NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY BERNARD SMITH, Plaintiff-Appellant, v. CONNIE GIPSON, Warden; et al., Defendants-Appellees.	No. 22-15069 D.C. No. 3:20-cv-01110-WHO MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Horsley Orrick, District Judge, Presiding

Submitted July 6, 2023**
San Francisco, California

Before: D.W. NELSON, SILVERMAN, and JOHNSTONE, Circuit Judges.

Anthony Bernard Smith, an inmate in the custody of the California Department of Corrections and Rehabilitation ("CDCR"), appeals pro se the district court's summary judgment order in his action alleging claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 2000cc *et seq*., and 42 U.S.C. § 1983 for violations of his First, Eighth, and Fourteenth Amendment rights. Smith alleges that defendants unlawfully deprived him of regularly available kosher meals during Ramadan and subjected him to a dining hall policy that created a risk of cross-contamination between halal and haram foods in violation of his sincere Muslim beliefs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Shakur v. Schriro*, 514 F.3d 878, 883 (9th Cir. 2008), and may affirm on any ground supported by the record, *M&T Bank v. SFR Invs. Poo1 1, LLC*, 963 F.3d 854, 857 (9th Cir. 2020). We affirm.

The district court properly granted summary judgment on Smith's RLUIPA claim for injunctive relief premised on the specific dining hall policy at Pelican Bay State Prison because Smith's transfer to another institution rendered the claim moot. *See Walker v. Beard*, 789 F.3d 1125, 1132 (9th Cir. 2015) (explaining that an inmate's claim for injunctive relief would be moot following his transfer if he "did not demonstrate a reasonable expectation that he [would be] . . . subjected again to the" challenged policies) (citation and internal quotation marks omitted)).

The district court properly granted summary judgment on Smith's RLUIPA claim for injunctive relief premised on the CDCR's policy offering 2019 Ramadan participants shelf-stable halal meals instead of perishable kosher meals when it found the absence of a genuine issue of material fact as to whether the policy imposed a substantial burden on his religious exercise. *See id.* at 1134 ("To state a

claim under RLUIPA, a prisoner must show that . . . the State's actions have substantially burdened [his religious] exercise.").

To the extent that Smith seeks damages on his RLUIPA claim, summary judgment was proper because such relief is not available. *See Al Saud v. Days*, 50 F.4th 705, 709 (9th Cir. 2022) ("Only injunctive relief, not monetary damages, is available pursuant to RLUIPA[.]").

The district court properly granted summary judgment on Smith's First Amendment free exercise claim and his Fourteenth Amendment equal protection claim because there was no genuine issue of material fact as to whether the CDCR's policy was not "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987).

The district court properly granted summary judgment on Smith's Eighth Amendment claim because there was no genuine issue of material fact as to whether any defendant was aware that he was refusing meals. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) ("We hold . . . that a prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate health or safety[.]").

AFFIRMED.