

**PRIORITY SEND**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. EDCV 14-01421-VAP (SPx)

Date: February 4, 2015

Title: MARTHA A. MONTALVO-ARIRI -v- JOHNSON & JOHNSON, INC.

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PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard  
Courtroom Deputy

None Present  
Court Reporter

ATTORNEYS PRESENT FOR  
PLAINTIFFS:

ATTORNEYS PRESENT FOR  
DEFENDANTS:

None

None

PROCEEDINGS: ORDER TO SHOW CAUSE RE: FAILURE TO PROSECUTE  
(IN CHAMBERS)

On July 11, 2014, Plaintiff Martha A. Montalvo-Ariri ("Plaintiff") filed this action against Johnson & Johnson, Inc. (Doc. No. 1.) Plaintiff filed a First Amended Complaint ("FAC"), only naming a new defendant, Ethicon, Inc. ("Ethicon"), on October 1, 2014. (Doc. No.11.)

To date, Plaintiff has not filed a proof of service indicating that Ethicon was served with the First Amended Complaint, nor has she submitted evidence to show efforts made to give notice or given a reason notice should not be required. Pursuant to Federal Rule of Civil Procedure ("FRCP") 4(m), a plaintiff must serve summons and complaint on all named defendants within 120 days of filing. When a

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plaintiff fails to prosecute the case, the court on its own motion may dismiss the case under FRCP 41(b). See Tolbert v. Leighton, 623 F.2d 585, 586-87 (9th Cir. 1980). Plaintiff has failed to prosecute this action, and thus it is subject to dismissal.

Though the filing of an amended complaint does not reset the 120 day limit for service as to any originally named defendants, plaintiffs are allowed an additional 120 days to serve newly named defendants in later pleadings. Bolden v. City of Topeka, Kansas, 441 F.3d 1129, 1148 (10th Cir. 2006) ("But the 120-day period provided by Rule 4(m) is not restarted by the filing of an amended complaint except as to those defendants newly added in the amended complaint."). As Ethicon was first named as a defendant in the FAC, Plaintiff had 120 days from October 1, 2014 to file a proof of service showing that Ethicon had been served. Plaintiff has not done so.

Accordingly, the Court ORDERS Plaintiff to show cause, in writing, not later than February 16, 2015, why this action should not be dismissed without prejudice for failure to prosecute. Failure to file a response will result in dismissal of this action.

**IT IS SO ORDERED.**