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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRENT B. GRADDY, Sr.,  
Plaintiff,  
v.  
D. DING,  
Defendant.

No. 2:14-cv-0901 DAD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983, together with a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff is presently incarcerated at the California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF). However, in the complaint pending before the court he challenges conditions of his confinement when he was incarcerated at Mule Creek State Prison (MCSP).

Plaintiff's in forma pauperis application is incomplete. Plaintiff did not provide the date of his signature on his affidavit submitted in support of his application (see ECF No. 2 at 2); nor was the certificate portion of the application filled out and signed by an authorized prison official. See 28 U.S.C. § 1915(a)(2). For these reasons, plaintiff will be provided another opportunity to submit a fully completed application to proceed in forma pauperis.

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1 Plaintiff's complaint is also incomplete. Again, on the complaint plaintiff did not provide  
2 the date of his signature. (See ECF No. 1 at 3.) For this and the following reasons, the complaint  
3 will be dismissed and plaintiff will be granted leave to file an amended complaint.

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

9 Plaintiff makes the following allegations in his complaint and attached exhibits filed April  
10 11, 2014. (ECF No. 1.) Plaintiff, a Muslim, was denied participation in the month-long Ramadan  
11 activities at MCSP during the summer of 2013. The official denial was premised on plaintiff's  
12 "C-status," by application of MCSP Departmental Operations Manual (DOM) Supplement §  
13 101060.6.4 (Inmate Attendance),<sup>1</sup> which provides:

14 Inmates on "C" status may be denied access to a religious service  
15 depending on security needs and supervision. Inmates on "C"  
16 status will be directed to complete a standard Request for Interview  
Form requesting authorization to attend one primary service a  
week.

17 (ECF No. 1 at 4.) In his complaint plaintiff names one defendant, Sergeant D. Ding, who, on July  
18 8, 2013, denied plaintiff's July 3, 2013 Request for Interview (CDCR Form 22), on the following  
19 grounds:

20 Inmates on "C" status may attend one primary religious service per  
21 week per DOM:101060.6.4. You have been instructed by the  
22 Chaplain on how you may participate in Ramada by fasting and  
23 praying in your assigned cell. You may attend one primary  
religious service per week. Use a CDCR Form 22 addressed to the  
Chaplain to request which primary service you would like to attend.

24 (ECF No. 1 at 9.)

25 In his complaint plaintiff levels the following allegation against defendant Ding:

26 On June 28, 2013, I was informed by Officer Bradley that I would  
27 not be able to partake in Ramadan activities because of C-status

28 <sup>1</sup> The challenged provision is specific to MCSP, not CDCR generally. Cf. CDCR DOM § 101060.6.4.

1 which I was on at that time. I followed the appeal process which  
2 Officer Bradley and Sgt. Dickinson said that D. Ding told them that  
3 I couldn't partake in Ramadan activities due to MCSP Supplement  
4 DOM section 101060.6.4.

5 (Id. at 3.) The complaint seeks the following relief: "To have the courts order MCSP to stop  
6 enforcing that policy [and] [f]or the courts to grant me 10,000 dollars in punitive damages." (Id.)

7 Although plaintiff was apparently transferred to SATF near the end of Ramadan or soon  
8 after its conclusion, he continued to pursue and exhaust his administrative grievance on the  
9 ground that he wanted to prevent future application of the challenged regulation to other MCSP  
10 inmates. Plaintiff asserted that Ramadan is not a "service" but an entire month dedicated to  
11 Muslims. He also asserted that he had been permitted to participate in Ramadan activities in 2009  
12 and 2010, despite being on "C" status.

13 The Third Level Review response denying plaintiff's grievance provided in pertinent part:

14 Contrary to appellant's claim, he is permitted to practice the  
15 religion of his choice as long as it is in compliance with  
16 institutional policy and security needs. The decision to limit the  
17 appellant's ability to conduct religious services is within the  
18 institution's scope of authority. In this case, the appellant was  
19 placed on "C" Status due to his misbehavior. The TLR notes that  
20 the appellant does not have an absolute right to conduct his  
21 religious services as requested as institutional security takes  
22 precedence and may impact his services.

23 (ECF No. 1 at 5. See also Id. at 7.)

24 The Third Level Review response to plaintiff's inmate grievance noted that plaintiff had  
25 not completed an Inmate Request for Interview to thereby request attendance at one primary  
26 service a week. (Id. at 5.)<sup>2</sup> The Third Level Review response also noted with approval the  
27 following Second Level Review finding:

28 Any arguments related to the appellant's access to Ramadan while  
on C-status in prior years is irrelevant as the fact that a person was  
allowed to access an activity in the past does not constitute proof  
that they were appropriately allowed access.

(Id. at 4. See also Id. at 7.)

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<sup>2</sup> The Second Level Review response to plaintiff's inmate grievance appears to indicate that at that time plaintiff was attending one primary service a week. (Id. at 15.)

1 As noted above, plaintiff's complaint is deficient in several respects. Plaintiff does not  
2 identify a legal basis for his claim based upon his factual allegations. In his administrative  
3 grievances, plaintiff asserted that the challenged conditions violated his First Amendment right to  
4 practice his religion. However, because plaintiff is challenging application of an institutional  
5 regulation, it appears that his claim may be more appropriately one under the Religious Land Use  
6 and Institutionalized Persons Act (RLUIPA), which provides in pertinent part:

7 No government shall impose a substantial burden on the religious  
8 exercise of a person residing in or confined to an institution . . . ,  
9 even if the burden results from a rule of general applicability,  
unless the government demonstrates that imposition of the burden  
on that person --

10 (1) is in furtherance of a compelling government interest;  
11 and

12 (2) is the least restrictive means of furthering that  
compelling government interest.

13 42 U.S.C. § 2000cc-1(a).

14 Nevertheless, assuming application of RLUIPA to plaintiff's legal claim, the Act does not  
15 provide for plaintiff's requested relief. Plaintiff's transfer from MCSP to SATF rendered moot  
16 his claim for injunctive relief. See Weinstein v. Bradford, 423 U.S. 147, 149 (1975); Dilley v.  
17 Gunn, 64 F.3d 1365, 1368-69 (9th Cir. 1995) (an inmate's claims for injunctive or declaratory  
18 relief become moot when he is no longer subject to the challenged conditions); see also Zenith  
19 Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969) (a court is unable to issue an  
20 order against individuals who are not parties to the suit pending before it). Because the regulation  
21 challenged by plaintiff is specific to MCSP, rather than a CDCR-wide regulation applicable to all  
22 California prisons, plaintiff's claim for injunctive relief has been rendered moot by his transfer.

23 Moreover, plaintiff's damages claim is not cognizable under RLUIPA. The Ninth Circuit  
24 Court of Appeals has held that a RLUIPA claim may not be maintained against prison officials in  
25 their individual capacities, Wood v. Yordy, 753 F.3d 899, 904 (9th Cir. 2014),<sup>3</sup> or in their official  
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27 <sup>3</sup> This ruling applies retroactively to cases, such as the instant case, that were filed prior to the  
28 Ninth Circuit's decision in Wood. See e.g. Hodges v. Sharon, Case No. 1:13-cv-00654 LJO SAB  
P, 2014 WL 5426410, \*4 (E.D. Cal. Oct. 22, 2014) (and cases cited therein).

1 capacities, Alvarez v. Hill, 667 F.3d 1061, 1063 (9th Cir. 2012). Rather, a claim under RLUIPA  
2 may proceed only for injunctive relief against defendants acting within their official capacity and  
3 such a claim has been rendered moot in this action for the reasons discussed above.

4 For these reasons, plaintiff is unable to challenge the subject regulation under RLUIPA.  
5 While perhaps posing an even more difficult challenge, plaintiff may be able to rest his damages  
6 claim on the First Amendment’s Free Exercise Clause and 42 U.S.C. § 1983. The Free Exercise  
7 Clause is implicated when a prison official, without justification that is reasonably related to a  
8 legitimate penological objective, burdens a prisoner’s practice of religion by preventing him from  
9 engaging in conduct which he sincerely believes is consistent with his faith. Shakur v. Schriro,  
10 514 F.3d 878, 884 (9th Cir. 2008) (citing Turner v. Safley, 482 U.S. 78, 89 (1987) (setting forth  
11 the factors to be considered in evaluating the constitutionality of a prison regulation),<sup>4</sup> and Ward  
12 v. Walsh, 1 F.3d 873, 876-77 (9th Cir. 1993) (holding that Turner continues to apply to prisoner  
13 free exercise claims)).

14 Although the government faces a lesser burden in demonstrating a legitimate government  
15 interest under the First Amendment than to demonstrate a compelling government interest under

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19 <sup>4</sup> As summarized by the Ninth Circuit in Shakur, Turner sets forth the following four factors to  
20 be balanced in determining whether a prison regulation is reasonably related to a legitimate  
penological interest:

21 (1) Whether there is a “‘valid, rational connection’ between the  
22 prison regulation and the legitimate governmental interest put  
forward to justify it;”

23 (2) Whether there are “‘alternative means of exercising the right that  
24 remain open to prison inmates;”

25 (3) Whether “‘accommodation of the asserted constitutional right”  
26 will “‘impact ... guards and other inmates, and on the allocation of  
prison resources generally;” and

27 (4) Whether there is an “‘absence of ready alternatives” versus the  
“‘existence of obvious, easy alternatives.”

28 Shakur, 514 F.3d at 884 (quoting Turner, 482 U.S. at 89-90).

1 RLUIPA,<sup>5</sup> plaintiff will be granted leave to file an amended complaint and restate his damages  
2 claim under the First Amendment's Free Exercise Clause and § 1983.

3 Should plaintiff elect to file an amended complaint, he must allege with particularity how  
4 each named defendant allegedly violated his constitutional rights. See e.g. Johnson v. Duffy, 588  
5 F.2d 740, 743 (9th Cir. 1978). The court discerns no presently valid basis for naming Sergeant  
6 Ding as a defendant in this action or, for that matter, any other prison official who was merely  
7 tasked with processing plaintiff's administrative requests and/or administrative grievance, and  
8 applying the challenged regulation.<sup>6</sup> The appropriate defendants to name in a challenge to the  
9 subject regulation are the MCSP officials responsible for its enactment and for ensuring its  
10 enforcement, e.g., the MCSP Warden and/or MCSP Associate Warden of Programs/Housing.

11 Should plaintiff elect to continue to pursue this action by filing an amended complaint, he  
12 shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure,  
13 and the Local Rules of Practice. The Amended Complaint must bear the docket number assigned  
14 to this case and be labeled "Amended Complaint." In any amended complaint he elects to file  
15 plaintiff must allege facts demonstrating how the conditions complained of resulted in a  
16 deprivation of his constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). There  
17 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection

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19 <sup>5</sup> Plaintiff is also informed that a legitimate government interest is demonstrated by the bona fide  
20 security needs of an institution. See e.g. Bell v. Wolfish, 441 U.S. 520, 557 n.38 (1979) (courts  
21 must defer "to the informed discretion of prison authorities . . . [to] make the difficult judgments  
22 which reconcile conflicting claims affecting the security of the institution").

22 <sup>6</sup> "The inquiry into causation must be individualized and focus on the duties and responsibilities  
23 of each individual defendant whose acts or omissions are alleged to have caused a constitutional  
24 deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). There can be no liability under  
25 42 U.S.C. § 1983 unless there is some affirmative link or connection between a specific  
26 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362, 371 (1976); May  
27 v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980). However, a defendant's alleged failure to grant  
28 plaintiff's administrative request or grievance does not state a constitutional claim. Because  
"[t]here is no legitimate claim of entitlement to a grievance procedure," Mann v. Adams, 855  
F.2d 639, 640 (9th Cir. 1988), a claim that a prison official failed to resolve a particular grievance  
in a favorable manner is not cognizable under section 1983, see e.g. Buckley v. Barlow, 997 F.2d  
494, 495 (8th Cir. 1993), particularly when such decision rested on application of an institutional  
regulation.

1 between a defendant's specific actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.  
2 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,  
3 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights  
4 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).  
5 Finally, Local Rule 220 requires that an amended complaint be complete in itself without  
6 reference to any prior pleading. The amended complaint will supersede the original complaint.  
7 See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Therefore, in an amended complaint, each  
8 claim and the involvement of each defendant must be sufficiently alleged.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) is denied without  
11 prejudice.

12 2. Within thirty days from the date of this order, plaintiff shall submit a properly  
13 completed application to proceed in forma pauperis on the form provided with this order, or the  
14 fee of \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee);

15 3. Plaintiff's complaint is dismissed.

16 4. Within thirty days from the date of this order, plaintiff shall complete the attached  
17 Notice and submit the following documents to the court:

18 a. The completed Notice;

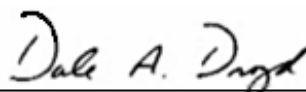
19 b. A completed in forma pauperis application; and

20 c. An original and one copy of the Amended Complaint.

21 5. The Clerk of the Court is directed to send plaintiff, together with a copy of this order, a  
22 blank Application to Proceed In Forma Pauperis By a Prisoner, and a blank Complaint for use by  
23 a prisoner pursuing a civil rights action.

24 6. Failure of plaintiff to timely comply with this order will result in a recommendation  
25 that this action be dismissed.

26 Dated: November 20, 2014

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRENT B. GRADDY, Sr.,  
Plaintiff,  
v.  
D. DING,  
Defendant.

No. 2:14-cv-0901 DAD P

NOTICE

Plaintiff hereby submits the following documents in compliance with the court's order  
filed \_\_\_\_\_.

\_\_\_\_\_ Completed IFP Application or \$400.00 Fee  
\_\_\_\_\_ Amended Complaint

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff