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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DARYL WOODS,  
12 CDCR #H-43246,

13 Plaintiff,

14 vs.

15 DANIEL PARAMO; VICTOR ACOSTA;  
16 F. HADJADJ,,  
17

18 Defendants.  
19

Case No.: 3:17-cv-02595-CAB-WVG

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT  
PURSUANT TO FED.R.CIV.P. 56**

[ECF No. 25]

20 Daryl Woods ("Plaintiff"), a prisoner currently incarcerated at the Richard J.  
21 Donovan Correctional Facility ("RJD") located in San Diego, California, is proceeding  
22 pro se and in forma pauperis ("IFP") in this civil action pursuant to 42 U.S.C. § 1983.

23 **I. Procedural History**

24 On February 15, 2018, the Court granted Plaintiff leave to proceed IFP pursuant to  
25 28 U.S.C. § 1915(a) and found that Plaintiff's Complaint contained "free exercise of  
26 religion and equal protection claims sufficient to survive the 'low threshold' for  
27 proceeding past the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and  
28

1 1915A(b).”<sup>1</sup> (ECF No. 4 at 4 citing *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir.  
2 2012)). The United States Marshals Service (“USMS) was directed to serve Defendants  
3 Paramo, Acosta and Hadjadj with a copy of the Complaint and summons. (*See Id.* at 6.)

4 Defendants filed an Answer on April 24, 2018. (*See* ECF No. 11.) On March 7,  
5 2019, Defendants filed a Motion for Summary Judgment pursuant to FED. R. CIV. P. 56.  
6 (*See* ECF No. 25.) Defendants notified Plaintiff of the requirements for opposing  
7 summary judgment pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc).  
8 (*See* ECF No. 25-7.) Plaintiff filed his Opposition to Defendants’ Motion on June 7,  
9 2019, to which Defendants filed their Reply. (*See* ECF Nos. 29, 30.) The Court also  
10 permitted Plaintiff to file a “Sur-Reply” on July 16, 2019. (*See* ECF No. 33.)

11 The Court has determined that this Motion is suitable for disposition upon the  
12 papers without oral argument and that no Report and Recommendation from Magistrate  
13 Judge William Gallo is necessary. *See* S.D. CAL. CIVLR 7.1(d)(1), 72.3(e).

14 Having carefully considered the record as submitted, the Court now GRANTS  
15 Defendants’ Motion for Summary Judgment.

## 16 **II. Factual Background**

### 17 **A. Plaintiff’s Claims**

18 Plaintiff was transferred from Wasco State Prison (“WSP”) to RJD on August 8,  
19 2017. (*See* Compl., ECF No. 1 at 4.) When Plaintiff was previously housed at WSP, he  
20 was “approved for Kosher diet.” (*Id.*) CDCR regulations provide, in part, that “inmates  
21 who are transferred shall have the ability to continue participation in their current  
22 religious diet program at the receiving institution barring medical needs or other  
23 extraordinary circumstances.” (*Id.* citing CAL. CODE. REGS. TIT. 15, § 3054(c).)

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27 <sup>1</sup> Page numbers for all documents filed in the Court’s Case Management/Electronic Case File  
28 (“CM/ECF”) will refer to the pagination generated by CM/ECF as indicated on the top right-hand corner  
of each chronologically-numbered docket entry.

1 Plaintiff alleges that RJD “has a practice/custom to violate this mandate with all  
2 transferred prisoners on religious diets.” (*Id.*) Plaintiff further maintains that “Chaplain  
3 Hadjadj is not adhering to section 3054(c) and continuing diets upon transfer.” (*Id.*)  
4 Instead, Hadjadj is “requiring prisoners to go through the entire approval process again.”  
5 (*Id.*) Plaintiff was “required to fill out a new CDCR 3030 form for Kosher diet, even  
6 though the Statewide Computer System (“S.O.M.S.”) notifies RJD officials of approved  
7 diets.” (*Id.*)

8 Plaintiff alleges he was “denied a Kosher meal for 27 days.” (*Id.*) Plaintiff  
9 submitted a grievance to Hadjadj and “CRM Brown<sup>2</sup>” on August 9, 2017 “but was not  
10 placed on Kosher diet” until September 4, 2017. (*Id.*) Plaintiff was “limited on what he  
11 could eat to not offend religious principles.” (*Id.*) He claims Warden Paramo had been  
12 “made aware of these long delays but failed to take action.” (*Id.*) As a result, Plaintiff  
13 was “forced to eat bread and water for 3 weeks.” (*Id.*)

14 Plaintiff further claims that “he was denied equal protection of similarly situated  
15 [prisoners] who transfer to prisons already approved for Kosher diet and allowed to  
16 continue in a reasonable fashion.” (*Id.* at 5.) Moreover, he alleges Paramo “has  
17 repeatedly been advised of this problem and extensive delays but he has to date failed to  
18 address it at all.” (*Id.*)

19 Plaintiff seeks injunctive relief in the form of an injunction preventing Defendants  
20 from “delaying provision of Kosher diets upon transfer for extensive periods,” along with  
21 compensatory and punitive damages “to be determined.” (*Id.* at 8.)

### 22 **III. Motion for Summary Judgment**

23 Defendants seek summary judgment on the grounds that: (1) they did not violate  
24 Plaintiff’s rights under the First Amendment; (2) they did not violate Plaintiff’s rights  
25 under the Fourteenth Amendment Equal Protection Clause; (3) they are entitled to  
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27  
28 <sup>2</sup> Brown is not a named Defendant in this action.

1 qualified immunity; and (4) Plaintiff lacks standing to request injunctive relief. (*See*  
2 Defs.’ Memo. of Ps&As in Suppl. of Mot. for Summ J., [hereafter “Defs.’ Memo. of P &  
3 As”] ECF No. 25-1, at 7.)

#### 4 **A. Standard of Review**

5 Rule 56(a) provides that a court “shall grant summary judgment if the movant  
6 shows 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).

8 Under summary judgment practice, the moving party always bears the initial  
9 responsibility of informing the district court of the basis for its motion, and identifying  
10 those portions of “the pleadings, depositions, answers to interrogatories, and admissions  
11 on file, together with the affidavits, if any,” which it believes demonstrate the absence of  
12 a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)  
13 (quoting Fed.R.Civ.P. 56(c)) If the moving party meets its initial responsibility, the  
14 burden then shifts to the nonmoving party to establish, beyond the pleadings, that there is  
15 a genuine issue for trial. *Id.* at 324.

16 To avoid summary judgment, the non-moving party is “required to present  
17 significant, probative evidence tending to support h[is] allegations,” *Bias v. Moynihan*,  
18 508 F.3d 1212, 1218 (9th Cir. 2007) (citations omitted), and must point to some evidence  
19 in the record that demonstrates “a genuine issue of material fact [which], with all  
20 reasonable inferences made in the plaintiff[]’s favor, could convince a reasonable jury to  
21 find for the plaintiff[].” *Reese v. Jefferson School Dist. No. 14J*, 208 F.3d 736, 738 (9th  
22 Cir. 2000) (citing Fed.R.Civ.P. 56; *Celotex*, 477 U.S. at 323). The opposing party cannot  
23 rest solely on conclusory allegations of fact or law. *Berg v. Kincheloe*, 794 F.2d 457, 459  
24 (9th Cir. 1986).

#### 25 **B. First Amendment Free Exercise claim**

26 “The right to the free exercise of religion is a precious American invention,  
27 distinguishing our Constitution from all prior national constitutions.” *Ward v. Walsh*, 1  
28 F.3d 873, 876 (9th Cir. 1993). “The right to exercise religious practices and beliefs does

1 not terminate at the prison door. The free exercise right, however, is necessarily limited  
2 by the fact of incarceration, and may be curtailed in order to achieve legitimate  
3 correctional goals or to maintain security.” *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th  
4 Cir. 1987). The protections of the Free Exercise Clause are triggered when prison  
5 officials burden the practice of an inmate’s religion by preventing him from engaging in  
6 conduct which he sincerely believes is consistent with his faith. *Shakur v. Schriro*, 514  
7 F.3d 878, 884 (9th Cir. 2008); *Freeman v. Arpaio*, 125 F.3d 732, 737 (9th Cir. 1997),  
8 *overruled in part by Shakur*, 514 F.3d at 884-85.

