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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MICHAEL CARMICHAEL,	)	1:12cv01913 LJO DLB PC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
	)	REGARDING COGNIZABLE CLAIMS
vs.	)	AND DISMISSAL OF CERTAIN CLAIMS
	)	
THE GEO GROUP, et al.,	)	<b>THIRTY-DAY DEADLINE</b>
	)	
Defendants.	)	

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Plaintiff Michael Carmichael (“Plaintiff”) is a prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed his complaint on November 26, 2012. Pursuant to Court order, he filed a First Amended Complaint on June 10, 2013. He names Food Services Manager M. Aguilar, Assistant Warden D. Meyer, Counselor J. Marshall, Assistant Warden E. Pressley and Warden W. Wilson as Defendants.

**A. LEGAL STANDARD**

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.

1 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
2 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
3 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.

4 § 1915(e)(2)(B)(ii).

5 A complaint must contain “a short and plain statement of the claim showing that the  
6 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
7 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
8 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing  
9 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
10 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Id. (quoting  
11 Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are  
12 not. Id.

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14 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
15 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
16 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
17 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the  
18 actions or omissions of each named defendant to a violation of his rights; there is no respondeat  
19 superior liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County,  
20 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235  
21 (9th Cir. 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to  
22 state a plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572  
23 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this  
24 plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.  
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1 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

2 Plaintiff alleges that he was transferred to McFarland Community Correctional Facility  
3 (“MCCF”) on September 16, 2011. Soon after, he told staff that he was Muslim and was a  
4 participant in the Religious Diet Program known as “Halal Meat Alternative.” Plaintiff indicated  
5 that he needed a transfer to an institution that could accommodate him, but he was told MCCF  
6 accommodates Muslims.

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8 On September 27, 2011, Plaintiff put in a request to Counselor Castaneda. He also had  
9 verbal communications with Defendant D. Meyer, Assistant Warden. Defendant Meyer said he  
10 would research it, but instead stalled for months.

11 Plaintiff filed a 602 on April 9, 2012. He did not receive a response and filed at the  
12 second level on June 7, 2012. Plaintiff did not receive a response and filed at the third level on  
13 July 26, 2012. The appeal was rejected for not getting responses at the lower levels.

14 Plaintiff alleges that Defendant Aguilar, Food Manager, failed to order meat classified as  
15 Halal, stating on numerous occasions that it was not in the budget. Plaintiff alleges that her  
16 actions imposed a burden on the practice of his religion and violated California Code of  
17 Regulations, title 15, section 3054.3(a), the Department of Operations Manual (“DOM”) and the  
18 Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

19  
20 Plaintiff alleges that Defendant Meyer denied him the opportunity to purchase Halal meat  
21 through special purchase, though he permitted a Jewish inmate to purchase kosher foods through  
22 special purchase twice. Plaintiff contends that Defendant Meyer intentionally discriminated  
23 against him because he is Muslim, in violation of the First Amendment, Fourteenth Amendment  
24 and RLUIPA.

25 Plaintiff further alleges that Defendant Pressley, Assistant Warden, denied him a  
26 religious diet, stating that it was not within the budget to provide a Halal diet. He also said that  
27 CDCR did not indicate that the money for feeding inmates was also meant to include “Muslim  
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1 inmates needing a Halal diet.” FAC 4. Plaintiff contends that his actions burdened the practice  
2 of his religion, in violation of the First Amendment, Fourteenth Amendment and RLUIPA.

3 Plaintiff alleges that Defendant Wilson, Warden, also denied him a religious diet. He  
4 contends that she has been aware of the situation since she has been in a position of authority.  
5 Plaintiff contends that Defendant Wilson has burdened the practice of his religion, in violation of  
6 the First Amendment, Fourteenth Amendment and RLUIPA.

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8 Finally, Plaintiff alleges that Defendant Marshall, Counselor, denied Plaintiff a transfer to  
9 another prison where his diet needs could be accommodated. Although Defendant Meyer told  
10 Muslims that if they continued to complain about Halal meals, they would be transferred later,  
11 Defendant Marshall told Plaintiff that because MCCF was not an “institution,” they were not  
12 obligated to provide Halal meals to Muslims. Plaintiff contends that the denial of religious meals  
13 and the failure to transfer him violates the First Amendment, Fourteenth Amendment and  
14 RLUIPA.

