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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS HERNANDEZ,
Plaintiff,

Case No. 1:15-cv-00262-SKO

INFORMATIONAL ORDER

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,
Defendant.

_____ /

Plaintiff is proceeding pro se in an action seeking judicial review of an administrative decision of the Commissioner of Social Security that denied, in whole or in part, Plaintiff's claim for benefits under the Social Security Act.

This order provides the following helpful information, and basically serves as a step-by-step guide, for pro se litigants. It is strongly suggested that Plaintiff read and re-read this order and keep it readily available for future reference.

I. Service of the Complaint

As is outlined in the Scheduling Order issued in this case, except when other provisions are made pursuant to an application to proceed in forma pauperis, Plaintiff shall serve a copy of the

1 (1) summons, (2) complaint, (3) notice of availability of a Magistrate Judge and the form of
2 consent/decline to jurisdiction of the United States Magistrate Judge (see Local Rule 305(a)), and
3 (4) the Scheduling Order, within twenty (20) days of Plaintiff's filing the complaint.

4 If Plaintiff is proceeding in forma pauperis, the United States Marshal usually serves the
5 complaint. However, if Plaintiff is not proceeding in forma pauperis, then Plaintiff or legal
6 counsel is responsible for service and then filing a proof of service without delay. See Local Rule
7 210.

8 Lawsuits for review of administrative decisions made by the Commissioner of Social
9 Security are prosecuted against the Commissioner of Social Security. Federal Rule of Civil
10 Procedure 4(i)(2) and (3) provide, in substance, that to serve the Commissioner in his official
11 capacity, the party must serve (1) the United States, and (2) the Commissioner.

12 To serve the United States, a party must:

13 (1) Deliver a copy of the summons and complaint to the United States Attorney for the
14 district where the action is brought, or to an Assistant United States Attorney or clerical employee
15 whom the United States Attorney designates in a writing filed with the Court; or send a copy of
16 the summons and complaint, by certified mail only, to the Civil Process Clerk at the United States
17 Attorney's Office; and

18 (2) Send a copy of the summons and complaint, by certified mail only, to the Attorney
19 General of the United States in Washington, D.C.; and

20 (3) Send a copy of the summons and complaint, by certified mail only, to the
21 Commissioner (the officer of the United States whose order is challenged by the lawsuit) in San
22 Francisco, California. Fed. R. Civ. P. 4(i)(1)-(3).

23 Initial service of process is thus sufficient if Plaintiff serves, by certified mail only, copies
24 of the summons and complaint on:

25
26 Office of the United States Attorney
27 Civil Process Clerk
28 2500 Tulare Street, Suite 4401
Fresno, CA 93721

1 Office of the Attorney General of the United States
2 950 Pennsylvania Avenue, N.W.
3 Washington, DC 20530-0001

4 Office of the General Counsel
5 Social Security Administration
6 160 Spear Street, Suite 800
7 San Francisco, CA 94105

8 After service upon these entities, a proof of service must be filed with the Court without
9 delay pursuant to Local Rule 210. If Plaintiff is proceeding in forma pauperis, the United States
10 Marshal generally completes the proof of service and files it with the Court. If Plaintiff is not
11 proceeding in forma pauperis, however, it is Plaintiff's duty to promptly file a proof of service
12 with the Court.

13 **II. Attempt at Informal Resolution of the Case**

14 Pursuant to the Scheduling Order, within one hundred twenty (120) days after service of
15 the complaint, Defendant is required to serve a copy of the administrative record on Plaintiff and
16 file the administrative record with the Court, which serves as the answer to the complaint in this
17 proceeding.

18 Once the administrative record has been filed, the parties must try to resolve the case
19 informally. In this process, the parties must exchange informal briefs in the form of letters about
20 the case to see if they can agree that the case should be sent back, or "remanded," to the Social
21 Security Administration for a further hearing by an administrative law judge.

22 In the letter brief, Plaintiff must briefly set forth (1) the issues in the case, (2) the reasons
23 why Plaintiff believes that Plaintiff is entitled to Social Security benefits, and (3) why the decision
24 to deny benefits should be remanded.

25 The letter brief must be marked "Confidential Letter Brief," should not be filed with the
26 Court, and must be served on Defendant within thirty (30) days from the date Defendant served
27 Plaintiff with the administrative record, by mailing copies to all the attorneys listed on the court
28 docket as representing Defendant, Commissioner of Social Security, at the addresses noted on the
court docket. A certificate of service of the Confidential Letter Brief shall be filed with the Court,
but the Confidential Letter Brief itself shall not be filed with the Court.

1 The name(s) of the attorney or attorneys representing Defendant are added to the court
2 docket at the time the Court receives Defendant's response to the complaint which, again, usually
3 consists of the administrative record. Sometimes the court docket lists not only an attorney at the
4 office of the General Counsel of the Social Security Administration in San Francisco, California,
5 but also an attorney at the United States Attorney's Office in Fresno, California. In these
6 particular cases, it will then be necessary for Plaintiff to mail copies of the Confidential Letter
7 Brief to more than one attorney for Defendant.

8 Defendant's Confidential Letter Brief must be served on Plaintiff no later than thirty-five
9 (35) days after Defendant is served with Plaintiff's confidential letter brief. A certificate of service
10 of Defendant's Confidential Letter Brief shall be filed with the Court.

11 If the parties agree to a remand, the case will go back to the Social Security Administration
12 before any formal briefs are filed with the Court, and without the Court ever considering the
13 merits of the case. The parties' agreement to remand the case must be set forth in writing in the
14 document titled "Stipulation and Order," which must be signed and filed with the Court no later
15 than fifteen (15) days after Defendant served its Confidential Letter Brief on Plaintiff. See Local
16 Rule 143(a)(1), (b).

17 The informal letter briefs exchanged by the parties are confidential in the sense that they
18 are not filed with the Court. If the parties are unable to agree to a remand, the letters are not part
19 of the case file and, thus, are not before the Court if and when the Court finally considers the case
20 on the merits.

21 **III. Briefs**

22 If, after exchanging the Confidential Letter Briefs, the parties are unable to agree to a
23 remand of the case, the parties must file formal briefs with the Court as directed in the Scheduling
24 Order. It is only after the formal briefs are filed with the Court that the Court will consider the
25 merits of the case and make a decision.

26 A. Plaintiff's Opening Brief

27 Plaintiff's opening brief must be filed and served no later than thirty (30) days from the
28 date Defendant's informal letter brief was served on Plaintiff. Plaintiff must serve a copy of the

1 opening brief on all the attorneys listed for Defendant on the court docket of the case at the
2 addresses noted on the court docket.

3 Plaintiff must also file the original opening brief, together with a copy, with the Court, by
4 either personal delivery or via U.S. mail to:

5 Office of the Clerk
6 United States District Court
7 Eastern District of California
8 2500 Tulare Street, Suite 1501
9 Fresno, California 93721

10 Plaintiff's opening brief must contain the following:

11 (1) A plain description of Plaintiff's alleged physical or emotional impairments, when
12 Plaintiff contends they became disabling, and how they disabled Plaintiff from work;

13 (2) A summary of the administrative proceedings before the Social Security
14 Administration;

15 (3) A summary of the relevant testimony at the administrative hearing;

16 (4) A summary of all relevant medical evidence, including an explanation of the
17 significance of clinical and laboratory findings, and the purpose and effect of prescribed
18 medication and therapy;

19 (5) A recitation of the Social Security Administration's findings and conclusions
20 relevant to Plaintiff's claims;

21 (6) A short, separate statement of each of Plaintiff's legal claims stated in terms of the
22 insufficiency of the evidence to support a particular finding of fact or reliance on an erroneous
23 legal standard; and

24 (7) Any argument separately addressing each claimed error.

25 All references to the administrative record and all assertions of fact must be accompanied
26 by citations to the administrative record. Any argument in support of each claim of error must be
27 supported by citation to legal authority and an explanation of the application of such authority to
28 the facts of the particular case. Briefs that do not substantially comply with these requirements
will be stricken. A document that is stricken becomes null and void and is not considered by the
Court for any purpose.

1 Plaintiff is further advised that failure to timely file an opening brief will result in dismissal
2 of the action.

3 B. Defendant's Brief

4 Pursuant to the Scheduling Order, defendant's responsive brief must be filed and served on
5 Plaintiff within thirty (30) days from the date of service of Plaintiff's opening brief on Defendant.

6 C. Plaintiff's Reply Brief

7 Plaintiff may, but is not required to file a reply brief within fifteen (15) days from the date
8 defendant served its responsive brief on Plaintiff. Plaintiff must serve a copy of the reply brief on
9 Defendant by serving the United States Attorney for the Eastern District of California at the
10 address in Fresno, California, as noted above. Plaintiff must also file the original reply brief,
11 together with a copy, with the Court at the Court's address in Fresno, California, as noted above.

12 Plaintiff's reply brief should respond to the arguments made in Defendant's responsive
13 brief.

14 **IV. Motion to Dismiss**

15 In some cases, instead of serving and filing an administrative record, Defendant may file a
16 motion to dismiss the case pursuant to Federal Rule of Civil Procedure 12, within one hundred
17 twenty (120) days from the date defendant is served with Plaintiff's complaint.

18 Plaintiff may oppose a motion to dismiss by filing and serving an opposition to the motion
19 within fourteen (14) days from the date the motion to dismiss was served on Plaintiff, and should
20 be titled "Opposition to Defendant's Motion to Dismiss." See Local Rule 230(c).

21 The Court will consider a motion to dismiss only after receiving opposition from Plaintiff,
22 or after the time for filing opposition has passed. In ruling on a motion to dismiss the case, the
23 Court may either (1) deny the motion and proceed with the case, ordering the parties to proceed to
24 file the administrative record, attempt informal resolution, and file briefs; or (2) grant the motion
25 to dismiss, and dismiss all or part of the case.

26 **V. The Court's Decision on the Merits**

27 The Court will consider the merits of the case only after all briefs have been filed, and may
28 enter judgment affirming, modifying, or reversing the determination of the Social Security

1 Administration. The Court may or may not remand the case to the Social Security Administration
2 for a further hearing.

3 **VI. General Summary of Deadline Calculations**

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<u>Event</u>	<u>Deadline</u>	<u>Reference</u>
5 Service of Complaint	20 days after filing complaint	<i>See Section (I) above</i>
6 Administrative Record	120 days after service of 7 complaint	<i>See Section (II) above</i>
8 Plaintiff's Opening Brief	95 days after administrative 9 record is lodged with Court	<i>See Section (III)(A) above</i>
10 Defendant's Brief	30 days after Plaintiff's 11 opening brief is filed	<i>See Section III(B) above</i>
12 Plaintiff's Reply Brief (Optional)	15 days after Defendant's 13 brief is filed	<i>See Section III(C) above</i>

14 **VII. Rules for Litigating this Action**

15 Plaintiff is informed of the following:

16 A. In litigating this action, the parties must comply with the Federal Rules of
17 Civil Procedure and the Local Rules of the United States District Court, Eastern District of
18 California ("Local Rules"). A copy of the Local Rules may be obtained in the Clerk's Office at no
19 charge.

20 Local Rule 206 is a special rule for social security actions. Specifically, sections (a)(1) and
21 (2) of Rule 206 generally state that complaints shall contain the last four digits of Plaintiff's social
22 security number only, i.e., XXX-XX-1234, and that Plaintiff shall privately disclose to Defendant,
23 within five (5) days after a request is made to Plaintiff, the full social security number of Plaintiff.
24 Therefore, Plaintiff shall refrain from disclosing the entire social security number on any filings.

25 **FAILURE TO COMPLY WITH THE LOCAL RULES, FEDERAL RULES, OR A
26 COURT ORDER, INCLUDING THIS ORDER, WILL BE GROUNDS FOR DISMISSAL
27 OR OTHER APPROPRIATE SANCTIONS. See Local Rule 110; Fed. R. Civ. P. 41(b).**

28 B. Documents intended to be filed with the Court must be mailed to the Clerk
of the Court in Fresno, California, at the address⁷ noted above. See Local Rule 134(a). All

1 documents inappropriately mailed directly to a judge's chambers will be stricken from the record.
2 A document requesting a court order must be styled as a motion, not as a letter. See Fed. R. Civ.
3 P. 7.

4 C. Each separate document must be separately stapled. See Local Rule 130. If
5 a document is stapled behind another document, it will not be filed and will not enter the court
6 docket.

7 D. All documents filed with the Court must be submitted with an additional
8 legible copy to be conformed for the Court's use. See Local Rule 133(d)(2). A document
9 submitted without an extra copy for the Court's use will be stricken. If the filing party wishes the
10 Court to return a file-stamped copy, an additional copy must be provided for that purpose (i.e., an
11 original and two copies, one for the Court's use and one to be returned to the filing party), together
12 with a self-addressed stamped envelope. The Court cannot provide copy or mailing service for a
13 party, even for an indigent plaintiff proceeding in forma pauperis. Copies of documents from the
14 Court's file may be obtained in the Clerk's Office at the cost of fifty (\$.50) cents per page.

15 E. After any defendant has appeared in an action by filing a pleading
16 responsive to the complaint (i.e., an answer or a motion to dismiss), all documents filed with the
17 Court must include a proof of service stating that a copy of the document was served on the
18 opposing party. See 28 U.S.C. § 1746; Fed. R. Civ. P. 5; Local Rule 135. A document submitted
19 without the required proof of service will be stricken. Where a party is represented by counsel,
20 service on the party's attorney of record constitutes effective service.

21 F. A pro se party has an affirmative duty to keep the Court and opposing
22 parties apprised of a current address. If Plaintiff moves and fails to file a notice of change of
23 address, service of court orders at Plaintiff's prior address shall constitute effective notice. See
24 Local Rule 182(f). If mail directed to Plaintiff is returned by the United States Postal Service as
25 undeliverable, the Court will not attempt to re-mail it. If Plaintiff's address is not updated, in

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1 writing, within sixty (60) days of mail being returned, the action will be dismissed for failure to
2 prosecute. See Local Rule 183(b).

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IT IS SO ORDERED.

Dated: March 16, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE