

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

May 01, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ZACHARY LEE BARRETT,

Plaintiff,

v.

CHIEF BILL SPLAWN, LT. ERNEST
COXEN, and DAWNA COX,

Defendants.

NO: 1:23-CV-3014-TOR

ORDER OF DISMISSAL

1915(g)

BEFORE THE COURT are Plaintiff's First Amended Complaint, ECF No. 8, received on March 13, 2023, and a 10-page Supplement, ECF No. 9, received on April 10, 2023. Plaintiff, a prisoner at the Yakima County Jail, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

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 (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

1 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,
2 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (any claims
3 voluntarily dismissed are considered to be waived if not replied). Furthermore,
4 defendants not named in an amended complaint are no longer defendants in the
5 action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore,
6 Defendants Lt. C. Freeburg, J. Fernandez, and Aramark Food Services have been
7 terminated from this action and the name of Defendant Director Cox has been
8 changed to Dawna Cox, as the Aramark Food Services Manager.

9 Plaintiff asserts that Defendants Splawn, Coxen, and Cox have violated his
10 right to Due Process. ECF No. 8 at 4. He claims that on January 5, 2023, he almost
11 consumed a “goathead,” which pierced his gums where a tooth was missing. *Id.*
12 Plaintiff states that he immediately filed a grievance. *Id.* Plaintiff complains that
13 five days later, on January 10, 2023, he almost swallowed a “goathead.” *Id.* He
14 states that he filed another grievance. *Id.*

15 Plaintiff avers that he received a final response to his grievance from
16 Defendant Lt. Coxen on January 12, 2023, stating, “while it is unfortunate that I
17 found not “1” but “2” goatheads in a five day period, there is nothing that can be
18 done other than food staff being more diligent.” *Id.* at 5 (as written in original).
19 Plaintiff avers that Defendant Coxen “acknowledged the fact this has happened in
20 the past.” *Id.*

1 Plaintiff asserts that he appealed his grievance to Defendant Chief Bill Splawn
2 on January 18, 2023, who responded, “Aramark is contracted by Yakima County
3 and thanks to me this issue was remedied and corrective action was taken. Allegedly
4 ‘Aramark would no longer serve the item in question.’” ECF No. 8 at 5 (as written
5 in original).

6 Plaintiff claims that on January 21, 2023, he “almost broke some teeth,” when
7 he bit down on a small rock. *Id.* He states he grieved this issue as well and
8 Defendant Coxen explained, “Yakima County is not responsible for the food,” and
9 indicated that Plaintiff had requested a tort form to use as necessary. *Id.* Plaintiff
10 states that when he complained to Dawna Cox, she gave Plaintiff the “impression
11 that they were not even sure of which food item contained the “objects.” *Id.* Plaintiff
12 complains that “[n]othing significant has been done to date by the above mentioned
13 ‘defendants’.” *Id.* Plaintiff states that other inmates have found foreign objects in
14 their food. *Id.*

15 Plaintiff asserts that “all inmates making these claims have manly been
16 isolated to Annex f.” *Id.* (as written in original). He complains that the named
17 Defendants “have not ensured that I receive adequate, nutritious, and object free
18 food.” *Id.* Plaintiff asserts that this has caused him to have “increased bouts of
19 anxiety.” *Id.* at 5. He wants the food at the YCDOC Jail “to be mostly object free,”
20 and he seeks monetary damages in the amount of \$100,000.00.

1 Liberally construing the First Amended Complaint and the supplemental
2 materials in the light most favorable to Plaintiff, the Court finds that his allegations
3 of two thorns found in his beans over a five-day period and then a small stone
4 approximately a week and a half later, are insufficient to state a constitutional
5 violation. As the Court advised Plaintiff in the prior Order to Amend or Voluntarily
6 Dismiss, ECF No. 7 at 6, the fact that food occasionally contains foreign objects,
7 while unpleasant, does not amount to a constitutional deprivation.” *LeMaire v.*
8 *Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993).

9 Furthermore, the existence of an administrative remedy process does not
10 create any substantive rights and mere dissatisfaction with the remedy process or its
11 results cannot, without more, support a claim for relief for violation of a
12 constitutional right. *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v.*
13 *Adams*, 855 F.2d 639, 640 (9th Cir.1988). The failure of jail officials to respond to
14 or process a grievance does not violate the Constitution. *See Flick v. Alba*, 932 F.2d
15 728, 729 (8th Cir. 1991); *see also Baltoski v. Pretorius*, 291 F.Supp.2d 807, 811
16 (N.D. Ind. 2003) (“[t]he right to petition the government for redress of grievances,
17 however, does not guarantee a favorable response, or indeed any response, from state
18 officials”). Plaintiff’s assertions against the named Defendants regarding the
19 manner in which they responded to Plaintiff’s grievances do not state a claim upon
20 which relief may be granted.

1 In addition, a non-attorney has no authority to appear on behalf of anyone but
2 himself. *See United States v. French*, 748 F.3d 922, 933 (9th Cir. 2014); *See also*
3 *Johns v. Cty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997). Mr. Barrett makes
4 no assertion, and provides no verification, that he is a licensed attorney admitted to
5 practice in the United States District Court, Eastern District of Washington.
6 Therefore, Plaintiff may not assert claims on behalf “all inmates” at the Yakima
7 County Jail.

8 Although granted the opportunity to do so, the Court finds that Plaintiff has
9 failed to cure the deficiencies of the initial complaint and does not state a claim upon
10 which relief may be granted against the named Defendants. The Court cautioned
11 Plaintiff that if he did not amend his complaint to state a claim upon which relief
12 may be granted, it would be dismissed and that such a dismissal would count as one
13 of the dismissals under 28 U.S.C. § 1915(g).

14 **ACCORDINGLY, IT IS ORDERED:**

15 1. The claims asserted in Plaintiff’s First Amended Complaint, ECF No. 8, are

16 **DISMISSED with prejudice.**

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

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

19 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of

20 this Order would not be taken in good faith and would lack any arguable
basis in

1 law or fact.

2 5. The Clerk of Court is further directed to forward a copy of this Order to the
3 Office of the Attorney General of Washington, Criminal Justice Division.

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

6 **DATED** May 1, 2023.



10
11
12
13
14
15
16
17
18
19
20

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