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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **IN RE THE CONTEMPT OF SALMA AGHA-**  
6 **KHAN, Plaintiff**

1:17-MC-0022-LJO

7 **ORDER RE REQUEST FOR**  
8 **CRIMINAL PROSECUTION FOR**  
9 **CONTEMPT OF COURT**

10 On February 9, 2017, the Court issued an Order to Show Cause re Criminal Contempt (“OSC”),  
11 explaining that “the Court will hold a hearing to determine whether Plaintiff should be held in criminal  
12 contempt for the language contained in [her] filings in this case.” Doc. 4 at 1. The Court held a status  
13 conference on the matter on March 22, 2017. Doc. 14.

14 On the morning of March 22, 2017, Plaintiff corresponded with the undersigned’s judicial  
15 assistant through email. *See* Doc. 15 at 1-3. Plaintiff indicated her opinion that the status conference  
16 should be vacated because she had filed an appeal. *See id.* at 1. The undersigned’s judicial assistant  
17 responded: “Filing the motion does not stay the proceedings in this court. Please be advised, if you do  
18 not appear for your hearing today, Judge O’Neill will be issuing a bench warrant for your arrest.” *Id.*  
19 Plaintiff responded: “Thanks. But he has no jurisdiction as he is not a Judge on my case. So he is acting  
20 as an individual and is threatening me. This is what I was told by certain investigating authorities.” *Id.*  
21 Plaintiff did not appear at the status conference. *Id.* Accordingly, the Court issued a warrant for her  
22 arrest with bail set at \$50,000, *id.*, which remains outstanding.

23 The Court held another status conference on April 11, 2017. Doc. 19. Again, Plaintiff did not  
24 appear. *Id.* The Court held a third status conference on May 2, 2017, and, again, Plaintiff did not appear.  
25 Doc. 27.

Under 18 U.S.C. § 401, this Court has the “power to punish by fine or imprisonment, or both, at

1 its discretion, such contempt of its authority, and none other, as--(1) Misbehavior of any person in its  
2 presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its  
3 officers in their official transactions; (3) Disobedience or resistance to its lawful writ, process, order,  
4 rule, decree, or command.” Plaintiff’s willful, repeated failure to appear without excuse constitutes  
5 criminal contempt. *See U.S. Bank Nat’l Ass’n as Trustee v. Garcia*, No. CIV S-10-1623 LKK/GGH PS,  
6 2010 WL 4365556, at \*2 (E.D. Cal. Oct. 27, 2010) (citing *In re Allis*, 531 F.2d 1391, 1392 (9th Cir.  
7 1976)).

8 Under Federal Rule of Criminal Procedure 42(a), “[a]ny person who commits criminal contempt  
9 may be punished for that contempt after prosecution on notice.” The Rule “requires the court to issue an  
10 order to show cause, giving the defendant notice stating the time and place of trial, allowing the  
11 defendant reasonable time to prepare a defense, and stating the essential facts constituting the charged  
12 criminal contempt and describing it as such.” *Garcia*, 2010 WL 4365556, at \*2. The Rule also “requires  
13 that the court appoint an attorney to prosecute the case.” *Id.*

14 Pursuant to Federal Rule of Criminal Procedure 42(a)(2), the Court requests that the U.S.  
15 Attorney’s Office for the Eastern District of California prosecute Plaintiff’s multiple instances of failing  
16 to appear as criminal contempt of court. The Court requests that the U.S. Attorney’s Office inform the  
17 Court by May 19, 2017, whether it will prosecute this case. The Court will then set a date for a  
18 substantive hearing on the matter.

19  
20 IT IS SO ORDERED.

21 Dated: May 5, 2017

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE