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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDRE LAWRENCE,
Plaintiff,
v.
JOHN MCMAHON, et al.,
Defendants.

Case No. EDCV 14-1331 DMG (SS)

**MEMORANDUM DECISION AND ORDER
DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND**

I.

INTRODUCTION

On June 28, 2014, Andre Lawrence ("Plaintiff"), a pretrial detainee proceeding pro se, constructively filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Dkt. No. 3). On August 8, 2014, the Court dismissed the Complaint with leave to amend due to certain pleading defects.¹ (Dkt. No. 7). The Court received Plaintiff's First Amended Complaint ("FAC") on August

¹ Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. See McKeever v. Block, 932 F.2d 795, 795 (9th Cir. 1991).

1 27, 2014.² (Dkt. No. 9). Because Plaintiff has cured only some,
2 but not all, of the pleading defects previously identified by the
3 Court, the FAC is dismissed, with leave to amend.

4
5 Congress mandates that district courts perform an initial
6 screening of complaints in civil actions where a prisoner seeks
7 redress from a governmental entity or employee. 28 U.S.C.
8 § 1915A(a). This Court may dismiss such a complaint, or any
9 portions thereof, before service of process if it concludes that
10 the complaint (1) is frivolous or malicious, (2) fails to state a
11 claim upon which relief can be granted, or (3) seeks monetary
12 relief from a defendant who is immune from such relief.
13 28 U.S.C. § 1915A(b)(1-2); see also Lopez v. Smith, 203 F.3d
14 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

15
16 **II.**

17 **ALLEGATIONS OF THE FIRST AMENDED COMPLAINT**

18
19 The FAC names as defendants three employees of the San
20 Bernardino County Sheriff's Department, the latter two of whom
21 worked during the relevant period at the West Valley Detention
22 Center ("WVDC"), where Plaintiff is currently housed: San
23 Bernardino County Sheriff John McMahon, Deputy Jones, and
24 Reverend Scraggs (collectively, "Defendants"). (FAC at 1, 3).³

25 _____
26 ² The Court notes that although the Court filed the FAC on August
27 27, 2014, the signature block indicates that Plaintiff signed the
28 FAC on August 28, 2014. (See FAC at 6).

³ The Court will cite to the FAC as though it were consecutively
paginated.

1 Plaintiff sues all Defendants in both their individual and
2 official capacities. (Id. at 3).

3
4 Although Plaintiff is "not Jewish," he "practice[s] the
5 Jewish faith." (Id. at 4). On May 23, 2014, Plaintiff requested
6 a kosher diet. (Id.). On May 29, 2014, Reverend Scraggs, after
7 questioning Plaintiff about his faith, informed Plaintiff that
8 despite the apparent sincerity of his beliefs, he could not
9 receive a kosher diet because the prison does not have a resident
10 rabbi and it would take at least two weeks to contact a synagogue
11 to see if Plaintiff is "on a list" so that his request for a
12 kosher diet could be approved. (Id.). However, Reverend Scraggs
13 "never got back" to Plaintiff. (Id.).

14
15 Plaintiff immediately filed a grievance. On May 30, 2014,
16 Deputy Jones answered the grievance after verbally informing
17 Plaintiff that his request would be deemed "unfounded." (Id.).
18 Deputy Jones also stated that "per his supervisor," Plaintiff's
19 request was a "dead issue" and "there were no further levels of
20 appeal." (Id.).

21
22 The FAC's allegations concerning Sheriff McMahon are faded
23 to the point of near illegibility. However, Plaintiff notes that
24 the Sheriff is in charge of all of his deputies and the staff at
25 the WVDC. (Id. at 5). As such, Plaintiff contends that the
26 Sheriff is responsible for his subordinates' actions and the
27 policies of the facilities under his supervision. (Id. at 5).

1 Although the FAC is not entirely clear, Plaintiff appears to
2 raise three claims, one against each Defendant. First, Plaintiff
3 alleges that Reverend Scraggs violated his rights under the
4 Religious Land Use and Institutionalized Person Act, 42 U.S.C.
5 §§ 2000cc et seq. ("RLUIPA"), by "unjustifiably denying [him] a
6 kosher diet." (FAC at 3). Second, Plaintiff appears to argue
7 that Deputy Jones violated his due process rights by denying him
8 "a fair and impartial investigation of [his] grievance." (Id.).
9 Third, Plaintiff claims that Sheriff McMahon, as Defendants'
10 supervisor and "executor" of WVDC policy, is ultimately
11 responsible for the failure of his "administration and staff" to
12 conduct a "fair grievance investigations [sic]." (Id.).
13

14 Plaintiff prays for injunctive relief, but not damages.
15 Plaintiff seeks an order requiring the WVDC to provide him a
16 kosher diet and to employ a rabbi. (See id. at 6). He also
17 demands that WVDC "change the actions of its staff and
18 administration in regards to blocking the processes of the
19 grievance system." (Id.).
20

21 **III.**

22 **DISCUSSION**

23
24 Under 28 U.S.C. § 1915A(b), the Court must dismiss the FAC
25 due to defects in pleading. Pro se litigants in civil rights
26 cases, however, must be given leave to amend their complaints
27 unless it is absolutely clear that the deficiencies cannot be
28 cured by amendment. See Lopez, 203 F.3d at 1128-29.

1 Accordingly, the Court grants Plaintiff leave to amend, as
2 indicated below.

3
4 **A. Plaintiff Fails To State A Claim Based On The Screening And**
5 **Investigation Of His Grievances**

6
7 Plaintiff contends that Deputy Jones violated his rights by
8 denying him a fair and impartial investigation of his grievance.
9 (FAC at 3). Plaintiff further argues that Sheriff McMahon, as
10 Deputy Jones's superior, is responsible for this improper
11 grievance "policy." (Id.). As the Court has previously
12 explained, however, claims that a defendant improperly screened
13 or investigated grievances, standing alone, do not state a
14 violation of constitutional rights.

15
16 A prisoner must "exhaust his administrative remedies before
17 filing a lawsuit concerning prison conditions." Sapp v.
18 Kimbrell, 623 F.3d 813, 821 (9th Cir. 2010) (citing 42 U.S.C. §
19 1997e(a)). However, the existence of a prison grievance
20 procedure does not create any substantive rights enforceable
21 under the Due Process Clause. See, e.g., Antonelli v. Sheahan,
22 81 F.3d 1422, 1430 (7th Cir. 1996) ("With respect to the Due
23 Process Clause, any right to a grievance procedure is a
24 procedural right, not substantive one. Accordingly, a state's
25 inmate grievance procedures do not give rise to a liberty
26 interest protected by the Due Process Clause.") (citations
27 omitted); Doe v. Moore, 410 F.3d 1337, 1350 (11th Cir. 2005)
28 ("State-created procedural rights that do not guarantee a

1 particular substantive outcome are not protected by the
2 Fourteenth Amendment, even where such procedural rights are
3 mandatory.”) (internal quotation marks omitted).

4
5 Consequently, an inmate does not have a right to any
6 particular grievance procedure or result. See, e.g., Ramirez v.
7 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (“[I]nmates lack a
8 separate constitutional entitlement to a specific prison
9 grievance procedure.”) (citing Mann v. Adams, 855 F.2d 639, 640
10 (9th Cir. 1988)); Geiger v. Jowers, 404 F.3d 371, 374 (5th Cir.
11 2005) (an inmate “does not have a federally protected liberty
12 interest in having . . . grievances resolved to his
13 satisfaction.”). As such, a prison official’s failure to
14 properly process a grievance, without more, is insufficient to
15 establish liability under section 1983. See Buckey v. Barlow,
16 997 F.2d 494, 495 (8th Cir. 1993).

17
18 Plaintiff’s claims against Deputy Jones and Sheriff McMahon
19 are based entirely on the processing of Plaintiff’s grievance.
20 However, Plaintiff does not have a constitutional right to any
21 particular grievance process or result. Accordingly, as the
22 Court has previously instructed, Plaintiff’s claims against
23 Deputy Jones and Sheriff McMahon based on the handling of his
24 grievance must be dismissed. Plaintiff is cautioned that in any
25 amended complaint, he should omit claims for which he has no
26 legal or factual basis.

27 \\

28 \\

1 **B. There Is No Vicarious Liability In Section 1983 Cases**

2
3 Plaintiff appears to allege that Sheriff McMahon is liable
4 only because as the head of the Sheriff's Department, he is
5 vicariously responsible for any acts committed or policies
6 implemented by his subordinates. (See FAC at 3). However,
7 Plaintiff is once again advised that there is no vicarious
8 liability under section 1983. As such, a supervisor cannot be
9 held liable simply because a subordinate violated plaintiff's
10 rights. Therefore, even if Plaintiff were able to assert a
11 cognizable claim against Deputy Jones, Sheriff McMahon would not be
12 liable merely because he is Deputy Jones's superior.

13
14 To demonstrate a civil rights violation against government
15 officials, a plaintiff must show either direct, personal
16 participation or some sufficient causal connection between the
17 official's conduct and the alleged constitutional violation. See
18 Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011). To be
19 held liable, a supervising officer has to personally take some
20 action against the plaintiff or "set in motion a series of acts
21 by others . . . which he knew or reasonably should have known,
22 would cause others to inflict the constitutional injury" on the
23 plaintiff. Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th
24 Cir. 1991) (internal quotations omitted). As the Ninth Circuit
25 has explained, "[s]upervisory liability [may be] imposed against
26 a supervisory official in his individual capacity [only] for his
27 own culpable action or inaction in the training, supervision, or
28 control of his subordinates, for his acquiescence in the

1 constitutional deprivations of which the complaint is made, or
2 for conduct that showed a reckless or callous indifference to the
3 rights of others.” Preschooler II v. Clark County Bd. Of
4 Trustees, 479 F.3d 1175, 1183 (9th Cir. 2007).

5
6 Whether or not Deputy Jones caused Plaintiff a harm
7 cognizable under section 1983, Sheriff McMahon would be liable
8 only if he either personally participated in the violation or
9 committed some act as a supervisor that directly led to the
10 constitutional violation. Plaintiff generically alleges that
11 Sheriff McMahon violated his rights by inadequately supervising
12 “his administration and staff.” (FAC at 3). However, Plaintiff
13 does not state what specifically was inadequate about Sheriff
14 McMahon’s supervision that led directly to the harm alleged. To
15 state any sort of claim against Sheriff McMahon (or any other
16 Defendant), Plaintiff must allege specific facts showing what he
17 personally did or did not do, when and where, and how his action
18 or inaction directly caused a violation of Plaintiff’s civil
19 rights. Accordingly, the FAC must be dismissed, with leave to
20 amend. If Plaintiff fails to correct this defect, Plaintiff is
21 advised that the Court will recommend dismissal of these claims
22 with prejudice and without leave to amend.

23
24 **C. The FAC Fails To State A Claim Against Deputy Jones And**
25 **Sheriff McMahon In Their Official Capacity**

26
27 Similarly, even if the improper screening or investigation
28 of a grievance could form the basis of a claim under section

1 1983, which it cannot, the FAC would still fail to state a claim
2 against Deputy Jones and Sheriff McMahon in their official
3 capacities.⁴ A suit against a defendant in his individual
4 capacity "seek[s] to impose personal liability upon a government
5 official for actions he takes under color of state law
6 Official-capacity suits, in contrast, generally represent only
7 another way of pleading an action against an entity of which an
8 officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165
9 (1985) (internal quotation marks omitted; emphasis added);
10 see also Community House, Inc. v. City of Boise, Idaho, 623 F.3d
11 945, 966-67 (9th Cir. 2010) (an official capacity suit is treated
12 as a suit against the entity). To the extent that Plaintiff's
13 allegations against Deputy Jones and Sheriff McMahon in their
14 "official capacity" may be construed as an attempt to sue the
15 County of San Bernardino for violations of Plaintiff's
16 constitutional rights under section 1983, however, the FAC fails
17 to state a claim and must be dismissed with leave to amend.

18
19 As the Court has previously explained, a local government is
20 liable in a section 1983 action only if the plaintiff can
21 establish that the municipality or county sued "had a deliberate
22 policy, custom, or practice that was the 'moving force' behind
23 the constitutional violation he suffered." Galen v. County of
24 Los Angeles, 477 F.3d 652, 667 (9th Cir. 2007) (quoting Monell v.
25 Dep't of Soc. Servs., 436 U.S. 658, 694-95 (1978)). In Monell,
26 the Supreme Court specifically rejected governmental liability

27 _____
28 ⁴ As previously mentioned the FAC purports to sue all Defendants
in both their individual and official capacities. (FAC at 3-4).

1 based on the doctrine of respondeat superior, or vicarious
2 liability. Monell, 436 U.S. at 691-94. Therefore, a local
3 government cannot be held liable under section 1983 merely
4 because one or more of its employees violated a person's rights.
5 Id.

6
7 The FAC does not identify, as required by Monell, any
8 specific policies or practices in the County of San Bernardino
9 that caused Plaintiff's alleged injuries. Furthermore, Plaintiff
10 is cautioned that "[a] plaintiff cannot prove the existence of a
11 municipal policy or custom based solely on the occurrence of a
12 single incident of unconstitutional action by a non-policymaking
13 employee." Davis v. City of Ellensburg, 869 F.2d 1230, 1233 (9th
14 Cir. 1989); see also Trevino v. Gates, 99 F.3d 911, 918 (9th Cir.
15 1996) ("Liability for improper custom may not be predicated on
16 isolated or sporadic incidents; it must be founded upon practices
17 of sufficient duration, frequency and consistency that the
18 conduct has become a traditional method of carrying out
19 policy."). In any amended complaint, assuming that Plaintiff is
20 able to identify a cognizable harm, Plaintiff must either
21 identify the specific County policies or practices that caused his
22 injury or limit his suit to claims against Defendants in their
23 individual capacity only. Accordingly, the FAC must be
24 dismissed, with leave to amend. Plaintiff should omit claims
25 that lack a legal basis. If Plaintiff again pleads such claims,
26 he is warned that the Court will recommend dismissal of such
27 claims with prejudice and without leave to amend.

1 **D. The FAC's RLUIPA Claim Against Reverend Scraggs In His**
2 **Individual Capacity Is Improper**

3
4 The FAC alleges that Reverend Scraggs violated Plaintiff's
5 "R.L.U.I.P.A. rights by unjustifiably denying [him] a kosher
6 diet." (FAC at 3). Accordingly, the FAC's religious exercise
7 claim appears to be grounded solely in Plaintiff's statutory
8 rights under RLUIPA, not his First Amendment constitutional
9 rights under section 1983. To state a claim under RLUIPA, an
10 inmate plaintiff must allege facts establishing that the
11 "government" substantially burdened the exercise of his religious
12 beliefs.⁵ See Warsoldier v. Woodford, 418 F.3d 989, 994 (9th
13 Cir. 2005) (citing 42 U.S.C. § 2000cc-1(a)(1)-(2)). Construed
14 liberally, Plaintiff's RLUIPA claim adequately, if minimally,
15 appears to state a claim as Plaintiff alleges that in furtherance
16 of his sincerely held religious beliefs, he presented his request
17 for kosher meals to Reverend Scraggs, who failed to grant the
18 request or follow through.

19
20 However, if Plaintiff is in fact raising his religious
21 exercise claim solely under RLUIPA, as the FAC suggests, the
22 claim against Reverend Scraggs in his individual capacity is
23 improper. RLUIPA was "enacted pursuant to Congress's spending
24 and commerce powers," Wood v. Yordy, 753 F.3d 899, 902 (9th Cir.

25 _____
26 ⁵ The statute defines the term "government" to mean "(i) a State,
27 county, municipality or other governmental entity created under
28 the authority of a State; (ii) any branch, department, agency,
instrumentality, or official of an entity listed in clause (i);
and (iii) any other person acting under color of State law
. . . ." 42 U.S.C. § 2000cc-5(4) (A).

1 2014), and applies in relevant part to any "program or activity
2 that receives Federal financial assistance." 42 U.S.C. § 2000cc-
3 1(b)(1). The Ninth Circuit has explained that because individual
4 employees are not the governmental "recipients" of federal funds,
5 they are not liable in their personal capacities under RLUIPA.
6 See Wood, 753 F.3d at 904 ("[T]here is nothing in the language or
7 structure of RLUIPA to suggest that Congress contemplated
8 liability of government employees in an individual
9 capacity. . . . The statute does not authorize suits against a
10 person in anything other than an official or governmental
11 capacity, for it is only in that capacity that the funds are
12 received."). To the extent that the FAC's religious exercise
13 claim is brought solely under RLUIPA, Plaintiff may not sue
14 Reverend Scraggs in his individual capacity.⁶

15 16 IV.

17 CONCLUSION

18
19 For the reasons stated above, the FAC is dismissed with
20 leave to amend. If Plaintiff still wishes to pursue this action,
21 he is granted **thirty (30) days** from the date of this Memorandum
22 and Order within which to file a Second Amended Complaint. In
23 any amended complaint, Plaintiff shall **cure the defects** described
24 above. **Plaintiff shall not include new Defendants or new**
25

26 ⁶ The Court notes, however, that a constitutional claim under
27 section 1983 may be asserted against Reverend Scraggs in his
28 individual capacity if Plaintiff is able to allege facts showing
that Reverend Scraggs personally violated his First Amendment
rights. See Starr, 652 F.3d at 1205-06.

1 **allegations that are not reasonably related to the claims**
2 **asserted in the original Complaint.** The Second Amended
3 Complaint, if any, shall be complete in itself and shall bear
4 both the designation "Second Amended Complaint" and the case
5 number assigned to this action. It shall not refer in any manner
6 to the original Complaint or FAC. Plaintiff shall limit his
7 action only to those Defendants who are properly named in such a
8 complaint, consistent with the authorities discussed above.

9
10 In any amended complaint, Plaintiff should confine his
11 allegations to those operative facts supporting each of his
12 claims. Plaintiff is advised that pursuant to Federal Rule of
13 Civil Procedure 8(a), all that is required is a "short and plain
14 statement of the claim showing that the pleader is entitled to
15 relief." **Plaintiff is strongly encouraged to utilize the**
16 **standard civil rights complaint form when filing any amended**
17 **complaint, a copy of which is attached.** In any amended
18 complaint, Plaintiff should make clear the nature and grounds for
19 each claim and specifically identify the Defendants he believes
20 are liable for that claim. Plaintiff shall not assert any claims
21 for which he cannot allege a proper factual or legal basis.

22
23 **Plaintiff is explicitly cautioned that failure to timely**
24 **file a Second Amended Complaint, or failure to correct the**
25 **deficiencies described above, will result in a recommendation**
26 **that this action be dismissed with prejudice for failure to**
27 **prosecute and obey Court orders pursuant to Federal Rule of Civil**
28 **Procedure 41(b).** Plaintiff is further advised that if he no

longer wishes to pursue this action, he may voluntarily dismiss
it by filing a Notice of Dismissal in accordance with Federal
Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is
attached for Plaintiff's convenience.

DATED: September 9, 2014

/s/

SUZANNE H. SEGAL

UNITED STATES MAGISTRATE JUDGE

**THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION NOR IS IT
INTENDED TO BE INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE
SUCH AS WESTLAW OR LEXIS.**