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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RICHARD R. GATES,

Plaintiff,

v.

R. LEGRAND, *et al.*,

Defendants.

Case No. 3:16-cv-00321-MMD-CLB

ORDER

**I. SUMMARY**

Plaintiff Richard R. Gates alleges violations of his First and Fourteenth Amendment rights because amber fragrant resin granular incense (“Incense”) was taken from him after he was permitted to order it while in the custody of the Nevada Department of Corrections (“NDOC”). Plaintiff alleges he needs the Incense to practice his Wiccan faith. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of Magistrate Carla L. Baldwin (ECF No. 77) relating to Defendants’ motion for summary judgment (ECF Nos. 70), and Defendant Olivas’ joinder thereto (ECF No. 73).<sup>1</sup> Plaintiff did not file an objection to the R&R, though the time for doing so has elapsed. For this reason, and as further explained below, the Court will accept and adopt the R&R, and grant both Defendants’ motion for summary judgment, and Defendant Olivas’ joinder thereto.

**II. BACKGROUND**

The Court refers to its prior order on Defendants’ first round of motions for summary judgment for the background facts of this case, and does not restate those facts here. (ECF No. 48 at 2-5.)

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<sup>1</sup>Plaintiff filed a response (ECF No. 72), and Defendants filed a reply (ECF No. 74).

1 **III. LEGAL STANDARDS**

2 **A. Review of the Magistrate Judge's Recommendations**

3 This Court "may accept, reject, or modify, in whole or in part, the findings or  
4 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
5 timely objects to a magistrate judge's report and recommendation, then the Court is  
6 required to "make a *de novo* determination of those portions of the [report and  
7 recommendation] to which objection is made." *Id.* Where a party fails to object, however,  
8 the court is not required to conduct "any review at all . . . of any issue that is not the subject  
9 of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*  
10 *Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) ("De novo review of the magistrate  
11 judges' findings and recommendations is required if, but *only* if, one or both parties file  
12 objections to the findings and recommendations.") (emphasis in original); Fed. R. Civ. P.  
13 72, Advisory Committee Notes (1983) (providing that the court "need only satisfy itself that  
14 there is no clear error on the face of the record in order to accept the recommendation").

15 **B. Summary Judgment Standard**

16 "The purpose of summary judgment is to avoid unnecessary trials when there is no  
17 dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18  
18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,  
19 the discovery and disclosure materials on file, and any affidavits "show there is no genuine  
20 issue as to any material fact and that the movant is entitled to judgment as a matter of  
21 law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine" if there is  
22 a sufficient evidentiary basis on which a reasonable fact-finder could find for the  
23 nonmoving party and a dispute is "material" if it could affect the outcome of the suit under  
24 the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).  
25 Where reasonable minds could differ on the material facts at issue, however, summary  
26 judgment is not appropriate. *See id.* at 250-51. "The amount of evidence necessary to  
27 raise a genuine issue of material fact is enough 'to require a jury or judge to resolve the  
28 parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897,

1 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89  
2 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all  
3 inferences in the light most favorable to the nonmoving party. See *Kaiser Cement Corp.*  
4 *v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

5 The moving party bears the burden of showing that there are no genuine issues of  
6 material fact. See *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once  
7 the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting  
8 the motion to "set forth specific facts showing that there is a genuine issue for trial."  
9 *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings  
10 but must produce specific evidence, through affidavits or admissible discovery material, to  
11 show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.  
12 1991), and "must do more than simply show that there is some metaphysical doubt as to  
13 the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting  
14 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere  
15 existence of a scintilla of evidence in support of the plaintiff's position will be insufficient."  
16 *Anderson*, 477 U.S. at 252.

#### 17 **IV. DISCUSSION**

18 As Plaintiff has failed to object to Judge Baldwin's Recommendation to grant  
19 summary judgment to Defendants, the Court is satisfied that Judge Baldwin did not commit  
20 clear error on the face of the R&R. Judge Baldwin recommends that summary judgement  
21 be granted to Defendants because they did not personally participate in Plaintiff's alleged  
22 constitutional violations—they merely responded to grievances. (ECF No. 77 at 7-9.)  
23 Moreover, Judge Baldwin recommends that summary judgment be granted to Defendants  
24 on the alternative basis that they are entitled to qualified immunity. (*Id.* at 9-11.) Having  
25 reviewed the R&R and the underlying briefing, the Court agrees with Judge Baldwin.

#### 26 **V. CONCLUSION**

27 The Court notes that the parties made several arguments and cited to several cases  
28 not discussed above. The Court has reviewed these arguments and cases and determines

1 that they do not warrant discussion as they do not affect the outcome of the motions before  
2 the Court.

3 It is therefore ordered that the Magistrate Judge's Report and Recommendation  
4 (ECF No. 77) is accepted and adopted in full.

5 It is further ordered that Defendants' motion for summary judgment, and the joinder  
6 thereto, (ECF Nos. 70, 73) are granted.

7 The Clerk of Court is directed to enter judgment accordingly and close this case.

8 DATED THIS 16<sup>th</sup> day of April 2020.



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11 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

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