

1 monetary damages (id. at 6).

2 **II. Defendant’s Motion for Summary Judgment**

3 **A. Defendant’s Contentions**

4 Defendant moves for summary judgment on the grounds that Plaintiff fails to
5 demonstrate a constitutional deprivation and that the policy governing food was
6 unconstitutional (Doc. 29). In support, Defendant submits his separate Statement of Facts
7 (DSOF) (Doc. 30). Defendant also proffers the declaration of Lieutenant Kimberly
8 Thompson, an officer in the Institutional Services division of Maricopa County Sheriff’s
9 Office (MCSO), which includes Food Services (id., Ex. A, Thompson Decl. ¶ 1), with
10 attachments: Plaintiff’s Inmate Housing Report (id., Ex. A, Attach. A); a copy of the MCSO
11 pickup roster for April 24, 2009 (id., Attach. B); a copy of the MCSO Policy DG-1, entitled
12 “Menu Planning and Nutritional Adequacy for Inmates” (id., Attach. C); a copy of the
13 MCSO Policy DG-2, entitled “Inmate Meal Distribution” (id., Attach. D); a copy of the 2005
14 United States Department of Agriculture (USDA) Guidelines for Americans (id., Attach. E);
15 copies of menus and nutritional information for meals served to inmates (id., Attachs. F-G);
16 a copy of the MCSO Policy DG-3, entitled “Food Services Section Safety and Sanitation”
17 (id., Attach. H); a copy of the MCSO Policy DG-6, entitled “Budgeting, Purchasing, and
18 Storing of Food” (id.); and copies of Plaintiff’s medical records (id.).

19 In his motion, Defendant argues that any policy claim against Defendant fails because
20 the MCSO’s food policy requires that meals meet or exceed the daily calories required for
21 a sedentary adult (Doc. 29 at 5-6). In addition, the policy requires that the jail’s dietician
22 periodically review the menus and the meals actually served to ensure that the nutritional
23 needs of inmates were met (id. at 6). As a result, Defendant contends that he has introduced
24 indisputable evidence that the meals served during Plaintiff’s incarceration met the USDA
25 guidelines and that Plaintiff has failed to provide any evidence that any food he received was
26 spoiled.

27 Alternatively, Defendant maintains that there is no evidence that Defendant knew of
28 any risk to Plaintiff or that Plaintiff actually suffered any harm (id. at 7-8). Finally,

1 Defendant argues that Plaintiff is not entitled to punitive damages (id. at 9).

2 **B. Plaintiff's Response²**

3 Plaintiff opposes Defendant's motion and maintains that there are sufficient facts
4 showing a genuine issue for trial (Doc. 38). Plaintiff submits his own Statement of Facts
5 (Doc. 39, Pl.'s Statement of Facts (PSOF)); his declaration (id., Ex. A, Pl. Decl.); and the
6 declarations of inmates Roy Lee Jarrett, Chad Edward Lander, and Richard A. Breitling (id.,
7 Exs. B-D).

8 Plaintiff argues that it is well-known that Defendant is "America's Toughest Sheriff"
9 and that Defendant has intentionally created policies—written and unwritten—that are
10 deliberately indifferent to the health of Plaintiff and other inmates (Doc. 38 at 4-5). Plaintiff
11 contends that contrary to Defendant's contentions, Plaintiff consistently received food that
12 was moldy, undercooked, or otherwise inedible (Doc. 39, Ex. A, Pl. Decl. ¶ 3). Plaintiff
13 asserts that it was common to receive food with foreign objects and that MCSO staff would
14 not replace inedible food (id. ¶¶ 6-7). Plaintiff claims that food that is inedible cannot count
15 toward the USDA minimum calorie requirement (Doc. 38 at 5). Plaintiff also challenges the
16 meal reports Defendant submitted in support of his summary judgment motion. Plaintiff
17 argues that any report generated by any MCSO employee is suspect and should not be
18 considered (id.).

19 As a result of inadequate and spoiled meals, Plaintiff alleges he suffered vomiting,
20 severe abdominal pain, cramping, headaches, dizziness, and physical weakness (Pl. Decl.
21 ¶ 9). Plaintiff also claims he was placed on a vegetarian diet (id. ¶ 10). Finally, Plaintiff
22 alleges that on days he went to court, he was served meals more than 14 hours apart (id. ¶ 4).

23 **C. Defendant's Reply**

24 In reply, Defendant maintains that MCSO policies pertaining to food service are
25 constitutional and that Plaintiff has not introduced any evidence to the contrary (Doc. 40 at
26 2). Additionally, Defendant argues that Plaintiff has not introduced any evidence to show

27
28 ²The Court issued an Order informing Plaintiff of his obligation to respond to Defendant's motion (Doc. 53). See Rand v. Rowland, 154 F.3d 952, 962 (9th Cir. 1998).

1 that Defendant was aware of any deficiencies with respect to meals and failed to act.
2 Defendant also challenges the statements from three other MCSO inmates, arguing that the
3 inmates' contentions are irrelevant with respect to whether MCSO's food policies are
4 unconstitutional. And finally, Defendant reiterates that there is no evidence Plaintiff suffered
5 anything more than *de minimis* harm or that Defendant had an intent to punish inmates (*id.*
6 at 5-6).

7 **IV. Legal Standards**

8 **A. Summary Judgment**

9 A court must grant summary judgment "if the pleadings, the discovery and disclosure
10 materials on file, and any affidavits show that there is no genuine issue as to any material fact
11 and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see
12 also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Under summary judgment
13 practice, the movant bears the initial responsibility of presenting the basis for its motion and
14 identifying those portions of the record, together with affidavits, that it believes demonstrate
15 the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323; Devereaux v.
16 Abbey, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc).

17 If the movant meets its burden with a properly supported motion, the burden then
18 shifts to the nonmovant to present specific facts that show there is a genuine issue for trial.
19 Fed. R. Civ. P. 56(e); Auvil v. CBS "60 Minutes", 67 F.3d 816, 819 (9th Cir. 1995); see
20 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The nonmovant need not
21 establish a material issue of fact conclusively in its favor; it is sufficient that "the claimed
22 factual dispute be shown to require a jury or judge to resolve the parties' differing versions
23 of the truth at trial." First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89
24 (1968). By affidavit or as otherwise provided by Rule 56, the nonmovant must designate
25 specific facts that show there is a genuine issue for trial. Anderson, 477 U.S. at 249;
26 Devereaux, 263 F.3d at 1076.

27 At summary judgment, the judge's function is not to weigh the evidence and
28 determine the truth but to determine whether there is a genuine issue for trial. Anderson, 477

1 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence, and draw all
2 inferences in the nonmovant’s favor. Id. at 255.

3 **B. Fourteenth Amendment³**

4 Pretrial detainees are protected by the Fourteenth Amendment’s Due Process Clause,
5 which provides that “detainees have a right against jail conditions or restrictions that ‘amount
6 to punishment.’” Pierce v. County of Orange, 526 F.3d 1190, 1205 (9th Cir. 2008) (citing
7 Bell v. Wolfish, 441 U.S. 520, 535-37 (1979)). The Fourteenth Amendment standard is more
8 protective than the Eighth Amendment; “[t]his standard differs significantly from the
9 standard relevant to convicted prisoners, who may be subject to punishment so long as it does
10 not violate the Eighth Amendment’s bar against cruel and unusual punishment.” Pierce, 526
11 F.3d at 1205.

12 Under the Fourteenth Amendment analysis, to determine if government action
13 constitutes punishment, courts must determine (1) whether the action caused the detainee to
14 suffer some harm or “disability,” and (2) whether the purpose of the action was to punish the
15 detainee. Demery v. Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004) (citing Bell, 441 U.S. at
16 538). The test for identifying unconstitutional punishment of pretrial detainees is whether
17 there was an express intent to punish or whether there was an alternative purpose for the
18 restriction and whether the restriction appears excessive in relation to this alternative
19 purpose. Demery, 378 F.3d at 1028.

20 Not every disability imposed during pretrial detention constitutes “punishment” in the
21 constitutional sense. Bell, 441 U.S. at 537. To constitute punishment, the harm caused by

22
23 ³ Defendant disputes that Plaintiff was a pretrial detainee during his MCSO
24 incarceration, arguing that Plaintiff was transferred to the Lower Buckeye Jail from the
25 Arizona Department of Corrections. Plaintiff, however, maintains that he was transferred
26 from the Pinal County Jail to MCSO custody. Defendant’s evidence about Plaintiff’s transfer
27 to MCSO custody reflects only that Plaintiff was picked up from “S. O. Florence” on April
28 24, 2009 (Doc. 30, Ex. A, Attach. B). This evidence does not establish that Plaintiff was
transferred from the Arizona Department of Corrections. And Defendant fails to introduce
any other evidence that Plaintiff was a convicted prisoner during his MCSO incarceration.
Consequently, the Court will analyze Plaintiff’s claim as arising under the Fourteenth
Amendment. Pierce, 526 F.3d at 1205.

1 the action or condition “must either significantly exceed, or be independent of, the inherent
2 discomforts of confinement.” Demery, 378 F.3d at 1030. A court should look at the nature
3 of the condition and whether it is reasonably related to a legitimate governmental objective.
4 Pierce, 526 F.3d at 1205. If the condition or restriction is arbitrary or purposeless, a court
5 may infer that the purpose of the action is punishment that may not be inflicted on pretrial
6 detainees. Id. (citing Bell, 441 U.S. at 539).

7 C. Food

8 Food served to inmates does not have to be tasty or aesthetically pleasing, and if meals
9 occasionally contain foreign objects or are served cold, it does not amount to a constitutional
10 deprivation. LeMaire v. Maass, 12 F.3d 1444, 1456 (9th Cir. 1993). But inmates must be
11 provided food that is nutritionally adequate to maintain health and that is prepared and served
12 in a manner that does not present a danger to their well being. Id.; see also Johnson v. Lewis,
13 217 F.3d 726, 731-32 (9th Cir. 2000) (identifying a cognizable constitutional violation where
14 inmates alleged they were, *inter alia*, deprived of adequate food).

15 V. Analysis

16 A supervisory official may be liable if he implements a policy “so deficient that the
17 policy ‘itself is a repudiation of constitutional rights’ and is the ‘moving force of the
18 constitutional violation.’” Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir.
19 1991) (citation omitted). To premise a supervisor’s alleged liability on a custom or policy,
20 the plaintiff must identify a specific policy and establish a “direct causal link” between that
21 policy and the alleged constitutional deprivation. See City of Canton, Ohio v. Harris, 489
22 U.S. 378, 385 (1989).

23 Under state law, Defendant has final policy-making authority with respect to the
24 operation of the county jails. See Ariz. Rev. Stat. § 11-441(A)(5); Flanders v. Maricopa
25 County, 54 P.3d 837, 847 (Ariz. Ct. App. 2002). Further, it has been established that pretrial
26 detainees at the Maricopa County Jails must be provided food that meets or exceeds the
27 USDA Dietary Guidelines. Graves v. Arpaio, 2008 WL 4699770, at *46 (D. Ariz. Oct. 22,
28 2008); Graves, ___ F.3d ___, 2010 WL 3987721, at *5-6 (9th Cir. Oct. 13, 2010)

1 (addressing, among other issues, adequacy of food); see U.S. ex rel. Robinson Rancheria
2 Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 2002) (courts may take judicial
3 notice of proceedings in other courts “if those proceedings have a direct relation to matters
4 at issue”).

5 Defendant introduces the relevant food policies in effect during Plaintiff’s
6 incarceration, which establish that inmates were served two meals a day, with an average of
7 just over 2500 calories per day (Doc. 30, Ex. 1, Thompson Aff. ¶¶ 12-13). Defendant further
8 submits the USDA guidelines for recommended caloric intake for sedentary males between
9 the ages of 31 and 50, which is 2200 calories per day (id. ¶ 10).⁴ Additionally, Defendant
10 avers that although there might be fluctuation in the actual calories served on a day-to-day
11 basis, the jail’s policy is to serve a minimum of 2400 calories per day (id. ¶ 16).

12 The Court finds that Defendant has introduced specific evidence that his policy
13 required inmates to be served a minimum of 2400 calories per day, which exceeds the USDA
14 caloric guidelines for sedentary males. The burden now shifts to Plaintiff to present specific
15 facts that a genuine issue exists. Fed. R. Civ. P. 56(e).

16 Plaintiff alleges that in practice, it was the custom at the jail to serve meals more than
17 14 hours apart and provide meals with inadequate calories and spoiled food. Plaintiff also
18 alleges that he suffered vomiting, headaches, and dizziness as a result of the spoiled and
19 insufficient meals provided at the jail. But Plaintiff’s response is devoid of any specific
20 allegations regarding any spoiled or inedible meals he received. Even crediting Plaintiff’s
21 claim that he did sometimes receive spoiled food, a claim that a policy or custom is
22 unconstitutional “may not be predicated on isolated or sporadic incidents.” Trevino v. Gates,
23 99 F.3d 911, 918 (9th Cir. 1996). Plaintiff’s conclusory and vague allegations are simply
24 insufficient to defeat summary judgment. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
25 1989).

26 Nor does Plaintiff introduce any probative evidence that Defendant directed or was
27

28 ⁴ Plaintiff’s date of birth is November 14, 1965 (Doc. 30, Ex. 1, Attach. A).

1 aware of any deviations from his established meal policies. See Redman, 942 F.2d at 1447
2 (culpability where a supervisor “knows or reasonably should know” that acts by others would
3 lead to a constitutional injury) (citation omitted). As such, Plaintiff makes no evidentiary
4 showing concerning Defendant’s liability. See Richardson v. Runnels, 594 F.3d 666, 671-72
5 (9th Cir. 2010) (movant must make some evidentiary showing to support claim for summary
6 judgment).

7 For these reasons, Defendant is entitled to summary judgment.

8 **IT IS ORDERED:**

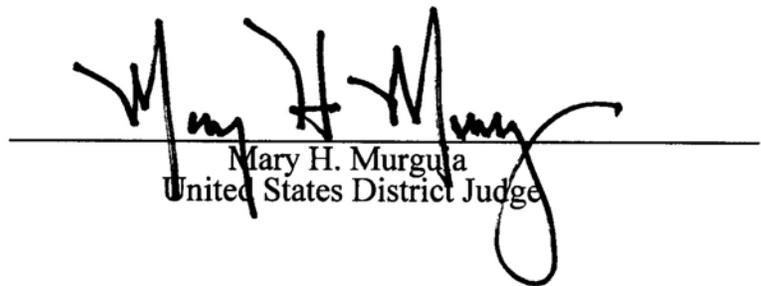
9 (1) The reference to the Magistrate Judge is **withdrawn** as to Defendant’s Motion for
10 Summary Judgment (Doc. 29).

11 (2) Defendant’s Motion for Summary Judgment (Doc. 29) is **granted**.

12 (3) This action is dismissed with prejudice, and the Clerk of Court must enter
13 judgment accordingly.

14 DATED this 22nd day of November, 2010.

15
16
17
18
19
20
21
22
23
24
25
26
27
28



Mary H. Murgula
United States District Judge