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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS T. BAY,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:17-cv-1034-TLN-KJN

ORDER

On November 14, 2017, plaintiff filed a motion to strike the Commissioner’s cross-motion for summary judgment, which was filed fourteen (14) days late. (ECF No. 16.) The Commissioner filed a response to the motion, along with a request for an extension of time, essentially admitting to a calendaring mistake and apologizing to plaintiff’s counsel and the court. (ECF No. 18.) Plaintiff then filed a reply brief, which continues to fervently advocate for striking the Commissioner’s cross-motion for summary judgment and deeming plaintiff’s motion for summary judgment as unopposed. (ECF No. 20.)

Although the Commissioner indisputably failed to comply with the court’s scheduling order, it has acknowledged its mistake and apologized to opposing counsel and the court. Furthermore, there is no indication that plaintiff was substantially prejudiced by the relatively brief delay. As such, striking the Commissioner’s cross-motion for summary judgment would be

1 a disproportionately harsh sanction under the circumstances here, especially given the general
2 policy embodied in the Federal Rules of Civil Procedure that cases should be resolved on their
3 merits whenever reasonably possible. Importantly, this is not a case where an attorney has
4 displayed a pattern of disregard for court deadlines and rules. Indeed, plaintiff's counsel may
5 well consider adopting a more collegial and forgiving stance in these type of circumstances,
6 especially if in future she finds herself in need of an extension based on an unintentional, but
7 human, error.

8 Accordingly, plaintiff's motion to strike is DENIED and the Commissioner's request for
9 an extension of time is GRANTED. The cross-motion is deemed timely filed. Plaintiff's optional
10 reply brief shall be filed in accordance with the court's November 15, 2017 minute order.

11 IT IS SO ORDERED.

12 This order resolves ECF Nos. 16 and 18.

13 Dated: November 20, 2017

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE
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