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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**JANE DOE 1, and JANE DOE 2,  
individually and on behalf of others  
similarly situated,**

*Plaintiffs,*

v.

**BLOOMBERG L.P.,**

*Defendant.*

**Case No. 3:19-cv-09471-FLW-TJB**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT BLOOMBERG L.P.'S  
MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO FEDERAL  
RULES OF CIVIL PROCEDURE 12(b)(2), 12(b)(4), and 12(b)(5)**

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Defendant Bloomberg L.P. (“Bloomberg”) hereby submits this memorandum of law in support of its motion to dismiss Plaintiffs’ complaint pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(4), and 12(b)(5).

### **INTRODUCTION AND FACTUAL BACKGROUND**

Dismissal of this action is warranted because of Plaintiffs’ flouting of the obligations set forth in Federal Rule of Civil Procedure 4(a)(1), which, among other things requires that a summons name the parties, be directed to the defendant, and state the name and address of plaintiffs’ attorneys. On April 10, 2019, Plaintiffs filed their putative class action Complaint, setting forth claims against Bloomberg under the Fair Labor Standards Act and various New Jersey wage and hour laws. (*See* Dkt. 1.) The very next day after the Complaint was filed, the Clerk issued a form summons that was pre-filled with the case’s index number, the Clerk’s electronic signature, and this Court’s seal. (*See* Dkt. 2.) The Clerk directed the Plaintiffs to “fill out Defendant and Plaintiffs attorney information and serve.” (*Id.*)

Despite having the form summons and instructions on April 11, 2019, Plaintiffs did nothing to initiate this action until the very last possible day for service. On July 9, 2019, a process server dropped off the Complaint with a civil cover sheet and the form summons at Bloomberg’s offices at 100 Business Park Drive in Princeton, New Jersey. However, Plaintiffs took not even the most basic of steps to ensure that a proper summons was served. The summons is missing the information the Clerk instructed the Plaintiffs to include and the information required by the Federal Rules of Civil Procedure for effective service. (*See* Dkt. 11.) Specifically, the summons contains no party names (misidentifying defendant as “JOHN DOE 1, ET AL,”), is not directed or even addressed to any specific defendant, and does not identify the name or address of Plaintiffs’ attorneys. Further, the summons names the plaintiff as “JANE DOE 2,” despite the Complaint

being filed on behalf of two plaintiffs - Jane Does 1 and 2. As a result, the summons fails to meet the requirements of Rule 4(a)(1).

Plaintiffs' failure to observe Rule 4's requirements leaves this Court without personal jurisdiction over Bloomberg and also renders the Complaint subject to dismissal for insufficient process and insufficient service of process. As such, this Court may not grant Plaintiffs an extension of time to effect proper service, either in its own discretion or under Rule 4(m), because it is without personal jurisdiction from the outset of this case. Even if this Court were able to consider an extension, Plaintiffs would not be able to show that good cause exists as is required under Rule 4(m) or that an extension would be warranted under this Court's discretion. Any extension would be highly prejudicial to Bloomberg because it would likely resuscitate portions of the claims that should be time-barred due to Plaintiffs' attorneys' own disregard for Rule 4. For these reasons, explained more fully below, this Court should dismiss Plaintiffs' Complaint.

## **ARGUMENT**

### **A. The Requirements of Federal Rule of Civil Procedure 4**

Federal Rule of Civil Procedure 4 governs the content, issuance, and service of summonses. Rule 4(a)(1) requires that a summons "(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 – the plaintiff; (D) state the time in 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." FED. R. CIV. P. 4(a)(1).

Rule 4(a)(1)'s requirements governing the contents of a summons serve the purpose of notice but, more importantly, are necessary for a court to obtain personal jurisdiction over a defendant. *See, e.g., Ayers v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 568-69 (3d Cir. 1996) (noting

that “[n]otice of a claim is not sufficient,” and that “[a] summons is process” and holding that a plaintiff’s failure to serve a defendant with a valid summons merited dismissal for lack of personal jurisdiction). Thus, “[i]t is axiomatic that absent strict compliance with Rule 4’s summons and service requirements, ‘a court ordinarily may not exercise power over a party the complaint names as a defendant.’” *Archbold v. Cracker Barrel Old Country Store, Inc.*, No. 3:12-cv-2212, 2013 WL 5272846, at \*3 (M.D. Pa. Sept. 17, 2013) (quoting *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344 (1999) and dismissing for lack of personal jurisdiction where “[i]n the portion of the summons tasking the plaintiff to identify each defendant by name and address, [plaintiff] indicated “SEE COMPLAINT.””).

**B. Dismissal of the Complaint is Warranted Under Federal Rules of Civil Procedure 12(b)(2), 12(b)(4), and 12(b)(5)**

“When a plaintiff fails to properly serve both a summons and a complaint upon named defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure, the action may be dismissed under Rule 12(b)(2) for lack of personal jurisdiction, 12(b)(4) for insufficient process, or 12(b)(5) for insufficient service of process.” *Sunoco v. Mid-Atlantic Region Retailer Compliance Center*, No. 10-4941, 2012 WL 2870871, at \*1 (D.N.J. July 12, 2012) (dismissing case for lack of personal jurisdiction where plaintiff failed to serve a summons despite being given pre-signed summons and being directed to “fill out Defendant and Plaintiffs[‘] attorney information and serve.”).

Plaintiffs’ failure to observe the requirements of Rule 4(a)(1)(A), (B), and (C) – by neglecting to direct the summons to Bloomberg as defendant, by failing to include the parties’ names, and by failing to state the names and addresses of the Plaintiffs’ attorneys – requires dismissal of the Complaint under Federal Rules of Civil Procedure 12(b)(2), 12(b)(4), and 12(b)(5). *See, e.g., Ayres*, 99 F.3d at 570 (dismissing for lack of personal jurisdiction under Rule

12(b)(2) where plaintiff delivered a faulty summons); *Ackerman v. Beth Israel Cemetery Ass'n of Woodbridge, N.J.*, No. 09-1097, 2010 WL 2651299, at \*3 (D.N.J. June 25, 2010) (dismissing case and noting that “[a]n action is properly dismissed under Rules 12(b)(2), (4) and (5) for a defect in process or service of process”); *Dr. Abdul-Ali Muhammad Head of State-Aboriginal Republic of N. Am. Xi-Amaru Indigenous Govt. v. Florence Township Police Dep’t*, No. 15-4812, 2016 WL 5852850, at \*3 (D.N.J. Oct. 4, 2016) (dismissing case pursuant to Rule 12(b)(5) where plaintiff’s process server served a blank summons).

1. Plaintiffs’ Complaint Should be Dismissed for Lack of Personal Jurisdiction Under Fed. R. Civ. P. 12(b)(2)

“In order for a district court to exercise personal jurisdiction over a defendant, in serving a summons all procedural requirements mandated by Federal Rule of Civil Procedure 4 must be followed.” *Miles v. City of Newark*, No. 15-1032, 2016 WL 4923504, at \*2 (D.N.J. Sept. 14, 2016). “[W]hen a summons is *prima facie* defective and violative of Rule 4, ‘such suit should be dismissed under Federal Rule of Civil Procedure 12(b)(2).’” *Archbold*, 2013 WL 5272846, at \*2 (citing *Ayres*, 99 F.3d at 569). Even an otherwise properly issued summons is ineffective in conferring personal jurisdiction if it has not been served in compliance with Rule 4. In *Ayres*, the Court dismissed under 12(b)(2) for lack of personal jurisdiction when the plaintiff served a summons lacking the clerk’s signature and the court’s seal. *Ayres*, 99 F.3d at 570.

The District of New Jersey has followed the same approach. See *Khorozian v. McCullough*, 186 F.R.D. 325, 330 (D.N.J. 1999) (construing *Ayres*, the court found that the plaintiff’s “manufactured” summons and failure to properly serve the defendant merited dismissal for lack of personal jurisdiction); see also *Wright v. Deutsche Bank Nat’l Tr. Co. for Registered Holders of Morgan Stanley ABS Capital Inc. Tr. 2007-HE& Mortg. Pass-Through Certificates, Series 2007 HE7*, No. CV 16-8989, 2018 WL 561841, at \*2 (D.N.J. Jan. 25, 2018) (dismissing for

lack of personal jurisdiction where plaintiff “did not serve [defendants] with summonses – let alone proper summonses – as required by Rule 4”); *Spellman v. Express Dynamics, LLC*, No. 2:15-cv-03257, 2015 WL 4569488, at \*3 (D.N.J. July 28, 2015) (dismissing for lack of personal jurisdiction where plaintiff failed to serve summons signed by the clerk of court); *Sunoco v. Mid-Atlantic Region Retailer Compliance Center*, No. 10-4941, 2012 WL 2870871, at \*2 (D.N.J. July 12, 2012) (dismissing for lack of personal jurisdiction where plaintiff – despite being given a pre-sealed summons and clear instructions by court – failed to serve the summons and holding that “[p]roperly serving a summons that does not comply with Rule 4 for lack of signature or seal fails to confer personal jurisdiction, and a properly issued summons containing signature and seal fails to confer personal jurisdiction if service is not in compliance with the rules.”) (emphasis added).

