



## I. STATEMENT OF FACTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiffs Myra Deleon and Karla Jimenez (“Plaintiffs”) commenced this action in the Superior Court of the State of California, County of Los Angeles, on October 28, 2019. In their Complaint, Plaintiffs allege as individuals and on a class basis that Denny’s (1) failed to pay all wages including overtime wages; (2) failed to provide meal periods; (3) failed to provide rest periods; (4) failed to provide accurate itemized wage statements; (5) failed to pay wages upon ending employment; (6) failed to reimburse employees for necessary business expenditures; and (7) engaged in unfair competition. Plaintiffs served Denny’s the complaint on January 3, 2020, and Denny’s removed to this Court pursuant to the Class Action Fairness Act of 2005 on February 3, 2020. (*See* Dkt. No. 1.)

The Court issued its Scheduling and Case Management Order (“Scheduling Order”) on March 4, 2020. (Dkt. No. 15.) In pertinent part, the Scheduling Order ordered that motions for class certification shall be filed within 120 days after removal, which was June 2, 2020. Plaintiffs failed to file a motion for class certification before the June 2, 2020 deadline. Plaintiffs also failed to seek relief from the filing deadline prior to the expiration thereof. Accordingly, Denny’s filed the motion asking the Court to strike Plaintiffs’ class allegations from their Complaint for failure to comply with the Court’s Scheduling Order, Local [Rule 23-3](#), and [Fed. R. Civ. Proc. 23\(c\)\(1\)\(A\)](#).

Plaintiffs contend that their failure to file their motion for class certification or request relief from the deadline prior to its expiration was the result of excusable neglect based on Plaintiffs’ counsel’s failure to calendar the filing deadline. (Opp. at 2; *see* Dkt. No. 19.) Specifically, Plaintiffs argue that their counsel’s neglect should be excused because: (1) the staff member responsible for calendaring the deadline (along with all other deadlines set forth in the Court’s Scheduling Order), Gilbert Martinez, went on medical leave the week the Scheduling Order was issued, and (2) Mr. Martinez’s error was not realized because most of Mahoney Law

1 Group’s support staff were furloughed due to California’s “shelter in place” order  
2 in response to the Covid-19 pandemic. (Opp. at 2.)

3 However, as Denny’s points out, by Plaintiffs’ own evidence, Mr. Martinez’s  
4 leave actually began on March 12, 2020, eight days after the March 4, 2020  
5 scheduling order was issued.<sup>1</sup> (Martinez Decl., ¶¶ 4, 5.) And California’s “shelter in  
6 place” order purporting to cause Mahoney Law Group to furlough some support staff  
7 was not issued until March 19, 2020, more than two weeks after the Scheduling Order  
8 was issued. (Cheng Decl., 19, Ex. H.)

9 In addition to failing to file their motion for class certification, Plaintiffs’ failed  
10 to propound any discovery in this matter prior to the June 2, 2020 deadline. Despite  
11 the Court’s Standing Order issued on February 5, 2020, ordering that “[c]ounsel  
12 shall begin to actively conduct discovery” (See Dkt. No. 9.), Plaintiffs did not  
13 propound any discovery until June 11, 2020—only *after* Denny’s had notified  
14 Plaintiffs of their failing to file their class certification motion. Denny’s, on the  
15 other hand, served Interrogatories, Request for Production of Documents, and  
16 Notices of Depositions on Plaintiffs Myra Deleon and Karla Jimenez on February 10,  
17 2020. Plaintiffs, however, failed to provide timely responses to Denny’s discovery  
18 requests within the timeframes set forth in the [Federal Rules of Civil Procedure,](#)  
19 [Rules 33](#) and 34, and again provided responses only *after* Denny’s brought Plaintiffs  
20 neglect to their attention.

