

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE EASTERN DISTRICT OF CALIFORNIA

4 BARRY A. HAZLE, JR., )  
5 )  
6 Plaintiff, ) 2:08-cv-02295-GEB-KJM  
7 v. ) ORDER GRANTING PLAINTIFF'S  
8 ) MOTION FOR PARTIAL SUMMARY  
9 MITCH CROFOOT, individually and as ) JUDGMENT, GRANTING DEFENDANT  
10 Parole Officer of the CDCR; BRENDA ) WESTCARE'S MOTION FOR SUMMARY  
11 WILDING, individually and as Unit ) JUDGMENT, and DENYING  
12 Supervisor of the CDCR; MATTHEW ) PLAINTIFF'S CROSS-MOTION FOR  
13 CATE, individually and as Secretary ) PARTIAL SUMMARY JUDGMENT  
14 of the CDCR; SCOTT KERNAN, )  
15 individually and as Chief Deputy )  
16 Secretary of Adult Operations of )  
17 the CDCR; TIM HOFFMAN, individually )  
18 and as Director of the Division of )  
19 Adult Parole Operations in )  
20 California; DEPUTY COMMISSIONER )  
21 JALLINS, individually and as )  
22 deputy commissioner; and WESTCARE, )  
23 Defendants. )  
24 )  
25 )  
26 )  
27 )  
28 )

17 Pending are three motions for summary judgment or summary  
18 adjudication concerning Plaintiff's claims that Defendants violated  
19 his rights under the Establishment Clause of the First Amendment.  
20 Specifically, Plaintiff argues these rights were violated when he was  
21 required to participate in a "12-step" drug rehabilitation program  
22 containing religious components as a condition of his parole.

23 Plaintiff filed a motion for partial summary judgment  
24 ("Partial Mot.") on December 23, 2009. Plaintiff seeks a ruling in  
25 this motion that Defendants Mitchell Crofoot ("Crofoot"), Brenda  
26 Wilding ("Wilding"), and Richard Jallins ("Jallins") are liable for  
27

28 \* This matter is deemed suitable for decision without oral  
argument. E.D. Cal. R. 230(g).

1 violating his rights under the Establishment Clause by not relieving  
2 Plaintiff from a condition of his parole requiring him to attend a  
3 12-step program with religious components after Plaintiff objected to  
4 the religious components. Defendant Westcare California, Inc.  
5 ("Westcare") also filed a motion for summary judgment ("Westcare  
6 Mot.") on December 23, 2009, in which it argues Plaintiff is unable to  
7 establish a causal connection between Westcare's activities and his  
8 Establishment Clause claim. Westcare also argues in its motion that  
9 Plaintiff's request for a taxpayer's injunction enjoining Defendants  
10 from using state resources and funds to require parolees to  
11 participate in 12-step programs with religious components is moot.  
12 Lastly, Plaintiff filed a cross-motion for partial summary judgment  
13 ("Cross Mot.") on January 26, 2010, in which he seeks a ruling that  
14 Westcare liable for violating his Establishment Clause rights. For  
15 the following reasons, Plaintiff's partial motion seeking to establish  
16 the liability of Crofoot, Wilding, and Jallins is GRANTED; Westcare's  
17 motion is GRANTED; and, Plaintiff's cross-motion against Westcare is  
18 DENIED.

### 19 I. Background

20 Plaintiff "was incarcerated at California Rehabilitation  
21 Center, Norco, from February 27, 2006 to February 27, 2007, on charges  
22 pertaining to possession of illegal substances." (Westcare's  
23 Statement of Undisputed Facts in Support of Motion for Summary  
24 Judgment ("Westcare SUF") ¶ 1.) "[Plaintiff] was released . . . on  
25 February 26, 2007, [and placed] on parole with the single condition  
26 that he attend and complete a 90-day ['12-step'] residential drug  
27 treatment program." (Id. ¶ 2; Statement of Undisputed Facts In  
28 Support of Plaintiff's Motion for Partial Summary Judgment ("Partial

1 Mot. SUF") ¶ 1; Statement of Undisputed Facts in Support of  
2 Plaintiff's Cross Motion for Partial Summary Judgment ("Cross Mot.  
3 SUF") ¶ 12.) Defendant "Mitch Crofoot was [Plaintiff's] parole agent  
4 at the time Plaintiff [participated in the drug treatment program]."  
5 (Partial Mot. SUF ¶ 4.)

6 Westcare "contracts with the [California Department of  
7 Corrections and Rehabilitation ("CDCR")] as a regional Substance Abuse  
8 Services Coordination Agency ("SASCA") for Parole Region I in  
9 California." (Westcare SUF ¶ 11; Cross Mot. SUF ¶ 1.) As a SASCA,  
10 "Westcare creates a network of treatment facilities for parolees with  
11 drug-related convictions, and coordinates with the State to place  
12 parolees in these programs." (Cross Mot. SUF ¶ 3.) "Westcare's  
13 standard form contract with residential providers prohibits the  
14 providers from requiring the 'SASCA participants to attend religious  
15 events or participate in religious activities. Any such participation  
16 is entirely optional for the SASCA participants and contractors may  
17 not impose a penalty for lack of participation.'" (Cross Mot. SUF ¶  
18 6.) A residential treatment facility is required to abide by the  
19 above provision in order to contract with Westcare. (Cross Mot. SUF ¶  
20 7; Smith Dep. 24:23-26:6.) "Empire Recovery Center ("Empire") is a  
21 non-profit corporation which contracts with Westcare to provide  
22 substance abuse treatment and re-entry services to parolees upon  
23 release from prison." (Westcare SUF ¶ 6.) "Empire is an independent  
24 contractor under the terms of the contract with Westcare." (Westcare  
25 SUF ¶ 7.)

26 "Prior to his release on parole in February 2007,  
27 [Plaintiff] told correctional authorities and Westcare representatives  
28 that he was an Atheist, and requested placement in a treatment

1 facility that did not contain religious components to fulfill the  
2 condition of his parole." (Cross Mot. SUF ¶ 13.) "A Westcare  
3 representative advised him that he should ask to be assigned to  
4 [Empire]." (Cross Mot. SUF ¶ 13.) Plaintiff was assigned to Empire  
5 in Redding, California. (Partial SUF ¶ 2; Westcare SUF ¶ 4.) Empire  
6 utilizes a 12-step recovery program, developed by Alcoholics Anonymous  
7 and Narcotics Anonymous, which includes references to God and a higher  
8 power. (Cross Mot. SUF ¶ 14; Partial Mot. SUF ¶ 3.)

9 "While at Empire, [Plaintiff] notified Westcare  
10 representatives and told them that he objected to the religious 12-  
11 step program used by Empire, and asked to be transferred to a secular  
12 alternative." (Cross Mot. SUF ¶ 15.) "[Plaintiff] also asked  
13 [Crofoot] whether he could fulfill his parole requirement through a  
14 secular recovery program." (Partial Mot. ¶ 7; Cross Mot. SUF ¶ 16.)  
15 "[Plaintiff] told Crofoot that he objected to participating in the  
16 Empire program because he was an atheist." (Partial Mot. SUF ¶ 6.)  
17 "Crofoot told [Plaintiff] that he needed to continue at Empire while  
18 Crofoot looked into the issue of whether secular programs were  
19 available, and told [Plaintiff] not to leave the Empire class in the  
20 meantime." (Cross Mot. SUF ¶ 17.) "Crofoot called Westcare to ask  
21 whether a non 12-step program was available for [Plaintiff]." (Cross  
22 Mot. SUF ¶ 18.) "Westcare informed Crofoot that there were no secular  
23 treatment programs in the Northern California area." (Westcare SUF ¶  
24 24.) "While waiting to hear back from Crofoot, [Plaintiff] contacted  
25 Westcare and again explained that he was an atheist and asked whether  
26 he could attend a secular program in lieu of Empire's religious 12-  
27 step program." (Cross Mot. SUF ¶ 19.) "Westcare representative Dawn  
28 Hall told [Plaintiff] that the only other available program was a

1 faith-based program called Cornerstone, and that if he 'didn't like  
2 Empire, he really wasn't going to like it at Cornerstone.'" (Cross  
3 Mot. SUF ¶ 20.) "After making inquiries, Crofoot told [Plaintiff]  
4 that there were no programs that were 'non 12-step.'" (Partial Mot.  
5 SUF ¶ 9.) "Crofoot told [Plaintiff] that he could file an  
6 Inmate/Parolee Appeal [known as a "602 Appeal"], but that in the  
7 meantime [Plaintiff] should continue to participate in the Empire  
8 Program or he would be returned to prison." (Partial Mot. SUF ¶ 10.)  
9 "[Plaintiff] presented Crofoot on April 3, 2007 with a 602 Appeal that  
10 set forth the basis for his objection to participation in the Empire  
11 program." (Partial Mot. SUF ¶ 11) Plaintiff's 602 Appeal states:

12 As an Atheist I object to forced participation in  
13 any spiritual/religious activities. I am currently  
14 required to attend 90 days on in-patient treatment  
15 at the Empire Recovery Center in Shasta County. I  
16 have been told by my parole officer that I must  
17 complete the 90 days of spiritual treatment because  
18 there are no available secular recovery  
19 alternatives. [¶] Since the CDC cannot provide me  
20 with a secular alternative to 12-step based  
21 treatment I would like the in-patient treatment  
22 stipulation removed from my parole conditions so  
23 that I may return home ASAP.

19 (Heller Decl. Partial Mot. Ex. B; Heller Decl. Cross Mot. Ex. L.)  
20 Plaintiff also attached to his 602 Appeal a document further  
21 explaining his beliefs as an Atheist and a summary of judicial  
22 opinions in support of his request. (Id.)

23 "According to Crofoot, representatives of Empire told  
24 Crofoot on April 6, 2007, that [Plaintiff] 'has been disruptive,  
25 though in a congenial way, to the staff as well as other students.'" (Partial Mot. SUF ¶ 12; Cross Mot. SUF ¶ 30.) "Crofoot's  
26 understanding from the Empire representatives was that [Plaintiff]  
27 'was not being loud; he wasn't throwing things around; he wasn't  
28

1 stomping around; he wasn't being boisterous and that sort of thing.'" (Partial Mot. SUF ¶ 13; Cross Mot. SUF ¶ 31.) "He was 'sort of  
2 passive aggressive.'" (Partial Mot. SUF ¶ 13; Cross Mot. SUF ¶ 31.)  
3 "Crofoot spoke with his Unit Supervisor, Defendant Brenda Wilding, and  
4 concluded that the right thing to do was to refer Plaintiff to [the  
5 Board of Parole Hearings (the "BPH")] on a parole violation for  
6 failing to participate in the BPH-ordered program." (Partial Mot. SUF  
7 ¶ 15.) "Wilding understood that [Plaintiff] objected to participating  
8 in the Empire [] program because he was an atheist." (Partial Mot.  
9 SUF ¶ 20.) "Wilding understood that Crofoot told [Plaintiff] that  
10 [Plaintiff] had to either participate in the [program] or be returned  
11 to prison." (Partial Mot. SUF ¶ 21.) "Crofoot and Wilding decided  
12 together that [Plaintiff] needed to be returned to prison so that he  
13 could argue his case before the BPH." (Partial Mot. SUF ¶ 16.)  
14 "Crofoot arrested [Plaintiff] on April 6, 2007 and booked him into the  
15 Shasta County Jail." (Partial Mot. SUF ¶ 17.) "After arresting  
16 [Plaintiff], Crofoot called the [California Rehabilitation Center (the  
17 "CRC")], explained the circumstances pertaining to [Plaintiff],  
18 explained that he was requesting that [Plaintiff] be returned to  
19 custody, and obtained an oral order of return authorized by Deputy  
20 Commissioner Richard Jallins." (Partial Mot. SUF ¶ 18.) "After the  
21 oral order of return was authorized from Deputy Commissioner Jallins,  
22 [Plaintiff] was sent back to prison." (Partial Mot. SUF ¶ 19.) The  
23 "oral order questionnaire/authorization" signed by Crofoot and  
24 approved by Jallins, states in the Comments section: "Refusing to  
25 participate in residential program. Causing problems with staff that  
26 is effecting [sic] the other residents." (Heller Decl. Partial Mot.  
27 Ex. C; Cross Mot. SUF ¶ 34.)  
28

