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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER STEVEN BUTLER,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,
Defendants.

Case No. [17-cv-02399-PJH](#)**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. No. 22

This is a civil rights case brought pro se by a state prisoner under 42 U.S.C. § 1983. His claims arise from his detention at Correctional Training Facility (“CTF”). Plaintiff, an adherent to the Nation of Islam (“NOI”), alleges that defendants interfered with his ability to practice his religion in violation of the free exercise clause of the First Amendment, the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), the equal protection clause of the Fourteenth Amendment and related state laws. Specifically, he argues that defendants failed to show NOI videos on a prison television channel and failed to provide a NOI chaplain. He seeks money damages and injunctive relief. This case was related to *Wade v. CDCR*, No. 17-0042 PJH, which was closed earlier this year when defendants’ motion for summary judgment was granted. Both cases contain the same claims and allegations.

Defendants filed a motion for summary judgment in this case on April 23, 2018. Plaintiff was provided multiple extensions of time to file an opposition, which was due by August 8, 2018. Plaintiff filed an opposition on August 29, 2018. However, a review of the opposition indicates that it is substantially similar to the opposition filed in *Wade v. CDCR*, No. 17-0042 PJH, and as such fails to address several issues in the instant

1 motion for summary judgment. Regardless, the court has still reviewed the opposition
2 and, for the reasons set forth below, the motion for summary judgment is granted.

3 **MOTION FOR SUMMARY JUDGMENT**

4 **Legal Standards**

5 Summary judgment is proper where the pleadings, discovery and affidavits show
6 that there is "no genuine dispute as to any material fact and the movant is entitled to
7 judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those which may
8 affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
9 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a
10 reasonable jury to return a verdict for the nonmoving party. *Id.*

11 The moving party for summary judgment bears the initial burden of identifying
12 those portions of the pleadings, discovery and affidavits which demonstrate the absence
13 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986);
14 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). When
15 the moving party has met this burden of production, the nonmoving party must go beyond
16 the pleadings and, by its own affidavits or discovery, set forth specific facts showing that
17 there is a genuine issue for trial. *Id.* If the nonmoving party fails to produce enough
18 evidence to show a genuine issue of material fact, the moving party wins. *Id.*

19 In order to establish a free-exercise violation, a prisoner must show a defendant
20 burdened the practice of his religion without any justification reasonably related to
21 legitimate penological interests. *See Shakur v. Schriro*, 514 F.3d 878, 883-84 (9th Cir.
22 2008). A prisoner is not required to objectively show that a central tenet of his faith is
23 burdened by a prison regulation to raise a viable claim under the Free Exercise Clause.
24 *Id.* at 884-85. Rather, the test of whether the prisoner's belief is "sincerely held" and
25 "rooted in religious belief" determines the Free Exercise Clause inquiry. *Id.* (finding
26 district court impermissibly focused on whether consuming halal meat is required of
27 Muslims as a central tenet of Islam, rather than on whether plaintiff sincerely believed
28 eating kosher meat is consistent with his faith). The prisoner must show that the religious

1 practice at issue satisfies two criteria: (1) the proffered belief must be sincerely held and
2 (2) the claim must be rooted in religious belief, not in purely secular philosophical
3 concerns. *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (cited with approval in
4 *Shakur*, 514 F.3d at 884).

5 A prison regulation that impinges on an inmate's First Amendment rights is valid if
6 it is reasonably related to legitimate penological interests. See *O'Lone v. Estate of*
7 *Shabazz*, 482 U.S. 342, 349 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987));
8 see, e.g., *Walker v. Beard*, 789 F.3d 1125, 1135-37 (9th Cir. 2015) (prison's classification
9 of a white racist inmate as eligible to be housed with a person of a different race and its
10 refusal to grant him an exemption did not violate Aryan Christian Odinist inmate's
11 religious rights under the Free Exercise Clause because prison's policy was reasonably
12 related to the penological interest in avoiding the legal liability of equal protection suits
13 brought by other inmates). Security interests may require prisons to restrict attendance
14 at religious services, but the inmates must be provided with an alternative means of
15 meeting the need for those services. See *McCabe v. Arave*, 827 F.2d 634, 637 (9th Cir.
16 1987) (protective custody inmate can be denied permission to attend service of a
17 particular denomination if he is permitted to attend interdenominational service).

18 Section 3 of RLUIPA provides: "No government shall impose a substantial burden
19 on the religious exercise of a person residing in or confined to an institution, as defined in
20 section 1997 [which includes state prisons, state psychiatric hospitals, and local jails],
21 even if the burden results from a rule of general applicability, unless the government
22 demonstrates that imposition of the burden on that person (1) is in furtherance of a
23 compelling governmental interest; and (2) is the least restrictive means of furthering that
24 compelling governmental interest." 42 U.S.C. § 2000cc-1(a). The statute applies "in any
25 case" in which "the substantial burden is imposed in a program or activity that receives
26 Federal financial assistance." 42 U.S.C. § 2000cc-1(b)(1). RLUIPA also includes an
27 express private cause of action that is taken from RFRA: "A person may assert a violation
28 of [RLUIPA] as a claim or defense in a judicial proceeding and obtain appropriate relief

1 against a government.” 42 U.S.C. § 2000cc-2(a); cf. § 2000bb-1(c). For purposes of this
2 provision, “government” includes, inter alia, states, counties, municipalities, their
3 instrumentalities and officers, and “any other person acting under color of state law.” 42
4 U.S.C. § 2000cc-5(4)(A).

5 The Equal Protection Clause requires that an inmate who is an adherent of a
6 minority religion be afforded a "reasonable opportunity of pursuing his faith comparable to
7 the opportunity afforded fellow prisoners who adhere to conventional religious precepts,"
8 *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (Buddhist prisoners must be given opportunity to
9 pursue faith comparable to that given Christian prisoners), as long as the inmate's
10 religious needs are balanced against the reasonable penological goals of the prison,
11 *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). *Allen v. Toombs*, 827 F.2d 563,
12 568-69 (9th Cir. 1987). The court must consider whether "the difference between the
13 defendants' treatment of [the inmate] and their treatment of [other] inmates is 'reasonably
14 related to legitimate penological interests.'" *Shakur v. Schriro*, 514 F.3d 878, 891 (9th
15 Cir. 2008) (citation omitted) (finding district court erroneously applied rational basis
16 review to plaintiff's claim that defendants violated equal protection clause by providing
17 only Jewish inmates with kosher meat diet and remanding claim so record could be more
18 fully developed regarding defendants' asserted penological interests).

19 An inmate "'must set forth specific facts showing a genuine issue' as to whether he
20 was afforded a reasonable opportunity to pursue his faith as compared to prisoners of
21 other faiths" and that "officials intentionally acted in a discriminatory manner." *Freeman*
22 *v. Arpaio*, 125 F.3d 732, 737 (9th Cir. 1997), *abrogated on other grounds by Shakur*, 514
23 F.3d at 884-85. *See, e.g., Hartman v. Cal. Dep't of Corr.*, 707 F.3d 1114, 1124 (9th Cir.
24 2013) (affirming dismissal of equal protection claim based on denial of request for a paid
25 Wiccan chaplain where pleadings suggested a reasoned and vetted denial – paid Wiccan
26 chaplain not necessary because a volunteer Wiccan chaplain provides services at prison
27 and staff chaplains are available to provide inmates with religious assistance – rather
28 than discriminatory intent).

1 Although prisoners are entitled to equal protection, it does not follow that a prison
2 must duplicate every religious benefit it provides so that all religions are treated exactly
3 the same. As the Supreme Court explained in *Cruz*:

4 We do not suggest . . . that every religious sect or group within
5 a prison--however few in number--must have identical facilities
6 or personnel. A special chapel or place of worship need not be
7 provided for every faith regardless of size; nor must a chaplain,
8 priest, or minister be provided without regard to the extent of
the demand. But reasonable opportunities must be afforded to
all prisoners to exercise the religious freedom guaranteed by
the First and Fourteenth Amendments without fear of penalty.

9 405 U.S. at 322 n.2.

10 **Facts**

11 A review of the records indicates that the following facts are undisputed unless
12 otherwise noted:

13 During the relevant time, plaintiff was incarcerated at CTF. Complaint (“Compl.”)
14 at 4. Plaintiff is an adherent of the NOI and occasionally attended Islamic services at
15 CTF. Compl. at 5; Motion for Summary Judgment (“MSJ”) Aquil Decl. ¶ 12. Plaintiff
16 requested that videos from the NOI be broadcast on the CTF system-wide television
17 channel and that a NOI chaplain be provided. Compl. at 6-11. These requests were
18 denied because defendants felt that the NOI had been found to promote racist and anti-
19 Semitic views that violate prison nondiscriminatory policy and cannot be publicly
20 endorsed by CTF. Aquil Decl. ¶¶ 4, 9-11, 15, 20. Plaintiff denies that the NOI has racist
21 and anti-Semitic beliefs, calling such a viewpoint a “matter of perception”. Opposition at
22 3. Plaintiff states, “[t]he proponents of this perception primarily come from those whom
23 injustices, immoral behavior, and atrocities are exposed by the truths that come from [the
24 NOI]. . . .” *Id.* However, plaintiff concedes that some NOI teachings could be
25 problematic, stating, “I understand that there can be a shock factor to most white people,
26 you know. And that can be something that can actually be a turnoff and upset people.”
27 MSJ, Ross Decl., Ex. C, Butler Depo. at 32. Plaintiff also concedes that if taught
28 improperly by the wrong individual, NOI teachings would be threatening to white inmates

1 and white correctional staff. *Id.*

2 Defendants determined that plaintiff's requests would be for institutional
3 educational equipment to be used for religious purposes. Aquil Decl. at ¶ 18; Urquidez
4 Decl. ¶ 7. Plaintiff was informed that the prison received federal funding to purchase
5 educational equipment and, pursuant to the Federal Education Act, the equipment cannot
6 be used for religious purposes such as broadcasting religious television programs within
7 the prison. Urquidez Decl., Ex. A. The reason that other religious groups could
8 broadcast on prison television channels was because outside organizations, not the
9 prison, covered the costs for the programming, equipment and installation. Ross Decl.,
10 Ex. A. Several Christian organizations had provided funding for these endeavors, and
11 the Muslim chaplain, defendant Chaplain Aquil, was able to broadcast programming
12 because he had acquired funding. *Id.* Plaintiff was informed that if he was aware of an
13 organization that could provide funding for the programming and equipment, the
14 organization should contact the prison. *Id.* Plaintiff argues that there are video channels
15 for noneducational purposes that can show religious videos. Opposition at 11.

16 Chaplain Aquil converted to Islam in 1962. Aquil Decl. at ¶ 3. He began studying
17 the NOI in 1974 and served as a NOI acting minister for Temple 27-C in Watts,
18 California. *Id.* In 1974 and 1975 he was assigned as a minister for the NOI in Seattle,
19 Albuquerque and Shreveport. *Id.*

20 Chaplain Aquil encouraged plaintiff and other NOI members to join the common
21 Muslim services that were already in place at CTF. Aquil Decl. ¶¶ 12, 15. The Islamic
22 Program at CTF was tailored to be inclusive for all Islamic sects by emphasizing values
23 that all Muslims share. *Id.* at ¶¶ 12, 24-25. Plaintiff occasionally attended Jumu'ah
24 services provided by Chaplain Aquil. *Id.* at ¶ 12. Chaplain Aquil also sought out
25 appropriate NOI written materials for plaintiff; helped plaintiff formally request a television
26 channel; and inquired about whether an inmate could serve as a NOI chaplain. *Id.* at ¶¶
27 13, 19, 21, 22.

28 The chaplain's office at CTF had several NOI VHS videotapes, and there was a

1 video player in the chapel. *Id.* at ¶ 14. Chaplain Aquil reviewed the videos and removed
2 those videos that contained inappropriate racist, anti-Semitic or homophobic content. *Id.*
3 Once a month and then twice a month, Chaplain Aquil invited NOI inmates to the chapel
4 to view the videos, and plaintiff occasionally watched the videos. *Id.*

5 Plaintiff was also allowed to privately congregate for NOI services on the prison
6 yard or in a housing unit; engage in written correspondence with a NOI chaplain and
7 purchase authorized religious items. *Id.* at ¶ 21. Chaplain Aquil also contacted a NOI
8 minister for suggestions. *Id.* NOI inmates and Chaplain Aquil were unable to come to an
9 agreement for NOI inmates to use the chapel without supervision. *Id.* at ¶ 20; Opposition
10 at 12-13.

11 The NOI members were not the only religious group that did not have access to
12 their own chaplain or broadcast video presentations. Urquidez Decl. ¶ 11. Wiccans
13 relied on the Native American chaplain, and Jehovah's Witnesses relied on the
14 Protestant chaplain. *Id.* Chaplain Aquil did not make hiring decisions regarding
15 chaplains. Aquil Decl. ¶¶ 22-23.

16 Plaintiff and Chaplain Aquil have differing views on various aspects of the NOI and
17 its teachings. Opposition at 7-8.

18 ANALYSIS

19 Free Exercise

20 For purposes of this motion, the court finds that plaintiff's beliefs are sincerely held
21 and rooted in religious conviction. Defendants first argue that they did not burden the
22 practice of plaintiff's religion. With respect to the desired video presentations, it is
23 undisputed that plaintiff and other NOI inmates were able to watch NOI videos in the
24 chapel. Plaintiff has not presented any arguments that viewing the videos in the chapel
25 burdened the practice of his religion as opposed to viewing the videos on a prison
26 television channel. Plaintiff fails to articulate why other prisoners who are not part of his
27 faith must be allowed to watch the videos on a prison television channel. Defendants did
28 not burden the practice of plaintiff's religion with respect to the videos and are entitled to

1 summary judgment on this claim.

2 Defendants are also entitled to summary judgment on the claim that they failed to
3 provide a NOI chaplain. The First Amendment does not require prisons to provide
4 inmates with the chaplain of their choice. *Hartman v. Cal. Dep't. of Corr. & Rehab.*, 707
5 F.3d 1114, 1122 (9th Cir. 2013) (*citing Cruz*, 405 U.S. at 322, n.2); *Johnson v. Moore*,
6 948 F.2d 517, 520 (9th Cir. 1991) (failure to provide Unitarian Universalist chaplain did
7 not violate free-exercise clause where inmate had “reasonable opportunity” to exercise
8 his faith). Plaintiff has not shown that he was prohibited from exercising his faith, and the
9 Muslim chaplain provided many opportunities for plaintiff and other NOI inmates to
10 pursue their religious beliefs.

11 Even assuming that defendants impinged on plaintiff’s First Amendment rights,
12 they argue that the denial of plaintiff’s requests was reasonably related to legitimate
13 penological interests. Defendants presented arguments and evidence with respect to the
14 factors set forth in *Turner*. Plaintiff cited several cases but failed to address the *Turner*
15 factors.

16 Allegations of a denial of an opportunity to practice religion “must be found
17 reasonable in light of four factors: (1) whether there is a ‘valid, rational connection’
18 between the regulation and a legitimate government interest put forward to justify it; (2)
19 ‘whether there are alternative means of exercising the right that remain open to prison
20 inmates’; (3) whether accommodation of the asserted constitutional right would have a
21 significant impact on guards and other inmates; and (4) whether ready alternatives are
22 absent (bearing on the reasonableness of the regulation).” *Pierce v. County of Orange*,
23 526 F.3d 1190, 1209 (9th Cir. 2008) (*citing Turner*, 482 U.S. at 89-90); *see Beard v.*
24 *Banks*, 548 U.S. 521, 532-33 (2006) (noting that application of the *Turner* factors does
25 not turn on balancing the factors but on determining whether the defendants show a
26 reasonable relation, as opposed to merely a logical relation).

27

28 Defendants argue that there was a valid, rational connection between the denials

1 of plaintiff's requests and the legitimate government interest to justify the denials.
2 Defendants contend that the NOI presents racist, homophobic and anti-Semitic beliefs,
3 and defendants have a legitimate interest in following policies of inclusion and anti-
4 discrimination. While the parties dispute whether the NOI presents racist, homophobic
5 and anti-Semitic beliefs, defendants have a legitimate interest in following policies of
6 inclusion and anti-discrimination. Plaintiff concedes that some NOI teachings could be
7 threatening to white individuals. In *Cutter v. Wilkinson*, 544 U.S. 709, 723 n.11 (2005),
8 the Supreme Court stated "Courts, however may be expected to recognize the
9 government's countervailing compelling interest in not facilitating inflammatory racist
10 activity that could imperil prison security and order."

11 Even if it were found that the NOI did not present discriminatory beliefs,
12 defendants had a legitimate government interest in denying plaintiff's use of a prison
13 television channel and educational department equipment for religious purposes. It is
14 undisputed that the Federal Education Act prevents use of federal education funds for
15 religious worship or instruction. It was reasonable for defendants to deny the requests so
16 as to not violate federal law. See, e.g., *Walker*, 789 F.3d at 1135-37.

17 With respect to the second factor, plaintiff had an alternative means to exercise his
18 right. Plaintiff and other NOI inmates were able to watch videos in the chapel and the
19 Muslim chaplain actively sought out ways to include the NOI inmates in the Islamic
20 program and incorporate their beliefs. It is undisputed that plaintiff occasionally attended
21 services. Defendants have also met their burden with respect to the third factor. If
22 plaintiff's requests were accommodated, there would be a significant impact on guards
23 and inmates. The safety of guards and other inmates would be at issue if the prison
24 authorized and provided funds for a religion and teachings that many consider being
25 prejudiced against others. If the prison paid for a chaplain for the NOI, then the prison
26 would need to pay for chaplains for other religions. Finally, the prison cannot use
27 educational equipment funds for religious purposes or they would be in violation of
28 federal law.

1 Defendants have also shown they are entitled to summary judgment with respect
2 to the fourth factor. There are ready alternatives already in place, as discussed above.
3 Plaintiff was able to view the videos, and there were many ways for him to practice his
4 religion. For all these reasons, summary judgment is granted on this claim.

5 **RLUIPA**

6 Plaintiff cannot obtain money damages pursuant to RLUIPA. RLUIPA does not
7 authorize suits against state actors (including prison officials) acting in their individual
8 capacity. *Wood v. Yordy*, 753 F.3d 899, 904 (9th Cir. 2014) (agreeing with other circuits
9 addressing this issue). Claims may only be brought against such defendants in their
10 official or governmental capacity. *Id.* at 904.

11 Yet, the availability of money damages from state officials sued in their official
12 capacity turns on whether the State has waived its Eleventh Amendment immunity from
13 such suits or Congress has abrogated that immunity under its power to enforce the
14 Fourteenth Amendment. *Holley v. Cal. Dep't of Corr.*, 599 F.3d 1108, 1112 (9th Cir.
15 2010). Although a state may choose to waive its Eleventh Amendment sovereign
16 immunity, its consent to suit "must be 'unequivocally expressed' in the text of the relevant
17 statute" and may not be implied. *Sossamon v. Texas*, 563 U.S. 277, 284 (2011) (*quoting*
18 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984)). RLUIPA's
19 provision that a person asserting a violation may obtain "appropriate relief," 42 U.S.C. §
20 2000cc-2a, does not unambiguously impose a waiver of sovereign immunity from claims
21 for damages as a condition of receipt of federal funds, so a state's receipt of such funds
22 is not a waiver. *Sossamon*, 563 U.S. 277 at 293 (holding that "States, in accepting
23 federal funding, do not consent to waive their sovereign immunity to private suits for
24 money damages under RLUIPA because no statute expressly and unequivocally includes
25 such a waiver"). And the provision of the Rehabilitation Act saying that states are not
26 immune under the Eleventh Amendment from suits asserting violations of enumerated
27 antidiscrimination statutes or "any other Federal statute prohibiting discrimination"
28 42 U.S.C. § 2000d-7, does not make a state's acceptance of federal funds a waiver of

1 immunity for RLUIPA claims because RLUIPA is not a “statute prohibiting discrimination.”
2 *Holley*, 599 F.3d at 1113-14. Consequently, RLUIPA does not authorize money
3 damages against state officials, whether sued in their official or individual capacities. See
4 *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015).

5 Nor is plaintiff entitled to injunctive relief under RLUIPA. Defendants have met
6 their burden in demonstrating the absence of a genuine issue of material fact, and
7 plaintiff has failed to meet his burden in showing a genuine issue for trial. Plaintiff has not
8 shown a substantial burden on his ability to practice his religion. He can view the NOI
9 videos; he can meet with other NOI members for religious reasons, including worship; the
10 Muslim chaplain has actively sought out ways to include plaintiff and other NOI inmates;
11 and plaintiff has attended Muslim services. Defendants have used the least restrictive
12 means to achieve a compelling government interest in avoiding inflammatory, racist,
13 homophobic and anti-Semitic activity and in avoiding the improper spending of education
14 funds on religious programming. This claim is denied.

15 **Equal Protection**

16 For the same reasons set forth above, summary judgment is granted to
17 defendants on the equal protection claim. Plaintiff has not set forth specific facts showing
18 a genuine issue as to whether he was denied a reasonable opportunity to pursue his faith
19 compared to other prisoners. Nor has he shown that defendants intentionally acted in a
20 discriminatory manner. In fact, defendants provided many ways for plaintiff to pursue his
21 faith through the various services and options they provided. Defendants are not liable
22 because other religious faiths acquired outside funding to provide other services. The
23 prison need not duplicate every religious benefit that other religions are provided. See
24 *Cruz* at 322 n.2. Moreover, there were various other groups that did not have their own
25 prison television channel or their own chaplain. For example, Wiccans relied on the
26 Native American chaplain, and Jehovah’s Witnesses relied on the Protestant chaplain.
27 Summary judgment is granted for this claim.

28 **Qualified Immunity**

1 The defense of qualified immunity protects “government officials . . . from liability
2 for civil damages insofar as their conduct does not violate clearly established statutory or
3 constitutional rights of which a reasonable person would have known.” *Harlow v.*
4 *Fitzgerald*, 457 U.S. 800, 818 (1982). The rule of “qualified immunity protects ‘all but the
5 plainly incompetent or those who knowingly violate the law.’” *Saucier v. Katz*, 533 U.S.
6 194, 202 (2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Defendants can
7 have a reasonable, but mistaken, belief about the facts or about what the law requires in
8 any given situation. *Id.* at 205. A court considering a claim of qualified immunity must
9 determine whether the plaintiff has alleged the deprivation of an actual constitutional right
10 and whether such right was clearly established such that it would be clear to a
11 reasonable officer that his conduct was unlawful in the situation he confronted. See
12 *Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (overruling the sequence of the two-part
13 test that required determining a deprivation first and then deciding whether such right was
14 clearly established, as required by *Saucier*). The court may exercise its discretion in
15 deciding which prong to address first, in light of the particular circumstances of each
16 case. *Pearson*, 555 U.S. at 236.

17 The court has not found a constitutional violation, and, even if there was a
18 violation, defendants would be entitled to qualified immunity. It would not be clear to
19 reasonable officials in these positions that denying plaintiff the ability to broadcast NOI
20 videos to the entire prison, while plaintiff and other inmates had the ability to watch them
21 in the chapel would violate the law. Nor would it be clear that denying a NOI chaplain
22 would violate the law when a Muslim chaplain was available, providing services and
23 opportunities for NOI inmates, and when not every religious faith is entitled to the
24 chaplain of their choice. Defendants are entitled to qualified immunity.¹

25 _____
26 ¹ To the extent there was a cognizable claim in the complaint regarding denial of use of
27 the chapel, the claim is denied. Plaintiff could privately congregate for NOI services on
28 the prison yard or in a housing unit; engage in written correspondence with a NOI
chaplain; and purchase authorized religious items. He has not shown that being denied
the use of the chapel burdened the practice of his religion under any of the causes of
action, and defendants would be entitled to qualified immunity.

1 **State Law Claims**

2 Under the California Tort Claims Act (“CTCA”), set forth in California Government
3 Code sections 810 et seq., a plaintiff may not bring a suit for monetary damages against
4 a public employee or entity unless the plaintiff first presented the claim to the California
5 Victim Compensation and Government Claims Board (“VCGCB” or “Board”), and the
6 Board acted on the claim, or the time for doing so expired. “The Tort Claims Act requires
7 that any civil complaint for money or damages first be presented to and rejected by the
8 pertinent public entity.” *Munoz v. California*, 33 Cal. App. 4th 1767, 1776 (1995). The
9 purpose of this requirement is “to provide the public entity sufficient information to enable
10 it to adequately investigate claims and to settle them, if appropriate, without the expense
11 of litigation.” *City of San Jose v. Superior Court*, 12 Cal. 3d 447, 455 (1974) (citations
12 omitted). Compliance with this “claim presentation requirement” constitutes an element
13 of a cause of action for damages against a public entity or official. *State v. Superior*
14 *Court (Bodde)*, 32 Cal. 4th 1234, 1244 (2004). Under California Government Code
15 section 910, plaintiff is required to show, inter alia, the date, place, and other
16 circumstances of the occurrence or transaction which gave rise to the claim; a general
17 description of the injury, damage or loss; and the names of the public employees causing
18 the injury. *Id.*

19 Federal courts require compliance with the CTCA for pendant state law claims that
20 seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d 702,
21 704 (9th Cir. 1969); *Mangold v. Cal. Pub. Utils. Comm’n*, 67 F.3d 1470, 1477 (9th
22 Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. §
23 1983, may proceed only if the claims were first presented to the state in compliance with
24 the claim presentation requirement. *Karim–Panahi v. LAPD*, 839 F.2d 621, 627 (9th
25 Cir.1988).

26 Defendants argue that plaintiff failed to file a government claim related to this
27 case. Ross Decl., Ex. I. Plaintiff’s only government claim submission was for a different
28 case. *Id.* Plaintiff does not address the state law claims in his opposition. Therefore,

1 plaintiff has failed to comply with the CTCA, and the state law claims must be dismissed.

2 Assuming plaintiff had argued that the government claim submitted by plaintiff
3 Wade in the related case also applies to him, such an argument would fail because
4 Wade's government claim was found to have been insufficient. In *Wade v. CDCR*, No.
5 17-0042 PJH, the court found that Wade had failed to comply with the claim presentation
6 requirement of the CTCA. No. 17-0042 PJH, Docket No. 53 at 12-15. Any argument that
7 plaintiff complied with the claim presentation requirement based on Wade's filing would
8 be denied for the same reasons set forth in *Wade*. *Id.* For all these reasons, the state
9 law claims are dismissed.²

10 **CONCLUSION**

11 1. For the reasons set forth above, the motion for summary judgment (Docket No.
12 22) is **GRANTED**.³

13 2. The clerk shall close the file.

14 **IT IS SO ORDERED.**

15 Dated: October 26, 2018



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18 **PHYLLIS J. HAMILTON**
United States District Judge

19
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25 _____
26 ² The court takes judicial notice of the public records from the related case. Docket No.
27 23. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

28 ³ Because the court has granted summary judgment on the merits, the exhaustion
argument will not be addressed. Nor will the court address that certain defendants did
not personally participate in the alleged violations or the availability of punitive damages.
Plaintiff did not set forth an Establishment Clause claim in this case so the issue will not
be addressed.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 CHRISTOPHER STEVEN BUTLER,

4 Plaintiff,

5 v.

6 CALIFORNIA DEPARTMENT OF
7 CORRECTIONS, et al.,

8 Defendants.

Case No. [17-cv-02399-PJH](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on October 26, 2018, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Christopher Steven Butler
18 T83516
19 Correctional Training Facility
20 P.O. Box 682
21 Soledad, CA 93960

22 Dated: October 26, 2018

23 Susan Y. Soong
24 Clerk, United States District Court

25 

26 Kelly Collins, Deputy Clerk to the
27 Honorable PHYLLIS J. HAMILTON