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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

The court conducted a status conference in this matter on August 15, 2013. (ECF No. 7.) On August 16, 2013, for the reasons discussed at the status conference, and in light of the court's concerns as to whether service of process has been properly effectuated and whether plaintiff has even named the proper defendant in this action, the court ordered plaintiff to file a statement no later than August 29, 2013, addressing various topics. The topics included the method(s) by which service of process were purportedly accomplished, the involvement of defendant Mike

¹ This action proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 DeSimoni with respect to plaintiff's claims, and plaintiff's efforts to obtain counsel. (See ECF
2 No. 8.) The court noted that, upon receipt and review of plaintiff's statement, the court would
3 issue a further order regarding the future progress and scheduling of the case. (Id.)

4 Thereafter, on August 26, 2013, plaintiff filed a motion for an extension of time,
5 essentially requesting a three-months to one-year stay of the case to allow her to obtain counsel.
6 (ECF No. 10.) Plaintiff represented that even though she had made efforts to obtain counsel,
7 those efforts had not proven successful at that point. (Id.) On August 29, 2013, the court
8 partially granted plaintiff's motion, noting that:

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

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

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

26 (ECF No. 11.)

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1 Subsequently, on September 13, 2013, plaintiff filed a statement addressing, at least in
2 part, some of the topics outlined in the court’s August 16, 2013 order. (ECF No. 12.)² In that
3 statement, plaintiff also represented that “the most recent attorney I have spoken to within the last
4 48 hours stated to me personally by our brief phone conversation that he would be willing to
5 accept my personal case but he needs more time only if the court with [sic] grant it. (I have his
6 name and law firm phone # on hand) but once again his law firm is not willing to deal with me
7 unless an extension is fully granted.” (Id.)

8 In light of plaintiff’s present representation that she has an immediate prospect of
9 retaining counsel, the court grants plaintiff a final extension of fourteen (14) days for her retained
10 attorney to enter an appearance in this action. Along with filing a notice of appearance on
11 plaintiff’s behalf, the attorney may request a further extension of time to allow the attorney to
12 familiarize himself or herself with the case, determine whether and how the complaint should be
13 amended, etc. The court will be inclined to grant such a request, assuming that a reasonable
14 period of time is requested.

15 Alternatively, plaintiff shall file a statement within fourteen (14) days advising the court
16 that she was unable to retain counsel. Upon the filing of such a notice, the court will issue a
17 further order regarding the progress and scheduling of the case. Plaintiff is advised that the court
18 is strongly disinclined to grant any further extensions of time, except as noted above.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff shall have a final extension of fourteen (14) days from the date of service of
21 this order for her retained attorney to enter an appearance in this action. Along with
22 filing a notice of appearance on plaintiff’s behalf, the attorney may request a further,
23

24 ² Although plaintiff filed her statement one day after the September 12, 2013 deadline, the court
25 exercises its discretion to consider that statement. Plaintiff attached a note from a court security
26 officer noting that plaintiff attempted to file her statement on September 12, 2013 at around 4:07
27 p.m., but that the Clerk’s Office was closed at that time. (ECF No. 12.) Therefore, it appears that
28 plaintiff at least made some effort to comply with the court’s deadline. However, plaintiff is
admonished to familiarize herself with the office hours of the Clerk of Court, and cautioned that
future failure to strictly comply with court deadlines and procedures may result in the imposition
of appropriate sanctions.


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appropriate extension of time in accordance with this order.

- 2. Alternatively, plaintiff shall file a statement within fourteen (14) days of this order advising the court that she was unable to retain counsel. Upon the filing of such a statement, the court will issue a further order regarding the progress and scheduling of the case.
- 3. Failure to timely file a notice of appearance by counsel, or a statement that no counsel was retained, by the required deadline may result in imposition of sanctions, including a recommendation that the action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: September 18, 2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE