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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.)<sup>1</sup>

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

<sup>1</sup> 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.)

27         Subsequently, on September 13, 2013, plaintiff filed a statement addressing, at least in  
28 part, some of the topics outlined in the court's August 16, 2013 order. (ECF No. 12.) In that

1 statement, plaintiff also represented that “the most recent attorney I have spoken to within the last  
2 48 hours stated to me personally by our brief phone conversation that he would be willing to  
3 accept my personal case but he needs more time only if the court with [sic] grant it. (I have his  
4 name and law firm phone # on hand) but once again his law firm is not willing to deal with me  
5 unless an extension is fully granted.” (Id.)

6 On September 18, 2013, in light of plaintiff’s representation that she had an immediate  
7 prospect of retaining counsel, the court granted plaintiff a final extension of fourteen (14) days for  
8 her retained attorney to enter an appearance in this action. (ECF No. 13.) The order also allowed  
9 plaintiff’s prospective attorney to request a further reasonable extension of time to allow the  
10 attorney to familiarize himself or herself with the case, determine whether and how the complaint  
11 should be amended, etc. (Id.) Even though the deadline for an appearance by counsel has now  
12 passed, no attorney has thus far entered an appearance on plaintiff’s behalf. Accordingly, the  
13 court addresses the future progress of this case on the assumption that plaintiff is proceeding  
14 without counsel, at least for now.<sup>2</sup>

15 After reviewing plaintiff’s September 13, 2013 response, the court concludes that plaintiff  
16 has not named the proper defendant in this action. In her response, plaintiff concedes that she had  
17 no personal dealings or involvement with Mr. DeSimoni, who is alleged to be the chairman or  
18 CEO of the Channel Lumber Company, the entity from which plaintiff apparently received her  
19 paychecks. Plaintiff indicates that she named Mr. DeSimoni as a defendant because she wanted  
20 to ensure that he knew about the alleged injustices she suffered at her employer. Plaintiff further  
21 suggests that she should probably have named the Channel Lumber Company as a defendant. At  
22 a minimum, on the record before the court, plaintiff does not appear to have any basis for  
23 asserting claims against Mr. DeSimoni individually.

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26 <sup>2</sup> Of course, if plaintiff is ultimately successful in obtaining counsel, such counsel shall enter an  
27 appearance on plaintiff’s behalf at the earliest opportunity. Until such time, however, plaintiff is  
28 obligated to comply with all court orders, the Federal Rules of Civil Procedure, and the Local  
Rules in representing herself.

1           Accordingly, the court dismisses plaintiff’s original complaint, but with leave to amend.  
2       Within 28 days of this order, plaintiff shall file a first amended complaint, which shall be  
3       captioned “First Amended Complaint.” The first amended complaint shall contain “(1) a short  
4       and plain statement of the grounds for the court’s jurisdiction...(2) a short and plain statement of  
5       the claim showing that [plaintiff] is entitled to relief; and (3) a demand for the relief sought....”  
6       Fed. R. Civ. P. 8(a). The first amended complaint shall clarify exactly who the named  
7       defendant(s) are and what specific claims are asserted against each defendant.<sup>3</sup> If plaintiff intends  
8       to state multiple claims against several defendants, plaintiff shall also endeavor to state such  
9       claims in separately labeled causes of action (i.e., in separate sections of the complaint), with  
10      factual allegations pertaining to each claim set forth in the section of the complaint dealing with  
11      the particular claim.<sup>4</sup>

12           Importantly, the first amended complaint shall not include lengthy and unnecessary  
13      exhibits, such as e-mails, charts, notes, evidence, etc. This requirement is because the complaint  
14      must only set forth *alleged facts* in support of plaintiff’s claims and need not include any  
15      documentary evidence, which may be presented at a later point in the case. Importantly,  
16      defendant(s) and the court should be able to understand plaintiff’s claims and the facts in support  
17      of those claims from reading the main body of plaintiff’s first amended complaint, and without  
18      having to review numerous exhibits to the first amended complaint. However, plaintiff shall  
19      attach any administrative charges of discrimination and right-to-sue letters issued by the  
20      applicable agencies that relate to plaintiff’s claims.

21           Plaintiff is informed that the court cannot refer to a prior complaint or filing in order to  
22      make plaintiff’s first amended complaint complete. Local Rule 220 requires that an amended  
23      complaint be complete in itself without reference to any prior pleading. As a general rule, an  
24      amended complaint supersedes the original complaint, and once the amended complaint is filed,

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25      <sup>3</sup> The court cannot provide plaintiff with legal advice as to which specific entity(ies) and/or  
26      person(s) should be named as defendants.

27      <sup>4</sup> For example, a cause of action in the complaint could be labeled and organized as: “Cause of  
28      Action No. 1 – Violation of Law X alleged against defendants A and B,” followed by the factual  
allegations related to that claim.

1 the original complaint no longer serves any function in the case.

2         Once plaintiff has filed a first amended complaint, the court will screen the complaint  
3 pursuant to 28 U.S.C. § 1915. If the court determines that the first amended complaint may  
4 properly be served on the named defendant(s), the court will issue an order to that effect. Plaintiff  
5 shall not attempt to effectuate service of process with the first amended complaint prior to an  
6 order directing service by the court. Additionally, because plaintiff is proceeding in forma  
7 pauperis, plaintiff need not hire a private process server and would be entitled to have the United  
8 States Marshal effectuate service of process, once such service has been authorized by the court.<sup>5</sup>

9         In the alternative, if plaintiff feels that she is unable to prosecute this case without counsel  
10 at this time, plaintiff may file a notice of voluntary dismissal of the action without prejudice  
11 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) within 28 days of this order.

12         Plaintiff is hereby cautioned that failure to file either a first amended complaint in  
13 accordance with this order, or a notice of voluntary dismissal, by the required deadline will result  
14 in a recommendation that the action be dismissed pursuant to Federal Rule of Civil Procedure  
15 41(b). Although the court is sympathetic to the difficulties faced by pro se litigants in litigating  
16 their cases in federal court, plaintiff has already had several extensions in this case. Thus, the  
17 court would be disinclined to grant further extensions absent extraordinary circumstances (which  
18 would not include plaintiff's efforts to obtain counsel).

19         Accordingly, IT IS HEREBY ORDERED that:

- 20         1. Plaintiff's original complaint (ECF No. 1) is dismissed, but with leave to amend.
- 21         2. Within 28 days of this order, plaintiff shall file a first amended complaint in  
22             accordance with this order.
- 23         3. Once plaintiff has filed a first amended complaint, the court will screen the complaint  
24             pursuant to 28 U.S.C. § 1915. If the court determines that the first amended complaint  
25             may appropriately be served on the named defendant(s), the court will issue an order

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27 <sup>5</sup> Although it appears, at least at an initial glance, that service of process may not have been  
28 properly effectuated on defendant DeSimoni, that issue is moot given that plaintiff's original  
complaint is dismissed and that plaintiff is required to file a first amended complaint.

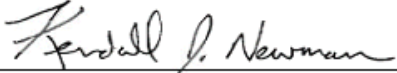
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to that effect. Plaintiff shall not attempt to effectuate service of process with the first amended complaint prior to an order directing such service by the court.

4. 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) within 28 days of this order.
5. Failure to file either a first amended complaint or a notice of voluntary dismissal within 28 days of this order will result in a recommendation that the action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: October 18, 2013

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE