IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Felton Guillory, Plaintiff, vs. James E. Tilton, et al., Defendants.	No. CV-07-0775-ROS (PC) **ORDER**

Pending before the Court is Defendants' Motion for Partial Summary Judgment (Doc. 63).[1] For the reasons below, the motion will be granted. The case will proceed to trial on Plaintiff's remaining claims.

BACKGROUND

The Parties

Plaintiff Felton Guillory is a prisoner in custody with the California Department of Corrections and Rehabilitation ("CDCR"). (Doc. 64, ¶ 1). Defendant Johnson is retired, but Johnson was a lieutenant at California Correctional Institution ("CCI") in Tehachapi, California at all times relevant to this lawsuit. (Id., ¶ 3-4). Johnson did not work on April 14 or 15, 2006. (Id., ¶ 5). Defendant Granillo is a correctional officer at CCI, and worked

[1] The remaining defendants are Granillo, Johnson, Montano and Snyder (collectively, "Defendants").

from 6 a.m. to 2 p.m. on all days relevant to this lawsuit. (Id., ¶ 6-8). Defendant Montano is a sergeant at CCI, but at all relevant times he was a correctional officer at CCI. (Id., ¶ 9). Montano stopped working at 10 p.m. on April 14, 2006, and did not work on April 15 through 17, 2006. (Id., ¶ 10-11). Defendant Snyder was a correctional officer at CCI and worked from 2 p.m. to 10 p.m. on all days relevant to this lawsuit. (Id., ¶ 12-13).

Plaintiff's Transfer

On April 14, 2006, Plaintiff was charged with participating in a battery on a peace officer at California State Prison Los Angeles ("LAC"). (Id., ¶ 14). Plaintiff was deemed a threat to the safety of "self and others," and given an Administrative Segregation Unit Placement Notice. (Id., ¶ 15). Lieutenant R. Clemons ordered Plaintiff be transferred from LAC to CCI and placed in Administrative Segregation, and remain there until an institutional classification committee evaluated his program and housing needs. (Id., ¶ 16). Defendants played no role in the decision to place or retain Plaintiff in Administrative Segregation. (Id., ¶ 18). Defendants did not believe, and did not have reason to believe, Plaintiff's assignment was inappropriate.

At approximately 8:30 p.m. on April 14, 2006, Defendant Snyder escorted Plaintiff from Receiving and Release to Building Six where the Administrative Segregation Unit is located. (Id., ¶ 22). The temperature was 47 or 48 degrees Fahrenheit. (Id., ¶ 23). Plaintiff does not recall how long the escort took, but it covered approximately 120 yards and would routinely take about six minutes. (Id., ¶ 25-30). An inmate in Administrative Segregation does not typically have a jumpsuit. (Id., ¶ 31). If necessary, additional clothing such as a jumpsuit may be provided to a prisoner during escort, but correctional staff members prefer not to provide additional clothing for security reasons. (Id., ¶ 33). Inmates often refuse to comply with orders, and Defendant Snyder was concerned that an inmate may refuse to relinquish a jumpsuit after transfer. (Id., ¶ 34-35). This would necessitate a cell extraction or other calculated force. (Id., ¶ 35). The risk of injury associated with such force is greater than exposing an inmate to external temperatures for a few minutes during transfer. (Id.). As such, most inmates are transported to Administrative Segregation without a jumpsuit or

additional clothing. (Id.). Defendant Snyder did not believe additional clothing was necessary during the April 14, 2006 escort. (Id., ¶ 36). Plaintiff does not know who escorted him to the Administrative Segregation Unit on April 14, 2006. (Id., ¶ 21).

Sandbags

Sandbags are sometimes placed in front of cell doors to prevent inmates from passing things to one another, such as weapons, contraband or notes. (Id., ¶ 37).

Meals

Inmates in Administrative Segregation are provided three meals per day. (Id., ¶ 39). The meals and trash are collected approximately one hour after they are delivered, except for the sack lunch and lunch trash which is collected at dinner. (Id.). Plaintiff does not know the identity of anyone who delivered meals to his housing unit from April 15 through 21, 2006. (Id., ¶ 40).

On April 15, 2006 breakfast and lunch were delivered by a non-defendant correctional staff member who failed to stop at Plaintiff's cell. (Id., ¶ 41). Plaintiff believed his cellmate inadvertently caused his cell to be skipped, so Plaintiff did not complain about missing meals until 5 p.m. at the earliest. (Id., ¶ 42). Plaintiff did not receive dinner on April 15, 2006, or breakfast or lunch on April 16, 2006. (Id., ¶ 43). His first meal was at 6 p.m. on April 16, 2006. (Id., ¶ 44). Defendants Granillo, Johnson, Montano and Snyder are not aware of anyone who refused to provide Plaintiff with any meals, and did not know Plaintiff was refused meals. (Id., ¶ 45-46). Plaintiff did not suffer any serious medical effect from the missed meals. (Id., ¶ 47-48).

Between April 17 and 21, 2006 the size of Plaintiff's breakfast and dinner were smaller than he was accustomed to. (Id., ¶ 51). CDCR dieticians are responsible for ensuring every prison prepares and serves meals that meet daily nutritional standards. (Id., ¶ 57). CDCR's meal plans include instructions regarding serving size. (Id., ¶ 58). CDCR's meal plan provided inmates with an average of 2943 calories per day. (Id., ¶ 61). Meals are served from large containers with serving utensils that are uniform in size. (Id., ¶ 59). Inmates serve most of the meals in prison, and they regularly exceed CDCR's serving sizes.

(Id., ¶ 64). A "normal [meal] tray" contained "more than a man could eat." (Id., ¶ 65) Defendants Granillo, Montano and Snyder did not believe or have reason to believe CDCR's meal plans were too small. (Id., ¶ 66). New Administrative Segregation inmates often complained CDCR's serving sizes were too small. (Id., ¶ 66).

Uneaten Food

Correctional staff are authorized to conduct random cell searches. (Id., ¶ 67); Cal. Code Regs. tit. 15, § 3287 (2006). Due to increased security risk in the unit, correctional staff frequently search cells in Administrative Segregation. (Doc. 64, ¶ 68). Inmates are not allowed to keep uneaten food in their cell. (Id., ¶ 69). Uneaten food poses a threat to the sanitation of a cell and the entire housing unit, and can lead to odor, disease and pest infestations. (Id., ¶ 70). During cell searches, correctional staff regularly confiscate uneaten food. (Id., ¶ 71).

However, inmates may request a special religious diet that can exempt an inmate from normal collection times for uneaten food. (Id., ¶ 72-73). Each year, the prison approves fasts during the religious holiday of Ramadan. (Id., ¶ 72). Under Department Operation Manual ("DOM") section 54080.13 inmates may request a special religious diet at least 30 days in advance. (Id., ¶ 73). The request must be made in writing to the chaplain, who decides whether to sponsor the request and pass it to supervisory prison officials to determine whether the request is feasible and appropriate. (Id.). If approved, inmates are provided paperwork indicating their eligibility and correctional staff are provided a list and instructions for the special program. (Id., ¶ 73-74).

Plaintiff fasted during the Ramadan, and Plaintiff was on an approved list of participants for fasting. (Id., ¶ 75). However, Plaintiff did not apply for permission to keep uneaten food in his cell during a fast, and he did not have paperwork exempting him from normal collection of uneaten food. (Id., ¶ 77). Defendants Johnson and Granillo played no role in processing requests for special religious diet programs. (Id., ¶ 78). Defendant Granillo did not have any reason to believe Plaintiff was exempt from uneaten food collection, and confiscated Plaintiff's uneaten food pursuant to regular policy. (Id., ¶ 79-81).

Defendant Johnson did not have any reason to believe Granillo's conduct was improper because Plaintiff was not exempt from the uneaten food collection policy. (Id., ¶ 83).

Toilet Paper and Soap

The amounts and type of property permitted in the Administrative Segregation Unit are restricted. (Id., ¶ 84-85). Defendants Granillo, Montano and Snyder always issued inmates toilet paper and soap upon their arrival, and have never observed a correctional staff member fail to provide an inmate with toilet paper or soap upon arrival. (Id., ¶ 87). Defendants Granillo, Johnson, Montano and Snyder did not believe, or have reason to believe, Plaintiff did not have toilet paper or soap. (Id., ¶ 88-91). Administrative Segregation inmates are allowed less property than general population inmates, so Defendants Granillo, Montano and Snyder frequently hear generalized complaints such as, "We don't have anything in here." (Id., ¶ 92). When they investigate those complaints, they discover the inmates have been issued necessary property, but are dissatisfied with what they are allowed to possess in Administrative Segregation. (Id., ¶ 92). As such, upon hearing a general complaint such as "I don't have anything in here," Defendants Granillo, Montano and Snyder would not have reason to believe an inmate lacks toilet paper and soap unless something was specifically said about toilet paper or soap. (Id., ¶ 93). Plaintiff stated to Defendants Snyder and Granillo, "We ain't got nothing. Why you guys not giving us anything?" (Id., ¶ 96). Before April 16, 2006, Plaintiff did not tell Defendants Snyder, Granillo, Montano or Johnson that he did not have toilet paper. (Id., ¶ 95). On April 16, 2006, Plaintiff received toilet paper and soap. (Id., ¶ 94). Between April 14 and 16, 2006, Plaintiff had one bowel movement and had to wash his hands with water. (Id., ¶ 97-98).

Mattress

Administrative Segregation inmates occasionally destroy their mattresses. (Id., ¶ 99). Extra mattresses are typically stored in the prison laundry. (Id.). The laundry is run by non-correctional staff employees who have keys to the building. (Id., ¶ 100). On Friday April 14, 2006, Defendant Montano learned the Administrative Segregation Unit was running low on mattresses. (Id., ¶ 101-102). Defendant Montano contacted laundry, but they were

closed. (Id., ¶ 103). Montano searched other cells looking for unused mattresses. (Id.). Montano was then informed the Administrative Segregation Unit was going to receive additional inmates. (Id., ¶ 104). Montano advised his supervisor, Sergeant Villanueva, of the mattress shortage, and Villanueva told Montano to also search all of Building Six and that he would try to get laundry reopened before Monday April 17, 2006. (Id., ¶ 105). Montano searched Building Six with another officer, but did not locate any available mattresses. (Id., ¶ 106). Villanueva informed Montano there was no laundry access, and Montano was not aware of any other means of obtaining additional mattresses. (Id., ¶ 107-109). On April 14 through 16, 2006, Plaintiff shared one mattress with his cellmate. (Id., ¶ 110). On Monday April 17, 2006, a second mattress and sheets were placed in Plaintiff's cell. (Id., ¶ 111).

Communications

Plaintiff alleges when he discussed the amount of property in his cell with Granillo, Granillo responded, "You know what you Muslims are here for. Stop bitching." (Id., ¶ 112). The conversation lasted only a few seconds. (Id.). Defendants Snyder and Montano did not hear Granillo make this statement. (Id., ¶ 113). When Plaintiff discussed the amount of property in his cell with Snyder, Snyder calmly responded, "The sergeant said nothing comes in or out of the cell." (Id., ¶ 114). This conversation also lasted only a few seconds. (Id.). Between April 14 and 19, 2006, Defendant Johnson did not communicate with Plaintiff, and Johnson was not aware of anyone mistreating Plaintiff, escorting Plaintiff, failing to provide Plaintiff with a meal, mattress, bedding, clothing, toilet paper, or soap. (Id., ¶ 117-118). On April 20, 2006, Plaintiff complained to Johnson that property was missing from his cell. (Id., ¶ 119). Immediately after speaking with Johnson, Plaintiff received a toothbrush, toothpaste, eating utensils and writing materials. (Id., ¶ 120).

ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate where "there is no genuine issue as to any material fact" and "the movant is entitled to judgment as a matter of law." Fed R. Civ. P. 56(c). The evidence of the non-moving party is to be believed, and all reasonable inferences drawn in

its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986). "[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal citations omitted). However, if the non-moving party bears the burden of proof at trial, the moving party's summary judgment motion need only highlight the absence of evidence supporting the non-moving party's claims. *See Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (citing *Celotex Corp.*, 477 U.S. at 323-25). The burden then shifts to the non-moving party who must produce evidence sustaining a genuine issue of disputed material fact. *Id.*

B. Defendants' Motion for Summary Judgment

Defendants Granillo, Johnson, Montano and Snyder move for summary judgment on Plaintiff's claims except (1) Plaintiff's Eighth Amendment claim against Snyder regarding the amount of clothing and sheets Plaintiff possessed between April 15 and April 16, 2006; and (2) Plaintiff's First and Eighth Amendment claims against Granillo regarding the amount of clothing and sheets Plaintiff possessed between April 14 and April 16, 2006. The Court will address each claim on which Defendants move for summary judgment.

1. Eighth Amendment Claims

The Eighth Amendment prohibits cruel and unusual punishment. This imposes a duty on prison officials to provide basic life necessities such as food, clothing, shelter and sanitation. *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The Constitution does not mandate comfortable prisons. *Farmer*, 511 U.S. at 832. To establish an Eighth Amendment violation against a prison official, a plaintiff must show: (1) the deprivation was objectively, sufficiently serious; and (2) the prison official had a sufficiently culpable state of mind, as where the offending conduct is unnecessary and wanton. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991).

To satisfy the first prong, a plaintiff must show he faced a substantial risk of serious harm. *Farmer*, 511 U.S. at 835-36. A court must consider the circumstances, nature and duration of the deprivation to determine whether a deprivation is sufficiently serious. *Id*. The more basic the need, the shorter time it may be withheld. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Temporary deprivations of sanitation are insufficient to state an Eighth Amendment claim. *Compare Hutto v. Finney*, 437 U.S. 678, 686-87 (1978) ("A filthy, overcrowded cell and a diet of 'grue[l]' might be tolerable for a few days and intolerably cruel for weeks or months.") and *Smith v. Copeland*, 87 F.3d 265, 269 (8th Cir. 1996) (four-day exposure to raw sewage from overflowing toilet in cell not cognizable because it was a "de minimis imposition and thus [did] not implicate constitutional concerns") *with Anderson v. County of Kern*, 45 F.3d 1310, 1314 (9th Cir. 1995) (Eighth Amendment violation cognizable where serious health hazards lasted nine months, including inoperable toilets, insect infestations in stagnant pools of water and a lack of cold water when temperatures were above 100 degrees).

To satisfy the second prong, a plaintiff must demonstrate the defendants intentionally acted with deliberate indifference to the substantial risk of harm. *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991). Negligence or gross negligence does not constitute deliberate indifference. *Farmer* 511 U.S. at 835-36; *Estelle v. Gamble*, 829 U.S. 97, 106 (1976). To be liable for an Eighth Amendment violation, the prison official must know of and disregard an excessive risk to inmate health or safety. *Farmer*, 511 U.S. at 837. The official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference. *Id.*

a. Plaintiff's Eighth Amendment Claims Regarding Meals

Plaintiff alleges Defendants violated his Eighth Amendment rights by depriving him of five meals on April 15 and April 16, 2006. Plaintiff's claim fails for two reasons. First, Plaintiff has not created a genuine issue of material fact that Defendants Montano, Johnson, Granillo or Snyder deprived him of food. Montano did not work either day. Johnson did not work April 15 and Plaintiff did not inform Johnson of the problem on April 16. Granillo and

Snyder were working, but were not responsible for delivering Plaintiff's meals, and they did not believe and were not informed anyone refused to provide Plaintiff with meals. Second, prisons must provide inmates with food, but to show deliberate indifference to Plaintiff's dietary needs, Plaintiff must show his health was in immediate danger or his health suffered as a result of the lack of food. *Wishon v. Gammon*, 978 F.2d 446, 449 (8th Cir. 1992); *Berry v. Brady*, 192 F.3d 504, 506-08 (5th Cir. 1999) (deprivation of food is cruel and unusual punishment only if it denies minimal civilized measure of life's necessities, which depends on duration of deprivation). Plaintiff has not shown that missing five meals placed his health in immediate danger or that his health suffered from the lack of food.

Plaintiff also alleges he received small serving sizes for breakfast and dinner between April 16 and April 21, 2006. Again, Plaintiff's claims fail for two reasons. First, Plaintiff has presented no evidence these Defendants delivered Plaintiff's meals between April 16 and April 21, 2006. Dieticians, not Defendants, prepared the menus. Second, prison meals provided 2943 calories per day. Inmates in general population were accustomed to receiving excess servings. Administrative Segregation inmates often complained the meals were too small, and subsequent investigations revealed the servicing sizes were sufficient for nutritional needs. Plaintiff concedes he was accustomed to servings that were "more than a man could eat," and he could not determine the number of calories he was provided between April 16 and April 21, 2006. Plaintiff has not demonstrated his health was impacted or in immediate danger.

Plaintiff has not demonstrated a genuine issue of material fact as to his Eighth Amendment claim regarding his meals.

b. Plaintiff's Eighth Amendment Claim Regarding the Mattress

Plaintiff alleges he shared a mattress with his cellmate between April 14 and April 16, 2006. Plaintiff has not shown he faced a substantial risk of serious harm. *Farmer*, 511 U.S. at 835-36. The deprivation was brief. The failure to provide a mattress for three nights does not violate the Eighth Amendment. *Hernandez v. Denton*, 861 F.2d 1421, 1424 (9th Cir. 1988) (sleeping on the floor without a mattress for a night does not state an Eight

Amendment violation) *vacated on other grounds by* 493 U.S. 801 (1989); *Wilson v. Schomig*, 863 F.Supp. 789, 794-95 (N.D. Ill. 1994) (without a showing of physical harm, no Eighth Amendment claim for inmate forced to sleep on filthy mattress); *Peterkin v. Jeffes*, 855 F.2d 1021, 1026-28 (3d Cir. 1988) sleeping on dirty mattress on floor did not state Eighth Amendment claim). Nor has Plaintiff shown Defendants intentionally acted with deliberate indifference to the substantial risk of harm. As discussed above, Johnson played no role in the mattress allegations. As to the remaining Defendants, they searched for a mattress but could not locate one until laundry opened the next business day. Plaintiff has not demonstrated a genuine issue of material fact as to his Eighth Amendment claim regarding the mattress.

c. Plaintiff's Eighth Amendment Claim Regarding Property in His Cell

Plaintiff alleges his Eighth Amendment rights were violated when he was denied toilet paper and soap for two days, and a toothbrush for a week. Defendants were not responsible for issuing these hygiene items upon Plaintiff's arrival. Non-defendant officers were responsible for issuing such items upon Plaintiff's arrival. Defendants were not aware of another instance in which an inmate was not issued hygiene items. Defendants assumed Plaintiff was issued hygiene items. Plaintiff did not inform Defendants that he was without these hygiene items. Instead, Plaintiff made general statements, such as "We ain't got nothing." Given that Administrative Segregation inmates are permitted less property than general population inmates, this is a common generalized complaint, and did not alert Defendants to the missing hygiene items.

To be liable for an Eighth Amendment violation, the prison official must know of and disregard an excessive risk to inmate health or safety. *Farmer,* 511 U.S. at 837. The official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference. *Id.* Defendants were without facts to draw the inference, and did not draw the inference, that Plaintiff faced a substantial risk of serious harm.

Moreover, courts have found the temporary deprivation of hygiene items does not satisfy the first component of an Eighth Amendment claim that the deprivation was objectively, sufficiently serious. *Harris v. Flemming,* 839 F.2d 1232, 1235-36 (7th Cir. 1988) (no constitutional violation where prison officials failed to provide inmate with toilet paper for five days, and soap, toothbrush and toothpaste for ten days).

Plaintiff has not demonstrated a genuine issue of material fact as to his Eighth Amendment claim regarding the lack of hygiene items in his cell.

d. Plaintiff's Eighth Amendment Claim Regarding Sandbag

Plaintiff alleges his Eighth Amendment rights were violated when a sandbag was placed in front of his cell door to prevent other inmates from passing him food or hygiene items. Plaintiff's claim fails for two reasons. First, Plaintiff's claims for deprivation of food and hygiene items do not survive summary judgment. Therefore, preventing other inmates from providing Plaintiff food or hygiene items cannot constitute an Eighth Amendment violation. Second, sandbags are regularly used to prevent inmates from passing weapons, contraband and notes. Plaintiff's allegation that Granillo used the sandbag to restrict food or hygiene items is unsubstantiated and conclusory. Plaintiff was in Administrative Segregation because of his participation in a battery. An investigation was ongoing, and the sandbag was used for the legitimate penological objective of preserving the integrity of the investigation. Plaintiff has not demonstrated a genuine issue of material fact as to his Eighth Amendment claim regarding the sandbag.

e. Plaintiff's Eighth Amendment Claim Regarding the Transfer

Plaintiff alleges his Eighth Amendment rights were violated when he was denied additional clothing during his transfer to the Administrative Segregation Unit. The record shows inmates in Administrative Segregation do not possess jumpsuits; inmates frequently refuse to comply with orders; if inmates are provided jumpsuits they may refuse to relinquish the jumpsuit, in which case officers must perform a cell extraction; and calculated force would expose the inmate and correctional staff to greater risk of harm than six to ten minutes of exposure to forty-seven degree weather. (Doc. 64, ¶ 21-35). Plaintiff has not presented

evidence that the alleged deprivation was objectively, sufficiently serious, or the prison official had a sufficiently culpable state of mind. As such, Plaintiff has not demonstrated a genuine issue of material fact as to his Eighth Amendment claim regarding the escort transfer.

2. First Amendment Claims

a. Retaliation

For each of Plaintiff's Eighth Amendment claims, it appears Plaintiff alleges a corresponding retaliation claim under the First Amendment. To prevail on a First Amendment retaliation claim, Plaintiff must show: (1) prison officials took adverse action against him; (2) the adverse action was taken because he engaged in protected conduct; (3) the adverse action chilled his First Amendment rights; and (4) the adverse action did not serve a legitimate penological purpose. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005).

With one exception, discussed below, Plaintiff's First Amendment retaliation claims fail because he failed to: (1) connect these Defendants to the alleged adverse action, and (2) present any evidence Defendants took any action based on Plaintiff's religion. *See May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980) (defendant's conduct must cause the deprivation of a plaintiff's constitutional rights); *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (causation is "individualized and focus[es] on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation."). Further, as discussed above, with the exception of the deprivation of hygiene items,[2] the alleged adverse actions served legitimate penological purposes.

The lone exception is Plaintiff's retaliation claim against Granillo for deprivation of clothing and bedding. Plaintiff supports this claim with Granillo's statement, "You know what you Muslims are here for. Stop bitching." (Id., ¶ 112). As such, Granillo indicated

[2] As discussed above, Plaintiff has not connected these Defendants to the deprivation of hygiene items. Plaintiff received hygiene items upon telling these Defendants what he was missing.

some of his conduct was based upon Plaintiff's religion, and Plaintiff's retaliation claim against Granillo for deprivation of clothing and bedding will go to trial.[3] (Id.).

Plaintiff also argues Snyder's conduct was similar to Granillo's conduct. However, Plaintiff has not presented any evidence Snyder took any action based on Plaintiff's religion. In contrast to Granillo, Snyder stated, "The sergeant says nothing comes in or out of this cell." (Doc. 64, ¶ 114). There is no evidence Snyder's motivations related to Plaintiff's religion. (Doc. 64, ¶ 114).

b. Free Exercise

Plaintiff alleges his right to exercise his religion was violated when Granillo collected Plaintiff's uneaten food and Johnson failed to intervene upon learning of Granillo's conduct through the prison grievance process. Prison policy, specifically Department Operation Manual section 54080.13, requires inmates to seek prior approval for a special religious diet program. Plaintiff did not have permission to possess uneaten food. Defendant Granillo confiscated Plaintiff's uneaten food pursuant to policy.

The First Amendment guarantees the right to the free exercise of religion. "The free exercise right, however, is necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security." *O'Lone v. Shabazz*, 482 U.S. 342, 348 (1987). To establish a violation of the free exercise clause, a prisoner must show the defendants prevented him from engaging in conduct mandated by his faith without justification reasonably related to a legitimate penological interest. *Freeman v. Arpaio*, 125 F.3d 732, 736 (9th Cir. 1997) (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). The burden is on the prison officials to prove the restriction of the prisoner's religious exercise was reasonably related to a legitimate penological purpose. *Ashelman v. Wawzaszek*, 111 F.3d 674, 677-78 (9th Cir. 1997).

Under *Turner*, courts evaluate four factors. *Turner*, 482 U.S. at 89. The first factor is whether there is a logical connection between the act and a legitimate government interest.

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[3] Defendant Granillo did not move for summary judgment on this retaliation claim.

The first factor favors Defendants because removing uneaten food serves the legitimate government interest of guarding against pests, disease, odors, contraband and notes. The second factor is whether Plaintiff had alternative means to practice his religion. Here, not only could Plaintiff pray and fast, he could also apply to keep his uneaten food in his cell for an extended period of time during a religious holiday. The second factor favors Defendants. The third factor is the impact the accommodation sought by Plaintiff will have on prison officials, prison resources and other inmates. Plaintiff did not apply to keep his uneaten food for an extended time. Instead, Plaintiff argues prisoners should not be required to obtain prior approval to keep their uneaten food longer. However, Plaintiff's proposal would require correctional staff to make on-the-spot determinations on a daily basis. The formal application process allows for a more measured, consistent application of prison policy. The third factor favors Defendants. The fourth factor is whether there are ready alternatives to the prison's current policy that would provide the sought after accommodation at de minimis cost. Again, the prison has a procedure in place. Plaintiff chose not to avail himself of this process. The fourth factor favors Defendants, as well. Collecting Plaintiff's uneaten food did not violate Plaintiff's First Amendment rights.

3. No Right to Hearing

Plaintiff alleges his Due Process rights were violated when prison officials housed him in the Administrative Segregation Unit upon finding Plaintiff posed a threat to "self and others." First, Defendants played no role in the decision to place or retain Plaintiff in Administrative Segregation. (Doc. 64, ¶ 14-19). As such, Plaintiff's claim fails because he has not connected specific defendants to the alleged deprivation of rights. *Ivey v. Bd. of Regents of Univ. of Alaska,* 673 F.2d 266, 268 (9th Cir. 1982) (vague and conclusory allegations that official personnel were involved in a civil rights violation are insufficient to support a claim under section 1983); *see also May*, 633 F.2d at167 (defendant's conduct must cause the deprivation of a plaintiff's constitutional rights); *Leer,* 844 F.2d at 633 (causation is "individualized and focus[es] on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation.").

Second, prison officials have broad administrative authority over the prison's they manage. *Hewitt v. Helms*, 459 U.S. 460, 467 (1983). Administrative confinement is the type of administrative action that is frequently necessary to the operation of prisons. *Id.* at 468. Plaintiff has not set forth evidence that any of these Defendants abused their authority to use administrative segregation to manage the prison.

4. Plaintiff's Conspiracy Claim

Plaintiff makes vague and conclusory allegations that Defendants committed a conspiracy. Plaintiff has not presented any specific facts to support his claim that Defendants entered into a conspiracy. Allegations of conspiracy must be pled with specificity and support a meeting of the minds. *Manis v. Sterling*, 862 F.2d 679, 681 (9th Cir. 1988); *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988); *Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir. 1983). Plaintiff has failed to allege "an agreement or meeting of the minds," and such vague and conclusory allegations will "not support a claim for violation of his constitutional rights under § 1983." *Woodrum v. Woodward County, Okla.*, 866 F.2d 1121, 1126 (9th Cir. 1989); *see also Ivey*, 673 F.2d at 268.

5. Plaintiff's Emotional or Mental Distress Damages

Plaintiff seeks emotional or mental distress damages. "No Federal civil action may be brought by a prisoner confined in a jail, prison or other correctional facility for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). The physical injury requirement does not bar a suit for a constitutional violation, but does bar a claim for mental and emotional injuries. *Oliver v. Keller*, 289 F.3d 623, 690 (9th Cir. 2002). Plaintiff has not alleged physical injury. Therefore, his claims for emotional or mental distress damages fail.

C. Plaintiff's "Motion in Opposition"

Although titled a motion, "Plaintiff's Notice of Motion and Motion in Opposition to Defendants' Summary Judgment" (Doc. 71) is actually just a response in opposition to Plaintiff's motion for summary judgment. As such, Plaintiff's "motion" at Docket 71 will be denied.

D. Plaintiff's Motion To Submit Weather Report

Plaintiff's "Notice of Motion an[d] Motion for Plaintiff to Submit the Weather Report" (Doc. 73) asks the Court to consider a printout from a Website called Weather Underground for April 14, 2006, which shows the high and low temperatures for Tehachapi, CA. Plaintiff did not lay any foundation for the Weather Underground report. Further, Plaintiff's evidence is irrelevant. Defendants submitted a statement of facts with evidence that Plaintiff was transferred at 8:30 p.m. on April 14, 2006, and the temperature between 7 p.m. and 9 p.m. on that date was between 47 and 48 degrees. (Doc. 64 ¶¶ 22-23). The Weather Underground report states the daily high was 63 and the low was 37. Plaintiff makes no effort to establish what time he was transferred or what the temperature was when he was transferred. The Weather Underground report does not refute Defendants' evidence. Plaintiff's motion will be denied for lack of foundation and relevance.

Accordingly,

IT IS ORDERED Defendant's motion **(Doc. 63)** is **GRANTED**.

IT IS ORDERED Plaintiff's motion **(Doc. 71)** is **DENIED**.

IT IS ORDERED Plaintiff's motion **(Doc. 73)** is **DENIED**.

DATED this 27th day of September, 2011.

Roslyn O. Silver
Chief United States District Judge