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

LONNIE LEE POSLOF, Sr.,)	Case No.: 1:13-cv-01935-AWI-SAB (PC)
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
v.)	REGARDING PLAINTIFF’S THIRD AMENDED
CDCR, et al.,)	COMPLAINT
Defendants.)	[ECF No. 28]
)	
)	

Plaintiff Lonnie Lee Poslof, Sr. is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

Now pending before the Court is Plaintiff third amended complaint, filed October 15, 2014.

**I.
SCREENING REQUIREMENT**

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but

1 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
2 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
3 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
4 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
5 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

6 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
7 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
8 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
9 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
10 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
11 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
12 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
13 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
14 U.S. at 678; Moss, 572 F.3d at 969.

15 II.

16 COMPLAINT ALLEGATIONS

17 Plaintiff contends that while housed at Corcoran State Prison, he is not provided enough food
18 to sustain his health which is deliberately indifference to his medical needs. Defendants fail to provide
19 Kosher food in an environment and in a manner as required by his Judaism faith. Specifically,
20 Plaintiff cannot eat his first or last meal of the day because it is in violation of his faith. Plaintiff
21 contends that documentation from the California Institute for Men, where he was previously housed,
22 will demonstrate that Kosher meals were deliberated to his housing unit.

23 Inmates on Kosher diet programs must be provided tables that are no “cross-contaminated”
24 with non-Kosher foods or any other things that would make the table non-Kosher after proper
25 cleaning. It has been requested that prisoners on Kosher diet programs be allowed to remove their
26 meals and establish their own environment that will allow them to keep the Kosher food in compliance
27 with their faith. In addition, the amount and content of the Kosher food provided is being restricted by
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1 providing foods that cannot be consumed on the dates and times and failing to provide hot meals on
2 Saturdays.

3 III.

4 DISCUSSION

5 A. Religious Land Use and Institutionalized Persons Act

6 To state a claim for violation of RLUIPA, Plaintiff must allege facts plausibly showing that the
7 challenged policy and the practices it engenders impose a substantial burden on the exercise of his
8 religious beliefs; Plaintiff bears the initial burden of persuasion on this issue. Hartmann v. California
9 Dep't of Corr. & Rehab., 707 F.3d 1114, 1124-25 (9th Cir. 2013) (quotation marks omitted).

10 Based on Plaintiff's allegations in the third amended complaint, Plaintiff states a cognizable
11 RLUIPA claim against Defendant Beard and Does 1 through 10.

12 B. Deliberate Indifference to Serious Medical Need

13 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
14 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference to
15 an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled
16 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.
17 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).
18 Plaintiff "must show (1) a serious medical need by demonstrating that failure to treat [his] condition
19 could result in further significant injury or the unnecessary and wanton infliction of pain," and (2) that
20 "the defendant's response to the need was deliberately indifferent." Wilhelm, 680 F.3d at 1122 (citing
21 Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by "(a) a purposeful act
22 or failure to respond to a prisoner's pain or possible medical need, and (b) harm caused by the
23 indifference." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind
24 is one of subjective recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d
25 at 985 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

26 Plaintiff's allegations do not state a cognizable claim under the Eighth Amendment. Plaintiff
27 has not pled sufficient facts demonstrating that the conditions of the food and/or diet infringed on his
28 Eighth Amendment rights. Rather, Plaintiff's claim regarding his request to provide an adequate

1 Kosher diet falls under RLUIPA. Accordingly, Plaintiff fails to state a cognizable claim for deliberate
2 indifference under the Eighth Amendment.

3 **C. Leave to Amend**

4 Because Plaintiff was previously notified of the deficiencies in his claims and given leave to
5 amend, further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000);
6 Noll v. Carlson, 809 F.2d 1446, 1448-1449 (9th Cir. 1987).

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8 **IV.**

9 **RECOMMENDATION**

10 Based on the foregoing,

11 IT IS HEREBY RECOMMENDED that:

- 12 1. This action shall proceed on Plaintiff's RLUIPA claim against Defendant Beard and
13 Does 1 through 10; and
14 2. Plaintiff's Eighth Amendment claim of deliberate indifference to a serious medical
15 need be DISMISSED for failure to state a cognizable claim for relief.

16 These Findings and Recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)**
18 **days** after being served with these Findings and Recommendations, Plaintiff may file written
19 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified
21 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
22 Cir. 1991).

23
24 IT IS SO ORDERED.

25 Dated: **December 3, 2014**



26 UNITED STATES MAGISTRATE JUDGE