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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.

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER TO APPEAR

Plaintiff is represented by attorney Bess M. Brewer of the law firm Bess M. Brewer & Associates. Plaintiff 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

1 failure to do so may result in dismissal for lack of prosecution. Fed. R. Civ. P. 41(b).” (Dkt. No.
2 4 at 4.)

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

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

8 On June 15, 2010, the court entered an order (“OSC”) requiring plaintiff to “show
9 cause in writing, on or before July 2, 2010, why this case should not be dismissed for lack of
10 prosecution and why plaintiff’s counsel should not be sanctioned by the court for failure to
11 adhere to the court’s Local Rules and the orders entered in this case.” (Dkt. No. 18 at 2.) The
12 OSC specifically stated that “[f]ailure by plaintiff and plaintiff’s attorney to file the required
13 writing within the time provided will result in dismissal of this action,” and that “[i]t will not be
14 sufficient for plaintiff to merely file a late motion for summary judgment; the required writing
15 must be filed.” (*Id.*) (emphasis added). The OSC also stated: “Plaintiff’s counsel shall serve this
16 order on her client, Ms. Ortiz, within fourteen days of the date of this order, and shall file written
17 notice with the court within fourteen days of that service that she has actually served this order
18 on Ms. Ortiz.” (*Id.* at 3.)

19 Plaintiff’s counsel filed a motion for summary judgment on plaintiff’s behalf on
20 July 2, 2010. (Dkt. No. 19.) Despite the court’s express warning that it would “not be sufficient
21 for plaintiff to merely file a late motion for summary judgment” and that “the required writing
22 must be filed,” plaintiff’s counsel failed to file the required writing. This is yet another violation
23 of this court’s order and is grounds for sanctions, including monetary sanctions and dismissal
24 pursuant to Federal Rule of Civil Procedure 41(b). See Local Rule 110 (“Failure of counsel or of
25 a party to comply with these Rules or with any order of the Court may be grounds for imposition
26 by the Court of any and all sanctions authorized by statute or Rule or within the inherent power

1 of the Court.”); Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir.
2 2005) (recognizing that a court may dismiss an action pursuant to Federal Rule of Civil
3 Procedure 41(b) *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil
4 procedure or the court’s orders). Moreover, plaintiff’s counsel, Bess M. Brewer, failed to timely
5 notify the court that she served a copy of the OSC on her client, which constitutes another
6 violation of a court order.


7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Plaintiff’s counsel, Bess M. Brewer, shall appear in person on Thursday,
9 August 5, 2010, at 10:00 a.m., in Courtroom 25 regarding the OSC and this order. Ms. Brewer
10 should be prepared to address the issue of sanctions for violation of this court’s orders, which
11 include: (1) the imposition of monetary sanctions on Ms. Brewer personally, and (2) dismissal of
12 plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b).

13 2. Ms. Brewer shall serve this order on her client, Ms. Ortiz, within seven
14 days of the date of this order, and shall file written notice with the court within seven days of
15 such service that she has actually served *this order and the OSC* on Ms. Ortiz.

16 IT IS SO ORDERED.

17 DATED: July 14, 2010

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE
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