

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IAN C. IRIZARRY,

Plaintiff,

v.

SPOKANE COUNTY and MIKE
SPARBER,

Defendants.

NO: 4:21-CV-0204-TOR

ORDER OF DISMISSAL

1915(g)

BEFORE THE COURT is Plaintiff's Second Amended Complaint against Spokane County and Mike Sparber. ECF No. 16. Plaintiff, a pretrial detainee at Spokane County Detention Services, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Plaintiff seeks \$50,000,000.00, claiming Spokane County took his right to practice his religion. *Id.* at 8.

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 repud). 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, the
6 Clerk of Court has terminated Spokane County Officers of 3 West from this action
7 and added Mike Sparber, the “Spokane County Jail Superintendent.”

8 Liberally construing the Second Amended Complaint in the light most
9 favorable to Plaintiff, however, the Court finds that it fails to cure the deficiencies
10 of the prior complaints and does not state a claim upon which relief may be granted.
11 The Court cautioned Plaintiff that if he did not amend his complaint to state a claim
12 upon which relief may be granted, it would be dismissed and that such a dismissal
13 would count as one of the dismissals under 28 U.S.C. § 1915(g).

14 **ADDITIONAL SUBMISSIONS**

15 In addition to the Second Amended Complaint received on November 19,
16 2021,¹ Plaintiff filed two additional supplemental documents on December 1 and 2,
17 2021. ECF Nos. 17, 18. He asserts that between November 25 and 28, 2021,

18
19 ¹ The Court then received page 7 of the Second Amended Complaint on
20 December 6, 2021, ECF No. 16-1.

1 prisoners at Spokane County Detention Services were “locked down” for over 96
2 hours pursuant to Defendant Mike Sparber’s policy, without access to showers,
3 exercise equipment or religious services. ECF No. 17. In the second submission,
4 Plaintiff clarifies that prisoners were “locked down” over the Thanksgiving holiday
5 weekend and he acknowledges “liability concerns” as he observed a repair crew
6 welding new railings “on Monday,” presumably November 29, 2021. ECF No. 18
7 at 1. Plaintiff asserts that this “does not stop the clock on how long we are deprived
8 of our liberty to excersize [sic] or Religion or shower or Recreate.” *Id.* at 1.

9 **PLAINTIFF’S ALLEGATIONS**

10 In Count 1, Plaintiff asserts the violation of his right to freely practice his
11 religion on Sunday and he lists numerous dates between April 10 and November 28,
12 of an unspecified year. ECF No. 16 at 4–5. Plaintiff asserts that the Christian
13 religion “sets aside Sunday as a Holy day,” but because of a policy he attributes to
14 Defendant Mike Sparber, guards did not allow pretrial detainees out of their cells or
15 give Plaintiff “adequate time” to freely exercise his religion. *Id.* at 5. These
16 conclusory assertions do not state a claim upon which relief may be granted.

17 In Count 2, Plaintiff again asserts that his rights to freely exercise his religion,
18 and to peaceably assemble, were violated by Defendant “Superintendent” Mike
19 Sparber’s “Rule” to not allow pretrial detainees adequate time out of their cells on
20 Sundays to practice their religion. *Id.* at 6. He states that prisoners are also “locked

1 in [their] cells” when they “break rules or deviate from instructed behavior.” *Id.* He
2 asserts that Defendant Mike Sparber’s policy of keeping prisoners “locked down
3 weekends and holidays with reckless disregard [sic] to our rights guaranteed [sic]
4 by our Constitution of United States” inflicts cruel and unusual punishment. ECF
5 No. 16-1. He avers, “Not letting [sic] me observe my religion on Sunday Neglect is
6 a form of Abuse.” *Id.*

7 In Count 3, Plaintiff asserts “96 hours of continuous [sic] lockdown with out
8 [sic] any Adequate time for us to enjoy the liberties [sic] Guaranteed [sic] by
9 Constitution.” *Id.* Plaintiff states that “on 11/25 11/26 11/27 11/29 2021,” because
10 of Defendant Mike Sparber’s policy, “Jail officials kept us lock in our cells without
11 coming out at all for four days Neglecting to allow us to freely practice of Religion,
12 exercise [sic] or shower abridging [sic] the privileges of citizens of the United
13 States therefor prohibiting the free exercise [sic] thereof. *Id.* Plaintiff asserts that
14 not being allowed to shower or exercise on the weekends and holidays is cruel and
15 unusual punishment and is “degrading and humiliating us.” ECF No. 16 at 7.

16 A detention facility may impose non-arbitrary conditions or restrictions on
17 pretrial detainees so long as they “do not amount to punishment, or otherwise violate
18 the Constitution.” *Bell v. Wolfish*, 441 U.S. 520, 536–37 (1979). In addition, “[n]ot
19 every disability imposed during pretrial detention amounts to ‘punishment’ in the
20 constitutional sense.” *Id.* at 537. “[I]f a particular condition or restriction of pretrial

1 detention is reasonably related to a legitimate governmental objective, it does not,
2 without more, amount to ‘punishment.’” *Id.* at 540.

3 If lockdowns are conducted to improve the safe and orderly operation of a jail,
4 then they would be reasonably related to its legitimate goals, including institutional
5 security. Plaintiff has acknowledged “liability concerns” due to needed repairs and
6 that prisoners are also “locked down” when they break rules and disregard
7 instructions regarding their behavior. ECF No. 18 at 1; ECF No. 16 at 5. While it
8 is unfortunate that Sunday worship services and weekend showers and exercise are
9 curtailed, Plaintiff has alleged no facts from which the Court could infer that the
10 lockdowns are either arbitrary or unreasonable during the present climate of a world-
11 wide pandemic and staffing shortages.

12 Although granted the opportunity to do so, Plaintiff provides no factual
13 allegations suggesting the complete denial of opportunities to practice his Christian
14 religion. He fails to allege facts to “show that the government action in question
15 substantially burdens the person’s practice of [their] religion.” *Jones v. Williams*,
16 791 F.3d 1023, 1031–32 (9th Cir. 2015) (internal citations, quotation marks, and
17 alterations omitted). *Jones* defines “substantial burden” as one which “places more
18 than an inconvenience on religious exercise; it must have a tendency to coerce
19 individuals into acting contrary to their religious beliefs or exert substantial
20 pressures on an adherent to modify his behavior and to violate his beliefs.” *Id.* “[A]

1 substantial burden occurs ‘where the state . . . denies [an important benefit] because
2 of conduct mandated by religious belief, thereby putting substantial pressure on an
3 adherent to modify his behavior and to violate his beliefs.’” *Hartmann v. Cal. Dep’t*
4 *Corrs. & Rehab.*, 707 F.3d 1114, 1124–25 (9th Cir. 2013) (quoting *Warsoldier v.*
5 *Woodford*, 418 F.3d 989, 995 (9th Cir. 2005) (alteration in original) (quotation
6 omitted).) Here, Plaintiff’s conclusory assertions do not support a claim of a
7 substantial burden to his First Amendment or Religious Land Use and
8 Institutionalized Persons Act rights. *See Jones*, 791 F.3d at 1031–32.

9 A pretrial detainee’s claims regarding the conditions under which he is
10 confined are analyzed under the Due Process Clause of the Fourteenth Amendment,
11 and not the Cruel and Unusual Punishment Clause of the Eighth Amendment.
12 *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). To state a claim of
13 unconstitutional conditions of confinement against an individual defendant, a
14 pretrial detainee must allege facts showing:

15 (i) the defendant made an intentional decision with respect to the
16 conditions under which the plaintiff was confined; (ii) those conditions
17 put the plaintiff at substantial risk of suffering serious harm; (iii) the
18 defendant did not take reasonable available measures to abate that risk,
19 even though a reasonable official in the circumstances would have
appreciated the high degree of risk involved—making the
consequences of the defendant’s conduct obvious; and (iv) by not
taking such measures, the defendant caused the plaintiff’s injuries.

20 *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

1 Plaintiff fails to allege with particularity what intentional decision Defendants
2 made to place Plaintiff in conditions that put Plaintiff at risk of suffering serious
3 harm. *Id.* Plaintiff makes no allegation of the complete absence of any opportunity
4 to exercise. *See May v. Baldwin*, 109 F.3d 557, 565 (1997) (“[A] temporary denial
5 of outdoor exercise with no medical effects is not a substantial deprivation.”).
6 Plaintiff alleges no facts showing any conditions he experienced amounted to
7 punishment or were excessive in relation to legitimate government interests. *See*
8 *Bell*, 441 U.S. at 537. Although granted the opportunity to do so, Plaintiff has failed
9 to state a claim regarding the conditions of his confinement upon which relief may
10 be granted.

