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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YATHYAH YAHVAH,
Plaintiff,
v.
COUNTY OF LOS ANGELES et al.,
Defendants.

NO. CV 17-101-MWF (AGR)
ORDER TO SHOW CAUSE WHY
INDIVIDUAL DEFENDANTS
SHOULD NOT BE DISMISSED
FOR FAILURE TO SERVE
PROCESS

On January 5, 2017, Plaintiff filed a civil rights complaint against the County of Los Angeles and four individual defendants who were employees of the County Department of Children and Family Services (“DCFS”): Director Philip L. Browning, assistant regional administrator Stephanie Harges, supervising social worker Virginia Lyle, and social worker Vanessa Soto-Miller.

On January 18, 2017, the court ordered Plaintiff to complete a USM-285 form for each defendant in each capacity in which that defendant is sued. In other words, if a defendant is sued in both individual and official capacity, Plaintiff must complete two forms for the defendant, one for each capacity. The court ordered Plaintiff to submit the completed USM-285 forms to the United States Marshal no later than February 17, 2017. The court

1 warned that failure to do so could result in dismissal for failure to prosecute. (Dkt. No. 8.)

2 The court provided the forms, summonses and copies of the complaint to Plaintiff.

3 The court issued an order directing service of process by the United States Marshal.
4 (Dkt. No. 7.)

5 On August 25, 2017, Plaintiff requested an extension of time to submit the documents
6 to the United States Marshal, and stated she or an attorney misplaced the forms. On
7 August 29, 2017, the court granted the request for extension of time to September 29,
8 2017. (Dkt. No. 13.) The court again provided the forms, summonses and copies of the
9 complaint.

10 Plaintiff submitted a USM-285 form for Defendant County of Los Angeles, which was
11 served with process. (Dkt. No. 17.) The County filed a motion to dismiss the complaint,
12 and the court has issued an Amended Report and Recommendation on that motion.

13 Plaintiff has not submitted USM-285 forms for any of the individual defendants in any
14 capacity and has not requested an extension of time to do so. As explained in the
15 Amended Report and Recommendation, service upon an individual defendant in an
16 official capacity is redundant and unnecessary because the County is a named defendant
17 and has appeared. However, service of process upon an individual defendant in his or her
18 individual capacity is required.

19 A “pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal
20 for service of the summons and complaint” after “having provided the necessary
21 information to help effectuate service” under 28 U.S.C. § 1915 and Rule 4. *Puett v.*
22 *Blandford*, 912 F.2d 270, 275 (9th Cir.1990); *accord, Walker v. Sumner*, 14 F.3d 1415,
23 1422 (9th Cir.1994), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S.
24 472 (1995)).

25 When service cannot be accomplished due to the pro se plaintiff's failure to submit the
26 required information, and the plaintiff fails to remedy the situation after being put on
27 notice, dismissal without prejudice is appropriate. *Walker*, 14 F.3d at 1421-22 (holding
28 that prisoner failed to show cause why his claims against prison official should not be

1 dismissed under Rule 4(m) when prisoner failed to show “he provided the marshal with
2 sufficient information to serve [the defendant]”).

3 Plaintiff’s time for service of process upon the individual defendants expired on
4 September 29, 2017. Fed. R. Civ. P. 4(m). The deadline may be extended for “good
5 cause.” *Id.*

6 IT IS ORDERED that Plaintiff show cause in writing, *on or before March 26, 2018*,
7 why the individual defendants in their individual capacity should not be dismissed from
8 this action without prejudice pursuant to Rule 4(m) or for failure to prosecute. If Plaintiff
9 does not timely response to this order to show cause *on or before March 26, 2018*, the
10 individual defendants may be dismissed without prejudice for failure to serve process
11 under Rule 4(m) or for failure to prosecute.

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13 DATED: March 9, 2018



14 ALICIA G. ROSENBERG
15 United States Magistrate Judge
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