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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

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Riki Rashaad Muhammad,

CV-11-1890-PHX-SMM (JFM)

9

Plaintiff

ORDER

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vs

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Arizona Department of Corrections,
et al.,

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Defendants.

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Plaintiff has filed a Second Amended Civil Rights Complaint (Doc. 25), raising claims of equal protection, free exercise of religion, and violations of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and in Count 7 a claim of deliberate indifference to Plaintiff’s safety. The Court’s Screening Order dismissed Counts 1, 5, and 6. It further directed responses from various combinations of Defendants Ryan, Krause, Linderman, and/or (J.) Lind to Counts 2, 3, and 4. A response from Defendant Ams to Count 7 was required. (Order 7/25/13, Doc. 29.)

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Defendants Ryan, Linderman, Lind, and Ams appeared, and Ryan, Linderman and Lind filed a notice of settlement (Doc. 60). In addition, Defendant Ams has recently filed what the Court has construed to be a motion to dismiss for failure to exhaust administrative remedies (Doc. 67).

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In the interim, Plaintiff filed a Motion for Preliminary Relief (Doc. 37) seeking preliminary relief as to count 3 (religious diet). He has also filed a Motion for Class Certification (Doc. 46), seeking his certification as a class representative as to the claims in Counts 2, 3, and 4.

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1 Service on Defendant Krause was originally returned unexecuted, an address for
2 service was ordered, and on February 14, 2014, a Waiver of Service was filed, reflecting
3 a waiver of service by Defendant Krause. To date, Defendant Krause has not appeared.

4 On July 1, 2014, Magistrate Judge Metcalf observed the incomplete settlement,
5 pending motions for preliminary relief and class certification, and failure to serve
6 Defendant Krause. Deadlines were set for, *inter alia*, the parties to file a stipulation to
7 dismiss, and Plaintiff to show cause why the pending motions should not be denied as
8 moot, and Defendant Krause dismissed for failure to effect timely service.

9 **Stipulation/Motion to Dismiss** - On July 8, 2014, Plaintiff and Defendants Lind,
10 Linderman, and Ryan filed a Notice of Settlement and Stipulation for Partial Dismissal,
11 advising that the parties had “reached a global settlement agreement of all disputed
12 claims between them,” and requesting “an order dismissing this action in its entirety and
13 as to every defendant except for Defendant Ams.” (Doc. 71.)

14 In an Order filed July 17, 2014, Magistrate Judge Metcalf observed that
15 Defendant Ams had not joined in the stipulation, construed the stipulation as a motion to
16 dismiss pursuant to Rule 41(a)(2) to dismiss with prejudice Counts 2, 3, and 4, and not
17 only Defendants Lind, Linderman and Ryan, but also Defendant Krause. The Court set a
18 deadline for a response in opposition or a joinder. On July 18, 2014, Defendant Ams
19 filed her Joinder (Doc. 74) in the Stipulation for Partial Dismissal.

20 With the joinder by Defendant Ams, all appearing parties have joined in a
21 stipulation of dismissal. Thus, the Stipulation for Partial Dismissal qualifies for a
22 voluntary dismissal by Plaintiff pursuant to Rule 41(a)(1)(A)(ii).

23 Because the Stipulation specified that the dismissal should be with prejudice, the
24 dismissal may be with prejudice. *See* Fed. R. Civ. P. 41(a)(1)(B).

25 Therefore, the Court will dismiss with prejudice Defendants Lind, Linderman,
26 Ryan and Krause and Counts 2, 3, and 4 pursuant to the stipulation.

27 **Pending Motions** - Plaintiff has failed to show cause why his pending motions
28 should not be deemed moot as a result of the claims disposed of in the settlement. The

1 time to do so has expired. Accordingly, those motions will be denied as moot.

2 **Remaining Claims and Parties** - This leaves pending Count 7 of the Second
3 Amended Complaint against Defendant Ams, and Defendant Ams' Motion for Judgment
4 on the Pleadings/Motion to Dismiss (Doc. 67).

5 **IT IS THEREFORE ORDERED** that the Court's order to show cause filed July
6 1, 2014 shall be deemed **SATISFIED**.


7 **IT IS FURTHER ORDERED** that, pursuant to the parties' Stipulation for Partial
8 Dismissal, filed July 8, 2014 (Doc. 71), that Counts 2, 3 and 4 of the Second Amended
9 Complaint (Doc. 25) are **DIMISSED WITH PREJUDICE**.

10 **IT IS FURTHER ORDERED** that Defendants Lind, Linderman, Ryan and
11 Krause are **DIMISSED WITH PREJUDICE**.

12 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Preliminary Relief,
13 filed September 26, 2013 (Doc. 37) is **DENIED** as moot.

14 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Class Certification,
15 filed November 29, 2013 (Doc. 46) is **DENIED** as moot.

16 DATED this 30th day of July, 2014.

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20 Stephen M. McNamee
21 Senior United States District Judge
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