IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

BRIAN JOHNSON,

Plaintiff,

v. **No. CIV-16-0011 LAM/GJF**

SIERRA COUNTY BOARD OF COUNTY COMMISSIONERS, CURTIS CHERRY, GLENN HAMILTON, and JOE BACA,

Defendants.

ORDER DENYING AS MOOT MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT [*Doc. 72*]

THIS MATTER is before the Court on Plaintiff's ***Motion for Leave to File Third Amended Complaint*** *(Doc. 72),* filed on December 19, 2016. Defendants Baca and Hamilton filed a response to the motion on January 3, 2017. [*Doc. 73*]. No other defendant filed a response to the motion, and Plaintiff has not filed a reply, and the times for doing so have passed. Having considered the motion, response, record of the case, and relevant law, the Court finds that the motion should be **DENIED as moot**.

In his motion, Plaintiff asks the Court to allow him to file an amended complaint "to include additional facts regarding segregation conditions at the Sierra County Detention Center." [*Doc. 72* at 1]. Plaintiff states that the proposed amended complaint also corrects "clerical and other small errors," but that it does not add any new claims. *Id.* at 2. In response, Defendants Baca and Hamilton oppose the motion, stating that "[i]t will be an undue expense to Defendants to prepare an answer to a Third Amended Complaint, given that all of the newly added facts are

encompassed within the causes of action set forth in Plaintiff's Second Amended Complaint." [*Doc. 73* at 2]. Defendants Baca and Hamilton state that they are already on notice of the factual allegations added in the proposed Third Amended Complaint because similar facts are already included in the Second Amended Complaint, and contend that the Third Amended Complaint is unnecessary. *Id.* at 2-3.

On January 23, 2017, Plaintiff filed an amended motion to file a Third Amended Complaint, in which Plaintiff seeks to add three parties. *See* [*Doc. 74*].[1] Plaintiff's second proposed Third Amended Complaint incorporates the additional factual allegations included in his first proposed Third Amended Compliant. *Compare* [*Doc. 72-1*] *with* [*Doc. 74-1*]. Therefore, the Court will deny this motion as moot, and will consider Plaintiff's amended motion to file a Third Amended Complaint in a separate Order.

IT IS THEREFORE ORDERED that, for the reasons stated above, Plaintiff's ***Motion for Leave to File Third Amended Complaint*** *(Doc. 72)* is **DENIED as moot**.

IT IS SO ORDERED.

Lourdes A. Martínez

LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE

[1] Plaintiff's amended motion to file a Third Amended Complaint [*Doc. 74*] is improperly filed as both a reply to his first motion to file a Third Amended Complaint ***and*** as a new motion. This violates the Court's Administrative Order 92-88, which provides that practitioners shall "submit a separate pleading for each matter upon which adjudication or a ruling of the Court is sought," and shall "submit, in the case of responsive pleadings, a separate pleading addressing each motion or other pleading to which a response is made." The Court will further consider *Document 74* in a separate Order.