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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ARMANDO VINCENT MUNOZ,

Plaintiff,

v.

JAMES TILTON, et al.,

Defendants.

) Case No.: 5:07-CV-03846 EJD

) **ORDER GRANTING DEFENDANT’S**
) **MOTION TO DISMISS; DENYING**
) **PLAINTIFF’S MOTION FOR**
) **SUMMARY JUDGMENT**

) **[Re: Docket Nos. 39, 44]**

Plaintiff Armando Vincent Munoz (“Plaintiff” or “Munoz”), a prisoner in the custody of the California Department of Corrections and Rehabilitation, has brought this civil action pursuant to 42 U.S.C. § 1983. Presently before the Court are Defendants’ Motion to Dismiss the Amended Complaint and cross-motions for summary judgment filed by both parties. For the reasons explained herein, the Court GRANTS Defendants’ Motion to Dismiss.

I. Background

A. Plaintiff Munoz’s Incarceration

Plaintiff Munoz has been incarcerated since May 18, 1996, and became an inmate in the California Department of Corrections and Rehabilitation (“CDCR”) on November 22, 1996. Am.

1 Compl., Dkt. No. 25, ¶¶ 13, 15. At the time of the incident underlying this lawsuit, Munoz was
2 housed at Correctional Training Facility (“CTF”), but he was subsequently transferred and is
3 currently housed at California State Prison, Solano. Declaration of I. Palmer ISO Def.’s MSJ
4 (“Palmer Decl.”), Dkt. No. 45, ¶ 3.

5 Munoz asserts that, at the time of his incarceration, he began living as a Christian and has
6 received Christian materials from various sources, including Christian ministries. Am. Compl.
7 ¶¶ 14, 16; see also Declaration of Kevin T. Snider ISO Pl.’s MSJ (“Snider Decl.”), Dkt. No. 42, Ex.
8 B at 19:16-18, 20:9-19. Munoz avers that as part of his religious beliefs he “must hear messages
9 from a variety of ministers to have the Word of God confirmed in his heart.” Am. Compl. ¶ 19; see
10 also Snider Decl. Ex. B at 37:2-38:5. As a result, Munoz received cassette tapes and compact discs
11 (“CDs”) containing sermons and worship music from a variety of Christian ministries, including
12 Abundant Life Foursquare Church (“Abundant Life”). Am. Compl. ¶ 16.

13 14 **B. Article 43 and Operations Procedure 26**

15 Article 43 of Chapter 5 of the CDCR Departmental Operations Manual “standardizes
16 allowable inmate property and enumerates in great detail the types and quantities of property an
17 inmate is allowed to possess based on the inmate’s classification.” Id. ¶ 20. The policy limits the
18 sources from which personal property can be obtained to “approved vendors” only. Id. Article 43
19 also “provides that inmates may acquire personal property using funds in their inmate trust account
20 only from departmentally approved vendors.” Declaration of B. Hedrick ISO Def.’s MSJ
21 (“Hedrick Decl.”), Dkt. No. 46, ¶ 3.

22 On March 7, 2005, Defendant Suzan Hubbard, the Deputy Director of Adult Institutions,
23 issued a memorandum requiring all CDCR institutions to implement Article 43. Am. Compl. ¶ 21.
24 Subsequently, on December 12, 2005, Defendant Anthony P. Kane, the Warden at CTF until June
25 7, 2006, “issued a memorandum to the inmate population at CTF indicating that Article 43 would
26 be fully implemented . . . [and] would be effective on Jan 1, 2006.” Id. at ¶¶ 8, 22. On May 11,
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1 2006, a list of the approved vendors from which inmates could receive or purchase personal
2 property was issued. Id. at ¶ 23. CTF then implemented Operational Procedure 26 on June 7,
3 2006, “to bring CTF into compliance with Article 43.” Id. at ¶ 24. Operations Procedure 26
4 implemented the policies and procedures of Article 43, governing inmate property receipt and
5 possession at CTF. Hedrick Decl. ¶ 4; see also Snider Decl. Ex. H.

6 Pursuant to Operations Procedure 26, “approved vendors must assemble, sort, package, and
7 process inmates’ property purchases in manners designed to ensure that inmates do not receive
8 contraband material from outside sources.” Hedrick Decl. ¶ 4; see Snider Decl. Ex. H. The
9 requirements are enforced to “enhance CTF’s security environment for staff and inmates by
10 limiting the opportunities for weapons, drugs, communications, and other illicit materials from
11 entering the institution. The approved-vendor policy also promotes efficient operations because it
12 reduces the amount of staff time that is needed to sort, review, and screen materials being delivered
13 to inmates at the institution.” Hedrick Decl. ¶ 4. Inmates in “appropriate privilege group[s] may
14 possess compact discs containing audio recordings” if they are commercially manufactured.
15 Hedrick Decl. ¶ 5; see Snider Decl. Ex. H.

17 **C. Alleged Enforcement of the Policy Against Munoz**

18 On Sept 25, 2006, Munoz attempted to retrieve Christian CDs mailed to him from
19 Abundant Life at CTF’s North Facility Property Room. Am. Compl. ¶ 25; see also Snider Decl.
20 Ex. B at 18:19-19:1, 50:14-18. However, the Property Room attendant “informed Munoz that he
21 could not receive religious materials from any Christian ministries because no Christian ministries
22 were on the approved-vendor list.” Am. Compl. ¶ 25; see also Snider Decl. Ex. B at 18:19-19:1.
23 After Munoz’s CDs were withheld, he filed an administrative grievance seeking their release. See
24 Am. Compl. ¶¶ 26-27; Snider Decl. Ex. B at 52:13-16. The Property Room attendant agreed to
25 hold the CDs pending Munoz’s administrative appeal. Am. Compl. ¶ 26; see also Snider Decl. Ex.
26 B at 52:1-3, 13-16.

1 Defendant Hedrick was a Correctional Business Manager II at CTF in 2006. Decl. Hedrick
2 ¶ 2. In November 2006, Hedrick interviewed Munoz concerning his grievance. Id. at ¶ 6. Hedrick
3 informed Munoz that the materials could not be received pursuant to CTF’s policies because they
4 did not come from an approved vendor. Id. Hedrick asserts that the CDs were not denied because
5 of their religious content, but rather “because they were not commercially manufactured compact
6 discs from an approved vendor, and thus posed potential security concerns.” Id. at ¶ 8.

7 On or about November 2, 2006, Hedrick advised Munoz that he could receive transcribed
8 versions of the CDs if the ministry that sent the discs was willing to transcribe the content into
9 written format. Hedrick Decl. ¶ 7; see also Am. Compl. ¶ 29. Additionally, Hedrick informed
10 Munoz that CTF’s Protestant Chaplain, Judge Lindsey, could possibly receive a donation of the
11 CDs to the chapel, where Munoz could subsequently check the CDs out from the chapel library to
12 listen to them. Hedrick Decl. ¶ 7; see also Am. Compl. ¶ 29; Snider Decl. Ex. B at 55:12-15. On
13 November 20, 2006, Munoz spoke with Chaplain Lindsey about this possibility, but Chaplain
14 Lindsey refused to receive the CDs because he was unable to receive materials for individual
15 inmates and accommodate all requests due to limited space and resources. Hedrick Decl. ¶ 7; see
16 also Am. Compl. ¶ 30; Snider Decl. Ex. B at 57:15-19. As a result, Munoz could not possess the
17 private, non-commercial CDs and Chaplain Lindsey was unable to accept them, so the CTF
18 Property Room did not release the Abundant Life CDs to Munoz. Hedrick Decl. ¶ 7.

19 Munoz subsequently resubmitted his administrative appeal for Second Level Review on
20 November 20, 2006. Am. Compl. ¶ 31. The Second Level Review denied Munoz’s appeal, stating
21 that all tapes and CDs must be purchased through approved vendors as articulated in Operations
22 Procedure 26. Id. Munoz then resubmitted the appeal to the Director’s Level of Review, which
23 denied the appeal on March 22, 2007. Id. at ¶ 32.

1 Munoz asserted during his deposition that all of his religious needs are being met. Id. at 76:5-7.
2 When asked whether all Munoz’s “religious needs for hearing the word of God [are] being met
3 right now,” Munoz responded, “Yes.” Id.

4 5 **F. The Present Motions**

6 Defendants now move to dismiss Munoz’s claims pursuant to Federal Rule of Civil
7 Procedure 12(b)(1) on grounds that the case is moot due to the fact that Munoz is no longer being
8 housed at CTF. Def.’s MSJ, Dkt. No. 44, 1:6-8, 8:17-19. The parties have also cross-moved for
9 summary judgment on the grounds that, in light of the lack of disputed issues of material fact, each
10 is entitled to judgment as a matter of law on the substantive issues of Plaintiff Munoz’s claims. Id.
11 at 1:9-14, 8:23-26. On March 22, 2013, the Court heard oral arguments of counsel on these
12 motions. See Dkt. No. 57.

13 14 **II. Legal Standard**

15 A party can file a motion to dismiss with the Court for lack of subject matter jurisdiction.
16 Fed. R. Civ. P. 12(b)(1). “Mootness . . . pertain[s] to a federal court’s subject-matter jurisdiction
17 under Article III, [so it is] properly raised in a motion to dismiss under Federal Rule of Civil
18 Procedure 12(b)(1).” White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). “[W]hen considering a
19 motion to dismiss pursuant to Rule 12(b)(1) the district court is not restricted to the face of the
20 pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual
21 disputes concerning the existence of jurisdiction.” McCarthy v. United States, 850 F.2d 558, 560
22 (9th Cir. 1988). Therefore, a Rule 12(b)(1) motion may be either a facial or factual challenge.
23 Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004).

24 A facial 12(b)(1) motion to dismiss involves an inquiry confined to the allegations in the
25 complaint. Id. When a defendant makes a facial challenge, all material allegations in the
26 complaint are assumed true, and the court must determine whether lack of federal jurisdiction

1 appears from the face of the complaint itself. Thornhill Publ'g Co. v. General Tel. Elec., 594 F.2d
2 730, 733 (9th Cir. 1979).

3 On a factual challenge, such as the one before this Court, the party opposing the motion
4 must produce affidavits or other evidence necessary to satisfy its burden of establishing subject
5 matter jurisdiction. Safe Air For Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). Under
6 a factual attack, the court need not presume the plaintiff's allegations are true. White, 227 F.3d at
7 1242. In the absence of a full-fledged evidentiary hearing, however, disputed facts pertinent to
8 subject matter jurisdiction are viewed in the light most favorable to the nonmoving party. Dreier v.
9 United States, 106 F.3d 844, 847 (9th Cir. 1996). Disputed facts related to subject matter should be
10 treated as they would in a motion for summary judgment. Id.

11 12 **III. Discussion**

13 **A. Mootness**

14 Plaintiff Munoz's transfer from CTF to Solano calls into question the issue of mootness.
15 "An inmate's release from prison while his claims are pending generally will moot any claims for
16 injunctive relief relating to the prison's policies unless the suit has been certified as a class action."
17 Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995) (citing Preiser v. Newkirk, 422 U.S. 395, 402-
18 03 (1975), and Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991)). "As a general rule . . .
19 voluntary cessation of allegedly illegal conduct does not make a case moot. But a case may
20 become moot if (1) it can be said with assurance that there is no reasonable expectation . . . that the
21 alleged violation will recur, and (2) interim relief or events have completely and irrevocably
22 eradicated the effects of the alleged violation." Lindquist v. Idaho State Bd. of Corrections, 776
23 F.2d 851, 854 (9th Cir. 1985) (internal quotations omitted).

1 **B. The Parties' Arguments**

2 Defendants argue that Munoz's transfer to another prison has rendered moot his pending
3 claims for injunctive relief to the prison's policy. See Dilley, 64 F.3d at 1368. Defendants argue
4 that Munoz has not demonstrated a reasonable expectation that he will be transferred back to CTF
5 where the injury would recur. Def.'s MSJ, Dkt. No. 44, 11:17-18. Moreover, since Munoz's
6 transfer, he has "received numerous religious preaching compact discs at Solano [and] his religious
7 needs to hear the word of God are currently being met." Def.'s MSJ, Dkt. No. 44, at 9:21-24,
8 10:15-20; see also Lewis Decl., Dkt. No. 47, Ex. A at 17:2-7, 73:18-23, 76:5-7.

9 Plaintiff Munoz argues the case should not be dismissed as moot because "Defendants'
10 voluntary cessation of the unlawful conduct cannot, in and of itself, moot the case as a matter of
11 law." Pl.'s Opp., Dkt. No. 51, at 5:14-16; see City of Mesquite v. Aladdin's Castle, Inc., 455 U.S.
12 283 (1982). Munoz argues that Defendants have not met their burden to show that the restrictions
13 on religious materials will not recur because Article 43 is still in place as a statewide policy, and
14 "Solano staff can, of their own volition, or compelled by superiors against their better judgment,
15 enforce Article 43." Pl.'s Opp., Dkt. No. 51, at 6:21-22, 8:9-15. Finally, Munoz argues that the
16 parties can only speculate as to Munoz's housing, so transfer from Solano still looms. Id. at 9:14-
17 22.

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19 **C. Plaintiff Munoz's Claims Are Moot**

20 The Court finds that Plaintiff Munoz's claims for injunctive and declaratory relief are moot
21 for two main reasons which will be explicated below: (1) Munoz's transfer and subsequent receipt
22 of religious materials at Solano have eradicated the effects of the alleged violation at CTF; and (2)
23 Munoz has failed to demonstrate a reasonable expectation that he would be transferred back to
24 CTF, where the incident occurred and could recur. As such, Defendants' motion to dismiss
25 pursuant to Federal Rule of Civil Procedure 12(b)(1) is granted without leave to amend.
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1 In Preiser v. Newkirk, 422 U.S. 395 (1975), plaintiff Newkirk was transferred from a
 2 medium security to maximum security prison in New York allegedly due to his involvement with
 3 union formation. Id. at 398. “Newkirk and three of the other four prisoners transferred from
 4 Wallkill brought suit . . . [requesting] a declaratory judgment that the transfers were in violation of
 5 the Constitution and laws of the United States and an injunction ordering their return to Wallkill,
 6 expunging all record of their transfer, and prohibiting future transfers without a hearing.” Id.
 7 Subsequently, Newkirk was transferred back to Wallkill and “had a memorandum placed in [his]
 8 file which explained the nature of the transfer, noted that the transfer was not for disciplinary
 9 reasons, and was not to have any bearing on eligibility for parole or the decisions of the time-
 10 allowance committee.” Id. at 399. Newkirk was then transferred to minimum security facility in
 11 New York, making it “clear that correction authorities harbor no animosity toward Newkirk.” Id.
 12 at 402.

13 The Preiser Court stated that the situation was “more than a ‘[m]ere voluntary cessation of
 14 allegedly illegal conduct,’ where we would leave ‘[t]he defendant . . . free to return to his old
 15 ways,’” and there is “no reasonable expectation that the wrong will be repeated.” Id. (internal
 16 citations omitted). The Court held that the issue did not fall within the mootness exception of
 17 capable of repetition, yet evading review, stating “[a]ny subjective fear Newkirk might entertain of
 18 being again transferred, under circumstances similar to those alleged in the complaint, or of
 19 suffering adverse consequences as a result of the 1972 transfer, is indeed remote and speculative
 20 and hardly casts that ‘continuing and brooding presence’ over him” Id. at 403-04.

21 In this case, similarly, Munoz’s transfer from CTF has eradicated the effects of the alleged
 22 violations that occurred there. As noted, in Solano, where he is currently being housed, Munoz has
 23 not experienced the conduct he alleges amounts to RLUIPA and constitutional violations. As
 24 noted, Munoz has received approximately forty religious preaching CDs and has stated at his
 25 deposition that his religious needs are currently being met. See Lewis Decl., Dkt. No. 47, Ex. A at
 26 73:18-23, 75:18-23, 76:5-7. Munoz argues that this situation amounts to a “voluntary cessation of
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1 illegal conduct” to which mootness does not apply because Article 43 is applicable to Solano.
2 However, the undisputed fact remains that Article 43 has not been enforced against him at his
3 current location, and Munoz has received religious CDs. See Lewis Decl. at 75:18-23. In fact,
4 Solano staff has not enforced the policy since Munoz’s incarceration there in 2009. See id.

5 Moreover, Munoz has failed to demonstrate a reasonable expectation of returning to CTF.
6 In Johnson v. Moore, the Ninth Circuit found that plaintiff Johnson’s claims for injunctive relief
7 relating to Clallam Bay Corrections Center (“CBCC”) policies were moot because he failed to
8 demonstrate a reasonable expectation of returning to CBCC. 948 F.2d 517, 519-20 (9th Cir. 1991).
9 Johnson had made several Constitutional claims based on the conditions of his confinement in
10 CBCC, including “injunctive relief from the ‘publishers only’ rule’s application to softcover books
11 and from the Clallam Bay’s smoking policy,” due process claims, freedom of religion, and Eighth
12 Amendment claims. Id. at 519. Before the District Court made any decisions in the case, Johnson
13 was transferred to a federal correctional facility in Washington, and prior to his appeal to the Ninth
14 Circuit, Johnson was transferred to a federal prison in Arizona. Id. The court held that Johnson
15 failed to demonstrate a reasonable expectation of transferring back to CBCC, which rendered moot
16 his claim for injunctive relief. Id. at 520.

17 Similarly, there is no indication that Munoz has a reasonable expectation that he will be
18 transferred from Solano back to CTF, even if his scores change so as to qualify him for a transfer.
19 See Palmer Decl. ¶ 4. Solano houses Level II and III inmates, so if Munoz is reclassified for Level
20 II housing at his yearly review, he could remain at Solano. Id. at ¶¶ 3-4. As such, Munoz’s yearly
21 review regarding transfer eligibility also fails to create a reasonable expectation that he will be
22 transferred from Solano back to CTF. Nor are there pending requests to transfer Munoz from
23 Solano to another CDCR institution; in fact, Munoz has stated that “[t]he parties can only engage
24 in conjecture regarding Munoz’ future housing assignment,” Pl.’s Opp., Dkt. No. 51, at 10:3-4.
25 Therefore, as in Johnson, Munoz’s claim for injunctive relief is moot because he failed to
26 demonstrate a reasonable expectation of returning to CTF.
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1 The situation presently before the Court is analogous to that of Dilley v. Gunn, in which the
2 Ninth Circuit held the plaintiff Dilley’s claim was moot where “Dilley has been transferred from
3 Calipatria to another California state prison.” 64 F.3d 1365, 1368 (9th Cir. 1995). Dilley, a former
4 inmate at Calipatria alleged that the defendants had violated his right of access to the courts by
5 failing to provide reasonable access to the prison law library. Dilley, 64 F.3d at 1367. The Ninth
6 Circuit held that “Dilley’s claim that he might be transferred back to Calipatria some time in the
7 future is too speculative to prevent mootness.” Id. at 1369 (internal quotation marks omitted).
8 Similarly, Plaintiff Munoz merely suggests that he might be transferred back to CTF at some point
9 in the future, which, as the Dilley court held, is “too speculative to prevent mootness.” See id.

10 Several cases from the Eastern District of California are analogous to the case before this
11 Court. In Rodriguez v. Hubbard, for example, plaintiff Rodriguez was incarcerated at Kern Valley
12 State Prison (“KVSP”) in Delano, California, where the alleged injury occurred. Rodriguez v.
13 Hubbard, No. 1:10-CV-00858-DLB PC, 2012 WL 4490768 (E.D. Cal. Sept. 28, 2012). Rodriguez
14 alleged that “Defendants refused to enforce state and federal laws which established rights
15 protecting Native American religious practices and sacred religious artifacts” Id. The district
16 court determined Rodriguez’s claim for injunctive relief was moot because “Plaintiff [was] no
17 longer incarcerated at KVSP.” Id. The court stated that “[t]ransfer to another prison renders the
18 request for injunctive relief moot absent some evidence of an expectation of being transferred
19 back.” Id. (citing Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007)); see also Abel v.
20 Martel, No. 2:09-CV-1749 JAM CKD, 2013 WL 552416 (E.D. Cal. Feb. 13, 2013) (declaring that
21 “injunctive relief against any of the defendants in this action would not be appropriate [because]
22 the transfer of a prisoner generally moots any claim for injunctive relief unless plaintiff
23 demonstrates a reasonable expectation of return to the prison where the claims arose,” and that
24 plaintiff failed to show a reasonable expectation of return); Burton v. Clark, No. 1:09-CV-00061-
25 AWI, 2012 WL 3205425 (E.D. Cal. Aug. 3, 2012) (concluding that Plaintiff’s RLUIPA claim for
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1 injunctive relief was moot because he was no longer housed at the prison at issue and demonstrated
2 no evidence of being transferred back).

3 Munoz cites Jesus Christ Prison Ministry v. California Dept. of Corrections,¹ to support his
4 argument that this case is not moot. In that case, plaintiffs were sent religious materials from Jesus
5 Christ Prison Ministry (“JCPM”) and other ministries while incarcerated at California State
6 Substance Abuse Treatment Facility (“SATF”). 456 F. Supp. 2d. 1188, 1193 (E.D. Cal. 2006).
7 However, “pursuant to a new policy . . . prison officials began denying plaintiffs these religious
8 materials because the literature was not sent from an ‘approved vendor’ and was thus considered
9 contraband.” Id. The defendants argued that the case was moot because the policy had changed so
10 that the plaintiffs could once again receive materials from JCPM. Id. at 1194. The defendants
11 asserted that “the issues with respect to these written materials are no longer ‘live’ and the parties
12 therefore ‘lack a legally cognizable interest’ in the outcome of this action.” Id. at 1196.

13 The primary distinguishing factor from the situation in Jesus Christ Prison Ministry and the
14 present one is that the plaintiffs in that case were not transferred to a different facility. The Jesus
15 Christ Prison Ministry court observed that the mail policies at SATF changed three times over a
16 two year period, creating a “moving target” and “no concrete assurance that the policies in question
17 [would] not be subject to further modification and change.” Id. at 1196. Plaintiff Munoz, in
18 contrast, has been removed from CTF (the facility where the alleged violations occurred) and
19 transferred to Solano (the facility where he has stated that his religious needs are being met).
20 Article 43 has not been enforced at Solano since its adoption through Operations Procedure 26 in
21 2006, and Munoz has not argued that his rights have been violated there. As such, there is no
22 “moving target” that concerned the Jesus Christ Prison Ministry court.

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26 ¹ Although Jesus Christ Prison Ministry v. California Dept. of Corrections has been “Withdrawn Pursuant to
27 Settlement” on April 16, 2007, this Court will analyze the reasoning of that court and distinguish it from the facts
28 presently before the Court.

1 **V. Conclusion and Order**

2 For the foregoing reasons, the Court finds that Plaintiff Munoz's claims in the Amended
3 Complaint are moot. Accordingly, the Court orders the following: Defendants' Motion to Dismiss
4 for lack of subject matter jurisdiction (Docket Item No. 44) is GRANTED WITH PREJUDICE and
5 Plaintiff Munoz's Amended Complaint is DISMISSED WITHOUT LEAVE TO AMEND. Plaintiff
6 Munoz's Motion for Summary Judgment (Docket Item No. 39) is DENIED.

7 Since this Order effectively disposes of the entire case, the Clerk shall close this file upon
8 entry of Judgment.

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10 **IT IS SO ORDERED.**

11 Dated: May 15, 2013

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13 EDWARD J. DAVILA
14 United States District Judge