

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSEPH R. FLORES,  
  
Plaintiff,  
  
v.  
  
JAN MORGEN, *et al.*,  
  
Defendants.

Case No. C08-5621 RJB/KLS

ORDER DENYING MOTION TO  
AMEND COMPLAINT

Before the Court is Plaintiff’s motion for leave to file an amended complaint. Dkt. # 25.  
For the reasons stated below, the Court finds that the motion to amend should be denied.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Mr. Flores filed his application to proceed *in forma pauperis* and proposed civil rights lawsuit on October 14, 2008. Dkt. # 1. The Court granted his application to proceed *in forma pauperis* and filed the complaint. Dkts # 4 and 5. Mr. Flores claims that while he was incarcerated at the Washington Corrections Center (WCC), Defendants (who are employees of WCC) denied him the use of his electric wheelchair and certain medications in violation of his Eighth Amendment rights. Dkt. # 5, p. 3.

On or about December 24, 2008, Mr. Flores was transferred to Airway Heights Corrections

1 Center (AHCC). Dkt. # 9. Mr. Flores seeks leave to amend his complaint to add claims against  
2 employees of AHCC. Dkt. # 25. Defendants have entered appearances, but have not answered the  
3 complaint. Dkts. # 30 and 38. A motion to dismiss is pending. Dkt. # 36.

4 Mr. Flores has not provided the Court with a proposed amended complaint. Defendants  
5 object to Mr. Flores' motion to amend because he failed to serve them with his motion and because  
6 he failed to provide a proposed amendment. Dkt. # 32.

## 7 **II. DISCUSSION**

8 Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 15(a), "[a] party may amend  
9 the party's pleading once as a matter of course at any time before a responsive pleading is served."  
10 Otherwise, the party "may amend the party's pleading only by leave of court or by written consent of  
11 the adverse party." *Id.* Leave to amend "shall be freely given when justice so requires," and "this  
12 policy is to be applied with extreme liberality." *Id.*; *Morongo Band of Mission Indians v. Rose*, 893  
13 F.2d 1074, 1079 (9<sup>th</sup> Cir. 1990). After a responsive pleading has been filed, "leave to amend should  
14 be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is  
15 futile, or creates undue delay." *Martinez v. Newport Beach City*, 125 F.3d 777, 786 (9<sup>th</sup> Cir. 1997).

17 In this case, Mr. Flores did not submit a proposed amended complaint. In his motion to  
18 amend, Mr. Flores claims that he is being "denied medical and accommodations under the ADA by  
19 the following persons: Maggie Miller-Stout (Warden of AHCC), Rusty Smith (medical Director),  
20 Dr. Doe Smith, Kimberly Dotson (Pac), Doe Hewston (CUS), G. Burk ( Counselor), Medical  
21 Committee (in whole), and other persons who work under the supervision of the warden of AHCC,  
22 or under DOC Secretary Eldon Vail." Dkt. # 25, p. 1. Without a proposed amendment, however,  
23 the Court is unable to determine the scope and nature of Mr. Flores' claims or if he intends to  
24 amend or supplement the allegations contained in his original complaint.

1 Mr. Flores is advised that an amended complaint supersedes the original in its entirety,  
2 making the original as if it never existed. *Id.* The allegations contained in his motion are not  
3 sufficient to properly plead an amended complaint to include all of his factual and legal allegations,  
4 including those stated in his original complaint. If Mr. Flores wishes to amend his complaint, he  
5 must set forth all of the parties and claims in a proposed amended complaint and submit it for the  
6 Court's review.

7 As Defendants have been served and entered their appearances in this matter, Mr. Flores  
8 must serve copies of all pleadings and motions on all Defendants through their counsel of record  
9 pursuant to Fed.R.Civ.P. 5(b)(1). Rule 5(d) also requires Mr. Flores to attach and file a certificate  
10 of service every time he files and serves a document. Fed.R.Civ.P. 5(d).

11 Accordingly, Plaintiff's motion to amend his complaint (Dkt. # 25) is **DENIED**.

12  
13  
14 DATED this 12th day of March, 2009.

15  
16   
17 Karen L. Strombom  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24  
25