

APPENDIX A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 2 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARILYN TILLMAN-CONERLY,

Plaintiff-Appellant,

v.

**UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT;
LAVERNE WATSON, OPM Legal
Administrative Specialist,**

Defendants-Appellees.

No. 20-17502

D.C. No. 2:20-cv-00950-TLN-KJN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted June 21, 2021**

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

Marilyn Tillman-Conerly appeals pro se from the district court's judgment dismissing her 42 U.S.C. § 1983 action alleging Fourteenth Amendment claims against the United States Office of Personnel Management based on her federal

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

retirement benefits. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to serve the summons and complaint under Federal Rule of Civil Procedure 4(m). *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 511 (9th Cir. 2001). We affirm.

The district court did not abuse its discretion by dismissing Tillman-Conerly's action because Tillman-Conerly failed to effect timely and proper service of the summons and complaint on defendants and did not show good cause for the failure, despite being given notice and an opportunity to do so. *See* Fed. R. Civ. P. 4(m) (district court may dismiss a claim for failure to serve, after providing notice to the plaintiff and absent a showing of good cause for failure to serve); *Sheehan*, 253 F.3d at 512 (discussing Rule 4(m)'s "good cause" standard). Moreover, as to defendant Watson, Tillman-Conerly failed to effect timely and proper service under California law. *See* Fed. R. Civ. P. 4(e) (setting forth methods for serving an individual, including by following relevant state law); Cal. Civ. Proc. Code § 415.30 (listing the requirements for service by mail under California law); *Barlow v. Ground*, 39 F.3d 231, 234 (9th Cir. 1994) ("Although California law does permit service of a summons by mail, such service is valid only if a signed acknowledgment is returned and other requirements are complied with[.]").

We reject as meritless Tillman-Conerly's contentions that the district court was biased against her.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

MARILYN TILLMAN-CONERLY,

v.

CASE NO: 2:20-CV-00950-TLN-KJN

**UNITED STATES OFFICE OF PERSONNEL
MANAGEMENT, ET AL.,**

Decision by the Court. This action came before the Court. The issues have been tried,
heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 12/18/2020**

Keith Holland
Clerk of Court

ENTERED: December 18, 2020

by: /s/ L. Mena-Sanchez
Deputy Clerk

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1501 Amazon Ave.
Sacramento CA 95835

--Case Participants: District Judge Troy L. Nunley (caed_cmecf_tln@caed.uscourts.gov), Magistrate Judge
Kendall J. Newman (caed_cmecf_kjn@caed.uscourts.gov)

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U.S. District Court

Eastern District of California – Live System

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**JUDGMENT dated *12/18/2020* pursuant to order signed by District Judge Troy L. Nunley on
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 MARILYN TILLMAN-CONERLY,

12 Plaintiff,

13 v.

14 U.S. OFFICE OF PERSONNEL
15 MANAGEMENT, et al.,

16 Defendants.
17

No. 2:20-cv-00950-TLN-KJN

ORDER

18 Plaintiff Marilyn Tillman-Conerly ("Plaintiff"), proceeding *pro se*, initiated this civil
19 action on May 8, 2020. (ECF No. 1.) The matter was referred to a United States Magistrate
20 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

21 On November 16, 2020, the magistrate judge filed findings and recommendations which
22 were served on the parties and which contained notice that any objections to the findings and
23 recommendations were to be filed within fourteen (14) days. (ECF No. 12.) On December 2,
24 2020, Plaintiff filed Objections to the Findings and Recommendations (ECF No. 13), which have
25 been considered by the court.

26 This Court reviews *de novo* those portions of the proposed findings of fact to which
27 objection has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore*
28 *Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982); *see*

1 also *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed
2 findings of fact to which no objection has been made, the Court assumes its correctness and
3 decides the motions on the applicable law. See *Orand v. United States*, 602 F.2d 207, 208 (9th
4 Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. See *Britt v. Simi*
5 *Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).


6 Having reviewed the file under the applicable legal standards, the Court finds the Findings
7 and Recommendations to be supported by the record and by the magistrate judge's analysis.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The Findings and Recommendations (ECF No. 12) are adopted in full;
10 2. Plaintiff's claims are DISMISSED without prejudice;
11 3. Plaintiff's Motion for Default Judgment (ECF No. 9) is DENIED; and
12 4. The Clerk of the Court is directed to close this case.

13 IT IS SO ORDERED.

14 DATED: December 17, 2020

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18 Troy L. Nunley
19 United States District Judge
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Docket Text:

ORDER signed by District Judge Troy L. Nunley on 12/17/2020 ADOPTING [12] Findings and
Recommendations in full; DENYING [9] Motion for Default Judgment. Plaintiff's claims are
DISMISSED without prejudice; CASE CLOSED; (Mena-Sanchez, L)

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APPENDIX C

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