

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

10 NANCY LYNN BERRIGAN,) 1:10-cv-00165 GSA
11)
12 Plaintiff,) ORDER REGARDING PLAINTIFF'S MOTION
13 v.) FOR DEFAULT JUDGMENT
14 MICHAEL J. ASTRUE, Commissioner) (Document 10)
15 of Social Security,)
16)
17 Defendant.)
18

19 Plaintiff filed this action on February 2, 2010. (Doc. 1.) On February 3, 2010, this Court
20 granted Plaintiff's application to proceed in forma pauperis. (Doc. 3.) On that same date, the Court
21 issued its Scheduling Order and Summons to Defendant. (Docs. 4 & 5.) Thereafter, Defendant
22 received service of process on March 5, 2010. (Doc. 7.) On March 10, 2010, this Court issued its
23 Informational Order for Pro Se Litigants. (Doc. 8.)

24 On May 24, 2010, Plaintiff filed a Motion for Judgment by Default, wherein she seeks
25 "judgment for the demand in the complaint" as against Defendant for its failure to file an answer and
26 a "remand order . . for a favorable decision in plaintiff's case." (See Doc. 10.)

27 Defendant has not failed to timely respond to Plaintiff's complaint and there is no reason to
28 enter default or issue an order to show cause at this time.

1 As outlined in the Scheduling Order of February 3, 2010, Defendant has 120 days from the
2 date it receives service of process within which to file the administrative record. (See Doc. 5 at ¶ 2
3 [“Within one hundred twenty (120) days after service of the complaint, respondent shall serve a copy
4 of the administrative record on appellant and file it with the court. The filing of the administrative
5 record shall be deemed an answer to the complaint”].) Additionally, in this Court’s Informational
6 Order served March 10, 2010, at page three, the following language appears: “Pursuant to the
7 Scheduling Order, within one hundred twenty (120) days after service of the complaint, defendant
8 is required to serve a copy of the administrative record on plaintiff and also file the administrative
9 record with the Court, which serves as the answer to the complaint in this proceeding.” (Doc. 8 at
10 3, emphasis in original.)

11 Therefore, because Defendant was served on March 5, 2010, Defendant has through and
12 including July 6, 2010,¹ within which to file the administrative record in this matter. Once
13 Defendant has filed the administrative record, Defendant will be deemed to have filed an answer to
14 Plaintiff's complaint. Here, Defendant has not failed to timely respond to Plaintiff's complaint
15 because Defendant has approximately forty days remaining within which to file the administrative
16 record (5/27/10 - 7/6/10 = 40).

17 Plaintiff should refer to both the Scheduling Order of February 3, 2010, and the Informational
18 Order of March 10, 2010, for information concerning due dates and deadlines specific to Social
19 Security appeals and the procedures related thereto.

20 Lastly, in the event Defendant does not file the administrative record in a timely fashion,
21 Plaintiff is advised the Court will issue the appropriate order to Defendant.

23 || IT IS SO ORDERED.

Dated: May 27, 2010

/s/ **Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE

¹120 days technically falls on Saturday, July 3, 2010 (3/5/10 + 120), therefore, Defendant has until the next court business day to file the administrative record. Because the Court will be closed on July 5, 2010, in recognition of Independence Day, the next court business day falls on Tuesday, July 6, 2010.