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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM P. GARCIA,
Plaintiff,
v.
KEN CLARK, et al.,
Defendants.

Case No. 1:10-cv-00447 LJO DLB PC
FINDINGS AND RECOMMENDATION
REGARDING DEFENDANTS' MOTION TO
DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION
[ECF No. 132]

Plaintiff William P. Garcia ("Plaintiff") is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed his initial complaint on March 12, 2010. This action is proceeding on Plaintiff's first amended complaint against Defendants Allison, Diaz, Ibarra, Knight, Palmer, Santos, Tolson, Turner, and Walters for violation of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").

On October 14, 2013, Defendants filed a motion to dismiss. ECF No. 132. On November 21, 2013, the Court issued a Findings and Recommendation which recommended the motion be denied as untimely. On December 5, 2013, Defendants filed objections to the Findings and Recommendation. Plaintiff filed a reply on December 18, 2013. By separate order, the Court has withdrawn the Findings and Recommendation issued on November 21, 2013. Accordingly, pending before the Court is Defendants' motion to dismiss based on a lack of subject-matter jurisdiction.

1 **I. Summary of Complaint**

2 Plaintiff was incarcerated at California Substance Abuse Treatment Facility
3 (“CSATF”) in Corcoran, California, at the time he filed this action, and where the events giving rise
4 to this action occurred.

5 Plaintiff alleges that while housed at CSATF, he participated in the Kosher Meal Program.
6 Plaintiff complains that Defendants at CSATF took away his “reasonable accommodation” by
7 refusing to allow him to take his meals back to his cell. He claims this change in procedure deprived
8 him of the ability to perform his religious Jewish orthodox practices relative to food and prayers. He
9 further claims that Defendants Walter and Santos served food that was opened, had foreign objects,
10 or was rotten.

11 **II. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)**

12 Under Fed. R. Civ. P. 12(b)(1), any party may move to dismiss for lack of subject-matter
13 jurisdiction. The issue of whether a federal court lacks subject-matter jurisdiction may be raised by
14 a party at any state in the litigation. Arbaugh v. Y&H Corp., 546 U.S. 500, 506-07 (2006); see Fed.
15 R. Civ. P. 12(h)(3) (“[i]f the court determines at any time that it lacks subject-matter jurisdiction, the
16 court must dismiss the action”). “Because . . . mootness . . . pertain[s] to a federal court’s subject-
17 matter jurisdiction under Article III, [mootness is] properly raised in a motion to dismiss under
18 Federal Rules of Civil Procedure 12(b)(1)” White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000).
19 “Rule 12(b)(1) jurisdictional attacks can be either facial or factual.” Id. Facial attacks are based
20 solely on the allegations presented in the complaint. Id. Factual attacks, like the one presented here,
21 challenge the truth of the allegations based on evidence beyond the complaint. Safe Air for
22 Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). The court may look beyond the complaint
23 without having to convert the motion into one of summary judgment. White, 227 F.3d at 1242.
24 “The court need not presume the truthfulness of the plaintiff’s allegations” in his complaint, and
25 “[o]nce the moving party has converted the motion to dismiss into a factual motion by presenting
26 affidavits or other evidence properly brought before the court, the party opposing the motion must
27 furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter
28 jurisdiction.” Safe Air, 373 F.3d at 1039 (citations omitted); see also Land v. Dollar, 330 U.S. 731,

1 735 n. 4 (1947) (“[W]hen a question of the District Court's jurisdiction is raised, either by a party or
2 by the court on its own motion, ... the court may inquire, by affidavits or otherwise, into the facts as
3 they exist.”). Nevertheless, all disputes of fact are resolved in favor of the non-movant. Dreier v.
4 United States, 106 F.3d 844, 847 (9th Cir. 1996), as amended (Feb. 4, 1997).

5 In this case, Defendants state that Plaintiff has been transferred from CSATF to Centinela
6 State Prison (“CSP”). Defendants state that CSP General Population has been converted to a Level
7 III Sensitive Needs Yard. Defendants state that prison authorities held a hearing with Plaintiff and
8 determined that Plaintiff was eligible for a non-adverse transfer to CSP. In June of 2013, Plaintiff
9 was transferred to the Sensitive Needs Yard at CSP. Upon his transfer, Defendants state, Plaintiff
10 was placed in the Kosher Meal Program. Defendants state Plaintiff no longer suffers from the
11 alleged constitutional violations for which he seeks relief in his complaint. In support, Defendants
12 submit the declaration of Lt. Masters, an employee of the CDCR, who spoke to Plaintiff on
13 September 26, 2013. Masters Decl., at ¶ 2. According to Masters, Plaintiff informed him then that
14 he had experienced no issues regarding his Kosher meals since his arrival at CSP. Id. Therefore,
15 Defendants argue, the case has become moot insofar as Plaintiff’s issues at CSATF are no longer
16 justiciable.

17 Plaintiff counters that Defendants caused him to be transferred in retaliation and in order to
18 make this action moot. Defendants dispute this, contending that the transfer was non-adverse in
19 nature. Defendants have submitted evidence that the transfer was effected because CSP had been
20 converted into a Level III SNY and Plaintiff was selected among approximately 75 other inmates at
21 CSATF Facility-E pursuant to a March 8, 2013, memorandum authored by K. Dickinson, Director of
22 Division of Adult Institutions. Defs.’ Reply, Exs. A, B. Plaintiff does not state he has suffered any
23 negative consequences as a result of the transfer. In addition, inmates do not have a constitutional
24 right to be incarcerated at a particular correctional facility or to be transferred from one facility to
25 another. Meachum v. Fano, 427 U.S. 215, 224-25, 96 S.Ct. 2532 (1976); see also Olim v.
26 Wakinekona, 461 U.S. 238, 244-45, 103 S.Ct. 1741 (1983). Regardless, the fact remains that due to
27 the transfer, Plaintiff received his Kosher meals upon transfer to CSP and placement into the Kosher
28 Meal Program. Masters Decl., at 2; Defs.’ Reply, Ex. B. Plaintiff’s claims for injunctive and

1 declaratory relief have become moot and his claim of retaliation is not properly before the court.

2 A federal court has no authority to issue opinions upon moot issues. See County of Los
3 Angeles v. Davis, 440 U.S. 625, 99 S.Ct. 1379 (1979); Aguirre v. S.S. Sohio Intrepid, 801 F.2d 1185
4 (9th Cir. 1986). When an inmate seeks injunctive or declaratory relief concerning the prison where
5 he is incarcerated, his claims for such relief become moot when he is no longer subjected to those
6 conditions. Alvarez v. Hill, 667 F.3d 1061, 1063-64 (9th Cir. 2012); Nelson v. Heiss, 271 F.3d 891,
7 897 (9th Cir. 2001); Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995); Johnson v. Moore, 948
8 F.2d 517, 519 (9th Cir. 1991).

9 A prisoner's transfer away from the institution at which the challenged conduct is occurring
10 will generally moot any claims for injunctive relief relating to the prison's policies, unless the suit is
11 certified as a class action. Dilley, 64 F.3d at 1368; see also Nelson, 271 F.3d at 897; Johnson, 948
12 F.2d at 519. The claim is not moot, however, if there is a likelihood of recurrence. Demery v.
13 Arpaio, 378 F.3d 1020, 1026 (9th Cir. 2004) (quotation marks omitted). The capable-of-repetition-
14 yet-evading-review exception to the mootness doctrine applies when (1) the duration of the
15 challenged action is too short to be litigated prior to cessation, and (2) there is a reasonable
16 expectation that the same party will be subjected to the same offending conduct. Id. (quotation
17 marks and citations omitted).

18 Here, there is no demonstrated probability or reasonable expectation that Plaintiff will be
19 transferred back CSATF. Demery, 378 F.3d at 1027 (quotation marks and citations omitted). See
20 Alvarez v. Smith, 558 U.S. 87, 93 (2009) (exception to mootness doctrine not warranted where
21 nothing in record suggested the individual plaintiffs would likely be again subjected to forfeiture
22 proceedings); Bernhardt v. County of Los Angeles, 279 F.3d 862, 871-72 (9th Cir. 2002) (no
23 indication in complaint that the plaintiff would be subjected to the same situation again); Dilley, 64
24 F.3d at 1369 (no reasonable expectation inmate would be transferred back to Calipatria where he had
25 been a level IV inmate at Calipatria when he filed suit, but he was later transferred to a lower-
26 security prison and reclassified as a level III inmate); Johnson, 948 F.2d at 519 (inmate's claim
27 against state prison warden moot where inmate had been transferred to a federal prison in a different
28 state and was no longer subject to the state facility's no smoking policy). Thus, Plaintiff's claims do

1 not meet the mootness exception.

2 Plaintiff further complains about the quality of his Kosher meals at CSP. He claims that the
3 Kosher meals consist of foods containing too much soybean. He claims he cannot eat his Kosher
4 meals because he cannot stomach the soybean vegetarian meals anymore. Nevertheless, Plaintiff's
5 complaints about the quality of the Kosher meals at CSP are not properly before this court. In
6 addition, Plaintiff's constitutional rights are not violated if he is receiving "food that is adequate to
7 maintain health; it need not be tasty or aesthetically pleasing." LeMaire v. Maass, 12 F.3d 1444,
8 1456 (9th Cir. 1993). Plaintiff admits that he is receiving his Kosher meals and Defendants have
9 submitted evidence that Plaintiff is not on a hunger strike or being starved, and he is being fed
10 adequately. Defs.' Reply, Ex. B.

11 Therefore, the Court concludes that Plaintiff's claims for injunctive and declaratory relief are
12 clearly foreclosed due to his transfer to CSP, his placement into CSP's Kosher Meals Program upon
13 his arrival, and Defendants' evidence that Plaintiff was receiving his Kosher meals at CSP according
14 to his claimed rights under the Constitution. The Court recommends that Defendants' motion to
15 dismiss for lack of subject-matter jurisdiction be GRANTED.

16 **RECOMMENDATION**

17 For the reasons set forth herein, the Court RECOMMENDS that Defendants' motion to
18 dismiss for lack of subject-matter jurisdiction be GRANTED, and the First Amended Complaint be
19 DISMISSED thereby terminating the case.

20 These Findings and Recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fifteen (15)
22 days after being served with these Findings and Recommendations, the parties may file written
23 objections with the Court. Local Rule 304(b). The document should be captioned "Objections to
24 Magistrate Judge's Findings and Recommendations." Any response to the objections must be filed
25 within fifteen (15) days from the date of service of the objections. Local Rule 304(d). The parties

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1 are advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: December 25, 2014

/s/ Dennis L. Beck
6 UNITED STATES MAGISTRATE JUDGE

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