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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAMEON DALEY,	)	NO. CV 10-1203 SJO (SS)
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM AND ORDER DISMISSING</b>
v.	)	
	)	<b>THIRD AMENDED COMPLAINT WITH</b>
UNITED STATES OF AMERICA, et al.,	)	<b>LEAVE TO AMEND</b>
	)	
Defendants.	)	

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Plaintiff, a federal prisoner proceeding pro se, filed his Third Amended Complaint alleging violations of the Religious Freedom Restoration Act of 1993 pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (the "Third Amended Complaint" or "TAC") on August 11, 2011, against eleven named employees at the Federal Correctional Complex ("FCC") Victorville.<sup>1</sup> For the

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<sup>1</sup> The Victorville Federal Correctional Complex (FCC) consists of three main facilities: FCI Victorville Medium I, FCI Victorville Medium II, and USP Victorville. The Court will refer to all three facilities as the FCC.

1 reasons stated below, the Third Amended Complaint is dismissed with  
2 leave to amend.<sup>2</sup>

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

13  
14 **ALLEGATIONS OF THE COMPLAINT**

15  
16 Plaintiff sues the following defendants: 1) J.L. Norwood, "Regional  
17 Director" and "Warden" at FCC; 2) Johnson, "former Assistant Food  
18 Service Administrator" at FCC; 3) S. Bentley, "Assistant Food Service  
19 Administrator" at FCC; 4) R. Cortez, a "Food Service Administrator"  
20 acting as a "law enforcement official" at FCC; 5) J. Hess, "Asst. Food  
21 Service Administrator" acting as a "law enforcement official" at FCC; 6)  
22 Fornsworth, "Cooks Supervisor" at FCC; 7) Cosby, "Cooks Supervisor" at  
23 FCC; 8) Aguilar, "Cooks Supervisor" at FCC; 9) Vega, "Cooks Supervisor"  
24 at FCC; 10) Navaro, "Cooks Supervisor" at FCC; and 11) Gibbs, "Associate  
25 Warden" at FCC. (TAC at 3-6).

26  
27 <sup>2</sup> Magistrate judges may dismiss a complaint with leave to amend  
28 without approval of the district judge. McKeever v. Block, 932 F.2d  
795, 798 (9th Cir. 1991).

1 Plaintiff asserts that all the individually-named defendants  
2 (collectively, the "Defendants") were deliberately indifferent to his  
3 religious dietary needs. (TAC at 8-13). Specifically, Plaintiff claims  
4 that the FCC Defendants served or authorized others to serve non-kosher  
5 foods to Plaintiff even though he is a "Certified Religious Diet"  
6 participant in violation of "[P]laintiff's First and Eight (sic)  
7 Amendment rights and his statutory rights under the RFRA [Religious  
8 Freedom Restoration Act]." (Id.). All FCC Defendants are sued in their  
9 individual capacity. (Id. at 3-6).

## 11 DISCUSSION

13 Under 28 U.S.C. § 1915A(b), the Court must dismiss Plaintiff's  
14 Third Amended Complaint due to defects in pleading. Pro se litigants in  
15 civil rights cases, however, must be given leave to amend their  
16 complaints unless it is absolutely clear that the deficiencies cannot be  
17 cured by amendment. Lopez, 203 F.3d at 1127-29. Accordingly, the Court  
18 grants Plaintiff leave to amend, as indicated below.

### 20 **A. To The Extent Plaintiff Is Suing Defendants For Their Decisions** 21 **Regarding Plaintiff's Administrative Grievance, Plaintiff Fails To** 22 **State A Claim**

24 Plaintiff alleges claims against Defendants Hess, Johnson, Cortez,  
25 Gibbs, and Norwood for denying his Internal Resolution Attempt Forms  
26 (BP-8) and "Inmate to Staff Requests." (TAC at 11). Additionally,  
27 Plaintiff asserts that Food Service Administration Unit Manager, S.  
28 Merlack, issued a response "upholding the food service department's CRD

1 practice." (Id. at 12). Plaintiff further claims that he filed an  
2 Administrative Remedy Request (BP-9), and "[D]efendant Norwood upheld  
3 the food service department's CRD practice." (Id.). Construing  
4 Plaintiff's allegations liberally, it appears he is attempting to sue  
5 these defendants, in part, based upon his dissatisfaction with their  
6 resolution of various administrative grievances.

7  
8 The Ninth Circuit has held that "inmates lack a separate  
9 constitutional entitlement to a specific prison grievance procedure."  
10 Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v.  
11 Adams, 855 F.2d 639, 640 (9th Cir. 1988)); see also Geiger v. Jowers,  
12 404 F.3d 371, 374 (5th Cir. 2005) (holding that an inmate "does not have  
13 a federally protected liberty interest in having . . . grievances  
14 resolved to his satisfaction"); Antonelli v. Sheahan, 81 F.3d 1422, 1430  
15 (7th Cir. 1996) ("With respect to the Due Process Clause, any right to  
16 a grievance procedure is a procedural right, not a substantive one.  
17 Accordingly, a state's inmate grievance procedures do not give rise to  
18 a liberty interest protected by the Due Process Clause.").

19  
20 Consequently, Plaintiff has no due process right to have the  
21 officials involved in his administrative appeal reach a specific  
22 decision or follow specific procedures. Plaintiff's allegations against  
23 Defendants arising out of their role in adjudicating his grievances fail  
24 to state a claim. These claims must be dismissed.

1 **B. To The Extent Plaintiff Sues Gibbs Or Norwood Simply Because They**  
2 **Are The Warden And Assistant Warden, Plaintiff Fails To State A**  
3 **Claim**  
4

5 According to Plaintiff, Gibbs and Norwood "deprived him from  
6 adhering to the mandated dietary laws and practice of his Rastafarian  
7 belief by knowingly and intentionally authorizing and or allowing the  
8 food service departments at [FCC] to violate the BOP's CRD policy, and  
9 routinely serv[ing] Plaintiff non-kosher rotten, and pork contaminated  
10 foods." (TAC at 10).  
11

12 Plaintiff must establish that Defendants had personal involvement  
13 in the civil rights violation or that their action or inaction caused  
14 the harm suffered. Starr v. Baca, \_\_\_ F.3d \_\_\_, 2011 WL 2988827 at \*2  
15 (9th Cir. July 25, 2011) (finding supervisor deliberately indifferent  
16 because there was no "obvious alternative explanation" for not  
17 intervening when informed of numerous violations of inmate's civil  
18 rights) id. at \*14; see also Arnett v. Webster, \_\_\_ F.3d \_\_\_, 2011 WL  
19 4014343 at \*12 (9th Cir. Sept. 12, 2011) (finding that supervisor must  
20 know about wrongful conduct and facilitate or condone it). To be held  
21 liable, a defendant has to personally take some action against the  
22 plaintiff or "set in motion a series of acts by others . . . which he  
23 knew or reasonably should have known, would cause others to inflict the  
24 constitutional injury" on the plaintiff. Larez v. City of Los Angeles,  
25 946 F.2d 630, 646 (9th Cir. 1991) (internal quotations omitted).  
26

27 Plaintiff fails to allege facts that show that the Warden and  
28 Assistant Warden personally participated in the constitutional

1 violations. Instead, it appears that employees of the food service were  
2 more directly involved, based upon Plaintiff's allegations.  
3 Accordingly, the Warden and Assistant Warden do not appear to be proper  
4 defendants in this action.

5  
6 **CONCLUSION**  
7

8 If Plaintiff still wishes to pursue this action, he is granted  
9 thirty (30) days from the date of this Memorandum and Order within which  
10 to file a Fourth Amended Complaint, curing the defects in the Third  
11 Amended Complaint described above. The Fourth Amended Complaint, if  
12 any, shall be complete in itself and shall bear both the designation  
13 "Fourth Amended Complaint" and the case number assigned to this action.  
14 It shall not refer in any manner to the previously filed complaints.  
15 **The caption of any Amended Complaint must identify all parties that**  
16 **Plaintiff is suing.** Each page of the Fourth Amended Complaint must be  
17 consecutively numbered. Plaintiff is advised that he is only required  
18 to allege a short and concise statement of his claims. If the Court has  
19 advised Plaintiff of defects in certain claims, he shall either correct  
20 those defects or, if they are not correctable, he shall not again allege  
21 defective claims.

22  
23 In any amended complaint, Plaintiff should confine his allegations  
24 to those operative facts supporting each of his claims. Plaintiff is  
25 advised that pursuant to Federal Rule of Civil Procedure 8(a), all that  
26 is required is a "short and plain statement of the claim showing that  
27 the pleader is entitled to relief." Further, the allegations against  
28 some defendants in the Third Amended Complaint do not always clearly

1 state a claim. Additionally, individuals who have not engaged in any  
2 alleged misconduct in their personal capacity should not be named as  
3 defendants.

4  
5 Plaintiff is explicitly cautioned that failure to timely file a  
6 Fourth Amended Complaint, or failure to correct the deficiencies  
7 described above, will result in a recommendation that this action be  
8 dismissed for failure to prosecute pursuant to Federal Rule of Civil  
9 Procedure 41(b). Plaintiff is further advised that, if he does not wish  
10 to pursue this action, he may voluntarily dismiss it by filing a notice  
11 of dismissal in accordance with Federal Rule of Civil Procedure  
12 41(a)(1). A sample notice is attached to this order as well.

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14  
15 DATED: September 28, 2011

\_\_\_\_\_  
/S/  
SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE

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18  
19 THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION NOR IS IT INTENDED  
20 TO BE INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE SUCH AS WESTLAW OR  
21 LEXIS.