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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

**DORIAN DAVIS aka WALI AL-TAQUI,
CDC #k-78041,**

Plaintiff,

vs.

E.G. FLORES, et al.,

Defendants.

Civil No. 1:08cv01197-JTM(JMA)

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR SUMMARY
JUDGMENT AND TO STRIKE
DECLARATION**

[Dkt Nos. 38, 43]

Plaintiff Dorian Davis ("Davis"), a state prisoner incarcerated at Kern Valley State Prison in Delano, California, is proceeding *pro se* and *in forma pauperis* with a First Amended Complaint ("FAC") filed September 25, 2009 in this 42 U.S.C. § 1983 civil rights action alleging, among other things, violations of his religious rights under the First Amendment and a federal statute. (Dkt No. 32.) By Order entered November 23, 2009, the Court *sua sponte* dismissed defendant R. Marta from this action as not renamed in the FAC, but ordered the four other named defendants (collectively "Defendants") to file a response to the FAC.¹ (Dkt No. 33.) Defendants filed an Answer on January 4, 2010. (Dkt No. 34.)

¹ This case was re-assigned for all purposes from the bench of the Eastern District of California to this Court on November 26, 2008. (Doc. No. 8.)

1 Davis has filed a Motion For Summary Judgment ("Motion") pursuant to FED. R. CIV. P.
2 ("Rule") 56 "on liability to the Plaintiff on his Religious practices and Services claims." (Dkt No. 38,
3 36:22-24.) The Motion encompasses by reference to those claims his First Amendment religious
4 practices cause of action (conduct of Muslim services and purchase and possession of prayer oils issues),
5 his federal statutory violation claim under the Religious Land Use And Institutionalized Persons Act,
6 42 U.S.C. § 2000cc (the "RLUIPA"), his equal protection claim, and his retaliation claim. The Court
7 set a briefing schedule for Defendants' Opposition to Davis' Motion and for Davis' Reply, as well as an
8 optional briefing schedule should Defendants elect to file a cross-motion for summary judgment, along
9 with the required Klinge / Rand notice informing Davis of the consequences should Defendants file
10 and prevail on a summary judgment motion. (Dkt No. 40.) On April 12, 2010, Defendants timely filed
11 only an Opposition to the Motion and a Response to Davis' Statement Of Undisputed Facts. (Dkt Nos.
12 41, 42.) Davis filed a Reply to the Opposition, a Motion To Strike the Declaration of defendant A.
13 Hedgpeth in support of Defendants' Opposition, and a Reply to Defendants' Response to Plaintiff's
14 Statement Of Undisputed Facts. (Dkt Nos. 43-45.) For the reasons discussed below, Davis' Motion is
15 **DENIED**, and his causes of action alleging equal protection violations, retaliation, and cruel and unusual
16 punishment are **DISMISSED** as a matter of law for failure to state a claim.

17 **I. BACKGROUND**

18 Davis filed his civil rights Complaint initiating this action on August 15, 2008. Defendants
19 moved to dismiss the Complaint, elaborating multiple deficiencies in the statement of his claims. (Dkt
20 No. 23.) Simultaneously with his Opposition to that motion, Davis sought leave to amend his complaint
21 (Dkt No. 27.) The Court granted him leave to amend, mooting Defendants' motion to dismiss. (Dkt No.
22 28.) The FAC was filed September 25, 2009 (Dkt No. 32). Davis thus had the benefit of Defendants'
23 briefing on deficiencies in the original pleading when preparing his FAC.

24 Davis contends he has been a Muslim of the Al-Islam faith since 1996. He arrived at Kern
25 Valley State Prison ("KVSP") in October 2005. He alleges that for a period of months in 2007 and 2008,
26 he and other Muslim prisoners were denied the right to purchase and possess prayer oil for a religious
27 practice prescribed by his faith, pursuant to a supplemental department policy Warden Hedgpeth added
28 to the Department Operations Manual ("DOM"). He also alleges Islamic religious services were

1 suspended after the prison dismissed from his chaplaincy a certain Imam who had been conducting
2 religious services for the KVSP's Muslim community, and Defendants prohibited the Muslim prisoners
3 from conducting unsupervised religious services themselves thereafter, pursuant to the same policy. (Id.
4 pp. 6-8, 10-12.). Davis alleges violations of his First Amendment rights to practice his religion, the
5 RLUIPA, equal protection, and the Eighth Amendment associated with the restrictions imposed by
6 implementation of the supplemental policy, and retaliation against Muslim prisoners after the dismissed
7 Imam initiated litigation against KVSP. (FAC, Dkt No. 32, pp. 6., 12-14)

8 Defendants succinctly summarize the contextual background for Davis' religious practices and
9 services denial claims forming the subject matter of his MSJ, consistently with facts Davis himself either
10 alleges or does not dispute.

11 On December 7, 2007, Kern Valley State Prison (KVSP)
12 instituted Department Operations Manual (DOM) Supplement 101060.
13 (Plaintiff's Motion for Summary Judgment "MSJ" 4:22-25; see also
14 Exhibit A to Declaration of Dorian Davis "Davis Decl."). Supplement
15 101060 stated, in part, that prayer oils were only to be used during
16 religious services in the chapel and that inmates were not allowed to
purchase or possess prayer oils in their cells. (MSJ 4:22-25; see also
17 Davis Decl., Ex. A). Plaintiff, an inmate incarcerated at KVSP, and a
18 practicing Muslim, claims that DOM Supplement 101060 caused undue
19 hardship to the practice of his religion since the tenets of his religion
require him to "put on oil" before prayer. (MSJ 6: 20-24, 11:9-15).

17 In October or November 2007, KVSP's Muslim Chaplain, Bilal
18 Mustafa, was fired from KVSP. (MSJ 4:9-11). Chaplain Mustafa's
19 position was unfilled until the Spring of 2009. (MSJ 4:11-12.) Without
a Muslim Chaplain, Plaintiff claims that Friday Muslim services were
20 suspended. (MSJ 4:12-13).

(Opp. Dkt No. 41 2:4-15.)

21 Davis names as defendants E.G. Flores, an acting associate warden, J. Castro, an acting associate
22 warden, T. Billings, a correctional counselor, and A. Hedgpeth, warden. (FAC, Dkt No. 32, p. 5.) He
23 sues them "in their official and individual capacity." (Id., p. 15.) In particular, the FAC seeks a
24 declaratory judgment that defendants Flores and Castro retaliated and discriminated against him in
25 violation of his First Amendment "right to freely practice and establish his religion," that defendants
26 Flores, Billings, and Castro denied him "the right to purchase and possess religious prayer oil without
27 a penological interest conducive to a safety and security concern" in violation of his First Amendment
28 rights, that defendant Hedgpeth failed to intervene and stop or reverse the actions of the other

1 Defendants in violation of the First Amendment right to free religious practice and of the RLUIPA, and
2 an "Eighth Amendment violation for [Hedgpeth's] deliberate indifference" in his capacity as Warden
3 responsible for religious services. (FAC, Dkt No. 32, pp. 16-17.) Davis further seeks injunctive relief,
4 among other things, to require defendants Flores and Castro "to allow an inmate minister to conduct
5 Jumu'ah services per C.C.R. §§ 3211(A)," to "cease the custom and illegal action of discrimination of
6 the adherents of Islam and deprivations," to order amendment of the DOM to permit prisoners to be in
7 the chapel without chaplain supervision, and to order defendants Flores, Castro, and Billings "to release
8 the oils and other artifacts of Plaintiff and other Muslims similar[ly] situated." (*Id.* p. 17.) Davis also
9 seeks monetary damages to compensate "for the pain and suffering for their denial of religious practices"
10 and for the "deprivations of Plaintiff[s] worship oil that prevented his religious practices" as well as
11 punitive damages from each defendant. (*Id.* pp. 17-19.)

12 Defendants deny the allegations and assert affirmative defenses, including, among others: failure
13 to exhaust administrative remedies; qualified immunity and immunity from liability; failure to state a
14 claim upon which relief can be granted; Eleventh Amendment bar to suit; and statute of limitations.
15 (Ans., Dkt No. 34, p. 3.) None of the immunity or exhaustion or limitations period affirmative defenses
16 is advanced in the Defendants' Opposition to the Motion. (Dkt No. 42.)

17 Davis supports his Motion For Summary Judgment with his Declaration (Dkt No. 38, pp. 2-11),
18 points and authorities (*Id.* pp. 13-36), a Statement Of Undisputed Facts (*Id.*, pp. 46-53), and multiple
19 Exhibits. Davis signed both his Declaration and his Statement Of Undisputed Facts under penalty of
20 perjury (Dkt No. 38, pp. 2-11, 46-53), permitting the Court to consider both for evidentiary purposes on
21 summary judgment. *See Johnson v. Meltzer*, 134 F.3d 1393, 1399-1400 (9th Cir. 1998) ("[I]ike a
22 verified complaint, a verified motion functions as an affidavit," so that facts set forth therein "are
23 evidence to be considered when deciding a motion for summary judgment").

24 Defendants support their Opposition with points and authorities (Dkt No. 41-1), the Declaration
25 of defendant Hedgpeth (Dkt No. 41-2), and a Response to Davis' Statement Of Undisputed Facts (Dkt
26 No. 42.). They represent Davis cannot tie any of the defendants to an actual violation of his civil rights.
27 (Dkt No. 41, 9:2-6.) They oppose the Motion on grounds: Davis "has not met his burden in establishing
28 a valid RLUIPA claim against Defendants" (Dkt No. 41, 2:20-21); failure "to establish that DOM

1 Supplement 101016 substantially burdened the practice of [Davis'] religious beliefs" (Id. 3:4-5); the
2 conduct giving rise to the Complaint "was done in furtherance of a compelling governmental interest
3 and [was] the least restrictive means of furthering that compelling governmental interest" (Id. 4:1-3);
4 failure "to establish a causal connection between any conduct by Defendants Billings, Castro and Flores
5 to a violation of [Davis'] civil rights" (Id. 5:1-2, 9:1-2, representing that those defendants "were simply
6 part of the inmate grievance process" associated with review of a group appeal Davis had joined; Davis'
7 "First Amendment retaliation claim must fail since it is not predicated on plaintiff's exercise of protected
8 conduct" (Id. 6:3-5); he "has set forth no evidence or argument in support of a viable due process claim"
9 (Id. 6:23-24); and his Equal Protection claim cannot stand "since it is not based on conduct affecting
10 similarly situated individuals" (Id. 7:7-9).

11 Davis' Reply (Dkt No. 44) primarily reiterates the merits of his claims. He also responds to
12 Defendants' Response to his initial Statement Of Undisputed Facts in a manner replete with argument
13 (Dkt No. 45), the contents of which, like that of Defendants' Response, demonstrates that multiple facts
14 are in dispute, be they material or immaterial to Davis' claims. Finally, as part of his Reply, Davis
15 moves to strike the Hedgpeth Declaration as defective for evidentiary purposes. (Dkt No. 43.)

16 **II. DISCUSSION**

17 **A. Legal Standards**

18 **1. Civil Rights Act, 42 U.S.C. § 1983**

19 The Civil Rights Act, 42 U.S.C. § 1983 ("Section 1983"), creates a procedure for the vindication
20 of constitutional rights violations.

21 [Section 1983] creates a cause of action against a person who, acting
22 under color of state law, deprives another of rights guaranteed under the
23 Constitution. Section 1983 does not create any substantive rights; rather
24 it is the vehicle whereby plaintiffs can challenge actions by governmental
25 officials. To prove a case under section 1983, the plaintiff must
26 demonstrate that (1) the action occurred "under color of state law" and (2)
27 the action resulted in the deprivation of a constitutional right or federal
28 statutory right. [Citations.]

29 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002), *citing* Parratt v. Taylor, 451 U.S. 527, 535 (1981),
30 *overruled on other grounds by* Daniels v. Williams, 474 U.S. 327 (1986); *see also* Graham v. Connor,

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1 490 U.S. 386, 393-94 (1989) ("[Section] 1983 'is not itself a source of substantive rights,' but merely
2 provides 'a method for vindicating federal rights elsewhere conferred' ") (citation omitted).

3 Thus, to prevail on a cause of action under Section 1983, a plaintiff must "plead and prove (1)
4 the defendants acted under color of state law and (2) deprived plaintiff of rights secured by the
5 Constitution or federal statutes." WMX Techs., Inc. v. Miller, 197 F.3d 367, 372 (9th Cir. 1999) (*en*
6 *banc*) (citation omitted); *see also* Levine v. City of Alameda, 525 F.3d 903, 905 (9th Cir. 2008) (to state
7 a *prima facie* case for relief under Section 1983, a plaintiff must allege that "an individual acting under
8 the color of state law deprived him of a right, privilege, or immunity protected by the United States
9 Constitution or federal law"); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) ("A person 'subjects'
10 another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an
11 affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally
12 required to do that causes the deprivation of which complaint is made").

13 Absent factual allegations of direct participation by the named state actor, no cognizable
14 constitutional claim is stated against that person. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).
15 There is no *respondeat superior* liability under Section 1983. Monell v. Dept. of Soc. Servs., 436 U.S.
16 658 (1978) (the supervisor of someone who allegedly violated a plaintiff's constitutional rights is not
17 made liable for the violation by virtue of that role). Rather, a supervisor is liable in his or her individual
18 capacity for constitutional violations of a subordinate only "if the supervisor participated in or directed
19 the violations, or knew of the violations and failed to act to prevent them." Taylor, 880 F.2d at 1045.

20 Federal courts must "liberally construe the inartful pleading of pro se litigants." Eldridge v.
21 Block, 832 F.2d 1132, 1137 (9th Cir. 1987) (citations omitted). A pro se litigant's allegations in a
22 complaint "are held to less stringent standards than formal pleadings drafted by lawyers." Id.; *see*
23 Erickson v. Pardus, 551 U.S. 89, 93-94 (2007) (a plaintiff need only give the defendant fair notice of the
24 claim and the grounds on which it rests). That rule, however, "applies only to a plaintiff's factual
25 allegations." Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation of a civil
26 rights complaint may not supply essential elements of the claim that were not initially pled." Bruns v.
27 Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997), *quoting* Ivey v. Bd. of Regents, 673
28 F.2d 266, 268 (9th Cir. 1982); *see also* Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (*per curiam*).

1 **2. Prison Litigation Reform Act**

2 The Prison Litigation Reform Act of 1996 ("PLRA"), 42 U.S.C. § 1997e, changed the processing
3 of prisoner pro se complaints in several ways. With respect to the dismissal of defective claims, the
4 court may at any time dismiss an action or portions of it *sua sponte* or on a party's motion:

5 (c) Dismissal

6 (1) The court shall on its own motion or on the motion of a party dismiss
7 any action brought with respect to prison conditions under section 1983
8 of this title, or any other Federal law, by a prisoner confined in any jail,
9 prison, or other correctional facility if the court is satisfied that the action
is frivolous, malicious, fails to state a claim upon which relief can be
granted, or seeks monetary relief from a defendant who is immune from
such relief.

10 (2) In the event that a claim is, on its face, frivolous, malicious, fails to
11 state a claim upon which relief can be granted, or seeks monetary relief
12 from a defendant who is immune from such relief, the court may dismiss
the underlying claim without first requiring the exhaustion of
administrative remedies.

13 42 U.S.C. § 1997e(c).²

14 The PLRA also restricts the availability and extent of remedies prisoners may seek in civil rights
15 actions. For example, recovery for mental or emotional injury suffered while in custody requires "a
16 prior showing of physical injury" that is more than *de minimus*. 42 U.S.C. § 1997e(e); *see Oliver v.*
17 *Keller*, 289 F.3d 623, 627 (9th Cir. 2002); *see Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).
18 However, no such showing applies to allegations of constitutional violations not premised on mental or
19 emotional injury. *See Canell v. Lightner*, 143 F.3d 1210, 1213 (9th Cir. 1998) (First Amendment
20 establishment and free exercise of religion claims). The PLRA also affects the type of prospective
21 injunctive relief that may be awarded, but retained substantially unchanged "the threshold findings and
22 standards required to justify an injunction." *Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir. 2001);
23 *see also* 18 U.S.C. § 3626(a)(1)(A) (1997).

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25
26 ² Similarly, the screening and grounds for dismissal provisions in the *in forma pauperis* statute provide,
27 in pertinent part: "(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss
28 the complaint, or any portion of the complaint, if the complaint-- (1) is frivolous, malicious, or fails to state a
claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such
relief." 28 U.S.C. § 1915(A).

1 **3. Summary Judgment Standard Of Review**

2 Any party "may move, with or without supporting affidavits, for summary judgment on all or part
3 of the claim." Rule 56(a), (b). Summary judgment is properly entered "if the pleadings, the discovery
4 and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material
5 fact and that the movant is entitled to judgment as a matter of law." FED.R.CIV.P. ("Rule") 56(c); *see*
6 Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 256
7 (1986). The movant bears the "burden of showing the absence of a genuine issue as to any material fact,
8 and for these purposes the material it lodged must be viewed in the light most favorable to the opposing
9 party." Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). The movant is not required to produce
10 evidence negating the non-movant's claims. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990)
11 ("the purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact
12 essential to the other side's case to demand at least one sworn averment of that fact before the lengthy
13 process of litigation continues"). If the movant carries its burden, the burden then shifts to the non-
14 moving party to establish facts beyond the pleadings showing there remains a triable issue of disputed
15 material fact so that summary judgment is not appropriate. Celotex, 477 U.S. at 324; Adickes, 398 U.S.
16 at 157; *see also* Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001);
17 Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

18 To successfully rebut a properly supported summary judgment motion, the non-moving party
19 "must point to some facts in the record that demonstrate a genuine issue of material fact and, with all
20 reasonable inferences made in the [nonmoving party's] favor, could convince a reasonable jury to find
21 for [that party]." Reese v. Jefferson School Dist. No. 14J, 208 F.3d 736, 738 (9th Cir. 2000); *see also*
22 Bias v. Moynihan, 508 F.3d 1212, 1218 (9th Cir. 2007). The non-moving party must "go beyond the
23 pleadings and by her own affidavits, or by 'the depositions, answers to interrogatories, and admissions
24 on file,' designate 'specific facts showing that there is a genuine issue for trial.' " Celotex, 477 U.S. at
25 324, *quoting* FED. R. CIV. P. 56(e)). The opposing party may not rest on conclusory allegations or mere
26 assertions. *See* Taylor, 880 F.2d at 1045. Rather, it must present significant probative evidence of
27 specific facts raising a material issue that "can be resolved only by a finder of fact because [the issue]
28 may reasonably be resolved in favor of either party." Anderson, 477 U.S. at 249-50, 256.

1 "A material issue of fact is one that affects the outcome of the litigation and requires a trial to
2 resolve the parties' differing versions of the truth." S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1306 (9th
3 Cir. 1982). The materiality of facts is determined by looking to the substantive law defining the
4 elements of the claim. *See* Anderson, 477 U.S. at 248; *see also* Hernandez v. Johnston, 833 F.2d 1316,
5 1318 (9th Cir. 1987). The moving party has the burden "to show initially the absence of a genuine issue
6 concerning a material fact." Adickes, 398 U.S. at 159. If the moving party fails to discharge this initial
7 burden, summary judgment must be denied, and the court need not consider the non-moving party's
8 evidence. *Id.* at 159-60. When the Court considers evidence from both sides, "[i]f reasonable minds
9 could differ" and there is "evidence on which the jury could reasonably find for the [non-moving]
10 party," summary judgment for the moving party is improper. Anderson, 477 U.S. at 252. Conversely,
11 summary judgment must be entered in favor of the moving party "if, under the governing law, there can
12 be but one reasonable conclusion as to the verdict." *Id.* at 250-251; Celotex, 477 U.S. at 325.

13 In deciding a summary judgment motion, the court does not make credibility determinations,
14 weigh conflicting evidence, or draw inferences, as those are functions reserved for the trier of fact.
15 Anderson, 477 U.S. at 249, 255, 249 (district court's role on summary judgment is merely to determine
16 whether there is a genuine issue for trial). Rather, the court considers the evidence in the light most
17 favorable to the non-moving party and accepts the version of disputed facts most favorable to that party.
18 Anderson, 477 U.S. at 255; *see* Lujan, 497 U.S. at 888 ("In ruling upon a Rule 56 motion, 'a District
19 Court must resolve any factual issues of controversy in favor of the non-moving party' only in the sense
20 that, where the facts specifically averred by that party contradict facts specifically averred by the movant,
21 the motion must be denied") (citations omitted).

22 **B. Hedgpeth Declaration Satisfies Rule 56(e) Evidentiary Requirements**

23 Davis moves to strike the Hedgpeth Declaration in support of Defendants' Opposition to his
24 Motion on grounds it is "defective" for failure to state that its contents are based on "personal
25 knowledge" and failure to identify "the county and state in which the statements are made." (Dkt No.
26 43, pp. 1-2.) Courts deciding summary judgment motions look to the content of the evidence submitted,
27 rather than the admissibility of its form, to determine whether it complies with the requirements of Rule
28

1 56(e).³ See Fonseca v. Sysco Food Service of Arizona, 374 F.3d 840, 846 (9th Cir. 2004) (to survive
2 summary judgment, a party does not have to produce evidence in a form that would be admissible at
3 trial, as long as the party satisfies the requirements of Rule 56); see also Fraser v. Goodale, 342 F.3d
4 1032, 1037 (9th Cir. 2003) ("At the summary judgment stage, we do not focus on the admissibility of
5 the evidence's form" but rather "on the admissibility of its contents"). For example, "hearsay evidence
6 produced in an affidavit may be considered on summary judgment if the declarant could later present
7 the evidence through direct testimony." Id. (citation omitted). The "personal knowledge requirement
8 in Rule 56(e) can be met by inference." Fonseca, 374 F.3d at 846 (citation omitted).

9 Hedgpeth signed his Declaration under penalty of perjury. The material facts stated therein are
10 on their face within his personal knowledge, such as the range of dates he served as the Warden at Kern
11 Valley State Prison, his claim of personal responsibility for adding Supplement 101060 to the DOM on
12 December 7, 2007 prohibiting inmates from purchasing and possessing the oils in their cells, his
13 authority and reasons for doing so in response to safety and security concerns at the prison he identified
14 as associated with contraband smuggled in and distributed to inmates by the dismissed Imam, and the
15 circumstances leading to an addendum to the DOM Supplement 101060 about seven months later, which
16 relaxed the restrictions on inmate possession of prayer oil in their cells after he determined the issues
17 that led to the restrictions had been addressed. (Dkt No. 41-2, ¶¶ 1-8.) Accordingly, Davis' Motion to
18 Strike the Hedgpeth Declaration is **DENIED** because his technical objections do not support a finding
19 the contents of the Declaration may not be considered on summary judgment.

20 **C. Triable Issues Of Material Fact Preclude Summary Judgment For Plaintiff**

21 **1. First Amendment Free Exercise Cause Of Action**

22 "The First Amendment, applicable to the States by reason of the Fourteenth Amendment . . .
23 prohibits government from making a law 'prohibiting the free exercise (of religion).'" Cruz v. Beto, 405
24 U.S. 319 (1972) (*per curiam*) (citation omitted). "[C]onvicted prisoners do not forfeit all constitutional
25 protections by reason of their conviction and confinement in prison." Bell v. Wolfish, 441 U.S. 520, 545
26 (1979). "The right to exercise religious practices and beliefs does not terminate at the prison door."

27
28 ³ "A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be
admissible in evidence, and show that the affiant is competent to testify on the matters stated. . . ." Rule 56(e).

1 McElyea v. Babbitt, 833 F.2d 196, 197 (9th Cir. 1987) (*per curiam*); *see also* O'Lone v. Estate of
2 Shabazz, 482 U.S. 342, 348 (1987). However, "[t]he free exercise right . . . is necessarily limited by the
3 fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain
4 prison security." McElyea, 833 F.2d at 197 (citations omitted); *see also* O'Lone, 482 U.S. at 348;
5 Shakur v. Schriro, 514 F.3d 878, 883-84 (9th Cir. 2008). "[A] prison inmate retains those First
6 Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate
7 penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822, 832 (1974) ("the
8 institutional consideration of internal security within the correctional facilities" is "central to all other
9 corrections goals"); *see also* Ashker v. Cal. Dep't of Corr., 350 F.3d 917, 922 (9th Cir. 2003)
10 (regulations must have a logical connection to the asserted goal to avoid arbitrary or irrational
11 deprivation of rights).

12 A prison regulation that impinges on First Amendment rights "is valid if it is reasonably related
13 to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987); *see also* Beard v. Banks,
14 548 U.S. 521, 528 (2006) (access to newspapers, magazines, and photographs); Overton v. Bazzetta, 539
15 U.S. 126, 132 (2003) (freedom of association); Lewis v. Casey, 518 U.S. 343, 361 (1996) (access to
16 courts); Prison Legal News v. Lehman, 397 F.3d 692, 699 (9th Cir. 2005) (access to non-subscription
17 bulk mail); Morrison v. Hall, 261 F.3d 896, 901 (9th Cir. 2001) (prison mail regulation); Mauro v.
18 Arpaio, 188 F.3d 1054, 1058 (9th Cir. 1999) (*en banc*) (sexually explicit material). Courts analyze these
19 competing interests by applying a "reasonableness" test to First Amendment challenges and accord
20 prison officials great deference when analyzing the constitutional validity of prison regulations.⁴ *See*
21 Beard, 548 U.S. at 528-30; Overton, 539 U.S. 126, 132 (2003); Turner, 482 U.S. at 84-85; Prison Legal
22 News v. Cook, 238 F.3d 1145, 1149 (9th Cir. 2001).

23 In order to prevail on his First Amendment Free Exercise violation claim, Davis must prove that
24 the suspension of possession of prayer oil in his cell infringed a sincerely held religious tenet without
25 penological justification. *See* Shakur, 514 F.3d at 884-85. The relevant factors in determining whether

27 ⁴ The Turner Court explicitly rejected the application of "strict scrutiny" to a prisoner's First Amendment
28 claims. "Subjecting day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would
seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable
problems of prison administration." Turner, 482 U.S. at 89.

1 a regulation, or its application in a particular situation, is reasonable are: (1) whether there is a valid,
2 rational connection between the regulation and a legitimate and neutral government interest, (2) whether
3 there are alternative means of exercising the constitutional right, (3) the impact the accommodation of
4 the right will have on prison staff and other prisoners, and (4) whether the regulation is an exaggerated
5 response to prison concerns, in light of readily available alternatives. See Turner, 482 U.S. at 89-91.
6 In evaluating a Free Exercise claim, a court must give "appropriate deference to prison officials,"
7 O'Lone, 482 U.S. at 349, because "the judiciary is 'ill-equipped' to deal with the difficult and delicate
8 problems of prison management." Thornburgh v. Abbot, 490 U.S. 401, 407-08 (1989) (citation omitted).

9 Under the first Turner factor, the court examines whether there is a valid, rational connection
10 between the restrictive regulation and the legitimate interest used to justify the regulation. See Ashker,
11 350 F.3d at 922; Morrison, 261 F.3d at 901; Cook, 238 F.3d at 1151. Legitimate penological interests
12 include security, the preservation of order and discipline, the maintenance of institutional security
13 against escape or unauthorized entry, and the rehabilitation of the prisoners. See Thornburgh, 490 U.S.
14 401 (regulation concerning entry of materials into a prison to forestall risk of disorder); see also Mauro,
15 188 F.3d at 1059 (protecting guards). With respect to the connection between the regulation of religious
16 exercise and penological interests, evidence concerning anticipated problems, even though no actual
17 problems have arisen from the prisoner's conduct, is sufficient to meet this standard. See Standing Deer
18 v. Carlson, 831 F.2d 1525, 1528 (9th Cir. 1987). The Ninth Circuit has upheld policies prohibiting
19 inmate-led religious services for security reasons. See Anderson v. Angelone, 123 F.3d 1197, 1198-99
20 (9th Cir. 1997). Moreover, prison officials have no affirmative obligation to provide particular clergy
21 of choice for inmates. See Ward v. Walsh, 1 F.3d 873, 880 (9th Cir. 1993); Reimers v. Oregon, 863 F.2d
22 630, 631-32 (9th Cir. 1989); Allen v. Toombs, 827 F.2d 563, 566-69 (9th Cir. 1987)..

23 Davis provides a copy of the DOM Supplemental Policy 101060 as an exhibit to his FAC. (Dkt
24 No. 38, pp. 56-74.) Pertinent portions of the policy provide:

25 101060.6 WORSHIP SERVICES

26 . . . 1010.6.3 USE OF INMATE MINISTERS No inmate will be
27 authorized or allowed to conduct or lead any religious services, classes,
28 or groups of any kind in the facility chapels, without being under the
direct supervision of a facility chaplain or authorized volunteer.

...

1 101060.10 SACRAMENTAL WINE AND RELIGIOUS ARTIFACTS

2 . . . **Prayer Oils** must be non-flammable and non-alcoholic in factory
3 plastic see-through sealed containers accompanied by a Material Safety
4 Data Sheet (MSDS) indicating contents in oil. Only four fragrances
5 (Egyptian Musk, Medina Musk, Blue Nile, and Somali Rose)[] prayer
6 oils may be donated to the institution. Prayer oils will only be used during
7 religious services in the chapel. Inmates will not be able to purchase or
8 possess this item.

9 ((Dkt No. 38, pp. 56, 60, 69, 74.)

10 Defendant Warden Hedgpeth declares he implemented DOM Supplement 101060 motivated by
11 safety and security concerns. In particular, with respect to the prayer oil restriction, he avers contraband
12 had entered the prison through prayer oil containers distributed to prisoners by the dismissed Imam.

13 5. DOM Supplement 101060 was created in response to serious
14 safety and security concerns that had arisen at KVSP. Prior to
15 establishing DOM Supplement 101060, KVSP officials determined that
16 a religious Chaplain was smuggling contraband into the prison and
17 distributing the contraband to the inmates. One way the contraband was
18 distributed was through the distribution of containers of prayer oils.
19 KVSP is a security level four prison. Level four prisons house the most
20 dangerous and violent inmates incarcerated within CDCR. The
21 possibility of unknown contraband hidden by level four inmates under the
22 guise of being prayer oil caused me grave concern.

23 6. Therefore, I was forced to create DOM Supplement 101060 in
24 order to remove all potential contraband from the prison and ensure that
25 inmates were not in possession of contraband. Under DOM Supplement
26 101060, inmates were still allowed to use prayer oils in the prison chapel,
27 which was open to inmate use during the day and during religious
28 services. After carefully reviewing the situation, I determined that this
would be the least restrictive means of ensuring the safety and security of
the institution.

(Dkt No. 41-2, Hedgpeth Decl. ¶¶ 5-6.)

Defendants do not dispute Davis' contentions enforcement of those regulations caused Davis to
be deprived of possession of prayer oil in his cell, a prohibition that lasted from December 2007 through
July 2008, and of religious services for an even longer period after Imam Bilial's chaplaincy was
terminated because he and other inmates were not permitted to hold religious services unsupervised.

(Dkt No. 42, 4:18-24.) The fact that inmates were permitted before that period of time and thereafter
to purchase and possess prayer oils is also not disputed. (Dkt No. 42, 5:8-14; 7:22-24.) Davis
acknowledges: "Recently, the Islamic practice of putting on oil for salat (prayer) and other rituals ha[s]
been restored to the Muslim[s] . . . by the permission from these same defendants to purchase and

1 possess oil," beginning in July 2008, but he characterizes that change as "an implication that it was a
2 blatant violation of the right of Plaintiff to practice his religion." (FAC, Dkt No. 32, p. 14.) He
3 summarily alleges "this act of returning the right to freely practice one's religious acts such as putting
4 on oil to perform salat and other rituals is to try to clean up or right the wrong because there was never
5 a security or safety reason cited for the denial to purchase and possess religious prayer oil." (*Id.* p. 15.)
6 He thus urges an inference from restoration of those privileges a finding of fact that Defendants acted
7 maliciously and capriciously in denying them, summarily arguing the prohibitions imposed an
8 unwarranted restriction on his religions practices without any penological justification. (*Id.*) Defendants
9 dispute not only Davis' contention that the restrictions were without penological justification, but also
10 the import of that restriction, because "nothing prohibited Plaintiff from using prayer oils in the facility
11 chapel" during the day and during religious services throughout the period the policy restriction was in
12 force. (Dkt No. 42, 3:9; *see also* Dkt No. 41-2, Hedgpeth Decl. ¶¶ 4, 6.)

13 Without making any factual findings on the merits of Davis' claims, the Court credits the
14 evidence properly before the Court in opposition to the motion raising triable issues of material fact.
15 Warden Hedgpeth declares Imam Mustafa was removed from his chaplaincy when it was discovered he
16 facilitated the introduction of contraband into the prison in prayer oil containers, and he consequently
17 suspended inmates' privilege to have prayer oils in their cells in order to conduct an investigation into
18 the threat and to seize any contraband. In addition, with respect to Davis' challenge to the denial of
19 prisoners' unsupervised religious services following the Imam's removal as an interference with religious
20 exercise without a legitimate penological interest, Warden Hedgpeth declares KVSP is a level four
21 prison housing the most serious and violent prisoners. The Court notes, without pre-judging the merits
22 of Davis' claim, the Ninth Circuit has upheld policies prohibiting inmate-led religious services. *See*
23 Anderson v. Angelone, 123 F.3d at 1198-99. Restrictions on the manner in which inmates are permitted
24 to congregate unsupervised would seem on their face to entail determinations ill-suited to judicial
25 management. *See Thornburgh*, 490 U.S. at 407-08.

26 The Court finds Defendants have carried their burden to present "significant, probative
27 evidence" in the form of Warden Hedgpeth's Declaration in support of their contention the restrictions
28 on his religious practices Davis complains of were justified by safety and security concerns, creating a

1 genuine issue of material fact for trial. Celotex, 477 U.S. at 324. Despite Davis' allegation Defendants'
2 security rational "is pretextual" (Dkt No. 38, 33:15-16), they have produced evidence from which a
3 reasonable fact-finder could conclude the curtailing of the religious practices Davis complains of was
4 in response to legitimate institutional safety and security needs. Disputed issues of material fact
5 accordingly preclude summary adjudication of Davis' First Amendment free exercise cause of action as
6 a matter of law, and the Motion is **DENIED** as to this claim.

7 **2. RLUIPA Violation Cause Of Action**

8 The Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc to
9 2000cc-5 (2000) (the "RLUIPA") provides a statutory basis for "protect[ing] prisoners and other
10 institutionalized people from government infringement on their practice of religion," in addition to their
11 First Amendment free exercise protections. Mayweathers v. Newland, 314 F.3d 1062, 1065 (9th Cir.
12 2002); *see* Cutter v. Wilkinson, 544 U.S. 709, 715 (2005). Section 3 of the RLUIPA provides:

13 No government shall impose a substantial burden on the religious
14 exercise of a person residing in or confined in an institution . . . unless the
15 government demonstrates that imposition of the burden on that person –
16 (1) is in furtherance of a compelling governmental interest; and (2) is the
17 least restrictive means of furthering that compelling governmental
18 interest.

19 42 U.S.C. § 2000cc-1(a);

20 Under traditional First Amendment jurisprudence, the prisoner's free exercise claims are analyzed
21 under the deferential "rational basis" standard of Turner, 482 U.S. 78. In contrast, "RLUIPA requires
22 the government to meet the much stricter burden of showing that the burden it imposes on religious
23 exercise is in furtherance of a compelling governmental interest; and is the least restrictive means of
24 furthering that compelling governmental interest."⁵ Greene v. Solano County Jail, 513 F.3d 982, 986

25 ⁵ Congress enacted the RLUIPA, effective September 22, 2000, in response to the Supreme Court's
26 partial invalidation of the Religious Freedom Restoration Act ("RFRA") in City of Boerne v. Flores, 521 U.S.
27 507 (1997), which declared the RFRA unconstitutional as applied to the states. *See* Wyatt v. Terhune, 315 F.3d
28 1108, 1115 (9th Cir. 2003). Both Acts were adopted in response to the Supreme Court's decision in Employment
Div., Dept. of Human Resources v. Smith, 494 U.S. 872 (1990). Among other things, the Smith rejected the strict
scrutiny standard of review formerly applied to free exercise claims and held that individuals cannot claim
exemptions from generally applicable laws simply because the laws conflict with their religious practices. Smith,
494 U.S. at 878-82, 890 ("neutral, generally applicable laws may be applied to religious practices even when not
supported by a compelling governmental interest"). The RLUIPA restored to review of free exercise claims
sought under the statute the "compelling interest/least restrictive means" standard previously articulated in
Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972).

1 (9th Cir. 2008), *citing* Cutter, 544 U.S. at 717 (internal quotations omitted); *see also* Mayweathers, 314
2 F.3d at 1069. Thus, by codifying a "compelling governmental interest" prerequisite to the imposition
3 of "a substantial burden on the religious exercise" of incarcerated persons, the RLUIPA extends to
4 prisoners engaged in religious conduct federal statutory protections beyond the protections embodied
5 in the First Amendment..

6 The RLUIPA defines "religious exercise" to include "any exercise of religion, whether or not
7 compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A); *see also* Cutter,
8 544 U.S. at 715. The statute expressly instructs it "shall be construed in favor of broad protection of
9 religious exercise." 42 U.S.C. § 2000cc-3(g). "[T]he plaintiff shall bear the burden of persuasion on
10 whether the law (including a regulation) or government practice that is challenged by the claim
11 substantially burdens the plaintiff's exercise of religion," although the statute does not define with
12 specificity what constitutes a "substantial burden" on religious exercise.⁶ 42 U.S.C. § 2000cc-2(b).
13 Accordingly, only if a plaintiff prisoner demonstrates a challenged CDC regulation imposed a substantial
14 burden on his or her exercise of religion does the burden shift to the defendant to demonstrate that the
15 regulation was designed to further a compelling governmental interest and was the least restrictive means
16 of furthering that interest.

17 Defendants dispute Davis' characterization the suspension of his ability to purchase and possess
18 prayer oil in his cell imposed a "substantial burden" on his religious exercise, characterizing those
19 restrictions as no "more than an inconvenience." (Dkt No. 41, Opp. 3:12-17, citing Bryant v. Gomez
20 46 F.3d 948, 949 (9th Cir. 1995) (applying the RFRA "compelling interest" test and requiring more than
21 an inconvenience to establish a substantial burden); *but see* Shakur, 514 F.3d at 884-85 (rejecting the
22 "objective centrality" test for religious beliefs followed in Bryant in favor of the "sincerity of belief"
23 test).) They emphasize DOM Supplement 101060 did not preclude Davis from praying. They argue
24 "there are no facts before this Court that establish any Plaintiff [*sic*] was precluded from continuing his
25 prayers or that he was precluded in practicing his faith in any way," particularly as "DOM Supplement
26

27 ⁶ *See* 146 Cong. Rec. S7774-01, July 27, 2000, Joint Statement of Sen. Hatch and Sen. Kennedy, S.
28 2869/H.R. 4862 ("The Act does not include a definition of the term 'substantial burden' because it is not the intent
of this Act to create a new standard for the definition of 'substantial burden' on religious exercise").

1 101060 on its face did not preclude inmates from using prayer oils." (Dkt No. 41, Opp. 3:15-21.) Davis
2 does not dispute "[i]nmates could still use prayer oils in the chapel." (Id., 3:23.) However, he contends
3 his faith requires him to use prayer oil whenever he prays. Accordingly, the Court finds whether the
4 policy substantially burdened his exercise of religion presents a material issue of fact in dispute.

5 In addition, material issues of fact regarding the penological necessity for imposing DOM
6 Supplement 101060 preclude summary judgment of Davis' RLUIPA claim. As traced above, Warden
7 Hedgpeth declares the restrictions were imposed in response to institutional safety and security concerns.
8 Although the Court makes no factual findings on the merits of claims and defenses in deciding summary
9 judgment motions, Davis does not attempt to refute Warden Hedgpeth's sworn representations
10 contraband had been smuggled into the prison in prayer oil vials distributed by the dismissed Imam to
11 Muslim prisoners. Courts must accord deference to prison authorities in matters "within the province
12 and expertise of corrections officers," and institutional safety and security are concerns "central to all
13 other corrections goals." Pell, 417 U.S. at 827, 823.

14 Finally, with respect to the least restrictive means element of an RLUIPA claim, Defendants
15 contend DOM Supplement 101060, as challenged here, was narrowly tailored to prayer oils purchased
16 and possessed by inmates in their cells and known by authorities to have been previously used as a
17 means of introducing contraband into the prison. (Hedgpeth Decl. ¶ 5.) Muslim prisoners still had
18 access to donated prayer oils stored in the chapel and could use them there for prayer and during
19 religious services. Davis offers no example of a less restrictive means to accomplish the stated objective
20 of the regulatory restriction. The Court finds Defendants have raised triable issues of fact on essential
21 elements of Davis' RLUIPA claim, preventing its summary adjudication in Davis' favor as a matter of
22 law. Accordingly, summary adjudication of this claim is **DENIED**

23 **D. Davis Fails To State A Claim For Retaliation, Equal Protection, Or An Eighth**
24 **Amendment Violation**

25 **1. Retaliation Cause Of Action**

26 Davis alleges: "Imam Bilal was disposed of and right after that, the Muslim community at Kern
27 Valley State Prison was retaliated against due to Imam Bilal promptly filing of [*sic*] his civil suit." (Dkt
28 No. 32, FAC 11:6-9.)

