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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 BRENT ALLAN WINTERS, et al.,

11 Plaintiffs,

No. 2:09-cv-00522 JAM KJN PS

12 v.

13 DELORES JORDAN, et al.,

14 Defendant.

ORDER

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16 On March 15, 2012, the undersigned conducted a status (pretrial scheduling)
17 conference in this case. It appears from the plaintiffs' status report and the court's docket that
18 defendant Cheryl Wade remains unserved after nearly three years of litigation.¹ An un-executed
19 summons filed on January 27, 2010, reflects that Wade has not been served (Dkt. No. 104). The
20 docket does not reflect any additional efforts on plaintiffs' part to effectuate service of process or
21 to assist the U.S. Marshal in effectuating service.²

22 As stated at the status conference, the undersigned is inclined to recommend the
23 dismissal of Wade without prejudice pursuant to Federal Rule of Civil Procedure 4(m). In

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25 ¹ This case proceeds before the undersigned pursuant to Eastern District of California Local
Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

26 ² Plaintiffs are proceeding in forma pauperis.

relevant part, Rule 4(m) provides:

(m) Time Limit for Service. If a defendant is not served within 120 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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

However, at the status conference, plaintiff Susan Winters represented that she might have an address at which Wade may be served.

Taking Susan Winters's representation at face value, the undersigned provides plaintiffs with 30 days from March 15, 2012, in which to effectuate service on Wade. At the conclusion of this 30-day period, plaintiffs shall file a declaration under penalty of perjury that explains their efforts to serve Wade. Absent a showing of good cause supporting the grant of additional leave to serve Wade, the undersigned will recommend that Wade be dismissed from this action without prejudice pursuant to Rule 4(m).


Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiffs shall have 30 days from March 15, 2012, in which to effectuate service of process on defendant Cheryl Wade.

2. By the close of the above-described 30-day period, plaintiffs shall file a declaration under penalty of perjury that explains their efforts to serve Wade.

IT IS SO ORDERED.

DATED: March 15, 2012


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE