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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

John H. Azeltine, Jr.,
Plaintiff,
vs.
Bank of America,
Defendant.

No. CV 10-218-TUC-RCC

ORDER

The Court accepts and adopts Magistrate Judge Hector C. Estrada’s December 14, 2010 Report and Recommendation (R &R) (Doc. 23) as the findings of fact and conclusions of law of this Court and grants Defendant’s Motion to Dismiss (Doc. 13); denies Plaintiff’s Motion for Default Judgment (Doc. 15); denies Defendant’s Motion for Summary Disposition (Doc. 17); denies Plaintiff’s Motion for Summary Judgment (Doc. 20); and grants Plaintiff leave to amend his complaint.

The parties were sent copies of the R & R and instructed that, pursuant to U.S.C. § 636(b)(1) and FED.R.CIV.P. 72(b)(2), they had fourteen (14) days to file written objections. Plaintiff filed an objection to the R & R within the 14 day period.

The duties of the district court in connection with a R & R are set forth in Rule 59 of the Federal Rules of Criminal Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

1 judge.” Fed.R.Crim.P. 59(b)(3); 28 U.S.C. § 636(b)(1). “The district court must consider whether
2 to modify or set aside any part of a nondispositive order that is contrary to law or clearly
3 erroneous.” Fed.R.Crim.P. 59(a). “The judge may also receive further evidence or recommit the
4 matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b); *see also* Fed.R.Crim.P.
5 59(b)(3).

6 Where the parties object to a R & R, “[a] judge of the [district] court shall make a *de*
7 *novo* determination of those portions of the [R & R] to which objection is made.” 28 U.S.C. §
8 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985).
9 When no objection is filed, the district court need not review the R & R *de novo*. *Wang v.*
10 *Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114,
11 1121-22 (9th Cir.2003) (en banc). Therefore to the extent that no objection has been made,
12 arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th
13 Cir.1980) (failure to object to Magistrate's report waives right to do so on appeal); *see also*,
14 Advisory Committee Notes to Fed.R.Civ.P. 72 (citing *Campbell v. United States Dist. Court*,
15 501 F.2d 196, 206 (9th Cir.1974) (when no timely objection is filed, the court need only satisfy
16 itself that there is no clear error on the face of the record in order to accept the recommendation).

17 The Court will not disturb a Magistrate Judge's Order unless his factual findings are
18 clearly erroneous or his legal conclusions are contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R.
19 Cr. P. 59(a). “[T]he magistrate judge's decision ... is entitled to great deference by the district
20 court.” *United States v. Abonce-Barrera*, 257 F.3d 959, 969 (9th Cir.2001). A failure to raise an
21 objection waives a right to review. Fed.R.Crim.P. 59(a); 28 U.S.C. § 636(b)(1).

22 Plaintiff objects to the R & R “on the issue of Defendant’s Default as that (Doc. 21)
23 Defendant’s Response to Plaintiff’s Request for Summary Judgement (Doc. 22) Plaintiff’s Reply
24 to Defendant’s Response (Doc. 21) And Proof of Defendant’s Voluntary Default were not
25 considered in this report.” (Doc. 24).

26 This Court finds, after consideration of all matter presented, including the objection, and
27 after an independent review of the record herein, that the findings of the Magistrate Judge as set
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1 forth in the Report and Recommendation shall be accepted and adopted as the findings of fact
2 and conclusions of law of the Court. Accordingly,

3 **IT IS HEREBY ORDERED** that Magistrate Judge Estrada's Report and
4 Recommendation (Doc. 23) is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and
5 conclusions of law by this Court;

6 **IT IS FURTHER ORDERED** that :

- 7
- 8 1. Defendant's Motion to Dismiss (Doc. 13) is **granted**
 - 9 2. Plaintiff's Motion for Default Judgment (Doc. 15) is **denied**
 - 10 3. Defendant's Motion for Summary Disposition (Doc. 17) is **denied**
 - 11 4. Plaintiff's Motion for Summary Judgment (Doc. 20) is **denied**
 - 12 5. Plaintiff is granted leave to amend his Complaint consistent with Section III of the Report
13 and Recommendation. Plaintiff shall file his amended Complaint on or before **May 6,**
14 **2011;**

15
16 **IT IS FURTHER ORDERED** that this matter is referred back to Magistrate Judge
17 Estrada for all pretrial proceedings and report and recommendation in accordance with the
18 provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2.

19 DATED this 15th day of April, 2011.

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23 **Raner C. Collins**
24 **United States District Judge**