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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Paul T. Stavensjord,	)	No. CV 09-0354-PHX-DGC (LOA)
Plaintiff,	)	<b>ORDER</b>
vs.	)	<b>AND</b>
	)	<b>ORDER TO SHOW CAUSE</b>
Corrections Corporation of America,	)	
Bruno Solc, Penny Hart,	)	
Defendants.	)	

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Plaintiff Paul T. Stavensjord filed this civil rights action against employees of the Corrections Corporation of America (CCA), Red Rock Correctional Center in the Superior Court for the State of Alaska. (Doc. #21.) Defendants removed the action to the United States District Court for the District of Alaska, and on February 17, 2009, the Court for the District of Alaska transferred the action to this District. On February 20, 2009, Defendants filed an answer. (Doc. #22.) Defendants now move for judgment on the pleadings on the ground that Plaintiff failed to serve his Complaint on Defendants in accordance with Alaska Rule of Civil Procedure (4)(h). (Doc. #32.) The Court issued an Order, required under Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), informing Plaintiff of his obligation to respond and the evidence necessary to rebut Defendants' contentions. (Doc. #34.) The matter is fully briefed. (Doc. ##33, 35, 36.<sup>1</sup>) The Court will deny the motion without prejudice.

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<sup>1</sup>Plaintiff filed a Supplement to his Opposition. (Doc. #36.)

1 **I. Background**

2 Plaintiff claimed that Defendants violated the Religious Land Use and  
3 Institutionalized Persons Act (RLUIPA) when they substantially burdened the practice of his  
4 religion by eliminating Buddhist service days and not allowing Plaintiff to use incense during  
5 the practice of his religion, which he had previously been allowed to use.

6 Plaintiff further alleged that Defendants violated his Fourteenth Amendment due  
7 process rights by “banning the Buddhist practice of burning ritual incense while allowing  
8 other groups (Alaska Natives), to have [a] fire and burn ritual incense (sage and sweetgrass)  
9 at their sweat lodge gatherings.” (Doc. #21.) Because Plaintiff appeared to raise an equal  
10 protection, rather than due process, claim, the Court construed these allegations as an equal  
11 protection claim.

12 **II. Motion For Judgment on the Pleadings**

13 **A. Legal Standards**

14 “Judgment on the pleadings is properly granted when, taking all allegations in the  
15 pleading as true, the moving party is entitled to judgment as a matter of law.” Merchants  
16 Home Delivery Serv., Inc. v. Frank B. Hall & Co., 50 F.3d 1486, 1488 (9th Cir.1995). When  
17 brought by a defendant, a Rule 12(c) motion for judgment on the pleadings is a “means to  
18 challenge the sufficiency of the complaint after an answer has been filed.” New.Net, Inc. v.  
19 Lavasoft, 356 F. Supp.2d 1090, 1115 (C.D. Cal. 2004). It is thus similar to a motion to  
20 dismiss. Id. The standard for deciding a Rule 12(c) motion is the same as that applied to  
21 a Rule 12(b) motion to dismiss. McGlinchy v. Shell Chem. Co., 845 F.2d 802, 810 (9th Cir.  
22 1988). The court may consider matters of public record of which the court may take judicial  
23 notice without converting a 12(b)(6) motion into a motion for summary judgment. See Lee  
24 v. City of Los Angeles, 250 F.3d 668, 688-689 (9th Cir. 2001), impliedly overruled on other  
25 grounds as discussed in Gallardo v. Dicarlo, 203 F. Supp.2d 1160, 1162 n.2 (C.D. Cal. 2002).  
26 Additionally, the court may consider documents which were not physically attached to the  
27 complaint but upon which the complaint necessarily relies when the authenticity of such  
28 documents is not contested. Lee, 250 F.3d at 688-689 (citing Parrino v. FHP, Inc., 146 F.3d

1 699, 705-706 (9th Cir. 1998) superseded by statute on other grounds). Likewise, in ruling  
2 on a motion for judgment on the pleadings, the court may consider any document  
3 incorporated by reference into the pleadings and any materials of which it could take judicial  
4 notice. Eaton v. Siemens, 2008 WL 3437735, at \*3 (E.D. Cal. Sept. 22, 2008).

5 Alaska Rule of Civil Procedure 4(h) provides that process may be served within the  
6 United States “by registered or certified mail, with return receipt requested. . . . Service of  
7 process by mail under this paragraph is complete when the return receipt is signed.”

## 8 **B. Parties’ Contentions**

### 9 **1. Defendants**

10 Defendants assert that Plaintiff filed his Complaint in Alaska Superior Court on  
11 September 9, 2008. On November 3, 2008, he filed a Rule 4(f) Affidavit avowing that he  
12 served the summons and complaint on Defendants and attached PS Form 152 (U.S. Postal  
13 Service Delivery Confirmation Receipt) as evidence of such service by mail. (Ex. 1.)  
14 Defendants assert that the form does not provide that the summons and complaint was served  
15 via registered or certified mail, with return receipt requested. Defendants assert that when  
16 they removed the case to federal court, they noted in the Supplemental Civil Cover sheet that  
17 they were preserving the affirmative defense that Plaintiff failed to properly serve the  
18 Complaint. Defendants contend that they asserted as an affirmative defense in their answer  
19 insufficiency of service of process.

