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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Mark E. Wardlow,  
Plaintiff,  
v.  
Ralph's Moving & Storage,  
Defendant,

CV 10-538 TUC DCB (HCE)

**ORDER**

The Court adopts the Report and Recommendation (R&R) filed on February 7, 2012, by Magistrate Judge Hector C. Estrada, as the opinion of the Court and summarily grants the Defendant's Motion for Judgment on the Pleadings, pursuant to Rule 7.2(i) of the Local Rules of Practice of the United States District Court for the District of Arizona (Local Rule), and denies the alternative Motion for Summary Judgment as moot.

After the R&R was prepared by the magistrate judge recommending summary disposition of the Defendant's motion, the Court realized that the R&R had been mailed to the Plaintiff at the wrong address. The certificate of mailing on the Defendant's motion also reflected the wrong address for the Plaintiff. The Plaintiff had timely filed a Notice of Change of Address and, therefore, the mistake in addresses was not due to his error or any failure on his part.

On March 30, 2012, the Court gave Plaintiff one more chance to file a Response to the Defendant's dispositive motion. The Court re-sent the R&R to the Plaintiff at the correct address. The Court ordered the Defendant to resend the motion to the Plaintiff at the correct address. The Court gave the Plaintiff 30 days from the date of receipt of the dispositive motion to file a Response. The Court gave Plaintiff what is commonly referred to as a Rand/Wyatt

1 Notice, telling him that the dispositive motion seeks to have the case dismissed and that if  
2 granted it would end the case. The Rand/Wyatt notice informed the Plaintiff that failure to file  
3 a Response would result in summary granting of the Defendant’s dispositive motion and  
4 dismissal of the case.

5 On May 8, 2012, the Defendant filed a Notice of Service with the Court, which reflects  
6 the Defendant mailed a copy of the dispositive motion to the Plaintiff on April 26, 2012.  
7 Plaintiff has not filed a Response to the Motion for Judgment on the Pleadings/Alternatively,  
8 Motion for Summary Judgment. The Court, therefore, reviews the R&R.

9 STANDARD OF REVIEW

10 The duties of the district court, when reviewing a Report and Recommendation of a  
11 Magistrate Judge, are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C.  
12 § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings  
13 or recommendations made by the magistrate judge.” Fed.R.Civ.P. 72(b), 28 U.S.C. § 636(b)(1).  
14 When the parties object to a Report and Recommendation (R&R), “[a] judge of the [district]  
15 court shall make a *de novo* determination of those portions of the [R&R] to which objection is  
16 made.” *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)). When  
17 no objections are filed, the district court does not need to review the R&R *de novo*. *Wang v.*  
18 *Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d  
19 1114, 1121-22 (9th Cir.2003) (*en banc*).

20 On March 30, 2012, the Court ordered the R&R to be sent to the Plaintiff at the correct  
21 address. The R&R instructed the parties that they had 14 days to file written objections and that  
22 failure to file an objection may be deemed a waiver of the party’s right to *de novo* review of the  
23 issues. (R&R at 4 (citations omitted). Additionally, Plaintiff was given an extension of time  
24 to file a Response to Defendant’s dispositive motion, which as noted above he has filed to do.

25 REPORT AND RECOMMENDATION

26 The Honorable Hector C. Estrada considered the merits of Defendant’s dispositive  
27 motion, which was that Plaintiff failed to state a claim of discrimination under Title VII of the  
28 Age Discrimination in Employment Act (ADEA). Specifically, Defendant challenged the

1 Plaintiff's failure to allege he was within the class of individuals protected by the ADEA or that  
2 he was qualified to be promoted. A *prima facie* case of discrimination under the ADEA  
3 requires a showing that the plaintiff is at least 40 years old; performing his job satisfactorily;  
4 discharged, and replaced by a substantially younger employee of equal or inferior qualifications.  
5 *Diaz v. Eagle Produce Ltd. Partnership*, 521 F.3d 1201, 1207-08 (9<sup>th</sup> Cir. 2008).

6 The Magistrate Judge and this Court considers the merits of the Defendant's motion  
7 within the context of Rule 7.2(i). The Court considers four factors: 1) the public's interest in  
8 expeditious resolution of litigation; 2) the court's need to manage its docket; 3) the risk of  
9 prejudice to the defendants; 4) the public policy favoring disposition of cases on their merits;  
10 and 5) the availability of less drastic sanctions. *Ghazali v. Moran*, 46 F.3d 52, 54 (9<sup>th</sup> Cir.  
11 1995) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9<sup>th</sup> Cir. 1986)).

12 In light of these considerations, and because the Motion to for Judgment on the Pleadings  
13 states a basis for dismissal, the Court believes that summary dismissal of the Complaint is  
14 warranted pursuant to Local Rule 7.2(i).

15 Where as here there are no objections to a R&R and review has been waived, the Court  
16 nevertheless reviews at a minimum, *de novo*, the Magistrate Judge's conclusions of law.  
17 *Robbins v. Carey*, 481 F.3d 1143, 1147 (9<sup>th</sup> Cir. 2007) (citing *Turner v. Duncan*, 158 F.3d 449,  
18 455 (9<sup>th</sup> Cir. 1998) (conclusions of law by a magistrate judge reviewed *de novo*); *Martinez v.*  
19 *Ylst*, 951 F.2d 1153, 1156 (9<sup>th</sup> Cir. 1991) (failure to object standing alone will not ordinarily  
20 waive question of law, but is a factor in considering the propriety of finding waiver)). The  
21 Court finds the R&R to be thorough and well-reasoned, without any clear error in law or fact.  
22 *United States v. Remsing*, 874 F.2d 614, 617-618 (9<sup>th</sup> Cir. 1989). The Court accepts and adopts  
23 the R&R as the opinion of the Court, pursuant to 28 U.S.C. § 636(b)(1). For the reasons stated  
24 in the R&R, the Court finds a basis for summary dismissal of Plaintiff's Complaint. The Court  
25 grants the Defendant's Motion for Judgment on the Pleadings and finds the alternative Motion  
26 for Summary Judgment moot.

27 **Accordingly,**

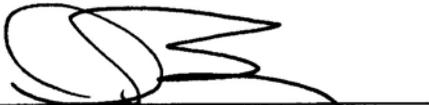
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**IT IS ORDERED** that the Report and Recommendation (Doc. # 29) is adopted as the opinion of the Court.

**IT IS FURTHER ORDERED** that the Motion for Judgment on the Pleadings (Doc. 25) is GRANTED and the Motion for Summary Judgment (Doc. 25) is DENIED AS MOOT.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment accordingly.

DATED this 15<sup>th</sup> day of June, 2012.

  
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David C. Bury  
United States District Judge