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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kurt Adam Oldenburg,

Plaintiff,

vs.

Laura Ridge, et al.,

Defendants.

No. CV-14-02367-PHX-PGR (DMF)

ORDER

Pending before the Court is Magistrate Judge Fine’s Report and Recommendation (Doc. 16) regarding the plaintiff’s Second Amended Complaint (Doc. 14, construed as a motion to file a second amended complaint.) Having reviewed *de novo* the Report and Recommendation in light of Plaintiff’s Objections to Report and Recommendation Issued by Magistrate Judge (Doc. 19), the Court finds that the plaintiff’s objections should be overruled because the Magistrate Judge correctly determined that the plaintiff should be allowed to file his Second Amended Complaint to the extent determined by the Magistrate Judge. Therefore,

IT IS ORDERED that the Magistrate Judge’s Report and Recommendation (Doc. 16) is accepted and adopted by the Court.

IT IS FURTHER ORDERED that the plaintiff’s motion to amend (Doc. 14) is granted

1 and that the Clerk of the Court shall file the plaintiff's Second Amended Complaint (Lodged
2 Doc. 15).

3 IT IS FURTHER ORDERED that Counts IV, V, VII, VIII, and IX of the Second
4 Amended Complaint are dismissed in their entirety for failure to state a claim, and that
5 defendants Psych Associate Elizabeth Fortune, Psych Associate James R. Gilchrist,
6 Deputy Warden Stemple, Warden Therese Schroeder, Assistant Deputy Warden Cox, CO
7 IV Bartuccio, Nursing Supervisor Venus David, Lead Psychologist Shelly Wolf, and all Jane
8 and/or John Does are dismissed from this action.

9 IT IS FURTHER ORDERED that defendants Lead Psych Associate Laura Ridge and
10 Deputy Warden Pierce must timely answer or otherwise respond to the ADA claim raised
11 in Count I of the Second Amended Complaint.

12 IT IS FURTHER ORDERED that defendants Lead Psych Associate Laura Ridge and
13 Deputy Warden Pierce must timely answer or otherwise respond to the Eighth Amendment
14 medical claim regarding the plaintiff's discharge from MTU raised in Count II of the Second
15 Amended Complaint. That portion of Count II related to the isolation cell claim is dismissed.

16 IT IS FURTHER ORDERED that defendant Psych Assistant Elizabeth Rios must
17 timely answer or otherwise respond to the Eighth Amendment claim regarding her
18 communication of the time frame for the plaintiff's reapplication to MTU raised in Count III
19 of the Second Amended Complaint.

20 IT IS FURTHER ORDERED that defendant Psychiatrist Winsky must timely answer
21 or otherwise respond to the Eighth Amendment medical claim raised in Count VI of the
22 Second Amended Complaint.

23 IT IS FURTHER ORDERED that the plaintiff's Motion for Extension of Time (Doc.
24 13) is denied as moot.

25 IT IS FURTHER ORDERED as follows:
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1 (1) The Clerk of Court must send the plaintiff this Order, and a copy of the Marshal's
2 Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request for Waiver of
3 Service of Summons form for defendants defendants Lead Psych Associate Laura Ridge,
4 Deputy Warden Pierce, Psych Assistant Elizabeth Rios, and Psychiatrist Winsky.

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

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

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

14 (5) The United States Marshal must request waiver of service of the summons
15 pursuant to Rule 4(d) of the Federal Rules of Civil Procedure as to defendants Lead Psych
16 Associate Laura Ridge, Deputy Warden Pierce, Psych Assistant Elizabeth Rios, and
17 Psychiatrist Winsky. The notice to these defendants must include a copy of this Order. The
18 Marshal must immediately file signed waivers of service of the summons. If a waiver of
19 service of summons is returned as undeliverable or is not returned by a defendant within
20 30 days from the date the request for waiver was sent by the Marshal, the Marshal must:

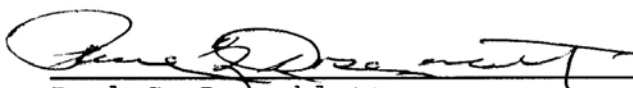
21 (a) personally serve copies of the Summons, Second Amended Complaint, and this
22 Order upon the defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure;
23 and

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

8 (6) If a defendant who must answer agrees to waive service of the Summons and
9 Second Amended Complaint, he or she must return the signed waiver forms to the United
10 States Marshal, not to the plaintiff.

11 DATED this 15th day of December, 2015.

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13 
14 Paul G. Rosenblatt
United States District Judge