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7 **IN THE UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**
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10 **RICK ALLEN HART**

CASE NO. CIV-10-1760 JSW

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Plaintiff,

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v.

**RESPONSE TO ORDER TO SHOW CAUSE;
 DECLARATION AND PROPOSED ORDER**

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**MICHAEL J. ASTRUE
 Commissioner of Social Security
 of the United States of America,**

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Defendant.

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19 **NOTICE OF MOTION**

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In response to the Court’s December 2, 2010, Order to Show Cause, Plaintiff hereby moves the Court for an order permitting him to file his Motion for Summary Judgment on December 8, 2010. This motion is being made pursuant to Rule 6 (4) (b) of the Federal Rules of Civil Procedure due to plaintiff’s counsel’s “inadvertence, mistake and excusable neglect” in failing to timely file the summary judgment motion or properly request an extension of time within which to do so. This motion is based on the entire record in this case including the declaration of plaintiff’s counsel as set forth below.

MOTION

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Plaintiff respectfully requests that the Court permit plaintiff’s counsel to file his Summary Judgment Motion and Memorandum pursuant to Rule 6 (4) (b) of the Federal Rules of Civil Procedure which provides in pertinent part that:

b) Extending Time.

1. (1) In General.

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Rule 6(4)(b).

Plaintiff’s summary judgment motion was due November 4, 2010, *See*, September 28, 2010. Unfortunately, plaintiff’s counsel inadvertently failed to re-calendar Mr. Hart’s summary judgment motion and, as a result, failed to timely file his summary judgment motion or request additional time within which to do so.

Counsel’s failure to comply with the court’s order was negligent but wholly inadvertent. Counsel apologizes to the Court for her oversight. Plaintiff has a meritorious claim and it should be judged on the merits. Opposing counsel does not object to the late filing. *See*, Declaration of Bess M. Brewer set forth below.

Dated: December 7, 2010d

LAW OFFICE OF
BESS M. BREWER & ASSOCIATES

By: /S/ BESS M. BREWER
BESS M. BREWER
Attorney for Plaintiff

DECLARATION OF BESS M. BREWER

I, Bess M. Brewer, Declare:

1. I am an attorney licensed to practice law in California and am admitted to practice before this Court. I represent plaintiff and submit this declaration in support of plaintiff's response to the Court's Order to Show Cause.
2. Plaintiff's motion for summary judgment was due November 4, 2010. Unfortunately, I inadvertently failed to re-calendar Mr. Hart's summary judgment motion after the stipulation for an extension of time within which to do so was approved. I realized my oversight when I read the Court's December 2, 2010, Order to Show Cause.
3. I did not willfully flout the court's order and apologize for failing to file plaintiff's summary judgment motion by November 4, 2010, as scheduled. My failure to timely file was not purposeful and is quite embarrassing.
4. I believe Mr. Hart has a meritorious claim and that his case should be judged on its merits. I respectfully request that the court permit his summary judgment motion to be filed on December 8, 2010. I have three other summary judgment motions due in the Eastern District and cannot complete Mr. Hart's brief before December 8, 2010.
5. My failure to timely file Mr. Hart's summary judgment motion was not intentional and opposing counsel does not object to the late filing.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on December 7, 2010, in Sacramento, California.

/s/ Bess M. Brewer
BESS M. BREWER

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ORDER

APPROVED AND SO ORDERED.

DATED: December 8, 2010


HONORABLE JEFFREY S. WHITE