

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hernandez v. County of Fresno

Hernandez · No. 1:22-cv-01145-ADA-EPG · Decided August 2, 2023

SUMMARY

The United States District Court for the Eastern District of California granted Plaintiffs' motion to enlarge the time to serve individual defendants in an action alleging failures to prevent and end abuse suffered in foster care. The court extended the service deadline to October 31, 2023, vacated the noticed hearing, and directed the Clerk to add Elizabeth Sandate as a defendant.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 2, 2023
DOCKET	1:22-cv-01145-ADA-EPG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved under Federal Rule of Civil Procedure 4(m) for additional time to serve individual defendants.
STANDARD OF REVIEW	The court exercised its discretion under Federal Rule of Civil Procedure 4(m) to determine whether to extend the time for service.
PRECEDENTIAL VALUE	Unknown
PARTIES	Veronica Hernandez, individually and as guardian ad litem for R.H. and M.H. v. County of Fresno, Christina Lara, Torres, Lakeisha Atkins, Marshunda Harding, Sergio Klassen, Annette Jones, Elizabeth Sandate

TOPICS

service of process

civil procedure

PRACTICE AREAS

civil procedure

civil rights

QUESTIONS PRESENTED

- 1. Whether plaintiffs should receive additional time under Federal Rule of Civil Procedure 4(m) to serve the individual defendants.
- 2. Whether the court may grant an extension of time for service even without a showing of good cause.

HOLDINGS

- 1. The court granted plaintiffs an extension until October 31, 2023, to serve the seven individual defendants.
- 2. The court recognized that Rule 4(m) permits a district court to grant an extension even without good cause and exercised that discretion here.

KEY QUOTATIONS

“Additionally, the rule permits the district court to grant an extension even in the absence of good cause.” (at 2)

FACTUAL BACKGROUND

Veronica Hernandez, individually and as guardian ad litem for two minors, brought claims concerning alleged abuse suffered while the plaintiffs were in foster care. Plaintiffs had not served seven individual defendants and represented that they had been communicating with defense counsel about whether counsel would accept service. Plaintiffs also represented that the case was in its infancy and that an extension would not prejudice defendants or unduly delay the action.

PROCEDURAL HISTORY

Plaintiffs filed a first amended complaint on February 17, 2023, alleging that defendants failed to prevent and end abuse suffered while plaintiffs were in foster care. The individual defendants had not been served, and plaintiffs moved for a 90-day extension. The court granted the motion, vacated the noticed hearing, and extended the service deadline to October 31, 2023.

DISPOSITION

other

CASES CITED

- Efaw v. Williams, 473 F.3d 1038, 1040 (9th Cir. 2007)

OPINION

Hernandez v. County of Fresno

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 EASTERN DISTRICT OF CALIFORNIA

9 10 VERONICA HERNANDEZ, et al., Case No. 1:22-cv-01145-ADA-EPG 11 Plaintiffs,

12 v. ORDER GRANTING PLAINTIFFS' MOTION

TO ENLARGE TIME TO SERVE

13 COUNTY OF FRESNO, et al., INDIVIDUAL DEFENDANTS

14 Defendants. (ECF No. 42) 15 16 17 Plaintiff Veronica Hernandez, individually, and as the
guardian ad litem for Plaintiffs 18 R.H. and M.H., brings this lawsuit alleging that Defendants
failed to prevent and end abuse that 19 Plaintiffs suffered while in foster care. Plaintiffs filed a first
amended complaint on February 17, 20 2023, which, pertinent here, lists as Defendants: Social
Worker Christina Lara, Social Worker 21 Torres, Social Worker Lakeisha Atkins, Social Worker
Supervisor Marshunda Harding, Social 22 Worker Sergio Klassen, Social Worker Supervisor
Annette Jones, and Social Worker Elizabeth 23 Sandate. (ECF No. 25). According to Plaintiffs,
none of these Defendants have been served and 24 thus they move for 90 additional days to serve
them. (ECF No. 40). Plaintiffs argue that there is 25 good cause for an extension, stating that they
have been having discussions with defense counsel 26 about whether counsel would accept service
for these Defendants but they have been unable to 27 confirm whether counsel will do so, no
prejudice will result to Defendants given that this case is 28 in its infancy, and an extension will
not unduly delay this case. 1 Under Federal Rule of Civil Procedure 4(m), "[i]f a defendant is not
served within 90 days 2 after the complaint is filed, the court—on motion or on its own after
notice to the plaintiff—must 3 dismiss the action without prejudice against that defendant or order
that service be made within a 4 specified time." Fed. R. Civ. P. 4(m). However, "if the plaintiff
shows good cause for the failure, the court must extend the time for service for an appropriate
period." Id. "Additionally, the rule 5 permits the district court to grant an extension even in the
absence of good cause." *Efaw v. 6 Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007) (discussing prior,
but materially similar, version of 7 the Rule). 8 The Court will exercise its discretion to grant the
extension. Notably, the non-expert 9 discovery deadline does not expire until February 2, 2024.1
(ECF No. 27). And based on 10 Plaintiffs' representations, they have at least been making an effort
to serve the individual 11 Defendants by having discussions with defense counsel. 12 Accordingly,
IT IS ORDERED as follows: 13

1. Plaintiff's motion to enlarge the time to serve the individual Defendants (ECF No. 42) is
14 granted. 15

2. The hearing noticed for September 11, 2023, on the motion is vacated.

16 3. Plaintiffs shall have an extension until October 31, 2023, to serve Social Worker Christina 17
Lara, Social Worker Torres, Social Worker Lakeisha Atkins, Social Worker Supervisor 18
Marshunda Harding, Social Worker Sergio Klassen, Social Worker Supervisor Annette 19 Jones,
and Social Worker Elizabeth Sandate.2 20 4. This deadline should be considered firm, and no
further extensions will be given absent 21 good cause. 22 \\\ 23 \\\ \\\ 24 \\\ 25 26 1 However, given
the delay in service, the Court will consider modifications to the scheduling order, after 27 the

Defendants are served, based on a properly supported stipulation or motion. 2 The motion lists this Defendant's name as "Elizabeth Sandante"; however, the complaint uses "Elizabeth 28 Sandate." 1 5. The Clerk of Court is directed to add Social Worker Elizabeth Sandate as a Defendant on 2 the docket. 3 4 IT IS SO ORDERED. Dated: _ August 2, 2023 [see hey 6 UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28