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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 EUREKA DIVISION

WILLIE MORRIS CLAY,  
 Plaintiff,

No. C 13-3437 NJV (PR)

**ORDER OF SERVICE**

v.

DAVID LIVINGSTON, et. al.,  
 Defendants.

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Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend. Plaintiff has filed an amended complaint.

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

1 omitted). Although in order to state a claim a complaint “does not need detailed factual  
2 allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
5 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
6 (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is  
7 plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained  
8 the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the  
9 framework of a complaint, they must be supported by factual allegations. When there are  
10 well-pleaded factual allegations, a court should assume their veracity and then determine  
11 whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
12 679 (2009).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
14 elements: (1) that a right secured by the Constitution or laws of the United States was  
15 violated, and (2) that the alleged deprivation was committed by a person acting under the  
16 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 **B. Legal Claims**

18 Plaintiff alleges that he and other Muslims at the Martinez Detention Facility who  
19 were fasting during Ramadan did not receive their lunches, even though completely  
20 sacrificing meals is not appropriate. He argues that denying lunches is a form of discipline  
21 for the exercise of his religion. He seeks monetary and injunctive relief. This claim is  
22 sufficient to proceed against Defendants Livingston, Vannoy and Baldwin.

23 In order to establish a free exercise violation, a prisoner must show a defendant  
24 burdened the practice of his religion without any justification reasonably related to  
25 legitimate penological interests. See *Shakur v. Schiro*, 514 F.3d 878, 883-84 (9th Cir.  
26 2008). A prisoner is not required to objectively show that a central tenet of his faith is  
27 burdened by a prison regulation to raise a viable claim under the Free Exercise Clause. *Id.*

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1 at 884-85. Rather, the sincerity test of whether the prisoner's belief is "sincerely held" and  
2 "rooted in religious belief" determines whether the Free Exercise Clause applies. *Id.*  
3 (finding district court impermissibly focused on whether consuming Halal meat is required  
4 of Muslims as a central tenet of Islam, rather than on whether plaintiff sincerely believed  
5 eating kosher meat is consistent with his faith). The prisoner must show that the religious  
6 practice at issue satisfies two criteria: (1) the proffered belief must be sincerely held and  
7 (2) the claim must be rooted in religious belief, not in purely secular philosophical concerns.  
8 *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (cited with approval in *Shakur*, 514 F.3d at  
9 884). A prison regulation that impinges on an inmate's First Amendment rights is valid if it  
10 is reasonably related to legitimate penological interests. See *O'Lone v. Estate of Shabazz*,  
11 482 U.S. 342, 349 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

12 **CONCLUSION**

- 13 1. The motion to amend (Docket No. 9) is **GRANTED**.
- 14 2. The clerk shall issue a summons and Magistrate Judge jurisdiction consent form  
15 and the United States Marshal shall serve, without prepayment of fees, the summons,  
16 Magistrate Judge jurisdiction consent form, copies of the amended complaint (Docket No.  
17 10) with attachments and copies of this order on Defendants Livingston, Vannoy and  
18 Baldwin at Martinez Detention Facility.
- 19 3. In order to expedite the resolution of this case, the Court orders as follows:
- 20 a. No later than sixty days from the date of service, Defendant shall file a  
21 motion for summary judgment or other dispositive motion. The motion shall be supported  
22 by adequate factual documentation and shall conform in all respects to Federal Rule of  
23 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming  
24 from the events at issue. If Defendant is of the opinion that this case cannot be resolved by  
25 summary judgment, she shall so inform the Court prior to the date his summary judgment  
26 motion is due. All papers filed with the Court shall be promptly served on Plaintiff.
- 27 b. At the time the dispositive motion is served, Defendant shall also serve, on  
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1 a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d  
2 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4  
3 (9th Cir. 2003). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and  
4 *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss  
5 for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

6 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
7 Court and served upon Defendant no later than thirty days from the date the motion was  
8 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"  
9 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.  
10 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

11 If Defendant files an unenumerated motion to dismiss claiming that Plaintiff failed to  
12 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), Plaintiff  
13 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION),"  
14 which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th  
15 Cir. 2003).

16 d. If Defendant wishes to file a reply brief, he shall do so no later than fifteen  
17 days after the opposition is served upon her.

18 e. The motion shall be deemed submitted as of the date the reply brief is  
19 due. No hearing will be held on the motion unless the court so orders at a later date.

20 4. All communications by Plaintiff with the Court must be served on Defendant, or  
21 Defendant's counsel once counsel has been designated, by mailing a true copy of the  
22 document to Defendant or Defendant's counsel.

23 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
24 No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the  
25 parties may conduct discovery.

26 6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
27 informed of any change of address by filing a separate paper with the clerk headed "Notice  
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1 of Change of Address.” He also must comply with the Court's orders in a timely fashion.  
2 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
3 Federal Rule of Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

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6 Dated: January 24, 2013.

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9 NANDOR J. VADAS  
10 United States Magistrate Judge  
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**NOTICE -- WARNING (SUMMARY JUDGMENT)**

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

**NOTICE -- WARNING (EXHAUSTION)**

If Defendant files an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If Defendant files a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

WILLIE MORRIS CLAY, II,

No. 1:13-CV-3437 NJV

Plaintiff,

v.

CERTIFICATE OF SERVICE

DAVID LIVINGSTON, et al.,

Defendants.

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I, the undersigned, hereby certify that on January 24, 2014, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

**Willie Morris Clay , II**  
AR 3562  
San Quentin State Prison  
SP1B29  
San Quentin, CA 94974

*/s/ Linn Van Meter*

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Linn Van Meter  
Administrative Law Clerk to  
the Honorable Nandor J. Vadas