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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LEWIS DIXIE,
Plaintiff,
v.
TIM VIRGA,
Defendants.

No. 2:12-cv-2626-MCE-DAD

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff, a Muslim, claims that defendants Warden Virga, Elia, Fardan, and Cannedy violated his rights by prohibiting inmates participating in the Enhanced Outpatient Program (“EOP”)¹ at California State Prison, Sacramento (“CSP-SAC”) from attending Jumu’ah prayer sessions with General Population (“GP”) inmates following an alleged fight between an EOP inmate and a GP inmate after a prayer session. Plaintiff seeks the award of damages, as well as injunctive and declaratory relief.

¹ The “Enhanced Outpatient Program (EOP) provides care to mentally disordered inmate-patients who would benefit from the structure of a therapeutic environment that is less restrictive than inpatient settings. This may include response to crisis symptoms which require extensive treatment, but can be managed as outpatient therapy with several psychotherapy sessions or medication adjustment with follow-up visits.” Mental Health Program Guide 8, California Department of California Department of Corrections and Rehabilitation, <http://www.cdcr.ca.gov/dchcs/docs/mental%20health%20program%20guide.pdf>.

1 Presently pending before the court are the following matters:

- 2 • Mandatory screening of plaintiff's first amended complaint, filed August 11, 2014.
3 (ECF No. 77.)
- 4 • Plaintiff's motion to compel discovery responses, filed July 25, 2014. (ECF No. 74.)
- 5 • Plaintiff's renewed² motion for appointment of counsel, filed September 15, 2014.
6 (ECF No. 84.)
- 7 • Defendant Fardan's motion (i) requesting that the court screen plaintiff's first amended
8 complaint and (ii) seeking to waive his right to reply to the first amended complaint.
9 (ECF No. 83.)

10 Each of these matters is addressed in turn below.

11 I. Background

12 A. Procedural History

13 On October 23, 2012, plaintiff filed his initial complaint in this civil rights action. On
14 December 12, 2012, following initial screening, the court determined that service was appropriate
15 on defendants Marc Elia, Daaiyallah Fardan, and Warden Tim Virga. (ECF No. 10.) Defendants
16 then moved to dismiss the complaint. (ECF No. 28.) On February 19, 2014, defendants' motion
17 to dismiss was granted in part and denied in part, as follows: (1) plaintiff's claims against
18 Warden Virga and under the Equal Protection Clause were dismissed with leave to amend;
19 (2) plaintiff's claims for (a) monetary damages under the Religious Land Use and
20 Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq. ("RLUIPA"), (b) against
21 defendants in their official capacities, and (c) under certain California prison regulations, were
22 dismissed with prejudice; and (3) the remainder of defendants' motion to dismiss was denied. As
23 a result of that ruling, plaintiff was permitted to proceed against defendants Elia and Fardan on
24 his claims for monetary damages under the Free Exercise Clauses of both the United States
25 Constitution and the California Constitution, and for declaratory and injunctive relief under
26 RLUIPA. The court's February 19, 2014 order also granted plaintiff leave to file an amended

27 ² On January 1, 2013, the court denied plaintiff's previous motion for appointment of counsel.
28 (ECF No. 15.)

1 complaint. (ECF No. 43.) On August 11, 2014, plaintiff filed a first amended complaint.
2 (“FAC,” ECF No. 77.)

3 B. Factual Allegations

4 In his FAC, plaintiff alleges as follows. Plaintiff is a black inmate in the EOP,
5 incarcerated at B-Facility at CSP-Sacramento. (ECF No. 77 at 4.) He is a follower of the Islamic
6 faith. (Id.) From approximately January 2010 until November 4, 2011, plaintiff consistently
7 practiced the religious tenet of Jumu’ah prayer in the B-Facility chapel at CSP-SAC along with
8 GP inmates. (Id.) Plaintiff describes Jumu’ah prayer as “a mandatory weekly prayer that can
9 only be held on Fridays during the apex of the sun (around noon-time), that all Muslims must
10 attend in accordance to the Holy Qur’an” (Id. at 7.)

11 On November 7, 2011, defendant Fardan, a Muslim Chaplain at CSP-SAC, informed
12 plaintiff that EOP inmates, such as plaintiff, would no longer be allowed by prison officials to
13 attend Jumu’ah prayer on Fridays with GP inmates because of an “incident” between an EOP
14 inmate and a GP inmate that allegedly occurred in the chapel after Jumu’ah prayer on Friday,
15 November 4, 2011. (Id. at 4.) Plaintiff asked Fardan to identify the prison official who made the
16 initial decision to restrict EOP inmates’ access to Jumu’ah prayer services. (Id.) Defendant
17 Fardan failed and/or refused to answer plaintiff’s question. (Id.) Plaintiff alleges, on information
18 and belief, that defendant Cannedy, a Correctional Captain at B-Facility in CSP-SAC during the
19 relevant time period, actually made the decision to restrict EOP inmates’ access to Friday
20 Jumu’ah prayer services, as well as to two subsequent Islamic religious observances. (Id. at 8.)

21 On December 8, 2011, plaintiff filed an inmate grievance regarding his denial of access to
22 Jumu’ah prayer, asserting that an isolated incident between two other inmates did not justify
23 restricting his participation in religious services. (Id.) On December 13, 2011, plaintiff’s inmate
24 grievance was rejected by the Inmate Appeals Office and returned to plaintiff with instructions to
25 attach documentation evidencing the suspension of religious services. (Id.) At some point in

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1 January 2012, plaintiff obtained the required documentation³ regarding the suspension of
2 religious services, and attached it to his inmate grievance. (Id.) On February 21, 2012, the
3 resubmitted grievance was accepted for processing. (Id.)

4 On or about December 18, 2011, plaintiff spoke with Bryan Lewis, the EOP inmate who
5 was suspected of being involved in the November 4 incident with the GP inmate. (Id.) Inmate
6 Lewis told plaintiff that he did not have a fight with any GP inmate, and that he had only been
7 suspected of fighting. (Id.) As a result, he had been placed in Administrative Segregation
8 pending an investigation into the matter. (Id.) Inmate Lewis also reported that, after the
9 investigation revealed that no fight actually took place, he was released from administrative
10 segregation. (Id. at 4-5, 12.) According to inmate Lewis, he never received a CDCR 115 Rule
11 Violation Report or other type of prison disciplinary action in connection with the suspected
12 fighting incident. (Id. at 5, 12.)

13 Plaintiff has attached to his complaint the declaration⁴ of Muwakkil Tyson, a GP inmate
14 incarcerated at CSP-SAC who was present in the B-Facility chapel during the alleged November
15 4, 2011 incident. (Id. at 26-27.) Inmate Tyson avers that, during the Jumu'ah prayer service,
16 defendant Fardan activated his personal alarm because one EOP inmate "became animated." (Id.
17 at 26.) Inmate Tyson further declares that correctional officers responded to defendant Fardan's
18 alarm, that no fight occurred, and that the incident involving the animated inmate had nothing to
19 do with any conflict between EOP inmates and GP inmates. (Id.)

20 On January 22, 2012, plaintiff sent a CDCR 22 Inmate Request to defendant Elia, a
21 Community Resources Manager, asking him to identify the source of the facts stated in his
22 December 22, 2011 memorandum and reveal the identity of the prison official who made the
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24 ³ The documentation plaintiff obtained was a December 22, 2011 memorandum, authored by
25 defendant Elia, which provided, first, that EOP inmates could no longer be integrated with GP
26 inmates because an EOP inmate was attacked and, second, that the decision to restrict EOP access
27 was a matter of plaintiff's personal safety as well as of institutional security. (ECF No. 77 at 5,
28 42.)

⁴ "A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c).

1 decision to stop EOP inmates from attending prayer services with GP inmates. (Id. at 5.) On
2 January 31, 3012, plaintiff received a response authored by defendant Fardan, in which Fardan
3 stated that the incident happened two months ago, and that he (Fardan) would be available to
4 provide Jumu'ah prayer services to EOP inmates on Thursdays. (Id. at 5, 15.) On February 1,
5 2012, plaintiff resubmitted his CDCR 22 request to defendant Elia, stating that defendant Fardan
6 had evaded plaintiff's questions and that Elia was the only one who could answer them. (Id.) On
7 February 6, 2012, defendant Elia responded, stating that "custody staff @ Sgt. or above may
8 approve a ducat request for chapel services." (Id.) Plaintiff claims that this response evaded the
9 questions that he had posed to defendant Elia. (Id. at 5.)

10 On February 11, 2012, plaintiff sent defendant Elia a second CDCR 22 request once again
11 posing the same two questions. (Id. at 5, 15.) On April 16, 2012, defendant Fardan responded to
12 this request, stating that plaintiff's questions had been answered. (Id. at 5-6, 15.) On April 18,
13 2012, plaintiff submitted his second request for supervisor review, stating that Fardan's response
14 was incorrect and that only Elia could answer the questions asked. (Id. at 6, 15.) Elia answered
15 this request on April 30, 2012, stating that plaintiff's questions had been "asked and answered
16 several times." (Id.) Plaintiff claims that his questions regarding the basis for the suspension of
17 religious services presented in the two CDCR 22 requests have never been answered by prison
18 officials. (Id. at 6.)

19 On May 11, 2012, defendant Tim Virga, Warden at CSP-SAC, addressed plaintiff's
20 inmate appeal at the second level of review. (Id.) Plaintiff asserts that in this review:

21 Virga did not address the material issue of whether the alleged
22 incident between the two said inmates on November 4, 2011, was
23 an isolated incident or whether the said incident was the result of
animosity or hostility between EOP inmates and GP inmates that
would pose a threat to inmate safety and institutional safety

24 (Id.) Plaintiff also asserts that Warden Virga refused to identify the officer who made the order to
25 restrict EOP inmates' access to the Jumu'ah prayer services. (Id.)

26 Previously, on April 11, 2012, plaintiff had submitted a Request for Religious
27 Accommodation and Investigation to defendants Elia and Warden Virga, requesting an
28 investigation into, among other things, whether restricting EOP inmates' access to Jumu'ah

1 prayer services was justified due to safety and security concerns. (Id. at 6, 20-22.)

2 On November 8, 2012, plaintiff was not allowed to attend the annual Eid al-Adha
3 celebration with GP inmates, allegedly for the same reasons that he was barred from attending
4 Jumu'ah prayer services on Fridays. (Id. at 7.) On October 29, 2013, the date of the following
5 year's Eid al-Adha celebration, plaintiff was excluded again from services, for the same reasons.
6 (Id. at 8.) On neither occasion was a separate Eid al-Adha celebration provided for EOP inmates.
7 (Id.)

8 According to plaintiff, any incident between an EOP inmate and a GP inmate on
9 November 4, 2011 was at most merely a personal dispute. Plaintiff asserts that his attendance at
10 Jumu'ah prayer services along with GP inmates poses neither a threat to plaintiff's safety nor to
11 institutional security, as there is no animosity or hostility between black EOP inmates and black
12 GP inmates. (Id. at 7.)

13 II. Analysis

14 A. Screening of First Amended Complaint

15 The court previously found that plaintiff had stated a cognizable claim against defendants
16 Fardan and Elia under the Free Exercise Clauses of the United States and California
17 Constitutions, and under RLUIPA. (ECF No. 39 at 19, adopted by ECF No. 43.) As the relevant
18 allegations are repeated verbatim in the FAC, the court need not revisit this earlier determination.
19 Accordingly, for screening purposes, the court will only consider those allegations and claims that
20 are newly-pled by plaintiff in his FAC.⁵ These new claims can be summarized as follows:

- 21 • The "John Doe" defendant named in plaintiff's initial complaint is now identified
22 as defendant C. Cannedy, a Correctional Captain at B-Facility in CSP-SAC during
23 the relevant time period.

