

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE

WANDA Y. GOODMAN,	)	
	)	
Plaintiff	)	
	)	No. 3:16-2780
v.	)	Judge Trauger/Brown
	)	
UPA, <i>et al.</i> ,	)	
	)	
Defendants	)	

**TO: THE HONORABLE ALETA A. TRAUGER**

**REPORT AND RECOMMENDATION**

For the reasons stated below the Magistrate Judge recommends that this case be dismissed without prejudice for failure to obtain service of process as required by Federal Rule of Civil Procedure 4(m).

**BACKGROUND**

The Plaintiff proceeding *pro se* filed a complaint against six Defendants and paid the filing fee in the amount of \$400 (Docket Entries 1 and 2) on October 24, 2016. The Clerk mailed the Plaintiff an information packet and service packets also on October 24, 2016, and the matter was referred to me for case management and a report and recommendation on any pretrial motion (Docket Entry 5) on October 27, 2016.

The docket sheet reflected no activity by the Plaintiff through January 31, 2017. At that point I entered an order directing the Plaintiff to show cause within 14 days why I should not recommend that her case be dismissed for failure to obtain service of process within 90 days as required by Federal Rule of Civil Procedure 4(m)

(Docket Entry 8). The record reflects that this order was received through certified mail by the Plaintiff on February 8, 2017 (Docket Entry 10).

As of the date of this report and recommendation the Plaintiff has failed to respond to the show cause order and has not returned any proof that she accomplished service of process on any of the Defendants.

#### **LEGAL DISCUSSION**

The Federal Rule of Civil Procedure 4(m) is quite specific. It provides that if the Defendant is not served within 90 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 the defendant or order that service be made within a specified time.

In this case the complaint was filed on October 24, 2016, and as of the date of this report and recommendation the Plaintiff has not shown service of process. The Plaintiff was given notice and an opportunity to explain why service of process had not been obtained by the Court, and the Plaintiff has provided no information in response to the show cause order.

The Plaintiff has failed to show any cause for not serving the Defendants and has asked for no additional time.

The Court must be able to control its docket and insure that cases are disposed of as promptly as reasonably possible. A case cannot proceed until the Plaintiff serves at least one defendant. The Plaintiff, without explanation, has failed to do so in this case.

**RECOMMENDATION**

For the reasons stated above, the Magistrate Judge recommends that this case be dismissed without prejudice for failure to obtain service of process as required by Federal Rule of Civil Procedure 4(m).<sup>1</sup>

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

**ENTER** this 28<sup>th</sup> day of February, 2017.

/s/ Joe B. Brown  
JOE B. BROWN  
United States Magistrate Judge

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<sup>1</sup>Although the dismissal is without prejudice, the Plaintiff may be barred from refiling if the statute of limitations has run.