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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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10 Kurt Adam Oldenburg,
11 Plaintiff,

12 vs.

13 Laura Ridge, et al.,
14 Defendants.

No. CV-14-02367-PHX-PGR (DMF)

ORDER

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16 Pending before the Court is Plaintiff's Objection to Magistrate's Order (Doc.
17 25), which is a timely appeal from Magistrate Judge Fine's order (Doc. 24) that
18 denied the plaintiff leave to file a third amended complaint. The Court finds that the
19 appeal should be denied.

20 The Court entered an order on December 16, 2015 (Doc. 20) that granted the
21 plaintiff's motion to file a second amended complaint, although the order dismissed
22 five counts and eight named defendants from the proposed amended complaint for
23 failure to state a claim. That order also required the plaintiff to timely return service
24 of process packets sent to him by the Clerk of the Court related to the Second
25 Amended Complaint. On January 4, 2016, the plaintiff filed a motion to file a third
26 amended complaint (Doc. 22). The stated purpose of the motion was not to add any

1 new claims or defendants in an amended complaint, but in effect was to shorten the
2 Second Amended Complaint by deleting the claims dismissed by the Court in order
3 to reduce photocopying and mailing expenses that the plaintiff stated he would incur,
4 but could not afford, in providing copies of the Second Amended Complaint to the
5 remaining defendants. In an order (Doc. 24) entered on January 6, 2016, Magistrate
6 Judge Fine denied the plaintiff's motion as "unnecessary," noting that the plaintiff
7 was not responsible for the photocopying and mailing costs associated with serving
8 the Second Amended Complaint. The plaintiff filed his pending appeal on January
9 22, 2016. On February 4, 2016, Magistrate Judge Fine issued an order (Doc. 26)
10 requiring the plaintiff to show cause why this action should not be dismissed due to
11 the plaintiff's failure to timely return the service packets as required by the Court in
12 its December 16th order. In his timely response (Doc. 27) to that order, the plaintiff
13 noted the pendency of this appeal, and the fact that he cannot comply with the order
14 requiring him to complete and return the service packets because he no longer has
15 a copy of the Second Amended Complaint in his possession.

16 In order to prevail on his appeal, the plaintiff has the burden of establishing
17 that Magistrate Judge Fine's order denying his motion to file a third amended
18 complaint is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Under
19 this standard, the Court must defer to a non-dispositive ruling made by a magistrate
20 judge unless the Court is left with the definite and firm conviction that a mistake has
21 been committed. The Court has no such conviction here.

22 The plaintiff's basic contention is that Magistrate Judge Fine's ruling that his
23 proposed third amended complaint is unnecessary is an erroneous finding that the
24 motion to amend had to be denied because it is futile. The Court disagrees because
25 Magistrate Judge Fine made no finding of futility. She merely found that there was
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1 simply no need for a third amended complaint based on the reasons given by the
2 plaintiff for the proposed amendment, and the Court concurs in that finding since the
3 plaintiff is not attempting to add any new claims or defendants but is merely seeking
4 to “streamline” the remaining portion of the Second Amended Complaint for cost-
5 cutting purposes. Since, as Magistrate Judge Fine correctly noted, the plaintiff is not
6 responsible for providing copies of the Second Amended Complaint for service
7 purposes, no significant purpose is served by the proposed third amended
8 complaint. Therefore,

9 IT IS ORDERED that Plaintiff’s Objection to Magistrate’s Order, Doc. 24-1
10 (Doc. 25) is denied and that the Magistrate Judge’s Order (Doc. 24) is affirmed.

11 IT IS FURTHER ORDERED that the Magistrate Judge’s Order to Show Cause
12 (Doc. 26) is vacated and that the Magistrate Judge shall issue a new deadline for the
13 plaintiff to return the service packets for the remaining defendants in the Second
14 Amended Complaint.

15 IT IS FURTHER ORDERED that the Clerk of the Court shall mail the plaintiff
16 a copy of his Second Amended Complaint (Doc. 21).¹

17 DATED this 17th day of March, 2016.

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19 _____
20 Paul G. Rosenblatt
21 United States District Judge

22 cc: DMF

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25 The plaintiff is advised that this is a one-time only free photocopy. The
26 plaintiff will be required to pay the Court’s standard photocopying fee for any future
request for a copy of a filed document.