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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Richard Theodore Fifer,)	
)	
Plaintiff,)	No. CIV 10-1727-PHX-RCB (JRI)
)	
vs.)	O R D E R
)	
City of Phoenix, <i>et al.</i>)	
)	
Defendants.)	

On February 16, 2011, the Magistrate Judge filed an Order and Report and Recommendation ("R&R") (Doc. 16). The Magistrate Judge granted plaintiff's motion to file a second amended complaint ("SAC"),¹ and recommended that counts II and III of that SAC be

¹ For clarification, the court notes that the Magistrate Judge's Order and R&R refers to "Plaintiff's Motion to Amend, filed January 27, 2011 (Doc. 13)." Doc. 16 at 1:11-12 (emphasis added). Because that motion was unsigned, the Magistrate Judge properly ordered plaintiff to file a signed copy of that motion within 14 days, "after which th[at] motion [doc. 13] w[ould] be stricken." Doc. 14 at 1:23-25. Plaintiff complied with that order and on February 11, 2011, timely filed a signed "Motion for Leave to Submit Second Amended Complaint" (doc. 15). That motion is identical to docket 13, except it is signed and does not include a copy of the proposed SAC, which had previously been filed as an attachment to the original motion to amend (doc. 13-1).

In light of this history, although the Magistrate Judge's order refers to docket 13 when he granted plaintiff's motion to amend, clearly he meant to refer to docket 15 - the signed motion to amend. In accordance with the Magistrate

1 dismissed without prejudice as to defendant City of Phoenix. R&R
2 (Doc. 16) at 5:24-26. He further recommended that defendants
3 McCraw, Friedman, and Maricopa County be required to answer counts
4 I and IV of the SAC. Id. at 5:27-6:1.

5 In that R&R, the Magistrate Judge specifically instructed the
6 parties that, pursuant to Fed. R. Civ. P. 72, they "shall have
7 fourteen (14) days from the date of service of a copy of this
8 recommendation within which to file specific written objections
9 with the Court. Id. at 7:20-22. None of the parties have filed
10 objections to that R&R, and the fourteen day time frame for so
11 doing has passed.²

12 When reviewing an R&R issued by a Magistrate Judge, this court
13 "may accept, reject, or modify, in whole or in part, the findings
14 or recommendations made by the magistrate judge." 28 U.S.C.
15 § 636(b)(1). Only if an objection is made, must this court conduct
16 a *de novo* review of the Magistrate Judge's findings and
17 recommendations. Wang v. Masaitis, 416 F.3d 992, 1000 (9th Cir.
18 2005). That is because "[n]either the Constitution nor the
19 [Federal Magistrates Act] requires a district judge to review, *de*
20 *nov*o, findings and recommendations that the parties themselves
21 accept as correct." United States v. Reyna-Tapia, 328 F.3d 1114,
22 1121 (9th Cir. 2003) (en banc) (citations omitted). Indeed,

23 _____
24 Judge's order, that motion has been granted. Doc. 16 at 1:5:18-19. The docket
should so reflect.

25 Additionally, evidently because plaintiff did not include a copy of the SAC
26 as an attachment to his signed motion to amend, the Magistrate Judge ordered the
filing of docket 13-1 -- the proposed SAC which was attached to the unsigned
27 motion. Id. at 5:20-21. That document serves as the SAC and was the subject of
the pending R&R.

28 ² This takes into account the additional three days allotted to
plaintiff in accordance with Fed. R. Civ. P. 6(d) because, as the docket sheet
indicates, the R&R was served upon him by mail.

1 construing the Federal Magistrates Act, the Supreme Court has found
2 that that "statute does not on its face require any review at all,
3 by either the district court or the court of appeals, of any issue
4 that is not the subject of an objection." Thomas v. Arn, 474 U.S.
5 140, 149, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). Consistent with
6 the foregoing authority, except to clarify the procedural posture
7 of this action, the court has not conducted a review of the pending
8 R&R because no objections were filed.

9 Accordingly,

10 IT IS ORDERED that the Magistrate Judge's Report and
11 Recommendation (Doc. 16) is ACCEPTED in its entirety.

12 DATED this 20th day of April, 2011.

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Robert C. Broomfield
Senior United States District Judge

Copies to plaintiff *pro se* and counsel of record