9 A prison regulation or policy that might otherwise unconstitutionally impinge on  
10 an inmate’s First Amendment rights will survive a First Amendment challenge, however,  
11 if it is “reasonably related to legitimate penological interests.” *See Turner v. Safley*, 482  
12 U.S. 78, 89 (1987); *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 353 (1987). In  
13 determining whether a prison regulation is reasonably related to a legitimate penological  
14 interest, the court considers the following factors: (1) whether there is a valid, rational  
15 connection between the regulation and the interest used to justify the regulation; (2)  
16 whether prisoners retain alternative means of exercising the right at issue; (3) the impact  
17 the requested accommodation will have on inmates, prison staff, and prison resources  
18 generally; and (4) whether the prisoner has identified easy alternatives to the regulation  
19 which could be implemented at a minimal cost to legitimate penological interests.  
20 *Turner*, 482 U.S. at 89-90; *Shakur*, 514 F.3d at 884.

### 21 **1. Defendant Paramo**

22 In Plaintiff’s Complaint, he contends that Warden Paramo “failed to act/stop and  
23 prevent wrongs alleged” by failing to “comply [with] Section 3054.” (ECF No. 1 at 2.)  
24 He further alleges that Paramo “failed to take action” after he was “made aware of these  
25 long delays.” (*Id.* at 4.) These allegations arise from Plaintiff’s claims that various  
26 prison officials at RJD were not complying with CDCR regulation § 3054 which is the  
27 section governing the CDCR’s “Religious Diet Program.” CAL. CODE. REGS. TIT. 15,  
28 § 3054. More specifically, Plaintiff is claiming that RJD prison officials failed to

1 comply with § 3054(c) which provides, in part, that “[i]nmates who are transferred shall  
2 have the ability to continue participating in their current Religious Diet Program at the  
3 receiving institution.” *Id.* at § 3054(c).

4 In support of their Opposition, Defendants have provided portions of Plaintiff’s  
5 deposition transcript. (*See* Defs.’ P&As, Declaration of Michelle Des Jardins in Supp. of  
6 Mot. for Summ. J., ECF No. 25-2 [hereafter “Pl.’s Dep.”], Ex. 1.) In addition, Defendant  
7 Paramo has submitted a declaration signed under penalty of perjury. (*See* Defs.’ P&As,  
8 Declaration of D. Paramo in Supp. of Mot. for Summ. J., ECF No. 25-5 [hereafter  
9 “Paramo Decl.”])

10 It is clear from Plaintiff’s allegations in his Complaint that he is seeking to hold  
11 Warden Paramo liable in his supervisory capacity. (*See* Compl. at 2, 3.) “A plaintiff  
12 must allege facts, not simply conclusions, that show that an individual was personally  
13 involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193,  
14 1194 (9th Cir. 1998). A person deprives another of a constitutional right under section  
15 1983, where that person ““does an affirmative act, participates in another’s affirmative  
16 acts, or omits to perform an act which [that person] is legally required to do that causes  
17 the deprivation of which complaint is made.”” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th  
18 Cir. 1978). The “requisite causal connection can be established not only by some kind of  
19 direct personal participation in the deprivation, but also by setting in motion a series of  
20 acts by others which the actor knows or reasonably should know would cause others to  
21 inflict the constitutional injury.” *Id.* at 743-44. There is no respondeat superior liability  
22 under § 1983; therefore, a supervisor, like Paramo, may be held liable for the  
23 constitutional violations of her subordinates only if she “participated in or directed the  
24 violations, or knew of the violations and failed to act to prevent them.” *Taylor v. List*,  
25 880 F.2d 1040, 1045 (9th Cir. 1989).

26 In his deposition, Plaintiff was asked if he sent “anything to the Warden.” (Pl.’s  
27 Dep. at 63:14.) Plaintiff responded that he did not. (*Id.* at 63:17.) In addition, Plaintiff  
28 was asked if he spoke with the Warden about the issue of the delay and he replied that he

1 did not speak with the Warden about that issue. (*Id.* at 63:16-17.) When asked “why do  
2 you contend he was aware of your delay in receiving a kosher diet,” Plaintiff responded  
3 “[b]ecause [Paramo] should be aware of the people under him what they’re doing.” (*Id.*  
4 at 63:18-21.) Plaintiff also stated that Paramo is “above everybody” and “the boss” and  
5 “should know what is going on at his own institution.” (*Id.* at 63:21-23.)

6 Paramo states in his declaration that “Donovan did not have a practice or policy of  
7 requiring inmates to reapply for a Kosher diet upon transfer to Donovan.” (Paramo Decl.  
8 at ¶ 2.) Paramo further states that he “never received any correspondence from  
9 [Plaintiff] concerning a Kosher diet.” (*Id.* at ¶ 3.) Finally, he declares that he was  
10 familiar with the CDCR regulations regarding religious diets and “had no reason to  
11 believe that the chaplain, food services personnel, or any other staff were ignoring any  
12 regulations pertaining to religious diets.” (*Id.* at ¶ 2.)

13 Plaintiff points to no evidence in the record to demonstrate that Paramo was at all  
14 aware of his claims. Instead, Plaintiff argues in his Opposition that Paramo “knowing the  
15 serious implications of Mr. Woods’ allegations/charges did not ‘man up’ to individual or  
16 collective responsibility – no ‘Harry S. Truman – the buck stops here.” (P.’s Opp’n, ECF  
17 No. 29 at 9.) Plaintiff does not present any evidence to raise a genuine issue of a dispute  
18 of a material fact that Paramo personally participated in the purported violation of  
19 Plaintiff’s constitutional rights.

20 Accordingly, Defendant Paramo’s Motion for Summary Judgment as to all of  
21 Plaintiff’s claims against him is **GRANTED** pursuant to FED.R.CIV.P. 56.

## 22 **2. Defendant Acosta**

23 There are even fewer facts relating to Defendant Acosta in Plaintiff’s Complaint.  
24 On page two of Plaintiff’s Complaint, he lists Acosta as a Defendant and indicates that he  
25 is the “Food Services Manager at RJD responsible for processing and handling all foods,  
26 diets, meals.” (Compl. at 2.) He further claims that Acosta “failed to comply with state  
27 regulation section 3054.” (*Id.*) However, in the body of Plaintiff’s Complaint there are  
28 no specific factual allegations as to how Acosta was aware of Plaintiff’s claims or that he

1 was personally involved in the purported violation of Plaintiff’s constitutional rights.

2 Plaintiff was asked in his deposition if he had ever spoken to Defendant Acosta  
3 and Plaintiff replied, “I think he was the guy in the kitchen.” (Pl.’s Dep. at 66:23-25.)  
4 He elaborated by saying he told Acosta “Man, you can tell the food manager that, hey,  
5 my stuff is here. I’ve been talking to Hadjadj.” (*Id.* at 67:2-3.) Plaintiff indicated that he  
6 believed that Acosta was the “free cook” and “looked Asian” to him. (*Id.* at 67:7-11.)  
7 Plaintiff further testified that he did not file a grievance with Acosta and Acosta did not  
8 respond to any of his grievances. (*Id.* at 9-22.)

9 Acosta has submitted a declaration in which he testifies that he is the “Correctional  
10 Food Manager I” and he works in the “administrative area of [RJD’s] central kitchen.”  
11 (*See* Defs.’ P&As, Declaration of Acosta in Supp. of Mot. for Summ. J., at ¶ 2, ECF No.  
12 25-4 [hereafter “Acosta Decl.”])

13 Acosta maintains that he is neither a cook nor is he Asian as described by  
14 Plaintiff. (*Id.* ¶ 3.) He further declares that he does not “typically interact with the  
15 inmate population” and works in the “central kitchen.” (*Id.*) The central kitchen is “not  
16 attached to a chow hall or to a prison yard.” (*Id.*) The kosher meals are “taken from the  
17 central kitchen to the yards for distribution to inmates who are on the kosher diet list.”  
18 (*Id.*) In addition, Acosta indicates that the distribution is “handled by someone other”  
19 than himself. (*Id.*)

20 Acosta declares that Plaintiff “never spoke” with him regarding his kosher diet.  
21 (*Id.* at ¶ 4.) He further maintains that he “had no knowledge of [Plaintiff’s] need for a  
22 kosher diet until he was placed on the kosher diet list that was provided for Food Service,  
23 after which he received kosher meals.” (*Id.*) Moreover, Acosta had “no authority to  
24 place an inmate on a kosher-diet list.” (*Id.* at ¶ 5.)

25 Plaintiff’s Opposition offers no admissible evidence to dispute Acosta’s  
26 demonstration that he was not involved in the decisions to provide Plaintiff with a kosher  
27 diet nor has Plaintiff offered any evidence that he ever spoke with Acosta regarding his  
28 kosher diet. In his Opposition, Plaintiff instead suggests that Acosta, without evidentiary



1 support, is involved in a “scam” to mix “kosher with non-kosher food packages.” (See  
2 Pl.’s Opp’n at 12.)

3 The Court finds there is no evidence in the record that would show there to be a  
4 direct connection between Defendant Acosta and Plaintiff’s purported delay in receiving  
5 a kosher diet. “[M]ere allegation and speculation do not create a factual dispute for  
6 purposes of summary judgment.” *Nelson v. Pima Community College*, 83 F.3d 1075,  
7 1081-82 (1996). Moreover, in order for the Court to find a genuine issue of material fact  
8 regarding whether Plaintiff’s constitutional rights were violated, there must be the  
9 “requisite causal connection” in which there is “some kind of direct personal participation  
10 in the deprivation” or that can be shown by “setting in motion a series of acts by other  
11 which the actor knows or reasonably should know would cause others to inflict the  
12 constitutional injury.” *Johnson*, 588 F.2d at 743-44. Here, there is no evidence in the  
13 record to raise a triable issue of material fact that would link the purported failure to  
14 provide Plaintiff with a kosher diet to Defendant Acosta.

15 Accordingly, Defendant Acosta’s Motion for Summary Judgment as to all of  
16 Plaintiff’s claims against him is **GRANTED** pursuant to FED.R.CIV.P. 56.

### 17 **3. Defendant Hadjadj**

18 Plaintiff’s allegations against Defendant Hadjadj involve Hadjadj’s alleged failure  
19 to immediately provide Plaintiff with a kosher diet upon his arrival at RJD in violation of  
20 CDCR’s regulations. (*See* Compl. at 4.) Plaintiff also claims it violated his First  
21 Amendment rights when Hadjadj required Plaintiff “to go through the entire [kosher  
22 meal] approval process again.” (*Id.*)

23 CDCR regulations provide, in part, that “inmates who are transferred shall have the  
24 ability to continue participation in their current Religious Diet Program at the receiving  
25 institution barring medical needs or other extraordinary circumstances.” CAL. CODE  
26 REGS. TIT. 15, § 3054(c)). It is undisputed that Plaintiff had been approved for a kosher  
27 diet when he was previously housed at WSP. (*See* Pl.’s Compl. at 4; Hadjadj Decl. at ¶  
28 5; Defs.’ P&As at 23.)

1 At issue in this matter is not the constitutionality of § 3054(c) itself but rather  
2 whether there is a genuine issue of material fact as to whether Hadjadj intentionally failed  
3 to comply with this regulation allowing Plaintiff to continue with a kosher diet  
4 immediately upon his transfer causing an alleged violation of Plaintiff's First  
5 Amendment rights.

6 In his declaration, Hadjadj declares that he "does not have a policy of requiring all  
7 inmates to re-apply for a religious diet when they transfer" to RJD. (Hadjadj Dec. at ¶  
8 3.) He further declares that he first received Plaintiff's request for a kosher diet in  
9 August of 2017. (*Id.* at ¶ 5.) Plaintiff had been transferred to RJD on August 8, 2017.  
10 (*See* Pl.'s Compl. at 4.) On August 9, 2017, Plaintiff submitted an "inmate/parolee  
11 request" indicating that he "was getting kosher at Wasco, I practice Jewish faith in a  
12 slightly different way." (*Id.*, Ex. "Inmate/Parolee Request for Interview, Item or  
13 Service, CDCD 22, dated Aug. 9. 2017.") Hadjadj responded to this request, on August  
14 15, 2017, stating "[p]lease provide proof/document of your previous approval." (*Id.*)  
15 Plaintiff responded to this request on August 23, 2017 stating that he would send his  
16 "original" approval. (Pl.'s Dep. at 45:1-5.) Plaintiff does not dispute that his request was  
17 ultimately granted and he began to receive his kosher meals on September 4, 2017. (*Id.*  
18 at 54:20-24.)

