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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

PAUL ANTHONY RUPE,

Plaintiff,

v.

JEFFREY BEARD, in his official
capacity as Secretary of the
California Department of
Corrections and Rehabilitation,
et al.,

Defendants.

No. CV-08-2454-EFS (PC)

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

I. INTRODUCTION

Before the Court, without oral argument, is Defendants' Motion for Summary Judgment, ECF No. 164. Defendants seek summary judgment on Plaintiff's claims against them. Also pending before the Court is the related matters of Plaintiff's Motion to Strike, ECF No. 166, and Defendants' Nunc Pro Tunc Leave to Exceed Page Limit, ECF No. 167.

Having reviewed the parties' submissions and the record in this matter, and having consulted the applicable authority, the Court is fully informed. For the reasons set forth below, the Court grants Defendants' Motion for Summary Judgment, ECF No. 164, grants Defendants' Nunc Pro Tunc Leave to Exceed Page Limit, ECF No. 167, and denies Plaintiff's Motion to Strike, ECF No. 166.

1 religious herbs and oils. MCSP officials held a hearing on
2 Plaintiff's grievance on April 2, 2007. At the hearing, Defendant
3 Long - an associate MCSP warden - informed Plaintiff that MCSP would
4 approve the Pagan group's practices and would grant them a worship
5 area, however the grounds provided were not large enough to
6 accommodate the large number of Pagan inmates at once.

7 On June 1, 2007, Plaintiff submitted a Religious Review
8 Committee (RRC) request regarding the limitations that Plaintiff
9 believed were being placed on his religion. On June 6, 2007,
10 Defendants Takehara and Lockhart searched Plaintiff's cell in
11 connection with their investigation of a note threatening an assault
12 on Mule Creek staff by members of Kekau Ya Aset (HYA), to which
13 Plaintiff belonged. On June 10, 2007, Plaintiff filed an inmate
14 grievance requesting the ability to purchase oils, herbs, prayer
15 stones, and crystals, and requesting a fence, fire pit, and sweathouse
16 for the Pagan religious grounds. In response Plaintiff was informed
17 these requests for unauthorized religious items need to go through the
18 RRC.

19 On June 14, 2007, Plaintiff was placed in administrative
20 segregation. On September 18, 2007, after an investigation was
21 completed, Plaintiff was found guilty of a Rule Violation Report (RVR)
22 in connection with the note threatening Mule Creek staff members by
23 HYA.

24 On November 15, 2007, Defendant Bueno and Green did not allow
25 non-Wiccans to use the Pagan religious grounds. Plaintiff and the
26 Druids were required to hold group worship on the general population

1 yard. Between November 2007 and September 2008, Plaintiff sent
2 multiple request to the RRC requesting food for religious feasts,
3 religious grounds to accommodate more inmates, a sweathouse, fire pit,
4 and approval of some religious items. On February 25, 2009, the RRC
5 reviewed Plaintiff's requests and decided that only Native Americans
6 could use the sweathouse. On March 17, 2009, Plaintiff was informed
7 that MCSP personnel had been served with his complaint. Defendant
8 Allen told building staff on April 7, 2009, that the Druids were no
9 longer a recognized religious group. On April 15, 2009, Defendant
10 Martel issued a memorandum stating that MCSP would no longer provide
11 food for any prisoner religious celebrations. On May 6, 2009,
12 Plaintiff was advised that he was being considered for a transfer to
13 the California State Prison in Lancaster ("LAC"). Plaintiff objected
14 to the transfer on numerous procedural and substantive grounds. The
15 UCC hearing stated the transfer was recommended because of the
16 conversion of Mule Creek yards that made them incompatible with Level
17 three and four inmates. On June 17, 2009, Plaintiff was transferred
18 to LAC. On July 22, 2009, Plaintiff attended his initial ICC hearing
19 and was placed on the waiting list to work as support staff. In March
20 2013, Plaintiff was transferred back to Mule Creek from LAC.

21 **B. Procedural History**

22 Plaintiff filed his initial Complaint on October 16, 2008, ECF
23 No. 1, and the Amended Complaint on July 24, 2009, ECF No. 31. On
24 February 1, 2010, the Court granted in part and denied in part
25 Defendants' motion to dismiss. ECF No. 48. On February 24, 2010,
26 Plaintiff filed another amended complaint, captioned as the First

1 Amended Complaint ("FAC"), ECF No. 51. Defendants answered the FAC on
2 June 15, 2010. ECF No. 68. On October 13, 2011, the Court denied
3 Plaintiff's motion for summary judgment, motion for leave to conduct
4 third-party discovery, and motion to compel discovery. ECF No. 96.

5 On December 14, 2011, Plaintiff filed the now-operative
6 complaint, captioned as the Second Amended Complaint ("SAC"), ECF No.
7 101. Defendants answered the SAC on February 16, 2012. ECF No. 105.
8 The SAC asserts nine claims and names thirty-eight individual
9 Defendants. On January 26, 2012, the Court screened the SAC pursuant
10 to 28 U.S.C. § 1915A. ECF No. 103. After partially dismissing
11 several of Plaintiff's claims for mootness, the Court directed service
12 of the remaining claims. On August 15, 2012, and March 25, 2013,
13 Defendants moved to dismiss various claims. ECF Nos. 128 & 151. On
14 June 3, 2013, the Court granted dismissal of the Fourth Claim against
15 Defendants Omeira and Bowen and granted dismissal of the Eighth Claim
16 against Defendants Cash, Fortson, and Sebok. ECF No. 157. On
17 September 12, 2013, the Defendants filed for summary judgment. ECF
18 No. 164.

19 **III. PLAINTIFF'S MOTION TO STRIKE**

20 Plaintiff seeks to strike Defendants' Motion for Summary
21 Judgment, ECF No. 164, as Defendants' brief exceeded the page limits
22 set in Local Rule 56.1 and 7.1. Under Local Rule 7.1, Defendants'
23 brief was twenty-three pages long, when the limit was twenty pages.
24 Plaintiff notes that before filing the over-length brief Defendants'
25 did not seek leave of the Court. However, on October 9, 2013,
26 Defendants filed a nunc pro tunc request for leave to exceed the page

1 limit, stating they had inadvertently filed the brief compliant with
2 the Eastern District of California Local Rules, but not complaint with
3 the Eastern District of Washington Local Rules, and requested leave be
4 granted. Ultimately, the Court finds good cause for permitting an
5 over-length brief, as the brief, which was three pages over length,
6 addressed nine claims against thirty-one Defendants, which was
7 necessary to adequately address all the issues. Accordingly,
8 Plaintiff's Motion to Strike is denied and Defendants' request to
9 exceed the page limit is granted.

10 **IV. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

11 Defendants seek summary judgment on Plaintiff's nine claims for
12 relief under the Religious Land Use and Institutionalized Persons Act
13 (RLUIPA) and the Civil Rights Act (§ 1983).

14 **A. Legal Standards**

15 Summary judgment is appropriate if the "movant shows that there
16 is no genuine dispute as to any material fact and the movant is
17 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
18 Once a party has moved for summary judgment, the opposing party must
19 point to specific facts establishing that there is a genuine dispute
20 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If
21 the nonmoving party fails to make such a showing for any of the
22 elements essential to its case for which it bears the burden of proof,
23 the trial court should grant the summary judgment motion. *Id.* at 322.
24 "When the moving party has carried its burden under Rule [56(a)], its
25 opponent must do more than simply show that there is some metaphysical
26 doubt as to the material facts. . . . [T]he nonmoving party must come

1 forward with 'specific facts showing that there is a genuine issue for
2 trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
3 574, 586-87 (1986) (internal citation omitted) (emphasis in original).

4 When considering a motion for summary judgment, the Court does
5 not weigh the evidence or assess credibility; instead, "the evidence
6 of the non-movant is to be believed, and all justifiable inferences
7 are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477
8 U.S. 242, 255 (1986).

9 **B. Discussion**

10 1. RLUIPA

11 Plaintiff alleges Defendants Beard and Jackson, in their
12 official capacity, violated his right to practice his religion under
13 RLUIPA. However, as Plaintiff acknowledges in his Notice of Claims to
14 Be Adjudicated, ECF No. 161, Plaintiff is no longer housed at LAC
15 making the injunctive relief sought against Jackson moot.

16 As to Defendant Beard, Plaintiff bears the initial burden of
17 persuasion on whether the "government practice that is challenged by
18 the claim substantially burdens the plaintiff's exercise of religion."
19 42 U.S.C.A. § 2000cc-2. RLUIPA provides that "[n]o government shall
20 impose a substantial burden on the religious exercise of a person
21 residing in or confined to an institution . . . even if the burden
22 results from a rule of general applicability," unless the government
23 shows that the burden is "in furtherance of a compelling government
24 interest" and "is the least restrictive means of furthering . . . that
25 interest." 42 U.S.C. § 2000cc-1(a) (2012). "While [RLUIPA] adopts a
26 'compelling governmental interest' standard, '[c]ontext matters' in

1 the application of that standard." *Cutter v. Wilkinson*, 544 U.S. 709,
2 722-23 (2005). Courts are expected to apply RLUIPA's standard with
3 "due deference to the experience and expertise of prison and jail
4 administrators in establishing necessary regulations and procedures to
5 maintain good order, security and discipline, consistent with
6 consideration of costs and limited resources." *Id.* at 723. RLUIPA
7 defines "religious exercise" to include "any exercise of religion,
8 whether or not compelled by, or central to, a system of religious
9 belief." § 2000cc-5(7)(A). RLUIPA does not define "substantial
10 burden," but the Ninth Circuit has held that in the context of a
11 prisoner's constitutional challenge to institutional policies a
12 substantial burden occurs "where the state . . . denies [an important
13 benefit] because of conduct mandated by religious belief, thereby
14 putting substantial pressure on an adherent to modify his behavior and
15 to violate his beliefs." *Warsoldier v. Woodford*, 418 F.3d 989, 995
16 (9th Cir.2005) (alteration in original) (quotation omitted).

17 Here, Plaintiff fails to make any showing that his religious
18 exercise was so burdened as to pressure him to abandon his beliefs.
19 Plaintiff continues to have the opportunity to pray, use his Tarot
20 cards, purchase some religious oils and herbs, and have group worship.
21 Rather than being pressured to abandon his religious belief, Plaintiff
22 seeks additional religious accommodations beyond those already
23 provided by the prison, namely sweathouse ceremonies and six yearly
24 feasts. Accordingly, Plaintiff fails to demonstrate a substantial
25 burden under RLUIPA.

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1 2. § 1983 Claims

2 Section 1983 imposes two essential proof requirements upon a
3 claimant: (1) that a person acting under color of state law committed
4 the conduct at issue, and (2) that the conduct deprived the claimant
5 of some right, privilege, or immunity protected by the Constitution or
6 laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535
7 (1981). A person deprives another "of a constitutional right, within
8 the meaning of section 1983, if he does an affirmative act,
9 participates in another's affirmative acts, or omits to perform an act
10 which he is legally required to do that causes the deprivation of
11 which [the plaintiff complains]." *Johnson v. Duffy*, 588 F.2d 740, 743
12 (9th Cir. 1978). The inquiry into causation must be individualized
13 and focus on the duties and responsibilities of each individual
14 defendant whose acts or omissions are alleged to have caused a
15 constitutional deprivation. See *Rizzo v. Goode*, 423 U.S. 362, 370-71
16 (1976). Liability for a violation will not arise from *respondeat*
17 *superior* liability. *Monell v. Dep't of Social Servs.*, 436 U.S. 658,
18 690-92 (1978). A causal link between a person holding a supervisory
19 position and the claimed constitutional violation must be shown; vague
20 and conclusory allegations are insufficient. See *Fayle v. Stapley*,
21 607 F.2d 858, 862 (9th Cir. 1979); *Ivey v. Bd. of Regents*, 673 F.2d
22 266, 268 (9th Cir. 1982).

23 The Court takes up each of the alleged violations in turn.

24 a. First Amendment, Free Exercise

25 Plaintiff alleges Defendants Jackson, Beard, Barnham, Baptista,
26 Muhammed, Kuric, Long, Lackner, R. Bueno, Green, Lockhart, Takehara,

1 Martel, Subia, and Knipp violated his First Amendment right to freedom
2 of religion. The Supreme Court has repeatedly held that prisoners
3 retain the protections of the First Amendment. See *O'Lone v. Estate*
4 *of Shabazz*, 482 U.S. 342, 348 (1974). A prisoner's right to freely
5 exercise his religion, however, is limited by institutional objectives
6 and by the loss of freedom concomitant with incarceration. *Id.* at
7 348. To prevail on his Free Exercise Claim, Plaintiff must show the
8 government denied him "a reasonable opportunity of pursuing [his]
9 faith comparable to the opportunity afforded fellow prisoners who
10 adhere to conventional religious precepts." *Cruz v. Beto*, 405 U.S.
11 319, 322 (1972). It is well-settled that the First Amendment does not
12 require prison administration to provide inmates with the religious
13 provisions of their choice. *Id.* at 322 n. 2 ("A special chapel or
14 place of worship need not be provided for every faith regardless of
15 size; nor must a chaplain, priest, or minister be provided without
16 regard to the extent of the demand.").

17 Here, as to Defendants Beard and Jackson, Plaintiff alleges they
18 violated his First Amendment rights by failing to enforce or implement
19 a number of new policies. See ECF No. 101 at 27. However, Beard and
20 Jackson are supervisory officials and Plaintiff has not demonstrated
21 any facts showing they, either through policies enacted or actions not
22 taken, deprived Plaintiff of his First Amendment rights. In fact, the
23 record shows that at all times Plaintiff could, and did, avail himself
24 of the RRC to voice his concerns and seek accommodations for his
25 practices.

26 //

1 Defendants Barnham, Baptista, Muhammed, Kuric, Long and Lackner,
2 members of the RRC, allegedly failed to recognize Druidry as a
3 religious practice. However, Plaintiff does not show how the RRCs
4 actions denied him a reasonable opportunity to pursue his faith
5 comparable to the opportunity afforded fellow prisoners. While at
6 Mule Creek, Plaintiff did have access to some oils and herbs, could
7 read his tarot cards, pray, could attend group worship, and was even
8 let out of the yard with other Druids prior to the general population.
9 Accordingly, Plaintiff has not demonstrated how the RRCs actions or
10 inactions deprived him of any First Amendment right.

11 Next, as to Defendants Martinez, Texeira, Machado, Knipp, Long,
12 Vanni, and Martel, Plaintiff concedes that Texeira, Knipp, and Vanni
13 were not present at the transfer meeting. Accordingly, those claims
14 are dismissed. As to Defendants Martinez, Machado, Long, and Martel,
15 the Plaintiff fails to show how the UCC's acknowledgement that
16 Plaintiff was up for transfer by the ICC, and then was not actually
17 transferred, in any way impacted his ability to practice his religion.

18 Plaintiff also alleges that Defendants Long, Bueno, and Baptista
19 violated his First Amendment rights by ordering him to reduce the
20 number of Pagan practitioners. However, the request to Plaintiff that
21 the provided space was not large enough to accommodate all the Pagan
22 inmates at one time, did not tell Plaintiff he could not attend or
23 that he could not practice his religion. Accordingly, the Court finds
24 no violation that could arise from this request as to Plaintiff's
25 First Amendment rights.

26 //

1 Defendants Bueno and Green allegedly violated Plaintiff First
2 Amendment rights by ordering Plaintiff off of the Pagan grounds due to
3 limited space and security concerns. However, Plaintiff was still
4 provided with the opportunity to worship with a group on the general
5 population yard. In *Cruz*, the Supreme Court stated that “[a] special
6 chapel or place of worship need not be provided for every faith
7 regardless of size.” *Cruz*, 405 U.S. at 322 n. 2. Accordingly, the
8 Court finds that Defendants, in providing Plaintiff an area for group
9 worship, just not the specific area Plaintiff desired, did not violate
10 his First Amendment rights.

11 On June 6, 2007, Defendants Lockhart and Takehara searched
12 Plaintiff’s cell taking a number of items. However, Plaintiff does
13 not demonstrate how, the search of his cell due to an ongoing
14 investigation of threats against the prison staff, in any way affected
15 his ability to practice his religion.

16 Finally, Plaintiff alleges Defendants Martel, Subia, Long, and
17 Knipp violated his First Amendment rights by being aware of the
18 actions of their direct subordinates but actively ignored their
19 actions. However, Plaintiff has not demonstrated a causal link
20 between these supervisors and the claimed constitutional violations.
21 *See Fayle*, 607 F.2d at 862. Accordingly, Plaintiff’s claim fails.

22 Ultimately, the Court finds nothing in the record before it to
23 support the contention that Defendants denied Plaintiff a reasonable
24 opportunity of pursuing his faith comparable to the opportunity
25 afforded fellow prisoners. Therefore, Plaintiff’s claim is dismissed.

26 //

1 b. Fourteenth Amendment, Equal Protection

2 Plaintiff alleges Defendants Beard, Jackson, Barnham, Baptista,
3 Muhammed, Kuric, Long, Lackner, Martinez, Teixera, Machado, Knipp,
4 Long, Vanni, Martel, R. Bueno, Green, Lockhart, and Takehara violated
5 his Fourteenth Amendment right to Equal Protection by treating other
6 religions differently from Druidry.

7 The Equal Protection Clause requires the State to treat all
8 similarly situated people equally. See *City of Cleburne v. Cleburne*
9 *Living Ctr.*, 473 U.S. 432, 439 (1985). This does not mean, however,
10 that all prisoners must receive identical treatment and resources.
11 See *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972); *Ward v. Walsh*, 1 F.3d
12 873, 880 (9th Cir. 1993); *Allen v. Toombs*, 827 F.2d 563, 568-69 (9th
13 Cir. 1987) (affirming summary judgment against Native American
14 prisoners' Equal Protection claim because "the prison administration
15 is not under an affirmative duty to provide each inmate with the
16 spiritual counselor of his choice"). To prevail on an Equal
17 Protection claim brought under § 1983, Plaintiff must show that "the
18 defendants acted with an intent or purpose to discriminate against
19 [him] based upon membership in a protected class." See *Thornton v.*
20 *City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005).

21 First, like his Free Exercise claim, Plaintiff argues the
22 request to reduce the number of Pagan practitioners, his removal from
23 Pagan grounds, and the searching of his cell amount to an equal
24 protection violation. However, Plaintiff does not evidence how he is
25 being treated differently from any other prisoner when space within
26 the prison is limited or when a prisoner is suspected of involvement

1 in threats to staff members. Additionally, he has presented no
2 evidence to indicate a discriminatory purpose for these actions.

3 Second, as the members of the ICC and UCC, Plaintiff concedes
4 that "Defendants Texeira, Knipp, and Vanni are dropped from this
5 claim" and that "[t]his is not an equal protection claim." ECF No.
6 166 at 11. Accordingly, the Court dismisses the Equal Protection
7 claim against the ICC and UCC Defendants.

8 Finally, Plaintiff maintains that the prison supervisors and
9 members of the RRC failed to provide Pagan Chaplains, lands for Druid
10 practices, or sweathouses, amounting to an Equal Protection violation.
11 However, like in *Toombs*, here, the fact that Druids do not have a paid
12 Chaplain is not a violation of the Equal Protection clause, as
13 Plaintiff is allowed to receive help with religious issues from other
14 paid Chaplains working at CDCR. Additionally, nothing presented by
15 the Plaintiff indicates that Defendants have, or would, deny him
16 access to a volunteer Druid Chaplain if one was available. Lastly,
17 Plaintiff acknowledges that the RRC did review and ultimately rejected
18 his request for land and a sweathouse. ECF No. 166 at 28. While
19 Native Americans are provided a sweathouse, all inmates are not
20 entitled to receive "identical treatment and resources." See *Hartmann*
21 *v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013).
22 Plaintiff has not demonstrated that the denial by the RCC of his
23 request to have a separate sweathouse² was based solely on his
24

25 ² Plaintiff acknowledges there is no alternative to the construction of a
26 separate sweathouse noting the Native Americans' sweathouse is
considered sacred.

1 religious beliefs and not upon the RCC's concern for the use of
2 limited prison resources.

3 In the end, Plaintiff while providing evidence that Defendants
4 knew he was a Druid, has not demonstrated that the purpose of any
5 disparate treatment he allegedly received was due to his being a
6 Druid. Accordingly, his claim is dismissed.

7 c. First Amendment, Freedom of Speech/Retaliation

8 Plaintiff claims that Defendants Martinez, Texeira, Machado,
9 Knipp, Long, Vanni, Martel, V. Bueno, Rutherford, Takehara,
10 Chamberlain, Burkard, Green, R. Bueno, Kudlata, Allen, Rathjen,
11 Reaves, Nakanoto, Bradford, Beuchter, and Rushing violated the First
12 Amendment by retaliating against him to chill his speech.

13 Prisoners may not be retaliated against for exercising their
14 right of access to the courts, which extends to access to established
15 prison grievance procedures. *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th
16 Cir. 1995). However, retaliation claims brought by prisoners must be
17 evaluated in light of concerns over "excessive judicial involvement in
18 day-to-day prison management, which 'often squander[s] judicial
19 resources with little offsetting benefit to anyone.'" *Pratt v.*
20 *Rowland*, 65 F.3d 802, 807 (9th Cir. 1995) (quoting *Sandin v. Conner*,
21 515 U.S. 472, 482 (1995)). In particular, courts should "'afford
22 appropriate deference and flexibility' to prison officials in the
23 evaluation of proffered legitimate penological reasons for conduct
24 alleged to be retaliatory." *Id.* (quoting *Sandin*, 515 U.S. at 482).
25 To state a retaliation claim, a plaintiff must allege five basic
26 elements: "1) an assertion that a state actor took some adverse action

1 against an inmate 2) because of 3) that prisoner's protected conduct,
2 and that such action 4) chilled the inmate's exercise of his First
3 Amendment Rights, and 5) the action did not reasonably advance a
4 legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-
5 68 (9th Cir. 2005). Legitimate penological goals include preserving
6 institutional order, discipline, and security. *Barnett v. Centoni*, 31
7 F.3d 813, 816 (9th Cir. 1994). Retaliation is not established simply
8 by showing adverse activity after the occurrence of protected speech,
9 but rather a plaintiff must show a nexus between the two events.
10 *Husky v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000). An
11 inmate claiming retaliation must allege that the actions caused some
12 injury, *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000), and has
13 the burden of pleading and proving the absence of legitimate
14 correctional goals for the alleged conduct. *Rizzo v. Dawson*, 778 F.2d
15 527, 532 (9th Cir. 1985).

16 Here, the Plaintiff has failed to meet this burden. First,
17 Plaintiff maintains the members of the UCC and ICC committees
18 retaliated against him by placing him up for transfer. Aside from the
19 fact that he was not transferred after these 2007 hearings, Plaintiff
20 fails to establish that being put up for transfer was because of his
21 religious beliefs and not for the legitimate penological goal of
22 maintaining security in the facility. Next, Plaintiff maintains that
23 Defendants placed him into administrative segregation in retaliation
24 for his religious beliefs and filing of grievances. However, aside
25 from the fact that the segregation occurred after the filing of
26

1 grievances, Plaintiff fails to show any nexus between the
2 administrative segregation and his religious beliefs.

3 Additionally, Plaintiff further alleges retaliation by Defendant
4 Rutherford and Defendant Allen by having to undergo strip searches and
5 having his cousin placed into a holding cell. However, these
6 conclusory allegations are not support by evidence demonstrating a
7 connection between these events and his religious beliefs, other than
8 that they occurred after complaining about religious services, which
9 is insufficient to maintain a retaliation claim.

10 Finally, Plaintiff alleges that Defendants further retaliated
11 against him by removing him from the Pagan grounds, transferring him
12 to LAC, and failing to place him on the assignment list. However, the
13 evidence shows he was removed because of space limitations, was
14 transferred due to yard conversion at Mule Creek, and was placed on
15 the waiting list for assignment to the support staff. Plaintiff has
16 provided nothing but conclusory allegations that these events had any
17 nexus to his religious beliefs or grievances.

18 Ultimately, Plaintiff fails to demonstrate how any of
19 Defendants' actions were actually retaliatory because of his religious
20 beliefs or grievances, and not for a legitimate penological goal.
21 Accordingly, Plaintiff's retaliation claims are dismissed.

22 *d. Fourteenth Amendment, Due Process*

23 Plaintiff alleges that Defendants Rutherford, V. Bueno, and
24 Kudlata, violated his due process rights under the Fourteenth
25 Amendment. Procedural due process claims require (1) a deprivation of
26 a constitutionally protected liberty or property interest, and (2) a

1 denial of adequate procedural protections. *Hufford v. McEnaney*, 249
2 F.3d 1142, 1150 (9th Cir. 2001). In the context of a disciplinary
3 proceeding where a liberty interest is at stake, due process requires
4 that "some evidence" support the disciplinary decision.
5 *Superintendent v. Hill*, 472 U.S. 445, 455 (1985). The inmate must
6 also receive: "(1) advance written notice of the disciplinary charges;
7 (2) an opportunity, when consistent with institutional safety and
8 correctional goals, to call witnesses and present documentary evidence
9 in his defense; and (3) a written statement by the fact-finder of the
10 evidence relied on and the reasons for the disciplinary action." *Id.*
11 at 454. However, "prison disciplinary proceedings are not part of a
12 criminal prosecution, and the full panoply of rights due a defendant
13 in such proceedings does not apply." *Wolff v. McDonnell*, 418 U.S.
14 539, 556 (1974).

