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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 PEDRO RODRIGUEZ,

Case No. 3:17-cv-00205-MMD-CBC

7 Plaintiff,

8 v.

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE CARLA B. CARRY

9 JAMES DZURENDA,

10 Defendant.

11 **I. SUMMARY**

12 Before the Court is the Report and Recommendation of United States Magistrate
13 Judge Carla B. Carry (ECF No. 29) (“R&R”) relating to Plaintiff Pedro Rodriguez’s motion
14 for temporary restraining order and/or preliminary injunction (“Motion”) (ECF No. 15).
15 Plaintiff filed an objection (“Objection”) (ECF No. 32) and Defendant responded (ECF
16 No. 34).¹ Plaintiff seeks a temporary restraining order and/or preliminary injunction to
17 prohibit Defendant from enforcement Administrative Regulation (“AR”) 810 and 810.1 to
18 the extent they preclude him from practicing his chosen religious faith of Satanism.²
19 (ECF No. 15 at 1-2.) The R&R recommended denying the Motion. (ECF No. 29.) For the
20 reasons stated below, the Court overrules Plaintiff’s Objection and adopts the R&R.

21 **II. RELEVANT BACKGROUND**

22 Plaintiff is an inmate in the custody of the Nevada Department of Corrections
23 (“NDOC”) and is housed at Ely State Prison (“ESP”). (ECF No. 15 at 2.) Plaintiff alleges
24 the following.

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26 ¹Plaintiff also filed a reply (ECF No. 35) without seeking leave of court. See LR IB
27 3-2(a) (“Replies [to response to objection] will be allowed only with leave of court.”). The
Court will strike Plaintiff’s reply (ECF No. 35).

28 ²Defendant opposed Plaintiff’s Motion (ECF No. 17) and Plaintiff replied (ECF No.
19).

1 Between June 2016 and January 1, 2017, Defendant NDOC Director James
2 Dzurenda was responsible for promulgating Administrative Regulations to govern the
3 conditions of inmates' confinement under state law. (ECF No. 7 at 4.) AR 810 addresses
4 "Religious Faith Group Activities," and AR 810.1 constitutes NDOC's "Religious Practice
5 Manual" ("Manual"). (ECF No. 15 at 3.) The Manual allows prisoners "to practice the
6 requirements of recognized faith groups" but only those "recognized faith groups"
7 specified in AR 810.1. (Id.) AR 810.1 recognizes many religions that predate and
8 postdate Christianity. (Id.) Prisoners who observe these religions may purchase and
9 possess religious property items unique to their faith. (Id.) Prisoners who believe in other
10 faiths cannot. (Id.) Satanism is not a recognized faith group. (Id.)

11 Plaintiff informed prison officials that he believes in Satanism, but he has been
12 unable to engage in religious exercise and possess religious property in accordance with
13 his beliefs. (See id. at 2.) Plaintiff completed a "Faith Group Affiliation Declaration Form"
14 in 2007 declaring his faith group as Satanism. (ECF No. 7 at 5.) Plaintiff submitted three
15 separate "Request for Accommodation of Religious Practice" forms ("Request Forms") to
16 the ESP Chaplain requesting that NDOC add Satanism and various ritual property items
17 to the Manual, but neither the Chaplain nor the Religious Review Team ("RRT")
18 responded. (Id.) Plaintiff then initiated the grievance process seeking "to add Satanism
19 as a new, recognized religion." (Id. at 5-6.)

20 After screening, the Court permitted Plaintiff to proceed on the two counts
21 asserted in the Complaint against Defendant in his capacity as the director of NDOC: (1)
22 First Amendment right to Free Exercise and Fourteenth Amendment right to equal
23 protection claims alleged in Count I; and (2) Religious Land Use and Institutionalized
24 Persons Act, 42 U.S.C. § 2000 ("RLUIPA") claim in Count I. (ECF No. 6 at 6-7.)

25 Plaintiff seeks to preliminarily enjoin Defendant from enforcing AR 810.1 "to the
26 extent it entirely precludes [Plaintiff] from both engaging in any religious practice, and
27 purchasing, obtaining, and or possessing any religiously mandated property items
28 identified in AR 810.1, comparable to other similarly situated prisoners." (ECF No. 15 at

1 1-2.) Thus, Plaintiff is not seeking to maintain the status quo. Instead, Plaintiff is
2 requesting a mandatory injunction to require Defendant to formally recognize Satanism
3 and to allow him to practice his religious faith similar to other faith groups recognized
4 under AR 810.1 without having to comply with AR 810 and 810.1 pending a final
5 decision on the merits of his claims.

6 **III. LEGAL STANDARDS**

7 **A. Review of Magistrate Judge’s Report and Recommendation**

8 This Court “may accept, reject, or modify, in whole or in part, the findings or
9 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
10 timely objects to a magistrate judge’s report and recommendation, then the court is
11 required to “make a de novo determination of those portions of the [report and
12 recommendation] to which objection is made.” *Id.* In light of Plaintiff’s Objection, the
13 Court will engage in a de novo to determine whether to adopt Magistrate Judge Carry’s
14 R&R.

15 **B. Preliminary Injunction**

16 “An injunction is a matter of equitable discretion’ and is ‘an extraordinary remedy
17 that may only be awarded upon a clear showing that the plaintiff is entitled to such
18 relief.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (quoting *Winter v.*
19 *Nat. Res. Def. Council*, 555 U.S. 7, 22, 32 (2008)). To qualify for a preliminary injunction,
20 a plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of
21 irreparable harm; (3) that the balance of equities favors the plaintiff; and (4) that the
22 injunction is in the public interest. *Winter*, 555 U.S. at 20. The Ninth Circuit has held that
23 “serious questions going to the merits’ and a hardship balance that tips sharply toward
24 the plaintiff can support issuance of an injunction, assuming the other two elements of
25 the *Winter* test are also met.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132
26 (9th Cir. 2011).

27 Relief that “orders a responsibly party to take action” is treated as a mandatory
28 injunction. *Marlyn Nutraceuticals, Inc. v Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879

1 (9th Cir. 2009) (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)). A
2 mandatory injunction “goes well beyond simply maintaining the status quo pendent lite
3 and is particularly disfavored.” *Id.* (quoting *Anderson v. United States*, 612 F.2d 1112,
4 1114 (9th Cir. 1980)). Courts should deny requests for mandatory preliminary injunctions
5 unless the facts and law clearly favor the moving party. *Stanley v. Univ. of S. Cal.*, 13
6 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson*, 612 F.2d at 1114). “In general,
7 mandatory injunctions are not granted unless extreme or very serious damage will
8 result[,] and are not issued in doubtful cases.” *Park Vill. Apartment Tenants Ass’n v.*
9 *Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011) (alteration in original) (quoting
10 *Marlyn*, 571 F.3d at 879).

11 Furthermore, under the Prison Litigation Reform Act, preliminary injunctive relief
12 must be “narrowly drawn,” must “extend no further than necessary to correct the harm,”
13 and must be “the least intrusive means necessary to correct the harm.” 18 U.S.C. §
14 3626(a)(2).

15 **IV. DISCUSSION**

16 The Magistrate Judge recommended denying the Motion because Plaintiff cannot
17 satisfy any of the four factors required under *Winter*. As to the likelihood of success on
18 the merits factor, the Magistrate Judge found in part that it is not clear that Plaintiff
19 properly submitted the Request Forms to adequately request that Satanism be
20 recognized as a religion. (ECF No. 29 at 10.) As to the likelihood of irreparable harm
21 prong, the Magistrate Judge found that Plaintiff has not offered evidence of irreparable
22 harm and has not demonstrated that he is entirely prohibited from practicing his religion
23 pending a decision on the merits. (*Id.* at 12.) The Court agrees with these findings and
24 will address Plaintiff’s objections related to these two findings; the Court declines to
25 address the two remaining *Winter* factors.³

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27 ³Plaintiff argues in his Objection that Defendant and the Magistrate Judge failed to
28 address his arguments as to likelihood of success on the merits of all his claims. (ECF
No. 32 at 9.) However, Plaintiff’s failure to satisfy the second *Winter* factor test alone
warrants denying his Motion. Moreover, the likelihood of success on the merits of his

1 First, the Court agrees with the Magistrate Judge's finding that it is not clear from
2 the records that Plaintiff properly sought recognition of Satanism as a religion under AR
3 810 by showing he properly submitted the Request Form. (ECF No. 29 at 10.) Plaintiff
4 disputes the finding that he failed to submit the Request Forms, citing to the declarations
5 attached to his Motion. (ECF No. 32 at 2.) In his Objection, Plaintiff reiterated that he
6 submitted two Requests to the ESP Chaplain between June 2015 and April 2016, and a
7 third Request in May 2016 when he didn't receive a response to the two previous
8 Requests. (Id. at 3.) Plaintiff cites to the two declarations attached to his Motion. (ECF
9 No. 15 at 20-24.) However, Plaintiff did not offer a copy of these Request Forms.
10 Defendant offers a declaration from Chaplain Snyder to assert that NDOC has no record
11 of Plaintiff having submitted the Request Form during the period from January 2016 to
12 the date of his declaration in May 2018.⁴ (ECF No. 17-4 at 3.) The court notes that this
13 period exceeds the period of time that Plaintiff alleges Defendant was responsible for
14 promulgating AR 810 and 810.1—the Complaint identifies this period as between June
15 2016 and January 1, 2017. (ECF No. 1-1 at 4.) Because Plaintiff has the burden of
16 showing a likelihood of success on the merits, the lack of evidence in the records shows
17 he has not met his burden. The Court thus concurs with the Magistrate Judge's finding
18 that Plaintiff has not established he was deliberately excluded from practicing Satanism

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20 claims requires a finding at this stage that Plaintiff has demonstrated that he followed
21 NDOC's process for seeking recognition of Satanism as a religion under AR 810, but the
Magistrate Judge correctly found that Plaintiff has not. See discussion *infra*.

22 ⁴In his Objection, Plaintiff contends the Magistrate Judge incorrectly found that
23 Chaplain Snyder was the Chaplain at ESP when his declaration states that he was the
24 Chaplain at Warm Springs Correctional Center ("WSCC"). (ECF No. 32 at 5-6.) Chaplain
25 Snyder states that he is the Chaplain at WSCC, and he has "been employed since
26 January of 2002, and [has] been a current member of the Religious Review Team since
27 April 2015." (ECF No. 17-4 at 2.) While Plaintiff is correct that Chaplain Snyder does not
28 state that he was the Chaplain at ESP, he does assert that NDOC does not have a
record that Plaintiff submitted any Request Form and "the RRT has not reviewed or
considered inmate Rodriguez' desire to have his Faith Group recognized as he has not
made a proper request." (Id. at 3.) The error as to Chaplain's position as Chaplain at
ESP instead of at WSCC is immaterial given the substance of his statement as to the
absence of any RRT record that Plaintiff has requested for his desired religion to be
recognized.

1 as other recognized religious groups because the record is not clear that Plaintiff
2 submitted the Request Forms to initiate the process of recognition under AR 810 as he
3 claims.

4 Second, the Court agrees with the Magistrate Judge's finding that Plaintiff cannot
5 demonstrate that he will likely suffer irreparable harm if the Court in the absence of
6 preliminary injunctive relief. Plaintiff asserts in his Motion that he "suffers harm everyday,
7 as he is entirely precluded from practicing any aspect of his religion despite that others
8 may." (ECF No. 15 at 13.) Plaintiff seems to rely on paragraphs 3 and 4 of AR 810.01 as
9 support.⁵ (Id. (citing ECF No. 7 at 16).) But these two paragraphs do not support
10 Plaintiff's conclusory statement that "he is entirely precluded from practicing any aspect
11 of his religion." (ECF No. 7 at 7.) As Defendant points out, Plaintiff "is free to practice his
12 religion in his cell like any other practitioner via prayer" and Plaintiff's Motion fails to
13 identify "what items he is being denied or how NDOC is causing irreparable injury." (ECF
14 No. 17 at 5.) Allegations of irreparable harm must be supported with actual evidence,
15 and not merely conclusory statements or unsupported allegations. See, e.g., Caribbean
16 Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674-75 (9th Cir. 1988) (noting the lack of
17 such evidence and therefore concluding that "liability is too remote and speculative to
18 constitute an irreparable harm meriting preliminary injunctive relief"). Plaintiff's

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⁵AR 810.01(3) states:

21 The Department facilitates religious programs for inmates. This includes
22 program coordination and supervision, opportunities to practice the
requirements of recognized faith groups and utilizing community resources.

23 (ECF No. 7 at 16.) AR 810.01(4) states:

24 All limitations or prohibitions must be consistent with consideration of
25 whether the limitations or prohibitions is in furtherance of a compelling
26 government interest and is the least restrictive means of furthering that
27 compelling government interest, or as otherwise required by applicable
law. Additionally, the Department shall consider whether the Regulation or
purported restriction serves to "substantially burden" an inmate's ability to
worship his or her religion.

28 (Id.)

1 allegations of irreparable harm are not enough to show that he will likely suffer imminent
2 actual harm if the Court denies preliminary relief.

3 In sum, the Court agrees with the Magistrate Judge that Plaintiff has not satisfied
4 at least two of the four Winter factors. Indeed, the facts and law do not clearly favor
5 Plaintiff to entitle him to the mandatory injunction requested in the Motion.

6 **V. CONCLUSION**


7 The Court notes that the parties made several arguments and cited to several
8 cases not discussed above. The Court has reviewed these arguments and cases and
9 determines that they do not warrant discussion as they do not affect the outcome of the
10 motion before the Court.

11 It is therefore ordered that the Report and Recommendation of United States
12 Magistrate Judge Carla B. Carry (ECF No. 29) is adopted in full.

13 It is further ordered that Plaintiff's motion for temporary restraining order and/or
14 preliminary injunction (ECF No. 15) is denied.

15 It is further ordered that Plaintiff's reply in support of his objection (ECF No. 35) is
16 stricken.

17 DATED THIS 13th day of February 2019.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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