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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KYLE AVERY,
Plaintiff,
v.
MARC ELIA, et al.,
Defendants.

No. 2:11-cv-3341 JAM CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. This action is proceeding on plaintiff’s first amended complaint filed on November 1, 2012 against defendants Beard, Carter, Elia, Huggins, Jones, Konrad and Virga (defendants) all current or former employees of the California Department of Corrections and Rehabilitation (CDCR). Plaintiff’s remaining claims concern his allegedly being denied the ability to practice his Wicca religion while being housed at California State Prison, Sacramento. Defendants have filed a motion for summary judgment.

On May 6, 2015, defendants presented evidence to the court suggesting that plaintiff is not really a Wiccan, but an Odinist. The evidence was not made available to counsel for defendants until April 2, 2015. In light of the new evidence, defendants have filed a motion seeking leave to file supplemental briefing concerning their motion for summary judgment. Because the evidence does seem relevant to material questions presented in defendants’ motion for summary judgment,

1 the court will permit further briefing. However, in order to make the briefing and the issues
2 before the court as clear as possible, defendants' pending motion for summary judgment will be
3 denied without prejudice to defendants re-filing within 30 days. Defendants must include all of
4 their arguments and references to any evidence submitted in the re-filed motion.

5 The also court notes that plaintiff filed a sur-reply regarding defendants' motion for
6 summary judgment on April 13, 2015 in which he also requests more time for discovery. The
7 document is 50 pages. Plaintiff is informed that the court does not allow sur-replies with respect
8 to the briefing of motions without leave of court. See Local Rule 230(l). Also, if plaintiff wishes
9 to engage in more discovery, he shall submit a motion, no more than 5 pages long, in which he
10 clearly articulates why he believes more discovery is warranted, and explains his delay for not
11 seeking an extension of the discovery deadline before it passed. For these reasons, the document
12 filed by plaintiff on April 13, 2015 will be ordered stricken.

13 In accordance with the above, IT IS HEREBY ORDERED that

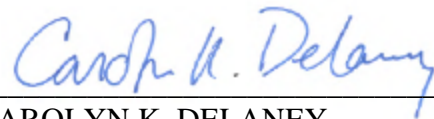
14 1. Defendants motion for summary judgment (ECF No. 73) is denied without prejudice.

15 2. Defendants are granted leave to file a motion for summary judgment within 30 days of
16 this order. The motion must include all of defendants' arguments and references to any evidence
17 submitted in the re-filed motion. Plaintiff shall file his opposition to defendants' motion within
18 30 days of service of the motion. Defendants may file a reply brief within 14 days of service of
19 plaintiff's opposition.

20 3. Defendants' March 18, 2015 motion to strike evidence submitted by plaintiff with his
21 opposition to defendants' motion for summary judgment (ECF No. 87) is denied as moot.

22 4. The document filed by plaintiff on April 13, 2015 (ECF No. 89) is ordered stricken.

23 Dated: June 10, 2015



24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE