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

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Darrell Marvin,

No. CV-17-00504-PHX-DLR (BSB)

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Plaintiff,

ORDER

11

v.

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Phoenix Police Department, et al.,

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Defendants.

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Pending before the Court is the Report and Recommendation (R&R) of Magistrate Judge Bridget S. Bade regarding service of Plaintiff's Second Amended Complaint. (Doc. 19.)

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After Plaintiff filed his Second Amended Complaint (Doc. 13), the Court ordered Plaintiff to complete and return the service packet to the Clerk of the Court within 21 days, and further ordered the United States Marshal Service to serve Defendant Melin, (Doc. 14). The Court warned Plaintiff that if he did "not either obtain a waiver of service of the summons or complete service of the Summons and Second Amended Complaint on Defendant within 90 days of the filing of the Complaint or within 60 days of the filing of [the March 20, 2017] Order, whichever is later, the action may be dismissed." (*Id.* at 6-7 (citing Fed. R. Civ. P. 4(m).)

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On June 16, 2017, Plaintiff filed a motion for default judgment against Defendant. (Doc. 16.) On June 22, 2017, service on Defendant was returned unexecuted. The

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1 Process Receipt and Return states, “Return unexecuted—no such name on Phx Police
2 Force per mail [or] phone contact w[ith] Department.” (Doc. 17.) On June 23, 2017,
3 Magistrate Judge Bade issued an order denying the motion for default judgment and
4 ordering Plaintiff to show cause why the case should not be dismissed for failure to serve.
5 (Doc. 18.) Plaintiff failed to respond to the order to show cause.

6 Because Plaintiff had no good cause for failing to serve Defendant within the time
7 frames ordered, the R&R recommends that this matter be dismissed without prejudice for
8 failure to serve pursuant to Fed. R. Civ. P. 4(m). Magistrate Judge Bade advised Plaintiff
9 that he “shall have fourteen days from the date of service of a copy of this
10 recommendation within which to file specific written objections with the Court.” (Doc.
11 19 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72).) Plaintiff filed a timely
12 objection, arguing that he submitted the service packet as instructed, but he has not heard
13 back from the Court. The Court, however, is not responsible for the fact that his Second
14 Amended Complaint was not served. The Process Receipt and Return filed on June 22,
15 2017 stated that the process server could not find, and therefore could not serve,
16 Defendant. Moreover, Magistrate Judge Bade’s order to show cause, issued the
17 following day, notified Plaintiff that service on Defendant was returned unexecuted and
18 afforded Plaintiff an opportunity to explain why the matter should not be dismissed for
19 lack of service. Having failed to respond to the order to show cause, Plaintiff cannot now
20 be heard to object to the dismissal of his complaint under Rule 4(m).

21 For these reasons, the Court agrees with Magistrate Judge Bade’s determinations,
22 accepts the recommended decision within the meaning of Rule 72(b), and overrules
23 Plaintiff’s objection. *See* 28 U.S.C. § 636(b)(1) (stating that the district court “may
24 accept, reject, or modify, in whole or in part, the findings or recommendations made by
25 the magistrate”).

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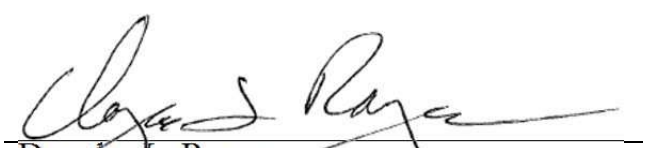
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IT IS ORDERED that R&R (Doc.19) is accepted. This matter is **DISMISSED** without prejudice. The Clerk shall terminate this action.

Dated this 3rd day of November, 2017.



Douglas L. Rayes
United States District Judge