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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kenneth C. Thompson,
Plaintiff,

vs.

Arizona Department of Corrections, et.
al.,
Defendants.

No. CV-14-00539-PHX-PGR (DMF)

ORDER

No party having objected to the Report and Recommendation of Magistrate Judge Fine regarding the filing of the plaintiff's second amended complaint,

IT IS ORDERED that the Magistrate Judge's Report and Recommendation (Doc 29) is accepted and adopted by the Court.

IT IS FURTHER ORDERED that the plaintiff's motion to file a second amended complaint (Doc. 26) is granted as follows:

- (1) The plaintiff's Second Amended Complaint (already filed as Doc. 26) shall remain filed;
- (2) The last name of defendant R.N. Angel Neibles is corrected to be **Nieblas**.
- (3) The Second Amended Complaint (Doc. 26) is dismissed in its entirety as to defendant Charles Ryan for failure to state a claim.

1 (4) Defendants Angel Nieblas, Security Staff Sgt. Whiting, COII Perry, COII Serna
2 COII Diaz, and Nurse Practitioner Tammy Taylor remain as defendants in Count I of the
3 Second Amended Complaint. Defendant Nieblas has already filed an answer (Doc. 27) to
4 the Second Amended Complaint and no additional answer is necessary. Defendants
5 Whiting, Perry, Serna, Diaz, and Taylor must answer or otherwise respond to Count I of the
6 Second Amended Complaint (Doc. 26) by appropriate motion within the time provided by
7 the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

8 (5) Count II of the Second Amended Complaint (Doc. 26) is dismissed as to
9 defendants Security Staff Sgt. Whiting, COII Perry, COII Serna and COII Serna for failure
10 to state a claim. Defendant Angel Nieblas remains a defendant in Count II.

11 (6) The Clerk of Court must send the plaintiff this Order, and a copy of the
12 Marshal's Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request for
13 Waiver of Service of Summons form for defendants Whiting, Perry, Serna, Diaz and Taylor.

14 (7) The plaintiff must complete and return the service packet to the Clerk of Court
15 within 21 days of the date of filing of this Order. The United States Marshal will not provide
16 service of process if the plaintiff fails to comply with this Order.

17 (8) If the plaintiff does not either obtain a waiver of service of the summons or
18 complete service of the Summons and Second Amended Complaint on the defendants
19 within 60 days of the filing of this Order, whichever is later, the action may be dismissed.
20 Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

21 (9) The United States Marshal must retain the Summons, a copy of the Second
22 Amended Complaint, and a copy of this Order for future use.

23 (10) The United States Marshal must request waiver of service of the summons
24 pursuant to Rule 4(d) of the Federal Rules of Civil Procedure as to defendants Whiting,
25 Perry, Serna, Diaz and Taylor. The notice to these defendants must include a copy of this
26

1 Order. The Marshal must immediately file signed waivers of service of the summons. If
2 a waiver of service of summons is returned as undeliverable or is not returned by a
3 defendant within 30 days from the date the request for waiver was sent by the Marshal, the
4 Marshal must:

5 (a) personally serve copies of the Summons, Second Amended Complaint, and this
6 Order upon Defendants pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure;
7 and

8 (b) within 10 days after personal service is effected, file the return of service for the
9 defendants, along with evidence of the attempt to secure a waiver of service of the
10 summons and of the costs subsequently incurred in effecting service upon the defendants.
11 The costs of service must be enumerated on the return of service form (USM-285) and
12 must include the costs incurred by the Marshal for photocopying additional copies of the
13 Summons, Second Amended Complaint, or this Order and for preparing new process
14 receipt and return forms (USM-285), if required. Costs of service will be taxed against the
15 personally served defendants pursuant to Rule 4(d)(2) of the Federal Rules of Civil
16 Procedure, unless otherwise ordered by the Court.

17 (11) If a defendant agrees to waive service of the Summons and Second
18 Amended Complaint, he or she must return the signed waiver forms to the United States
19 Marshal, not to the plaintiff.

20 Dated this 14th day of December, 2015.

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23 Paul G. Rosenblatt
24 United States District Judge
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