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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS BLANKS,

Plaintiff,

No. 2:11-cv-0171 WBS CKD P

vs.

MATTHEW CATE, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

I. Introduction

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. In the complaint filed January 19, 2011, plaintiff names as defendants CDCR Secretary Matthew Cate and California Medical Facility Warden Kathleen Dickinson. (Dkt. No. 1 at 2¹.) His allegations concern his religious practice of Rastafarianism while incarcerated at the California Medical Facility (“CMF”) between 2004 and 2011.

Plaintiff alleges that defendants have “fail[e]d to hire or [procure] a Rastafarian Minister” and “fail[ed] to provide a separate outside area as space of worship and set[] up an Administration Office for affairs of the Rastafarian Minister-Staff.” He alleges that, while

¹ Page citations are to page numbers assigned by the court’s docketing system.

1 CDCR “recognizes Rastafarians as a religion,” Rastafarians are not provided accommodations
2 similar to other religious groups at CMF. Plaintiff alleges that defendants have “fail[ed] to
3 provide Artifact chronos for Rastafarian[s] to possess religious items” and have “refused to
4 provide the allowance of religious headgear (i.e., Tam or Turban) chronos for the wearing of
5 religious ornament in the visiting room similar to Muslim and Jews being permitted to wear
6 [religious headgear.]” He also alleges that defendants have “fail[ed] to provide a religious
7 vendor for the Rastafarians as other faiths are granted.” (Id. at 4-5.)

8 Plaintiff claims that defendants substantially burdened his religious exercise under
9 the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA); and violated his
10 First Amendment right to free exercise of religion and his Fourteenth Amendment rights to equal
11 protection and due process. He seeks damages against each defendant and the following
12 injunctive relief: a Rastafarian minister, an outside worship area and minister administrative
13 office, Rastafarian artifact chronos for religious items, and a vendor memorandum for
14 Rastafarian prisoners. (Dkt. No. 1. at 3-5.)

15 Pending before the court is defendants’ March 9, 2012 motion for summary
16 judgment. (Dkt. No. 21.) Plaintiff has filed an opposition (Dkt. No. 29) and defendants have
17 filed a reply (Dkt. No. 31.)² For the following reasons, the undersigned will recommend that
18 defendants’ motion for summary judgment be granted.

19 II. Summary Judgment Standards Under Rule 56

20 Summary judgment is appropriate when it is demonstrated that there exists “no
21 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
22 matter of law.” Fed. R. Civ. P. 56(c).

23 Under summary judgment practice, the moving party
24 always bears the initial responsibility of informing the district court
of the basis for its motion, and identifying those portions of “the

25
26 ² On November 2, 2012, plaintiff filed an additional declaration (Dkt. No. 36), which the
court will consider as evidence submitted in opposition to summary judgment.

1 pleadings, depositions, answers to interrogatories, and admissions
2 on file, together with the affidavits, if any,” which it believes
3 demonstrate the absence of a genuine issue of material fact.

4 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). “[W]here the
5 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary
6 judgment motion may properly be made in reliance solely on the ‘pleadings, depositions, answers
7 to interrogatories, and admissions on file.’” Id. Indeed, summary judgment should be entered,
8 after adequate time for discovery and upon motion, against a party who fails to make a showing
9 sufficient to establish the existence of an element essential to that party’s case, and on which that
10 party will bear the burden of proof at trial. See id. at 322. “[A] complete failure of proof
11 concerning an essential element of the nonmoving party’s case necessarily renders all other facts
12 immaterial.” Id. In such a circumstance, summary judgment should be granted, “so long as
13 whatever is before the district court demonstrates that the standard for entry of summary
14 judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323.

15 If the moving party meets its initial responsibility, the burden then shifts to the
16 opposing party to establish that a genuine issue as to any material fact actually does exist. See
17 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
18 establish the existence of this factual dispute, the opposing party may not rely upon the
19 allegations or denials of its pleadings but is required to tender evidence of specific facts in the
20 form of affidavits, and/or admissible discovery material, in support of its contention that the
21 dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11. The opposing party
22 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
23 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
24 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
25 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
26 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,
1436 (9th Cir. 1987).

1 In the endeavor to establish the existence of a factual dispute, the opposing party
2 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
3 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
4 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
5 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
6 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
7 committee’s note on 1963 amendments).

8 In resolving the summary judgment motion, the court examines the pleadings,
9 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
10 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
11 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the
12 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.
13 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
14 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
15 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
16 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
17 show that there is some metaphysical doubt as to the material facts Where the record taken
18 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
19 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

20 The court “is not required to comb through the record to find some reason to deny
21 a motion for summary judgment.” Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026,
22 1029 (9th Cir. 2001). Instead the “party opposing summary judgment must direct the Court’s
23 attention to specific triable facts.” S. Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 889 (9th
24 Cir. 2003). Statements in a brief, unsupported by the record, cannot be used to create an issue of
25 fact. Barnes v. Independent Auto Dealers, 64 F.3d 1389, 1396 n.3 (9th Cir. 1995).

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1 On May 18, 2011, the court advised plaintiff of the requirements for opposing a
2 motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. (Dkt. No. 14.) See Rand v.
3 Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), cert. denied, 527 U.S. 1035 (1999). On
4 July 12, 2012, the court issued a second Rand notice to plaintiff pursuant to the Ninth Circuit’s
5 decision in Woods v. Carey, No. 09-15548 (9th Cir. July 6, 2012). (Dkt. No. 26.) Plaintiff filed
6 his opposition to summary judgment on September 14, 2012. (Dkt. No. 29.)

7 III. Facts

8 The following facts are undisputed unless otherwise noted:

9 Plaintiff was transferred to CMF on May 4, 2004. (DUF 3.) In January 2005,
10 plaintiff claimed he was a “Bobo Ashanti Rastafari” and asked to wear his hair in dreadlocks
11 covered by a religious headwrap.³ (DUF 4.) Plaintiff was allowed to wear his hair in dreadlocks
12 and to have white or grey religious headwraps. Plaintiff was not allowed religious headgear that
13 contained colors due to a safety and security-based policy to prevent the display of gang colors,
14 e.g., the color red, associated with the Bloods street gang. (DUF 8.)

15 Between 2006 and 2008, plaintiff submitted three inmate appeals requesting
16 various accommodations for his Rastafarian religious practice, two of which were withdrawn.
17 (Defs.’ Ex A, Mirich Decl, ¶¶ 7-9.) It does not appear that plaintiff exhausted administrative
18 remedies as to the remaining grievance. See 42 U.S.C. § 1997e(a).

19 On December 20, 2009, plaintiff submitted an inmate appeal in Log. No. CMF-
20 09-M-3233. (Dkt. No. 21-3 at 54-55.) At that time, non-defendant P. Mirich was the
21 Community Partnership Manager who oversaw religious programs for inmates at CMF. (Defs.’
22 Ex A, Mirich Decl, ¶ 2.) Mirich interviewed plaintiff concerning the December 2009 appeal.
23 (DUF 11.) This appeal was partially granted at the Second Level of review on February 11,
24

25 ³ Defendants ask the court to take judicial notice of facts about “Rastafarian Beliefs and
26 Practices” as described on the internet website Wikipedia. The court declines this request as
such information is not sufficiently reliable. See Fed. R. Evid. 201(b)(2).

1 2010. (Dkt. No. 21-3 at 56-58.) An appeal of that decision was denied at the Director's Level of
2 review on May 24, 2010. (Dkt. No. 1 at 28.)

3 While that appeal was pending, plaintiff submitted another appeal dated April 28,
4 2010 in Log. No. CMF-10-1033, renewing his requests for religious headgear and artifact
5 chronos. (Dkt. No. 21-3 at 83-84.) By this time, Mirich was no longer Community Partnership
6 Manager; Tim Polasik held that position. However, Mirich again interviewed plaintiff. (Defs.
7 Ex. A, Mirich Decl., ¶ 17.) Polasik also met with plaintiff concerning his requests for religious
8 accommodations. (DUF 25.) Plaintiff's April 2010 appeal was partially granted at the First
9 Level of review on June 9, 2010. (Id. at 85-86.)

10 CMF officials responded to plaintiff's requests as follows:

11 Rastafarian Minister

12 In his December 2009 grievance, plaintiff requested that a Rastafarian minister be
13 appointed at CMF. If none could be found, plaintiff asked that an inmate be approved to
14 temporarily act as minister until one was provided. Plaintiff provided the name and address for
15 the Royal Apostles of Haile Selassi in Oakland, California as a contact in locating a Rastafarian
16 representative. (DUF 10.)

17 In February 2010, the Second Level reviewer stated:

18 A review of other religious groups here at CMF show that they
19 either have a designated chaplain, a contract employee or a
20 volunteer from the community to oversee their services. Mr. W.
21 Forbes, a current CMF employee was assisting with the Rastafarian
22 group; however, due to regulations he was informed that he could
23 no longer assist during his time off. Currently the Imam (the
24 Islamic Chaplain) is assigned to tend to the religious/spiritual
25 needs of the inmates of the Rastafarian Faith. [These inmates], per
26 their own request, are currently assigned to meet for worship
services in Chapel B on Mondays from 13:00 to 14:00 hours. Due
to Monday's being the Imam's day off, when the new Catholic
Chaplain is hired, he will be assigned as the person to tend to the
Rastafarian needs. Mr. Forbes and I are currently canvassing the
local community for a leader of the Rastafarian Faith who would
be willing to volunteer to lead the worship services. If you are
requesting an inmate be permitted to assume the role of minister of
the group until a volunteer is located, I refer you to [Department

1 regulations]. . . Any inmate who feels he is qualified to perform
2 this task may author a memorandum to the Warden stating their
3 request to be considered a temporary minister and list their
4 qualifications.

5 (Dkt. No. 21-3 at 56-57.)

6 The Second Level reviewer further determined that “there are currently not
7 enough inmates of the Rastafarian Faith here at CMF to warrant hiring a staff minister, however
8 CMF is actively seeking a volunteer from the outside community to hold the services you are
9 requesting.” (*Id.* at 57.) Similarly, on Director’s Level review, the reviewer stated that “a full
10 time Rastafarian minister will not be considered due to the small group that practices the faith;
11 however, the community partnership manager is actively seeking a volunteer from the
12 community.” (Dkt. No. 1 at 28.) From lists submitted by plaintiff, it appears that from July 2006
13 to August 2011, between 14 and 18 inmates at CMF identified as Rastafarian. By late November
14 2011, 21 inmates identified as Rastafarian. (Dkt. No. 29 at 30-32.)

15 Plaintiff did not subsequently make a request showing that he was qualified to
16 lead Rastafarian services.⁴ (DUF 11.)

17 In his declaration, Polasik states that plaintiff asked him to schedule Rastafarian
18 group services on Saturdays. Polasik states that, during this time, there was a shortage of
19 chaplains available to facilitate inmate religious programs, and the prison was in the process of
20 filling a vacant position. As a temporary solution, plaintiff and other Rastafarians were allowed
21 to meet outside in a fenced area between the outside areas used by nature-based religious groups,

22 ⁴ Plaintiff notes that in a July 2006 grievance, No. CMF-06-M-1473, he “clearly
23 outline[d] his request to be the representative of the Rastafarian collective.” (Dkt. No. 29 at 6;
24 see Dkt. No. 21-3 at 37-39.) In an August 2006 decision, the Second Level reviewer stated that
25 plaintiff’s request “is denied at this time due to the safety and security of the institution, meaning
26 there must be a staff representative present during these services.” (Dkt. No. 21-3 at 41.) As a
general rule, inmate ministers are not approved because of the potential for conflict and undue
influence over other inmates. (DUF 30.) In plaintiff’s case, there had been some conflict
between plaintiff and other Rastafarian inmates over the question of whether the religion allowed
homosexuality. Plaintiff also had a number of disciplinary actions in his record. (*Id.*)

1 like the Wiccan and Odinists, and the Native American spiritual grounds. That area was under
2 direct observation and supervision by officers. When the vacant chaplain position was filled, the
3 Rastafarian service was again scheduled in the chapel. (DUF 29.)

4 In opposition to summary judgment, plaintiff asserts that Rastafarian inmates at
5 CMF were “denied services” for almost a year “because CDCR never hired a Catholic priest.”
6 (Dkt. No. 29 at 5.) In sum, it appears that for a period of several months at CMF, due to
7 scheduling and staffing issues, Rastafarian inmates were allowed to meet outside in a fenced area
8 near where other religious groups met, but were not led by a chaplain or an inmate minister.

9 As of December 2, 2011, Rastafarian group services at CMF were scheduled for
10 Tuesday afternoons in Chapel B, led by the Islamic chaplain. (Dkt. No. 21-3 at 89.)

11 Place of Worship

12 In his December 2009 grievance, plaintiff asked that an outside area be made
13 available for Rastafarian worship.⁵ Plaintiff claimed that an outside area was needed because
14 Rastafarians were not allowed to burn incense, engage in drumming and chanting, or play music
15 recordings in the chapel.

16 Plaintiff was apparently mistaken about certain activities being banned in the
17 chapel. In February 2010, the Second Level reviewer stated that there was “no security issue if a
18 Rastafarian drum service is held inside of Chapel B during a scheduled worship service.” In a
19 later meeting, Polasik also told plaintiff that religious drumming or chanting or the playing of
20 music was allowed in the prison’s chapels. (DUF 28.)

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22
23 ⁵ The fenced area where Rastafarian services were held in 2010 was not the outside area
24 plaintiff requested. Plaintiff specifically “asked that a courtyard area outside Chapels A and B be
25 opened” for Rastafarian religious use. (DUF 10.) However, for safety and security reasons,
26 inmates were not allowed to access the courtyard area outside the chapels. The courtyard is
located near the unit at CMF where administrative segregation inmates are housed, and access to
the courtyard is restricted to prevent communication between the administrative segregation
inmates and other inmates. In the past, an inmate attempted to escape by climbing from the
courtyard onto the roof of an adjoining building. (DUF 22.)

1 However, the Second Level reviewer stated, “[t]he authorizing of the use of
2 incense for your religious service must first go through the Religious Review Committee for
3 initial approval. Please document this request . . . and send it to the office of the Community
4 Partnership Manager for processing.” (Dkt. No. 21-3 at 57.) The burning of incense also had to
5 be approved by the prison’s Fire Chief, as open flame devices could be allowed for ceremonial
6 purposes if they did not pose a fire hazard. (DUF 17-21.) Plaintiff did not document a religious
7 need to burn incense for Rastafarian group services and did not submit a request for approval.
8 (DUF 15.)

9 On Director’s Level review, it was noted that plaintiff’s request “for a secondary
10 place of worship was denied.” (Dkt. No. 1 at 28.)

11 As described above, Rastafarian inmates were assigned to a fenced outdoor area
12 for worship services at CMF until a chaplain and/or chapel space was available. Plaintiff
13 subsequently requested that Rastafarian inmates be allowed to resume services in the chapel. On
14 First Level review of plaintiff’s April 2010 grievance, the reviewer states: “Lieutenant Mirich has
15 . . . informed me that you are requesting time in Chapel B on Sunday to hold a worship service.
16 This information has been passed on to Mr. Polasik who will review the current chapel schedule
17 and get with you to find a better time for your services.” (Dkt. No. 21-3 at 85.) As noted above,
18 by December 2011, the Rastafarians were scheduled for weekly services facilitated by an Islamic
19 chaplain in Chapel B.

20 Religious Artifact Chronos

21 In his December 2009 grievance, plaintiff asked that prison officials provide
22 religious chronos allowing him to have a portrait of Emperor Haile Selassie; a Lion of Judah
23 Banner; religious headgear and permission to wear it in the visiting room; a religious necklace or
24 bracelet with the colors red, green, and gold; oils and incense; and recordings of drumming and
25 chanting. His exhibits to the grievance included a November 2005 religious chrono showing that
26 he was allowed to have dreadlocks and an October 2006 chrono showing that he was allowed to

1 carry a Lion of Judah banner to and from Rastafarian services. (Dkt. No. 21-3 at 72-73.)

2 In response, the Second Level reviewer stated:

3 [N]ew chronos for 2010 are currently being retyped and will be
4 distributed to inmates of the Rastafarian Faith as soon as they are
5 completed and signed. These chronos will include all items
6 currently authorized for wear/possession by inmates of the
7 Rastafarian Faith. These items will also be included in the updated
8 CMF D.O.M. Supplement of Section 101060.

9 (Dkt. No. 21-3 at 57.) The Director's Level decision in May 2010 similarly stated: "[N]ew
10 chronos are being prepared that will list those items approved for Rastafarian worship." (Dkt.
11 No. 1 at 28.)

12 In his April 2010 grievance, plaintiff complained that, although he had been told a
13 meeting would take place to resolve his request for artifact chronos, no such meeting had
14 occurred and he still had not received approval for these items.

15 In his June 2010 response, the First Level Reviewer stated:

16 These chronos are in the possession of the Community Resources
17 Manager, [Polasik]. Mr. Polasik has reviewed the chronos and is
18 forwarding them to Administration for review/approval of the
19 items and then to the Warden for final approval and her signature.
20 Once these chronos are signed, you will be given a copy which
21 allow all documented members of the Rastafarian faith group to
22 possess the approved items listed on the chrono.

23 (Dkt. No. 21-3 at 85.)

24 In a declaration, Polasik states plaintiff did not receive new religious chronos
25 before he left CMF in December 2011. Polasik states that he advised not to approve religious
26 accommodations through the issuance of new chronos because a Wardens' Advisory Group was
27 reviewing all new religious accommodation requests in an effort to ensure that requests from
28 inmates at different institutions were treated consistently. Defendants assert that plaintiff
29 continued to be allowed to practice Rastafarianism and have previously approved items and
30 accommodations, even though the new religious chronos were not issued. (DUF 31.)

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1 From the record, it is not clear exactly what items plaintiff was allowed to possess
2 while awaiting the issuance of new religious chronos in 2010. Plaintiff's evidence includes an
3 August 2006 chrono stating he was approved "to possess and carry the Rastafarian religious
4 artifact 'Lion of Judah' banner, to and from religious services," which expired in August 2007.
5 (Dkt. No. 29-1 at 6). A December 2011 property inventory states that plaintiff possessed grey
6 and white Rasta hats. (Dkt. No. 29 at 47). In sworn declarations, three CMF Rastafarian inmates
7 state that they witnessed plaintiff receive a "picture of Haile Selassie at the Rastafarian service
8 that was given to him by the Community Project Manager Tim Polasik." They also state that
9 plaintiff possessed "a Rastafarian religious banner and two head-gear turbans[,]" but do not
10 specify when these events occurred. (Id. at 48-53.) In his declaration, Mirich asserts that
11 plaintiff would have been allowed to bring an approved religious banner to group services and
12 would have been allowed to have a portrait of Emperor Haile Selassie. Plaintiff would also have
13 been allowed to have a religious medallion and chain with an approved symbol, but not colored
14 medallions, for the same safety and security reasons that applied to religious headgear. (DUF
15 13.)

16 At his meeting with Polasik, plaintiff requested chronos allowing him to keep
17 certain religious items in his cell for personal use, but also bring them to Rastafarian meetings.
18 As a general rule, an inmate is allowed a religious picture, religious books like a Bible, and an
19 approved religious medallion for personal use. Other, larger items would be allowed for group
20 religious use but otherwise kept by prison staff. (DUF 26.)

21 Plaintiff said he had an outside person willing to donate the items he wanted.
22 Polasik told plaintiff to have the donor send Polasik the items to review to determine if they
23 would be allowed. Contrary to Polasik's instructions, the donated items were sent directly to
24 plaintiff, and staff returned them to the sender as unauthorized. Polasik told plaintiff he could
25 contact the donor and have the items resent to Polasik as instructed. The donor did not resend
26 the items. (Id.)

1 Religious Vendor

2 In his December 2009 grievance, plaintiff asked that a Rastafarian vendor be
3 approved so that inmates could purchase approved Rastafarian religious artifacts.

4 In February 2010, the Second Level reviewer stated: “Please have the inmates of
5 the Rastafarian faith submit a list of requested vendors and these vendors will be reviewed by the
6 Community Partnerships Manager. A vendor or vendors for approved Rastafarian items will be
7 established.” (Dkt. No. 21-3 at 57.)

8 In May 2010, the Director’s Level reviewer noted: “[A] vendor has been
9 approved and the institution is awaiting the names and addresses of those who can provide the
10 approved Rastafarian items and artifacts.” (Dkt. No. 1 at 28.)

11 In a June 2010 response to plaintiff’s April 2010 grievance, the First Level
12 Reviewer stated: “You have given Lieutenant Mirich the name and address of a vendor who can
13 fill your religious artifact requirements. This information will be passed on to Mr. Polasik who
14 will complete the required documents to grant this part of your request.” (Dkt. No. 21-3 at 85.)
15 The reviewer further noted that a meeting was scheduled on June 15, 2010 “in order to finalize
16 any outstanding issues in regards to the Rastafarian faith” and that plaintiff’s religious requests
17 were “being processed for approval as long as they meet all required policies and procedures.”
18 (Id. at 85-86.)

19 Plaintiff was transferred from CMF to Deuel Vocational Institution-Main (DVI)
20 on December 22, 2011. (DUF 1.) One month later, plaintiff submitted an inmate appeal
21 requesting the same religious accommodations that he seeks in the instant complaint, filed on
22 January 19, 2011. (Dkt. No. 29 at 21.) A May 13, 2012 chrono from DVI states that plaintiff is
23 authorized to possess numerous Rastafarian items. These include a religious medallion and
24 chain; religious literature purchased from an approved vendor; photos of “religious symbols or
25 personalities”; white, black, or gray turbans or tams; 4 oz. of ceremonial fragrance; 3 compact
26 discs of Rasta worship music quarterly; and a photo of a banner. The chrono states that

1 “[r]eligious head coverings, medallions or public approved artifacts may be worn in the Housing
2 Units, Corridors, Yards, Dining Halls, Visiting Rooms religious meeting rooms, Board/Review
3 hearings and work assignments at the discretion of the supervisor relative to safety concerns.”

4 (Id. at 23.)

5 DVI also issued a May 9, 2012 memorandum in response to plaintiff’s “inquiries
6 regarding the purchase of religious artifacts, and approval for Rastafarian services for groups of
7 inmates[.]” The memo describes CDCR procedures for “the purchase of religious artifacts”
8 through inmates’ trust accounts or by a third party. The memo stated that, as of May 2012, there
9 was “no prior history” of Rastafarian services at DVI. It outlined the process for establishing a
10 new religious practice at DVI, including an inmate needs assessment, a resource assessment, and
11 other steps. The memo indicated that, as of May 2012, DVI staff were “near the end of the
12 Needs Assessment phase (due to the Lock-Down) and at the beginning of the resource
13 assessment, appropriations stage of establishing Rastafarian services at DVI.” (Id. at 24.)

14 IV. RLUIPA

15 Plaintiff claims that defendants substantially burdened his religious exercise of
16 Rastafarianism at CMF. The RLUIPA provides:

17 No government shall impose a substantial burden on the religious
18 exercise of a person residing in or confined to an institution ... even
19 if the burden results from a rule of general applicability, unless the
20 government demonstrates that imposition of the burden on that
person (1) is in furtherance of a compelling government interest;
and (2) is the least restrictive means of furthering that compelling
government interest.

21 42 U.S.C. § 2000 cc-1(a). “RLUIPA defines ‘religious exercise’ to include ‘any exercise of
22 religion, whether or not compelled by, or central to, a system of religious belief.’” Greene v.
23 Solano County Jail, 513 F.3d 982, 986 (9th Cir. 2008) (quoting 42 U.S.C. § 2000cc-5(7)(A)).

24 RLUIPA “mandates a stricter standard of review for prison regulations that burden the free
25 exercise of religion than the reasonableness standard under Turner.” Shakur v. Schriro, 514 F.3d
26 878, 888 (9th Cir. 2008) (citing Warsoldier v. Woodford, 418 F.3d 989, 994 (9th Cir. 2005)).

1 Plaintiff bears the initial burden of demonstrating that defendants substantially burdened the
2 exercise of his religious beliefs. Warsoldier, 418 F.3d at 994-95. “A ‘substantial burden’ on
3 ‘religious exercise’ must impose a significantly great restriction or onus upon such exercise.” Id.
4 at 995 (citing San Jose Christian Coll. v. City of Morgan Hill, 360 F.3d 1024, 1034 (9th Cir.
5 2004)).

6 Before turning to the parties’ evidence, the court considers what type of relief is
7 available to plaintiff against defendants Cate and Dickinson under RLUIPA.

8 Plaintiff seeks compensatory damages against defendants, but does not indicate
9 whether he is suing them in their official or individual capacities. If the former, official-capacity
10 damages under RLUIPA are barred by the state’s Eleventh Amendment sovereign immunity.
11 Sossamon v. Texas, 131 S. Ct. 1651, 1663 (2011); Holley v. California Dept. of Corrections, 599
12 F. 3d 1108, 1114 (9th Cir. 2010) (“The Eleventh Amendment bars Holley’s suit for official-
13 capacity damages under RLUIPA.”)

14 As to whether individual damages are available under RLUIPA, the United States
15 Supreme Court has not resolved this question and Ninth Circuit Court of Appeals has expressly
16 reserved the issue. See Florer v. Congregation Pidyon Shevuyim, N.A., 639 F.3d 916, 922 n. 3
17 (9th Cir. 2011) (“Defendants do not challenge, and we do not decide, RLUIPA’s application to
18 private actors sued for damages in their individual capacity The Ninth Circuit has not ruled on
19 this issue in a precedential opinion, and we reserve this question for another day.”).

20 However, five circuit courts have held that RLUIPA does not authorize suits for
21 damages against government officials in their individual capacities. See Stewart v. Beach, ----
22 F.3d ----, 2012 WL 6582331, at *8 (10th Cir. Dec. 18, 2012); Rendelman v. Rouse, 569 F.3d 182,
23 187-89 (4th Cir. 2009); Sossamon v. Texas, 560 F.3d 316, 327-29 (5th Cir. 2009); Nelson v.
24 Miller, 570 F.3d 868, 886-89 (7th Cir. 2009); Smith v. Allen, 502 F.3d 1255, 1271-75 (11th Cir.
25 2007). Most courts have assessed Congress’s power to enact RLUIPA as stemming from its
26 Article I spending power. See generally Nelson, 570 F.3d at 886. These courts have reasoned

1 that, because individual officers are not the recipients of federal funds, Congressional enactments
2 pursuant to the Spending Clause do not impose liability on individual defendants. Several district
3 courts in the Ninth Circuit have also concluded that RLUIPA does not authorize suits for damages
4 against government officials in their individual capacities. Kindred v. California Department of
5 Mental Health, No. 1:08-cv-1321-AWI-GSA-PC, 2011 WL 2709104, at *8-9 (E.D. Cal. July 12,
6 2011) (and cases cited therein); Birdwell v. Cates, No. Civ. S-10-0719 KJM GGH P, 2012 WL
7 1641964, at *9 (E.D. Cal. May 9, 2012) (and cases cited therein). See also Washington v. Brown,
8 No. 2:06-cv-1994 WBS DAD (PC), 2012 WL 3704847, at *2-7 (E.D. Cal. Aug. 24, 2012),
9 (adopted insofar as consistent with district court order issued October 5, 2012). The undersigned
10 finds no reason to depart from the Fourth, Fifth, Seventh, Tenth and Eleventh Circuits and various
11 Ninth Circuit district courts in concluding that RLUIPA does not create a damages remedy against
12 individual defendants. Thus defendants are entitled to summary judgment on plaintiff's damages
13 claims under RLUIPA.

14 As to plaintiff's requested injunctive and declaratory relief, the complaint seeks
15 such relief based on prison policies and conduct of officials at CMF. Plaintiff was transferred to
16 DVI on December 22, 2011. Generally, when an inmate seeks injunctive or declaratory relief
17 concerning the prison where he is incarcerated, his claims for such relief become moot when he is
18 no longer subjected to those conditions. Nelson v. Heiss, 271 F.3d 891, 897 (9th Cir. 2001);
19 Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir.1995); Johnson v. Moore, 948 F.2d 517, 519 (9th
20 Cir.1991). Thus plaintiff's claims for injunctive relief against defendant Warden Dickinson
21 should be denied as moot.

22 In his opposition to summary judgment, plaintiff argues that prison officials at DVI
23 perpetuated the challenged policies at CMF. (Dkt. No. 29 at 9-10.) Plaintiff's claims for
24 injunctive and declaratory relief against Secretary Cate (or rather, his successor under Federal
25 Rule of Civil Procedure 25(d)) are not mooted by his transfer to another prison insofar as

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1 plaintiff's claims concern CDCR practices, policies, or procedures.⁶ See Nelson, 271 F.3d at 897.
2 Thus the remaining issue is whether defendant Cate is entitled to summary judgment on plaintiff's
3 RLUIPA claims for injunctive and declaratory relief.

4 The court first considers whether plaintiff has shown that his exercise of religious
5 belief was substantially burdened by CDCR policies, practices, or procedures. Here, the answer is
6 no. Prison officials at CMF declined to hire a Rastafarian chaplain, citing the relatively small
7 number of Rastafarian inmates.⁷ However, chaplains of other faiths were assigned to facilitate
8 Rastafarian services, which were held either in the chapel or, for some months, in a secure outside
9 area where other religious groups met. Even though Rastafarians at CMF lacked any chaplain for
10 several months, this was due to scheduling and staffing constraints specific to CMF. Plaintiff or
11 another Rastafarian inmate could have applied to lead the group until a chaplain was appointed,
12 but did not. In any case, with respect to chaplaincy issues specific to CMF, defendant Cate would
13 not be the proper defendant for injunctive relief.

14 Plaintiff's request for a "separate outside area as space of worship" at CMF has
15 also been mooted by his transfer to DVI and is institution-specific. Plaintiff points to no CDCR
16 policy, practice, or procedure that precludes him from drumming, chanting, or burning incense as
17

18 ⁶ For claims seeking injunctive relief in which a state practice, policy, or procedure is
19 attacked on federal grounds, it is not necessary to allege the personal involvement of a state
20 official if the practice, policy, or procedure relates in some way to the job duties of the named
21 defendant. Ryles v. Felker, 2008 WL 1901231, at *3 (E.D. Cal. Apr.28, 2008). "All that is
22 required is that the complaint name an official who could appropriately respond to a court order
on injunctive relief should one ever be issued." Id. See also Rouser v. White, 707 F. Supp. 2d
1055, 1066 (E.D. Cal. 2010) (proper defendant for injunctive relief regarding implementation of
a CDCR policy would be the Secretary of the CDCR in his official capacity or, to the extent that
the policy is institution-specific, the warden in his official capacity).

23 ⁷ In McCullum v. CDCR, 647 F.3d 870, 874-75 (9th Cir. 2011), the Ninth Circuit set
24 forth a detailed description of CDCR's historical and current policies with respect to its
chaplaincy program, including the criteria CDCR uses "in determining the need for a given paid
25 chaplaincy position." Defendants cite to the facts recited in McCullum. (Dkt. No. 21-1- at 11.)
However, courts may take judicial notice of another court's opinion for the existence of the
26 opinion, but not for the truth of the facts recited therein. Lee v. City of Los Angeles, 250 F.3d
668, 690 (9th Cir. 2001).

1 part of his religious practice, the latter subject to appropriate review for fire safety. Plaintiff also
2 requests an administrative office for a Rastafarian minister, but the lack of this facility cannot be
3 construed as a “substantial burden” on plaintiff’s religious exercise.

4 As to plaintiff’s request for chronos allowing him to possess various Rastafarian
5 items, his requests to CMF officials have been mooted, and the evidence shows he is allowed to
6 possess numerous religious artifacts and headgear at DVI. He has not shown that any CDCR
7 policy, practice, or procedure is burdening his religious exercise in this regard.

8 Similarly, while plaintiff suffered some delay in the approval of a Rastafarian
9 religious vendor at CMF, this request has been mooted by his transfer to DVI. A May 2012
10 memorandum submitted by plaintiff outlines CDCR procedures for inmates’ purchase of religious
11 articles through outside vendors. Insofar as plaintiff is seeking DVI’s approval of a specific
12 vendor of Rastafarian items, that is a DVI-specific issue and does not implicate defendant Cate.

13 At DVI, non-defendant prison officials appear responsive to plaintiff’s request to
14 establish a Rastafarian religious program through institutional procedures. Because plaintiff has
15 not shown that any CDCR policy, practice, or procedure has substantially burdened his access to
16 religious services, no injunctive relief against defendant Cate is warranted on this basis. Thus
17 both defendants should be granted summary judgment on the RLUIPA claims.

18 V. § 1983

19 The Civil Rights Act provides as follows:

20 Every person who, under color of [state law] ... subjects, or causes
21 to be subjected, any citizen of the United States ... to the deprivation
22 of any rights, privileges, or immunities secured by the Constitution
... shall be liable to the party injured in an action at law, suit in
equity, or other proper proceeding for redress.

23 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
24 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
25 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
26 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the

1 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits
2 to perform an act which he is legally required to do that causes the deprivation of which complaint
3 is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

4 Here defendants are immune to section 1983 damages claims against them in their
5 official capacities under the Eleventh Amendment. Such claims are really suits against the
6 governmental employer because the employer must pay any damages awarded. Butler v. Elle, 281
7 F.3d 1014, 1023 n.8 (9th Cir. 2002). The Eleventh Amendment prohibits federal jurisdiction over
8 claims against a state unless the state has consented to suit or Congress has abrogated its
9 immunity. Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 99–100 (1984). The
10 state's consent to suit must be unequivocally expressed. Id.

11 Insofar as defendants are sued in their individual capacities, liability under section
12 1983 arises only upon a showing of personal participation by the defendant. Taylor v. List, 880
13 F.2d 1040, 1045 (9th Cir. 1989), citing Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979).

14 There is no respondeat superior liability under section 1983. Id., citing Ybarra v. Reno
15 Thunderbird Mobile Home Village, 723 F.2d 675, 680-81 (9th Cir. 1984). However, on a theory
16 of "direct liability" under section 1983, a supervisory official is liable "even without overt
17 personal participation in the offensive act if supervisory officials implement a policy so deficient
18 that the policy itself is a repudiation of constitutional rights and is the moving force of the
19 constitutional violation." Redman v. County of San Diego, 942 F.2d 1435, 1447 (9th Cir. 1991).

20 A claim for injunctive relief, as opposed to monetary relief, may be made on a
21 theory of respondeat superior in a section 1983 action. See Peavy v. Rohlfing, 2012 WL 4364502,
22 at *3 (E.D. Cal. Sept. 20, 2012) (citing cases). For the reasons discussed above, any claims for
23 injunctive relief against defendant Dickinson are mooted by plaintiff's transfer to DVI. In fact, by
24 the time plaintiff left CMF in December 2011, nearly a year after filing the complaint, CMF
25 officials had addressed some of the issues plaintiff raises.

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1 A. First Amendment

2 In order for a prisoner to prove that his First Amendment right to free exercise of
3 his religion has been violated, he must show that his practice of his religion was burdened by the
4 prevention of his engaging in conduct mandated by his faith without any justification reasonably
5 related to interests concerning the care of committed persons. See Freeman v. Arpaio, 125 F.3d
6 732, 736 (1997) (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). Several factors are relevant in
7 determining the reasonableness of the acts of prison officials. First, there must be a valid and
8 rational connection between the jail official’s actions and the interest put forward to justify those
9 actions. Turner, 482 U.S. at 89. Second, the court must consider whether there are alternate
10 means of exercising the right impinged upon. Id. at 90. Third, the court must consider the impact
11 that accommodation of the asserted First Amendment right will have on guards, other inmates,
12 and prison resources. Id. Finally, the absence of alternatives is evidence of the reasonableness of
13 the restriction of the asserted First Amendment right. Id.

14 As to plaintiff’s request for a Rastafarian chaplain, the Constitution does not
15 require prisons “to provide each inmate with the spiritual counselor of his choice.” Allen v.
16 Toombs, 827 F.2d 563, 569 (9th Cir.1987). Prisons need only provide inmates with a “reasonable
17 opportunity” to worship in accord with their conscience. Id. The Constitution does not require
18 “that every religious sect or group within a prison - however few in number - must have identical
19 facilities or personnel. A special chapel or place of worship need not be provided for every faith
20 regardless of size; nor must a chaplain, priest, or minister be provided without regard to the extent
21 of the demand. But reasonable opportunities must be afforded to all prisoners to exercise the
22 religious freedom guaranteed by the First and Fourteenth Amendment without fear of penalty.”
23 Cruz v. Beto, 405 U.S. 318, 322 n.2 (1972).

24 Here, plaintiff has not shown that prison officials’ failure to provide a Rastafarian
25 chaplain denied him a reasonable opportunity to exercise his faith. Evidence submitted by
26 plaintiff indicates that less than 20 inmates at CMF identified as Rastafarian for most of the

1 relevant period. The Rastafarians were assigned a Muslim chaplain to assist with their services
2 and a time slot for chapel worship. However, for several months, when an unfilled position made
3 a chaplain unavailable to oversee Rastafarian services in the chapel, the Rastafarians met in an
4 outside area without a chaplain's assistance, near where other religious groups met. Although
5 plaintiff was advised that he could request that he or another inmate be approved as a temporary
6 inmate minister, he never submitted such a request. By December 2011, Rastafarians were again
7 scheduled for a weekly chapel slot, overseen by a paid Muslim chaplain. During this period,
8 prison officials repeatedly acknowledged that Rastafarian inmates were entitled to religious
9 accommodations such as weekly gatherings, artifact chronos, special headgear, and permission to
10 drum, chant, and possibly burn incense in their ceremonies. At DVI, the evidence shows that
11 prison officials were responsive to plaintiff's request to establish a Rastafarian religious program
12 at this institution. Thus officials' failure to make a Rastafarian minister available to plaintiff did
13 not violate the latter's First Amendment rights.

14 Nor did prison officials' failure to provide a particular outdoor area and/or an
15 administrative building for Rastafarians violate plaintiff's right to free exercise. Rastafarians
16 were not prohibited from using the chapels at CMF for services, subject to availability. By the
17 time plaintiff left CMF, Rastafarian group services at CMF were scheduled for Tuesday
18 afternoons in Chapel B. Defendants also cited "a valid and rational connection" between prison
19 security interests and the denial of plaintiff's request to use the courtyard outside the chapels for
20 Rastafarian services. Instead, plaintiff and other Rastafarian inmates were allowed to hold
21 religious meetings in a secure outdoor area until a minister for a chapel meeting became available.
22 Thus plaintiff's right to free exercise was not violated based on the location of Rastafarian group
23 activities.

24 As to plaintiff's request for artifact chronos, it appears that, while consistently
25 acknowledging that Rastafarian inmates were entitled to possess certain religious items, CMF
26 officials delayed issuing renewed artifact chronos to plaintiff for more than a year: throughout

1 2010 and for an unknown period of time prior to that. The reasons ranged from simple
2 bureaucratic delay (waiting for the chronos to be retyped, reviewed, and signed), to a directive to
3 Polisak not to issue any new religious chronos pending committee review, in order to ensure that
4 prisons responded consistently to inmate requests. It appears that, even without the renewed
5 chronos, plaintiff was allowed to possess certain, previously-approved religious items during this
6 period, such as headwraps. However, drawing all reasonable inferences in plaintiff's favor, the
7 court will assume that plaintiff was not able to possess certain, previously-approved religious
8 items due to a lengthy delay in the issuance of new chronos.

9 In an apparent attempt to address this problem, Polisak met with plaintiff in 2011
10 and advised him that an outside donor could send religious items directly to Polisak to review,
11 who would then pass them on to inmates. However, these instructions were not followed, and the
12 items were returned to the donor as unauthorized and never re-sent.

13 In May 2012, DVI officials issued a chrono to plaintiff authorizing him to possess
14 numerous religious items. His request for injunctive relief on this basis is therefore moot. The
15 question is whether the delayed issuance of religious chronos at CMF could give rise to damages
16 liability for either defendant Dickinson or Cate under section 1983. Regarding the former,
17 plaintiff has not shown that Warden Dickinson was directly involved in the delay in issuing 2010
18 religious chronos. The evidence shows that non-defendants Mirich and Polasik were responsible
19 for addressing inmates' religious needs, including, presumably, having the chronos "re-typed" and
20 processed in a timely manner. Certainly Dickinson was not responsible for the fact a donor sent
21 religious items directly to plaintiff rather than to Polasik for review in 2011, resulting in the items'
22 being sent back to the donor. Nor is there any evidence that the delays were based on a
23 constitutionally-deficient CMF policy. Thus Dickinson is entitled to summary judgment on this
24 issue.

25 As to defendant Cate, one reason plaintiff's chronos were delayed was that Polisak
26 was advised (by whom, it is not known) that no new religious chronos should be issued until a

1 Wardens' committee could ensure that prisons responded consistently to inmates' requests.
2 Construing this directive as some sort of policy, the court lacks sufficient information about it to
3 determine whether it was reasonable under the factors set forth in Turner, 482 U.S. at 89-90. For
4 example, the record does not indicate how long this policy was in place. See Cannell v. Lightner,
5 143 F.3d 1210, 1215 (9th Cir. 1998) ("relatively short-term and sporadic" intrusion on inmate's
6 religious practice was not a "substantial burden" on free exercise). However, plaintiff has not
7 produced any evidence that Cate was involved in implementing the formal or informal policy of
8 temporarily delaying new religious chronos, or even knew about it. Thus Cate is entitled to
9 summary judgment on this ground.

10 Regarding the lack of a religious vendor, plaintiff has not shown that either
11 defendant was directly involved in delaying or denying the approval of a Rastafarian vendor at
12 CMF. In response to plaintiff's 2009 and 2010 grievances, non-defendant officials stated that a
13 vendor "would be established"; "has been approved"; and could "fill [plaintiff's] religious artifact
14 requirements," respectively. Plaintiff was also advised to have an outside party send religious
15 items directly to Polasik for approval and distribution to inmates. At DVI, as noted above,
16 plaintiff was provided a memo of CDCR procedures for the purchase of religious artifacts "and
17 sent by the vendor to DVI." (Dkt. No. 29 at 24.) Even assuming arguendo that the lack of an
18 approved vendor for an unspecified period of time substantially burdened plaintiff's religious
19 exercise, neither defendant is causally linked to this problem by the evidence presented. Both are
20 entitled to summary judgment on this ground.

21 B. Equal Protection

22 The Equal Protection Clause requires that persons who are similarly situated be
23 treated alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439(1985). An
24 equal protection claim may be established by showing that the defendant intentionally
25 discriminated against the plaintiff based on the plaintiff's membership in a protected class,
26 Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), or that similarly situated individuals

1 were intentionally treated differently without a rational relationship to a legitimate state purpose,
2 Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v. Behrens, 546
3 F.3d 580, 592 (9th Cir. 2008). In the prison context, a prisoner must demonstrate that his
4 treatment is invidiously dissimilar to that received by other inmates.

5 Here, plaintiff has not shown that similarly situated inmates were intentionally
6 treated differently without a rational relationship to a legitimate state purpose. Plaintiff asserts
7 that other religious groups at CMF were provided either a paid or volunteer minister, while the
8 Rastafarians were not provided a dedicated minister. He also asserts that inmates of other
9 religions had an “individual place of worship” while the Rastafarians did not. (Dkt. 1 at 4.)

10 First, plaintiff has not shown that he is similarly situated to inmates belonging to
11 other religious groups. A small number of inmates at CMF identified as Rastafarian during the
12 relevant period, and at DVI, there was apparently no Rastafarian program prior to plaintiff’s
13 arrival. Prison officials are not required to provide exactly the same accommodations to large and
14 small religious groups alike. See Cruz, 405 U.S. 322 n.2.

15 Second, plaintiff has not shown that he received dissimilar treatment not rationally
16 related to a legitimate state purpose. Plaintiff was allowed to participate in group religious
17 activities at scheduled times, like inmates of other religions. Prison officials provided chapel
18 time, chaplains, and other staff to facilitate the Rastafarian religious program and allowed inmate
19 volunteers and outside vendors, as with other religious groups. Rastafarians were allowed to
20 possess headwraps, medallions, banners, pictures, and other religious items, subject to certain
21 safety regulations and the 2010 delay described above. Although plaintiff did not receive renewed
22 artifact chronos in 2010, he has not shown that inmates of other faiths were treated differently, or
23 that the no-renewal directive did not apply across the board to inmates of all religions. Nor has
24 plaintiff shown intentional discrimination. Thus defendants are entitled to summary judgment on
25 plaintiff’s equal protection claim.

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1 C. Due Process

2 Plaintiff alleges that defendants' interference with his religious exercise denied him
3 due process under the Fourteenth Amendment. If a claim implicates a specific constitutional
4 right, the claim should be analyzed under that standard and not under the Due Process Clause.
5 Armendariz v. Penman, 75 F.3d 1311, 1318 (9th Cir. 1996), overruled in part on other grounds as
6 stated in Crown Point Dev., Inc. v. City of Sun Valley, 506 F.3d 851, 852-853 (8th Cir. 2007).
7 "The scope of substantive due process does not extend to areas addressed by other, more specific
8 provisions of the Constitution." Id. at 1326. Here, plaintiff's religious exercise claim must be
9 analyzed under the First Amendment and his religious discrimination claims under the Equal
10 Protection Clause of the Fourteenth Amendment, as discussed above.

11 Accordingly, IT IS HEREBY RECOMMENDED THAT:

- 12 1. Defendants' March 9, 2012 motion for summary judgment (Dkt. No 21) be
13 granted; and
14 2. This case be closed.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
17 days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
20 shall be served and filed within fourteen days after service of the objections. The parties are
21 advised that failure to file objections within the specified time may waive the right to appeal the
22 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 Dated: January 25, 2013

24 
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE