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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA
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12 Branden Adkins, *et al.* }

13 Plaintiffs, }

14 vs. }

15 Corrections Corporation of
16 America, *et al.* }

17 Defendants. }

CV-12-1615-PHX-RCB(JFM)

O R D E R

18 Currently pending before the court is the Report and
19 Recommendation of United States Magistrate Judge James F.
20 Metcalf ("R & R") (Doc. 14), wherein he makes three
21 recommendations with respect to plaintiffs' First Amended
22 Complaint ("FAC") (Doc. 8). Objections have been filed as to
23 only one of those recommendations. More specifically,
24 pursuant to 28 U.S.C. § 1915A, the Magistrate Judge
25 recommends dismissal without prejudice as to defendants John
26 Ioane and the State of Hawaii ("SOH"). R & R (Doc. 14) at
27 5:3-4. However, those two defendants, making a "special
28 appearance . . . for purposes of responding" to the R & R,

1 are requesting that this court "amend the [R & R] and not
2 dismiss them from this action." Resp. (Doc. 29) at 1:13-15
3 (emphasis omitted); and at 6:8-10 (emphasis in original).

4 The R & R was filed and served upon the parties on
5 November 27, 2012. The R & R explicitly advised the parties
6 that, pursuant to Fed.R.Civ.P. 72, they "shall have fourteen
7 (14) days from the date of service of a copy of this
8 recommendation within which to file specific written
9 objections with the Court." Id. at 5:25-27. Defendants
10 Ioane and the SOH timely filed a response to that R & R, as
11 indicated. No other objections have been filed.

12 When reviewing an R & R, this court "may accept, reject,
13 or modify, in whole or in part, the findings or
14 recommendations made by the magistrate judge." 28 U.S.C.
15 § 636(b)(1); see also Fed.R.Civ.P. 72(b) ("The district judge
16 may accept, reject, or modify the recommended decision,
17 receive further evidence, or recommit the matter to the
18 magistrate judge with instructions.") "Of course, de novo
19 review of a R & R is only required when an objection is made
20 to the R & R[.]" Wang v. Masaitis, 416 F.3d 992, 1000 n. 13
21 (9th Cir. 2005) (citing United States v. Reyna-Tapia, 328 F.3d
22 1114, 1121 (9th Cir. 2003) (*en banc*)). That is because
23 "[n]either the Constitution nor the [Federal Magistrates Act]
24 requires a district judge to review, de novo, findings and
25 recommendations that the parties themselves accept as
26 correct." Reyna-Tapia, 328 F.3d at 1121 (citations omitted).
27 Indeed, construing the Federal Magistrates Act, the Supreme
28 Court has found that that "statute does not on its face

1 require any review at all, by either the district court or
2 the court of appeals, of any issue that is not the subject of
3 an objection." Thomas v. Arn, 474 U.S. 140, 149, 106 S.Ct.
4 466, 88 L.Ed.2d 435 (1985). Consistent with the foregoing
5 authority, the court has conducted a *de novo* review only as
6 to the R & R's recommendation of dismissal as to defendants
7 Ioane and the SOH, because that is the only aspect of the
8 R & R to which objections were made.

9 The FAC adds as defendants, among others, John Ioane and
10 the SOH. As to the former, the R & R recommends dismissal
11 because he "is not connected in any way to the allegations of
12 the [FAC]." R & R (Doc. 14) at 4:18. As to the SOH, the
13 R & R recommends dismissal because the FAC "makes no
14 allegations that the [SOH] has waived its [sovereign]
15 immunity" under the Eleventh Amendment. Id. at 5:1-2.

16 Given the "somewhat unique[]" procedural history of this
17 action, as detailed in defendants' response, and to enforce
18 the agreement reached in connection with the related stayed
19 Hawaii state court action, also detailed therein, the court
20 agrees with defendants Ioane and the SOH, that the R & R must
21 be amended. In particular, defendant Ioane shall not be
22 dismissed from this action because, *inter alia*, he is
23 "consent[ing] to this Court's jurisdiction for purposes of
24 this lawsuit only." see Resp. (Doc. 29) at 3:3 - 4:22; 4:1-
25 15, and exh. 3 thereto; and at 5:26 - 6:1 (footnote omitted).
26 Further defendants SOH and Ioane "consent to be sued in this
27 action, in this Court and waive applicable Eleventh Amendment
28 immunity defenses." Id. at 5:4-5. Allowing both the federal

1 claims and state law tort claims, including those against
2 defendants SOH and Ioane, to be litigated in this federal
3 court action, will serve the laudable purpose of, among other
4 things, conserving judicial resources.

5 Thus, having reviewed the Magistrate Judge's R & R (Doc.
6 14), and the "Special Appearance on Behalf of Defendants
7 State of Hawaii and John Ioane for Purposes of Responding to
8 Magistrate's [R & R] Dated 11/27/12 [Doc. 14]" (Doc. 29), **IT**
9 **IS ORDERED** that:

10 (1) that portion of the Report and Recommendation (Doc.
11 14) that defendants John Ioane and the State of Hawaii should
12 be dismissed, without prejudice, is not adopted and
13 plaintiffs shall be allowed to proceed with their claims as
14 against these defendants and others; but

15 (2) in all other respects, the court hereby **ACCEPTS,**
16 **ADOPTS and INCORPORATES BY REFERENCE,** as if fully set forth
17 herein, the remainder of the Magistrate Judge's Report and
18 Recommendation (Doc. 14).

19 DATED this 4th day of January, 2013.

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22 Robert C. Broomfield
23 Senior United States District Judge
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26 Copies to counsel of record
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