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

CARLOS HERNANDEZ,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No. 1:15-cv-00110-DAD-SMS  
  
ORDER AMENDING SCHEDULING ORDER  
  
(Doc. 32)

This matter is before the Court on Plaintiff’s letter, received on August 15, 2016. Doc. 32. Plaintiff responded to the August 8, 2016, minute order, wherein the Court directed the parties to provide an update on the status of this case. Doc. 31. The letter states, in relevant part: “I thought that all the information that the court requested was already filed. The last documents that I sent was the closed brief classified as CONFIDENTIAL and never got a confirmation notice that was received. I don’t understand what other documents the court needs from me.” Doc. 32. Based on Plaintiff’s statements, the Court construes the letter as a status update and a motion for clarification, warranting further direction by the Court.

On February 2, 2016, the Court issued an order granting Plaintiff’s motion to file an amendment to his first amended complaint. Doc. 29. An order amending the scheduling order was also issued and sent to Plaintiff that same day. Doc. 30. The order states, in relevant part:

1                   Within thirty (30) days after service of this order, appellant shall serve  
2                   on respondent a letter brief outlining the reasons why he/she contends  
3                   that a remand is warranted. The letter brief shall succinctly set forth  
4                   the relevant issues and reasons for the remand. **The letter brief itself  
5                   shall NOT be filed with the court and it shall be marked  
6                   “confidential.” A separate proof of service reflecting that the letter  
7                   brief was served on respondent shall be filed with the court.**

8                   Doc. 30, p. 2 (emphasis added). Plaintiff was therefore required to file a proof of service, no later  
9                   than March 2, 2016, showing his letter brief was served on Defendant. Similarly, Defendant was to  
10                  serve a responsive letter brief on Plaintiff and file a proof of service with the Court thirty-five days  
11                  after service of Plaintiff’s confidential letter brief. Doc. 30, p. 2.

12                  To date, no proof of service has been filed by Plaintiff or Defendant. While Plaintiff states  
13                  he sent “brief classified as CONFIDENTIAL and never got a confirmation notice that was received,”  
14                  it is unknown to whom and when he sent the brief.<sup>1</sup> And Defendant cannot serve her responsive  
15                  confidential letter brief without receipt of Plaintiff’s confidential letter brief. Consequently, the  
16                  parties’ failure to comply with the February 2, 2016 order triggered the Court’s request for a status  
17                  update.

18                  Compliance with the scheduling order is mandatory and essential to the Court’s management  
19                  and resolution of a case. Mindful of Plaintiff’s *pro se* status, the Court will therefore provide  
20                  another opportunity for compliance with the amended scheduling order. To accommodate for the  
21                  lapse of time, the Court will once again amend the scheduling order. Plaintiff is admonished that  
22                  failure to comply with the scheduling order as amended below may result in a recommendation that  
23                  this case be dismissed.

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25                  <sup>1</sup> On December 18, 2015, the Commissioner notified the Court that on December 15, 2015, she  
26                  “received a packet from Plaintiff . . . which included a document containing a summary of  
27                  disabilities and narrative description of impairments.” Doc. 24, pg. 2. That receipt of the document  
28                  predated the original (issued December 30, 2015) and amended scheduling order suggests it was not  
                  the confidential letter brief Plaintiff was required to file under the amended scheduling order.

1 Accordingly, the Court HEREBY DIRECTS the parties to comply with the scheduling order  
2 amended as follows:

- 3 1. Within thirty (30) days after service of this order, appellant shall serve on respondent a letter  
4 brief outlining the reasons why he/she contends that a remand is warranted. The letter brief  
5 shall succinctly set forth the relevant issues and reasons for the remand. The letter brief itself  
6 shall NOT be filed with the court and it shall be marked "confidential." A separate proof of  
7 service reflecting that the letter brief was served on respondent shall be filed with the court.
- 8 2. Within thirty-five (35) days after service of appellant's letter brief, respondent shall serve a  
9 response to appellant's letter brief on appellant. The response itself shall NOT be filed with  
10 the court and it shall be marked "confidential." A separate proof of service reflecting that the  
11 response was served on appellant shall be filed with the court.
- 12 3. In the event the parties stipulate to a remand to the Commissioner, the stipulation shall be  
13 filed with the Court WITHIN fifteen (15) days after respondent serves his response on  
14 appellant.
- 15 4. In the event respondent does not agree to a remand, within thirty (30) days of service of  
16 respondent's response, appellant shall file and serve an opening brief with the court and on  
17 respondent.
- 18 5. In the event that the parties have already engaged in the prior steps (1-4), appellant shall file  
19 and serve an opening brief with the court and on respondent within thirty (30) days of service  
20 of this order.
- 21 6. Respondent's responsive brief shall be filed with the court and served on appellant within  
22 thirty (30) days after service of appellant's opening brief.
- 23 7. Appellant's reply brief shall be filed with the court and served on respondent within fifteen  
24 (15) days after service of respondent's brief.
- 25 8. Paragraphs 9-15 of the original scheduling order (Doc. 26) remain intact.

26 IT IS SO ORDERED.

27 Dated: August 24, 2016

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE