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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHERITA WATERS,
Plaintiff,
v.
CAROLYN W. COLVIN, Commissioner
of Social Security,
Defendant.

No. 2:15-cv-0970 KJN (TEMP)

ORDER AND
FINDINGS AND RECOMMENDATIONS

On August 28, 2015, the previously assigned Magistrate Judge granted plaintiff's motion to proceed in forma pauperis and ordered plaintiff to submit to the United States Marshal the documents necessary for service of process within fourteen days. (Dkt. No. 3.) Plaintiff was also ordered to file in this court a declaration stating the date on which the documents were submitted to the United States Marshal within five days after submitting those documents.

Plaintiff, however, did not file a declaration stating the date on which the documents necessary for service were submitted to the United States Marshall nor did a defendant appear in this action. Accordingly, on January 21, 2016 the court issued an order directing plaintiff to show cause in writing within fourteen days as to why this action should not be dismissed for a lack of prosecution. (Dkt. No. 7.)

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1 Plaintiff, however, did not comply with that order but instead, on February 9, 2016, filed a
2 motion for summary judgment. (Dkt. No. 8.) In this regard, plaintiff still had not filed a
3 declaration stating the date on which the documents necessary for service were submitted to the
4 United States Marshall nor had a defendant appeared in this action. In light of plaintiff's pro se
5 status, on March 9, 2016, the undersigned again issued an order ordering plaintiff to show cause
6 in writing within fourteen days as to why this action should not be dismissed for a lack of
7 prosecution. That order advised plaintiff that in lieu of filing a written statement of good cause
8 plaintiff could file a declaration stating the date on which the documents necessary for service
9 were submitted to the United States Marshal. The order also advised plaintiff that Rule 4(m) of
10 the Federal Rules of Civil Procedure provides that a defendant must be dismissed if service of the
11 summons and complaint is not accomplished on the defendant within 90 days after the complaint
12 was filed and that the failure to timely respond to the order might result in the dismissal of this
13 action.

14 The fourteen-day period has passed and plaintiff has not responded to the March 9, 2016
15 order in any manner. The factors to be weighed in determining whether to dismiss a case for lack
16 of prosecution are as follows: (1) the public interest in expeditious resolution of litigation; (2) the
17 court's need to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy
18 favoring disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v.
19 City of El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260
20 (9th Cir. 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty
21 that should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963
22 F.2d at 1260.

23 Failure of a party to comply with the any order of the court "may be grounds for
24 imposition by the Court of any and all sanctions authorized by statute or Rule or within the
25 inherent power of the Court." Local Rule 110. Any individual representing himself or herself
26 without an attorney is nonetheless bound by the Federal Rules of Civil Procedure, the Local
27 Rules, and all applicable law. Local Rule 183(a). A party's failure to comply with applicable
28 rules and law may be grounds for dismissal or any other sanction appropriate under the Local

1 Rules. Id.

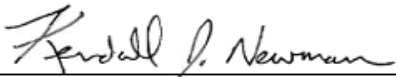
2 Here, plaintiff has repeatedly failed to respond to the courts' orders and has apparently
3 failed to provide the United States Marshal with the documents necessary for service of process
4 on the defendant. Plaintiff's lack of prosecution of this case renders the imposition of monetary
5 sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the court's
6 need to manage its docket, and the risk of prejudice to the defendant all support the imposition of
7 the sanction of dismissal. Only the public policy favoring disposition on the merits counsels
8 against dismissal. However, plaintiff's failure to prosecute the action makes disposition on the
9 merits an impossibility.

10 Moreover, Rule 4(m) of the Federal Rules of Civil Procedure provides that a defendant
11 must be dismissed if service of the summons and complaint is not accomplished on the defendant
12 within 90 days after the complaint was filed. Here, over seven months has passed since service of
13 process was ordered and it appears that no defendant has been served.

14 Accordingly, IT IS HEREBY ORDERED that a district judge be assigned to this action.

15 Also, IT IS HEREBY RECOMMENDED that plaintiff's complaint be dismissed without
16 prejudice for failure to prosecute and failure to comply with Rule 4(m).

17 Dated: April 5, 2016

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

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