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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Scott M. McNair,
Plaintiff,

No. CV-03-2119-PHX-NVW

ORDER

vs.

County of Maricopa, et al.,
Defendant.

_____)

The Court has before it Plaintiffs Motion for Reconsideration of Plaintiffs Motion for Continuance of Deadline for Joining of Parties and Amending of Pleadings (doc. #34). The Motion for Reconsideration correctly notes that Plaintiffs Motion for Continuance of Deadline for Joining of Parties and Amending of Pleadings was filed on August 2, 2004, which was within the July 31, 2004, time for amendment of pleadings as set by the Case Management Order in light of Rule 6(a), FED.R.Civ.P. Therefore, the Court withdraws the discussion on page 2, line 17 to page 3, line 2 of the Order of August 18, 2004 (doc. #33), which assumed otherwise. However, Plaintiff misunderstands Rule 15(a), which gives an "absolute" right to amend a pleading once only "before a responsive pleading is served". Plaintiff has no absolute right to amend his pleadings at this time.

Plaintiff has not previously moved to amend his pleadings. His previous expression of an intention to join parties or amend its complaint in the future is not a motion to amend.

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1 Any motion to amend pleadings must attach a copy of the proposed amended pleading. Indeed, Plaintiff has not suggested any new claim or additional parties against which he wishes to file new or amended pleadings. To the contrary, Defendant's Motion for Reconsideration at page 12 suggests that Plaintiff should assert new claims that "will only be unearthed through discovery," and at page 14 that Plaintiff asserts that new claims have and will be discovered. Again, Plaintiff has not disclosed the nature of any new claims, whether they relate in any way to the claims asserted in this action, whether they could even be joined with the claims asserted in this action under the -standard stated in Rule 18, FED.R.Civ.P., or whether they even would be subject to the jurisdiction of the District Court.

Plaintiff filed this action 10 months ago on October 30, 2003. The claims asserted in this action should not be held in abeyance while Plaintiff seeks out other claims. This action must be processed promptly and in good faith. If the Plaintiff should discover new claims and prepare an actual proposed amended complaint, Plaintiff may at that time seek leave to modify the Case Management Order and to allow the filing of such claims. Depending on the merit of such a motion and whether it would prejudice the case in its then status, the Court would consider such a motion and might grant it, depending on all the circumstances. It is unlikely that the court would grant a motion to amend pleadings to add new claims well into the previously ordered schedule for this case.

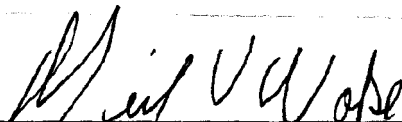
The Court notes that no discovery motion is before the Court, nor has any such motion been filed in this action. Plaintiffs general references in prior pleadings to dissatisfaction with Defendants' discovery responses do not satisfy the preconditions for filing discovery motions summarized in the Court's Order of August 18, 2004 (doe. #33). If Plaintiff fails to satisfy the meet and confer preconditions to filing discovery motions and fails to seek relief from the Court for any discovery that is properly owing and not produced, his time to prepare his case will run out, and the case will proceed to dispositive motions and possible trial on the discovery the parties have obtained. The same as true for the Defendants.

1 **IT IS THEREFORE ORDERED** that the Motion for Reconsideration of Plaintiffs
2 Motion for Continuance of Deadline for Joining of Parties and Amending of Pleadings (doc.
3 #34) is DENIED

4 IT IS FURTHER ORDERED that page 2, line 17 through page 3, line 2 of the Order
5 dated August 18, 2004 (doc. #33) is VACATED. The vacation of that paragraph does not
6 change the result of that Order (doe. #33), which is otherwise reaffirmed.

7 DATED this 7th day of September, 2004.

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Neil V. Wake
United States District Judge

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