NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SONIA LOPEZ,

Plaintiff - Appellant,

v.

COSTCO WHOLESALE CORPORATION,

Defendant - Appellee,

and

JEN PELL, DOES 1-50, inclusive,

Defendants.

No. 25-620

D.C. No. 2:23-cv-01686-MCS-PVC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Mark C. Scarsi, District Judge, Presiding

Submitted October 29, 2026**
Pasadena, California

Before: PAEZ, OWENS, and SANCHEZ, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Sonia Lopez appeals from the district court's denial of her motion under Federal Rule of Civil Procedure 60(b)(1) to seek relief from dismissal of her tort action against Costco Wholesale Corporation ("Costco"). We review a district court's denial of a Rule 60(b) motion for abuse of discretion. *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100 (9th Cir. 2006). As the parties are familiar with the facts, we do not recount them here. We affirm.

The district court did not abuse its discretion in concluding that Lopez's counsel's delay in moving to reopen was not excusable neglect under Rule 60(b)(1). To determine whether counsel's neglect was excusable, the district court applied the four factors set out by the Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993): (1) the danger of prejudice to the opposing party, (2) the length of the delay, (3) the reason for the delay, and (4) whether the movant acted in good faith. Lopez's appeal focuses on the length of delay and reasons for delay, as these are the factors the district court found weighed in favor of denial.

1. The district court did not abuse its discretion in concluding that the length of Lopez's delay weighed in favor of denial. First, the delay was significant: Lopez did not file her Rule 60(b)(1) motion until nearly eight months after the district court dismissed her case. *Cf. Harvest v. Castro*, 531 F.3d 737, 747 (9th Cir. 2008) (deeming a sixty-four day delay substantial). Lopez argues that,

because the case was litigated for a year in state court, the "delay of eight months here[]" was not unreasonable. But while lengthy delays may sometimes be reasonable, such delays must be justified. *See, e.g.*, *Lemoge v. United States*, 587 F.3d 1188, 1197 (9th Cir. 2009) (finding a seven-month delay reasonable "in light of [counsel's] traumatic medical issues that still afflicted him as of the time of the hearing"). As the district court explained, Lopez's counsel's caseload management issues do not justify Lopez's substantial delay. *Cf. id.*

2. Lopez also asserts that the district court abused its discretion in concluding that her counsel's reason for delay (his carelessness) did not constitute excusable neglect. *See Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000) (excusable neglect "covers cases of negligence, carelessness and inadvertent mistake"). The entire purpose of *Pioneer*'s equitable test is to determine whether carelessness is "excusable" or "inexcusable." *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (per curiam). And not every instance of carelessness qualifies as excusable neglect. *Pincay v. Andrews*, 389 F.3d 853, 859–60 (9th Cir. 2004) (en banc).

Lopez's counsel's justifications for the delay—personnel changes, a large caseload, and notice issues—are unavailing: The Supreme Court has noted that courts "give little weight to the fact that counsel was experiencing upheaval in his law practice . . . ." *Pioneer*, 507 U.S. at 398; *see also Iopa v. Saltchuk-Young*

Bros., Ltd., 916 F.3d 1298, 1301–02 (9th Cir. 2019) (per curiam). Lopez's delay thus does not qualify as excusable neglect.

Accordingly, the district court did not abuse its discretion in denying Lopez's Rule 60(b) motion to reopen.[1]

AFFIRMED.

[1] To the extent Lopez challenges the dismissal order itself, that order is not properly part of this appeal. Lopez filed her Rule 60(b)(1) motion after the time for appealing the order of dismissal had elapsed, *see* Fed. R. App. P. 4(a)(1)(A), and the motion was too late to toll the time to appeal the dismissal order, *see* Fed. R. App. P. 4(a)(4)(A)(vi).