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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

PAUL ANTHONY RUPE,

Plaintiff,

v.

M. CATE, R.J. SUBIA, M. MARTEL,
D. LONG, W. KNIPP, G. MACHADO,
R.M. KUDLATA, A.L. CHAMBERLAIN,
V. BUENO, B. BUENO, A. GREEN,
K. RUTHERFORD, J. TEXEIRA, L.
MARTINEZ, D. BAPTISTA, S.
BARNHAM, KURIC, S. MUHAMMED,
TAKEHARI, LOCKHART, J. BURKARD,
M. LACKNER, B. RATHJEN, M.
BENNETT, L.B. REAVES, M. ALLEN,
R. NAKANOTO, B.M. CASH, C.
FORTSON, J. SEBOK, A. OMEIRA,
BOWEN, K. BRADFORD, M.
BEUCHTER, P. VANNI, L. RUSHING,
L. JACKSON, and D.J. WILLIAMS,

Defendants.

NO. CV-08-2454-EFS (PC)

**ORDER SCREENING SECOND AMENDED
COMPLAINT AND REQUIRING
PLAINTIFF TO SUBMIT SERVICE-
RELATED DOCUMENTS**

Before the Court is pro se state prisoner Plaintiff Paul Anthony Rupe's Second Amended Complaint. ECF No. [101](#). Mr. Rupe asserts nine claims against a total of thirty-eight Defendants, alleging numerous violations of his federal statutory and constitutional rights. In accordance with the Court's November 21, 2011 Order, ECF No. [100](#), the Court screens Mr. Rupe's Second Amended Complaint pursuant to 28 U.S.C.

1 § 1915A. For the reasons discussed below, the Court dismisses aspects
2 of Plaintiff's Second Amended Complaint, and orders Plaintiff to prepare
3 and return service documents so that the U.S. Marshals may serve the
4 complaint on all heretofore-unserved named Defendants.

5 **I. Mr. Rupe's Second Amended Complaint**

6 Under the Prisoner Litigation Reform Act of 1995, the Court is
7 required to screen prisoner complaints seeking relief against a
8 governmental entity or an officer or employee of a governmental entity.
9 28 U.S.C. § 1915A(a). Claims that are legally frivolous or malicious,
10 claims that fail to state a claim upon which relief may be granted, and
11 claims that seek monetary relief from a defendant who is immune from such
12 relief are properly dismissed. *Id.* §§ 1915A(b)(1), (2) & 1915(e)(2).

13 After review, the Court finds that the complaint as a whole states
14 plausible constitutional claims under 42 U.S.C. § 1983, as well as
15 plausible claims under the Religious Land Use and Institutionalized
16 Persons Act of 2000, 42 U.S.C. § 2000cc-1 *et. seq.* (RLUIPA). However,
17 several of Mr. Rupe's claims fail to state a claim upon which relief can
18 be granted and must be dismissed.

19 Several of Mr. Rupe's claims seek injunctive relief against
20 Defendant Martel, who is the warden of Mule Creek State Prison (MCSP),
21 and one of Mr. Rupe's claims seeks injunctive relief against Defendants
22 Rathjen, Bennett, Reaves, and Nakanoto, who are correctional counselors
23 at MCSP (Defendant Nakanoto is alleged to be a classification services
24 representative for the California Department of Corrections). As noted
25 in the Court's February 1, 2010 Order, Mr. Rupe's claims for injunctive
26 relief against officials at MSCP are moot because Mr. Rupe was

1 transferred from MCSP during June 2009 and he has no reasonable
2 expectation that he will be transferred to that facility again. See ECF
3 No. [48](#) at 8-9; see also *Dilley v. Gunn*, 64 F.3d 1365, 1368-69 (9th Cir.
4 1995) (finding prisoner claim for injunctive relief moot upon prisoner's
5 transfer to new facility). As such, the following claims are dismissed
6 as they relate to Defendant Martel: Mr. Rupe's First Amendment Free
7 Exercise claim, Mr. Rupe's Fourteenth Amendment Equal Protection claim,
8 and Mr. Rupe's RLUIPA reasonable accommodation claim. Additionally, Mr.
9 Rupe's Eighth Amendment claim for injunctive relief is dismissed as it
10 relates to Defendants Rathjen, Bennett, Reaves, and Nakanoto.

11 Mr. Rupe's remaining claims state plausible claims for relief and
12 are not dismissed. Nothing in this Order, however, should be read to
13 preclude or discourage Defendants from filing a motion to dismiss or
14 motion for summary judgment with regard to any or all of Mr. Rupe's
15 remaining claims.

16 **II. Service of Defendants Martinez, Jackson, and Williams**

17 Of the thirty-eight Defendants named in Mr. Rupe's Second Amended
18 Complaint, the following thirty-five have previously been served: M.
19 Cate, R.J. Subia, M. Martel, D. Long, W. Knipp, G. Machado, R.M. Kudlata,
20 A.L. Chamberlain, V. Bueno, B. Bueno, A. Green, K. Rutherford, J.
21 Texeira, D. Baptista, S. Barnham, Kuric, S. Muhammed, Takehari, Lockhart,
22 J. Burkard, M. Lackner, B. Rathjen, M. Bennett, L.B. Reaves, M. Allen,
23 R. Nakanoto, B.M. Cash, C. Fortson, J. Sebok, A. Omeira, Bowen, K.
24 Bradford, M. Beuchter, P. Vanni, and L. Rushing. Three Defendants have
25 not been served: Defendant L. Martinez was previously named in this
26

1 lawsuit but had not been served, see ECF No. [98](#), and Defendants L.
2 Jackson and D.J. Williams have not previously been named.

3 Accordingly, the Court orders Mr. Rupe to prepare and return service
4 documents for L. Martinez, L. Jackson, and D.J. Williams so that the U.S.
5 Marshals may serve the Second Amended Complaint on these heretofore-
6 unserved Defendants. **Mr. Rupe must prepare and return the service**
7 **documents, as well as file the attached Notice of Submission of**
8 **Documents, within forty-five (45) days of the entry of this Order.**

9 **III. Mr. Rupe's Motion to Extend Discovery**

10 Also before the Court is Mr. Rupe's Motion to Extend Discovery for
11 90 Days After the Answering of the Second Amended Complaint. ECF No.
12 [102](#). Mr. Rupe asks the Court to extend the currently-set discovery
13 cutoff of February 20, 2012, in light of his Second Amended Complaint,
14 ECF No. [101](#), which was filed on December 14, 2011. Because Mr. Rupe's
15 Second Amended Complaint names two additional Defendants, the discovery
16 stage of this case must be re-opened. Accordingly, the Court strikes the
17 currently-set discovery cutoff of February 20, 2012. Once Defendants
18 have filed an answer or answers to Mr. Rupe's Second Amended Complaint,
19 the Court will issue a scheduling order setting pre-trial deadlines, a
20 pretrial conference date, and a trial date.

21 **IV. Plaintiff's Motion to Strike**

22 Finally, it has come to the Court's attention that Mr. Rupe's
23 October 11, 2011-filed Motion to Strike and Reply to Defendants'
24 Opposition to Motion for Default Judgment, ECF No. [95](#), is still pending.
25 The Court had construed this motion as a reply in addressing Mr. Rupe's
26 Motion for Default Judgment, ECF No. [92](#), which the Court denied in its

1 October 13, 2011 Order Addressing Plaintiff's Motions, ECF No. [96](#).
2 Accordingly, Mr. Rupe's motion to strike is denied as moot.

3 **V. Conclusion**

4 For the reasons discussed above, several of Mr. Rupe's claims for
5 injunctive relief are dismissed. Mr. Rupe is directed to prepare and
6 return service documents for Defendants Martinez, Jackson, and Williams
7 within forty-five (45) days. When Mr. Rupe has returned these documents
8 and filed the attached Notice of Submission of Documents, the Court will
9 direct the U.S. Marshals to serve the Second Amended Complaint on those
10 three Defendants.¹ The Court's Order directing service will lift the
11 stay on Defendants' responsibility to answer Mr. Rupe's complaint, see
12 ECF No. [100](#), and will include specific instructions for answering the
13 complaint. When answering Plaintiffs' Second Amended Complaint,
14 **Defendants do not need to respond to the following dismissed claims:** Mr.
15 Rupe's First Amendment Free Exercise claim as it relates to Defendant
16 Martel, Mr. Rupe's Fourteenth Amendment Equal Protection claim as it
17 relates to Defendant Martel, Mr. Rupe's RLUIPA reasonable accommodation
18 claim as it relates to Defendant Martel, and Mr. Rupe's Eighth Amendment
19 claim for injunctive relief as it relates to Defendants Rathjen, Bennett,
20 Reaves, and Nakanoto.

21 Additionally, the Court strikes the February 20, 2012 discovery
22 cutoff and denies Mr. Rupe's motion to strike as moot.

23 //

24 /

26 ¹ The thirty-five previously-served Defendants have already appeared
and thus receive electronic service of filings in this matter.

1 For the reasons discussed above, **IT IS HEREBY ORDERED:**

2 1. Service is appropriate for all heretofore-unserved named
3 Defendants (**L. Martinez, L. Jackson, and D.J. Williams**).

4 2. The Clerk of Court shall immediately send Plaintiff a USM-285
5 form for each Defendant to be served, as well as a summons, instruction
6 sheet, and a copy of the Second Amended Complaint, ECF No. [101](#).

7 3. Within **forty-five (45) days** from the date of this Order,
8 Plaintiff shall complete the attached Notice of Submission of Documents
9 and submit the following documents to the Court:

10 a. The completed Notice of Submission of Documents;

11 b. One completed summons;

12 c. One completed USM-285 form for each Defendant listed in
13 paragraph 1 above; and

14 d. Three (3) copies of the Second Amended Complaint, ECF No.
15 [101](#).

16 4. Plaintiff need not attempt service on Defendants and need not
17 request waiver of service. After receiving the above-described
18 documents, the Court will issue a separate Order requiring the U.S.
19 Marshals to serve each Defendant listed in paragraph 1.

20 5. The Court cautions Plaintiff that failing to submit the above-
21 described documents within **forty-five (45) days** will be construed as
22 permission to **dismiss this lawsuit in regard to the three above-named**
23 **Defendants** under Federal Rule of Civil Procedure 41.

24 6. Plaintiff's Motion to Extend Discovery for 90 Days After the
25 Answering of the Second Amended Complaint, **ECF No. [102](#)**, is **GRANTED in**
26 **part**. The currently-set February 20, 2012 discovery cutoff is **STRICKEN**.

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6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION

8 PAUL ANTHONY RUPE,

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24 BEUCHTER, P. VANNI, L. RUSHING,
25 L. JACKSON, and D.J. WILLIAMS,

26 Defendants.

NO. CV-08-2454-EFS (PC)

NOTICE OF SUBMISSION OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the Court's Order filed _____:

- _____ completed summons form;
- _____ completed USM-285 forms; and
- _____ copies of the Second Amended Complaint, ECF No. 101.

DATED: _____

Paul Anthony Rupe
Plaintiff