

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANDI ZEKTHI,)	
)	
Plaintiff,)	
)	
v.)	No. 4:16 CV 1215 CDP
)	
PERFORMANT RECOVERY, INC.)	
et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before me for *sua sponte* review under Rule 4(m), Federal Rules of Civil Procedure.

Plaintiff Andi Zekthi originally brought this action against defendant Performant Recovery, Inc., raising claims under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*, and the Telephone Consumer Protection Act, 47 U.S.C. § 227, as well as various state law claims. Summons issued, and Zekthi timely served the defendant. Performant Recovery’s responsive pleading was due no later than August 24, 2016. On August 24, however, Zekthi filed an amended complaint, adding Performant Technologies, Inc., as a defendant. At the time Zekthi filed the amended complaint, Performant Recovery had neither entered an appearance nor responded to the original complaint.

Under Fed. R. Civ. P. 4(m) (rev. 2015), the Court, after notice to the plaintiff,

is directed to dismiss an action against a defendant upon whom service has not been made within ninety days after the filing of the complaint. Adding a new party through an amended complaint initiates a new ninety-day timetable for service upon the added defendant. 4B Charles Alan Wright, et al., *Federal Practice and Procedure* § 1137 (4th ed. 2015). Accordingly, the Rule 4(m) period for service of the amended complaint upon newly added defendant Performant Technologies expires in this matter on November 22, 2016.

Defendant Performant Recovery, however, was previously served with the original complaint and is not a newly added defendant. There is no indication in the file as to whether (or when) Performant Recovery was served with the amended complaint. Since Performant Recovery had not yet entered on the original complaint, I will give Zekthi ninety days from the filing of the amended complaint by which to effectuate service on this defendant. Under Fed. R. Civ. P. 15(a)(3), however, Performant Recovery will have only fourteen days from service within which to answer or otherwise respond to the amended complaint.¹

Accordingly,

IT IS HEREBY ORDERED that plaintiff shall cause service of the amended complaint to be effected upon defendants Performant Recovery, Inc., and Performant Technologies, Inc., not later than **November 22, 2016**. In the

¹ Summons issued on the amended complaint to Performant Recovery must state this time period within which it must appear and defend. Fed. R. Civ. P. 4(a)(1)(D).

absence of good cause shown, failure to effect timely service shall result in the dismissal without prejudice of plaintiff's claims against any unserved defendant.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 20th day of September, 2016.