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

CONSTANCE D. ADAMS,

Plaintiff,

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

v.

MIKE DESIMONI, SR.,

Defendant.

ORDER

\_\_\_\_\_  
Plaintiff, who is proceeding without counsel, filed her complaint on March 5, 2013, 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. (Dkt. No. 1.) Plaintiff also filed an application to proceed without prepayment of fees, or in forma pauperis. (Dkt. No. 2).<sup>1</sup>

Plaintiff's application in support of her request to proceed in forma pauperis makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the undersigned grants plaintiff's request to proceed in forma pauperis.

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<sup>1</sup> This case was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1           The determination that a plaintiff may proceed in forma pauperis does not  
2 complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to  
3 dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the  
4 action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks  
5 monetary relief against an immune defendant.

6           The undersigned cannot conclude on the present record that plaintiff's action is  
7 frivolous, that the complaint fails to state claims on which relief can be granted, or that plaintiff  
8 seeks monetary relief from an immune defendant. The undersigned reserves decision as to  
9 plaintiff's claims until the record is sufficiently developed, and this order does not preclude  
10 defendant from challenging plaintiff's complaint through a timely motion pursuant to Federal  
11 Rule of Civil Procedure 12 or other appropriate method of challenging plaintiff's pleading.  
12 Accordingly, the undersigned will order service of the complaint on defendant Mike DeSimoni,  
13 Sr.

14           For the foregoing reasons, IT IS HEREBY ORDERED that:

- 15           1. Plaintiff's motion to proceed in forma pauperis (Dkt. No. 2) is granted.
- 16           2. Service of plaintiff's complaint is appropriate for the following defendant:  
17 Mike DeSimoni, Sr.
- 18           3. The Clerk of the Court is directed to issue forthwith all process pursuant to  
19 Federal Rule of Civil Procedure 4.
- 20           4. The Clerk of Court shall send plaintiff one USM-285 form, one summons,  
21 this court's scheduling order, and the forms providing notice of the magistrate judge's  
22 availability to exercise jurisdiction for all purposes.
- 23           5. Plaintiff is advised that to effectuate service, the U.S. Marshal will require:
  - 24           a. One completed summons;
  - 25           b. One completed USM-285 form for each defendant to be served;
  - 26           c. A copy of the complaint for each defendant to be served, with an

1 extra copy for the U.S. Marshal; and

2 d. A copy of this court's scheduling order and related documents for  
3 each defendant to be served; and

4 6. Plaintiff shall supply the United States Marshal, within 28 days from the  
5 date this order is filed, all information needed by the Marshal to effectuate service of process, and  
6 *shall, within 10 days thereafter, file a statement with the court that such documents have been*  
7 *submitted to the United States Marshal.*

8 7. The U.S. Marshal shall serve process, with copies of this court's  
9 scheduling order and related documents, within 90 days of receipt of the required information  
10 from plaintiff, without prepayment of costs. *The U.S. Marshal shall, within 10 days thereafter,*  
11 *file a statement with the court that such documents have been served.* If the U.S. Marshal is  
12 unable, for any reason, to effect service of process on any defendant, the Marshal shall promptly  
13 report that fact, and the reasons for it, to the undersigned.

14 8. *If a defendant waives service, the defendant is required to return the*  
15 *signed waiver to the U.S. Marshal. The filing of an answer or a responsive motion does not*  
16 *relieve a defendant of this requirement, and the failure to return the signed waiver may subject a*  
17 *defendant to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).*

18 9. The Clerk of Court shall serve a copy of this order on the United States  
19 Marshal.

20 10. Plaintiff's failure to comply with this order may result in a  
21 recommendation that this action be dismissed. See Local Rules 110, 183(a).

22 IT IS SO ORDERED.

23 DATED: March 8, 2013

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE