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

LEONARD BAYLOR,

Plaintiff,

No. 2:12-cv-1056 KJN

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff, who is represented by counsel, commenced this action on April 20, 2012. (Dkt. No. 1.) On May 9, 2012, the undersigned granted plaintiff’s application to proceed in forma pauperis, and directed plaintiff to submit copies of the required service documents to the United States Marshal (and file a statement with the court that such documents have been submitted to the United States Marshal) within fourteen (14) days of that order. (Dkt. No. 6 at 2.) Plaintiff failed to file the required statement and failed to submit the service documents to the U.S. Marshal in accordance with the court’s order.

The court’s May 9, 2012 scheduling order in this matter expressly states that failure to adhere to scheduling deadlines “may result in sanctions, including dismissal. L.R. 110. Plaintiff has an affirmative duty to prosecute this action, and failure to do so may result in a

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1 dismissal for lack of prosecution. Fed. R. Civ. P. 41(b). Requests to modify this order must be
2 made by written motion.” (Dkt. No. 8 at 3-4.)

3 Consequently, on November 1, 2012, the court issued an order to show cause
4 (“OSC”) directing plaintiff, within fourteen (14) days, to show cause in writing why this case
5 should not be dismissed for lack of prosecution and failure to comply with court orders. The
6 court cautioned plaintiff that failure to timely file the required writing would result in a
7 recommendation that the action be dismissed with prejudice. See Fed. R. Civ. P. 41(b); E.D.
8 Cal. L.R. 110; see also Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689
9 (9th Cir. 2005) (recognizing that a court may dismiss an action pursuant to Federal Rule of Civil
10 Procedure 41(b) *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil
11 procedure or the court’s orders).

12 On November 14, 2012, plaintiff’s counsel filed a response to the OSC. (Dkt.
13 No. 10.) Plaintiff’s counsel explained that his failure to submit the required service documents
14 to the U.S. Marshal was the result of an inability to contact or meet with plaintiff to complete the
15 intake process for representation. (Id. ¶ 2.) Plaintiff’s counsel conducted an initial phone
16 interview with plaintiff and completed the application to proceed in forma pauperis. (Id. ¶ 3.)
17 However, despite multiple attempts, plaintiff’s counsel has been unable to reach plaintiff since
18 then, and he does not have an executed retainer agreement from plaintiff. (Id. ¶ 4.) Accordingly,
19 plaintiff’s counsel asserts that he does not believe that he can proceed with prosecuting this
20 matter. (Id.)

21 In light of plaintiff’s counsel’s representations, it appears that plaintiff has
22 abandoned prosecution of the case. The court therefore recommends that the action be dismissed
23 without prejudice.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The Clerk of Court randomly select and assign a United States District Judge
3 to this case.

4 2. Plaintiff's counsel shall immediately serve a copy of this order and findings
5 and recommendations on plaintiff by mail at his last known address and by e-mail at his last
6 known e-mail address, if any.

7 IT IS FURTHER RECOMMENDED that:

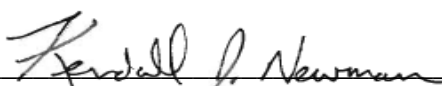
8 1. The case be DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule
9 of Civil Procedure 41(b) for failure to prosecute.

10 2. The Clerk of Court be directed to vacate all dates and close this case.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
13 (14) days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
16 shall be served on all parties and filed with the court within fourteen (14) days after service of
17 the objections. The parties are advised that failure to file objections within the specified time
18 may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455
19 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

20 IT IS SO ORDERED AND RECOMMENDED.

21 DATED: November 16, 2012

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25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE