

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.

OPINION

Hernandez v. County of Fresno

PER CURIAM.

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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

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