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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

2:08-CV-396 JCM (CWH)

MARY KAREN MORETTI,  
  
Plaintiff,  
  
v.  
  
PLIVA, INC., and TEVA  
PHARMACEUTICALS, USA, INC.,  
  
Defendants.

**ORDER**

Presently before the court is defendant Pliva, Inc.’s emergency motion to strike. (Doc. #275). Pliva asserts that plaintiff’s response to its motion to dismiss was filed late and should not be considered by this court. (Doc. #275). Alternatively, Pliva moves the court for leave to file a reply in support of its motion to dismiss. (Doc. #275).

On August 10, 2011, the court held a status hearing for this case. During the hearing, the court and the parties agreed on a briefing schedule for dispositive motions. (See Doc. #269). According to the minutes of this hearing, dispositive motions were due by September 7, 2011, replies by September 19, 2011, and responses by September 23, 2011. (Doc. #269). It appears that the minutes of the proceedings erroneously switched the “reply” and “response” titles in the briefing schedule.

When Pliva timely filed its motion to dismiss on September 7, 2011, CM/ECF automatically generated a response deadline that was different from the deadline ordered by the court in the August 10, 2011, status hearing. Instead of the September 19, 2011, deadline ordered at the status hearing,

1 CM/ECF indicated that the response deadline was September 24, 2011. (Doc. #271).

2 Pliva filed a notice of non-opposition on September 23, 2011. (Doc. #272). This notice was  
3 filed four days after the court-ordered response deadline, but one day prior to CM/ECF's  
4 automatically generated deadline. Plaintiff filed a response to the motion to dismiss the next day,  
5 on September 24, 2011. (Doc. #273). The response file date was consistent with CM/ECF's  
6 automatically generated deadline.

7 Plaintiff contemporaneously filed a response to Pliva's notice of non-opposition. (Doc.  
8 #274). In the response, plaintiff asserts that the late file date was a result of the confusion caused  
9 by: (1) the erroneously notated scheduling period in the minutes of the proceedings, and (2) the  
10 conflicting response deadlines in the minutes of the proceedings and CM/ECF. (Doc. #274).

11 On September 27, 2011, Pliva filed the instant motion, asking the court to strike plaintiff's  
12 late-filed response or, in the alternative, grant leave to file a reply. (Doc. #275).

13 Plaintiff did file her response after the court-ordered deadline. However, in light of the  
14 confusion surrounding the applicable deadline, the court finds that this late filing was inadvertent  
15 and excusable.

16 Accordingly,

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's emergency  
18 motion (doc. #275) be, and the same hereby is, DENIED IN PART. Plaintiff's late-filed response  
19 is not stricken and will be considered by the court.

20 IT IS FURTHER ORDERED that defendant's emergency motion (doc. #275) be, and  
21 the same hereby is, GRANTED IN PART. Pliva may file a reply to plaintiff's opposition up to and  
22 including October 4, 2011.

23 DATED September 28, 2010.

24  
25   
26 UNITED STATES DISTRICT JUDGE