

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 22, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSHUA M. CHAVEZ,

Plaintiff,

v.

3M; TYCO FIRE PRODUCTS;

FAIRCHILD AIRFORCE BASE;

DEPARTMENT OF DEFENSE; and

THOMAS K. BROWN (3M Board of
Directors),

Defendants.

No. 2:22-CV-00094-SAB

**ORDER DISMISSING FIRST
AMENDED COMPLAINT**

1915(g)

Before the Court is Plaintiff's First Amended Complaint pursuant to 42 U.S.C. § 1983. ECF No. 13. Plaintiff, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

Generally, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, "[a]ll causes of action alleged in an original complaint which are not alleged in an amended complaint are waived." *King v. Atiyeh*, 814 F.2d 565,

ORDER DISMISSING FIRST AMENDED COMPLAINT *1

567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (holding that any claims voluntarily dismissed are considered to be waived if not re-pled).

After reviewing the First Amended Complaint in the light most favorable to Plaintiff, the Court finds that he has failed to cure the deficiencies of his initial complaint and the First Amended Complaint fails to state a claim upon which relief may be granted. The Court cautioned Plaintiff that if he failed to amend to state a claim upon which relief may be granted, the First Amended Complaint would be dismissed under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and such dismissal would count as a “strike” under 28 U.S.C. § 1915(g).

Plaintiff alleges that between 2017 and 2018, Defendants acted negligently regarding water contaminants, “[g]iving rise to unequal & acts to/of deprivation, Intentionally showing Indifference knowingly as to such unlawful acts that Defendant’s) Did act & perform, Participate in acts causing deprivation of Equal protection.” ECF No. 13 at 4–5 (as written in original). As previously noted, Plaintiff’s claims of negligence do not state a claim under 42 U.S.C. § 1983 upon which relief may be granted. *See Davidson v. Cannon*, 474 U.S. 344, 347–48 (1986). Furthermore, his claims are time-barred under Washington State’s three-year statute of limitations. *See RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002).

For the reasons set forth above and in the Order to Amend or Voluntarily Dismiss, ECF No. 12, **IT IS HEREBY ORDERED** that the First Amended Complaint, ECF No. 13, is **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious

1 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory
2 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may
3 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may
4 adversely affect his ability to file future claims.

5 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
6 enter judgment, provide copies to Plaintiff at this last known address, and **close** the
7 file. The Clerk of Court is directed to forward a copy of this Order to the Office of
8 the Attorney General of Washington, Corrections Division. The Court certifies any
9 appeal of this dismissal would not be taken in good faith.

10 **DATED** this 22nd day of August 2022.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line underneath it.

16 Stanley A. Bastian
17 Chief United States District Judge
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