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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Eli Lilly and Company,

Plaintiff,

v.

JOHN DEREK GITMED, FELICIA
GITMED, and ANTHONY POLLINO,
JR.,

Defendants.

No. 1:16-cv-00178-DAD-SAB

ORDER DENYING DEFENDANT’S
MOTION TO DISMISS

(Doc. No. 27)

Plaintiff Eli Lilly and Company commenced this action on February 8, 2016, by filing its complaint against defendants John Derek Gitmed, Holly Gitmed, Felicia Gitmed, and Anthony Pollino, Jr. (Doc. No. 1.) On May 3, 2016, the assigned magistrate judge issued an order granting plaintiff an extension of time until July 8, 2016, in which to serve defendant John Gitmed. (Doc. No. 16.) On July 5, 2016, the magistrate judge granted plaintiff a second extension of time to September 6, 2016 for plaintiff to carrying out service on defendant John Gitmed by. (Doc. No. 24.) On August 2, 2016, plaintiff filed a process receipt and return with the court showing that the United States Marshals Service effectuated service on July 15, 2016 with respect to defendant John Derek Gitmed. (Doc. No. 25.)

On August 3, 2016, defendant John Gitmed filed a motion to dismiss on the grounds that the summons expired prior to his being served. (Doc. No. 27.) Rule 4 of the Federal Rules of


1 Civil Procedure provides that a summons must be served within ninety days after the complaint is
2 filed unless the court finds good cause to extend the time for service. Fed. R. Civ. P. 4(m). On
3 two prior occasions, this court extended plaintiff's time for service after finding good cause to do
4 so. Based on those findings, plaintiff was granted until September 6, 2016 to serve the summons
5 and complaint on defendant John Gitmed. In his motion to dismiss, defendant John Gitmed states
6 that he received the summons on July 13, 2016 (Doc. No. 27 at 2), and the process receipt from
7 the United States Marshals Service indicates he was served July 15, 2016 (Doc. No. 26). In either
8 instance, it is undisputed defendant John Gitmed received the summons prior to the September 6,
9 2016 deadline set by the court's order which was based on a finding of good cause for the delay
10 in carrying out service. (*See* Doc. No. 24.)

11 Accordingly,

- 12 1. Defendant John Gitmed's motion to dismiss the action for insufficient service (Doc.
13 No. 27) is denied;
- 14 2. Defendant John Gitmed shall file a pleading responsive to the complaint within
15 twenty-one days from the date of service of this order; and
- 16 3. Defendant John Gitmed is advised that failure to file a responsive pleading in
17 compliance with this order may result in default being entered against him in this
18 action.

19 IT IS SO ORDERED.

20 Dated: August 8, 2016

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23 UNITED STATES DISTRICT JUDGE
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