

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARVIN OGMAN, :
Plaintiff, :
 :
v. : C.A. No. 14-17S
 :
WARDEN BRIAN MURPHY, :
SERGEANT SULLIVAN, ARAMARK :
FOOD SERVICE, :
Defendants. :

REPORT AND RECOMMENDATION

Patricia A. Sullivan, United States Magistrate Judge

On January 10, 2014, Plaintiff Marvin Ogman, a prisoner held at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island, filed a hand-written *pro se* Complaint against two prison employees and the prison’s food services provider, claiming that he has been forced to eat meals “in reservation of ‘Lent,’” which he argues has forced him to participate in a Catholic religious ritual. With his Complaint, Ogman filed a motion for leave to proceed *in forma pauperis* (“IFP”), ECF No. 2, which has been referred to me for determination pursuant to 28 U.S.C. § 636(b)(1)(A). Based on my review of the IFP motion and the attached “Resident Funds Inquiry,”¹ I conclude that he has satisfied the requirements of 28 U.S.C. § 1915(a)(2); accordingly, it will be granted if the Complaint survives screening.

Because Ogman is a prisoner seeking to proceed IFP, this Court is required by statute to further review the Complaint *sua sponte* under 28 U.S.C. § 1915(e)(2) and to dismiss the action if it is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. For the reasons discussed

¹ While the “Resident Funds Inquiry” is not a certified copy of the prisoner trust fund account statement, it does show Defendant’s funds for the six-month period prior to the filing of the Complaint, and therefore adequately complies with the requirement of 28 U.S.C. § 1915(a)(2).

below, I recommend that, following an opportunity to amend, Plaintiff's Complaint be DISMISSED WITH PREJUDICE because it fails to state a claim on which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

Ogman's Complaint alleges that the general prison population was served "entrée-less" meals on Fridays during the time period when Catholics observed Lent² in 2013. He purports that the serving of these meals to the general population violated his First Amendment rights. Further, on February 22, 2013, after he spoke up about his frustrations over the menu, one of the defendants, Sergeant Sullivan, placed him in the special housing unit for a total of nine days, allegedly for participating in a group demonstration. In an aside, he notes that kosher and halal meals were served to the Jewish and Muslim inmates throughout the forty days of Lent. Ogman requests that the Court order Defendants to implement a policy to "discontinue the practice of forcing religion" and pay him five million dollars.

The legal standard for dismissing a complaint for failure to state a claim pursuant to §§ 1915(e)(2) and 1915A is the same used when ruling on a Rule 12(b)(6) motion to dismiss. Hodge v. Murphy, 808 F. Supp. 2d 405, 408 (D.R.I. 2011). To survive a motion to dismiss, a complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); see also Fed. R. Civ. P. 12(b)(6). Well-pled allegations are accepted as true and the Court "scrutinize[s] the complaint in the light most favorable to the plaintiff."

Rogan v. Menino, 175 F.3d 75, 77 (1st Cir. 1999). Section 1915 also requires dismissal if the

² It is not entirely clear how "entrée-less" meals conforms to Catholic religious ritual. According to the National Conference of Catholic Bishops, every Catholic person fourteen years of age or older must abstain from meat (and items made with meat) on Ash Wednesday, Good Friday and all the Fridays of Lent. Pastoral Statement on Penance and Abstinence (Nov. 18, 1966), available at <http://www.usccb.org/prayer-and-worship/liturgical-resources/lent/us-bishops-pastoral-statement-on-penance-and-abstinence.cfm> (last visited Feb. 3, 2014). Because the factual allegations of a complaint must be accepted as true for purposes of a Fed. R. Civ. P. 12(b)(6) analysis, and mindful of Ogman's *pro se* status, I assume that whatever was served satisfied the dietary requirements of Catholics on the Fridays in Lent.

Court finds that the case is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). Although this Court construes pleadings of a *pro se* plaintiff “liberally,” Estelle v. Gamble, 429 U.S. 97, 106 (1976), “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. When a *pro se* prisoner complaint fails to state a claim but is not frivolous, the First Circuit has cautioned against *sua sponte* dismissal with prejudice “without affording plaintiff notice and an opportunity to be heard.” Street v. Fair, 918 F.2d 269, 272 (1st Cir. 1990) (per curiam). Instead, district courts are advised to give plaintiffs “some form of notice and an opportunity to cure the deficiencies in the complaint.” Brown v. Rhode Island, 511 F. App’x 4, 4-5 (1st Cir. 2013) (per curiam) (vacating dismissal under §§ 1915(e) and 1915A).

Ogman’s Complaint asserts that his First Amendment rights were violated because he was required to eat “entrée-less” meals on Ash Wednesday and Fridays during the Lenten season in 2013. This claim potentially arises under the Establishment Clause of the First Amendment, which states that “Congress shall make no law respecting an establishment of religion” and instructs that one religious denomination cannot be officially preferred over another. See Cardew v. Bellnier, No. 9:09-CV-775 (GLS/ATB), 2010 WL 7139218, at *13 (N.D.N.Y. Dec. 9, 2010). Courts analyze claims under the Establishment Clause using the three-pronged test set forth in Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971): governmental action that interacts with religion 1) must have a secular purpose; 2) must have a principal or primary effect that neither advances nor inhibits religion; and 3) must not foster an excessive government entanglement with religion.

In the prison context, the Lemon test is adjusted slightly in that regulations must be reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 89 (1987).

Given the government's "significant control over inmates' lives, a niche has necessarily been carved into the establishment clause to require the government to afford opportunities for worship." Muhammad v. N.Y.C. Dep't of Corrs., 904 F. Supp. 161, 198 (2d Cir. 1995) (quoting United States v. Kahane, 396 F. Supp. 687, 698 (E.D.N.Y. 1975)) (internal quotation marks omitted). Serving meals that conform to Catholic dietary requirements falls into such a niche. See Travillion v. Leon, 248 F. App'x 353, 355 (3d Cir. 2007) (per curiam) ("[The jail's] actions had the secular purpose of feeding the inmates.") The service of such meals does not have the primary effect of advancing Catholicism or inhibiting other religions, nor does it foster the excessive entanglement of government with religion. Id. at 355-56. A meal without an entrée is not inherently linked to a religious practice. See also Cardew, 2010 WL 7139218, at *15 ("Serving non-red-meat meals on Ash Wednesday and Fridays serves the valid penological purpose of feeding the inmates, while simultaneously meeting the religious dietary needs and preferences of a substantial segment of the prison population.").

Ogman's Complaint fails when interpreted as grounded on the Establishment Clause. The prison did not serve entrée-less meals on Ash Wednesday and Fridays during the Lenten season to force Catholicism on its inmates, but to simultaneously feed the inmates while addressing the religious dietary needs of its Catholic inmate population. Serving meals without an entrée is not linked to a religious practice and serves the purpose of feeding the inmates. Therefore, Plaintiff has not been forced to participate in a religious ritual and his Complaint fails to state a claim under the Establishment Clause of the First Amendment.

When viewed through the alternative lens of the Free Exercise Clause of the First Amendment, which guarantees the right to the free exercise of religion, Plaintiff's Complaint is equally flawed. Courts have found that prisoners have a constitutional right under the Free

Exercise Clause to food that satisfies the dictates of their religion. See Koehl v. Greene, No. 9:05-CV-582, 2008 WL 4822520, at *6 (N.D.N.Y. Oct. 31, 2008) (Free Exercise Clause “extends beyond mere attendance at congregate religious services into other aspects of prison life including, pertinently, that of an inmate’s diet.”) (citing Ford v. McGinnis, 352 F.3d 582, 597 (2d Cir. 2003)). Nevertheless, a nonreligious inmate does not have a Free Exercise claim when he is served meals that conform to Catholic dietary requirements during the Lenten season as long as the food served is not forbidden by his own religious beliefs. See Cardew, 2010 WL 7139218, at *16 (“Plaintiffs do not assert that they are generally forbidden, on any religious grounds, from eating fish or any of the non-red-meat entrees.”). As pled in this Complaint, Plaintiff’s Free Exercise rights under the First Amendment are untrammelled by the alleged alteration to the menu served at the prison during Lent.

Based on the foregoing, I recommend that Ogman be given leave to file an Amended Complaint that remedies the deficiencies identified in this report and recommendation within thirty days of this Court’s adoption of it. Brown, 511 F. App’x at 6. If he fails to do so, I recommend that his Complaint be DISMISSED WITH PREJUDICE and that his IFP motion (ECF No. 2) be denied as moot.³ See 28 U.S.C. §§ 1915(e)(2), 1915A.

Any objection to this Report and Recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court’s decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

³ If Ogman timely files an amended complaint that states a claim on which relief may be granted, this Court will grant his IFP motion; an Order setting out the amount to be paid as an initial filing fee and monthly until the filing fee is paid in full will be entered at that time.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
February 3, 2014