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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM ROUSER,

NO. CIV. S-03-767 LKK/GGH P

Plaintiff,

v.

O R D E R

THEO WHITE, et al.,

Defendants.

_____/

Plaintiff, William Rouser, a state prisoner proceeding pro se, has moved to enforce a settlement agreement by reinstating a civil rights action brought under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 17, 2003, the magistrate judge filed findings which were served on all parties. The district court reviews de novo the magistrate judge's conclusions of law and those portions of the proposed findings of fact to which objection has been made. See 28 U.S.C. § 636(b)(1)(c). The court may, however, assume the

1 correctness of that portion of the proposed findings of fact to
2 which no objection has been made. See United States v. Remsing,
3 874 F.2d 614, 617 (9th Cir. 1989). The court is not bound to adopt
4 the magistrate judge's findings and recommendations, but should
5 exercise "sound judicial discretion" in making its own
6 determination on the record. United States v. Raddatz, 447 U.S.
7 667, 675-76 (1980).

8 Here, plaintiff has objected to the magistrate judge's
9 findings and recommendations as to each of his claims, and has also
10 objected to the magistrate judge's characterization of the record.
11 Accordingly, this court has undertaken an independent examination
12 of the record, and reviews the magistrate judge's findings of fact
13 and conclusions of law de novo. Having done so, I adopt in part
14 and reject in part the magistrate judge's findings and
15 recommendations.

16 I.

17 **BACKGROUND AND PROCEDURAL HISTORY**

18 Plaintiff, Rouser, is incarcerated within the California
19 Department of Corrections ("CDC") prison system. He originally
20 filed suit on May 6, 1993, alleging that defendant prison officials
21 violated his right to practice the Wicca religion as protected by
22 the First Amendment to the Constitution of the United States. See
23 42 U.S.C. § 1983.¹ After extensive motion practice and before

24
25 ¹ Plaintiff alleged claims under the Religious Freedom
26 Restoration Act ("RFRA") of 1993, 42 U.S.C. § 2000bb. The RFRA was
subsequently declared unconstitutional as applied to the states.
City of Flores v. Boerne, 521 U.S. 507 (1997).

1 trial, the parties entered into a settlement agreement and
2 stipulation for dismissal without prejudice on December 5, 1997.
3 The settlement agreement provides plaintiff with rights of access
4 to Wiccan religious services and artifacts. This court retained
5 jurisdiction to enforce the agreement only through reinstatement
6 of the original action.

7 On February 24, 2003, plaintiff filed letters with the court
8 stating that the defendants breached the settlement agreement.
9 On June 19, 2003, the court allowed plaintiff's attorney who
10 negotiated the agreement on his behalf to withdraw, and he is now
11 proceeding pro se. On September 2, 2003, the plaintiff filed a
12 motion to enforce the settlement agreement by reinstating the
13 original action. See Amended Complaint.

14 Plaintiff's amended complaint identifies five additional
15 plaintiffs and includes allegations which were not included in his
16 original action. The magistrate judge found that because the only
17 matter at issue is whether the defendants have violated the
18 settlement agreement, and the settlement agreement applies to
19 plaintiff only, those additional plaintiffs and claims are not
20 cognizable. I concur.² The amended complaint is thus construed
21 as plaintiff's allegations in support of his motion to enforce the
22 agreement. Moreover, I adopt the magistrate judge's findings
23 rejecting plaintiff's allegations regarding rights not provided for

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25 ² Those putative parties are, of course, free to file their
26 own separate suit. Moreover, once plaintiff's suit is reinstated,
he will be free to amend to include whatever wrongs he may allege
pursuant to Fed. R. Civ. P. 15.

1 in the settlement agreement. See Findings and Recommendations at
2 10:1 to 12:7. But see n.2 infra.

3 Plaintiff's complaint contains multiple allegations concerning
4 the defendants' failure to provide him access to religious services
5 and artifacts. The magistrate judge found that his allegations and
6 accompanying arguments were not sufficient to show that defendants
7 violated the agreement. I cannot agree.

8 **II.**

9 **RIGHT OF ACCESS TO RELIGIOUS SERVICES**

10 **A. PLAINTIFF'S ALLEGATIONS**

11 Plaintiff avers that defendants violated the settlement
12 agreement by failing to allow him to attend religious services
13 called Esbats and Sabbats. The agreement provides that plaintiff
14 is to be permitted access to a room for bi-weekly Esbats and for
15 the eight annual Sabbats for Wiccan services, subject to the same
16 policies and procedures regulating other inmate individual or group
17 religious worship. Settlement Agreement, § 7.

18 In his amended complaint, plaintiff alleges that he was
19 allowed only one Sabbat and no Esbats in a one year period.
20 Amended Complaint at 5. On April 22, 2001, plaintiff filed a
21 grievance alleging that he had been unable to attend these services
22 since his transfer on May 30, 2000 from an administrative
23 segregation facility to a general population facility.³ Defs'

24
25 ³ Under ¶ 15 of the settlement agreement, prison officials
26 have discretion to suspend the terms of the agreement for
attendance while plaintiff is in segregated housing. Plaintiff was
housed in administrative segregation during June 28, 1998 to April,

1 Reply, Attachment 1, at 59-61.

2 Plaintiff also avers that the defendants breached the
3 settlement agreement when they allegedly failed to process a
4 request to conduct a Yule Sabbat on December 23, 2002. Plaintiff
5 filed a grievance on December 30, 2002 concerning this complaint.
6 Defs' Response, Exh. A, Attachment 1 at 100-101. The parties
7 present conflicting versions of the factual circumstances
8 surrounding this request. See Defs' Response, Attachment 1 at 119;
9 Pl's Response to Deft's Reply at 7-8.

10 **B. THE MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS**

11 The magistrate judge found that the plaintiff had not
12 sufficiently demonstrated a violation of his constitutional
13 rights.⁴ As I now explain, the grounds upon which he rejected
14 plaintiff's claims are inconsistent with the settlement, which this
15 court is duty bound to enforce.

16 The magistrate judge partially based his findings on
17 plaintiff's failure to seek administrative remedies, but did not
18 explain why plaintiff was required to do so. The settlement
19 agreement has no provision requiring exhaustion of grievance
20 procedures, and thus there is no apparent reason why the failure
21 to exhaust administrative remedies bars his claims, and more
22 narrowly, his right to reinstatement of his suit.

23 _____
24 1999 and from Feb. 26, 2000 to May 30, 2000. Defs' Reply, Exh. A
at 2.

25 ⁴ As I point out, infra, the correct inquiry at this stage
26 is whether plaintiff has made a showing of a violation of the
settlement agreement.

1 It may be that the magistrate judge was applying the
2 provisions of the Prison Litigation Reform Act ("PLRA"), requiring
3 prisoners complaining of prison conditions to exhaust
4 administrative remedies before suing under § 1983. See 42 U.S.C.
5 § 1997e(a). Those provisions are inapplicable to the instant
6 matter, the case having been filed in 1993, nearly three years
7 before the PLRA was enacted. More to the point, what is at stake
8 is the enforcement of a settlement agreement arising out of a claim
9 of violation of the federal constitution. The state officials,
10 having entered into the agreement, were duty bound to live up to
11 their agreement, and the court retained jurisdiction to reinstate
12 the lawsuit if they failed to do so. As the Supreme Court recently
13 explained, even the Eleventh Amendment does not operate to bar
14 enforcement of such agreements. See Frew v. Hawkins, 124 S.Ct. 899,
15 903-905 (2004) (where settlement involves a federal decree entered
16 to implement a federal statute, enforcing "the decree vindicates
17 an agreement that the state officials reached to comply with
18 federal law." "Federal courts are not reduced to approving consent
19 decrees and hoping for compliance. Once issued, the decree may be
20 enforced"). While, of course, the instant matter does not involve
21 a consent decree, the court retained jurisdiction to reinstate the
22 suit if the defendants failed to keep their end of the bargain.
23 There is no principled way of distinguishing the matter-at-bar from
24 the High Court's decision in Frew.

25 Even if the obligation of this court to enforce the parties'
26 agreement were not dispositive, I cannot agree with the magistrate

1 judge's implied conclusion that, although the original action was
2 filed in 1993, plaintiff's present filing triggers the PLRA
3 exhaustion requirement.

4 The Ninth Circuit has not addressed whether the reinstatement
5 of an action after breach of a settlement agreement, pursuant to
6 18 U.S.C. § 3626(c), is subject to the exhaustion requirements of
7 42 U.S.C. § 1997e(a). However, the plain language of the statutes
8 indicates that the reinstatement of an action such as this one does
9 not require exhaustion of administrative remedies.

10 I first examine the language of § 1997e(a) to determine when
11 a prisoner must exhaust administrative remedies. See In re
12 Transcon Lines, 58 F.3d 1432, 1437 (9th Cir. 1995) ("[I]n
13 interpreting a statute a court should always turn to one cardinal
14 canon before all others [C]ourts must presume that a
15 legislature says in a statute what it means and means in a statute
16 what it says there") (quoting Connecticut Nat'l Bank v. Germain,
17 503 U.S. 249, 253 (1992)). Section 1997e(a) provides that "[n]o
18 action shall be brought with respect to prison conditions . . . by
19 a prisoner . . . until such administrative remedies as are
20 available are exhausted." The question then turns on what Congress
21 meant by the word 'brought.'

22 In Harris v. Garner, 216 F.3d 970 (2000), the Tenth Circuit
23 engaged in a thorough analysis of the meaning of "brought" in
24 section 1997e(a). Specifically, the question addressed by that
25 court was whether "bring," the present form of "brought," "means
26 to commence or start a lawsuit, or instead means to maintain or

1 continue it to conclusion." Id. at 973. The court concluded that
2 it is well established that "brought" refers to the initiation, or
3 commencement, of legal proceedings, and not to the continuation of
4 an action. Id. at 973-974. ⁵ Plain meaning and commonsense
5 suggest that the court's conclusion is correct.

6 Given its established meaning, I must presume that Congress
7 used the settled legal definition of "brought" in
8 § 1997e(a). Harris at 974 (citing Commissioner v. Keystone Consol.
9 Industries, Inc., 508 U.S. 152, 159 (1993)) (Congress presumed to
10 be aware of settled interpretations of words). Given all the above
11 and given the structure of the PLRA, which I now address, it seems
12 clear that plaintiff's claim here falls outside § 1997e(a).

13 Plaintiff complains that the settlement agreement reached was
14 breached by the defendants, and now asks this court to reinstate
15 his action. The PLRA provides that prisoners complaining about
16 prison conditions may enter into private settlement agreements,
17 without regard to certain limitations on relief, if the "agreement
18 [is] not subject to court enforcement other than the reinstatement
19 of the civil proceeding that the agreement settled." 18 U.S.C.
20 § 3626(c)(2). That was precisely the deal struck by the parties.

21 The statute does not provide that the prisoner may bring a new
22 action, but that the court may reinstate the original action. In
23 United States v. Green, the Ninth Circuit examined a statute that

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25 ⁵The Ninth Circuit, in a different context, has also noted
26 that bringing an action means commencing it. See McKinney v. Carey
311 F.3d. 1198, 1198 (9th Cir.2002).

1 allowed an action to be reinstated. 107 F.2d 19, 22 (9th Cir.
2 1939). As in 18 U.S.C. § 3626(c)(2), the statute did not
3 contemplate plaintiffs filing a new complaint, but that plaintiffs
4 could reinstate their complaint. The court held that "[t]o
5 reinstate a case means simply to place again in the position
6 enjoyed prior to dismissal." Id. at 22; see also In re Robert, 171
7 B.R. 881, 883 (Bankr. N.D. Cal. 1994) (finding that a "new"
8 bankruptcy case was not commenced when the court vacated dismissal
9 of the case because the order stated that the case was
10 "reinstated"). Clearly, bringing an action and reinstating an
11 action are different acts, and statutes using one or the other term
12 refer to those distinctive meanings. Congress chose the word
13 reinstatement in 18 U.S.C. § 3626(c)(2)), thus manifesting its
14 intent that prisoners who suffer breach of a settlement agreement
15 could have the suit reinstated, and were not required to commence
16 a new suit. It follows that, by seeking to reinstate his original
17 action, plaintiff need not meet the requirements set out in 42
18 U.S.C. § 1997e(a).

19 The magistrate judge also found that "[t]he record does not
20 indicate that prison officials have, at least in the past 2½
21 years, routinely refused to permit plaintiff to conduct Sabbat and
22 Esbat services in accordance with the settlement agreement."
23 Findings and Recommendations at 7. I must respectfully suggest
24 that whether there are routine violations is not the proper
25 inquiry. The settlement agreement did not contemplate that a
26 breach would only occur after "routine" violations, nor does the

1 law governing the settlement agreement support such a rule.

2 The settlement agreement is a private contract binding both
3 parties to its terms. Arnold v. United States, 816 F.2d 1306, 1309
4 (9th Cir. 1987). The rights of parties pursuant to settlement
5 agreements are determined using state law principles of contract
6 interpretation, and a failure to perform an express term of the
7 settlement agreement is a breach. Sharpe v. F.D.I.C., 126 F.3d
8 1147, 1153 (9th Cir. 1997) (citing Witkin, Summary of California
9 Law, Contracts § 791 (9th ed. 1987) ("The wrongful, i.e., the
10 unjustified or unexcused, failure to perform a contract is a
11 breach."); Nicholson v. Barab, 233 Cal.App.3d 1671, 1681, 285
12 Cal.Rptr. 441 (1991) (settlement agreements interpreted according
13 to contract principles under California law)). A violation,
14 therefore, even if only a single is a breach which dissolves the
15 agreement. Accordingly, whether the defendants violated the
16 settlement agreement by failing to allow plaintiff to attend
17 religious services should be determined, not by whether defendants
18 "routinely" refused him access, but by the appropriate standards
19 of contract law.

20 The magistrate judge noted that the record contained
21 conflicting accounts regarding plaintiff's ability to attend Esbats
22 and Sabbats for an entire year and that the reason for plaintiff's
23 inability to attend the Yule Sabbat "is not entirely clear."
24 Despite these findings, however, he concluded that, because the
25 record also indicates that plaintiff's ability to attend these
26 services since the year complained of has been consistent, and

1 prison officials responded to plaintiff's complaints, there was no
2 breach of contract. Findings and recommendations at 7. Because
3 the record shows that there is a genuine question concerning
4 whether the defendants breached the terms of the settlement
5 agreement, a hearing is warranted to determine whether there in
6 fact was a breach.

7 **III.**

8 **RIGHT OF ACCESS TO RELIGIOUS ARTIFACTS**

9 **A. PLAINTIFF'S ALLEGATIONS**

10 The settlement agreement also obligates the defendants to
11 assist plaintiff in obtaining the religious artifacts listed in the
12 agreement via institutional mail. Settlement Agreement at ¶ 13.
13 Plaintiff claims that since the settlement agreement was executed,
14 he and other Wiccans have continuously encountered obstacles to
15 obtaining the religious artifacts, mostly due to orders being
16 rejected and sent back to the vendor by the prison mail service.
17 See Amended Complaint at 5 -10. The magistrate judge's findings
18 and recommendations describe the allegations, appeals, and
19 responses from the defendants in detail, and therefore do not need
20 to be restated here. See Findings and recommendations at 7-9.

21 Plaintiff further claims that his right to access artifacts
22 already ordered and obtained was also violated. The settlement
23 agreement states that plaintiff shall have access to them "for use
24 in the Esbats and the Sabbats." Settlement Agreement at ¶ 10. On
25 July 17, 2002, plaintiff filed a group grievance alleging that the
26 Wiccan community had been denied access to the Chapel, which had

1 been allocated for their use. Pl's Response to Defs' Reply at 6.
2 According to plaintiff, upon notifying Sgt. J. Garcia, plaintiff
3 and other Wiccans were escorted and given access to the Chapel.
4 Id. Although they were allowed access, however, Correctional
5 Officer Hannigan refused to allow plaintiff access to artifacts
6 necessary to conduct the Esbat Service. Id.

7 **B. THE MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS**

8 The magistrate judge found that plaintiff did not show that
9 the defendants violated the agreement's provisions relating to
10 access to religious artifacts. He found that defendants adequately
11 responded to plaintiff's grievance of July 17, 2002 regarding this
12 matter.

13 On September 16, 2002, the grievance was answered by way of
14 a memorandum issued by Community Resources Manager Lonnie Jackson.
15 Defs' Response, Exh. A, Attachment 1 at 100-101. The memorandum
16 partially granted plaintiff's appeal, stating that "Operational
17 Exigencies, Institutional Emergencies or Security needs, may be
18 reason to cancel, delay, or postpone scheduled Religious services."
19 Id.; see Settlement Agreement at ¶ 15. While the memo explains why
20 plaintiff's access to the chapel was delayed, it does not explain
21 why he was not allowed use of the artifacts once he was in the
22 chapel. The magistrate judge did not address this aspect of
23 plaintiff's complaint.

24

25 As noted, the settlement agreement provides plaintiff with
26 the right to use the religious artifacts during services. It seems

1 apparent that, if plaintiff was denied use of the artifacts in the
2 chapel, the defendants violated the agreement.

3 In addressing plaintiff's complaints regarding his
4 frustrations in ordering religious artifacts, the magistrate judge
5 found it enough that defendants responded to plaintiff's grievances
6 by issuing memorandums. Specifically, he found that

7 "prison officials have encountered difficulties in
8 enforcing the portion of the settlement agreement
9 authorizing plaintiff to possess certain religious
10 artifacts. This difficulty appears to stem from
11 confusion by staff regarding what artifacts are
12 and are not permitted. However, prison staff have
13 responded to plaintiff's grievances regarding this
14 matter."

15 Findings and Recommendations at 9. He concluded that the "record
16 does not suggest that prison officials have a policy of refusing
17 to enforce this portion of the settlement agreement." Id. Of
18 course, the issuing of memos in response to plaintiff's grievances
19 is not compliance with the settlement agreement. Again, as
20 explained above, a single wrongful violation of plaintiff's right
21 to order and obtain religious artifacts may suffice to find a
22 breach, and a finding that defendants have a policy of refusing to
23 implement the agreement is not required to support such a breach.⁶

24 ⁶ Surely, it is significant that plaintiff has continuously
25 had problems with ordering items since the agreement was executed
26 in 1997. While it may be predictable that, without adequate
oversight, defendants would experience administrative difficulty
with the initial implementation of the portion of agreement
concerning the ordering of religious artifacts, that these
difficulties have not been remedied in over five years suggests
that the defendants have not made a good faith effort to live up
to their agreement. Again I note good or bad faith is not the
issue.

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3 In conclusion, the record warrants an evidentiary hearing,
4 using applicable standards of contract law, to determine whether
5 the settlement agreement was in fact violated.

6 Accordingly, the court hereby ORDERS that:

7 1. The December 17, 2003 Findings and Recommendations are
8 ADOPTED in part and REJECTED in part as specified above; and

9 2. This case is REMANDED to the magistrate judge for further
10 proceedings consistent with this opinion.

11 IT IS SO ORDERED.

12 DATED: March 22, 2004.

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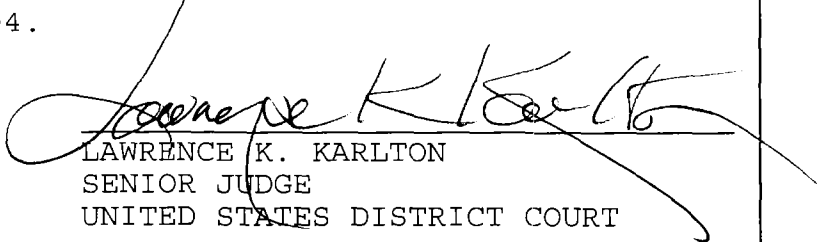
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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

ndd

United States District Court
for the
Eastern District of California
March 23, 2004

* * CERTIFICATE OF SERVICE * *

2:93-cv-00767

Rouser

v.

White

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 23, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

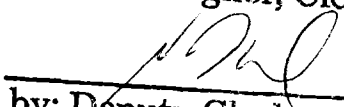
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