## 21 II. LEGAL ANALYSIS

### 22 A. The Court Has Discretion To Strike Plaintiffs’ Class 23 Allegations Because Plaintiffs Failed To Move For Class 24 Certification

25  
26  
27  
28  
<sup>1</sup> In the parties Joint Statement regarding the instant motion, Plaintiffs’ counsel also misrepresented to the Court that the individual (who was unnamed at that point) responsible for calendaring the instant deadline was an associate that had not yet appeared in the case. (See Dkt. No. 17 at 4:11-13; 5:5-7.) But in Plaintiffs’ opposition, it is now revealed that this individual was actually a paralegal, Mr. Martinez. (See, e.g., Opp. at 4:8; see Mahoney Decl., ¶ 5, Dkt. No. 20.)

1 The Scheduling and Case Management Order issued in this matter on  
2 March 4, 2020 provides that “[m]otions for class certification shall be filed . . . within  
3 120 days after service of the Notice of Removal.” (Dkt. 15 at 34:25-27.) This order  
4 derives from and is supported by [Rule 23](#) of the Federal Rules of Civil Procedure and  
5 Local [Rule 23-3](#) of the Central District of California.

6 [Rule 23](#) of the Federal Rules of Civil Procedure provides that the Court must  
7 determine whether to certify a class “[a]t an early practicable time after a person sues  
8 or is sued as a class representative.” [Fed. R. Civ. P. 23\(c\)\(1\)\(A\)](#). “The Central  
9 District of California has, in an attempt to comply with requirements of [Federal Rule](#)  
10 [of Civil Procedure 23](#), adopted Local [Rule 23-3](#) which provides, in pertinent part:  
11 “At the earliest possible time after service of a pleading purporting to commence a  
12 class action other than an action subject to the Private Securities Litigation Reform  
13 Act of 1995, P.L. 104-67, [15 U.S.C. § 77z-1](#) et seq., but no later than any deadline  
14 set by the assigned judge, the proponent of the class must file a motion for  
15 certification that the action is maintainable as a class action.” C.D. [Cal. Civ. L.R.](#)  
16 [23-3 \(eff. Dec. 1, 2019\)](#).

17 As this Court recently explained, under [Federal Rules of Civil Procedure 12\(f\)](#),  
18 the Court “has discretion to strike class allegations for failure to comply with Local  
19 [Rule 23-3](#).” *See Winebarger*, 411 F. Supp. 3d 1070 at 1083-1085<sup>2</sup>, *citing*, [Watson v.](#)  
20 [Schwarzenegger](#), 347 Fed. Appx. 282, 284-85 (9th Cir. Jun. 23, 2009) (finding that  
21 the district court did not abuse its discretion in enforcing Local [Rule 23-3](#)); [Verner v.](#)  
22 [Swiss II, LLC](#), 2010 U.S. Dist. LEXIS 4443, \*4 (C.D. Cal. Jan. 6, 2010) (“Because  
23 Plaintiff failed to comply with Local [Rule 23-3](#) for filing motions for class  
24 certification, the Court strikes the class allegations in Plaintiff’s First Amended  
25 Complaint.”); *see also* [Burkhalter v. Montgomery Ward and Co., Inc.](#), 676 F.2d 291  
26 [\(8th Cir. 1982\)](#) (affirming district court’s striking of class allegations because of the

27  
28 <sup>2</sup> The ruling in *Winebarger* was issued prior to Central District of California  
amending Local [Rule 23-3](#). However, its central holding – striking plaintiff’s class  
allegations for failure to timely file a motion for class certification – remains relevant.

1 plaintiff's failure to comply with court order setting deadline for filing of motion for  
2 class certification); [Joseph N. Main P.C. v. Electronic Data Systems Corp., 168](#)  
3 [F.R.D. 573 \(N.D. Tex. 1996\)](#) (striking class allegations for failing to comply with the  
4 Local Rules' requirement that such motions be filed within ninety days of filing of  
5 the complaint).

6 "Local [Rule 23-3](#) and [Federal Rule of Civil Procedure 23\(c\)\(1\)](#) share an  
7 important purpose . . . 'premised on sound practical considerations,' including  
8 preservation and protection of the putative class members' claims. [Id.](#), citing, [Jones](#)  
9 [v. Hartford Ins. Co. of the Midwest, 243 F.R.D. 694, 695 \(N.D. Fla. 2006\)](#).

10 Here, it is undisputed that the Court's scheduling order set a June 2, 2020  
11 deadline for Plaintiffs to file a class certification motion and that Plaintiffs did not  
12 comply with that deadline. It is also undisputed that Plaintiffs did not, until filing  
13 their opposition to the instant motion, seek relief from the 120-day deadline.  
14 Accordingly, this Court has discretion to strike Plaintiffs' class allegations for failure  
15 to comply with [Rule 23](#) of the Federal Rules of Civil Procedure, Local [Rule 23-3](#) of  
16 the Central District of California, and the Scheduling Order issued on March 4, 2020.

17 **B. Plaintiffs Are Not Entitled To Relief Because There Is No**  
18 **Excusable Neglect**

19 [Rule 6](#) of the Federal Rules of Civil Procedure in relevant part provides that  
20 "[w]hen an act may or must be done within a specified time, the court may, for  
21 good cause, extend the time: ... (B) on motion made after the time has expired if  
22 the party failed to act because of **excusable neglect**." [Fed. R. Civ. Proc. 6\(b\)\(1\)\(B\)](#)  
23 (emphasis added). Inadvertence, ignorance of the rules, or mistakes construing  
24 the rules do not usually constitute "excusable" neglect. [Pioneer Investment](#)  
25 [Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 392,](#)  
26 [113 S. Ct. 1489, 123 L. Ed. 2d 74 \(1993\)](#). To determine whether neglect is  
27 "excusable," courts consider (1) the prejudice to the defendants, (2) the length  
28 of the delay and the potential impact on judicial proceedings, (3) the reason for

1 the delay, including whether it was within the reasonable control of the party  
2 seeking relief, and (4) whether that party acted in good faith. *Id.* at 395.

3 **1. Plaintiffs' Failure to Calendar The Motion For Class**  
4 **Certification Deadline Does Not Make Plaintiffs' Neglect**  
5 **Excusable**

6 Plaintiffs' "reason for non-compliance was due to Plaintiffs' counsel and his  
7 firm's failure to calendar deadlines in the case." (Cheng Decl, ¶ 18, Ex. G, at 4:5-  
8 7.) However, failing to calendar or miscalendaring a deadline is not excusable  
9 neglect. *See, e.g., Kyle v. Campbell Soup. Co., 28 F.3d 928, 930 (9th Cir. 1994)*  
10 (counsel's mistake in interpreting and applying the Local Rules and Federal  
11 Rules of Civil Procedure is not excusable neglect); *see also In re Veritas*  
12 *Software Corporation Securities Litigation, 496 F.3d 962, 973 (9th Cir. 2007)*  
13 (affirmed district court's order holding counsel's failure to timely file the motion  
14 was not excusable neglect even though the length of delay was not great and  
15 plaintiffs had not shown they were prejudice); *Seyboth v. GMC, 2008 U.S. Dist.*  
16 *LEXIS 37736, \*5-6 (M.D. Fla. May 7, 2008)* (finding that counsel's mistake in  
17 calculating time for the motion for class certification is not excusable neglect);  
18 *Robertson v. Fedex Nat'l LTL, Inc., 2010 U.S. Dist. LEXIS 145959, \*14-15 (C.D.*  
19 *Cal. Jan. 5, 2010)* (finding "a lawyer's mistake in interpreting and applying the  
20 relevant rules or mistake of fact is not a compelling excuse.").

