FILED: September 21, 2021

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6642
(7:16-cv-00084-JLK-RSB)

WALTER DELANEY BOOKER, JR.

Plaintiff - Appellant

v.

M. E. ENGELKE, Director of Food Services; N. GREGG, State Dietitian; H. PONTON, Regional Administrator, Western; L. FLEMING, Warden; M. BROYLES, FOMB; Q. REYNOLDS, Unit Manager; J. COMBS, Assistant Warden; BRYANT, Sergeant; CHOW HALL OFFICERS, C and D side; WITT, Correctional Officer; MARCUS ELAM, Regional Administrator, Western; SGT. KIMBERLIN; E. PEARSON, Warden-Greensville; A. ANDERSON, GCC Food Operations Director; CREQUE, GCC Food Services Manager; S. TAPP, GCC Ombudsman; K. PHILLIPS, GCC Ombudsman

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Diaz, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6642

WALTER DELANEY BOOKER, JR.,

Plaintiff - Appellant,

v.

M. E. ENGELKE, Director of Food Services; N. GREGG, State Dietitian; H. PONTON, Regional Administrator, Western; L. FLEMING, Warden; M. BROYLES, FOMB; Q. REYNOLDS, Unit Manager; J. COMBS, Assistant Warden; BRYANT, Sergeant; CHOW HALL OFFICERS, C and D side; WITT, Correctional Officer; MARCUS ELAM, Regional Administrator, Western; SGT. KIMBERLIN; E. PEARSON, Warden-Greensville; A. ANDERSON, GCC Food Operations Director; CREQUE, GCC Food Services Manager; S. TAPP, GCC Ombudsman; K. PHILLIPS, GCC Ombudsman,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (7:16-cv-00084-JLK-RSB)

Submitted: September 29, 2020 Decided: December 3, 2020

Before NIEMEYER, DIAZ, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Walter Delaney Booker, Jr. Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Walter Delaney Booker, Jr., appeals the district court's orders granting Defendants' motions for summary judgment in Booker's action filed pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc to 2000cc-5. After reviewing the record, we are satisified that, even assuming the Defendants' policies substantially burdened Booker's free exercise rights under the Religious Land Use and Institutionalized Persons Act and the First Amendment, the policies were reasonably related to the prison's legitimate penological interests in balancing inmates' religious dietary restrictions with the agency's operational, budgetary, and administrative concerns, and so affirm on that basis. On all other claims, we affirm for the reasons stated by the district court. *Booker v. Engelke*, No. 7:16-cv-00084-JLK-RSB (W.D. Va., Mar. 22, 2018 & Mar. 26, 2019). We further deny Booker's motion for injunctive relief pending appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WALTER DELANEY BOOKER, **Plaintiff,**	)	**Civil Action No. 7:16cv00084**
v.	)	**MEMORANDUM OPINION**
M.E. ENGELKE, et al., **Defendants.**	)	**By: Hon. Jackson L. Kiser** **Senior United States District Judge**

Walter Delaney Booker, a Virginia inmate proceeding pro se, filed a verified second amended complaint [ECF No. 42-1] pursuant to 42 U.S.C. §§ 1983 and 2000cc-1, et seq., naming several officials within Virginia Department of Corrections ("VDOC"), Wallens Ridge State Prison ("WRSP"), and Greensville Correctional Center ("GRCC") as defendants.[1] Plaintiff's remaining claims assert that Defendants substantially burdened his sincere religious exercise in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). (See Mem. Op. & Order, Mar. 22, 2018 [ECF Nos. 67, 68].) Defendants filed a supplemental motion for summary judgment and brief in support [ECF Nos. 72, 73], and Plaintiff responded [ECF No. 78], making the matter ripe for disposition. After reviewing the record, I grant Defendants' supplemental motion for summary judgment and dismiss the action in its entirety.

[1] The pleading consists of 253 paragraphs, not including sub-paragraphs. Plaintiff also filed a "second declaration" [ECF No. 4] and "third declaration" [ECF No. 11] in support of the pleading. Exhibits A-D [ECF No. 1-1] were included with the original verified complaint, and exhibits F-1 [ECF Nos. 42-2 to 42-4], were included with the amended complaint. There does not appear to be an Exhibit E.

I.

A.

Plaintiff has been a religious adherent to the "Nation of Islam" during his incarceration at multiple VDOC prisons.[2] Plaintiff was approved for the VDOC's Common Fare Diet ("Common Fare") on September 19, 2011. Common Fare is the VDOC's attempt at a uniform menu to accommodate inmates' various religious dietary beliefs at numerous VDOC facilities. Plaintiff's religious beliefs limit the kinds of foods he eats. He may eat nearly all vegetables except for peas, collard greens, cabbage sprouts, and salads made from beet tops, turnip greens, or kale mustard greens. Kidney beans, lima beans, pinto beans, butter beans, great northern beans, and soy beans are also off limits. Lettuce, tomatoes, peppers, and onions may be consumed uncooked, but cabbage, broccoli, cauliflower, zucchini, squash, celery, cucumbers, and spinach must be cooked. Plaintiff also does not eat pork products, "scavengers of the sea, such as oysters, crabs, clams, snails, shrimps, eels, and catfish[,]" or any fish weighing more than fifty pounds. He may not consume oils of any kind except vegetable oil, olive oil, or pure butter. He may eat whole wheat bread, but not cornbread, freshly baked breads, muffins, hot cakes, or white bread. "[P]roperly raised and slaughtered" beef, chicken, lamb, and baby pigeon are also permissible.

B.

Plaintiff's five remaining claims assert that the named Defendants "substantially burdened" his sincere religious exercise, namely his ability to eat a diet consistent with his own religious scruples, in violation of the First Amendment's Free Exercise Clause and the Religious Land Use

[2] During the times pertinent to this action, Plaintiff was housed at GRCC until September 22, 2015, when he was transferred to WRSP. Plaintiff left WRSP and returned to GRCC on July 28, 2016. He was transferred to St. Brides Correctional Center sometime around July 2017.

and Institutionalized Persons Act ("RLUIPA").[3] Under the Free Exercise Clause and RLUIPA, the Government "substantially burdens" religious exercise when it "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs, or . . . forces a person to choose between following the precepts of [his] religion and forfeiting [governmental] benefits, on the one hand, and abandoning one of the precepts of [his] religion . . . on the other hand." Lovelace v. Lee, 472 F.3d 174, 187 (4th Cir. 2006); see Patel v. B.O.P., 515 F.3d 807, 814 (8th Cir. 2008) ("When the significance of a religious belief is not at issue, the same definition of 'substantial burden' applies under the Free Exercise Clause . . . and RLUIPA."). Plaintiff seeks damages against Defendants in their individual capacities under 42 U.S.C. § 1983, as well as injunctive relief against Defendants in their official capacities under § 1983 and RLUIPA.[4]

1. Eid-ul-Adha Feast

The VDOC allows Muslim inmates to observe the Islamic holy day Eid-ul-Adha (the "Feast"), which occurs approximately two months after Ramadan, the holy month of fasting. Plaintiff participated in Ramadan while at GRCC, including in 2015. He was transferred to WRSP on September 23, 2015, two days before the Feast would be celebrated at WRSP with a pre-prepared Common Fare Feast lunch. Plaintiff assumed he would automatically be approved to observe the Feast at WRSP because he participated in Ramadan at GRCC. However, his name was not on the list of approved participants when lunch was served on September 25, so he was offered

[3] Defendants do not dispute that Plaintiff seeks to engage in a personal practice that is both sincerely held and rooted in religious belief.

[4] I previously granted judgment in Defendants' favor on Plaintiff's claims seeking damages under RLUIPA, as well as his § 1983 claims seeking damages against Defendants in their official capacities. (Mem Op. pgs. 9–10, Mar. 22, 2018 [ECF No. 67].) I also held that Defendants were entitled to qualified immunity on Plaintiff's § 1983 claims alleging violations of the Eighth and Fourteenth Amendments. (Id. pgs. 11–14.)

a regular Common Fare tray rather than the special Common Fare Feast tray. Plaintiff refused the regular Common Fare tray and skipped lunch that day. Plaintiff's faith allows him to make up a missed Feast, but his requests for a "make up" Feast in the fall of 2015 were unsuccessful. WRSP officials did offer Plaintiff a "make up" Feast nearly three years later, in July 2018, but Plaintiff declined because he was in the middle of another religious fast.

Plaintiff faults defendant Corrections Officer Witt for acting "intentionally and with callous disregard" to Plaintiff's religious rights by offering him the regular Common Fare tray and refusing to get him a Common Fare Feast tray after Plaintiff told Witt that he was supposed to receive the Eid-al-Adha Feast tray because he is Muslim. He proffers that Witt should have consulted other WRSP staff and given a Common Fare Feast tray to Plaintiff within thirty minutes. Plaintiff faults defendant WRSP Warden Fleming for having "never placed any particular type of procedure to sign up for the . . . [F]east." Plaintiff further faults Fleming and Defendant Ponton, one of VDOC's Western Region Administrators, for not authorizing a "make up" Feast meal in 2015.

2. Suspension from Common Fare Meal Plan

On December 15, 2015, Plaintiff received notice that an Institutional Classification Authority ("ICA") hearing would be scheduled to determine whether he could continue receiving Common Fare. At the hearing, Plaintiff learned that defendant Sgt. Kimberlin had filed an incident report claiming that on November 26, 2015, he saw Plaintiff take a regular meal tray in violation of the Common Fare Agreement ("Agreement"). Plaintiff denied taking a regular tray and denied seeing Sgt. Kimberlin in the dining hall that day. Plaintiff further argued that "even if he took a Thanksgiving tray from the window[,] it was not a regular tray, but a Special Observance tray and it did not violate the . . . Agreement." Plaintiff believed that his faith allowed him to eat the

Thanksgiving meal, regardless of whether it was classified as a non-Common Fare tray. Defendant Unit Manager Reynolds, who served as the ICA, determined Plaintiff violated the Agreement and recommended he be suspended from Common Fare. He was suspended from Common Fare for six months beginning on December 18, 2015. Plaintiff faults Defendant Sgt. Kimberlin for intentionally interfering in his religious exercise by falsely accusing Plaintiff of taking an unauthorized meal tray. He also faults Fleming, Reynolds, and Defendant WRSP Assistant Warden Combs for suspending him from Common Fare, as well as Defendant Elam, another of VDOC's Western Region Administrators, for upholding the suspension via an administrative appeal.[5]

3. Changes to Common Fare Menu, Regular Trays, and No-Meat Trays

In October 2015, the VDOC implemented a new Common Fare menu featuring a "majority of the food items" that Plaintiff believes violate his religious beliefs. These unholy foods include "all types of beans, white potatoes, white rice, white bread[,] fresh hot cakes and carrots, ... French toast, toast, eggs, oatmeal, farina[,] . . . tuna cake and peanut butter (when they do not contain soy) and cabbage . . . ." Plaintiff unsuccessfully sought the following substitutions, all of which allegedly had been served during earlier iterations of Common Fare: brown rice, navy beans, unbreaded fish, and different vegetables. Plaintiff notes that these substitutions are already provided during Islamic holidays. He believes that there is "nothing Kosher about the Common Fare Diet as it exists now."[6] Plaintiff faults Defendant Engelke, the VDOC's Director of Food

[5] I previously held that Defendants were entitled to qualified immunity on Plaintiff's separate § 1983 claim challenging this suspension on due-process grounds. (See Mem. Op. pgs. 13–14 & n.10, Mar. 22, 2018 [ECF No. 67]).

[6] Even though Common Fare served vegetables prohibited by his religion, Plaintiff acknowledges it was a better alternative than regular trays and no-meat trays that serve mostly prohibited foods and are contaminated with pork substances.

Services, and Defendant Gregg, the State Dietician, for creating and implementing the new un-Kosher Common Fare menu. He faults Defendants Fleming, Pearson, Broyles, Anderson, Creque, and Ponton for not correcting these issues after being informed via the administrative grievance process. Defendant Pearson was GRCC's Warden, Defendant Broyles was the Food Operations Manager at WRSP, Anderson was the Food Operations Director at GRCC, and Defendant Creque was the Food Operations Manager and Supervisor at GRCC. Plaintiff also faults Defendants Phillips and Tapps, both institutional ombudsmen at GRCC, for their responses to his grievances.

4. The Agreement

To participate in Common Fare, inmates must apply and be approved by their prison's ICA, as well as the VDOC's Central Classification Services. Inmates' applications are reviewed to determine whether they demonstrate a sincere religious need to consume foods served on Common Fare rather than foods served on the Master Menu. If approved for Common Fare, inmates must agree to the rules of participation by reading and signing an Agreement. Inmates who refuse to sign the Agreement will not receive Common Fare.

Before June 2018, violations of the Agreement included: failing to take at least seventy-five percent of meal trays served in any given month; being observed eating, trading, or possessing unauthorized food items not served on the Common Fare menu; being observed giving away or trading a Common Fare food item; purchasing or being observed eating food items from the commissary inconsistent with the dietary requirements of Common Fare; and failing to attend services or other religious activities at least twice per month, if available at the inmate's facility. Breaking any one of these rules would result in the following sanctions: the first violation was six months' suspension, the second violation was twelve months' suspension, and the third (or more)

violation was four years' suspension from Common Fare. The Agreement was revised in March and June 2018. Although inmates who request the Common Fare diet must still sign an Agreement promising to not pick up or eat a non-Common Fare meal tray, and to not trade or possess unauthorized food items from the main line, they are no longer required to pick up a certain number of Common Fare trays each month or to attend religious services in order to stay on the Common Fare meal plan. Additionally, involuntary removal or suspension from Common Fare is no longer a permissible sanction for violating the Agreement. Rather, the inmate shall be assessed the cost of the Common Fare meal, which is currently $0.70 per meal, for each violation. An inmate who cannot afford to pay for the meal will have the cost charged as a loan to his Inmate Trust Account.

Plaintiff objects to having to sign the Agreement before receiving foods in conformity with his religious beliefs. He complains that the Agreement creates its "own dietary laws and requirements that [P]laintiff is either forced to deal with or don't have anything to consume . . . [except for] prohibited food . . . , which forced [P]laintiff to violate his religious beliefs." He also argues that the old Agreement was designed to take away his religious diet "without regard to whether [P]laintiff violated any of his [own sincere] religious dietary laws." He further argues that the former Agreement forced "[P]laintiff to attend a [religious] service even though that religious service may not be in conformance with the proper teachings or may differ on points of views that [P]laintiff sincerely does not agree with." He asserts this claim against Defendant Engelke, whose signature is on the Agreement.

5. Pork-Contaminated Trays

On December 20, 2015, shortly after being suspended from Common Fare, Plaintiff unwittingly touched a pork-contaminated tray that was offered to him during a meal. He objected

to receiving it and requested a non-pork tray, but an officer claimed that such trays were "not available." Via an administrative grievance, Plaintiff informed Warden Fleming, who did not "correct" this problem. Plaintiff requested and received non-pork trays on December 22, 2015. Consequently, Plaintiff was forced for two days to forego meals or to contact and eat pork-contaminated foods. He asserts this claim against Defendants Fleming, Reynolds, Broyles, and Combs.

C.

Defendants moved for summary judgment on all of Plaintiff's remaining claims. They claim to be entitled to judgment as a matter of law because: Plaintiff cannot show certain Defendants were personally involved in the alleged deprivations; the new Common Fare Agreement moots Plaintiff's claims for prospective injunctive relief under RLUIPA; and Plaintiff's religious exercise was not "substantially burdened" by missing one Eid-ul-Adha Feast meal, receiving two pork-contaminated meals trays; being suspended from Common Fare after violating the former Agreement; dealing with changes to the Common Fare menu; or being required to sign the Agreement. Alternatively, Defendants assert that the challenged policies pass muster under both RLUIPA and the Free Exercise Clause. (See generally Defs.' Br. in Supp. of Suppl. Mot. for Summ J. pgs. 10–35, July 20, 2018 [ECF No. 73].)

II.

Federal Rule of Civil Procedure 56 provides that a court should grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "As to materiality . . . [o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In order to preclude

summary judgment, the dispute about a material fact must be "'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. However, if the evidence of a genuine issue of material fact "is merely colorable or is not significantly probative, summary judgment may be granted." Id. at 250. In considering a motion for summary judgment, a court must view the record as a whole and draw all reasonable inferences in the light most favorable to the nonmoving party. See, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986); Shaw v. Stroud, 13 F.3d 791, 798 (4th Cir. 1994).

A court must grant a motion for summary judgment if, after adequate time for discovery, the nonmoving party fails to make a showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. The nonmoving party cannot defeat a properly supported motion for summary judgment with mere conjecture and speculation. Glover v. Oppleman, 178 F. Supp. 2d 622, 631 (W.D. Va. 2001). The trial judge has an "affirmative obligation" to "prevent 'factually unsupported claims and defenses' from proceeding to trial." Id. (quoting Celotex, 477 U.S. at 317).

III.

A.

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). While the allegations or evidence necessary to proceed with a claim under § 1983 "will vary with the constitutional provision at issue," a plaintiff must at least establish "that each Government-official defendant, through the official's own actions [or omissions], has violated the Constitution." See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Likewise, RLUIPA requires the plaintiff to show

that the named defendant was in fact responsible for the challenged policy, action, or omission that allegedly imposed a substantial burden on the plaintiff's religious practice. See Lovelace v. Lee, 472 F.3d 174, 193 (4th Cir. 2006). Both statutes also require the plaintiff to show that the official acted with the requisite intent. Negligent actions or omissions that happen to deprive the plaintiff of his rights do not give rise to liability under either statute. See Daniels v. Williams, 474 U.S. 327, 330 (1986) (42 U.S.C. § 1983); DePaola v. Va. Dep't of Corrs., No. 7:12cv592, 2013 WL 6804744, at *4 (W.D. Va. Dec. 20, 2013) (RLUIPA).

Plaintiff does not sufficiently allege that Defendants Anderson, Broyles, Combs, Creque, Elam, Fleming, Parsons, Phillips, Ponton, and Tapps were personally involved in any of the events giving rise to his remaining claims for relief. Rather, each of these Defendants, all higher-level officials at GRCC, WRSP, or the VDOC headquarters, is alleged to have received Plaintiff's grievances complaining about the events giving rise to these claims, and, according to Plaintiff, failed to take appropriate corrective action. "Generally, prison officials are absolutely immune from liability stemming from their participation in the inmate grievance process." Blount v. Phipps, No. 7:11cv594, 2013 WL 831684, at *5 n.12 (W.D. Va. Mar. 6, 2013) (citing Burst v. Mitchell, 589 F. Supp. 186, 192 (E.D. Va. 1984)); see also Lowery v. Edmondson, 528 F. App'x 789, 792 (10th Cir. 2013) ("[T]he mere denial of a grievance . . . is inadequate for personal participation" under both § 1983 or RLUIPA). "Even after considering their grievance responses, Plaintiff fails to establish that [these Defendants] . . . were personally involved in any alleged violation of federal rights, either directly or through another's conduct in execution of their policies or customs."[7] Washington v. McAuliffe, No. 7:16cv476, 2018 WL 401903, at *9 (Jan. 12, 2018) (citing Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994)). "Allegations of negligent investigation

[7] See generally ECF No. 1-1, at 18–37; ECF No. 11, at 3–9.

or respondeat superior are not sufficient." Id.; see also Brown v. Mathena, No. 7:14cv20, 2014 WL 4656378, at *2 (W.D. Va. Sept. 16, 2014). Accordingly, Defendants Anderson, Broyles, Combs, Creque, Elam, Fleming, Parsons, Phillips, Ponton, and Tapps are entitled to judgment as a matter of law in their favor on all remaining claims. Fed. R. Civ. P. 56(a).

B.

Defendants next argue that Plaintiff's RLUIPA claims seeking to enjoin enforcement of "the penalty and sanctions and other parts of the suspension process" related to the Common Fare meal plan are moot because the current Common Fare Agreement, which went into effect in June 2018, no longer requires that inmates pick up a certain number of Common Fare trays each month or attend religious services in order to stay on the Common Fare meal plan. Additionally, inmates will no longer be involuntarily removed or suspended from this program. Rather, an inmate who is caught with a non-Common Fare meal tray, or trading or possessing unauthorized food items from the main line, will be assessed the cost of the Common Fare meal, which is currently $0.70. Plaintiff objects that these claims are not moot because he still must sign the Agreement to receive a diet consistent with his religious scruples and Defendants have not shown that it is "absolutely clear that the allegedly wrongful behavior could not be expected to recur." (Pl.'s Br. in Opp'n 31 (citing Friends of the Earth, Inc. v. Laidlaw Envt'l Servs., 528 U.S. 167, 189 (1982) (discussing the Article III "mootness" standard)).)

RLUIPA has a "safe harbor provision" that allows the government to avoid court-ordered prospective injunctive relief under this specific statute "'by changing the policy or practice that results in a substantial burden'" on the plaintiff's sincere religious exercise. Phillips v. S.C. Dep't of Corrs., No. 8:14cv2269, 2015 WL 4727028, at *5 (D.S.C. Aug. 10, 2015) (quoting 42 U.S.C. § 2000cc-3(e)); cf. United States v. Cty. of Culpeper, Va., No. 3:16cv83, 2017 WL 3835601, at *8

(W.D. Va. Sept. 1, 2017) ("The safe harbor provision embodies a congressional policy against federal micromanagement of a locality's land use decisions, as long as the underlying RLUIPA violation has been cured."). Here, there is no dispute that the VDOC has removed the challenged provisions from its Common Fare Agreement and food services policy. Cf. Pogue v. Woodford, No. Civ S-05-1873, 2009 WL 2777768, at *9 (E.D. Cal. Aug. 26, 2009) ("Because the changed, current regulations cannot be reasonably challenged as infringing on plaintiff's religious practice/beliefs, plaintiff may not receive any prospective relief." (citing 42 U.S.C. § 2000cc-3(e)); Boles v. Neet, 402 F. Supp. 2d 1237, 1240–41 (D. Colo. 2005) (concluding there was "no serious factual dispute" that the state department of corrections came within RLUIPA's safe harbor provision, therefore mooting plaintiff's claim for injunctive relief, by changing the challenged policy to allow Jewish inmates to wear religious garb while being transported outside the prison). Although Plaintiff still must sign the Agreement to participate in the program, this requirement does "not impose any burden" on his sincere religious exercise, Blount v. Ray, No. 7:08cv504, 2009 WL 2151331, at *6 (W.D. Va. July 19, 2009), much less the "substantial burden" necessary to show a prima facie violation of RLUIPA. Accordingly, Plaintiff's requests for prospective injunctive relief under RLUIPA in Claims Two and Four will be dismissed.

Additionally, although Defendants have not raised the issue, the Court must consider whether the new Common Fare Agreement also moots Plaintiff's claims for prospective injunctive relief under § 1983, since Plaintiff is not now subject to the policies and practices challenged in this lawsuit.[8] "It is well established that a defendant's 'voluntary cessation of a challenged practice'

[8] Plaintiff also seeks retrospective injunctive relief in the form of a court order "expunging [P]laintiff's religious diet record" showing that he violated the Agreement in December 2015. (Am. Compl. 37.) I previously held that Plaintiff had failed "to establish a defendant violated clearly established law about due process before suspending him" from the Common Fare plan, and "that there was 'some evidence in the administrative record to support the [suspension] decision based on Sgt. Kimberlin's report." (Mem. Op. at 13–14, Mar. 22, 2018 [ECF No. 67]). Although Plaintiff's Free Exercise Clause claim for damages

moots an action"—thereby depriving the federal court of its constitutional authority to entertain the case—"only if 'subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" Wall v. Wade, 741 F.3d 492, 497 (4th Cir. 2014) (quoting Friends of the Earth, 528 U.S. at 189); see also Porter v. Clarke, 852 F.3d 358, 363–64 (4th Cir. 2017). "The heavy burden of persua[ding] the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." Wall, 741 F.3d at 497 (quoting Friends of the Earth, 528 U.S. at 189). "Here, nothing bars the [VDOC] from reverting to the challenged policies in the future," Porter, 852 F.3d at 365, the named Defendant who oversees this particular program "failed to even offer a bald conclusory pledge not to return to such policies," Prison Legal News v. Stolle, 319 F. Supp. 3d 830, 838 (E.D. Va. 2015), and, given the frequency with which VDOC officials review their policies on religious accommodations, there is a least "some degree of doubt that the new policy will remain in place for long," Wall, 741 F.3d at 497. Accordingly, Plaintiff's requests for prospective injunctive relief, under 42 U.S.C. § 1983, in Claims Two and Four are not moot.

C.

Defendants moved for summary judgment on all five of Plaintiff's remaining claims, arguing that Plaintiff cannot show the challenged conduct and policies imposed a "substantial burden" on his religious exercise, and, in the alternative, that the policies pass muster under both RLUIPA and the First Amendment's Free Exercise Clause.

As noted, the Government "substantially burdens" religious exercise protected by the First Amendment or RLUIPA when it "put[s] substantial pressure on an adherent to modify his

against Sgt. Kimberlin in his individual capacity remains (id. at 14 n.10), "the law is clear that individuals sued in their official capacity as state agents cannot be held liable for . . . retrospective injunctive relief," Lewis v. Bd. of Educ. of Talbot Cty., 262 F. Supp. 2d 608, 612 (D. Md. 2003) (collecting cases). Accordingly, Plaintiff's request for an order expunging his prison disciplinary record will be dismissed.

behavior and to violate his beliefs, or . . . forces a person to choose between following the precepts of [his] religion and forfeiting [governmental] benefits, on the one hand, and abandoning one of the precepts of [his] religion . . . on the other hand." Lovelace, 472 F.3d at 187. "No substantial burden occurs if the government action merely makes the 'religious exercise more expensive or difficult,' but fails to pressure the adherent to violate his or her religious beliefs or abandon one of the precepts of his religion." Estes v. Clarke, 7:15cv155, 2018 WL 2709327, at *5 (W.D. Va. June 5, 2018) (quoting Living Water Church of God v. Charter Twp. of Meridian, 258 F. App'x 729, 739 (6th Cir. 2007)). Additionally, because neither the First Amendment nor RLUIPA protects against negligent conduct that happens to interfere with religious exercise, the plaintiff must show that the named Defendant acted or failed to act with the requisite intent. See Daniels, 474 U.S. at 330; DePaola, 2013 WL 6804744, at *4.

1. Eid-ul-Adha Feast

There is no dispute that Plaintiff signed up for and observed Ramadan in the summer of 2015 while housed at GRCC. Had Plaintiff remained at GRCC, he would have "automatically be[en] included in the Eid-ul-Adha feast" when it was celebrated in late September 2015. [ECF No. 55-1, at 36.] Plaintiff was transferred from GRCC to WRSP on September 22, two days before the latter facility planned to serve the Eid-ul-Adha feast. Plaintiff asserts that on September 24, he asked WRSP "counselors and officers" about the upcoming feast, but all stated that "they did not know what Plaintiff was talking about." (Am. Compl. ¶ 47; see also Pl.'s Br. in Opp'n 6–7.) Under VDOC policy, unspecified officials at WRSP should have consulted a central record-keeping program to determine whether Plaintiff "participated in Ramadan . . . at [his] prior facility" and then added him "to the Eid-ul-Adha observance" list for WRSP "when participation has been verified." [ECF No. 55-1, at 36.] This policy did not provide any timeframe within which the

WRSP officials should have acted. VDOC policy also instructed that any inmate "who is approved for Common Fare and transfers into an institution that offers Common Fare should begin receiving Common Fare meals as soon as practical, [but] no later than 7 days after arrival at the institution." [ECF No. 55-1, at 22.]

Unfortunately, Plaintiff's name was not on the list of Eid-ul-Adha Feast participants when Defendant Witt delivered lunch trays on September 25, 2015. (Am. Compl. ¶¶ 49–50.) When Plaintiff told Witt "that he is supposed to receive a feast tray because he is Muslim," Witt responded that Plaintiff was "not receiving a feast tray." (Id. ¶ 50.) Witt declined to contact other prison officials, and instead told another officer that Plaintiff could choose between the regular Common Fare tray and "no tray at all." (Id. ¶ 51.) "Plaintiff refused the tray because it was not the [Feast] observance tray required," and eating a non-Feast meal would have violated this important Holy Day practice. (Id. ¶ 53.) Defendant Witt does "not recall th[is] incident," but avers that he "would have been delivering trays in accordance with a list provided by [the] Food Service Department." (Witt Aff. ¶ 4 [ECF No. 73-4].) Witt did not have authority to change an inmate's meal tray. (See id.) Although Plaintiff concludes that "Witt acted intentionally and with callous disregard" to his free-exercise rights (Am. Compl. ¶ 55), Plaintiff does not dispute that his name was not on Witt's "list stating who to give the [Feast] tray to" on September 25, 2015 (id. at ¶ 49). (See also Pl.'s Br. in Opp'n 7; Pl.'s Fourth Decl. 3–7 [ECF No. 60-1].)

Accepting Plaintiff's assertions as true, Officer Witt's refusal to give Plaintiff the Common Fare Feast tray was at most negligent—and more likely an isolated record-keeping error for which Officer Witt was not responsible. See DePaola, 2013 WL 6804744, at *4; Talbert v. Jabe, No. 7:07cv450, 2007 WL 3339314, at *16 (W.D. Va. Nov. 8, 2007) (dismissing prisoner's Free Exercise claim because "the isolated incidents plaintiff complains of indicate a lack of intent on

the part of defendants," as required to plausibly allege a constitutional violation). There is no competent evidence in the record showing that Plaintiff's name was on WRSP's list of Feast participants, and Plaintiff does not present any evidence why Officer Witt should have disregarded the Food Services list and taken Plaintiff's word for it that he "was supposed to receive a feast tray." (Am. Comp. ¶¶ 49–50.)

Moreover, Plaintiff has not presented any evidence showing that "missing one feast meal rises to the level of a 'substantial burden'" under the Free Exercise Clause. Cf. DePaola, 2013 WL 6804744, at *4 (holding the same under RLUIPA's more demanding "substantial burden" test, which focuses exclusively on the specific religious exercise in question rather than the inmate's ability to practice his religion by alternative means). "He does not assert that his religious exercise was so encumbered that he was forced to modify or abandon his religious beliefs," id., or required to eat food that violated his Holy Day practice. Rather, Plaintiff declined the regular Common Fare tray and skipped lunch that day. Accordingly, Defendants' supplemental motion for summary judgment will be granted on this claim.

2. The Agreement & Six Month Suspension

VDOC officials "are clearly entitled to . . . implement[] procedures governing the administration of the agency's religious diet accommodations for inmates." Blount, 2009 WL 2151331, at *6. The fact that Plaintiff had to sign the Common Fare Agreement and follow certain rules to receive a specially prepared religious diet, without more, did not impose a substantial burden on his religious exercise. Id. Defendants also assert that Plaintiff's temporary suspension from Common Fare did not substantially burden his religious exercise because he could supplement his vegetarian diet with Halal/Kosher food through the prison's commissary—being suspended from the Common Fare plan did not force Plaintiff to choose between going hungry,

on the one hand, and eating food that violated his religious beliefs, on the other. (See Engelke Suppl. Aff. ¶ 6 [ECF No. 73-3].) Plaintiff responds that he could not afford to purchase food from the commissary, and that he should not have to spend his limited resources for food instead of purchasing other items or calling his family. (Pl.'s Br. in Opp'n 10.)

The fact that Halal/Kosher food "remained available to [P]laintiff, albeit at a cost, appears to negate any claim that [his] temporary removal from Common Fare constituted a substantial burden on his religious practice, since he retained another means for observing his religious dietary laws" during this six-month period. Hammer v. Keeling, No. 1:14cv8, 2015 WL 925880, at *6 (E.D. Va. Mar. 3, 2015) (citing Krieger v. Brown, 496 F. App'x 322 (4th Cir. 2012)). Accordingly, Defendants' supplemental motion for summary judgment will be granted on these claims.

3. New Common Fare Menu

Although not entirely clear, the gravamen of Plaintiff's claim challenging the VDOC's new Common Fare menu seems to be that the meals did not fully align with Plaintiff's personal, subjective views of which foods were or were not consistent with his religious dietary laws. (See, e.g., Am. Compl. ¶¶ 104–12, 119, 121.) He asserts that VDOC officials could have granted his requests to substitute other foods consistent with Plaintiff's religious views, such as serving brown rice instead of white rice, and navy beans in place of "all other beans." (Id. ¶ 109.) Plaintiff alleges that he "has consume[d] some of the prohibited foods" so he would not "suffer hunger pains" (id. ¶ 116), but he has not presented any evidence that he was "forced to consume" food he genuinely believed to be "at odds with his religious . . . diet," Muhammad v. Mathena, No. 7:14cv134, 2015 WL 300363, at *3 (W.D. Va. Jan. 22, 2015).

However, assuming Plaintiff's sworn allegations describing the new menu's problems create "a genuine factual dispute as to whether Defendants' actions in preventing him from

receiving meals in compliance with his dietary restrictions substantially burdened his ability to practice his religion," Carter v. Fleming, 879 F.3d 132, 140 (4th Cir. 2018), Defendants also assert Plaintiff cannot show that the new Common Fare menu was unreasonable or not related to a legitimate penological interest (see Defs.' Br. in Supp. 29; Engelke Aff. ¶¶ 3–6; Robinson Aff. ¶¶ 4–5 [ECF No. 73-1].) The Free Exercise Clause "forbids the adoption of laws designed to suppress religious beliefs or practices," Wall, 741 F.3d at 499, including those governing life behind prison walls. However, a neutral and generally applicable prison policy that substantially burdens an inmate's sincere religious exercise is nonetheless constitutional if it is "reasonably adapted to achieving a legitimate penological" interest. Id. At trial, Plaintiff would bear the burden of proving that the VDOC's new Common Fare menu was not reasonably adapted to achieving a legitimate penological interest. Jehovah v. Clarke, 798 F.3d 169, 176 (4th Cir. 2015) (citing Overton v. Bazzetta, 539 U.S. 126, 132 (2003)).

> The governing test for constitutionally asks:
>
> > (1) whether there is a "valid, rational connection" between the prison regulation or action and the interest asserted by the government, or whether this interest is "so remote as to render the policy arbitrary or irrational"; (2) whether "alternative means of exercising the right remain open to prison inmates"; (3) what impact the desired accommodation would have on security staff, inmates, and the allocation of prison resources; *and* (4) whether there exist any "obvious, easy alternatives" to the challenged regulation or action.

Lovelace, 472 F.3d at 200 (quoting Turner v. Safley, 482 U.S. 78, 89–92 (1987)) (emphasis added) (internal brackets omitted). Here, Defendants assert that the VDOC's Common Fare menu is designed to balance inmates' differing religious dietary restrictions with the agency's "operational, budgetary, and administrative concerns" (Robinson Aff. ¶¶ 4–5), including their obligation to provide adequate nutrition and caloric intake. Because these meals are purchased and prepared in bulk, the VDOC cannot "tailor individual trays for each prisoner" who participates in Common Fare. (Engelke Aff. ¶ 6.) The VDOC does serve navy beans and brown rice during Ramadan and

other Muslim holidays, but those substitutions are "more costly" and it is not "cost efficient to offer these food items as substitutes throughout the year." (Id.) Several federal district courts in Virginia have concluded that the VDOC's standardized Common Fare menu is reasonably adapted to achieving legitimate penological interests in cost-efficiency, uniformity, and maintaining good order while trying to accommodate different religious dietary needs. See Shabazz v. Johnson, No. 3:12cv282, 2015 WL 4068590, at *13–15 (E.D. Va. July 2, 2015) (collecting cases); Lovelace v. Bassett, No. 7:07cv506, 2009 WL 3157367, at *8 (W.D. Va. Sept. 29, 2009 ("The administrative decision to standardize accommodation of inmates' religious dietary needs throughout the VDOC . . . is just the kind of prison policy-making determination to which courts must defer.").

Plaintiff generally responds that Engleke's attestations are inaccurate and that using Plaintiff's suggested substitutions would be cheaper, but he does not point to any admissible evidence to support these allegations. Accordingly, Defendants' supplemental motion for summary judgment will be granted on this clam.

4. Two Pork-Contaminated Trays

On December 20, 2015, shortly after being suspended from Common Fare, Plaintiff unwittingly touched a pork-contaminated tray that was offered to him during a meal. He objected to receiving it and requested a non-pork tray, but an officer claimed that such trays were "not available." Plaintiff requested and received non-pork trays on December 22, 2015. Consequently, Plaintiff was forced for two days to forego meals or to contact and eat pork-contaminated foods. As with his Eid-ul-Ahda Feast claim, the "isolated incidents" Plaintiff complains of here "indicate a lack of intent on part of [D]efendants," Talbert, 2007 WL 3339314, at *16, none of whom were even personally involved in giving him the meal trays. Moreover, Plaintiff does not explain how Plaintiff inadvertently touching the pork-contaminated tray before realizing what it was constitutes

government action that substantially burdened his religious exercise. Cf. Fields v. Robinson, No. 3:15cv455, 2017 WL 253955, at *4 (E.D. Va. Jan. 19, 2017) ("[E]ven if one assumed the lack of a Common Fare diet substantially burdened Fields's religious exercise, any RLUIPA claim would fail, as the burden on [his] religious exercise flows from Fields's own failure to reapply for the diet, rather than any state action."). Accordingly, Defendants' supplemental motion for summary judgment will be granted on this claim.

IV.

For the foregoing reasons, I will grant Defendants' supplemental motion for summary judgment [ECF No. 72]. An appropriate order will be entered this day.

ENTERED this 26th day of March, 2019.

SENIOR UNITED STATES DISTRICT JUDGE

Appendix D

-IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WALTER DELANEY BOOKER, **Plaintiff,**	)	**Civil Action No. 7:16-cv-00084**
v.	)	**MEMORANDUM OPINION**
M.E. ENGELKE, et al., Defendants.	)	**By: Hon. Jackson L. Kiser Senior United States District Judge**

Walter Delaney Booker, a Virginia inmate proceeding pro se, filed a verified second amended complaint (ECF No. 42-1) pursuant to 42 U.S.C. §§ 1983 and 2000cc-1, et seq.[1] Plaintiff names numerous staff of the Virginia Department of Corrections ("VDOC"), Wallens Ridge State Prison ("WRSP"), and Greensville Correctional Center ("GRCC") as defendants.[2] Plaintiff argues that defendants substantially burdened his religious exercise, imposed cruel and unusual punishment, and violated due process, in violation of the First, Eighth, and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Defendants filed a motion for summary judgment, arguing, inter alia, the defense of qualified immunity, and Plaintiff responded, making this matter ripe for disposition.[3] After reviewing the record, I grant in part and deny in part Defendants' motion for summary judgment, direct them to

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[1] The pleading consists of 253 paragraphs, not including sub-paragraphs. Plaintiff also filed a "second declaration" (ECF No. 4) and "third declaration" (ECF No. 11) in support of the pleading although no first declaration was filed separately. Exhibits A-D (ECF No. 1-1) were included with the original complaint, and exhibits F-I (ECF Nos. 42-2 – 42-4) were included with the second amended complaint. There does not appear to be an Exhibit E.

[2] One named defendant is "Unknown Chow Hall Officers." A group of persons, like "Unknown Chow Hall Officers," is not a "person" subject to 42 U.S.C. § 1983. See, e.g., Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); Ferguson v. Morgan, No. 1:90cv06318, 1991 U.S. Dist. LEXIS 8295, 1991 WL 115759, at *1 (S.D.N.Y. June 20, 1991) (concluding that a group of personnel, like "medical staff," is not a "person" for purposes of § 1983). Accordingly, any § 1983 claim against defendant "Unknown Chow Hall Officers" is dismissed without prejudice.

[3] The forty-six page response (ECF No. 60) was captioned as the "fourth declaration." Two months after the response, Plaintiff filed a motion for discovery, to which Defendants objected (ECF No. 65) and Plaintiff responded. Plaintiff had not certified that he attempted to confer with Defendants to resolve discovery before filing the motion for discovery. Fed. R. Civ. P. 37(a)(1). Accordingly, the motion is denied as a motion to compel. However, the motion is granted to the extent that Defendants shall confer with him in some manner within twenty-one days.

confer with Plaintiff about his discovery request, and direct them to file another motion for summary judgment.

I.
A.

Plaintiff has been a religious adherent to the "Nation of Islam" during his incarceration at multiple VDOC prisons.[4] Plaintiff had been approved for the VDOC's Common Fare Diet ("Common Fare") on September 19, 2011. Common Fare is the VDOC's attempt at a uniform menu to accommodate inmates' various religious dietary beliefs at numerous VDOC facilities.

Plaintiff's religious beliefs limit the types of foods he eats. Plaintiff may eat nearly all vegetables, including Brussels sprouts, egg plant, asparagus, okra, squash, rhubarb, "broccoli, whitehead cabbage, cauliflower, spinach, rutabaga, garlic, onions, cucumbers, tomatoes, peppers, etc." However, Plaintiff may not eat collard greens, turnip salad, white potatoes, black-eyed peas, field peas, speckled peas, red peas, brown peas, split peas, beet top salads, kale mustard salads, cabbage sprouts, kidney beans, lima beans, pinto beans, butter beans, great northern beans, and soy beans. Plaintiff notes that lettuce, tomatoes, peppers, and onions may be consumed uncooked, whereas cabbage, broccoli, cauliflower, zucchini, squash, celery, cucumbers, and spinach need to be cooked.

Plaintiff also does not eat pork products, "scavengers of the sea, such as oysters, crabs, clams, snails, shrimps, eels, and catfish[,]" and any fish weighing more than fifty pounds. Plaintiff may not consume oils of any kind except vegetable oil, corn oil, olive oil, or pure butter. Plaintiff may eat butter beans; fish like mackerel, whiting, salmon, perch, white buffalo, channel trout, and tuna; and "properly raised and slaughtered" beef, chicken, lamb, and baby pigeon.

[4] During the times pertinent to this action, Plaintiff was housed at GRCC until September 22, 2015, when he was transferred to WRSP. Plaintiff left WRSP and returned to GRCC on July 28, 2016. Plaintiff was transferred to St. Brides Correctional Center sometime around July 2017.

Plaintiff may eat whole wheat bread but not cornbread, freshly baked breads, muffins, hot cakes, or white bread. Plaintiff may eat cream cheese "instead of other cheese on the market."

B.

Plaintiff presents six claims in the second amended complaint. The first five claims concern a substantial burden to his religious exercise, and the sixth claim concerns the time allowed to consume meals. Plaintiff seeks damages, declaratory, and equitable relief.

1. Eid-ul-Adha Feast

The VDOC allows Muslim inmates to observe the Islamic holy day Eid-ul-Adha (the "Feast"), which occurs approximately two months after the Islamic holiday Ramadan. Plaintiff observed Ramadan while at GRCC, but he was subsequently transferred to WRSP.

The Feast was recognized by a celebratory meal at WRSP on September 25, 2015. Plaintiff had assumed that he would automatically be pre-approved to observe the feast at WRSP because he had participated in Ramadan at GRCC. Plaintiff did not know before the Feast that WRSP had special sign-up procedures in place requiring him to send a request for a Common Fare Feast tray to his counselor. Consequently, Plaintiff was offered a regular Common Fare tray and not a special Common Fare Feast tray on September 25, 2015. Plaintiff refused the regular Common Fare tray and skipped a meal that day. Plaintiff's faith allows him to make up a missed Feast, but his requests for a "make up" Feast were unsuccessful.

Plaintiff faults defendant Officer Witt for "intentionally and with callous disregard" to Plaintiff's religious rights by offering him the Common Fare tray and refusing to get him a Common Fare Feast tray. Plaintiff proffers that Witt should have consulted other staff and delivered a Common Fare Feast tray within thirty minutes. Plaintiff faults Warden Fleming for having "never placed any particular type of procedure to sign up for the . . . [F]east." Plaintiff

further faults Warden Fleming and Ponton, the VDOC's Western Region Administrator, for not authorizing a "make up" Feast meal.

2. Suspension from Common Fare

On December 15, 2015, Plaintiff received a generic notice that an Institutional Classification Authority ("ICA") hearing would be scheduled to determine his eligibility to remain on Common Fare. Plaintiff learned at the hearing that Sgt. Kimberlin had filed an incident report claiming he saw Plaintiff take a regular tray on November 26, 2015, in violation of the Common Fare Agreement ("Agreement"). Plaintiff denied taking a regular tray and denied ever seeing Sgt. Kimberlin in the dining hall that day. Plaintiff further argued that "even if he took a Thanksgiving tray from the window[,] it was not a regular tray, but a Special Observance tray and it did not violate the . . . Agreement." Plaintiff believed that there were no apparently unauthorized items on the Thanksgiving tray and that his faith allowed him to eat the Thanksgiving tray, regardless to whether it was classified as a non-Common Fare tray. Unit Manager Reynolds, who served as the ICA, determined Plaintiff violated the Agreement and recommended suspension from Common Fare.

Three days later, Plaintiff was suspended from Common Fare for six months. Thereafter on December 18, 2015, Plaintiff asked for no-meat trays, which still provided various foods his faith prohibited like biscuits, grits, crab cake, soy, unknown bread, and collard greens.

Plaintiff faults Sgt. Kimberlin for falsely identifying him as an inmate who took a Thanksgiving tray.[5] Plaintiff faults Reynolds for not producing a copy of the Agreement as evidence during the ICA hearing. Plaintiff faults Warden Fleming, Reynolds, and Assistant

[5] Plaintiff does not otherwise deny taking a special, purportedly non-regular "Thanksgiving tray" although he argues that taking it did not violate his personal religious beliefs or the Agreement.

Warden Combs for suspending him from Common Fare, and he faults Elam, a VDOC Western Region Administrator, for upholding the suspension via an administrative appeal.

3. The Common Fare Menu, Regular Trays, and No-Meat Trays

WRSP staff implemented a new version of Common Fare in October 2015 that contained a "majority of the food items" that violates Plaintiff's religious beliefs. These unholy foods include "all types of beans, white potatoes, white rice, white bread[,] fresh hot cakes and carrots, ... French toast, toast, eggs, oatmeal, farina[,] . . . tuna cake and peanut butter (when they do not contain soy) and cabbage. . . ." Plaintiff unsuccessfully sought the following substitutions, all of which allegedly had been served on prior iterations of Common Fare: brown rice, navy beans, unbreaded fish, and alternate vegetables. Plaintiff notes that these substitutions are already provided during Islamic holidays. Plaintiff believes that there is "nothing Kosher about the Common Fare Diet as it exists now."[6] Plaintiff faults Engelke and Gregg for creating and implementing the new un-Kosher Common Fare. Plaintiff faults Warden Fleming, Warden Pearson, Broyles, Anderson, Creque, and Ponton for not correcting the issues after being informed via the administrative remedy process. Plaintiff faults Phillips and Tapps for their responses to his grievances.

Plaintiff explains he is forced to consume the prohibited foods because, if not, "he will suffer hunger pains [and] as a result [P]laintiff has suffered skin abrasions, bumps[,] and itching of the skin that did not occur until after consuming some prohibited foods, which is definitely punishment from Allah." Plaintiff also complains that the regular trays and no-meat trays violate

[6] Even though Common Fare served vegetables prohibited by his religion, he acknowledges it was a better alternative than regular trays and no-meat trays that serve mostly prohibited foods and are contaminated with pork substances.

his religious dietary needs by not serving acceptable foods and being "contaminated" with pork substances.

4. The Agreement

Inmates must apply for, and be approved for, Common Fare by a prison's ICA and the VDOC Central Classification Services. Inmates' applications are reviewed to determine whether they demonstrate a sincere religious need to consume foods served on Common Fare rather than foods served on the Master Menu. If approved for Common Fare, inmates are required agreeing to the rules of participation by reading and signing an Agreement. Inmates who refuse to sign may not receive Common Fare.

Violations of the Agreement include not picking-up a minimum of seventy five percent of meals served per month; being observed eating, trading, or possessing unauthorized food items not served on Common Fare trays; being observed giving away or trading a Common Fare food item; purchasing or being observed eating food items from the commissary inconsistent with the dietary requirements of Common Fare; and not attending services or other religious activities at least twice per month (if available). Violations result in the following sanctions: the first violation is six months' suspension, the second violation is twelve months' suspension, and the third or more violation is four years' suspension.

Plaintiff objects to having to sign the Agreement before receiving foods in conformity with his religious beliefs. Plaintiff complains that the Agreement creates its "own dietary laws and requirements that [P]laintiff is either forced to deal with or don't have anything to consume . . . [except for] prohibited food . . ., which forced [P]laintiff to violate his religious beliefs." Plaintiff also argues that the Agreement is designed to take away Plaintiff's religious diet "without regard to whether [P]laintiff violated any of his [own sincere] religious dietary laws."

Plaintiff further argues that the Agreement "forces [P]laintiff to attend a religion service even though that religious service may not be in conformance with the proper teachings or may differ on points of views that [P]laintiff sincerely does not agree with." Plaintiff also complains that the Agreement requires him to pick up at least 75% of his trays and "seeks to punish [P]laintiff for inaccurate record-keeping."

5. Pork-Contaminated Trays

After being suspended from Common Fare, Plaintiff unwittingly touched a pork-contaminated tray on December 20, 2015. Plaintiff objected to receiving it and requested a non-pork tray, but an officer claimed that no-pork trays are "not available." Via an administrative grievance, Plaintiff informed Warden Fleming, who did not "correct it." Plaintiff requested and received non-pork trays two days later on December 22, 2015. Consequently, Plaintiff was forced for two days to forego meals or to contact and eat pork-contaminated foods.

6. Time to Eat Meals

Plaintiff complains that he has only four to eight minutes to eat a meal in a segregation unit at WRSP before officers Sgt. Bryant, Sgt. Kimberlin, and Unknown Chow Hall Officers order Plaintiff to leave the dining hall. Plaintiff "had to get into the habit of forcing food down before the order was made to leave the dining hall or forgo eating a great portion of his meals and on some days he just got up with 90% of the food still left on his tray." Plaintiff acknowledges that "cram[ming] his food at the table without chewing and then swallow . . . within five minutes. . . . is a practice [P]laintiff had to become used to. . . ."

Plaintiff withdrew his grievance on the topic after Reynolds told him that the policy should allow him more time to eat and that the time would be increased.[7] When staff tried to increase the time, Sgt. Bryant, Sgt. Kimberlin, and Unknown Chow Hall Officers overrode the request and continued short dining times. Warden Fleming was informed via an administrative grievance but did not remedy the issue.

Plaintiff allegedly experiences indigestion, acid reflux, and heartburn as a result and takes the medicine Zantac "to alleviate the effects." Plaintiff also says that his "religious dietary laws forbid[] the cramming of food because the punishment is severe from Allah (God)[.]" Plaintiff fears that "cramming" will cause him cancer of the esophagus and "other related illnesses of the throat."

II.
A.

Defendants filed a motion for summary judgment, arguing, inter alia, that they are entitled to qualified immunity. Qualified immunity permits "government officials performing discretionary functions . . . [to be] shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Once a defendant raises the qualified immunity defense, a plaintiff bears the burden to show that a defendant's conduct violated the plaintiff's right. Bryant v. Muth, 994 F.2d 1082, 1086 (4th Cir. 1993).

A party is entitled to summary judgment if the pleadings, the disclosed materials on file, and any affidavits show that there is no genuine dispute as to any material fact. Fed. R. Civ. P.

[7] Per the grievance policy, a withdrawal meant that Plaintiff could not "be able to file any other grievance in the future about this issue."

56(a). Material facts are those necessary to establish the elements of a party's cause of action. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists if, in viewing admissible evidence and all reasonable inferences drawn therefrom in a light most favorable to the non-moving party, a reasonable fact-finder could return a verdict for the non-movant. Id. The moving party has the burden of showing – "that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If the movant satisfies this burden, then the non-movant must set forth specific facts that demonstrate the existence of a genuine dispute of fact for trial. Id. at 322-24. A party is entitled to summary judgment if the admissible evidence as a whole could not lead a rational trier of fact to find in favor of the non-movant. Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991). Conclusory statements and speculation are not enough to defeat a summary judgment motion. Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc., 53 F.3d 55, 62 (4th Cir. 1995). A plaintiff cannot use a response to a motion for summary judgment to amend or correct a complaint challenged by the motion for summary judgment. Cloaninger v. McDevitt, 555 F.3d 324, 336 (4th Cir. 2009).

B.

Defendants are entitled to summary judgment as to damages sought for the RLUIPA claims and for official capacity claims via § 1983. RLUIPA does not authorize damages against a public official. See Sossamon v. Texas, 563 U.S. 277, 282 n.1, 293 (2011) (prohibiting damages claims against state officials in their official capacity); Rendelman v. Rouse, 569 F.3d 182, 189 (4th Cir. 2009) (same for individual capacity); see also Washington v. Gonyea, 731 F.3d 143, 146 (2d Cir. 2013). Also, the Commonwealth of Virginia has not waived its sovereign immunity to § 1983 damages actions. See, e.g., Will v. Mich. Dep't of State Police, 491 U.S. 58,

religious belief is not at issue, the same definition of 'substantial burden' applies under the Free Exercise Clause, RFRA, and RLUIPA.").

For each of the six claims, Plaintiff avers to his sincere religious needs to not be rushed and to eat a particular diet. Plaintiff explains that by their acts, omissions, policies, or customs, Defendants force Plaintiff to forgo food to preserve his religious integrity or instead consume "unpure" foods, whether on Common Fare trays or not, too quickly. Plaintiff sincerely believes he could have eaten the Thanksgiving tray and observe a "make-up" Feast, and the decisions to suspend him from Common Fare and to not allow a make-up Feast constitute a substantial burden. Accordingly, Defendants' motion for summary judgment is denied in part, and they shall file another motion for summary judgment supported by affidavits.

IV.

Plaintiff argues that the policy or custom requiring him to consume his meal in four to eight minutes constitutes cruel and unusual punishment. Defendants are entitled to qualified immunity and summary judgment for this claim.

"The Eighth Amendment does not prohibit cruel and unusual prison conditions; it prohibits cruel and unusual punishments. If a prisoner has not suffered serious or significant physical or mental injury as a result of the challenged condition, he simply has not been subjected to cruel and unusual punishment within the meaning of the Amendment." Strickler v. Waters, 989 F.2d 1375, 1381 (4th Cir. 1993); see Monmouth Cnty. v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (discussing a serious medical need as a life-long handicap or permanent loss).

Plaintiff's alleged indigestion, acid reflux, and heartburn, all of which have been "alleviate[d]" with medicine, do not constitute a serious or significant physical injury. See, e.g., Watson-El v. Wilson, No. 08 C 7036, 2010 U.S. Dist. LEXIS 97481, at *34, 2010 WL 3732127,

at *13 (N.D. Ill. Sept. 15, 2010) ("The court finds as a matter of law that the plaintiff's acid reflex did not rise to the level of a serious medical need for purposes of Eighth Amendment analysis."); George v. Jones, No. C 06-2800 CW (PR), 2008 U.S. Dist. LEXIS 25506, at *25, 2008 WL 859439, at *8 (N.D. Cal. Mar. 28, 2008) ("[N]o reasonable jury could find that Plaintiff's mild heartburn is a serious medical need within the meaning of the Eighth Amendment."). Plaintiff's speculative fears of cancer or some other illness of the throat are similarly insufficient. See, e.g., Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Even if any of these complaints could constitute a sufficient objective injury, Plaintiff fails to establish any defendant's deliberate indifference. Deliberate indifference requires a state actor to have been personally aware of facts indicating a substantial risk of serious harm, and the actor must have actually recognized the existence of such a risk. Farmer v. Brennan, 511 U.S. 825, 838 (1994); see Miltier v. Beorn, 896 F.2d 848, 851 (4th Cir. 1990) ("Deliberate indifference may be demonstrated by either actual intent or reckless disregard."). "A defendant acts recklessly by disregarding a substantial risk of danger that is either known to the defendant or which would be apparent to a reasonable person in the defendant's position." Miltier, 896 F.2d at 851-52; see Parrish ex rel. Lee v. Cleveland, 372 F.3d 294, 303 (4th Cir. 2004) ("[T]he evidence must show that the official in question subjectively recognized that his actions were 'inappropriate in light of that risk.'").

Nothing in the record supports an inference that a defendant was personally aware of facts indicating a substantial risk of serious harm for eating a meal quickly. Similarly missing is an inference that any defendant, after being personally aware of such, actually drew an inference that Plaintiff was exposed to a substantial risk of serious harm. Furthermore, having to eat a meal so quickly is not a condition of confinement that would be apparent, to a reasonable person

in any defendant's position, as a substantial risk of serious harm. Accordingly, Defendants are entitled to qualified immunity and summary judgment for the Eighth Amendment claim.

V.

Liberally construed, Plaintiff asserts that the administrative procedures and decisions causing his suspension from Common Fare for six months violate due process guaranteed by the Fourteenth Amendment. Plaintiff fails to establish that a defendant violated clearly established law about due process before suspending him, and consequently, Defendants are entitled to qualified immunity for these claims.

Plaintiff's temporary six-month suspension from Common Fare is not such an "atypical and significant hardship in relation to the ordinary incidents of prison life." See, e.g., Sandin v. Conner, 515 U.S. 472, 484 (1995); see also Incumaa v. Stirling, 791 F.3d 517, 526-27 (4th Cir. 2015) (recognizing the length of deprivation impacts whether a hardship is atypical and significant). Furthermore, Plaintiff's "private interest affected" is slight because Plaintiff does not allege he has been completely deprived of religious practice, and Plaintiff does not establish anything more than a slight risk of a temporary erroneous deprivation using current procedures, which includes administrative review. See, e.g., Mathews v. Eldridge, 424 U.S. 319, 335 (1996). In light of these two factors, Plaintiff's argument that video recordings should be used to adjudicate Common Fare violation hearings is not sufficiently persuasive to demonstrate a violation of clearly established law. See, e.g., id.; Awe v. Va. Dep't of Corr., Civil Action No. 7:12-cv-00546, 2013 U.S. Dist. LEXIS 161227, at *10, 2013 WL 5988869, at *3 (W.D. Va. Nov. 12, 2013) ("Requiring every staff's allegation of inmate misconduct to be established by a video recording would disrupt the orderly operation of a prison."), aff'd, 564 F. App'x 54 (4th Cir. 2014).

Moreover, Plaintiff does not contest that he received advance notice of the proceedings, had an opportunity to call witnesses and present evidence, and had a neutral fact finder determine the accusation. See, e.g., Wolff v. McDonnell, 418 U.S. 539, 564-71(1974). While he challenges the ultimate decision to suspend him, the record establishes that there was "some evidence" in the administrative record to support the decision based on Sgt. Kimberlin's report.[10] See, e.g., Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455-56 (1985). Accordingly, Plaintiff fails to establish a violation of a clearly established procedural or substantive due process right, and Defendants' motion is granted as to qualified immunity. See, e.g., Pink v. Lester, 52 F.3d 73, 75 (4th Cir.1995).

VI.

For the foregoing reasons, I grant in part and deny in part Defendants' motion for summary judgment, direct them to respond to Plaintiff's discovery request, and direct them to file another motion for summary judgment.

ENTER: This 22nd day of March, 2018.

Senior United States District Judge

[10] Whether Sgt. Kimberlin intentionally deprived Plaintiff of a religious right with a false accusation is a different question than the one presented as a due process challenge.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WALTER DELANEY BOOKER, **Plaintiff,**	)	**Civil Action No. 7:16-cv-00084**
v.	)	**ORDER**
M.E. ENGELKE, et al., **Defendants.**	)	**By: Hon. Jackson L. Kiser** **Senior United States District Judge**

In accordance with the Memorandum Opinion entered this day, it is hereby

ORDERED

any claim pursuant to 42 U.S.C. § 1983 against defendant "Unknown Chow Hall Officers" is dismissed without prejudice; Defendants' motion for summary judgment is **GRANTED in part** and **DENIED in part**; the motion for discovery is **GRANTED in part** inasmuch as Defendants shall confer with Plaintiff in some manner about the request within twenty-one days, and it is **DENIED in part** in other respects; Defendants shall **FILE**, within ninety days, another motion for summary judgment supported by affidavit(s) pursuant to Standing Order 2013-6.

ENTER: This 22nd day of March, 2018.

Senior United States District Judge

Document 60

Appendix E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Roanoke Division

WALTER DELANEY BOOKER, JR.,
Plaintiff,

v.

Civil No. 7:16 CV 84

M.E ENGELKE, et al.,
Defendants.

4th DECLARATION IN SUPPORT OF OPPOSITION
TO DEFENDANTS MOTION FOR SUMMARY JUDGEMENT

I, Walter Delaney Booker, Jr. state:

1. I am the plaintiff in the above-entitled case. I make this affidavit/declaration in support of and in opposition to the defendants motion for summary judgment.

2. I am competent to testify to the facts stated in the amended complaint declared under penalty of perjury and the facts stated herein.

3. I am a practicing Muslim pursuant to the doctrines of the Qu'ran and the Most Honorable Elijah Muhammad, who has prescribed in his religious texts specific religious dietary laws, clarifying previous texts on Forbidden Foods, which was revealed to him by Allah himself.

4. My religious dietary laws are mandatory and consuming the proper religious diet is one of the most central tenets of me living as a Muslim and remaining spiratually clean. No other tenet of my religion can take the place of me consuming the proper pure foods as revealed to the Most Honorable Elijah Muhammad, for me to follow. By me consuming the proper religious diet, it will continue to raise me from my lowest condition to a higher spiritual and physical condition as a Muslim.

5. I personally believe, I receive my guidance and inspiration from what is revealed in the Nation of Islam religious texts on How to Eat to Live, The Qu'ran and passages that are prescribed.

6. I believe that the inspiration I have received from the Qu'ran and the Most Honorable Elijah Muhammad on prohibited impure foods and pure foods have been made clear by them.

7. When I consume the proper mandated religious diet it prepares me for all other tenets of my religious practice and allows me to practice with purer thoughts.

8. Observing Islamic Holy Days is a central tenet of my religion which are included as a part of the sacred Month of Ramadan and its completion, Known as Eid-ul-Fitr and Eid-ul-Adha.

9. I followed the procedures that were made available to receive the Eid-ul-Adha Feast at both Walkens Ridge and Greensville.

10. After careful examination of the memorandum issued by A. David Robinson on April 30, 2015, (See L. Fleming affidavit, Enclosure D) the memorandum provided additional guidance on not only 2015 observance of Ramadan/N.O.I. Month of Fasting, but also Eid-ul-Fitr Feast and the Eid-ul-Adha Feast and stated:

(a) I.D. - Offenders in segregation who are already identified as ~~Muslim~~ Muslim should be contacted by staff to afford the offender the opportunity to sign up for Ramadan/N.O.I. Month of Fasting and Eid-ul-Fitr Feast. This would include those offenders who are already identified having a family history in the Muslim, MSTA or N.O.I. faiths (as documented in the Cloris), past involvement in those faiths at previous assignments or past Ramadan/N.O.I. Month of Fasting.

(b.) V.D. - There is no need for a separate sign-up process for Eid-ul-Fitr participation. Those who sign up on the Muslim or N.O.I./MSTA lists (for the Fast) and who are approved will automatically be included in the Eid-ul-Fitr Feast.

(c) V.F. - Offenders on the Common Fare program who elected to be suspended from Common Fare during Ramadan may eat the Eid-ul-Fitr Feast meal with no violation of the Common Fare Agreement.

(d) VII. B. - The Feast of Eid-ul-Adha shall be provided to Muslim, N.O.I. and MTSA offenders. Each facility may set either September 23, 24, or 25, 2015 for the Eid-ul-Adha feast.

(e) VII. C. - Generally, those who are celebrating the completion of Ramadan/Month of Fasting, should be served first.

(f) VII. E. - There is no need for a separate sign-up process for Eid-ul-Adha participation. Those who signed up for the

Muslim or N.O.I./MSTA, Ramadan/Eid-ul-Fitr lists (For the fast) and who were approved for that event will automatically be included in the Eid-ul-Adha Feast.

For offenders who transferred facilities since the completion of Ramadan/Month of fasting, CORIS Programs should be consulted to determine if an offender participated in Ramadan/Month of Fasting at their prior Facility and added to the Eid-ul-Adha observance at their currently facility when participation has been verified.

(g). VII. F. Offenders on the Common Fare program who elected to be suspended from Common Fare during Ramadan may eat the Eid-ul-Adha Feast meal with no violation of their Common Fare Agreement.

11. My Ramadan/Month of Fasting was never completed, because the Eid-ul-Adha Feast was the end of that journey and celebration for the year 2015

12. I was automatically added to the list when transferring From Wallens Ridge to Greensville in the year 2016, when I also received the N.O.I. diet tray.

13. I should not have been suspended From Common Fare unless I actually violate my religious dietary laws, intentionally, not the religious dietary laws created by VDOC

14. Even if I took a thanksgiving tray, not saying I did, the thanksgiving meal/Special Observance meal food items were not inconsistent with the dietary requirements of the common Fare program, but contained the same foods.

15. I did not present my I.D. to receive any type of tray to a security officer.

16. Sgt. Kimberlin was not in the chow hall on Thanksgiving Day.

17. Sgt. Kimberlin reported a violation (4) days after the alleged incident.

18. The defendants knowingly deprived me of my religious mandated diet for six months, without a compelling interest, the least restrictive means in Furtherance of that compelling interest nor a legitimate interest.

19. My sincerity was never in question and Reynolds, Combs and Fleming, intentionally overlook significant evidence that I was in fact a practicing Muslim and did not violate my religious dietary laws had a took a Thanksgiving tray

20. The suspension from common fare imposed a substantial burden on my ability to exercise even the minimum needs, imposed central tenet of consuming the pure foods of the religious dietary requirements laid down by the Most Honorable Elijah Muhammad's inspiration from Allah and the Qu'ran.

21. The fact that I was reinstated back on common fare on July 13, 2016, does not rid me of the collateral detriment from the first suspension and sanction and the possibility of the same procedures and a 2nd suspension of a 1-year, which would still be in vidation of the Free Exercise Clause under the RLUIPA and First Amendment

22. VDOC did not create the new common fare diet to meet the religious needs and restrictions of the dietary laws prescribed by Allah to the Most Honorable Elijah Muhammad in the Nation of Islam, the Qu'ran and myself as a practicing Muslim.

23. Soy products and soy based protein is a prohibited food as pork and is on the Common fare menu and is included in a majority of meals at GRCC, included in the peanut butter, rice entree, rice bean entree,

24. Had Engelke, Gregg, or Anderson consulted with Islamic Scholars, specifically the representatives from the Nation of Islams Virginia Prison Ministry, the Minister Tracey Muhammad and student Minister Dr. Jerry L. Muhammad DD., they would not have placed the prohibited food on the menu.

25. There is no certification from an Nation of Islam Dretician/Representative, another Islamic Scholar nor a Jewish Rabbi assuring that common fare meets any and all religious guidelines.

26. Common fare food are transported in large serving trays same as regular serving trays and are served from the main line. All foods can be rehected same as main line regular diets.

27. French Toast Casserole nor egg casserole is a Kosher nor Halal Food product.

28. The same eggs that are served to general population are the same eggs served on Common Fare, in the shell.

29. Engelke and Gregg are responsible for the implementation of the common fare diet throughout the entire VDOC. Ponton had authority and implementation of religious diets within the western region. Fleming and Broyles have authority and implementation of the religious diets at Wallens Ridge. Pearson, Anderson and Creque have authority and responsibility, and the implementation over religious diets at Greensville. The defendants respectively could have and should have taken corrective action, however the defendants at Greensville took additional action outside of the regular Common Fare Diet, without consulting my religious dietary laws nor the N.O.I dietician.

30. Common Fare was not developed to meet the dietary needs of N.O.I religious dietary laws, Halal, nor Kosher dietary laws, just a no-pork criteria and is accommodated by foods served on the regular menu.

31. VDOC, Wallens Ridge and Greensville provide a variety of menus that accommodate medical diets, including renal, cardiac, allergens, Commonfare, N.O.I Month of Fasting, N.O.I./Commonfare etc.

32. A Kosher or Halal meat or fish substitute would be consistent with N.O.I. diet and Islamic diet, instead of soy and soy-based protein, Grilled Cheese Sandwiches, eggs, oatmeal, farina, French toast, toast, wheat bread, White Navy beans, cabbage, Broccoli, Cauliflower, Zucchini, Squash, White Fish, Mackeral, oranges, apples, pears, strawberries, blueberries are all existing items within the defendants control, that are inexpensive and are used on existing menus and could have and could be used to accommodate plaintiff. The products used can either be Halal or Kosher products.

33. The staff at Wallens Ridge and Greensville intentionally served me food not in compliance with my religious dietary laws violating my protections under the Free Exercise Clause of RLUIPA and the First Amendment

34. I do suffer from reactions from eating the impure foods that is punishment from Allah in the form of itching, skinbumps, etc. When I do not consume the prohibited food the itching stops.

35. Dr. Brooks, on 6/1/17, stated to me that the previous tests used for allergens are insufficient and that the test now used is expensive, but to stop consuming the foods that cause the reactions.

36. The Common Fare agreement as applied to me and instituted upon me forces me to violate my religious tenets and be subject to state created religious dietary laws, restrictions and sanctions, without a compelling interest or legitimate interest.

37. The sanctions and restrictions are not intended to deter participation of inmates who lack a serious interest in the Religious Diet Program.

38. In order for me to receive the state created religious diet, I am forced to sign an agreement, even though a violation of the agreement is not a violation of my religious beliefs as a practicing Muslim and if I do not sign I am denied a religious accommodation.

39. Engelke is officially and personally responsible for the implementation of the common fare agreement.

40. I am not and was never supposed to come into contact with pork, a tray containing pork or anything contaminated by it. It is prohibited to breath the fumes of pork.

41. I did not change my religious diet, I was intentionally removed from the religious diet at a moments notice, then advised after I received pork trays that it was my responsibility to request a non-pork tray. The policy available at Wallens Ridge states I may change my diet, however the administration changed my diet, knowing my existing diet was no-pork and overlooked intentionally my religious affiliation as a Muslim and my rights not to come into contact with a pork tray.

42. I came into contact with the pork tray on two occassions intentionally by food service, without any advance notification and also had to go without eating because security officer Kendricks and another unknown security officer did not want to provide me with a substitute tray.

43. My religious affiliation that is in CORIS and the food service records, was known to food service and the administration, was not taken into account, when assigning me to a pork diet.

44. The adequacy of the procedures in place were not and are not adequate to prevent the erraneous deprivation of my religious dietary needs, the procedures and the discretion of the officials overlooks, the significance of my beliefs and the impact a removal would have on my religious exercise nor whether I violated a central tenet of my religion.

45. The preparation of meals can be prepared by using existing common fare equipment or other equipment that are free from pork products.

46. I cannot purchase food from the prison's commissary to supplement meals for a number of reasons whether on a suspension or not because:

(a) There are not enough food items consistent with my religious dietary laws and do not meet those dietary requirements

(b) The foods on commissary are more expensive than what the VDOC, Greensville and Wallens Ridge could procure

to provide to me under the existing budget to provide me with an adequate religious diet consistent with my religious dietary laws.

(c) Having to purchase even small amounts that would not supplement my meals nor provide me with an adequate diet, would cause me to give up purchasing necessary hygiene items, that are not provided by VDOC, Greensville nor Wallens Ridge, necessary stamps to communicate with Family, access to the courts and I would have to sacrifice potential visits with family that provide me with limited funds.

47. I cannot and could not observe my religious dietary laws by purchasing foods from the prison commissary.

48. I was never given any time above (8) minutes to consume my food at Wallens Ridge. Four (4) minutes was the norm, (8) minutes was rare.

49. My previous meal assignment and religious affiliation was not considered intentionally when assigning me to a pork tray.

50. The defendants used General procedures with no safeguards to deprive plaintiff of his religious diet.

51. The defendants were required to notify me of the Eid-al-Adha Feast.

52. I participated in Ramadan / N.O.I. Month of Fasting and received an N.O.I. diet.

53. The common fare agreement serves only a punitive measure to remove plaintiff, and persons like plaintiff from their respective religious diet without recourse.

54. VDOC has had at least (3) different "zero tolerance" agreements in the past (10) years.

55. The Common fare menu is a watered down version of the past (4) common fare menus, which accommodated all religions, except for uncooked foods.

56. All common fare items are not prepared nor served separately from regular meals/preparation

57. On my belief every effort is not made to administer the CF program in a reasonable manner.

58. Food items that are transported can be reheated to the proper temperature before reaching any temperature danger zones

59. Simple individual entrees can be served that are safe, sealed and can be heated in common fare warmers.

60. Food substitutions are made all the time for offenders allergic to soy and beans only by a doctor's approval.

61. Substitutions for no-meat eaters on common fare were made at Wallens Ridge.

62. The products used in the casserole are unknown.

63. VDOC, Food Department has now implemented an N.O.I/ Commonfare Menu for comman fare offenders during Ramadan. The only food that should ~~sh~~ not be on the tray is eggs. According to the Qu'ran and the N.O.I dietary laws only water-game is permitted during the Holy Month.

64. The dietary requirements of Ramadan/N.O.I. Month of Fasting do not impose any additional burdens on the institution or Department.

The foregoing is true and correct, based on my personal knowledge under penalty of perjury pursuant to 28 U.S.C. 1746.

Executed on the 12th day of June, 2017

Signed. WALTER ~~BOOKER~~ BOOKERJR

Affiant/declarant

Plaintiff, Prose

Document 78, Att. # 1

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

Roanoke Division

WALTER DELANEY BOOKER, JR. SHABAZZALLAH

Plaintiff,

v. Case No. 7:16cv84

M.E. ENGELKE, et al.,

Defendants

PLAINTIFF'S DECLARATION/AFFIDAVIT IN SUPPORT OF OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT

Walter Delaney Booker, Jr. Shabazzallah states:

1. I am the plaintiff in the above-entitled case. I make this declaration in opposition to defendants motion for summary judgment on my claims of violations of the First Amendment and RLUIPA.

2. The defendants affidavits claim, in summary, plaintiff did not make a request for the Eid-ul-Adha Feast, it was his fault for the CF suspension, CF is more comparable to Mainline, because CF has been modified and plaintiff should have placed a request in for a no-pork diet and therefore, they are not liable and no violation took place under the First Amendment and RLUIPA.

3. The defendants are not entitled to summary judgment because there are genuine issues of material fact that need to be resolve. I oppose the defendants alleged undisputed facts.

4. I am housed at St. Brides Correctial Center.

5. I assumed CF would accommodate my religious dietary laws when I signed back up when returning from the jail. No food items are advertised

6. There is no meat served at CF except Tuna that sometimes say.

7. CF meals are cooked the same as Mainline meals, and served on the mainline, however the CF trays are cleaned by hand washing.

8. The CF diet does not accommodate the feasts between the end of Ramadan and the Hajj. The CF Feast contains prohibited food as stewing.

9. The defendants fail to submit affidavits of N.O.I. leaders explaining dietary laws.

10. If for any reason plaintiff misses CF call, he has to wait until mainline meal are served, then his tray is served on the same line, no matter what was served before. There is no special preparation or extraordinary effort that goes into CF that has a relationship to punishment.

11. The CF diet cost the same as a Mainline meal did in 2015 as in 2018. All food for CF and Mainline must be stored in areas separate from other foods. According to my knowledge in food service handling and storage all foods have to be stored, maintained and transported at certain temperature, CF workers do not receive any special training specific to just CF. Because VDOC grouped all (40). religions under one umbrella to determine a diet and come up with its own dietary laws, it specifically

and intentionally excluded plaintiff's religious exercise

12. The defendants fail to present any evidence on how they determine sincerety. The defendants are aware of the dietary laws of the N.O.I in Islam.

13. The defendants do not ask for plaintiff's religious dietary laws on the application for CF.

14. All food must be prepared pursuant to Serv Safe and Food Service Essentials and the handling and preparation of food bears no connection to being suspended nor being assessed the cost of a CF meal as a penalty. The defendants do not explain how disciplining an inmate with a suspension or monetary penalty minimizes cost.

15. I was assessed the cost of a meal on August 24, 2018 for a Eid-ul-Adha Feast tray I received on August 23, 2018 in service with the N.O.I. The CF tray contained pulverized soy and violated my religion. The food prepared on the regular Feast tray served to the entire population was more in line with brown rice, spinach, wheat rolls, turkey and chicken breast, however because of my religious practice my funds were deducted from my account and left me in a negative balance. The CF agreement was modified as a result of this litigation and no defense to the claims, I was forced to sign the CF agreement by Counselor Brandon, Food Service Supervisors Bashir and Jones and told if not I could not receive a meal. General Population is not assessed a monetary penalty for not picking up a veg tray, allergy tray, renal tray, no-meat tray etc. The voluntary cessation of the suspension part does not moot my claim because not only is there ongoing controversy, the defendants have changed the CF agreement numerous times and there is a

strong possibility the Department, without Court action on either issue will revert back. The policy can be changed at a moments notice as shown to the Court.

16. Fleming failed to follow the procedure in the memo and intentionally denied plaintiff his participation in the feast meal.

17. I was not transferred while Ramadan was in progress, Ramadan ended (2) months prior to my transfer.

18. There is no notification from the sending institution, however that information travels with me in VACORIS and then that system is applied at the next institution before he arrives.

19. I was not given an option when the CF tray was brought to me instead of the Eid-ul-Adha Feast.

20. My review of the Operating Procedure 866.1 indicates the informal complaint is the process, practice or procedure available to offenders to secure facility services or resolve complaints and a grievance is an unresolved issue filed and signed by an individual offender on their own behalf concerning an issue which has affected them personally and meets intake criteria. On the grievance form after the complaint is written, it asks what relief does I want taken. In 2015 I specifically asked for the feast to be made up. I declined the make-up feast for 2015 in 2018 of July, because I was in the middle of a traveling spiritually for the Hajj of 2018 and the Eid-ul-Adha feast commemorating the end of that was in a couple of weeks or so, That would have interfered with that. That feast should have been made up when asked in 2015 and there is no justification for the denial or the denial of make-up at that time. In denying the feast to me I do not know whether

With disrespects other inmates generally or specifically, however I know what he did to me and my observation lead me to believe he would do it again.

21. I was not notified that the CF suspension was approved. I was not notified I needed to request another diet nor that I would automatically be placed on a pork diet. My current diet was CF, so research of my current diet for removal was no-part.

22. Combs had final determination before I was removed from CF to either deprive me of my religious exercise, which was also in the hearing when recommendation was made that I was Muslim. There was no procedure for me to receive notification. The defendants just removed me from CF and that's it.

23. I do not possess funds that would allow me to purchase the expensive meals that are provided on commissary in the short-term or long-term. I have no guarantee of funds incoming into my account. I would have to sacrifice phone calls to family, stationary, email, visits, secure pak, etc. My mother was the only source of steady funds that was trusted in and out whenever she could send it, however she has since passed (Peace And Blessings Be Upon Her), so there is no guarantee. The entrees and meals can be purchased by the Department at prices below wholesale.

24. The CF diet is not highly regulated nor restrictive. Anyone can sign up, because it is a diet comparable to Mainline. Each CF meal is not pre-made, only peanut butter, egg salad and tuna salad (cold trays) are pre-made. The defendants fail to explain why available foods that were served during N.O.I Month of Fasting cannot be implemented in a modified version of three meals, nor why

the appropriate cereal could not be used instead of pancakes and peanut butter in the morning and unbreaded fish or mackeral be used instead of soy, pinto beans, black eye peas, brown rice for white rice, Wheat bread for white bread, navy beans instead of all other beans, Fruit instead of cake, and broccoli, spinach, cauliflower, tomatoes, squash, Zucchinni, cucumbers, instead of collards, sweet potato, carrots, and white potatoes.

25. Once food is opened by anyone other than the encounter it is no longer Kosher/Halal.

26. The defendants were untruthful about the price of Mackeral to me in discovery. The price of mackeral is cheaper than soy per serving. The Mackeral used is called Holita Mackeral in Brine and is $33.12 case that contains 24 cans of 5 servings a can, and amounts to .27 per serving of 4oz. and not $.37 as given to plaintiff in discovery. The chicken breast that was served to the General Population and Staff on a daily basis that comes out of the inmates food budget costs $441.32 for a case that contains 81 servings, that amounts to $5.45 per serving. The food is bought at a market place where access to food that would be served on any diet is actually cheaper and sealed items are also there. Navy beans are $11.95 a case, the Unbreaded Fish is $39.40 for 50 cases Brown Rice is $10.40 a bag. Staff are provided fresh vegetables daily, however the defendants do not explain how staff food that comes out of the inmates budget can be higher, however a diet that is cheaper in comparison, and even a higher cost would not be any burden or an impact. The defendants do not provide this diet to all CF participants nor to all Ramadan participants. I did

not request that the implementation to be served to all CF throughout the year. The defendants fail to state the price difference for me or any N.O.I adherent, which could be offered at all facilities at no additional burden

27. The menu does not prohibit alterations. The Menu states that Food Service Directors may make substitutions in accordance with Food Service Guidelines, I do not know whether the Food Service alterations at Greensville were specifically authorized by VDOC, There is no evidence of what was used to make the modified food at Greensville on CF.

28. All officers in VDOC have the authority to contact food service for a correct food tray

29. My only opportunity for Hajj until I can make a physical travel is by practicing and participating in the Holy Day, which cannot be substituted for any other exercise

30. There was no impact on staff or food service to provide the feast in 2015

31. White bread (Sunbeam) has been always used, however the bread is not Kosher. Once I am able to make a copy of it, it will be provided.

32. The same CF Menu that was in effect in 2015 is in effect in 2018, with the exception of Kidney Bean Burger and egg and rice combined.

33. The defendants fail to explain how the difference is in waste when a CF participant does not pick up a tray and a Mainline participant who does not pick up a tray.

34. An easy alternative of determining why I may have taken the tray over the CF tray and determining was there an insincere belief and determines whether I violated my religious dietary laws

35. The Public has an interest in having unlawful actions settled, so the Court should issue a judgment.

36. The stigma of having my name as a participant, in VRPMRIS, as violating a religious diet gives the impression that I am an insincere believer.

37. My claim of suspension from CF results from the direct deprivation of my religious exercise under the First Amendment and RLUIPA.

38. The defendants knew I was a Muslim.

39. The defendants fail to present evidence of an Islamic leader that represents the N.O.I.

40. At Wallens Ridge substitutions were made for non-meat eaters on CF.

41. The modification of the CF agreement does not alter my standing, because the substance of the agreement creates a continued controversy with me, and the defendants have shown a pattern of flip flopping.

42. There is no reason for a monetary penalty for violating a condition of the CF agreement that has an effect on the CF program.

43. I did not take an extra tray.

44. The defendants do not explain how the option of consuming an N.O.I feast tray was feasible in 2015 and not 2018

45. Engelke is responsible for the CF agreement

pork ¶45. One of the reasons I was on CF was because it is a no pork diet.

pork ¶47. I should not have been removed without notice of the event that I would be immediately placed on a diet that violated my religious exercise.

pork ¶49. There were options given to me besides take the pork tray or no tray at all.

pork ¶49. I should have been able to consent to what diet I would be transferred to and what was available.

50. Reynolds, Combs and Flemitis were directly involved in the removal of me from CF and should have taken the reasonable person steps to ensure I would be moved to an appropriate diet until my claims were resolved and Broyles knew a removal of my name from CF list also would move me straight to a diet in violation of my religious exercise.

51. I grieved the portion sizes in the same grievance when I grieved the new menu for the sake of brevity. I grieved the menu as soon as it took effect on October 12, 2015.

52. Common fare food is not covered until it is pushed through the slot.

53. Special trays for soft diets, allergies, no soy, no meat etc. are offered on a continuous basis.

54. Re-exhaustion of the CF agreement claim would needlessly extend already prolonged litigation, even though the substance of the claim has not changed.

55. Chicken breast is not served on CF.

56. The modified CF agreement was written with no impact on the government.

57. M.E. Engelke implemented the CF agreement and applied its provisions in violation of the First Amendment and RLUIPA.

58. A reasonable person in the defendants position would have known to either notify me so I could request the proper tray or automatically place me on a no-pork tray.

59. The defendants have failed to provide evidence of any costs from 2015, 2016, 2017 or 2018 and the differences between the menus that are based on facts,

60. The Holy Day of Eid-ul-Adha is a religious exercise in itself.

61. The Court can take notice of the causal links of inactions by the defendants continuously in this action as well as other actions involving constitutional injuries before the district courts. Carter v Fleming is one case among many others.

62. I was not able to attend religious services at Wallens Ridge, even though it is not an alternative to my religious diet.

63. The Department of Corrections receives appropriations from the General Assembly to cover religious diet requests,

I declare/certify that the foregoing is true and correct and is based on my personal knowledge under penalty of perjury pursuant to 28 U.S.C. 1746.

Executed on the 6th day of September, 2018

signed: Walter Dewayne Bunting, Sr. Shabazz-Allah

Affiant, Plaintiff, pro se

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6642
(7:16-cv-00084-JLK-RSB)

Walter Delaney Booker, Jr. Shabazzallah
Plaintiff-Appellant

v.

M. E. Engelke, Director of Food Services, et al.,
Defendants-Appellees.

AFFIDAVIT OF Joel A. Gregory

I, Joel A. Gregory, VDOC #1015151, state:

1. I am competent to testify to the facts and information contained within this affidavit and any information related thereto.

2. I am aware of the the action initiated above.

3. My work assignment is in St. Brides Correctional Center's Kitchen. My job title is Lead Store Room Clerk. A description of my duties are to receive itemize and store every product that is used by SBCC Food Service staff. I am also required to maintain a data base designed to monitor the daily usage of food products, consumable goods and secured chemical products.

4. The data base method enables accurate cost of daily meals served to offender population.

5. I have worked in this position for fifteen months.

6. SBCC Food Service orders bulk fish occasional and Mackeral is

ordered, mainly for N.O.I. Month of Fasting/Ramadan and Common fare. Food Service provide Gouda cheese, Pepperjack cheese and Mini Bel cheese. Cauliflower, broccoli, spinach, cabbage, onion, squash, rice, beans, eggs, carrots and an assortment of fresh fruits depending upon availability and cost, throughout the year. Tuna is ordered only for CF.

7. Based on VDOC and SBCC method, meals cost $0.70 per tray,N.O.I. Month of Fasting or otherwise.

8. St. Brides Feeding method takes takes account of how the offender population comes to the dining hall based upon particular meals being served. The ideal is not to exceed $2.40 per offender, per day food cost.

9. The cost of each meal is calculated based on cost of each product used to produce each meal.

10. Based upon my knowledge and experience, the N.O.I Month of Fasting Menu in a modified version could be implemented without disruption to food service and would only require that the institution take into account the documented inmates or approximate the number that would remain the same semi-annually or annually.

11. Most produce and some fish products have a fluctuating price, but navy beans, rice wheat bread and cereal are stable on the VDOC Market.

12. Food service does not order foods to accomodate N.O.I. believers unless it is to accommodate Ramadan/N.O.I. Month of Fasting, so the foods I identifed that could accommodate a portion of the modified N.O.I. diet Month of Fasting menu are already ordered and carried by the facility.

13. N.O.I. Month of Fasting/ Ramadan has budget expectations within the existing food budget.

14. There has not been any disruption in the preparation of the separate N.O.I. diet during Ramadan any different from mainline meals and staff meals.

15. During the Month of Ramadan, there is no disruption in storing of any additional foods and there is a guarantee that unauthorized agents do not come into contact with the N.O.I. diet.

16. Staff meals are not cost exclusive, however,not incuding prepartion options differ,

I affirm under penalty of perjury that the foregoing statements of fact contained herein are true and correct to the best of my personal knowledge, experience, information and belief, pursuant to 28 U.S.C. § 1746.

Executed on the 1 day of October, 2019

Signed: Joel A. Gregory[VDOC # 1015151]

Affiant

Joel A Gregory

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6642
(7:16-cv-00064-JLK-RSB)

WALTER DELANEY BOOKER, JR. SHABAZZALLAH
Plaintiff - Appellant

v.

M. E. ENGELKE, Director of Food Services, et al.,
Defendants - Appellees

AFFIDAVIT OF WALTER DELANEY BOOKER, JR SHABAZZALLAH
IN SUPPORT OF APPLICATION/MOTION
FOR PRELIMINARY/ PERMANENT INJUNCTION

I, Walter Delaney Booker, Jr. Shabazzallah, state:

1. I am the Plaintiff-Appellant in the above-styled action before this Court.

2. I seek a preliminary or an permanent injunction for the protection of my religious exercise under the Religious Land Use And Institutionalized Persons Act and the First Amendment to receive a religious diet consistent with my religious dietary laws.

3. This motion for injunction relief among other relief was requested in the district court and moving again in the district court without action by this Court would be impracticable, because the district court failed to afford the relief requested.

4. The mediation hearing failed to afford any relief and was one-sided, because I was defending my position continuously to the court, without the other party attempting any type of compromise and an impasse ensued.

5. I am a Muslim who practices Islam pursuant to the doctrines of the Qu'ran and the Most Honorable Elijah Muhammad who prescribed in the Nation of Islam religious texts specific religious dietary laws that clarified prvious religious texts on prohibited and forbidden foods, that was revealed to him by Allah(God)himself.

6. The Most Honorable Elijah Muhammad teaches in religious texts of How To Eat To Live and subsequent companions, that the religious dietary laws are intended to raise me from my lowest condition to a higher spiritual and physical condition as a Muslim.

7. When I consume the proper mandated religious diet,it prepares me for all other tenets of my religious practice that are central to the practice of Islam, such as the performing of the obligatory five prayers a day.

8. Consuming the righteous foods is central to my practice of religion.

9. The Honorable Elijah Muhammad taught that Allah(God) in the Person of Master Fard Muhammad prohibited the eating of poisonous plants, vegetables and meats that degrade my spirit and my physical.

10. Allah(God) permitted the eating of virtually all fruits and vegetables such as broccoli, whitehead cabbage, cauliflower, spinach, rutabaga, garlic, onions, cucumbers, tomatoes, peppers, etc., whole wheat bread, brussel sprouts, egg plant, asparagus, okra, squash and permitted only the eating of one bean, the navy bean(white, pink or red).

11. Allah(God) has forbidden the eating of pork of any kind from the hog and anything that touches its carcass,soy, cornbread, freshly baked breads, muffins hotcakes, whitebread, collard greens, turnip salad, white potatoes, peas(black-

eyed peas, field peas, speckled peas, red peas, brown peas, split peas), beet top salads, kale, mustard salads, cabbage sprouts, kidney beans, lima beans,pinto beans, butter beens, soy beans, scavengers of the sea, such as oysters, crabs, clams, snails, shrimps, eels and catfish (pig of the water).

12. Allah(God) forbids oils of any kind except vegetable oil, corn oil, pure butter or olive oil.

13. Allah(God) forbids the eating of any fish that weighs over 50 lbs and chicken that is not raised properly.

14. Allah(God) permits the eating of properly raised beef, lamb and baby pigeon and of water game, mackeral, whiting, salmon, perch, white buffalo fish, river trout.

15. The reason fish is permitted is because it is raised under a different atmosphere, a different world of life are born and live in the water of life. The water of life generates spiritual elevation.

16. During Ramadan/N.O.I. Month of Fasting the permitted foods is expansive enough that the VDOC can provide a religious diet for that month, because the VDOC implements a menu that omits any prohibited food through the Holy Month. See (Dkt. 1, Ex. B,Att. 2) and see(e.g. daily ordering Exhibit C)

17. On information and belief the N.O.I. religious diet does not exceed the cost of any other meal and was prepared without any disruption to the oderly operation of the institution. See(Aff. of Joel A. Gregory ¶'s 7-10).

18. The VDOC specifically M.E. Engelke and N. Gregg implemented a new CF diet in 2015 and another June 2019,

19.This diet was implemented and which prompted the initiation of part of the above- action was because the Defendants not only intentially implemented a diet that was contrary to my religious diet,and it also causes me to choose between violating the prohibitions of my religion or to go without eating I am forced to violate a central part of my religious exercise.

20. I cannot afford to supplement my religious diet nor purchase any meals off the commissary list because ythe prices are exorbiant, beyond my means and would force me to reduce spending , any incoming funds, on hygiene, stationary, stamps, phone calls and any visitation from family and/ or friends, etc..

21. (50) meals out of the (84) meals that are on the menu are prohibited to eat by Allah(God). Soy dominates the entrees in addition to pinto, kidney,Lima beans,et..... Sweet potatoes, white potatoes, biscuits, etc.....

22. The Department characterizes the meals , for example as Taco Casserole or Ranch Burger, but in reality it is soy based with taco and Ranch flavor. See (Ex. A), the highlighted areas.

23. Because the courts have failed to afford relief,the VDOC implements a diet continuously in violation of the Religious Land Use and Institutionalized Persons And and the First Amendment and created an alternate mainline diet.

24.The new CF menu (June 2019), like the 2015 and susequent menu contains vegetables that are prohibited and poisonous to my Islamic practice are kale, collard greens,etc.....and have now incorporated the prohibited cornbread, as mainline.

25. The CF diet forced me to violate my religous beliefs and contaminate my body which in turns brings punishment from Allah.

26. Every entree in (Exhibit A) is soy based.

27. I cannot consume these prohibited items through the month of Ramadan, a Holy Month(N.O.I. Month of Fasting), however every day in the exercise of my religion is a Holy Day, because I have to read passages and I have to make (5)prayers (Sa'lat) and supplement prayers throughout the day and each time it is holy.

28. During litigation the defendants modified the CF agreement to relax standards and to remove the mandatory suspensions and added a $0.70 fee if I pick up another tray besides my CF tray and if I do not accept the agreement I cannot receive any religious diet.

29. The charge and/or forcing me to submit to another agreement after the first agreement placed a substantial burden on my religous exercise places a substantial burden on my religious exercise, because I have to relinquish the right to have my funds deducted without just compensation nor due process of law.

30.I was charged $0.70 for the Eid-al-Adha feast of 2018, because the feast meal that was given to the entire populationm and I chose to eat a meal that did not contain prohibited food. The VDOC wanted me to eat there mandated diet of prohibited food, that contained soy, collard greens, etc. and I was punished as a result.

31. The new agreement is abusive, because I have a grievance pending because I was assessed a charge of $ 0.70 for a tray I never took. The food service nor the business office can identify me, the time nor date. They had no evidence my I.D. was swiped. All they went by was because someone highlighted my name, however I am forced into this agreement to receive a religious diet tray.

32. I never picked up a tray to be charged $0.70. No process was afforded to correct erroneous deprivation. My account is just assessed. The defendants can and does abuse this process implemented by Mr. Engelke, and continuously charge me for a meal I never received, because someone uses my name or marked my name erroneously.

33. The failure of the court to grant relief continues permanent loss of First Amendment religious exercise and loss of the Religious Land Use and Institutionalzed Persons Act protections without a substantial burden on my religious exercise.

34. There are no facts by defendants disputing that because the N.O.I. Month of Fasting menu poses no hardship during Ramadan at every facility, then it will neither cause any hardsip nor burden cost to provide year-round at every

facility.

35. There are no facts disputing that I have not been burdened in my religious exercise under the First Amendment and RLUIPA, that my religious diet is not essential and a central practice and without it, all other aspects of my religious exercise such as prayer (5) times daily, studying the Qu'ran and elevating my spiritual condition is not affected.

36. There are no facts disputing that I cannot afford to supplement my religious diet, nor do I have the means.

37. There are no facts disputing that the practice of consuming the religious diet prescribed by The Most Honorable Elijah Muhammad from Allah(God) in Person is my deeply held religious belief and is rooted in the religion of Islam in the Nation of Islam doctrines.

38. There are no facts nor evidence disputing the cost of providing N.O.I. diet throughout VDOC or to me is less burdensome and deminimus on the Department.

39. There are no facts disputing that the CF diet does violate my religious dietary laws and is not in conformance with Allah's guidelines.

40. On information and belief for the fiscal year ending June 30, 2018 the General Assembly appropriated the Department of Corrections an adjusted operating budget of $ 1,257,128,812 and the VDOC expended $ 1,248,956,790 of that leaving $ 8,172,022 in surplus.

41. VDOC is under an obligation to provide meals (3) times daily for 365 days a year to approximately 30,444 inmates on average, including 26 major institutions, 8 field units, 5 work centers, 2 detention centers, 2 diversion centers, 1 detention/diversion center and the privately run Lawrenceville Correctional Center.

42. On information, belief and according to the Operating Procedure 841.3, and Chapter 4 of the food service manual sets a limit on meals at $0.70 per meal or $ 2.10 per day per inmate, whihh as of fiscal year 2018, it accounted for 1.856% of the 1,257,128,812 budget allotted , approximately $23,335,326.

43. Even though the N.O.I. diet used during Ramadan/N.O.I. Month of Fasting cost the same as mainline and CF meals any additional costs or an additional cost of $ 0.20 or $ 0.50 for approximately 500 inmates or even 1000 inmates would be deminimis out of the existing budget.

44. The N.O.I. population is small but for statistical and factual development, at approximate 500 inmates on the N.O.I. diet at an additional $ 0.20 to the existing meal expense would be an additional $100 a day and $36,500 per year,which would be .0029034% of the 1,257,128,812 budget and .4405274% out of the $ 8,172,022 that was left over at the end of the fiscal year 2018.

45. Approximately 500 inmates on the N.O.I. diet at an additional $ 0.50 to the exiting meal expense would be an addiitonal $ 250 per day and $ 91,250 per year, which would amount to .0072586% of the $1,257,128,812 budget and 1.113558% of the $ 8,172,022 that was left over at the end of the fiscal year.

46. At approximately 1000 inmates on the N.O.I. diet at an addition $ 0.20 to the existing meal expense would be an additional $ 200.00 per day and $ 91,250 per year, which amounts to .0058069% of the $1,257,128,812 budget and .8932918% out of the $ 8,172,022 that was left over at the end of the fiscal year.

47. At approximately 1000 inmates on the N.O.I diet at an additional $ 0.50 to the existing meal expense, would be an additional $500 per day and $ 182,500 per year, which amounts to .00144774% of the existing $1,257,128,8122 budget and 2.23294% of the $ 8,172,022 that was left over at the end of the fiscal year.

48. At the biggest estimate of an additional $ 0.50 for 1000 inmates would be $ 182,500 a year, which still leaves $ 7,989,522 out of the left over funds.

49. On my information, knowledge and calculations, the left over funds from 2018 alone could fund the additional cost for the next 24 years, with another $3,741,250 in funds to used for inflation, unexpected costs or any other reason the Department saw fit..

50. The representative and defendants of the Department of Corrections speculated about cost and the actual impact that providing the N.O.I. diet year round would have on the Department of Corrections.

51. To provide this diet to me would not cost the Department nor the institution any extra cost and the extra cost at either an additional $0.20 or $ 0.50 per day would amount to $73.00 and $ 182.50 respectively per year. The VDOC offered to pro ide the E d-al-Adha feast from 2015 ,three years later and their was no burden for preparation of that meal, had I accepted,but the significance of the Holy Day bed since passed.

52. VDOC do not care about the religious practice of me and continuously direspects my practice of consuming the proper spritual diet, because now the institution is allowed to serve the prohibited cornbread , biscuits that are now baked in the mainline bakery, however is conveniently now a CF bakery, even though no additional equipment has been purchased nor has it ever been a kosher bakery where pork products are also baked. See (¶ 9 & 11 of this Affidavit).

53. See Exhibits B & D ,on information and belief the mixing of alleged Kosher ingredients that are not certified Kosher in packaging after preparation does not establish the foods as Kosher after food handlers who are not certified in preparing nor ordained to call food Kosher/Halal mix ingredients cook it and serve it to me.

54. On information and belief it is unlawful in Virginia to label any repackaged food product or food product or display or offer for sale any unwrapped food or food product that represents the food or food product as kosher or halal without indicating the person or entity authorizing such designation by providing the name or symbol of the authority or providing a phone number or website to access the information. See Virginia §3.2-5124.

55. The entire new menu is in violation of my religious dietary laws and interferes with my religious exercise/practice and my nutritional needs because I am forced to forgo consuming these meals, limiting my nutritional intake, which also interferes with the proper fun ctioning of my body in order to pray to Allah(God) himself in good health.

56. On some days I am forced to consume these prohibited foods, because if I do not I will have hunger pains, because I cannot supplement the diet.

57. The defendants including Mr.Bresheare(Food Services Director) at St. Brides Correctional Center,who is not named as a defendant in the original action, intentionally provide foods that they know are in violation of my relious diet and the main course meals they provide that is all soy, biscuits,cornbread, collards and the other poisonous food that are listed in this affidavit and the original action. The prohibited foods are even listed in their Operating Procedure that governs The N.O.I. Month offFasting.See

58. There are no facts disputing that the VDOC Common fare diet violates my religious practice in Islam and is not in conformance with Nation of Islam in no way.

58. The defendants even stated they wanted to make CF more comparable to mainline meals in their affidavits and arguments.

59. 59. The defendants have no compelling interest ,with the least restrictive means nor a compelling interest in denying me a religious diet in conformance with my religion.

61. No amount of damages can be calculated for the loss of my religious exercise going forward.

62. The nature of the N.O.I. diet does not vary among individuals of the N.O.I. , whether offering it to me or throughout VDOC.

63. The defendants never presented any evidence that providing the N.O.I. diet imposes any hardship upon them.

64. The CF diet does not draw any food items nor options considering restrictions from any religious source and is not sufficient for my religious diet.

65. In the defendants affidavit of A.David Robinson and Engelke,false statements were alleged that kosher and halal meat is served, when in fact no meat is served , only soy.

66.Engelke nor A.David Robinson can testify to the preparation of meals it never observes nor the functioning of that process.

67. On information and belief, there are three major religious sects in VDOC that require strict religious diet as Islam, Nation of Islam, Judaism and a distant fourth, respectively, Native American.

68. The defendants presented no evidence from a religious advisor on religious diets from neither Islam, Nation of Islam nor Judaism.

69. The defendants creates the CF menu not out of respect for religion, but to say they have an alleged religious diet, however Exhibit D shows that the defendants can call anything they want CF, which does not mean Kosher nor Halal.

I affirm under penalty of perjury that the foregoing statement of fact contained herein are true and correct in the best of my personal knowledge and with respect to information and belief, I believe the information to be true, pursuant to 28 U.S.C. § 1746.

Executed on the 1st day of October, 2019 Signed: Walter Delaney Booker, Jr. Shabazzallah