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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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DWIGHT O. BROUSSARD,

Plaintiff,

v.

UNITED STATES ARMY MEDICAL  
COMMAND,

Defendant.

**ORDER**

Case No. 2:13-CV-00054

Judge Robert J. Shelby

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This case has been referred to Magistrate Judge Brooke Wells pursuant to 28 U.S.C. § 626(b)(1)(B). Mr. Broussard filed a Motion for Default Judgment, arguing that the United States Army Medical Command failed to respond to his Complaint.<sup>1</sup> The United States opposed the motion, arguing that Mr. Broussard failed to effect service under Federal Rule of Civil Procedure 4(i), which proscribes the rules for service of the United States and its agencies.<sup>2</sup>

Judge Wells issued a Report & Recommendation on October 16, 2014.<sup>3</sup> Judge Wells recommended the court deny the Motion for Default Judgment because Mr. Broussard failed to serve the United States in a manner permitted by the Federal Rules. Judge Wells recommended that Mr. Broussard be given an additional sixty days to effect proper service.

Neither party submitted an objection to the Report & Recommendation within the allotted time frame.<sup>4</sup> In the absence of an objection, the court may apply a “clearly erroneous” standard.

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<sup>1</sup> Dkt. No. 26.

<sup>2</sup> Dkt. No. 27.

<sup>3</sup> Dkt. No. 30.

<sup>4</sup> Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b).

Under this standard, the court “will affirm the Magistrate Judge’s ruling unless it . . . is left with the definite and firm conviction that a mistake has been committed.”<sup>5</sup>

After reviewing the briefing, record, and relevant legal authorities, the court concludes Judge Wells did not err in analyzing Mr. Broussard’s motion. In this respect, the court ADOPTS the Recommendation and DENIES the Motion for Default Judgment.<sup>6</sup>

At the same time, however, the court is mindful of significant delays in this case. Mr. Broussard first filed a Motion for Service of Process on the Office of the Surgeon General of the United States Army Medical Command in November 2013.<sup>7</sup> After his motion was denied, Mr. Broussard experienced difficulty in securing service of process and obtained several extensions. Mr. Broussard then sought default judgment, at which time the United States appears to have received notice of his lawsuit and a copy of the Complaint.<sup>8</sup> Within the past week, the United States moved to dismiss, arguing the court lacks subject matter jurisdiction.<sup>9</sup>

Under such circumstances, an order instructing additional service of process would not promote the “just, speedy, and inexpensive determination” of this dispute.<sup>10</sup> Instead, the court will construe the recent Motion to Dismiss as a waiver of service and will decline the invitation to order Mr. Broussard to effect additional service.<sup>11</sup> Instead, Mr. Broussard may file an opposition, if any, to the United States’ Motion to Dismiss within twenty-eight (28) days of the date of this Order.

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<sup>5</sup> *Thompson v. Astrue*, 2010 WL 1944779, at \*1 (D. Utah May 11, 2010) (internal quotation marks and citations omitted).

<sup>6</sup> Dkt. Nos. 26, 30.

<sup>7</sup> Dkt. No. 16.

<sup>8</sup> See Dkt. No. 27 (discussing allegations in the Complaint).

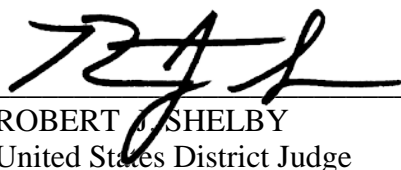
<sup>9</sup> Dkt. No. 32.

<sup>10</sup> Fed. R. Civ. P. 1.

<sup>11</sup> See Fed. R. Civ. P. 12(h).

SO ORDERED this 29th day of December, 2014.

BY THE COURT:



Handwritten signature of Robert J. Shelby in black ink, consisting of stylized initials 'RJS' followed by a horizontal line.

ROBERT J. SHELBY  
United States District Judge