

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

May 01, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROBERT SCOTT INGRAM,  
Plaintiff,  
v.

4:19-cv-05247-SAB

**ORDER DISMISSING ACTION**

JAMES KEYES and DEPARTMENT OF  
CORRECTIONS,  
Defendants.

**1915(g)**

Before the Court is Plaintiff's First Amended Complaint. ECF No. 9. Plaintiff, a *pro se* prisoner at the Washington State Penitentiary in Walla Walla, Washington, was previously ordered to amend or voluntarily dismiss his Complaint. ECF No. 8. He is proceeding *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 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 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,

1 814 (9th Cir. 1981)), overruled in part by *Lacey*, 693 F.3d at 928 (any claims  
2 voluntarily dismissed are considered to be waived if not replied).

3 Furthermore, Defendants not named in an amended complaint are no longer  
4 defendants in the action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
5 1992). Consequently, Defendants AHCC & AHCC/MSU have been terminated.

### 6 **FIRST AMENDED COMPLAINT**

7 In the First Amended Complaint, Plaintiff claims that he was denied access  
8 to the courts when delivery of his “legal mail” was delayed over a weekend on  
9 approximately July 24, 2019. ECF No. 9 and 5. He claims this violated due process  
10 as he was allegedly prevented from “being able to respond in a timely manner.” *Id.*  
11 Elsewhere, Plaintiff indicates there was a court hearing concerning the welfare of  
12 his minor child, and he was unable to be heard on his child’s behalf. *Id.* at 6.

13 Inmates have a fundamental constitutional right of access to the courts.  
14 *Lewis v. Casey*, 518 U.S. 343, 346 (1996). The right of access to the courts,  
15 however, is merely the right to bring to court a grievance the inmate wishes to  
16 present, and is limited to direct criminal appeals, habeas petitions, and civil rights  
17 actions. *Lewis*, 518 U.S. at 354. Because Plaintiff is asserting the delay of one  
18 weekend in the receipt of information concerning a family law matter, he has failed  
19 to state an access to court claim under *Lewis* upon which this Court can grant  
20 relief. *Id.* at 351-52.

21 Next, Plaintiff contends his First Amendment right to freedom of religion  
22 was violated because he was required to sign up for religious activities, (*e.g.*,  
23 Alcoholics Anonymous, Narcotics Anonymous and Bible studies) one week in  
24 advance. “The free exercise right . . . is necessarily limited by the fact of  
25 incarceration, and may be curtailed in order to achieve legitimate correctional  
26 goals or to maintain prison security.” *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th  
27 Cir. 1987) (*per curiam*) (citations omitted); *see also O’Lone v. Estate of Shabazz*,  
28 482 U.S. 342, 348 (1987).

1 “A person asserting a free exercise claim must show that the government  
2 action in question substantially burdens the person’s practice of [his or] her  
3 religion.” *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015). Liberally  
4 construing Plaintiff’s allegations in the light most favorable to him, the Court is  
5 unable to infer that requiring inmates to “sign up” to attend religious activities one  
6 week in advance substantially burdened Plaintiff’s religious practice. He has failed  
7 to state a First Amendment claim upon which relief may be granted.

8 Finally, Plaintiff complains of the delay in receiving regular mail, asserting  
9 that mail is not handed out until 8:30 p.m. Plaintiff has presented no facts from  
10 which the Court could infer that a constitutionally significant injury resulted from  
11 any alleged delay. *See e.g., Morgan v. Montanye*, 516 F.2d 1367, 1371 (2nd Cir.  
12 1975).

13 Furthermore, the Washington State Department of Corrections (“DOC”) is  
14 not susceptible to suit under section 1983. *See Will v. Mich. Dept. of State Police*,  
15 491 U.S. 58, 71 (1989). “*Will* establishes that the State and the arms of the State,  
16 which have traditionally enjoyed Eleventh Amendment immunity, are not subject  
17 to suit under section 1983 in either federal or state court.” *Howlett v. Rose*, 496  
18 U.S. 356, 365 (1990). In addition, Plaintiff has alleged no facts against Defendant  
19 James Keyes from which the Court could infer that he personally participated in  
20 the alleged deprivation of Plaintiff’s constitutionally protected rights. *Taylor v.*  
21 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

## 22 DISMISSAL

23 The Court had cautioned Plaintiff that if he chose to amend his complaint  
24 and the Court found that the amended complaint was frivolous, malicious, or failed  
25 to state a claim upon which relief may be granted, the amended complaint would  
26 be dismissed pursuant to 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2). Having  
27 liberally construed the First Amended Complaint in the light most favorable to  
28 Plaintiff, the Court finds that he has failed to state a claim upon which relief may

1 be granted.

2 Accordingly, **IT IS ORDERED** this action is **DISMISSED** with prejudice  
3 for failure to state a claim against identified Defendants upon which relief may be  
4 granted. 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

5 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
6 brings three or more civil actions or appeals which are dismissed as frivolous or for  
7 failure to state a claim will be precluded from bringing any other civil action or  
8 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious  
9 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory  
10 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may  
11 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may  
12 adversely affect his ability to file future claims.

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

18 **DATED** this 1st day of May 2020.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

24 Stanley A. Bastian  
25 United States District Judge  
26  
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