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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

<b>GREGORY L. RHOADES,</b>	)	<b>1: 02 - CV - 5476 AWI DLB P</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER DENYING RENEWED</b>
	)	<b>MOTION FOR JUDGMENT AS A</b>
<b>v.</b>	)	<b>MATTER OF LAW</b>
	)	
<b>ALAMEIDA et al.,</b>	)	<b>(Document #138)</b>
	)	
<b>Defendants</b>	)	

**BACKGROUND**

In this action, Plaintiff Gregory L. Rhoades (“Plaintiff”) contended that Defendant Atkison (“Defendant”) violated his First Amendment rights and the Due Process Clause when he destroyed Plaintiff’s religious property. A jury trial in this action began on September 29, 2009. After the court denied Defendant’s motion for judgment as a matter of law pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, on September 30, 2009, the jury returned a verdict in favor of Defendant on the First Amendment claim and in favor of Plaintiff on the Due Process Clause claim. The jury awarded Plaintiff \$150.00 in damages on the Due Process Clause claim.

On October 9, 2009, Defendant timely filed a renewed motion for judgment as a matter of law pursuant to Rule 50(b) of the Federal Rules of Civil Procedure. Defendant contends that he is entitled to qualified immunity on Plaintiff’s Due Process Clause claim.

1 Plaintiff requested additional time in which to oppose Defendant's motion. On March 22,  
2 2010, Plaintiff filed an opposition.

### 3 LEGAL STANDARD

4 The court may enter a judgment as a matter of law if there is no legally sufficient  
5 evidentiary basis for a reasonable jury to find for a party on an issue. See Fed.R.Civ.P. 50(a).  
6 Federal Rule of Civil Procedure 50 provides in pertinent part:

7 (a) Judgment as a Matter of Law.

8 (1) In General. If a party has been fully heard on an issue during a jury trial  
9 and the court finds that a reasonable jury would not have a legally  
sufficient evidentiary basis to find for the party on that issue, the court  
may:

10 (A) resolve the issue against the party; and

11 (B) grant a motion for judgment as a matter of law against the party  
on a claim or defense that, under the controlling law, can be  
maintained or defeated only with a favorable finding on that issue.

12 (2) Motion. A motion for judgment as a matter of law may be made at any  
13 time before the case is submitted to the jury. The motion must specify the  
judgment sought and the law and facts that entitle the movant to the  
judgment.

14 (b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the  
15 court does not grant a motion for judgment as a matter of law made under Rule  
50(a), the court is considered to have submitted the action to the jury subject to  
16 the court's later deciding the legal questions raised by the motion. No later than 28  
17 days after the entry of judgment--or if the motion addresses a jury issue not  
decided by a verdict, no later than 28 days after the jury was discharged--the  
18 movant may file a renewed motion for judgment as a matter of law and may  
include an alternative or joint request for a new trial under Rule 59. In ruling on  
the renewed motion, the court may:

19 (1) allow judgment on the verdict, if the jury returned a verdict;

20 (2) order a new trial; or

21 (3) direct the entry of judgment as a matter of law.

22 Fed.R.Civ.Pro. 50(a)-(b).

23 In the Ninth Circuit, judgment as a matter of law pursuant to Rule 50(b) is appropriate  
24 when the evidence permits only one reasonable conclusion, and that conclusion is contrary to that  
25 of the jury. Martin v. California Dept. of Veterans Affairs, 560 F.3d 1042, 1046 (9<sup>th</sup> Cir. 2009);  
26 Josephs v. Pacific Bell, 443 F.3d 1050, 1062 (9<sup>th</sup> Cir. 2006); White v. Ford Motor Co., 312 F.3d  
27 998, 1010 (9<sup>th</sup> Cir. 2002). All evidence must be viewed in the light most favorable to the

1 nonmoving party, and the court must draw all reasonable inferences in that party's favor.  
2 E.E.O.C. v. Go Daddy Software, Inc., 581 F.3d 951, 961 (9<sup>th</sup> Cir. 2009); Martin, 560 F.3d at  
3 1046; Josephs, 443 F.3d at 1062. “[I]n entertaining a motion for judgment as a matter of law, the  
4 court . . . may not make credibility determinations or weigh the evidence.” Reeves v. Sanderson  
5 Plumbing Prods., Inc., 530 U.S. 133 (2000); Go Daddy Software, 581 F.3d at 961.

6 Rule 50(a) requires that a motion for a directed verdict be made at the close of all the  
7 evidence in order to be renewed following entry of judgment. Go Daddy Software, 581 F.3d at  
8 961; Zhang v. American Gem Seafoods, Inc., 339 F.3d 1020, 1029 (9<sup>th</sup> Cir. 2003). A  
9 post-verdict Rule 50(b) motion for judgment as a matter of law is limited to the grounds asserted  
10 in the pre-deliberation Rule 50(a) motion for judgment as a matter of law, and a party cannot  
11 raise arguments in its post-verdict Rule 50(b) motion that it did not raise in its pre-deliberation  
12 Rule 50(a) motion. Go Daddy Software, 581 F.3d at 961; Freund v. Nycomed Amersham, 347  
13 F.3d 752, 761 (9<sup>th</sup> Cir. 2003). “However, Rule 50(b) ‘may be satisfied by an ambiguous or  
14 inartfully made motion’ under Rule 50(a).” Go Daddy Software, 581 F.3d at 961 (quoting Reeves  
15 v. Teuscher, 881 F.2d 1495, 1498 (9<sup>th</sup> Cir. 1989)).

### 16 DISCUSSION

17 “When a qualified immunity claim cannot be resolved before trial due to a factual  
18 conflict, it is a litigant's responsibility to preserve the legal issue for determination after the jury  
19 resolves the factual conflict. A Rule 50(a) motion meets this requirement.” Tortu v. Las Vegas  
20 Metropolitan Police Dept., 556 F.3d 1075, 1083 (9<sup>th</sup> Cir. 2009); see also Norwood v. Vance, 572  
21 F.3d 626, 631 (9<sup>th</sup> Cir. 2009) (defendant may waive qualified immunity claim by failing to raise it  
22 to the district court during or immediately after trial under Rule 50). Here, Defendant timely  
23 made a motion for judgment as a matter of law on qualified immunity grounds during trial.  
24 Thus, Defendant’s renewed motion for judgment as a matter of law on qualified immunity  
25 grounds is properly before the court.

26 “The doctrine of qualified immunity protects government officials from liability for civil  
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1 damages insofar as their conduct does not violate clearly established statutory or constitutional  
2 rights of which a reasonable person would have known.” Pearson v. Callahan, – U.S.– , 129 S.Ct.  
3 808, 815 (2009); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Rodis v. City, County of San  
4 Francisco, 558 F.3d 964, 968 (9<sup>th</sup> Cir. 2009). The defendant bears the burden of establishing  
5 qualified immunity. Crawford-El v. Britton, 523 U.S. 574, 586- 87 (1998).

6 Where a constitutional violation occurs, a defendant is entitled to qualified immunity if he  
7 or she acted reasonably under the circumstances. Millender v. County of Los Angeles, 564 F.3d  
8 1143, 1148 (9<sup>th</sup> Cir. 2009). The Supreme Court in Saucier v. Katz, 533 U.S. 194 (2001),  
9 outlined a two-step approach to qualified immunity. The first step requires the court to ask  
10 whether “[t]aken in the light most favorable to the party asserting the injury, do the facts alleged  
11 show the officer's conduct violated a constitutional right?” Saucier, 533 U.S. at 201; Millender,  
12 564 F.3d at 1148. “If the answer to the first inquiry is yes, the second inquiry is whether the right  
13 was clearly established: in other words, ‘whether it would be clear to a reasonable officer that his  
14 conduct was unlawful in the situation he confronted.’” Millender, 564 F.3d at 1148 (quoting  
15 Saucier, 533 U.S. at 201). In Pearson v. Callahan, 129 S.Ct. 808 (2009), the Supreme Court  
16 held that “judges of the district courts and the courts of appeals should be permitted to exercise  
17 their sound discretion in deciding which of the two prongs of the qualified immunity analysis  
18 should be addressed first in light of the circumstances in the particular case at hand.” Id. at 818  
19 & 821; see also Millender, 564 F.3d at 1149.

20 The operation of the clearly established federal law standard depends substantially upon  
21 the level of generality at which the relevant “legal rule” is to be identified. Anderson v.  
22 Creighton, 483 U.S. 635, 639 (1987); Rodis, 558 F.3d at 969. “[T]he right the official is alleged  
23 to have violated must have been ‘clearly established’ in a more particularized, and hence more  
24 relevant, sense: The contours of the right must be sufficiently clear that a reasonable official  
25 would understand that what he is doing violates that right.” Anderson, 483 U.S. at 640; Rodis,  
26 558 F.3d at 969. “The injured party need not establish that the Defendant’s behavior had been  
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1 previously declared unconstitutional.” Rodis, 545 F.3d at 969. The inquiry is whether it would  
2 be clear to a reasonable officer that his or her conduct was unlawful in the situation he or she  
3 confronted. Saucier, 533 U.S. at 202; Rodis, 545 F.3d at 969.

4 In this action, Plaintiff contended that Defendant violated his procedural due process  
5 rights when he destroyed Plaintiff’s religious property pursuant to prison policies without giving  
6 Plaintiff a hearing or other process. The Due Process Clause protects an inmate’s interest in his  
7 personal property. Hansen v. May, 502 F.2d 728, 730 (9<sup>th</sup> Cir. 1974). However, “prison  
8 officials have broad administrative and discretionary authority over the institutions they  
9 manage.” Hewitt v. Helms, 459 U.S. 460, 467 (1983). Prison policies that infringe on an  
10 inmate’s constitutional rights are still valid if they are reasonably related to a legitimate  
11 penological goal. Turner v. Safley, 482 U.S. 78, 89 (1987). To determine if a prison policy is  
12 reasonably related to a legitimate penological goal, “there must be a valid, rational connection  
13 between the prison regulation and the legitimate government interest put forward to justify it,”  
14 and “the governmental objective must itself be a legitimate and neutral one.” Turner, 482 U.S. at  
15 89. A second consideration is “whether there are alternative means of exercising the right that  
16 remain open to prison inmates.” Id. at 90 (internal quotations and citation omitted). A third  
17 consideration is the impact the accommodation “of the asserted right will have on guards and  
18 other inmates, and on the allocation of prison resources generally.” Id. “Finally, the absence of  
19 ready alternatives is evidence of the reasonableness of a prison regulation.” Id.

20 During trial, Defendant offered several reasons for restrictions on items an inmate may  
21 have in his cell when that inmate is housed in the security housing unit (“SHU”). These reasons  
22 included: (1) The need for additional security measures within the SHU; (2) The use of religious  
23 property as weapons by SHU inmates; (3) The length of time an inmate is often in the SHU; (4)  
24 The amount of inmates and property transferred within the SHU weekly; (5) The lack of space to  
25 store items; (6) The difficulty in searching SHU cells for contraband; and (7) The difficulty of  
26 recognizing items that may be of spiritual significance to some religious groups. Ultimately, the  
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1 jury found that, given these penological reasons, the destruction of Plaintiff's religious property  
2 did not violate Plaintiff's First Amendment rights.

3         The problem with Defendant's contention that he also did not violate Plaintiff's  
4 procedural due process rights is that Defendant never presented evidence as to what valid  
5 penological reasons required Plaintiff be given no or severally limited process prior to his  
6 religious property items' destruction. The penological reasons cited by Defendant concerned  
7 why regulations limiting property in the SHU were necessary. However, these reasons did not  
8 explain why regulations limiting the process given to inmates prior to the destruction of religious  
9 property were necessary. Defendant failed to offer a valid, rational connection between the  
10 prison regulation and the deprivation of Plaintiff's procedural due process rights. There was no  
11 evidence of an alternative means for Plaintiff to obtain his procedural due process rights. While  
12 evidence concerning the lack of storage facilities was provided, Defendant provided no evidence  
13 that allowing Plaintiff some additional process prior to the property's destruction would have an  
14 unacceptable impact on guards, other inmates, and/or the allocation of prison resources. Simply  
15 put, Defendant's evidence did not offer a valid penological reason to violate Plaintiff's  
16 procedural due process rights. As such, there was sufficient evidence for the jury to find  
17 Plaintiff's procedural due process rights had been violated.

18         The next question in the qualified immunity analysis is whether it would have been clear  
19 to a reasonable officer that destroying Plaintiff's religious property without due process violated  
20 the Constitution. See Millender, 564 F.3d at 1148. The law has been clearly established since  
21 the 1970's that inmates have a due process right in their personal property. See Hansen, 502  
22 F.2d at 730. While there have always been limits on an inmate's right to possess his property,  
23 the Turner factors have been used since 1987 to determine if regulations that infringe on due  
24 process rights are reasonably related to a legitimate penological goal. See Turner, 482 U.S. at 89.  
25 Since at least the Turner case was decided, a reasonable officer would have known that there  
26 must be some penological purpose supporting a regulation that infringes on a prisoner's  
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1 procedural due process rights. Because insufficient evidence was presented at trial to show a  
2 penological purpose in withholding Plaintiff's procedural due process rights, Defendant is not  
3 entitled to qualified immunity. Thus, Defendant's motion for judgment as a matter of law  
4 pursuant to Rule 50(b) must be denied.

5 While not raised by Defendant, the court does note that the Ninth Circuit has found that a  
6 defendant is entitled to qualified immunity if he or she acts pursuant to official prison policies if  
7 the policies are not "patently violative of constitutional principles." Brown v. Mason, 288  
8 Fed.Appx. 391, 392-93 (9<sup>th</sup> Cir. 2008). "[W]hen a public official acts in reliance on a duly  
9 enacted statute or ordinance, that official ordinarily is entitled to qualified immunity." Dittman  
10 v. California, 191 F.3d 1020, 1027 (9<sup>th</sup> Cir.1999); Cordell v. Tilton, 515 F.Supp.2d 1114, 1137  
11 (S.D.Cal. 2007). However, reliance upon a statute, regulation, or official policy does not render  
12 the officer's conduct per se reasonable. Roska v. Peterson, 328 F.3d 1230, 1252 (10<sup>th</sup> Cir. 2003);  
13 Dittman, 191 F.3d at 1027. The existence of a statute or ordinance authorizing particular conduct  
14 is a factor that militates in favor of the conclusion that a reasonable official would find that  
15 conduct constitutional because officers are ordinarily entitled to rely on the assumption that the  
16 legislature has considered the views of legal counsel and concluded that the regulation or policy  
17 is a valid and constitutional exercise of authority. Grossman v. City of Portland, 33 F.3d 1200,  
18 1209 (9<sup>th</sup> Cir.1994); see also Way v. County of Ventura, 445 F.3d 1157, 1166 (9<sup>th</sup> Cir. 2006).  
19 Qualified immunity will not be granted to a public official who enforces a statute, regulation, or  
20 policy that is "patently violative of fundamental constitutional principles." Grossman, 33 F.3d at  
21 1209; Cordell, 515 F.Supp.2d at 1137.

22 In this case, the court declines to address whether Defendant is entitled to qualified  
23 immunity because the prison regulations that deprived Plaintiff of due process were not "patently  
24 violative of fundamental constitutional principles." This argument has never been raised by  
25 Defendant. Defendant has never argued that he should be given qualified immunity because he  
26 was simply following prison regulations. A post-verdict Rule 50(b) motion for judgment as a  
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1 matter of law is limited to the grounds asserted in the pre-deliberation Rule 50(a) motion for  
2 judgment as a matter of law, and a party cannot raise arguments in its post-verdict Rule 50(a)  
3 motion that it did not raise in its pre-deliberation Rule 50(a) motion. See Go Daddy Software,  
4 581 F.3d at 961. Because Defendant never argued in his earlier Rule 50(a) motion that qualified  
5 immunity was necessary because Defendant was following established prison regulations,  
6 Defendant is foreclosed from making such an argument at this late date.

7 **ORDER**

8 Accordingly, the court ORDERS that Defendant's renewed motion for judgment as a  
9 matter of law is DENIED.

10  
11 IT IS SO ORDERED.

12 **Dated:** May 19, 2010

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE