APPENDIX

APPENDIX

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APPENDIX A

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 22a0186p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-1011

[Filed August 12, 2022]

UNITED STATES OF AMERICA and STATE OF MICHIGAN *ex rels.* MOHAMED SY and DOSHAUN EDWARDS, *Relators-Appellants*,	)
v.	)
OAKLAND PHYSICIANS MEDICAL CENTER, LLC, dba Pontiac General Hospital; SANYAM SHARMA, *Defendants-Appellees.*	)

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:18-cv-10458—Nancy G. Edmunds, District Judge.

Decided and Filed: August 12, 2022

Before: GILMAN, GRIFFIN, and THAPAR, Circuit Judges.

COUNSEL

ON BRIEF: Adam S. Akeel, AKEEL & VALENTINE, PLC, Troy, Michigan, for Appellants. Kathleen H. Klaus, Jesse L. Roth, MADDIN HAUSER ROTH & HELLER, P.C., Southfield, Michigan, for Appellees.

OPINION

RONALD LEE GILMAN, Circuit Judge. Mohamed Sy and Doshaun Edwards (the Plaintiffs) brought this qui tam action against their former employer, Oakland Physicians Medical Center, LLC, d/b/a Pontiac General Hospital, and against Sanyam Sharma, the Chief Executive Officer and Chairman of Pontiac General Hospital (the Defendants). The Plaintiffs filed their complaint under seal pursuant to 31 U.S.C. § 3730, giving the United States 60 days to investigate the claims and determine whether to intervene in the case. The government filed several ex parte motions to extend the investigation period, which ultimately spanned two-and-a-half years and ended when the government filed a notice electing not to intervene. The district court unsealed the complaint three days later and ordered the Plaintiffs to serve the Defendants, triggering the 90-day period during which the Plaintiffs were required to effectuate service of process pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. But the Plaintiffs did not serve the Defendants until

approximately 50 days after the time to effect service had expired.

Pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, the Defendants moved to dismiss the amended complaint for insufficient service of process. The court granted the motion, concluding that the Plaintiffs had failed to establish good cause for their delay and declining to grant a discretionary extension of time. For the reasons that follow, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

The Plaintiffs were employed by Pontiac General Hospital (Pontiac) until their termination on November 22, 2017. At that time, Sy served as Pontiac's Director of Nursing, and Edwards served as a Nurse Educator. In December 2017, the Plaintiffs filed separate charges of discrimination—alleging race, gender, and religious discrimination, as well as retaliation, under Title VII—with the Equal Employment Opportunity Commission (EEOC). The EEOC, a year later, declined to pursue the charges and issued "Right to Sue" letters to the Plaintiffs. But neither of the Plaintiffs exercised their right to file a Title VII suit.

While the EEOC charges were pending, however, the Plaintiffs initiated this qui tam action against the Defendants. The action alleged that Pontiac rendered unnecessary patient procedures in order to unduly inflate its Medicare and Medicaid payments. According to the Plaintiffs, this violated the False Claims Act (FCA), 31 U.S.C. § 3729, including Pontiac's alleged retaliation for the Plaintiffs' cooperation with a Center

for Medicare and Medicaid Services audit; Michigan's Medicaid FCA provisions, Mich. Comp. Laws § 400.610a(2); and Michigan's Whistleblower Protection Act, Mich. Comp. Laws § 15.361, *et seq*.

On October 23, 2020, the government declined to intervene in the qui tam action. The district court unsealed the complaint on October 26, 2020, which began the 90-day period for service under Rule 4(m). This led the Plaintiffs to file a stipulation to dismiss all but their FCA retaliation claim and their claim under Michigan's Whistleblower Protection Act, but they did not seek the issuance of a summons. They instead filed an amended complaint on January 14, 2021, setting forth their two remaining claims and adding a claim for retaliation under Michigan's Medicaid FCA, Mich. Comp. Laws § 400.610a(2). The Plaintiffs then sent the amended complaint, without attaching a summons, via certified mail to the Defendants on January 22, 2021 (within the 90-day service period).

The Plaintiffs, however, never got confirmation that the Defendants received the amended complaint. One hundred and twenty-eight days after the seal was lifted, the Plaintiffs realized that no summons had been issued. Upon realizing this oversight, the Plaintiffs sought the issuance of a summons, which was provided on March 4, 2021. The Plaintiffs then served the Defendants with the amended complaint and summons on March 15, 2021, which was approximately 50 days after the 90-day period to effect service of process had already expired.

On April 26, 2021, the Defendants moved to dismiss the amended complaint under Rule 12(b)(5) of the

Federal Rules of Civil Procedure for insufficient service of process. The district court granted the motion, concluding that the Plaintiffs had failed to establish good cause for their delay and declining to grant a discretionary extension of time. In response, the Plaintiffs moved the court to reconsider its original decision, but the court declined to do so. This timely appeal followed.

II. ANALYSIS

A. Standard of review

We review a district court's judgment dismissing a complaint for failure to effect timely service of process under the abuse-of-discretion standard. *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996). "A district court abuses its discretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an[] erroneous legal standard." *Romstadt v. Allstate Ins. Co.*, 59 F.3d 608, 615 (6th Cir. 1995) (citation omitted). We may reverse only if we are "firmly convinced that a mistake has been made, i.e., when we are left with a definite and firm conviction that the trial court committed a clear error of judgment." *United States v. Heavrin*, 330 F.3d 723, 727 (6th Cir. 2003) (citation omitted).

B. The relevant test

Rule 4(m) of the Federal Rules of Civil Procedure sets forth the timeline for effecting service of process, as well as the scenarios that warrant enlarging that timeframe. The Rule states:

> If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Rule 4's service-of-process requirements apply to claims brought under the FCA. *See* 31 U.S.C. § 3730(b)(3) ("The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure."). Thus, once a qui tam action is unsealed, plaintiffs must serve defendants within the 90-day period prescribed by Rule 4.

How a district court should respond to a motion to enlarge the time for service of process depends on the circumstances. If a plaintiff demonstrates good cause for the failure to timely serve process, the court must extend the time for service. Fed. R. Civ. P. 4(m). But absent a finding of good cause, the court retains discretion as to whether or not to enlarge that timeframe. *Henderson v. United States*, 517 U.S. 654, 662 (1996). On appeal, the Plaintiffs in the case before us do not challenge the court's determination that they failed to establish good cause for their delayed service of process. They instead limit their argument to the court's decision to not grant a discretionary extension of time despite the Plaintiffs' lack of good cause. We will therefore focus on whether the court abused its

discretion by declining to enlarge the service-of-process period under these circumstances.

This court has not yet announced a test that district courts should employ when assessing whether to exercise their discretion to enlarge the service-of-process period. The district courts in this circuit, however, including the district court in the present case, have consistently balanced the following five factors:

> [whether] (1) a significant extension of time was required; (2) an extension of time would prejudice the defendant other than the inherent "prejudice" in having to defend the suit; (3) the defendant had actual notice of the lawsuit; (4) a dismissal without prejudice would substantially prejudice the plaintiff; i.e., would his lawsuit be time-barred; and (5) the plaintiff had made any good faith efforts at effecting proper service of process.

Slenzka v. Landstar Ranger, Inc., 204 F.R.D. 322, 326 (E.D. Mich. 2001); *see also In re Ohio Execution Protocol Litig.*, 370 F. Supp. 3d 812, 821 (S.D. Ohio 2019).

Other circuits have looked to the Advisory Committee's note to Rule 4 for guidance. *See Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1305–06 (3d Cir. 1995) ("The Advisory Committee['s] note provides some guidance as to what factors the district court should consider when deciding to exercise its discretion to extend time for service in the absence of a finding of good cause."). The Advisory Committee's note explains

that expanding the service-of-process timeline "may be justified, for example, if the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service." Fed. R. Civ. P. 4(m) (1993) (Advisory Committee's note to 1993 amendment); *see also Morrissey v. Mayorkas*, 17 F.4th 1150, 1160 (D.C. Cir. 2021). Additional factors that courts have mentioned include whether the plaintiff was diligent in correcting the service deficiencies, *Jones v. Ramos*, 12 F.4th 745, 749 (7th Cir. 2021), and whether the plaintiff was a pro se litigant deserving of additional latitude to correct defects in the service of process, *Kurka v. Iowa County*, 628 F.3d 953, 958 (8th Cir. 2010).

Based on the foregoing, we conclude that a district court should consider the following factors when deciding whether to grant a discretionary extension of time in the absence of a finding of good cause:

> (1) whether an extension of time would be well beyond the timely service of process;
>
> (2) whether an extension of time would prejudice the defendant other than the inherent prejudice in having to defend the suit;
>
> (3) whether the defendant had actual notice of the lawsuit;
>
> (4) whether the court's refusal to extend time for service substantially prejudices the plaintiff, i.e., would the plaintiff's lawsuit be time-barred;

> (5) whether the plaintiff had made any good faith efforts to effect proper service of process or was diligent in correcting any deficiencies;
>
> (6) whether the plaintiff is a pro se litigant deserving of additional latitude to correct defects in service of process; and
>
> (7) whether any equitable factors exist that might be relevant to the unique circumstances of the case.

C. The district court did not abuse its discretion

In the present case, the district court applied the five factors that other district courts in this circuit have consistently considered. *See Slenzka*, 204 F.R.D. at 326. The court concluded that, although the applicable statute of limitations would bar the Plaintiffs from refiling their claims, the remaining factors weighed in favor of the Defendants. Specifically, the court concluded that factors two, three, and five weighed in the Defendants' favor. The court reasoned that "an extension may prejudice Defendants in light of the fact that Plaintiffs brought this case as a qui tam action and it remained under seal for over two-and-a-half years" (factor two); that the Defendants did not appear to have had actual notice of the lawsuit (factor three); that "an attempt at mailing the complaint (without a summons) 88 days after unsealing of the complaint does not constitute a good faith effort at effectuating proper service of process" (factor five); and that the Plaintiffs failed to "set forth any explanation for why they waited so long to make this sole attempt at service during the 90-day time period" (also factor five).

In response, the Plaintiffs contend that, because their claims will be time-barred by the applicable statute of limitations, the dismissal of their case substantially prejudices them and warrants an extension. But whether the applicable statute of limitations has run is only one of several factors that a court must consider in deciding whether to grant a discretionary extension of time. Persuasive authority from other circuits concludes that the running of the statute of limitations does not *require* a court to grant a discretionary extension, a conclusion with which we agree. *See Morrissey*, 17 F.4th at 1160; *Jones*, 12 F.4th at 750–51; *Zapata v. City of New York*, 502 F.3d 192, 197–98 (2d Cir. 2007); *Petrucelli*, 46 F.3d at 1306. *But see Thrasher v. City of Amarillo*, 709 F.3d 509, 512 (5th Cir. 2013) ("If the applicable statute of limitations likely bars future litigation, a district court's dismissal of claims under Rule 4(m) should be reviewed under the same heightened standard used to review a dismissal with prejudice." (citation and internal quotation marks omitted)).

We are thus left with the overarching question of whether the district court in the present case made a clear error of judgment in its overall balancing of the factors. Specifically, the Plaintiffs take issue with the court's conclusion that the Defendants lacked actual notice of the Plaintiffs' suit (factor three), and that the Defendants would be prejudiced by that lapse of time (factor two). But the Plaintiffs, in framing the issues, fail to encompass all that the court considered in rendering its decision. So long as the court "clearly weighed, on the record, the impact that a dismissal or an extension would have on the parties before ordering

a dismissal," the court does not abuse its discretion. *Harmon v. Bogart*, 788 F. App'x 808, 810 (2d Cir. 2019); *see also Morrissey*, 17 F.4th at 1160 (affirming the district court's conclusion that, although "the statute of limitations weighed in favor of an extension[,] . . . other factors tipped the balance against an extension").

