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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6 JOY MACKELL,
7 Plaintiff,

8 v.

9 WELLS FARGO HOME MORTGAGE, et
10 al.,
11 Defendants.

Case No. 16-cv-04202-BLF

**ORDER GRANTING MOTION TO FILE
A LATE BRIEF**

[Re: ECF 33]


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13 Plaintiff Joy Mackell (“Mackell”) moves the Court for leave to file a late opposition to
14 Defendants’ motion to dismiss under Fed. R. Civ. P. 6(b). ECF 33. Mackell argues that there is
15 good cause because the opposition had already been prepared but was not filed due to an
16 inadvertent clerical error. *Id.* Mackell further argues that there would be no prejudice to
17 Defendants because Defendants could still to file their reply in support of their motion to dismiss.

18 Under Rule 6(b), a “determination of whether neglect is excusable is an equitable one that
19 depends on at least four factors: (1) the danger of prejudice to the opposing party; (2) the length of
20 the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether
21 the movant acted in good faith.” *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir.
22 2000). The Court finds that there is no danger of prejudice to Defendants because the hearing for
23 Defendants’ motion to dismiss has been vacated and a reply could still be filed. Moreover,
24 Defendants have not opposed this motion to file a late opposition. At this early stage of the case,
25 the late opposition would have no significant impact on the progression of the case. The Court
26 additionally finds the inadvertent clerical error to be an excusable neglect. Based on these
27 reasons, the Court GRANTS Mackell’s motion for leave to file a late opposition to Defendants’
28 motion to dismiss.

1 Mackell shall file the opposition attached as Exhibit A to its administrative motion, ECF
2 34-1, as a separate docket entry on or before December 13, 2016. Defendants shall file their reply
3 on or before December 20, 2016. The Court will then rule on Defendants' motion to dismiss on
4 the submitted papers without a hearing.

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6 **IT IS SO ORDERED.**

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8 Dated: December 9, 2016

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10 BETH LABSON FREEMAN
11 United States District Judge
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