

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CONNEL LITTLES, by and through his  
guardian ad litem, JANET BUTLER, ) 1:09-CV-00991-JLT  
Plaintiff, ) ORDER DISCHARGING ORDER TO SHOW  
v. ) CAUSE (DOC. 16)  
MICHAEL J. ASTRUE, )  
Commissioner of Social )  
Security, )  
Defendant. )

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (Commissioner) denying an application for benefits. The parties have consented to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1), and the matter has been assigned to the Magistrate Judge to conduct all further proceedings in this case, including entry of final judgment.

Plaintiff filed his complaint on June 5, 2009. On June 8, 2009, the Court served Plaintiff with a scheduling order in which the Court ordered that Plaintiff's opening brief was due ninety-five days after the date of the filing of the administrative record, which was deemed to be the Defendant's answer to the complaint. The administrative record was filed on October 7, 2009; thus, Plaintiff's brief was due on January 11, 2010. However, nearly three months passed and no brief was filed nor any request for an extension of time. On March 31, 2010, the Court issued its

1 order to show cause why the action should not be dismissed for Plaintiff's failure to file a timely  
2 opening brief and failure to comply with the scheduling order of the Court. (Doc. 16). Plaintiff  
3 was directed to file a response to the order within 15 days of service. (Id. at 2). On April 6,  
4 2010, Plaintiff filed a response to the order to show cause and also filed an opening brief. (Docs.  
5 17, 18).

6 Plaintiff's explanation for failing to file a timely brief was, in essence, that because of  
7 technical difficulties with his counsel's office software, counsel inadvertently deleted the due  
8 dates and thus did not file a timely opening brief. (See Doc. 17 at 1-2). Counsel accepts full  
9 responsibility for this failure, states that steps have been taken to assure that it will not recur and  
10 apologizes for the delay. Counsel further assures the Court that the failure to file a timely  
11 opening brief was an "aberration" and that he has taken steps to eliminate this error from  
12 interfering with the Court's docket in the future. (Id. at 2-3).

13 In light of the assurances made by Plaintiff's counsel in the response to the order to show  
14 cause, the Court expects that counsel will not commit this error again in the future.

15 Plaintiff and Plaintiff's counsel are informed that the Court's scheduling orders in Social  
16 Security cases are uniform and are designed to permit the expeditious handling of the cases.  
17 When parties delay, it necessitates the use of the Court's time and staff to secure compliance; if  
18 the Court's resources must be used in such a fashion, the Court has determined that it is  
19 necessary to ascertain that the parties and the attorneys in question are aware of the deadline and  
20 the need for compliance, and to be satisfied that steps will be taken by the pertinent people in the  
21 future to avoid apparent lapses in prosecution of cases. This wastes limited judicial resources.

22 With that admonition, and in light of the fact Plaintiff has now filed an opening brief, the  
23 order to show cause will be discharged.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Order to Show Cause (Doc. 16) IS DISCHARGED;
2. Defendant shall have until May 7, 2010 to file a responsive brief; and
3. Plaintiff shall have 15 days from service of a responsive brief to file a reply.

IT IS SO ORDERED.

Dated: April 7, 2010

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE