

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

SUSAN LUDWIG,

Plaintiff,

No. CIV S-10-0325 JAM EFB PS

VS.

ADULT PROTECTIVE SERVICES OF SACRAMENTO COUNTY; VERNA MAGNUSON; UNIVERSITY OF CALIFORNIA DAVIS MEDICAL CENTER; MCKINLEY HEALTH CENTER; CITY OF SACRAMENTO POLICE DEPARTMENT; A. CROSBY; MERCY HOSPITAL; and DOES 1-5.

ORDER

Defendants.

This case is before the undersigned pursuant to Local Rule 302(c)(21). *See* 28 U.S.C. (1). The complaint was filed in this action over a year ago on February 8, 2010. Dckt. Nonetheless, plaintiff still has not served all of the defendants, as required by Federal Civil Procedure 4(m).¹ Fed. R. Civ. P. 4(m) (“If service of the summons and complaint is made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without

¹ Defendant Adult Protective Services of Sacramento filed an answer on May 18, 2010. Dckt. No. 4.

1 prejudice as to that defendant or direct that service be effected within a specified time; provided
2 that if the plaintiff shows good cause for the failure, the court shall extend the time for service
3 for an appropriate period.”).

4 On November 15, 2010, the court issued an order granting plaintiff’s third request for
5 additional time to serve the remaining unserved defendants. Dckt. No. 12. Plaintiff was given
6 until January 31, 2011 to serve the remaining unserved defendants and was specifically
7 admonished that “no further extensions of time to serve [would] be granted.” *Id.* at 2.

8 Nonetheless, plaintiff has now filed a *fourth* motion for an extension of time to serve the
9 remaining unserved defendants. Dckt. No. 13. Plaintiff contends that she works full-time as an
10 international flight attendant and that “[d]ue to circumstances beyond [her] control including
11 severe winter weather, resulting in flight cancellations and disruption of work schedule and also
12 due to illness, [she was] unable to serve” the remaining unserved defendants by the January 31
13 deadline. *Id.* at 2. Plaintiff now requests that she be given until April 13, 2011 to serve the
14 remaining defendants because she has a surgery scheduled “for February into March” and she
15 will need time to recover from the surgery. *Id.* at 3.

16 The court is very reluctant to grant plaintiff’s current request in light of the significant
17 amount of time that has passed since this action was filed and in light of the previous
18 admonitions given to plaintiff regarding service in this action. Nonetheless, because plaintiff
19 indicates that these circumstances were out of her control, plaintiff will be granted *one final*
20 *extension* of time to April 13, 2011 to serve the remaining unserved defendants. If plaintiff does
21 not serve the remaining unserved defendants and file with the court a proof of service thereon by
22 April 13, 2011, any unserved defendants *will be dismissed* from this action pursuant to Federal
23 Rule of Civil Procedure 4(m). Failure to comply with this order may also result in the
24 imposition of sanctions, including a recommendation that this action be dismissed for lack of
25 prosecution. *See Fed. R. Civ. P. 41(b).*

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Plaintiff's fourth motion for an extension of time to serve, Dckt. No. 13, is granted.

3 2. Plaintiff shall have until April 13, 2011 to serve the remaining unserved defendants
4 and file a proof of such service with the court.

5 3. The status conference currently set for March 30, 2011 is continued to June 29, 2011,
6 at 10:00 a.m. in Courtroom No. 24;

7 4. By June 15, 2011, the parties shall file status reports (or a joint status report) setting
8 forth the matters referenced in the court's February 8, 2010 order, including the status of
9 service of process;² and

10 5. Failure to comply with this order *will* result in the dismissal of any unserved
11 defendants pursuant to Federal Rule of Civil Procedure 4(m) and may also result in the
12 imposition of sanctions, including a recommendation that this entire action be dismissed for lack
13 of prosecution. *See* Fed. R. Civ. P. 41(b).

14 DATED: March 8, 2011.



15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE

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25 2 Because defendant Adult Protective Services of Sacramento County already filed a status
26 report herein, it need not file a further status report or participate in the preparation of a joint status
report. However, if defendant Adult Protective Services of Sacramento County elects to file a
further status report, it shall do so on or before June 15, 2011.