

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Count's Kustoms, LLC,
5 Plaintiff

6 v.

7 Joseph Frontiera, et al.,
8 Defendants

9
10 ALL RELATED ACTIONS

2:16-cv-00910-JAD-GWF

**Order Re: Motion-to-Dismiss
Briefing**

[ECF Nos. 25, 37]

11 When defendant Joseph Frontiera filed his motion to dismiss¹ eight minutes after the
12 stipulated deadline expired, plaintiff Count's Kustoms, LLC moved to strike it as untimely.²
13 Frontiera asks the court to excuse the motion's untimeliness and consider the motion on its
14 merits.³ I find both motions suitable for disposition without oral argument.⁴

15 **A. Motion to Strike**

16 Plaintiff cites Federal Rule of Civil Procedure 12(f)(2) as the authoritative basis for its
17 request to strike Frontiera's late motion to dismiss. Rule 12(f) authorizes the court to strike
18 matters *from pleadings*.⁵ Rule 7 identifies the civil filings that qualify as pleadings;⁶ a motion to
19
20
21

22 ¹ ECF No. 18.

23 ² ECF No. 25.

24 ³ ECF No. 37.

25 ⁴ L.R. 78-1.

26 ⁵ Fed. R. Civ. P. 12(f).

27 ⁶ Fed. R. Civ. P. 7(a)(1)–(7).
28

1 dismiss is not among them, so Rule 12(f) has no application here.⁷ The motion to strike (ECF
2 No. 25) is denied.

3 **B. Motion for Leave**

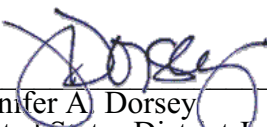
4 Frontiera moves the court to accept his late-filed motion based on a showing of excusable
5 neglect. Counsel explains that the motion was served on all counsel minutes before the deadline,
6 but the filing did not ultimately go through until eight minutes after midnight on the following
7 day.⁸ Because the motion was timely served on the parties, and the filing delay was mere
8 minutes long, I find excusable neglect and good cause exists. Accordingly, I grant Frontiera's
9 motion (ECF No. 37) and deem his motion to dismiss (ECF No. 18) timely.

10 **Conclusion**

11 Accordingly, IT IS HEREBY ORDERED that

- 12 • Plaintiff's Motion to Strike Defendant Frontiera's Motion to Dismiss As Untimely
13 **[ECF No. 25] is DENIED;**
- 14 • Defendant Frontiera's Motion for Leave for this Court to Accept Late Filing of
15 Motion to Dismiss **[ECF No. 37] is GRANTED.** Frontiera's Motion to Dismiss
16 **[ECF No. 18]** will be considered as a timely motion.

17 DATED: June 20, 2016

18 
19 _____
20 Jennifer A. Dorsey
21 United States District Judge
22
23
24

25 ⁷ *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) (“Under the express
26 language of the rule, only pleadings are subject to motions to strike.”).

27 ⁸ ECF Nos. 37 at 3; 37-1 at 3.