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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TRACY TAYLOR,

Plaintiff,

v.

SUSAN HUBBARD, et al.,

Defendants.

CASE NO. 1:10-cv-00404-LJO-BAM PC

FINDINGS AND RECOMMENDATIONS
REGARDING PLAINTIFF’S MOTIONS FOR
PRELIMINARY INJUNCTION AND/OR
PROTECTIVE ORDER

(ECF Nos. 29, 39)

OBJECTIONS DUE WITHIN TWENTY-ONE
DAYS

Plaintiff Tracy Taylor (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to [42 U.S.C. § 1983](#). This action is proceeding on Plaintiff’s second amended complaint against Defendant Cate, in his official capacity as Secretary of the California Department of Corrections and Rehabilitation, for injunctive relief for violations of the Free Exercise Clause of the First Amendment and of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”); against Defendant Harrington, in his individual capacity and his official capacity as Acting Warden at Kern Valley State Prison, for violations RLUIPA and the Free Exercise Clause of the First Amendment; and against Defendant Wegman, in her individual capacity, for violation of the Free Exercise Clause of the First Amendment.

Pending before the Court are: (1) Plaintiff’s motion for preliminary injunction and/or protective order, filed January 9, 2012 (ECF No. 29); and (2) Plaintiff’s motion for preliminary injunction and/or protective order, filed March 23, 2012 (ECF No. 39). Defendants Harrington and Wegman opposed the second motion for preliminary injunction on July 16, 2012, and Plaintiff

1 replied on August 13, 2012. (ECF Nos. 58, 66.) After filing an answer to the complaint, Defendant
2 Cate opposed the motions for preliminary injunction on October 9, 2012, and Plaintiff replied.¹
3 (ECF Nos. 81, 87.) The matter is deemed submitted pursuant to Local Rule 230(1).

4 **I. Motion for Preliminary Injunction and/or Protective Order** (ECF No. 29)

5 On January 9, 2012, Plaintiff moved for a preliminary injunction against Defendants
6 Harrington and Wegman at Kern Valley State Prison to (1) receive from his family and friends, via
7 postal services, tobacco products (e.g., loose tobacco, cigarettes, cigars, rolling papers, smoking pipe,
8 lighters, matches); (2) possess and use tobacco products; (3) purchase and set up an altar in his cell
9 with the following items purchased from the vendor of his choice: altar cloth, holy books of
10 Thelema, tarot cards, statuary, Yi Ching, incense, incense sticks, ash catcher, wand, chalices, oils,
11 oil diffusers, candles, candle holders, abalone shell, lighter, T.V./radio/c.d. player, religious chanting
12 c.d.s, bell, crystals and gemstones. (ECF No. 29, p. 8.)

13 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
15 balance of equities tips in his favor, and that an injunction is in the public interest.” [Winter v. Natural](#)
16 [Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S.Ct. 365, 374, 172 L.Ed.2d 249 \(2008\)](#) (citations
17 omitted).

18 Here, Plaintiff claims that his religious items were confiscated by custody staff at Calipatria
19 State Prison, that Defendant Wegman has refused Plaintiff access to his religious items at Kern
20 Valley State Prison and that Defendant Harrington has implemented a policy prohibiting Plaintiff
21 from using and possessing tobacco in his cell at Kern Valley State Prison. (ECF No. 29, pp. 2-3, 4.)

22 Based on his moving papers, it is unclear whether Plaintiff is seeking preliminary injunctive
23 relief against Calipatria State Prison or against Kern Valley State Prison or both. Regardless, what
24 is clear from the record is that Plaintiff is no longer incarcerated at either facility. He is currently
25 housed at California State Prison, Los Angeles County in Lancaster, California. (ECF No. 82.) A
26 preliminary injunction becomes moot if a prisoner is transferred. [Andrews v. Cervantes, 493 F.3d](#)

27
28 ¹Plaintiff filed a duplicative reply to Defendant Cate’s opposition on January 22, 2013. (ECF No. 95.) The
duplicative reply is HEREBY DISREGARDED.

1 [1047, 1053 n. 5 \(9th Cir.2007\)](#) (citing [Johnson v. Moore, 948 F.2d 517, 510 \(9th Cir.1991\)](#) (per
2 curiam)); [Holt v. Stockman, 2012 WL 259938, *6](#) (E.D. Cal. Jan. 25, 2012) (a prisoner’s claim for
3 injunctive relief is rendered moot when he is transferred from the institution whose employees he
4 seeks to enjoin from harming him).

5 However, claims that are “capable of repetition, yet evading review,” are excepted from the
6 mootness doctrine. [Spencer v Kemna, 523 U.S. 1, 17](#), 118 S.Ct. 978, 988 (1998). A party seeking
7 to apply such exception must demonstrate that: (1) the challenged action is too short in duration to
8 be fully litigated prior to cessation or expiration; and (2) there is a reasonable likelihood that he will
9 be subject to the same action again. *Id.* In the context of a prisoner's claim for injunctive relief for
10 civil rights violations, he must demonstrate a reasonable expectation of being transferred back to the
11 institution where the violations occurred. [Johnson, 948 F.2d at 519](#). Here, Plaintiff has not alleged
12 any “reasonable expectation” or “clear probability” that he will be transferred back to Kern Valley
13 State Prison or to Calipatria State Prison, so his claim for injunctive relief is moot. [Darring v.](#)
14 [Kincheloe, 783 F.2d 874, 876 \(9th Cir. 1996\)](#).

15 For these reasons, the Court recommends that Plaintiff's motion for preliminary injunction,
16 filed January 9, 2012, be denied as moot.

17 **II. Motion for Preliminary Injunction and/or Protective Order** (ECF No. 39)

18 On March 9, 2012, Plaintiff moved for a preliminary injunction to (1) receive from his family
19 or friends, via postal services, tobacco products (e.g. loose tobacco, cigarettes, cigars, rolling papers,
20 smoking pipe, lighters, matches); (2) possess and use tobacco products; (3) purchase the religious
21 items he needs for his religious altar; (4) set up and maintain a religious altar in his cell with the
22 following items: altar cloths, holy books of Thelema, troth tarot cards, statuary, Yi ching, incense,
23 incense sticks/cones, ash catcher, wands, chalices, oils, oil diffuser, colognes, perfumes, candles,
24 candle holders, abalone shell, lighters, radio/cd player with speakers that play out loud, bell, crystals,
25 and gemstones; and (5) wear charms and charm bags. (ECF No. 39, p. 10.)

26 In his moving papers, Plaintiff reported that he had been transferred out of Kern Valley State
27 Prison to Calipatria State Prison, but he had been brought back to Kern Valley State Prison in
28 February 2010 for a court trial and will remain there until completion of his trial in August 2012.

1 (ECF No. 39, p. 9.) Plaintiff claims that his religious items were confiscated by prison officials at
2 Calipatria State Prison. (ECF No. 39, p. 9.) As with his prior motion, Plaintiff's moving papers do
3 not clearly indicate whether he seeks injunctive relief related to the confiscating of his religious items
4 at Calipatria State Prison or regarding the confiscation and/or use of religious items use at Kern
5 Valley State Prison. In his replies, Plaintiff appears to indicate that he seeks a preliminary injunction
6 related to confiscation of his items at Calipatria State Prison, receipt of religious items directly from
7 his family, use and possession of tobacco products and the ability to set up and maintain a religious
8 altar with certain items. (ECF No. 66, pp. 4, 9; ECF No. 87, pp 2, 4.) Nonetheless, as with his prior
9 motion, Plaintiff has been transferred to California State Prison, Los Angeles County in Lancaster
10 and thus his request for preliminary injunctive relief against officials at Kern Valley State Prison or
11 at Calipatria State Prison is moot. [Andrews, 493 F.3d at 1053 n. 5](#); [Knows His Gun v. Montana, 866](#)
12 [F.Supp.2d 1235, 1242-43 \(D. Mont. 2012\)](#) (in the context of RLUIPA cases, when a prisoner is
13 transferred to another facility, his claims for injunctive or declaratory relief against the transferring
14 facility becomes moot). Plaintiff has not alleged any "reasonable expectation" or "clear probability"
15 that he will be transferred back to Kern Valley State Prison or to Calipatria State Prison. [Darring,](#)
16 [783 F.2d at 876.](#)

17 While it is clear that Plaintiff cannot seek to enjoin officials at prisons where he is no longer
18 incarcerated, Plaintiff has asserted claims against Defendant Cate, in his official capacity as Secretary
19 of the California Department of Corrections and Rehabilitation ("CDCR").² In seeking a preliminary
20 injunction, Plaintiff claims that CDCR's policies do not allow him to purchase religious artifacts
21 from the vendors of his choice and do not allow his family to mail him tobacco products personally
22 even though CDCR does not have a vendor that sends tobacco products that Plaintiff requires. (ECF
23 No. 66, p. 4; ECF No. 87, pp. 4, 15.) In sum, Plaintiff complains that CDCR's policy forces him "to
24 purchase his religious items only from departmentally locally-approved vendors." (ECF No. 66, p.
25 8.) He also complains that he must seek re-approval of any religious artifacts he possesses when he
26 transfers to another facility. (ECF No. 87, p. 15.)

27
28 ²Matthew Cate is no longer the Secretary of CDCR. J. Beard has been appointed to take his place. (ECF
No. 97.)

1 In relevant part, the CDCR policy at issue states as follows:

2 (i) Inmates shall be allowed special purchases of authorized personal property items
3 from locally-approved special purchase vendors The institution head or
4 designated staff shall ensure approved vendor catalogs and order forms are available
5 to inmates who qualify. Special purchases shall only include the following:

6 . . .
7 (4) Religious Items, as listed within the Religious Property Matrix.

8 [15 Cal. Code Regs. § 3190\(i\)](#). There is no indication in any of the moving papers that Plaintiff is
9 unable to obtain approved religious items at his current facility or that there is no locally-approved
10 special purchase vendor for religious items at his current facility. Additionally, there is no indication
11 that CDCR's regulations operate as a complete ban on Plaintiff's receipt of approved religious items.

12 Moreover, to the extent Plaintiff seeks a preliminary injunction at California State Prison,
13 Los Angeles County, Plaintiff has failed to meet the relevant standard for such an injunction to issue.
14 As noted above, a plaintiff seeking a preliminary injunction must establish, among other things, that
15 he is likely to suffer irreparable harm in the absence of preliminary relief. [Winter, 555 U.S. at 20](#).
16 In this instance, Plaintiff has not named any officials at California State Prison, Los Angeles County
17 in his complaint, and he has not submitted evidence of real, immediate, irreparable harm at
18 California State Prison, Los Angeles County. In short, Plaintiff has failed to provide any evidence
19 that he is currently being subjected to a violation of his rights. Thus, there does not appear to be any
20 harm, much less irreparable harm, that Plaintiff will suffer if his request for injunctive relief is
21 denied at this time.

22 For these reasons, the Court recommends that Plaintiff's motion for preliminary injunction,
23 filed on March 23, 2012, be denied.

24 **III. Conclusion and Recommendations**

25 Accordingly, it is HEREBY RECOMMENDED as follows:

- 26 1. Plaintiff's motion for preliminary injunction and/or protective order, filed on
27 January 9, 2012, be DENIED; and
- 28 2. Plaintiff's motion for preliminary injunction and/or protective order, filed on
March 23, 2012, be DENIED.

