



1 I. Service of the Complaint

2 As is outlined in the Scheduling Order issued in this case, except when other provisions  
3 are made pursuant to an application to proceed in forma pauperis, plaintiff **shall** serve a copy of  
4 the (1) summons, (2) complaint, (3) notice of availability of a Magistrate Judge and the form of  
5 consent/ decline to jurisdiction of United States Magistrate Judge (See Local Rule 305(a)), and  
6 (4) the Scheduling Order, within **twenty (20) days** of plaintiff filing the complaint.

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

11 Lawsuits for review of administrative decisions made by the Commissioner of Social  
12 Security are prosecuted against the Commissioner of Social Security. Fed.R.Civ.P. 4(i)(2) and  
13 (3) provides, in substance, that to serve the Commissioner in his official capacity, the party **must**  
14 serve (1) the United States, and (2) the Commissioner.

15 To serve the United States, a party **must**:

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

21 (2) **send** a copy of the summons and complaint, by certified mail **only**, to the  
22 Attorney General of the United States in Washington, D.C.; and,

23 (3) **send** a copy of the summons and complaint, by certified mail **only**, to the  
24 Commissioner (the officer of the United States whose order is challenged by the lawsuit) in San  
25 Francisco, CA. Fed.R.Civ.P. 4(i)(1)-(3).

26 Initial service of process is thus sufficient if plaintiff serves, by certified mail **only**, copies  
27 of the summons and complaint on:

28 Office of the United States Attorney

1 Civil Process Clerk  
2 2500 Tulare Street, Suite 4401  
3 Fresno, CA 93721

4 Office of the Attorney General of the United States  
5 950 Pennsylvania Avenue, NW  
6 Washington, D.C. 20530-0001

7 Office of the General Counsel  
8 Social Security Administration  
9 333 Market Street, Suite 1500  
10 San Francisco, CA 94105

11 after which a proof of service must be filed with the Court without delay pursuant to Local Rule  
12 210. If plaintiff is proceeding in forma pauperis, the United States Marshal generally completes  
13 the proof of service and files it with the Court; however, if plaintiff is not proceeding in forma  
14 pauperis, it is plaintiff's duty to promptly file a proof of service with the Court.

15 II. Attempt at Informal Resolution of the Case

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

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

24 In the letter brief, plaintiff **must** briefly set forth (1) the issues in the case, (2) the reasons  
25 why plaintiff thinks that plaintiff is entitled to Social Security benefits, and (3) why the decision  
26 to deny benefits should be remanded.

27 The letter brief **must** be marked "Confidential Letter Brief", should not be filed with the  
28 Court, and **must** be served on defendant **within thirty (30) days from the date defendant**  
**served plaintiff with the administrative record, by mailing copies to all the attorneys listed**  
**on the court docket as representing defendant**, Commissioner of Social Security, at the

1 addresses noted on the court docket.

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

9 Defendant's confidential letter brief **must** be served on plaintiff no later than **thirty-five**  
10 **(35) days** after defendant is served with plaintiff's confidential letter brief.

11 If the parties agree to a remand, then the case will go back to the Social Security  
12 Administration before any formal briefs are filed with the Court, and without the Court ever  
13 considering the merits of the case. The parties' agreement to remand the case **must** be set forth  
14 in writing in a document titled "Stipulation and Order," which **must** be signed and filed with the  
15 Court no later than **fifteen (15) days** after defendant served its confidential letter brief on  
16 plaintiff. See Local 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  
20 case on the merits.

### 21 III. Briefs

22 If, after exchanging confidential letter briefs, the parties are unable to agree to a remand  
23 of the case, then 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, CA 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) 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. Argument in support of each claim of error **must** be  
27 supported by citation to legal authority and explanation of the application of such authority to the  
28 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

1 Court for any purpose.

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

4 B. Defendant's Brief

5 Pursuant to the Scheduling Order, defendant's responsive brief is due filed and  
6 served on plaintiff within **thirty (30) days** from the date of service of plaintiff's opening brief on  
7 defendant.

8 C. Plaintiff's Reply Brief

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

14 Plaintiff's reply brief should respond to the arguments made in defendant's responsive  
15 brief.

16 IV. Motion to Dismiss

17 In some cases, instead of serving and filing an administrative record, defendant may file a  
18 motion to dismiss the case pursuant to Fed.R.Civ.P. 12., within **one hundred twenty (120) days**  
19 from the date defendant is served with plaintiff's complaint.

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

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

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1 V. The Court's Decision on the Merits

2 The Court will consider the merits of the case only after all briefs have been filed, and  
3 may enter a judgment affirming, modifying, or reversing the determination of the Social Security  
4 Administration. The Court may or may not remand the case to the Social Security  
5 Administration for a further hearing.

6 VI. Summary of Deadline Calculations

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8 See Section I. above	Service	due <b>20</b> days after filing complaint
9 See Section II. above	Administrative Record	due <b>120</b> days after service
10 See Section III. A. above	Plaintiff's Opening Brief	due <b>95</b> days after administrative record lodged with court
11 See Section III. B. above	Defendant's Brief	due <b>30</b> days after plaintiff's opening brief filed
12 See Section III. C. above	Plaintiff's Reply Brief - optional	due <b>15</b> days after defendant's brief filed

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14 VII. Rules for Litigating the Action

15 Plaintiff is informed of the following:

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

20 Local Rule 206 is a special rule for social security actions. Specifically (a)(2) and (3)  
21 generally states that complaints **shall** contain the last four digits of plaintiff's social security  
22 number **only**, i.e., XXX-XX-1234, and that plaintiff shall privately disclose to defendant, within  
23 **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  
25 filings.

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

1 B. Documents intended to be filed with the Court **must** be mailed to the Clerk of the  
2 Court in Fresno, CA, at the address noted above. See Local Rule 134(a). All documents  
3 inappropriately mailed directly to a judge's chambers will be stricken from the record. A  
4 document requesting a court order **must** be styled as a motion, not a letter. See Fed.R.Civ.P. 7.

5 C. Each document submitted for filing **must** include the original signature of the  
6 filing party or parties. Local Rule 131; Fed.R.Civ.P. 11(a). All documents submitted without  
7 the required signature(s) will be stricken. Each separate document **must** be separately stapled.  
8 See Local Rule 130. If a document is stapled behind another document, it will not be filed and  
9 will not enter the court docket.

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

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

24 F. A pro se party has an affirmative duty to keep the Court and opposing parties  
25 apprised of a current address. If plaintiff moves and fails to file a notice of change of address,  
26 service of court orders at plaintiff's prior address shall constitute effective notice. See Local Rule  
27 182(f). If mail directed to plaintiff is returned by the United States Postal Service as  
28 undeliverable, the Court will not attempt to re-mail it. If plaintiff's address is not updated, in

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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4 IT IS SO ORDERED.

5 Dated: **June 5, 2017**

  
UNITED STATES MAGISTRATE JUDGE

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