19 Plaintiff alleges in his unverified Complaint that Hadjadj had a policy of "not  
20 adhering to Section 3054(c) and continuing diets upon transfer" but instead "requiring  
21 prisoners to go through the approval process again." (Pl.'s Compl. at 4.) Hadjadj  
22 declares that he followed the regulation and did "not have a policy of requiring all  
23 inmates to re-apply for a religious diet when they transfer to [RJD]." (Hadjadj Decl. at ¶  
24 3.) Plaintiff offers no admissible evidence to dispute Hadjadj's declaration but rather  
25 relies on conclusory statements.

26 However, Hadjadj declares that he "checked CDCR's electronic inmate file for  
27 [Plaintiff] and did not see an approved Form 3030 for a kosher diet." (*Id.* at ¶ 5.) He did  
28 see the initial denial of a kosher diet for Plaintiff on November 17, 2016 at WSP but

1 states he “did not realize that there was another updated copy of the November 17, 2016  
2 Form 3030 in which a [WSP] official had later checked off ‘approved’ at the bottom of  
3 the form next to the box where they had previously checked off ‘denied.’” (*Id.*) As a  
4 result, it is undisputed that Hadjadj “asked [Plaintiff] to fill out a new Form 3030 so that I  
5 could verify his eligibility for one.” (*Id.* at ¶ 6; Pl.’s Dep. 45:1-12.) On August 29,  
6 2017, Plaintiff resubmitted the form requesting a kosher diet and on September 4, 2017,  
7 Plaintiff began receiving a kosher diet. (Hadjadj Decl., Ex. 4, Religious Diet Program  
8 Request, CDCR 3030 dated Aug. 29, 2017; Compl. at 4.)

9 The Ninth Circuit has held that it is constitutional for an institution to require that  
10 an inmate complete an application in order to receive a kosher meal. *See Resnick v.*  
11 *Adams*, 348 F. 3d 763, 771 (9th Cir. 2003). Plaintiff’s receipt of a kosher diet was  
12 delayed by a period of less than thirty days but Plaintiff provides no evidence that the  
13 delay was intentional or that it was unnecessarily prolonged. Moreover, Plaintiff can  
14 point to no authority that the brief delay was unconstitutional. *See e.g. Green v. Paramo*  
15 2018 WL 6062359, at \*4 (S.D. Cal. Nov. 20, 2018) (five month delay in processing  
16 religious diet application not unconstitutional); *Taylor v. Pelican Bay*, 2010 WL 2671989  
17 at \*8 (N.D. Cal. July 2, 2010) (two month delay in processing religious diet not  
18 unconstitutional even after plaintiff was previously approved for a religious diet at  
19 another prison and required to participate in verification process.)

20 Accordingly, Defendant Hadjadj’s Motion for Summary Judgment as to Plaintiff’s  
21 claims First Amendment claims against him is **GRANTED** pursuant to FED.R.CIV.P. 56.

### 22 **C. Fourteenth Amendment Equal Protection claims**

23 Defendants move for summary judgment of Plaintiff’s equal protection claims.  
24 (*See* Defs.’ Memo of Ps & As at 27-28.) “The Equal Protection Clause of the Fourteenth  
25 Amendment commands that no State shall ‘deny to any person within its jurisdiction the  
26 equal protection of the laws,’ which is essentially a direction that all persons similarly  
27 situated should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 472 U.S.  
28 432, 439 (1985). Specifically, the Equal Protection Clause of the Fourteenth

1 Amendment protects prisoners from intentional discrimination based on their religious  
2 beliefs. *Freeman*, 125 F.3d at 737, *overruled in part by Shakur*, 514 F.3d 884-85.  
3 “Prisons must afford an inmate of a minority religion ‘a reasonable opportunity of  
4 pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to  
5 conventional religious precepts.’” *Id.*, quoting *Cruz v. Beto*, 405 U.S. 319, 322 (1972)  
6 (per curiam). Prisons are required to “make good faith accommodation of the  
7 (prisoner’s) rights in light of practical considerations.” *Freeman*, 125 F.3d at 737,  
8 quoting *Allen v. Toombs*, 827 F.2d 563, 569 (9th Cir. 1987).

9 In order to support a discrimination claim, Plaintiff is required to demonstrate that  
10 prison officials intentionally acted in a discriminatory manner. *Freeman*, 125 F.3d at  
11 737, citing *FDIC v. Henderson*, 940 F.2d 465, 471 (9th Cir. 1991). In order to defeat  
12 summary judgment, Plaintiff “‘must set forth specific facts showing that there is a  
13 genuine issue’ as to whether he was afforded a reasonable opportunity to pursue his faith  
14 as compared to prisoners of other faiths and that such conduct was intentional.”  
15 *Freeman*, 125 F.3d at 737, quoting FED.R.CIV. PRO. 56(e).

16 Defendants maintain that Plaintiff has failed to allege that “Defendants  
17 intentionally discriminated against him because of his membership in a protected class or  
18 that they intentionally treated him differently than other inmates at [RJD] without a  
19 rational relationship to a legitimate state purpose.” (Defs.’ Memo of Ps & As at 27-28.)  
20 In fact, Defendants argue that Plaintiff actually alleges that Defendants applied a policy  
21 to all inmates requiring them to all re-apply for religious diets even if they had been  
22 approved at a different institution prior to arriving at RJD. (*Id.* at 28.) However, in his  
23 unverified Complaint, Plaintiff appears to allege that while he was not permitted to  
24 continue his kosher diet when he was first transferred to RJD, other inmates were  
25 “allowed to continue in a reasonable fashion.” (Compl. at 5.) This contradicts his earlier  
26 assertion that there was a blanket policy to deny all incoming inmates the right to  
27 continue to have kosher meals.  
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1 Plaintiff offers no admissible evidence, nor does his point to any evidence in the  
2 record, to support this assertion that he was treated differently than any other inmate.  
3 Instead, he seems to provide exhibits in support of his allegations in his opposition, which  
4 are not contained in his Complaint, that other inmates kosher diets were denied for a  
5 variety of reasons. These exhibits, even if they were admissible, would not in any way  
6 support his unsupported conclusory assertion that he had been discriminated against.  
7 Thus, the Court finds that Plaintiff has failed to point to any evidence in the record to  
8 support his conclusory allegation, or to raise a triable issue of material fact, that  
9 Defendants intended to discriminate against any inmates by purportedly failing to  
10 implement a policy allowing an inmate to continue to receive a kosher diet following a  
11 prison transfer. *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001).  
12 Defendants' Motion for Summary Judgment as to Plaintiff's equal protection claims is  
13 **GRANTED.**

14 **D. Qualified Immunity**

15 Finally, Defendants argue that they are entitled to qualified immunity. Because the  
16 Court has found no triable issue of fact exists to show Plaintiff's constitutional rights  
17 were violated by Defendants, it need not reach any issues regarding qualified immunity.  
18 *See Saucier v. Katz*, 533 U.S. 194, 201 (2001) ("If no constitutional right would have  
19 been violated were the allegations established, there is no necessity for further inquiries  
20 concerning qualified immunity."); *County of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5  
21 (1998) ("[The better approach to resolving cases in which the defense of qualified  
22 immunity is raised is to determine first whether the plaintiff has alleged the deprivation of  
23 a constitutional right at all.").

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1 **IV. Conclusion and Order**

2 For all the reasons explained, the Court:

3 **GRANTS** Defendants' Motion for Summary Judgment pursuant to Fed.R.Civ.P.  
4 56. (ECF No. 25.) The Clerk of Court is directed to enter judgment for the Defendants  
5 and close the file.

6 **IT IS SO ORDERED.**

7 Dated: August 2, 2019



8  
9 Hon. Cathy Ann Bencivengo  
United States District Judge

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