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

WAUKEEN Q. MCCOY,

No. C 16-01536 WHA

Appellant,

v.

E. LYNN SCHOENMANN,

**ORDER DENYING MOTION
TO DISMISS FOR LACK
OF PROSECUTION**

Appellee.

The record in this bankruptcy appeal was docketed and certified on May 3 (Dkt. Nos. 3–6). A scheduling order provided that appellant’s opening brief was due “no more than 30 days after docketing of notice that the record has been transmitted or is available electronically on the District Court’s docket” (Dkt. No. 7). The bankruptcy court transmitted further documents for consideration as part of the record on May 25 (Dkt. No. 8).

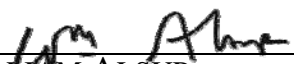
On June 8, appellee moved to dismiss the appeal for lack of prosecution because appellant had not yet filed his opening brief, although 30 days had elapsed since the initial record had been docketed. On June 9, appellant, who is proceeding *pro se*, responded stating that he understood his brief would be due on June 27, thirty days following the supplementation of the record. On June 24, appellee replied that the supplementation of the record did not amend the scheduling order, so appellant should have sought an extension. Appellant filed his opening brief on June 24.

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The scheduling order did not specify a deadline of June 2. That date only appeared in the description of the docket entry on ECF. Appellant perhaps reasonably believed that the supplementation of the record restarted the clock. Moreover, appellee will suffer no prejudice as a result of this delay. Appellee's motion to dismiss the action for lack of prosecution is **DENIED.**

IT IS SO ORDERED.

Dated: June 24, 2016.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE