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

MADY CHAN,

Plaintiff,

No. CIV S-09-2006 MCE GGH P

vs.

COUNTY OF SACRAMENTO, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On September 15, 2010, the court denied plaintiff's motions for a temporary restraining order, motion to amend the complaint and several other issues. Currently pending before the court are plaintiff's September 21, 2010, motion for a temporary restraining order (Doc. 56), October 1, 2010, motion for leave to amend (Doc. 57) and October 6, 2010, motion for contempt (Doc. 58). This action continues on claims involving inadequate dental care and violations of plaintiff's ability to practice his religion by not allowing him to conduct Buddhism study classes. These claims arose at Sacramento County Jail.

Motion to Amend

Plaintiff filed the original complaint on July 21, 2009. That complaint was dismissed with leave to amend and plaintiff filed the operative first amended complaint on

1 September 8, 2009. On October 30, 2009, the court dismissed several claims and defendants and
2 ordered service on the County of Sacramento and Chaplain Ortiz for claims of inadequate dental
3 care and violations of plaintiff's ability to practice his religion related to not being allowed to
4 conduct Buddhism study classes. Defendants filed an answer on June 4, 2010.

5 Plaintiff has filed a motion to amend the complaint with a second amended
6 complaint. Defendants have not filed any opposition. Essentially the second amended complaint
7 contains the same claims as the first amended complaint and adds one claim that defendants
8 confiscated a handmade Buddha statute that plaintiff had been using for worship, in violation of
9 RIUIPA and the First Amendment. Plaintiff has also added several state law causes of action for
10 the preexisting and new claim and named a few new defendants.

11 Plaintiff's motion to amend will be granted in part and the October 1, 2010,
12 second amended complaint will be the operative complaint in this case containing the original
13 claims and the new Buddha statue claim. However, no new defendants will be added as plaintiff
14 has failed to identify the actions of the new defendants with sufficient specificity.

15 Defendants, if they wish, may file a supplemental answer to the second amended
16 complaint within twenty-eight days.

17 No further amendments to the complaint will be allowed.

18 Motion for Contempt

19 Plaintiff alleges that defendants are in violation of the Kaiser consent decree
20 therefore defendants should be held in contempt and plaintiff should be given permanent dental
21 fillings. In essence, plaintiff is seeking the relief he seeks in this case through a motion for
22 contempt, i.e., alleged violation of an order in another case. While the Kaiser order may have
23 applicability, and it may not, the applicability of the order will be decided as part of this case on
24 motion for summary judgment or trial – not on a motion for contempt.

25 Motion for Temporary Restraining Order

26 Within twenty-eight days defendants shall file a reply to the motion for a

1 temporary restraining order solely with respect to the dental claims.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff's motion to amend (Doc. 57) is granted in part and the October 1,
4 2010, second amended complaint will be the operative complaint in this case. Defendants, if
5 they wish, may file a supplemental answer to the second amended complaint within twenty-eight
6 days. No new defendants will be added and no further amendments will be allowed.

7 2. Plaintiff's motion for contempt (Doc. 58) is denied.

8 3. Within twenty-eight days, defendants shall file a reply to the motion for a
9 temporary restraining order (Doc. 56) solely with respect to the dental claims.

10 DATED: January 20, 2011

11 /s/ Gregory G. Hollows

12 _____
UNITED STATES MAGISTRATE JUDGE

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