1 "[Plaintiff] was incarcerated for more than 100 days, the  
2 bulk of which he spent in state prison in Norco, California." (Cross  
3 Mot. SUF ¶ 35.) "On June 27, 2007, while Plaintiff was still in  
4 prison, he received a response from CDCR to his 602 appeal, denying  
5 the appeal." (Cross Mot. SUF ¶ 36.) The response to Plaintiff's 602  
6 Appeal states:

7 It would behoove you to take advantage of the tools  
8 that are offered to you to help you with your  
9 addiction, behavior, and adjustment to society.  
10 Per your Agent of Record, Mr. Crofoot, he has made  
11 attempts to locate treatment facilities to  
12 accommodate your preference, per Mr. Crofoot,  
13 Empire Recovery was the best suited for you. Your  
14 negative behavior toward staff caused you to be  
15 discharged from that program leaving your Agent of  
16 Record no other choice but to return you to CRC for  
17 further treatment. Therefore, your request is  
18 denied.

14 (Heller Decl. Partial Mot. Ex. I.) The response is signed by William  
15 Crisologo, Associate Chief Deputy Commissioner, Board of Parole  
16 Hearings. (Id.)

17 Plaintiff filed his Complaint in this case on September 29,  
18 2008. After Plaintiff filed his Complaint, on November 18, 2008,  
19 the CDCR issued Directive No. 08-06, which states:

20 Case law filed on September 7, 2007 in the *United*  
21 *States Court of Appeals For The Ninth Circuit*  
22 established that placement of a parolee into a  
23 religious based substance abuse program at the  
24 objection of the parolee was unconstitutional. As  
25 such, the Division of Adult Parole Operations  
26 (DAPO) cannot compel a parolee to participate in  
27 Alcoholics Anonymous (AA), Narcotics Anonymous (NA)  
28 or any other religious-based substance abuse  
treatment program as a condition of parole. [¶]  
Effective immediately, Parole Agents assigned to  
DAPO, shall not require that a parolee attend AA,  
NA, or any other religious based program if the  
parolee refuses to participate in such a program  
for religious reasons. Under these circumstances,  
the parolee shall be referred to an alternative  
nonreligious program.

1 (Cross Mot. SUF ¶ 37; Heller Decl. Cross Mot. Ex. O.) "Westcare did  
2 not receive a copy of this directive until it was produced in  
3 discovery in this action." (Cross Mot. SUF ¶ 38.) "Westcare does not  
4 know what the term 'alternative nonreligious program' as used in the  
5 Directive means." (Cross Mot. SUF ¶ 39.) "The Directive has not  
6 altered the way in which Westcare conducts business." (Cross Mot. SUF  
7 ¶ 40.) "To date, Westcare continues to contract solely with  
8 residential providers that use the 12-step program 'in some form or  
9 fashion.'" (Cross Mot. SUF ¶ 41.)

## 10 **II. Legal Standard**

11 A party seeking summary judgment bears the initial burden of  
12 demonstrating the absence of a genuine issue of material fact for  
13 trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). If  
14 this burden is satisfied, "the non-moving party must set forth . . .  
15 specific facts showing that there is a genuine issue for trial." T.W.  
16 Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626,  
17 630 (9th Cir. 1987) (quotations and citation omitted) (emphasis  
18 omitted). "All reasonable inferences must be drawn in favor of the  
19 non-moving party." Bryan v. McPherson, 590 F.3d 767, 772 (9th Cir.  
20 2009). "Here, cross-motions for summary judgment are at issue. [The  
21 Court] evaluate[s] each motion separately, giving the nonmoving party  
22 in each instance the benefit of all reasonable inferences." A.C.L.U.  
23 of Nevada v. City of Las Vegas, 466 F.3d 784, 790-91 (9th Cir. 2006).

24 //

25 //

26 //

27 //

28 //



1 //

2 **III. Analysis**

3 **A. Hazle's motion for summary judgment on whether Defendants**  
4 **Crofoot, Wilding, and Jallins are liable for violating Hazle's**  
5 **Establishment Clause rights**

6 Plaintiff seeks a partial summary judgment finding that  
7 Defendants Crofoot, Wilding, and Jallins (the "Parole Defendants") are  
8 liable for violating his Establishment Clause rights by requiring him  
9 to participate in a 12-step drug rehabilitation program that contained  
10 religious components. Specifically, Plaintiff argues the Parole  
11 Defendants violated his First Amendment right under the Establishment  
12 Clause as follows: (1) "requiring him, upon threat of arrest or  
13 incarceration, to continue participating in a '12-step' program that  
14 contained religious components"; (2) "rejecting his requests to  
15 fulfill the treatment condition of his parole through a secular and  
16 non-religious program"; and (3) "arresting and incarcerating him based  
17 on his resistance." (Partial Mot. 7:15-20.) The Parole Defendants  
18 respond, arguing it was Plaintiff's "disruptive behavior" and "not  
19 [Plaintiff's] self-professed status as an Atheist [that] caused his  
20 dismissal from his substance abuse program, . . . arrest[,] and  
21 subsequent reincarceration . . . ." (Parole Defs.' Opp'n to Partial  
22 Mot. 4:1-10.)

23 "For the government to coerce someone to participate in  
24 religious activities strikes at the core of the Establishment Clause  
25 of the First Amendment, whatever else the Clause may bar." Inouye v.  
26 Kemna, 504 F.3d 705, 712 (9th Cir. 2007). The Ninth Circuit  
27 articulated the following test in Inouye v. Kemna "with regard to  
28 determining whether [Plaintiff] was [subject to] governmental coercion  
of religious activity . . . : 'first, has the state acted; second,

1 does the action amount to coercion; and third, is the object of the  
2 coercion religious rather than secular?" Id. at 713. "First,  
3 [Crofoot] acted in his official state capacity as a parole officer to  
4 order [Plaintiff into a 12-step program that contained religious  
5 components]. That the state did not run the program itself is 'of no  
6 moment.'" Id. (quoting Kerr v. Farrey, 95 F.3d 472, 479 (7th Cir.  
7 1996)). It is undisputed that Crofoot, Wilding, and Jallins were  
8 acting in their official state capacities when they required Plaintiff  
9 to participate in the 12-step drug treatment program as a condition of  
10 his parole, and subsequently removed and incarcerated him for not  
11 participating in the program.

12 Further, the Parole Defendants' "action was clearly  
13 coercive: [Plaintiff] could be imprisoned if he did not attend and he  
14 was, in fact, ultimately returned to prison *in part* because of his  
15 refusal to participate in the program." Inouye, 504 F.3d at 713  
16 (emphasis added). The Parole Defendants argue Plaintiff was returned  
17 to prison because he was "disruptive" in the program. This argument  
18 rings hollow in light of the undisputed facts showing Plaintiff was  
19 only "disruptive" in the program "'in a congenial way'" and "was 'sort  
20 of passive aggressive.'" (Partial Mot. SUF ¶¶ 12, 13.) It is also  
21 undisputed that Plaintiff communicated his objection to participation  
22 in the Empire program and that Crofoot told Plaintiff he "should  
23 continue to participate in the Empire Program or he would be returned  
24 to prison." (Id. ¶ 10.) It is further undisputed that Crofoot and  
25 Wilding concluded that "the right thing to do" was to refer Plaintiff  
26 to the Board of Parole Hearings "on a parole violation for failing to  
27 participate in the BPH-ordered program." (Id. ¶ 15.) It is also  
28 undisputed that Deputy Commissioner Jallins authorized Plaintiff to be

1 returned to prison because of Plaintiff's failure to participate in  
2 the program. (Id. ¶¶ 18-19, 24.)

3 "The final element requires somewhat more discussion."  
4 Kerr, 95 F.3d at 479. It is undisputed that "Empire used a 12-step  
5 program that included references to God and a 'higher power.'" (Partial Mot. SUF ¶ 3.) Further, Plaintiff's following averments in  
6 his declaration have not been controverted:  
7

8           Shortly after arriving at Empire, I discovered that  
9 Empire used a "12-step" recovery program based [on]  
10 the principles of Alcoholics Anonymous ("AA") and  
11 Narcotics Anonymous ("NA"), which contains  
12 religious components. Among other features, the  
13 "12-step" method used by Empire made references to  
14 God, involved acknowledgment of a "higher power,"  
15 and included prayer. [¶] I am an atheist, and was  
one in 2007. The substantial religious components  
to the "12-step" program administered by Empire  
conflicted with my beliefs. Prior to my release on  
parole, I had notified correctional authorities of  
my Atheism, and requested placement in a treatment  
facility that did not contain religious components.

16 (Hazle Decl. ¶¶ 2, 3.) The Parole Defendants do not dispute that the  
17 Empire's 12-step program contained religious components. "As such, on  
18 this summary judgment record and given the lack of dispute between the  
19 parties in question, . . . the third prong of [Plaintiff's]  
20 Establishment Clause test has been met as well." Inouye, 504 F.3d at  
21 713-14. Therefore, "the program runs afoul of the prohibition against  
22 the state's favoring religion in general over non-religion," because  
23 of the program's use of a religious concept of a Higher Power through  
24 references to God and prayer. Kerr, 95 F.3d at 480. Accordingly,  
25 Plaintiff's partial motion for summary judgment against the Parole  
26 Defendants is granted.

27 ///

28 ///

1 **B. Plaintiff and Westcare's cross motions for summary judgment on**  
2 **Plaintiff's Establishment Clause claim**

3 Westcare and Plaintiff each seek summary judgment on  
4 Plaintiff's Establishment Clause claim. Westcare argues Plaintiff  
5 "cannot establish a causal connection between Westcare's alleged acts  
6 and the violation of [Plaintiff's] rights." (Westcare Mot. 6:3-4.)  
7 Westcare further argues "Plaintiff has no evidence to support coercion  
8 on the part of Westcare." (Westcare Mot. 9:10-11.) Plaintiff argues  
9 Westcare "set in motion" the series of events leading up to the  
10 violation of his rights by "contract[ing] exclusively with 12-step  
11 facilities." (Plt.'s Opp'n to Westcare Mot. 19:5-23.) Plaintiff also  
12 argues Westcare is liable for "ignor[ing]" Plaintiff's "objections to  
13 the religious components of the program" once it became aware of them.  
14 (Plt.'s Opp'n to Westcare Mot. 22:20-23:2.)

15 It is undisputed that Westcare contracts with the State of  
16 California to "create a network of treatment facilities for parolees  
17 with drug-related convictions, and coordinates with the State to place  
18 parolees in these programs." (Cross Mot. SUF ¶ 3.) It is also  
19 undisputed that Westcare does not have the authority to require a  
20 parolee to attend or remain within a specific residential treatment  
21 facility once there. (Westcare SUF ¶ 15.) It is further undisputed  
22 that parolees can be transferred to treatment facilities in other  
23 counties to fulfill their parole conditions upon the approval of the  
24 parolee's parole agent. (Cross Mot. SUF ¶ 22.) Since Plaintiff has  
25 not controverted Westcare facts with specific facts showing that  
26 Westcare had authority to require Plaintiff to attend or remain within  
27 a specific residential treatment facility, Westcare's motion is  
28 granted, and Plaintiff's motion is denied.

1 **C. Westcare's Motion for Summary Judgment on Plaintiff's Injunction**

2 Westcare also seeks summary judgment of Plaintiff's request  
3 for an injunction, arguing that CDCR Directive No. 08-06, issued  
4 November 18, 2008, moots Plaintiff's request. (Westcare Mot. 11:4-5.)  
5 The Directive states:

6 Case law filed on September 7, 2007 in the *United*  
7 *States Court of Appeals For The Ninth Circuit*  
8 established that placement of a parolee into a  
9 religious based substance abuse program at the  
10 objection of the parolee was unconstitutional. As  
11 such, the Division of Adult Parole Operations  
12 (DAPO) cannot compel a parolee to participate in  
13 Alcoholics Anonymous (AA), Narcotics Anonymous (NA)  
14 or any other religious-based substance abuse  
treatment program as a condition of parole. [¶]  
Effective immediately, Parole Agents assigned to  
DAPO, shall not require that a parolee attend AA,  
NA, or any other religious based program if the  
parolee refuses to participate in such a program  
for religious reasons. Under these circumstances,  
the parolee shall be referred to an alternative  
nonreligious program.

15 (Heller Decl. Cross Mot. Ex. O.) Plaintiff responds, arguing Westcare  
16 has not met its burden of showing that his claim for an injunction is  
17 moot. (Opp'n to Westcare Mot. 23:22-23.)

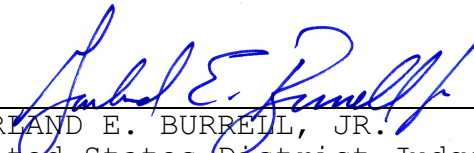
18 "A case m[ay] become moot if subsequent events ma[ke] it  
19 absolutely clear that the allegedly wrongful behavior c[annot]  
20 reasonably be expected to recur." United States v. Concentrated  
21 Phosphate Ass'n, 393 U.S. 199, 203 (1968). Here, the uncontroverted  
22 Directive adopts a new policy that complies with the Ninth Circuit's  
23 holding in Inouye. Such a conclusive change in policy, absent any  
24 indication that it was promulgated only in response to ongoing  
25 litigation, is sufficient to render the request for an injunction  
26 moot. See White v. Lee, 227 F.3d 1214, 1243-44 (9th Cir. 2000)  
27 (finding that a "memorandum represent[ing] a permanent change" in  
28 policy, that was "unequivocal in tone," and "fully supportive of First

1 Amendment rights," mooted plaintiff's claims for prospective relief).  
2 Therefore, this portion of Westcare's motion is granted.

3 **IV. Conclusion**

4 For the stated reasons, Plaintiff's partial motion for  
5 summary judgment on Defendants Crofoot, Wilding, and Jallins'  
6 liability is granted, Westcare's motion for summary judgment is  
7 granted, and Plaintiff's cross-motion for partial summary judgment on  
8 Westcare's liability is denied. Further, Westcare's prevails on its  
9 argument that Plaintiff's request for an injunction is moot.

10 Dated: April 6, 2010

11   
12 \_\_\_\_\_  
13 GARLAND E. BURRELL, JR.  
14 United States District Judge