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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAUN DARNELL GARLAND,  
Plaintiff,  
vs.  
ANTHONY HEDGPETH, J. BOLIN,  
THOMPSON, BLACKSTONE,  
J. VARGAS, J. OSTRANDER,  
Defendants.

No. C 08-00635 WHA (PR)

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**INTRODUCTION**

A California state prisoner proceeding *pro se*, plaintiff has filed a civil rights complaint pursuant to 42 U.S.C. 1983, alleging *inter alia* that defendants, officers and employees of Kern Valley State Prison, retaliated against plaintiff for his exercise of his First Amendment rights. The remaining defendant in this action is Juan Bolin, a correctional officer at Kern Valley. Defendants have filed a motion for summary judgment. Plaintiff has not filed an opposition, even though he was granted an extension of time. For the reasons stated herein, defendants' motion is **GRANTED** as to all claims against defendant.

1 **DISCUSSION**

2 **I. STANDARD OF REVIEW**

3 Summary judgment is proper where the pleadings, discovery and affidavits show  
4 that there is “no genuine dispute as to any material fact and [that] the movant is entitled to  
5 judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those which may  
6 affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
7 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a  
8 reasonable jury to return a verdict for the nonmoving party. *Ibid.*

9 The moving party for summary judgment bears the initial burden of identifying  
10 those portions of the pleadings, discovery and affidavits which demonstrate the absence  
11 of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323  
12 (1986). Where the moving party will have the burden of proof on an issue at trial, it must  
13 affirmatively demonstrate that no reasonable trier of fact could find other than for the  
14 moving party. On an issue for which the opposing party will have the burden of proof at  
15 trial, however, the moving party need only point out “that there is an absence of evidence  
16 to support the nonmoving party’s case.” *Id.* at 325.

17 Once the moving party meets its initial burden, the nonmoving party must go  
18 beyond the pleadings and, by its own affidavits or discovery, set forth specific facts  
19 showing that there is a genuine issue for trial. Fed. R. Civ. P. 56. The court is only  
20 concerned with disputes over material facts and “factual disputes that are irrelevant or  
21 unnecessary will not be counted.” *Anderson*, 477 U.S. at 248. It is not the task of the  
22 district court to scour the record in search of a genuine issue of triable fact. *Keenan v.*  
23 *Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). The nonmoving party has the burden of  
24 identifying with reasonable particularity the evidence that precludes summary judgment.  
25 *Ibid.* If the nonmoving party fails to make this showing, “[t]he moving party is entitled to  
26 a judgment as a matter of law.” *Celotex Corp*, 477 U.S. at 323.

1 **II. CLAIMS**

2 Plaintiff alleges that defendants Juan Vargas, a correctional officer at Kern Valley  
3 State Prison, engaged in retaliatory acts, thereby violating plaintiff’s First Amendment  
4 right to file grievances and petition for redress. Such alleged retaliatory acts included  
5 serving plaintiff food to which he was allergic, searching his cell, elbowing him,  
6 subjecting him to a strip search, and leaving his cell disheveled.

7 The motion for summary judgment is unopposed. A district court may not grant a  
8 motion for summary judgment solely because the opposing party has failed to file an  
9 opposition. *Cristobal v. Siegel*, 26 F.3d 1488, 1494–95 & n.4 (9th Cir. 1994) (unopposed  
10 motion may be granted only after the court determines that there are no material issues of  
11 fact). The Court may, however, grant an unopposed motion for summary judgment if the  
12 movant’s papers are themselves sufficient to support the motion and do not on their face  
13 reveal a genuine issue of material fact. *See United States v. Real Property Located at*  
14 *Incline Village*, 47 F.3d 1511, 1520 (9th Cir. 1995) (local rule cannot mandate automatic  
15 entry of judgment for moving party without consideration of whether motion and  
16 supporting papers satisfy Fed. R. Civ. P. 56), rev’d on other grounds sub nom. *Degen v.*  
17 *United States*, 517 U.S. 820 (1996); *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 950 (9th  
18 Cir. 1993) (same).

19 The papers in support of the motion for summary judgment are evidence that the  
20 defendants did not violate plaintiff’s First Amendment rights. More specifically, the  
21 evidence does not show that defendant took an adverse action against plaintiff because of  
22 plaintiff’s protected conduct, that such action chilled plaintiff’s exercise of his First  
23 Amendment rights, and that such action did not reasonably advance a legitimate  
24 correctional goal. *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005) (footnote  
25 omitted). The movants’ papers are sufficient to support the motion and do not on their  
26 face reveal a genuine issue of material fact. Accordingly, defendants’ motion for  
27 summary judgment is GRANTED.

1 **CONCLUSION**

2 Defendants' motion for summary judgment (Docket No. 65) is GRANTED in  
3 favor of defendant Vargas as to all claims. Plaintiff's motion for an order directing prison  
4 officials to return confiscated legal work (Docket No. 74) is DENIED. Plaintiff's  
5 allegations concerning searches of his cell and confiscations of his property are not part of  
6 this action. If plaintiff seeks relief on such claims, he may file a separate civil rights  
7 action.

8 The Clerk shall enter judgment in favor of defendants, and close the file.

9 **IT IS SO ORDERED.**

10 Dated: November 15, 2011



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12 WILLIAM ALSUP  
13 UNITED STATES DISTRICT JUDGE  
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