

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

KASEY F. HOFFMANN,
Plaintiff,
v.
L. PULIDO, et al.,
Defendants.

Case No. 1:18-cv-00209-AWI-SKO (PC)

**ORDER REQUIRING PLAINTIFF TO
FILE A FIRST AMENDED COMPLAINT
OR NOTIFY THE COURT OF HIS DESIRE
TO PROCEED ONLY ON RETALIATION
AND DUE PROCESS CLAIMS AND TO
SEEK ONLY DAMAGES FOR LOSS OF
GOOD-TIME CREDITS AND PUNITIVE
DAMAGES**

(Doc. 1)

21-DAY DEADLINE

Plaintiff Kasey F. Hoffmann, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. section 1983. (Doc. 1 at 1.) Plaintiff alleges that the defendants denied him a kosher diet in violation of the First Amendment, issued a false rules violation report (RVR) in retaliation for his engagement in protected activity, and denied him the ability to present witnesses at his RVR hearing in violation of the Due Process Clause. (*Id.* at 3-5.) Plaintiff seeks compensatory damages for the loss of good-time credits and mental health injuries, punitive damages, and an injunction charging the defendants with violations of California Penal Code section 147. (*Id.* at 6.)

For the reasons set forth below, the Court finds that Plaintiff’s retaliation and due process claims are cognizable, but his religious freedom claim is not. The Court also finds that Plaintiff

1 may not seek damages for mental health injuries or the requested injunctive relief.

2 Plaintiff is therefore **ORDERED** to either file a first amended complaint curing the
3 deficiencies in his pleading OR, in the alternative, notify the Court that he wishes to (1) proceed
4 only on the claims found cognizable in this order and (2) seek only compensatory damages for the
5 loss of good-time credits and punitive damages.

6 **I. SCREENING REQUIREMENT**

7 The Court is required to screen complaints brought by prisoners seeking relief against a
8 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
9 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
10 legally frivolous or malicious, fail to state a claim upon which relief may be granted, or seek
11 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). The
12 Court should dismiss a complaint if it lacks a cognizable legal theory or fails to allege sufficient
13 facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
14 699 (9th Cir. 1990).

15 **II. PLEADING REQUIREMENTS**

16 **A. Federal Rule of Civil Procedure 8(a)**

17 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
18 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 513 (2002). A complaint must contain
19 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
20 Civ. Pro. 8(a)(2). “Such a statement must simply give the defendant fair notice of what the
21 plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512 (internal
22 quotation marks and citation omitted).

23 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
24 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
25 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must
26 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
27 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Factual allegations are accepted as
28 true, but legal conclusions are not. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

1 The Court construes pleadings of *pro se* prisoners liberally and affords them the benefit of
2 any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, “the
3 liberal pleading standard ... applies only to a plaintiff’s factual allegations,” not his legal theories.
4 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989). Furthermore, “a liberal interpretation of a civil
5 rights complaint may not supply essential elements of the claim that were not initially pled,”
6 *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal quotation
7 marks and citation omitted), and courts “are not required to indulge unwarranted inferences.” *Doe*
8 *I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
9 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient to
10 state a cognizable claim, and “facts that are merely consistent with a defendant’s liability” fall
11 short. *Iqbal*, 556 U.S. at 678 (internal quotation marks and citation omitted).

12 **B. Linkage and Causation**

13 Section 1983 provides a cause of action for the violation of constitutional or other federal
14 rights by persons acting under color of state law. *See* 42 U.S.C. § 1983. To state a claim under
15 Section 1983, a plaintiff must show a causal connection or link between the actions of the
16 defendants and the deprivation alleged to have been suffered by the plaintiff. *See Rizzo v. Goode*,
17 423 U.S. 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
18 deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative
19 act, participates in another’s affirmative acts, or omits to perform an act which he is legally
20 required to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588
21 F.2d 740, 743 (9th Cir. 1978) (citation omitted).

22 **III. DISCUSSION**

23 **A. Plaintiff’s Allegations**

24 Plaintiff’s claims stem from an allegedly false rules violation report issued on December
25 20, 2017. (*See* Doc. 1 at 3, 4, 5.) Plaintiff alleges that, on December 19, 2017, he told Defendant-
26 Correctional Officer L. Pulido that the meals CDCR serves are not kosher because they have
27 “PIA” products, and that he had filed an “appeal in Sacramento addressing this issue.” (*Id.* at 3.)
28 Plaintiff has received kosher meals from CDCR since October 2009. (*Id.*) Plaintiff states that he

1 told Officer Pulido that he requires a kosher meal, and that, “[i]n an attempt to retaliate against
2 [Plaintiff,] [Pulido] falsely accused [Plaintiff] of disrespecting him when [Plaintiff] was simply
3 telling him [Plaintiff’s] religious needs.” (*Id.*) Plaintiff alleges that Pulido intentionally left out
4 key facts and included false information in the RVR issued against Plaintiff in retaliation for
5 Plaintiff’s expressing his religious needs. (*Id.* at 4.)

6 On January 12, 2018, Defendant-Correctional Lieutenant C. Smith held a hearing on the
7 RVR. (*Id.* at 5.) Plaintiff alleges that he requested the participation of three witnesses who were
8 present during the December 19, 2017 incident and could corroborate his story. (*Id.*) Plaintiff
9 states that Lieutenant Smith did not allow him to present witnesses, in violation of the Due
10 Process Clause. (*Id.*) As a result of the RVR, Plaintiff lost 30 days of good-time credits. (*Id.*)

11 In Claim I, Plaintiff states that Defendants denied his right to the free exercise of religion.
12 (*Id.* at 3.) In Claim II, Plaintiff checks the box for “[r]etaliation.” (*Id.* at 4.) In Claim III, Plaintiff
13 states that Defendants violated his due process rights. (*Id.* at 5.) For his alleged injuries, Plaintiff
14 seeks compensatory damages, including for future medical needs; punitive damages; and an
15 injunctive order charging the defendants with violation of California Penal Code section 147. (*Id.*
16 at 6.)

17 **B. Claims for Relief**

18 1. Denial of Religious Freedom

19 a. Free Exercise Clause of the First Amendment

20 Prisoners “do not forfeit all constitutional protections by reason of their conviction and
21 confinement in prison.” *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). Inmates “retain protections
22 afforded by the First Amendment, ... including its directive that no law shall prohibit the free
23 exercise of religion.” *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (citations omitted).
24 However, “[l]awful incarceration brings about the necessary withdrawal or limitation of many
25 privileges and rights, a retraction justified by the considerations underlying our penal system.” *Id.*
26 (internal quotation marks and citation omitted).

27 A plaintiff asserting a free exercise claim must show that the defendant’s actions
28 substantially burden her practice of religion. *See Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir.

1 2015). “A substantial burden ... place[s] more than an inconvenience on religious exercise; it
2 must have a tendency to coerce individuals into acting contrary to their religious beliefs or exert
3 substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Id.* (internal
4 quotation marks and citations omitted). “[A] prison policy that intentionally puts significant
5 pressure on inmates ... to abandon their religious beliefs ... imposes a substantial burden on [the
6 inmate’s] religious practice.” *Shakur v. Schriro*, 514 F.3d 878, 889 (9th Cir. 2008) (internal
7 quotation marks and citation omitted).

8 Once a plaintiff establishes that state action substantially burdens her exercise of religion,
9 “the government bears the burden of establishing that the regulation serves a compelling
10 government interest and is the least restrictive means of achieving that interest.” *Id.* In the prison
11 context, the Supreme Court has held that alleged infringements of prisoners’ free exercise rights
12 are “judged under a ‘reasonableness’ test less restrictive than that ordinarily applied to alleged
13 infringements of fundamental constitutional rights.” *O’Lone*, 482 U.S. at 349 (citation omitted).
14 The challenged conduct “is valid if it is reasonably related to legitimate penological interests.” *Id.*
15 (internal quotation marks and citation omitted). “[T]he availability of alternative means of
16 practicing religion is a relevant consideration” for claims under the First Amendment. *Holt v.*
17 *Hobbs*, 135 S. Ct. 853, 862 (2015) (citations omitted).

18 Plaintiff alleges that his free exercise rights were violated, but he fails to link either of the
19 defendants to the violation. He states that CDCR’s kosher meals contain non-kosher products,
20 (Doc. 1 at 3), but he does not demonstrate how Correctional Officer Pulido or Correctional
21 Lieutenant Smith are in any way responsible for the meals he receives. Since Plaintiff does not
22 show a causal connection between his alleged religious deprivation and the defendants’ actions,
23 he fails to state a cognizable free exercise claim. *See Rizzo*, 423 U.S. at 373-75.

24 b. Religious Land Use and Institutionalized Persons Act

25 A prisoner’s ability to freely exercise his religion is also protected by the Religious Land
26 Use and Institutionalized Persons Act (RLUIPA). The RLUIPA provides that “[n]o government
27 shall impose a substantial burden on the religious exercise of a person residing in or confined to
28 an institution, ... unless the government demonstrates that imposition of the burden on that person

1 ... is in furtherance of a compelling governmental interest ... and is the least restrictive means of
2 furthering that ... interest.” 42 U.S.C.A. § 2000cc-1(a). “RLUIPA defines ‘religious exercise’ to
3 include ‘any exercise of religion, whether or not compelled by, or central to, a system of religious
4 belief.’” *Hartmann v. California Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1124 (9th Cir. 2013);
5 42 U.S.C. § 2000cc-5(7). As with the First Amendment, under RLUIPA, the government imposes
6 a “substantial burden” on a prisoner when it puts “substantial pressure on [him] to modify his
7 behavior and to violate his beliefs.” *Hartmann*, 707 F.3d at 1125 (citation omitted).

8 RLUIPA is more protective of the First Amendment, in that the availability of alternative
9 means of practicing religion is irrelevant to whether the Act has been violated. *See Holt*, 135 S.
10 Ct. at 862. With RLUIPA, the “‘substantial burden’ inquiry asks whether the government has
11 substantially burdened religious exercise..., not whether the RLUIPA claimant is able to engage
12 in other forms of religious exercise.” *Id.*

13 Once a plaintiff shows that government action has substantially burdened her exercise of
14 religion, the burden shifts to the government to show that the challenged conduct furthers a
15 compelling government interest and is the least restrictive means of further that interest. *See id.* at
16 863. “The least-restrictive-means standard is exceptionally demanding...” *Burwell v. Hobby*
17 *Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014) (citation omitted). “[I]f a less restrictive means is
18 available for the Government to achieve its goals, the Government must use it.” *United States v.*
19 *Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 815 (2000).

20 At the same time, in the prison context, “[c]ourts are expected to apply RLUIPA’s
21 standard with ‘due deference to the experience and expertise of prison and jail administrators in
22 establishing necessary regulations and procedures to maintain good order, security and discipline,
23 consistent with consideration of costs and limited resources.’” *Hartmann*, 707 F.3d at 1124.
24 (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005)).

25 As with his First Amendment claim, Plaintiff does not state a viable claim under RLUIPA,
26 because he fails to show that the defendants caused the alleged religious burden. Plaintiff does not
27 allege that Pulido or Smith had any control over the purportedly non-kosher meals he received.

28 ///

1 2. Retaliation

2 A claim for retaliation has five elements. *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir.
3 2012). First, a plaintiff must allege he engaged in protected activity. *Id.* For example, filing an
4 inmate grievance is protected, *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005), as is the
5 right to access the courts. *Bounds v. Smith*, 430 U.S. 817, 821 (1977); *see also Rizzo v. Dawson*,
6 778 F.2d 527, 531-32 (9th Cir. 1985). Second, the plaintiff must show that the defendant took
7 adverse action against him. *Watison*, 668 F.3d at 1114 (citation omitted). “Third, the plaintiff
8 must allege a causal connection between the adverse action and the protected conduct.” *Id.* In
9 other words, the plaintiff must claim the defendant subjected him to an adverse action *because of*
10 his engagement in protected activity. *Rhodes*, 408 F.3d at 567. “Fourth, the plaintiff must allege
11 that the official’s acts would chill or silence a person of ordinary firmness from future [protected]
12 activities.” *Watison*, 668 F.3d at 1114 (internal quotation marks and citation omitted). “Fifth, the
13 plaintiff must allege ‘that the prison authorities’ retaliatory action did not advance legitimate
14 goals of the correctional institution....’” *Id.* (quoting *Rizzo*, 778 F.2d at 532).

15 Plaintiff alleges that Correctional Officer Pulido filed a false RVR because he expressed
16 his religious concerns regarding non-kosher meals. (Doc. 1 at 4.) As explained above, free
17 exercise of religion is protected conduct, as is the filing of inmate grievances. Thus, if Defendants
18 issued the RVR and reduced Plaintiff’s good-time credits because of this protected conduct, then
19 they are liable under Section 1983. Plaintiff therefore states a cognizable retaliation claim.

20 3. Due Process Violation

21 The Fourteenth Amendment protects persons from deprivations of life, liberty, or property
22 without due process of law. U.S. Const. amend. XIV. Protected liberty interests may arise both
23 from the Constitution itself or from state law. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005)
24 (citations omitted). “A state may create a liberty interest through statutes, prison regulations, and
25 policies.” *Chappell v. Mandeville*, 706 F.3d 1052, 1063 (9th Cir. 2013) (citation omitted).

26 When a protected liberty interest is implicated, the Due Process Clause provides certain
27 procedural guarantees. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). The
28 amount of process or specific procedures required vary by context and the particular interest at

1 stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). When a protected interest is at stake, a
2 prisoner charged with a disciplinary violation is entitled to (1) advance written notice of the
3 charge, (2) an opportunity to present evidence and call witnesses, unless calling witnesses would
4 interfere with institutional security, and (3) a written statement by the factfinder of the evidence
5 relied upon and the reason(s) for the discipline. *Wolff v. McDonnell*, 418 U.S. 539, 564-570
6 (1974); *see also Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003). In addition, a
7 disciplinary decision must be supported by “some evidence.” *See Superintendent, Massachusetts*
8 *Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985).

9 Plaintiff alleges that the RVR caused him to forfeit 30 days of good-time credits.
10 California Penal Code section 2931 creates a constitutionally protected liberty interest in time
11 credits. *Toussaint v. McCarthy*, 801 F.2d 1080, 1095 (9th Cir. 1986), *abrogated on other grounds*
12 *by Sandin v. Conner*, 515 U.S. 472 (1995). Thus, Defendants cannot deprive Plaintiff of credits
13 received pursuant to section 2931 without due process. Plaintiff alleges that Lieutenant Smith
14 denied his request to present witnesses at his RVR hearing without an explanation. (Doc. 1 at 5.)
15 Since, absent legitimate security concerns, the ability to present witnesses is a requirement for
16 disciplinary proceedings under *Wolff*, 418 U.S. at 566, Plaintiff states a cognizable due process
17 claim.

18 **C. Requested Relief**

19 Plaintiff seeks compensatory damages in the amount of \$200 per day for each day he has
20 been deprived of good-time credits, as well as “medical for life for [exacerbation] of [his] mental
21 health issues.” (*Id.* at 6.) In addition, Plaintiff seeks punitive damages in the amount of \$15,000,
22 as well as an injunction “[t]o have L. Pulido and C. Smith charged ... under Penal Code Section
23 ... 147.” (*Id.*)

24 With respect to the requested mental-health damages, Section 1997e(e) provides: “No
25 Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional
26 facility, for mental or emotional injury suffered while in custody without a prior showing of
27 physical injury or the commission of a sexual act....” 42 U.S.C. § 1997e(e). Since Plaintiff
28 alleges neither physical injury nor a “sexual act,” as defined by the statute, he cannot pursue

1 damages for mental or emotional injuries. In other words, Plaintiff may not seek “medical for life
2 for ... [his] mental health issues.”

3 With respect to Plaintiff’s requested injunctive relief, California Penal Code section 147
4 provides: “Every officer who is guilty of willful inhumanity or oppression toward any prisoner
5 under his care or in his custody, is punishable by fine not exceeding four thousand dollars ... and
6 by removal from office.” In general, criminal statutes do not give rise to private rights of action.
7 *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006); *see also Lu v. Hawaiian*
8 *Gardens Casino, Inc.*, 50 Cal. 4th 592, 603 (2010) (California courts “begin with the premise that
9 a violation of a state statute does not necessarily give rise to a private cause of action”). California
10 Penal Code section 147 does not provide an exception. Thus, Plaintiff may not seek an injunction
11 charging the defendants with a violation of this statute.

12 **IV. CONCLUSION AND ORDER**

13 For the reasons provided above, **within 21 days**, Plaintiff may file a second amended
14 complaint OR, in the alternative, notify the Court that he wishes to proceed solely on his
15 retaliation and due process claims and solely on his requests for punitive damages and
16 compensatory damages for loss of good-time credits. If Plaintiff no longer wishes to pursue this
17 action, he may file a notice of voluntary dismissal. If Plaintiff needs an extension of time to
18 comply with this order, he shall file a motion seeking an extension no later than **21 days** from the
19 date of service of this order.

20 Plaintiff is informed that an amended complaint supersedes the original and prior
21 amendments, *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012), and must be “complete
22 in itself without reference to the prior or superseded pleading.” Local Rule 220. The Court
23 provides Plaintiff with the opportunity to amend his complaint to cure the deficiencies identified
24 in this order. However, Plaintiff may not change the nature of this suit by adding unrelated claims
25 in an amended complaint.

26 ///

27 ///

28 ///

