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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Victoria Chiaminto,  
Plaintiff,  
v.  
Commissioner of Social Security  
Administration,  
Defendant.

No. CV-20-00215-TUC-JAS  
**ORDER**

Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Macdonald. The Report and Recommendation recommends denying Plaintiff’s Opening Brief (Doc. 25) and affirming the Commissioner’s decision. Plaintiff filed objections to the Report and Recommendation and Defendant responded.<sup>1</sup>

As a threshold matter, as to any new evidence, arguments, and issues that were not timely and properly raised before United States Magistrate Macdonald, the Court exercises its discretion to not consider those matters and considers them waived. *United States v. Howell*, 231 F.3d 615, 621-623 (9th Cir. 2000) (“[A] district court has discretion, but is not required, to consider evidence presented for the first time in a party's objection to a magistrate judge's recommendation . . . [I]n making a decision on whether to consider newly offered evidence, the district court must . . . exercise its discretion . . . [I]n providing for a *de novo* determination rather than *de novo* hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to

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<sup>1</sup> Unless otherwise noted by the Court, internal quotes and citations have been omitted when citing authority throughout this Order.

1 place on a magistrate judge's proposed findings and recommendations . . . The magistrate  
2 judge system was designed to alleviate the workload of district courts . . . To require a  
3 district court to consider evidence not previously presented to the magistrate judge would  
4 effectively nullify the magistrate judge's consideration of the matter and would not help to  
5 relieve the workload of the district court. Systemic efficiencies would be frustrated and the  
6 magistrate judge's role reduced to that of a mere dress rehearsal if a party were allowed to  
7 feint and weave at the initial hearing, and save its knockout punch for the second round . .  
8 . Equally important, requiring the district court to hear evidence not previously presented  
9 to the magistrate judge might encourage sandbagging. [I]t would be fundamentally unfair  
10 to permit a litigant to set its case in motion before the magistrate, wait to see which way  
11 the wind was blowing, and—having received an unfavorable recommendation—shift gears  
12 before the district judge.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9<sup>th</sup> Cir.  
13 2003) (“Finally, it merits re-emphasis that the underlying purpose of the Federal  
14 Magistrates Act is to improve the effective administration of justice.”).

15         Assuming that there has been no waiver, the Court has conducted a *de novo* review  
16 as to Plaintiff’s objections. *See* 28 U.S.C. § 636(b)(1)(C) (“Within fourteen days after  
17 being served with [the Report and Recommendation], any party may serve and file written  
18 objections to such proposed findings and recommendations as provided by rules of court.  
19 A judge of the court shall make a *de novo* determination of those portions of the report or  
20 specified proposed findings or recommendations to which objection is made. A judge of  
21 the court may accept, reject, or modify, in whole or in part, the findings or  
22 recommendations made by the magistrate judge. The judge may also receive further  
23 evidence or recommit the matter to the magistrate judge with instructions.”).

24         In addition to reviewing the Report and Recommendation and any objections and  
25 responsive briefing thereto, the Court’s *de novo* review of the record includes review of the  
26 record and authority before United States Magistrate Judge Macdonald which led to the  
27 Report and Recommendation in this case.

28         Upon *de novo* review of the record and authority herein, the Court finds Plaintiff’s

1 objections to be without merit, rejects those objections, and adopts United States  
2 Magistrate Judge Macdonald’s Report and Recommendation. *See, e.g., United States v.*  
3 *Rodriguez*, 888 F.2d 519, 522 (7<sup>th</sup> Cir. 1989) (“Rodriguez is entitled by statute to *de novo*  
4 review of the subject. Under *Raddatz* [447 U.S. 667 (1980)] the court may provide this on  
5 the record compiled by the magistrate. Rodriguez treats adoption of the magistrate's report  
6 as a sign that he has not received his due. Yet we see no reason to infer abdication from  
7 adoption. On occasion this court affirms a judgment on the basis of the district court's  
8 opinion. Affirming by adoption does not imply that we have neglected our duties; it means,  
9 rather, that after independent review we came to the same conclusions as the district judge  
10 for the reasons that judge gave, rendering further explanation otiose. When the district  
11 judge, after reviewing the record in the light of the objections to the report, reaches the  
12 magistrate's conclusions for the magistrate's reasons, it makes sense to adopt the report,  
13 sparing everyone another round of paper.”); *Bratcher v. Bray-Doyle Independent School*  
14 *Dist. No. 42 of Stephens County, Okl.*, 8 F.3d 722, 724 (10th Cir. 1993) (“*De novo* review  
15 is statutorily and constitutionally required when written objections to a magistrate's report  
16 are timely filed with the district court . . . The district court's duty in this regard is satisfied  
17 only by considering the actual testimony [or other relevant evidence in the record], and not  
18 by merely reviewing the magistrate's report and recommendations . . . On the other hand,  
19 we presume the district court knew of these requirements, so the express references to *de*  
20 *novo* review in its order must be taken to mean it properly considered the pertinent portions  
21 of the record, absent some clear indication otherwise . . . Plaintiff contends . . . the district  
22 court's [terse] order indicates the exercise of less than *de novo* review . . . [However,]  
23 brevity does not warrant look[ing] behind a district court's express statement that it engaged  
24 in a *de novo* review of the record.”); *Murphy v. International Business Machines Corp.*, 23  
25 F.3d 719, 722 (2nd Cir. 1994) (“We . . . reject Murphy's procedural challenges to the  
26 granting of summary judgment . . . Murphy's contention that the district judge did not  
27 properly consider her objections to the magistrate judge's report . . . lacks merit. The judge's  
28 brief order mentioned that objections had been made and overruled. We do not construe

1 the brevity of the order as an indication that the objections were not given due  
2 consideration, especially in light of the correctness of that report and the evident lack of  
3 merit in Murphy's objections.”); *Gonzales-Perez v. Harper*, 241 F.3d 633 (8th Cir. 2001)  
4 (“When a party timely objects to a magistrate judge's report and recommendation, the  
5 district court is required to make a *de novo* review of the record related to the objections,  
6 which requires more than merely reviewing the report and recommendation . . . This court  
7 presumes that the district court properly performs its review and will affirm the district  
8 court's approval of the magistrate's recommendation absent evidence to the contrary . . .  
9 The burden is on the challenger to make a *prima facie* case that *de novo* review was not  
10 had.”); *Brunig v. Clark*, 560 F.3d 292, 295 (5<sup>th</sup> Cir. 2009) (“Brunig also claims that the  
11 district court judge did not review the magistrate's report *de novo* . . . There is no evidence  
12 that the district court did not conduct a *de novo* review. Without any evidence to the  
13 contrary . . . we will not assume that the district court did not conduct the proper review.”).<sup>2</sup>

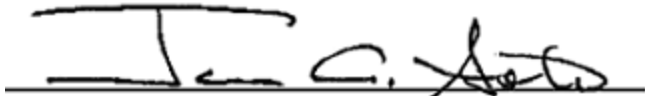
#### 14 **CONCLUSION**

15 Accordingly, IT IS HEREBY ORDERED as follows:

16 <sup>2</sup> See also *Pinkston v. Madry*, 440 F.3d 879, 893-894 (7th Cir. 2006) (the district court's  
17 assurance, in a written order, that the court has complied with the *de novo* review  
18 requirements of the statute in reviewing the magistrate judge's proposed findings and  
19 recommendation is sufficient, in all but the most extraordinary of cases, to resist assault on  
20 appeal; emphasizing that “[i]t is clear that Pinkston's argument in this regard is nothing  
21 more than a collateral attack on the magistrate's reasoning, masquerading as an assault on  
22 the district court's entirely acceptable decision to adopt the magistrate's opinion . . .”);  
23 *Garcia v. City of Albuquerque*, 232 F.3d 760 (10th Cir. 2000) (“The district court's order  
24 is terse . . . However, neither 28 U.S.C. § 636(b)(1) nor Fed.R.Civ.P. 72(b) requires the  
25 district court to make any specific findings; the district court must merely conduct a *de*  
26 *novo* review of the record . . . It is common practice among district judges . . . to [issue a  
27 terse order stating that it conducted a *de novo* review as to objections] . . . and adopt the  
28 magistrate judges' recommended dispositions when they find that magistrate judges have  
dealt with the issues fully and accurately and that they could add little of value to that  
analysis. We cannot interpret the district court's [terse] statement as establishing that it  
failed to perform the required *de novo* review . . . We hold that although the district court's  
decision is terse, this is insufficient to demonstrate that the court failed to review the  
magistrate's recommendation *de novo*.”); *Goffman v. Gross*, 59 F.3d 668, 671 (7<sup>th</sup> Cir.  
1995) (“The district court is required to conduct a *de novo* determination of those portions  
of the magistrate judge's report and recommendations to which objections have been filed.  
But this *de novo* determination is not the same as a *de novo* hearing . . . [I]f following a  
review of the record the district court is satisfied with the magistrate judge's findings and  
recommendations it may in its discretion treat those findings and recommendations as its  
own.”).

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- (1) United States Magistrate Judge Macdonald’s Report and Recommendation is accepted and adopted in its entirety.
  - (2) Plaintiff’s objections are rejected.
  - (3) Plaintiff’s Opening Brief (Doc. 25) is DENIED and the Commissioner’s decision is AFFIRMED. The Clerk shall enter judgment and close the file in this case.
- Dated this 7th day of January, 2022.



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Honorable James A. Soto  
United States District Judge