

1 **WO**

2

3

4

5

6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8

9 Tim Wesley Weaver,

10 Plaintiff,

11 vs.

12 Charles L. Ryan, et al.,

13 Defendants.

14

15

16

No. CV-10-0717-PHX-FJM

**ORDER**

17 The court has before it plaintiff’s motion to amend the complaint (doc. 36),  
18 defendants’ response (doc. 43), the report and recommendation of the United States  
19 Magistrate Judge recommending that we deny the motion (doc. 45), plaintiff’s objections to  
20 the report and recommendation (doc. 49), and defendants’ reply (doc. 57).

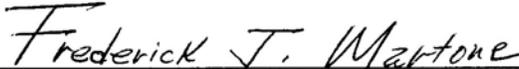
21 This matter has been pending for almost a year. On March 29, 2010, plaintiff filed  
22 a four count complaint pursuant to 42 U.S.C. § 1983 asserting that his constitutional rights  
23 were violated by his validation as a gang member and conditions of confinement in  
24 maximum security. On August 27, 2010, the court issued a scheduling order setting  
25 September 24, 2010, as the deadline to amend the complaint, and February 16, 2011, as the  
26 discovery cut-off date. Plaintiff’s motion to amend the complaint was filed on December 15,  
27 2010, three months after the deadline. Plaintiff seeks to amend his complaint in order to  
28 assert a First Amendment/RLUIPA claim regarding a religious diet—an entirely new cause

1 of action. In addition, he seeks to add four new defendants.

2 We agree with the Magistrate Judge's conclusion that adding a new claim and new  
3 defendants so late in this proceeding will unduly prejudice defendants and result in delay of  
4 the resolution of this case. Plaintiff acknowledgment that he has "studied Asatru for many  
5 years and has been 'designated' within A.D.O.C. as Asatru for many years as his designated  
6 religious preference," (doc. 36, ex. 1 at 23) undermines any claim of excusable neglect.

7 **IT IS ORDERED ADOPTING** the report and recommendation of the Magistrate  
8 Judge and **DENYING** plaintiff's motion to amend (doc. 36).

9 DATED this 4<sup>th</sup> day of March, 2011.

10  
11   
12 \_\_\_\_\_  
13 Frederick J. Martone  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28