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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,  
Plaintiff,  
v.  
CALIFORNIA DEP'T OF CORR. AND  
REHAB., ET AL.,  
Defendant(s).

Case No. CV 21-7364-CBM (KK)

**ORDER ACCEPTING FINDINGS  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge. No objections have been filed. The Court accepts the findings and recommendation of the Magistrate Judge.

IT IS THEREFORE ORDERED that

(1) Plaintiff's claim for violation of Article I, Section 4 of the California Constitution is dismissed without prejudice and without leave to amend; and

(2) the following claims are dismissed with prejudice and without leave to amend:

(a) Plaintiff's claims pursuant to 42 U.S.C. § 1983 ("Section 1983") the Religious Land Use and Institutionalized Person Act, 42 U.S.C. § 2000cc et seq. ("RLUIPA") against CDCR and defendants Johnson and Lee in

1 their official capacity to the extent Plaintiff seeks monetary damages from  
2 defendants Johnson and Lee;

3 (b) Plaintiff's RLUIPA claim against the individual defendants in their  
4 individual capacity;

5 (c) Plaintiff's First Amendment Free Exercise and Eighth Amendment  
6 claims for denial of Plaintiff's administrative appeals against defendants  
7 Johnson, Lee, Lewandowski, Ulstad, and Lake;

8 (d) Plaintiff's Fourteenth Amendment due process and equal protection  
9 claims; and

10 (e) Plaintiff's claims for violation of Sections 5009(a), 636, 147 and 673  
11 of the California Penal Code.

12 The Court will issue separate orders regarding service of the following claims:

13 (1) Plaintiff's RLUIPA claim against defendants Johnson and Lee in their  
14 official capacity for injunctive relief alleging 15 C.C.R. § 3054.5 discriminates against  
15 religious inmates, and

16 (2) Plaintiff's First and Eighth Amendment claims pursuant to Section 1983  
17 against defendants E. Lake, Rabbi Lazar, and Does 1-10 in their individual capacity  
18 alleging they removed Plaintiff from the Kosher Diet Program with the intent of  
19 burdening Plaintiff's free exercise of his religion and preventing him from eating food  
20 that complies with the requirements of his religion.

21  
22 Dated: July 28, 2022



23  
24 HON. CONSUELO B. MARSHALL  
Senior United States District Judge