Courts within the Third Circuit have applied *Ayres* to dismiss cases for lack of personal jurisdiction where the plaintiff – as here – failed to identify the parties or direct the summons to any defendant. For example, the court in *Archbold* dismissed the plaintiff’s complaint pursuant to Rule 12(b)(2) where the summons failed to identify each of the parties, the summons was not directed to any defendant, and the plaintiff failed to obtain a separate summons for each defendant. *Archbold*, 2013 WL 5272846, at \*1. Instead, the plaintiff merely filled out the summons by writing “SEE COMPLAINT.” *Id.* Because of the plaintiff’s failings in completing the summons, the court concluded that that it was “compel[led] to dismiss this action for lack of personal jurisdiction.” *Id.* at \*2.

Like the plaintiff in *Archbold*, Plaintiffs have served Bloomberg with a summons that fails to name the parties and is not directed to the Defendant (*e.g.*, by including Defendant’s name or address), as required by Rule 4(a)(1)(A) and (B). In addition to these failings, Plaintiffs’ attorneys have even neglected to include their own names or addresses in the summons, as required by Rule

4(a)(1)(C). Because the summons is “*prima facie* defective and violative of Rule 4” this suit should be dismissed under Federal Rule of Civil Procedure 12(b)(2). *Archbold*, 2013 WL 5272846, at \*2.

2. *In the Alternative, Plaintiffs’ Complaint Should Be Dismissed Under Fed. R. Civ. P. 12(b)(4) or 12(b)(5)*

Where plaintiffs have failed to follow the requirements of Rule 4(a)(1), this Court has dismissed complaints under Rules 12(b)(4) and 12(b)(5). *See, e.g., Ackerman*, 2010 WL 2651299, at \*3 (dismissing case and noting that “[a]n action is properly dismissed under Rules 12(b)(2), (4) and (5) for a defect in process or service of process”); *Muhammad v. Florence Township Police Department*, No. 15-4812, 2016 WL 5852850, at \*3 (D.N.J. Oct. 4, 2016) (dismissing case pursuant to Rule 12(b)(5) where the “summonses were blank”).

As described at length above, Plaintiffs’ summons fails to comply with the requirements of Rule 4(a)(1)(A), (B), and (C). For this reason, dismissal is independently appropriate under Rules 12(b)(4) and 12(b)(5).

**C. The Lack of Personal Jurisdiction Over Bloomberg Makes Fed. R. Civ. P. 4(m) Inapplicable**

As set forth above, this Court lacks personal jurisdiction over Bloomberg and, thus, Fed. R. Civ. P. 4(m) – which provides for extensions for “good cause” if the plaintiff fails to serve within 90 days – is inapplicable. *See Ayres*, 99 F.3d at 569 (where the plaintiff served defendant with an invalid summons “it becomes unnecessary for the district court to consider such questions as whether service was properly made, or whether an extension to the...service period should be granted under Rule 4(m)”; *Khorozian*, 186 F.R.D. at 330 (dismissing under 12(b)(2) and construing *Ayres* to mean that, as a result, “this Court should not consider whether to grant an extension of the service period”); *Archbold*, 2013 WL 5272846, at \*3 (where plaintiff served summons that did not identify defendants, the court found Rule 4(m) “immaterial” and “serves no

purpose” where “the summons itself is defective and divests the court of personal jurisdiction from the outset”).

Moreover, Plaintiffs could not demonstrate good cause to support such an extension even if the Court had personal jurisdiction over Bloomberg. “Inadvertence of counsel, half-hearted efforts at service which fail to meet the standard, and reliance upon a third party or a process service do not amount to good cause.” *Ackerman*, 2010 WL 2651299, at \*4 (citing *Braxton v. United States*, 817 F.2d 238, 241 (3d Cir. 1987)). Further, “[d]isregard for the ‘technical niceties’ of service of process also does not constitute good cause.” *Id.* (citing *Ayres*, 99 F.3d at 568).

Plaintiffs will not be able to establish good cause. First, Plaintiffs have experienced counsel, who are seeking to represent a class of plaintiffs and are fully capable of complying with the service requirements of the Federal Rules. Second, the Court provided the signed and sealed summons to Plaintiffs’ counsel and even provided clear instructions to fill out the form and serve it on Bloomberg. (*See* Dkt. 2). In these circumstances, Plaintiffs cannot offer any reasonable excuse for the utter disregard to comply with the Federal Rules of Civil Procedure. By failing to comply with Rule 4(a)(1)(A), (B), and (C), Plaintiffs failed to observe more than just the “technical niceties” of service of process; they utterly failed to take any reasonable step to properly serve Bloomberg. *See Ayres*, 99 F.3d at 568 (upholding district court’s finding that plaintiff’s disregard for the technical requirements of Rule 4 did not constitute good cause was “in line with the precedent of this court”). Further, the facts here preclude any plausible argument that there was good cause for such woefully defective service.

**D. The Court Should Not Use Its Discretion to Grant an Extension**

Because the Court lacks personal jurisdiction over Bloomberg, it likewise may not grant Plaintiffs a discretionary extension of time to serve without running afoul of the principles

described in *Ayres*, *Khorozian*, and *Archbold*.<sup>1</sup> Even if it were within the Court's discretion to grant an extension, dismissal would still be appropriate due to the prejudicial effect of an extension on Bloomberg and the utter lack of excuse for Plaintiffs' sloppiness.

In determining whether to grant a discretionary extension, the courts consider "whether the statute of limitations forecloses re-filing of the complaint; the conduct of the defendant, in particular whether the defendant attempted to evade service; the conduct of the plaintiff, specifically whether the plaintiff is represented by counsel; and other equitable reasons for granting relief." *Miles*, 2016 WL 4923504, at \*3. Whether the statute of limitations has run, however, is not a "game-changer" because it is "well recognized that 'the expiration of the statute of limitations does not require the court to extend time for service, as the court has discretion to dismiss the case even if the refiling of the action is barred'". *Id.* (quoting *MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1098 (3d Cir. 1995)). "Moreover, where the complaint was filed at the end of the limitations period, the Court may view the running of the statute of limitations 'in a light less favorable to the plaintiff.'" *Id.* (quoting *Crutchley v. Sun Dog Marina*, No. 10-3737, 2011 WL 6071807, at \*6 (D.N.J. Dec. 5, 2011)). Courts have also considered such factors as prejudice to the defendant in determining whether to grant a discretionary extension. *See Ackerman*, 2010 WL 2651299, at \*4 (noting that, among other factors, courts consider "prejudice to the defendant").

Here, absent an extension, the running of the statute of limitations may extinguish various portions of the claims in this putative class action. Given that the Plaintiffs are not identified by name, Bloomberg has inadequate notice and information to assess what portion of Plaintiffs' claims will be rendered untimely by dismissal of the action. It is clear, though, that some portion of Plaintiffs' claims for back wages will become untimely upon dismissal. This is *precisely why*

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<sup>1</sup> See Section C, *supra* at p. 6-7.

extending the time to serve would be prejudicial to Bloomberg – it could effectively make Bloomberg pay for Plaintiffs’ attorneys’ own disregard for Rule 4. Knowledge of the statute of limitations should have led experienced Plaintiffs’ attorneys to more carefully observe the technical requirements of Rule 4(a)(1). *Cf. Miles*, 2016 WL 4923504, at \*3 (noting that courts view filings at the end of the limitations period “in a light less favorable to the plaintiff”).

Bloomberg, for its part, has not attempted to evade service in any way, shape, or form. Plaintiffs’ attorneys could have requested that Bloomberg waive service under Federal Rule of Civil Procedure 4(d), but did not. Likewise, they could have served Bloomberg at its offices or through its registered agent during any time in the 90-day service period, but chose to wait until the last possible day.

Finally, as indicated above, the Plaintiffs are not *pro se* – they are represented by two experienced firms and by multiple attorneys. There is no reason to excuse their disregard for the requirements of Rule 4(a)(1). Exercising discretion to extend their time would effectively shift the costs of Plaintiffs’ attorneys’ own sloppiness onto Bloomberg, and would only serve to “mock the rules and the guidance given to district courts in weighing procedural missteps.” *Miles*, 2016 WL 4923504, at \*3 (refusing to exercise discretion to extend the time for service, and dismissing the case effectively with prejudice because the statute of limitations had run on plaintiff’s claims).

### **CONCLUSION**

For the foregoing reasons, Defendant Bloomberg L.P. respectfully requests that the Court dismiss Plaintiffs’ Complaint without prejudice and award all other relief as the Court deems just and proper.

Dated: July 30, 2019

Respectfully submitted,

*s/Jennifer L. Del Medico* \_\_\_\_\_

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