

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

JASON COOK

v.

C.A. NO. 09-169 S

A.T. WALL, II, ET AL.

REPORT AND RECOMMENDATION

Jacob Hagopian, Senior United States Magistrate Judge

Plaintiff, Jason Cook, an inmate at the Adult Correctional Institutions in Cranston, Rhode Island, filed a complaint on April 9, 2009 alleging, *inter alia*, that defendants retaliated against him for exercising his First Amendment rights (the “Original Complaint”) (Docket # 1). On January 25, 2010, plaintiff filed an amended complaint, reiterating his original claims and adding a new defendant and new claims (the “Amended Complaint”) (Docket # 26).

Presently before the Court is defendants’ Motion to Dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Federal Rules”) for failure to state a claim upon which relief may be granted, or in the alternative, Motion for Summary Judgment pursuant to Federal Rule 56 with respect to the Original Complaint (the “Motion to Dismiss”) (Docket # 17). Defendants filed the Motion to Dismiss prior to plaintiff’s filing of the Amended Complaint. Plaintiff objected to defendants’ motion (Docket # 20). This matter has been referred to me for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons that follow, I recommend that the Motion to Dismiss be DENIED.

The present Motion to Dismiss seeks dismissal of the Original Complaint. However, as plaintiff filed the Amended Complaint, the Original Complaint has been superseded and no longer performs any function in this case. *See Kolling v. American Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003). Accordingly, defendants’ Motion to Dismiss the Original Complaint is moot, and I therefore recommend that the motion be DENIED.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed.R.Civ.P. 72(b); LR Cv 72(d). Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. *United States v. Valencia-Copete*, 792 F.2d 4, 6 (1st Cir. 1986) (*per curiam*); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603, 605 (1st Cir. 1980).



Jacob Hagopian
Senior United States Magistrate Judge
February 18, 2010