IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

MARQUISE ALI ROBBINS, Plaintiff, VS. WILLIAM ROBERTSON, and MARTY ALLEN, Defendants.	:	**7 : 15-CV-124 (WLS)**

ORDER AND RECOMMENDATION

The Plaintiff filed this action pursuant to 42 U.S.C. § 1983 in July 2015 raising allegations regarding his free exercise of religion while confined at Valdosta State Prison. (Doc. 1). Presently pending herein are Defendants' motions to dismiss (Docs. 13, 17), and Plaintiff's motions to amend (Docs. 15, 20) and Motion for a Temporary Restraining Order (Doc. 25).

Background

Plaintiff's claims arise out of events occurring during his incarceration at Valdosta State Prison ("VSP"). Plaintiff, a self-identified Muslim, asserts that Defendant Robertson, VSP's Food Services Director, and Defendant Allen, Warden at VSP, have knowingly failed to provide Plaintiff with the proper vegan diet required by his religion, intentionally depriving him of nutrition, and allowed him to be served diluted, inedible, and sometimes chemically-contaminated foods. (Doc. 1). Plaintiff alleges that the meals were improperly prepared and inadequate, and that dietary insufficiencies have caused him to suffer pain and weight loss that required medical treatment. *Id.* Plaintiff's claims brought pursuant to the Eighth Amendment, the First Amendment, and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") were

allowed to proceed after initial review. (Doc. 5).

Motions to amend

Plaintiff has filed two (2) motions to amend. (Docs. 15, 20). Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

> 1. ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course within:
> **(A)** 21 days after serving it, or
> **(B)** If the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under rule 12(b), (e), or (f), whichever is earlier.
>
> 2. ***Other Amendments***. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Plaintiff executed his first Motion to Amend on October 18, 2015, within 21 days of the filing of Defendants' initial Motion to Dismiss the original Complaint. (Docs. 13, 15). As such, the Plaintiff filed his first Motion to Amend within the time period for amending as of right under Rule 15(a)(1), and the Court has no discretion to deny the Plaintiff's first proposed amendment. *Troville v. Venz*, 303 F.3d 1256, 1260 (11th Cir. 2002); *Jemison v. Wise*, 2010 WL 2929692, p.3 (11th Cir. July 28, 2010). Thus, Plaintiff's first Motion to Amend (Doc. 15) is **GRANTED**, and the Complaint is deemed amended as of the date the Motion to Amend was filed. Within this motion, Plaintiff adds Valdosta State Prison as a Defendant, and adds factual support for his existing claims.

To the extent that Plaintiff has added Valdosta State Prison as a Defendant regarding his conditions of confinement claims, Valdosta State Prison is not a proper party to a § 1983 claim. The Eleventh Amendment bars suits directly against a state or its agencies, regardless of the nature

of relief sought. *Stevens v. Gay*, 864 F.2d 113, 115 (11th Cir. 1989); *Pennhurst St. Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). Accordingly, it is recommended that Valdosta State Prison be **DISMISSED** as a Defendant herein.

Plaintiff filed his second Motion to Amend on November 12, 2015, noting that he had discovered that Defendants originally identified as a John or Jane Doe is "the VSP Kitchen Supervisors". (Doc. 20). As this is Plaintiff's second Motion to Amend, Plaintiff may not amend his Complaint as of right, but seeks to add to his Complaint by leave of court. The decision whether to grant leave to amend a pleading is within the sound discretion of the district court and is not automatic. *Nat'l. Service Industries, Inc. v. Vafla Corp*, 694 F.2d 246, 249 (11th Cir. 1982). Although the decision to grant or deny a motion to amend a complaint is within the discretion of the court, "a justifying reason must be apparent for denial of a motion to amend." *Moore v. Baker*, 989 F.2d 1129, 1131 (11th Cir. 1993). The Court may consider "such factors as 'undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment [and] futility of the amendment.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Plaintiff provides no explanation as to why these proposed defendants were not identified earlier in this litigation process, how many persons Plaintiff's designation "VSP Kitchen Supervisors" includes, or any specific information as to these individuals' alleged involvement in the original claims. Finding that Plaintiff unnecessarily delayed in seeking to amend his Complaint for a second time and that Plaintiff has failed to provide enough information to sustain claims against the "VSP Kitchen Supervisors", Plaintiff's second Motion to Amend (Doc. 20) is

DENIED.

Motion for a Temporary Restraining Order

On July 11, 2016, Plaintiff filed a Motion for a Temporary Restraining Order, wherein he seeks relief from "restrictive conditions" regarding his library access. (Doc. 25). In order to obtain injunctive or declaratory relief, the Plaintiff must prove that: (1) there is a substantial likelihood that he will prevail on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985); *Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 909 F.2d 480, 483 (11th Cir. 1990). Injunctive relief will not issue unless the conduct at issue is imminent and no other relief or compensation is available. *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987). "In this Circuit, a preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the 'burden of persuasion' as to the four requisites." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998).

A review of the Plaintiff's motion for injunctive relief reveals an inadequate basis for the issuance of an injunctive order. Plaintiff has not established that he is entitled to injunctive relief in regard to his requests, i.e., that there is a substantial likelihood of success on the merits or resulting irreparable harm, or that no other relief is available to address his alleged injuries. Accordingly, it is the recommendation of the undersigned that Plaintiff's motion for injunctive relief be **DENIED**. (Doc. 25).

Motions to dismiss

Defendants have filed a Motion to Dismiss Plaintiff's original Complaint (Doc. 13) and a Motion to Dismiss Plaintiff's Amended Complaint (Doc. 17). A motion to dismiss can be granted only if Plaintiff's Complaint, with all factual allegations accepted as true, fails to "raise a right to relief above the speculative level". *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007).

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556, 570).

Religious freedom claims: RLUIPA

The "RLUIPA prohibits policies that substantially burden religious exercise except where a policy '(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.' Once a plaintiff proves that a challenged practice substantially burdens his religious exercise, the burden shifts to the defendant to show that the policy is the least restrictive means of furthering a compelling government interest." *Rich v. Sec'y., Florida Dept. of Corrections*, 716 F.3d 525, 531 (11th Cir. 2013) *quoting* 42 U.S.C. § 2000cc-1a.

As noted by Defendants, the "RLUIPA does not create a private action for monetary damages against prison officials sued in their individual capacity." *Hathcock v. Cohen*, 287 F. A'ppx 793, 798 (11th Cir. 2008) *citing Smith v. Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007),

abrogated on other grounds by Sossamon v. Texas, 131 S. Ct. 1651 (2011). To the extent that Plaintiff seeks monetary damages against the Defendants in their individual capacities under the RLUIPA, his claims must therefore fail.

To the extent that Plaintiff seeks injunctive relief based on his RLUIPA claims, his factual allegations fail to set out a claim that his religious beliefs have been substantially burdened by the provision of what he has deemed to be diluted, unsatisfactory vegan meals. Importantly, "[a] pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do'". *Ashcroft*, 556 U.S. at 678, *quoting Twombly*, 550 U.S. at 555. Under the RLUIPA, "a 'substantial burden' must place more than an inconvenience on religious exercise; a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004). "[T]o constitute a substantial burden under RLUIPA, the governmental action must significantly hamper one's religious practices." *Smith*, 502 F.3d at 1277.

Plaintiff complains of certain physical ailments that he alleges resulted from the restricted diet, asserts that the vegan meals were inadequate and not prepared according to Department of Corrections' policy standards, and states that he was provided with vitamin and meal supplements, but he does not explain or establish how the vegan meal situation substantially burdened his religious practices. Plaintiff only sets out the "label and conclusion" of an undefined burden to his religious practices, and does not describe food preparation practices that rise above an inconvenience to Plaintiff. Moreover, Plaintiff states that after April 8, 2015, the vegan meals

provided began to improve, if only in certain ways, further diminishing the basis for the issuance of injunctive relief. Doc. 1 at p. 8. Accordingly, Plaintiff has failed to set forth a sustainable RLUIPA claim.

Religious freedom claims: 1st Amendment

The Free Exercise Clause of the First Amendment "requires government respect for, and noninterference with, the religious beliefs and practices of our Nation's people." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). Prisoners retain their First Amendment rights, although certain limitations or restrictions may be necessary within the prison system. *Brunskill v. Boyd*, 141 F. A'ppx 771, 774 (11th Cir. 2005).

"To ensure that courts afford appropriate deference to prison officials, we have determined that prison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test . . . 'When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.'" *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) *quoting Turner v. Safley*, 482 U.S. 78, 89 (1987). In *Turner v. Safley*, 482 U.S. 78 (1987), the Supreme Court established four factors to be considered in determining the reasonableness of a regulation: (1) whether the regulation has a valid, rational connection to a legitimate governmental interest; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of the right would have on guards and inmates and prison resources; (4) whether there are ready alternatives to the regulation. As with the RLUIPA, a plaintiff alleging a First Amendment free exercise of religion violation must allege that the government has impermissibly placed a substantial burden on a sincerely held religious belief. *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989).

Plaintiff admits that he was allowed to sign up for and received "restricted vegan religious meals" upon his transfer to VSP in December 2014. (Doc. 1, p. 4). Plaintiff maintains that the meals, however, "have been meager, improperly prepared, and at times inedible". *Id.* As previously set out herein, Plaintiff does not specifically allege that the provision of vegan meals somehow impinged upon, let alone substantially burdened, his religious beliefs, and his First Amendment claim must accordingly fail.

Eighth Amendment

Plaintiff also alleges that the provision of vegan meals at VSP violated the Eighth Amendment. When prisoners are denied "the minimal civilized measure of life's necessities", the Eighth Amendment is violated. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). The Eighth Amendment prohibits deliberate indifference to prison conditions that deprive an inmate of essential human needs such as food, clothing, shelter, medical care, and reasonable safety. *Helling v. McKinney*, 509 U.S. 25, 31-32 (1993). To establish an Eighth Amendment prison-conditions claim, a prisoner must show both that "the condition he complains of is sufficiently serious . . . [and] that the defendant prison officials acted with a sufficiently culpable state of mind". *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004). "Specifically with regard to food, even if the food provided to a prisoner is unpleasant, it is not necessarily an Eighth Amendment violation because the Constitution requires only that prisoners be provided with reasonably adequate food of sufficient nutritional value to preserve health." *Edwards v. Cornelius*, 2012 WL 2087413 (M.D.Fla 2012) *citing Hamm v. DeKalb County*, 774 F.2d 1567, 1575 (11th Cir. 1985).

Plaintiff's allegations herein do not state a claim for an Eighth Amendment violation, as he

does not allege that the Defendants knowingly provided less than reasonably adequate food to Plaintiff in his requested vegan meals. Plaintiff admits that the meals were provided, along with supplements, and does not allege that the Defendants were aware of any extreme condition that posed an unreasonable risk of serious harm to the inmates' future health or safety. "While an inmate need not await a tragic event before seeking relief, he must at the very least show that a condition of his confinement poses an unreasonable risk of serious damage to his future health or safety." *Chandler*, 379 F.3d at 1289, *internal citations omitted*. Additionally, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Furthermore, officials are not liable "if [they] responded reasonably to the risk, even if the harm ultimately was not averted." *Id.* at 844.

Conclusion

Based on Plaintiff's failure to set forth sufficient allegations of constitutional or federal law violations, it is the recommendation of the undersigned that Defendants' motions to dismiss (13, 17) be **GRANTED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to

challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO ORDERED and RECOMMENDED, this 13th day of July, 2016.

s/ *THOMAS Q. LANGSTAFF*
UNITED STATES MAGISTRATE JUDGE