

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICKY RIVERA,
Plaintiff,
v.
DAVE DAVEY, et al.,
Defendants.

Case No.: 1:16-cv-01817-AWI-BAM (PC)
FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITH PREJUDICE, FOR
FAILURE TO OBEY COURT ORDERS AND
FAILURE TO PROSECUTE
(ECF No. 14)
FOURTEEN (14) DAY DEADLINE

Plaintiff Ricky Rivera is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil action pursuant to 42 U.S.C. § 1983.

On November 22, 2017, the Court screened Plaintiff's complaint, found that he had failed to state any cognizable claim, and granted him leave to amend within thirty (30) days. (ECF No. 14.) The Court expressly warned Plaintiff that the failure to comply with that order would result in this action being dismissed. (*Id.* at 7.)

The deadline for Plaintiff to file an amended complaint has passed, and he has not complied with the Court's order. Accordingly, the Court recommends dismissal of Plaintiff's complaint, for the reasons explained below.

I. Failure to State a Claim
A. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §

1 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
2 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
3 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 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*, 556 U.S. 662, 678, 129 S. Ct. 1937,
9 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65
10 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
11 unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
12 (internal quotation marks and citation omitted).

13 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
14 liberally construed and to have any doubt resolved in their favor. *Hebbe v. Pliler*, 627 F.3d 338,
15 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be facially
16 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
17 named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949
18 (quotation marks omitted); *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir.
19 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
20 consistency with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678,
21 129 S. Ct. at 1949 (quotation marks omitted); *Moss*, 572 F.3d at 969.

22 **B. Summary of Complaint Allegations**

23 Plaintiff is currently housed at California State Prison – Corcoran ("Corcoran") where the
24 events in the complaint are alleged to have occurred. Plaintiff names the following defendants:
25 (1) Warden Dave Davey; (2) Community Resource Manager M. Robicheaux; (3) Christian
26 Chaplain Ed Crain; and (4) S.M.V. Chapoleon, Catholic Priests. Plaintiff contends that defendants
27 violated his First Amendment rights to practice the Jewish obligatory prayers and holiday events
28 during 2014 through 2016.

1 Plaintiff alleges that he arrived at Corcoran on June 23, 2014, from Wasco State Prison
2 (“WSP”). While at WSP, Plaintiff was able to practice all requested religious prayers and rituals
3 under the Jewish faith. Upon Plaintiff’s arrival at Corcoran, however, the requested prayers and
4 holiday events have been repeatedly denied by Defendants Robicheaux, Crain, Chapoleun and
5 Davey since July 2014.

6 Plaintiff contends that he followed all instructional procedures and guidelines after his
7 arrival by submitted numerous CDCR-22 Inmate Request Forms to Facility 3A staff members,
8 including Defendants Davey, Robicheaux, Crain and Chapoleun to provide him with the facility
9 chapel to practice obligatory Jewish prayers and holy day events. At the time of his requests in
10 2014 and 2015, all other inmates of the Christian, Islamic, Catholic, Buddhist, and Kemectic
11 Services were afforded their obligatory religious services at the facility chapel.

12 Plaintiff made personal requests to Defendants Crain and Chapoleun that went without
13 accommodations and resulted in intentional denial of religious services for the Jewish faith.
14 Plaintiff alleges that Defendants Crain and Chapoleun intentionally violated his First Amendment
15 rights to practice and observe Jewish prayers and holy day events by repeatedly denying services.

16 On August 17 and 24, 2015, and November 21, 2015, Plaintiff sent several CDCR-22
17 inmate request forms to Defendant Robicheaux (Defendants Crain and Chapoleun’s supervisor)
18 requesting her immediate assistance to rectify the continued denial and deprivation of Plaintiff’s
19 requested obligatory Jewish prayers and holy day events that were occurring at the facility.
20 Defendant Robicheaux did not respond to Plaintiff’s CDCR-22 requests. Plaintiff contends that
21 her failure to rectify the violations committed by Defendants Crain and Chapoleun violated
22 Plaintiff’s First Amendment rights.

23 On November 15, 2015, Plaintiff submitted a CDCR-602 grievance to Defendant Davey,
24 objecting to Defendants Crain, Chapoleun and Robicheaux’s continued failure to comply with
25 policies to afford the Plaintiff his equal opportunity to perform obligatory Jewish prayer services
26 and holy day events that were afforded to all other religious inmates for Catholic, Christian,
27 Islamic, Buddhist and Kemectic services. Plaintiff alleges that Defendant Davey’s failure to
28 timely intervene and rectify the violations committed by Defendants Crain, Robicheaux and

1 Chapoleon violated Plaintiff's First Amendment rights to practice the obligatory Jewish prayers
2 and holy day events in Facility 3A in 2014 and 2015. Plaintiff further alleges that Defendants
3 Davey, Robicheaux, Crain and Chapoleon intentionally violated Plaintiff's Fourteenth
4 Amendment right to Equal Protection under the law by failing to provide Plaintiff with equal
5 access to the 3A Facility Chapel religious services that were afforded to all other inmates of
6 Christian, Islamic, Catholic, Buddhist and Kemectic faiths from 2014 through 2016.

7 As relief, Plaintiff seeks compensatory and punitive damages, along with declaratory and
8 injunctive relief.

9 **C. Discussion**

10 **1. Federal Rule of Civil Procedure 8**

11 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain
12 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). As noted
13 above, detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a
14 cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678
15 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a
16 claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
17 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*; *see also*
18 *Twombly*, 550 U.S. at 556–557; *Moss*, 572 F.3d at 969.

19 Although Plaintiff's complaint is short, it is not a plain statement of his claims
20 demonstrating that he is entitled to relief. Plaintiff's complaint fails to include sufficient factual
21 allegations to state a claim, including his religious affiliation or beliefs, what he requested by way
22 of religious services and holy day events, when he requested it and why his requests were denied.
23 Absent these basic facts, the Court cannot determine whether Plaintiff has stated a plausible claim
24 on the face of his complaint.

25 **2. Supervisory Liability**

26 Plaintiff seeks to hold Defendant Davey liable for the failure of his subordinates to ensure
27 that Plaintiff's religious services and holy day needs were properly met. To the extent Plaintiff
28 seeks to bring suit against Warden Davey based on his role as supervisor, Plaintiff may not do so.

1 Supervisory personnel may not be held liable under section 1983 for the actions of
2 subordinate employees based on respondeat superior or vicarious liability. *Crowley v. Bannister*,
3 734 F.3d 967, 977 (9th Cir. 2013); accord *Lemire v. California Dep't of Corr. and Rehab.*, 726
4 F.3d 1062, 1074–75 (9th Cir. 2013); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915–16 (9th Cir.
5 2012) (en banc). “A supervisor may be liable only if (1) he or she is personally involved in the
6 constitutional deprivation, or (2) there is a sufficient causal connection between the supervisor’s
7 wrongful conduct and the constitutional violation.” *Crowley*, 734 F.3d at 977 (internal quotation
8 marks omitted); accord *Lemire*, 726 F.3d at 1074–75; *Lacey*, 693 F.3d at 915–16. “Under the
9 latter theory, supervisory liability exists even without overt personal participation in the offensive
10 act if supervisory officials implement a policy so deficient that the policy itself is a repudiation of
11 constitutional rights and is the moving force of a constitutional violation.” *Crowley*, 734 F.3d at
12 977 (citing *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks
13 omitted).

14 Although Plaintiff alleges that he submitted a CDCR-602 grievance to Warden Davey,
15 there is no indication in the complaint that Warden Davey received the grievance or that the
16 grievance was not processed through the ordinary channels of review. There also is no indication
17 that Defendant Davey otherwise knew of Plaintiff’s requests for religious services or holy day
18 events and that those requests allegedly were denied. To state a claim against any supervisory
19 defendant, Plaintiff must allege facts showing that the defendant participated in or directed
20 conduct that violated Plaintiff’s constitutionally protected rights. Plaintiff has not alleged such
21 facts in his complaint.

22 **3. First Amendment – Free Exercise of Religion**

23 “Inmates ... retain protections afforded by the First Amendment, including its directive
24 that no law shall prohibit the free exercise of religion.” *O’Lone v. Estate of Shabazz*, 482 U.S.
25 342, 348, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987) (internal quotations and citations omitted).
26 However, “a prisoner’s right to free exercise of religion ‘is necessarily limited by the fact of
27 incarceration.’” *Jones v. Williams*, 791 F.3d 1023, 1032 (9th Cir. 2015) (citation omitted). “‘To
28 ensure that courts afford appropriate deference to prison officials,’ the Supreme Court has

1 directed that alleged infringements of prisoners’ free exercise rights be ‘judged under a
2 ‘reasonableness’ test less restrictive than that ordinarily applied to alleged infringements of
3 fundamental constitutional rights.’” *Id.* (quoting *O’Lone*, 482 U.S. at 349, 107 S.Ct. 2400.) “The
4 challenged conduct ‘is valid if it is reasonably related to legitimate penological interests.’” *Id.*
5 (quoting *O’Lone*, 482 U.S. at 349, 107 S.Ct. 2400). “A person asserting a free exercise claim
6 must show that the government action in question substantially burdens the person’s practice of
7 [his] religion.” *Jones*, 791 F.3d at 1031; *Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008).
8 “[T]he availability of alternative means of practicing religion is a relevant consideration” for
9 claims under the First Amendment. *Holt v. Hobbs*, —U.S. —, 135 S. Ct. 853, 862 (2015).

10 Plaintiff’s conclusory allegations fail to state a cognizable claim. Plaintiff fails to set forth
11 facts alleging his sincerely held religious beliefs. He also fails to set forth facts alleging that any
12 denial substantially burdened the practice of his religion, that any denial was not reasonably
13 related to legitimate penological interests or that he did not have alternative means of practicing
14 his religion.

15 **4. Fourteenth Amendment – Equal Protection**

16 The Equal Protection Clause requires that all persons who are similarly situated should be
17 treated alike. *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (2001); *City of Cleburne v. Cleburne*
18 *Living Center*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). “The Equal Protection
19 Clause entitles each prisoner to ‘a reasonable opportunity of pursuing his faith comparable to the
20 opportunity afforded fellow prisoners who adhere to conventional religious precepts.’ ” *Shakur*,
21 514 F.3d at 891 (quoting *Cruz v. Beto*, 405 U.S. 319, 321-22 (1972) (per curiam)).

22 To state a claim, Plaintiff must allege facts sufficient to support a claim that prison
23 officials intentionally discriminated against him on the basis of his religion by failing to provide
24 him a reasonable opportunity to pursue his faith compared to other similarly situated religious
25 groups. *Cruz*, 405 U.S. at 321-22; *Shakur*, 514 F.3d at 891.

26 Here, Plaintiff alleges that other religions have not been denied the same access to
27 religious services and holy day events. However, Plaintiff’s assertions regarding other religions
28 are conclusory at best and lack supporting factual allegations. Plaintiff also fails to allege

1 sufficient facts to demonstrate that he was denied the same opportunities because of his religious
2 beliefs. Plaintiff therefore fails to state an Equal Protection Clause claim.

3 **II. Failure to Prosecute and Failure to Obey a Court Order**

4 **A. Legal Standards**

5 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
6 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
7 within the inherent power of the Court.” District courts have the inherent power to control their
8 dockets and “[i]n the exercise of that power they may impose sanctions including, where
9 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court
10 may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to
11 obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52,
12 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d
13 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
14 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
15 (dismissal for failure to comply with court order).

16 In determining whether to dismiss an action, the Court must consider several factors:
17 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
18 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
19 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
20 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

21 **B. Discussion**

22 Here, Plaintiff’s amended complaint is overdue, and he has been otherwise non-responsive
23 to the Court’s orders. The Court cannot effectively manage its docket if Plaintiff ceases litigating
24 his case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

25 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
26 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
27 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
28 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d

1 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility
2 it is to move a case toward disposition on the merits but whose conduct impedes progress in that
3 direction,” which is the case here. *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d
4 1217, 1228 (9th Cir. 2006) (citation omitted).

5 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
6 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
7 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s November 22, 2017 order
8 expressly warned Plaintiff that his failure to file an amended complaint would result in dismissal
9 of this action for failure to obey a court order and the failure to state a claim. (ECF No. 14, at p.
10 7.) Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.

11 Additionally, at this stage in the proceedings there is little available to the Court that
12 would constitute a satisfactory lesser sanction while protecting the Court from further
13 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this
14 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
15 likely to have no effect given that Plaintiff has ceased litigating his case.

16 **III. Conclusion and Recommendation**

17 For the reasons explained above, the Court HEREBY RECOMMENDS that this action be
18 dismissed, with prejudice, for the failure to state a claim, failure to obey a court order, and failure
19 to prosecute.

20 These Findings and Recommendation will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
22 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
23 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
24 Findings and Recommendation.”

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: January 10, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE