

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

Cheryl Wells,	)	No. CV 07-309-TUC-FRZ (JM)
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Hon. Jan E. Kearney, et al.,	)	
Defendants.	)	
_____	)	

Pending before the Court are two Report and Recommendations which were issued on December 2, 2009. *See* Doc. #'s 121, 122. United States Magistrate Judge Jacqueline Marshall issued a Report and Recommendation (Doc. #121) recommending the dismissal of two defendants without prejudice as Plaintiff failed to effect service. In addition, United States Magistrate Judge Jacqueline Marshall issued a Report and Recommendation (Doc. #122) recommending sanctions in the amount \$15,000 against Plaintiff.

The Report and Recommendations indicated that any party could file written objections within ten days after being served with copies of the Report and Recommendations. Copies of both Report and Recommendations (Doc. #'s 121, 122) were mailed to Plaintiff on December 2, 2009. The parties have not filed any objections to the Report and Recommendations. As such, the Court will not consider any objections or new evidence. *See generally United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir.

1 2003)(*en banc*)(failure to timely file objections to any factual or legal determination of the  
2 Magistrate Judge may be considered a waiver of the party's right to *de novo* consideration  
3 of the issues).

4 The Court has reviewed the entire record and concludes that Magistrate Judge  
5 Marshall's recommendations are not clearly erroneous. *See* 28 U.S.C. § 636(b)(1); Fed. R.  
6 Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *Conley v.*  
7 *Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

8 Accordingly, IT IS HEREBY ORDERED as follows:

9 (1) United States Magistrate Judge Marshall's Report and Recommendations (Doc. #'s 121,  
10 122) are **ACCEPTED AND ADOPTED**.

11 (2) Defendants Cia Wells and Alan Belauskas are dismissed without prejudice from this case.

12 (3) The Court imposes \$15,000.00 in sanctions against Plaintiff; each of the three parties  
13 requesting sanctions (i.e. Defendants Phillip Schwartz, John Knox Village, and Broad and  
14 Cassel) is awarded \$5,000 from the \$15,000 sanction.

15 (4) The Clerk of the Court shall enter judgment accordingly.

16 (5) As this case was originally assigned to Magistrate Judge Marshall, and the referral  
17 pertains to all pretrial proceedings, the referral to Magistrate Judge Marshall is still in effect;  
18 this case is referred back to Magistrate Judge Marshall to the extent pretrial proceedings  
19 remain in this case.

20 DATED this 13<sup>th</sup> day of January, 2010.

21  
22  
23   
24 FRANK R. ZAPATA  
25 United States District Judge  
26  
27  
28