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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
  Plaintiff,  
  
  v.  
  
JAMES O. MOLEN, et al.,  
  
  Defendants.

No. 2:10-cv-02591-MCE-KJN

ORDER AND ORDER TO SHOW CAUSE

Defendant James Molen (“defendant”) is proceeding without counsel in this action.<sup>1</sup> On November 22, 2013, plaintiff the United States (“plaintiff”) filed a Motion For Partial Summary Judgment. (Mot. for Summ. J., ECF No. 148.) However, as defendant points out in his Opposition brief of December 5, 2013 (Opp’n, ECF No. 155), plaintiff filed its motion one day *after* the deadline for the filing of dispositive motions. (See ECF No. 147 (setting the deadline for filing dispositive motions as “no later than” November 21, 2013).) Plaintiff’s moving papers neither acknowledge the filing’s tardiness nor offer an explanation for such tardiness. While the undersigned’s prior order stated that extensions could be requested to help accommodate delays resulting from the Federal Government “Shutdown” (id. at 3 n.5), the court’s electronic docket does not reflect that plaintiff ever filed any formal requests for extensions.

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<sup>1</sup> This action was referred to the undersigned pursuant to Eastern District Local Rule 302(c)(21). (ECF No. 11.)

1 I. BACKGROUND

2 On April 11, 2013, the court issued an order giving the parties until September 20, 2013,  
3 to file “all dispositive motions.” (ECF No. 132 at 2.) Plaintiff filed a motion for partial summary  
4 judgment on September 20, 2013. (ECF No. 139.) On September 25, United States District  
5 Judge Morrison C. England *sua sponte* moved the trial date from February 3, 2014, to August 4,  
6 2014. (ECF Nos. 122, 144.) Additionally, Judge England notified parties that their Joint Final  
7 Pretrial Statement will be due no later than May 22, 2014. (Id.)

8 After reviewing plaintiff’s motion for partial summary judgment, the undersigned *sua*  
9 *sponte* scheduled a status conference to facilitate the defendant’s response thereto, especially  
10 given defendant’s pro se status. (ECF Nos. 139-1, 139-2, 139-3, 145.) As expressed at the  
11 hearing, the undersigned was concerned that defendant would have unnecessary difficulty  
12 appropriately responding to the motion. (ECF No. 146.)

13 The status conference came on for hearing on October 3, 2013. (Id.) Defendant appeared  
14 telephonically on his own behalf. (Id.) Attorney Guy Patrick Jennings appeared on behalf of the  
15 plaintiff. (Id.) During the status conference, plaintiff and defendant jointly requested that  
16 plaintiff be permitted to withdraw its motion for partial summary judgment and to re-file a more  
17 straightforward motion. (ECF No. 139, 146.) In light of the joint nature of the request and in the  
18 interests of judicial economy, and given that defendant reported having not been served with the  
19 moving papers, the request was granted. (ECF No. 147.) The undersigned also found that there  
20 was good cause to amend his scheduling order (ECF No. 132) and to continue the deadline for  
21 filing dispositive motions from September 20, 2013, to November 21, 2013.<sup>2</sup> (Id.) The  
22 undersigned set the hearing on the revised motion for partial summary judgment on January 23,  
23 2014. (Id.)

24 II. DISCUSSION

25 Given that the pending motion was filed one day after the deadline of November 21, 2013,  
26 plaintiff is ordered to show cause in writing on or before January 16, 2014, why the court should

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28 <sup>2</sup> Except for the dispositive motion deadline, all other dates remained unchanged.

1 deem the late-filed Motion for Partial Summary Judgment (ECF No. 148) as timely, and to show  
2 cause in writing why the court should make any determination as to the merits of the late-filed  
3 motion.

4 Likewise, on or before January 16, 2014, defendant shall file a declaration describing  
5 what prejudice, if any, he has suffered by the pending motion's having been filed one day late. If  
6 defendant has not suffered any prejudice by the late filing, defendant should say so.

7 In addition, defendant's Opposition (ECF No. 155) focuses primarily on the pending  
8 motion's tardiness and raises discovery arguments, but does not address the substantive merits of  
9 the pending motion. Without making any pre-determination as to whether the pending motion  
10 might be deemed timely, the undersigned nonetheless orders defendant to file an Amended  
11 Opposition that substantively addresses the arguments and factual/evidentiary assertions made in  
12 the pending motion *and* complies with the requirements of Federal Rule of Civil Procedure 56  
13 and Eastern District Local Rule 260(b), including but not limited to the filing of a Separate  
14 Statement of Disputed Facts. The Amended Opposition shall be filed on or before February 6,  
15 2014.

16 The pending motion's currently scheduled hearing date of January 23, 2014, is hereby  
17 continued to March 13, 2014. Plaintiff's Reply to defendant's above-described Amended  
18 Opposition shall be filed on or before February 13, 2014. The undersigned's setting a hearing  
19 date and a deadline to file the Reply should **not** be construed as a pre-determination that the late-  
20 filed motion will necessarily be deemed timely. The undersigned sets these dates for planning  
21 purposes only, and should the undersigned determine that the pending motion should be denied  
22 on grounds of untimeliness, the undersigned will vacate these dates by way of a written order.  
23 Absent such order, the parties should plan to adhere to this timeline.

24 III. CONCLUSION

25 Accordingly, IS HEREBY ORDERED that:


- 26 1. On or before **January 16, 2014**, plaintiff shall show cause in writing why the court  
27 should deem the late-filed Motion for Partial Summary Judgment (ECF No. 148) as  
28 timely, and shall also show cause in writing why the court should make any

1 determination as to the merits of the motion.

- 2 2. On or before **January 16, 2014**, defendant shall file a declaration explaining what  
3 prejudice, if any, he has suffered by the pending motion's having been filed one day late.
- 4 3. Without making any pre-determination as to whether the pending motion might be  
5 deemed timely, the undersigned orders defendant to file an Amended Opposition that  
6 substantively addresses the arguments and factual/evidentiary assertions made in the  
7 pending motion *and* complies with the requirements of Federal Rule of Civil Procedure  
8 56 and Eastern District Local Rule 260(b), including but not limited to the filing of a  
9 Separate Statement of Disputed Facts. The Amended Opposition shall be filed on or  
10 before **February 6, 2014**. The undersigned's ordering the filing of an Amended  
11 Opposition should **not** be construed as a pre-determination that the late-filed motion will  
12 necessarily be deemed timely.
- 13 4. On or before **February 13, 2014**, plaintiff may file Reply briefing to address defendant's  
14 above-described Amended Opposition. The undersigned's setting a deadline to file  
15 Reply briefing should **not** be construed as a pre-determination that the late-filed motion  
16 will necessarily be deemed timely
- 17 5. The hearing on plaintiff's Motion for Partial Summary Judgment (ECF No. 148)  
18 currently set for **January 23, 2014**, is CONTINUED to **March 13, 2014**, at 10:00 a.m.,  
19 in Courtroom 25. The undersigned's setting such hearing date should **not** be construed  
20 as a pre-determination that the late-filed motion will necessarily be deemed timely.

21 IT IS SO ORDERED.

22 Dated: December 12, 2013

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25 KENDALL J. NEWMAN  
26 UNITED STATES MAGISTRATE JUDGE  
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