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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANNE SABETTA,

Plaintiff,

No. 2:08-cv-2181 JAM KJN PS

v.

THE NATIONAL RAILROAD
PASSENGER CORP., dba AMTRAK,
et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /
On November 1, 2010, the court ordered for the second time that plaintiff submit a statement with the court that she has provided all information needed to effectuate service upon defendants to the United States Marshals. Plaintiff,¹ who is proceeding without counsel, has filed no such statement or other responsive document to date. Therefore, as discussed in further detail below, the court will recommend that this case be dismissed.

Plaintiff filed this action on September 16, 2008. (Dkt. No. 1.) Because this case

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¹ Anne Sabetta originally filed this action along with two additional plaintiffs, Karl Wichelman and Bridgette Walker. However, the court dismissed those additional plaintiffs via an order signed by the Honorable John A. Mendez on June 29, 2010. (Dkt. No. 19.) Plaintiff filed an interlocutory appeal challenging this dismissal. (Dkt. No. 26.) However, the Ninth Circuit dismissed this appeal on August 26, 2010 for lack of jurisdiction. (Dkt. No. 30.)

1 is proceeding in forma pauperis, the court screened plaintiff's complaint. Following that
2 screening under 28 U.S.C. § 1915(e)(2), the court dismissed the complaint and permitted plaintiff
3 to file an amended complaint. (Dkt. No. 9.) On September 3, 2009, plaintiff filed a first
4 amended complaint. (Dkt. No. 12.) Following the screening of that complaint, the court ordered
5 dismissal of certain claims and plaintiffs. (Dkt. Nos. 14, 19.) By separate order, the court
6 ordered service of the first amended complaint upon defendants. (Dkt. No. 20.) In that order,
7 plaintiff was required to submit certain documents to the United States Marshals for service of
8 her complaint. Plaintiff was further ordered to submit "within 10 days thereafter," a "statement
9 with the court that such documents have been submitted to the United States Marshal." (Dkt.
10 No. 20 at 2.) The docket in this action does not reflect that plaintiff filed any such statement. In
11 fact, the docket does not reflect service upon any defendant or appearance by any defendant.

12 Therefore, the court issued a subsequent order on November 1, 2010, which stated
13 in pertinent part that plaintiff "shall file, on or before November 15, 2010, a statement with the
14 court that she has provided **all** information needed by the United States Marshal to effectuate
15 service of process as detailed in this court's July 6, 2010 order." (Dkt. No. 33, emphasis in
16 original). That order also warned plaintiff that failure to timely file the required writing may
17 result in sanctions, including but not limited to dismissal of this action.

18 The docket reflects that plaintiff still has not filed the required writing and thus
19 failed to comply with the court's July 6, 2010 and November 1, 2010 orders. Accordingly, the
20 undersigned will recommend that this case be dismissed for failure to prosecute and failure to
21 comply with the court's orders. See Fed. R. Civ. P. 41(b); Local Rules 110, 183(a); see also
22 Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
23 (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b)
24 *sua sponte* for a plaintiff's failure to prosecute or comply with the rules of civil procedure or the
25 court's orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) ("Failure to follow
26 a district court's local rules is a proper ground for dismissal."); King v. Atiyeh, 814 F.2d 565,

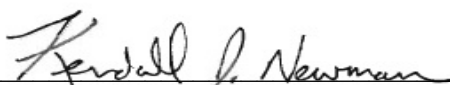
1 567 (9th Cir. 1987) (“Pro se litigants must follow the same rules of procedure that govern other
2 litigants.”).

3 For the foregoing reasons, the undersigned HEREBY RECOMMENDS that:

- 4 1. This case be dismissed without prejudice; and
- 5 2. The Clerk of Court be directed to close this case and vacate any pending
6 dates.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
9 days after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
12 within the specified time may waive the right to appeal the District Court’s order. Turner v.
13 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.
14 1991).

15 DATED: November 30, 2010

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE
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