

United States District Court  
District of Massachusetts

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JOHN BEATTY,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No.
		)	17-12539-NMG
OCWEN LOAN SERVICING,		)	
		)	
Defendant.		)	
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ORDER

GORTON, J.

This case arises from a dispute over a mortgage foreclosure. Plaintiff John Beatty ("Beatty" or "plaintiff") filed a complaint in Massachusetts Superior Court in November, 2017 against defendant Ocwen Loan Servicing ("Ocwen" or "defendant") which timely removed the action to this Court. On March 20, 2018, this Court entered a default against Ocwen. Ocwen contends that it was not properly served with process and has moved to vacate the entry of default (Docket No. 17) and to dismiss for insufficient service of process under Fed. R. Civ. P. 12(b)(5) (Docket No. 19).

When a defendant challenges the sufficiency of service of process, the plaintiff bears "the burden of proving proper service". Lopez v. Municipality of Dorado, 979 F.2d 885, 887 (1st Cir. 1992). Under the federal rules of civil procedure, if a defendant is not served within 90 days after the complaint is

filed, the court must "dismiss the action without prejudice against that defendant or order that service be made within a specified time". Fed. R. Civ. P. 4(m). If the plaintiff shows good cause for failure, the court "must extend the time for service for an appropriate period". Id.

Plaintiff, who appears pro se, has not asserted good cause for his failure to serve process in a timely manner nor expressly asked for a good-cause extension. Defendant has not, however, shown that it would suffer prejudice if the time for service were extended. See Morales v. Spencer, No. 13-12423, 2014 WL 2003039, \*2 (D. Mass. May 14, 2014) (denying a motion to dismiss under Fed. R. Civ. P. 12(b)(5) and granting plaintiff a 30-day extension in which to serve defendants, noting that it is the practice of this Court to "grant some latitude to pro se plaintiffs who make procedural missteps").

Accordingly, the motion to vacate entry of default (Docket No. 17) is **ALLOWED** and the motion to dismiss for insufficient service (Docket No. 19) is **DENIED WITHOUT PREJUDICE**. The period for service of process of defendant is extended until Friday, August 17, 2018.

**So ordered.**

/s/ Nathaniel M. Gorton  
Nathaniel M. Gorton  
United States District Judge

Dated July 16, 2018