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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRENT ADLER,
Plaintiff,
v.
F. GONZALEZ, et al.,
Defendants.

Case No. 1:11-cv-1915-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
TO GRANT DEFENDANTS' MOTION
FOR PARTIAL SUMMARY JUDGMENT
AND MOTION TO DISMISS**

(ECF No. 49)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

I. PROCEDURAL HISTORY

Plaintiff is a former state prisoner who initiated this civil rights action pro se and in forma pauperis on November 17, 2011. (ECF No. 1.) Plaintiff since has been released from prison and obtained counsel. (ECF Nos. 36 & 51.) This action proceeds against Defendants Negrete, Zanchi, Carrasco, Holland, Holmstrom, Gonzalez, Steadman, Bryant, Schuyler, Lundy, Stainer, and Does Nos. 1, 2, 4, 5, and 6 on Plaintiff's First Amendment freedom of religion claim, and against the same Defendants, with the exception of Defendant Stainer, on Plaintiff's Religious Land Use and Institutionalized Persons Act ("RLUIPA") claim. (ECF Nos. 37 & 38).

Before the Court is Defendants' July 21, 2014 motion for partial summary

1 judgment on some of Plaintiff's First Amendment claims on exhaustion grounds, and
2 motion to dismiss Plaintiff's RLUIPA claims and his claims against Defendant
3 Holmstrom pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 49.) Plaintiff,
4 through counsel, opposes the motions. (ECF No. 53.) Defendants filed a reply. (ECF
5 No. 55.) This matter is deemed submitted.¹

6 **II. LEGAL STANDARD**

7 **A. Motion for Summary Judgment**

8 Any party may move for summary judgment, and the Court shall grant summary
9 judgment if the movant shows that there is no genuine dispute as to any material fact
10 and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Wash.
11 Mut. Inc. v. United States, 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's position,
12 whether it be that a fact is disputed or undisputed, must be supported by (1) citing to
13 particular parts of materials in the record, including but not limited to depositions,
14 documents, declarations, or discovery; or (2) showing that the materials cited do not
15 establish the presence or absence of a genuine dispute or that the opposing party
16 cannot produce admissible evidence to support the fact. Fed R. Civ. P. 56(c)(1).

17 In judging the evidence at the summary judgment stage, the Court may not make
18 credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless,
19 Inc., 509 F.3d 978, 984 (9th Cir. 2007), and it must draw all inferences in the light most
20 favorable to the nonmoving party, Comite de Jornaleros de Redondo Beach v. City of
21 Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011).

22 **B. Motion to Dismiss**

23 A motion to dismiss brought pursuant to Federal Rule of Civil Procedure Rule
24 12(b)(6) tests the legal sufficiency of a claim, and dismissal is proper if there is a lack of

25
26 ¹ Local Rule 230(l) provides that motions filed in cases wherein one party is incarcerated and proceeding
27 pro se shall be submitted upon the record without oral argument unless otherwise ordered by the Court.
28 Here, Plaintiff was not incarcerated at the time the motion was filed and now is represented by counsel.
Nevertheless, neither party has requested a hearing and the Court has determined that the motion may
be submitted upon the record and briefs on file pursuant to Local Rule 230(g). Accordingly, the motion is
hereby deemed submitted.

1 a cognizable legal theory or the absence of sufficient facts alleged under a cognizable
2 legal theory. Conservation Force v. Salazar, 646 F.3d 1240, 1241-42 (9th Cir. 2011). In
3 resolving a 12(b)(6) motion, a court's review is generally limited to the operative
4 pleading. Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010).

5 To survive a motion to dismiss, a complaint must contain sufficient factual matter
6 to state a claim to relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678
7 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Conservation
8 Force, 646 F.3d at 1242; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).
9 The Court must accept the factual allegations as true and draw all reasonable
10 inferences in favor of the non-moving party, Daniels-Hall, 629 F.3d at 998, and pro se
11 litigants are entitled to have their pleadings liberally construed and to have any doubt
12 resolved in their favor, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012);
13 Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012); Silva v. Di Vittorio, 658 F.3d
14 1090, 1101 (9th Cir. 2011); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

15 **III. FACTUAL SUMMARY**

16 Based on the submissions of the parties (ECF Nos. 49-5 & 53-2), the Court finds
17 that the following facts are undisputed.

- 18 1. Plaintiff was housed at California Correctional Institution (CCI) between
19 November 5, 2008 and January 31, 2011.
- 20 2. On December 13, 2009, Plaintiff filed an inmate grievance, Appeal Log No.
21 CCI-09-01933, regarding restrictions on the practice of his religion at CCI.
- 22 3. Appeal Log No. CCI-09-01933 was the only grievance relating to restrictions
23 on Plaintiff's religious practices that was appealed to the third level of review,
24 and therefore the only grievance that was administratively exhausted.
- 25 4. In Appeal Log No. CCI-09-01933, Plaintiff stated as follows:

26 This is an inmate appeal pursuant to CCR Title 15 3304(c)
27 Rights and Respect to Others, 3210 Establishment of
28 Religious Programs and Scheduled Services. I am appealing
that prison officials at CCI are willfully and unlawfully
violating my right to religious group programs. I have been

1 housed on Facility IV-A since Nov. 5 2008 after transferring
2 from Facility IV-B. Currently and throughout the previous
3 year I have been denied the right to weekly group services
4 and individual visits to the chapel or meetings with a spiritual
5 advisor as a result of an incident in April 2008. I am being
6 denied access as a form of retaliation and retribution
7 towards myself and the population, not security concerns.
8 General Population inmates are being treated like ASU and
9 SHU inmates when having to deal with their spiritual
10 advisors. I am a general population and have been as of 12-
11 05-08. I have been A1/A since May 2009, A2/B 12-05-08
12 through May on a S.S. waiting list. My rights at CCI Facility
13 IV-A are currently being violated pursuant to the
14 Institutionalized Persons Act of 2000 and Religious Land
15 Use. I claim that my rights to freedom of religious
16 expression, pursuant to the First Amendment is unlawfully
17 being violated by Doe's 1-10, as a form of ongoing retaliation
18 and retribution in violation of State and Federal Laws.

19 Since my arrival at CCI Facility IV-A prison officials have
20 denied my proper access to his personal Spiritual Advisor
21 without due process of the Law.

- 22 5. In Appeal Log No. CCI-09-01933, Plaintiff sought the following
23 relief:

24 That I be allowed to go to weekly group services and
25 individual visits to the chapel, or meetings with a Personal
26 Spiritual Advisor, and that I do not have to give up my
27 scheduled yard program in order to go see my personal
28 spiritual advisor.

- 29 6. Plaintiff's first amended complaint alleges that numerous restrictions were
30 placed on his ability to practice his Catholic religion at CCI, including the
31 following: he was unable to attend group worship, take sacramental bread
32 and wine, participate in confession, attend religious services, celebrate
33 religious holidays, follow a religious diet when necessary, obtain spiritual
34 advice, consistently maintain ownership of a Bible, or secure a rosary. While
35 confined in Ad-Seg, he was denied religious visitations and literature.
36 Following his release from Ad-Seg, all inmates were restricted to "in-cell"
37 religious services. During this time, Plaintiff did not have access to religious
38 items and services, and could not confess his sins, participate in group prayer
39 and discussion, take communion, speak with a spiritual advisor, or receive a

1 Bible or rosary. Also during this time, numerous modified programs (“PSRs”)
2 were issued, curtailing Plaintiff’s ability to satisfy his religious requirements.
3 Even when there were no PSRs in place, no religious services were held.

4 **IV. ANALYSIS**

5 **A. Motion for Summary Judgment for Failure to Exhaust**

6 **1. Legal Standard – Exhaustion**

7 The Prison Litigation Reform Act (“PLRA”) stipulates, “No action shall be brought
8 with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by
9 a prisoner confined in any jail, prison, or other correctional facility until such
10 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
11 Therefore, prisoners are required to exhaust all available administrative remedies prior
12 to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007).

