

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

**Sep 22, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CODY LOUIS HOPKINS,

Plaintiff,

v.

ANDY MILLER, BRENDAN  
SIEFKEN, ROBERT GUERRERO,  
KASEY KIST and BENTON  
COUNTY,

Defendants.

NO: 4:22-CV-5070-TOR

ORDER OF DISMISSAL

**1915(g)**

BEFORE THE COURT is Plaintiff's First Amended Complaint. ECF No. 11. Plaintiff, a pretrial detainee at the Benton County Jail, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

**AMENDED COMPLAINT**

As a general rule, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927

1 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint  
2 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814  
3 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,  
4 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (any claims  
5 voluntarily dismissed are considered to be waived if not repled).

6 Benton County has been added as a Defendant. Liberally construing the First  
7 Amended Complaint in the light most favorable to Plaintiff, however, the Court finds  
8 that Plaintiff has failed to cure the deficiencies of his initial complaint and the First  
9 Amended Complaint fails to state a claim upon which relief may be granted.

#### 10 **FIRST AMENDED COMPLAINT**

11 Plaintiff now invokes the First and Eighth Amendments of the United States  
12 Constitution against prosecuting attorneys, Defendants Andy Miller and Brendan  
13 Siefken, against the Benton County Jail captain and a lieutenant, Defendants Robert  
14 Guerrero and Kasey Kist, and against Benton County. ECF No. 11 at 3–5. Plaintiff’s  
15 factual allegation do not support either a First or Eighth Amendment claim.

16 Because Plaintiff makes no reference to “excessive bail,” the Court must  
17 assume that he is asserting that he was subjected to “cruel and unusual punishment”  
18 under the Eighth Amendment. “The Cruel and Unusual Punishments Clause was  
19 designed to protect those convicted of crimes, and consequently the Clause applies  
20 only after the State has complied with the constitutional guarantees traditionally

1 associated with criminal prosecutions.” *Whitley v. Albers*, 475 U.S. 312, 318–19  
2 (1986) (internal quotations, alterations, and citations omitted). Consequently,  
3 because of his pre-conviction status, Plaintiff cannot state an Eighth Amendment  
4 claim of cruel and unusual punishment.

5 Plaintiff indicates that he is facing criminal charges for assaulting his then  
6 wife. ECF No. 11 at 5–6. He complains that on April 7, 2022, he was blocked from  
7 calling his ex-wife’s sister, a “close friend of 20 years” and “link” to his children.  
8 *Id.* Plaintiff avers that he does not have contact with his former spouse due to a no-  
9 contact order and he does not know the phone number she uses. *Id.* But, he asserts  
10 that he talks with his former sister-in-law and she provided him money for phone  
11 calls. *Id.* at 6.

12 Plaintiff claims that Defendant Siefken, and Defendant Miller as his direct  
13 supervisor, instructed the Benton County Jail to block two numbers, one belonging  
14 to his children’s grandmother and the other to his former sister-in-law, and that  
15 Defendant Guerrero approved the blocks. *Id.* Plaintiff contends that because all of  
16 the other Defendants work for Benton County, Benton County is responsible and  
17 accountable for any action they take. *Id.* at 7.

18 Plaintiff states that he has lost “money’s on the phone,” as well as time and  
19 visitation with his children and friend. *Id.* He states this has caused mental anguish,  
20 and “mental stress” because his children do not know who he is anymore. *Id.* at 6.

1 Plaintiff asks this Court to remove the block and award him monetary damages for  
2 the time the phone numbers were blocked and he was unable to visit with his  
3 children. *Id.* at 10. He also seeks other fees associated with this litigation. *Id.*

4 In attached documents, Plaintiff admits that both his children and his former  
5 sister-in-law live with his former spouse. *Id.* at 11. He claims that he cannot write  
6 to his children because they are less than five years old and live with their mother,  
7 who has a no-contact order against Plaintiff. *Id.* Plaintiff indicates that his former  
8 spouse and her sister are twins and can be mistaken for each other. *Id.* at 12.

9 Once again, to the extent Plaintiff is complaining that his former sister-in-law  
10 has lost money on a prepaid phone, a non-attorney has no authority to appear on  
11 behalf of anyone but himself. *See United States v. French*, 748 F.3d 922, 933 (9th  
12 Cir. 2014); *see also Johns v. Cty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997).  
13 Mr. Hopkins makes no assertion, and provides no verification, that he is a licensed  
14 attorney admitted to practice in the United States District Court, Eastern District of  
15 Washington. Therefore, Mr. Hopkins may not assert claims on behalf of his former  
16 sister-in-law regarding the loss of money she prepaid to contact her using a particular  
17 phone number.

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## TELEPHONE ACCESS

“Prisoners have a First Amendment right to telephone access, subject to reasonable security limitations.” *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996) (citing *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986)), amended by 135 F.3d 1318 (9th Cir. 1998). Here, Plaintiff has not demonstrated that his rights were violated.

Blocking restricted telephone numbers (such as the telephone numbers of crime victims) is a legitimate and neutral objective. *See Allen v. Josephine County*, 1993 WL 11948, \*6–7 (D. Or. Jan. 13, 1993). Here, Plaintiff admits that he has been charged with assaulting his former spouse and that the persons with whom he wishes phone contact (i.e., his former sister-in-law and his children) reside with his former spouse. Therefore, the Court cannot infer that the alleged limitations on Plaintiff’s telephone access rise to the level of a First Amendment violation, *see Strandberg*, 791 F.2d at 747. It is not unusual for incarceration to disrupt family and parental relationships. *See Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (“freedom of association is among the rights least compatible with incarceration”).

Plaintiff’s assertion that Benton County is responsible for its employees actions is insufficient to state a claim upon which relief may be granted. A municipality or governmental entity cannot be found liable under § 1983 on a *respondeat superior* theory; such liability can be imposed only for injuries inflicted

1 pursuant to an official governmental policy or custom. *Monell v. New York City*  
2 *Dep't of Social Services*, 436 U.S. 658, 690-94 (1978). “[I]t is when execution of a  
3 government’s policy or custom, whether made by its lawmakers or by those whose  
4 edicts or acts may fairly be said to represent official policy, inflicts the injury that  
5 the government as an entity is responsible under § 1983.” *Id.* at 694. Here, Plaintiff  
6 alleges no facts from which the Court could infer that a Benton County policy  
7 resulted in the deprivation of his constitutionally protected rights.

8 The Court cautioned Plaintiff that if he chose to amend and the Court found  
9 that the amended complaint failed to state a claim upon which relief may be granted,  
10 it would be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1) and  
11 such dismissal would count as one of the dismissals under 28 U.S.C. § 1915(g).

12 **ACCORDINGLY, IT IS ORDERED:**

13 1. The claims asserted in Plaintiff’s First Amended Complaint, ECF No. 11, are  
14 **DISMISSED with prejudice.**

15 2. This dismissal will count as a “strike” under 28 U.S.C. § 1915(g).

16 3. Plaintiff’s *in forma pauperis* status is hereby **REVOKED.**

17 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this  
18 Order would not be taken in good faith and would lack any arguable basis in  
19 law or fact.

20 5. The Clerk of Court is further directed to forward a copy of this Order to the

1 Office of the Attorney General of Washington, Criminal Justice Division.

2 The Clerk of Court is directed to enter this Order and Judgment accordingly,  
3 forward copies to Plaintiff at his last known address, and **CLOSE** the file.

4 **DATED** September 22, 2022.



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*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge