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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TAINA NAPOTO,

Plaintiff,

v.

DHL EXPRESS (USA), INC., et al.,

Defendants.

No. 09-01551 JSW

**ORDER GRANTING *EX PARTE*
APPLICATION FOR
ADMINISTRATIVE RELIEF TO
FILE PLAINTIFF'S OPPOSITION
TO DEFENDANTS' AMENDED
MOTION TO DISMISS**

On May 15, 2009, Defendants filed a Motion to Dismiss and to Strike, which was noticed for hearing on June 26, 2009. Because that day was unavailable to the Court, on May 18, 2009, Defendants re-noticed the hearing date to July 17, 2009. Thereafter, this Court issued a briefing schedule based on the July 17, 2009 hearing date and ordered that Plaintiff's opposition would be due on June 5, 2009, and Defendants' reply brief would be due on June 12, 2009.

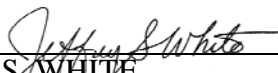
On May 20, 2009, Defendants filed an Amended Motion to Dismiss and to Strike, which superseded the motion filed on May 15, 2009. The Court directed Defendants to set forth in writing the nature of the amendments. Because it did not appear to the Court that the amendments changed the substance of the motion, it did not issue a new briefing order. However, Plaintiff did not file an opposition to the motion on June 5, 2009. Rather, on June 11, 2009, Plaintiff filed an opposition and the instant request for administrative relief in which she

1 seeks leave of Court to file her opposition beyond the June 5, 2009 deadline.¹ Although this
2 would appear to be the type of dispute that could be resolved without Court intervention,
3 Defendants oppose Plaintiff's request.

4 According to Plaintiff, Defendants' amended motion engendered some confusion as to
5 whether the Court's May 18, 2009 briefing schedule remained in place. Plaintiff, through
6 counsel, did not seek to clarify this issue with Defendants until June 10, 2009, and did not seek
7 to clarify the issue with the Court until June 11, 2009. Further, counsel offers no explanation
8 for failing to seek relief from either the Defendants or this Court prior to the June 5, 2009
9 deadline, which would have been the prudent course of action. Defendants, in turn, fail to
10 articulate any prejudice that would result from permitting Plaintiff the opportunity to file her
11 brief. In light of the strong preference for litigating cases on their merits, and because the
12 motion is not set for hearing until July 17, the Court grants Plaintiff's request and shall consider
13 the opposition brief. However, Plaintiff and her counsel are hereby placed on notice that failure
14 to comply with this Court's orders in the future may result in sanctions, including the rejection
15 of untimely papers. Defendants shall be permitted to file a substantive reply to Plaintiff's
16 opposition, which shall be due on June 24, 2009.

17 **IT IS SO ORDERED.**

18 Dated: June 17, 2009



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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¹ On that same date, Defendants filed a reply brief, in which they argue, in part,
that the motion should be granted because Plaintiff failed to file an opposition.