

FILED

OCT 30 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

ANNETTE L. THIEL, d/b/a SWEET
VALLEY PRODUCE,

Plaintiff,

vs.

ANN M. VENEMAN, Secretary of the
United States Department of
Agriculture, Farm Service Agency
("FSA"), LAWRENCE NAYES,
Individually and as an agent of the
Defendant FSA, and JEFFREY
JANSHEN, Individually and as an
agent of the Defendant FSA,

Defendants.

CV 09-168-BLG-DWM-CSO

ORDER

This matter comes before the Court on Findings and Recommendation entered by United States Magistrate Judge Carolyn S. Ostby. (Doc. 105.) Judge Ostby recommends this matter be dismissed with prejudice due to Plaintiff's failure to follow Orders of the Court. (*Id.* at 7.) In detailed findings, Judge Ostby chronicled the recent history of this case and Ms. Thiel's repeated failure to prosecute this action, including her absence from the Court's show cause hearing convened on October 9, 2013. (*See id.* at 1-3.)

Plaintiff did not timely object to Judge Ostby's Findings and Recommendation. She has accordingly waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). The Court reviews the findings and recommendation of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

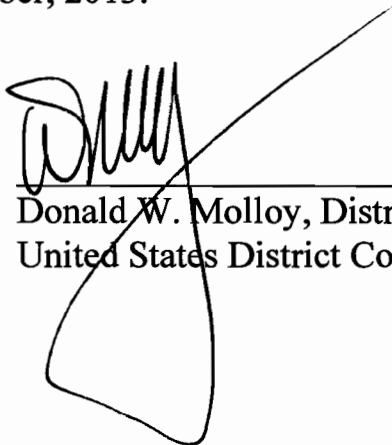
After a review of Judge Ostby's Findings and Recommendation, I find no clear error. At the time her attorney's Motion to Withdraw was granted, Ms. Thiel was advised that she must retain new counsel or appear *pro se*. (Doc. 98 at 2.) She was advised that her failure to comply may result in dismissal of her case. (*Id.*) Ms. Thiel did not respond, and the Court ordered her to show cause why her case should not be dismissed for failure to comply. (Doc. 101.) Again, Ms. Thiel did not respond to the substance of the Court's directive. She instead relayed a request for extension of time to the Clerk of Court by facsimile. (*See* Doc. 102-1.) The Court effectively granted Plaintiff's request for an extension and ordered her to appear in person for a show cause hearing. (Doc. 102.) When the show cause hearing was convened, Ms. Thiel did not appear. (Doc. 104.) The Court noted her

absence and Defendants requested the case be dismissed. (*Id.*) Judge Ostby properly concludes her case is subject to dismissal under Federal Rule of Civil Procedure 41(b).

IT IS ORDERED that Judge Ostby's Findings and Recommendations, (Doc. 105), are ADOPTED IN FULL.

IT IS FURTHER ORDERED that the above-captioned case is DISMISSED WITH PREJUDICE. The Clerk of Court shall close the case and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 30th day of October, 2013.



Donald W. Molloy, District Judge
United States District Court