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

Agwu Gibson,

Plaintiff,

v.

Jerry L. Sternes, et al.,

Defendants.

No. CV-14-8156-PCT-DLR (BSB)

**ORDER**

On April 13, 2015, Magistrate Judge Bridget S. Bade issued a Report and Recommendation (“R & R”) recommending this action be dismissed without prejudice based on Plaintiff’s failure to notify the Court of his current address. (Doc. 20).<sup>1</sup> On April 23, 2015, Plaintiff filed a Notice of Party’s Change of Address. (Doc. 21). Accordingly, the R & R will be rejected and the Court will give Plaintiff an opportunity to complete service.

**IT IS ORDERED:**

(1) The Report and Recommendation (Doc. 20) is **REJECTED**.

(2) Defendant Khalaf must answer Count Two of the First Amended Complaint. All other claims and Defendants are dismissed without prejudice.

(3) The Clerk of Court must send Plaintiff a service packing including the First Amended Complaint (Doc. 11), the January 16, 2015 Service Order (Doc. 13), and both

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<sup>1</sup> Plaintiff was never mailed a copy of the R & R because multiple attempts had been made to send him copies of the January 16, 2015 Service Order (Doc. 13) and the March 6, 2015 Order to Show Cause (Doc. 16) which were returned as undeliverable.

1 summons and request for waiver forms for Defendant Khalaf.

2 (4) Plaintiff must complete and return the service packet to the Clerk of Court  
3 within 21 days of the date of filing of this Order. The United States Marshal will not  
4 provide service of process if Plaintiff fails to comply with this Order.

5 (5) If Plaintiff does not either obtain a waiver of service of the summons or  
6 complete service of the Summons and First Amended Complaint on Defendant within  
7 120 days of the filing of the Complaint or within 60 days of the filing of this Order,  
8 whichever is later, the action may be dismissed. Fed. R. Civ. P. 4(m); LRCiv  
9 16.2(b)(2)(B)(ii).

10 (6) The United States Marshal must retain the Summons, a copy of the First  
11 Amended Complaint, and a **copy of the January 16, 2015 Service Order** for future use.

12 (7) The United States Marshal must notify Defendant of the commencement of  
13 this action and request waiver of service of the summons pursuant to Rule 4(d) of the  
14 Federal Rules of Civil Procedure. The notice to Defendant must include a **copy of the**  
15 **January 16, 2015 Service Order**.

16 **The Marshal must immediately file signed waivers of service of the summons.**  
17 **If a waiver of service of summons is returned as undeliverable or is not returned by**  
18 **Defendant within 30 days from the date the request for waiver was sent by the**  
19 **Marshal, the Marshal must:**

20 (a) personally serve copies of the Summons, First Amended Complaint,  
21 and **the January 16, 2015 Service Order** upon Defendant pursuant to Rule  
22 4(e)(2) of the Federal Rules of Civil Procedure; and

23 (b) within 10 days after personal service is effected, file the return of  
24 service for Defendant, along with evidence of the attempt to secure a waiver of  
25 service of the summons and of the costs subsequently incurred in effecting service  
26 upon Defendant. The costs of service must be enumerated on the return of service  
27 form (USM-285) and must include the costs incurred by the Marshal for  
28 photocopying additional copies of the Summons, First Amended Complaint, or **the**

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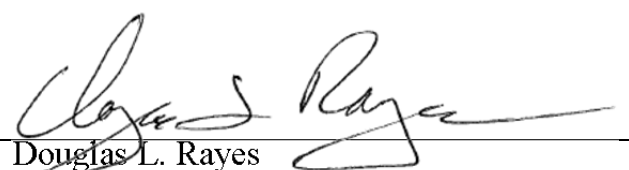
**January 16, 2015 Service Order** and for preparing new process receipt and return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

**(8) If Defendant agrees to waive service of the Summons and First Amended Complaint, he must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

(9) Defendant must answer the First Amended Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

(10) This matter remains referred to Magistrate Judge Bridget S. Bade pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

Dated this 30th day of April, 2015.

  
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Douglas L. Rayes  
United States District Judge