

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Michael J. Salazar,

Plaintiff,

v.

Arizona Department of Corrections, et al.,

Defendants.

No. CV-15-00688-PHX-DJH

ORDER

Pending before the Court is a Report and Recommendation of United States Magistrate Judge James F. Metcalf (“R & R”) (Doc. 29), recommending that this action be dismissed in its entirety without prejudice. Also pending before the Court is a motion for summary judgment by defendant Marlene Coffey (Doc. 23).

I. Background

On February 22, 2016, in recommending dismissal, Judge Metcalf engaged in the multi-factor analysis which this Circuit requires before such dismissal may be granted as a sanction pursuant to Fed.R.Civ.P. 37(b)(2)(A)(v). (Doc. 29 at 2:10-3:17).

The R & R explicitly advised the parties that, pursuant to Fed.R.Civ.P. 72, they “shall have fourteen days from the date of service of a copy of this recommendation within which to file specific written objections with the Court.” (Doc. 29 at 3:26-28). The R & R also explicitly advised the parties that “[f]ailure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a

1 party's right to *de novo* consideration of the issues, . . . , and will constitute a waiver of a
2 party's right to appellate review of the findings of fact in an order or judgment entered
3 pursuant to the recommendation of the Magistrate Judge[.]” (Id. at 4:1-6) (citation
4 omitted). None of the parties have filed objections to that R & R, and the 14 day time
5 frame for so doing has passed.

6 **II. Analysis**

7 When reviewing an R & R issued by a Magistrate Judge, this court “may accept,
8 reject, or modify, in whole or in part, the findings or recommendations made by the
9 magistrate judge.” 28 U.S.C. § 636(b)(1). “Of course, *de novo* review of a R & R is only
10 required when an objection is made to the R & R[.]” *Wang v. Masaitis*, 416 F.3d 992,
11 1000 n. 13 (9th Cir. 2005) (citing *United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th
12 Cir. 2003) (*en banc*)). That is because “[n]either the Constitution nor the [Federal
13 Magistrates Act] requires a district judge to review, *de novo*, findings and
14 recommendations that the parties themselves accept as correct.” *Reyna–Tapia*, 328 F.3d
15 at 1121 (citations omitted). Indeed, construing the Federal Magistrates Act, the Supreme
16 Court has found that that “statute does not on its face require any review at all, by either
17 the district court or the court of appeals, of any issue that is not the subject of an
18 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

19 Consistent with the foregoing authority, because no objections to the R & R were
20 filed, the Court has not conducted a *de novo* review. The Court has reviewed the R & R
21 however and finds that it is soundly reasoned. In light of the foregoing, the Court hereby
22 incorporates and adopts the Magistrate Judge's Report and Recommendation in its
23 entirety (Doc. 29).

24 Adopting the R & R means that this action is dismissed without prejudice to
25 renew. Such dismissal renders moot defendant Coffey's summary judgment motion.

26 Accordingly,

27 **IT IS ORDERED** that Magistrate Judge Metcalf's R & R (Doc. 29) is **accepted**
28 **and adopted** as the Order of this Court;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED DENYING as moot Defendant Coffey's motion for summary judgment (Doc. 23); and

IT IS FINALLY ORDERED that pursuant to Fed.R.Civ.P. 16(f), 37(b)(2)(A)(v), and 41, this action is **dismissed without prejudice**.

Dated this 11th day of March, 2016.



Honorable Diane J. Humetewa
United States District Judge