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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Edward Lee Jones,

10 Plaintiff,

11 v.

12 Arizona Department of Corrections, et al.,

13 Defendants.
14

No. CV-14-01689-PHX-DJH (JZB)

ORDER

15 On May 18, 2015, Plaintiff Edward Lee Jones, Jr., who is confined in the Arizona
16 State Prison Complex-Eyman in Florence, Arizona, filed a *pro se* civil rights Second
17 Amended Complaint pursuant to 42 U.S.C. § 1983. (Doc. 30.) On June 29, 2015, the
18 Court Screened the Second Amended Complaint, ordered Defendants Ryan, Linderman,
19 Vicklund, Lopez, Woods, Miser, and Forbes to answer portions of Counts One, Two,
20 Three, Seven, Eight, Ten, and Eleven of the Second Amended Complaint, and dismissed
21 the remaining claims and Defendants without prejudice. (Doc. 31.) Now pending before
22 the Court is Plaintiff's Request to Amend Counts 1, 2, 3, 4, 8, 9 and Request to Dismiss
23 With Prejudice Counts 5 and 6 of the Second Amended Complaint. (Doc. 56.) Plaintiff
24 attached a proposed amended complaint to his Motion.¹ As detailed below, the Court
25 will grant Plaintiff's Motion to Amend, order the Clerk to file Plaintiff's proposed Third

26
27 ¹ Plaintiff titled this proposed Amended Complaint as his "Second Amended
28 Complaint." (Doc. 56 at 12-32.) However, the Amended Complaint includes several of
the amendments Plaintiff references in his Motion to Amend. Therefore, the Court will
construe Doc. 56 at pages 12 through 32 as Plaintiff's proposed Third Amended
Complaint.

1 Amended Complaint, and, after screening, dismiss Plaintiff’s claims for conspiracy,
2 Eighth Amendment conditions of confinement claims, and racial discrimination claim,
3 and order Defendants to answer the remaining claims in the Third Amended Complaint.

4 **I. Statutory Screening of Prisoner Complaints**

5 The Court is required to screen complaints brought by prisoners seeking relief
6 against a governmental entity or an officer or an employee of a governmental entity. 28
7 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
8 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
9 which relief may be granted, or that seek monetary relief from a defendant who is
10 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

11 A pleading must contain a “short and plain statement of the claim *showing* that the
12 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
13 not demand detailed factual allegations, “it demands more than an unadorned, the
14 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
15 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Id.*

17 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
18 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
19 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable
21 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
22 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
23 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
24 specific factual allegations may be consistent with a constitutional claim, a court must
25 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
26 at 681. But as the United States Court of Appeals for the Ninth Circuit has instructed,
27 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
28 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less

1 stringent standards than formal pleadings drafted by lawyers.” *Id.* (quoting *Erickson v.*
2 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

3 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
4 520-21 (1972), conclusory and vague allegations will not support a cause of action, *Ivey*
5 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a
6 liberal interpretation of a civil rights complaint may not supply essential elements of the
7 claim that were not initially pled. *Id.*

8 **II. Plaintiff’s Third Amended Complaint**

9 In his Third Amended Complaint, Plaintiff sues the following Defendants:
10 Arizona Department of Corrections (ADOC) Director Charles L. Ryan, Pastoral
11 Administrator Mike Linderman, Senior Chaplain J. Vicklund, Warden Ron Credio,
12 Correctional Officer (CO) II/Counselor E. Lopez, Assistant Deputy Warden G. Woods,
13 Lieutenant Swayne, and Unit Chaplain Miser, and CO II/Kitchen Staff (Security) Forbes.
14 In his Request for Relief, Plaintiff seeks declaratory relief, monetary damages, and his
15 costs of suit.

16 In his Motion to Amend, Plaintiff asserts that he seeks to do the following in his
17 Third Amended Complaint: (1) amend Counts One, Two, Three, Four, and Eight to state
18 a claim based on Plaintiff’s inability to properly observe the Islamic practice of
19 Ramadan; (2) state claims for relief against Defendant Credio (Count Four) and
20 Defendant Swayne (Count Nine) sufficient for the Court to issue service packets for those
21 two Defendants; and (3) dismiss Counts Five and Six with prejudice. (Doc. 56.)²

22 Plaintiff asserts that he is a practicing Muslim. He contends that in the Islamic
23 faith, it is not permissible for Muslim males to remove any hair from their beards below a
24 fistful and that beard trimming violates the Sunnah. Plaintiff also asserts that during
25 Ramadan, all Muslims initiate a fast subsequent to the performance of “‘Fair’ prayer,”

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27 ² Plaintiff also seeks to amend Defendant Woods’ name from “G. Woods” to “M.
28 Woods.” (Doc. 56 at 4.) However, Plaintiff subsequently withdrew that request after
Defendants provided documentation showing that the correct Defendant is GERALYNN
WOODS. (Docs. 54, 58, 64, 77.)

1 which Plaintiff asserts in 2012, was “performed prior to the meal time of 0500 hours.”

2 **a. Count One**

3 In Count One, Plaintiff alleges that Defendant Ryan violated his rights under the
4 First Amendment and the Religious Land Use and Institutionalized Persons Act of 2000
5 (RLUIPA). Plaintiff claims that Defendant Ryan denied Plaintiff his constitutional right
6 to grow his beard and denied him the opportunity to freely practice his faith during the
7 observation of Ramadan. More specifically, Plaintiff asserts that Defendant Ryan
8 created, implemented, and enforced a prison grooming policy that barred Plaintiff from
9 growing his beard longer than 1/4 of an inch for religious reasons. Plaintiff asserts that
10 Defendant Ryan knew the policy was unconstitutional.

11 Plaintiff further asserts that according to the Islamic practice of Ramadan, “‘Fair’
12 prayer is the start of the fast for Muslims during Ramadan each day,” and “according to
13 the Ramadan 2012 prayer time schedule[,] ‘Fair’ prayer on July 20[] had to be performed
14 at approximately 0414 hours[,] no later. Thereafter, a minute or two would be added to
15 that time each day following to perform ‘Fair’ prayer.” Plaintiff contends, however, that
16 Defendant Ryan signed off on a Memorandum, “passed down” by Defendant Linderman
17 to all Units in the Eyman/Florence Complexes, instructing “staff/officials” regarding
18 when the observation of Ramadan could begin and the “feeding timeframe set by
19 Defendant Linderman,” which burdened Plaintiff because it forced Plaintiff to either
20 break his fast or starve. Plaintiff asserts that “[b]y July 23[], Ramadan participants
21 started to be called out for Morning feeding subsequent to ‘Fair’ prayer, placing a burden
22 on individuals such as Plaintiff.”

23 Plaintiff claims that he submitted inmate letters to CO II Cione and A.D.W. Cluff
24 regarding the issue, and, after being denied, submitted a grievance. Plaintiff further
25 claims that “at Defendant’s level,” Plaintiff “was informed that [he] could start his fast at
26 any time.” Plaintiff asserts that “because Ryan is responsible for all the policy and
27 Memorandums signed by him and circulated to be implemented in the ADOC, he should
28 have known or knew those policies and Memorandums were unfair to Muslims and

1 violated the law.” Finally, Plaintiff complains that Defendant should have accepted
2 Plaintiff’s proposals to either allow an earlier feeding time during Ramadan or deliver
3 meals to the Housing Units for practicing Muslims during Ramadan.

4 **b. Count Two**

5 In Count Two, Plaintiff claims that Defendant Linderman violated his rights under
6 RLUIPA and the First Amendment because Defendant Linderman “fashions policies and
7 Memorandums regarding religious activities,” “came up with” the 1/4-inch beard length
8 limitation, and denied Plaintiff’s requests to grow his beard pursuant to his faith. Plaintiff
9 also claims that Defendant Linderman violated his rights when he “fashioned the morning
10 mealtime during Ramadan [in 2012] at 0500 hours,” which “placed a burden on the
11 Plaintiff and other Muslims to either starve or break their fast.” Plaintiff contends that
12 Defendant Linderman knew or should have known that his actions were unconstitutional.

13 **c. Count Three**

14 In Count Three of his Third Amended Complaint, Plaintiff asserts the same
15 allegations as those in Count Three of his Second Amended Complaint. Specifically,
16 Plaintiff claims that Defendant Vicklund violated his rights under RLUIPA and the First
17 Amendment. Plaintiff contends that after Defendant Miser and another chaplain denied
18 Plaintiff’s request for a religious shaving waiver and to grow his beard longer than 1/4
19 inch, Plaintiff requested that Defendant Vicklund overturn those decisions, grant Plaintiff
20 a religious shaving waiver, and allow Plaintiff to grow his beard longer than 1/4 inch.
21 Plaintiff asserts that Defendant Vicklund refused to do so, either claiming that there was
22 no basis for Plaintiff’s requests or that Plaintiff needed to write a statement agreeing to
23 comply with ADOC policies in order to receive a waiver. Plaintiff asserts that the
24 statement would have required him to violate his religious customs and practices in order
25 to receive a waiver. Plaintiff contends that Defendant Vicklund would not assign a
26 chaplain to interview Plaintiff without this written statement and that the interview was
27 necessary to obtain the waiver. Plaintiff claims that he complied with Defendant
28 Vicklund’s request, but Defendant Vicklund nevertheless denied Plaintiff’s requests

1 based on Plaintiff's "institutional disciplinary record in relation to the subject of
2 following the ten[ets] of Plaintiff's faith/practic[es]."

3 Plaintiff also claims that because Defendant Vicklund failed to approve his
4 shaving waiver, Plaintiff was threatened and harassed by ADOC officials and was issued
5 disciplinary infractions for failing to comply with prison policies (presumably regarding
6 facial hair). Plaintiff asserts that because he chose not to abandon his religious practices
7 and beliefs, he was forced, for a year between January 2012 and January 2013, to only eat
8 one meal per day and to not eat meals in the "chow hall."

9 Plaintiff asserts that in March 2013, Defendant Vicklund finally approved a
10 shaving waiver for Plaintiff, but refused to overturn Defendant Miser's and the other
11 chaplain's prior denial of Plaintiff's request to grow his beard longer than 1/4 inch.
12 Plaintiff also asserts that Defendant Vicklund "conspired" with the other Defendants to
13 deny Plaintiff his rights under RLUIPA and the First Amendment.

14 **d. Count Four**

15 In Count Four, Plaintiff alleges that Defendant Credio violated his rights under
16 RLUIPA and the First Amendment. Plaintiff asserts that on January 31, 2013, Plaintiff
17 submitted a grievance appeal to Defendant regarding Plaintiff's attempts, over two years,
18 to obtain a shaving waiver, and Defendant Vicklund's recent denial of Plaintiff's request
19 based on Plaintiff's disciplinary record for refusing to shave. Plaintiff asserts that "as a
20 result of not having a waiver[,] Plaintiff was being denied meals (2 in one day) without
21 due process and continuously threaten[ed] with disciplinary for standing firm to his
22 religious beliefs and practices." Plaintiff asserts that in his grievance appeal, he
23 requested a shaving waiver and to receive his meals in his cell.

24 Plaintiff contends that Defendant Credio responded to Plaintiff's grievance appeal
25 on March 29, 2013. Plaintiff asserts that Defendant Credio stated it is the Chaplain's
26 responsibility to evaluate the validity of Plaintiff's waiver request, and "the intent of
27 Defendant Vicklund's evaluation was not punitive." However, Defendant Credio
28 instructed Plaintiff that "while waiting for approval of any shaving wavier inmates are

1 expected to report to the Chow Hall in Compliance with policy.” According to Plaintiff,
2 Defendant Credio further stated that Plaintiff, “by obtaining a medical waiver, was”
3 attempting “to circumvent procedure in order to get any shaving wavier [and] that such
4 acts do[] not demonstrate sincerity if the request for a religious wavier approval [arose]
5 again.” Plaintiff claims that Defendant Credio further stated he had investigated
6 Plaintiff’s grievance, and concluded that he concurred with the Deputy Warden’s
7 determination that Plaintiff would not be able to grow his beard beyond the 1/4 inch
8 level, the policy had been implemented to comply with RLUIPA, the Department had a
9 penological interest in “keeping a safe and secure environment through inmate
10 accountability and ease of identification” and the 1/4 inch limitation “was the least
11 restrictive means” in furthering that interest, in 2013, Plaintiff had signed a waiver
12 agreeing to the 1/4 inch limitation, and he considered “the matter resolved.”

13 Plaintiff also claims that on March 20, 2014, he submitted an inmate letter to
14 Defendant Credio regarding the requirement the Plaintiff cannot grow his beard longer
15 than 1/4 inch, explaining that officials had threatened Plaintiff, and that the beard length
16 policy required Plaintiff to “abandon his religious beliefs and practices.” On April 22,
17 2014, before Defendant Credio responded to Plaintiff’s inmate letter, Plaintiff submitted
18 a grievance appeal to Defendant Credio regarding the beard length policy and how it
19 violated Plaintiff’s rights. Plaintiff requested a new shaving waiver that complies with
20 his religious beliefs. Plaintiff asserts that he provided “Islamic Literature” to contradict
21 the “mis-information” by Chaplain Daniels that wearing a beard beyond 1/4 inch is a
22 choice within the Muslim faith.

23 Plaintiff further alleges that on April 28, 2014, Defendant Credio responded to
24 Plaintiff’s March 20, 2014 inmate letter, quoted policy, and referenced Plaintiff’s shaving
25 waiver, signed by Plaintiff, which states that growing his beard beyond the 1/4 inch level
26 was a choice.

27 With regard to observing Ramadan, Plaintiff asserts that Defendant Credio failed
28 to act during Ramadan by using an earlier meal time schedule to allow Plaintiff to eat

1 before fair prayer. Plaintiff alleges that on August 20, 2012, he submitted a grievance
2 appeal to Defendant Credio regarding the negative effects caused by the 0500 meal time
3 during Ramadan. Plaintiff contends that Defendant Credio responded to Plaintiff's
4 grievance appeal, stating that the meal time was "set in order to . . . maintain the safe and
5 secure[] operations of the unit," and "Plaintiff may begin his fast at any time he chooses
6 to do so." Plaintiff asserts that Defendant Credio could have allowed Plaintiff to receive
7 his meals in his cell to accommodate Plaintiff's religious beliefs, which would be a less
8 restrictive means of achieving the penological goal of a safe environment.

9 **e. Counts Five and Six**

10 Plaintiff removed Counts Five and Six in his Third Amended Complaint.

11 **f. Count Seven**

12 Plaintiff asserts the same allegations in Count Seven of his Third Amended
13 Complaint as those in Count Seven of his Second Amended Complaint. Specifically,
14 Plaintiff asserts that Defendant Lopez violated his rights under RLUIPA and the First,
15 Eighth, and Fourteenth Amendments. Plaintiff contends that Defendant Lopez
16 "conspired" with Defendant Swayne and another individual to deny Plaintiff food
17 because Plaintiff refused to shave and violate his faith. Plaintiff asserts that Defendant
18 Lopez refused to feed Plaintiff or provide Plaintiff with food twice in a 24-hour period
19 because Plaintiff would not shave for religious reasons. Plaintiff asserts that this was a
20 deliberate act by Defendant Lopez to violate Plaintiff's religious rights. Plaintiff states
21 that there is a possibility that racism played a part in Defendant Lopez's acts because
22 Plaintiff is Black.

23 **g. Count Eight**

24 In Count Eight, Plaintiff alleges that Defendant Woods violated his rights under
25 RLUIPA and the First Amendment. Plaintiff asserts that in July 2012, he submitted a
26 grievance to Defendant Woods regarding the mealtime schedule interfering with
27 Plaintiff's morning prayer during Ramadan. In his grievance, Plaintiff proposed that the
28 Department utilize a different meal time. Plaintiff contends that on July 30, 2012,

1 Defendant Woods denied Plaintiff's proposal, and stated that the Unit would not use a
2 different feeding schedule. Defendant Woods stated that she "must defer to the
3 accommodations outlined by Religious Services." Plaintiff asserts that Defendant Woods
4 "failed to address the issue with her superiors or to see if the Plaintiff's issue had validity
5 by contacting outside Islamic Scholars, Imam's or learned individuals in the Practices of
6 Islam." Plaintiff asserts that Defendant Woods' "acts and omissions" have caused
7 Plaintiff injury.

8 Plaintiff further claims that on January 24, 2013, he submitted a grievance to
9 Defendant Woods regarding being threatened with disciplinary action due to the length of
10 his beard and being denied his meals "unless he accepts the disciplinary infractions."
11 Plaintiff claims that he informed Defendant Woods that he was denied a shaving waiver
12 because he received disciplinary infractions for refusing to shave in accordance with his
13 religious beliefs. Plaintiff requested that he be issued a shaving wavier immediately
14 because his disciplinary record had been clean for 14 months.

15 Plaintiff contends that Defendant Woods responded on January 29, 2013, and
16 stated that she was unable to deny or approve Plaintiff's request for a shaving waiver.
17 However, Plaintiff contends she effectively denied his grievance by not acting. Plaintiff
18 claims that although Defendant Woods claimed to have consulted with the Unit Chaplin,
19 Defendant Woods failed to consult with the Director or the Attorney General's Office
20 regarding legally required religious accommodations. Finally, Plaintiff asserts that
21 Defendant Woods could have reprimanded the officials who denied Plaintiff his meals,
22 ordered them not to harass Plaintiff, and allowed Plaintiff to receive his meals in his cell,
23 but she took none of those actions.

24 **h. Count Nine**

25 In Count Nine, Plaintiff alleges that Defendant Swayne violated Plaintiff's rights
26 under RLUIPA and the First Amendment. Plaintiff contends that Defendant Swayne
27 persecuted and targeted Plaintiff because he was Muslim and had defied authority by
28 refusing to shave in accordance with the ADOC's grooming policies. Plaintiff asserts

1 that Defendant Swayne “made it a point to teach Plaintiff a lesson” by taking Plaintiff’s
2 shaving waiver, encouraged other officers to issue Plaintiff disciplinary infractions after
3 Defendant Swayne took Plaintiff’s shaving waiver if those officers observed Plaintiff not
4 complying with policy, encouraged Non-Muslim, Black inmates to confront Plaintiff
5 regarding his beard and to relay messages that Defendant “would let everything go” if
6 Plaintiff shaved his beard, and never contacted Defendant Ryan or ADOC’s legal counsel
7 for guidance regarding Plaintiff’s right to grow a beard longer than 1/4 inch. Plaintiff
8 contends that Defendant knew by taking Plaintiff’s shaving wavier, Plaintiff would
9 receive disciplinary infractions or be denied meals for practicing Plaintiff’s religion.

10 **i. Count Ten**

11 Plaintiff asserts the same allegations in Count Ten of his Third Amended
12 Complaint as those in Count Ten of his Second Amended Complaint. Specifically,
13 Plaintiff alleges that Defendant Miser violated his rights under RLUIPA and the First,
14 Eighth, and Fourteenth Amendments. Plaintiff contends that Defendant Miser
15 “conspired” with others, including Defendant Vicklund, to deliberately violate Plaintiff’s
16 rights. Plaintiff contends that in November 2011, Defendant Miser failed to approve
17 Plaintiff’s request for a religious shaving waiver, failed to properly research whether a
18 beard was obligatory for Muslims, failed to contact or consult with a Muslim scholar to
19 determine whether Plaintiff’s claim was valid, and failed to consult with Defendant
20 Linderman or ADOC’s legal counsel. Plaintiff asserts that Defendant Miser knew or
21 should have known that his actions were unconstitutional. Plaintiff asserts that because
22 Defendant Miser denied Plaintiff’s waiver, Plaintiff was denied food on several
23 occasions, was forced to eat just one meal per day for a year, and was continually
24 threatened with disciplinary infractions for keeping his beard and for standing by his
25 religious beliefs.

26 **j. Count Eleven**

27 Finally, in Count Eleven of his Third Amendment Complaint, Plaintiff asserts the
28 same allegations as those in Count Eleven of his Second Amended Complaint.

1 Specifically, Plaintiff alleges that Defendant Forbes violated his rights under RLUIPA
2 and the First, Eighth, and Fourteenth Amendments. Plaintiff claims that when he received
3 his meal sack during Ramadan on June 28, 2014, he noticed that some items were
4 missing. Plaintiff contends that he contacted Defendant Forbes, who did not correct the
5 issue and told Plaintiff to contact either Defendant Vicklund or the food services
6 provider. Plaintiff states that other individuals who were observing Ramadan were also
7 missing items and a sergeant intervened and instructed Defendant Forbes to correct the
8 issue. Plaintiff asserts that, thereafter, Defendant Forbes “conspired” with others,
9 including Defendants Swayne and Vicklund, to retaliate against Plaintiff for being a
10 Muslim, for “standing firm on his protected rights” and for causing Defendant Forbes to
11 be corrected by his supervisor. Plaintiff contends that after a conversation with Defendant
12 Swayne, Defendant Forbes sent an e-mail to Defendant Vicklund claiming that Plaintiff
13 had broken his religious fast by eating breakfast in the dining hall and requesting that
14 Plaintiff be removed from the Ramadan meal list. Plaintiff asserts that Defendant Forbes
15 did not investigate the records to determine whether Plaintiff actually had eaten breakfast
16 and that Defendant Forbes’s e-mail caused Plaintiff to be removed from the Ramadan
17 meal list without merit and chilled or prevented Plaintiff from fulfilling his obligations
18 pursuant to his religious beliefs. Plaintiff also contends that Defendant Forbes’s acts and
19 omissions did not reasonably advance a legitimate correctional goal.

20 **III. Discussion of Plaintiff’s Third Amended Complaint**

21 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
22 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
23 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a
24 liberal interpretation of a civil rights complaint may not supply essential elements of the
25 claim that were not initially pled. *Id.*

26 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
27 specific injury as a result of specific conduct of a defendant and show an affirmative link
28 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,

1 371-72, 377 (1976). Conclusory allegations that a Defendant or group of Defendants has
2 violated a constitutional right are insufficient. “A plaintiff must allege facts, not simply
3 conclusions, that show that an individual was personally involved in the deprivation of
4 his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

5 To state a First Amendment, free-exercise-of-religion claim, a plaintiff must allege
6 that a defendant substantially burdened the practice of the plaintiff’s religion by
7 preventing him from engaging in a sincerely held religious belief and that the defendant
8 did so without any justification reasonably related to legitimate penological interests
9 *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008). A plaintiff must identify the
10 sincerely held religious belief, which defendant substantially burdened the practice of the
11 plaintiff’s religion, and how that particular defendant substantially burdened the practice
12 of the plaintiff’s religion.

13 Under RLUIPA, a government may not impose a substantial burden on the
14 religious exercise of a confined person unless the government establishes that the burden
15 furthers a “compelling governmental interest” and does so by “the least restrictive
16 means.” 42 U.S.C. § 2000cc-1(a)(1)-(2). Under RLUIPA, the plaintiff bears the initial
17 burden of demonstrating a *prima facie* claim that the challenged state action constitutes a
18 “substantial burden on the exercise of his religious beliefs.” *Warsoldier v. Woodford*, 418
19 F.3d 989, 994 (9th Cir. 2005). A substantial burden is one that is “‘oppressive’ to a
20 ‘significantly great’ extent. That is, a ‘substantial burden’ on ‘religious exercise’ must
21 impose a significantly great restriction or onus upon such exercise.” *Id.* at 995 (quoting
22 *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)).
23 A substantial burden must be “more than an inconvenience”; it prevents an inmate from
24 “engaging in [religious] conduct or having a religious experience.” *Worldwide Church of*
25 *God v. Philadelphia Church of God, Inc.*, 227 F.3d 1110, 1121 (9th Cir. 2000) (citations
26 omitted).

27 **a. Conspiracy Claims**

28 In several of his counts, Plaintiff alleges that Defendants conspired to violate his

1 rights. To state a conspiracy claim, a plaintiff “must show ‘an agreement or ‘meeting of
2 the minds’ to violate constitutional rights.” *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir.
3 2002) (citation omitted). The Court “need not, however, accept as true allegations that are
4 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”
5 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), amended on other
6 grounds, 275 F.3d 1187 (9th Cir. 2001); *see also Woodrum v. Woodward County*, 866
7 F.2d 1121, 1126 (9th Cir. 1989) (conclusory allegations of conspiracy did not support a §
8 1983 claim); *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 626 (9th Cir.
9 1988) (“A mere allegation of conspiracy without factual specificity is insufficient.”).
10 Plaintiff repeatedly uses the word “conspiracy,” but this is insufficient. *See Iqbal*, 129 S.
11 Ct. at 1949 (“Threadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.”). Plaintiff has not made any allegations of an
13 agreement or meeting of the minds between the named Defendants. Nor is there a
14 “conspiracy” simply because Defendants followed the same policy. *See Myers v. City of*
15 *Hermosa Beach*, 299 Fed. Appx. 744, 747 (9th Cir. 2008) (“Before a conspiracy claim
16 can be sustained, a plaintiff must show a meeting of the minds by the so-called
17 conspirators. . . . However, the evidence adduced must demonstrate more than the mere
18 fact that two people did or said the same thing; the evidence must actually point to an
19 agreement.”) (citations omitted). Thus, the Court will dismiss Plaintiff’s conspiracy
20 claims.

21 **b. Conditions of Confinement Claims**

22 In Counts Seven, Ten, and Eleven, Plaintiff appears to be alleging conditions of
23 confinement claims under the Eighth and Fourteenth Amendments. An Eighth
24 Amendment claim requires a sufficiently culpable state of mind by the Defendants,
25 known as “deliberate indifference.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).
26 Deliberate indifference is a higher standard than negligence or lack of ordinary due care
27 for the prisoner’s safety. *Id.* at 835. To state a claim of deliberate indifference, plaintiffs
28 must meet a two-part test. “First, the alleged constitutional deprivation must be,

1 objectively, sufficiently serious”; and the “official’s act or omission must result in the
2 denial of the minimal civilized measure of life’s necessities.” *Id.* at 834 (internal
3 quotations omitted). Second, the prison official must have a “sufficiently culpable state of
4 mind,” i.e., he must act with “deliberate indifference to inmate health or safety.” *Id.*
5 (internal quotations omitted). In defining “deliberate indifference” in this context, the
6 Supreme Court has imposed a subjective test: “the official must both be aware of facts
7 from which the inference could be drawn that a substantial risk of serious harm exists,
8 *and* he must also draw the inference.” *Id.* at 837 (emphasis added).

9 Nothing in Plaintiff’s allegations supports a claim that any Defendant was
10 deliberately indifferent to his health or safety. Thus, the Court will dismiss Plaintiff’s
11 Eighth and Fourteenth Amendment conditions of confinement claims.

12 **c. Counts One, Two, and Three**

13 Liberally construed, Plaintiff has stated RLUIPA and First Amendment claims
14 regarding his beard and his inability to observe Ramadan against Defendants Ryan
15 (Count One) and Linderman (Count Two), and RLUIPA and First Amendment claims
16 regarding his beard against Defendant Vicklund (Count Three). Therefore, the Court will
17 require these Defendants to answer those claims. In addition, for the reasons previously
18 stated, the Court will dismiss Plaintiff’s conspiracy claim in Count Three.

19 To the extent Plaintiff seeks to assert claims against Defendant Vicklund in Count
20 Three regarding Plaintiff’s inability to observe Ramadan, he fails to state a claim for
21 relief.³ Plaintiff fails to assert with any specificity what Defendant Vicklund failed to do
22 that hindered Plaintiff’s ability to observe Ramadan. Therefore, to the extent Plaintiff is
23 asserting this claim in Count Three, the Court will dismiss it.

24 **d. Count Four**

25 Liberally construed, Plaintiff has stated RLUIPA and First Amendment claims
26

27 ³ Plaintiff claims in his Motion to Amend that he is asserting claims against
28 Defendant Vicklund regarding Plaintiff’s inability to observe Ramadan. (Doc. 56 at 3.)
However, as stated above, Plaintiff asserts the same allegations in Count Three of his
Third Amended Complaint as those in Count Three of his Second Amended Complaint.

1 regarding his beard and his inability to observe Ramadan against Defendant Credio in
2 Count Four. The Court will require Defendant Credio to answer Count Four.

3 **e. Count Seven**

4 Liberally construed, Plaintiff has stated RLUIPA and First Amendment claims
5 regarding Defendant Lopez's refusal to feed Plaintiff because Plaintiff would not shave
6 for religious reasons. The Court will require Defendant Lopez to answer this portion of
7 Count Seven.

8 As previously noted, Plaintiff's allegations are insufficient to state conspiracy and
9 conditions of confinement claims. In addition, Plaintiff's allegations are insufficient to
10 state a racial discrimination claim against Defendant Lopez. Plaintiff simply notes his
11 own race, but makes no allegations to support that Defendant Lopez's actions were
12 motivated by racial animus. Thus, the Court will dismiss Plaintiff's conspiracy,
13 conditions of confinement, and racial discrimination claims against Defendant Lopez.

14 **f. Count Eight**

15 Liberally construed, Plaintiff has stated RLUIPA and First Amendment claims
16 regarding his beard and his inability to observe Ramadan against Defendant Woods. The
17 Court will require Defendant Woods to answer Count Eight.

18 **g. Count Nine**

19 Liberally construed, Plaintiff has stated RLUIPA and First Amendment claims
20 against Defendant Swayne regarding his conduct related to Plaintiff's beard and shaving
21 waiver. Therefore, the Court will require Defendant Swayne to answer those claims in
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1 Count Nine.⁴

2 **h. Count Ten**

3 Liberally construed, Plaintiff has stated RLUIPA and First Amendment claims
4 regarding his beard against Defendant Miser. The Court will require Defendant Miser to
5 answer this portion of Count Ten.

6 For the reasons previously explained, Plaintiff's vague and conclusory allegations
7 are insufficient to state conspiracy and conditions of confinement claims against
8 Defendant Miser. The Court will dismiss these portions of Count Ten.

9 **i. Count Eleven**

10 Liberally construed, Plaintiff has stated RLUIPA, First Amendment, and
11 retaliation claims against Defendant Forbes. The Court will require Defendant Forbes to
12 answer this portion of Count Eleven.

13 For the reasons explained above, Plaintiff's vague and conclusory allegations are
14 insufficient to state conspiracy and conditions of confinement claims against Defendant
15 Forbes. The Court will dismiss these portions of Count Eleven.

16 **IV. Warnings**

17 **a. Release**

18 If Plaintiff is released while this case remains pending, and the filing fee has not
19 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court
20 that he intends to pay the unpaid balance of his filing fee within 120 days of his release,
21 or (2) file a non-prisoner application to proceed *in forma pauperis*. Failure to comply

22
23 ⁴ To the extent Plaintiff also seeks to assert an equal protection claim against
24 Defendant Swayne in Count Nine by alleging that Defendant Swayne "persecute[ed]"
25 and "targeted" Plaintiff, Plaintiff has failed to state a claim for relief. To show a violation
26 of the Equal Protection Clause, a plaintiff must demonstrate that the defendant acted with
27 a discriminatory intent or purpose that was based upon the plaintiff's membership in a
28 protected class, *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003), and he must set
forth specific facts showing that he was not "afforded a reasonable opportunity to pursue
his faith as compared to prisoners of other faiths." *Freeman v. Arpaio*, 125 F.3d 732, 737
(9th Cir. 1997). Here, Plaintiff fails to set forth sufficient factual allegations to show that
Defendant Swayne intentionally acted in a discriminatory manner, or that Plaintiff was
not afforded a reasonable opportunity to pursue his faith as compared to inmates of other
faiths. Therefore, to the extent Plaintiff seeks to assert an equal protection claim in Count
Nine, the Court will dismiss that claim.

1 may result in dismissal of this action.

2 **b. Address Changes**

3 Plaintiff must file and serve a notice of a change of address in accordance with
4 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion
5 for other relief with a notice of change of address. Failure to comply may result in
6 dismissal of this action.

7 **c. Copies**

8 Because Plaintiff is currently confined in an Arizona Department of Corrections
9 unit subject to General Order 14-17, Plaintiff is not required to serve Defendants with a
10 copy of every document he files or to submit an additional copy of every filing for use by
11 the Court, as would ordinarily be required by Federal Rule of Civil Procedure 5 and
12 Local Rule of Civil Procedure 5.4. If Plaintiff is transferred to a unit other than one
13 subject to General Order 14-17, he will be notified of the requirements for service and
14 copies for the Court that are required for inmates whose cases are not subject to General
15 Order 14-17.

16 **d. Possible Dismissal**

17 If Plaintiff fails to timely comply with every provision of this Order, including
18 these warnings, the Court may dismiss this action without further notice. *See Ferdik v.*
19 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action
20 for failure to comply with any order of the Court).

21 **IT IS ORDERED** that:

22 (1) The reference to the Magistrate Judge is withdrawn as to Plaintiff's Motion to
23 Amend (Doc. 56), and the screening of Plaintiff's Third Amended Complaint. All other
24 matters remain referred to the Magistrate Judge for disposition as appropriate.

25 (2) Plaintiff's Motion to Amend (Doc. 56) is granted. The Clerk of Court shall file
26 Plaintiff's Third Amended Complaint at Doc. 56, pages 12 through 32.

27 (3) As to the Third Amended Complaint:

28 a) Plaintiff's conspiracy and conditions of confinement claims are dismissed.

- 1 b) Defendant Ryan must answer Count One.
- 2 c) Defendant Linderman must answer Count Two.
- 3 d) Defendant Vicklund must answer the RLUIPA and First
4 Amendment claims in Count Three regarding Plaintiff's beard. The
5 remainder of Count Three is dismissed.
- 6 e) Defendant Credio must answer Count Four.
- 7 f) Defendant Lopez must answer the RLUIPA and First Amendment
8 claims in Count Seven regarding his refusal to feed Plaintiff. The
9 remainder of Count Seven is dismissed.
- 10 g) Defendant Woods must answer Count Eight.
- 11 h) Defendant Swayne must answer the RLUIPA and First Amendment
12 claims in Count Nine regarding his conduct related to Plaintiff's
13 beard and shaving wavier. The remainder of Count Nine is
14 dismissed.
- 15 i) Defendant Miser must answer the RLUIPA and First Amendment
16 claims in Count Ten regarding Plaintiff's beard. The remainder of
17 Count Ten is dismissed.
- 18 j) Defendant Forbes must answer the RLUIPA, First Amendment, and
19 retaliation claims in Count Eleven regarding his request to have
20 Plaintiff removed from the Ramadan meal list. The remainder of
21 Count Eleven is dismissed.

22 (4) The Clerk of Court must send Plaintiff this Order, and a copy of the Marshal's
23 Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request for Waiver
24 of Service of Summons form for Defendants Credio and Swayne.

25 (5) Plaintiff must complete⁵ and return the service packets to the Clerk of Court
26 within 21 days of the date of the filing of this Order for Defendants Credio and Swayne.
27 The United States Marshal will not provide service of process if Plaintiff fails to comply
28 with this Order.

(6) If Plaintiff does not either obtain a waiver of service of the summons or
complete service of the Summons and Third Amended Complaint on those Defendants
within 90 days of the filing of the Complaint or within 60 days of the filing of this Order,

⁵ If a Defendant is an officer or employee of the Arizona Department of Corrections, Plaintiff must list the address of the specific institution where the officer or employee works. Service cannot be effected on an officer or employee at the Central Office of the Arizona Department of Corrections unless the officer or employee works there.

1 whichever is later, the action may be dismissed as to each Defendant not served. *See*
2 Fed.R.Civ.P. 4(m); LRCiv 16.2(b)(2)(B)(i).

3 (7) The United States Marshal must retain the Summons, a copy of the Third
4 Amended Complaint, and a copy of this Order for future use.

5 (8) The United States Marshal must notify Defendants Credio and Swayne of the
6 commencement of this action and request waiver of service of the summons pursuant to
7 Rule 4(d) of the Federal Rules of Civil Procedure. The notice to these Defendants must
8 include a copy of this Order. **The Marshal must immediately file signed waivers of**
9 **service of the summons. If a waiver of service of summons is returned as**
10 **undeliverable or is not returned by a Defendant within 30 days from the date the**
11 **request for waiver was sent by the Marshal, the Marshal must:**

12 (a) personally serve copies of the Summons, Third Amended Complaint, and this
13 Order upon the Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil
14 Procedure; and

15 (b) within 10 days after personal service is effected, file the return of service for
16 the Defendant, along with evidence of the attempt to secure a waiver of service of the
17 summons and of the costs subsequently incurred in effecting service upon the Defendant.
18 The costs of service must be enumerated on the return of service form (USM-285) and
19 must include the costs incurred by the Marshal for photocopying additional copies of the
20 Summons, Third Amended Complaint, or this Order and for preparing new process
21 receipt and return forms (USM-285), if required. Costs of service will be taxed against
22 the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
23 Procedure, unless otherwise ordered by the Court.

24 (9) **A Defendant who agrees to waive service of the Summons and Third**
25 **Amended Complaint must return the signed waiver forms to the United States**
26 **Marshal, not the Plaintiff.**

27 (10) Defendants must answer the relevant portions of the Third Amended
28 Complaint or otherwise respond by appropriate motion within the time provided by the

1 applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

2 (11) Any answer or response must state the specific Defendant by name on whose
3 behalf it is filed. The Court may strike any answer, response, or other motion or paper
4 that does not identify the specific Defendant by name on whose behalf it is filed.

5 **Dated** this 5th day of May, 2016.

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Honorable Diane J. Humetewa
United States District Judge

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