

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CONSTANCE D. ADAMS,
Plaintiff,
v.
MIKE DESIMONI, SR.,
Defendant.

No. 2:13-cv-0440 TLN KJN PS

ORDER

On March 5, 2013, plaintiff Constance Adams, proceeding without counsel, filed this action alleging a claim of employment discrimination primarily based on race under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. against defendant Mike DeSimoni, Sr. (ECF No. 1.)¹ On August 15, 2013, the court conducted a status conference in this matter. (ECF No. 7.) Following the status conference, the court issued an order requiring plaintiff to file a statement addressing specific topics no later than August 29, 2013. (ECF No. 8.)

Thereafter, on August 26, 2013, plaintiff filed a motion to reschedule the “hearing date as of August 29, 2013.” (ECF No. 10.) Because no court hearing is set for August 29, 2013, the court construes plaintiff’s filing as a motion for an extension of time to comply with the court’s order requiring the filing of the above-mentioned statement no later than August 29, 2013. In her

¹ This action proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21).

1 motion, plaintiff indicates that although she has been making efforts to obtain counsel, and one
2 attorney is apparently reviewing her case, she has thus far been unsuccessful in retaining counsel.
3 Plaintiff essentially requests a three-months to one-year stay of the case to allow her to obtain
4 representation. (ECF No. 10.)

5 Although the court is sympathetic to the difficulties faced by a pro se litigant in
6 representing herself in federal court, and encourages plaintiff to continue her efforts to obtain
7 counsel, the court declines to grant plaintiff a three-month to one-year extension of time.
8 Numerous litigants are compelled by financial or other circumstances to represent themselves in
9 federal court, and pro se status is not in itself a proper basis for staying a case. Moreover, as the
10 court noted at the status conference, the court has concerns as to whether service of process on the
11 named defendant, Mike DeSimoni, Sr., has been properly effectuated and whether plaintiff has
12 even named the proper defendant in this action. In light of those concerns, the court ordered
13 plaintiff to file the above-mentioned statement addressing topics related to how service of process
14 was accomplished, Mr. DeSimoni's involvement with respect to plaintiff's claims, etc. These
15 topics primarily concern facts that should be in plaintiff's possession and do not require complex
16 legal arguments.

17 If plaintiff retains counsel and counsel enters an appearance in this case, the court would
18 certainly be willing to entertain a request for extension of time filed by counsel to enable him or
19 her to properly evaluate the case. However, at this time, there does not appear to be any
20 immediate prospect of plaintiff retaining counsel, and there are no proper grounds to stay the case
21 or grant a significant extension of time.

22 Therefore, plaintiff will be required to file the statement in response to the court's prior
23 August 16, 2013 order no later than *September 12, 2013*. If plaintiff feels that she is unable to
24 prosecute the case without counsel at this time, she may alternatively file a notice of voluntary
25 dismissal of the action without prejudice pursuant to Federal Rule of Civil Procedure
26 41(a)(1)(A)(i).

27 Accordingly, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff's motion to reschedule the "hearing date as of August 29, 2013," construed as


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
27
28

a motion for extension of time (ECF No. 10), is PARTIALLY GRANTED.

2. *No later than September 12, 2013*, plaintiff shall file a statement addressing the specific topics outlined in the court’s August 16, 2013 order. Upon receipt and review of plaintiff’s statement, the court will issue a further order regarding the future progress and scheduling of the case.
3. Alternatively, plaintiff may file a notice of voluntary dismissal of the action without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) no later than September 12, 2013.
4. *Failure to file either the required statement or a notice of voluntary dismissal without prejudice by the required deadline will result in a recommendation that the action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).*
5. The Clerk of Court shall serve on plaintiff a copy of the court’s prior August 16, 2013 order along with this order.

IT IS SO ORDERED.

Dated: August 29, 2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE