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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARRELL HARRIS,
Plaintiff,
v.
R. PIMENTEL, et al.,
Defendants.

Case No. 1:13-cv-01354-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO:**

**(1) DENY DEFENDANT’S MOTION TO
STRIKE FIRST AMENDED COMPLAINT;**

**(2) GRANT IN PART AND DENY IN
PART DEFENDANT’S MOTION TO
DISMISS;**

**(3) GRANT DEFENDANT’S MOTION TO
STRIKE SUR-REPLY; AND**

**(4) DENY PLAINTIFF’S REQUEST FOR
JUDICIAL NOTICE**

(ECF No. 33)

**ORDER DENYING MOTION FOR
EXTENSION OF TIME AND FOR COURT
ORDER**

(ECF No. 35)

CASE TO REMAIN OPEN

1 **I. PROCEDURAL HISTORY**

2 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil
3 rights action brought pursuant to 42 U.S.C. § 1983. The matter proceeds against
4 Defendant Escamilla on Plaintiff's First Amendment free exercise, Fourteenth
5 Amendment equal protection, and RLUIPA claims for damages. The matter was
6 referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and
7 Local Rule 302 of the United States District Court for the Eastern District of California.

8 On February 9, 2015, the Magistrate Judge issued findings and
9 recommendations to (1) deny Defendant's motion to strike the first amended complaint,
10 (2) grant in part and deny in part Defendant's motion to dismiss, (3) grant Defendant's
11 motion to strike Plaintiff's sur-reply, and (4) deny Plaintiff's request for judicial notice.
12 (ECF No. 33.) Defendant objected to the findings and recommendations to the extent
13 the Magistrate Judge found Plaintiff pled cognizable First and Fourteenth Amendment
14 claims. (ECF No. 34.) Plaintiff filed a motion for an extension of time to file objections,
15 and also seeks a court order regarding delivery of his mail and access to the law library.
16 (ECF No. 35.)

17 **II. MOTION FOR EXTENSION OF TIME**

18 Plaintiff requests an extension of time on the ground that he did not receive the
19 findings and recommendations until the deadline for filing objections had passed. (ECF
20 No. 35.) Although he agrees with the findings and recommendations, he wishes to file
21 objections to preserve his rights on appeal.

22 In light of Plaintiff's agreement with the findings and recommendations, which are
23 largely in his favor, his motion for extension of time will be denied as unnecessary.

24 **III. MOTION FOR COURT ORDER**

25 Along with his motion for extension of time, Plaintiff asks that the Court order his
26 current institution, California Institution for Men, to pick up and deliver his mail within a
27 specified time frame, and to afford him two hours per week of law library access. (ECF
28 No. 35.) However, the instant action proceeds only against Defendant Escamilla and

1 concerns acts that occurred at Corcoran State Prison. (ECF No. 10.) There is no
2 indication Defendant Escamilla has any influence over the policies and practices at
3 California Institution for Men, and the Court has no power to issue an order against
4 individuals who are not parties to a suit pending before it. See Zenith Radio Corp. v.
5 Hazeltine Research, Inc., 395 U.S. 100, 112 (1969); Zepeda v. INS, 753 F.2d 719, 727
6 (9th Cir. 1985).

7 Accordingly, Plaintiff's motion for a court order will be denied.

8 **IV. FINDINGS AND RECOMMENDATIONS**

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has
10 conducted a de novo review of this case. Having carefully reviewed the entire file, the
11 Court finds the February 9, 2015 findings and recommendations to be supported by the
12 record and by proper analysis. Defendant objections do not raise an issue of fact or law.
13 Plaintiff's first amended complaint states cognizable First and Fourteenth Amendment
14 claims for the reasons stated in the findings and recommendations.

15 **V. CONCLUSION AND ORDER**

16 Based on the foregoing, it is HEREBY ORDERED that:

- 17 1. The Court adopts the findings and recommendations, filed February 9,
18 2015 (ECF No. 33), in full;
- 19 2. Defendant's motion to strike the first amended complaint (ECF No. 16) is
20 DENIED;
- 21 3. Defendant's motion to dismiss (ECF No. 16) is GRANTED IN PART AND
22 DENIED IN PART;
- 23 4. Plaintiff's official capacity and RLUIPA claims are DISMISSED;
- 24 5. Defendant's motion to strike Plaintiff's sur-reply (ECF No. 28) is
25 GRANTED;
- 26 6. Plaintiff's request for judicial notice (ECF No. 20) is DENIED;
- 27 7. Plaintiff's motion for extension of time (ECF No. 35) is DENIED;
- 28 8. Plaintiff's motion for a court order (ECF No. 35) is DENIED; and

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9. The case shall remain open for further proceedings on Plaintiff's First Amendment free exercise and Fourteenth Amendment equal protection claims against Defendant Escamilla in his individual capacity.

IT IS SO ORDERED.

Dated: March 13, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE