IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE WASHINGTON,

Plaintiff, No. CIV S-06-1994 WBS DAD P

vs.

J. BROWN, et al.,

Defendants. ORDER

_____/

Plaintiff is a state prisoner proceeding pro se with an action pursuant to 42 U.S.C. § 1983. On September 9, 2010, defendants requested leave to file a dispositive motion out of time.[1] Defendants maintain that on April 5, 2010, the Ninth Circuit Court of Appeals held in Holley v. Cal. Dep't of Corr., 599 F.3d 1008 (9th Cir. 2010) that monetary damages are unavailable under RLUIPA against state officials in their individual and official capacities. Defendants contend that in light of Holley, plaintiff's RLUIPA claim in this case must be dismissed because he seeks only monetary damages against defendants. Defendants further contend that they were unable to present the court with this argument in their September 16, 2009 motion for summary judgment because their motion was filed well before the Ninth Circuit's

[1] Pursuant to the court's March 25, 2009 order, all dispositive motions in this case were to be filed on or before September 25, 2009. (Doc. No. 81.)

decision in Holley. The undersigned finds good cause to grant defendants' motion under these circumstances and to resolve this issue following briefing by the parties .

Accordingly, good cause appearing, IT IS HEREBY ORDERED that:

1. Defendants' September 9, 2010 request for leave to file a dispositive motion with respect to plaintiff's RLUIPA claim (Doc. No. 124) is granted;

2. Defendants shall file and serve their dispositive motion within thirty days of the date of this order; plaintiff's opposition or statement of non-opposition and defendants' reply, if any, shall be filed and served in accordance with Local Rule 230(l); and

3. The court's August 31, 2010 scheduling order (Doc. No. 122) is vacated; the court will reissue a scheduling order setting dates for pretrial statements and jury trial following the adjudication of defendants' dispositive motion.

DATED: September 10, 2010.

DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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