

No. 13-56454

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Eugene Evan Baker,

Plaintiff-Appellant,

v.

Eric H. Holder, Jr., et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV 13-05807-RMW)

**APPELLANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE REPLY BRIEF; DECLARATION OF SEAN A. BRADY**

C. D. Michel (S.B.N. 144258)
Joshua R. Dale (S.B.N. 209942)
Sean A. Brady (S.B.N. 262007)
Anna M. Barvir (S.B.N. 268728)
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Tel. No: (562) 216-4444
Fax No: (562) 216-4445
E-mail: cmichel@michellawyers.com

Counsel for Plaintiff-Appellant

REQUEST FOR EXTENSION OF TIME

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2(b), Appellants respectfully submit this unopposed motion for a seven-day extension, through and including May 27, 2016, to file their Reply Brief. This request is based on the declaration of Sean A. Brady attached hereto.

Plaintiff-Appellant's Reply Brief is currently scheduled to be filed on or before May 20, 2016. Declaration of Sean A. Brady ("Brady Decl."), ¶ 2. While counsel for Plaintiff-Appellant Eugene Evan Baker ("Baker") is aware that Ninth Circuit Rule 31-2.2(b) expressly states that a motion requesting an extension of time should be filed at least seven days before the expiration of the time prescribed for filing the brief, for the reasons summarized here and attested to in Mr. Brady's attached declaration, Baker has a substantial need for an extension of that deadline. Counsel for Defendant-Appellee, U.S. Attorney General Eric Holder, Patrick G. Nemeroff, has indicated that they do not oppose. Brady Decl., ¶ 3. Counsel for Defendant-Appellee, California Attorney General Kamala Harris and the State of California Department of Justice, Anthony R. Hakl, also has indicated that they do not oppose. Brady Decl., ¶ 4. Baker thus requests this Court issue an order granting

Baker an extension of seven days to file his Reply Brief. If approved by the Court, his Reply Brief shall be due on or before May 27, 2016. Brady Decl., ¶ 11.

To comply with Ninth Circuit Rule 31-2.2(b), Baker had until May 13, 2016, to file an extension request. Due to a serious illness, however, Baker's lead counsel, Sean A. Brady, was bed-ridden for the entire week of May 8 to May 15, 2016. Brady Decl., ¶ 6. His emergency time off was unforeseeable, unavoidable, and debilitating—resulting in him only able to correspond about work minimally while at home. Brady Decl., ¶ 7. In Mr. Brady's absence, the other attorney who would have been responsible for continuing Baker's appeal, Ms. Anna M. Barvir, was dedicated exclusively to researching, drafting, finalizing, and filing two Briefs in the Court of Appeals for the District of Columbia Circuit. Brady Decl., ¶ 9. As a result, a timely motion requesting an extension of time was not filed. Brady Decl., ¶ 8.

The above reasons preclude Baker's counsel from filing Baker's Reply Brief by the current deadline of May 20, 2016, without significantly impairing its quality. Brady Decl., ¶ 10. Baker previously obtained a thirty-day streamlined extension of time to file the brief April 22, 2016. Brady Decl., ¶ 5. Baker's request for an extension is made in good faith and not for the purpose of delay. Brady Decl., ¶ 13.

Baker thus requests that this Court grant a seven-day extension, through and including May 27, 2016, for Baker to file his Reply Brief. Alternatively, Baker requests an extension for a period of time the Court deems appropriate.

Date: May 18, 2016

MICHEL & ASSOCIATES, P.C.

/s/ Sean A. Brady

Sean A. Brady

Attorney for *Plaintiff-Appellant*

DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, declare as follows:

1. I am attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an Associate attorney at Michel & Associates, P.C., attorneys of record for Plaintiff-Appellant. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. Plaintiff-Appellant's Reply Brief is presently due on May 20, 2016.

3. On May 18, 2016, my office sent an e-mail to counsel of record for Defendant-Appellee U.S. Attorney General Eric Holder, Patrick G. Nemeroff and Michael Raab, asking whether the Attorney General would oppose Plaintiff-Appellant's motion for a one-week extension to file Plaintiff-Appellant's Reply Brief. Mr. Nemeroff responded that the Attorney General does not oppose the motion.

4. On May 18, 2016, I sent an e-mail to counsel of record for Defendant-Appellee California Attorney General Kamala Harris and the State of California Department of Justice, Anthony R. Hakl, asking whether the Attorney General would oppose Plaintiff-Appellant's motion for a one-week extension to file

Plaintiff-Appellant's Reply Brief. Mr. Hakl responded on May 18, 2016, stating that the Attorney General does not oppose the motion.

5. On April 22, 2016, Plaintiff-Appellant made a streamlined request to extend time to file Appellant's Reply Brief by thirty days.

6. Due to a serious illness, I was bed-ridden for the entire week of May 8, 2016 to May 15, 2016.

7. My emergency time off was unforeseeable, unavoidable, and debilitating—I was only able to correspond about work minimally while at home.

8. Because I was bed-ridden on May 13, 2016, I was unable to file a timely motion requesting an extension of time.

9. In my absence, the other attorney who would have been responsible for continuing Plaintiff-Appellant's appeal, Ms. Anna M. Barvir, was dedicated exclusively to researching, drafting, finalizing, and filing of two Briefs in the Court of Appeals for the District of Columbia. Specifically, she filed a Reply Brief on May 6, 2016, in *Ampersand v. N.L.R.B.*, Case Nos. 15-1082, 15-1154 (D.C. Cir.), and an Opening Brief on May 16, 2016, in *Ampersand v. N.L.R.B.*, Case Nos. 15-1074, 15-1130 (D.C. Cir.).

10. The above reasons preclude Plaintiff-Appellant's counsel from filing the Reply Brief by the current deadline of May 20, 2016, without significantly

impairing its quality. As such, Plaintiff-Appellants respectfully request a seven-day extension of time from the currently scheduled May 20, 2016 deadline to file their Reply Brief.

11. If the Court approves Plaintiff-Appellant's motion for extension, the Reply Brief shall be due on or before May 27, 2016.

12. Counsel for Plaintiff-Appellant has at all times exercised diligence to provide this Court timely and professional briefing. The requested extension of time will enable counsel to continue to do so.


13. This motion is made in good faith for the reasons of actual need set forth herein and not for the purpose of delay. In fact, it is in Plaintiff-Appellant's interest to expedite a resolution of this matter, but not at the expense of the quality of briefing.

14. To my knowledge, the requested extension will not prejudice any party.

15. The court reporter is not in default with regard to any designated transcripts.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 18th day of May, 2016, in Long Beach California.


Sean A. Brady
Declarant

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2016, an electronic PDF of
**APPELLANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE REPLY BRIEF; DECLARATION OF SEAN A. BRADY**
was uploaded to the Court's CM/ECF system, which will automatically generate
and send by electronic mail a Notice of Docket Activity to all registered attorneys
participating in the case. Such notice constitutes service on those registered
attorneys.

Date: May 18, 2016

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for Plaintiffs-Appellants