

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

CYNTHIA BENNETT AND AMANDA MEADS,

Plaintiffs,

v.

Case No. 18-01295-JTM

LUIGI'S ITALIAN RESTAURANT  
AND GIANNI TOPALLI,

Defendants.

**MEMORANDUM AND ORDER**

Plaintiffs Bennett and Meads filed their complaint in this matter on October 21, 2018. (Dkt. 1). A summons was issued to defendants on December 14, 2018. As of March 15, 2019, the court's records did not show that either defendant had been served with the summons and complaint. Plaintiffs were therefore ordered on that date to show cause as to why this matter should not be dismissed for lack of prosecution. (*See* Dkt. 3).

Subsequently, plaintiffs filed returns of service on April 17, 2019 showing that personal service was obtained on defendants Luigi's Italian Restaurant (Dkt. 5) and Gianni Topalli (Dkt. 4) on January 10, 2019. Plaintiffs then filed a response to the court's show cause order and motion for extension of time to file a motion for default judgment. (Dkt. 6, 7). Plaintiffs contend that the returns of service on both defendants were not filed with the court until April 17, 2019 because plaintiffs' counsel was engaged in efforts to resolve this matter with defendants without resorting to further litigation.

While the court appreciates plaintiffs' attempt to resolve this matter directly with defendants, if plaintiffs had simply filed the returns of service as directed by Fed. R. Civ.

P. 4 it would have conserved judicial resources and simplified resolution of the case. Nevertheless, the court finds plaintiffs' response sufficient to satisfy the show cause order and will not, at this time, dismiss the case for lack of prosecution. The court will also allow plaintiffs additional time to file a motion for default.

Plaintiffs' motion to continue for default judgment (Dkt. 7) is GRANTED. Plaintiffs are directed, per their request, to file any motion for default judgment no later than May 31, 2019. If plaintiffs fail to take further action on the case by that date, the court may consider it a failure to prosecute and may dismiss the action pursuant to D. Kan. Rule 41.1.

IT IS SO ORDERED.

Dated this 2<sup>nd</sup> day of May, 2019.

/s/J. Thomas Marten  
THE HONORABLE J. THOMAS MARTEN  
UNITED STATES DISTRICT COURT