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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 J.A.M., a minor child; O.A.M., a minor
12 child; and THELMA MEDINA
13 NAVARRO, their mother,
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15 Plaintiffs,
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17 v.
18 UNITED STATES OF AMERICA, et al.,
19 Defendants.

Case No.: 3:22-CV-00380-GPC-BGS

**ORDER GRANTING PLAINTIFFS’
MOTION TO RE-TAX COSTS**

[ECF No. 71]

18 Before the Court is Plaintiffs’ Motion to Re-Tax Costs. ECF No. 71. A briefing
19 schedule was set by the Court, ECF No. 72, but the United States did not oppose, and
20 Plaintiffs did not file a reply. For the reasons below, the Court GRANTS Plaintiffs’
21 Motion to Re-tax Costs.

22 **FACTUAL BACKGROUND**

23 On March 21, 2022, Plaintiffs filed a complaint against the United States for
24 damages arising from the U.S. Customs & Border Protection (“CBP”) detention of the
25 Children-Plaintiffs. ECF 1. Plaintiffs brought claims under the Federal Torts Claims Act
26 (“FTCA”), the Bane Act, and the U.S. Constitution. *Id.* On May 24, 2024, the United
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1 States moved to dismiss for lack of jurisdiction pursuant to Federal Rule of Civil
2 Procedure 12(b)(1). ECF No. 4. On July 21, 2022, the Court denied the motion to
3 dismiss, and the case proceeded to discovery. ECF No. 16.

4 At the time of trial, the only remaining counts were the FTCA claims for false
5 imprisonment, intentional infliction of emotional distress, and negligence. ECF No. 65 at
6 2. A bench trial was held from March 19, 2024 to March 22, 2024. *Id.* On June 21,
7 2024, the Court issued its findings of fact and conclusions of law and held that the United
8 States was liable on the remaining counts. ECF No. 65. On the same day, the Court
9 entered judgment in favor of Plaintiffs. ECF No. 66.

10 On July 9, 2024, Plaintiffs submitted a bill of costs requesting \$24,748.87 total:
11 \$21,526.87 in transcripts costs, \$2,820.00 in interpreters costs, and \$402.00 in court fees.
12 ECF No. 67. Before the July 5, 2024 deadline to submit Plaintiffs' bill of costs,
13 Plaintiffs' sole counsel was abroad on a pre-planned trip and, during that trip, a member
14 of his immediate family unexpectedly passed away. ECF No. 71 at 2. The deadline to
15 submit the bill of costs passed while Plaintiffs' counsel was in Oregon dealing with the
16 loss of his family member. *Id.*¹ Plaintiffs' counsel was still in Oregon when he filed the
17 bill of costs four days after the deadline. *Id.* Because the bill of costs was filed more
18 than 14 days after entry of judgment, *see* L.R. 54.1(a), the Clerk of the Court denied it in
19 its entirety, ECF No. 70.

20 On July 30, 2024, Plaintiffs timely moved to re-tax costs pursuant to Federal Rule
21 of Civil Procedure 54(d)(1) and Local Rule 54.1.h. ECF No. 71. Plaintiffs argue that,
22 because their counsel's untimeliness was caused by "excusable neglect," the Court should
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26 ¹ Plaintiffs' counsel also raised this issue in a Declaration supporting the bill of costs.
27 *See* ECF No. 67-1.

1 extend their time for filing the bill of costs pursuant to Federal Rule of Civil Procedure
2 6(b)(2). For the reasons below, the Court GRANTS Plaintiffs’ Motion to Re-tax Costs.

3 **DISCUSSION**

4 Under Federal Rule of Civil Procedure 6(b)(1)(B), a court may extend the time for
5 a “motion made after the time has expired if the party failed to act because of excusable
6 neglect.” *See Rodriguez v. Barrita, Inc.*, 53 F. Supp. 3d 1268, 1292 (N.D. Cal. 2014)
7 (stating that, because “the timeliness requirements of Rule 54(d) are not jurisdictional,” a
8 court has discretion to consider untimely motions for costs) (internal quotation marks and
9 citations omitted). Courts consider four factors to determine whether there is excusable
10 neglect: “(1) the danger of prejudice to the opposing party; (2) the length of the delay and
11 its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the
12 movant acted in good faith.” *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973
13 (9th Cir. 2007) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S.
14 380, 395 (1993)).

15 ***Danger of Prejudice to Defendant.*** Allowing Plaintiffs’ late filing will not
16 prejudice the United States. There are no other pending matters in this litigation that are
17 affected by the delay. While there was a pending appeal, it has now been dismissed.²
18 ECF No. 77. And a four-day delay in filing the bill of costs is not otherwise negatively
19 impacting the United States. In fact, the United States failed to oppose the Motion to Re-
20 tax. If the United States felt that it was prejudiced by the delay, it could have taken the

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23 ² The delay would not have impacted the appeal regardless. If a cost award was issued
24 while the appeal was pending, the United States could have contested it in its appeal. *See*
25 *Draper v. Rosario*, 836 F.3d 1072, 1086 (9th Cir. 2016) (“an order fixing costs in the
26 district court, while an appeal was pending, should be considered an inseparable part of
27 the pending appeal”) (internal citation omitted).

1 opportunity to convey the prejudicial effects to the Court.³ Accordingly, there is no
2 danger of prejudice to the United States, and this factor weighs in favor of Plaintiffs.

3 ***Length of Delay.*** Plaintiffs filed their bill of costs on July 9, 2024—just four days
4 (and two business days) after the deadline. Such a delay has not—and is unlikely to—
5 impact the proceedings at all. This is especially true considering the case’s current
6 procedural stance. The appeal to the Ninth Circuit has now been dismissed, ECF No. 77,
7 and there are no other pending matters in the litigation. This factor thus weighs in favor
8 of Plaintiffs.

9 ***Reason for the Delay.*** The Court finds that Plaintiffs’ counsel has a good reason
10 for the inadvertent delay. Before the July 5, 2024 deadline to submit Plaintiffs’ bill of
11 costs, Plaintiffs’ sole counsel was abroad on a pre-planned trip. ECF No. 71 at 2. During
12 that trip, a member of his immediate family unexpectedly passed away, and counsel
13 quickly traveled to Oregon to be with his family after the unexpected loss. *Id.* The
14 deadline to submit the bill of costs passed while Plaintiffs’ counsel was still in Oregon
15 dealing with the loss of his family member. *Id.*⁴ In fact, Plaintiffs’ counsel was still in
16 Oregon when he filed the bill of costs four days after the deadline. *Id.* The sudden death
17 of a family member, and the travel and hardships that accompany such a tragedy, are
18 good reasons for a slight delay in meeting a filing deadline. *See Tall Hickory Mktg., LLC*
19 *v. Infoquick, Inc.*, 2013 WL 12202997, at *2 (C.D. Cal. Mar. 11, 2013) (finding good
20 reason for delay where counsel’s father passed away and counsel had to travel across the
21 county to care for his family); *Halvonik v. Doll*, 263 F.R.D. 13, 16-17 (D.D.C. 2009)

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24 ³ Further, Local Rule 7.1(f)(3)(c) indicates that failure to file opposing papers “may
25 constitute a consent to the granting of the motion.”

26 ⁴ Plaintiffs’ counsel also raised this issue in a Declaration supporting the bill of costs.
27 *See* ECF No. 67-1.

1 (finding excusable neglect where “an extensive family medical emergency” caused
2 plaintiff’s counsel to file proof of service several weeks late); *Stark-Romero v. Nat’l R.R.*
3 *Passenger Co. (AMTRAK)*, 275 F.R.D. 544, 549 (D.N.M. 2011) (“[a] lawyer should be
4 able to show excusable neglect and good cause when he or she has unexpected turmoil in
5 life”). Therefore, this factor weighs in favor of Plaintiffs.

6 ***Good Faith.*** There is no indication that Plaintiffs’ counsel did not act in good
7 faith. As described above, he experienced an unexpected loss in his family, attended to
8 the circumstances, and even submitted the bill of costs while still attending to the
9 circumstances. Accordingly, this factor weighs in favor of Plaintiffs.

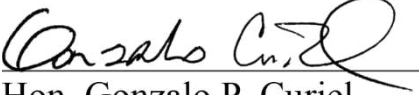
10 Because all four factors weigh decidedly in favor of Plaintiffs, the Court finds that
11 Plaintiffs failed to act as a result of excusable neglect. Accordingly, the Court will
12 exercise its discretion to extend the time for submitting the bill of costs pursuant to
13 Federal Rule of Civil Procedure 6(b)(1)(B) and accept Plaintiffs’ untimely submission.

14 CONCLUSION

15 For the above reasons, the Court GRANTS Plaintiffs’ Motion to Re-tax Costs. The
16 Clerk of the Court is directed to issue the appropriate cost award based on Plaintiffs’ bill
17 of costs. The hearing set for October 25, 2024 shall be **vacated**.

18 **IT IS SO ORDERED.**

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20 Dated: October 24, 2024

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22 Hon. Gonzalo P. Curiel
23 United States District Judge
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