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

PAMELA J. ORTIZ,

Plaintiff,

No. 2:09-cv-02641-KJN

v.

ORDER TO SHOW CAUSE

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____/

Plaintiff, who is represented by counsel, filed a complaint and motion to proceed in this action in forma pauperis on September 21, 2009. (Dkt. Nos. 1, 2.) This court granted plaintiff’s motion to proceed in forma pauperis (Dkt. No. 3) and issued a scheduling order setting forth, among other things, a deadline by which defendant was required to file the administrative transcript and an answer or other response to plaintiff’s complaint, and a deadline by which plaintiff was required to file a motion for summary judgment and/or remand. (Dkt. No. 4.) The scheduling order further provides: “The court will not contact counsel or the parties to remind them of these scheduling deadlines. Failure to adhere to the schedule outlined above may result in sanctions, including dismissal. L.R. 11–110. Plaintiff has an affirmative duty to prosecute this action, and failure to do so may result in dismissal for lack of prosecution. Fed. R. Civ. P.

1 41(b).” (Dkt. No. 4 at 4.)

2 On March 8, 2010, defendant lodged the administrative transcript with the court
3 and filed an answer to plaintiff’s complaint. (Dkt. Nos. 12, 13.)

4 On April 27, 2010, the court approved the parties’ stipulation permitting plaintiff
5 to file a motion for summary judgment on or before May 28, 2010. (Dkt. No. 17.) Despite this
6 extension, plaintiff failed to file a timely motion for summary judgment.

7 Accordingly, it is HEREBY ORDERED that:

8 1. Plaintiff shall show cause in writing, on or before July 2, 2010, why this
9 case should not be dismissed for lack of prosecution and why plaintiff’s counsel should not be
10 sanctioned by the court for failure to adhere to the court’s Local Rules and the orders entered in
11 this case. See Fed. R. Civ. P. 41(b); E. Dist. Local Rules 110 (“Failure of counsel or of a party to
12 comply with these Rules or with any order of the Court may be grounds for imposition by the
13 Court of any and all sanctions authorized by statute or Rule or within the inherent power of the
14 Court.”); Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
15 (recognizing that a court may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b)
16 *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the
17 court’s orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to follow
18 a district court’s local rules is a proper ground for dismissal.”)


19 Failure by plaintiff and plaintiff’s attorney to file the required writing within the
20 time provided will result in dismissal of this action. It will not be sufficient for plaintiff to
21 merely file a late motion for summary judgment; the required writing must be filed. Moreover,
22 reliance on plaintiff’s counsel’s “extremely impacted briefing schedule” does not necessarily
23 constitute sufficient cause to discharge this order and avoid sanctions.¹

24
25 ¹ Plaintiff’s counsel frequently appears before this court on claims similar to the one pursued
26 on plaintiff’s behalf here. Plaintiff’s counsel has demonstrated repeated difficulty filing timely
motions for summary judgment on behalf of her clients, and frequently attempts to excuse her

1 2. Plaintiff's counsel shall serve this order on her client, Ms. Ortiz, within
2 fourteen days of the date of this order, and shall file written notice with the court within fourteen
3 days of that service that she has actually served this order on Ms. Ortiz.

4 IT IS SO ORDERED.

5 DATED: June 14, 2010

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9 KENDALL J. NEWMAN
 UNITED STATES MAGISTRATE JUDGE

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25 conduct by relying on her impacted briefing schedule or heavy case load. The undersigned has
26 previously expressed concern that plaintiff's counsel is using orders to show cause like the present
one as a form of calendaring system, and encouraged her to cease such a practice to extent that this
is the case. (See Quintana v. Comm'r of Soc. Sec., No. 2:09-cv-01056 KJN, Dkt. Nos. 22, 25.)