13 “The primary purpose of a [prisoner’s administrative] grievance is to alert the
14 prison to a problem and facilitate its resolution, not to lay groundwork for litigation.”
15 Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009). “A grievance need not include
16 legal terminology or legal theories unless they are in some way needed to provide
17 notice of the harm being grieved. A grievance also need not contain every fact
18 necessary to prove each element of an eventual legal claim.” Id. Instead, the grievance
19 must “alert the prison to the nature of the wrong for which redress is sought,” and must
20 give the prison an opportunity “to reach the merits of the issue.” Id. at 1120-21.

21 A motion for summary judgment is the proper means to raise a prisoner's failure
22 to exhaust the administrative remedies. Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir.
23 2014). Defendants have the burden of proving Plaintiff failed to exhaust the available
24 administrative remedies. See Jones, 549 U.S. at 216 (failure to exhaust is an affirmative
25 defense). “If undisputed evidence viewed in the light most favorable to the prisoner
26 shows a failure to exhaust, a defendant is entitled to summary judgment under Rule 56.”
27 Albino, 747 F.3d at 1166. If material facts are disputed, summary judgment should be
28 denied, and the district judge should decide disputed factual questions relevant to

1 exhaustion “in the same manner a judge rather than a jury decides disputed factual
2 questions relevant to jurisdiction and venue.” Id. at 1170-71.

3 **2. Parties’ Arguments**

4 The parties agree that Plaintiff exhausted one administrative grievance regarding
5 restrictions on his religious practices at CCI. There is no dispute regarding the content
6 of the grievance. The parties dispute only whether Plaintiff’s grievance can or should be
7 construed to encompass all of the First Amendment claims raised in Plaintiff’s first
8 amended complaint.

9 Defendants argue that Plaintiff’s grievance exhausted his claims that he could
10 not attend group religious services, access the chapel, or meet with a spiritual advisor.
11 However, Plaintiff did not exhaust his claims that he was unable to take sacramental
12 bread and wine, participate in confession, celebrate religious holidays, follow a religious
13 diet, possess a rosary, or maintain ownership of a Bible. (ECF No. 49.)

14 Plaintiff argues that his grievance was sufficiently broad to put Defendants on
15 notice of all of the allegations contained in his first amended complaint. He asserts that
16 it was Defendants’ burden to investigate the details of his allegations, and he points out
17 that he was never interviewed regarding his grievance.² He claims that there are
18 disputed issues of material fact regarding “the scope of the notice and investigation of
19 the grievance and appeals.” He also contends that there are disputed issues of material
20 fact regarding whether his First Amendment rights were violated.

21 **3. Discussion**

22 Plaintiff’s assertion that there are disputed issues of material fact regarding
23 whether his First Amendment rights were violated is not relevant to the instant motion,
24

25
26 ² Plaintiff argues that the response to his grievance states that he was not interviewed because he had filed numerous
27 grievances on the same issue, when in fact he only filed one. (ECF No. 53-1 at 2.) However, the Director’s Level
28 Decision on Plaintiff’s appeal clarifies that Plaintiff was not interviewed because multiple appeals of the same issue
were filed by different inmates. (ECF No. 49-2 at 10.) Accordingly, it does not appear that prison officials were
under the mistaken impression that Plaintiff had filed multiple appeals. Additionally, as discussed below, Plaintiff
has no constitutional entitlement to a specific grievance procedure.

1 which addresses only whether Plaintiff exhausted his administrative remedies. This
2 motion does not reach the merits of his claims.

3 Plaintiff claims there are disputed issues of material fact regarding the scope of
4 his grievance and appeal. There are not. Defendants submitted a copy of Plaintiff's
5 grievance and appeal records. (ECF No. 49-2 at 4-11.) Plaintiff agrees that the
6 documents submitted by Defendants accurately set forth his grievance. (See ECF No.
7 53-2.) There is no dispute regarding the content of Plaintiff's grievance.

8 The issue is whether Plaintiff's grievance "provide[d] enough information . . . to
9 allow prison officials to take appropriate responsive measures." Johnson v. Testman,
10 380 F.3d 691, 697 (3d Cir. 2004), cited with approval in Griffin, 557 F.3d at 1121. Such
11 a dispute regarding the legal significance of undisputed facts is a question of law
12 suitable for disposition on summary judgment. See Wash. Mut., Inc., 636 F.3d at 1216.

13 Plaintiff's grievance was specific. It complained of lack of access to group
14 programs and services, individual visits to the chapel, and meetings with a spiritual
15 advisor. It sought access to group services, visits to the chapel, meetings with a spiritual
16 advisor, and maintenance of his scheduled yard program. Plaintiff's grievance
17 adequately notified prison officials of these specific complaints.

18 When combined with these specific complaints, Plaintiff's general reference to
19 the First Amendment and RLUIPA was not sufficient to notify prison officials of Plaintiff's
20 other specific complaints, such as his inability to take sacramental bread and wine,
21 participate in confession, celebrate religious holidays, follow a religious diet, possess a
22 rosary, or maintain ownership of a Bible. See McCollum v. CDCR, 647 F.3d 870, 876-77
23 (9th Cir. 2011) (finding that claim of religious discrimination predicated on institution's
24 failure to provide Wiccan chaplains was not exhausted by grievances addressing other
25 problems encountered by Wiccan inmates). Viewing the grievance in the light most
26 favorable to Plaintiff, as the Court is required to do at this stage of the proceedings, the
27 Court cannot conclude that Plaintiff's grievance gave notice of and exhausted these
28 complaints.

1 Accordingly, the Court will recommend that Defendants' motion for partial
2 summary judgment be granted, and that judgment be entered in favor of Defendants on
3 Plaintiff's First Amendment claims, with the exception of his claims that he was denied
4 group programs and services, visits to the chapel, and meetings with a spiritual advisor.

5 **B. Motion to Dismiss for Failure to State a RLUIPA Claim**

6 **1. Parties' Arguments**

7 Defendants argue that Plaintiff's RLUIPA claims should be dismissed pursuant to
8 the United States Court of Appeals for the Ninth Circuit's recent decision in Wood v.
9 Yordy, 753 F.3d 899, 902-04 (9th Cir. 2014). Defendants argue that, pursuant to Wood,
10 no relief is available to Plaintiff under RLUIPA. Specifically, injunctive relief is not
11 available because Plaintiff is no longer incarcerated at CCI, and monetary relief is not
12 authorized by RLUIPA. (ECF No. 49-1 at 7.)

13 Plaintiff concedes monetary relief is not available under RLUIPA. (ECF No. 53 at
14 2.) He otherwise does not respond to Defendants' argument or offer any reason his
15 RLUIPA claims should not be dismissed.

16 **3. Discussion**

17 RLUIPA does not permit suits against government employees in their individual
18 capacities. Wood v. Yordy, 753 F.3d 899, 902-04 (9th Cir. 2014). Neither does it permit
19 suits for money damages against government employees in their official capacities.
20 Sossamon v. Texas, 131 S. Ct. 1651, 1660 (2011). Accordingly, only official capacity
21 suits seeking prospective relief are permitted.

22 At the time Plaintiff filed his first amended complaint, he no longer was
23 incarcerated at CCI. (ECF No. 8.) Nothing in the submissions of the parties indicates a
24 likelihood that Plaintiff will return to CCI. Accordingly, injunctive relief is not available to
25 Plaintiff. See City of Los Angeles v. Lyons, 461 U.S. 95, 102-05 (1983); Preiser v.
26 Newkirk, 422 U.S. 395, 402-03 (1975); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir.
27 1991); Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007). Plaintiff's claim
28

1 for declaratory relief previously was dismissed. (ECF No. 37.) No prospective relief is
2 available to Plaintiff.

3 Based on the foregoing, the Court will recommend that Plaintiff's RLUIPA claims
4 be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can
5 be granted.

6 **C. Motion to Dismiss for Failure to State a Claim Against Holmstrom**

7 **1. Parties' Arguments**

8 Defendants argue that Defendant Holmstrom should be dismissed because
9 Plaintiff's complaint fails to allege a cognizable claim against her. (ECF No. 49-1 at 8.)
10 Specifically, Defendants contend that the complaint alleges only that Defendant
11 Holmstrom failed to "adequately investigate" Plaintiff's grievance, and that this allegation
12 does not provide a sufficient basis for a civil rights claim. (Id.)

13 Plaintiff does not respond to this argument or present any reason why Defendant
14 Holmstrom should not be dismissed. (ECF No. 53.)

15 **2. Discussion**

16 The Court previously screened Plaintiff's complaint and found that it stated a
17 cognizable First Amendment claim against Defendant Holmstrom (and other defendants
18 involved in the review of Plaintiff's grievance) for failing to ensure Plaintiff had access to
19 religious services. (ECF No. 37 at 9.) However, upon further review of the complaint, it
20 does not appear that the complaint alleges sufficient facts to support a First Amendment
21 claim against Defendant Holmstrom.

22 Plaintiff's first amended complaint alleges that Defendant Holmstrom reviewed
23 Plaintiff's appeal at the Director's Level of Review. (ECF No. 8 at 19.) He faults
24 Defendant Holmstrom for not investigating the allegations contained in his grievance.
25 He notes that Defendant Holmstrom stated, "CCI staff have attested that group services
26 are regularly scheduled and that the Institution has conformed with the California Code
27 of Regulations Section 3210."

1 Plaintiff does not have a constitutional right to a particular inmate grievance
2 procedure. See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams,
3 855 F.2d 639, 640 (9th Cir. 1988). Defendant Holmstrom's alleged failure to investigate
4 Plaintiff's allegations, standing alone, does not state a cognizable claim. Furthermore,
5 the facts alleged do not indicate that Defendant Holmstrom personally was involved in
6 the deprivation of Plaintiff's First Amendment rights. See Iqbal, 556 U.S. at 677. Nor do
7 they suggest that Defendant Holmstrom knew of the alleged violations but failed to act
8 to prevent them. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v.
9 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570
10 (9th Cir. 2009); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th
11 Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997). Rather, the facts
12 alleged suggest that Defendant Holmstrom inquired into Plaintiff's allegations, and was
13 informed by staff that no violations had occurred.

14 Accordingly, Plaintiff's first amended complaint fails to state a claim against
15 Defendant Holmstrom, and the Court will recommend that Defendant Holmstrom be
16 dismissed.

17 **VI. CONCLUSION AND RECOMMENDATION**

18 Based on the foregoing, the Court HEREBY RECOMMENDS that:

- 19 1. Defendants' motion for partial summary judgment and to dismiss (ECF No.
20 49) be GRANTED;
- 21 2. Judgment be entered in favor of Defendants on Plaintiff's First Amendment
22 claims, with the exception of his claims that he was denied group programs
23 and services, visits to the chapel, and meetings with a spiritual advisor;
- 24 3. Plaintiff's RLUIPA claims be dismissed;
- 25 4. Defendant Holmstrom be dismissed; and
- 26 5. The case remain open for resolution of Plaintiff's remaining First Amendment
27 claims.

28 These Findings and Recommendations are submitted to the United States

1 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
2 Within **fourteen** (14) days after being served with these Findings and
3 Recommendations, any party may file written objections with the Court and serve a
4 copy on all parties. Such a document should be captioned “Objections to Magistrate
5 Judge’s Findings and Recommendations.” Any reply to the objections shall be served
6 and filed within ten days after service of the objections. The parties are advised that
7 failure to file objections within the specified time may waive the right to appeal the
8 District Court’s order. Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991).

9
10 IT IS SO ORDERED.

11 Dated: October 14, 2014

/s/ Michael J. Seng
12 UNITED STATES MAGISTRATE JUDGE