

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

GEORGIA A. CELENTANO,

Plaintiff,

No. 2:11-cv-3456-JAM-EFB PS

vs.

AMERICANS WITH DISABILITIES
OFFICE, SACRAMENTO SUPERIOR
COURT; SACRAMENTO SUPERIOR
COURT; JUDICIAL COUNCIL OF
CALIFORNIA; and DOES 1-10,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

This case, in which plaintiff is proceeding *pro se* and *in forma pauperis*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On June 11, 2012, the undersigned dismissed plaintiff’s first amended complaint pursuant to 28 U.S.C. § 1915(e)(2), but provided plaintiff thirty days to file a second amended complaint. Dckt. No. 10. The order explained that “[i]f plaintiff fails to file a second amended complaint, the undersigned may recommend that this case be dismissed for failure to prosecute and/or for failure to comply with court orders. *See* Fed. R. Civ. P. 41(b); *see also* Local Rule 110.” *Id.* at 6. Because the deadline passed and plaintiff failed to file a second amended complaint, on July 17, 2012, the undersigned issued findings and recommendations,

1 recommending that the action be dismissed without prejudice for failure to prosecute. Dckt. No.
2 11.

3 On August 3, 2012, plaintiff filed objections to the findings and recommendations. Dckt.
4 No. 12. Although the objections did not respond to the findings and recommendations, and
5 instead appeared to be challenging the analysis stated in this court's June 11, 2012 order
6 dismissing plaintiff's first amended complaint, Dckt. No. 10, because plaintiff was attempting to
7 prosecute this action, on August 22, 2012, the undersigned issued an order vacating the
8 recommendation that the action be dismissed for failure to prosecute and granting plaintiff
9 additional time to file an amended complaint.¹ Dckt. No. 13. Specifically, the order provided
10 that plaintiff had thirty days to file a second amended complaint. *Id.* at 2. Plaintiff was
11 admonished that if she failed to timely file a second amended complaint, the undersigned would
12 once again recommend that this case be dismissed for failure to prosecute and/or for failure to
13 comply with court orders. *See* Fed. R. Civ. P. 41(b); *see also* Local Rule 110.

14 The deadline has now passed and plaintiff has once again failed to timely file a second
15 amended complaint. Accordingly, IT IS HEREBY RECOMMENDED that this action be
16 dismissed without prejudice, and that the Clerk be directed to close this case. Fed. R. Civ. P.
17 41(b); L.R. 110.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections


23 ///

24 ///

25
26 ¹ However, the June 11, 2012 order dismissing plaintiff's first amended complaint was not vacated.

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: September 27, 2012.

4 
5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26