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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 TRACY LEE TAYLOR,
9 Plaintiff,

No. C 07-6380 MHP (pr)

ORDER OF DISMISSAL

10 v.

11 N. GRANNIS; et al.,
12 Defendants.

13
14 **INTRODUCTION**

15 In this pro se prisoner's civil rights action, Tracy Lee Taylor complains that
16 defendants have interfered with his religious freedom. Defendants now move to dismiss the
17 action, arguing that Taylor's claims are barred by the doctrine of res judicata. For the
18 reasons discussed below, the court grants the motion and dismisses the action.

19 **BACKGROUND**

20 This is the third action filed by Taylor in which he complains about the denial of his
21 requests to use and possess tobacco in prison for religious purposes. All three actions will be
22 described. Although it is the Del Norte action that has res judicata effect, the earlier
23 Sacramento action also is described because the court in the Del Norte action followed up on
24 an order issued in the Sacramento action.

25 A. Federal Court Action

26 The operative pleading in this action is the second amended complaint. Taylor
27 contended in his second amended complaint that his rights under the Religious Land Use and
28 Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1, were violated. Taylor
alleged that, after his arrival at Pelican Bay State Prison, he sought permission to have

1 tobacco products for his “Wheel of Love” religious ceremony. He alleged that prison
2 chaplain R. G. Bliesner told him on January 20, 2007 that his request for tobacco products
3 was denied because he had not effectively explained the relationship between tobacco and
4 the "Wheel of Love" ceremony in his religion. Taylor further alleged that defendants M.A.
5 Cook, Robert Horel, and Nola Grannis rejected Taylor's inmate appeals for tobacco products
6 for his religious ceremony. Cook was the associate warden and Horel was the warden at
7 Pelican Bay. Grannis was the chief of inmate appeals for the CDCR.

8 The court liberally construed the second amended complaint and determined that it
9 stated a claim against all four defendants (i.e., Bliesner, Cook, Horel and Grannis) for a
10 violation of Taylor's rights under RLUIPA. Order of Service, p. 2. Because Taylor did not
11 attempt to allege a claim for a violation of the Free Exercise Clause of the First Amendment
12 in his second amended complaint, the court dismissed that claim. See Order of Service, pp.
13 2-3. Thus, the only claim in this action is an RLUIPA claim.

14 B. State Court Activity

15 1. Habeas Proceedings In Sacramento County

16 On April 27, 2005, Taylor filed a petition for writ of habeas corpus in the Sacramento
17 County Superior Court, In re. Tracy Lee Taylor, Sacramento County Superior Court No.
18 05F03960 (“the Sacramento action”). Defendant’s Request For Judicial Notice (“RFJN”),
19 Ex. A. Taylor – who was then housed at California State Prison-Sacramento – alleged that
20 he was being denied access to tobacco in violation of his rights under RLUIPA and the First
21 Amendment. Taylor alleged that he needed tobacco for the “Wheel of Love” ceremony.

22 The Sacramento County Superior Court issued an order to show cause on the petition
23 and respondent filed a return. RFJN, Exs. B, C. Counsel was appointed for Taylor. RFJN,
24 Ex. D. Although counsel was appointed for him, Taylor filed his own denial and exception
25 to respondent’s return. RFJN, Exs. E and F. Taylor’s counsel later filed a traverse. RFJN,
26 Ex. G.

27 On February 22, 2006, the Sacramento County Superior Court granted in part and
28 denied in part the petition, and remanded the matter “to prison officials with directions that

1 they reevaluate petitioner’s claim for tobacco under” RLUIPA. RFJN, Ex. H, p. 1. That
2 court explained that RLUIPA required prison officials to evaluate the request for tobacco
3 under the “least restrictive means” test and that the administrative record did not indicate that
4 the test had been applied to Taylor’s case. I. at 6. Hence, the remand for re-evaluation. No
5 appeal was taken from this order, and the parties have not presented evidence that any further
6 substantive proceedings took place in the Sacramento action. Sometime after the order was
7 issued, Taylor was transferred to Pelican Bay.

8 2. Habeas Proceedings In Del Norte County

9 On June 22, 2007, Taylor filed a petition for writ of habeas corpus in Del Norte
10 County Superior Court, In re. Tracy Taylor, Del Norte County Superior Court Case No.
11 HCPB07-5105 (“the Del Norte action”). Taylor alleged in this petition that during his
12 incarceration at Pelican Bay he was being denied access to tobacco in violation of RLUIPA
13 and the First Amendment. He alleged that he needed tobacco for the “Wheel of Love”
14 ceremony in his religion. RFJN, Ex. I.

15 The Del Norte court issued an order to show cause regarding the petition and
16 appointed counsel for Taylor. RFJN, Ex. J. Respondent filed a return to the order to show
17 cause. RFJN, Ex. K. Taylor’s counsel filed a denial to the return. RFJN, Ex. L.

18 On October 12, 2007, the court granted the habeas petition. The superior court
19 examined Taylor’s claims under RLUIPA, explained that “this Court does not intend to re-
20 litigate the issues decided last year in Sacramento.” RFJN, Ex. M

21 The Department is ordered to make tobacco available for Petitioner’s use during the
22 Wheel of Love ceremony. The Court would expect that the amounts and frequency of
23 the use would be consistent with that used by other inmates for religious purposes.
Nothing in this order should be interpreted to require the Department to purchase the
tobacco at its expense nor to allow the petitioner to keep the tobacco in his cell.

24 Id. The court denied Taylor’s request to have 10 pounds of tobacco in his cell for use at all
25 times. Id. Respondent did not appeal this order.

26 Taylor then filed this action on December 17, 2007.

27 **VENUE AND JURISDICTION**

28 Venue is proper in the Northern District of California because some of the events or

1 omissions giving rise to the claims occurred in Del Norte County, which is located within the
2 Northern District. See 28 U.S.C. §§ 84, 1391(b). This Court has federal question
3 jurisdiction over this action brought under 42 U.S.C. § 1983. See 28 U.S.C. § 1331.

4 **LEGAL STANDARD FOR RULE 12(b)(6) MOTIONS**

5 Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move to dismiss on
6 the ground that there is a "failure to state a claim upon which relief may be granted." A
7 motion to dismiss should be granted if plaintiff fails to proffer "enough facts to state a claim
8 to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570
9 (2007) (abrogating Conley v. Gibson, 355 U.S. 41 (1957)). The court "must accept as true
10 all of the factual allegations contained in the complaint," Erickson v. Pardus, 551 U.S. 89, 94
11 (2007), and must construe pro se pleadings liberally, Hebbe v. Pliler, 611 F.3d 1202, 1205
12 (9th Cir. 2010). The court need not accept as true allegations that are legal conclusions,
13 unwarranted deductions of fact or unreasonable inferences. See Sprewell v. Golden State
14 Warriors, 266 F.3d 979, 988, amended, 275 F.3d 1187 (9th Cir. 2001). In considering a
15 motion to dismiss, the court may take judicial notice of matters of public record outside the
16 pleadings. See MGIC Indemn. Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986).

17 **DISCUSSION**

18 The federal courts have traditionally adhered to the related doctrines of res judicata
19 and collateral estoppel. See Allen v. McCurry, 449 U.S. 90, 94 (1980). Under res judicata, a
20 final judgment on the merits bars further claims by parties or their privies based on the same
21 cause of action. See Montana v. United States, 440 U.S. 147, 153 (1979). Under collateral
22 estoppel, once an issue is actually and necessarily determined by a court of competent
23 jurisdiction, that determination is conclusive in subsequent suits based on a different cause of
24 action involving a party to the prior litigation. See id.

25 The federal full faith and credit statute, 28 U.S.C. § 1738, requires that a federal court
26 give to a state court judgment the same preclusive effect as would be given that judgment
27 under the law of the state in which the judgment was rendered. See Migra v. Warren City
28 School Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). In California, a final judgment in state

1 court "precludes further proceedings if they are based on the same cause of action."
2 Brodheim v. Cry, 584 F.3d 1262, 1268 (9th Cir. 2009) (quoting Maldonado v. Harris, 370
3 F.3d 945, 951 (9th Cir. 2004)).

4 Here, Taylor pursued the same cause of action in state court as here: violation of his
5 right under RLUIPA to have tobacco for use in his religious ceremony. See Brodheim, 584
6 F.3d at 1268. Taylor's argument in opposition to the motion to dismiss that his second
7 amended complaint has a different scope than that of the habeas petition in Del Norte fails to
8 persuade the court. Both the Del Norte petition and the federal second amended complaint
9 focused on Taylor's need for tobacco for the Wheel of Love ceremony. See SAC at ¶¶ 13-
10 14; RFJN, Ex. I at ¶¶ 7, 10, 14. Both urged that he needed to possess ten pounds of tobacco.
11 SAC at ¶ 16; Exh. I at ¶ 18 and § V. 4 (request for relief). Both were based on the denial of
12 the request for tobacco he made to defendant Chaplain Bliesner, and the later rejection of his
13 inmate appeal about that denial (i.e., CDC-602 log # PBSP-A-07-00132) by defendants
14 Cook, Horel, and Grannis – who signed the first level appeal response, the second level
15 appeal response, and the third level appeal response, respectively. See SAC at ¶¶ 14-16 and
16 Ex. C thereto; RFJN, Ex. I at ¶¶ 14, 18. In sum, the Del Norte action and this action involve
17 the same injury to the plaintiff and the same wrong by the same prison officials, even though
18 the form of the action in state court (i.e., a habeas petition) led Taylor to identify as the
19 adverse party his custodian and the CDCR rather than the alleged individual wrongdoers.
20 The defendants are in privity with the respondent in the state habeas action. See Citizens For
21 Open Access To Sand And Tide, Inc. v. Seadrift Ass'n, 60 Cal. App. 4th 1053, 1069 (Cal.
22 Ct. App. 1998) (privity refers "to a mutual or successive relationship to the same rights of
23 property, or to such an identification in interest of one person with another as to represent the
24 same legal rights.") The Del Norte County Superior Court's order granting the petition was
25 final and on the merits. See In re Crow, 4 Cal. 3d 613, 623 (Cal. 1971) (order granting
26 habeas petition is considered a final order for res judicata purposes).

27 The doctrines of res judicata and collateral estoppel do not apply "when the party
28 against whom the earlier decision is asserted did not have a 'full and fair opportunity' to

1 litigate the claim or issue. . . . 'Redetermination of issues is warranted if there is reason to
2 doubt the quality, extensiveness, or fairness of procedures followed in prior litigation."
3 Kremer v. Chemical Constr. Corp., 456 U.S. 461, 480-81 & n.22 (1982) (citations omitted).
4 In enacting § 1738, Congress intended that federal courts give preclusive effect to state court
5 judgments whenever the courts of the State from which the judgment came would do so –
6 accepting the rules chosen by the State from which the judgment came rather than employing
7 their own rules of res judicata. "The State must, however, satisfy the applicable requirements
8 of the Due Process Clause. A State may not grant preclusive effect in its own courts to a
9 constitutionally infirm judgment, and other state and federal courts are not required to accord
10 full faith and credit to such a judgment." Kremer, 456 U.S. at 482 (footnote omitted). Where
11 the federal court is considering the preclusive effect of a state court judgment under 28
12 U.S.C. § 1738, "state proceedings need do no more than satisfy the minimum procedural
13 requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the
14 full faith and credit guaranteed by federal law." Kremer, 456 U.S. at 481.

15 Taylor had an opportunity for full and fair litigation of his RLUIPA claim that he had
16 not been allowed to allow him to possess and use tobacco for his religious ceremony. In the
17 Del Norte action, the court found that Taylor had made a sufficient showing to require a
18 formal response from the CDCR, and ordered the CDCR to show cause in the superior court
19 as to why relief should not be granted. The superior court even appointed counsel for Taylor.
20 The parties submitted evidence and argument, and then the court issued its decision. The Del
21 Norte court ordered the CDCR to allow Taylor to possess and use tobacco for his religious
22 ceremony.

23 The fact that the earlier litigation was a state habeas proceeding does not exempt the
24 case from the principles of res judicata. See Silverton, 644 F.2d at 1347. "[B]ecause of the
25 nature of a state habeas proceeding, a decision actually rendered should preclude an identical
26 issue from being relitigated in a subsequent § 1983 action if the state habeas court afforded a
27 full and fair opportunity for the issue to be heard and determined under federal standards."
28 Silverton v. Dept. of the Treasury, 644 F.2d 1341, 1347 (9th Cir. 1981). Taylor had that full

1 and fair opportunity for the issue to be heard and litigated under federal standards. The fact
2 that damages may have been unavailable in the state habeas proceeding does not matter.
3 See City of Los Angeles v. Superior Court, 85 Cal. App. 3d 143, 151 (Cal. Ct. App. 1978
4 (litigant "cannot avoid impact of rule against splitting causes of action by choosing for his
5 first foray a tribunal of limited jurisdiction.")

6 Under California law, res judicata prevents the prevailing party, as well as the losing
7 party, from returning to the well. "[A]ll claims based on the same cause of action must be
8 decided in a single suit; if not brought initially, they may not be raised at a later date. Res
9 judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of
10 the same cause of action on a different legal theory or for different relief. . . . A predictable
11 doctrine of res judicata benefits both the parties and the courts because it seeks to curtail
12 multiple litigation causing vexation and expense to the *parties* and wasted effort and expense
13 in *judicial administration*." Mycogen Corporation v. Monsanto Co., 28 Cal. 4th 888, 897
14 (Cal. 2002) (citations and internal quotation marks omitted, emphasis in source). In
15 Mycogen, the court held that the plaintiff who prevailed in an action for declaratory relief
16 and specific performance of a contract could not pursue damages in a subsequent action for
17 breach of that same contract. Res judicata barred the second action for damages. See id. at
18 904; accord Hatch v. Bank of America N.T. & S.A., 182 Cal. App. 2d 206, 210-11 (Cal. Ct.
19 App. 1960) (prevailing plaintiff in quiet title action who received judgment determining his
20 claim was superior and that he was entitled to immediate judgment was barred by res judicata
21 from pursuing second action for damages sustained during time he was deprived of use of
22 property).

23 Under California law, Taylor could not pursue an action for damages in California
24 because he already received a favorable adjudication in the earlier action he filed on the same
25 cause of action. Res judicata bars Taylor from relitigating the RLUIPA claim because the
26 same cause of action is being pursued, Taylor is the same party as in the earlier case, and the
27 adjudication of the petition was final and on the merits. The Del Norte County Superior
28 Court's decision finally and conclusively resolved his RLUIPA claim on the merits. The

1 present action must be dismissed.

2 Taylor argues that the motion to dismiss should be denied because this court already
3 determined that he stated a cognizable RLUIPA claim. Although the *possibility* of a res
4 judicata problem was apparent in Taylor's filings, it is only by taking judicial notice of the
5 state court filings submitted by defendants that this court has enough of a record to determine
6 that the complaint is barred by res judicata. The court "may take judicial notice of
7 proceedings in other courts, both within and without the federal judiciary system, if those
8 proceedings have a direct relation to matters at issue." Bias v. Moynihan, 508 F.3d 1212,
9 1225 (9th Cir. 2007) (internal quotation marks and citations omitted). The court grants
10 defendants' request for judicial notice of defendants' Exhibits A-M, which are documents
11 filed in the Del Norte action and Sacramento action in state court.

12 **CONCLUSION**

13 Defendants' motion to dismiss is GRANTED. (Docket # 27.) This action is barred
14 by res judicata and therefore is dismissed. In light of the dismissal of this action, plaintiff's
15 motion for a preliminary injunction is DENIED. (Docket # 37.) The clerk shall close the
16 file.

17 IT IS SO ORDERED.

18 Dated: October 28, 2010

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Marilyn Hall Patel
United States District Judge

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