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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 STEVEN HYPOLITE,

11 Plaintiff,

No. 2:05-cv-0428 MCE KJN P

12 vs.

13 CDCR, et al.,

14 Defendants,

ORDER

15 _____/
16 Plaintiff is a state prisoner proceeding without counsel, with a claim brought
17 under the Religious Land Use and Institutionalized Persons Act (RLUIPA). Plaintiff contends
18 that the prison grooming regulation that mandated short hair violated RLUIPA as plaintiff's long
19 hair is associated with his religious beliefs. Pending before the court is defendants' motion for
20 summary judgment, filed on April 3, 2009, to which plaintiff filed his opposition on April 22,
21 2009.

22 Plaintiff seeks the following relief: (1) an order that the Rule Violation Reports
23 (RVRs) relating to his grooming violations be expunged from his CDCR records; (2) nominal
24 and compensatory damages in the amount of \$100,000 from each defendant; and (3) punitive
25 damages from each defendant. However, plaintiff concedes that his claims for injunctive relief
26 are now moot as all RVRs have been removed from his central file. Therefore, the sole issue is if

1 plaintiff is entitled to monetary damages for receiving several RVRs that have now been
2 expunged.¹

3 The motion for summary judgment and the opposition only discuss the issue of
4 qualified immunity. However, the parties have not addressed whether monetary damages are
5 legally recoverable under RLUIPA against defendants either in their individual or official
6 capacities. If the only remaining issue in this case is plaintiff's claim for monetary damages, and
7 plaintiff is not legally entitled to such damages, the court need not address the qualified immunity
8 issues.

9 Individual Capacity

10 While the Ninth Circuit has not addressed the issue, several Circuit Courts have
11 held that RLUIPA does not create a cause of action for damages against officials in their
12 individual capacity. See, e.g., Rendelman v. Rouse, 569 F.3d 182, 187-89 (4th Cir. 2009);
13 Nelson v. Miller, 570 F.3d 868, 886-89 (7th Cir. 2009); Sossamon v. Lone Star State of Texas,
14 560 F.3d 316, 327-29 (5th Cir. 2009); Smith v. Allen, 502 F.3d 1255, 1271-75 (11th Cir. 2007).

15 Official Capacity

16 There is a split of authority between the circuits regarding whether a state's
17 receipt of prison funds constitutes a waiver of its sovereign immunity from suits seeking
18 monetary damages. The Ninth Circuit has not addressed this issue. The Eleventh Circuit has
19 held that the Eleventh Amendment does not bar official capacity claims while the Fourth, Fifth,
20 Sixth and Seventh Circuits have held officials are immune. Compare Smith, 502 F.3d at 1275-76
21 & n. 12 (Eleventh Amendment does not bar RLUIPA official capacity claims for damages;
22 statutory language conditioning receipt of federal funds on adherence to statute and providing for
23 "appropriate relief" for violation waives immunity); with Nelson, 570 F.3d at 884-85 (Eleventh
24

25 ¹ As all RVRs have been expunged it is not entirely clear what injury plaintiff has
26 suffered, if any, that would entitled him to money damages. Based on plaintiff's pleadings it
does not appear that he was ever forced to cut his hair.

1 Amendment bars RLUIPA official capacity claims for damages, because the “appropriate relief”
2 provision is not sufficiently unequivocal to waive sovereign immunity); Cardinal v. Metrish, 564
3 F.3d 794, 800-01 (6th Cir. 2009) (same); Sossamon, 560 F.3d at 329-30 (same); Madison v.
4 Virginia, 474 F.3d 118, 130-32 (4th Cir. 2006) (same).

5 Punitive Damages

6 In order to be entitled to punitive damages, plaintiff would need to establish that
7 defendants acted with an “evil motive” or demonstrated “reckless callous indifference” to his
8 constitutional rights. See Smith v. Wade, 461 U.S. 30, 56 (1983).

9 Further Briefing

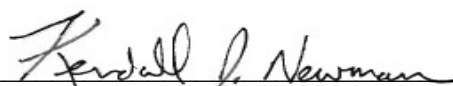
10 Accordingly, the parties shall have the opportunity to brief the issue addressing
11 whether plaintiff can recover monetary damages against defendants in their individual or official
12 capacities under RLUIPA and if punitive damages are appropriate. Defendants shall file a brief
13 within 21 days of service of this order. Plaintiff shall file a reply within 21 days of the filing of
14 defendants’ brief. Plaintiff’s brief should also address what injury, if any, he suffered that
15 supports his claims for monetary damages. No extensions will be granted.

16 If defendants contend that the law allows plaintiff to proceed with his claims for
17 monetary damages under RLUIPA they should so indicate. No more briefing on qualified
18 immunity is required by the court.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Defendants’ shall file briefing within 21 days of service of this order.
21 2. Plaintiff shall file a reply brief within 21 days of defendants’ filing their brief.

22 DATED: March 4, 2010

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24 
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE