

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA
8
9

10
11 ANDREW A. CEJAS,) 1:12cv00271 AWI DLB PC
12 Plaintiff,)
13 vs.) ORDER ADOPTING FINDINGS AND
14 W.K. MYERS, et al.,) RECOMMENDATIONS, GRANTING IN
15 Defendants.) PART AND DENYING IN PART
16) DEFENDANTS' MOTION TO DISMISS,
) AND DENYING MOTION FOR MORE
) DEFINITE STATEMENT AS MOOT
)
) (Document 44)
)
)

17
18 Plaintiff Andrew Cejas ("Plaintiff") is a prisoner proceeding pro se and in forma pauperis
19 in this civil rights action pursuant to 28 U.S.C. § 1983. This action is proceeding on Plaintiff's
20 Second Amended Complaint for violation of the First Amendment, Fourteenth Amendment and
21 the Religious Land Use and Institutionalized Persons Act ("RLUIPA") against Defendants Yates,
22 Walker, Myers, McGee, Fisher, Trimble, Foston, Van Leer and Pimentel.

23 On March 28, 2014, Defendants filed a motion to dismiss and motion for more definite
24 statement. The matters were referred to a United States Magistrate Judge pursuant to 28 U.S.C.
25 § 636(b)(1)(B) and Local Rule 302.

26 On September 10, 2014, the Magistrate Judge issued [Findings and Recommendations](#) that
27 Defendants' motion to dismiss be granted in part and denied in part, and Defendants' motion for
28

1 more definite statement be denied as moot. The Findings and Recommendations were served on
2 the parties and contained notice that any objections were to be filed within thirty (30) days.

3 Plaintiff filed [objections](#) on October 14, 2014. Defendants filed a [response](#) on October 27, 2014.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
5 a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff's
6 objections and Defendants' response, the Court finds that the Findings and Recommendations
7 are supported by the record and by proper analysis.

8
9 Plaintiff presents no arguments to warrant departure from the Magistrate Judge's
10 findings. Plaintiff admits that his RLUIPA claim is barred, but he asks that he be able to present
11 the claim to the Court "when the law changes." ECF No. 46, at 1. This Court is bound by the
12 current law, not what the law may be in the future.

13 Plaintiff also takes issue with the Magistrate Judge's refusal to consider the documents
14 attached to his opposition. However, the Magistrate Judge correctly determined that documents
15 that go beyond the face of the complaint are not properly considered in a 12(b)(6) motion.

16 Finally, Plaintiff objects to the finding that Defendant Yates is entitled to qualified
17 immunity because his involvement was based solely on the promulgation and enforcement of a
18 policy. Plaintiff suggests that because Defendant Yates is African-American, he favored
19 Muslims because most Muslims are African-American. Plaintiff's apparent attempt to bring
20 Defendant Yates into his Equal Protection claim is speculative and unsupported by any factual
21 allegations.

22 The Magistrate Judge recommended that Plaintiff be granted leave to amend his First
23 Amendment and Equal Protection claim. In addition to his objections, Plaintiff lodged a Third
24 Amended Complaint. Defendants object to the filing on numerous grounds, including Plaintiff's
25 failure to abide by the guidelines set out in the Findings and Recommendations. The Court will
26 not order that the lodged Third Amended Complaint be filed because it was submitted prior to
27

1 the adoption of the Findings and Recommendations. Plaintiff is advised, however, that his
2 amended complaint must comply with the requirements set forth in the Findings and
3 Recommendations. The Court will screen Plaintiff's amended complaint and dismiss it, without
4 leave to amend, if it does not comply with the Court's instructions. Defendants need not file a
5 responsive pleading unless and until the Court finds that Plaintiff states a claim for which relief
6 may be granted.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's RLUIPA claim is DISMISSED WITHOUT LEAVE TO AMEND;
- 9 2. Plaintiff's claims against Defendants in their official capacity are DISMISSED
10 WITHOUT LEAVE TO AMEND;
- 11 3. Defendants Yates and Walker are entitled to qualified immunity and are
12 DISMISSED FROM THIS ACTION;
- 13 4. Plaintiff's First Amendment claim and Equal Protection Claim are DISMISSED
14 WITH LEAVE TO AMEND; and
- 15 5. Plaintiff is permitted to file an amended complaint, in accordance with the
16 requirements set forth in the Findings and Recommendations, within thirty (30) days of the date
17 of service of this order.
18

19
20 IT IS SO ORDERED.

21 Dated: November 13, 2014

22 
23 _____
24 SENIOR DISTRICT JUDGE
25
26
27
28