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

OMAR ERNEST EPPS,

Plaintiff,

vs.

N. GRANNIS, et al.,

Defendants.

CASE NO. 10-cv-1949 BEN (MDD)

ORDER:

**(1) ADOPTING IN PART AND
DECLINING IN PART REPORT
AND RECOMMENDATION RE:
MOTION TO DISMISS**

[Docket Nos. 47]

I. INTRODUCTION

Plaintiff Omar Ernest Epps, a prisoner at California’s Calipatria State Prison proceeding *pro se*, filed a First Amended Complaint on February 26, 2011. In his Amended Complaint he names thirteen defendants in six counts alleging fifteen claims for relief. On May 12, 2011, Defendants filed a Motion to Dismiss. On December 1, 2011, the Magistrate Judge issued a Report and Recommendation recommending that Defendants’ Motion to Dismiss be granted in part and denied in part. Plaintiff filed Objections to the Report and Recommendation on December 21, 2011. Defendants filed a Reply to the Objections on January 13, 2012. Consideration of the Report and Recommendation awaited the outcome of Plaintiff’s appeal to the Ninth Circuit Court of Appeals regarding this Court’s ruling denying Plaintiff’s motion for a preliminary injunction. The appeal has been decided. The ruling has been affirmed and the

1 Mandate issued last week.

2 The Court need only conduct a *de novo* review of those claims and issues to which Plaintiff
3 objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (“The
4 statute makes it clear that the district judge must review the magistrate judge’s findings and
5 recommendations *de novo* if objection is made, but not otherwise.”); *see also* *Wang v. Masaitis*,
6 416 F.3d 992, 1000 n.13 (9th Cir. 2005). Now, having reviewed the Objections to the Report and
7 Recommendation on Defendants’ Motion to Dismiss *de novo*, the Report is adopted in part and
8 Plaintiff’s Objections are overruled in part. Defendants’ Motion to Dismiss is granted in part and
9 denied in part.

10 II. DISCUSSION

11 Plaintiff’s many claims for relief may be roughly grouped into two categories: (a) the
12 § 1983 claims; and (b) the Religious Land Use and Institutionalized Persons Act of 2000
13 (“RLUIPA”) claims. Plaintiff does not object to the Report’s recommendations concerning the
14 § 1983 claims in Counts 3 and 4 of the Amended Complaint. Nor does he object to the
15 recommendation concerning the § 1983 claim contained in Count 5 of the Amended Complaint.
16 Therefore, the Report and Recommendation concerning those claims is adopted and the § 1983
17 claims in Counts 3 and 4 are dismissed. Additionally, the § 1983 claim in Count 5 is dismissed
18 against all Defendants except Defendant Meister.

19 As to the remaining claims for relief,¹ after reviewing *de novo* the Amended Complaint and
20 the Motion to Dismiss, the Court finds as follows:

21 Count 1 describes events that took place in 2006. Count 2 describes events that took place
22 in February 2008. Since the case was filed in September 2010, the Report recommends that the
23 § 1983 claims be dismissed as barred by the applicable two-year statute of limitations. Plaintiff
24 argues that the violations are ongoing, but this is not evident from the face of the Amended
25 Complaint. Therefore, the recommendation is adopted and the § 1983 claims in Count 1 and 2 are

26 ¹*Pro se* pleadings are held to a less stringent standard than those drafted by lawyers.
27 *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

1 dismissed as time barred.

2 Counts 1 and 2 also describe violations of RLUIPA. The Report recommends dismissing
3 Count 1 while permitting Count 2 to go forward. This Court declines the recommendation
4 regarding Count 1 – finding instead that, construing the Complaint liberally, Plaintiff has in fact
5 stated a claim for relief under RLUIPA in Count 1. Therefore, the motion to dismiss as to the
6 RLUIPA claims in Counts 1 and 2, is denied.

7 As noted above, there are no objections concerning Counts 3 & 4. The Report
8 recommends denying the motion to dismiss the RLUIPA claims in Counts 3 & 4, and the
9 recommendation is adopted.

10 The Report recommends dismissing the RLUIPA claim in Count 5. This Court declines
11 the recommendation regarding Count 5 – finding instead that, construing the Complaint liberally,
12 Plaintiff has in fact stated a claim for relief under RLUIPA in Count 5. Therefore, the motion to
13 dismiss as to the RLUIPA claim in Count 5, is denied.

14 The Report recommends dismissing the § 1983 claim in Count 6 for lack of specificity.
15 Plaintiff focuses his Objections on the RLUIPA claim in Court 6, rather than the § 1983 claim.
16 This Court agrees with the Report and finds Count 6 fails to state a claim under § 1983. Therefore
17 the motion to dismiss is granted as to the § 1983 claim in Count 6.

18 The Report also recommends dismissing the RLUIPA claim in Count 6. This Court
19 declines the recommendation regarding Count 6 – finding instead that, construing the Complaint
20 liberally, Plaintiff has in fact stated a claim for relief under RLUIPA in Count 6. Therefore, the
21 motion to dismiss as to the RLUIPA claim in Count 6, is denied.

22 Finally, all Defendants move for dismissal on the basis of qualified immunity. The Report
23 recommends against dismissal at this point in the case because qualified immunity is not obvious
24 from the face of the Amended Complaint. *See Groten v. California*, 251 F.3d 844, 851 (9th Cir.
25 2001); *Rupe v. Cate*, 688 F. Supp. 2d at 1050. Neither party objects to this recommendation.
26 Therefore, the recommendation is adopted and the motion to dismiss on the basis of qualified
27 immunity is denied.

1 **III. CONCLUSION**

2 Accordingly, Defendants' Motion to Dismiss the First Amended Complaint is granted in
3 part, and denied in part, as follows:

4 Section 1983 Claims.

5 The recommendation is adopted and the § 1983 claims in Count 1 and 2 are dismissed as
6 barred by the statute of limitations.

7 The recommendation is adopted and the § 1983 claims in Counts 3 and 4 are dismissed.

8 The recommendation is adopted and the § 1983 claim in Count 5 is dismissed against all
9 Defendants *except* Defendant Meister.

10 The recommendation is adopted and the § 1983 claim in Count 6 is dismissed.

11 To sum up, all of the § 1983 claims against all Defendants are dismissed, except claim 5
12 against Defendant Meister. The motion to dismiss on the basis of qualified immunity is denied.

13 RLUIPA Claims.

14 The recommendation is declined and the motion to dismiss the RLUIPA claims in Counts
15 1, 5 and 6, is denied. The recommendation is adopted and the motion to dismiss the RLUIPA
16 claims in Counts 2, 3 and 4, is denied. To sum up, all of the RLUIPA claims for prospective
17 injunctive relief may go forward.²

18 IT IS SO ORDERED.

19 DATED: March 26, 2012

20 
21 Hon. Roger T. Benitez
22 United States District Judge
23
24
25

26 _____
27 ²This assumes for purposes of the motion to dismiss that the claims are not moot. *See e.g.,*
28 *Alvarez v. Hill*, ___ F.3d ___, 2012 WL 164507 *1 (9th Cir. Jan. 20, 2012).