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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

PHILLIP TOTHEROW,)	
)	
Plaintiff,)	
)	
v.)	CIV 07-02218 PHX PGR (MEA)
)	
DORA SCHRIRO, et al.,)	REPORT AND RECOMMENDATION
)	
Defendants.)	
_____)	

TO THE HONORABLE PAUL G. ROSENBLATT:

This matter is before the Magistrate Judge on referral from the District Judge, and the determination of the Magistrate Judge is dispositive of some of Plaintiff's claims. Accordingly, the following proposed findings of fact, report, and recommendation are made pursuant to Rule 72(b), Federal Rules of Civil Procedure, and 28 U.S.C. § 636(b)(1)(B) and (C).

Plaintiff, who is now incarcerated by the Arizona Department of Corrections, filed a civil rights complaint on November 14, 2007, naming Dora Schriro, the Arizona Department of Corrections, and members of the Board of Institutional Protectional Committee as defendants. On January 18, 2008, the Court granted Plaintiff's motion to proceed *in forma pauperis* and dismissed the complaint with leave to amend.

1 On February 5, 2008, Plaintiff filed an amended
2 complaint naming Herb Haley and Benny Rollins as defendants
3 and alleging these defendants failed to protect him from
4 attacks by other inmates in 2001 and 2006. On April 2, 2008,
5 the Court ordered Defendants Haley and Rollins to answer Count
6 I of Plaintiff's amended complaint at Docket No. 8. The Court
7 denied Plaintiff's motion for injunctive relief without
8 prejudice.

9 Defendants waived service and filed an answer to the
10 amended complaint on June 30, 2008. See Docket No. 15. On
11 July 2, 2008, the Court ordered any motion to add parties or
12 to further amend the complaint be filed by September 5, 2008.

13 Plaintiff filed a motion [Docket No. 19] for leave to
14 file an amended complaint on September 4, 2008. Plaintiff
15 did not lodge a proposed amended complaint. In an order
16 issued October 3, 2008, the Court allowed Plaintiff until
17 October 31, 2008, to file a second amended complaint. The
18 Second Amended Complaint was filed October 20, 2008. In an
19 order issued November 25, 2008, the Court ordered Defendants
20 to answer the claims stated in the Second Amended Complaint.

21 Defendants filed a motion to dismiss on February 11,
22 2009. Plaintiff filed a response to the motion to dismiss and
23 a motion [Docket No. 56] for leave to amend his Second Amended
24 Complaint on March 16, 2009. Defendants oppose the motion for
25 leave to amend the Second Amended Complaint.

26 The scheduling order required all motions to join
27 parties or to further amend pleadings be filed by September 5,
28 2008. Plaintiff has filed two amended complaints since his

1 original complaint was filed. A dispositive motion is
2 pending.

3 Accordingly,

4 **IT IS RECOMMENDED that** Plaintiff's motion for leave
5 to file an amended complaint which adds additional parties and
6 claims for relief be **denied**.

7 DATED this 13th day of April, 2009.

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Mark E. Aspey
United States Magistrate Judge