

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

1800 MICHIGAN AVENUE, et al.,

Case No. 2:21-cv-12069

Plaintiffs,

HONORABLE STEPHEN J. MURPHY, III

v.

UNITED STATES SMALL BUSINESS
ASSOCIATION and ISABELLA
CASILLAS GUZMAN,

Defendants.

_____ /

ORDER DISMISSING CASE

On September 3, 2021, Plaintiffs, three LLCs that constitute three locations of the local restaurant Bobcat Bonnie's, sued the United States Small Business Administration ("SBA") and Administrator Isabella Casillas Guzman for failing to disperse COVID-19 relief funds to Plaintiffs from the Restaurant Revitalization Fund. ECF 1. Plaintiffs' equitable estoppel claim sought both declaratory relief and monetary damages. *Id.* at 3–4.

Under Federal Rule of Civil Procedure 4(m), Plaintiffs had to effectuate service no later than December 2021. If Plaintiffs failed to effectuate service, the Court could dismiss the case without prejudice unless Plaintiffs showed good cause for the failure. Fed. R. Civ. P. 4(m).

Plaintiffs filed a certificate of service on the docket that showed Plaintiffs had served both Defendants via certified mail in November 2021. ECF 5. Plaintiffs took no further action and the time for Defendants to respond had long passed. *See* Fed.

R. Civ. P. 12(a)(2). Given the inactivity, the Court issued an order to show cause as to why the case should not be dismissed for Plaintiffs' failure to prosecute the matter. ECF 6. Plaintiffs did not timely respond to the show cause order, but Plaintiffs did request that the Clerk of the Court enter a default with respect to Defendants. ECF 7. The Clerk of the Court denied the request because Plaintiffs failed to comply with Rule 4(i). ECF 8.

Because the SBA is a United States agency and the suit is against Administrator Guzman in an official capacity as an officer of the SBA, ECF 1, PgID 1–2, Plaintiff had to comply with Rule 4(i)(2) to properly serve Defendants rather than Rule 4(c)'s general service of process procedures. Under Rule 4(i)(2), “[t]o serve a United States agency or corporation, or a United States officer . . . sued only in an official capacity, a party must serve the United States *and* also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.” (emphasis added). Proper service of the United States entails sending a copy of the summons and complaint by certified mail to both “the civil-process clerk at the United States attorney’s office” and “to the Attorney General of the United States at Washington, D.C.” Fed. R. Civ. P. 4(i)(1). In lieu of sending a copy by certified mail “to the civil-process clerk at the United States attorney’s office,” a plaintiff could also “deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought,” but a mailing must still be sent to the Attorney General. *Id.* Courts must allow a plaintiff additional time to remedy imperfect service under Rule 4(i)(2) only if the

plaintiff has “served either the United States attorney or the Attorney General of the United States.” Fed. R. Civ. P. 4(i)(4).

Here, Plaintiffs did not demonstrate service upon either the Attorney General or the United States Attorney for the Eastern District of Michigan. *See* ECF 5. Plaintiff therefore failed to serve the United States. And Plaintiffs’ failure does not require the Court to extend time to remedy the imperfect service. Fed. R. Civ. P. 4(i)(4)(A). Because Plaintiffs failed to properly serve Defendants within the time allowed under Rule 4(m) and failed to show good cause by not responding to the Court’s show cause order, the Court will dismiss the case without prejudice. *See also* E.D. Mich. L.R. 41.2.

WHEREFORE, it is hereby **ORDERED** that the case is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: February 16, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 16, 2022, by electronic and/or ordinary mail.

s/ David P. Parker
Case Manager