20 Defendants first argue that although they have filed an answer, they can file a 12(c)  
21 motion, because the defense was included in their responsive pleadings. (Doc. #32 at 1 n.  
22 1, citing Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980).) They also assert that  
23 although Rule 12(c) precludes a party from presenting matters outside the pleadings, the  
24 district court may take into consideration documents incorporated into the pleadings and can  
25 take judicial notice of matters of public record. (Doc. #32 at 2, citing United States v. Wood,  
26 925 F.2d 1580, 1582 (7th Cir. 1991).) They assert that the affidavit is a matter of public  
27 record. As to service, Defendants assert that because Plaintiff filed his case in Alaska  
28 Superior Court, he was required to effect service pursuant to the Alaska Rules of Civil

1 Procedure. They argue that the delivery confirmation receipt does not qualify as a return  
2 receipt because it only confirms that something was delivered to an address, not that the  
3 person to whom the document was addressed received it and signed for it. They ask the  
4 Court to dismiss the Complaint.

## 5 **2. Plaintiff**

6 Plaintiff agrees that he filed a Rule 4(f) affidavit and asserts that the pleadings were  
7 placed in the CCA/Legal Mail Box with PS Form 3811 and PS Form 152 attached to the  
8 envelope. (Doc. #33 at 1-2.) The copies of the summons and complaints were addressed to  
9 CCA, 10 Burton Hills Blvd., Nashville, Tenn. 37215; Mr. Bruno Stolc, c/o CCA/Red Rock  
10 Corr. Cntr., 1752 E. Arica Rd., Eloy Arizona, 85231; and Ms. Penny Hart, c/o CCA/Red  
11 Rock Corr. Cntr., 1752 E. Arica Rd., Eloy Arizona. He asserts that receipts were received  
12 the next day on PS Form 152, stamped Eloy AZ 85231 Oct 29 2008 USPS. (Id. at 2.) He  
13 argues that once he puts the mail in the CCA Legal Mail box, as an inmate, he can take no  
14 further action and if something did not take place that should have, it was after the pleadings  
15 were deposited in the CCA mail box. (Id. at 2-3.)

16 Plaintiff also argues that under Alaska Stat. § 09.05.010, the voluntary appearance of  
17 the defendant is equivalent to personal service of a copy of the summons and complaint.  
18 (Id.) He points out that Defendants answered the Complaint. In his Supplement, Plaintiff  
19 alleges a problem with the mail room at the CCA facility; he asserts that he obtained copies  
20 of mail room logs, and they show incoming mail for Stolc and Hart on October 29, 2008, but  
21 no outgoing mail to either one. (Doc. #36 at 1.) He also provides copies of the envelopes  
22 containing the summonses and complaints to both Stolc and Hart stamped “Received Nov.  
23 3-2008.” (Id. at 2, Attach.)

## 24 **3. Reply**

25 Defendants argue that placement in the CCA/ Legal Mail Box is not proper personal  
26 service under the Rule. They reassert that they preserved their defense of insufficient service  
27 of process. (Doc. #35 at 2.)  
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1           **C.     Analysis**

2           Alaska Rule of Civil Procedure 4(h) provides:

3                   (h) Service of Process by Mail. In addition to other methods of  
4                   service provided for by this rule, process may also be served  
5                   within this state or the United States or any of its possessions by  
6                   registered or certified mail, with return receipt requested, upon  
7                   an individual other than an infant or an incompetent person and  
8                   upon a corporation, partnership, unincorporated association, or  
9                   public corporation. In such case, copies of the summons and  
10                  complaint or other process shall be mailed for restricted delivery  
11                  only to the party to whom the summons or other process is  
12                  directed or to the person authorized under federal regulation to  
13                  receive the party's restricted delivery mail. All receipts shall be  
14                  so addressed that they are returned to the party serving the  
15                  summons or process or the party's attorney. Service of process  
16                  by mail under this paragraph is complete when the return receipt  
17                  is signed.

18           Plaintiff does not provide proof that he mailed the summons and complaint to  
19           Defendants by registered or certified mail, return receipt requested. However, the affidavit  
20           of service is dated October 3, 2008. On February 20, 2009, Defendants filed their Answer  
21           and a Corporate Disclosure Statement. (Doc. ##22, 24.) The Answer asserted  
22           “insufficiency of process and insufficiency of service of process” “should subsequent  
23           discovery reveal these defenses are appropriate.” (Doc. #22 ¶ 35.) On April 1, 2009, present  
24           counsel filed a Notice of Appearance for all Defendants; the Notice of Appearance is not  
25           limited to an appearance for the purpose of objecting to the insufficiency of service. (Doc.  
26           #28.)

27           The Court has the duty to issue and serve process in prisoner cases. 28 U.S.C.  
28           § 1915(d). On screening pursuant to 28 U.S.C. § 1915A(a), this Court did not order service  
29           on Defendants because it appeared that service had been made and that Defendants had  
30           answered the Complaint. (Doc. #26 at 2.)

31           Even assuming that service of process was insufficient, “[i]t is clear to the Court that  
32           this is not a case where process is so lacking that dismissal at this time is warranted.”  
33           Berman v. Anchorage Police Dept., 2005 WL 946845, at \* 1 (D. Alaska 2005). The Court  
34           will direct Defendants to advise the Court if they waive objections to the insufficiency of

1 service of process, and, if they do not, the Court will send Plaintiff a service packet including  
2 the Complaint, this Order, and both summons and request for waiver forms for Defendants  
3 and order service by the United States Marshal.

4 **IT IS ORDERED:**

5 (1) The reference to the Magistrate Judge is withdrawn as the Defendants' Motion for  
6 Judgment on the Pleadings for Insufficiency of Service of Process (Doc. #32).

7 (2) Within 5 days from the issuance of this Order, Defendants must advise the Court  
8 if they waive objections to the insufficiency of service of process, and if they do not, the  
9 Court will direct the Clerk of Court to provide Plaintiff with a service packet.

10 (3) Defendants' Motion is **denied without prejudice** to renewal in the event that  
11 Defendants do not waive objections to the insufficiency of the service of process and Plaintiff  
12 does not effect service in the future.

13 DATED this 22nd day of October, 2009.

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David G. Campbell  
United States District Judge