

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-03514-WPJ-NYW

K.B., by and through her next friend,  
ANGELA BOURELLE,

Plaintiff,

v.

CHRISTOPHER J. PEREZ, in his personal capacity,

Defendant.

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**ORDER DISCHARGING ORDER TO SHOW CAUSE**

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Magistrate Judge Nina Y. Wang

On June 8, 2015, this court issued an Order to Show Cause on or before June 29, 2015 why this case should not be dismissed pursuant to D.C.COLO.LCivR 41.1 for lack of prosecution and failure to comply with Rule 4(m) of the Federal Rules of Civil Procedure. [#16].

Plaintiff, through her counsel, responded to the Order to Show Cause on June 29, 2015. [#18]. Plaintiff represents the following: Defendant Christopher Perez is the one remaining Defendant in this matter;<sup>1</sup> Defendant Perez was sued in his personal capacity only and he waived

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<sup>1</sup> The case was originally assigned to District Judge Moore, who *sua sponte* entered an order on January 8, 2015 dismissing Plaintiff's claim against Mr. Vanni on the basis that it "...interferes with the administration of a criminal case, affects its finality, and is not justiciable." [#7]. Judge Moore then recused himself as to the Second Claim because the underlying allegations of that Claim are directed at Defendant Perez who is a supervising U.S. Probation Officer in the District of Colorado. [*Id.*] The case was subsequently reassigned by Order of the U.S. Court of Appeals for the Tenth Circuit to Judge Johnson of the District of New Mexico. On June 5, 2015, Judge Johnson issued a Second Order of Reference [#15], specifically referring this matter to the undersigned Magistrate Judge for "all matters, dispositive and non-dispositive, in this case: to

service on January 30, 2015; following a disagreement between counsel regarding proper service, Plaintiff effected service on the United States on May 22, 2015; and Defendant Perez intends to Answer or otherwise respond to the Complaint by July 17, 2015.<sup>2</sup>

On July 1, 2015, Defendant Perez filed a Reply to Plaintiff's Response seeking only "to clarify certain issues raised by Plaintiff's Response," and noting that "he takes no position on whether the Court should dissolve its Order to Show Cause [ ] and permit this case to proceed." [#19]. The Parties subsequently filed a Stipulation pursuant to D.C.COLO.LCivR 6.1(a), agreeing that Defendant Perez shall respond to the Complaint by August 7, 2015.

Federal Rule of Civil Procedure 4(m) instructs that 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." However, the court must also extend the time for service for an appropriate period if the plaintiff shows good cause for his failure to serve. Fed. R. Civ. P. 4(m). Plaintiff has demonstrated an intention to pursue this litigation and the Response is considered sufficient for the purposes of the Order to Show Cause.

Accordingly, IT IS ORDERED:

1. The Order to Show Cause [#16] is hereby DISCHARGED;
2. Pursuant to the Stipulation [#20], Defendant Perez shall file an Answer or otherwise respond to the Complaint on or before **August 7, 2015**; and

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conduct hearings, if warranted, including evidentiary hearings, and to perform any legal analysis required to recommend to the Court, if appropriate, an ultimate disposition of this case." [*Id.*]

<sup>2</sup> Counsel for Plaintiff also represents that in April and May of 2015 she was addressing a personal emergency and confirming that this lawsuit was in the best interest of her minor client, and takes responsibility for not informing the court of the reasons for the lack of prosecution.

3. The Clerk of Court is instructed to amend the docket to reflect that Walter Vanni has been dismissed from this action.

DATED: July 16, 2015

BY THE COURT:

s/Nina Y. Wang  
United States Magistrate Judge