

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**

Antoine Lavelle Simmons,  
Plaintiff,  
v.  
Ryan Thornell, et al.,  
Defendants.

No. CV-23-01620-PHX-DJH  
**ORDER**

Before the Court is Magistrate Judge James F. Metcalf’s Report and Recommendation (“R&R”) (Doc. 32) recommending this matter be dismissed without prejudice for failure to prosecute this action.

Judge Metcalf advised the parties that they had fourteen days to file objections and that the failure to timely do so “may result in the acceptance of the Report and Recommendation by the District Court without further review.” (*Id.* at 5) (citing *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)). Petitioner has not filed an objection and the time to do so has expired. Respondents have also not filed an objection. Absent any objections, the Court is not required to review the findings and recommendations in the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (noting that the relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1), “does not on its face require any review at all . . . of any issue that is not the subject of an objection.”); *Reyna-Tapia*, 328 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) (“The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly


1 objected to.”).

2           Nonetheless, the Court has reviewed Judge Metcalf’s well-reasoned R&R and  
3 agrees with its findings and recommendations. The Court will, therefore, accept the R&R  
4 and dismiss this action without prejudice. *See* 28 U.S.C. § 636(b)(1) (“A judge of the  
5 court may accept, reject, or modify, in whole or in part, the findings or recommendations  
6 made by the magistrate judge.”); Fed.R.Civ.P. 72(b)(3) (same).

7           **IT IS ORDERED** that Magistrate Judge James F. Metcalf’s Report and  
8 Recommendation (“R&R”) (Doc. 32) is adopted as the Order of this Court. The Clerk of  
9 Court is kindly ordered to dismiss this matter, without prejudice, and enter judgment  
10 accordingly.

11           Dated this 29th day of August, 2024.

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

  
Honorable Diane J. Humetewa  
United States District Judge