

1 consciousness, such as ‘transgenders and Torah aren’t a godly pairing,’ ‘same-sex is an
2 abomination,’ [and] ‘homosexuality is against Torah and you’re homosexual.’” *Id.* It took
3 Shmary and Eshelman 222 days to respond to plaintiff’s request for a Kosher diet, even though
4 such responses are typically provided within 30 days. *Id.* at 4, 7. Plaintiff claims her request was
5 ultimately approved thanks to the intervention by the Jewish Community Foundation of Los
6 Angeles. *Id.* at 5. Plaintiff claims she wrote to the defendants (including Warden Covello and
7 Chief Deputy Warden Holmes) accusing them of discrimination, but they did not deny or
8 otherwise respond to her accusations. *Id.*

9 Plaintiff asserts claims under the First Amendment, the Religious Land Use and
10 Institutionalized Persons Act of 2000, and the Equal Protection clause of the Fourteenth
11 Amendment. She seeks declaratory relief, injunctive relief, and \$50,000 in damages. *Id.* at 9-10.

12 Liberally construed, plaintiff’s allegations are sufficient to state the following potentially
13 cognizable claims:² (1) a First Amendment freedom of religion claim against defendants Shmary
14 and Eshelman; (2) an official-capacity RLUIPA claim for declaratory and injunctive relief only,
15 against defendants Shmary and Eshelman; and (3) a Fourteenth Amendment equal protection
16 claim³ against Shmary. *See Wood v. Yordy*, 753 F.3d 899, 902-04 (9th Cir. 2014) (RLUIPA
17 neither permits individual capacity suits nor suits for monetary damages).⁴

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19 ² Plaintiff fails to state a claim against “institution heads” Warden Covello and Chief
20 Deputy Warden Holmes (*see, e.g.*, ECF No. 22 at 4), as plaintiff appears to have named them
21 solely because of their supervisory roles. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
(no respondeat superior liability under section 1983).

22 ³ There is no basis for an equal protection claim against any other defendant because
23 plaintiff does not allege that any other defendant acted with an intent or purpose to discriminate
24 against plaintiff because of her membership in any protected class. *See Thornton v. City of St.*
25 *Helens*, 425 F.3d 1158, 1166-67 (9th Cir. 2005). Plaintiff’s allegation, without more, that the
26 defendants did not deny or otherwise respond to plaintiff’s accusations of discriminatory
27 treatment fails to state a claim upon which relief could be granted.

28 ⁴ Like the original complaint, the amended complaint continues to list “Doe” defendants.
As plaintiff is aware, unknown persons cannot be served with process until they are identified by
their real names and the court will not investigate the names and identities of unnamed
defendants.

1 For these reasons, plaintiff may either proceed only on the potentially cognizable First
2 Amendment and RLUIPA claims against defendants Shmary and Eshelman and the equal
3 protection claim against Shmary or she may amend her complaint to attempt to cure the
4 complaint's deficiencies. Plaintiff is not obligated to amend her complaint.

5 Leave to Amend

6 Plaintiff may file an amended complaint to attempt to cure the deficiencies noted above.
7 Any amended complaint must identify as a defendant only persons who personally participated in
8 a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d
9 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if
10 he does an act, participates in another's act or omits to perform an act he is legally required to do
11 that causes the alleged deprivation). Plaintiff is not obligated to file an amended complaint.

12 Plaintiff may not change the nature of this suit by alleging new, unrelated claims in the
13 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

14 Any amended complaint must be written or typed so that it so that it is complete in itself
15 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
16 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
17 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
18 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter
19 being treated thereafter as non-existent.") (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
20 1967)).

21 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
22 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
23 *See* E.D. Cal. L.R. 110.

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Conclusion

Accordingly, it is ORDERED that:

1. Plaintiff's amended complaint (ECF No. 22) alleges, for screening purposes, the following potentially cognizable claims:
 - a. a First Amendment freedom of religion claim against defendants Shmary and Eshelman;
 - b. an official capacity RLUIPA claim for declaratory and injunctive relief against defendants Shmary and Eshemlan; and
 - c. a Fourteenth Amendment equal protection claim against defendant Shmary.
2. All other claims are dismissed with leave to amend within 30 days from the date of service of this order. Plaintiff is not obligated to amend her complaint.
3. Within thirty days plaintiff shall return the notice below advising the court whether she elects to proceed with the cognizable claims or file an amended complaint. If the former option is selected and returned, the court will enter an order directing service at that time.
4. Failure to comply with any part of this this order may result in dismissal of this action.

Dated: September 8, 2021.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIVA AVIKAIDA ISRAEL,

Plaintiff,

v.

RABBI SHMARY, et al.,

Defendants.

No. 2:21-cv-0262-TLN-EFB P

NOTICE

In accordance with the court’s Screening Order, plaintiff hereby elects to:

(1) _____ proceed only with the First Amendment freedom of religion claim and official capacity RLUIPA claim for declaratory and injunctive relief against defendants Shmary and Eshelman and the Fourteenth Amendment equal protection claim against defendant Shmary;

OR

(2) _____ delay serving any defendant and file a second amended complaint.

Plaintiff

Dated: