

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-09123-RGK (JEMx)	Date	November 15, 2012
Title	William Rouser v. Theo White, et al.		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE		
S. Williams (Not Present)	Not Reported	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
Not Present	Not Present		

Proceedings: (IN CHAMBERS) Order Re: Plaintiff’s Motion to Enforce the Consent Decree (DE 558) and Plaintiff’s Request for No More Extensions of Time, Sanctions & Evidentiary Hearing (DE 571)

I. INTRODUCTION

William Rouser (“Plaintiff”) is an inmate in the California State Correctional System. On May 7, 1993, Plaintiff began litigating against state prison officials for his right to practice his religion, Wicca, while incarcerated. In 2011, Plaintiff entered a settlement agreement with Defendants Matthew Cate, Secretary of the California Department of Corrections and Brenda Cash, Warden of the California State Prison, Los Angeles County (collectively “Defendants”).¹ On Oct. 18, 2011, a court in the Eastern District of California approved the joint agreement and entered it as a Consent Decree (“Decree”). Then, it transferred the case to this Court because Plaintiff was transferred to prison within the Central District.

Presently before the Court is Plaintiff’s Motion to Enforce the Consent Decree (DE 558) and Plaintiff’s Oct. 9, 2012 Request for No More Extensions of Time, for Sanctions, and for an Evidentiary Hearing (DE 571.) The Court **GRANTS in part** and **DENIES in part** Plaintiff’s Motion to Enforce the Consent Decree and **DENIES** Plaintiff’s Oct. 9, 2012 Requests.

II. FACTUAL BACKGROUND

Plaintiff is presently incarcerated in California State Prison, Los Angeles County in Lancaster, California. The Decree entered into by the parties governs Plaintiff’s ability to

¹ Named Defendant White was one of the defendants in the original action brought by Plaintiff. The claims against him and several other defendants were dismissed as a part of the Decree. (Decree ¶5.)

practice Wicca while incarcerated in “any institution under California Department of Corrections (“CDCR”) jurisdiction to which he may be assigned.” (Decree ¶ 43.) It provides Plaintiff’s rights within a range of categories including, but not limited to, the right to access personal religious items and the right to observe religious services. However, compliance with the Decree may be temporarily suspended in various circumstances. (Decree ¶ 37.)

On July 26, 2012, Plaintiff filed this Motion to Have the Court Enforce the Consent Decree (“Pl.’s Mot.”). In his Motion, Plaintiff alleges multiple violations of the Decree, specifically violations of Plaintiff’s rights (1) to access religious items, (2) to have his inmate appeals heard at Warden level, (3) to observe weekly services and specified special religious services, and (4) to access an outdoor religious area. Plaintiff seeks to have the Decree provisions enforced against Defendants.

IV. DISCUSSION

Plaintiff alleges Defendants denied him several rights set forth by the Decree, and thus, seeks the Court’s enforcement of the Decree’s provisions. As Plaintiff is appearing *pro se*, the Court construes his pleadings liberally. However, many of the allegations are unclear, unsupported, or unrelated to the terms of the Decree. As such, the Court considers only the claims that are well-plead and relevant.

Additionally, the Court declines to consider any filings related to this Motion made after October 9, 2012, the date which he filed his Reply to Defendants’ Opposition. Any subsequent filings must be filed as separate motions. See C.D. Cal. L.R. 7-10. Further, any new allegations that Defendants violated the Decree must follow the administrative procedures outlined in the Decree before being brought to this Court. (Decree ¶ 45.)

For the following reasons, this Court **GRANTS in part** and **DENIES in part** Plaintiff’s Motion for Enforcement of the Decree.

A. Violation of Plaintiff’s Right to Access Religious Items

The Decree provides that Plaintiff shall have access to certain religious items. (Decree ¶ 11.) It also provides that prison officials will maintain custody of group religious items. (*Id.* ¶ 31.) It does not address the storage of personal items except in specific circumstances not alleged herein. (*Id.* ¶¶ 12-13.) Plaintiff alleges three violations. The Court agrees in part and considers each in turn.

First, Plaintiff alleges that Defendants violated the Decree when a religious necklace stored in a locked closet under Defendants’ control was damaged and when other religious items stored in the closet were stolen. To the extent religious items are under Defendants’ control, the Court orders Defendants to adhere to the terms of the Decree and maintain group religious items such that Plaintiff’s access is not inhibited.

Second, Plaintiff alleges that Defendants violated the Decree by inappropriately touching religious items under Defendants’ custody and control. Plaintiff alleges prison officials inappropriately touched his religious items so as to contaminate them for use. (Pl.’s Mot. at 2.) Plaintiff has not met his burden to show that the actions of prison officials have effectively denied him access to the items. For safety and security reasons, certain items must be kept in the prison officials’ custody. By necessity, in order to give these items to Defendant and the Wiccan volunteers, prison officials must touch these items. Thus, the alleged touching did not violate Plaintiff’s access to his religious items.

Third, Plaintiff alleges that Defendants have violated the Decree by refusing to allow him to order candles, candle holders, incense, and incense holders. The Decree mandates that prison officials shall permit Plaintiff to order and access these items for Religious Group Services. (Decree ¶ 30.) While initially Defendants did not allow Plaintiff to order these items, this was due a miscommunication that has now been resolved and Plaintiff is allowed to order these items. Thus, the Court finds no violation.

In summary, the Court finds that the Defendants violated the Decree as to the first allegation, damage of items in Defendants' custody, but that Defendants did not violate the Decree as to the second and third allegations, touching and ordering of religious items.

B. Violation of Plaintiff's Right to Have Inmate Appeals Reviewed at Warden Level

Plaintiff alleges his inmate appeals are not being heard according to the procedures in the Decree. The Decree states that Plaintiff's inmate appeals are to be processed by the Warden or his or her designee, thereby permitting his appeals to bypass the lower administrative levels. (Decree ¶ 45.) Plaintiff alleges his appeals are being dismissed before reaching the Warden. Defendants failed to respond to this issue in their Opposition. Thus, the Court orders Defendants to adhere to the appeals process set forth in the Decree.

C. Violation of Plaintiff's Right to Observe Religious Services

The Decree provides that prison officials shall provide Plaintiff with the opportunity to participate in regular services once per week and special religious services designated in the Decree. (Decree ¶¶ 14-16.) The Decree allows for cancellation without rescheduling in certain circumstances. Services *must be rescheduled* when the reason for cancellation is administrative, such as a staff shortage. (Decree ¶ 16.) But, services *are not required to be rescheduled* when the reason for cancellation was a lockdown or an inmate-caused security or safety issue. (*Id.*)

1. December 21, 2011 Yule Sabbat

Plaintiff alleges that Defendants violated the Decree by improperly cancelling the Yule Sabbat service scheduled for December 21, 2011 without rescheduling it. The Court disagrees. Plaintiff has provided no evidence that religious services on December 21, 2011 were cancelled due to anything other than an inmate-caused safety and security threat. As a result, this cancellation did not violate the Decree.

2. June 21, 2012 Summer Solstice Sabbat

Plaintiff alleges that Defendants violated the Decree by improperly cancelling the Summer Solstice Sabbat scheduled for June 21, 2012, without rescheduling it. Plaintiff fails to support his allegation with adequate facts. Plaintiff merely states that the service was canceled, but provides no further indication as to what reasoning was provided for the cancellation and why it is inadequate. While the Decree provides that Defendants allow Plaintiff to observe religious services, it also allows for services to be cancelled in certain circumstances. Therefore, he has not met his burden of demonstrating a violation.

3. Disproportionate Cancellation of Wiccan Services

Plaintiff contends there was disproportionate cancellation of Wiccan services when compared to Christian services, in violation of the Decree. The Decree requires prison officials to make reasonable efforts to avoid cancelling or shortening Wiccan services “more often than those for inmates of other religious faiths.” (Decree ¶ 24.) Plaintiff alleges that Christian services were held, and not cancelled, on a day when a lockdown occurred one week after the Yule Sabbat of December 21, 2011 was cancelled due to a lockdown. Plaintiff has not alleged enough facts to support a violation here. Thus, this cancellation did not violate the Decree.

4. “Indefinite Cancellation” of Wiccan Services

Plaintiff alleges Wiccan services were cancelled indefinitely in violation of the Decree. The Court disagrees. Services were temporarily suspended after Wiccan volunteers created a safety issue by covering windows inside the prison. After that incident, Defendants properly suspended the services until staff could investigate and counsel the volunteers on the proper rules and procedures. The services were reinstated after this two-week period. As a result, this cancellation did not violate the Decree.

In summary, the Court finds that Plaintiff failed to meet his burden as to the violations of his right to observe weekly and specified religious services.

D. Violation of Plaintiff’s Right to Access an Outdoor Religious Area

Plaintiff alleges Defendants have improperly denied access to an outdoor religious area and the area is incomplete. The Decree provides Plaintiff will have access to an outdoor religious activity area “in accordance with institutional operational concerns to promote equitable access to prayer areas.” (Decree ¶ 21.) It further provides that Plaintiff will have access to a fire pit in this area, the use of which will be in accordance with institutional safety and security concerns. (Decree ¶ 22.)

Defendants have not denied Plaintiff his right to access an outdoor religious area. As Plaintiff’s filings have indicated, Defendants have given him access to work on the outdoor religious area (Pl’s Reply 2.) Further, Plaintiff’s allegations that the area is not “complete” is not supported by sufficient facts. Thus, Court finds that Plaintiff has not met his burden as to the violations of his right to access an outdoor religious area.

E. Plaintiff’s Request for Sanctions and Evidentiary Hearing

On October 9, 2012, Plaintiff filed a Request for No More Extensions of Time, for Sanctions, and for an Evidentiary Hearing. (DE 571.) The Court **DENIES** Plaintiff’s Request in its entirety. Given that the Court has found evidence sustaining only two of Plaintiff’s eight alleged violations, it finds that sanctions are unnecessary at this time. Substantial compliance “is a defense to an action for civil contempt.” *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986). Thus, Plaintiff’s Request for sanctions is rejected. Further, Plaintiff fails to demonstrate that an evidentiary hearing is warranted. Finally, the Court considers Plaintiff’s Request for No More Extensions of Time to be moot in light of the disposition of this Motion.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Enforce the Consent Decree as to the following:

1. Contamination and desecration of religious property (III.A)
2. Cancellation of the December 21, 2011 Yule Sabbat (III.C.1)
3. Cancellation of the June 21, 2012 Summer Solstice Sabbat (III.C.2)
4. Disproportionate cancellation (III.C.3)
5. Indefinite cancellation of services (III.C.4).
6. Outdoor religious area (III.D).

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion to Enforce the Consent Decree as to the following:

1. Damage to his religious property when in Defendants' control (III.A.)
2. Failure to follow proper inmate appeals procedures (III.B)

The Court also **DENIES** Plaintiff's Request for No More Extensions of Time, for Sanctions, and for an Evidentiary Hearing. (DE 571.)

IT IS SO ORDERED.

Initials of
Preparer

_____ : _____
