

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, ex rel.)	
FRIEDRICH LU,)	
)	Civil Action 1:18-cv-10105-IT
Plaintiff,)	
)	
v.)	
)	
MARIELENA GAMBOA-RUIZ and)	
TRUSTEES of TUFTS COLLEGE)	
)	
Defendants.)	

ORDER ON PENDING MOTIONS AND SERVICE ISSUES

August 3, 2018

TALWANI, D.J.

On January 18, 2018, Plaintiff Friedrich Lu filed his Complaint [#1] against Defendants Trustees of Tufts College (“Tufts”) and Marielena Gamboa-Ruiz, asserting claims including a claim under the False Claims Act, 31 U.S.C. § 3730, et. seq. Plaintiff also filed a Motion to Seal [#2]. The court granted the Motion to Seal [#2], sealed the case, and delayed issuance of summonses pending the United States’ decision on whether to intervene. See Order [#6].

On April 9, 2018, the United States filed notice that it declined to intervene in this case, see Notice of Election to Decline Intervention [#11], and the following day, April 10, 2018, the court ordered the action unsealed, directed the clerk to issue summonses, and directed Plaintiff to serve the summons and Complaint [#1] upon each Defendant. See Order [#12]. The docket reflects that the case was unsealed, summonses were issued, and copies of the Complaint [#1], Order [#12] and summonses were mailed to Plaintiff that same day. See Docket Entry #14.

Based on the April 10, 2018, issuance of the summonses, service should have been

completed by July 9, 2018. According to Tufts, Tufts received the summons and a copy of the Complaint [#1] on July 11, 2018. Def. Trustees of Tufts College’s Mot. for Extension of Time to Respond to Pl.’s Compl. ¶ 5 [#23]. Tufts’ motion does not contest the timeliness of service, but does seek additional time to prepare briefing in support of a motion to dismiss. Id. ¶ 9 [#23]. As grounds, Tufts states that the Complaint [#1] raises multiple causes of action under federal and state law claims and that Tufts requires additional time to properly brief these claims. Id. ¶ 8 [#23]. The court finds good cause for the extension, and Tufts’ time to respond to the Complaint [#1] is extended to August 17, 2018.

The court turns next to Relator’s Motion for Full Disclosure [#22]. Some background is needed to address this motion. One week after the court issued the Order [#12] unsealing the case and directing Plaintiff to serve the Defendants, Plaintiff filed a document entitled Relator’s Response to Apr 10, 2018 Order [#15]. In that filing, Plaintiff stated that he had been unable to find the case on the public docket. That filing sought no particular court action.

On May 21, 2018, Plaintiff filed his Motion to Reset the Clock [#16]. In that filing, Plaintiff noted that the court had “not acted on [his earlier response], though the court need not, for it was not a motion.” Id. Plaintiff’s May 21 filing sought additional time for service because Plaintiff was unable to find the case on the public docket on April 16, 2018. The court denied the motion, as Plaintiff made no claim that he would be unable to timely serve the summons and complaint in the remaining six weeks of the service period. Elec. Order [#17]. The court also permitted Plaintiff to file a motion for a 30 day extension of time to complete service “[i]n the event that Plaintiff is unable to serve Defendants with the summons and complaint by July 10, 2018.” Id.

On July 10, 2018, Plaintiff filed a Motion to Extend Time to Serve [#19]. Plaintiff did not state that he had made any attempt to serve Gamboa-Ruiz before July 10, or provide any

cause for failing to complete service, despite the requirements of Federal Rules of Civil Procedure 4(m)-(l) and District of Massachusetts Local Rule 4.1(m), which require a plaintiff requesting additional time for service to demonstrate good cause for the failure to serve within the 90-day period. Accordingly, the motion was denied. Elec. Order [#20]. The denial again was without prejudice, but Plaintiff was directed that any motion for additional time for service shall be supported by a showing of good cause. Id.

Rather than explaining any grounds for the delay in service, Plaintiff expressly declined to file such a motion, and instead demands “full disclosure” regarding the court’s unsealing of the record, charging “one irregularity after another.” Relator’s Mot. for Full Disclosure [#22]. The court has no information as to why Plaintiff’s search of the docket at the court’s public terminal was unsuccessful, and has identified no irregularities by the court or the clerk’s office. It may be that Plaintiff typed Defendant’s name incorrectly or that he is mistaken as to the date of the search: April 16, 2018, was a court holiday so no search could have been conducted at the court’s public terminal on that date. In any event, Relator’s Motion for Full Disclosure [#22] is denied as frivolous.

Under Federal Rule of Civil Procedure 4(m), “[i]f a 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 that defendant or order that service be made within a specified time.” The court hereby gives Plaintiff notice that the action will be dismissed as to Defendant Gambia-Ruiz if proof of service is not filed by August 31, 2018.¹

¹ In its motion, Tufts asked for the same response date for Defendant Gamboa-Ruiz. Def. Trustees of Tufts College’s Mot. for Extension of Time to Respond to Pl.’s Compl. at 2 [#23]. Defendant Gambia-Ruiz, if she so elects, may of course waive service of process and respond together with Defendant Tufts to avoid further delays in this action.

Accordingly, for the foregoing reasons,

1. Defendant Trustees of Tufts College's Motion for Extension of Time to Respond to Plaintiff's Complaint [#23] is ALLOWED. Tufts shall file its response to Plaintiff's Complaint [#1] by August 17, 2018.
2. Relator's Motion for Full Disclosure [#22] is DENIED as frivolous.
3. If Plaintiff seeks to proceed against Defendant Gambia-Ruiz, he shall serve and file a proof of service by August 31, 2018, unless Gambia-Ruiz waives service by filing a response to the Complaint [#1].

IT IS SO ORDERED.

Date: August 3, 2018

Indira Talwani
United States District Judge