

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JEFFERY BATTLE,

Plaintiff

v.

MICROSOFT CORPORATION,

Defendants

Case No. 1:23-cv-01822-LKG

**DEFENDANT MICROSOFT CORPORATION'S
OPPOSED MOTION TO EXTEND TIME TO RESPOND TO COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) and Local Rule 105(9), Defendant Microsoft Corporation (“Microsoft”) hereby respectfully moves the Court for an order extending the time within which Microsoft is required to file a responsive pleading or motion. Good cause exists to extend the responsive pleading or motion deadline because doing so would allow the parties to clarify service, which to date has not been effectuated, to accommodate competing briefing deadlines for the undersigned counsel, and allow Microsoft to investigate and prepare its answer or responsive pleadings. Microsoft has offered to waive service in exchange for the prescribed 60 days, which Plaintiff has declined.

For these reasons and as set forth in the accompanying Memorandum, Microsoft respectfully requests that the Court enter an order extending the time to answer or otherwise respond to the Complaint by sixty (60) days, to December 18, 2023.

[SIGNATURES ON FOLLOWING PAGE]

October 19, 2023

Respectfully submitted,

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*Attorneys for Defendant Microsoft
Corporation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October, 2023, a copy of the foregoing Motion, memorandum of law, and proposed order were served by first class US Mail, postage pre-paid, to:

Jeffery Battle (*pro se*)
P.O. Box 448
Laurel, MD 20725

/s/ Brett Ingerman
Brett Ingerman

CERTIFICATE OF CONFERENCE

Counsel for Microsoft conferred with Plaintiff via email correspondence on October 17 and 18, 2023, and Plaintiff indicated that he was opposed to the relief sought in this Motion. Plaintiff requested that his response be included as follows:

“I filed service of court summons in the proper jurisdiction of Baltimore, Maryland, service to Microsoft's Resident Agent in accordance with the rule, and opposed a 60-day extension. I will only agree to increase my initial 10-day extension recommendation to a 21-day extension. 21-day is what is initially allowed by the court. When you approach the court, please ensure to include my complete language, as written here, as my opposition and response.”

/s/ Daniel L. Tobey
Daniel L. Tobey

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**MEMORANDUM IN SUPPORT OF DEFENDANT’S
OPPOSED MOTION TO EXTEND TIME TO RESPOND TO COMPLAINT**

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) and Local Rule 105(9), Defendant Microsoft Corporation (“Microsoft”) respectfully requests an extension of time to file a responsive pleading or motion to Plaintiff’s Complaint. As explained below, good cause exists to extend the responsive pleading or motion deadline because doing so would allow the parties to clarify service, accommodate competing briefing deadlines for the undersigned counsel, and allow Microsoft to investigate and prepare its answer or responsive pleadings. Microsoft has offered to waive service in exchange for the prescribed 60 days under Federal Rule of Civil Procedure 4(d), which Plaintiff has declined. For these reasons, Microsoft respectfully requests that the Court enter an order extending Microsoft’s time to respond to the Complaint by sixty (60) days, to December 18, 2023.

II. ARGUMENT

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), “the court may, for good cause, extend the time with or without motion or notice if ... a request is made before the original time or its extension expires.” Good cause exists for the Court to grant this Motion.

First, the requested extension would provide the parties the necessary time to clarify service of process, which has not been effectuated, and establish deadlines. Plaintiff has filed separate incomplete proofs of service. *See* Dkts. 11 (unsigned proof of service, complaint not attached to summons) and 14 (proof of service signed by Plaintiff himself and mailed via FedEx).¹ Microsoft has offered to waive service in exchange for the prescribed 60 day extension under Fed. R. Civ. P. 4(d). Plaintiff has been unwilling to participate in a telephone call and would not consent to waiver of service or the requested relief.

Second, the extension would accommodate competing deadlines for the undersigned counsel. Over the coming weeks, the undersigned counsel has dispositive and expert motion deadlines in several other cases.

Third, the requested extension would allow Microsoft and its counsel sufficient time to fully investigate Plaintiff’s claims and prepare a response to the Complaint, either in the form of an answer or a motion under Fed. R. Civ. P. 12(b).

Finally, granting this extension of time will not prejudice Plaintiff or the scheduling of this case in any way. Plaintiff did not attempt to serve Microsoft for the first time until three weeks ago, and this case is still in its inception. Plaintiff has not sought any form of expedited relief.

¹ Out of an abundance of caution, and without waiver of the position that Plaintiff has not effected service, Microsoft has filed this Motion on the date indicated in Docket Entry No. 14, to avoid any claim that its response is untimely.

This is Microsoft's first request for an extension of time. This Motion is filed in good faith and prior to the expiration of the deadline to file a response to Plaintiff's Complaint. This Motion is not intended to delay or obstruct the progress of this case.

Under these circumstances, good cause exists to extend Microsoft's time to respond to the Complaint by sixty (60) days, to December 18, 2023. In requesting an extension of time to respond, Microsoft does not intend to waive any arguments that may be asserted under the Federal Rules of Civil Procedure or other applicable law, including but not limited to challenges based on jurisdiction, venue, or failure to state a claim upon which relief can be granted. *See AMA Sys. v. Vonnice, Inc.*, No. 1:22-cv-00652-JRR, 2022 WL 216715, *3 (D. Md. June 15, 2022) (finding no waiver of 12(b) motions because, "[b]y seeking an extension to respond to the complaint by pleading or motion, Defendants did not seek action by the court as to the merits of any matter....").

III. CONCLUSION

For the foregoing reasons, Defendant Microsoft Corporation respectfully asks the Court to grant its motion to extend its deadline to answer or otherwise respond to Plaintiff's Complaint to December 18, 2023.

October 19, 2023

Respectfully submitted,

By: /s/ Brett Ingerman
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[PROPOSED] ORDER GRANTING MOTION FOR EXTENSION OF TIME

Upon consideration of the Motion for Extension of Time to Respond to the Complaint, filed by Defendant Microsoft Corporation, it is on this _____ day of October, 2023:

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that Defendant Microsoft Corporation's deadline for filing an answer or responsive motion to the Complaint is extended up to and including December 18, 2023.

Lydia Kay Griggsby
United States District Judge