

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KENNETH LEE MCGOWAN,

Plaintiff,

v.

KIRSTJEN M. NIELSEN, et al.,

Defendants.

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Civil Action No. **3:17-CV-1668-L-BK**

ORDER

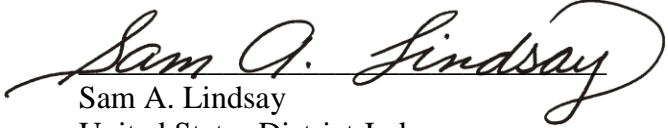
Before the court is Plaintiff’s Motion for Default Judgment (Doc. 13), filed December 11, 2017, and Defendants’ Motion to Dismiss (Doc. 14), also filed December 11, 2017. This action was brought *pro se* by Kenneth Lee McGowan on June 26, 2017 against John F. Kelly, Keith Jones, Chad Tetreault, John Sauer, Leslie Hope, Sue O’Hare, Mark Schwartz, and Larry Turner (“Defendants”).¹ On September 28, 2017, after more than 90 days had passed since Plaintiff filed this action without effecting service on Defendants, the court directed Plaintiff to effect service or show good cause in writing for the failure or inability to effect service by October 27, 2017. (Doc. 5).

¹ Plaintiff previously brought action No. 3:15-CV-1640-M-BH against these Defendants for identical claims arising from the same factual allegations, which was dismissed without prejudice on June 20, 2017 by Chief Judge Barbara M. G. Lynn for failure to timely serve the defendants under Rule 4(m) of the Federal Rules of Civil Procedure. Judgment (Doc. 68). According to the Findings, Conclusions, and Recommendation adopted in that case, Plaintiff McGowan mailed service to Defendants via UPS Ground shipment and, after requesting entry of default judgment, was informed by the Clerk that service did not appear to comply with Rule 4 and was instructed to file a valid return of service. Findings, Conclusions, and Recommendation, No. 3:15-CV-1640-M-BH, 2–3 (Doc. 65). Magistrate Judge Ramirez noted that “Plaintiff had been advised in several orders...how service of process was deficient.” FCR, 3 (Doc. 65). In the action pending before this court, Plaintiff served notice to Defendants by U.S. Postal Service Certified Mail and only received a return of service for Defendant O’Hare, who stated in a declaration that she did not receive the Plaintiff’s complete complaint pursuant to Fed. R. Civ. P. Rule 4(c)(1). Findings, Conclusions and Recommendation, No. 3:17-CV-1668-L-BK (Doc. 19).

On August 9, 2018, United States Magistrate Judge Renée Harris Toliver entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”), recommending that the court deny Plaintiff’s Motion for Default Judgment, grant Defendants’ Motion to Dismiss, and dismiss without prejudice this action.² No objections were filed to the report.

Having reviewed the record in this case, Report, and applicable law, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **dismisses without prejudice** this action for failure to effect proper service.

It is so ordered this 24th day of August, 2018.


Sam A. Lindsay
United States District Judge

² In granting Defendants’ Motion to Dismiss, the magistrate court relied on Defendant’s argument that Plaintiff failed to effect service of process, and did not address Defendant’s other two grounds for dismissal offered in their motion for lack of subject-matter jurisdiction and failure to name proper defendants. *See* Defendant’s Brief in Support of Their Motion to Dismiss (Doc. 15). The court notes that the Report correctly and sufficiently disposes of Defendant’s motion on the basis of insufficient service of process and, therefore, did not need to address these alternative grounds.