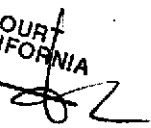


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FILED
MAR 26 2010
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 
DEPUTY CLERK

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 **LYDIA JOHNSON**

Case No. CIV-08-3041 GGH

10
11 **Plaintiff,**

**RESPONSE TO ORDER TO SHOW CAUSE
AND MOTION PURSUANT TO RULE 6(4)(b);
DECLARATION AND ORDER**

12 **v.**

13 **MICHAEL J. ASTRUE**
Commissioner of Social Security
14 of the United States of America,

15 **Defendant.**

16 (SS) Johnson v. Commissioner of Social Security

Doc. 27

17
18 **RESPONSE TO ORDER TO SHOW CAUSE
AND NOTICE OF MOTION**

19
20 In response to the Court's Order to Show Cause filed, Plaintiff hereby moves the Court for an
21 order permitting her to file her Motion for Summary Judgment on March 23, 2010. This motion is being
22 made pursuant to Rule 6 (4) (b) of the Federal Rules of Civil Procedure due to plaintiff's counsel's
23 "inadvertence, mistake and excusable neglect" in failing to timely file the summary judgment motion or
24 properly request an extension of time within which to do so. This motion is based on the entire record
25 in this case including the declaration of plaintiff's counsel as set forth below.

26 **MOTION**

27 Rule 6(4)(b) provides in pertinent part that:

- 28 b) Extending Time.
1. (1) In General.

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When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Plaintiff's motion for Summary Judgement was due January 12, 2010. Plaintiff's counsel failed to timely file the motion or request an extension of time due to her "excusable" neglect as set forth in her declaration. See, Declaration of Bess M. Brewer.

Plaintiff's counsel respectfully requests that she be permitted to file Ms. Johnson's summary judgment motion on March 23, 2010, in response to the Court's March 1, 2010, Order to Show Cause. Counsel apologizes to the court for her negligence in not timely requesting an extension of time within which to file Ms. Johnson's motion and for continuing to strain the court's patience.

Opposing counsel does not object to the late filing.

Dated: March 22, 2010

LAW OFFICE OF
BESS M. BREWER & ASSOCIATES

By: /S/ BESS M. BREWER
BESS M. BREWER
Attorney for Plaintiff

DECLARATION OF BESS M. BREWER

I, Bess M. Brewer, Declare:

1. I am an attorney licensed the practice law in California and am admitted to practice before this Court. I represent the plaintiff in the above referenced case and submit this declaration in support of plaintiff's motion for an extension of time to file her motion for summary judgment.
2. Plaintiff's motion for summary judgment was due January 15, 2010. Unfortunately, I failed to file her motion or request an extension of time. My failure to timely file was not purposeful and is quite embarrassing.
3. My case load is seriously impacted. In late 2008 and 2009, I over estimated my ability to work these cases and took on far more than I

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could handle. As a result, I have had to request very lengthy extensions and have inadvertently failed to timely file some of my summary judgment motions


- 4. In order to handle my huge case load, I hired two paralegal assistants in the Spring of 2009. Unfortunately, one did not work out and the other has been on an extended leave of absence due to medical problems since August of 2009. I have not had the time to hire or train replacements.
- 5. However, since October of 2009, I have cut the number of cases I take by half. Unfortunately, I won't feel the impact of the reduced case load until May of 2010.
- 6. I believe Ms. Johnson has a meritorious claim and that her case should be judged on its merits. I respectfully request that the court permit her case to proceed.
- 7. Opposing counsel does not object to the late filing.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on March 22, 2010, in Sacramento, California.

/s/ Bess M. Brewer
BESS M. BREWER

ORDER

APPROVED AND SO ORDERED.
DATED: *March 26, 2010*


GREGORY G. HOLLOWES
GREGORY G. HOLLOWES
U.S. MAGISTRATE JUDGE Motion