

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
ROBERT HILTON,	:	
	:	
Plaintiff,	:	
	:	23 Civ. 3517 (JPC)
-v-	:	
	:	<u>ORDER OF SERVICE</u>
TD BANK <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X		

JOHN P. CRONAN, United States District Judge:

Plaintiff Robert Hilton, of Arverne, New York, brings this *pro se* action invoking the Court's federal question jurisdiction and asserting what appear to be violations of his federal constitutional rights. In his Amended Complaint, Dkt. 5, Plaintiff seeks damages and sues the following defendants: (1) TD Bank; (2) Allied Universal ("AU"); (3) "Duncan," an AU supervisor; (4) "Lucas," a person in charge of "Allied Operations"; (5) "Scott," also an AU supervisor; and (6) "Steve," a TD Bank manager.¹ The Court construes Plaintiff's Amended Complaint as asserting claims under the Family Medical Leave Act of 1993 ("FMLA") as well as claims under state law.

By Order dated April 27, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. As discussed below, the Court: (1) directs service of the Amended Complaint, Dkt. 5, on TD Bank and AU; (2) directs counsel for TD Bank and AU to provide to Plaintiff and the Court the full identities and service addresses of Defendants "Duncan," "Lucas," "Scott," and "Steve"; and (3) denies Plaintiff's application for the Court to

¹ Plaintiff's Amended Complaint is the operative pleading for this action. Dkt. 5.

request *pro bono* counsel, Dkt. 4, without prejudice to Plaintiff's filing another such application at a later date.

I. Discussion

A. Service on TD Bank and AU

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (requiring the court to order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service of the Amended Complaint, Dkt. 5, on TD Bank and AU through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of those defendants. The Clerk of Court is further instructed to issue a summons for each of those defendants and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service of the Amended Complaint, Dkt. 5, on those defendants.

If the Amended Complaint, Dkt. 5, is not served on those defendants within ninety days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within ninety days of the date the original complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the Amended Complaint until the Court reviewed the Amended Complaint and ordered that summonses be issued. The Court therefore extends the time to serve until ninety days after the date that summonses are issued.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. Defendants “Duncan,” “Lucas,” “Scott,” and “Steve”

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying unidentified defendants. 121 F.3d 72, 76 (2d Cir. 1997). In the Amended Complaint, Dkt. 5, Plaintiff supplies sufficient information to permit TD Bank and AU to fully identify Defendants “Duncan,” “Lucas,” “Scott,” and “Steve,” and to provide their service addresses. As alleged, “Duncan” is an AU supervisor assigned to 501 Seventh Avenue, New York, New York; “Lucas” is a person in charge of “Allied Operations” and is assigned to 501 Seventh Avenue, New York, New York; “Scott” is also an AU supervisor assigned to 501 Seventh Avenue, New York, New York; and “Steve” is a TD Bank manager assigned to 1470 Second Avenue, New York, New York.

It is therefore ordered that counsel for TD Bank and AU ascertain the full identities and service addresses of Defendants “Duncan,” “Lucas,” “Scott,” and “Steve.” Counsel for TD Bank and AU must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file a second amended complaint naming the newly fully identified defendants and providing their service addresses. The second amended complaint will replace, not supplement, the original and amended complaints. A second amended complaint form that Plaintiff should complete is attached to this Order. Once Plaintiff has filed a second amended complaint, the Court will screen it and, if necessary, issue an order directing service on the newly fully identified defendants.

C. Application for the Court to Request *Pro Bono* Counsel

The factors to be considered in ruling on an indigent litigant’s request for counsel include the merits of the case, his efforts to obtain a lawyer, and his ability to gather the facts and present the case if unassisted by counsel. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). Of these, the merits is “[t]he factor which command[s] the most attention.” *Cooper*, 877 F.2d at 172. Even if a court does believe that a litigant should have a free lawyer, under the IFP statute, a court has no authority to “appoint” counsel, but instead, may only “request” that an attorney volunteer to represent a litigant. *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 301-10 (1989).

Because it is too early in the proceedings for the Court to assess the merits of Plaintiff’s claims, the Court denies Plaintiff’s application for the Court to request *pro bono* counsel, Dkt. 4, without prejudice to Plaintiff’s filing another such application at a later date.

II. Conclusion

The Court directs the Clerk of Court to mail an information package to Plaintiff.

The Court also directs the Clerk of Court to issue summonses for TD Bank and Allied Universal; complete USM-285 forms with the service addresses of those defendants; and deliver all documents necessary to effect service of the Amended Complaint, Dkt. 5, on those defendants to the U.S. Marshals Service.

The Court further directs the Clerk of Court to mail a copy of this order and the Amended Complaint, Dkt. 5, to TD Bank and Allied Universal at the addresses listed below.

A second amended complaint form is attached to this order.

The Court denies Plaintiff's application for the Court to request *pro bono* counsel, Dkt. 4, without prejudice to Plaintiff's filing another such application at a later date.

SO ORDERED.

Dated: May 22, 2023
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", is written over a horizontal line.

JOHN P. CRONAN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. TD Bank
2035 Limestone Road
Wilmington, Delaware 19808
2. Allied Universal
Eight Tower Bridge
161 Washington Street, Suite 600
Conshohocken, Pennsylvania 19428

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

____ CV ____
(Include case number if one has been
assigned)

**SECOND AMENDED
COMPLAINT**

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you need more
space, please write "see attached" in the space above and
attach an additional sheet of paper with the full list of
names. The names listed above must be identical to those
contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

_____.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence:

Date(s) of occurrence:

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

[illegible]

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

_____		_____	
Dated		Plaintiff's Signature	

First Name	Middle Initial	Last Name	

Street Address			

County, City		State	Zip Code

Telephone Number		Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.