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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 ROBERT GLASS,

CASE NO. 1:05-cv-0457-LJO-DLB PC

10 Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT IN PART

11 v.

12 A.K. SCRIBNER, et al.,

(Doc. 48, 50)

13 Defendants.
14 _____/

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16 A. Procedural History

17 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to [42](#)
18 [U.S.C. § 1983](#). This action is proceeding on plaintiff's complaint, filed April 8, 2005, against
19 defendants A.K. Scribner, S. Johnson, D. Thompson, D. James and Schultz ("defendants") for
20 violating his rights under the Free Exercise Clause of the First Amendment, the Equal Protection
21 Clause of the Fourteenth Amendment and the Eighth Amendment. On April 26, 2007, plaintiff filed
22 a motion for summary judgment. On May 21, 2007, defendants filed an opposition and cross
23 motion for summary judgment. Plaintiff filed an opposition to defendants' motion on June 18,
24 2007.¹

25 B. Legal Standard

26 Summary judgment is appropriate when it is demonstrated that there exists no genuine issue
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28 ¹ Plaintiff was provided with notice of the requirements for opposing a motion for summary judgment by the court in an order filed on January 31, 2006. [Klinge v. Eikenberry, 849 F.2d 409 \(9th Cir. 1988\)](#).

1 as to any material fact, and that the moving party is entitled to judgment as a matter of law. [Fed. R.](#)
2 [Civ. P. 56\(c\)](#). Under summary judgment practice, the moving party

3 [A]lways bears the initial responsibility of informing the district court
4 of the basis for its motion, and identifying those portions of “the
5 pleadings, depositions, answers to interrogatories, and admissions on
file, together with the affidavits, if any,” which it believes
demonstrate the absence of a genuine issue of material fact.

6 [Celotex Corp. v. Catrett, 477 U.S. 317, 323 \(1986\)](#). “[W]here the nonmoving party will bear the
7 burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made
8 in reliance solely on the ‘pleadings, depositions, answers to interrogatories, and admissions on file.’”

9 [Id.](#) Indeed, summary judgment should be entered, after adequate time for discovery and upon
10 motion, against a party who fails to make a showing sufficient to establish the existence of an
11 element essential to that party's case, and on which that party will bear the burden of proof at trial.

12 [Id. at 322](#). “[A] complete failure of proof concerning an essential element of the nonmoving party’s
13 case necessarily renders all other facts immaterial.” [Id.](#) In such a circumstance, summary judgment
14 should be granted, “so long as whatever is before the district court demonstrates that the standard
15 for entry of summary judgment, as set forth in Rule 56(c), is satisfied.” [Id. at 323](#).

16 If the moving party meets its initial responsibility, the burden then shifts to the opposing
17 party to establish that a genuine issue as to any material fact actually does exist. [Matsushita Elec.](#)
18 [Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 \(1986\)](#). In attempting to establish the existence
19 of this factual dispute, the opposing party may not rely upon the denials of its pleadings, but is
20 required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery
21 material, in support of its contention that the dispute exists. Rule 56(e); [Matsushita, 475 U.S. at 586](#)
22 [n.11](#). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that
23 might affect the outcome of the suit under the governing law, [Anderson v. Liberty Lobby, Inc., 477](#)
24 [U.S. 242, 248 \(1986\)](#); [T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630](#)
25 [\(9th Cir. 1987\)](#), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
26 return a verdict for the nonmoving party, [Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436](#)
27 [\(9th Cir. 1987\)](#).

28 In the endeavor to establish the existence of a factual dispute, the opposing party need not

1 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual
2 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at
3 trial.” [T.W. Elec. Serv., 809 F.2d at 631](#). Thus, the “purpose of summary judgment is to ‘pierce
4 the pleadings and to assess the proof in order to see whether there is a genuine need for trial.’”
5 [Matsushita, 475 U.S. at 587](#) (quoting Fed. R. Civ. P. 56(e) advisory committee’s note on 1963
6 amendments).

7 In resolving the summary judgment motion, the court examines the pleadings, depositions,
8 answers to interrogatories, and admissions on file, together with the affidavits, if any. Rule 56(c).
9 The evidence of the opposing party is to be believed, [Anderson, 477 U.S. at 255](#), and all reasonable
10 inferences that may be drawn from the facts placed before the court must be drawn in favor of the
11 opposing party, [Matsushita, 475 U.S. at 587](#) (citing [United States v. Diebold, Inc., 369 U.S. 654, 655](#)
12 [\(1962\) \(per curiam\)](#)). Nevertheless, inferences are not drawn out of the air, and it is the opposing
13 party's obligation to produce a factual predicate from which the inference may be drawn. [Richards](#)
14 [v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 \(E.D. Cal. 1985\)](#), [aff’d, 810 F.2d 898, 902 \(9th](#)
15 [Cir. 1987\)](#).

16 Finally, to demonstrate a genuine issue, the opposing party “must do more than simply show
17 that there is some metaphysical doubt as to the material facts. Where the record taken as a whole
18 could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for
19 trial.’” [Matsushita, 475 U.S. at 587](#) (citation omitted).

20 C. Statement of Undisputed Facts²

21 1. Plaintiff was incarcerated at the California State Prison, Corcoran from April 2003
22 to October 2005.

23 2. Plaintiff is currently incarcerated at the California State Prison, Sacramento.

24 3. In November 2005, plaintiff informed the court that his address changed to
25 California State Prison, Sacramento.

26 4. Defendants Scribner, Thompson, James, Schultz and Johnson were employees of the
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28 ²These undisputed facts are taken from defendants’ statement of undisputed facts and plaintiff’s response.

1 California State Prison, Corcoran.

2 5. Plaintiff began practicing the Ausarian religion approximately eight years ago while
3 in prison.

4 6. In a Mental Health Interdisciplinary Progress Note dated December 2004, the
5 interviewer noted that plaintiff stated he was Muslim. Plaintiff denies that he is
6 Muslim and that he made the statement.

7 7. In July 2005, plaintiff wrote in a grievance that he “is a Rastafarian who wears a full
8 beard and hair fashioned into dread locks (for spiritual reasons).”

9 8. In January 2001, because of misuse by inmates, the California State Prison, Corcoran
10 suspended the use of oils for religious purposes. The oils, which are flammable were
11 being lit and left unattended in the housing units. This created concerns of injury to
12 staff and inmates as well as the risk that use of the oils would cause a fire in the
13 facility. The use of oils for religious purposes had been allowed in the past, however,
14 the seriousness of the safety and security concerns that developed in 2000-2001
15 compelled the use of oils to be suspended. Inmates were allowed to keep the oil they
16 had.

17 9. The suspension applied to all groups that used oils in their religious practices.

18 10. The suspension of oil was in effect when plaintiff arrived at California State Prison,
19 Corcoran in April 2003.

20 11. Plaintiff arrived at California State Prison Corcoran with a small amount of oil,
21 which was not confiscated by prison staff.

22 12. By 2002, the suspension policy was modified so that all inmates who needed oil for
23 religious purposes could request, maintain and receive oils from the Muslim
24 chaplain, regardless of religious faith, at religious services, as appropriate. This
25 policy allowed authorized inmates to have the oils and enabled staff to monitor the
26 appropriate use of the oils for religious purposes. The unrestricted and unmonitored
27 in-cell use of the oils would continue to be a safety and security problem at California
28 State Prison, Corcoran.

- 1 13. Defendant Johnson claims she took no action to interfere or deprive plaintiff of any
2 authorized religious artifacts or objects. She claims she did not know that plaintiff
3 was acquiring religious artifacts and that plaintiff did not inform her of the same.
4 Johnson claims she was unaware of chronos issued in October 2003 and January 22,
5 2004 authorizing plaintiff to wear and possess religious artifacts. Johnson did not
6 write the chronos for plaintiff's other religious artifacts.
- 7 14. Plaintiff was in the process of working with the Muslim chaplain to obtain the oils
8 for plaintiff to meditate when he was transferred out of Corcoran.
- 9 15. In addition to the administrative appeals process, an inmate can file a complaint in
10 which the inmate may allege misconduct or request action. An inmate may make
11 allegations or requests on a [CDCR 602](#) Form but are permitted to make their
12 allegations in the form of a letter or other writing. An inmate may also request an
13 appointment to meet with his correctional counselor and/or facility sergeant,
14 lieutenant, captain, associate warden and warden. The inmate can also make his
15 grievance known or addressed by any one or all of these individuals by letter.
- 16 16. Plaintiff requested action on his dietary issues through CDCR Form 602, Log #04-
17 590 and a letter to Warden Scribner proposing that a religious organization contract
18 with the Department of Corrections and Rehabilitation. The letter to Warden
19 Scribner references the 602 Form, Log #04-590. The 602 and letter were part of the
20 prison's administrative appeal process.
- 21 17. In September 2003, defendant James was not the Institutional Food Manager for
22 California State Prison, Corcoran and had not served in that position for five months
23 before that date. Under Title 15, § 3054 of the California Code of regulations, the
24 chaplain was required to send the verification of religious diet to the institutional
25 food manager.
- 26 18. Defendant Shultz was the dietician for the Acute Care Hospital at the California State
27 Prison Corcoran during times relevant to this action.
- 28 19. Defendant Shultz did not have authority to modify the diet of inmates who were not

1 patients at the hospital.

2 20. In July 2004, plaintiff made a request to see a dietician for a consult. In August 2004,
3 plaintiff was seen by Dr. Greaves who noted that plaintiff “is a well developed male
4 who certainly does not seem to be affected by his diet.” Dr. Greaves noted that
5 plaintiff was not requesting medical treatment. The referral information indicated
6 that plaintiff claimed to be a vegetarian and wanted to discuss his diet with a dietician
7 to help him control his nutrition.

8 21. In late August 2004, plaintiff met with defendant Shultz. Defendant Shultz contends
9 that during the meeting, plaintiff was not interested in receiving instruction about diet
10 but only wanted defendant to provide him with a written opinion supporting his
11 belief that there were nutritional deficiencies in his diet. Defendant Shultz contends
12 that plaintiff did not tell her about any symptoms or medical problems and did not
13 request that she refer him for tests or medical treatment. Plaintiff was not a patient
14 at the hospital. Defendant Shultz did not agree that there were nutritional
15 deficiencies in plaintiff’s diet. Plaintiff was informed that the daily diet consisted of
16 approximately 3000 calories and as an adult male he would need about 2200 calories
17 per day. As a vegetarian, plaintiff was allowed to make substitutions at every meal,
18 including but not limited to, extra vegetables or fruit for meat products, juice instead
19 of milk, and two extra peanut butter sandwiches at lunch. Plaintiff was informed that
20 defendant Shultz did not have the authority to modify his diet over and above the
21 accommodations that had been previously made for him. Her authority over the diet
22 of inmates was limited only to those who are patients at the Acute Care Hospital.
23 Shultz contends the meeting with plaintiff in August 2004 was her only contact with
24 plaintiff.

25 20. During the relevant time period, plaintiff had a chrono which allowed him to take
26 multivitamins sent by a religious organization.

27 21. The master prison menus are designed to meet the nutritional needs of normal healthy
28 adults. The 2004 master prison menu contained approximately 3000 calories per day.

1 The prison master menu contains approximately 300 more calories per day than the
2 minimum amount required by the average, moderately active adult to maintain
3 adequate nutrition. The reason the prison menu was created to have more than the
4 normal amount of calories is so that inmates may discard food they dislike or food
5 that does not agree with them and still receive an adequate amount of nutrition per
6 day. All prisons, including the California State Prison Corcoran, serve the master
7 prison menu but each prison is permitted to substitute certain items if the item falls
8 within the established guidelines for maintaining proper, balanced nutrition.

9 22. At his deposition, plaintiff admitted that it is virtually impossible to eat the way you
10 want to eat as a vegan in prison.

11 23. Plaintiff admits that he is not going to be able to practice his religion the way he
12 would like because he is in prison.

13 Plaintiff's Additional Undisputed Facts

14 24. Plaintiff contends he is a vegetarian due to his religious faith. On September 12,
15 2003, Aqeel M. El-Amin, Muslim Chaplain at Corcoran State Prison directed a
16 memorandum to "Darren James, Institutional Food Manager," indicating that plaintiff
17 had requested special religious dietary provisions, which had been verified by Mr.
18 Amin. Mr. Amin also stated that the Ausarian inmates, of which plaintiff was
19 included, had identified a religious organization of the faith to provide their required
20 dietary needs.

21 25. On December 23, 2003, plaintiff filed Inmate Appeal Log. 04-590, stating, "This
22 602/complaint also serves as a formal notice to the food manager Darren James,
23 Warden A.K, Scribner and the director of corrections, E. Alameida that the above
24 constitutional rights are currently being violated."

25 26. In Inmate Appeal Log. 04-590, plaintiff requested that pursuant to CDCR, title 15
26 section 3054(2), he be allowed to receive natural vegan foods from his religious
27 organization and vendors.

28 27. Inmate Appeal Log. 04-590 states, "See attached Appeal/Response form dated

1 3/01/04 signed by D. Thompson.”

2 28. On March 3, 2004, plaintiff received a fact finding report written by Dean Thompson
3 and addressed to D. Leon, Associate Warden, Business Services (A) in regards to
4 plaintiff’s appeal and this report stated that the food service department was in
5 process of formulating procedures to address religious diets and that the action
6 dictated no intention to deny religious diets but only to make them easier to process.

7 29. On March 26, 2004, plaintiff submitted his appeal for second level review stating,
8 “Thus far my religious needs have not been met. This is in direct violation of the
9 rules and regulations of CDC and because I am a strict vegetarian I am currently
10 being deprive [sic] of adequate intakes of calories, vitamins B12 and D, Iron,
11 Calcium and protein.”

12 30. In April 2004, plaintiff received notification of delay of appeals process from CSP
13 Corcoran Appeal Office.

14 31. On April 13, 2004, plaintiff was interviewed by Dean Thompson and informed that
15 meat-free lunches (peanut butter and jelly) would be made and sent to him and that
16 any contract with a religious organization to provide him with a vegan food items
17 must be donated by that religious organization. Plaintiff’s request for monetary
18 compensation was denied, thus the First Level response was deemed partially
19 granted.

20 32. On May 12, 2004, V. Yamamoto, partially granted plaintiff’s appeal at the second
21 level of review informing plaintiff that food items from his religious organization
22 would have to be donated and his request for monetary compensation was denied.

23 33. On June 18, 2004, plaintiff submitted his appeal to the third level. On August 9,
24 2004, N. Grannis returned the appeal to plaintiff.

25 34. On August 4, 2004, Diane Brewer, spiritual counselor, sent a certified letter to
26 assistant correctional food manager Dean Thompson, explaining that her religious
27 organization wished to contract with Corcoran State Prison to provide plaintiff
28 religious dietary needs to ensure his health and well being.

1 35. On August 27, 2004, Dean Thompson wrote a letter to Diane Brewer acknowledging
2 her interest and informing her that per regulation any religious organization may
3 contract with the Department provided the contract doesn't result in additional cost.
4 Mr. Thompson informed Ms. Brewer that any vegan food would need to be donated
5 and any product and/or packaging material would require security clearance. He also
6 informed her that he would refer her request to the Internal Investigation Unit.

7 36. On September 20, 2004, Ms. Brewer sent another letter to Mr. Thompson asking for
8 a referral to the Internal Investigation Unit for more information on packaging.

9 37. In December 2004, plaintiff presented Warden Scribner a proposal for his religious
10 organization to contract with the prison to provide his religious dietary needs.

11 D. Discussion

12 1. Defendants' Motion for Summary Judgment

13 a. Free Exercise Claims

14 The First Amendment to the United States Constitution provides that "Congress shall make
15 no law respecting the establishment of religion, or prohibiting the free exercise thereof" U.S.
16 Const., amend. I. Prisoners "retain protections afforded by the First Amendment," including the free
17 exercise of religion. [O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, 107 S.Ct. 2400 \(1987\)](#).
18 However, "[l]awful incarceration brings about the necessary withdrawal or limitation of many
19 privileges and rights, a retraction justified by the considerations underlying our penal system." [Id.](#)
20 (quoting [Price v. Johnson, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060 \(1948\)](#)). "In order to establish
21 a free exercise violation, [a prisoner] must show the defendants burdened the practice of his religion,
22 by preventing him from engaging in conduct mandated by his faith, without any justification
23 reasonably related to legitimate penological interests." [Freeman v. Arpaio, 125 F.3d 732, 736 \(9th](#)
24 [Cir. 1997\)](#). "In order to reach the level of a constitutional violation, the interference with one's
25 practice of religion 'must be more than an inconvenience; the burden must be substantial and an
26 interference with a tenet or belief that is central to religious doctrine.'" [Freeman, 125 F.3d at 737](#)
27 (quoting [Graham v. C.I.R., 822 F.2d 844, 851 \(9th Cir. 1987\)](#)).

28 "To ensure that courts afford appropriate deference to prison officials, . . . prison regulations

1 alleged to infringe constitutional rights are judged under a ‘reasonableness’ test less restrictive than
2 that ordinarily applied to alleged infringements of fundamental constitutional rights.” O’Lone, 382
3 U.S. at 349. Under this standard, “when a prison regulation impinges on inmates’ constitutional
4 rights, the regulation is valid if it is reasonably related to legitimate penological interests.” Turner
5 v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254 (1987). First, “there must be a valid, rational connection
6 between the prison regulation and the legitimate government interest put forward to justify it,” and
7 “the governmental objective must itself be a legitimate and neutral one.” Id. A second consideration
8 is “whether there are alternative means of exercising the right that remain open to prison inmates.”
9 Id. at 90 (internal quotations and citation omitted). A third consideration is “the impact
10 accommodation of the asserted right will have on guards and other inmates, and on the allocation
11 of prison resources generally.” Id. “Finally, the absence of ready alternatives is evidence of the
12 reasonableness of a prison regulation.” Id.

13 (1) Suspension of the Use of Prayer Oil

14 Defendants argue that suspending the use of prayer oils, which the prison found to be
15 hazardous when lit and left unattended in a cell, was directly related to the legitimate penological
16 interest of protecting the safety and security of the institution.³ Johnson Dec., ¶3. Defendants
17 contend that allowing the unrestricted and unsupervised in cell use of flammable oils created a safety
18 concern through either intentional or accidental misuse of the oil which would result in fires and
19 injury to staff and inmates. Id. Defendants therefore contend the prison acted reasonably and
20 demonstrated a legitimate penological interest in denying plaintiff unrestricted and unsupervised use
21 of the oil.

22 Defendants also point out that despite the ban, plaintiff had alternative means of practicing
23 his religion because by 2002, the suspension policy was modified so that all inmates who needed oil
24 for religious purposes could request, maintain and receive oils by the Muslim chaplain, regardless
25 of religious faith, at religious services, as appropriate. Johnson Dec., ¶4.

27 ³For purposes of their motion for summary judgment only, defendants do not dispute the sincerity of
28 plaintiff’s religious beliefs. For purposes of plaintiff’s motion however, defendants dispute the sincerity of plaintiff’s
religious beliefs.

1 Defendants argue that allowing plaintiff and other prisoner's in-cell use of oils would have
2 required prison officials to closely monitor the activity, thereby causing additional strain on prison
3 resources affecting prison staff and other inmates. Defendants contend that the only alternative to
4 plaintiff's exclusion from in-cell use of the oil at nighttime would have been to provide more
5 security, which as discussed above, would greatly impact prison resources.

6 The court finds that defendants have met their initial burden of informing the court of the
7 basis for their motion, and identifying those portions of the record which they believe demonstrate
8 the absence of a genuine issue of material fact. The burden therefore shifts to plaintiff to establish
9 that a genuine issue as to any material fact actually does exist. See [Matsushita Elec. Indus. Co. v.](#)
10 [Zenith Radio Corp., 475 U.S. 574, 586 \(1986\)](#). As stated above, in attempting to establish the
11 existence of this factual dispute, plaintiff may not rely upon the mere allegations or denials of his
12 pleadings, but is required to tender evidence of specific facts in the form of affidavits, and/or
13 admissible discovery material, in support of its contention that the dispute exists. [Fed. R. Civ. P.](#)
14 [56\(e\); Matsushita, 475 U.S. at 586 n.11; First Nat'l Bank, 391 U.S. at 289; Strong v. France, 474](#)
15 [F.2d 747, 749 \(9th Cir. 1973\)](#). Plaintiff must do more than attack the credibility of defendants'
16 evidence, see [National Union Fire. Ins. Co. v. Argonaut Ins. Co., 701 F.2d 95, 97 \(9th Cir. 1983\)](#)
17 (“[N]either a desire to cross-examine an affiant nor an unspecified hope of undermining his or her
18 credibility suffices to avert . . . judgment.”), and arguments or contentions set forth in a responding
19 brief do not constitute evidence, see [Coverdell v. Dep't of Soc. & Health Servs., 834 F.2d 758, 762](#)
20 [\(9th Cir. 1987\)](#) (recitation of unsworn facts not evidence).⁴

21 Plaintiff argues the “partial ban” on the use of oils amounts to a total ban for him. Plaintiff
22 states that under the modified policy, the oils were only available at Muslim services, which were
23 held at different times than his religion requires him to meditate and perform rituals. Plaintiff's
24 Declaration in Opposition ¶ 40. Plaintiff states that he performs meditation and rituals every night
25 from 8:00 - 10:00 p.m. and therefore he requires the essential oils in his possession during these

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27 ⁴ However, verified complaints and oppositions constitute opposing affidavits for purposes of the summary
28 judgment rule if they are based on facts within the pleader's personal knowledge. [Johnson v. Meltzer, 134 F.3d](#)
[1393, 1399-1400 \(9th Cir. 1998\)](#).

1 times. *Id.* Plaintiff also suggests that non-flammable oils would be a sufficient alternative.

2 With respect to the first prong, it is undisputed that there is a rational connection between the
3 regulation and prison safety concerns, a legitimate governmental interest. Thus, the first prong of
4 the *Turner* test weighs in favor of defendants.

5 The second factor requires the court to examine whether, notwithstanding the regulation on
6 one aspect of plaintiff's religion, plaintiff still has alternative means of exercising his religion.

7 "The relevant inquiry under this factor is not whether the inmate has an alternative means of
8 engaging in a particular religious practice that he or she claims is being affected; rather, we are to
9 determine whether the inmates have been denied all means of religious expression." Ward, 1

10 F.3d at 877 (citing O'Lone, 482 U.S. at 351-52, 107 S.Ct. 2400). Defendants argue that plaintiff
11 was able to participate in other aspects of his religion because he was given access to oils and an
12 opportunity to meditate while using, albeit at different times. Plaintiff argues that the alternative
13 amounts to a total ban on his ability to meditate because his prayer time is at night. However, as
14 noted, the relevant inquiry is not whether there are alternative means of practicing the particular
15 religious practice, but rather whether the inmate has been denied all means of religious
16 expression. Here plaintiff was not denied all means of religious expression. This factor
17 therefore weighs in defendants' favor.

18 The third prong requires the court to assess the burden that accommodating plaintiff's
19 wish to retain the oils in his cell would place on prison resources. Defendants have presented
20 evidence, which plaintiff does not dispute, that allowing plaintiff and other prisoners in-cell use
21 of oils would require prison officials to closely monitor the activity thus placing burdens on the
22 prison with respect to safety and prison resources.

23 The fourth *Turner* factor requires the court to evaluate whether there are alternatives to
24 the prison's current policy that would accommodate plaintiff at *de minimis* costs. Defendants
25 contend the only alternative to plaintiff's exclusion from in-cell use of the oil at nighttime would
26 have been to provide more security to ensure order during these activities, which as discussed
27 would impact prison staff, other inmates and prison resources. Plaintiff states that allowing him
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1 to use non-flammable oils in his cell is a reasonable alternative that would address defendants'
2 concerns. Defendants do not address this alternative nor does plaintiff provide information on
3 the cost of non-flammable oils.

4 Assuming the fourth *Turner* factor weighs in plaintiff's favor, the other three do not. The
5 *Turner* test is a balancing test and not every prong must be met in order to find that a regulation
6 is reasonably related to a legitimate penological interest. The Court therefore finds that the
7 regulation at issue is reasonably related to a legitimate penological interest and plaintiff's Free
8 Exercise claim must fail as a matter of law.⁵

9 (2) Religious Diet

10 Plaintiff also contends that defendants violated his First Amendment right to free exercise
11 of his religion by denying him the foods he required. Plaintiff contends he is forbidden from
12 consuming animal products and food items containing their by-products.
13

14 Defendants do not address the merits of this claim but only address the individual
15 defendants' involvement in the alleged deprivation, arguing that plaintiff cannot establish each
16 defendants' personal involvement in the alleged violation of his constitutional rights. Defendants
17 also contend plaintiff's request for injunctive relief is moot because he has been transferred to
18 another prison.

19 Section 1983 plainly requires that there be an actual connection or link between the
20 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
21 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
22 (1976). "A person deprives another of a constitutional right, where that person 'does an
23 affirmative act, participates in another's affirmative acts, or omits to perform an act which [that
24 person] is legally required to do that causes the deprivation of which complaint is made.'" Hydrick v. Hunter, No. 03-56712, 2007 WL 2445998, *5 (9th Cir. Aug. 30, 2007) (quoting
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27
28 ⁵Defendant Johnson contends his signature of the memorandum suspending the use of prayer oil is the only involvement alleged by plaintiff and this conduct did not violate his constitutional rights as discussed above. Because the Court finds that the regulation did not violate plaintiff's constitutional rights, plaintiff fails to state a claim against defendant Johnson.

1 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection can be
2 established not only by some kind of direct, personal participation in the deprivation, but also be
3 setting in motion a series of acts by others which the actor knows or reasonably should know
4 would cause others to inflict the constitutional injury.’” Id. (quoting Johnson at 743-44).]

5 Defendant Shultz contends she was not asked to modify plaintiff’s diet nor did she have
6 the authority to do so. DUF 19. Shultz contends that she was asked to provide an opinion of
7 plaintiff’s dietary deficiencies, an opinion that she did not share. Plaintiff contends that Shultz
8 did not provide information regarding the types of foods he could substitute in his diet to meet
9 his religious requirements and that she disregarded his religious beliefs by suggesting that he
10 “defile” his body and religious conscience by consuming meat and animal products. *See*
11 *Plaintiff’s Declaration*, ¶ 25.

12 Plaintiff has not submitted any evidence to establish that defendant Shultz had the
13 authority to modify his diet or that she was responsible for depriving plaintiff his special
14 religious dietary needs in violation of his First Amendment rights. Nor has plaintiff submitted
15 evidence that Shultz was responsible for depriving plaintiff of any of his constitutional rights.
16 Section 1983 plainly requires that there be an actual connection or link between the actions of the
17 defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.
18 Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “‘A
19 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of [§]
20 1983, if [that person] does an affirmative act, participates in another’s affirmative acts or omits to
21 perform an act which [that person] is legally required to do that causes the deprivation of which
22 complaint is made.’” Hydrick v. Hunter, 466 F.3d 676, 689 (9th Cir. 2006) (quoting Johnson v.
23 Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). Absent evidence that defendant Shultz was
24 responsible for his inability to obtain his religious diet or an adequate diet, defendant is entitled
25 to judgment as a matter of law on plaintiff’s claims against her.

26 Defendant James contends that the chaplain mistakenly sent him the request for a
27 religious organization to donate food to plaintiff. James Dec., ¶ 4. Defendant James contends he
28

1 was not the food manger and further, plaintiff failed to provide the names and addresses of the
2 religious organizations as required under the regulation. *Id.* As pointed out by plaintiff,
3 notwithstanding any mistake by the chaplain, defendant James acknowledges that he received the
4 request but failed to forward it to the Institutional Food Manager. This is sufficient to bring into
5 dispute defendants' personal involvement in the alleged violation of plaintiff's constitutional
6 rights.

7 Defendants Thompson and Scribner contend their involvement in this case was limited to
8 their processing of plaintiff's appeals, which cannot serve as basis for liability under section
9 1983. Plaintiff disputes this and contends that defendant Thompson as the Food Manager and
10 defendant Scribner as Warden failed to respond to requests by his religious organization to
11 contract with the prison to provide the religion dietary needs of plaintiff. Plaintiff's Declaration
12 in Opposition to Defendants' Motion for Summary Judgment, ¶ 14, Complaint ¶ 36 - 38, 40, 42.
13 Plaintiff's complaint and declaration are sufficient to bring into dispute defendants' personal
14 involvement in the alleged violation of plaintiffs constitutional rights.

15 (3) Injunctive Relief

16 Defendants argue that plaintiff's request for injunctive relief is now moot because he has
17 been transferred to California State Prison, Sacramento. DUF 2. When an inmate seeks
18 injunctive or declaratory relief concerning the prison where he is incarcerated, his claims for such
19 relief become moot when he is no longer subjected to those conditions. [Nelson v. Heiss, 271](#)
20 [F.3d 891, 897 \(9th Cir. 2001\)](#); [Dilley v. Gunn, 64 F.3d 1365, 1368 \(9th Cir. 1995\)](#); [Johnson v.](#)
21 [Moore, 948 F.2d 517, 519 \(9th Cir. 1991\)](#). Because plaintiff is no longer incarcerated at
22 Corcoran State Prison, his requests for injunctive releif concerning that prison are moot. 2.

23 Plaintiff's Motion for Summary Judgment

24 Plaintiff contends he is entitled to summary judgment on his claim that defendants
25 violated his First Amendment and Equal Protection rights by failing to accommodate his special
26 religious diet and use of essential oils for meditation and rituals. Defendants argue that plaintiff
27 is not entitled to summary judgment because there are disputed issues of material fact as to
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1 whether his religious practices are based on a sincere religious belief.

2 To prevail on his motion for summary judgment, plaintiff must establish beyond
3 controversy every essential element of his claim. [Fontenot, 780 F.2d at 1194](#). Defendants have
4 submitted evidence that in December 2004, plaintiff stated he was Muslim (DUF 7) and in July
5 2005, plaintiff wrote in a grievance that he “is a Rastafarian who wears a full beard and hair
6 fashioned into dread locks (for spiritual reasons).” DUF 8. Defendants therefore dispute the
7 sincerity of plaintiff’s religious beliefs. “[I]t is a commonplace of federal practice that a party’s
8 state of mind “is not readily susceptible to resolution on a motion for summary judgment.”
9 [Rouser v. White, 944 F.Supp. 1447 \(E.D.Cal. 1996\)](#), *citing* [Richards v. Nielsen Freight Lines,](#)
10 [602 F.Supp. 1224, 1231 \(E.D.Cal.1985\)](#), *aff’d*, [810 F.2d 898 \(9th Cir.1987\)](#). Because there is a
11 material dispute as to the sincerity of plaintiff’s religious beliefs, plaintiff’s motion for summary
12 judgment must be denied.

13 E. Conclusion

14 For the foregoing reasons, plaintiff’s motion for summary judgment, filed April 26, 2007
15 is HEREBY DENIED. Defendants’ motion for summary judgment, filed May 21, 2007, is
16 GRANTED IN PART and DENIED IN PART as follows:

- 18 1. Defendants’ motion for summary adjudication on plaintiff’s free exercise claim
19 arising from the denial of essential oils is GRANTED;
- 20 2. Defendant Shultz’s motion for summary adjudication on plaintiff’s free exercise
21 claim against her is GRANTED; defendants’ Thompson, James and Scribner’s
22 motion for summary adjudication on plaintiff’s free exercise claim arising out of
23 the alleged denial of a vegetarian diet is DENIED;
- 24 3. Defendants’ motion for summary adjudication on plaintiff’s claims for injunctive
25 relief is GRANTED; and
- 26 4. This case shall proceed to trial against defendants Scribner, Thompson and James
27 on plaintiff’s free exercise claim arising out of the alleged denial of a vegetarian
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diet as required for his religious beliefs.

IT IS SO ORDERED.

Dated: March 13, 2008

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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