

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

'O' JS-6

Case No.	2:15-cv-02897-CAS(Ex)	Date	January 28, 2016
Title	ALICE ANDERSON v. UNITED STATES OF AMERICA, ET AL.		

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants

Not Present

Not Present

Proceedings: (IN CHAMBERS) - ORDER DISMISSING CASE WITHOUT PREJUDICE

I. INTRODUCTION & BACKGROUND

On April 20, 2015, plaintiff Alice Anderson filed the instant action against defendants United States of America, Colton Michael McGee, and the United States Navy (collectively, “defendants”). See Dkt. 1 (Complaint). The complaint appears to assert a claim for negligence against defendants for injuries sustained when defendant Colton, while driving a tractor trailer in the scope of his employment with the Navy, rear-ended plaintiff’s vehicle.¹ See id.

On December 22, 2015, this Court issued an Order to Show Cause why the action should not be dismissed for lack of prosecution, as no proof of service had been filed as of that date. Dkt. 8 (OSC) (citing Fed. R. Civ. P. 4(m)). The Court’s OSC stated as follows:

As of the date of this Order, the electronic docket in this matter indicates that plaintiff has not filed a Proof of Service. IT IS HEREBY ORDERED that plaintiff Alice Anderson show cause in writing not later than Monday, January 4, 2016 why this action should not be dismissed for lack of prosecution as to defendants. See C.D. Cal. L.R. 41-1 (“Civil suits which have been pending for an unreasonable period of time without any

¹ Plaintiff alleges that prior to filing the instant suit, she presented a claim in accordance with the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b) et seq. This claim was purportedly denied on March 9, 2015. Compl. ¶ 2.

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action having been taken therein may, after notice, be dismissed for want of prosecution.”).

Plaintiff is advised that the Court will consider the following as a satisfactory response to the Order to Show Cause:

A proof of service of summons and complaint on defendants on or before the above date.

See Dkt. 8. On December 30, 2015, plaintiff’s attorney of record, Eric Bryan Seuthe (“Counsel” or “Seuthe”), requested that the Clerk of Court issue a summons on the complaint. Dkt. 9. On December 31, 2015, Seuthe filed a motion to withdraw as counsel. Dkt. 10. On January 4, 2016, Seuthe filed a Declaration re: Order to Show Cause. Dkt. 11 (“Seuthe Decl.”). On January 5, 2016, the Clerk of Court issued a 60-day summons. Dkt. 12.

II. DISCUSSION

In a sworn declaration, attorney Eric Seuthe states that he is the attorney of record for plaintiff Alice Anderson in the above-referenced case. Seuthe Decl. ¶ 1. Seuthe asserts that shortly after filing this action, “there was an irreconcilable breakdown of the attorney-client relationship” between him and plaintiff. Id. ¶ 5. Seuthe states that prior to the “breakdown” in the attorney-client relationship, his office was in the process of serving defendants in this action. Id. ¶ 6. Shortly thereafter, in June 2015, plaintiff signed a substitution of attorney, which Seuthe has attached to his declaration. Id.

However, Seuthe does not state that this substitution of attorney was ever filed with the Court, and the document does not appear on the electronic docket in this case. Furthermore, the document itself appears to indicate that plaintiff Alice Anderson will appear *pro se* as the attorney of record. See id., Ex.1. Despite this, Seuthe avers that he was under the impression that plaintiff and “her new counsel” were “handling the case” when he learned of the Court’s December 22, 2015 Order to Show Cause. Id. ¶ 7. Seuthe states that following the Court’s issuance of the OSC, he attempted to contact plaintiff “repeatedly by phone and letter” but failed to receive a response. Id. Accordingly, Seuthe requests in his January 4, 2015 declaration an additional 60 days to

