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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Alex Aguilar,)	No. CV 09-1198 PHX-NVW (JRI)
Plaintiff,)	ORDER
v.)	
Lewis, et al.,)	
Defendants.)	

Pending before the court is the Report and Recommendation (“R&R”) of Magistrate Judge Irwin (Doc. # 19) recommending (1) that Count Two of Plaintiff’s Second Amended Complaint be dismissed, without prejudice, for failure to state a claim, (2) that Defendants DeRosa and Cate be dismissed without prejudice, (3) that an answer to Count One of the Second Amended Complaint be required from Defendants Lewis and Mazzola, and (4) that a service order be entered. The Magistrate Judge advised the parties that they had ten days to file objections to the R&R. (R&R at 4 (citing 28 U.S.C. § 636(b)). No objections were filed.

The court has reviewed the R&R and finds that it is well taken. The court will accept the R&R and dismiss Count Two of the Second Amended Claim, dismiss Defendants DeRosa and Cate, and order an answer to Count One of the Second Amended Complaint by Defendants Lewis and Mazzola and order a service order. *See* 28 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate”).

1 IT IS THEREFORE ORDERED that the Report and Recommendation of the
2 Magistrate Judge (Doc. #19) is accepted.

3 IT IS FURTHER ORDERED, pursuant to 28 U.S.C. § 1915A, that Count Two of the
4 Second Amended Complaint (#18) is dismissed without prejudice, for failure to state a claim.

5 IT IS FURTHER ORDERED that Defendants DeRosa and Cate be dismissed without
6 prejudice, pursuant to 28 U.S.C. § 1915A.

7 IT IS FURTHER ORDERED that an Answer to Count One of the Second Amended
8 Complaint (#18) be required from Defendants Lewis and Mazzola.

9 IT IS FURTHER ORDERED that service on Defendants Lewis and Mazzola be
10 ordered, and they be required to respond to the Second Amended Complaint.

11 IT IS FURTHER ORDERED that:

12 (1) The Clerk of the Court shall send Plaintiff a service packet including both
13 summons and request for waiver forms for said Defendants.

14 (2) Plaintiff shall complete and return the service packet to the Clerk of the Court
15 within 20 days of the date of the filing of this Order. The United States Marshal will not
16 provide service of process if Plaintiff fails to comply with this Order.

17 (3) The United States Marshal shall retain the Summons, a copy of such amended
18 complaint, and a copy of this Order for future use.

19 (4) The United States Marshal shall notify said Defendants of the commencement
20 of this action and request waiver of service of the summons pursuant to Rule 4(d) of the
21 Federal Rules of Civil Procedure. The notice to Defendants shall include a copy of this
22 Order. The Marshal shall file waivers of service of the summons or requests for waivers
23 that were returned as undeliverable as soon as they are received. If a waiver of service of
24 summons is not returned by Defendants within thirty days from the date the request for
25 waiver was sent by the Marshal, the Marshal shall:

26 (a) Personally serve copies of the Summons, such amended Complaint and this
27 Order upon Defendants pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure.

28 (b) Within ten days after personal service is effected, file the return of service

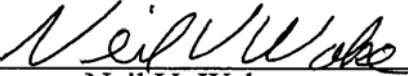
1 for the Defendants, along with evidence of the attempt to secure a waiver of service of the
2 summons and of the costs subsequently incurred in effecting service upon the Defendants.
3 The costs of service shall be enumerated on the return of service form (USM-285) and
4 shall include the costs incurred by the Marshal for photocopying additional copies of the
5 Summons, such amended complaint, or this Order and for preparing new process receipt
6 and return forms (USM-285), if required. Costs of service will be taxed against the
7 personally served Defendant pursuant to Rule 4(d)(2) and (5) of the Federal Rules of
8 Civil Procedure, unless otherwise ordered by the Court.

9 **(5) Defendants who agree to waive service of the Summons and such amended**
10 **complaint shall return signed waiver forms to the United State Marshal, and not to**
11 **Plaintiff.**

12 (6) Said Defendants shall answer such amended complaint or otherwise respond by
13 appropriate motion within the time provided by the applicable provisions of Rule 12(a) of
14 the Federal Rules of Civil Procedure.

15 (7) Any answer or responsive pleading shall state the specific Defendant(s) by
16 name on whose behalf it is filed. The Court may strike any answer, responsive pleading,
17 or other motion or paper that does not identify the specific Defendant(s) by name on
18 whose behalf it is filed.

19 DATED this 28th day of October, 2009.

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Neil V. Wake
United States District Judge
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