

1 NOT FOR PUBLICATION
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Donnell Thomas,

10 Plaintiff,

11 v.

12 Wexford Medical, *et al.*,

13 Defendants.
14

No. CV-15-00394-PHX-JJT

ORDER

15 At issue is Magistrate Judge James F. Metcalf's Report and Recommendation
16 (R&R) in this matter filed September 30, 2015 (Doc. 59). The R&R recommends that the
17 Court dismiss without prejudice Plaintiff Donnell Thomas's civil rights complaint for
18 failure to prosecute. The R&R clearly advised Plaintiff that he had fourteen days from the
19 date of service of a copy of the R&R to file any specific written objections. Fed. R. Civ.
20 Pr. 72. Plaintiff filed no objections, and the time to do so is now long past. Plaintiff has
21 therefore waived his right to *de novo* consideration of the issues per *United States v.*
22 *Rayna-Tapia*, 328 F.3d 1141, 1121 (9th Cir. 2003)(*en banc*), and the Court may adopt the
23 R&R based on the waiver. Nonetheless, the Court has conducted a review on the merits
24 of the issues involved. It finds that Magistrate Judge Metcalf's reasoning and analysis are
25 correctly applied to the procedural situation.

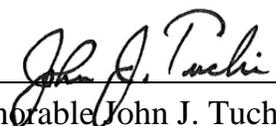
26 Pursuant to Plaintiff's motion, the Court directed the Clerk to enter default against
27 the remaining Defendant in this matter, and expressly gave Plaintiff fourteen days to
28 move for default judgment against her. (Doc. 55). Plaintiff allowed the deadline to pass

1 without so filing for default judgment. The court nonetheless gave Plaintiff an additional
2 chance, issuing on September 9, 2015 an Order to Show Cause why the case should not
3 be dismissed for failure to prosecute and giving Plaintiff fourteen days to show such
4 cause. (Doc. 57). Plaintiff failed to comply with the order. This matter is therefore ripe
5 for dismissal. The Court agrees with Judge Metcalf's analysis that dismissal should be
6 without prejudice.

7 IT IS ORDERED dismissing without prejudice Plaintiff's cause of action in this
8 matter and instructing the Clerk to close the matter.

9 Dated this 30th day of November, 2015.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Honorable John J. Tuchi
United States District Judge