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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JESSICA ROSE LANGLEY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 17-CV-04583-LHK

**ORDER GRANTING MOTION TO
VACATE THE JUDGMENT AND
REOPEN THE CASE**

Re: Dkt. No. 24

Before the Court is a motion to vacate the judgment and reopen the case filed by Plaintiff Jessica Rose Langley (“Plaintiff”). ECF No. 24 (“Mot.”). Defendant Commissioner of Social Security (“Defendant”) has not opposed or otherwise responded to Plaintiff’s motion. Having considered Plaintiff’s submission, the relevant law, and the record in this case, the Court GRANTS Plaintiff’s motion.

I. BACKGROUND

On August 10, 2017, Plaintiff, who is represented by counsel, filed a complaint against Defendant. ECF No. 1. On August 22, 2017, Defendant consented to proceed before Magistrate Judge Elizabeth D. Laporte. ECF No. 9. On November 16, 2017, Defendant filed an answer and lodged the administrative record. ECF Nos. 12 & 13.

1 On November 21, 2017, the Clerk ordered Plaintiff to file Plaintiff’s consent or declination
2 to proceed before a magistrate judge by December 5, 2017. ECF No. 14. On December 8, 2017,
3 Plaintiff submitted a blank consent/declination form. ECF No. 15. Then, on May 11, 2018, the
4 Clerk again ordered Plaintiff to file Plaintiff’s consent or declination to proceed before a
5 magistrate judge by May 25, 2018. ECF No. 17. Plaintiff did not respond. Finally, on August 24,
6 2018, the Clerk ordered Plaintiff to file Plaintiff’s consent or declination to proceed before a
7 magistrate judge by September 7, 2018. ECF No. 18. Plaintiff again did not respond. Nor did
8 Plaintiff file a motion for summary judgment or for remand within 28 days of service of
9 Defendant’s November 16, 2017 answer, as required by Civil Local Rule 16-5.

10 On September 13, 2018, Magistrate Judge Laporte ordered Plaintiff “to show cause in
11 writing by September 20, 2018 why this case should not be dismissed for failure to prosecute.”
12 ECF No. 19. After Plaintiff failed to respond to the order to show cause, Magistrate Judge Laporte
13 issued a Report and Recommendation to dismiss the case on September 24, 2018. ECF No. 20
14 (“September 24, 2018 Report and Recommendation”). On September 24, 2018, after Magistrate
15 Judge Laporte issued her Report and Recommendation, the case was reassigned to the
16 undersigned. *See* ECF No. 21.

17 On September 25, 2018, this Court issued an Order vacating the September 24, 2018
18 Report and Recommendation and dismissing the case with prejudice for failure to prosecute. ECF
19 No. 22. In the Court’s order, the Court weighed the five factors for dismissing a matter for failure
20 to prosecute: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
21 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
22 disposition of cases on their merits and (5) the availability of less drastic sanctions. *See Henderson*
23 *v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

24 The Court found that the first two factors weighed strongly in favor of dismissal “[g]iven
25 Plaintiff’s failure to comply with three separate orders to consent or decline magistrate judge
26 jurisdiction, failure to file a summary judgment motion, and failure to comply with Magistrate
27 Judge Laporte’s order to show cause.” ECF No. 22 at 2. The Court also found that the third factor

1 weighed in favor of dismissal. *See id.* at 2–3. The Court stated: “Plaintiff filed this case over a year
2 ago on August 10, 2017, and has effectively not engaged in any litigation over the last year.
3 Plaintiff’s delay also creates a presumption of injury [to the Defendant].” *Id.* As for the fifth
4 factor, the Court emphasized that “warning a [party] that failure to obey a court order will result in
5 dismissal can suffice to meet the ‘consideration of alternatives’ requirement.” *Id.* at 3 (quoting
6 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 132 (9th Cir. 1987)). The Court found that Plaintiff had
7 been sufficiently warned and had failed to comply with multiple court orders, including Magistrate
8 Judge Laporte’s order to show cause. *Id.*

9 Accordingly, having weighed the factors, the Court dismissed with prejudice the case for
10 failure to prosecute. *Id.* On September 25, 2018, the Court entered judgment in favor of Defendant
11 and directed the Clerk to close the file. ECF No. 23. The case file was closed that same day.

12 On October 9, 2018, Plaintiff filed the instant motion to vacate the judgment and reopen
13 the case. *See Mot.* In support of her motion, Plaintiff attached a declaration from counsel and a
14 proposed motion for summary judgment. *See id.*

15 **II. DISCUSSION**

16 Federal Rule of Civil Procedure 55(c) provides that “[t]he court may set aside an entry of
17 default for good cause, and it may set aside a final default judgment under Rule 60(b).” Fed. R.
18 Civ. P. 55(c). Pursuant to Federal Rule of Civil Procedure 60(b), a Court may grant a party relief
19 from an order or judgment where one or more of the following is shown: (1) mistake,
20 inadvertence, surprise or excusable neglect; (2) newly discovered evidence that by due diligence
21 could not have been discovered before the Court’s decision; (3) fraud by the adverse party; (4)
22 voiding of the judgment; (5) satisfaction of the judgment; (6) any other reason justifying relief.
23 *See Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).
24 Whether to grant a party relief pursuant to Rule 60(b) is within the district court’s discretion.
25 *Towery v. Ryan*, 673 F.3d 933, 940 (9th Cir. 2012).

26 Here, Plaintiff seeks relief from the Court’s September 25, 2018 Judgment and order
27 vacating the September 24, 2018 Report and Recommendation and dismissing the case with

1 prejudice for failure to prosecute. Mot. at 2–3; *see* ECF Nos. 22 & 23. In particular, Plaintiff
2 argues that after Magistrate Judge Laporte issued her September 24, 2018 Report and
3 Recommendation, Plaintiff was entitled to the opportunity to “serve and file specific written
4 objections to [the] recommendation within fourteen (14) days after being served with a copy.” *See*
5 *id.* (quoting September 24, 2018 Report and Recommendation). According to Plaintiff, the
6 fourteen-day deadline to file an objection to the September 24, 2018 Report and Recommendation
7 was October 8, 2018. Mot. at 3. Plaintiff represents that “Plaintiff had no intention of not filing an
8 objection; however, was not afforded an opportunity to do so” because the undersigned issued its
9 order vacating the September 24, 2018 Report and Recommendation and dismissing the case with
10 prejudice for failure to prosecute on September 25, 2018. *Id.*

11 None of the first five Rule 60(b) bases to grant relief from the order apply in the instant
12 case. Specifically, there was no (1) mistake, inadvertence, surprise or excusable neglect; (2) newly
13 discovered evidence that by due diligence could not have been discovered before the Court’s
14 decision; (3) fraud by the adverse party; (4) voiding of the judgment; or (5) satisfaction of the
15 judgment. Nonetheless, Plaintiff, who has always been represented by counsel, now appears to be
16 willing to litigate the case. The Court believes that allowing Plaintiff to now litigate her case
17 would be in the interest of justice and GRANTS Plaintiff’s motion to vacate the judgment and
18 reopen the case.

19 **III. CONCLUSION**

20 For the foregoing reasons, the Court GRANTS Plaintiff’s motion to vacate the judgment
21 and reopen the case. The Clerk shall reopen the file. The Court sets aside the Judgment. *See* ECF
22 No. 23. Plaintiff shall file her motion for summary judgment by Friday, January 11, 2019. Failure
23 to file a motion for summary judgment by January 11, 2019 will result in a dismissal of this case
24 with prejudice for failure to prosecute.

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26 **IT IS SO ORDERED.**

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Dated: January 8, 2019



LUCY H. KOH
United States District Judge