15 Plaintiff also alleges that these denials constitute cruel and unusual punishment.

16 **C. ANALYSIS**

17 1. Eighth Amendment

18 The Eighth Amendment’s prohibition against cruel and unusual punishment protects  
19 prisoners not only from inhumane methods of punishment but also from inhumane conditions of  
20 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.  
21 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347,  
22 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and  
23 often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of  
24 pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).  
25 Thus, conditions which are devoid of legitimate penological purpose or contrary to evolving  
26 standards of decency that mark the progress of a maturing society violate the Eighth  
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1 Amendment. Morgan, 465 F.3d at 1045 (quotation marks and citations omitted); Hope v. Pelzer,  
2 536 U.S. 730, 737, 122 S.Ct. 2508 (2002); Rhodes, 452 U.S. at 346.

3 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,  
4 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th  
5 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains  
6 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks  
7 omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials  
8 were deliberately indifferent to a substantial risk of harm to his health or safety. E.g., Farmer,  
9 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels,  
10 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731;  
11 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

13 Here, Plaintiff believes that Defendants' denial of a Halal diet constitutes cruel and  
14 unusual punishment. He is incorrect. While Plaintiff believes that the denial impacts the  
15 practice of his religion, it does not rise to the level of an Eighth Amendment claim. In other  
16 words, Defendants were not deliberately indifferent to a substantial risk of harm to Plaintiff's  
17 health or safety.

18 Plaintiff therefore fails to state a claim under the Eighth Amendment and this deficiency  
19 cannot be cured by amendment.

20  
21 2. Title 15 and the DOM

22 Plaintiff seeks to impose liability against Defendant Aguilar based on a violation of the  
23 Title 15 prison regulations and the DOM. The existence of Title 15 regulations and DOM  
24 provisions governing the conduct of prison officials does not necessarily entitle an inmate to sue  
25 civilly for any violations. The Court has found no authority to support a finding of an implied  
26 private right of action under Title 15 and the DOM, and Plaintiff has provided none. There are  
27 several district court decisions holding that there is no such right. E.g., Vasquez v. Tate, 2012  
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1 WL 6738167, at \*9 (E.D.Cal. Dec.28, 2012); Davis v. Powell, 901 F.Supp.2d 1196, —, 2012  
2 WL 4754688, at \*9 (S.D.Cal. Oct.4, 2012).

3 Accordingly, even if Plaintiff could show a violation of prison regulations and the DOM,  
4 he has no right to state a claim for such violation. See Chappell v. Perrez, 2011 WL 2296816, \*2  
5 (E.D.Cal. June 8, 2011); Lamon v. Cate, 2011 WL 773046, \*9 (E.D.Cal. February 28, 2011).

6 Since no such private right exists, leave to amend this claim would be futile and will be  
7 denied.

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9 **3. First Amendment**

10 The First Amendment guarantees the right to the free exercise of religion. Cruz v. Beto,  
11 405 U.S. 319, 323 (1972). “The free exercise right, however, is necessarily limited by the fact of  
12 incarceration, and may be curtailed in order to achieve legitimate correctional goals or to  
13 maintain prison security.” O’Lone v. Shabazz, 482 U.S. 342, 348 (1987); Turner v. Safley, 482  
14 U.S. 78 (1987). In order to establish a free exercise violation, a prisoner must show a defendant  
15 burdened the practice of his religion without any justification reasonably related to legitimate  
16 penological interests. See Shakur v. Schriro, 514 F.3d 878, 883–84 (9th Cir. 2008). A prisoner’s  
17 right to the practice of his religion includes “the right to be provided with food sufficient to  
18 sustain them in good health that satisfies the dietary laws of their religion.” McElyea v. Babbitt,  
19 833 F.2d 196, 198 (9th Cir.1987).

20 Here, Plaintiff alleges that the practice of his religion has been burdened by various acts  
21 of the Defendants.<sup>1</sup> He contends that Defendant Meyer denied him the opportunity to purchase  
22 Halal meat through special purchase, and that Defendants Pressley and Wilson denied him a  
23 religious diet. At this stage of the proceedings, Plaintiff has corrected the deficiencies and states  
24 a First Amendment claim against Defendants Meyer, Pressley and Wilson.<sup>2</sup>

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<sup>1</sup> Plaintiff does not allege a First Amendment claim against Defendant Aguilar.

28 <sup>2</sup> Plaintiff will be instructed on service by separate order.

1 Plaintiff further alleges that Defendant Marshall denied him a transfer to accommodate  
2 his diet needs, and told Plaintiff that because MCFF was not an “institution,” it was not required  
3 to provide Muslims with Halal diets. While Plaintiff’s claim regarding the transfer does not state  
4 a claim because there is no constitutional right to a transfer, Meachum v. Fano, 427 U.S. 215,  
5 224-25 (1976), his contention that Defendant Marshall denied him a Halal diet does state a  
6 claim.

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8 4. RLUIPA

9 RLUIPA prohibits prison officials from substantially burdening a prisoner’s “religious  
10 exercise unless the burden furthers a compelling governmental interest and does so by the least  
11 restrictive means.” Alvarez v. Hill, 518 F.3d 1152, 1156 (9th Cir. 2009) (quoting Warsoldier v.  
12 Woodford, 418 F.3d 989, 997-98 (9th Cir. 2005)).

13 Plaintiff states a claim under RLUIPA against Defendant Meyer, Pressley, Wilson and  
14 Marshall. He also states a claim against Defendant Aguilar based on her failure to order Halal  
15 meat for Plaintiff.

16 5. Fourteenth Amendment

17 “The Equal Protection Clause . . . is essentially a direction that all persons similarly  
18 situated should be treated alike.” City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432,  
19 439 (1985) (citing Plyler v. Doe, 457 U.S. 202, 216 (1982)). A prisoner is entitled “to ‘a  
20 reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow  
21 prisoners who adhere to conventional religious precepts.” Shakur v. Schriro, 514 F.3d 878, 891  
22 (9th Cir. 2008) (quoting Cruz v. Beto, 405 U.S. 319, 321-22 (1972) (per curiam)). To state a  
23 claim, a plaintiff must allege facts sufficient to support the claim that prison officials  
24 intentionally discriminated against him on the basis of his religion by failing to provide him a  
25 reasonable opportunity to pursue his faith compared to other similarly situated religious groups.  
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1 Cruz, 405 U.S. at 321-22; Shakur, 514 F.3d at 891; Serrano v. Francis, 345 F.3d 1071, 1082 (9th  
2 Cir. 2003); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001).

3 Here, Plaintiff alleges that Defendant Meyer discriminated against him because he  
4 allowed a Jewish inmate to purchase Halal meat, but did not allow Plaintiff to do so. He  
5 contends that Defendant Meyer discriminated against him because of his Muslim faith. Plaintiff  
6 has corrected the deficiencies against Defendant Meyer and states a Fourteenth Amendment  
7 claim against him.

8 Plaintiff also alleges a Fourteenth Amendment discrimination claim against Defendants  
9 Pressley, Wilson and Marshall based on their denial of a religious diet. Plaintiff contends that  
10 Defendant Pressley told him that the money set aside to feed inmates does not contemplate  
11 offering Muslims a Halal diet. Similarly, Plaintiff alleges that Defendant Marshall told him that  
12 MCCF does not have to provide Halal diets to Muslims. Viewed liberally, Plaintiff states a  
13 Fourteenth Amendment claim against Defendants Pressley and Marshall.

14 As to Defendant Wilson, however, Plaintiff does not allege that the denial was based, in  
15 any way, on his Muslim faith. Plaintiff was given the required standard for a Fourteenth  
16 Amendment claim in the prior screening order, but has failed to correct the deficiency. He  
17 therefore fails to state a claim against Defendant Wilson and should not be given leave to amend.  
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19 **D. FINDINGS AND RECOMMENDATIONS**

20 Plaintiff's First Amended Complaint states the following cognizable claims: (1) violation  
21 of the First Amendment against Defendants Meyer, Pressley, Wilson and Marshall; (2) violation  
22 of RLUIPA against Defendants Aguilar, Meyer, Pressley, Wilson and Marshall; and (3) violation  
23 of the Fourteenth Amendment against Defendants Meyer, Pressley and Marshall. Plaintiff's First  
24 Amended Complaint does not state any further claims upon which relief may be granted under  
25 section 1983.  
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27 These Findings and Recommendations will be submitted to the United States District  
28 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty



1 (30) days after being served with these Findings and Recommendations, Plaintiff may file  
2 written objections with the Court. The document should be captioned “Objections to Magistrate  
3 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections  
4 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
5 Ylst, 951 F.2d 1153, 1157 (9th Cir. 1991).  
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7 IT IS SO ORDERED.

8 Dated: January 8, 2014

9 /s/ Dennis L. Beck  
10 UNITED STATES MAGISTRATE JUDGE  
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