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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON M. SORIANO,
Plaintiff,
v.
M. E. SPEARMAN, et al.,
Defendants.

No. 2:17-cv-1617 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has consented to the jurisdiction of a magistrate judge.

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 **I. Screening Requirement**

4 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion
5 thereof, that may have been paid, the court shall dismiss the case at any time if the court
6 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
7 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

8 **II. Pleading Standard**

9 Section 1983 "provides a cause of action for the deprivation of any rights, privileges, or
10 immunities secured by the Constitution and laws of the United States." Wilder v. Virginia Hosp.
11 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
12 substantive rights, but merely provides a method for vindicating federal rights conferred
13 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

14 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
15 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
16 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
17 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

18 A complaint must contain "a short and plain statement of the claim showing that the
19 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
20 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
21 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
22 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual
23 matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial
24 plausibility demands more than the mere possibility that a defendant committed misconduct and,
25 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

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1 **III. Plaintiff's Allegations¹**

2 At all times relevant to this action, plaintiff was a state prisoner housed at High Desert
3 State Prison (“HDSP”) in Susanville, California. He names as defendants M.E. Spearman, HDSP
4 Warden; R. St. Andre, HDSP Associate Warden; D. Foster, Appeals Examiner; M. Woong, Chief
5 Officer of Appeals; S. Kelly, Correctional Sergeant; G. Spears, Captain; and K. Grether, Facility
6 Captain.

7 Plaintiff’s allegations may be fairly summarized as follows:

8 Plaintiff is a Muslim inmate. He accuses the defendants, collectively, of denying Muslim
9 inmates use of the chapel area. They also deny Muslim inmates an outside Imam and they require
10 these inmates to hold their Friday religious services outside under “extreme conditions (i.e. in
11 rain, snow, extreme freezing conditions, having to deal with blowing dust and biting insects....).”

12 Plaintiff brings suit pursuant to the Eighth Amendment and the Religious Land Use and
13 Institutionalized Persons Act. He seeks injunctive relief.

14 **IV. Discussion**

15 **A. Class Action**

16 Plaintiff purports to bring this action as a class action on behalf of HDSP Muslim inmates.
17 He may not do so. A non-attorney proceeding pro se may bring his own claims to court, but may
18 not represent others. Fymbo v. State Farm Fire & Casualty Co., 213 F.3d 1320, 1321 (2000);
19 Johns v. County of San Diego, 114 F.3d 874, 876 (9th Cir. 1997); C.E. Pope Equity Trust v.
20 United States, 818 F.2d 696, 697 (9th Cir. 1987). A pro se litigant simply cannot “fairly and
21 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4); Fymbo, 213 F.3d at 1321.

22 Therefore, this action will be construed as an individual civil suit brought by plaintiff
23 rather than as a class action.

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26 ¹ Plaintiff filed a first amended complaint on August 25, 2017, just three weeks after his August
27 3, 2017, complaint was filed and before the latter was screened. Since this amended complaint
28 supersedes the original complaint, only those allegations set forth in the amended pleading will be
screened by this order.

1 **B. Linkage**

2 Section 1983 provides a cause of action for the violation of plaintiff's constitutional or
3 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d
4 1087, 1092 (9th Cir. 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);
5 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim, a plaintiff must
6 demonstrate that each defendant personally participated in the deprivation of his rights. Iqbal, 556
7 U.S. at 677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v.
8 City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934.

9 Plaintiff's complaint does not include any charging allegations specific to any of the
10 defendants. Rather, he claims the defendants, generally, have denied use of the chapel area,
11 denied an outside Imam, and required Muslim inmates to hold religious ceremonies in "extreme
12 conditions" outside. It is unclear how and to what extent each named defendant personally
13 participated in the deprivation of plaintiff's rights.

14 To the extent that plaintiff alleges liability under § 1983 based on any of the defendants'
15 roles as supervisory officials, the Supreme Court has emphasized that the term "supervisory
16 liability," loosely and commonly used by both courts and litigants alike, is a misnomer. Iqbal, 556
17 U.S. at 677. "Government officials may not be held liable for the unconstitutional conduct of their
18 subordinates under a theory of respondeat superior." Id. at 676. Rather, each government official,
19 regardless of his or her title, is only liable for his or her own misconduct. Id. at 677. Accordingly,
20 plaintiff fails to state a claim against any of the defendants in their supervisory capacities.

21 For these reasons, plaintiff's amended complaint must be dismissed, but leave to amend
22 will be granted. Should plaintiff decide to amend, the undersigned sets forth the legal standards
23 for his Eighth Amendment and RLUIPA claims.

24 **C. Religious Land Use and Institutionalized Persons Act**

25 The Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") provides:

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

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

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

4 42 U.S.C. § 2000cc-1(a). Plaintiff must allege facts demonstrating that defendants substantially
5 burdened the exercise of his religious beliefs. Warsoldier v. Woodford, 418 F.3d 989, 994-95 (9th
6 Cir. 2005). In any RLUIPA claim, one must first identify the “religious exercise” allegedly
7 impinged upon, and then must ask whether the prison regulation at issue “substantially burdens”
8 that religious exercise. Greene v. Solano County Jail, 513 F.3d 982, 987 (9th Cir. 2008).

9 “RLUIPA does not define ‘substantial burden,’ but [the Ninth Circuit] has held that ‘a
10 substantial burden on religious exercise must impose a significantly great restriction or onus upon
11 such exercise.’” Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d 1114, 1124-25 (9th
12 Cir. 2013) (citing San Jose Christian Coll. v. City of Morgan Hill, 360 F.3d 1024, 1034 (9th Cir.
13 2004)). “Generally, the term ‘substantial burden’ in RLUIPA is construed in light of federal
14 Supreme Court and appellate jurisprudence involving the Free Exercise Clause of the First
15 Amendment prior to the Court’s decision in Emp’t Div. Dep’t of Human Res. of Oregon v. Smith,
16 494 U.S. 872, 878-82 (1990).” Int’l Church of Foursquare Gospel, 673 F.3d at 1067 (citing Guru
17 Nanak Sikh Soc. Of Yuba City v. County of Sutter, 456 F.3d 978, 988 (9th Cir. 2006)). “In the
18 context of a prisoner’s constitutional challenge to institutional policies, this court has held that a
19 substantial burden occurs ‘where the state ... denies [an important benefit] because of conduct
20 mandated by religious belief, thereby putting substantial pressure on an adherent to modify his
21 behavior and to violate his beliefs.’” Hartmann, 707 F.3d at 1124-25 (citing Warsoldier v.
22 Woodford, 418 F.3d 989, 995 (9th Cir. 2005)).

23 **D. Eighth Amendment Conditions of Confinement**

24 The Eighth Amendment protects prisoners from both excessive uses of force and
25 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006)
26 (citing Farmer v. Brennan, 511 U.S. 825, 847 (1994), and Rhodes v. Chapman, 452 U.S. 337, 347
27 (1981)) (quotation marks omitted).

28 To allege an Eighth Amendment claim for inhumane conditions of confinement, a
prisoner must show that prison officials were deliberately indifferent to a substantial risk of harm

1 to his health or safety. See, e.g., Farmer, 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144,
2 1150-51 (9th Cir. 2010). “Deliberate indifference describes a state of mind more blameworthy
3 than negligence” but is satisfied by something “less than acts or omissions for the very purpose of
4 causing harm or with knowledge that harm will result.” Farmer, 511 U.S. at 835. Plaintiff must
5 demonstrate first that the seriousness of the risk was obvious or provide other circumstantial
6 evidence that defendants were aware of the substantial risk to his health, and second that there
7 was no reasonable justification for exposing him to that risk. Lemire, 726 F.3d at 1078 (citing
8 Thomas, 611 F.3d at 1150) (quotation marks omitted).

9 **V. Conclusion**

10 For the aforementioned reasons, plaintiff’s first amended complaint does not state a claim
11 for relief. The court will grant plaintiff an opportunity to file an amended complaint. Noll v.
12 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If plaintiff opts to amend, he must demonstrate
13 that the alleged acts resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-
14 78. Plaintiff must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its
15 face.’” Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate that
16 each named defendant personally participated in a deprivation of his rights. Jones v. Williams,
17 297 F.3d 930, 934 (9th Cir. 2002).

18 Plaintiff should note that although he has been given the opportunity to amend, it is not for
19 the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff
20 should carefully read this Screening Order and focus his efforts on curing the deficiencies set
21 forth above.

22 Finally, plaintiff is advised that Local Rule 220 requires that an amended complaint be
23 complete in itself without reference to any prior pleading. As a general rule, an amended
24 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
25 Once an amended complaint is filed, the original complaint no longer serves any function in the
26 case. Therefore, in an amended complaint, as in an original complaint, each claim and the
27 involvement of each defendant must be sufficiently alleged. The amended complaint should be
28 clearly and boldly titled “Second Amended Complaint,” refer to the appropriate case number, and

1 be an original signed under penalty of perjury. Plaintiff's amended complaint should be brief. Fed.
2 R. Civ. P. 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
3 right to relief above the speculative level" Twombly, 550 U.S. at 555 (citations omitted).

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's application to proceed in forma pauperis (ECF Nos. 2, 9) is granted;
- 6 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
7 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
8 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to
9 the Director of the California Department of Corrections and Rehabilitation filed
10 concurrently herewith;
- 11 3. Plaintiff's first amended complaint (ECF No. 8) is dismissed;
- 12 4. Plaintiff is granted thirty days from the date of service of this order to file a second
13 amended complaint that complies with the requirements of the Civil Rights Act, the
14 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended
15 complaint must bear the docket number assigned this case and must be labeled
16 "Second Amended Complaint"; plaintiff must file an original and two copies of the
17 amended complaint; failure to file an amended complaint in accordance with this order
18 will result in a recommendation that this action be dismissed.

19 Dated: September 13, 2017

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22 DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE

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26 DB/Inbox/Substantive/sori1617.scm