

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TONIA JOHNSON,

Plaintiff,

-against-

THE CITY OF NEW YORK, N.Y.C.
DEPARTMENT OF EDUCATION,
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES OF
THE CITY OF NEW YORK, JOHN/JANE
DOES 1-3, MICHAEL BLOOMBERG, DENNIS
WALCOTT, EDNA WELLS HANDY,
NANCY GRILLO, and VALERIE JACKSON,

Defendants.

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ORDER ADOPTING R&R
14-CV-3444 (WFK) (LB)

WILLIAM F. KUNTZ, II, United States District Judge:

This action was initiated by the filing of a Complaint on May 30, 2014. Pursuant to Fed. R. Civ. P. 4(m),¹ the Plaintiff had 120 days to file service on the Defendants, which resulted in a deadline of September 29, 2014. By Order of the Honorable United States Magistrate Judge Lois Bloom on June 17, 2014, Plaintiff was advised that if she did not file proof of timely service or show good cause why service had not been effectuated by September 29, 2014, the Court would dismiss the action without prejudice pursuant to Fed. R. Civ. P. 4(m). Dkt. 4.

¹ Fed. R. Civ. P. 4(m) states, in relevant part: “[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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

Magistrate Judge Bloom twice granted Plaintiff's requests for extensions of time to serve the Summons and Complaint. *See* Dkts. 8, 10. In the second Order granting Plaintiff's request, Magistrate Judge Bloom admonished Plaintiff that "[a]bsolutely no further extensions of time will be considered." Dkt. 10 (underline in original). Despite this warning, Plaintiff failed to file proof of service by the extended December 15, 2014 deadline. Instead, Plaintiff filed a third request for additional time to file proof of service on December 16, 2014. Dkt. 11 (dated December 15, 2014).²

On December 17, 2014, Magistrate Judge Bloom issued a *sua sponte* Report & Recommendation ("R&R") "respectfully recommend[ing] that this action should be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure" because of Plaintiff's "failure to show good cause why service was not timely effected[.]" Dkt. 12 at 2. Any objections to the R&R were to be filed by January 5, 2015. *See id.*; Fed. R. Civ. P. 72(b)(2). No objections have been filed and the time to do so has passed.

The Court reviews a Report and Recommendation for clear error when no objections have been filed, *see Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007) (Garaufis, J.), and the Court finds no such error here. The Court therefore adopts the Decision of Magistrate Judge Bloom in its entirety. Accordingly, it is hereby ORDERED that this action is DISMISSED, without prejudice, pursuant to Fed. R. Civ. P. 4(m).³

² Plaintiff argued in her letter "that the summons she received was stamped with an incorrect docket number. However, [Magistrate Judge Bloom found that] the summons issued shows the correct docket number." Dkt. 12 at 2.

³ While the dismissal is without prejudice, as Magistrate Judge Bloom observed that the dismissal is, in effect, with prejudice because plaintiff's claim will be time-barred." Dkt. 12 at 12 n.1 (citing *Zapata v. City of New York*, 502 F.3d 192, 196 (2d Cir. 2007)).

The Clerk of Court is directed to close this action and send a copy of this Order to the *pro se* Plaintiff.

SO ORDERED.

/S/ Judge William F. Kuntz, II

~~HON. WILLIAM F. KUNTZ, II.~~
United States District Judge

Dated: January 7, 2015
Brooklyn, New York