

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EARLENE SMITH,

Plaintiff,

v.

STATE OF CALIFORNIA [CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION],

Defendant.

Case No. 1:17-cv-01058-LJO-SAB

ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO SERVE IN COMPLIANCE
WITH RULE 4(m)

TEN DAY DEADLINE

Plaintiff filed this civil rights action on August 8, 2017, pursuant to 42 U.S.C. § 1983 against the California Department of Corrections (“Defendant CDCR”) and several unidentified defendants. On September 29, 2017, Defendant CDCR filed a motion to dismiss which was granted on November 29, 2017, and Defendant CDCR has been dismissed from this action. In the order granting the motion to dismiss, Plaintiff was provided with the opportunity to file an amended complaint within ten days and informed that if an amended complaint was not filed this action would proceed until against the unnamed defendants. More than ten days have passed and Plaintiff has not filed an amended complaint.

An order setting the mandatory scheduling conference issued on August 8, 2017, and informed Plaintiff that she was to “diligently pursue service of the summons and complaint” and “promptly file proofs of the service of the summons and complaint.” (ECF No. 3-1 at 1.)

1 Plaintiff was referred to Rule 4 of the Federal Rules of Civil Procedure regarding the
2 requirement of timely service of the complaint. (Id. at 1-2.) Further, Plaintiff was advised that
3 “[f]ailure to timely serve the summons and complaint may result in the imposition of sanctions,
4 including dismissal of this action.” (Id. at 2.) Although Plaintiff served Defendant CDCR, she
5 has not amended the complaint to name the unidentified defendants and there are currently no
6 defendants remaining that have been served in this action.

7 Rule 4(m) of the Federal Rules of Civil Procedure addresses the time requirements for
8 service of the complaint in civil cases. Rule 4(m) provides:

9 If a defendant is not served within 90 days after the complaint is filed, the court--
10 on motion or on its own after notice to the plaintiff--must dismiss the action
11 without prejudice against that defendant or order that service be made within a
12 specified time. But if the plaintiff shows good cause for the failure, the court must
13 extend the time for service for an appropriate period.

14 Accordingly, Plaintiff is HEREBY ORDERED to show cause in writing within ten (10)
15 days from the date of service of this order why this action should not be dismissed for failure to
16 serve the complaint in compliance with Rule 4(m) of the Federal Rules of Civil Procedure.

17 IT IS SO ORDERED.

18 Dated: December 12, 2017


UNITED STATES MAGISTRATE JUDGE