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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RONNY EUGENE KING,)	Civil No. 08cv0812 LAB(RBB)
)	
Plaintiff,)	REPORT AND RECOMMENDATION RE
)	DISMISSAL FOR WANT OF
v.)	PROSECUTION
)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	
_____)	

On April 28, 2008, Plaintiff Ronny Eugene King filed a one-page Complaint against the Social Security Administration [doc. no. 1]. He also filed a Motion for Leave to Proceed In Forma Pauperis and a Motion to Appoint Counsel [doc. nos. 2, 3]. On May 15, 2008, the Court denied King appointed counsel, granted him leave to proceed in forma pauperis, and authorized the United States Marshals Service to effect service of process as directed by the Plaintiff [doc. no. 5]. The Clerk of the Court wrote to King and gave him instructions on how to complete his service requirements. (Summons Attach. #1.)

No activity occurred in the case until November 7, 2008, when the Court set a December 8, 2008, hearing on whether this case

1 should be dismissed for failure to prosecute [doc. no. 7]. On that
2 date, the Court addressed whether to dismiss the complaint for want
3 of prosecution under Local Rule 41.1 and under Rule 4 (m) of the
4 Federal Rules of Civil Procedure [doc. no. 8]. King was present at
5 the hearing. The Court declined to recommend dismissal of the case
6 but instructed King to complete Marshals Form 285 and all other
7 service requirements no later than January 7, 2009. Id. The Court
8 also informed King that the hearing, pursuant to the Notice of
9 Hearing for Dismissal for Want of Prosecution under Local Rule 41.1
10 and Dismissal for want of Prosecution under Rule 4 (m) of the
11 Federal Rules of Civil Procedure, was continued to March 16, 2009.
12 Id.

13 King completed U.S. Marshals 285 Form naming the Social
14 Security Administration as a defendant [doc. no. 9]. It appears
15 that the U.S. Marshals Service served Nick Pilcher, staff
16 assistant, with the Complaint on December 16, 2008. (Process
17 Receipt and Return 1 [USM-285].)

18 Because Plaintiff is proceeding in forma pauperis, he is
19 entitled to have the summons and Complaint in his case served by
20 the United States Marshal. Puett v. Blandford, 912 F.2d 270, 273
21 (9th Cir. 1990) (citing Romandette v. Weetabix Co., 807 F.2d 309,
22 310 n.1 (2d Cir. 1986); see also Fed. R. Civ. P. 4(c)(2)(B)(i).
23 The "officers of the court shall issue all service of process." 28
24 U.S.C. § 1915(a)(1). "Although a plaintiff . . . proceeding in
25 forma pauperis may rely on service by the Marshal, such plaintiff
26 'may not remain silent and do nothing to effectuate such service;'
27 rather, '[a]t a minimum, a plaintiff should request service upon
28 the appropriate defendant and attempt to remedy any apparent

1 defects of which [he] has knowledge.'" Jenkins v. Caplan, No. C
2 02-5603 RMW (PR), 2009 WL 393786, at *4 (N.D. Cal. Feb. 13, 2009)
3 (quoting Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987)). A
4 plaintiff proceeding in forma pauperis may face dismissal where he
5 fails to instruct the U.S. Marshal Service to serve the necessary
6 parties. See Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994)
7 (overruled on other grounds by Sandin v. Connor, 515 U.S. 472
8 (1995)).

9 Rule 4(i) of the Federal Rules of Civil Procedure provides the
10 manner in which a plaintiff must effect service of process when
11 suing the United States or one of its agencies. The plaintiff must
12 deliver a copy of the summons and complaint to three entities: (1)
13 the United States attorney for the district in which the action is
14 brought, (2) the Attorney General of the United States at
15 Washington, District of Columbia, and (3) the agency which took the
16 actions of which the plaintiff complains. Fed. R. Civ. P.
17 4(i)(1)(A)-(B), (2)(A).

18 King only attempted to serve one of the necessary entities --
19 the Social Security Administration. In order to effect proper
20 service, Plaintiff must also serve the United States Attorney for
21 the Southern District of California and the Attorney General of the
22 United States. To date, King has not directed the U.S. Marshals
23 Service to serve the United States Attorney or the Attorney
24 General.

25 On March 16, 2009, the Court held the continued hearing
26 regarding dismissal of this action for want of prosecution under
27 Local Rule 41.1 and dismissal for want of prosecution under Rule 4
28 (m) of the Federal Rules of Civil Procedure [doc. no. 10]. King

1 did not attend the continued hearing and has not filed any
2 opposition. He has done nothing further to prosecute this action
3 or effect proper service of process. Under these circumstances the
4 Court recommends that this case be dismissed without prejudice.

5 This Report and Recommendation will be submitted to the United
6 States District Court Judge assigned to this case, pursuant to the
7 provisions of 28 U.S.C. § 636(b)(1). Plaintiff may file written
8 objections with the Court and serve a copy on all parties on or
9 before April 20, 2009. The document should be captioned
10 "Objections to Report and Recommendation." Failure to file an
11 objection within the specified time may waive the right to appeal
12 the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
13 Cir. 1991).

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16 Dated: March 18, 2009


RUBEN B. BROOKS
United States Magistrate Judge

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18 cc: Judge Burns
All Parties of Record

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