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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION
6

7 SHARON BRIDGEWATER,
8 Plaintiff,
9 vs.
10 HAYES VALLEY LIMITED
11 PARTNERSHIP, et al.,
12 Defendants.

Case No: C 10-0703 SBA

ORDER

Docket 117.

13
14 Presently before the Court is pro se Plaintiff Sharon Bridgewater's ("Plaintiff")
15 motion to extend time to serve Defendants, motion to issue summons, motion to make
16 corrections to the complaint, and motion to toll the statute of limitations. Dkt. 117. Having
17 read and considered the papers filed in connection with this matter and being fully
18 informed, the Court hereby GRANTS the motion to extend time to serve Defendants,
19 DENIES the motion to issue summons, DENIES the motion to make corrections to the
20 complaint, and DENIES the motion to toll the statute of limitations without prejudice to its
21 renewal at a later time. The Court, in its discretion, finds this matter suitable for resolution
22 without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

23 **I. BACKGROUND**

24 **A. Unlawful Detainer Action**

25 In April 2006, the owners and managers ("Property Defendants") of Plaintiff's
26 former housing, located at 427 Page Street in San Francisco, California ("Page Street"),
27 filed an unlawful detainer action against Plaintiff in San Francisco County Superior Court.
28 Case No. 09-3639, Dkt. 38. The Property Defendants were represented by a law firm and

1 certain of its attorneys (“Legal Defendants”).¹ Id. On February 19, 2009, the parties
2 entered into a stipulated judgment. Id. In the stipulated judgment, Plaintiff agreed to
3 vacate the premises and Defendants agreed to waive all past rent due, attorney’s fees and
4 costs. Id. Allegedly as a result of the emotional stress from the suit, Plaintiff moved to
5 Hawaii, and, purportedly, was homeless until she moved back to California and secured
6 housing in June 2009. Id.

7 **B. Case Nos. 09-3639 and 09-5663**

8 In 2009, Plaintiff filed two actions in this Court, Case No. 09-3639 against the Legal
9 Defendants and Case No. 09-5663 against the Property Defendants. Case No. 09-3639,
10 Dkt. 38. In these actions, Plaintiff alleged the Property and Legal Defendants engaged in a
11 conspiracy to deny her Seventh Amendment right to a jury trial and brought her claims
12 pursuant to 42 U.S.C. § 1983. Additionally, Plaintiff brought the following claims based
13 upon alleged violations of state laws: malicious prosecution; conspiracy to commit
14 malicious prosecution; aiding and abetting common law malicious prosecution; conspiracy;
15 wrongful eviction; retaliatory eviction; intentional misrepresentation and concealment of
16 known facts; intentional infliction of emotional distress; conspiracy to inflict intentional
17 emotional distress; negligent infliction of emotional distress; negligence (gross); and fraud.
18 Id.

19 On January 19, 2010, this Court issued an Order denying Plaintiff’s application for
20 in forma pauperis status and dismissed the actions as frivolous under 28 U.S.C. § 1915(e).
21 Case No. 09-3639, Dkt. 38. In that Order, the Court detailed the history of Plaintiff’s
22 lawsuits pertaining to the unlawful detainer action. Id. Excluding the instant actions,
23 Plaintiff has filed six previous lawsuits seeking relief based on the Page Street unlawful
24 detainer action. Id. She filed two cases in San Francisco County Superior Court, asserting
25 personal injury and breach of contract claims. Id. Both suits were dismissed. Id. She filed
26 four suits in the Northern District, all of which were dismissed for various reasons,

27 _____
28 ¹ Sometimes the Property Defendants and Legal Defendants are referred herein as
“Defendants.”

1 including dismissal for lack of subject matter jurisdiction, for failure to state a claim, and
2 for being time-barred. Id.

3 As to Case Nos. 09-3639 and 09-5663, this Court found Plaintiff's Seventh
4 Amendment claim lacked merit because this amendment had not been incorporated under
5 the Fourteenth Amendment, and therefore did not apply to the states or state civil
6 proceedings. Case No. 09-3639, Dkt. 38. Thus, Plaintiff could not rely on the Seventh
7 Amendment as a basis for claiming Defendants deprived her of a jury trial in the unlawful
8 detainer action. Id. As to her § 1983 claims, the Court found that Defendants were not
9 state actors, and therefore her claims against Defendants failed as a matter of law. Id.

10 C. Instant Related Actions

11 Despite this Court's dismissal in its January 19, 2010 Order,² on February 18, 2010,
12 Plaintiff filed two suits, one against the Property Defendants, Case No. 10-703, and one
13 against the Legal Defendants, Case No. 10-704.

14 On March 4, 2010, Plaintiff amended her complaint in Case No. 10-703. Case No.
15 10-703, Dkt. 11. The amended complaint alleges various claims against the Property
16 Defendants, including violation of her Fifth and Fourteenth Amendment due process rights
17 under 42 U.S.C. § 1983, conspiracy to violate her Fifth and Fourteenth Amendments due
18 process rights under 42 U.S.C. § 1985, and a retaliatory housing discrimination claim in
19 violation of the Fair Housing Act, 42 U.S.C. § 3604 ("FHA"). Id. The amended complaint
20 also alleges state law claims for malicious prosecution, common law forcible detainer,
21 retaliatory eviction, wrongful eviction, intentional infliction of emotional distress, breach of
22 lease, conspiracy to commit forcible detainer, breach of oral promise, and negligent
23 infliction of emotion distress. Id.

24 In Case No. 10-704, in addition to the federal claims alleged against the Property
25 Defendants, the complaint asserts other federal claims against the Legal Defendants,
26

27 ² Because Plaintiff's prior actions have been dismissed under 28 U.S.C. § 1915,
28 there is no res judicata preclusion to the filing of a paid complaint. Denton v. Hernandez,
504 U.S. 25, 34 (1992).

1 including violations of the Americans With Disabilities Act, 42 U.S.C. § 12182 (“ADA”),
2 and the Fair Debt Collection Practice Act, 15 U.S.C. § 1692 (“Fair Debt Act”). Case No.
3 10-704, Dkt. 1. The complaint also asserts various state law claims against Legal
4 Defendants, including fraud, malicious prosecution, conspiracy, forcible detainer,
5 intentional infliction of emotional distress, tortious interference with lease, and tortious
6 interference with quiet enjoyment of premises. Id.

7 On April 7, 2011, this Court found that Case No. 10-703 and Case No. 10-704 were
8 related, and that the actions were related to Case Nos. 09-3639 and 09-5663. Case No. 10-
9 703, Dkt. 94.³ The actions again involve the Page Street unlawful detainer action. On June
10 2, 2010, the Court denied Plaintiff’s application for in forma pauperis status and ordered
11 her to pay the filing fee within twenty days of the Order. Dkt. 25. On August 24, 2010, the
12 Court dismissed Plaintiff’s actions without prejudice for her failure to pay the filing fee as
13 ordered. Dkt. 37. On January 3, 2011 and April 7, 2011, Plaintiff paid the filing fees in the
14 instant actions.

15 On July 29, 2011, the Court issued an Order granting Plaintiff’s motions to re-open
16 her actions and to consolidate Case No. 10-704 with 10-703. Dkt. 111. In that Order, the
17 Court directed Plaintiff to file a second amended complaint in Case No. 10-703 asserting all
18 claims against all defendants who have been named in Case Nos. 10-703 and 10-704, to the
19 extent that those claims relate to the Page Street unlawful detainer action. Id. The Court
20 also directed Plaintiff to effectuate service of process of the second amended complaint in
21 Case No. 10-703 on all Defendants within fourteen (14) days from the date Plaintiff files
22 her second amended complaint. Id. Upon effectuating service, the Order requires Plaintiff
23 to file certificates of service with the Court. Id. The Order cautioned Plaintiff that the
24 failure to follow any of the instructions in its Order may result in sanctions against her, up
25 to and including dismissal with prejudice of Case Nos. 10-703 and 10-704. Id.

26
27
28 ³ All further references to the Docket are to the Docket in the instant action - Case
No. 10-703.

