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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEBORAH L. MARSHALL,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of  
Social Security

Defendant.

CASE NO. 08cv1735-L(WMc)

**ORDER RE: ORDER TO SHOW  
CAUSE**

This social security appeal came before the court for a hearing on December 1, 2009 on the court's order to show cause why it should not be dismissed for failure to prosecute. Thomas Roche, Esq. appeared on behalf of Plaintiff. Mark Winn, Esq. appeared telephonically on behalf of Defendant.

The complaint was filed on September 23, 2008. On January 14, 2009 Defendant filed an answer and the administrative record. On January 16, 2009 Magistrate Judge William McCurine, Jr. issued a briefing schedule ordering Plaintiff to file a summary judgment motion no later than March 20, 2009. On November 4, 2009 the court issued an order to show cause why the case should not be dismissed for failure to prosecute, because there had been no activity since March 20, 2009.

Federal Rule of Civil Procedure 41(b) provides in pertinent part:

Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.

1 District courts have the authority to dismiss *sua sponte* “cases that have remained  
2 dormant because of the inaction or dilatoriness of the parties seeking relief.” *Link v.*  
3 *Wabash R.R. Co.*, 370 U.S. 626, 630 (1962); *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir.  
4 1984). Consistent with this authority, Civil Local Rule 41.1(a) provides:

5 Actions or proceedings which have been pending in this court for more than  
6 six months, without any proceeding or discovery having been taken during  
7 such period, may, after notice, be dismissed by the court for want of  
8 prosecution, at the calling of a calendar prepared for that purpose by the  
9 clerk. Such a dismissal shall be without prejudice, unless otherwise ordered.

10 Based on Plaintiff’s representations on the record regarding the reason for a more  
11 than ten-month delay, the court finds that the delay was unreasonable. However, in the  
12 interests of justice and because Plaintiff in the recent days has commenced settlement  
13 negotiations with Defendant, the action is not dismissed at this time. Accordingly, it is  
14 hereby **ORDERED** as follows:

- 15 1. No later than **December 14, 2009** Plaintiff shall file either a dismissal or a  
16 motion for summary judgment.
- 17 2. Plaintiff shall forthwith contact the chambers of the Hon. William McCurine Jr.  
18 to schedule a case management conference to address the ongoing settlement negotiations  
19 and set a new briefing schedule on cross-motions for summary judgment on an expedited  
20 basis.
- 21 3. If Plaintiff does not file either a dismissal or a summary judgment motion on or  
22 before December 14, 2009, this action will be dismissed without prejudice for failure to  
23 prosecute.

24 **IT IS SO ORDERED.**

25 DATED: December 1, 2009

26   
27 M. James Lorenz  
28 United States District Court Judge

29 COPY TO:  
30 HON. WILLIAM McCURINE, Jr.  
31 UNITED STATES MAGISTRATE JUDGE  
32 ALL PARTIES/COUNSEL