

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

KEESYA D. ROSS,	:	
	:	
Plaintiff,	:	Case No. 3:13cv00038
	:	
vs.	:	District Judge Timothy S. Black
	:	Magistrate Judge Sharon L. Ovington
TELEPERFORMANCE USA, INC., et al.,	:	
	:	
Defendants.	:	
	:	

ORDER AND NOTICE TO PLAINTIFF

Plaintiff Keesya D. Ross filed this case pro se on February 6, 2013. She was granted leave to proceed *in forma pauperis*. Service of process was temporarily held pending the Court's initial review of the Complaint as required by 28 U.S.C. §1915.

Shortly after the Court issued its Decision and Entry concerning the initial review of Plaintiff's Complaint, summons was re-issued and Plaintiff filed a Motion to Amend Complaint. (Doc. #s 8, 9).

Most recently, Plaintiff filed an Application to Clerk for Entry of Default against Teleperformance USA, Inc, et al. (Doc. #10). Plaintiff's Application is premature because the record presently contains no return of service "executed" or some other indication that service of process has been accomplished upon the remaining named defendants. This is no small problem.

“Due process requires proper service of process for a court to have jurisdiction to adjudicate the rights of the parties.” *O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003). Where service has not yet occurred, and time remains for a plaintiff to effect service, entry of default is unwarranted. *See id.* (and cases cited therein); *see also Ohio St. Plumbers & Pipefitters Health & Welfare Fund v. Absolute Air, Inc.*, 2010 WL 3447562 (Aug. 27, 2010)(Deavers, M.J.).

Time remains for Plaintiff to effect service. Under Fed. R. Civ. P. 4(m), a party must effect service of process within 120 days after the Complaint is filed. Because Plaintiff was authorized to effect service on March 8, 2013 (Doc. #8), she has 120 days from that date to accomplish service of summons and Complaint – through the U.S. Marshall – upon the remaining named defendants. Plaintiff is placed on **NOTICE** that, in the event she does not effect timely service of summons and her Complaint, her case may be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

IT IS THEREFORE ORDERED THAT:

Plaintiff’s Application to Clerk for Entry of Default Judgment (Doc. #10) is DENIED and her Motion to Amend Complaint (Doc. #9) remains pending.

April 17, 2013

s/Sharon L. Ovington
Sharon L. Ovington
Chief United States Magistrate Judge