1 On August 29, 2011, Plaintiff filed a second amended complaint, alleging seven
2 claims for relief styled as follows: conspiracy to deprive rights in violation of 42 U.S.C. §
3 1985(3); intentional misrepresentation and concealment of known facts (fraud); negligent
4 infliction of emotional distress; violation of Plaintiff's civil rights under 42 U.S.C. § 1983;
5 malicious prosecution (wrongful eviction); violation of the ADA; and a retaliatory housing
6 discrimination claim in violation of the FHA. Dkt. 112. On September 12, 2011 Plaintiff
7 filed a motion for extension of time to serve Defendants, a motion to issue summons, a
8 motion to make corrections to the complaint, and a motion to toll the statute of limitations.
9 Dkt. 117.

10 **II. DISCUSSION**

11 **A. Motion for Extension of Time to Serve Defendants**

12 In this Court's July 29, 2011 Order, the Court noted that more than 120 days had
13 passed since Plaintiff had filed her complaints in Case Nos. 10-703 and 10-704. As such,
14 Plaintiff had not timely served her summons and complaint as required by Federal Rule of
15 Civil Procedure 4(m), which states:

16 If service of the summons and complaint is not made on a
17 defendant within 120 days after the filing of the complaint, the
18 court, upon motion or on its own initiative after notice to the
19 plaintiff, shall dismiss the action without prejudice as to that
20 defendant or direct that service be effected within a specified
time; provided that if plaintiff shows good cause for the failure,
the court shall extend the time for service for an appropriate
period.

21 (Emphasis added). Dkt 111.

22 However, in light of Plaintiff's pro se status, the Court provided Plaintiff with
23 additional time to effectuate service. Dkt. 111. Plaintiff was given fourteen (14) days from
24 the time she filed her second amended complaint in Case No. 10-703 to effectuate service
25 on the Defendants. Id.

26 On August 29, 2011, Plaintiff filed a second amended complaint, but failed to
27 effectuate service on any Defendant within fourteen (14) days as required by the Court's
28

1 July 29, 2011 Order. In fact, Plaintiff has yet to effect service on any Defendant.
2 Accordingly, this action is subject to dismissal.

3 Plaintiff, for her part, requests an extension of time to serve the Defendants. Dkt.
4 117. In her motion, Plaintiff asserts that she has not purposely missed the deadline, and
5 that she was unable to serve the Defendants because the clerk did not issue the summonses.
6 Dkt. 117. In her declaration, Plaintiff attests that she “had all [of the] summons[es]
7 completed on the day [she] filed the [second amended] complaint on Aug. 29, 2011 and the
8 clerk would not issue the summons[es]. Dkt. 116. Plaintiff, however, does not explain why
9 the clerk would not issue the summonses.

10 In light of Plaintiff’s pro se status, Plaintiff’s motion for extension of time to serve
11 Defendants is GRANTED. The Court will give Plaintiff another opportunity to effectuate
12 service on the Defendants named in the second amended complaint before dismissing this
13 action. Plaintiff shall have fourteen (14) days from the date of this Order to effectuate
14 service on Defendants. The Court advises Plaintiff that if she fails to timely serve
15 Defendants, the second amended complaint will be dismissed without further notice.

16 **B. Motion to Issue Summons**

17 Plaintiff requests that this Court issue an Order directing the clerk to issue the
18 summonses attached to her motion. Dkt. 117. A summons must name the court and
19 parties; be directed to the defendant; state the name and address of the plaintiff’s attorney
20 or the pro se plaintiff; state the time within which the defendant must appear and defend;
21 notify the defendant that a failure to appear and defend will result in a default judgment
22 against the defendant for the relief demanded in the complaint; be signed by the clerk; and
23 bear the court’s seal. Fed.R.Civ.P. 4(a). Concurrently with or after the filing of the
24 complaint, the plaintiff may present a summons to the clerk for signature and seal.
25 Fed.R.Civ.P. 4(b). If the summons is properly completed, the clerk must sign, seal, and
26 issue it to the plaintiff for service on the defendant. Id. A summons--or a copy of a
27 summons that is addressed to multiple defendants--must be issued for each defendant to be
28 served. Id.

