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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MICHAEL CARMICHAEL,

Plaintiff,

vs.

M. AGUILAR, et al.,

Defendants.

) 1:12cv01913 LJO DLB PC  
)  
)  
) FINDINGS AND RECOMMENDATIONS  
) REGARDING DEFENDANT MARSHALL'S  
) MOTION FOR SUMMARY JUDGMENT  
) (Document 44)  
)  
) THIRTY-DAY DEADLINE  
)

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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. This action is proceeding on the following claims: (1) violation of the First Amendment against Defendants Meyer, Pressley, Wilson and Marshall; (2) violation of RLUIPA against Defendants Aguilar, Meyer, Pressley, Wilson and Marshall; and (3) violation of the Fourteenth Amendment against Defendants Meyer, Pressley and Marshall.

1 Defendant Marshall filed a motion for summary judgment<sup>1</sup> on October 21, 2014.<sup>2</sup>  
2 Plaintiff opposed the motion on November 4, 2014.<sup>3</sup> Defendant filed his reply on November 14,  
3 2014. The motion is submitted upon the record without oral argument. Local Rule 230(l).

4 **I. LEGAL STANDARD**

5 Any party may move for summary judgment, and the Court shall grant summary  
6 judgment if the movant shows that there is no genuine dispute as to any material fact and the  
7 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks  
8 omitted); Washington Mutual Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party’s  
9 position, whether it be that a fact is disputed or undisputed, must be supported by (1) citing to  
10 particular parts of materials in the record, including but not limited to depositions, documents,  
11 declarations, or discovery; or (2) showing that the materials cited do not establish the presence or  
12 absence of a genuine dispute or that the opposing party cannot produce admissible evidence to  
13 support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may consider  
14 other materials in the record not cited to by the parties, but it is not required to do so. Fed. R.  
15 Civ. P. 56(c)(3); Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031 (9th Cir.  
16 2001); accord Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

17  
18 Defendant does not bear the burden of proof at trial and in moving for summary  
19 judgment, he need only prove an absence of evidence to support Plaintiff’s case. In re Oracle  
20 Corp. Securities Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett,  
21 477 U.S. 317, 323, 106 S.Ct. 2548 (1986)). If Defendant meets his initial burden, the burden  
22 then shifts to Plaintiff “to designate specific facts demonstrating the existence of genuine issues  
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24 <sup>1</sup> Concurrently with his motion for summary judgment, Defendant served Plaintiff with the requisite notice of the  
25 requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir. 2012); Rand v. Rowland,  
154 F.3d 952, 960-61 (9th Cir. 1998).

26 <sup>2</sup> The remaining Defendants are represented by separate counsel, and filed a separate motion for summary judgment  
27 on October 21, 2014.

28 <sup>3</sup> Plaintiff also purports to move for summary judgment in his favor. The Court will address this in ruling on the  
remaining Defendants’ motion for summary judgment.

1 for trial.” In re Oracle Corp., 627 F.3d at 387 (citing Celotex Corp., 477 U.S. at 323). This  
2 requires Plaintiff to “show more than the mere existence of a scintilla of evidence.” Id. (citing  
3 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505 (1986)).

4 In judging the evidence at the summary judgment stage, the Court may not make  
5 credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc., 509  
6 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all  
7 inferences in the light most favorable to the nonmoving party and determine whether a genuine  
8 issue of material fact precludes entry of judgment, Comite de Jornaleros de Redondo Beach v.  
9 City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation  
10 omitted), cert. denied, 132 S.Ct. 1566 (2012). The Court determines only whether there is a  
11 genuine issue for trial, and Plaintiff’s filings must be liberally construed because he is a pro se  
12 prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks and citations  
13 omitted).  
14

## 15 **II. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

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

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

24 Plaintiff filed a 602 on April 9, 2012. He did not receive a response and filed at the  
25 second level on June 7, 2012. Plaintiff did not receive a response and filed at the third level on  
26 July 26, 2012. The appeal was rejected for not getting responses at the lower levels.  
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1 Plaintiff alleges that Defendant Aguilar, Food Manager, failed to order meat classified as  
2 Halal, stating on numerous occasions that it was not in the budget.

3 Plaintiff further alleges that Defendant Meyer denied him the opportunity to purchase  
4 Halal meat through special purchase, though he permitted a Jewish inmate to purchase kosher  
5 foods through special purchase twice.

6 Plaintiff also contends that Defendant Pressley, Assistant Warden, denied him a religious  
7 diet, stating that it was not within the budget to provide a Halal diet. He also said that CDCR did  
8 not indicate that the money for feeding inmates was also meant to include “Muslim inmates  
9 needing a Halal diet.”

10 Plaintiff alleges that Defendant Wilson, Warden, also denied him a religious diet. He  
11 contends that she has been aware of the situation since she has been in a position of authority.  
12 Plaintiff contends that Defendant Wilson has burdened the practice of his religion.

13 Finally, Plaintiff alleges that Defendant Marshall, Counselor, denied Plaintiff a transfer to  
14 another prison where his diet needs could be accommodated. Although Defendant Meyer told  
15 Muslims that if they continued to complain about Halal meals, they would be transferred later,  
16 Defendant Marshall told Plaintiff that because MCCF was not an “institution,” they were not  
17 obligated to provide Halal meals to Muslims.  
18

19 **III. UNDISPUTED MATERIAL FACTS**<sup>4</sup>

20 Plaintiff is a California state prisoner housed at Golden State Modified Community  
21 Correctional Facility (“MCCF”) in McFarland, California. ECF No. 12. MCCF is a medium-  
22 security prison run by the GEO Group. Marshall Decl. ¶ 2. The GEO Group has a contract with  
23 the State of California to house some state prisoners at MCCF. Marshall Decl. ¶ 2. As part of  
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25  
26 <sup>4</sup> Plaintiff neither filed his own separate statement of disputed facts nor admitted or denied the facts set forth by  
27 Defendant as undisputed. Local Rule 260(b). Therefore, Defendant’s statement of undisputed facts is accepted  
28 except where brought into dispute by Plaintiff’s verified complaint or opposition. Jones v. Blanas, 393 F.3d 918,  
923 (9th Cir. 2004); Johnson v. Meltzer, 134 F.3d 1393, 1399-1400 (9th Cir. 1998).

1 this contract, some of the staff at MCCF are employees of the California Department of  
2 Corrections and Rehabilitation (“CDCR”). Marshall Decl. ¶ 2.

3 Defendant Marshall is employed by CDCR and has worked at MCCF since September  
4 2002. Marshall Decl. ¶ 2. He has been a Correctional Counselor II during all relevant times. As  
5 a Correctional Counselor II, his duties include participating in classification committee hearings,  
6 screening inmate appeals and discussing potential prison policy changes with the Warden and  
7 Associate Wardens. Marshall Decl. ¶ 1. Although Defendant sometimes participates in  
8 discussions regarding possible changes to MCCF policy, he does not have authority to change  
9 any policies at MCCF relevant to this lawsuit, and he does not make the final decision on any  
10 MCCF policy changes. Marshall Decl. ¶ 1.

11  
12 The Food Services department at MCCF is responsible for providing inmates with  
13 breakfast, lunch and dinner. Marshall Decl. ¶ 3. Defendant is not responsible for creating,  
14 implementing, or overseeing any policies relating to food or food services provided to MCCF  
15 inmates. Marshall Decl. ¶ 3.

16 Before September 20, 2013, MCCF Food Services did not provide a Halal diet option for  
17 inmates. Marshall Decl. ¶ 4. On September 20, 2013, MCCF began providing a Halal diet  
18 option for Muslim inmates. Marshall Decl. ¶ 4.

19 Plaintiff arrived at MCCF on September 16, 2011. ECF No. 12, at 3. Sometime in  
20 September 2011, Defendant became aware that Muslim inmates at MCCF were complaining  
21 about the availability of a Halal diet. Marshall Decl. ¶ 7. He then discussed the issue with other  
22 staff at MCCF and recommended that inmates with religious dietary needs be provided with a  
23 vegetarian diet until a more permanent solution could be reached. Marshall Decl. ¶ 7.

24 On July 26, 2012, Defendant chaired a Unit Classification Committee (“UCC”) hearing  
25 attended by Plaintiff. Marshall Decl. ¶ 8. At this hearing, Plaintiff requested that he be  
26 transferred to another institution because of a rules-violation report he received, and because he  
27

1 was not receiving a Halal diet. Marshall Decl. ¶ 8, Ex. B. For an inmate to be transferred, he  
2 must be recommended by a classification committee and then endorsed by a Classification Staff  
3 Representative. Marshall Decl. ¶ 9.

4 On October 18, 2012, Defendant chaired another UCC hearing attended by Plaintiff.  
5 Marshall Decl. ¶ 9. After the hearing, the Committee recommended that Plaintiff be transferred  
6 to an institution that could provide him with a Halal diet. Marshall Decl. ¶ 9, Ex. C.

7 Plaintiff's transfer was endorsed by a Classification Staff Representative on December 4,  
8 2012. Marshall Decl. ¶ 9, Ex. C. However, Plaintiff was not transferred because the  
9 endorsement expired before any vacancies at an endorsed transfer facility became available.  
10 Marshall Decl. ¶ 9.

11 On July 25, 2013, Defendant chaired another UCC hearing attended by Plaintiff. The  
12 Committee again recommended that Plaintiff be transferred to another prison due to the lack of a  
13 religious meat alternative program at MCCF. Marshall Decl. ¶ 10, Ex. D.

## 14 C. ANALYSIS

### 15 1. Personal Participation

16 Under section 1983, Plaintiff must link the named defendants to the participation in the  
17 violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (2009); Simmons v. Navajo County,  
18 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235  
19 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be  
20 imposed under a theory of *respondeat superior*, and some causal connection between the conduct  
21 of each named defendant and the violation at issue must exist. Iqbal, 556 U.S. at 676-77; Lemire  
22 v. California Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Lacey v.  
23 Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v. Baca, 652 F.3d 1202,  
24 1205-08 (9th Cir. 2011), cert. denied, 132 S.Ct. 2101 (2012).

1 To hold a defendant liable for damages, the wrongdoer must personally cause the  
2 violation. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir.1988). The inquiry into causation must  
3 be individualized and focus on the duties and responsibilities of each individual defendant whose  
4 acts or omissions are alleged to have caused a constitutional deprivation. Id. Sweeping  
5 conclusory allegations against an official are insufficient to state a claim for relief. Id. at 634  
6 (citation omitted).

7  
8 The undisputed evidence shows that MCCF did not provide a Halal diet until September  
9 2013, almost one year after Plaintiff filed this action. It is also undisputed Defendant Marshall  
10 did not have any control over Food Services or the diets provided to inmates. Based on these  
11 undisputed facts, Defendant has carried his initial burden of showing the absence of evidence to  
12 support Plaintiff's claims.

13 In his First Amended Complaint, Plaintiff alleges that Defendant Marshall denied him a  
14 transfer to an institution that would accommodate his religious dietary needs. Similarly, in his  
15 opposition, he states that "Defendants" refused to transfer him. ECF No. 45, at 11. While  
16 Defendant Marshall denies this, the issue is not relevant because there is no constitutional right  
17 to a transfer, Meachum v. Fano, 427 U.S. 215, 224-25 (1976), as the Court explained in the  
18 screening order.

19 Insofar as Plaintiff alleges that Defendant Marshall denied him a Halal diet, his bare  
20 assertion is not sufficient to create a dispute of fact. As stated above, in attempting to establish  
21 the existence of a factual dispute, Plaintiff may not rely upon the mere allegations or denials of  
22 his pleading; he is required to tender evidence of specific facts in the form of affidavits, and/or  
23 admissible discovery material, in support of its contention that the dispute exists. Fed. R. Civ. P.  
24 56(e); Matsushita, 475 U.S. at 586 n.11.

25  
26 Plaintiff also alleges that Defendant Marshall told him that because MCCF was not an  
27 "institution," they were not obligated to provide Halal meals to Muslims. However, even if  
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1 Defendant Marshall said this, there is no dispute that he did not have any control over Food  
2 Services, food policies, or food options provided to inmates. There is also no dispute that MCCF  
3 did not offer a Halal diet until 2013. Plaintiff has not offered evidence to demonstrate Defendant  
4 Marshall's participation in the alleged denial. Johnson v. Duffy, 588 F.2d 740, 743 (9th  
5 Cir.1978) (A person deprives another "of a constitutional right, within the meaning of section  
6 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform  
7 an act which he is legally required to do that causes the deprivation of which [the plaintiff  
8 complains].").

9  
10 Accordingly, the Court finds that Defendant Marshall is entitled to summary judgment on  
11 the claims brought under section 1983.

12 2. RLUIPA

13 A RLUIPA claim for may proceed only for injunctive relief against defendants acting  
14 within their official capacities. See Wood v. Yordy, 753 F.3d 899, 904 (9th Cir.2014) (RLUIPA  
15 does not contemplate liability of government employees in individual capacity); see also Holley  
16 v. Cal. Dep't of Corr., 599 F.3d 1108, 1114 (9th Cir. 2010) ("The Eleventh Amendment bars [the  
17 plaintiff's] suit for official-capacity damages under RLUIPA.").

18 Therefore, Plaintiff is only entitled to injunctive relief under RLUIPA. This limitation to  
19 injunctive relief leads to two issues. First, the causal connection required where a party seeks  
20 injunctive or declaratory relief is slightly less stringent, though it still "focuses on the duties and  
21 responsibilities of each of the individual defendants whose acts or omissions are alleged to have  
22 caused the constitutional violation." Leer v. Murphy, 844 F.2d 628, 632-633 (9th Cir. 1988).

23  
24 Again, even under this broader causation standard, it is undisputed that MCCF did not  
25 offer a Halal diet until September 2013, and that Defendant's duties and responsibilities had  
26 nothing to do with food policies or available diets.

1 Second, because injunctive relief is the sole form of relief available under RLUIPA,  
2 Plaintiff's subsequent receipt of a Halal diet in September 2013 moots his request for injunctive  
3 relief. Injunctive relief becomes moot when a party receives the requested relief after filing an  
4 action. See Johnson v. Moore, 948 F.2d 517, 519 (9th Cir.1991) (per curiam).

5 The Court therefore recommends that summary judgment be granted on the RLUIPA  
6 against Defendant Marshall.

### 7 3. Qualified Immunity

8 Qualified immunity shields government officials from civil damages unless their conduct  
9 violates "clearly established statutory or constitutional rights of which a reasonable person would  
10 have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "Qualified immunity balances  
11 two important interests - the need to hold public officials accountable when they exercise power  
12 irresponsibly and the need to shield officials from harassment, distraction, and liability when  
13 they perform their duties reasonably," Pearson v. Callahan, 555 U.S. 223, 231 (2009), and it  
14 protects "all but the plainly incompetent or those who knowingly violate the law," Malley v.  
15 Briggs, 475 U.S. 335, 341 (1986). "[T]he qualified immunity inquiry is separate from the  
16 constitutional inquiry" and "has a further dimension." Estate of Ford v. Ramirez-Palmer, 301  
17 F.3d 1043, 1049-50 (9th Cir. 2002) (citing Saucier v. Katz, 533 U.S. 194, 205 (2001)) (internal  
18 quotation marks omitted). "The concern of the immunity inquiry is to acknowledge that  
19 reasonable mistakes can be made. . . ." Estate of Ford, 301 F.3d at 1049 (citing Saucier, at 205)  
20 (internal quotation marks omitted).

21 In resolving a claim of qualified immunity, courts must determine whether, taken in the  
22 light most favorable to the plaintiff, the defendant's conduct violated a constitutional right, and if  
23 so, whether the right was clearly established. Saucier, 533 U.S. at 201; Mueller v. Aufer, 576  
24 F.3d 979, 993 (9th Cir. 2009). While often beneficial to address in that order, courts have  
25 discretion to address the two-step inquiry in the order they deem most suitable under the  
26 circumstances. Pearson, 555 U.S. at 236 (overruling holding in Saucier that the two-step inquiry  
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1 must be conducted in that order, and the second step is reached only if the court first finds a  
2 constitutional violation); Mueller, 576 F.3d at 993-94.

3 The Court has determined that Defendant Marshall did not violate any of Plaintiff's  
4 constitutional rights. Nonetheless, even if the Court denied summary judgment on the merits of  
5 Plaintiff's claims, a reasonable official would have believed it was lawful to deny a Halal diet  
6 where one wasn't provided by the institution. Pearson, 555 U.S. at 236. Therefore, Defendant  
7 would be entitled to qualified immunity.

8 **D. FINDINGS AND RECOMMENDATIONS**

9 The Court finds that Defendant Marshall's motion for summary judgment should be  
10 GRANTED.

11 These Findings and Recommendations will be submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
13 thirty (30) days after being served with these Findings and Recommendations, the parties may  
14 file written objections with the Court. The document should be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file  
16 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
17 Wheeler, \_\_ F.3d \_\_, \_\_, No. 11-17911, 2014 WL 6435497, at \*3 (9th Cir. Nov. 18, 2014)  
18 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19  
20  
21 IT IS SO ORDERED.

22 Dated: March 3, 2015

23 /s/ Dennis L. Beck  
24 UNITED STATES MAGISTRATE JUDGE