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14IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Anthony James Merrick,)	No. CV-15-00684-PHX-SPL (BSB)
)	
Plaintiff,)	ORDER
vs.)	
)	
Charles L. Ryan, et al.,)	
)	
Defendants.)	

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On April 16, 2015, Plaintiff Anthony James Merrick, who is confined in the Arizona State Prison Complex-Yuma, commenced the instant action (Doc. 1), and filed a *pro se* Second Amended Complaint pursuant to 42 U.S.C. § 1983 on July 24, 2015 (Doc. 14). On May 13, 2016, Merrick filed a motion to supplement the pleadings pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, seeking to supplement the pleadings with transactions, occurrences, and events that occurred after the filing of his Second Amended Complaint. (Docs. 52, 53.) While Defendants filed a response opposing the request on June 15, 2016 (Doc. 63), no reply was filed.

On July 8, 2016, the Honorable Bridget S. Bade, United States Magistrate Judge, issued a Report and Recommendation (“R&R”) (Doc. 65), recommending that the motion to supplement the pleadings be denied. Merrick was informed that he had fourteen days to file an objection to the R&R. However, he did not do so. Instead, Merrick filed a Rule 60(c) motion to vacate (Doc. 68) and declaration (Doc. 69), dated July 19, 2016, urging the Court to vacate the R&R because he did not receive Defendants’ response to the

1 motion, and was therefore precluded from filing a reply or an objection. Because nothing
2 prevented Merrick from objecting to the issues addressed in the R&R, and additional
3 briefing would not lead this Court to arrive at a different conclusion, the motion to vacate
4 will be denied.¹

5 The Court has reviewed Merrick’s proposed supplemental pleading and the
6 docket, and is in agreement with Judge Bade’s recommendation and her supporting
7 reasoning. As addressed in the R&R, the amendment and discovery deadlines have
8 passed. (*See* Docs. 31, 48.) Permitting Merrick to supplement his pleadings at this
9 juncture, the functional equivalent of granting him leave to file a Third Amended
10 Complaint, would unduly delay the resolution of this case. It would prejudice Defendants
11 who would be unable to conduct discovery and investigate the new allegations. Further,
12 amendment would be futile. As explained in the R&R, the proposed supplemental
13 allegations fail to state a claim for relief. The Court will therefore adopt the R&R and
14 deny Merrick’s motion to supplement the pleadings. *See* 28 U.S.C. § 636(b)(1) (stating
15 that the district court “may accept, reject, or modify, in whole or in part, the findings or
16 recommendations made by the magistrate”); Fed. R. Civ. P. 72(b)(3) (“The district judge
17 may accept, reject, or modify the recommended disposition; receive further evidence; or
18 return the matter to the magistrate judge with instructions.”). Accordingly,

19 **IT IS ORDERED:**

20 1. That the Motion Pursuant to Rule 60(c) (Doc. 68) is **denied**;

21 2. That the Magistrate Judge’s Report and Recommendation (Doc. 65) is
22 **accepted** and **adopted** by the Court; and

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27 ¹ The Court adds as a side note that Rule 60 is not a mechanism for vacating a
28 Magistrate Judge’s R&R. An R&R is not a final judgment or an order; it is a
recommendation to the District Judge as to how he or she should rule on or resolve an
issue pending before the Court.

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3. That the Motion to Supplement the Pleadings (Doc. 52) is **denied**.

Dated this 26th day of July, 2016.


Honorable Steven P. Logan
United States District Judge