

The Honorable Robert S. Lasnik  
The Honorable David G. Estudillo  
The Honorable Lawrence Van Dyke

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

BENANCIO GARCIA III,

Plaintiff,

v.

STEVEN HOBBS in his official capacity as  
Secretary of State of Washington, et al.

Defendants.

NO. 3:22-cv-05152-RSL-DGE-LJCV

UNOPPOSED MOTION TO  
EXTEND TIME FOR FILING  
ANSWER TO AMENDED  
COMPLAINT

NOTE ON MOTION CALENDAR:  
July 15, 2022

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), Defendant Secretary Hobbs respectfully requests that this Court extend the deadline for filing an answer to Plaintiff's amended complaint. Secretary Hobbs requests that this Court extend the deadline to accept the answer filed on Thursday, July 7th. This extension will not prejudice any party, and counsel for both Mr. Garcia and the State of Washington have indicated that they do not oppose the extension.

**I. RELEVANT FACTS**

In May 2022, Secretary Hobbs filed an answer to Plaintiff's complaint. Dkt. # 12. In early June 2022, this Court entered an order directing Plaintiff to file an amended complaint adding the State of Washington as a defendant. Dkt. # 13 at p. 2.

1 Pursuant to this Court’s order, Plaintiff filed an amended complaint on June 9, 2022. Dkt.  
2 # 14. The only substantive changes from the original complaint were the addition of a new  
3 Paragraph 13, which identified the State of Washington as a defendant and made certain  
4 allegations, and the addition of a sentence to Paragraph 16, asserting that “Defendant State of  
5 Washington is a state of the United States.” Dkt. # 13 at p. 4. Pursuant to Federal Rule of Civil  
6 Procedure 15(a)(3), an answer by Secretary Hobbs was due on June 23, 2022, and this deadline  
7 was timely calendared, Declaration of Karl D. Smith (Smith Decl.), ¶ 2. Pursuant to Federal Rule  
8 of Civil Procedure 12(a)(1)(A)(ii), an answer by the State of Washington is not due until  
9 August 9, 2022. *See* Dkt. # 16 (waiver of service reflecting that an answer must be filed “within  
10 60 days from June 10, 2022”).

11 On June 16, 2022, counsel for Secretary Hobbs prepared a draft answer to the amended  
12 complaint. Smith Decl., ¶ 3. From June 9 through June 23, 2022, counsel for Secretary Hobbs  
13 had an unusually large number of professional and personal responsibilities, including multiple  
14 filing deadlines. *Id.*, ¶ 4. On June 23, 2022, the counsel for Secretary Hobbs who was responsible  
15 for filing the answer went on vacation under the erroneous belief that the answer had been filed  
16 in this matter. *Id.*, ¶ 5. Upon returning and discovering the error, counsel promptly prepared this  
17 motion and the accompanying declaration. *Id.*, ¶ 6.

## 18 II. ARGUMENT

19 This Court may extend a procedural deadline “after the time has expired if the party failed  
20 to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). “[E]xcusable neglect’ under  
21 Rule 6(b) is a somewhat ‘elastic concept’ and is not limited strictly to omissions caused by  
22 circumstances beyond the control of the movant.” *Pioneer Investment Servs. Co. v. Brunswick*  
23 *Assocs. Ltd. P’ship*, 507 U.S. 380, 392 (1993) (quoting 4A C. Wright & A. Miller, *Federal*  
24 *Practice and Procedure* § 1165, p. 479 (2d ed. 1987)). In assessing whether the standard is met,  
25 this Court considers four factors: (1) the danger of prejudice; (2) the length of delay and its  
26 potential impact of judicial proceedings; (3) the reason for the delay; and (4) whether the movant

1 acted in good faith. *Iopa v. Saltchuk-Young Bros., Ltd.*, 916 F.3d 1298, 1301 (9th Cir. 2019). On  
2 balance, these factors weigh strongly in favor of concluding that excusable neglect is established  
3 here.

4 There is no danger of prejudice. The answer to the amended complaint is identical to the  
5 existing answer except that it makes certain admissions and indicates that certain allegations are  
6 legal conclusions to which no response is required. The absence of prejudice is further reflected  
7 by the fact that the remaining parties do not object to this extension.

8 The length of delay is short, and there is no potential impact on judicial proceedings. The  
9 delay is two weeks, and Defendant State of Washington's answer is not due for over one month.  
10 There are no deadlines that could plausibly be affected by the delay.

11 The reason for the delay is the closest question among these factors. Secretary Hobbs  
12 acknowledges that this was an oversight that was within the control of his counsel. But this fact  
13 is not dispositive. *Pioneer Investment Servs. Co.*, 507 U.S. at 392. In other circumstances, an  
14 oversight of this nature may not constitute excusable neglect. Here, though, the three other  
15 factors overwhelmingly support a finding of excusable neglect.

16 Finally, Secretary Hobbs has acted in good faith. Counsel timely created a calendar  
17 reminder and prepared a timely draft. Smith Decl., ¶¶ 2, 3. Upon discovering the oversight,  
18 counsel promptly contacted counsel for Plaintiff and the State, acknowledging the oversight. *Id.*,  
19 ¶ 7. This was a good faith error that provided no tactical advantage to Secretary Hobbs.

20 Considering all four factors, this Court should conclude that the excusable neglect  
21 standard is satisfied, and extend the deadline.

### 22 III. CONCLUSION

23 Secretary Hobbs respectfully requests that this Court extend the deadline for filing an  
24 answer to the amended complaint and accept the answer filed on July 7, 2022.

1 RESPECTFULLY SUBMITTED this 7th day of July, 2022.

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3 *Attorney General*

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14 *Attorneys for Defendant Steven Hobbs*

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**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 7th day of July 2022, at Olympia, Washington.

*s/ Leena Vanderwood*  
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The Honorable Robert S. Lasnik  
The Honorable David G. Estudillo  
The Honorable Lawrence Van Dyke

**UNITED STATES DISTRICT COURT  
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NO. 3:22-cv-05152-RSL

ORDER GRANTING UNOPPOSED  
MOTION TO EXTEND TIME FOR  
FILING ANSWER TO AMENDED  
COMPLAINT

[PROPOSED]

THIS MATTER having come on regularly for hearing before the undersigned judge of the above-entitled Court upon Defendant Steven Hobbs' Unopposed Motion to Extend Time for Filing Answer to Amended Complaint, and the parties being represented by their counsel of record, and the Court having examined the records and files herein, and being fully advised in the matter; now therefore,

IT IS HEREBY ORDERED that Defendant Steven Hobbs' Unopposed Motion to Extend Time for Filing Answer to Amended Complaint is GRANTED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
United States District Court Judge

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Presented by:  
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*Attorneys for Defendant Steven Hobbs*

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4 this document upon all counsel of record.

5 DATED this 7th day of July 2022, at Olympia, Washington.

6 *s/ Leena Vanderwood*  
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