IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATTY M. WETHERELL,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

_______________________________________/

No. C 13-0889 MMC

ORDER GRANTING MOTION TO DISMISS

Before the Court is defendant's "Motion to Dismiss," filed March 26, 2013, by which motion defendant moves, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the above-titled action for the reason that plaintiff's "Complaint for Review of Social Security Decision" is barred by the applicable statute of limitations.[1] Plaintiff has filed opposition, to which defendant has replied. Having read and considered the papers submitted in support of and in opposition to the motion, the Court deems the matter suitable for decision thereon, vacates the hearing set for May 24, 2013, and hereby rules as follows.

"Section 405(g) of title 42 provides that a Social Security claimant may obtain review of a 'final' decision of the Secretary of Health and Human Services by 'a civil action commenced within sixty days after the mailing to [her] of notice of such decision . . . .'" See Vernon v. Heckler, 811 F.2d 1274, 1277 (9th Cir. 1987). "Mailing" is construed as the date

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[1] "A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations . . . when the running of the statute is apparent on the face of the complaint." Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir. 2010) (internal quotation and citation omitted).

on which the notice "is received by the individual." See 20 C.F.R. § 422.210. "The sixty-day period . . . constitutes a statute of limitations." See Vernon, 811 F.2d at 1277.

Plaintiff alleges she received the Social Security Administration's decision on December 27, 2012. (See Compl. ¶ 7.) Plaintiff filed her complaint on February 27, 2013, 62 days later. Consequently, plaintiff's complaint is barred by the statute of limitations.

Accordingly, defendant's motion is hereby GRANTED, and the above-titled action is hereby DISMISSED.

IT IS SO ORDERED.

Dated: May 7, 2013

Maxine M. Chesney

MAXINE M. CHESNEY
United States District Judge