11 **ACCORDINGLY, IT IS ORDERED:**

- 12 1. The claims asserted in Plaintiff’s Second Amended Complaint, ECF No. 16,
13 are **DISMISSED with prejudice**.
- 14 2. This dismissal will count as a “strike” under 28 U.S.C. § 1915(g).
- 15 3. Plaintiff’s *in forma pauperis* status is hereby **REVOKED**.
- 16 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this
17 Order would not be taken in good faith and would lack any arguable basis in
18 law or fact.
- 19 5. The Clerk of Court is further directed to forward a copy of this Order to the
20 Office of the Attorney General of Washington, Criminal Justice Division.

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

3 **DATED** December 10, 2021.



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

Other Orders/Judgments[2:21-cv-00204-TOR Irizarry v. Spokane County](#)**Eastern District of Washington****U.S. District Court****Notice of Electronic Filing**

The following transaction was entered on 12/10/2021 at 2:39 PM PST and filed on 12/10/2021

Case Name: Irizarry v. Spokane County

Case Number: [2:21-cv-00204-TOR](#)

Filer:

WARNING: CASE CLOSED on 12/10/2021

Document Number: [19](#)

Docket Text:

ORDER OF DISMISSAL: The claims asserted in Plaintiff's Second Amended Complaint, ECF No. 16, are DISMISSED with prejudice. This dismissal will count as a strike under 28 U.S.C. § 1915(g). Plaintiff's in forma pauperis status is hereby REVOKED. The court certifies any appeal of this dismissal would not be taken in good faith. cc: WA State AG. The file is CLOSED. Signed by Judge Thomas O. Rice. (LLH, Courtroom Deputy) (Service of Notice on parties not registered as users of the Court CM/ECF system accomplished via USPS mail.)

2:21-cv-00204-TOR Notice has been electronically mailed to:

2:21-cv-00204-TOR Notice has been delivered by other means to:

Ian C Irizarry
450921
Spokane County Jail
1100 W. Mallon
Spokane, WA 99260

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1069357611 [Date=12/10/2021] [FileNumber=3829880-0] [1b3075cba0a0d276a4682eee61a617593c80664c37954d64a2d1646d025c6a803444321ae1e064b5953ad62c75e32a009ec9351cf5e1dfe1c013ebcd9d4cbcd0]]

UNITED STATES DISTRICT COURT
for the
Eastern District of Washington

IAN C. IRIZARRY,

Plaintiff

v.

SPOKANE COUNTY and MIKE SPARBER,

Defendant

)
)
) Civil Action No. 4:21-CV-0204-TOR
)
)

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

☐ the plaintiff (*name*) _____ recover from the
defendant (*name*) _____ the amount of
_____ dollars (\$ _____), which includes prejudgment
interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (*name*) _____
_____ recover costs from the plaintiff (*name*) _____
_____.

☒ other: The claims asserted in Plaintiff's Second Amended Complaint, ECF No. 16, are DISMISSED with prejudice.

This action was (*check one*):

☐ tried by a jury with Judge _____ presiding, and the jury has
rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision
was reached.

☒ decided by Judge THOMAS O. RICE _____

for failure to state a claim upon which relief may be granted.

Date: December 10, 2021

CLERK OF COURT

SEAN F. McAVOY

s/ Linda L. Hansen

(By) Deputy Clerk

Linda L. Hansen

Other Events

[2:21-cv-00204-TOR Irizarry v. Spokane County](#) **CASE CLOSED on 12/10/2021**

Eastern District of Washington

U.S. District Court

Notice of Electronic Filing

The following transaction was entered on 12/10/2021 at 2:47 PM PST and filed on 12/10/2021

Case Name: Irizarry v. Spokane County

Case Number: [2:21-cv-00204-TOR](#)

Filer:

WARNING: CASE CLOSED on 12/10/2021

Document Number: [20](#)

Docket Text:

JUDGMENT IN A CIVIL ACTION. (Service of Notice on parties not registered as users of the Court CM/ECF system accomplished via USPS mail.) (LLH, Courtroom Deputy)

2:21-cv-00204-TOR Notice has been electronically mailed to:

2:21-cv-00204-TOR Notice has been delivered by other means to:

Ian C Irizarry
450921
Spokane County Jail
1100 W. Mallon
Spokane, WA 99260

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1069357611 [Date=12/10/2021] [FileNumber=3829897-0] [81a818bbd67e604128070b6b5c283bebeb676a1b668003dcc735b86879020ebfc7d98b79676eaf5471fcddd1cf374882ef0d4ced92927ef0ba3f1ed1689cfbff]]