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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Michael Carl Allen,  
  
                                  Plaintiff,  
  
vs.  
  
Sgt. Modi, et al.,  
  
                                  Defendants.

No. CV-14-00378-PHX-SPL (JFM)

**ORDER**

On January 23, 2015, Plaintiff Michael Carl Allen, who is confined in the Arizona State Prison Complex – Lewis, filed a *pro se* civil rights Second Amended Complaint pursuant to 42 U.S.C. § 1983. (Doc. 48.) The Honorable James F. Metcalf, United States Magistrate Judge, issued a Report and Recommendation (“R&R”) (Doc. 83), recommending that Defendants Manzano, Jhonson, and Hendrix be dismissed without prejudice. Plaintiff has objected to the R&R and moves for appointment of counsel (Doc. 85). For the following reasons, the Court accepts and adopts the R&R, and denies his request.

**I. Report and Recommendation**

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge in a habeas case. *See* 28 U.S.C. § 636(b)(1). The Court must undertake a *de novo* review of those portions of the R&R to which specific objections are made. *See id.*; Fed. R. Civ. P. 72(b)(3); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). However, a petitioner is not entitled

1 as of right to *de novo* review of evidence and arguments raised for the first time in an  
2 objection to the R&R, and whether the Court considers the new facts and arguments  
3 presented is discretionary. *United States v. Howell*, 231 F.3d 615, 621-622 (9th Cir.  
4 2000).

5 Here, after carefully detailing the history of attempts to assist Plaintiff to  
6 accomplish service, and the notice provided to him to timely prosecute his case, the  
7 Magistrate Judge concluded that Plaintiff had failed to show that good cause or excusable  
8 neglect justifies a further extension of the time to complete service on Defendants  
9 Manzano, Jhonson, and Hendrix. Among other reasons, the Magistrate Judge duly noted  
10 that “[t]his case is already over 17 months old, the time for service expired over two  
11 months ago, and the case is nearing completion, with all but the final pretrial motions  
12 deadline expired.” (Doc. 83.) While Plaintiff has objected to the R&R, his objection does  
13 not point to any specific flaw in the Magistrate Judge’s analysis or findings. Instead, he  
14 offers only general objections. To that end, these objections largely consist of criticisms  
15 of the justice system and a general reiteration of the complaints that were addressed by  
16 the Magistrate Judge, but without any reference to the Magistrate Judge’s findings with  
17 regard to those complaints.

18 Under Rule 72 of the Federal Rules of Civil Procedure, the district judge must  
19 review *de novo* those portions of the R&R that have been “properly objected to.”  
20 Fed.R.Civ.P. 72(b). A proper objection requires “*specific written* objections to the  
21 proposed findings and recommendations.” *Id.*; see 28 U.S.C. § 636(b)(1) (emphasis  
22 added). The inherent purpose of this requirement is judicial economy. See *Thomas v. Arn*,  
23 474 U.S. 140, 149 (1985); *Reyna-Tapia*, 328 F.3d at 1121. Because *de novo* review of an  
24 entire R&R would defeat this purpose, a general objection serves to have the same effect  
25 as if Plaintiff had failed to object entirely. As a result, the Court has no obligation to  
26 review Plaintiff’s general objection to the R&R. See *Thomas*, 474 U.S. at 149 (no review  
27 at all is required for “any issue that is not the subject of an objection.”). The R&R will  
28 therefore be adopted and the unserved defendants will be dismissed.

1     **II.     Appointment of Counsel**

2             Next, Plaintiff moves for appointment of counsel. He argues that counsel should  
3 be appointed “to level out the playing field of professional assistance [and] to keep  
4 Plaintiff true to [the] Court’s schedule. (Doc. 85 at 3.)

5             There is no constitutional right to the appointment of counsel in a civil case. *See*  
6 *Johnson v. U.S. Dep’t of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991); *Ivey v. Bd of*  
7 *Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). “However, a court may  
8 under ‘exceptional circumstances’ appoint counsel for indigent civil litigants pursuant to  
9 28 U.S.C. § 1915(e)(1).” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (quoting  
10 *Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)). “When  
11 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the  
12 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his  
13 claims *pro se* in light of the complexity of the legal issues involved.” *Palmer*, 560 F.3d  
14 at 970 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)); *see also Terrell v.*  
15 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). “Neither of these considerations is  
16 dispositive and instead must be viewed together.” *Palmer*, 560 F.3d at 970 (citing  
17 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

18             Having considered both elements, Plaintiff has not shown that exceptional  
19 circumstances are present that would require the appointment of counsel in this case. As  
20 Defendant Modi’s Motion for Summary Judgment is presently under advisement, the  
21 Court cannot say that Plaintiff has demonstrated a likelihood of success on the merits at  
22 this juncture. Nor has Plaintiff shown that he is experiencing difficulty in litigating this  
23 case because of the complexity of the issues involved. Rather, Plaintiff’s filings with the  
24 Court, as exemplified by the instant objection and motion, indicate that Plaintiff is  
25 capable of navigating his proceedings and presenting arguments to the Court. *See*  
26 *Wilborn*, 789 F.2d at 1331 (“If all that was required to establish successfully the  
27 complexity of the relevant issues was a demonstration of the need for development of  
28 further facts, practically all cases would involve complex legal issues.”). Plaintiff is in no

1 different position than many *pro se* prisoner litigants. Having failed to show that  
2 exceptional circumstances are present, Plaintiff's request for appointment of counsel will  
3 be denied.

4 Accordingly,

5 **IT IS ORDERED:**


6 1. That Magistrate Judge's Report and Recommendation (Doc. 83) is  
7 **accepted** and **adopted** by the Court;

8 2. That Defendants Manzano, Jhonson, and Hendrix are **dismissed without**  
9 **prejudice**;

10 3. That Plaintiff's Motion for Appointment of Counsel (Doc. 85) is **denied**;  
11 and

12 4. That this matter shall remain referred to Magistrate Judge James F. Metcalf  
13 pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial  
14 proceedings as authorized under 28 U.S.C. § 636(b)(1).

15 Dated this 14th day of August, 2015.

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18 Honorable Steven P. Logan  
19 United States District Judge  
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