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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LOUIS OLIVEREZ, JR.,

Plaintiff,

v.

BEN ALBITRE, et al.,

Defendants.

CASE NO. 1:09-cv-00352-SMS PC

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND, FOR FAILURE TO  
STATE A CLAIM UNDER SECTION 1983

(Doc. 1)

AMENDED COMPLAINT DUE WITHIN  
THIRTY DAYS

Screening Order

**I. Screening Requirement**

Plaintiff Louis Oliverez, Jr. is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 26, 2009.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.  
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
4 plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a).  
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 11 **II. Plaintiff’s First Amendment Free Exercise Claim**

12 Plaintiff, who is housed at California State Prison-Corcoran, alleges that he ordered a book  
13 and religious oil in compliance with the regulations governing the purchase of spiritual items.  
14 Religious oil ordered by inmates is kept by a chaplain’s office representative, and is distributed to  
15 inmates two ounces at a time for prayer and worship purposes. Plaintiff sent Defendant Ben Albitre,  
16 the Native American spiritual leader, a request for two ounces of his prayer oil but received no  
17 response. When Plaintiff requested a copy of the receipt for the oil, Defendant Albitre refused to  
18 provide one. Plaintiff twice filed an inmate appeal on the issue, but received no response either time.  
19 Plaintiff subsequently wrote letters to the Associate Warden and the Warden, without resolution.

20 Plaintiff alleges a violation of the Free Exercise Clause of the First Amendment. “Inmates  
21 . . . retain protections afforded by the First Amendment, including its directive that no law shall  
22 prohibit the free exercise of religion.” O’Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987)  
23 (internal quotations and citations omitted). The protections of the Free Exercise Clause are triggered  
24 when prison officials substantially burden the practice of an inmate’s religion by preventing him  
25 from engaging in conduct which he sincerely believes is consistent with his faith. Shakur v. Schriro,  
26 514 F.3d 878, 884-85 (9th Cir. 2008); Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997),  
27 *overruled in part by Shakur*, 514 F.3d at 884-85.

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1 Plaintiff is entitled to a *reasonable* opportunity to practice his religion. Cruz v. Beto, 405  
2 U.S. 319, 322 (1972). Plaintiff’s allegations do not support a claim that he is being deprived of a  
3 reasonable opportunity to practice his religion or that Defendant Albitre’s failure to respond to his  
4 request for prayer oil has substantially burdened his religious practice. Plaintiff will be permitted  
5 leave to amend his claim.

6 In addition to Defendant Albitre, Plaintiff names Warden Derral Adams as a defendant.  
7 “Although there is no pure *respondeat superior* liability under § 1983, a supervisor [may be held]  
8 liable for the constitutional violations of subordinates ‘if the supervisor participated in or directed  
9 the violations, or knew of the violations and failed to act to prevent them.’” Hydrick v. Hunter, 500  
10 F.3d 978, 988 (9th Cir. 2007) (quoting Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)). Because  
11 Plaintiff’s allegations fall short of stating a claim against Defendant Albitre for failure to deliver the  
12 prayer oil, Plaintiff’s claim against Defendant Adams for failing to intervene and stop the violation  
13 necessarily fails.

### 14 **III. Conclusion and Order**

15 Plaintiff’s complaint fails to state a claim for violation of the First Amendment. The Court  
16 will provide Plaintiff with one opportunity to file an amended complaint curing the deficiencies  
17 identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).  
18 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended  
19 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

20 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
21 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights,  
22 Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must be  
23 [sufficient] to raise a right to relief above the speculative level . . . .” Bell Atlantic Corp. v.  
24 Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

25 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
26 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
27 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded  
28 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an original

1 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing  
2 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at  
3 1474.

4 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 5 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a claim  
6 under section 1983;
- 7 2. The Clerk’s Office shall send Plaintiff a complaint form;
- 8 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
9 amended complaint;
- 10 4. Plaintiff may not add any new, unrelated claims to this action via his amended  
11 complaint and any attempt to do so will result in an order striking the amended  
12 complaint; and
- 13 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this  
14 action be dismissed, with prejudice, for failure to state a claim.

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16 IT IS SO ORDERED.

17 **Dated:** April 6, 2009

18 /s/ Sandra M. Snyder  
19 UNITED STATES MAGISTRATE JUDGE  
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