1 The Court notes that it has issued an Order allowing Plaintiff to file a second
2 amended complaint, which she did. As such, the clerk will issue a summons as to
3 Defendant's second amended complaint for each named Defendant upon a proper request
4 by Plaintiff. The Court advises Plaintiff that it is her obligation to properly complete each
5 summons and present it to the clerk for signature and seal. If Plaintiff properly completes a
6 summons, the clerk will issue the summons to Plaintiff for service on the Defendant. The
7 Court advises Plaintiff that it is her obligation to serve each Defendant with a summons and
8 a copy of the complaint. See Fed.R.Civ.P. 4(c)(1). As indicated previously, Plaintiff must
9 effectuate service on Defendants within fourteen (14) days from the date of this Order.
10 Failure to do so will result in dismissal of the second amended complaint without further
11 notice.

12 **C. Motion to Make Corrections to the Complaint**

13 The Court construes Plaintiff's "motion to make corrections to the complaint" as a
14 motion for leave to file a third amended complaint. While leave to amend "shall be freely
15 given when justice so requires," Fed.R.Civ.P. 15(a)(2), Plaintiff has failed to demonstrate
16 that leave to amend is appropriate. Plaintiff has not provided the Court with a proposed
17 third amended complaint nor has she specified in her papers the amendments or
18 "corrections" she intends on making to the second amended complaint. In fact, her papers
19 are devoid of any argument on this issue. Accordingly, because there is no basis to grant
20 Plaintiff leave to file a third amended complaint, Plaintiff's motion to make corrections to
21 the complaint is DENIED.

22 **D. Motion to Toll Statute of Limitations**

23 In her motion papers, Plaintiff requests that the Court toll the statute of limitations.
24 Plaintiff, however, does not cite any authority or specifically argue why tolling is
25 appropriate. Instead, she describes various circumstances, including "severe mental
26 distress" caused by the Defendants, that could provide a factual basis for tolling the
27 applicable limitations periods. See Stoll v. Runyon, 165 F.3d 1238, 1242 (9th Cir. 1999)
28 ("Equitable tolling applies when the plaintiff is prevented from asserting a claim by

1 wrongful conduct on the part of the defendant, or when extraordinary circumstances
2 beyond the plaintiff's control made it impossible to file a claim on time."). However, the
3 Court finds it unnecessary to address the propriety of tolling at this time. Plaintiff has not
4 properly effectuated service on any of the Defendants named in the second amended
5 complaint. As such, any assessment of the tolling issue is premature. Accordingly,
6 Plaintiff's motion to toll the statute of limitations is DENIED without prejudice to its
7 renewal at a later time.

8 **III. CONCLUSION**

9 For the reasons stated above, IT IS HEREBY ORDERED THAT:

10 1. Plaintiff's motion to extend time to serve Defendants is GRANTED. Under
11 Federal Rule of Civil Procedure 4(m), Plaintiff is directed to effectuate service of process
12 of the second amended complaint on all Defendants within fourteen (14) days from the date
13 of this Order. Plaintiff shall also serve a copy of the Court's July 29, 2011 Order on all
14 Defendants when effectuating service of process. Upon effectuating service, Plaintiff shall
15 file certificates of service with the Court forthwith.

16 2. Plaintiff's motion to issue summons is DENIED.

17 3. Plaintiff's motion to make corrections to the complaint is DENIED.

18 4. Plaintiff's motion to toll the statute of limitations is DENIED without
19 prejudice to its renewal at a later time.

20 5. Plaintiff is cautioned that the failure to follow any of the instructions in this
21 Order may result in sanctions against her, up to and including dismissal with prejudice of
22 this action without further notice.

23 6. This Order terminates Docket 117.

24 IT IS SO ORDERED.

25 Dated: 2/13/12

26 _____
27 SAUNDRA BROWN ARMSTRONG
28 United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 BRIDGEWATER et al,

5 Plaintiff,

6 v.

7 HAYES VALLEY LIMITED PARTNERSHIP et
8 al,

9 Defendant.

10 _____/

11 Case Number: CV10-00703 SBA

12 **CERTIFICATE OF SERVICE**

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on February 13, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19 Sharon Bridgewater
20 965 Mission Street
21 Suite 409
22 San Francisco, CA 94104

23 Dated: February 13, 2012

24 Richard W. Wieking, Clerk

25 By: LISA R CLARK, Deputy Clerk

26

27

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