

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD S. KINDRED,

1:08-cv-01321-AWI-GSA-PC

Plaintiff,

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS
(Doc. 25.)

vs.

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS
(Doc. 17.)

CALIFORNIA DEPARTMENT
OF MENTAL HEALTH, et al.,

ORDER DISMISSING CLAIMS, WITH
LEAVE TO AMEND AS INSTRUCTED
BY THIS ORDER

Defendants.

ORDER FOR PLAINTIFF TO EITHER:
(1) FILE AMENDED COMPLAINT, OR
(2) NOTIFY COURT THAT HE IS
WILLING TO PROCEED ON
COGNIZABLE CLAIMS

THIRTY DAY DEADLINE

ORDER REFERRING CASE BACK TO
MAGISTRATE JUDGE FOR FURTHER
PROCEEDINGS

_____ /

Richard S. Kindred ("Plaintiff") is a civil detainee proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

1 On July 12, 2011, Findings and Recommendations were entered, recommending that (1) the
2 motion to dismiss filed on December 14, 2010 by defendants Ahlin and Devine be granted; (2)
3 certain claims be dismissed without leave to amend; and (3) certain claims be dismissed with leave
4 to amend. (Doc. 25.) On August 10, 2011, Defendants filed a response to the findings and
5 recommendations, and on August 15, 2011, Plaintiff filed a notice of non-opposition to the Findings
6 and Recommendations. (Docs. 28, 29.)

7 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
8 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
9 Court finds the Findings and Recommendations to be supported by the record and proper analysis.

10 Defendants have filed a motion to quash and in conjunction, have requested the Court to set
11 aside the Magistrate Judge's finding that defendant Fields was served with the complaint. (Doc. 28.)
12 The motion to quash shall be referred back to the Magistrate Judge.

13 Accordingly, THE COURT HEREBY ORDERS that:

- 14 1. The Findings and Recommendations issued by the Magistrate Judge on July 12, 2011,
15 are ADOPTED in full;
- 16 2. The motion to dismiss filed on December 14, 2010 by defendants Ahlin and Devine is
17 GRANTED, as follows:
 - 18 (1) Plaintiff's § 1983 claims for monetary damages against defendants Ahlin and
19 Devine in their official capacities are DISMISSED for failure to state a claim,
20 without leave to amend;
 - 21 (2) Plaintiff's RLUIPA claims for monetary damages against Defendants Ahlin
22 and Devine in their official capacities are DISMISSED for failure to state a
23 claim, without leave to amend;
 - 24 (3) Plaintiff's § 1983 claims against defendant Ahlin are DISMISSED for failure
25 to state a claim against her, without leave to amend; and
 - 26 (4) Plaintiff's individual capacity RLUIPA claims are DISMISSED for failure to
27 state a claim, without leave to amend;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Upon the Court's *sua sponte* screening of the Complaint, it is ordered that:
- (1) Plaintiff states cognizable § 1983 claims in the Complaint for money damages, for the violation of Plaintiff's rights to freely exercise his religion under the First Amendment, against defendants Barbara Devine and Linda Fields;
 - (2) Plaintiff's request for declaratory relief is DENIED, with prejudice;
 - (3) Plaintiff's § 1983 claims for monetary damages against defendant Fields in her official capacity are DISMISSED for failure to state a claim, without leave to amend;
 - (4) Plaintiff's RLUIPA claims for monetary damages against defendant Fields in her official capacity are DISMISSED for failure to state a claim, without leave to amend;
 - (5) Plaintiff's individual capacity RLUIPA claims against defendant Fields are DISMISSED for failure to state a claim, without leave to amend; and
 - (6) Plaintiff's remaining official capacity RLUIPA claims are DISMISSED, with leave to amend;
4. Within thirty days from the date of service of this order, Plaintiff is required to either:
- (1) file an amended complaint curing the deficiencies identified in the Findings and Recommendations, or (2) notify the Court in writing that he does not wish to file an amended complaint and is instead willing to proceed only against defendants Barbara Devine and Linda Fields under § 1983 for money damages, for the violation of his rights to freely exercise his religion under the First Amendment; and
5. This case, including Defendants' motion to quash, is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: September 11, 2011


CHIEF UNITED STATES DISTRICT JUDGE