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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

José Abel Fierro,
Plaintiff,
vs.
Charles L. Ryan, et al.,
Defendants.

No. CV-13-02173-PHX-PGR (BSB)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Bade in light of the plaintiff’s Objections to the Magistrates’ Report and Recommendations (Doc. 36), the Court concludes that the Magistrate Judge’s recommendations should be adopted and that the plaintiff’s objections should be overruled. Therefore,

IT IS ORDERED that the Magistrate Judge’s Report and Recommendation (Doc. 31) is accepted and adopted by the Court.

IT IS FURTHER ORDERED that Plaintiff[’s] Motion for Reconsideration (Doc. 28), construed as a motion for leave to file a second amended complaint, is granted and the Clerk of the Court is directed to file the Second Amended Complaint attached to Doc. 28.

1 IT IS FURTHER ORDERED that Defendants Badilla, Houze, Molera,
2 Pitrowsky, Stephan, Fizer, Quintero, Wiggin, Jackson, Tucker, Ryan, Luen, Morales,
3 Rojas, Malachinski, Pratt, Merchant, Rioochi, Stark, Miller, Espinoza, Anderson,
4 Shruff, Thompson, Brown, Stowell, Greeley, Lacrone, and Theodore are dismissed
5 from this action.

6 IT IS FURTHER ORDERED that Count Two of the Second Amended
7 Complaint is dismissed.

8 IT IS FURTHER ORDERED that Defendants McCarville, Ochoa, Pruett,
9 Forester, Mcoffy, Smith, Shuster, and Sanders shall respond to Count One of the
10 Second Amended Complaint.

11 IT IS FURTHER ORDERED that Defendants Veckcovic and Brower shall
12 respond to Count Three of the Second Amended Complaint.

13 IT IS FURTHER ORDERED that Defendants Nash and East shall respond to
14 Count Four of the Second Amended Complaint.

15 IT IS FURTHER ORDERED as follows:

16 (1) That the Clerk of Court is directed send Plaintiff a service packet
17 including the Second Amended Complaint and this Order, and both summons and
18 request for waiver forms for Defendants McCarville, Ochoa, Pruett, Forester, Mcoffy,
19 Smith, Shuster, Sanders, Veckcovic, Brower, Nash, and East.

20 (2) That Plaintiff shall complete and return the service packet to the Clerk
21 of Court within 21 days of the date this Order. Plaintiff is advised that the United
22 States Marshal will not provide service of process if Plaintiff fails to comply with the
23 Court's Order.

24 (3) That Plaintiff is warned that if he does not either obtain a waiver of
25 service of the summons or complete service of the Summons and Second Amended
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1 Complaint on a Defendant within 120 days of the filing of the Second Amended
2 Complaint, the action may be dismissed as to each Defendant not served. See Fed.
3 R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

4 (4) That the United States Marshal is directed to retain the Summons, a
5 copy of the Second Amended Complaint, and a copy of this Order for future use.

6 (5) That the United States Marshal is directed to notify Defendants of the
7 commencement of this action and request waiver of service of the summons
8 pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to
9 Defendants must include a copy of this Order. The Marshal must immediately file
10 signed waivers of service of the summons. If a waiver of service of summons is
11 returned as undeliverable or is not returned by a Defendant within 30 days from the
12 date the request for waiver was sent by the Marshal, the Marshal must:

13 (a) personally serve copies of the Summons, Second Amended Complaint,
14 and this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal
15 Rules of Civil Procedure; and

16 (b) within 10 days after personal service is effected, file the return of
17 service for Defendant, along with evidence of the attempt to secure a
18 waiver of service of the summons and of the costs subsequently
19 incurred in effecting service upon Defendant. The costs of service must
20 be enumerated on the return of service form (USM-285) and must
21 include the costs incurred by the Marshal for photocopying additional
22 copies of the Summons, First Amended Complaint, or this Order and
23 for preparing new process receipt and return forms (USM-285), if
24 required. Costs of service will be taxed against the personally served
25 Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
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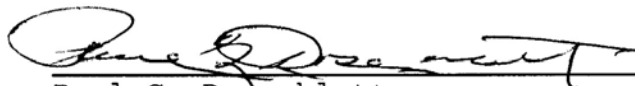
1 Procedure, unless otherwise ordered by the Court.

2 (6) That a Defendant who agrees to waive service of the Summons and
3 Second Amended Complaint must return the signed waiver forms to the United
4 States Marshal, not the Plaintiff.

5 (7) That Defendants shall answer the Second Amended Complaint or
6 otherwise respond by appropriate motion within the time provided by the applicable
7 provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

8 (8) That any answer or response must state the specific Defendant by
9 name on whose behalf it is filed. The Court may strike any answer, response, or
10 other motion or paper that does not identify the specific Defendant by name on
11 whose behalf it is filed.

12 DATED this 10th day of March, 2015.

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15 Paul G. Rosenblatt
16 United States District Judge
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