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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brenda Louise Davis,
Plaintiff,
vs.
Michael J. Astrue, Commissioner of the
Social Security Administration,
Defendant.

No. CV 07-355 TUC FRZ (JM)
REPORT AND RECOMMENDATION

In accordance with the Rules of Practice of the United States District Court for the District of Arizona and 28 U.S.C. § 636(b)(1), this matter was referred to the Magistrate Judge for report and recommendation. As explained below, the Magistrate Judge recommends that the District Court, after an independent review of the record, provide notice to Plaintiff and dismiss the complaint if good cause does not exist to do otherwise.

Background

Pursuant to the order entered in this action granting Plaintiff *in forma pauperis* status, the Court ordered that the Plaintiff was responsible for the service of the summons and complaint in this action [Docket No. 4]. Rule 4(m), Fed.R.Civ.P., provides that:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice

1 Fed.R.Civ.P. 4(m). More than 120 days have passed since the filing of the complaint, and
2 there is no indication in the record that it has been served on the Defendant.

3 Additionally, Plaintiff was warned in the Scheduling Order that “[a]bsent any pending
4 dispositive motions, this case may be dismissed as prescribed in Local Rule LRCiv. 41.1
5 Rules of Practice.” [Docket No. 3]. Local Rule 41.1 provides that:

6 Cases which have had no proceedings for six (6) months or
7 more months may be dismissed by the Court for want of
8 prosecution. Notice shall be given to the parties that such action
9 is contemplated, and a status hearing shall be scheduled where
10 the parties may show good cause why such action should not be
11 taken.

12 L.R.Civ. 41.1. There are no pending motions in this case and the docket reflects that no
13 proceedings have occurred in six months.

14 **Recommendation**

15 Based on the foregoing and pursuant to 28 U.S.C. § 636(b) and Local Rule Civil 72.1,
16 Rules of Practice of the United States District Court, District of Arizona, the Magistrate
17 Judge recommends that the District Court, after an independent review of the record, issue
18 notice to the Plaintiff that his action shall be dismissed unless good cause is established for
19 doing otherwise.

20 This Recommendation is not an order that is immediately appealable to the Ninth
21 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
22 Appellate Procedure, should not be filed until entry of the District Court's judgment.

23 However, the parties shall have ten (10) days from the date of service of a copy of this
24 recommendation within which to file specific written objections with the District Court. *See*
25 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a) and 6(e) of the Federal Rules of Civil Procedure.
26 Thereafter, the parties have ten (10) days within which to file a response to the objections.
27 If any objections are filed, this action should be designated case number: **CV 07-355-TUC-**
28 **FRZ**. Failure to timely file objections to any factual or legal determination of the Magistrate
Judge may be considered a waiver of a party's right to *de novo* consideration of the issues.

1 *See United States v. Reyna-Tapia* 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*).

2 DATED this 26th day of February, 2009.

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Jacqueline Marshall
United States Magistrate Judge