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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BEVERLY JEAN GIBSON,) Case No.: 1:12-cv-00945 - JLT
)
Plaintiff,) ORDER DISMISSING THE ACTION FOR
) PLAINTIFF’S FAILURE TO COMPLY WITH THE
v.) COURT’S ORDERS AND FAILURE TO
) PROSECUTE
COMMISSIONER OF SOCIAL SECURITY,)
)
Defendant.)
)

Beverly Jean Gibson (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* with an action seeking judicial review of a determination of the Social Security Administration. For the following reasons, Plaintiff’s First Amended Complaint is **DISMISSED**.

I. Factual and Procedural History

Plaintiff initiated this action on June 11, 2012, by filing her complaint. Pursuant to 28 U.S.C. § 1915(a), the Court screened Plaintiff’s complaint and dismissed it with leave to amend on June 15, 2012. (Doc. 6). Plaintiff filed her First Amended Complaint on June 28, 2012 (Doc. 7), which the Court approved for service on July 2, 2012. (Doc. 8). The Court directed Plaintiff to “complete and submit to the Court the ‘Notice of Submission of Documents in Social Security Appeal Form’ issued by the Clerk. *Id.* at 4.

The instructions issued in the form directed Plaintiff to provide the Clerk’s Office with the following documents:

- 1 1. The original Summons and five (5) copies of the Summons
- 2 2. Five (5) copies of the Order directing service by the U.S. Marshal
- 3 3. Five (5) copies of the Complaint
- 4 4. One completed USM-285 form addressed to the Social Security Administration

5 The Clerk's Office notified the Court that Plaintiff failed to complete the forms required for service
6 and attempted to supplement her First Amended Complaint with additional exhibits and documents
7 not approved for service. Therefore, on July 20, 2012, the Court issued an order directing Plaintiff to
8 comply with the instructions for service. (Doc. 11).

9 On August 24, 2012, the Clerk's Office notified the Court that Plaintiff submitted the forms a
10 second time, but once again, Plaintiff failed to comply with the instructions. Plaintiff failed to
11 complete the USM-285 form and did not use the Summons issued by the Court. Further, Plaintiff
12 provided copies of only a portion of the First Amended Complaint, and copies of other extraneous
13 documents. Because the documents provided were insufficient for service, the Court issued an order
14 to Plaintiff on August 29, 2012, directing her to comply with the instructions for service. (Doc. 13).
15 The Court informed Plaintiff that failure to obey the Court's order would result in dismissal of the
16 action pursuant to Local Rule 110. *Id.* at 2.

17 Plaintiff failed to comply with or otherwise respond to the Court's order, and as a result the
18 Court issued an order to show cause for her failure on September 24, 2012. (Doc. 14). The Court
19 explained once again that failure of a party to comply with the Court's orders may be grounds for
20 sanctions, including dismissal of the action. Therefore, the Court directed Plaintiff to show cause why
21 the action should not be dismissed or, in the alternative, to file the documents identified with the
22 Clerk. *Id.* at 2.

23 On September 26, 2012, the Clerk's office notified the Court that Plaintiff filed a third set of
24 incomplete service documents. For example, Plaintiff filed five copies of *only* page one of the First
25 Amended Complaint which she attached to page two of the Order directing her compliance. Again,
26 the documents provided were insufficient for service. In addition, Plaintiff again filed copies of other
27 documents not authorized for service by the Court. Therefore, on October 1, 2012, the Court issued an
28 order granting Plaintiff "**one final opportunity** to comply with the terms of the instructions for service
of the First Amended Complaint." (Doc. 15 at 2) (emphasis in original). The Court reminded Plaintiff

1 an action may be dismissed “based on a party’s failure to prosecute an action or failure to obey a court
2 order, or failure to comply with local rules.” *Id.* (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61
3 (9th Cir. 1992); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987); *Henderson v.*
4 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)).

5 On October 9, 2012, Plaintiff filed a response to the Court’s order to show cause, asserting she
6 submitted the documents required for service. (Doc. 16). Plaintiff explained: “I strongly feel that I
7 have been in compliance with the order and should be allowed to move forward.” *Id.*

8 **II. Failure to Prosecute and Obey the Court’s Orders**

9 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
10 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
11 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent
12 power to control their dockets,” and in exercising that power, a court may impose sanctions including
13 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
14 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action
15 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik*, 963 F.2d at
16 1260-61 (dismissal for failure to comply with an order requiring amendment of complaint); *Malone*,
17 833 F.2d at 130 (dismissal for failure to comply with a court order); *Henderson*, 779 F.2d at 1424
18 (dismissal for failure to prosecute and to comply with local rules).

19 **III. Discussion and Analysis**

20 In determining whether to dismiss an action for failure to prosecute and failure to obey a court
21 order, the Court must consider several factors, including: “(1) the public’s interest in expeditious
22 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
23 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
24 of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61;
25 *Thompson*, 782 F.2d at 831.

26 In the case at hand, the public’s interest in expeditiously resolving this litigation and the
27 Court’s interest in managing the docket weigh in favor of dismissal. The risk of prejudice to the
28 defendant also weighs in favor of dismissal, since a presumption of injury arises from the occurrence

1 of unreasonable delay in prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
2 Cir. 1976). Although the First Amended Complaint was approved for service, Plaintiff has failed to
3 comply with the instructions for service for nearly three months without explanation. In addition,
4 Plaintiff has failed to comply with or otherwise respond to the Court's order dated October 9, 2012.

5 Finally, the Court's repeated warning to Plaintiff that failure to comply with the Court's orders
6 would result in dismissal satisfies the requirement that the Court consider less drastic measures.
7 *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424. In the Order to Show Cause, the Court
8 warned that it "may dismiss an action with prejudice, based upon a party's failure to prosecute an
9 action or failure to obey a court order . . ." (Doc. 14 at 2). Similarly, in its order directing Plaintiff to
10 comply with the instructions for service dated October 1, 2012, the Court informed Plaintiff that if she
11 "**fails to comply with this Order, the action will be dismissed for failure to obey a court order**
12 **pursuant to Local Rule 110.**" (Doc. 15 at 3) (emphasis in original). Thus, Plaintiff had adequate
13 warning that dismissal would result from her failure to comply with the Court's orders and the Local
14 Rules, and her failure to prosecute the action. Given these facts, the Court finds the policy favoring
15 disposition of cases on their merits is outweighed by the factors in favor of dismissal.

16 **IV. Conclusion and Order**

17 The factors set forth by Ninth Circuit weigh in favor of dismissal of the action. Therefore, the
18 Court is within its discretion to dismiss the action for Plaintiff's failure to prosecute the action and
19 failure to comply with the Court's orders.

20 The Court does not issue this order lightly. However, Plaintiff refuses to follow the very basic
21 instructions given to her¹ and without her doing so, the complaint cannot be served and the matter may
22 not move forward. She leaves the Court no option but to order the matter **DISMISSED WITHOUT**
23 **PREJUDICE.**

24 Accordingly, **IT IS HEREBY ORDERED:**

- 25 1. Plaintiff's First Amended Complaint is **DISMISSED WITHOUT PREJUDICE**; and
26

27 ¹ Because Plaintiff's failure to comply with the Court's instructions and orders is inexplicable given the harsh warnings
28 issued to her, the Court examined her documents to determine whether there was any indication she suffers from some
mental impairment which would prevent her from comprehending her situation. The Court has found no evidence this is
the case.

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2. The Clerk of Court is directed to close this action, because this order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: October 30, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE