

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

OMAR ERNEST EPPS,

Plaintiff,

vs.

N. GRANNIS, et al.,

Defendants.

Case No. 10cv1949 BEN (KSC)

**ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

Plaintiff Omar Ernest Epps, a prisoner at California's Calipatria State Prison proceeding *pro se*, filed a First Amended Complaint on February 26, 2011. In his Amended Complaint he named fourteen defendants in six counts alleging fifteen claims for relief.

Plaintiff's claims for relief were grouped into two categories: (a) the § 1983 claims; and (b) the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") claims. Previously, all of the § 1983 claims were dismissed against all of the Defendants except the claim in Count Five against Defendant Meister in his individual capacity. At the same time the civil rights claims were dismissed, an Order to Show Cause was issued because it appeared that the RLUIPA claims might be moot. After both parties filed responses, the Court found that some of the

1 RLUIPA claims were, in fact, moot. However, the RLUIPA claim in Count 2 about
2 a prison policy of denying Plaintiff a Kosher diet, the RLUIPA claim in Count 5
3 about a prison policy on Plaintiff's purchasing through religious vendors, and the
4 RLUIPA claim in Count 6 about a policy of retaining Plaintiff's confiscated
5 religious books described a continuing case or controversy and so the Court set the
6 claims to be tried on the merits. The Defendants have now moved for summary
7 judgment on each of these remaining claims.

8 As an introductory matter, it is noted that Plaintiff has recently notified the
9 Court of a change of address. He indicates that he is no longer housed at Calipatria
10 State Prison. The new address is Centinela State Prison. See Notice filed September
11 9, 2013 (docket no. 138). As a result of the move, his RLUIPA claims seeking
12 injunctive relief are probably moot. "An inmate's release from prison while his
13 claims are pending generally will moot any claims for injunctive relief relating to the
14 prison's policies unless the suit has been certified as a class action." *Alvarez v. Hill*,
15 667 F.3d 1061, 1064 (9th Cir. 2012) (quoting *Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th
16 Cir. 1995)). The same is true for a transfer from one prison to another. *Rendelman*
17 *v. Rouse*, 569 F.3d 182, 186 (4th Cir. 2009) ("[A]s a general rule, a prisoner's
18 transfer or release from a particular prison moots his claims for injunctive and
19 declaratory relief with respect to his incarceration there."); *Sossamon v. Lone Star*
20 *State of Texas*, 560 F.3d 316, 325-26 (5th Cir. 2009). "The reasons for finding
21 mootness in such a context are clear. Once an inmate is removed from the
22 environment in which he is subjected to the challenged policy or practice, absent a
23 claim for damages, he no longer has a legally cognizable interest in a judicial
24 decision on the merits of his claim." *Lee v. Gurney*, Case No. 3:08cv99, 2010 WL
25 5113782, at *10 (E.D. Va. Dec. 9, 2010) (dismissing RLUIPA claim upon plaintiff's
26 transfer to different prison). However, even if the claims are not moot because of his
27 transfer, they fail for other reasons.

1 **II. DISCUSSION**

2 Summary judgment must be granted where the record shows “there is no
3 genuine dispute as to any material fact and the movant is entitled to judgment as a
4 matter of law.” FED. R. CIV. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S.
5 317, 322 (1986). The moving party must “persuade the court that there is no
6 genuine issue of material fact.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos.,*
7 *Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

8 **A. The RLUIPA Claims**

9 RLUIPA provides that a government generally shall not “impose a substantial
10 burden on the religious exercise of a person residing in or confined to an institution.”
11 42 U.S.C. § 2000cc-1(a). This general prohibition is tempered. A burden is
12 permissible if it is not substantial or if it is in furtherance of a “compelling
13 government interest” and is the least restrictive means of furthering that interest. *Id.*
14 The standard is to be applied giving “due deference to the experience and expertise
15 of prison and jail administrators in establishing necessary regulations and procedures
16 to maintain good order, security and discipline, consistent with consideration of
17 costs and limited resources.” *Hartmann v. Cal. Dep’t of Corrections*, 707 F.3d
18 1114, 1124 (9th Cir. 2013) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005)).

19 The plaintiff bears the initial burden of proof on whether a policy substantially
20 burdens his exercise of religion. *Id.* For a plaintiff who is incarcerated, the Ninth
21 Circuit Court of Appeals has held that, “a substantial burden occurs ‘where the state
22 . . . denies an important benefit because of conduct mandated by religious belief,
23 thereby putting substantial pressure on an adherent to modify his behavior and to
24 violate his beliefs.’” *Id.* at 1125 (quoting *Warsoldier v. Woodford*, 418 F.3d 989, 995
25 (9th Cir. 2005). If the Plaintiff bears his initial burden, then the burden shifts to the
26 government. “Once the plaintiff establishes that the challenged state action
27 substantially burdens his religious exercise, the government bears the burden of
28

1 establishing that the regulation serves a compelling government interest and is the
2 least restrictive means of achieving that interest.” *Shakur v. Schriro*, 514 F.3d 878,
3 889 (9th Cir. 2008).

4 **1. Named Defendants Lack Authority**

5 The first question Defendants pose is about their limited official authority to
6 change the policies Plaintiff challenges. RLUIPA does not provide for awards of
7 money damages against prison officials. *Alvarez*, 667 F.3d at 1063 (RLUIPA does
8 not provide for damages against state officials); *Holley v. Cal. Dep’t of Corr.*, 599
9 F.3d 1108, 1114 (9th Cir. 2010) (same); *Rendelman v. Rouse*, 569 F.3d 182, 189 (4th
10 Cir. 2009) (RLUIPA does not provide for damages against individual capacity
11 defendants for denial of Kosher meals); *Sossamon v. Lone Star State of Texas*, 560
12 F.3d 316, 329 (5th Cir. 2009) (RLUIPA does not provide for damages against
13 individual capacity defendants); *Nelson v. Miller*, 570 F.3d 868, 889 (7th Cir. 2009)
14 (same); *Smith v. Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007) (same). On the other
15 hand, RLUIPA may provide injunctive relief.

16 To win injunctive relief, a plaintiff need not prove a named official’s personal
17 involvement in the alleged RLUIPA violation. *Hartmann*, 707 F.3d at 1127.
18 Instead, a plaintiff must name as a defendant a government official who can
19 appropriately respond and change policy if injunctive relief is ordered. *Id.* (“Rather,
20 a plaintiff need only identify the law or policy challenged as a constitutional
21 violation and *name the official within the entity who can appropriately respond to*
22 *injunctive relief.*” (emphasis added)).

23 Plaintiff has named a large number of prison officials as Defendants.
24 However, Defendants have presented numerous declarations demonstrating that
25 none of the sued Defendants have authority to change their actions or change the
26 prison policies of which Plaintiff complains.

27 Some Defendants have retired from their positions with the state prison

1 system. More have transferred away from the prison where Plaintiff is incarcerated.
2 Those who still work at Calipatria State Prison have neither the authority to change
3 departmental policies or procedures nor the power to change, circumvent, or act
4 contrary to those policies – according to the current Acting Warden, F. Chavez. *See*
5 Declaration of F. Chavez, dated July 31, 2013 (Exhibit “G” to Defendants’ Motion
6 for Summary Judgment). Plaintiff submits no evidence to the contrary beyond his
7 own “understanding.” In *Hartmann*, the Ninth Circuit permitted RLUIPA claims to
8 proceed against two individuals who *did* have authority to carry out injunctive relief,
9 *i.e.*, the Secretary of the California Department of Corrections and the Warden of the
10 plaintiff’s prison. 707 F.3d at 1127 & n.2 (defendants admitted Secretary of CDCR
11 and Warden were most appropriate defendants to execute court-ordered injunctive
12 relief). Here, Epps has named neither the Secretary of the California Department of
13 Corrections, nor the Warden of Calipatria State Prison. Therefore, Defendants’ joint
14 motion for summary judgment on the RLUIPA claims is granted because there is no
15 genuine issue as to each Defendant’s lack of authority to execute any possible
16 RLUIPA court-ordered relief.

17 **2. The Halal/Kosher Diet Claim**

18 Even if Plaintiff had sued a proper defendant, the defendant would be entitled
19 to summary judgment. For example, Count Two asserts that the prison denies
20 Plaintiff a Kosher diet. Prison policy provides for a Kosher diet for inmates of the
21 Jewish faith. However, Plaintiff has asserted not that he is Jewish, but Muslim. He
22 is provided a “Religious Meat Alternative” (“RMA”) diet; it is a diet designed to be
23 respectful of practicing Muslims. “The RMA diet was designed to conform to the
24 Islamic faith. It includes Islamic Halal meat for dinner and vegetarian meals for
25 breakfast and lunch.” *See* Declaration of S. Andersen (Associate Warden), dated
26 July 30, 2013 (Exhibit “F” to Defendants’ Motion for Summary Judgment). In his
27 opposition, Plaintiff cites his deposition evidencing that he has been receiving the
28

1 RMA diet, but questions whether it is in fact a Halal diet. *See* Opposition of
2 Plaintiff, at 16.

3 While he offers reasons for why he questions whether the RMA diet is Halal,
4 he does not go further and declare that the prison’s provision of the RMA diet has
5 pressured Plaintiff to abandon his religious beliefs. Instead, like the unsuccessful
6 plaintiffs in *Hartmann*, “[r]ather than claiming [he] has been pressured to abandon
7 [his] religious beliefs, Plaintiff[] seek[s] additional religious accommodations
8 beyond those already provided by the prison. . . .” 707 F.3d at 1125.

9 Epps claims that he is entitled to a Kosher diet because, he says, a Kosher diet
10 is also Halal. In his Amended Complaint Epps says that the RMA diet causes him
11 chronic constipation, persistent gas, bloating, abdominal cramps, and chest pains,
12 “all of which places [him] in a state of ritual impurity.” The Complaint suggests the
13 Kosher diet would relieve all of that. Except that there is no evidence in the record
14 about whether a Kosher diet would have any effect on his physical condition. Epps
15 offers only his own speculation that a Kosher diet would cure his gastrointestinal
16 maladies. There is no evidence that Epps has either presented his physical
17 complaints to medical staff or that medical staff have prescribed a Kosher diet to
18 address his ills.

19 Epps’ claim stands in contrast to the plaintiff’s claim in *Shakur v. Schriro*. In
20 *Shakur*, the prisoner was not offered a Halal diet. Instead, he was offered only a
21 vegetarian diet with no meat. *Shakur*, 514 F.3d at 881. The other contrast is that in
22 *Shakur*, the only evidence of the expense of a kosher meal was from a prison
23 chaplain. *Id.* at 889-90. Here, Defendants provide a declaration from the
24 Correctional Food Manager at Calipatria explaining that the cost of a RMA diet is
25 \$3.10/day while a Kosher diet costs the prison \$8.70/day per inmate. *See*
26 Declaration of A. Covarrubias, dated July 31, 2013 (Exhibit “H” to Defendants’
27 Motion for Summary Judgment). There are 176 inmates receiving the RMA diet

1 while only 6 receive the Kosher diet. *Id.* The food manager also states that,
2 “[i]nmates who suffer from physical ailments because of their diet may obtain an
3 order from a physician that directs the food management team to alter their diet to
4 resolve the problem.” *Id.*

5 This is sufficient uncontested evidence to demonstrate that the Defendants’
6 provision of a RMA diet is the least restrictive means of furthering its interests in
7 containing the costs of simultaneously feeding inmates and accommodating inmates’
8 religious beliefs. Epps simply seeks an additional accommodation beyond what the
9 prison provides. There is, of course, no issue raised about whether Epps’ religious
10 belief is sincerely held. However, he has not submitted evidence creating a genuine
11 issue about whether his religious belief has been substantially burdened or showing
12 that if it has been, that there is no compelling interest for the burden or that there is
13 another less restrictive means available to serve the compelling interest. Defendants
14 are entitled to summary judgment on Count Two.

15 **3. The Quarterly Package Policy**

16 Even if Plaintiff had sued a proper defendant, the defendant would be entitled
17 to summary judgment on Count Five challenging the quarterly package policy.
18 Under the policy, an inmate may order products or food once a quarter to be
19 received in prison. Any time packages from outside a prison are delivered to an
20 inmate inside a prison, the package presents security and safety concerns. To
21 ameliorate those concerns, inmates may order from approved vendors who agree to
22 work with the prison. “[T]he religious purchase policy works to limit the
23 introduction of contraband into the institution by pre-approving vendors who are
24 willing to meet specific requirements designed to ensure safety and security.” *See*
25 Declaration of S. Andersen (Associate Warden), dated July 30, 2013 (Exhibit “F” to
26 Defendants’ Motion for Summary Judgment). In addition, an inmate may order a
27 religious item from a non-approved vendor if a Chaplain approves. The item then
28

1 must pass a safety analysis. *Id.* These extra packages for religious items do not
2 count against an inmates' quarterly package allowance. *Id.*

3 In Count Five, Plaintiff claims that a package from an exclusively Muslim
4 vendor should fall under the extra religious package exception. Epps submits his
5 own declaration and the declaration of Brandon Holsey (a Calipatria inmate). He
6 describes how, in his opinion, the prison does not comply with state regulations and
7 the department operation manual. Yet, Epps does not go further and declare that the
8 prison's quarterly package policy has pressured Plaintiff to abandon his religious
9 beliefs. Instead, like the unsuccessful plaintiffs in *Hartmann*, "[r]ather than claiming
10 [he] has been pressured to abandon [his] religious beliefs, Plaintiff[] seek[s]
11 additional religious accommodations beyond those already provided by the prison. . .
12 ." 707 F.3d at 1125. Summary judgment is the time for each party to present
13 evidence sufficient to carry their own burden of proof or cast substantial doubt on
14 the other's proof. Here, Plaintiff's proof that the policy works a substantial burden
15 is lacking. Also lacking is any evidence that the quarterly package policy does not
16 serve a compelling government interest by a least restrictive means. There is
17 evidence that permitting inmates to receive packages through the mail implicates
18 security and safety concerns. One way to maintain security is to prohibit all
19 packages. The prison has a more generous policy. The more generous policy does
20 not impose a substantial burden on Epps' religious practice. Defendants are entitled
21 to summary judgment on Count Five. *See also Davis v. Powell*, 901 F. Supp. 2d
22 1196, 1232 (S.D. Cal. 2012) (dismissing RLUIPA claim that California prison
23 quarterly package policy may have made purchases from favorite vendor more
24 difficult, but did not rise to a substantial burden). **4. Seized Religious**

25 **Written Materials**

26 Here again, even if Plaintiff had sued the proper Defendants, the Defendants
27 would be entitled to judgment on Count Six challenging the seizure and retention of
28

1 some of Plaintiff's religious written materials. The defect in this claim for relief is
2 that it is now moot. According to the Amended Complaint, written materials were
3 seized from Epps' cell in 2010. Some were religious papers; some were self-defense
4 papers. He does not complain of the withholding of the self-defense manual. He
5 does complain of the retention of the religious writings and seeks their return.
6 However, in his recent declaration, Epps states that the religious papers were
7 returned to him in November 2012. *See* Declaration of O. Epps, ¶ 56, dated August
8 15, 2013 (Attachment to Plaintiff's Opposition to Motion for Summary Judgment).

9 Mootness is the doctrine of standing set in a time frame. That is, standing
10 "must continue throughout" the case. *Friends of the Earth, Inc. v. Laidlaw Env'tl.*
11 *Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *Sanford v. MemberWorks, Inc.*, 625
12 F.3d 550, 556 (9th Cir. 2010). Because Epps' materials have been returned to him
13 (albeit two years after they were first seized) and there is no other evidence that the
14 prison has a policy of seizing and retaining an inmate's religious writings or that
15 Epps' same papers will be re-seized in the future, this RLUIPA claim is moot. "A
16 claim is moot when the issues presented are no longer live." *Alvarez*, 667 F.3d at
17 1064 (citations omitted) (finding moot a prisoner's RLUIPA claim).

18 **B. The § 1983 Claim Against Defendant Meister**

19 Count Five stated a claim against Defendant Meister acting in his individual
20 capacity. Epps claims that Meister deprived him of a special package mailed to him
21 for the observance of Ramadan in 2008. According to the Complaint, Ramadan took
22 place during September and October 2008, ending on October 2, 2008. Epps claims
23 that a Ramadan package addressed to him arrived at the prison on October 10th but
24 Meister refused acceptance of the package. He claims the refusal was in violation of
25 a prison policy that permitted inmates to receive Ramadan packages as late as ten
26 days after the end of Ramadan. The package was eventually returned to the sender.
27 Epps claims that he was denied "the expression of my religion through eating

1 Halal/Kosher foods.” He seeks \$318 in damages from Defendant Meister “for
2 inappropriately refusing to accept plaintiff’s special religious Ramadan package.”

3 In order to establish a First Amendment violation, Epps must prove that
4 Defendant Meister “burdened the practice of his religion, by preventing him from
5 engaging in conduct mandated by his faith, without any justification reasonably
6 related to legitimate penological interests.” *Freeman v. Arpaio*, 125 F.3d 732, 736
7 (9th Cir. 1997) (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). Defendant Meister
8 points out several shortcomings in Plaintiff’s evidence. First, there is a lack of
9 evidence that Meister burdened Epps’ practice of his religion. There is no question
10 that Epps’ package arrived on October 10, 2008, at the earliest. That was a week
11 after the observance of Ramadan had concluded. If Meister had picked up and not
12 rejected the package on the 10th day of October, it would still have been too late for
13 Epps’ Ramadan observance. That the prison had a policy of accepting Ramadan
14 packages for several days after Ramadan had ended is more than what is required by
15 Epps’ faith. That the policy may not have been followed does not make it a First
16 Amendment violation. Moreover, Epps offers no evidence about what he expected
17 to find in the contents of the returned package. He does declare, without explaining
18 the connection, that he was deprived of “the use and benefit of the Halal and Kosher
19 meat and fish.” *See* Declaration of O. Epps, ¶ 19, dated August 15, 2013
20 (Attachment to Plaintiff’s Opposition to Motion for Summary Judgment). Even at
21 that, Epps does not explain how meat and fish were mandated by his religion on
22 October 10th or later, after Ramadan had ended.

23 Second, Epps offers no evidence to cast doubt on the explanation that
24 Meister’s actions were reasonably related to legitimate penological interests. As
25 noted earlier, mail packages to inmates present issues of prison safety and security.
26 There is no evidence suggesting Meister was acting out of personal animus or an
27 institutional policy designed to deter Epps from practicing his faith.

1 More importantly, the evidence paints a different picture in which Meister
2 never had a chance to reject Epps' Ramadan package on October 10, 2008. Meister
3 offers the declaration of Sgt. B. Bentley who worked as the mail room Sergeant
4 during October 2008. *See* Declaration of B. Bentley, dated July 30, 2013 (Exhibit
5 "I" to Defendants' Motion for Summary Judgment). Bentley explains that he would
6 travel to the local post office Monday through Friday, arriving between 9:00 a.m.
7 and 9:30 a.m. to pick up mail addressed for Calipatria State Prison. He says he did
8 this on October 10, 2008 and left between 10:00 a.m. and 10:30 a.m. Bentley says
9 that days later he informed Plaintiff that a package had arrived at the local post
10 office at 11:09 a.m. on Friday, October 10, 2008 -- *after* he had already returned to
11 the prison. Bentley says that there was no mail picked up on either Saturday or
12 Sunday following Friday, October 10, 2008, as was the usual custom. The inference
13 is that Meister could not have rejected Epps' package on October 10, 2008, because
14 the package had not yet been brought to the prison.

15 The inference is borne out by Meister's own declaration. Meister recalls that
16 he worked in the mail room at the prison in 2008. *See* Declaration of W. Meister,
17 dated July 26, 2013 (Exhibit "Q" to Defendants' Motion for Summary Judgment).
18 Meister says, "I know that I never personally rejected a Ramadan package intended
19 for Plaintiff on or before October 12, 2008." *Id.* He explains that during the
20 following week he filled out a form with the remark: "Ramadan expired 10-10-08."
21 Meister offers that he believed the period for inmates to receive Ramadan packages
22 ended on October 10, 2008. *Id.* Meister's memory comports with that of inmate
23 Brandon Holsey, according to a declaration submitted by Plaintiff. The Court is not
24 weighing competing evidence. It finds that there is no genuine issue because all of
25 the evidence is consistent. Plaintiff's package was not picked up from the local post
26 office on October 10, 11, or 12. Likewise, Defendant Meister, who worked only
27 inside the prison mail room, did not have the opportunity to reject Plaintiff's
28

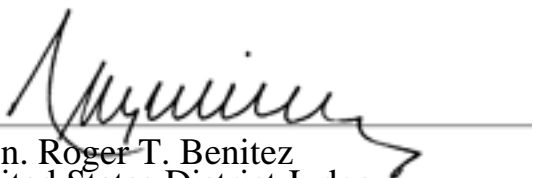
1 package on October 10, 11, or 12. There is no evidence demonstrating that Meister
2 personally burdened Epps' religious practice. There is evidence that Meister was
3 simply acting in accordance with prison policy reasonably related to legitimate
4 penological interests. Therefore, Defendant Meister, sued in his individual capacity,
5 is entitled to summary judgment on Count Five.

6 **III. CONCLUSION**

7 Defendant Meister is entitled to summary judgment on the § 1983 claim
8 against him. The remaining RLUIPA claims may now be moot as a result of
9 Plaintiff's prison transfer. Even if all of the RLUIPA claims are not moot, the claim
10 in Count Six challenging the seizure and retention of some of Plaintiff's religious
11 written materials is now moot. Finally, even if the claim in Count Six is not moot,
12 Defendants are entitled to summary judgment on all of the RLUIPA claims.
13 Plaintiff has not prevailed on any of his claims and judgment may be entered in
14 favor of all Defendants. The Clerk of Court may close the case.

15 IT IS SO ORDERED.

16 DATED: September 21, 2013

17 
18 Hon. Roger T. Benitez
19 United States District Judge
20
21
22
23
24
25
26
27
28