1 The retaliation was started by the Imam Bilal Mustafa litigation against
2 Kern Valley State Prison. Plaintiff happen[s] to be of that class of
Muslims who was retaliated against.

3 (Dkt No. 32, FAC 12:26-13:1.)

4 "A prisoner suing prison officials under [Section] 1983 for retaliation must allege that **he was**
5 **retaliated against for exercising his constitutional rights** and that the retaliatory action does not
6 advance legitimate penological goals, such as preserving institutional order and discipline." Barnett v.
7 Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam) (emphasis added) (prisoner challenging
8 reclassification on grounds of retaliation for his having *himself* previously filed civil rights actions
9 against prison officials regarding his medical treatment); *see also* Rhodes v. Robinson, 408 F.3d 559,
10 567-68 (9th Cir. 2005) (alleging retaliation against *prisoner plaintiff who had filed* prison grievances);
11 Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (alleging double-celling and transfer to a different
12 prison of a prisoner in retaliation for *his* having high-profile media contact). Such claims must be
13 evaluated in light of the deference accorded to prison officials whose conduct can be justified by "neutral
14 institutional objectives." *See* Pratt, 65 F.3d at 807-08.. The prisoner must submit evidence to establish
15 a link between his or her own exercise of constitutional rights and the allegedly retaliatory action.
16 *Compare* Pratt, 65 F.3d at 807 (finding insufficient evidence) *with* Vance v. Barrett, 345 F.3d 1083,
17 1093 (9th Cir. 2003) (finding sufficient evidence prison officials retaliated against prisoners for their
18 refusal to waive their procedural due process property right to money in prison trust accounts).

19 "Within the prison context, a viable claim of First Amendment retaliation entails five basic
20 elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of
21 (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First
22 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal."
23 Rhodes, 408 F.3d at 567-68 (footnote omitted); *see* Barnett, 31 F.3d at 816 (same); *see also* Pratt, 65
24 F.3d at 806, 807 (alleging harm is enough to ground a First Amendment retaliation claim). The Court
25 notes that Defendants articulated the essential elements of a retaliation cause of action in their Motion
26 To Dismiss Davis' original Complaint, and exposed the deficiencies in Davis' initial statement of that
27 claim. (Dkt No. 23-2, pp. 4-5.) Despite that notice, Davis continues to rely for the basis of his
28 retaliation claim on the conduct of third-party Imam Mustafa in exercising his right to file a lawsuit

1 against KVSP after he was fired as the alleged cause for Defendants' purported retaliatory decision to
2 prohibit Muslim inmates from purchasing and possessing prayer oils in their cells. (Dkt No. 32, FAC
3 p. 11.) Defendants concede the right to petition the court is a constitutional right. (Dkt No. 41, Opp.
4 6:18-19.) However, Davis does not plead any of his own conduct triggered the purportedly retaliatory
5 measures. He identifies no personal exercise of a constitutional right which allegedly motivated
6 Defendants to impinge his religious practices. As argued by Defendants, on the facts Davis alleges, he
7 cannot "establish that any of the named Defendants retaliated against him for exercising a protected
8 right," foreclosing relief for an alleged First Amendment retaliation claim. (Dkt No. 41, Opp. 6:20-21.)
9 Exercising its authority under 42 U.S.C. § 1997e(c) to *sua sponte* dismiss a ground for relief that fails
10 to state a claim upon which relief can be granted, the Court **DISMISSES** Davis' retaliation claim as a
11 matter of law and without further leave to amend. *See Barnett*, 31 F.3d at 815-16.

12 **2. Equal Protection Cause Of Action**

13 The Fourteenth Amendment Equal Protection Clause prohibits the states from denying any
14 person the equal protection of the laws, with the general objective that all persons similarly situated
15 should be treated alike. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). To
16 prevail on an equal protection claim under 42 U.S.C. § 1983, a plaintiff must plead and prove "the
17 defendants acted with an intent or purpose to discriminate against the plaintiff based on membership in
18 a protected class." *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001), *quoting Barren v.*
19 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). The "intent" component of the discrimination requires
20 a showing "the defendant acted at least in part *because of* the plaintiff's protected status." *Serrano v.*
21 *Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003).

22 Prisoners are protected by the Equal Protection Clause from intentional discrimination on the
23 basis of their religion. *See Freeman v. Arpaio*, 125 F.3d 732, 737 (9th Cir. 1997), *citing Cruz*, 405 U.S.
24 at 321-22, *overruled in part by Shakur*, 514 F.3d at 884-85. "The Constitution's equal protection
25 guarantee ensures that prison officials cannot discriminate against particular religions." *Freeman*, 125
26 F.3d at 737. Although prison officials need not provide identical facilities or personnel to different
27 faiths (*Cruz*, 405 U.S. at 322 n.2), they must make "good faith accommodation of the [prisoner's] rights
28 in light of practical considerations." *Allen*, 827 F.2d at 569. A facially neutral policy having a

1 disproportionate impact on an identifiable group does not necessarily mean it violates the Equal
2 Protection Clause. Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264-66
3 (1977).

4 Davis alleges Defendants violated his equal protection rights during the period while KVSP was
5 without a Muslim chaplain, following the dismissal of Imam Mustafa, and did not permit Muslim
6 prisoners to conduct their own unsupervised Islamic services. Although he acknowledges prison
7 regulations prohibit all inmate faiths from conducting their own unsupervised religious services, he
8 nevertheless argues an inmate minister should have been allowed to take over the Muslim services. He
9 compares the Muslim prison population to a purportedly similarly situated inmate group he identifies
10 as the Men's Advisory Committee ("MAC"). He represents the MAC is permitted to hold its meetings
11 run by individuals they elect from among themselves. (Dkt No. 38, MSJ 8:22-9:7; 19:6-10.) "It is
12 blatant discrimination to allow the election of a non-Muslim representative to sit on the MAC. (Men's
13 Advisory Committee) and act on behalf of non-Muslims but to deny that same right and practice to the
14 Muslims." (Id. 3:26-4:2.; *see also id.* 27:8-28:1.)

15 Defendants argue Davis' Equal Protection claim is fatally flawed for several reasons, including
16 lack of evidence to sustain the required elements of "similarly situated" groups treated disparately. They
17 also argue Davis has no evidence causally connecting "any of the Defendants"⁷ to that policy or
18 supporting his allegation of an intent to discriminate against Davis and the Muslim inmate community
19 in enforcing the policy against inmate-run religious services. (Dkt No. 41, Opp. 8:3-11.) First, they rely
20 on Davis' own description of the MAC members as not a religious group at all. They argue that
21 example, accordingly, cannot provide a factual basis for demonstrating the treatment of Muslim
22 worshipers is invidiously dissimilar to the treatment received by other, similarly situated inmate groups.
23 For the period of time Muslims were without a Chaplain after Imam Mustafa's departure and were
24 denied approval to conduct worship services by themselves, the policy may have impacted Muslims'

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26 ⁷ In Opposition to the MSJ, Defendants represent: "Defendants Billings, Castro, and Flores were
27 simply part of the inmate grievance process which reviewed a group appeal that Plaintiff had joined. There are
28 no facts to tie any of these Defendants to an actual violation of Plaintiff's civil rights." (Dkt No. 41, Opp. 9:1-3.)
However, they offer no factual support for these representations in the form of Declarations or any other
evidence, and those representations conflict with Davis' FAC allegations describing their offices and roles in the
withdrawal of Muslim services after Imam Mustafa was terminated and denial of prayer oils in cells.

1 ability to participate in religious services differently from other religious groups whose chaplains were
2 not dismissed. However, Davis offers no evidence from which it could reasonably be inferred the intent
3 of the policy was to discriminate against him and the other Muslim inmates due to their membership in
4 a protected class.

5 DOM Supplement 101060.6.3 uniformly regulates "Use Of Inmate Ministers" without regard to
6 any particular religious faith, and Davis has identified no religious group in the prisoner population
7 treated differently from the Muslim inmates. The supplemental DOM policy on its face prohibits all
8 unsupervised inmate-conducted religious services, drawing no distinction between Muslims and
9 adherents to other faiths. Defendants merely adhered to the policy. Therefore, the Court finds Davis
10 has failed to support with any evidence his conclusory allegation Defendants targeted Muslims for
11 discriminatory treatment on the basis of their membership in a protected class. Lee, 250 F.3d at 686.
12 Accordingly, the Court **DISMISSES** Davis' Equal Protection claim as a matter of law for failure to state
13 a claim and without further leave to amend.

14 3. **Eighth Amendment Cause Of Action**

15 Davis names only Warden Hedgpeth in his Eighth Amendment cause of action. He alleges:
16 "The failure of Defendant A. Hedgpeth to intervene and reverse these violations that trampled upon the
17 rights to practice and establish one's religion is a deliberate indifference to the suffering of Plaintiff and
18 discriminatory behavior of these defendants coupled with the reprisals and retaliatory actions constitutes
19 an 8th, 14th, 1st Amendment violation and a disregard and violation of the R.L.U.I.P.A. Act." (Dkt No.
20 32, FAC 16:13-21.) He appears to base this claim on an alleged failure to prevent the implementation
21 by the other Defendants of the supplemental policy Warden Hedgpeth himself added to the DOM in
22 response to perceived institutional needs.

23 "It is undisputed that the treatment a prisoner receives in prison and the conditions under which
24 he is confined are subject to scrutiny under the Eighth Amendment." Helling v. McKinney, 509 U.S.
25 25, 31 (1993). Prison officials "must ensure that inmates receive adequate food, clothing, shelter, and
26 medical care" and "must take reasonable measures to guarantee" their personal safety. Farmer v.
27 Brennan, 511 U.S. 825, 832-33 (1994). The Eighth Amendment proscribes the imposition of cruel and
28 unusual punishments "extending beyond physically barbarous punishments." See Estelle v. Gamble, 429

1 U.S. 97, 102 (1976); Hutto v. Finney, 437 U.S. 678, 685 (1978) (conditions in isolation cell); *see also*
2 Spain v. Procunier, 600 F.2d 189, 200 (9th Cir. 1979) (outdoor exercise deprivation and unwarranted
3 use of tear gas). Nevertheless, conditions of confinement may, consistent with the Constitution, be
4 "restrictive and even harsh." *See* Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Morgan v. Morgensen,
5 465 F.3d 1041, 1045 (9th Cir. 2006) (same).

6 Plaintiffs can establish an Eighth Amendment constitutional violation only when "both the
7 objective and subjective components of a two-part test" are satisfied. Hallett v. Morgan, 296 F.3d 732,
8 744 (9th Cir. 2002), *citing* Wilson v. Seiter, 501 U.S. 294, 298-99 (1991). First, the deprivation alleged
9 must be, objectively, sufficiently serious, that is, implicates the "minimum civilized measure of life's
10 necessities." Rhodes, 452 U.S. at 347. The second requirement is subjective and follows from the
11 principle that only the unnecessary and wanton infliction of pain or a condition of confinement that
12 offends decency implicates the Eighth Amendment. To satisfy the second element, a prison official must
13 have a "sufficiently culpable state of mind." Farmer, 511 U.S. at 834 ("In prison-conditions cases that
14 state of mind is one of 'deliberate indifference' to inmate health or safety"); *see also* Wilson, 501 U.S.
15 at 302-03; Hope v. Pelzer, 536 U.S. 730, 737-38 (2002).

16 A liberal interpretation of a civil rights complaint does not extend to supplying " 'essential
17 elements of the claim that were not initially pled.' " Bruns, 122 F.3d at 1257, *quoting* Ivey, 673 F.2d
18 at 268; *see also* Pena, 976 F.2d at 471. Davis alleges no physical injury, no serious deprivation of
19 anything remotely satisfying the objective element of an Eighth Amendment claim (no wanton infliction
20 of pain, no threat to his health or safety, or any other indecent condition of confinement, singly or in
21 combination) associated with any failure to act on the part of Warden Hedgpeth. Warden Hedgpeth
22 established an institutional policy restricting, as pertinent here, prisoners' purchase and possession of
23 prayer oil in their cells and inmate gatherings for religious services unless supervised by approved
24 persons defined in the policy. Only if Davis had satisfied the objective prong of the Eighth Amendment
25 analysis would Warden Hedgpeth's state of mind become an issue.

26 The Court notes that Defendants articulated the essential elements of an Eighth Amendment
27 cause of action in their Motion To Dismiss Davis' original Complaint, and exposed the deficiencies in
28 Davis' statement of that claim in that pleading (Dkt No. 23-2, pp. 5-6), deficiencies he has not remedied


1 in his restatement of the claim in his FAC. Exercising its authority under 42 U.S.C. § 1997e(c) to *sua*
2 *sponte* dismiss a ground for relief that fails to state a claim upon which relief can be granted, the Court
3 **DISMISSES** Davis' Eighth Amendment claim, as a matter of law and without further leave to amend.

4 **III. CONCLUSION AND ORDER**

5 For all the foregoing reasons, **IT IS HEREBY ORDERED** Plaintiff's Motion For Summary
6 Judgment is **DENIED**. For the reasons discussed above, **IT IS FURTHER ORDERED** Davis'
7 Retaliation, Equal Protection, and Eighth Amendment claims are **DISMISSED** for failure to state a
8 claim upon which relief can be granted and without leave to amend, in consideration of his having
9 already filed an Amended Complaint without correcting the deficiencies in his pleading of those claims
10 in the original complaint.

11 **IT IS SO ORDERED.**

12 DATED: July 1, 2010

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15 Hon. Jeffrey T. Miller
16 United States District Judge
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