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## IN THE UNITED STATES DISTRICT COURT

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## FOR THE DISTRICT OF ARIZONA

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Anthony L. Rodrigues,

No. CV16-8272 PCT DGC

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Plaintiff,

**ORDER**

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v.

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Charles L. Ryan, et al.,

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Defendants.

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On November 17, 2016, Plaintiff Anthony L. Rodrigues filed a seven-count civil rights complaint pursuant to 42 U.S.C. § 1983. Doc. 1. Plaintiff filed a First Amended Complaint pursuant to 42 U.S.C. § 1983 on May 15, 2017. Doc. 20. United States Magistrate Eileen S. Willett has issued a report and recommendation (“R&R”) recommending that:

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1. Count One of the First Amended Complaint be dismissed without prejudice.

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2. Defendants Ryan, Rider, Santiago, Diaz, Winkler, and Frederick shall answer the Eighth Amendment threat-to-safety claim contained in Count Two of the First Amended Complaint.

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3. Defendants MTC, Washington, Rider, Santiago, Diaz, Winkler, and Frederick shall answer the Arizona common law claim for negligence in Count Three.

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4. Defendant MTC shall answer the negligent training claim in Count Three.

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1           5.       Counts Four, Five, and Six of the First Amended Complaint are dismissed  
2 without prejudice.

3           No objection has been filed, which relieves the Court of its obligation to review  
4 the R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Thomas v. Arn*, 474 U.S.  
5 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). The  
6 Court will accept the R&R and include the following language:

7           1.       The Clerk of Court shall send Plaintiff a service packet including the First  
8 Amended Complaint, this Order, and a copy of the Marshal's Process Receipt & Return  
9 form (USM-285) and Notice of Lawsuit & Request for Waiver of Service of Summons  
10 form for Defendants MTC, Washington and Frederick.

11           2.       Plaintiff shall complete and return the service packet to the Clerk of Court  
12 within 21 days of the date of filing of this Order. The United States Marshal will not  
13 provide service of process if Plaintiff fails to comply with this Order.

14           3.       If Plaintiff does not either obtain a waiver of service of the summons or  
15 complete service of the Summons and First Amended Complaint on Defendants within  
16 90 days of the filing of the First Amended Complaint or within 60 days of the filing of  
17 this Order, whichever is later, the action may be dismissed as to each Defendant not  
18 served. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

19           4.       The United States Marshal shall retain the Summons, a copy of the First  
20 Amended Complaint, and a copy of this Order for future use.

21           5.       The United States Marshal shall notify Defendants MTC, Washington, and  
22 Frederick of the commencement of this action and request waiver of service of the  
23 summons pursuant to Federal Rule of Civil Procedure 4(d). The notice to Defendants  
24 shall include a copy of this Order. The Marshal shall file waivers of service of the  
25 summons or requests for waivers that were returned as undeliverable as soon as they are  
26 received. If a waiver of service of summons is returned as undeliverable or is not  
27 returned by Defendants within thirty days from the date the request for waiver was sent  
28 by the Marshal, the Marshal shall:

1 (a) personally serve copies of the Summons, First Amended Complaint, and  
2 this Order upon (i) Defendant MTC pursuant to Federal Rule of Civil Procedure 4(h) and  
3 (ii) Defendants Washington and Frederick pursuant to Federal Rule of Civil Procedure  
4 4(e)(2); and

5 (b) Within ten days after personal service is effected, file the return of  
6 service for Defendants, along with evidence of the attempt to secure a waiver of service  
7 of the summons and of the costs subsequently incurred in effecting service upon  
8 Defendants. The costs of service shall be enumerated on the return of service form  
9 (USM-285) and shall include the costs incurred by the Marshal for photocopying  
10 additional copies of the Summons, First Amended Complaint, or this Order and for  
11 preparing new process receipt and return forms (USM-285), if required. Costs of service  
12 will be taxed against the personally served Defendants pursuant to Federal Rule of Civil  
13 Procedure 4(d)(2), unless otherwise ordered by the Court.

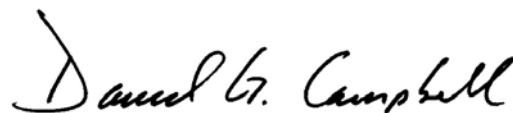
14 **6. If Defendants agree to waive service of the Summons and First**  
15 **Amended Complaint, Defendants must return the signed waiver forms to the United**  
16 **States Marshal, not the Plaintiff.**

17 7. Defendants shall answer the First Amended Complaint or otherwise  
18 respond by appropriate motion within the time provided by applicable provisions of Rule  
19 12(a) of the Federal Rules of Civil Procedure.

20 **IT IS ORDERED:**

- 21 1. The R&R (Doc. 22) is **accepted**.
- 22 2. A certificate of appealability and leave to proceed *in forma pauperis* on  
23 *appeal are denied*

24 Dated this 9th day of June, 2017.

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David G. Campbell  
United States District Judge