21 In *Robertson*, Plaintiffs failed to timely file their motion for class  
22 certification and also failed to seek relief from their deadline prior to the  
23 expiration of the deadline. *Robertson v. Fedex Nat'l LTL, Inc., 2010 U.S. Dist.*  
24 *LEXIS 145959, \*9 (C.D. Cal. Jan. 5, 2010)*. Plaintiffs' counsel argued that their  
25 neglect should be excused because the prior lead counsel, who left the firm prior to  
26 the deadline, failed to calendar the motion deadline and it was therefore "not  
27 immediately apparent to the attorneys who remained in the case after [the prior lead  
28 attorney's] departure." *Ibid.* The Court in *Robertson* did not find excusable neglect,

1 providing the following reasoning:

2 **[T]here seems to be no reason why the other two attorneys who**  
3 **were also Plaintiff's counsel of record from the commencement of**  
4 **this action should be excused for their failure to calendar the**  
5 **deadline** in July 2009. That the remaining attorneys missed the  
6 deadline due to the "lead" attorney's departure cannot be viewed to  
7 have been in good faith given the firm's standard practice. Moreover,  
8 even if the failure was due to inadvertence and was in good faith, a  
9 **lawyer's mistake in interpreting and applying the relevant rules or**  
10 **mistake of fact is not a compelling excuse.**

11  
12 *Id.* at \*15, (emphasis added), citing *Pincay*, 389 F.3d at 860 (a lawyer's mistake of  
13 law or fact is not a compelling excuse); *Kyle v. Campbell Soup Co.*, 28 F.3d 928, 932  
14 (9th Cir. 1994) (the general rule is that a mistake of law does not constitute excusable  
15 neglect). The Court added that a **"lawyer's failure to read an applicable rule is**  
16 **one of the least compelling excuses that can be offered."** *Id.* at \*14-15, quoting,  
17 *Pincay v. Andrews*, 389 F.3d 853, 859 (9th Cir. 2004) (emphasis added).

18 Applying the reasoning in *Robertson* to the instant action compels the same  
19 conclusion that Plaintiffs' neglect was not excusable. In fact, Plaintiffs' neglect is  
20 even less excusable in this matter than in *Robertson* because there it was at least  
21 argued that an attorney failed to calendar the deadline, while in the instant matter,  
22 Plaintiffs' counsel place the blame substantially on their support staff. As stated in  
23 *Robertson*, there is "no reason why the [. . .] two attorneys who were [] Plaintiff's  
24 counsel of record from the commencement of this action should be excused for their  
25 failure to calendar the deadline." *Robertson*, 2010 U.S. Dist. LEXIS 145959, at \*15.

26 Moreover, Plaintiffs' attorneys cannot credibly argue away their inexperience  
27 as an excuse for missing the class certification motion deadline. The Mahoney Law  
28 Group purports itself to "handle[]" class action lawsuits in both state and federal

1 court.” (<http://www.mahoney-law.net/practice-areas/class-action-employment.php>.)  
2 Kevin Mahoney—purportedly Plaintiffs’ Lead Trial Counsel despite failing to file a  
3 Lead Trial Counsel Declaration in violation of the Court’s Standing Order (*see* Dkt.  
4 No 9 at [§ 3\(a\)](#))—represents that “[h]e specializes in wage and hour class action  
5 lawsuits and labor and employment litigation.” ([https://www.mahoney-](https://www.mahoney-law.net/attorneys/kevin-mahoney.php)  
6 [law.net/attorneys/kevin-mahoney.php](https://www.mahoney-law.net/attorneys/kevin-mahoney.php).) Likewise, Edward Kim purports himself to  
7 be experienced in “litigat[ing] and resolv[ing] a variety of disputes, including claims  
8 for unpaid wages, class and collective actions, claims under the Private Attorney  
9 General Act (PAGA) and whistleblower actions.” ([https://www.mahoney-](https://www.mahoney-law.net/attorneys/edward-kim.php)  
10 [law.net/attorneys/edward-kim.php](https://www.mahoney-law.net/attorneys/edward-kim.php).) Assuming the truth of Plaintiffs’ counsel’s own  
11 representations, Plaintiffs’ counsel would (or should) have taken heed of such a  
12 critical deadline.

13 Further, Plaintiffs’ claim that the error was not realized because his firm  
14 furloughed some of their staff following the March 19, 2020 State and local shelter  
15 in place orders does not excuse their neglect for several reasons. Most importantly,  
16 it is still the counsel of record’s responsibility to manage deadlines and comply with  
17 local rules and standing orders. Moreover, even assuming, *arguendo*, that the  
18 furloughing of support staff somehow excuses an attorney from complying with the  
19 Court’s orders, Plaintiffs have not explained why the support staff—let alone Msrs.  
20 Mahoney and Kim, who ultimately oversaw the case—did not calendar the deadline  
21 during the approximately two-week period between the time when the Scheduling  
22 Order was issued (March 4, 2020) and when the stay-at-home orders were issued  
23 causing the furlough (March 19, 2020) – let alone take any effort over the next three  
24 months afterwards to review the case file and learn the applicable deadlines for this  
25 matter.

26 Moreover, Plaintiffs’ counsels’ neglect goes far beyond simply missing their  
27 deadline to move for class certification or failing to request an extension. Plaintiffs  
28 filed their complaint on October 28, 2019 but did not serve Denny’s until over two

1 months later, on January 3, 2020. After Denny’s removed the action on February 3,  
2 2020, the Court issued its Standing Order on February 5, 2020, which  
3 specifically states in paragraph 4(b) that “[c]ounsel shall begin to actively  
4 conduct discovery before the [Fed. R. Civ. P. 26\(f\)](#) conference because at the  
5 Scheduling Conference the Court will impose tight deadlines to complete  
6 discovery.” (See Dkt. No. 9.) Indeed, Denny’s served its initial discovery and  
7 deposition notices on February 10, 2020. But unlike in *Robertson*, where plaintiffs  
8 engaged in “extensive discovery” before missing their deadline, Plaintiffs in this  
9 matter failed to serve any discovery on defendants until over four months later on  
10 June 11, 2020—after the deadline to move for class certification had already passed  
11 and *only* after Defendant informed them.<sup>3</sup> See [Robertson, supra, 2010 U.S. Dist.](#)  
12 [LEXIS 145959, \\*20-21](#). Mr. Kim represented that their failure to serve discovery  
13 was for “reasons similar to those” offered to excuse the neglect of the motion deadline  
14—a glaring admission that he and Mr. Mahoney simply allowed their clients’ case  
15 fester for several months without even as much as an afterthought to check whether  
16 any deadlines were looming on the near horizon, or even push the case forward. (See  
17 Opp. at 3:24-28.) But the Court’s Standing Order directing the parties to “actively  
18 conduct discovery” was issued on February 5, 2020—long before Mr. Martinez’s  
19 leave and staff furloughs. Plaintiffs’ counsel’s lack of diligence is further reflected  
20 in their untimely discovery responses that were served more than 30 days beyond the  
21 statutory deadline and only after being prompted by defense counsel.

22 For these reasons, even if Plaintiffs had calendared their deadline, there  
23 is no reason to believe that they would have been able to prepare and file their  
24

---

25 <sup>3</sup> It should also be noted that Mr. Kim’s firm was actively engaging in litigation and  
26 discovery in a related wrongful termination/retaliation matter brought by Plaintiff  
27 Myra Deleon, for which Mr. Kim and Mr. Mahoney are also listed as counsel of  
28 record, which again calls into question why Plaintiffs’ counsel was not actively  
pursuing litigation or discovery in the above-referenced action. (See *Deleon v.*  
*Denny’s Inc.*, Case No. 2:20-cv-01668-DMG-PJW [C.D. Cal.].) **Exhibit J** to Cheng  
Decl.

1 motion for class certification because they had yet to propound even the most  
2 basic discovery requests prior to the deadline. Accordingly, Plaintiffs' counsel  
3 have demonstrated a complete lack of diligence in representing the putative  
4 class, and this **“lack of due diligence is a strong indication that [Plaintiffs  
5 counsel] will not ‘fairly and adequately protect the interests of the class.’”**  
6 [Robertson, supra, 2010 U.S. Dist. LEXIS 145959, \\*19](#) (emphasis added), *citing*  
7 [Fed. R. Civ. Proc. 23\(a\)\(4\)](#), and [East Tex. Motor Freight Sys. v. Rodriguez, 431](#)  
8 [U.S. 395, 405, 97 S. Ct. 1891, 52 L. Ed. 2d 453 \(1977\)](#) (“the named plaintiffs’  
9 failure to protect the interests of class members by moving for certification  
10 surely bears strongly on the adequacy of the representation that those class  
11 members might expect to receive”).

12 Plaintiffs' lack of excusable neglect is also much more apparent here than  
13 in other cases cited above. In *Kyle*, for example, plaintiff's counsel  
14 miscalculated the last day to file a motion for attorney's fees, believing his last  
15 day to file the motion was extended by three days because it was served by mail  
16 under [Federal Rule of Civil Procedure 6\(e\)](#). As a result, Plaintiffs motion was  
17 untimely filed. The Ninth Circuit found that counsel's mistaken reading and  
18 application of the rules did not constitute excusable neglect even though counsel  
19 acted in good faith. *Id.*, at 932 *citing* [United States v. Prairie Pharmacy, Inc.,](#)  
20 [921 F.2d 211, 213 \(9th Cir. 1990\)](#) (attorney's mistaken belief that a notice of  
21 criminal appeal could be filed within 30 days did not constitute excusable  
22 neglect); *see also* [Parke-Chapley Constr. Co. v. Cherrington, 865 F.2d 907, 912-](#)  
23 [13 \(7th Cir. 1989\)](#) (lack of familiarity or understanding of the Federal Rules,  
24 except in rare circumstances, is not excusable neglect; denial of enlargement of  
25 time under [Federal Rule of Appellate Procedure 4\(a\)](#) affirmed); [Townsel v.](#)  
26 [County of Contra Costa, 820 F.2d 319, 320-21 \(9th Cir. 1987\)](#) (ignorance of [Rule](#)  
27 [4\(j\)](#) regarding time of service is not excusable neglect under [Rule 6\(b\)](#)); [Graham](#)  
28 [v. Pennsylvania R.R., 119 U.S. App. D.C. 335, 342 F.2d 914, 915-16 \(D.C. Cir.](#)

1 [1964](#)) (lack of awareness of a change in a federal rule is not excusable neglect  
2 under [Rule 6\(b\)](#)), *cert. denied*, [381 U.S. 904, 14 L. Ed. 2d 286, 85 S. Ct. 1446](#)  
3 [\(1965\)](#); *Diliberti v. United States*, *4 Cl. Ct.* 505, 506-07 (1984) (mistaken belief  
4 that additional time was allotted for notice of appeal after service by mail is not  
5 excusable neglect). Here, Plaintiffs counsel's neglect was not based on a mistaken  
6 reading or application of the rules. Rather, two of Plaintiffs' counsels of record  
7 failed to make themselves aware of the deadline (or to conduct any discovery)  
8 during the entire 120 day window that they were supposed to be preparing the  
9 motion to be filed.

10 Also, the Ninth Circuit has held that relief under [Rule 6\(b\)](#) based solely on  
11 counsel's unfamiliarity with the amended Local and Federal Rules did not constitute  
12 excusable neglect in [Committee for Idaho's High Desert v. Yost](#), [92 F.3d 814 \(9th](#)  
13 [Cir. 1996\)](#). In *Committee*, plaintiff's counsel explained that the motion was filed late  
14 because he and his co-counsel had been unaware of the relevant changes in federal  
15 and local rules. [Id. at 824](#). The court also noted that plaintiff was represented by two  
16 attorneys and even if one attorney was able to show excusable neglect, the other  
17 attorney was more than capable and competent and presumably available to assist.  
18 [Id. at 825](#). Accordingly, Plaintiffs' counsel's unfamiliarity with Local Rules or the  
19 Courts Scheduling order does not constitute excusable neglect.

20 For these reasons, Plaintiffs' counsel's purported reason for not filing their  
21 motion or seeking relief prior to the deadline (failure to calendar the deadline) is  
22 insufficient to excuse their neglect.

