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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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12 Erik Scott Maloney, )

13 ) Plaintiff, )

No. CV 13-00314-PHX-RCB(BSB)

14 ) vs. )

O R D E R

15 ) Charles L. Ryan, et al. )

16 ) Defendants. )

17

**Background**

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19 Plaintiff *pro se* Erik Scott Maloney is confined in the  
20 Arizona State Prison Complex-Florence in Florence, Arizona.  
21 On February 12, 2013, he filed a three count civil rights  
22 complaint pursuant to 42 U.S.C. § 1983, naming five  
23 defendants. Plaintiff is alleging various constitutional  
24 violations, as well as a violation of the Religious Land Use  
25 and Institutionalized Persons Act ("RLUIPA"). Basically,  
26 those alleged violations stem from a claimed Arizona  
27 Department of Corrections ("ADOC") policy or regulation which  
28 plaintiff claims does not accommodate his meal and prayer

1 requirements during the month of Ramadan. In its screening  
2 order, the court ordered that only three of the five named  
3 defendants were required to file an answer. See Ord. (Doc.  
4 5) at 7, ¶ (4). Those defendants are Charles L. Ryan, ADOC  
5 Director; Mike Linderman, ADOC Administrator of Pastoral  
6 Activities; and Wayne Mason, East Unit Chaplain at Florence  
7 Complex. See Co. (Doc. 1) at 3, ¶¶ 1-2; and at 2, ¶ 5. To  
8 date, there is nothing in the record showing that any of  
9 those three defendants have been served with the complaint.

10 On June 13, 2013, the plaintiff filed a motion for a  
11 temporary restraining order "and/or" a preliminary  
12 injunction.<sup>1</sup> Mot. (Doc. 8) at 1. The plaintiff broadly seeks  
13 a TRO "requiring the defendants to accommodate meal  
14 requirements of [M]uslim practitioners in accordance to [sic]  
15 the tenets of their religion." Id. at 6:10-12 (footnote  
16 added). Because Ramadan commences on July 9, 2013, this year,  
17 Mot. (Doc. 8) at 1:25, the court ordered the expedited filing  
18 of a response and reply, if any. See Ord. (Doc. 9). Although  
19 the defendants' responses were due on June 26, 2013, due to  
20 the State's "internal administrative process[,] counsel for  
21 defendants Linderman and Ryan, Neil Singh, Assistant Attorney  
22 General, did not see this court's order until June 27, 2013.  
23 Mot. (Doc. 12) at 1:21-25. Mr. Singh then promptly filed an  
24 "Emergency Motion for Extended Time Re[:] Plaintiff's Motion  
25 for Temporary Restraining Order" (Doc. 12).

26 In the meantime, on June 25, 2013, plaintiff Maloney

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27 <sup>1</sup> For brevity's sake, hereinafter the court will refer to this as  
28 "the TRO motion."

1 filed a First Amended Complaint ("FAC") (Doc. 11).<sup>2</sup> That  
2 single count complaint alleges strictly a violation of RLUIPA  
3 against a single defendant, Mr. Ryan. The plaintiff alleges  
4 that defendant Ryan rescinded an ADOC policy regarding  
5 inmates' possession of religious books, "substantially  
6 burdening" the "religious exercise of Dawwah[,]" which is  
7 "require[d] [of] [M]uslim practitioner[s][.]" FAC (Doc. 11)  
8 at 4:10; at 3, ¶ 3. The ramifications of the FAC are  
9 discussed below, including how the court intends to proceed  
10 given that recent filing by the plaintiff.

11 **Discussion**

12 Preliminarily, the court observes that plaintiff's FAC  
13 does not comport with LRCiv 15.1(b). That Rule requires,  
14 among other things, "a separate notice of filing the amended  
15 complaint[,]" to which a copy of the amended pleading is  
16 attached. LRCiv 15.1(b). Plaintiff Maloney did not do that,  
17 however. Despite the requirements of that Rule, plaintiff  
18 Maloney also did not "indicate[] in what respect [the FAC]  
19 differs from the pleading which it amends, by bracketing or  
20 striking through the text that was deleted and underlining  
21 the text that was added." See id.

22 Plaintiff's failure to comply with that Local Rule is  
23 troubling, but his situation is further complicated by the  
24 manner in which he presents the FAC. As just mentioned, it  
25 contains a single RLUIPA count, designated as "Count IV[,]"  
26 and lists only Mr. Ryan as a defendant. FAC (Doc. 11) at 3.

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27 <sup>2</sup> The FAC first came to the court's attention when it was entered  
28 the next day, June 26, 2013.

1 The FAC is void of any mention of Ramadan whatsoever. On the  
2 other hand, plaintiff's original complaint, set forth three  
3 counts, enumerated as Counts I, II, and III - all pertaining  
4 to Ramadan, and listed five defendants, including Mr. Ryan.  
5 Because the FAC does not mention any of those original three  
6 counts pertaining to Ramadan, and because it begins with  
7 Count IV, presumably, the plaintiff intends the FAC to be a  
8 continuation of the complaint and that the two complaints be  
9 read together.

10 While perhaps a logical presumption for a layperson,  
11 settled law undermines such a presumption. That is because  
12 "the general rule is that an amended complaint supercedes the  
13 original complaint and renders it *without legal effect*["  
14 Lacey v. Maricopa Cnty., 693 F.3d 896, 927 (9<sup>th</sup> Cir. 2012) (en  
15 banc) (emphasis added); see also Valadez-Lopez v. Chertoff,  
16 656 F.3d 851, 857 (9<sup>th</sup> Cir. 2011) (quotation marks and  
17 citations omitted) ("[I]t is well-established that an amended  
18 complaint supersedes the original, the latter being treated  
19 thereafter as non-existent."). Simply put, "[o]nce an amended  
20 complaint is filed, the original pleading no longer serves  
21 any function in the case." Hasegawa v. State of Hawaii, 2011  
22 WL 2020715, at \*1 n. 1 (D.Hawai'i May 24, 2011).

23 Application of that rule here means that plaintiff's  
24 FAC, which is void of any allegations pertaining to Ramadan,  
25 supercedes his original complaint, which focused solely on  
26 Ramadan issues. Consequently, because plaintiff's original  
27 complaint "no longer serves any function in this case[,]" it  
28 cannot form the basis for his pending TRO motion seeking

1 relief solely related to Ramadan. See id. Thus, the court  
2 **VACATES** its order filed July 20, 2013 (Doc. 9), ordering  
3 expedited briefing as to plaintiff's TRO motion and **DENIES**  
4 that motion as moot.<sup>3</sup> Likewise, the court **DENIES** as moot the  
5 emergency motion by defendants Linderman (Doc. 12). As  
6 explained below, however, because the court is granting  
7 plaintiff leave to file a second amended complaint, this order  
8 does not preclude the filing of a motion for a temporary  
9 restraining order and/or a preliminary injunction at a later  
10 date.

11 "Pro se litigants must follow the same rules of  
12 procedure that govern other litigants." King v. Atiyeh, 814  
13 F.2d 565, 567 (9<sup>th</sup> Cir. 1987), overruled on other grounds by  
14 Lacey, 693 F.3d 896; see also Ghazali v. Moran, 46 F.3d 52 (9<sup>th</sup>

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16 <sup>3</sup> The court recognizes that it has a "duty to construe pro se  
17 pleadings liberally[.]" See Bernhardt v. Los Angeles County, 393 F.3d 920,  
18 925 (9<sup>th</sup> Cir. 2003). Consistent with that duty, and disregarding the  
19 plaintiff's specific indication that the pleading filed June 25, 2013, is  
20 a "First Amended Complaint," (Doc. 11), the court will briefly consider  
21 whether the FAC could, instead, be construed as a supplemental pleading.  
22 The distinction between a supplemental and an amended pleading is  
23 significant because a "supplemental pleading, unlike [an] amended pleading,  
24 does not supersede the original pleading[.]" See Gregory v. Hill, 2013 WL  
25 2130887, at \*4 n. 1 (C.D.Cal. April 5, 2013) (citing Puget Sound Power &  
26 Light Co. v. City of Seattle, 5 F.2d 393, 393 (9<sup>th</sup> Cir. 1925), adopted by  
27 2013 WL 2138540 (C.D.Cal. May 13, 2013).

28 The FAC cannot be read as a supplemental pleading, however, because  
by definition supplemental pleadings pertain to matters that "happened after  
the date of the pleading to be supplemented." See Fed.R.Civ.P. 15(d)  
(emphasis added). Plaintiff Maloney's FAC pertains to a matter which  
occurred prior to the filing of his original complaint though. In  
particular, the FAC alleges a RLUIPA violation by defendant Ryan when, in  
January 30, 2013, he allegedly rescinded a policy "allowing for an unlimited  
number of religious books, provided they fit into a property box." FAC  
(Doc. 11) at 3-4, ¶ 3. Plaintiff filed his original complaint after that,  
however, on February 12, 2013. Thus, the court declines to construe the FAC  
as a supplemental, rather than an amended pleading. Plaintiff therefore  
cannot avail himself of the rule that a supplemental pleading does not  
supersede the original pleading.

1 Cir. 1995) ("pro se litigants are bound by the rules of  
2 procedure."). At the same time, however, the court recognizes  
3 its obligation to "ensure that pro se litigants do not  
4 unwittingly fall victim to procedural requirements." Waters  
5 v. Young, 100 F.3d 1437, 1441 (9<sup>th</sup> Cir. 1996). Balancing those  
6 competing concerns, the court finds that "justice requires"  
7 allowing plaintiff to file a second amended complaint, if he  
8 so chooses. See Fed R. Civ. P. 15(a)(2).

9 Based upon the foregoing, the court **HEREBY ORDERS** that:


10 (1) the order filed June 20, 2013 (Doc. 9), requiring  
11 expedited briefing as to plaintiff's TRO motion is **VACATED**;

12 (2) the "Emergency Motion for Extended Time Re[:]  
13 Plaintiff's Motion for Temporary Restraining Order" by  
14 defendants Linderman and Ryan (Doc. 12) is **DENIED** as moot;

15 (3) Plaintiff's "Motion for a Temporary Restraining Order  
16 and/or Preliminary Injunction" (Doc. 8) is **DENIED** as moot; and

17 (4) plaintiff is **GRANTED** leave to file a second amended  
18 complaint, which shall be filed **no later than twenty (20) days**  
19 from the date of entry of this order.

20 DATED this 28th day of June, 2013.

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24 Robert C. Broomfield  
25 Senior United States District Judge

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27 Copies to plaintiff *pro se* and Neil Singh, Arizona State  
28 Assistant Attorney General