

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
NO. 3:18-CV-105

FRANK MORENO,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
EXPEDIA,	)	
	)	
Defendants.	)	
	)	
	)	

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This matter is before the Court upon the *pro se* Plaintiff’s September 24, 2018 letter motion requesting an extension of time to appeal the Court’s June 20, 2018 Order granting Defendant’s Motion to Compel Arbitration. The Defendant has filed a response in opposition and the Plaintiff has filed a Reply. This matter is now ripe for disposition.

Plaintiff Frank Moreno initiated this lawsuit against Defendant Expedia on January 30, 2018, asserting a claim under the Consumer Protection Act (RCW 19.86) of the State of Washington and a claim under the Federal Trade Commission Act (“FTCA”) for “false or misleading” advertising arising out of Plaintiff’s decision to utilize Expedia’s website to book travel accommodations near Charleston, South Carolina in December 2017.

Defendant moved to compel arbitration and the Court entered its Order granting that motion on June 20, 2018. A copy of this Order was mailed to the Plaintiff at the address provided to the Court. Thirty days passed without Plaintiff filing a Notice of Appeal as provided under Rule 4 of the Federal Rules of Appellate Procedure or other filing seeking reconsideration

or review of the Order. Plaintiff claims that he called the Clerk's Office on September 5 to inquire about the pending motion and learned that the Court had granted it. After requesting a copy of the Order, Plaintiff asserts he received a copy on September 9, 2018. On September 24, 2018, Plaintiff sent correspondence to the Court indicating that he received a copy of the Order from the Court on September 9, 2018, asserting that had he timely received a copy of the Order he would have filed a notice of appeal, and requesting that he be provided additional time to appeal the Order.

Rule 4(a)(5) of the Federal Rules of Appellate Procedure allows the Court to extend the time to file a notice of appeal if: "(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (2) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, the party shows excusable neglect or good cause." Rule 4(a)(1) allows thirty (30) days following the entry of an order to file a notice of appeal.

Plaintiff herein seeks to extend the time to file a notice of appeal approximately ninety-five days after the Court issued its Order. Plaintiff's time to file the motion expired thirty-five days prior to the filing of his request and therefore his request is untimely.

Even if his request was timely, Plaintiff has failed to establish excusable neglect or good cause. Even if Plaintiff did not receive a copy of the Order until September 9, as he claims, he did not seek leave to appeal the Order until September 24th, more than two weeks later. Plaintiff has offered no explanation for this delay and has offered no basis upon which the Court could determine that such delay is "excusable" or that "good cause" exists for allowing Plaintiff to file a Notice of Appeal at this juncture. Accordingly,

IT IS THEREFORE ORDERED that Plaintiff's letter motion to extend time to file a notice of appeal is hereby DENIED.

Signed: October 31, 2018

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

