

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

BRIANNA STEELE

CIVIL ACTION

VERSUS

NO: 13-528

BAYER HEALTHCARE LLC, ET AL

SECTION: "H"(4)

ORDER AND REASONS

Before the Court is Defendants' Motion to Dismiss pursuant to Rule 4(m) (Doc. 4). Plaintiff has filed a statement of non-opposition to the motion. For the following reasons, the Motion is GRANTED and this matter is DISMISSED WITHOUT PREJUDICE.

LAW AND ANALYSIS

Federal Rule of Civil Procedure 4(m) provides: "[i]f 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." A plaintiff may avoid dismissal by showing good cause for the delay. "When service of process is challenged, the serving party bears the burden of proving good cause for failure to effect timely service. Proof of good cause requires at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." *Thrasher v. City of Amarillo*, 709 F.3d 509, 511 (5th Cir. 2013) (internal quotations omitted).

Although Plaintiff has chosen not to file an opposition, the Court may not simply grant the instant Motion as unopposed. The Fifth Circuit approaches the automatic grant of dispositive motions with considerable aversion. *See, e.g., Servicios Azucareros de Venezuela, C.A. v. John Deere Thibodeaux, Inc.*, 702 F.3d 794, 806 (5th Cir. 2012); *Johnson v. Pettiford*, 442 F.3d 917, 918 (5th Cir. 2006) (per curiam); *John v. State of Louisiana (Bd. of Trs. for State Colls. and Univs.)*, 757 F.2d 698, 709 (5th Cir. 1985).

Plaintiff filed her complaint on March 20, 2013. Defendants filed their motion to dismiss on July 25, 2013, more than 120 days after the filing of the complaint. Plaintiff filed her notice of non-opposition on September 19, 2013, and still had not effected service as of that date. Plaintiff has failed to show any cause, much less good cause, for her failure to serve Defendants. Therefore, the Court grants the instant Motion.

CONCLUSION

For the foregoing reasons, Defendants Motion to Dismiss is GRANTED, and this matter is DISMISSED WITHOUT PREJUDICE.

New Orleans, Louisiana, this 2nd day of October, 2013.


JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE