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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HOWARD YOUNG,

vs.

LARRY SMALLS, et al.,

Plaintiff,

Defendants.

CASE NO. 09CV2545 DMS (JMA)
**ORDER DENYING PLAINTIFF’S
AMENDED MOTION FOR
INJUNCTIVE RELIEF**

Pending before the Court is Plaintiff’s amended motion for a temporary restraining order and/or for preliminary injunctive relief. For the following reasons, Plaintiff’s motion is denied.

**I.
BACKGROUND**

Plaintiff, a state prisoner proceeding *pro se*, filed a Complaint pursuant to 42 U.S.C § 1983 on November 10, 2009. (Doc. 1.) Plaintiff subsequently filed several amended complaints and his Fourth Amended Complaint (“FAC”) is presently on file with the Court. (Doc. 31.) In his FAC, Plaintiff asserts, among other claims, a claim requesting kosher diet meals and alleging the religious vegetarian diet meals he currently receives are insufficient in light of his religious beliefs, in violation of the First and Fourteenth Amendments to the Constitution and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, *et seq.*

On December 8, 2010, Plaintiff filed a motion for preliminary injunctive relief. (Doc. 51.) The

1 following day, Plaintiff filed an amended motion for preliminary injunctive relief. (Doc. 53.) In his
2 amended motion, Plaintiff seeks to be provided with kosher diet meals in light of his “sincerely held
3 beliefs as a Hebrew-Israelite.” (FAC at 1.) Defendants Price, Ochoa, Rigney, Tapia, and Smalls filed
4 an opposition to Plaintiff’s amended motion. (Doc. 68.)

5 **II.**

6 **DISCUSSION**

7 On a motion for a preliminary injunction, a plaintiff has the burden of establishing: 1)
8 likelihood of success on the merits; 2) likelihood of irreparable harm in the absence of preliminary
9 relief; 3) the balance of equities tips in his favor; and 4) an injunction is in the public interest. *Winter*
10 *v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365, 374 (2008). With respect to the showing a
11 plaintiff must make regarding his chances of success on the merits, the Ninth Circuit applies a sliding
12 scale approach. *See Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049 (9th Cir. 2010). Under
13 the sliding scale approach, the elements of the preliminary injunction test are balanced and, where a
14 plaintiff can make a stronger showing of one element, it may offset a weaker showing of another. *Id.*
15 “Therefore, ‘serious questions going to the merits’ and a hardship balance that tips sharply towards
16 the plaintiff can support issuance of an injunction, so long as the plaintiff also shows a likelihood of
17 irreparable injury and that the injunction is in the public interest.” *Id.* at 1053. Accordingly, it is
18 necessary for a plaintiff to demonstrate each of these four elements for a preliminary injunction to
19 issue. Furthermore, under the Prison Litigation Reform Act, preliminary injunctive relief against a
20 state prison system must be “narrowly drawn, extend no further than necessary to correct the harm the
21 court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.”
22 18 U.S.C. § 3626(a)(2).

23 Here, Plaintiff has demonstrated neither a likelihood of success nor serious questions going to
24 the merits of his claims. In his amended motion, he merely states he is a “Hebrew-Israelite” requesting
25 the kosher diet meals available at Kern Valley State Prison, where he is currently incarcerated, and that
26 the kosher meals available meet the requirements of his sincerely-held religious beliefs. He attaches
27 as an exhibit a response from the California Prison Health Care Services Office of Third Level
28 Appeals to his appeal from a decision regarding a religious exception to receiving a Tuberculosis shot

1 and claims this exhibit indicates Defendant CDCR has acknowledged Plaintiff's religious beliefs.
2 However, the exhibit merely notes that Plaintiff states he is a Jewish inmate and states he has
3 sincerely-held beliefs as a Hebrew-Israelite. Such a bare showing by Plaintiff is insufficient to satisfy
4 his burden of demonstrating a likelihood of success or serious questions going to the merits of his
5 claim. Because Plaintiff has not sufficiently satisfied the first element of the preliminary injunction
6 standard, the Court does not address the remaining elements.

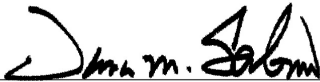
7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons, Plaintiff's amended motion for a temporary restraining order and/or
10 for preliminary injunctive relief is denied.

11 **IT IS SO ORDERED.**

12 DATED: January 12, 2011

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14 HON. DANA M. SABRAW
15 United States District Judge

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