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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Michael T. Washington,
Plaintiff,
v.
Charles L. Ryan, et al.,
Defendants.

No. CV-15-1113-PHX-DJH (JFM)

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) issued by United States Magistrate Judge James F. Metcalf on July 19, 2016. (Doc. 46). In the R&R, Judge Metcalf recommends dismissing Defendant Townsend because he has not been served in accordance with Fed.R.Civ.P. 4(m) and LRCiv 16.2(b)(2)(B)(ii). As the R&R states, service was attempted on Defendant Townsend but was returned unexecuted on November 6, 2015 because Plaintiff had not provided his complete name and, as a result, the Arizona Department of Corrections (“ADOC”) could not verify the individual’s employment. (Doc. 12). Judge Metcalf subsequently issued an Order (Doc. 17) on January 5, 2016 granting Plaintiff a 60-day extension to serve Defendant Townsend, among others. In addition, Judge Metcalf directed ADOC to provide a current work address for Defendant Townsend or, if no longer employed by ADOC, the last known home address for Defendant Townsend, under seal. (Doc. 17 at 2). However, when the U.S. Marshals Service attempted to serve Defendant Townsend at the address provided under seal, it was unable to do so because Defendant Townsend was no longer

1 at that address. (Doc. 25). Thus, the efforts to serve Defendant Townsend by the
2 Marshals Service were unsuccessful. Plaintiff, who bears the ultimate responsibility for
3 service, has not subsequently served Defendant Townsend nor has he provided further
4 information that would allow the Marshals Service to serve Defendant Townsend.

5 Plaintiff filed an Objection (Doc. 50) to Judge Metcalf's R&R on July 27, 2016.
6 He explains that his status as a prisoner limits his ability to obtain information required to
7 serve Defendant Townsend. Plaintiff further claims he has requested appointment of
8 counsel and has sought assistance from other inmates and the paralegal at the prison. He
9 argues that under these circumstances it would be unjust to dismiss Defendant Townsend
10 for failure to serve.

11 The district judge "shall make a de novo determination of those portions of the
12 report or specified proposed findings or recommendations to which objection is made."
13 28 U.S.C. § 636(b)(1)(C); *see also* Fed.R.Civ.P. 72(b)(3) ("The district judge must
14 determine de novo any part of the magistrate judge's disposition that has been properly
15 objected to."); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (same). The judge "may
16 accept, reject, or modify, in whole or in part, the findings or recommendations made by
17 the magistrate judge." 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P. 72(b)(3).

18 After reviewing this matter de novo, the Court agrees with Judge Metcalf's
19 recommendation. Judge Metcalf granted Plaintiff a 60-day extension of the service
20 deadline and directed ADOC to provide a service address for Defendant Townsend.
21 Because Defendant Townsend was no longer employed by ADOC (or the prison
22 healthcare contractor), a last known home address was provided under seal to the U.S.
23 Marshals Service. Defendant Townsend, however, was no longer at that address and no
24 forwarding address was given. Plaintiff has provided no other address information for
25 Defendant Townsend and the service deadline has expired. Defendant Townsend will
26 therefore be dismissed from this action.

27 Accordingly,


28 **IT IS ORDERED** that Magistrate Judge Metcalf's R&R (Doc. 46) is **accepted**

1 and **adopted**. Petitioner's Objection (Doc. 50) is overruled.

2 **IT IS FURTHER ORDERED** that Defendant Townsend is **dismissed** from this
3 action without prejudice.

4 **Dated** this 2nd day of November, 2016.

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Honorable Diane J. Humetewa
United States District Judge