

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JASON NEWBERRY,

Plaintiff,

vs.

CINDY HINER, CONNIE WINNER,
DR. REESE, DR. HURST, WARDEN
LYNN GUYER, BILL
WEDDINGTON, and REGIOND
MICHAELS,

Defendants.

CV 19–50–H–DLC–JTJ

ORDER

United States Magistrate Judge John T. Johnston entered an Order and Findings and Recommendations on April 7, 2020, recommending that the Court dismiss Defendants State of Montana and Bill Weddington from this action. (Doc. 7.) Plaintiff Jason Newberry failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendations (Doc. 7), the Court finds no clear error in Judge Johnston's recommendation that the State of Montana be dismissed from this action. Although Newberry named the State when he opened this case (Doc. 1), he did not do so in his Amended Complaint (Doc. 6). An amended complaint supersedes previous versions, and the State therefore must be dismissed. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

The Court will also adopt Judge Johnston's recommendation to dismiss Defendant Weddington. Judge Johnston did not clearly err in determining that Newberry failed to allege that Weddington violated a federally protected right when he alleged only that Weddington failed to follow appropriate procedures for considering complaints under the Prison Rape Elimination Act. *See Porter v. Jennings*, No. 1:10-cv-1811-AW-DLB PC, 2012 WL 1434986, at *1 (E.D. Cal. Apr. 25, 2012).

Accordingly, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 7) is ADOPTED; and

(2) Defendants State of Montana and Bill Weddington are DISMISSED from this action.

DATED this 11th day of May, 2020.



Dana L. Christensen, District Judge
United States District Court