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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
DONALD M. WANLAND, JR.,
Defendant.

No. 2:13-cv-2343-KJM-KJN PS

ORDER

On December 24, 2015, the court issued an order requiring any motions for summary judgment or other dispositive relief to be filed no later than May 5, 2016. (ECF No. 68.) In light of the previous delays in this case, the court has previously cautioned the parties that case deadlines will be strictly enforced. (See, e.g. ECF Nos. 68, 75.)

Presently pending before the court is defendant’s recently-filed “motion for summary judgment, motion for judgment, and motion to dismiss complaint.” (ECF No. 78.) The motion was only received and filed by the Clerk of Court on May 17, 2016, i.e., almost two weeks after the applicable deadline. As such, the motion appears to be untimely.

However, the court notes that defendant’s motion is accompanied by a “Certificate of Mailing for Electronic Filing and Service,” which represents that defendant personally delivered the motion documents to Federal Express for overnight delivery, postage prepaid, to the Clerk of Court on May 4, 2016. (ECF No. 78 at 27.) The court has serious concerns regarding that

1 representation, absent an adequate showing as to why a purported overnight delivery by Federal
2 Express took so long to effectuate. Nevertheless, the court finds it appropriate to grant defendant
3 an opportunity to explain that delay.

4 Accordingly, no later than June 3, 2016, defendant shall file with the court the following
5 materials:


- 6 (a) A copy of the original documentation from Federal Express demonstrating that the
7 motion papers were delivered to Federal Express for overnight delivery on May 4,
8 2016;
- 9 (b) A copy of documentation from Federal Express showing when the motion papers were
10 delivered to the Clerk of Court; and
- 11 (c) A declaration from defendant, under penalty of perjury, outlining what efforts he made
12 to verify that the motion documents were delivered to the Clerk of Court on May 5,
13 2016; what specific inquiries he made to Federal Express regarding any delays,
14 including the dates of such inquiries; the updates and explanations he received from
15 Federal Express, including the dates of such updates and explanations; and the other
16 specific efforts defendant undertook to present the motion papers to the Clerk of Court
17 for filing as soon as possible.

18 Defendant's filed materials shall only address the above-mentioned factual matters.
19 No further legal briefing will be entertained.

20 It will be defendant's burden to demonstrate that he took all necessary steps to ensure
21 timely filing with the Clerk of Court and acted diligently upon any discovery that the filing was
22 not timely completed. Failure to make the requisite showing will result in denial of defendant's
23 dispositive motion as untimely.

24 IT IS SO ORDERED.

25 Dated: May 19, 2016

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28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE