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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Anthony L Rodrigues,
10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,
13 Defendants.
14

No. CV-14-08141-PCT-DGC (ESW)

ORDER

15
16 Pending before the Court are a number of motions, which the Court has reviewed
17 and rules on as set forth below.

18 **I. DISCUSSION**

19 **A. Plaintiff's "Motion to Supplement Second Amended Complaint" (Doc.**
20 **174)**

21 On August 26, 2016, the Court deemed Plaintiff's "Rule 15(d) Motion for Leave
22 to Supplement Original Pleading" (Doc. 139) a motion to amend the Second Amended
23 Complaint (Doc. 15). (Doc. 168 at 2). The Court denied Plaintiff leave to amend the
24 Second Amended Complaint because Plaintiff's Motion (Doc. 139) was untimely filed
25 and Plaintiff failed to show the good cause necessary for the Court to deviate from its
26 Rule 16 Scheduling Order. (Doc. 168 at 4). In addition, Plaintiff's Motion (Doc. 139)
27 failed to comply with Local Rule of Civil Procedure 15.1. (*Id.*). The Court granted
28 Plaintiff leave to file a motion to supplement the Second Amended Complaint (Doc. 15)

1 pursuant to Federal Rule of Civil Procedure 15(d). (*Id.*). On September 9, 2016, Plaintiff
2 filed a “Motion to Supplement Second Amended Complaint” (Doc. 174) and
3 “Supplemental Pleading to Second Amended Complaint” (Doc. 175).¹

4 “Rule 15(d) permits the filing of a supplemental pleading which introduces a cause
5 of action not alleged in the original complaint and not in existence when the original
6 complaint was filed.” *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir.
7 1998) (citation omitted). “Rule 15(d) is intended to give district courts broad discretion
8 in allowing supplemental pleadings” as it is “a tool of judicial economy and
9 convenience.” *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). “While leave to permit
10 supplemental pleading is favored, it cannot be used to introduce a separate, distinct and
11 new cause of action” that should have been the subject of a separate suit. *Planned*
12 *Parenthood of Southern Arizona v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997).

13 There is currently one claim at issue in this case—Plaintiff’s allegation that
14 Defendants were deliberately indifferent to Plaintiff’s serious medical need to be in a
15 smoke-free environment. (Doc. 104 at 9-11, 13-14). Plaintiff’s “Supplemental Pleading”
16 (Doc. 175) seeks to add six new defendants and two new claims. Plaintiff alleges that
17 Defendants were indifferent to his serious medical needs by refusing to provide Plaintiff
18 with a “low fat reduced sodium medical diet.” (Doc. 175 at 2-7). Plaintiff also alleges
19 the loss of personal property and emotional and physical injury arising from a prison riot
20 that occurred in July 2015. (*Id.* at 10-23). The Court finds that the proposed new claims
21 represent separate causes of action that are distinct from the cause of action currently at
22 issue. To reiterate, the goal of Rule 15(d) is judicial efficiency. *Keith*, 858 F.2d at 473.
23 This case is over two years old, discovery has closed, and briefing on Defendants’
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25 ¹ Defendants filed a “Response in Opposition to Plaintiff’s Motion to Supplement
26 Second Amended Complaint” (Doc. 182). Defendants argue that Plaintiff filed his
27 Motion to Supplement (Doc. 174) without substantial justification and for the purpose of
28 unreasonably delaying and/or expanding the proceeding and that Defendants are therefore
entitled to doubled attorney fees pursuant to ARIZ. REV. STAT. § 12-349(A). (Doc. 182 at
3-4). Plaintiff has moved to strike (Doc. 187) the Response (Doc. 182). Plaintiff’s
Motion to Strike and Defendants’ request for attorney fees are discussed in Section I(B)
below.

1 Motion for Summary Judgment is nearly complete. (Docs. 166, 192-93). Judicial
2 efficiency will not be served if Plaintiff is permitted to add two new claims unrelated to
3 Plaintiff's existing cause of action against new defendants. Plaintiff's "Motion to
4 Supplement Second Amended Complaint" (Doc. 174) will be denied.

5 **B. Plaintiff's "Motion to Strike . . ." (Doc. 186) and Defendants' Request for**
6 **Doubled Attorney Fees Pursuant to ARIZ. REV. STAT. § 12-349(A) (Docs.**
7 **182, 189, 191)**

8 Plaintiff has moved to strike Defendants' "Response in Opposition to Plaintiff's
9 Motion to Supplement Second Amended Complaint" (Doc. 182). (Doc. 186).
10 Defendants' Response (Doc. 182) is authorized by Local Rule of Civil Procedure 7.2(c).
11 Plaintiff's Motion to Strike (Doc. 186) will be denied.

12 In their Response (Doc. 182 at 6), Defendants request that the Court "order
13 Plaintiff to pay Defendants' doubled reasonable attorney fees and expenses incurred as
14 the result of Plaintiff's Motion to Supplement in an amount not to exceed five thousand
15 dollars as set forth in A.R.S. 12-349."² ARIZ. REV. STAT. § 12-349(A) provides that:

16 Except as otherwise provided by and not inconsistent with
17 another statute, in any civil action commenced or appealed in
18 a court of record in this state, the court shall assess reasonable
19 attorney fees, expenses and, at the court's discretion, double
20 damages of not to exceed five thousand dollars against an
21 attorney or party, including this state and political
22 subdivisions of this state, if the attorney or party does any of
23 the following:

- 24 1. Brings or defends a claim without substantial
25 justification.
- 26 2. Brings or defends a claim solely or primarily for
27 delay or harassment.
- 28 3. Unreasonably expands or delays the proceeding.
4. Engages in abuse of discovery.

24 Defendants assert that "[t]his substantive rule applies in Arizona District Court." (Doc.
25 182 at 3). Under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), "federal courts sitting in
26 diversity apply state substantive law and federal procedural law." *Gasperini v. Ctr. for*

28 ² Defendants reiterate this request in their "Response in Opposition to Plaintiff's
Motion to Strike" (Docs. 189, 191).

1 *Humanities, Inc.*, 518 U.S. 415, 427 (1996). However, the Court’s subject-matter
2 jurisdiction in this case is not predicated on diversity of the parties, but on a federal
3 question. *See Rushdan v. Perbula*, 295 F. App’x 154, 155 (9th Cir. 2008) (“The district
4 court had federal question jurisdiction because the first amended complaint asserted an
5 Eighth Amendment claim for deliberate indifference under section 1983.”). No claims
6 based on Arizona law are involved. “In a pure federal question case brought in federal
7 court, federal law governs attorney fees.” *Disability Law Center of Alaska, Inc. v.*
8 *Anchorage School Dist.*, 581 F.3d 936, 940 (9th Cir. 2009) (reversing district court’s
9 award of attorney fees pursuant to state procedural rule); *Klein v. City of Laguna Beach*,
10 810 F.3d 693, 702 (9th Cir. 2016) (“[F]ederal courts apply state law for attorneys’ fees to
11 state claims because of the *Erie* doctrine . . . *Erie* does not compel federal courts to apply
12 state law to a federal claim.”). Defendants’ request for attorney fees pursuant to ARIZ.
13 REV. STAT. § 12-349 will be denied.³

14 **C. Plaintiff’s Motions (Docs. 170, 177) Requesting that the Court Stay**
15 **Defendants’ Motion for Summary Judgment (Doc. 166)**
16 **and**
17 **Plaintiff’s “Motion for Extention [sic] of Time to File Answer to Request**
18 **for Summary Judgment” (Doc. 184)**

19 On August 31, 2016, the Clerk of Court docketed Plaintiff’s “Motion to Stay
20 Defendants’ Request for Summary Judgment” (Doc. 170). Thereafter, Plaintiff filed a
21 “Motion to Amend Motion to Stay Defendants’ Request for Summary Judgment” (Doc.
22 176) and lodged an “Amended Motion to Stay . . .” (Doc. 177). The Court will grant
23 Plaintiff’s Motion to Amend (Doc. 176) and will direct the Clerk of Court to file
24 Plaintiff’s “Amended Motion to Stay . . .” (Doc. 177).

25 ³ The Court would deny Defendants’ request for attorney fees pursuant to ARIZ.
26 REV. STAT. § 12-349 even if this were a diversity jurisdiction case. Defendants’ request
27 is based on Plaintiff’s conduct in the litigation. As the Ninth Circuit has explained,
28 “when fees are based upon misconduct by an attorney or party in the litigation itself,
rather than upon a matter of substantive law, the matter is
procedural.” *In re Larry’s Apartment, L.L.C.*, 49 F.3d 832, 838 (9th Cir. 2001) (reversing
bankruptcy court’s award of attorney fees pursuant to ARIZ. REV. STAT. § 12-349).
“[T]he federal courts must be in control of their own proceedings and of the parties
before them, and it is almost apodictic that federal sanction law is the body of law to be
considered in that regard.” *Id.*

1 In requesting that the Court stay Defendants' Motion for Summary Judgment,
2 Plaintiff asserts that Defendants have failed to comply with Plaintiff's discovery requests.
3 (Doc. 177 at 2). However, the Court previously denied Plaintiff's "Motion to Compel
4 Discovery" (Doc. 130). (Doc. 168 at 5-7). To the extent Plaintiff seeks to reopen
5 discovery pursuant to Federal Rule of Civil Procedure 56(d), Plaintiff's request is denied
6 for failure to comply with the requirements set forth in Rule 56(d). *See, e.g., United*
7 *States v. Kitsap Physicians Service*, 314 F.3d 995, 1000 (9th Cir. 2002) ("Failure to
8 comply with [the requirements of Rule 56(d)] is a proper ground for denying
9 relief.");⁴ *Pfingston v. Ronan Engineering Co.*, 284 F.3d 999, 1005 (9th Cir. 2002)
10 ("The failure to conduct discovery diligently is grounds for the denial of a Rule 56[d]
11 motion."); *Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 524 (9th Cir. 1989) ("A movant
12 cannot complain if it fails diligently to pursue discovery before summary judgment");
13 *Landmark Dev. Corp. v. Chambers Corp.*, 752 F.2d 369, 372 (9th Cir. 1985) (ruling that
14 district court properly denied the plaintiffs' Rule 56(d) motion because the "[f]ailure to
15 take further depositions apparently resulted largely from plaintiffs' own delay"). As
16 Plaintiff has not shown good cause to stay the Motion for Summary Judgment (Doc.
17 166), the "Amended Motion to Stay . . ." (Doc. 177) will be denied.

18 Plaintiff requests that the Court extend the deadline to respond to the Motion for
19 Summary Judgment (Doc. 166) to October 26, 2016. (Doc. 184 at 2). The Court will
20 grant the request. Plaintiff's Response (Docs. 192-93) filed on October 25, 2016 is
21 deemed timely filed.

22 II. CONCLUSION

23 Based on the foregoing,

24 **IT IS ORDERED** denying Plaintiff's "Motion to Supplement Second Amended
25 Complaint" (Doc. 174).

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27 ⁴ Prior to the 2010 amendments to the Federal Rules of Civil Procedure, Rule
28 56(d) was numbered 56(f).

