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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GABRIEL PIES-LONSDALE,
12 INMATE # 64770-298,

13 Plaintiff,

14 v.

15 LEMUS, Chaplain, GEO Western Region
16 Detention Facility,

17 Defendant.
18
19

Case No.: 22-CV-309 TWR (JLB)

**ORDER (1) GRANTING IN PART
AND DENYING IN PART
DEFENDANT’S MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(b)(6), AND
(2) DIRECTING PLAINTIFF TO
SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE DISMISSED
FOR FAILURE TO PROSECUTE**

(ECF No. 13)
20

21 Plaintiff Gabriel Pies-Lonsdale, a person detained at the GEO Western Region
22 Detention Facility in San Diego, California, at the time of the underlying events but since
23 released from custody, is proceeding *pro se* with a civil rights Complaint. (*See generally*
24 ECF No. 1 (“Compl.”).) The only remaining claim in the Complaint alleges that Defendant
25 Chaplain Lemus, the sole remaining Defendant, violated Plaintiff’s right to the free
26 exercise of religion as protected by the Religious Freedom Restoration Act of 1993
27 (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.*, by denying his request for “Haitian Voodoo
28 prayers” on the basis that it “is not a religion.” (*See id.* at 3–4; ECF No. 8 at 6–10.)

1 Presently before the Court is Defendant’s Motion to Dismiss (“Mot.,” ECF No. 13)
 2 pursuant to Federal Rule of Civil Procedure 12(b)(6).¹ Plaintiff’s Opposition was initially
 3 due on September 20, 2022. (See ECF No. 14.) On November 3, 2022, Plaintiff filed a
 4 notice of change of address that included a request for an extension of time to file an
 5 Opposition and for copies of all documents filed in this case. (See ECF No. 15.) On
 6 November 8, 2022, the Court extended Plaintiff’s deadline to file an Opposition until
 7 December 6, 2022, and directed the Clerk of Court to send him copies of his Complaint,
 8 the Defendant’s Motion to Dismiss, and the Court’s prior Orders in this case. (See ECF
 9 No. 16.) That Order was returned to the Court by the United States Post Office marked:
 10 “return to sender/not deliverable as addressed/unable to forward.” (See ECF No. 17.)

11 For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
 12 Defendant’s Motion to Dismiss. Further, because Plaintiff has not kept the Court apprised
 13 of his current address, he is directed to **SHOW CAUSE** why this action should not be
 14 dismissed for failure to prosecute pursuant to this Court’s local rules. See S.D. Cal. CivLR
 15 83.11(b) (“If mail directed to a pro se plaintiff by the Clerk at plaintiff’s last designated
 16 address is returned by the Post Office, and if such plaintiff fails to notify the Court and
 17 opposing parties within 60 days thereafter of the plaintiff’s current address, the Court may
 18 dismiss the action without prejudice for failure to prosecute.”).

19 BACKGROUND

20 Plaintiff initiated this action on March 4, 2022, by filing a 42 U.S.C. § 1983 civil
 21 rights Complaint naming as Defendants GEO Western Region Detention Facility Chaplain
 22 Lemus and GEO Western Region Detention Facility Case Manager Hartley. (See generally
 23 ECF No. 1.) He alleged he was not allowed to practice his religion by praying and claimed
 24 violations of the First and Eighth Amendments and the Religious Land Use and
 25

26
 27 ¹ Although this matter was randomly referred to United States Magistrate Judge Jill L. Burkhardt pursuant
 28 to 28 U.S.C. § 636(b)(1)(B), the Court has determined that neither a Report and Recommendation nor oral
 argument is necessary for the disposition of this matter. See S.D. Cal. Civ.L.R. 7.1(d)(1), 72.1(d).

1 Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.* (*See*
2 Compl. at 3–4.)

3 Specifically, in count one of the Complaint, Plaintiff claims a violation of his rights
4 to “freedom of religion and freedom from cruel and unusual punishment.” (*See* Compl. at
5 3.) He alleges that, while incarcerated at the Western Region Detention Facility:

6 On 2.17.22 I put in a detainee request form to Chaplain Lemus stating the
7 following. “I would like Haitian voodoo prayers so I can find salvation thru
8 my religion as I am documented thru the b.o.p. Thank you for allowing me to
9 practice my First Amendment right.” Chaplain Lemus responded on 2.24.22
10 stating “voodoo practices are all about rituals that we do not allow in this
11 facility for security and safety reasons, therefore your request is denied.”
12 When Chaplain Lemus did her rounds on 2.26.22 I asked her Chaplain Lemus
13 why she denied my religion request there is nothing in my request that is
14 threatening to the safety and security to the facility. Chaplain Lemus stated
15 “because your religion is not a religion.”

16 (*Id.*)

17 In count two of the Complaint, Plaintiff claims violations of his rights to “freedom
18 of religion and freedom from cruel and unusual punishment” and alleges that:

19 On 2.24.22 at 5pm I turn in a detainee grievance I stated “I requested voodoo
20 prayers on 2.17.22 so I can seek salvation thru my religion which is voodoo.
21 Chaplain Lemus has imposed a substantial burden on my religious exercise.
22 A clear violation of the First Amendment and (RLUIPA). See *Cutter v.*
23 *Wilkinson*, 544 U.S. 709 (2005). Plz allow me to practice my religion without
24 discrimination, [there is] no need for this hate crime to continue.”

25 (*Id.* at 4.)

26 In addition to demanding compensatory and punitive damages, the Complaint seeks
27 an injunction preventing Defendants from denying him “religious document(s) for and of
28 prayer(s),” “religious physical items for pray(s) ritual(s)” and “all rights to my religious
freedom(s) without prejudice(s).” (*See id.* at 6.)

On May 4, 2022, the Court granted Plaintiff leave to proceed *in forma pauperis* and
screened the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), which
require *sua sponte* dismissal of complaints, or any portions thereof, filed by persons, such

1 as Plaintiff, who are proceeding *in forma pauperis* and detained for violations of conditions
 2 of supervised release, that are frivolous, malicious, fail to state a claim, or that seek
 3 damages from defendants who are immune. (*See generally* ECF No. 8.) Because Plaintiff
 4 was presenting claims arising from actions that took place in a private detention facility
 5 housing federal detainees and there were no allegations of state action, the Court liberally
 6 construed the Complaint as brought pursuant to *Bivens v. Six Unknown Named Agents of*
 7 *the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), rather than 42 U.S.C. § 1983. (*See*
 8 ECF No. 8 at 6–7.) The Court found Plaintiff could not state a First Amendment free
 9 exercise claim under *Bivens* because an alternative remedial scheme with all appropriate
 10 relief for free exercise claims was available under the RFRA and because *Bivens* does not
 11 allow a cause of action against employees of a private detention facility operated by the
 12 GEO Group under a contract with the United States Marshals Service. (*See* ECF No. 8 at
 13 7.) The Court further found Plaintiff could not state a claim under RLUIPA because that
 14 statute applies only to state governments; nonetheless, the Court liberally construed
 15 Plaintiff’s RLUIPA claim as a RFRA claim. (*See* ECF No. 8 at 8.) The Court dismissed
 16 as moot Plaintiff’s claim for injunctive relief because he had been released from custody.
 17 (*Id.* at 9.) The Court dismissed the RFRA claim against Defendant Hartley because there
 18 were no allegations regarding any actions he had taken or had failed to take and directed
 19 service of the summons and Complaint on Defendant Chaplain Lemus after finding the
 20 Complaint plausibly stated a RFRA claim against him. (*See* ECF No. 8 at 8–10.)

21 Defendant Chaplain Lemus moved to dismiss on August 30, 2022. (*See generally*
 22 ECF No. 13.)

23 MOTION TO DISMISS

24 I. Legal Standard

25 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss
 26 on the grounds that a complaint “fail[s] to state a claim upon which relief can be granted.”
 27 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the legal
 28 sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To survive

1 a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to
2 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
3 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially
4 plausible “when the plaintiff pleads factual content that allows the court to draw the
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
6 U.S. at 678. Plausibility requires pleading facts, as opposed to conclusory allegations or
7 the “formulaic recitation of the elements of a cause of action,” *Twombly*, 550 U.S. at 555,
8 which rise above the mere conceivability or possibility of unlawful conduct. *Iqbal*, 556
9 U.S. at 678-79. “Threadbare recitals of the elements of a cause of action, supported by
10 mere conclusory statements, do not suffice.” *Id.* at 678. “In sum, for a complaint to survive
11 a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences
12 [drawn] from that content, must be plausibly suggestive of a claim entitling the plaintiff to
13 relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009), quoting *Iqbal*, 556
14 U.S. at 678.

15 **II. Analysis**

16 Defendant Chaplain Lemus moves to dismiss: (1) the Complaint in its entirety
17 because Plaintiff has not exhausted his administrative remedies, (2) the Eighth Amendment
18 cruel and unusual punishment claim for failure to state a claim, and (3) the injunctive relief
19 claim as overly broad and lacking specificity. (*See generally* Mot.) Pursuant to Section
20 III.A.2 of the undersigned’s Standing Order for Civil Cases, Plaintiff’s “failure timely to
21 file an opposition . . . may be construed as consent to the granting of the motion pursuant
22 to Civil Local Rule 7.1(f)(3)(c).” Nonetheless, the Court will consider each of the grounds
23 raised in Defendant’s Motion on the merits.

24 **A. Exhaustion of Administrative Remedies**

25 Defendant Chaplain Lemus, the only Defendant remaining in this action, first moves
26 to dismiss the Complaint in its entirety without prejudice for failure to exhaust
27 administrative remedies. (*See* Mot. at 4–6 (citing 42 U.S.C. § 1997e(a) (“No action shall
28 be brought with respect to prison conditions under section 1983 of this title, or any other

1 Federal law, by a prisoner confined in a jail, prison, or other correctional facility until such
2 administrative remedies as are available are exhausted.”)).) Defendant argues that although
3 Plaintiff states in the Complaint that he filed a detainee grievance on February 24, 2022,
4 he does not indicate how it was resolved. (See Mot. at 3–4.) And although Plaintiff
5 checked the box on his form Complaint answering “Yes” when asked whether he had
6 “previously sought and exhausted all forms of available relief from the proper
7 administrative officials regarding the acts alleged,” (see Compl. at 5), he left blank the
8 following question: “If your answer is “Yes”, briefly describe how relief was sought and
9 the results. If you answer is “No”, briefly explain why administrative relief was not
10 exhausted.” (See *id.*) Defendant therefore contends that Plaintiff “did not describe how
11 relief was sought and the results, as the instructions dictate.” (See Mot. at 4.)

12 “The Prison Litigation Reform Act of 1995 (PLRA) mandates that an inmate exhaust
13 ‘such administrative remedies as are available’ before bringing suit to challenge prison
14 conditions.” *Ross v. Blake*, 578 U.S. 632, 635 (2016) (quoting 42 U.S.C. § 1997e(a)).
15 “[T]he PLRA’s exhaustion requirement does not allow a prisoner to file a complaint
16 addressing non-exhausted claims.” *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
17 2010). “[P]risoners are obligated to navigate all a prison’s administrative review process
18 ‘regardless of the fit between a prisoner’s prayer for relief and the administrative remedies
19 possible.’” *Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005) (quoting *Booth v. Churner*,
20 532 U.S. 731, 739 (2001)) Inmates are not required to exhaust administrative remedies,
21 however, when circumstances render administrative remedies effectively unavailable. See
22 *Nunez v. Duncan*, 591 F.3d 1217, 1226 (9th Cir. 2010); see also *Ross*, 578 U.S. at 648
23 (“The only limit to § 1997e(a)’s mandate is the one baked into its text: An inmate need
24 exhaust only such administrative remedies as are ‘available.’”)

25 “Failure to exhaust under the PLRA is ‘an affirmative defense the defendant must
26 plead and prove.’” *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (en banc) (quoting
27 *Jones v. Bock*, 549 U.S. 199, 204, 216 (2007)). The Ninth Circuit stated in *Albino* that “an
28 unenumerated motion under Rule 12(b) is not the appropriate procedural device for pretrial

1 determination of whether administrative remedies have been exhausted under the PLRA.”
2 *Id.* at 1168. “In the rare event that a failure to exhaust is clear on the face of the complaint,
3 a defendant may move for dismissal under Rule 12(b)(6). Otherwise, defendants must
4 produce evidence proving failure to exhaust in order to carry their burden.” *Id.* at 1166.
5 Once a defendant carries that burden by showing “there was an available administrative
6 remedy, and that the prisoner did not exhaust that available remedy . . . the burden shifts to
7 the prisoner to come forward with evidence showing that there is something in his
8 particular case that made the existing and generally available administrative remedies
9 effectively unavailable to him.” *Id.* at 1172.

10 It is not clear in this case from the face of the Complaint that Plaintiff has failed to
11 exhaust his available administrative remedies. Rather, Plaintiff states he has exhausted his
12 administrative remedies. (*See* Compl. at 5.) He also describes the contents of the grievance
13 he used to exhaust, which contains the same allegations against Defendant Chaplain Lemus
14 as contained in the Complaint. (*Id.* at 4.) Because this is not a “rare event that a failure to
15 exhaust is clear on the face of the complaint,” Defendant Lemus may not move for
16 dismissal under Rule 12(b)(6). *See Albino*, 747 F.3d at 1166; *see also id.* at 1168
17 (“Otherwise, defendants must produce evidence proving failure to exhaust in order to carry
18 their burden.”). The Court therefore **DENIES WITHOUT PREJUDICE** the Motion to
19 dismiss Plaintiff’s Complaint for failure to exhaust administrative remedies.

20 ***B. Eighth Amendment Cruel and Unusual Punishment Claim***

21 Defendant moves to dismiss the Eighth Amendment cruel and unusual punishment
22 claim from the Complaint on the basis that the Eighth Amendment is not implicated by an
23 alleged denial of the free exercise of religion. (*See* Mot. at 6–7.) Defendant therefore
24 requests the words “cruel and unusual punishment” be dismissed or stricken from the
25 Complaint. (*See id.* at 7.)

26 To plausibly allege an Eighth Amendment cruel and unusual punishment claim, a
27 prisoner must allege facts sufficient to plausibly show that officials acted with deliberate
28 indifference to a substantial risk of harm to their health or safety. *See Farmer v. Brennan*,

1 511 U.S. 825, 847 (1994). There are no such allegations in the Complaint. (*See generally*
2 Compl.) Rather, Plaintiff merely alleges Defendant Chaplain Lemus denied him his right
3 to engage in prayerful worship of his religious beliefs. Accordingly, Plaintiff has not
4 plausibly alleged an Eighth Amendment cruel and unusual punishment violation, and the
5 Court **GRANTS** Defendant’s Motion to dismiss the Eighth Amendment claim.

6 **C. Injunctive Relief**

7 Finally, Defendant seeks dismissal of Plaintiff’s claim for injunctive relief as overly
8 broad and not sufficiently narrowly drawn as required by 18 U.S.C. § 3626(a)(1)(A). (*See*
9 Mot. at 7.) Plaintiff seeks an injunction preventing Defendants from denying him
10 “religious document(s) for and of prayer(s),” “religious physical items for pray(s) ritual(s)”
11 and “all rights to my religious freedom(s) without prejudice(s).” (*See* Compl. at 6.) The
12 Court previously dismissed as moot Plaintiff’s claim for injunctive relief in the Court’s
13 screening order. (*See* ECF No. 8 at 9.) Accordingly, the Court **DENIES AS MOOT**
14 Defendant’s Motion to dismiss Plaintiff’s claim for injunctive relief.

15 **ORDER TO SHOW CAUSE**

16 Southern District of California Civil Local Rule 83.11(b) requires parties proceeding
17 *pro se* to keep both the Court and opposing parties advised as to their current address and
18 provides that “[i]f mail directed to a pro se plaintiff by the Clerk at plaintiff’s last
19 designated address is returned by the Post Office, and if such plaintiff fails to notify the
20 Court and opposing parties within 60 days thereafter of the plaintiff’s current address, the
21 Court may dismiss the action without prejudice for failure to prosecute.” *See id.*; *see also*,
22 *e.g., Nunez-Martinez v. United States*, No. 19-CV-514 DMG (KK), 2020 WL 42457, at *1
23 n.1 (C.D. Cal., Jan. 2, 2020) (holding that plaintiff’s failure to keep the court apprised of
24 his current address in violation of local rules amounted to lack of prosecution).

25 On November 8, 2022, in response to a request from Plaintiff that accompanied his
26 notice of change of address, the Court issued an Order extending Plaintiff’s deadline to file
27 an Opposition until December 6, 2022, and directed the Clerk of Court to send Plaintiff
28 copies of his Complaint, the Defendant’s Motion to Dismiss, and the Court’s prior Orders

1 in this case. (See ECF No. 16.) That Order was returned to the Court by the Post Office
2 on November 16, 2022, marked: “return to sender/not deliverable as addressed/ unable to
3 forward.” (See ECF No. 17.) Plaintiff’s sixty days under Local Civil Rule 83.11(b) expired
4 on January 17, 2023.

5 As of the date of this Order, the Court has received no notice of Plaintiff’s current
6 address. Accordingly, the Court **ORDERS Plaintiff TO SHOW CAUSE** within twenty-
7 one (21) days of the date of this Order why this action should not be dismissed for failure
8 to prosecute pursuant to Local Civil Rule 83.11(b).

9 **CONCLUSION**

10 Based on the foregoing, the Court **GRANTS IN PART** and **DENIES IN PART**
11 Defendant Chaplain Lemus’ Motion to Dismiss pursuant to Federal Rule of Civil
12 Procedure 12(b)(6). Specifically, the Court **DENIES WITHOUT PREJUDICE**
13 Defendant’s Motion to dismiss the Complaint for failure to allege exhaustion of
14 administrative remedies, **GRANTS** Defendant’s Motion to dismiss Plaintiff’s Eighth
15 Amendment cruel and unusual punishment claim, and **DENIES AS MOOT** Defendant’s
16 Motion to dismiss Plaintiff’s claim for injunctive relief. This action **SHALL PROCEED**
17 as to the only remaining claim in the Complaint against the only remaining Defendant to
18 this action, namely, Plaintiff’s RFRA claim against Defendant Chaplain Lemus.

19 The Court also **ORDERS Plaintiff TO SHOW CAUSE** within twenty-one (21)
20 days of the date of this Order why this action should not be dismissed for failure to
21 prosecute by keeping the Court and Defendant apprised of his current address as required
22 by Southern District of California Civil Local Rule 83.11(b). *Should Plaintiff fail timely*
23 *to respond to this Order, the Court will dismiss this action without prejudice.*

24 **IT IS SO ORDERED.**

25 Dated: January 18, 2023

26 

27 Honorable Todd W. Robinson
28 United States District Judge