



1 In light of the above, the court: (1) vacates the recommendation that this case be dismissed  
2 for failure to prosecute; (2) denies defendants' motion to strike; and (3) directs defendants to file  
3 their reply to plaintiff's opposition within fourteen days from the date this order is filed.

4 There is no question, in light of the foregoing background, that plaintiff's opposition is  
5 untimely. Defendants' arguments on this point are recognized and well-taken. Nevertheless, the  
6 court must weigh plaintiff's obvious failure to adhere to this court's deadlines against the Ninth  
7 Circuit's position that "a case should, whenever possible, be decided on the merits." *Falk v.*  
8 *Allen*, 739 F.2d 461, 463 (9th Cir. 1984). Given that the opposition *has* been filed and  
9 defendants' reply is presumably imminent, it appears that the court will soon have the opportunity  
10 to consider the merits of defendants' motion for summary judgment. The court elects to do so,  
11 noting that defendants have not identified any specific prejudice that will befall them if their  
12 motion to strike is denied.<sup>2</sup>

13 It is THEREFORE ORDERED that:

- 14 1. The December 13, 2017 findings and recommendations (ECF No. 105) are  
15 VACATED;
- 16 2. Defendants' motion to strike (ECF No. 109) is DENIED; and
- 17 3. Defendants shall file their reply (if any) to plaintiff's opposition (ECF No. 108)  
18 within fourteen days of this order's entry. The motion for summary judgment will then stand  
19 submitted.

20 DATED: April 30, 2018.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>2</sup> Nevertheless, plaintiff is cautioned that even pro se litigants must read and comply the  
28 court rules and court orders. Future violations of either may result in sanctions, including  
monetary sanctions or the dismissal of this action.