## 23 **2. Plaintiffs' Complete Failure to Prosecute Their Case Will** 24 **Cause Significant Delay In the Judicial Process**

25 This action has been on the Court's docket for more than five months.  
26 In that time, Plaintiffs counsel's lack of diligence has resulted in their failure  
27 to obtain a single document or discovery response pertaining to their class  
28 allegations, the need for the instant motion and, if Plaintiffs were permitted to

1 proceed with their class allegations, will require that this matter continue  
2 pending on this Court's docket for many more months while the parties engage  
3 in discovery that should have been completed months ago. Plaintiffs'  
4 opposition does not address the delay in the judicial process caused by their  
5 lack of diligence.

6 *Robertson* is also instructive on this issue. There, plaintiffs' counsel first  
7 learned of the missed deadline and requested relief approximately four months  
8 after removal. [Robertson, supra, 2010 U.S. Dist. LEXIS 145959, \\*12.](#)  
9 Accordingly, plaintiffs' counsel failed to meet the deadline or request relief before  
10 the deadline expired, necessitating the motion under that Court's consideration. [Id.](#)  
11 [at \\*13.](#) Finding that the impact Plaintiffs' counsel's neglect had on the judicial  
12 proceedings weighed against granting relief, the Court reasoned:

13 Having considered Plaintiff's lack of diligence and the resulting  
14 waste of the Court's resources, **the Court finds that further delay**  
15 **in this action would be contrary to the interest of judicial**  
16 **economy and the principle of judicial efficiency.** See [McCarthy](#)  
17 [v. Kleindienst, 741 F.2d 1406, 1412, 239 U.S. App. D.C. 247 \(D.C.](#)  
18 [Cir. 1984\)](#) (opining that the local rules governing the filing of class  
19 certification motions "foster the interests of judicial efficiency, as  
20 well as the interests of the parties, by encouraging courts to proceed  
21 to the merits of a controversy as soon as practicable"). This District  
22 has been inundated with CAFA actions, and **it is therefore**  
23 **imperative that the parties and their attorneys strictly comply**  
24 **with the rules in order for the Court to manage its docket**  
25 **efficiently and conserve its resources.**

26 [Id. at \\*13-14.](#)

27  
28 Plaintiffs' delay in this matter is more significant than in *Robertson*

1 because this case has been pending on the Court’s docket for five months not  
2 four, and Plaintiffs in *Robertson* were at least making progress by conducting  
3 “extensive discovery,” while Plaintiffs’ in the instant action failed to propound  
4 any discovery whatsoever until after the deadline. See *Id.* at 20-21. For these  
5 reasons, the Court finds that Plaintiffs’ counsel’s neglect has created a  
6 significant delay in the judicial process, weighing against excusing the neglect.

7 **3. Defendants are Prejudiced by Plaintiff’s Neglect**

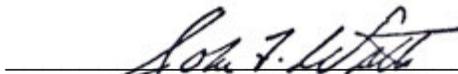
8 Defendants contend that they will be prejudiced if Plaintiffs’ are permitted  
9 to file a late motion because it will necessarily prolong the litigation for many  
10 months. As described above, Plaintiffs have made zero progress gathering  
11 information to support their class allegations. This case will be starting as if it  
12 was just removed with regard to these class allegations despite being filed eight  
13 months ago and removed five months ago. As in *Robertson*, the Court finds that  
14 Plaintiffs’ delay in prosecuting their class allegations prejudices Defendants.

15 **III. CONCLUSION**

16 For the foregoing reasons, the Court finds that Plaintiffs failed to file their  
17 motion for class certification by the June 2, 2020 deadline, and that the reasons  
18 for this failure (Plaintiffs’ counsel’s failure to calendar the deadline) does not  
19 constitute excusable neglect under [Rule 6\(b\)\(1\)\(B\)](#). Accordingly, Defendants  
20 Motion To Strike Plaintiffs’ Class Allegations From Plaintiffs’ Class Action  
21 Complaint is GRANTED.

22  
23 **IT IS SO ORDERED.**

24 DATED: July 22, 2020

25   
26 **HON. JOHN F. WALTER**  
27 United States District Judge  
28