

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
 4 MICHELE FOTINOS, on behalf of
 5 herself and as Guardian ad Litem
 6 for her minor children, R.F. and
 7 A.F.,

8 Plaintiff,

9 v.

10 JOHN FOTINOS; DAWN GROVER; RENEE
 11 LA FARGE; BONNIE MILLER; KAMALA
 12 HARRIS, Attorney General; JAYNE
 13 KIM, Chief Trial Counsel, State
 14 Bar of California; ROBYN PITTS,
 15 City of Belmont Police Officer;
 16 MARK REED, San Mateo County
 17 Deputy Sheriff; PATRICK CAREY,
 18 San Mateo County Deputy Sheriff;
 19 SHANNON MORGAN; CITY OF BELMONT;
 20 COUNTY OF SAN MATEO; and RENEE
 21 LAFARGE,

22 Defendant.
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No. C 12-953 CW

ORDER GRANTING
 PLAINTIFF'S EX
 PARTE APPLICATIONS
 FOR EXTENSION OF
 TIME (Docket Nos.
 87 & 88) AND
 STRIKING
 IMPROPERLY FILED
 DOCUMENTS (Docket
 Nos. 87-1, 87-2 &
 87-3)

United States District Court
 For the Northern District of California

18 I. Ex Parte Application for Extension of Time to File Second
 19 Amended Complaint

20 On March 22, 2013, the Court entered an order dismissing all
 21 of Plaintiff's federal claims. In that order, the Court granted
 22 Plaintiff fourteen days to amend some of her federal claims. The
 23 Court advised Plaintiff that if she failed to do so, her federal
 24 claims would be dismissed with prejudice and her state claims
 25 would be dismissed without prejudice to refile in state court.
 26 Accordingly, Plaintiff's Second Amended Complaint (2AC) was due by
 27 April 5, 2013.

1 On April 9, 2013, Plaintiff filed an "Ex Parte Motion for
2 Leave to File Second Amended Supplemental Complaint 3 days late."
3 Docket No. 87. Defendants County of San Mateo, Mark Reed, Patrick
4 Carey and Shannon Morgan (San Mateo County Defendants) and
5 Defendant Bonnie Miller oppose the motion.

6 The Court notes that this request is part of an ongoing
7 pattern of Plaintiff's counsel seeking extensions of time after a
8 deadline has passed. See Docket Nos. 44, 65, 85, 87, 88; see also
9 Docket No. 63 (application for extension of time filed on the date
10 the filing was due). Federal Rule of Civil Procedure 6(b)(1)(B)
11 provides that a motion for extension of time "made after the time
12 has expired" may be granted "if the party failed to act because of
13 excusable neglect." However, the primary reason provided by
14 Plaintiff for failing to meet the Court's deadlines is that
15 counsel is busy working with other clients on other matters. See,
16 e.g., Docket No. 65 at ¶4 ("I ended up on Friday, July 6, 2012,
17 and Saturday, July 7, 2012, working on matters for two other
18 clients . . ."); Docket No. 87 at ¶3 (discussing counsel's decision
19 to "[take] on the task of representing the key witness of [her]
20 client for whom [she] recently filed a civil rights action in the
21 Central District of CA.").

22 The California Rules of Professional Conduct provide, "A
23 member shall not intentionally, recklessly, or repeatedly fail to
24 perform legal services with competence." Cal. Rule of Prof.
25 Conduct 3-110(A). "For purposes of this rule, 'competence' in any
26 legal service shall mean to apply the 1) diligence, 2) learning
27 and skill, and 3) mental, emotional, and physical ability
28 reasonably necessary for the performance of such service." Id. at

1 3-110(B). The Court interprets this rule to require counsel to
2 consider her obligations to current clients before taking on
3 additional clients or cases, and to ensure that she can meet the
4 deadlines in all of her existing cases.

5 The Court will GRANT Plaintiff's ex parte application for
6 extension of time to file her 2AC. (Docket No. 87) However,
7 counsel is admonished of her duty to provide competent service to
8 her client, including her duty to meet the Court's deadlines.
9 Plaintiff shall file her 2AC within one day of the date of this
10 order. Defendants may answer or move to dismiss the amended
11 complaint within twenty-one days thereafter.

12 II. Second Ex Parte Application for Extension of Time Re:
13 Documents Containing Confidential Information

14 On March 19, 2013, the Court issued an order directing
15 Plaintiff to take steps to ensure that her filings did not
16 improperly include confidential information on the public docket.
17 On April 1, 2013, the Court granted Plaintiff's request for an
18 extension of time until April 9, 2013 to comply with the Court's
19 March 19, 2013 order. On April 10, 2013, Plaintiff filed an ex
20 parte application seeking an extension of the April 9 deadline to
21 April 16, 2013. In that application, counsel states that she
22 "could not complete the redaction and other tasks related to
23 preserving the confidentiality of the children even in the extra
24 time which the Court granted because of the demands of her law
25 practice." As noted above, this excuse is not well-taken in light
26 of counsel's obligation to provide competent service to her
27 clients. Nonetheless, the Court will GRANT Plaintiff's ex parte
28 application for an extension of time to April 16, 2013 (Docket No.

1 88). Any future failure to meet Court deadlines may result in
2 sanctions including, but not limited to, dismissal of Plaintiff's
3 case.

4 III. Request to Substitute Redacted Amended Complaint

5 At least twice, this Court has admonished Plaintiff of the
6 need to refer to minor children by their initials rather than
7 their full names. See Docket Nos. 45 and 83. Because of
8 Plaintiff's continued use of minor children's full names and
9 inclusion of other personally identifying and sensitive
10 information related to minor children, the Court temporarily
11 sealed the entire docket on March 19, 2013 and ordered Plaintiff
12 to conduct a review of all of her filings and to take steps to
13 ensure that such information is not included on the public docket.
14 Docket No. 83. Nonetheless, Plaintiff has filed a proposed 2AC
15 that includes the full names of her minor children. Docket Nos.
16 87-1, 87-2 and 87-3. Recognizing this error, counsel has filed a
17 "request to substitute" a redacted 2AC. (Docket No. 88)

18 The Court grants this request. Further, because Docket Nos.
19 87-1, 87-2, and 87-3 contain the full names of Plaintiff's minor
20 children, the Court STRIKES those documents and directs the Clerk
21 to delete them from the public docket.

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23 IT IS SO ORDERED.

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25 Dated: 4/12/2013

26 
27 CLAUDIA WILKEN
28 United States District Judge