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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SY LEE CASTLE,

CASE NO. 1:08-cv-01754-AWI-SMS

Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

v.

A. HEDGPETH, et al.,

(ECF Nos. 84, 94, 95)

Defendants.

/ OBJECTIONS DUE WITHIN THIRTY DAYS

I. Procedural History

Plaintiff Sy Lee Castle ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's first amended complaint filed May 12, 2009, against Defendants Hedgpeth, Marta, and Amavisca for violating Plaintiff's First Amendment right to free exercise of religion. (ECF No. 7.) Defendants filed a motion for summary judgment on April 20, 2011. (ECF No. 84.) Plaintiff filed an opposition on July 5, 2011.¹ (ECF No. 94.) Defendants filed a reply on July 13, 2011. (ECF No. 95.)

II. Summary Judgment Legal Standard

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party

¹Plaintiff was provided with notice of the requirements for opposing a motion for summary judgment by the Court in an order filed on June 14, 2011, and provided with 15 days to file an amended opposition to Defendant's motion for summary judgment. Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

1 is entitled to judgment as a matter of law. Summary judgment must be entered, “after adequate time
2 for discovery and upon motion, against a party who fails to make a showing sufficient to establish
3 the existence of an element essential to that party’s case, and on which that party will bear the burden
4 of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). However, the court is to
5 liberally construe the filings and motions of pro se litigants. Thomas v. Ponder, 611 F.3d 1144, 1150
6 (9th Cir. 2010.) The “party seeking summary judgment bears the initial responsibility of informing
7 the district court of the basis for its motion, and identifying those portions of the ‘pleadings,
8 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’
9 which it believes demonstrate the absence of a genuine issue of material fact.” Celotex, 477 U.S.
10 at 323 (quoting Rule 56(c) of the Federal Rules of Civil Procedure).

11 If the moving party meets its initial responsibility, the burden then shifts to the opposing
12 party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec.
13 Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the existence
14 of this factual dispute, the opposing party may not rely upon the denials of its pleadings, but is
15 required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery
16 material, in support of its contention that the dispute exists. Fed. R. Civ. P. 56(e); Matsushita, 475
17 U.S. at 586 n.11.

18 The parties bear the burden of supporting their motions and oppositions with the papers they
19 wish the Court to consider and/or by specifically referencing any other portions of the record for
20 consideration. Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001).
21 The Court will not undertake to mine the record for triable issues of fact. Simmons v. Navajo
22 County, Arizona, 609 F.3d 1011, 1017 (9th Cir. 2010)

23 **III. Plaintiff’s Allegations**

24 Plaintiff alleges that Defendant Hedgpeth promulgated a regulation that prohibited the
25 purchase, receipt, and possession of prayer oil. Defendants Marta and Amavisca enforced the
26 regulation against Plaintiff. The possession and use of prayer oil in Plaintiff’s cell is rooted in his
27 sincerely held religious beliefs, and Defendants denied him prayer oil in violation of the Free
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1 Exercise Clause of the First Amendment.²

2 **IV. Undisputed Facts**

3 1. Defendant Hedgpeth was the Warden of Kern Valley State Prison (“KVSP”) from January
4 1, 2007 through December 1, 2008.

5 2. All prisons within the California Department of Corrections and Rehabilitation (“CDCR”)
6 are governed by the Department Operations Manual (“DOM”).

7 3. A warden has discretion to establish a supplement to the DOM based upon the needs of his
8 or her particular institution.³

9 4. On December 7, 2007, Defendant Hedgpeth implemented DOM Supplement 101060,
10 mandating that inmate prayer oils be contained in factory sealed plastic see-through
11 containers, prohibiting inmates from possessing prayer oils in their cells, and from
12 purchasing prayer oils generally.

13 5. DOM Supplement 101060 was created in response to serious safety and security concerns
14 that had arisen at KVSP. Prior to establishing DOM Supplement 101060, KVSP officials
15 determined that a rogue Chaplain was smuggling contraband into the prison and distributing
16 the contraband to inmates. One way that the contraband was disseminated was through the
17 distribution of containers of prayer oils.⁴

18 6. KVSP is a Level IV high-security prison. Level IV prisons house the most dangerous and
19 violent inmates incarcerated in the State of California. The possibility of unknown
20 contraband in the possession of Level IV inmates under the guise of prayer oil constitutes a
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24 ²The screening order failed to clarify the claims that were found to be cognizable. The claims that are
25 proceeding in this action were identified in the findings and recommendations recommending that Defendants’
26 motion to dismiss be denied. (Findings and Recommendations 8:23-28, ECF No. 37.)

27 ³Plaintiff denies that a warden has discretion to implement a regulation as an exaggerated response to
28 speculative security concerns.

⁴Plaintiff disputes that there was a serious safety and security concern because Defendants have not stated
what was being smuggled into the institution or proved that an investigation occurred. Additionally Plaintiff argues
that his package arrived prior to alleged smuggling of contraband being discovered.

1 serious breach of security.⁵

2 7. Therefore, Defendant Hedgpeth was compelled to create DOM Supplement 101060 in order
3 to make sure that inmates were not in possession of contraband, to prevent any contraband
4 from being brought in, and to eradicate the contraband that existed.⁶

5 8. Under DOM Supplement 101060, inmates were still allowed to use prayer oils in the prison
6 chapel, which was open to inmate use during the day, as well as during religious services.
7 Because inmates were still able to use prayer oils, and the institution was able to address the
8 compelling governmental interest of removing contraband, this was determined to be the
9 least restrictive means of ensuring the safety and security of the institution.⁷

10 9. Plaintiff was able to pray five times per day while DOM Supplement 101060 was in effect.

11 10. Soon after implementing DOM Supplement 101060, KVSP staff began the process of
12 investigating and removing the contraband that the Chaplain had distributed to inmates. The
13 Chaplain at issue was also removed from the prison following an investigation by the Office
14 of Internal Affairs.⁸

15 11. DOM Supplement 101060 was implemented to address a serious security concern at the
16 prison, while still allowing inmates access to prayer oils in the prison chapel. Furthermore,
17 DOM Supplement 101060 applied to all inmates, regardless of religious affiliation.⁹

18 12. On July 8, 2008, after resolving all lingering safety and security concerns with inmates
19 possessing prayer oils, Defendant Hedgpeth issued an addendum to DOM Supplement
20 101060, which allowed inmates to purchase sixteen ounces of prayer oils from approved
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22 ⁵Plaintiff denies that the possession on unknown contraband by Level IV inmates constitutes a serious
23 breach of security.

24 ⁶Plaintiff denies that Defendant Hedgpeth was compelled to create DOM Supplement 101060 because
25 Defendants have not proved that a chaplain distributed contraband to any inmates.

26 ⁷Plaintiff disputes that he could use prayer oil in the Chapel because majority of time the regulation was in
27 effect the institution was on modified lock down.

28 ⁸Plaintiff denies that any investigation occurred due to the response to his inmate appeal.

⁹Plaintiff denies that the supplement was implemented in response to a serious security concern at the
prison.

1 vendors, as long as the prayer oil was in a sealed clear plastic container, and was non-
2 alcoholic and non-flammable. Prayer oils were no longer to be stored in the Chapel, and
3 Chaplains were not allowed to buy, donate, or distribute prayer oils to inmates, in order to
4 prevent further dissemination of contraband.¹⁰

5 13. Plaintiff acknowledges that safety and security override other concerns in a prison setting.

6 14. Defendant Marta is a sergeant in Receiving and Release at KVSP. As a sergeant in Receiving
7 and Release, it is Defendant Marta's responsibility to supervise the screening of all inmate
8 packages that enter KVSP.

9 15. Defendant Amvisca is a correctional officer assigned to Receiving and Release. Defendant
10 Amavisca's job responsibilities include screening inmate packages that enter KVSP to make
11 certain that they are in compliance with institutional policy and do not contain contraband
12 or other items that are prohibited from entering the prison.

13 16. Defendants Amavisca and Marta complied with the requirements of DOM Supplement
14 101060.¹¹

15 17. Any failure to comply with DOM Supplement 101060 would have been insubordination, and
16 Defendants Amavisca and Marta could have been disciplined accordingly, had they permitted
17 inmates to receive prayer oil.

18 18. From December 7, 2007 to July 8, 2008, Defendants Amavisca and Marta enforced DOM
19 Supplement 101060 in an equal and non-discriminatory manner. All prayer oils purchased
20 by any inmate, regardless of religious affiliation, were returned to the vendors who sent the
21 prayer oils to the institution.

22 19. Neither Defendant Amavisca nor Defendant Marta know Plaintiff, and it is unlikely that they
23 would have ever had knowledge of him if not for this lawsuit. Defendants Amavisca and
24 Marta did not act to interfere with Plaintiff's religious observance, but only to comply with
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27 ¹⁰Plaintiff denies that a serious security concern ever existed.

28 ¹¹Plaintiff denies that Defendants Marta and Amavisca complied with the requirements of the supplement,
because they took it upon themselves and returned his religious package to the vendor.

1 institutional policy.¹²

2 20. Muslim Chaplain O’Meira is the Muslim chaplain at the California State Prison-Los Angeles
3 County (“Lancaster”).

4 21. In 1967, Muslim Chaplain O’Meira graduated as Imam from the Ansar Islamic Institute in
5 Damascus, Syria, where he studied under the Syrian Grand Mufti. Additionally, he is co-
6 founder of the Islamic Center of North Valley, which offers prayer services and Islamic
7 instruction to the Muslim communities of Lancaster and Palmdale, California. Moreover,
8 Chaplain O’Meira is currently a student of Advanced Islamic Studies at the Cloverdale
9 Seminary, of Mishawaka, Indiana.

10 22. Among other things, Chaplain O’Meira’s job duties include providing spiritual guidance to
11 Muslim inmates, presiding over Jumah Prayer Services, Ramadan, and other Islamic days
12 of religious observance, and instructing classes in Islamic religion.

13 23. Pursuant to the Quran, the seminal religious text of Islam, Muslims are required to pray five
14 times per day; however, the Quran does not state that Muslims are required to use prayer oils
15 during prayer or in preparation for prayer.

16 24. In Chaplain O’Meira’s expert opinion, the use of prayer oils in Islam is complimentary to
17 prayer, but is not mandatory.¹³

18 **V. Qualified Immunity**

19 **A. Legal Standard**

20 The doctrine of qualified immunity protects government officials from civil liability where
21 “their conduct does not violate clearly established statutory or constitutional rights of which a
22 reasonable person would have known.” Pearson v. Callahan, 129 S. Ct. 808, 815 (2009) (quoting
23 Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). To determine if an official is entitled to qualified
24 immunity the court uses a two part inquiry. Saucier v. Katz, 533 U.S. 194, 200 (2001). The court
25 determines if the facts as alleged state a violation of a constitutional right and if the right is clearly
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27 ¹²Plaintiff denies that Defendants Marta and Amavisca complied with institutional policy.

28 ¹³Plaintiff disputes this fact as it is his sincerely held religious belief that he is required to use prayer oil.

1 established so that a reasonable official would have known that his conduct was unlawful. Saucier,
2 533 U.S. at 200. A district court is “permitted to exercise their sound discretion in deciding which
3 of the two prongs of the qualified immunity analysis should be addressed first in light of the
4 circumstances in the particular case at hand.” Pearson, 129 S. Ct. at 818. The inquiry as to whether
5 the right was clearly established is “solely a question of law for the judge.” Dunn v. Castro, No. 08-
6 15957, 2010 WL 3547637, at *2 (9th Cir. Sept. 14, 2010) (quoting Tortu v. Las Vegas Metro. Police
7 Dep’t. 556 F.3d 1075, 1085 (9th Cir. 2009)).

8 **B. Defendants’ Argument**

9 Defendants argue that they are entitled to summary judgment because Plaintiff has failed to
10 demonstrate that they violated the Free Exercise Clause of the First Amendment. Additionally,
11 Defendants are entitled to qualified immunity because they acted in good faith and reasonably
12 believed their actions were lawful.

13 Defendant Hedgpeth promulgated DOM Supplement 101060, which temporarily prohibited
14 inmates from purchasing and possessing prayer oil, in response to a legitimate security concern. The
15 deprivation of prayer oil was temporary and an alternative means was available for Plaintiff to
16 practice his religion. Plaintiff was able to pray in his cell and the use of prayer oil is not required by
17 Muslims during prayer or in preparation for prayer.

18 DOM Supplement 101060 was instituted after it was determined that contraband was being
19 smuggled into the prison in prayer oil by a chaplain. The smuggling of contraband caused a serious
20 security breach. A similar policy was upheld by the Tenth Circuit in Hammons v. Saffle, 348 F.3d
21 1250, 1254 (10th Cir. 2003), even though the policy in that instance was not in response to a specific
22 security risk. Defendant Hedgpeth had a legitimate penological interest in enacting the policy, and
23 Defendants Marta and Amavisca had a legitimate penological interest in enforcing the policy. The
24 policy was a temporary measure that was lifted as soon as the security threat was eradicated. Inmates
25 were allowed to use prayer oil during religious services and in the Chapel which was open for
26 inmates during the day. It would have been impractical to allow inmates to retain their prayer oil as
27 the scope of the smuggling was unknown and allowing inmates to possess prayer oil would have
28 constituted an unreasonable risk to the safety of inmates and staff because the contraband would not

1 be eradicated.

2 Defendants also argue they are entitled to qualified immunity because they did not violate
3 Plaintiff's constitutional rights as the policy was promulgated in response to a serious security
4 concern. In promulgating the regulation Defendant Hedgpeth had to balance the inmates' rights to
5 exercise their religion with the duty to protect inmates and staff from the substantial risk created by
6 inmates possessing contraband. A reasonable prison official choosing to protect the safety of
7 inmates and staff at the expense of the inmates' rights to exercise their religion would believe his
8 conduct was lawful. Defendants Amavisca and Marta were reasonable in relying on the regulation
9 as it was valid pursuant to CDCR policy. Defendants would not have been on notice that adhering
10 to the policy would be unlawful.

11 The Court finds that Defendants have met their initial burden of informing the Court of the
12 basis for their motion, and identifying those portions of the record which they believe demonstrate
13 the absence of a genuine issue of material fact. The burden therefore shifts to Plaintiff to establish
14 that a genuine issue as to any material fact actually does exist. See Matsushita Elec. Indus., 475 U.S.
15 at 586.

16 **C. Plaintiff's Opposition**

17 Plaintiff argues that his family purchased an Islamic religious package for him that contained
18 a prayer rug and prayer oil. The package containing his prayer oil arrived at KVSP prior to the
19 regulation being implemented prohibiting inmates from receiving prayer oil. The shipment arrived
20 in November 2009 prior to the discovery that contraband was being smuggled into the institution in
21 prayer oil. Since his shipment arrived at the institution prior to the discovery of the alleged
22 smuggling, Defendants violated his First Amendment rights to free exercise of religion.
23 (Memorandum of Points and Authorities 3, ECF No. 94.) On February 2, 2008, Plaintiff's first level
24 appeal response stated that there was no investigative reason to withhold religious packages from
25 Islamic inmates and receiving and release was instructed to release the religious packages to Islamic
26 inmates. Therefore, there was never a safety or security concern regarding contraband being
27 smuggled into the institution. (Id. at 4.)

28 Since the institution never stated what the contraband was that was allegedly being smuggled

1 into the institution, Defendants have never proved the necessity of the regulation. (Id. at 3-4.) Also,
2 while Defendants claim that prayer oil was available in the chapel, Plaintiff was not able to use
3 prayer oil because he was not allowed to purchase or possess it and during the majority of time the
4 regulation was in effect the institution was on modified lock down. (Id. at 5.)

5 The regulation did not state that packages were to be returned to the vendor, and Defendants
6 Marta and Amavisca took it upon themselves to return Plaintiff's package to the vendor. (Id. at 6.)
7 Defendants Marta and Amavisca failed to follow regulations that requires that any item considered
8 to be contraband be shall be retained by staff for investigation. (Id. at 7.) Additionally, even after
9 inmates were allowed to receive prayer oil, Defendants continued to consider religious packages as
10 personal property packages in violation of the regulations. (Id. at 8.) Prayer oil is a significant part
11 of Plaintiff's Muslim belief. (Id. at 9.) There was no investigation into contraband being smuggled
12 into the institution in prayer oil. (Id. at 13.) No documents exist that state a chaplain can distribute
13 prayer oil to inmates and chaplains have never been authorized to bring prayer oil to inmates. (Id.
14 at 17.) Defendants have not proved that there was contraband being smuggled into the institution
15 in prayer oil and they used an exaggerated response to a speculative security concern. Since
16 Plaintiff has a sincerely held belief that it is mandatory for him to use prayer oil, Defendants are not
17 entitled to summary judgment. (Id. at 11.) There was no alternative means of using prayer oil as
18 there was no prayer oil in the chapel. (Id. at 19.)

19 Defendants are not entitled to qualified immunity because they violated Plaintiff's First
20 Amendment right. Id. at 22. There was no serious safety risk due to contraband being smuggled into
21 the institution and Defendant Hedgpeth was unreasonable in implementing the regulation. Plaintiff's
22 package arrived at KVSP prior to Defendant Hedgpeth implementing the DOM supplement
23 prohibiting inmates from purchasing and possessing prayer oil. Defendants held onto Plaintiff's
24 package even though it was purchased from an approved vendor and was received prior to the
25 alleged smuggling of contraband being discovered. Defendants have never proved what contraband
26 was smuggled to inmates in prayer oil. On February 2, 2008, in response to his appeal, Lt.
27 Whitehead stated there was no investigative reason to withhold religious packages from Islamic
28 inmates. If there was a valid security concern Lt. Whitehead would have been informed. Defendants

1 were considering religious special package purchases as regular personal property in violation of
2 Title 15. (Id. at 23.)

3 **D. Defendants' Reply**

4 Defendants argue that Plaintiff has failed to raise a triable issue of fact and the Court should
5 grant Defendants' motion for summary judgment. Defendants have demonstrated that the regulation
6 was promulgated in response to a serious security concern and was reasonably related to a legitimate
7 correctional purpose. Relying on two sentences in a response to his administrative appeal, Plaintiff
8 alleges that no investigation of the purported smuggling occurred. The statement does not contradict
9 Defendants' position. There was not an investigation into Muslim inmates. Nor was there any
10 reason to withhold packages from Muslim inmates. The regulation applied to all prayer oil, no
11 matter the religious affiliation of the inmate.

12 Plaintiff claims that because he was not provided with details of the investigation, no
13 investigation occurred. However, there are legitimate reasons for not disclosing the information to
14 Plaintiff, a Level IV inmate. Defendants have provided evidence that an investigation occurred in
15 the declarations provided in support of their motion for summary judgment. Additionally, Plaintiff
16 alleges that his package was received prior to the regulation being promulgated. However, the
17 discovery that contraband was being smuggled into the institution occurred prior to the regulation
18 being promulgated and the regulation was in response to the discovery.

19 Plaintiff argues that prison regulations were violated, however violations of prison
20 regulations do not rise to the level of a constitutional violation. Alternative means of exercising his
21 religious beliefs were still available to Plaintiff. He was still able to pray five times per day. Even
22 if Plaintiff did not have access to prayer oil, Plaintiff was able to and did continue to practice his
23 religion during the time that inmates were not allowed to possess prayer oil.

24 Finally, Defendants are entitled to qualified immunity because reasonable prison officials in
25 Defendants' position would not believe their conduct was unlawful.

26 **E. Discussion**

27 "Qualified immunity balances two important interests - the need to hold public officials
28 accountable when they exercise power irresponsibly and the need to shield officials from harassment,

1 distraction, and liability when they perform their duties reasonably.” Pearson, 129 S. Ct. at 815. The
2 objective of qualified immunity is to resolve insubstantial claims against government officials prior
3 to discovery. Id. at 815. Because qualified immunity is an immunity from suit rather than a defense
4 to liability, the issue of qualified immunity should be resolved at the earliest possible stage of the
5 litigation. Hunter v. Bryant, 502 U.S. 224, 227 (1991) (per curiam).

6 Qualified immunity allows for mistakes in judgment and protects “all but the plainly
7 incompetent or those who knowingly violate the law.” Hunter, 502 U.S. at 229 (quoting Malley v.
8 Briggs, 475 U.S. 335, 341 (1986)). Defendants are entitled to qualified immunity for civil damages
9 if “their conduct does not violate clearly established statutory or constitutional rights of which a
10 reasonable person would have known.” Pearson, 129 S. Ct. at 815.

11 Under Pearson, the Court has the discretion to determine which of the two prongs of the
12 qualified immunity analysis should be addressed first. In cases where it is plain that the
13 constitutional right is not clearly established, the use of judicial resources is best served by first
14 deciding the second prong of the qualified immunity analysis. Pearson, 129 S. Ct. at 818.
15 Accordingly, the Court will first address whether the right was clearly established.

16 Plaintiff has the burden of proving that the alleged constitutional violation was clearly
17 established at the time of the defendants’ alleged misconduct. May v. Baldwin, 109 F.3d 557, 561
18 (9th Cir. 1997). The right Plaintiff alleges has been “violated must be defined at the appropriate
19 level of specificity before a court can determine if it was clearly established.” Dunn, 2010 WL
20 3547637, at *4 (quoting Wilson v. Layne, 526 U.S. 603, 615 (1999)). The constitutional right to be
21 addressed in this instance is not the right to freely exercise religion, but Plaintiff’s right to exercise
22 his religious beliefs by possessing prayer oil.

23 Plaintiff alleges that there is no evidence that the regulation was promulgated in response to
24 a safety and security threat, however the declarations submitted by Defendants do constitute
25 evidence. (Declaration of A. Hedgpeth 2:25-3:9, 3:16-26.) Defendants are not required to identify
26 the contraband that was being smuggled in the prayer oil to establish that there was a valid safety
27 concern.

28 In his sworn declaration Defendant Hedgpeth states that DOM Supplement 101060 was

1 implemented after it was discovered that a rogue Chaplain was smuggling contraband into the prison
2 and distributing the contraband to inmates. (Declaration of A. Hedgpeth 2:25-3:1, ECF 84-6.) After
3 an investigation by Internal Affairs the chaplain involved was removed from the prison. (Id. at 3:18-
4 19.) In his response to Plaintiff's interrogatories Defendant Hedgpeth responded that distribution
5 of packages to Muslim inmates never stopped. Certain packages were not delivered due to the non-
6 compliance with prison regulations and the suspicion that a prison chaplain was smuggling
7 contraband into the prison in religious packages. (Opp. 105, ECF No. 94.) Additionally, in response
8 to Plaintiff's request for admissions, Defendant Marta stated that he was aware of documentation
9 determining that a chaplain was smuggling contraband into the prison and distributing it to inmates
10 through the distribution of containers of prayer oil. (Opp. 93, ECF No. 94.)

11 Plaintiff cannot defeat a motion for summary judgment by questioning the credibility of the
12 moving parties evidence. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986) (once the
13 moving party demonstrates the absence of a genuine issue of material fact, the burden shifts to the
14 non-moving party to produce evidence sufficient to support a jury verdict). Defendants have
15 submitted evidence that the regulation was implemented in response to a legitimate security concern.

16 Plaintiff claims that the response to his inmate appeal proves that no security concern existed.
17 Plaintiff was part of a group appeal complaining that Islamic inmates were not receiving their
18 religious packages. On February 1, 2008, Lt. Whitehead interviewed Plaintiff and responded to the
19 appeal on February 8, 2008. The appeal response stated:

20 [o]n February 2, 2008, Lieutenant Whitehead asked the Investigative Services Unit
21 lieutenant if there were any investigative reasons why the Islamic inmates on Facility
22 "B" could not receive religious packages. Lieutenant Whitehead was informed that
23 there were no investigative reasons to withhold Religious Packages from the Islamic
inmates on Facility "B". On February 2, 2008, Lieutenant Whitehead instructed the
R&R staff to proceed with the distribution of Religious Packages for the Islamic
inmates on Facility "B".

24 Compl. 22, ECF No. 1.)

25 Plaintiff alleges that the statements made in this response proves that there was never an
26 investigation and, therefore, no legitimate security concern existed. The Court declines to accept
27 Plaintiff's conclusion. By this time the DOM Supplement, implemented December 7, 2007, had
28 been in place for approximately two months. The investigation into contraband being smuggled into

1 the institution in prayer oil was not an investigation into “Islamic” Religious Packages. All packages
2 containing prayer oil would be withheld under the regulation, regardless of religious affiliation.
3 Plaintiff’s package was not being withheld because it was an Islamic package, but because it
4 contained prayer oil in violation of the Supplement.¹⁴

5 The Ninth Circuit has affirmed a district court’s grant of summary judgment against a
6 Muslim inmate’s free exercise claim for prison officials prohibiting him from purchasing a hygienic
7 prayer rug.¹⁵ Akbar v. Gomez, 122 F.3d 1069 (9th Cir. 1997); see also Campbell v. Almeida, No.
8 C 03-4984 PJH (PR), 2006 WL 2734330 (N.D. Cal. Sept. 25, 2006) (inmate’s First Amendment
9 rights not violated by refusal to allow him to possess prayer oil in his cell and defendants are entitled
10 to qualified immunity as the right is not clearly established under either the First Amendment or
11 RLUIPA). Other circuits have rejected inmates’ free exercise claims on the confiscation or
12 prohibition of religious property. See Pressley v. Beard, 266 Fed.Appx. 216, 218-19 (3d Cir. 2008)
13 (confiscation of Muslim inmates’ hardbound Koran, prayer rug, and kufi was in furtherance of a
14 legitimate penological objectives and did not violate the First Amendment); Arguello v. Duckworth,
15 106 F.3d 403 (7th Cir. 1997) (affirming district court’s grant of summary judgment against plaintiff
16 challenging restriction on use of religious artifacts).

17 The Tenth Circuit affirmed a grant of summary judgment where an inmate was prohibited
18 from possessing prayer oil in his cell due to prison officials concerns in maintaining prison order and
19 safety. Hammons, 348 F.3d 1250 (10th Cir. 2003); see also Alamiin v. Miller, No. CIV-08-1371-F,
20 2010 WL 3603150, *22-25 (W.D.Okla. June 28, 2010) (granting summary judgment for prison
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23 ¹⁴To the extent that Plaintiff is alleging constitutional violations due to Defendants noncompliance with
24 Title 15 regulations, there is no independent cause of action for a violation of Title 15 regulations. “To the extent
25 that the violation of a state law amounts to the deprivation of a state-created interest that reaches beyond that
26 guaranteed by the federal Constitution, [s]ection 1983 offers no redress.” Sweaney v. Ada County, Idaho, 119 F.3d
27 1385, 1391 (9th Cir. 1997), quoting Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 370 (9th Cir. 1996). There is
28 not a single reported case giving an independent cause of action for violation of Title 15 regulations. (See Davis v.
Kissinger, No. CIV S-04-0878 GEB DAD P, 2009 WL 256574, *12 n.4 (E.D.Cal. Feb. 3, 2009) Nor is there any
liability under § 1983 for violating prison policy. Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009) (quoting
Gardner v. Howard, 109 F.3d 427, 430 (8th Cir. 1997)).

¹⁵In determining whether the law is clearly established for qualified immunity purposes, the court should
look at all decisional law, including district court and unpublished cases. Al-Kidd v. Ashcroft, 598 F.3d 1129, 1135
(9th Cir. 2010).

1 officials where Muslim inmate was denied opportunity to participate in congregational prayer, denied
2 request to observe some aspects of Ramadan, and denied request to carry prayer oil on his person);
3 Thomas v. Little, No. 07-1117-BRE/egb, 2009 WL 1938973 (W.D.Tenn. July 6, 2009) (granting
4 summary judgment for defendants where inmate was required to purchase prayer oil from specific
5 vendor and oil was required to be stored in the property room and distributed by the chaplain);
6 Abdullah v. Anderson, No. 5:05-cv-00568, 2008 WL 4103980, *14 (S.D.W.Va. Sept. 2, 2008)
7 (limiting the number of kufis and bottles of prayer oil inmate could possess and withholding
8 language translator did not prevent free exercise of religion in violation of the First Amendment);
9 Ghashiyah v. Wisconsin Dept. of Corrections, No. 01-C-10, 2007 WL 2822005, *21-22 (E.D.Wis.
10 Sept. 27, 2007) (denying Muslim inmate right to possess prayer oil did not violate inmate's free
11 exercise rights where it was rationally related to a legitimate penological interest).

12 In sum, Plaintiff has failed to identify, and the Court is unable to find, any authority that
13 would have reasonably placed Defendants on notice that prohibiting Plaintiff from possessing prayer
14 oil in his cell would violate the First Amendment. Defendant Hedgpeth did not violate a clearly
15 established right by promulgating the regulation prohibiting inmates from possessing prayer oil in
16 their cells in response to a safety and security threat to the institution.

17 Nor did Defendants Amavisca and Marta violate a clearly established right by returning
18 Plaintiff's package which contained prayer oil. Plaintiff's family purchased a religious package that
19 was mailed to him on November 14, 2007. (Plaintiff's Statement of Disputed Facts 2, ECF No. 94.)
20 While Plaintiff argues that his package was received prior to the discovery of any alleged smuggling
21 on contraband in prayer oil, the facts fail to support this. Plaintiff's package was purchased on
22 November 14, 2007, and mailed on that date or later. The regulation at issue was implemented on
23 December 10, 2007, less than one month after Plaintiff's package was purchased. The evidence
24 shows that at the time Plaintiff's package was received, the safety and security concern had been
25 discovered and Defendant Hedgpeth was addressing the concern. Shortly after the date Plaintiff's
26 package arrived the regulation was effective and Defendants did not violate a clearly established
27 right by holding Plaintiff's package pending the implementation of the pending regulation.

28 Since the right was not clearly established at the time Defendants acted, Defendants are

1 entitled to qualified immunity.

2 **VI. Conclusion and Recommendation**

3 The Court finds that Defendants Hedgpeth, Amavisca, and Marta are entitled to qualified
4 immunity because the right of an inmate to possess prayer oil was not clearly established when the
5 regulation was promulgated and enforced. Accordingly, based on the foregoing, the Court
6 HEREBY RECOMMENDS that Defendants' motion for summary judgment, filed April 20, 2011,
7 be GRANTED, thus concluding this action in its entirety.

8 These findings and recommendations will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
10 days after being served with these findings and recommendations, Plaintiff may file written
11 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
12 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
14 1153 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 **Dated: July 26, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE