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

KELLY M. MARSH,

Plaintiff,

No. CIV S-10-0330 LKK DAD PS

vs.

OLIVE GARDEN,

Defendant.

ORDER DIRECTING CLERK TO
SEND MATERIALS FOR SERVICE
AND REQUIRING SERVICE BY
UNITED STATES MARSHAL

_____ /

Plaintiff is proceeding pro se with an employment discrimination action that was filed on January 22, 2010, in the United States District Court for the Northern District of California. On February 9, 2010, the case was transferred to the United States District Court for the Eastern District of California because the acts complained of occurred in Tracy, California, which is located in the Eastern District of California. Upon transfer, the proceeding was referred to the undersigned magistrate judge pursuant to Local Rule 302(c)(21).

By order filed February 3, 2010, prior to transfer, the Honorable Sandra Brown Armstrong screened plaintiff's complaint and granted plaintiff's application to proceed in forma pauperis. Judge Armstrong determined that plaintiff's complaint states a cognizable claim for pregnancy discrimination but fails to state a claim for gender discrimination. The claim for gender discrimination was dismissed with leave to amend. The February 3, 2010 order provides

1 that if no amended complaint is filed by February 26, 2010, the court will dismiss the claim for
2 gender discrimination without prejudice and order service of the complaint on the defendant.

3 No amended complaint has been filed in this court or forwarded to this court from
4 the Northern District of California. In accordance with the February 3, 2010 order, plaintiff's
5 unamended claim for gender discrimination is deemed dismissed without prejudice, and this
6 action will now proceed on the claim for pregnancy discrimination alleged in plaintiff's original
7 complaint.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The Clerk of the Court is directed to issue a summons to defendant Olive
10 Garden and send plaintiff an instruction sheet for service of process by the United States
11 Marshal, together with the summons, one USM-285 form, and one endorsed copy of plaintiff's
12 complaint filed January 22, 2010 (Doc. No. 1); on the endorsed copy of the complaint sent to
13 plaintiff, the Clerk of the Court shall amend the caption by lining through the word "Northern"
14 and entering the word "Eastern," and by lining through the Northern District case number and
15 entering the Eastern District case number.

16 2. Within twenty (20) days after this order is served, plaintiff shall submit the
17 following documents to the United States Marshal by delivering or mailing them to the United
18 States Marshals Service at 501 I Street, Suite 5600, Sacramento, CA 95814:

19 a. One complete copy of this order;
20 b. One properly completed USM-285 form;
21 c. The summons prepared by the Clerk of the Court; and
22 d. Two complete copies of the endorsed complaint with the caption
23 amended by the Clerk of the Court pursuant to this order.

24 3. Within ten (10) days after submitting the materials for service to the United
25 States Marshal, plaintiff shall file with this court a document titled "Notice of Submission" in
26 which she states the date on which she delivered or mailed the required documents to the United

1 States Marshal. Failure to file a Notice of Submission in a timely manner may result in an order
2 imposing appropriate sanctions.

3 4. Within thirty (30) days after receiving the required documents from plaintiff,
4 the United States Marshal is directed to serve process on defendant Olive Garden by first seeking
5 a waiver of service of summons in accordance with Federal Rule of Civil Procedure 4(d) and by
6 effecting personal service if no waiver is received within the time specified in the request for
7 waiver.

8 DATED: April 22, 2010.

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11 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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