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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Derrick Johnson, *et al.*,

10 Plaintiff,

11 v.

12 Robert Brady, *et al.*,

13 Defendants.  
14  
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No. CV-14-01875-PHX-DGC

**ORDER**

16 Plaintiff Derrick Johnson has filed a Rule 60 motion to vacate three orders entered  
17 in this case. Doc. 101. Defendants responded (Docs. 103, 104), and Plaintiff did not  
18 reply. No party requests oral argument. The Court will deny Plaintiff's motion.

19 **I. Background.**

20 On August 22, 2014, Plaintiff filed a pro se complaint against various government  
21 employees and municipalities ("Defendants"). Doc. 1. Plaintiff filed an application to  
22 proceed *in forma pauperis* (Doc. 2) and a Rule 4(c)(3) motion for service by a U.S.  
23 marshal (Doc. 4). The Court granted the application and motion. Doc. 8. The Court  
24 ordered the Clerk to deliver service packets to Plaintiff and directed Plaintiff to complete  
25 and return them to the Clerk so that the U.S. Marshal could execute service. Doc. 8  
26 at 1-2. When Plaintiff returned the packets, the Clerk forwarded them to the Marshal for  
27 service on Defendants. *See* Doc. 101.

28 Defendants filed three motions to dismiss. Docs. 11, 20, 22. On

1 January 28, 2015, the Court granted two of the motions in full and one in part. Doc. 37  
2 (“January 28 order”). Plaintiff filed an amended complaint (Doc. 44), and Defendants  
3 again filed three motions to dismiss (Docs. 49, 50, 51). On June 17, 2015, the Court  
4 granted two of the motions in full and one in part. Doc. 65 (“June 17 order”). The  
5 remaining Defendants then filed a motion for summary judgment. Doc. 78. Plaintiff did  
6 not respond. Doc. 83; Doc. 89 at 2. On February 16, 2016, the Court dismissed “this  
7 action without prejudice for Plaintiff’s failure to prosecute, his failure to follow the  
8 applicable rules, and his failure to comply with the Court’s orders.” *Id.* at 3  
9 (“February 16 order”).

10 Plaintiff now moves for Rule 60 relief, alleging that a procedural mistake requires  
11 the Court to vacate the January 28, June 17, and February 16 orders. Doc. 101.

12 **II. Analysis.**

13 Plaintiff must show that Rule 60 relief is warranted. Fed. R. Civ. P. 60. Plaintiff  
14 relies on an alleged violation of Rule 4(b) to justify vacating the three orders. Doc. 101.  
15 Plaintiff argues that Rule 4(b) required the Clerk to “sign, seal, and issue” the summons.  
16 *Id.* at 2. The Clerk’s failure to do so, Plaintiff argues, is an error that requires the Court  
17 to vacate its prior orders. *Id.*

18 Rule 4(b) provides that “the plaintiff may present a summons to the clerk for  
19 signature and seal. If the summons is properly completed, the clerk must sign, seal, and  
20 issue it *to the plaintiff for service on the defendant.*” Fed. R. Civ. P. 4(b) (emphasis  
21 added). But Plaintiff elected not to serve Defendants himself. Plaintiff instead requested  
22 that “service . . . be made by a U.S. Marshal, Deputy Marshal, or someone specially  
23 appointed by the Court.” Doc. 4; *see also* Fed. R. Civ. P. 4(c)(3). The Court granted  
24 Plaintiff’s motion. Doc. 8. Returning service packets to Plaintiff would be inconsistent  
25 with his own request that someone else serve them. Further, the alleged noncompliance  
26 has had no effect on this case. The Court did not rely on Rule 4 to issue the three orders  
27 Plaintiff seeks to vacate. Docs. 37, 65, 89.

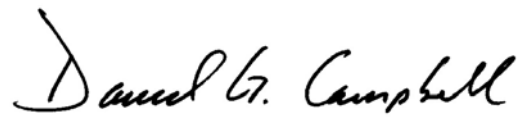
28 Plaintiff cites Rules 5(d)(2), 6(c)(1)(C), 7(b), and 78(b) for the proposition that

1 they “provide more grounds for this application and motion.” Doc. 101 at 2. But  
2 Plaintiff does not explain, and the Court cannot discern, how these rules support his  
3 motion.

4 **IT IS ORDERED** that Plaintiff Derrick Johnson’s Rule 60 motion (Doc. 101) is  
5 **denied.**

6 Dated this 2nd day of April, 2018.

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David G. Campbell  
United States District Judge