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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,
Plaintiff,
v.
OLD NAVY, LLC,
Defendant.

Case No. 1:23-cv-00245-EPG
ORDER VACATING MAY 25, 2023
SCHEDULING CONFERENCE
ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY THIS CASE SHOULD NOT
BE DISMISSED WITHOUT PREJUDICE
FOR FAILURE TO COMPLETE
SERVICE ON DEFENDANT PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 4(M)

Plaintiff Fernando Gastelum bring claims under the Americans with Disabilities Act and California state law against Defendant Old Navy, LLC. (ECF No. 1). For the reasons given below, the Court orders Plaintiff to show cause why this action should not be dismissed without prejudice for failure to timely complete service on Defendant.

Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.*

Plaintiff filed this action on February 17, 2023. (ECF No. 1). A summons was issued on February 22, 2023. (ECF No. 2). The Court issued an order on February 22, 2023, advising

1 Plaintiff of Rule 4(m)'s service requirement and warning that failure to timely serve the
2 complaint could result in the dismissal of the unserved Defendant. (ECF No. 3, pp. 1-2). To date,
3 Plaintiff has not filed a return of service demonstrating that Plaintiff has accomplished service of
4 the complaint and summons on Defendant, nor has a waiver of service been filed by Defendant.
5 Thus, the 90-day period for service appears to have expired without service being achieved.

6 Moreover, the Court set an initial scheduling conference for May 25, 2023, requiring the
7 parties file a joint scheduling report at least one week before the conference. (*Id.* at 2). Plaintiff
8 has not timely filed a joint scheduling report or anything since filing the complaint.

9 Accordingly, IT IS ORDERED as follows:

- 10 1. The May 25, 2023 scheduling conference is vacated. (ECF No. 3).
- 11 2. By no later than May 30, 2023, Plaintiff shall show cause why this action should not be
12 dismissed without prejudice for failure to timely serve Defendant as required under
13 Federal Rule of Civil Procedure 4(m).
- 14 3. Plaintiff is advised that failure to respond to this order may result in the dismissal of
15 this action.

16 IT IS SO ORDERED.

17 Dated: May 19, 2023

18 /s/ Eric P. Gray
19 UNITED STATES MAGISTRATE JUDGE