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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARK S. SOKOLSKY,

Plaintiff,

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

1:13-cv-02044-LJO-GSA-PC

ORDER CLARIFYING PLAINTIFF'S  
CLAIMS AND PERMITTING FURTHER  
BRIEFING ON PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT  
(ECF No. 61.)

**I. BACKGROUND**

Plaintiff is a civil detainee proceeding *pro se* in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on December 16, 2013. (ECF No. 1.) On September 11, 2014, Plaintiff filed the First Amended Complaint as a matter of course. (ECF No. 9.) On July 27, 2015, the court issued an order finding cognizable claims in the First Amended Complaint and requiring Plaintiff to either notify the court of his willingness to proceed only on the cognizable claims, or file a Second Amended Complaint. (ECF No. 16.) On August 10, 2015, Plaintiff notified the court that he wished to proceed only with the claims found cognizable by the court, namely: (1) free exercise of religion claims under the First Amendment and RLUIPA against defendants Domrese, Coyne, King, Meek, Porter, and Bonsu, and (2) substantive due process claim under the Fourteenth Amendment against defendants Domrese, King, Porter, and Bonsu, “for their alleged failure to provide

1 medically appropriate food with respect to his CVID condition,” labeled a condition of  
2 confinement claim. (ECF No. 15.) The court then issued orders dismissing all other claims  
3 and defendants from this action and initiating service of process by the United States Marshal.  
4 (ECF Nos. 18, 20.)

5 On January 14, 2016, Plaintiff requested leave to amend the complaint to substitute the  
6 correct names of Defendants being sued in their official capacities. (ECF No. 28.) Plaintiff  
7 submitted a proposed Second Amended Complaint in which the names of the Defendants had  
8 been updated. (ECF No. 29.) On February 5, 2016, the court granted Plaintiff leave to file the  
9 Second Amended Complaint. (ECF No. 29.)

10 On December 23, 2016, Plaintiff filed a motion for summary judgment. (ECF No. 61.)  
11 On December 8, 2014, defendants Coyne, King, Meek, Porter, and Bonsu (“Defendants”) filed  
12 an opposition to the motion. (ECF No. 65.) On March 16, 2017, Plaintiff filed a reply to the  
13 opposition. (ECF No. 67.)

## 14 **II. PLAINTIFF’S CLAIMS AT ISSUE**

15 In their opposition to Plaintiff’s motion for summary judgment, Defendants request  
16 clarification of the factual and legal allegations which Plaintiff is allowed to explore in his  
17 motion for summary judgment and further proceedings in this action. Defendants correctly  
18 state that on September 14, 2015, the court allowed Plaintiff to proceed with the First Amended  
19 Complaint with only certain claims and defendants. Defendants also correctly note that the  
20 Second Amended Complaint includes claims that were dismissed by the court on September  
21 14, 2015.

22 This case now proceeds with Plaintiff’s Second Amended Complaint, filed on February  
23 4, 2016. (ECF No. 30.) In addition, Plaintiff’s claims and defendants dismissed from this  
24 action on September 14, 2015, remain dismissed. (ECF No. 18.) Thus, the case now proceeds  
25 only with the claims found cognizable by the court, namely: (1) free exercise of religion claims  
26 under the First Amendment and RLUIPA against defendants Domrese, Coyne, King, Meek,  
27 Porter, and Bonsu, and (2) substantive due process claim under the Fourteenth Amendment  
28 against defendants Domrese, King, Porter, and Bonsu, “for their alleged failure to provide

1 medically appropriate food with respect to his CVID condition,” labeled a condition of  
2 confinement claim.<sup>1</sup>

3 Additionally in their opposition, Defendants opposed Plaintiff’s claims concerning  
4 Kosher foods using only First Amendment standards, and opposed Plaintiff’s claims  
5 concerning Jewish celebrations and observances using only RLUIPA standards. In explanation  
6 of this division in their analysis, Defendants assert that in the SAC Plaintiff does not specify  
7 what law he claims was violated by any particular fact pattern, but in the motion for summary  
8 judgment, Plaintiff alleges that his First Amendment right to free exercise of religion was  
9 violated when he was not provided a proper Kosher diet, while his religious exercise rights  
10 under RLUIPA were violated when he was not allowed to fully participate in particular  
11 religious obligations. The court does not find such a clear division of law used by Plaintiff in  
12 the motion for summary judgment and nevertheless, the court turns to Plaintiff’s SAC and the  
13 court’s screening orders to determine Plaintiff’s claims. The SAC does not specify that one law  
14 or the other, First Amendment or RLUIPA, applies to particular allegations. Therefore, the  
15 court shall consider both laws as they apply to all of Plaintiff’s free exercise allegations,  
16 whether they concern Kosher foods or Jewish holidays and observances.

17 Due to this clarification of Plaintiff’s claims, Defendants shall be granted sixty days to  
18 submit additional briefing in response to Plaintiff’s motion for summary judgment, addressing  
19 the First Amendment and RLUIPA with respect to all of Plaintiff’s free exercise allegations.  
20 Plaintiff may then file a reply to Defendants’ briefing, should they file one, within thirty days  
21 of the date of filing of their briefing.

22 **III. CONCLUSION**

23 Based on the foregoing, IT IS HEREBY ORDERED that:

- 24 1. This case now proceeds with the Second Amended Complaint filed on February  
25 4, 2016, on the following claims and defendants: (1) free exercise of religion

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26  
27 <sup>1</sup> The court’s February 5, 2016, order permitted Plaintiff to file the Second Amended Complaint  
28 only for the purpose of substituting the proper parties’ names as defendants. As the order states, “Plaintiff has  
submitted a Second Amended Complaint in which he has taken the First Amended Complaint and amended the  
proper parties.” (ECF No. 29.)

1 claims under the First Amendment and RLUIPA against defendants Domrese,  
2 Coyne, King, Meek, Porter, and Bonsu, and (2) substantive due process claims  
3 under the Fourteenth Amendment against defendants Domrese, King, Porter,  
4 and Bonsu, “for their alleged failure to provide medically appropriate food with  
5 respect to [Plaintiff’s] CVID condition;”

6 2. Defendants are granted sixty days from the date of service of this order to  
7 submit additional briefing in response to Plaintiff’s motion for summary  
8 judgment, addressing the First Amendment and RLUIPA with respect to all of  
9 Plaintiff’s free exercise allegations; and

10 3. Plaintiff may file a reply to Defendants’ briefing within thirty days of the date of  
11 filing of the Defendant’s brief.

12 IT IS SO ORDERED.

13 Dated: June 28, 2017

14 /s/ Gary S. Austin  
15 UNITED STATES MAGISTRATE JUDGE