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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Alpha Tech International LLC,

10 Plaintiff,

11 v.

12 Dutch Skiver,

13 Defendant.
14

No. CV-20-01581-PHX-MTL

ORDER

15 The Court has considered Defendant Dutch Skiver’s Motion to Strike Notice of
16 Errata and Dismiss Complaint for Insufficient Service of Process. (Doc. 15.) Plaintiff
17 Alpha Tech International LLC filed a responsive brief that moves to strike Defendant’s
18 Motion. (Doc. 19.) Oral argument is not necessary to aid the decisional process. *See* Fed.
19 R. Civ. P. 78(b); LRCiv 7.2(f). The Court’s ruling is as follows.

20 “When a defendant challenges service, the plaintiff bears the burden of establishing
21 that service was valid under Rule 4.” *Zuckerman v. Trump*, No. CV-20-00842, 2020 WL
22 5038583, at *1 (D. Ariz. Aug. 26, 2020) (citing *Brockmeyer v. May*, 383 F.3d 798, 801
23 (9th Cir. 2004)). Plaintiff’s counsel has attempted to serve process in this case on an
24 attorney who represents Defendant in a different case that was filed with the United States
25 Trademark Trial and Appeal Board (the “TTAB Case”). (Doc. 19 at 2.) Defendant’s lawyer
26 in the TTAB Case has not appeared in this case, has disclaimed any authorization to
27 practice in front of this Court, and has indicated that his client has not authorized him to
28 accept service of process in this case. (Doc. 15, Ex. 1.) Despite this, Plaintiff insists that it

1 properly served process by advancing a conclusory argument. That argument is, because
2 the lawyer was authorized to represent Defendant in the TTAB Case, that lawyer is
3 authorized to accept service of process for all other matters. (Doc. 19 at 3–6.) For this
4 proposition, Plaintiff cites no authority.

5 Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure and interpretive cases
6 demonstrate that Plaintiff is mistaken. To constitute an agent for the purposes of service, a
7 person must be “authorized by appointment or by law to receive service of process.” Fed.
8 R. Civ. P. 4(e)(2)(C). This analysis is more nuanced than Plaintiff understands it to be.
9 True, a client will often authorize its attorney to accept service. It is also true that “[s]ervice
10 of process on an attorney not authorized to accept service for his client is ineffective.”
11 *Zherka v. Ryan*, 52 F. Supp. 3d 571, 577 (S.D.N.Y. 2014); *accord Graves v. Republic Nat’l*
12 *Distrib. Co.*, 42 F. Supp. 3d 121, 123 (D.D.C. 2014); *Kline v. Kline*, 221 Ariz. 564, 570
13 ¶ 20 (App. 2009). Defendant has convincingly shown that his TTAB Case attorney was not
14 authorized to accept service of process in this case. Notwithstanding that clearly
15 communicated message, Plaintiff maintained its contrary position.

16 The flaws in Plaintiff’s position do not end there. Implicit in Plaintiff’s argument is
17 the assumption that email constitutes a proper means of service. (Doc. 19 at 6.) “The plain
18 language of Rule 4(e) forecloses the possibility of service by email.” *Mayweather v. Wine*
19 *Bistro, LLC*, No. 2:13-210, 2013 WL 5537312, at *3 (D. Nev. Oct. 4, 2013); *see Hellmich*
20 *v. Mastiff Contracting, LLC*, No. SACV-14-1354, 2014 WL 12855835, at *2 (C.D. Cal.
21 Sept. 26, 2014) (“Rule 4, unlike Rule 5(b), does not provide for ‘electronic service’ by
22 email or otherwise.”). Rule 4(e) does allow Plaintiff to serve process according to Arizona
23 law, the state where this Court is located. *See* Fed. R. Civ. P. 4(e)(1). But Arizona law
24 similarly requires a court order to serve a defendant by way of email. *See* Ariz. R. Civ.
25 P. 4.1(d), (k). Plaintiff has neither sought nor received a court order permitting electronic
26 service in this case, and the means of service provided under Arizona law do not otherwise
27 appear to be impracticable. *See id.* 4.1(k)(1). The Court therefore finds that Plaintiff has
28 failed to properly serve Defendant.