15 Here, Plaintiff's allegations are 1) that Rutherford threatened
16 to charge him with misconduct if he did not accuse another, 2) V.
17 Bueno falsely charged him with misconduct, and 3) Kudlata failed to
18 provide him with an impartial hearing officer. However, Plaintiff
19 fails to establish the he was not provided adequate procedural
20 protection before being placed in administrative segregation. While
21 Plaintiff maintains that he was charged with false reports, the Due
22 Process Clause does not make one free from false accusations, but
23 merely provides procedural protections to defend against false
24 accusations. Accordingly, Plaintiff's claim that his due process
25 rights were violated is dismissed.

26 //

1 e. Fourth Amendment, Unlawful Search and Seizure

2 Plaintiff argues that Defendants Lockhart, Takehara, and
3 Rutherford violated his Fourth Amendment right to be free from
4 unreasonable searches and seizures by searching his cell in connection
5 with an ongoing investigation into threats against prison staff. The
6 U.S. Supreme Court has held, however, that "the Fourth Amendment has
7 no applicability to a prison cell." *Hudson v. Palmer*, 468 U.S. 517,
8 536 (1984). An inmate has no "reasonable expectation of privacy in
9 his prison cell entitling him to the protection of the Fourth
10 Amendment against unreasonable searches and seizures." *Id.* at 519.
11 The Supreme Court noted, "[p]rison officials must be free to seize
12 from cells any articles which, in their view, disserve legitimate
13 institutional interests." *Id.* at 528 n.8. Here, the Court finds that
14 Plaintiff did not have a reasonable expectation of privacy in his
15 prison cell. Accordingly, Plaintiff Fourth Amendment claim is
16 dismissed.

17 f. Eighth Amendment, Cruel and Unusual
18 Punishment/Deliberate Indifference

19 Finally, Plaintiff alleges that Defendants Rathjen, Bennett,
20 Reaves, Nakanoto, Bradford, Beuchter, and Rushing violated his Eighth
21 Amendment rights. The Eighth Amendment requires that prison officials
22 take reasonable measures to guarantee the safety of prisoners. *Farmer*
23 *v. Brennan*, 511 U.S. 825, 832 (1994). The failure of prison officials
24 to protect inmates from dangerous conditions at the prison violates
25 the Eighth Amendment only when two requirements are met: (1) the
26 deprivation alleged is, objectively, sufficiently serious; and (2) the

1 prison official is, subjectively, deliberately indifferent to inmate
2 safety. *Id.* at 834. A prison official is deliberately indifferent if
3 she knows that a prisoner faces a substantial risk of serious harm and
4 disregards that risk by failing to take reasonable steps to abate it.
5 *Id.* at 837. Neither negligence nor gross negligence will constitute
6 deliberate indifference. *Id.* at 835-36 & n.4.

7 Here, Plaintiff maintains that Defendants either transferred him
8 to LAC knowing he would be subject to cruel or unusual punishment at
9 LAC or did not place Plaintiff on the assignment list so that he could
10 be given a work assignment. However, Plaintiff has failed to
11 demonstrate any evidence that could show that any Defendant was
12 subjectively aware of a risk to Plaintiff's safety. Accordingly,
13 Plaintiff has not demonstrated any violations of his Eight Amendment
14 rights.

15 **C. Conclusion**

16 For the foregoing reasons, taking the evidence in the light most
17 favorable to the Plaintiff, the Plaintiff failed to demonstrate that a
18 violation of his constitutional rights or the RLUIPA occurred.
19 Accordingly, the Court grants Defendants' Motion for Summary Judgment.

20 **V. CONCLUSION**

21 Accordingly, **IT IS HEREBY ORDERED:**

- 22 1. Defendants' Motion for Summary Judgment, **ECF No. 164**, is
23 **GRANTED.**
- 24 2. Defendants' Nunc Pro Tunc Leave to Exceed Page Limit, **ECF**
25 **No. 167**, is **GRANTED.**
- 26 3. Plaintiff's Motion to Strike, **ECF No. 166**, is **DENIED.**

1 4. The Clerk's Office is directed to enter **JUDGMENT** in
2 Defendants' favor with prejudice.

3 5. All pending deadlines and hearings are **STRICKEN**.

4 6. The Clerk's Office shall **CLOSE** this file.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
6 Order and provide copies to Mr. Rupe and to defense counsel.

7 **DATED** this 23rd day of December 2013.

8 s/ Edward F. Shea

9 EDWARD F. SHEA

10 Senior United States District Judge