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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MADERO POUNCIL,)	1:17-cv-00547-AWI-BAM (PC)
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF ACTION
vs.)	FOR FAILURE TO STATE A CLAIM
)	
STU SHERMAN, et al.,)	(ECF No. 13)
)	
Defendants.)	FOURTEEN-DAY DEADLINE
)	

Plaintiff Madero Pouncil is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302. On January 31, 2018, the Court screened Plaintiff’s complaint and granted him leave to amend. (ECF No. 12.) Plaintiff’s first amended complaint, filed on February 26, 2018, is currently before the Court for screening. (ECF No. 13)

I. Screening Requirement and Standard

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. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary

1 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
2 § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
7 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
8 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
9 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
10 (internal quotation marks and citation omitted).

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

20 **II. Summary of Plaintiff’s Allegations**

21 Plaintiff is currently incarcerated at the California Substance Abuse Treatment Facility in
22 Corcoran, California, where the events in the complaint are alleged to have occurred. Plaintiff
23 names Lieutenant D. Lopez as the sole defendant.

24 Plaintiff alleges as follows:

25 On 6-19-16 while observing and participating in the fasting portion of Ramadan,
26 it came a time to break our fast, as we had done every night prior to this particular
27 one. Lt. D. Lopez chose to deny us/myself entry into the chow hall. We asked
28 “Why?” He said “Because of a memo!” We said, “Show us the memo!” He
refused, and said, “I don’t have to show you shit! Now leave, and I’m not feeding
you.” Another Muslim [hollered] out, “You can’t do, that! You must feed us.”

1 Lt. D. Lopez stated “I do what the fuck I want to do, if you have a problem with
2 it, put it on paper. Have a nice night!” The next night the Imam/Muslim Spiritual
3 Showed up. Lt. D. Lopez, went out of his way to lie to him, and try to sway him
4 to go along with what he did, knowing he was wrong. When the Imam, didn’t go
5 along with his action and “confirmed his wrong doings.” Lt. D. Lopez, went out
6 his way to try and get the Imam fired. Lt. D. Lopez, doesn’t care of about
7 602’s/Inmate appeals, or staff complaints, because around here at S.A.T.F., they
8 mean nothing. Staff is not corrected, or punished, and 602’s are delayed and
9 never answered.

7 (ECF No. 13 at 3-4). Plaintiff asserts violations of the Eighth and Fourteenth Amendments. As
8 relief, he seeks monetary damages.

9 **III. Discussion**

10 **A. Free Exercise Clause – First Amendment**

11 “Inmates ... retain protections afforded by the First Amendment, including its directive
12 that no law shall prohibit the free exercise of religion.” O’Lone v. Estate of Shabazz, 482 U.S.
13 342, 348 (1987) (internal quotations and citations omitted). The protections of the Free Exercise
14 Clause are triggered when prison officials substantially burden the practice of an inmate’s
15 religion by preventing him from engaging in conduct which he sincerely believes is consistent
16 with his faith. Shakur v. Schriro, 514 F.3d 878, 884–85 (9th Cir. 2008).

17 Government action substantially burdens the exercise of religion when the action is
18 “oppressive to a significantly great extent.” Int’l Church of Foursquare Gospel v. City of San
19 Leandro, 673 F.3d 1059, 1067 (9th Cir. 2011) (internal quotations and citation omitted). “That is,
20 a ‘substantial burden’ on ‘religious exercise’ must impose a significantly great restriction or onus
21 upon such exercise.” Id. (quoting San Jose Christian College v. City of Morgan Hill, 360 F.3d
22 1024, 1034 (9th Cir. 2004)). “A substantial burden exists where the governmental authority puts
23 substantial pressure on an adherent to modify his behavior and to violate his beliefs.” Id. (citation
24 omitted).

25 Plaintiff’s assertion that he was denied meals on one night of Ramadan does not allege
26 that he was denied the opportunity to break his fast through other means or that he was denied
27 the opportunity to break his fast for the entire month of Ramadan. In other words, Plaintiff’s
28 complaint does not sufficiently allege that the denial of meals one time was oppressive to a

1 significantly great extent. Plaintiff has been unable to cure this deficiency.

2 **B. Eighth Amendment – Deprivation of Meals**

3 The Eighth Amendment’s prohibition against cruel and unusual punishment protects
4 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
5 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer, 511
6 U.S. at 847, and Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392 (1981)) (quotation
7 marks omitted). Prison officials must ensure that inmates receive adequate food, clothing,
8 shelter, medical care and personal safety. Farmer, 511 U.S. at 832.

9 “Adequate food is a basic human need protected by the Eighth Amendment.” Keenan v.
10 Hall, 83 F.3d 1083, 1091 (9th Cir.1996). The Eighth Amendment requires only that prisoners
11 receive food that is adequate to maintain health. LeMaire v. Maass, 12 F.3d 1444, 1456 (9th
12 Cir.1993). However, the Ninth Circuit has found that “[t]he sustained deprivation of food can be
13 cruel and unusual punishment when it results in pain without any penological purpose.” Foster v.
14 Runnels, 554 F.3d 807, 812–13 (9th Cir. 2009) (finding the denial of sixteen meals in twenty-
15 three days a sufficiently serious deprivation for Eighth Amendment purposes).

16 Plaintiff’s allegations that he did not receive meals for one day are not sufficient to rise to
17 the level of an Eighth Amendment violation. Plaintiff’s complaint does not allege that he failed
18 to receive food adequate to maintain his health or that he suffered a sustained deprivation of
19 food. Plaintiff has been unable to cure this deficiency.

20 **C. Fourteenth Amendment**

21 The Equal Protection Clause requires that all persons who are similarly situated should be
22 treated alike. Lee v. City of Los Angeles, 250 F.3d 668, 686 (2001); City of Cleburne v.
23 Cleburne Living Center, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). “The Equal
24 Protection Clause entitles each prisoner to ‘a reasonable opportunity of pursuing his faith
25 comparable to the opportunity afforded fellow prisoners who adhere to conventional religious
26 precepts.’ ” Shakur, 514 F.3d at 891 (quoting Cruz v. Beto, 405 U.S. 319, 321–22 (1972) (per
27 curiam)). To state a claim, Plaintiff must allege facts sufficient to support a claim that prison
28 officials intentionally discriminated against him on the basis of his religion by failing to provide

1 him a reasonable opportunity to pursue his faith compared to other similarly situated religious
2 groups. Cruz, 405 U.S. at 321–22; Shakur, 514 F.3d at 891.

3 Here, Plaintiff’s complaint does not include any allegations regarding other similarly
4 situated religious groups. Plaintiff’s complaint also does not allege sufficient facts to
5 demonstrate that he was denied the same opportunities as other inmates because of his religious
6 beliefs. Plaintiff therefore fails to state an Equal Protection Clause claim.

7 **D. RLUIPA**

8 Inmates’ religious freedoms also are protected by the RLUIPA. However, RLUIPA does
9 not authorize money damages against state officials, whether sued in their official or individual
10 capacities. See Jones v. Williams, 791 F.3d 1023, 1031 (9th Cir. 2015). Thus, Plaintiff may not
11 maintain a RLUIPA claim for money damages.

12 **IV. Conclusion and Recommendation**

13 Plaintiff’s complaint fails to state a cognizable claim for relief. Despite being provided
14 with the relevant pleading and legal standards, Plaintiff has been unable to cure the deficiencies
15 in his complaint, and further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122,
16 1130 (9th Cir. 2000).

17 For the reasons explained above, the Court **HEREBY RECOMMENDS** that this action
18 be dismissed, with prejudice, for the failure to state a claim upon which relief may be granted.

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

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1 objections within the specified time may result in the waiver of the “right to challenge the
2 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
3 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
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5 IT IS SO ORDERED.

6 Dated: May 15, 2018

7 /s/ Barbara A. McAuliffe
8 UNITED STATES MAGISTRATE JUDGE
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