

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

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

WILLIAM P. GARCIA,	1:10-CV-00447-OWW-DLB PC
Plaintiff,	ORDER ADOPTING FINDINGS AND
	RECOMMENDATIONS AND GRANTING
v.	PLAINTIFF'S MOTION FOR
	PRELIMINARY INJUNCTION
KEN CLARK, et al.,	(DOC. 40)
Defendants.	

\_\_\_\_\_ /

Plaintiff William P. Garcia ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"), proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's first amended complaint against Defendants K. Allison, F. Diaz, D. Ibarra, S. Knight, C. Palmer, R. Santos, R. Tolson, K. Turner, and C. 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"). Pending before the Court is Plaintiff's [motion for preliminary injunction](#), filed May 5, 2010. Doc. 8. 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 8, 2011, the Magistrate Judge filed a [Findings and](#)  
2 [Recommendations](#) which was served on the parties and which contained  
3 notice to the parties that any objection to the Findings and  
4 Recommendations was to be filed within thirty days. Doc. 40. On  
5 August 15, 2011, Defendants filed an [Objection](#) to the Findings and  
6 Recommendations. Doc. 44. On August 26, 2011, Plaintiff filed a  
7 [Reply](#) to Defendants' Objection. Doc. 50.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1),  
9 this Court has conducted a *de novo* review of this case. Having  
10 carefully reviewed the entire file, the Court will adopt the  
11 Findings and Recommendations, and provides the following additional  
12 analysis.

13 The Magistrate Judge recommended that Plaintiff be provided  
14 with Kosher meals as provided for other similarly situated  
15 prisoners. Defendants contend that Plaintiff is receiving proper  
16 Kosher food as a part of the Kosher meal program. Defs.'  
17 Objections 4, Doc. 44. Plaintiff contends that the meals are not  
18 Kosher because they are contaminated with foreign objects, on a  
19 dirty cart, and with other people's food on it. Pl.'s Reply 3-4,  
20 Doc. 50. Nevertheless, Plaintiff does not dispute he receives food  
21 from the Kosher meal program at CDCR. However, Plaintiff further  
22 contends that certain Defendants took away his Kosher food right  
23 from his hands. Pl.'s Reply 11-12, Doc. 50. Plaintiff's religious  
24 dietary needs would not be met, even if he is on the Kosher food  
25 program, if he does not receive his food. *See McElyea v. Babbitt*,  
26 833 F.2d 196, 198 (9th Cir. 1987) (per curiam) (holding under the  
27 First Amendment, "[i]nmates . . . have the right to be provided  
28 with food sufficient to sustain them in good health that satisfies

1 the dietary laws of their religion").

2 Plaintiff also contends that Defendants do not provide a place  
3 for Plaintiff to wash, pray, and stand and face east before his  
4 breakfast meal. Pl.'s Mot. 2, Doc. 8. Defendants contend that  
5 Plaintiff may perform his religious duties prior to eating his  
6 breakfast in the dining hall, citing a declaration from Rabbi  
7 Moskowitz. Defs.' Objections, Moskowitz Decl. ¶ 3. However,  
8 Plaintiff contends that he is religiously required to pray out loud  
9 before he eats his meal, and to purify himself and his eating area.  
10 Pl.'s Reply 4-6. Defendants' reliance on Rabbi Moskowitz's  
11 declaration is unavailing. The Court does not make determinations  
12 as to what is necessary for the exercise of a person's religion.  
13 See *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008) (for  
14 the Free Exercise Clause of the First Amendment to apply, the  
15 prisoner's belief must be sincerely held and rooted in religious  
16 belief); see also 42 U.S.C. § 2000cc-5(7)(A) (under RLUIPA,  
17 "religious exercise" includes "any exercise of religion, whether or  
18 not compelled by, or central to, a system of religious belief.");  
19 *Warsoldier v. Woodford*, 418 F.3d 989, 994 (9th Cir. 2005) (under  
20 RLUIPA, "substantial burden" is one that imposes a significantly  
21 great restriction or onus" upon a prisoner's exercise of religion)  
22 (citation omitted).

23 Based on the record before the Court, Plaintiff has met the  
24 requirements for receiving a preliminary injunction. It is unclear  
25 whether Defendants will have to substantially change any of their  
26 procedures. Defendants contend, for example, that Plaintiff may  
27 ritually wash himself using a small cup of water. Plaintiff does  
28 not appear to be prohibited from praying out loud over his

1 breakfast meal. Plaintiff also does not appear to have these  
2 problems during the lunch and dinner meals.<sup>1</sup>

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Findings and Recommendations, filed July 8, 2011, is  
5 adopted as stated herein;
- 6 2. Plaintiff's motion for preliminary injunction, filed May  
7 5, 2010, is granted as stated herein;
- 8 3. Defendants shall provide Plaintiff with the Kosher meals  
9 that are provided other similarly situated prisoners; and
- 10 4. Defendants are to provide Plaintiff with a means for  
11 Plaintiff to pray and to perform his religious duties,  
12 prior to, during, and/or after the breakfast meal.

13 IT IS SO ORDERED.

14 Dated: September 22, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

26 \_\_\_\_\_  
27 <sup>1</sup>The Court will dispense with the security requirement for  
28 Plaintiff. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113,  
1126 (9th Cir. 2005).