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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ronald Williams,	}	
Plaintiff,		No. CV-10-0237-PHX-PGR (MEA)
vs.		
CO II B. Griffeth, et al.,		<u>ORDER</u>
Defendants.		

Having considered Magistrate Judge Aspey’s Report and Recommendation in light of the plaintiff’s Objection to the Report and Recommendation (Doc. 28), the Court finds that the Magistrate Judge correctly determined that the plaintiff’s Motion for Leave to File an Amended Complaint (Doc. 18) should be denied.

At issue is the plaintiff’s request to amend his complaint to add a new defendant, Correctional Major Lao, to his Eighth Amendment claim. Pursuant to the Court’s original screening order, the only remaining claim of the original complaint is an Eighth Amendment claim against defendants Griffeth and Evans for leaving the plaintiff in his cell for more than fifteen minutes after they discharged an entire canister of pepper spray into the cell; the Court dismissed the plaintiff’s claims arising from the defendants’ decision to use pepper spray

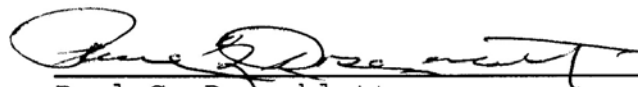
1 and the manner in which they used it. In his proposed amended complaint, the
2 plaintiff alleges that Lao, by failing to meet with the plaintiff as he promised he
3 would, failed to correct the situation using non-forceful means before it escalated
4 to the level that resulted in the pepper-spraying. The defendants argue,
5 presumably pursuant to Fed.R.Civ.P. 15(a)(2), that the proposed addition is futile
6 because the proposed amended complaint fails to state a claim against Lao. The
7 Magistrate Judge concluded that the proposed amended complaint fails to state a
8 claim against Lao pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

9 Whether viewed pursuant to the futility standard of Rule 15(a) or the failure
10 to state a claim standard under § 1915(e) or 28 U.S.C. § 1915A(b)(1), which in
11 practical effect constitute the same standard, the Court agrees that the plaintiff's
12 allegations against Lao do not state an Eighth Amendment claim even when
13 liberally construed. First, since the Court has already ruled that the use of pepper
14 spray on the plaintiff did not constitute a constitutional violation, Lao's alleged
15 failure to intervene to prevent the pepper-spraying does not constitute a
16 constitutional violation, and (2) there are no allegations in the proposed amended
17 complaint that Lao knew that the plaintiff had been left in his cell for an
18 unreasonable amount of time after pepper spray had been discharged into his
19 cell. Therefore,

20 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
21 (Doc. 25) is accepted and adopted by the Court.

22 IT IS FURTHER ORDERED that the plaintiff's Motion for Leave to File an
23 Amended Complaint (Doc. 18) is denied.

24 DATED this 4th day of November, 2010.

25 
26 Paul G. Rosenblatt
United States District Judge