The record before us demonstrates that the district court weighed the relevant factors and reached a reasonable conclusion, which belies an abuse-of-discretion claim. *See Piper v. Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981) (explaining that, under the abuse-of-discretion standard, "where the court has considered all relevant public and private interest factors [required in a *forum non conveniens* analysis], and where its balancing of these factors is reasonable, its decision deserves substantial deference").

As to actual notice, the district court focused its reasoning on the fact that the Plaintiffs failed to establish that the Defendants had notice of the lawsuit prior to the late service on March 15, 2021. The court also factored in the Plaintiffs' lack of good cause for the delay—the Plaintiffs' "sole attempt at service" was "mailing the complaint (without a summons) 88 days after unsealing." And even then, the Defendants ultimately did not receive notice of the lawsuit until approximately 50 days after the initial 90-day period had already expired.

The district court acknowledged that 50 days was not a "very long time," which, the Plaintiffs argue, demonstrates that the court committed a clear error of judgment. But that was not the end of the court's reasoning. The court took into account the 50-day

length of time and balanced that with the other relevant factors, reasoning that the Plaintiffs' insufficient explanation for that delay (the impact of the COVID-19 pandemic on the United States Postal Service's operations) as well as the Defendants' lack of actual notice outweighed the fact that 50 days was not a "very long time." Further, the court observed that the Plaintiffs "could have brought a motion to extend service [before the 90-day period expired] but failed to do so." A final relevant observation is that the Plaintiffs in this case were not proceeding pro se, meaning that additional latitude in this case is not warranted. Even though the district court did not expressly make this observation, it is another factor that supports the court's determination.

And as to the prejudicial effect of the delay, the Defendants did not make a clear showing that they will suffer actual prejudice, such as the loss of records or the death of a witness. *See, e.g.*, *Nartron Corp. v. Borg Indak, Inc.*, 848 F. Supp. 2d 725, 748 (E.D. Mich. 2012) (listing, in the context of the laches defense, examples of prejudice, such as "a defendant's inability to present a full and fair defense on the merits due to a loss of records, the death of a witness, or the unreliability of memories of long past events" (citation omitted)). The district court nevertheless found that this factor weighed in the Defendants' favor, reasoning that both the "lapse in time"—due in part to the nature of the qui tam action and the extensions sought by the government—and the Plaintiffs' "delay in service," in combination, could prejudice the Defendants. This reasoning, the Plaintiffs argue, demonstrates little

more than "inherent prejudice in having to defend this suit."

But the question before us is whether the district court's analysis under this factor reflects such a clear error of judgment that its reasoning essentially upends the remainder of the court's multi-factor balancing. In general, appellate courts leave it "to the district courts to decide on the facts of each case how to weigh the prejudice to the defendant that arises from the necessity of defending an action after both the original service period and the statute of limitations have passed before service." *Zapata*, 502 F.3d at 198. "[N]o weighing of the prejudices between the two parties can ignore that the situation is the result of the plaintiff's neglect." *Id*. On this record, we cannot conclude that the court engaged in a clear error of judgment.

If the standard of review in this case were de novo, reversal based on an insufficient showing of actual prejudice to the Defendants might be warranted. But prejudice to the Defendants is not the singular or dispositive factor of the analysis and should thus not be considered in isolation. *See Harmon*, 788 F. App'x at 810 (explaining that a court does not abuse its discretion if the record shows that the court "clearly weighed . . . the impact that a dismissal or an extension would have on the parties before ordering a dismissal").

In the present case, although the length of time that passed between the original incident (the termination of the Plaintiffs in 2017) and the unsealing of the complaint was not due to any fault of the Plaintiffs, it was also not due to any fault of the Defendants. And nothing in the record indicates that the Defendants

were evading service. At least one court of appeals has affirmed a district court's finding that the defendants were more likely to be prejudiced than the plaintiffs where the defendants, "through no fault of their own[,] would now have to defend the suit long after the statute of limitations had expired and memories had begun to fade." *Jones v. Ramos*, 12 F.4th 745, 750 (7th Cir. 2021).

Here, more than three years had passed since the Plaintiffs' termination. The same reasoning that the court of appeals upheld in *Jones* is applicable in this case, where the district court found that the lapse of time, plus the Plaintiffs' untimely service of process, would be more likely to prejudice the Defendants. Moreover, the district court in this case observed that because the Plaintiffs never filed a Title VII suit after the EEOC declined to pursue their charges, the Defendants could reasonably have expected no further legal action—at least none arising out of the Plaintiffs' termination.

On balance, the district court considered and weighed the relevant factors, and its analysis did not treat any one factor as dispositive of the outcome. Although the Plaintiffs disagree with how the district court weighed the relevant factors—and even if we might have reached a different result under a de novo standard of review—"mere disagreement [between reasonable jurists] does not amount to an abuse of discretion." *United States v. Dunn*, 728 F.3d 1151, 1159 (9th Cir. 2013). We therefore conclude that the court did not abuse its discretion when it declined to enlarge the service-of-process timeframe.

III. CONCLUSION

For all of the foregoing reasons, we **AFFIRM** the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 18-10458

Honorable Nancy G. Edmunds

[Filed October 18, 2021]

MOHAMED SY and DOSHAUN EDWARDS,	)
Plaintiffs,	)
v.	)
OAKLAND PHYSICIAN MEDICAL CENTER, LLC d/b/a PONTIAC GENERAL and SANYAM SHARMA,	)
Defendants.	)

OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [28]

The matter is before the Court on Defendants' motion to dismiss for insufficient service of process under Federal Rule of Civil Procedure 12(b)(5). (ECF No. 28.) Plaintiffs oppose the motion. (ECF No. 30.) Defendants have replied. (ECF No. 31.) The Court finds

that the decision process would not be significantly aided by oral argument. Therefore, pursuant to Eastern District of Michigan Local Rule 7.1(f)(2), Defendants' motion will be decided on the briefs and without oral argument. For the reasons set forth below, the Court GRANTS Defendants' motion to dismiss.

I. Background

Plaintiffs were employed by Defendant Pontiac General as part of its nursing staff from 2016 until their employment was terminated in November 2017. In December 2017, Plaintiffs filed charges of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging race, gender, and religious discrimination and retaliation under Title VII. (ECF Nos. 28-2, 28-3.) While those charges were still pending, Plaintiff filed this qui tam action on February 8, 2018 under seal. (ECF No. 1.) Plaintiffs did not bring claims under Title VII in this lawsuit, but instead alleged violations of the Federal False Claims Act, Michigan Medicaid False Claims Act, and Michigan's Whistleblowers' Protection Act, as well as a retaliation claim under the Federal False Claims Act. Eventually, in December 2018, the EEOC issued notices finding there was insufficient evidence for it to pursue Plaintiffs' Title VII claims. (ECF No. 28-4.)

On October 23, 2020, the state and federal government filed their notice of intention not to intervene in this case. Three days later, the Court ordered that the complaint be unsealed and served upon Defendants. (ECF No. 21.) On December 24, 2020, Plaintiffs filed a stipulation to dismiss all their claims except for the retaliation claim under the False Claims

Act and the claim under the Whistleblowers' Protection Act. (ECF No. 22.) On January 14, 2021, Plaintiffs filed an amended complaint, bringing those two claims along with their claim under the Medicaid False Claims Act that they had dismissed by stipulation a few weeks earlier and a claim for retaliatory discharge in violation of public policy. (ECF No. 23.)

Plaintiffs have submitted a declaration indicating that a copy of their amended complaint was sent via certified mail to Defendants on January 22, 2021. (ECF No. 30-1.) After monitoring the delivery status for weeks and the USPS tracking website only showing "status not available," Plaintiffs prepared to personally serve Defendants. It was at this point that Plaintiffs realized summons had not yet been requested in this case. On March 3, 2021, Plaintiffs sought the issuance of summons. (ECF No. 24.) And on March 15, 2021, Plaintiffs effectuated service on Defendants. After the parties stipulated to extend the time for a responsive pleading in this case by three weeks, (ECF No. 27), Defendants brought the present motion to dismiss.

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(5), a complaint may be dismissed for "insufficient service of process." The plaintiff is responsible for serving the summons and complaint within the time allowed by Federal Rule of Civil Procedure 4(m). *See* Fed. R. Civ. P. 4(c)(1). Under Rule 4(m),

> [i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must

> dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

This rule applies to False Claims Act cases. *See* 31 U.S.C. § 3730(b)(3). Because such cases are initially filed under seal, however, the 90-day clock does not start until the court unseals the complaint. *See id.*

III. Analysis

Defendants argue that dismissal of this case is appropriate because they were served after more than 90 days from the entry of the order directing Plaintiffs to serve Defendants had passed.[1] Plaintiffs ask the Court to enlarge the time period for service and allow this case to proceed.

Plaintiffs argue that there was good cause for the failure to timely effect service due to the mailing of a copy of the first amended complaint two days prior to the 90-day period expiring. But "the plaintiff's failure to obtain proper service of process, even if inadvertent, is not enough to establish good cause." *See Slenzka v. Landstar Ranger, Inc.*, 204 F.R.D. 322, 324 (E.D. Mich. 2001). Thus, the Court finds Plaintiffs have not met their burden of establishing good cause. Nonetheless,

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[1] Defendants also argue the amended complaint was improperly filed because Plaintiffs did not seek or obtain leave of Court. Because Plaintiffs do not argue that the filing of the amended complaint had any direct impact on the timeliness of the service of process, the Court need not resolve this issue.

"'courts have been accorded discretion to enlarge the [90-day] period even if there is no good cause shown.'" *Id.* at 325 (quoting *Henderson v. United States*, 517 U.S. 654, 662 (1996)). In determining whether to exercise this discretion, the Court considers whether: (1) a significant extension of time was required; (2) an extension would prejudice the defendant in some way other than the inherent prejudice in having to defend the suit; (3) the defendant had actual notice of the suit; (4) a dismissal without prejudice would substantially prejudice the plaintiff, i.e., refiling of the lawsuit would be time-barred; and (5) the plaintiff had made any good faith efforts at effecting proper service of process. *Id.* at 326.

Most of the relevant factors here weigh in favor of Defendants. Defendants were not served until close to 50 days after the 90-day time period for service. While this is not a very long time period, Defendants do not appear to have had actual notice of the lawsuit. Also, an extension may prejudice Defendants in light of the fact that Plaintiffs brought this case as a qui tam action and it remained under seal for over two-and-a-half years. Plaintiffs had filed EEOC charges against Defendants after their termination and those charges were eventually dismissed, so Defendants had reason to believe a lawsuit would not be filed against them after 90 days had passed from the date of the EEOC notices. And an attempt at mailing the complaint (without a summons) 88 days after unsealing of the complaint does not constitute a good faith effort at effectuating proper service of process. Nor do Plaintiffs set forth any explanation for why they waited so long to make this sole attempt at service during the 90-day

time period. Thus, even though refiling of the lawsuit may be time-barred, the Court finds that enlarging the time for service in this case is not appropriate. Accordingly, the Court grants Defendants' motion to dismiss for insufficient service of process.

IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss is GRANTED. This case is dismissed without prejudice.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: October 18, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 18, 2021, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 18-10458

Honorable Nancy G. Edmunds

[Filed October 18, 2021]

MOHAMED SY and DOSHAUN EDWARDS,	)
Plaintiffs,	)
v.	)
OAKLAND PHYSICIAN MEDICAL CENTER, LLC d/b/a PONTIAC GENERAL and SANYAM SHARMA,	)
Defendants.	)

JUDGMENT

In accordance with the Court's opinion and order entered this date,

IT IS ORDERED AND ADJUDGED that Defendants' motion to dismiss is GRANTED, and this case is hereby DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: October 18, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 18, 2021, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 18-10458

Honorable Nancy G. Edmunds

[Filed December 22, 2021]

MOHAMED SY and DOSHAUN EDWARDS,	)
Plaintiffs,	)
v.	)
OAKLAND PHYSICIAN MEDICAL CENTER, LLC d/b/a PONTIAC GENERAL and SANYAM SHARMA,	)
Defendants.	)

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION [34]

On October 18, 2021, the Court granted Defendants' motion to dismiss for insufficient service of process and entered judgment on the order, dismissing this qui tam action without prejudice. (ECF Nos. 32, 33.) Plaintiffs now move for reconsideration under Eastern District of

Michigan Local Rule 7.1(h) and Federal Rule of Civil Procedure 59(e). (ECF No. 34.) For the reasons set forth below, the Court DENIES Plaintiffs' motion for reconsideration.

I. Legal Standard

Under Eastern District of Michigan Local Rule 7.1(h)(1), a party may move for reconsideration of an order within 14 days of the order's issuance. For the motion to succeed, the movant "must not only demonstrate a palpable defect by which the Court and the parties . . . have been misled but also show that correcting the defect will result in a different disposition of the case." E.D. Mich. L.R. 7.1(h)(3). A court generally will not grant a motion for reconsideration that "merely present[s] the same issues ruled upon by the Court, either expressly or by reasonable implication." *Id.*

Federal Rule of Civil Procedure 59(e) authorizes a party to move a court to alter or amend a judgment within 28 days after entry of the judgment. Rule 59(e) motions are generally granted only to: (1) accommodate an intervening change in controlling law; (2) account for new evidence not previously available; or (3) correct a clear error of law or prevent manifest injustice. *See Nagle Indus., Inc. v. Ford Motor Co.*, 175 F.R.D. 251, 254 (E.D. Mich. 1997) (citation omitted).

II. Analysis

Plaintiffs argue reconsideration of the dismissal of this case for insufficient service of process is needed to prevent manifest injustice. Plaintiffs, however, are primarily rehashing the arguments they previously

made in opposition to Defendants' motion to dismiss. A motion for reconsideration is "not the proper vehicle to attempt to obtain a reversal of a judgment by offering the same arguments previously presented." *See id.* at 254 (internal quotation marks and citation omitted). But even if the Court were to consider their arguments, Plaintiffs have not demonstrated a palpable defect by which the Court and the parties were misled or that relief is otherwise warranted under Rule 59(e).

Plaintiffs emphasize they filed an amended complaint after seeking and obtaining the government's consent to dismiss certain claims. But to the extent they suggest service was timely because it was accomplished within 90 days of that filing, the Court notes the filing of an amended complaint does not reset the time for service of defendants named in the original complaint. *See Lee v. Airgas Mid-S., Inc.*, 793 F.3d 894, 898 (8th Cir. 2015); *Bolden v. City of Topeka*, 441 F.3d 1129, 1148-49 (10th Cir. 2006); *Harris v. City of Cleveland*, 190 F.R.D. 215, 218 (N.D. Ohio 1999), aff'd 7 F. App'x 452 (6th Cir. 2001). Thus, the 90-day clock started running when the Court unsealed the original complaint.

Plaintiffs also emphasize they will be prejudiced and argue that the Court's dismissal of this action without prejudice is equivalent to a dismissal with prejudice because all of their claims are now time-barred. However, "when there is no good cause for a plaintiff's failure to comply with [Federal Rule of Civil Procedure] 4(m), 'a district court may in its discretion still dismiss the case, even after considering that the statute of limitations has run and the refiling of an

action is barred.'" *See Winston v. Bechtel Jacobs Co., LLC*, No. 3:13-CV-192-TAV-CCS, 2015 U.S. Dist. LEXIS 31584, at *14 (E.D. Tenn. Mar. 16, 2015) (quoting *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1306 (3d Cir. 1995)); *see also Cardenas v. City of Chicago*, 646 F.3d 1001, 1006-07 (7th Cir. 2011). Moreover, the Court acknowledged this factor in its order but found that several of the remaining factors counsel against enlargement of the time for service in this case. More specifically, it does not appear Defendants had notice of this lawsuit prior to service (even after the complaint was unsealed) and the sole attempt at service was a mailing of the complaint 88 days after unsealing. Aside from general assertions regarding the COVID-19 pandemic, Plaintiffs do not set forth an explanation as to why they waited so long to attempt service. Also, this attempt was prior to expiration of the 90-day period and Plaintiffs could have brought a motion to extend service at the time but failed to do so. And while this case remained under seal for over two and a half years due to the nature of a qui tam action and the extensions obtained by the government to investigate the matter, that lapse in time combined with the delay in service could have a prejudicial effect on Defendants. In sum, even though courts prefer to adjudicate cases on the merits, the Court appropriately found the relevant factors, as a whole, weigh in favor of Defendants and declined to enlarge the 90-day period for service under the circumstances here.

III. Conclusion

For the foregoing reasons, Plaintiffs' motion for reconsideration is DENIED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: December 22, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 22, 2021, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-1011

[Filed September 19, 2022]

UNITED STATES OF AMERICA AND STATE OF MICHIGAN EX RELS. MOHAMED SY AND DOSHAUN EDWARDS,	)
Relators-Appellants,	)
v.	)
OAKLAND PHYSICIANS MEDICAL CENTER, LLC, DBA PONTIAC GENERAL HOSPITAL; SANYAM SHARMA,	)
Defendants-Appellees.	)

O R D E R

BEFORE: GILMAN, GRIFFIN, and THAPAR, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then

was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/_____
Deborah S. Hunt, Clerk

APPENDIX F

31 U.S.C. § 3730 - Civil actions for false claims

(a) Responsibilities of the Attorney General.—

The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by Private Persons.—

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) [1] of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the Parties to Qui Tam Actions.—

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)

(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or

proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam Plaintiff.—

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one

which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [2] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees

and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.—

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)

(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)

(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has [3] knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) Government Not Liable for Certain Expenses.—
The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and Expenses to Prevailing Defendant.—
In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Relief From Retaliatory Actions.—

(1) In general.—

Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2)Relief.—

Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3)Limitation on bringing civil action.—

A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

Fed. R. Civ. P. 4

Rule 4. Summons

(a) Contents; Amendments.

(1) Contents. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) Amendments. The court may permit a summons to be amended.

(b) Issuance. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) Service.

(1) In General. A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) By a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916.

(d) Waiving Service.

(1) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or

general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive. If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) Results of Filing a Waiver. When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) Serving a Minor or an Incompetent Person. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of

process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) United States. To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee 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.

(3) Officer or Employee Sued Individually. To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) Serving a Foreign, State, or Local Government.

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) Territorial Limits of Effective Service.

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(l) Proving Service.

(1) Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) Service Outside the United States. Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) Validity of Service; Amending Proof. Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under

Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

(n) Asserting Jurisdiction over Property or Assets.

(1) Federal Law. The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) State Law. On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.