

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**

Robert Heard,

 Plaintiff,

v.

Unknown Murray,

 Defendant.

No. CV-22-00051-PHX-JJT (JFM)

ORDER

At issue is the Report and Recommendation (Doc. 14, “R&R”) submitted in this matter by United States Magistrate Judge James F. Metcalf recommending that the Court dismiss without prejudice the Complaint (Doc. 1) and this action. In the R&R, Judge Metcalf warned the parties that they “shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the Court.” (Doc. 14 at 4). Judge Metcalf further warned the parties that “[f]ailure to timely file objections to any findings or recommendations of the Magistrate Judge will be considered a waiver of a party’s right to de novo consideration to the issues [] and will constitute a waiver of a party’s right to appellate review of the findings of fact in an order or judgment entered pursuant to the recommendation of the Magistrate Judge.” (Doc. 14 at 4.)

Judge Metcalf’s R&R was entered May 23, 2022. Because Plaintiff is not registered as a participant on the Court’s ECF system for electronic service, service of the R&R upon him was affected by mail that same day, pursuant to Rule 5(b)(2)(C), Fed. R. Civ. P., and

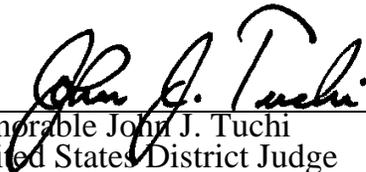
1 Plaintiff's 14-day deadline was extended by three days to account for mailing as provided
2 in Rule 6(d), Fed. R. Civ. P. Thus, Plaintiff had a total of 17 days, or until June 9, 2023, to
3 file any objections to the R&R. He filed no objections, either by that deadline or in the
4 seven weeks that have elapsed since. Plaintiff therefore has waived his right to *de novo*
5 consideration of the issues before the Court and its findings and conclusions in this Order.

6 The Court nonetheless evaluated the R&R on its merits, and upon doing so,
7 concludes that Judge Metcalf's reasoning and recommendations are all sound and
8 thoroughly discussed. It therefore will adopt the R&R, including its analysis, in whole. As
9 Judge Metcalf observed, Plaintiff appears to have abandoned his case. He never filed his
10 case management report, as Judge Metcalf had ordered him to do by April 11, 2022, and
11 without which the Court could not proceed in efficient fashion. He then never filed any
12 response to Judge Metcalf's Order requiring him to show cause why the matter should not
13 be dismissed. As Judge Metcalf rightly recognized, this is a failure to prosecute Plaintiff's
14 case. And it is the basis for Judge Metcalf's recommendation that this Court dismiss the
15 matter without prejudice. Plaintiff's failure to object to the R&R further bolsters Judge
16 Metcalf's conclusion that Plaintiff has abandoned his case. The Court thus will dismiss.

17 **IT IS ORDERED** adopting in whole Judge Metcalf's R&R (Doc. 14) and
18 dismissing without prejudice the Complaint (Doc. 1).

19 **IT IS FURTHER ORDERED** directing the Clerk of Court to terminate this matter.

20 Dated this 29th day of July, 2022.

21 
22 _____
23 Honorable John J. Tuchi
24 United States District Judge
25
26
27
28