

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
BHARANIDHARAN PADMANABHAN,)		
MD, PhD,)		
)		
Plaintiff,)		
)		1:15-cv-13297-NMG
v.)		
)		
MAURA HEALEY, STEVEN HOFFMAN,)		
CHRIS CECCHINI, ADELE AUDET,)		
JAMES PAIKOS, LORETTA KISH)		
COOKE, JOHN DOES, and JANE DOES)		
)		
Defendants.)		
_____)	

DEFENDANTS MAURA HEALY, STEVEN HOFFMAN, CHRIS CECCHINI, ADELE AUDET, JAMES PAIKOS AND LORETTA KISH COOKE'S RESPONSE TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT JANE DOE

Now come Defendants Maura Healey, Steven Hoffman, Chris Cecchini, Adele Audet, James Paikos, and Loretta Kish Cooke (collectively “Commonwealth Defendants”) and respectfully respond to Plaintiff’s motion to entry of default against Defendant “Jane Doe”, by providing additional information to the Court that Plaintiff failed to identify the named Defendant other than by a pseudonym, and failed to identify any facts showing the Office of the Attorney General was authorized to accept service for “Jane Doe”:

1. Bharanidharan Padmanabhan, MD PhD, pro se, commenced this action against Commonwealth Defendants in their individual capacity on September 30, 2015.
2. In addition to these named Defendants, Plaintiff also identifies “John Does” and “Jane Does” in the caption of the Complaint.

3. Plaintiff identifies a “Jane Doe” in the allegations of the Complaint as an unknown agent of either the Office of the Attorney General or the Massachusetts State Police. *See* Complaint, ¶ 14
4. The Complaint further alleges that “Jane Doe” was with named Defendant Chris Cecchini, an investigator with the Office of the Attorney General on April 29, 2015 and refused to identify herself. *See* Complaint, ¶¶ 48, 51.
5. On October 1, 2015, Plaintiff served a summons addressed to “Jane Doe” referring to the individual as “Assistant for Chris Cechini on 4/29/2015” by constable on the Office of the Attorney General. *See* Summons attached as Exhibit 1.
6. Plaintiff alleges in his motion that this act constitutes an acceptance of service by the Office of the Attorney General for Defendant “Jane Doe”.
7. However, based on the allegations contained in the Complaint this is insufficient to prove effective service of “Jane Doe” pursuant to Rule 4 of the Federal Rules of Civil Procedure.
8. Rule 4 requires that a summons name the parties and be directed to the defendant. Fed. R. Civ. P. 4(a).
9. Rule 4 further requires that a summons be served upon the individual personally, at their dwelling or usual place of abode or upon an authorized agent. Fed. R. Civ. P. 4(e); Mass. R. Civ. P. 4(d)(1).
10. To the extent that Plaintiff names “Jane Doe” as in her individual capacity as an employee of an agency of the Commonwealth, he must serve both the agency with which she is employed as well as her individually. Fed. R. Civ. P. 4(i)(3); *see also* Mass. R. Civ. P. 4(d)(3).

11. Here, Plaintiff has failed to adequately identify “Jane Doe” and has failed to serve her personally with the summons and complaint.
12. Instead, Plaintiff has simply served the Attorney General’s Office based on his belief that she might be employed by that office.
13. At no point has the Attorney General’s Office waived service for “Jane Doe” or agreed to accept service on her behalf pursuant to Fed. R. Civ. P. 4(d).
14. Accordingly, Plaintiff has failed to effect proper service of the Complaint upon “Jane Doe”.
15. Plaintiff’s motion further seeks that the Commonwealth Defendants be ordered to “reveal the identity of Defendant Jane Doe”.
16. However, Plaintiff fails to cite any legal authority that supports this request.
17. Having commenced this action, Plaintiff is free to engage in discovery through which he may obtain the identity of Jane Doe.
18. In such a case, Plaintiff is free to seek leave from the Court pursuant to Fed. R. Civ. P. 15 to amend the Complaint to substitute the identified party for Jane Doe and to be allowed to serve her with the summons and Complaint.
19. Plaintiff’s attempt to compel the Commonwealth defendants to identify “Jane Doe” based on the limited allegations regarding her identity in the Complaint is improper and has no basis in law.

WHEREFORE, the Commonwealth Defendants respectfully request the Court deny Plaintiff’s motion for entry of default against Defendant Jane Doe.

Respectfully submitted,

MAURA HEALY, STEVEN HOFFMAN,
CHRIS CECCHINI, ADELE AUDET, JAMES
PAIKOS, and LORETTA KISH COOKE,

By their Attorneys,

MAURA HEALEY
ATTORNEY GENERAL

/s/ Mark P. Sutliff
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Date: November 2, 2015

CERTIFICATE OF SERVICE

I, Mark P. Sutliff, Assistant Attorney General, hereby certify that I have this day, November 2, 2015, served the foregoing document upon all parties, by electronically filing to all ECF registered parties and by sending a copy, first class mail, postage prepaid to all unregistered parties.

/s/ Mark P. Sutliff
Assistant Attorney General
Government Bureau/Trial Division

Dated: November 2, 2015