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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Eulandas J. Flowers,

10 Plaintiff,

11 v.

12 Sandra Lawrence, et al.,

13 Defendants.  
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No. CV-14-08184-PCT-JAT

**ORDER**

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18 Pending before the Court is the Report and Recommendation (“R&R”) from the  
19 Magistrate Judge, (Doc. 19), recommending that Plaintiff’s Motion for Leave to File an  
20 Amended Complaint, (Doc. 10), be granted and that Defendants Shane and Coleman be  
21 dismissed as to Count I of the proposed Amended Complaint.

22 Neither party filed objections to the R&R. Accordingly, the Court hereby accepts  
23 and adopts the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985) (finding that district  
24 courts are not required to conduct “any review at all . . . of any issue that is not the  
25 subject of an objection” (emphasis added)); *United States v. Reyna-Tapia*, 328 F.3d 1114,  
26 1121 (9th Cir. 2003) (*en banc*) (“statute makes it clear that the district judge must review  
27 the magistrate judge’s findings and recommendations de novo if objection is made, but  
28 not otherwise” (emphasis in original)); *see also Schmidt v. Johnstone*, 263 F.Supp.2d

1 1219, 1226 (D. Ariz. 2003).

2 Therefore,

3 **IT IS ORDERED** that that the Magistrate Judge's Report and Recommendation,  
4 (Doc. 12), is **ADOPTED AND ACCEPTED**;

5 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to File an  
6 Amended Complaint, (Doc. 10), is **GRANTED**;

7 **IT IS FURTHER ORDERED** that Count I of the Amended Complaint is  
8 **DISMISSED WITHOUT PREJUDICE** as to Defendants Shane and Coleman; Count I  
9 is not dismissed as to Defendants Young, Batchlor, and L. Marshall;

10 **IT IS FURTHER ORDERED** that Defendants Young, Batchlor, and L. Marshall  
11 shall answer Count I of the Amended Complaint;

12 **IT IS FURTHER ORDERED** that all Defendants shall answer Count II of the  
13 Amended Complaint;

14 **IT IS FURTHER ORDERED** that the Clerk of Court shall file the proposed  
15 Amended Complaint lodged as Doc 11-1 as Plaintiff's Amended Complaint;

16 **IT IS FURTHER ORDERED** that the Clerk of Court shall send Plaintiff the  
17 Court's Order, and a copy of the Marshal's Process Receipt & Return form (USM-285)  
18 and Notice of Lawsuit & Request for Waiver of Service of Summons form for  
19 Defendants Young, Batchlor, L. Marshall, S. Lawrence, Contreas, Coleman, Dean, and  
20 Shane;

21 **IT IS FURTHER ORDERED** that **Plaintiff shall complete and return the**  
22 **service packet to the Clerk of Court within 21 days of the date of filing of the**  
23 **Court's Order. The United States Marshal will not provide service of process if**  
24 **Plaintiff fails to comply with this Order**;

25 **IT IS FURTHER ORDERED** that **if Plaintiff does not either obtain a waiver**  
26 **of service of the summons or complete service of the Summons and Amended**  
27 **Complaint on a Defendant within 120 days of the filing of the Amended Complaint**  
28 **or within 60 days of the filing of the Court's Order, whichever is later, the action**

1 **may be dismissed as to each Defendant not served.** Fed. R. Civ. P. 4(m); LRCiv  
2 16.2(b)(2)(B)(i);

3 **IT IS FURTHER ORDERED** that the United States Marshal is advised and  
4 ordered as follows:

5 - The United States Marshal must retain the Summons, a copy of the Amended  
6 Complaint, and a copy of the Court's Order for future use;

7 - The United States Marshal must notify Defendants of the commencement of this  
8 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal  
9 Rules of Civil Procedure. The notice to Defendants must include a copy of the Court's  
10 Order;

11 - **The Marshall must immediately file signed waivers of service of the**  
12 **summons. If a waiver of service of summons is returned as undeliverable or is not**  
13 **returned by a Defendant within 30 days from the date the request for waiver was**  
14 **sent by the Marshal, the Marshal must:**

15 (a) personally serve copies of the Summons, Amended Complaint, and the  
16 Court's Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules  
17 of Civil Procedure; and

18 (b) within 10 days after personal service is effected, file the return of  
19 service for Defendant, along with evidence of the attempt to secure a waiver of  
20 service of the summons and of the costs subsequently incurred in effecting service  
21 upon Defendant. The costs of service must be enumerated on the return of service  
22 form (USM-285) and must include the costs incurred by the Marshal for  
23 photocopying additional copies of the Summons, Amended Complaint, or the  
24 Court's Order and for preparing new process receipt and return forms (USM-285),  
25 if required. Costs of service will be taxed against the personally served Defendant  
26 pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise  
27 ordered by the Court;

28 **IT IS FURTHER ORDERED** that Defendants are advised and ordered as

1 follows:

2 - **Any Defendant who agrees to waive service of the Summons and Amended**  
3 **Complaint must return the signed waiver forms to the United States Marshal, not**  
4 **the Plaintiff;**

5 - Defendants must answer the Amended Complaint or otherwise respond by  
6 appropriate motion within the time provided by applicable provisions of Rule 12(a) of the  
7 Federal Rules of Civil Procedure;

8 - Any answer or response must state the specific Defendant by name on whose  
9 behalf it is filed. The Court may strike any answer, response, or other motion or paper  
10 that does not identify the specific Defendant by name on whose behalf it is filed;

11 **IT IS FURTHER ORDERED** that Plaintiff is advised and ordered as follows:

12 **A. Address Changes**

13 Plaintiff must file and serve a notice of a change of address in accordance with  
14 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion  
15 for other relief with a notice of change of address. Failure to comply may result in  
16 dismissal of this action;

17 **B. Copies**

18 Because Plaintiff is currently confined in an Arizona Department of Corrections  
19 unit subject to General Order 14-17, Plaintiff is not required to serve Defendants with a  
20 copy of every document he filed or to submit an additional copy of every filing for use by  
21 the Court, as would ordinarily be required by Federal Rule of Civil Procedure 5 and  
22 Local Rule of Civil Procedure 5.4. If Plaintiff is transferred to a unit other than one  
23 subject to General Order 14-17, he will be notified of the requirements for service and  
24 copies for the Court that are required for inmates whose cases are not subject to General  
25 Order 14-17;


26 **C. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of the Court's Order,  
28 including these warnings, the Court may dismiss this action without further notice. *See*

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*Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order of the Court).

Dated this 31st day of March, 2015.



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James A. Teilborg  
Senior United States District Judge