24 ⁵ The court does note one error on plaintiff's part: in paragraph 36 of his first amended
25 complaint, plaintiff alleges a "violation [of his] rights under the First Amendment to the U.S.
26 Constitution." (ECF No. 77 at 9.) The equivalent paragraph in the original complaint, paragraph
27 24, addressed "plaintiff's rights under the First **and Fourteenth** Amendments to the United States
28 Constitution." (ECF No. 1 at 7) (emphasis added). The omission in pleading is substantively
immaterial, as it is settled law that the First Amendment's Free Exercise Clause applies to the
states under the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

- 1 • Additional allegations regarding defendant Warden Virga’s involvement in the
- 2 alleged deprivation of plaintiff’s civil rights.
- 3 • Allegations supporting a claim under the Equal Protection Clause.
- 4 • Allegations supporting a claim for conspiracy to deprive plaintiff of his civil
- 5 rights.

6 1. Standard re: Screening

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. See 28 U.S.C. §
9 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims
10 that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
11 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
12 U.S.C. § 1915A(b)(1) & (2).

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
14 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
15 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
16 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
17 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
18 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
19 Cir. 1989); Franklin, 745 F.2d at 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
21 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
23 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
24 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
25 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
26 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550
27 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
28 allegations of the complaint. See Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740

1 (1976). The court must also construe the pleading in the light most favorable to the plaintiff and
2 resolve all doubts in the plaintiff's favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

3 2. Is Captain Cannedy properly named as a defendant?

4 Defendant Cannedy is newly named as a defendant in the FAC. Therein, plaintiff alleges,
5 on information and belief, that Cannedy, a Correctional Captain at B-Facility in CSP-SAC during
6 the relevant time period, "made the specific decision or directive to deny plaintiff his to [*sic*]
7 attend Jumu'ah Prayer Services and attend both above-said Eid-Al-Adha celebrations" (ECF
8 No. 77 at 8.)

9 The court must first decide whether, in determining the sufficiency of a pleading under
10 Federal Rule of Civil Procedure 8, it is appropriate to consider allegations pled on information
11 and belief. As one judge of this court has previously noted:

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13 Neither the Supreme Court nor the Ninth Circuit has issued a
14 definitive ruling on whether, and under what circumstances,
15 allegations may properly be pled on information and belief under
16 Rule 8, as interpreted by [Ashcroft v. Iqbal, 556 U.S. 662 (2008)]
17 and [Bell Atlantic, 550 U.S. at 544]. Nevertheless, a recent Ninth
18 Circuit opinion, Blantz v. Cal. Dep't of Corr., 727 F.3d 917 (9th
19 Cir. 2013) provides some guidance on the subject.

20 Blantz concerns a wrongful termination action against the
21 California Department of Corrections and Rehabilitation
22 ("CDCR"). The Ninth Circuit panel addressed, inter alia, whether
23 plaintiff could properly proceed against Terry Hill, the Chief
24 Medical Officer overseeing CDCR's medical care system. The
25 only allegations concerning Hill were that, "on information and
26 belief," he "direct[ed]" the other defendants to take the challenged
27 actions. The panel dismissed the claims against Hill, not because
28 these allegations were pled on information and belief, but because
they were conclusory allegations unsupported by further factual
assertions.

From Blantz, one can reasonably infer that district courts may
properly consider allegations pled on information and belief in
determining whether claims have been adequately pled under Rule
8. That an allegation is pled on information and belief is neither
dispositive nor particularly germane. Per Iqbal and Twombly, the
proper inquiry remains whether the plaintiff has presented a non-
conclusory factual allegation. If so, the court may assume the
allegation's "veracity and then determine whether [it] plausibly
give[s] rise to an entitlement to relief." Iqbal, 556 U.S. at 679. This
approach is supported by the text of Rule 11(b):

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By presenting to the court a pleading . . . an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery

As the court may rely on [an unrepresented party’s] certification as to the likelihood of evidentiary support for any allegations pled on information and belief, it appears reasonable to grant such allegations the benefit of the doubt — so long as they are non-conclusory.

Waldo v. Eli Lilly & Co., No. 13-cv-0789-LKK-EFB, 2013 WL 5554623 (E.D. Cal. Oct. 8, 2013). The undersigned adopts this reasoning, and accordingly, will consider plaintiff’s allegations concerning Cannedy in the FAC that were pled on information and belief.

The question is whether plaintiff has pled sufficient non-conclusory factual matter to support naming Cannedy as a defendant. Plaintiff has alleged that it was Cannedy, then a Correctional Captain at B-Facility in CSP-SAC, who made the decision to bar plaintiff from the relevant religious observances. This is a non-conclusory factual allegation. Moreover, as the court must construe the pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins, 395 U.S. at 421, the court will infer that Cannedy, as Correctional Captain, was in a position of sufficient authority to make a decision as to whether EOP inmates could attend the religious observances in question.

Accordingly, for screening purposes, it appears that Cannedy is properly named as a defendant in the FAC.

3. Is Warden Virga properly named as a defendant?

The court previously found that plaintiff had failed to state a cognizable claim against defendant Warden Virga. However, because the court could not “find at this time that the defects in plaintiff’s complaint with respect to his claims against Warden Virga are incapable of being cured by amendment,” plaintiff was granted leave to amend the relevant claims. (ECF No. 39 at 8.)

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1 In his FAC, plaintiff now alleges as follows. On April 11, 2012, he submitted a Request
2 for Religious Accommodation and Investigation to defendants Elia and Warden Virga, a copy of
3 which is attached as an exhibit to the amended complaint. (Id. at 6, 20-22.) In that Request,
4 plaintiff asks:

5 that an investigation be conducted by the [Religious Review
6 Committee]⁶ into this alleged incident of November 4, 2011, and determine whether it had actually occurred . . . and determine
7 whether such a restrict to Jumu'ah as described is in fact an arbitrary decision that is not based on a legitimate penological
8 interest, or whether this restriction is justified by reason(s) of safety and security Thereafter, upon conclusion of this requested
9 investigation, I request that the RRC then consider re-instating this religious accommodation to the EOP inmates that is now sought.

10 (Id. at 21.) On April 24, 2012, plaintiff's request was denied in writing by defendant Elia. (Id. at
11 6, 23.) Plaintiff paraphrases a California prison regulation for the proposition that Virga, as
12 Warden, was "responsible for making every reasonable effort to provide for the religious and
13 spiritual welfare of all interested inmates" (Id. at 6) (citing 15 Cal. Code. Regs. § 3210).
14 Plaintiff alleges that defendant Elia circumvented required procedures by denying plaintiff's
15 request, and that this circumvention was sanctioned, and acquiesced to by Warden Virga, who
16 was by then on notice as to the alleged constitutional violation. (Id. at 6-7.)

17 "In order for a person acting under color of state law to be liable under section 1983 there
18 must be a showing of personal participation in the alleged rights deprivation: there is no
19 respondeat superior liability under section 1983," Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
20 2002). Each defendant is liable only for his or her own misconduct. Iqbal, 556 U.S. at 676.
21 However, a supervisor may be held liable under § 1983 "for a subordinate's constitutional
22 violations 'if the supervisor participated in or directed the violations, or knew of the violations
23 and failed to act to prevent them.'" Maxwell v. Cnty. of San Diego, 708 F.3d 1075, 1086 (9th
24 Cir. 2013) (quoting Taylor v. List, 880 F.3d 1040, 1045 (9th Cir. 1989)).

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27 ⁶ The term apparently originates in 15 California Code of Regulations § 3210(d), which provides:
28 "A request for a religious service accommodation that requires a specific time, location and/or
item(s) not otherwise authorized, will be referred to a Religious Review Committee (RRC) for
review and consideration."

1 According to the allegations of plaintiff's FAC, his request was addressed to both
2 defendant Elia and Warden Virga, and included sufficient detail to put Warden Virga on notice
3 about the alleged violations of plaintiff's civil rights. According to the complaint, despite being
4 so informed, Warden Virga failed to act, and instead acquiesced to defendant Elia's denial of
5 plaintiff's request. By so pleading, plaintiff has alleged sufficient facts to support a claim that
6 Warden Virga "knew of the violations and failed to act to prevent them." Taylor, 880 F.3d at
7 1045.

8 Accordingly, for screening purposes, the court finds that the FAC properly names Warden
9 Virga as a defendant in this action

10 4. Does the first amended complaint state a cognizable Equal Protection claim?

11 Plaintiff alleges in the FAC that defendants violated his rights under the Equal Protection
12 Clause of the Fourteenth Amendment.

13 The Equal Protection Clause requires the state to treat all similarly-situated people
14 equally. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). State prison
15 inmates retain a right to equal protection of the laws guaranteed by the Fourteenth Amendment.
16 Walker v. Gomez, 370 F.3d 969, 974 (9th Cir. 2004) (citing Lee v. Washington, 390 U.S. 333,
17 334 (1968)). "Moreover, the Equal Protection Clause entitles each prisoner to 'a reasonable
18 opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who
19 adhere to conventional religious precepts.'" Shakur v. Schiro, 514 F.3d 878, 891 (9th Cir. 2008)
20 (quoting Cruz v. Beto, 405 U.S. 319, 322 (1972)).

21 A plaintiff may state an Equal Protection claim by alleging that the state has impinged
22 upon his fundamental constitutional rights. Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). One such
23 right is the free exercise of religion. See Cruz, 405 U.S. at 322 ("The First Amendment,
24 applicable to the States by reason of the Fourteenth Amendment, prohibits government from
25 making a law 'prohibiting the free exercise (of religion).'").

26 Alternatively, a plaintiff can plead an Equal Protection violation by alleging facts
27 showing: (1) that he is a member of an identifiable class; (2) that he was intentionally treated
28 differently from others similarly situated; and (3) that there is no rational basis for the difference

1 in treatment. Engquist v. Or. Dep't of Agric., 553 U.S. 591, 601 (2008); Vill. of Willowbrook v.
2 Olech, 528 U.S. 562, 564 (2000).

3 For screening purposes, it appears that plaintiff has adequately alleged that defendants
4 violated the Equal Protection Clause. In his FAC, plaintiff alleges that defendants determined
5 whether he and other Muslim inmates at CSP-SAC could attend Friday Jumu'ah services (as well
6 as Eid al-Adha celebrations in 2011 and 2012) based on whether these inmates had been
7 classified as EOP or GP. Plaintiff and others were barred from attending these religious
8 observances because they were classified as EOP. Plaintiff has also alleged his "sincere belie[f]
9 that Jumu'ah Prayer is a mandatory weekly prayer that only be held on Fridays during the apex of
10 the sun (around noon-time) [and] that all Muslims must attend in accordance to the Holy Qur'an
11 62:9-11." (ECF No. 77 at 7.) Accordingly, plaintiff has satisfactorily alleged that defendants'
12 employment of his mental health status as a criterion for whether he could attend mandatory
13 religious services unconstitutionally impinged on the free exercise of his Muslim faith. In other
14 words, plaintiff claims that defendants denied him "a reasonable opportunity of pursuing his faith
15 comparable to the opportunity afforded fellow prisoners who adhere to conventional religious
16 precepts." Cruz, 405 U.S. at 322.

17 In his FAC, plaintiff has also adequately alleged: (1) that he is a member of an
18 identifiable class, specifically, Muslim inmates at CSP-SAC; (2) that he was intentionally treated
19 differently from similarly situated inmates, that is, Muslim inmates at CSP-SAC who were
20 classified as GP; and (3) that there is no rational basis for the difference in treatment, based on his
21 allegation that the November 4, 2011 incident "was only a personal dispute . . . between two
22 individuals, and there is no animosity between black EOP inmates and GP inmates that would
23 pose a threat to plaintiff's safety and institutional security if he is permitted to attend Jumu'ah
24 Prayer Services together with GP inmates." (ECF No. 77 at 7.) For screening purposes, these
25 allegations, which must be accepted as true at this stage of the proceedings, suffice to state a
26 cognizable Equal Protection claim under a "class of one" theory. Olech, 528 U.S. at 564.

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1 5. Does the first amended complaint state a conspiracy claim?

2 Plaintiff also asserts a civil rights conspiracy claim in his FAC, alleging as follows:

3 Defendants conspired for purpose of depriving plaintiff, either
4 directly or indirectly, of equal protections of the laws, by acting in
5 furtherance of the acts directly committed by Defendant
6 C. Cannedy to deprive plaintiff of his right to religious freedom and
7 exercise by supporting Defendant Cannedy in the said violation of
8 plaintiff's rights and conspiring to conceal defendant Cannedy's
9 identity in an attempt to protect Cannedy from liability in this
10 case

11 (ECF No. 77 at 8.) It is unclear whether this claim is brought by plaintiff under 42 U.S.C. § 1983
12 or 42 U.S.C. § 1985(3). Accordingly, the court will examine plaintiff's allegations under both
13 statutes.

14 a. § 1983 conspiracy

15 To state a conspiracy claim under § 1983, plaintiff must allege, first, that defendants
16 reached an agreement or a meeting of the minds to violate plaintiff's constitutional rights, and
17 second, that they took some concerted action in furtherance thereof. Crowe v. Cnty. of San
18 Diego, 608 F.3d 406, 440 (9th Cir. 2010). Although each of the defendants does not need to
19 know the exact details of the plan, each defendant must share the common objective of the
20 conspiracy. Id. (quoting United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539,
21 1541 (9th Cir. 1989)).

22 Here, plaintiff has adequately alleged two common objectives: "to deprive plaintiff of his
23 right to religious freedom and exercise . . . and . . . to conceal defendant Cannedy's identity in an
24 attempt to protect Cannedy from liability in this case and matter" (ECF No. 77 at 8.) The
25 first objective would violate plaintiff's First Amendment right to free exercise of religion; the
26 second objective arguably violates plaintiff's First Amendment right to petition the government
27 for redress of grievances.

28 Plaintiff has also alleged actions in furtherance of the claimed conspiracy, including
29 defendants Fardan's, Elia's, and Warden Virga's repeated refusals to identify the individual who
30 made the initial decision to restrict EOP inmates' access to Jumu'ah prayer services (Id. at 4-6),
31 defendant Elia's authorship of a memo justifying the restriction on the basis of plaintiff's and the

1 institution's security (Id. at 5), and defendant Warden Virga's acquiescence in defendant Elia's
2 decision to continue excluding EOP inmates from Jumu'ah prayer services (Id. at 7). These
3 alleged actions are consistent with the alleged objectives of, first, denying plaintiff access to
4 Jumu'ah prayer services, and second, of concealing defendant Cannedy's identity from plaintiff.

5 While plaintiff has not specifically alleged the existence of an agreement or meeting of the
6 minds among defendants to violate his constitutional rights, such may be inferred from the actions
7 and objectives specifically alleged in the FAC. See Martensen v. Koch, 942 F. Supp. 2d 983,
8 1003 (N.D. Cal. 2013) ("The existence of a conspiracy may be inferred when the alleged
9 conspirators have committed acts that 'are unlikely to have been undertaken without an
10 agreement.'") (quoting Mendocino Env'tl. Ctr. v. Mendocino County, 192 F.3d 1283, 1301 (9th
11 Cir. 1999)). Of course, it is highly unlikely that plaintiff, as an inmate, would be privy to
12 conversations or other communications between the defendants. To require him to plead
13 additional facts which are currently beyond his power to obtain would be to in effect bar him
14 from bringing a conspiracy claim. Because plaintiff has satisfactorily pled the remaining
15 elements of a claim for conspiracy under § 1983 and the allegation of an agreement can be
16 reasonably inferred therefrom, the court will allow him to proceed on this claim.

17 b. § 1985 conspiracy

18 It is also possible that plaintiff intended to plead a conspiracy claim under 42 U.S.C.
19 § 1985. Section 1985 "establishes five classes of prohibited conspiracy." Kush v. Rutledge, 460
20 U.S. 719, 724 (1983). The class of conspiracy that is most pertinent to plaintiff's allegations is
21 outlined in subsection (3), which provides in relevant part:

22 If two or more persons . . . conspire . . . for the purpose of
23 depriving, either directly or indirectly, any person or class of
24 persons of the equal protection of the laws, or of equal privileges
25 and immunities under the laws . . . the party so . . . deprived may
have an action for the recovery of damages occasioned by such . . .
deprivation, against any one or more of the conspirators.

26 42 U.S.C. § 1985(3). To state such a claim, a plaintiff must allege facts demonstrating:

27 (1) a conspiracy; (2) for the purpose of depriving, either directly or
28 indirectly, any person or class of persons of the equal protection of
the laws, or of equal privileges and immunities under the laws; and

1 (3) an act in furtherance of this conspiracy; (4) whereby a person is
2 either injured in his person or property or deprived of any right or
privilege of a citizen of the United States.

3 United Bhd. of Carpenters and Joiners of Am., Local 610, AFL-CIO v. Scott, 463 U.S. 825, 828-
4 29 (1983). Moreover, “the second of these four elements requires that in addition to identifying a
5 legally protected right, a plaintiff must demonstrate a deprivation of that right motivated by ‘some
6 racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the
7 conspirators’ action.” Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992) (quoting
8 Griffith v. Breckenridge, 403 U.S. 88, 102 (1971)). “The term ‘invidious discrimination’
9 generally refers to treating a class differently in order to harm or repress it.” Nat’l Comm. of the
10 Reform Party of the United States v. Democratic Nat’l Comm., 168 F.3d 360, 366 (9th Cir. 1999).
11 As pled, the FAC simply fails to meet this standard. It includes no factual allegations supporting
12 the existence of a conspiracy. Conclusory statements regarding the existence of a conspiracy are
13 insufficient to state a claim under § 1985. “[T]o be entitled to the presumption of truth,
14 allegations in a complaint or counterclaim may not simply recite the elements of a cause of
15 action, but must contain sufficient allegations of underlying facts to give fair notice and to enable
16 the opposing party to defend itself effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir.
17 2011). The FAC also includes no allegations that defendants were motivated by an intent to harm
18 either EOP inmates generally or plaintiff specifically. Accordingly, the FAC fails to state a claim
19 for conspiracy under § 1985.

20 Having concluded its screening of the FAC, the court will now address the other motions
21 before it.

22 B. Plaintiff’s motion to compel discovery responses

23 On July 25, 2014, plaintiff filed a motion to compel defendants Elia and Fardan to provide
24 responses to certain of his discovery requests. (ECF No. 74.) On July 31, 2014, defendant Elia
25 filed an opposition to the motion to compel (ECF No. 76), to which plaintiff filed a reply (ECF
26 No. 80). On August 14, 2014, defendant Fardan filed an opposition to the motion to compel
27 (ECF No. 79), to which plaintiff did not file a reply. The court now turns to the substance of
28 plaintiff’s motion to compel.

1 1. Interrogatories

2 Under the Federal Rules of Civil Procedure, a responding party is obligated to respond to
3 interrogatories fully. Fed. R. Civ. P. 33(b)(3). Any objections must be stated with specificity.
4 Fed. R. Civ. P. 33(b)(4). “The responding party shall use common sense and reason in its
5 responses; hyper-technical, quibbling, or evasive objections will not be viewed favorably by the
6 court.” Johnson v. Cate, No. 1:10-cv-02348-LJO-MJS, 2014 WL 1419816 at * 2 (E.D. Cal. Apr.
7 14, 2014). A responding party is not generally required to conduct extensive research in order to
8 answer an interrogatory, but must make a reasonable effort to respond. L.H. v. Schwarzenegger,
9 No. 2:06-cv-2042-LKK-GGH, 2007 WL 2781132 at *2 (E.D. Cal. Sep. 21, 2007). “Moreover, if
10 the responding party would necessarily have to gather the requested information to prepare its
11 own case, objections that it is too difficult to obtain the information for the requesting party are
12 not honored.” Id. Finally, the responding party has a duty to supplement any responses if the
13 information sought is later obtained or the response provided needs correction. Fed. R. Civ. P.
14 26(e)(1)(A).

15 Plaintiff seeks to compel further responses to four interrogatories propounded on
16 defendant Fardan and five interrogatories propounded on defendant Elia. The court has
17 thoroughly reviewed the interrogatories and responses at issue, as well as the parties’ filings in
18 support of, and in opposition to, the motions to compel. Having done so, the court finds the
19 majority of defendants’ responses adequate, and therefore will not compel further responses to
20 these interrogatories.

21 Nevertheless, the court is concerned by the responses to plaintiffs’ interrogatory #19
22 propounded on defendant Fardan, and interrogatory #6 propounded on defendant Elia.

23 Interrogatory #19 propounded on defendant Fardan provides:

24 Attached hereto, as Exhibit C, is a copy of the CDCR 22 Inmate
25 Request Form submitted to you by the plaintiff on January 21,
26 2012. On February 13, 2012, you responded in Section B of the
request by stating: “We would like to have services for EOP
inmates but the prison administration will not permit it.”

27 Please identify all prison administration officials to which you refer
28 to above who(m) will not permit Jumu’ah Services for EOP
inmates.

1 Defendant Fardan responded to this interrogatory as follows:

2 Defendant objects to this interrogatory because he is not a custodian
3 of records and cannot authenticate the document Plaintiff attaches
4 as “Exhibit C.” Without waiving this objection, Defendant
5 responds as follows: Defendant does not specifically recall who he
6 was referring to when responding to Plaintiff’s CDCR 22.

7 (ECF No. 74 at 25.)

8 Similarly, interrogatory #6 propounded on defendant Elia provides:

9 Please identify any and all CDCR employee or employees at CSP-
10 SAC that specifically made either directive/decision, whether
11 verbally or otherwise, to no longer permit EOP inmates from going
12 to Jumu’ah Prayer Services with General Population (GP) inmates
13 on B-Facility.

14 Defendant Elia responded to this interrogatory as follows:

15 Defendant does not recall the specific CDCR or CSP-SAC
16 employees who determined that EOP inmates were not permitted to
17 attend Jumu’ah services with GP inmates on B-Facility. However,
18 Defendant is informed and believes that Chaplain Fardan submits
19 inmate ducat requests for every service in the B-Facility chapel, and
20 those ducat requests must be approved and signed by a custody
21 supervisor in the classification of Sergeant or above. Defendant is
22 informed and believes that ducat requests for EOP inmates to attend
23 Jumu’ah services at the same time as GP inmates at the B-Facility
24 chapel were not approved by custody staff.

25 (ECF No. 74 at 14-15.)

26 These two interrogatories pose a straightforward question: which prison official or
27 officials made the decision to prohibit EOP inmates from attending Friday Jumu’ah prayer
28 services in CSP-SAC’s B-Facility? Defendants’ responses to this question appear inadequate.
By signing a response to a discovery request, a party certifies that it has been formed “after a
reasonable inquiry.” Fed. R. Civ. P. 26(g)(1). “In general, a responding party is not required to
conduct extensive research in order to answer an interrogatory, but a reasonable effort must be
made.” Gorrell v. Sneath, 292 F.R.D. 629, 632 (E.D. Cal. 2013). At the very least, “[t]he
responding party must state under oath that he is unable to provide the information and must
describe the efforts he used to obtain the information.” Bryant v. Armstrong, 285 F.R.D. 596,
612 (S.D. Cal. 2012).

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1 Here, neither defendant Fardan nor defendant Elia describes any efforts undertaken to
2 obtain the information or otherwise refresh his recollection. Each may have records in his
3 possession reflecting who made the decision at issue, or else be able to make inquiries as to the
4 relevant decisionmakers' identities. See, e.g., Shields v. Koelling, No. 2:10-cv-2866 WBS KJN,
5 2012 WL 1435029 (E.D. Cal. Apr. 25, 2012) ("It is unclear how difficult it would be for
6 defendants to discover who, at California State Prison-Solano, is authorized to certify these
7 records."). That both defendants are sued in their individual, rather than their official, capacities
8 does not absolve them of their responsibility to make a reasonable inquiry before responding to
9 discovery. It also seems likely that, if this case were to proceed to trial, these defendants "would
10 necessarily have to gather the requested information [regarding who made the decision to bar
11 EOP inmates from Friday Jumu'ah services] to prepare [their] own case[s] . . ." L.H., 2007 WL
12 2781132 at *2.

13 For these reasons, the court will order defendant Fardan to file an amended response to
14 interrogatory #19 propounded upon him, and defendant Elia will be ordered to file an amended
15 responses to interrogatory #6 propounded upon him. If, following a reasonable inquiry, either is
16 unable to respond to the relevant interrogatory, he must "state under oath that he is unable to
17 provide the information and must describe the efforts he used to obtain the information." Bryant,
18 285 F.R.D. at 612.

19 2. Requests for Production

20 A party may serve on any other party a request "to produce and permit the requesting
21 party or its representative to inspect, copy, test, or sample items in the responding party's
22 possession, custody or control." Fed. R. Civ. P. 34(a)(1). "Control is defined as the legal right to
23 obtain documents upon demand. The party seeking production of the documents . . . bears the
24 burden of proving that the opposing party has such control." United States v. Int'l Union of
25 Petroleum & Indus. Workers, 870 F.2d 1450, 1452 (9th Cir. 1989).

26 Plaintiff seeks to compel responses to eleven requests for production propounded on
27 defendant Elia. According to plaintiff, defendant Elia has produced virtually no documents in
28 response to these requests, and has instead repeated some variant of the following objection:

1 Defendants object to this request because it calls for information
2 which inmates are not permitted to possess under California Code
3 of Regulations, title 15, sections 3450(d), 3321 and 3370.
4 Specifically, this request calls for information that could endanger
5 the safety of another person, could jeopardize the safety and
6 security of the institution, and because no inmate or parolee shall
7 have access to the case records or file of another inmate or parolee.

8 (ECF No. 74 at 6-12.)

9 Defendant Elia cites California Code of Regulations title 15, §§ 3321, 3370, and 3450(d)
10 as the basis for his withholding of documents sought by plaintiff. Section 3321, entitled
11 “Confidential Information,” provides that the following types of information shall be classified as
12 “confidential”:

13 (1) Information which, if known to the inmate, would endanger the
14 safety of any person.

15 (2) Information which would jeopardize the security of the
16 institution.

17 (3) Specific medical or psychological information which, if known
18 to the inmate, would be medically or psychologically detrimental to
19 the inmate.

20 (4) Information provided and classified confidential by another
21 governmental agency.

22 (5) A Security Threat Group debrief report, reviewed and approved
23 by the debriefing subject, for placement in the confidential section
24 of the central file.

25 Cal. Code Regs., tit. 15, § 3321(a). The remainder of the regulation addresses the proper
26 handling of information obtained from confidential sources. In the court’s view, defendant Elia
27 cannot justify withholding documents sought by citing to this regulation without further
28 explanation. “A conclusory objection based on institutional security is . . . insufficient,” absent
an explanation of how the document will compromise security. Rogers v. Giurbino, 288 F.R.D.
469, 480 (S.D. Cal. 2012) (citing Goolsby v. Carrasco, No. 1:09-cv-01650 JLT, 2011 WL
2636099 at *6-7 (E.D. Cal. Jul. 11, 2011)). Defendant Elia has not attempted to make a showing
that the requested documents fall under the ambit of § 3321(a).

Section 3370, entitled “Case Records File and Unit Health Records Material — Access
and Release,” governs access to inmates’ case records and health care records. Relevant

1 subsections provide:

2 (b) Except by means of a valid authorization, subpoena, or court
3 order, no inmate or parolee shall have access to another's case
4 records file, unit health records, or component thereof.

5 (c) Inmates or parolees may review their own case records file and
6 unit health records, subject to applicable federal and state law. [...]

7 (d) No inmate or parolee shall access information designated
8 confidential pursuant to section 3321 which is in or from their own
9 case records file.

10 Cal. Code Regs., tit. 15, § 3370. But defendant Elia nowhere explains why the records sought by
11 plaintiff are confidential. For example, to the extent that the documents sought would reveal that
12 an inmate is receiving treatment in the EOP, defendant must assert that objection with specificity.

13 Finally, § 3450, entitled “Personal Information Record Access and Amendment,”
14 primarily addresses the right of “any person on whom the department maintains a record or file
15 containing personal information . . . to inspect their record and authorize any person to inspect
16 such records on their behalf ,” as well as to correct such information. Subsection (d), cited by
17 defendant Elia, provides:

18 No inmate or parolee shall prepare, handle, or destroy any portion
19 of a departmental record containing confidential information as that
20 term is defined in Section 3321.

21 Cal. Code Regs., tit. 15, § 3450(d). This regulation depends on information being designated as
22 classified under § 3321. As discussed above, defendant Elia has not attempted to show that the
23 information sought by plaintiff is so designated. Further, none of the cited regulations supports
24 defendant Elia’s blanket objection that “no inmate or parolee shall have access to the case records
25 or file of another inmate or parolee.”

26 Defendant Elia is correct in pointing out that “where otherwise discoverable information
27 would pose a threat to the safety and security of the prison or infringe upon a protected privacy
28 interest, a need may arise for the Court to balance interests in determining whether disclosure
should occur.” Quezada v. Lindsey, No. 1:10-cv-01402-AWI-SAB, 2014 WL 5500800 at *1
(E.D. Cal. Mar. 29, 2012) (summarizing applicable caselaw). However, the court cannot engage
in such a balancing test given defendant Elia’s generic objections and absent specific information

1 about the documents being withheld by the defense.

2 In support of his opposition to the motion to compel, defendant Elia has filed the “meet
3 and confer” letters exchanged by the parties voluntarily prior to plaintiff’s filing of his motion to
4 compel. Plaintiff argues therein that defendant Elia can redact or edit the requested documents
5 “in a manner that protects the safety of any persons and institutional security while preserving the
6 factual accuracy of the events or incident[s] that [are] reported” (ECF No. 76-6 at 3.)
7 Defendant Elia replies that “[t]here is no basis for your request that the confidential information
8 be redacted or edited in a manner that protects the safety of persons and institutional security
9 while preserving the factual accuracy of the events or incidents that [are] reported therein in those
10 said documents.” (ECF No. 76-7 at 5.) Defendant Elia’s statement of the law is incorrect. In
11 cases involving inmate plaintiffs, court often order the production of documents with confidential
12 information redacted and accompanied by a privilege log. See, e.g. Manriquez v. Hutchins, No.
13 1:09-cv-00456-OWW-SMS, 2011 WL 3290165 at *8 (E.D. Cal. Jul. 27, 2011); Womack v.
14 Virga, No. 2:11-cv-1030-MCE-EFB, 2011 WL 6703958 at *6 (E.D. Cal. Dec. 21, 2011); Candler
15 v. Santa Rita Cnty. Jail Watch Commander, No. 11-cv-01992-CW (MEJ), 2014 WL 2120310 at
16 *5 (N.D. Cal. May 21, 2014).

17 The parties’ discovery dispute in this regard will be resolved by defendant Elia’s
18 production of the documents sought by plaintiff’s requests for production #1, 2, 3, 8, 9, 18, and 20
19 for in camera review by the undersigned. The documents submitted for in camera review must
20 be accompanied by a cover letter explaining the attendant security and/or privacy concerns in
21 sufficient detail to permit the court to balance the concerns raised against plaintiff’s asserted need
22 for the information sought. The court can then determine whether it is appropriate to order
23 production of these documents, whether in unredacted or redacted form.

24 Defendant Elia will not be required to respond further to requests for production #4 & 5,
25 in which plaintiff seeks documents showing the historical housing locations of inmates Bryan
26 Lewis and Jacoby Pope. Plaintiff has not sufficiently justified the relevance of these documents
27 to his claims. Moreover, the institutional security concerns attendant on release of this
28 information is readily apparent.

1 Defendant Elia also will not be required to respond further to request for production #6, in
2 which plaintiff seeks documents related to work assignments in a dining hall at CSP- SAC.
3 Defendant Elia has responded that he has made a reasonable inquiry and that no responsive
4 documents exist. (ECF No. 74 at 8.) In so doing, he has satisfied his discovery obligations.
5 Under these circumstances, it is unclear what documents defendant Elia could be compelled to
6 produce in any event.

7 Finally, plaintiff concedes that he no longer seeks to compel responses to his request for
8 production #21 (Reply, ECF No. 80 at 8). Accordingly, the court will deny plaintiff's motion as
9 to this request.

10 C. Plaintiff's renewed motion for appointment of counsel

11 On September 15, 2014, plaintiff filed a renewed motion for appointment of counsel.
12 (ECF No. 84.) As the court has previously advised plaintiff, the United States Supreme Court has
13 ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983
14 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional
15 circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. §
16 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900
17 F.2d 1332, 1335-36 (9th Cir. 1990).

18 The test for exceptional circumstances requires the court to evaluate the plaintiff's
19 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
20 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
21 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
22 common to most prisoners, such as lack of legal education and limited law library access, do not
23 establish exceptional circumstances that would warrant a request for voluntary assistance of
24 counsel. In the present case, the court does not find the required exceptional circumstances.

25 Plaintiff's request for the appointment of counsel will therefore be denied.

26 D. Defendant Fardan's motion for screening and for waiver of right to reply

27 Defendant Fardan has filed a motion (i) requesting that the court screen plaintiff's FAC
28 and (ii) seeking to waive his right to reply to that complaint. (ECF No. 83.) Plaintiff has filed a

1 notice of non-opposition to the latter motion. (ECF No. 85.)

2 The court has screened plaintiff's FAC, per the discussion above. Upon issuance of this
3 order, defendant Fardan will be required to timely answer the first amended complaint.

4 IV. Conclusion

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. The allegations in the first amended complaint are found sufficient to state potentially-
7 cognizable claims against defendants C. Cannedy and Warden Tim Virga, as well as a
8 claim under the Equal Protection Clause of the Fourteenth Amendment, pursuant to 42
9 U.S.C. § 1983. See 28 U.S.C. § 1915A. With this order, the Clerk of the Court shall
10 provide to plaintiff a blank summons, a copy of the first amended complaint filed
11 August 11, 2014, two USM-285 forms, and instructions for service of process on
12 defendants C. Cannedy and Warden Tim Virga. Within thirty days of service of this
13 order plaintiff may return the attached Notice of Submission of Documents with one
14 completed summons, the two completed USM-285 forms, and three copies of the first
15 amended complaint filed August 11, 2014. The court will transmit them to the United
16 States Marshal for service of process pursuant to Fed. R. Civ. P. 4. Defendants
17 C. Cannedy and Warden Tim Virga will be required to respond to plaintiff's
18 allegations within the deadlines stated in Fed. R. Civ. P. 12(a)(1).
- 19 2. Plaintiff's motion to compel further responses to interrogatory no. 19 propounded on
20 defendant Fardan (ECF No. 74) is granted. If, following a reasonable inquiry,
21 defendant Fardan is unable to respond to this interrogatory, then he must state under
22 oath that he is unable to provide the information requested and must describe the
23 efforts he used to obtain the information.
- 24 3. Plaintiff's motion to compel further responses to interrogatory nos. 11, 18, and 21
25 propounded on defendant Fardan (ECF No. 74) is denied.
- 26 4. Plaintiff's motion to compel further responses to interrogatory no. 6 propounded on
27 defendant Elia (ECF No. 74) is granted. If, following a reasonable inquiry, defendant
28 Elia is unable to respond to this interrogatory, then he must state under oath that he is

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