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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**TREVOR WEEKS,**

**Plaintiff**

**v.**

**UNION PACIFIC RAILROAD CO.,**

**Defendant**

**CASE NO. 1:13-CV-01641-AWI-JLT**

**ORDER ON PLAINTIFF'S LATE  
OPPOSITION FILING**

(Doc. No. 35)

Trial in this matter is set for August 4, 2015, and the pre-trial conference is set for June 3, 2015. On March 2, 2015, Defendant filed a motion for summary judgment. Hearing on this motion was set for April 6, 2015. On March 31, 2015, the Court took the motion under submission; Plaintiff had not filed an opposition.

On April 9, 2015, Plaintiff's counsel filed an ex parte application to extend time to file an opposition. See Doc. No. 31. The Court granted the motion and set a new briefing schedule. See Doc. No. 32.

On April 20, 2015, Plaintiff filed an opposition. See Doc. No. 33. The opposition did not include a response to Defendant's Statement of Undisputed Facts. See id. The Local Rules require a party opposing summary judgment to reproduce the moving party's Statement of Undisputed Facts and respond thereto. See Local Rule 260(b).

1 On April 27, 2015, Defendant filed a reply. See Doc. No. 34. Defendant pointed out that  
2 Plaintiff had not responded to the Statement of Undisputed Facts, other than to file repetitive  
3 objections to several of the proposed facts. See id.

4 On April 28, 2015, Plaintiff filed a response to Defendant's Statement of Undisputed  
5 Facts. See Doc. No. 35. This document complies with Local Rule 260(b). Plaintiff's counsel also  
6 attached a declaration that stated he believed that the full opposition had been filed, and it was  
7 only while reading Defendant's reply that he realized that the response to Defendant's Statement  
8 of Undisputed Facts had not been filed. See id. Plaintiff's counsel states that the omission was  
9 not intentional and that it was the result of clerical error. See id. Plaintiff's counsel asks the Court  
10 to consider the late filing. See id.

11 Many of the facts in the Statement of Undisputed Facts are not disputed by Plaintiff, and  
12 those that are disputed are generally done through reference to either Defendant's own exhibits or  
13 through citation to Plaintiff's deposition. See Doc. No. 35. The same portions of Plaintiff's  
14 deposition that are cited in the response to Defendant's Statement of Undisputed Facts also appear  
15 to be cited in Plaintiff's opposition. Cf. Doc. No. 33 with Doc. No. 35. Furthermore, Plaintiff's  
16 response was filed less than 24 hours after the reply was filed. Considering this timing, the  
17 content of Plaintiff's opposition, and Plaintiff's counsel's declaration, it appears that it was a  
18 mistake that caused Plaintiff to file a late response. Given the above, the Court will consider  
19 Plaintiff's late filed response to Defendant's Statement of Undisputed Facts and will also give  
20 Defendant additional time to reply.

21 That being said, the Court is very concerned over a pattern that is starting to develop  
22 regarding Plaintiff's filings. Plaintiff missed one deadline, and was granted relief. Plaintiff then  
23 filed an incomplete opposition, despite receiving additional time. Plaintiff has asked for what  
24 amounts to additional time, and is being granted that time. Although trial in this matter is not until  
25 August 2015, Plaintiff's out of time filings are causing disruptions to, and diversion of resources  
26 from, the Court and opposing counsel. The Court likely will not look sympathetically at any  
27 further late filed documents by Plaintiff.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Court will consider Doc. No. 35 in resolving Defendant's motion for summary  
3 judgment; and
- 4 2. Defendant may file a reply to Doc. No. 35, which may entail the filing of a new reply to  
5 the entirety of Plaintiff's opposition (if Defendant deems that to be necessary), within  
6 seven (7) days of service of this order.

7  
8 IT IS SO ORDERED.

9 Dated: April 29, 2015

  
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10 SENIOR DISTRICT JUDGE