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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Chuks Odigwe,

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No. CV-11-2396-PHX-SMM (BSB)

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Plaintiff,

)

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v.

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ORDER

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National Mentor Healthcare LLC, et al.,

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Defendants.

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15 This case is on appeal at the Ninth Circuit Court of Appeals. (See Ninth Circuit Court
16 of Appeals Docket No. 13-17067.) Plaintiff is appealing judgment in favor of Defendants and
17 terminating his complaint. (Docs. 148, 149.) Generally, the filing of a notice of appeal
18 divests the district court of jurisdiction over the matters appealed. See Gould v. Mut. Life Ins.
19 Co. of New York, 790 F.2d 769, 772 (9th Cir. 1986). However, an appeal from the merits
20 does not foreclose an award of attorney’s fees by the district court. See Masalosalo by
21 Masalosalo v. Stonewall Ins. Co., 718 F.2d 955, 956 (9th Cir. 1983).

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23 Subsequent to Magistrate Judge Mark Aspey’s final ruling and Plaintiff’s notice of
24 appeal, Defendants moved for attorney’s fees and expenses. (Doc. 153.) Even though Judge
25 Aspey recognized that recusal will result in a sixth judge being assigned to this matter, Judge
26 Aspey recused himself from further proceedings when, without a factual basis, Plaintiff
27 accused him of misconduct. (Docs. 157, 158.) Magistrate Judge Bridget Bade was assigned
28 to handle the matter. (Doc. 158.) Plaintiff then moved to rescind his consent to magistrate
judge jurisdiction. (Doc. 159.)

Pending before the Court is Judge Bade’s Report and Recommendation

1 recommending that Plaintiff’s motion rescinding consent for a Magistrate Judge to preside
2 over this case be denied. (Doc. 160.) Plaintiff objects to the Report and Recommendation.
3 (Doc. 161.) After considering the Report and Recommendation and the arguments raised in
4 Plaintiff’s Objection, the Court will deny Plaintiff’s objection and affirm Judge Bade’s
5 Report and Recommendation.

6 **STANDARD OF REVIEW**

7 When reviewing a Magistrate Judge’s Report and Recommendation, this Court “shall
8 make a *de novo* determination of those portions of the report . . . to which objection is made,”
9 and “may accept, reject, or modify, in whole or in part, the findings or recommendations
10 made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C); see Thomas v. Arn, 474 U.S. 140,
11 149-50 (1985); see also Wang v. Masaitis, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). To the
12 extent that no objection has been made, arguments to the contrary have been waived. Fed.
13 R. Civ. P. 72; see 28 U.S.C. § 636(b)(1) (objections are waived if they are not filed within
14 fourteen days of service of the Report and Recommendation).

15 **DISCUSSION**

16 Plaintiff objects to Magistrate Judge Bade’s Report and Recommendation which
17 recommended that Plaintiff’s motion rescinding consent for a Magistrate Judge to preside
18 over this case be denied. (Doc. 161.) Plaintiff’s reasons for rescinding consent focus on his
19 contention that Judge Aspey’s rulings were partial toward the Defendants. (Id.) Plaintiff
20 also objected to Judge Voss’s handling of the merits of his complaint again along partiality
21 grounds. (Id.)

22 As previously noted, the merits of Plaintiff’s case will be reviewed and decided by the
23 Ninth Circuit Court of Appeals. The only part of Plaintiff’s case that remains before Judge
24 Bade is Defendants’ motion for attorney’s fees. Plaintiff seeks to rescind consent for
25 Magistrate Judge Bade to rule on this motion. Judge Bade conducted a thorough review of
26 the matter setting forth the legal standard for vacating consent requiring that Plaintiff
27 establish extraordinary circumstances. See Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993).
28 Judge Bade found that Plaintiff’s dissatisfaction with the Magistrate Judge’s rulings did not

1 constitute an extraordinary circumstance and therefore did not rescind his consent.

2 Having reviewed the legal conclusions of the Report and Recommendation of the
3 Magistrate Judge, and Plaintiff's objections, the Court finds that the Magistrate Judge
4 adequately addressed all of Plaintiff's arguments. Therefore, the Court will approve,
5 incorporate and adopt the Magistrate Judge's Report and Recommendation.

6 **CONCLUSION**

7 For the reasons set forth above,

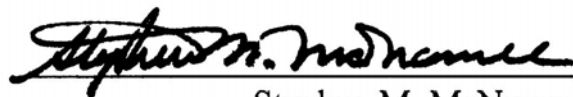
8 **IT IS HEREBY ORDERED** approving, incorporating, and adopting the Report and
9 Recommendation of Magistrate Judge Bridget Bade. (Doc. 160.)

10 **IT IS FURTHER ORDERED** denying Plaintiff's Objection to Magistrate Judge's
11 Report and Recommendation. (Doc. 161.)

12 **IT IS FURTHER ORDERED** denying Plaintiff's motion to rescind consent for a
13 Magistrate Judge to Preside over this case. (Doc. 159.)

14 **IT IS FURTHER ORDERED** that the Clerk of Court forward a copy of this Order
15 to the Ninth Circuit Court of Appeals.

16 DATED this 1st day of May, 2014.

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20 Stephen M. McNamee
21 Senior United States District Judge
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