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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NATHAN SESSING,  
Plaintiff,  
v.  
JEFFREY BEARD, et al.,  
Defendants.

Case No. 1:13-cv-01684-LJO-MJS (PC)  
**ORDER VACATING FINDINGS AND  
RECOMMENDATIONS AND ORDERING  
PLAINTIFF TO FILE AN AMENDED  
COMPLAINT**  
**(ECF No. 32)**  
**AMENDED COMPLAINT DUE WITHIN 30  
DAYS**

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. He has declined Magistrate Judge jurisdiction. (ECF No. 5.)

The Court screened Plaintiff's Third Amended Complaint and issued findings and a recommendation that the complaint be dismissed with prejudice for failure to state a claim. (ECF No. 25.)

Plaintiff filed objections to the findings and recommendation and in doing so clarified factual issues underlying some religious claims in his Third Amended Complaint (ECF No. 18). The Third Amended Complaint suggested that Plaintiff was basing his claims on the prison's failure to furnish his religious group – the Asatru/Odinists – with a worship area (including a fire pit) off-limits to other religions. He outlined his spiritual objections to

1 worshipping in the same area as Native Americans, who do have use of a fire pit.  
2 However, Plaintiff did not specify whether Odinists were permitted to use the Native  
3 Americans' firepit. In his objections, Plaintiff now indicates that he "is not permitted access  
4 to a fire pit" and that Native American worshippers have "exclusive" use of the "outdoor  
5 ceremonial enclosure" that contains the fire pit. (ECF No. 32, at 5.) He states his  
6 willingness to use a shared "multi-faith pagan worship area." (ECF No. 32, at 13.)  
7

8 The arbitrary denial of use of the Native American fire pit could potentially present Free  
9 Exercise, Establishment Clause, RLUIPA, and Equal Protection problems. Rouser v. White,  
10 707 F.Supp.2d 1055, 1066-1067 (E.D. Cal. 2010)(preventing Wiccans from using fire pit,  
11 while allowing Native Americans to use it, potentially violated Free Exercise, Establishment,  
12 and Equal Protection Clauses); Avery v. Elia, No. 2:11-cv-03341 2013 WL 4407266 (E.D.  
13 Cal. Aug. 15, 2013)(same). Therefore, the Court will provide Plaintiff a final opportunity to  
14 amend his complaint to plead sufficient facts to support such claims. Plaintiff should clarify  
15 when, how and under what circumstances and in what manner he sought and was denied  
16 access to the Native American worship area, and what reasons, if any, he was given for the  
17 denial, and who denied him such access.  
18

19 Plaintiff also mentions that the current setup of the Native American worship area is not  
20 suitable for Odinist worship, at least in part because it lacks an altar. Plaintiff should  
21 explain the alleged inadequacies in more detail and describe what modifications could be  
22 implemented to facilitate Odinist ceremonies.  
23

24 The Court reminds Plaintiff that prisons need not provide identical treatment and  
25 resources to all religious groups to satisfy constitutional requirements. Allen v. Toombs,  
26 827 F.2d 563, 568 (9th Cir. 1987)(citing Cruz v. Beto, 405 U.S. 319, 322 (1972)). While an  
27 adherent of a minority religion must be given "a reasonable opportunity of pursuing his faith  
28 comparable to the opportunity afforded fellow prisoners who adhere to conventional

1 religious precepts,” not every religious sect or group is entitled to “a special chapel or place  
2 of worship.” Cruz, 405 U.S. at 322 n. 2.

3 Based on the foregoing, the Court will vacate its Findings and Recommendation  
4 (ECF No. 25) and permit Plaintiff to file a Fourth Amended Complaint to present claims  
5 based on Odinists’ inability to use the fire pit at CSATF.  
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7 The Court HEREBY ORDERS as follows:

- 8 1. The Findings and Recommendations issued March 30, 2015 (ECF No. 25) are  
9 VACATED;
- 10 2. The Clerk's Office shall send Plaintiff (1) a blank civil rights amended complaint  
11 form and (2) a copy of his Third Amended Complaint filed June 20, 2014;
- 12 3. Plaintiff shall file an amended complaint within thirty (30) days from service of this  
13 order; and
- 14 4. If Plaintiff fails to comply with this order, the Court will recommend that this action  
15 be dismissed for failure to obey a court order.  
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18 IT IS SO ORDERED.

19  
20 Dated: May 28, 2015

Is/ Michael J. Seng  
21 UNITED STATES MAGISTRATE JUDGE  
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