

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KEVIN DIAZ,

Plaintiff,

v.

ASHLEY JOHNSON, United States Navy,
MICHAEL MYERS, United States Office
of Naval Research, JIM GALAMBOS,
Defense Strategic Technology Office, and
ANDREI IANCU, United States Patent
and Trade Mark Office,

Defendants.

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Civil Action No. 18-cv-11257

ORDER

May 8, 2019

TALWANI, D.J.

On June 15, 2018, Plaintiff Kevin Diaz filed a Complaint [#1] *pro se*. On September 17, 2018, the Magistrate Judge to whom this case was referred granted Plaintiff's Motion for Extension of Time [#9], giving Plaintiff until October 19, 2018, to effectuate service of process on the Defendants. Order [#15]. The Magistrate Judge further ordered Plaintiff, should he be unable to serve process by other means provided by Fed. Rule of Civ. P. 4, to file with the court a detailed explanation of the steps he undertook to effectuate service of process to allow the court to consider whether the circumstances warrant issuing an order to the marshal or deputy marshal to service process pursuant to Rule 4(c)(3). Id. Plaintiff did not respond to the Order [#15] and to date has not filed proof of service upon the Defendants.

On April 29, 2019, the Magistrate Judge issued a Report and Recommendation [#19], recommending that Plaintiff's Complaint be dismissed both because Plaintiff had failed to effectuate service in a timely manner, and because the court does not have subject matter

jurisdiction under the Tucker Act, 28 U.S.C. § 1491, or the Administrative Procedures Act, 5 U.S.C. § 702 *et seq.* R & R [#19]. Plaintiff filed his Response to Recommendation for Dismissal on May 6, 2019. Pl's Resp. [#21].

In his Response, Plaintiff acknowledges that he has not served Defendants, and fails to provide any explanation for his failure to respond to the Magistrate Judge's Order of September 17, 2018. Nor does his Response address the Magistrate Judge's recommendation that Plaintiff's Complaint be dismissed for lack of subject matter jurisdiction.

The court ADOPTS the Magistrate Judge's Report and Recommendation [#19] for the reasons set forth therein. Plaintiff's Complaint [#1] is DISMISSED without prejudice.

IT IS SO ORDERED.

Date: May 8, 2019

/s/ Indira Talwani
United States District Judge