UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INMATE # BK 4340129	CASE NUMBER
LILY CASSANDRA ALPHONSIS	CV17-03650 ODW (DFM)
PLAINTIFF(S)	
v.	
CENTURY REGIONAL DETENTION FACILITY	**ORDER RE REQUEST TO PROCEED WITHOUT PREPAYMENT OF FILING FEES**
DEFENDANT(S)	

IT IS ORDERED that the Request to Proceed Without Prepayment of Filing Fees is hereby GRANTED.

IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of $350.00. An initial partial filing fee of $ -0- must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of the case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. § 1915(b)(2).

May 18, 2017
Date

Douglas F. McCormick
United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed Without Prepayment of Filing Fees be **DENIED** for the following reason(s):

- ☐ Inadequate showing of indigency.
- ☐ Failure to authorize disbursements from prison trust account to pay the filing fees.
- ☐ Failure to provide certified copy of trust fund statement for the last six (6) months.
- ☐ District Court lacks jurisdiction.
- ☐ Other _____
- ☐ Frivolous, malicious, or fails to state a claim upon which relief may be granted.
- ☐ Seeks monetary relief from a defendant immune from such relief.
- ☐ Leave to amend would be futile.
- ☐ This denial may constitute a strike under the "Three Strikes" provision governing the filing of prisoner suits. *See O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).

Comments:

Date

United States Magistrate Judge

IT IS ORDERED that the Request to Proceed Without Prepayment of Filing Fees is:

- ☐ **GRANTED. IT IS FURTHER ORDERED** that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of $350.00. An initial partial filing fee of $ _____ must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of the case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. § 1915(b)(2).
- ☐ **DENIED**. Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
- ☐ **DENIED**, and this case is hereby DISMISSED immediately.
- ☐ **DENIED, with leave to amend within 30 days.** Plaintiff may re-submit the IFP application and Complaint to this Court, if submitted with the Certified Trust Account Statement and Disbursement Authorization. Plaintiff shall utilize the same case number. If plaintiff fails to submit the required documents within 30 days, this case shall be DISMISSED.

Date

United States District Judge

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 21-56141

LILY CASSANDRA ALPHONSIS,

Appellant

v.

COUNTY OF LOS ANGELES & JOEL GARNICA,

Appellees

Order Denying Rehearing

November 30, 2022

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LILY CASSANDRA ALPHONSIS,

Plaintiff-Appellant,

v.

JOEL GARNICA, Deputy; COUNTY OF LOS ANGELES,

Defendants-Appellees,

and

CENTURY REGIONAL DETENTION FACILITY; JIM MCDONNELL, Sheriff; PEOPLE OF THE STATE OF CALIFORNIA,

Defendants.

No. 21-56141

D.C. No.
2:17-cv-03650-ODW-DFM
Central District of California,
Los Angeles

ORDER DENYING PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for rehearing. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-56141

LILY CASSANDRA ALPHONSIS,

Appellant

v.

COUNTY OF LOS ANGELES & JOEL GARNICA,

Appellees

Opinion of the United States Court of Appeals for the Ninth Circuit

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October 14, 2022

FILED

OCT 14 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LILY CASSANDRA ALPHONSIS, Plaintiff-Appellant, v. JOEL GARNICA, Deputy; COUNTY OF LOS ANGELES, Defendants-Appellees, and CENTURY REGIONAL DETENTION FACILITY; JIM MCDONNELL, Sheriff; PEOPLE OF THE STATE OF CALIFORNIA, Defendants.	No. 21-56141 D.C. No. 2:17-cv-03650-ODW-DFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted October 12, 2022**
San Francisco, California

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

Lily Alphonsis appeals pro se from the district court's summary judgment in favor of Defendants Joel Garnica and the County of Los Angeles (County) in her 42 U.S.C. § 1983 civil rights action alleging a variety of claims arising from her incarceration in the Century Regional Detention Facility. We review de novo,[1] and we affirm.

The district court correctly determined that there was no genuine dispute of material fact that Garnica did not use excessive force when he removed Alphonsis's handcuffs on June 5, 2017. The evidence before the district court—including witness statements, video footage of the encounter, and Alphonsis's minimal injuries—showed that Garnica did not act maliciously or

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[1] *See Hughes v. Rodriguez*, 31 F.4th 1211, 1218 (9th Cir. 2022).

sadistically. *See id.* at 1221; U.S. Const. amend. XIII.[2] Alphonsis's assertions to the contrary are plainly belied by video evidence, which the district court was entitled to credit. *See Scott v. Harris*, 550 U.S. 372, 380–81, 127 S. Ct. 1769, 1776, 167 L. Ed. 2d 686 (2007).

The district court also properly entered summary judgment in favor of the County on Alphonsis's disability discrimination claim because there was no genuine dispute of material fact that due to her disciplinary infractions, Alphonsis was not "otherwise qualified to participate in" the jail education program. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

The district court did not err in granting summary judgment in favor of the County on Alphonsis's First Amendment free exercise claim[3] arising from the

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[2] Failure of the district court to expressly consider the supplemental evidence Alphonsis submitted was harmless error. *See Brown v. Roe*, 279 F.3d 742, 744–45 (9th Cir. 2002); *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 534 (9th Cir. 2011); *see also* 28 U.S.C. § 636(b)(1). The purported medical records were not properly authenticated, and did not tend to show that any injuries occurred on June 5, 2017. *See Las Vegas Sands*, 632 F.3d at 532–34; *Sanchez v. Aerovias de Mex., S.A. de C.V.*, 590 F.3d 1027, 1029 (9th Cir. 2010).

[3] *Jones v. Williams*, 791 F.3d 1023, 1031–32 & 1032 n.5 (9th Cir. 2015); U.S. Const. amend. I.

purported confiscation of her Quran and prayer mat.[4] Alphonsis's evidence failed to raise a genuine dispute of material fact about whether the County had a "policy or custom" of confiscating the Qurans and prayer mats of inmates who were in solitary confinement. *Castro v. County of Los Angeles*, 833 F.3d 1060, 1073 (9th Cir. 2016) (en banc); *see Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996); *see also Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995).

Finally, the district court did not err in granting summary judgment in favor of the County on Alphonsis's RLUIPA[5] claim arising from the prison's head cover policy.[6] The district court correctly concluded that there was no genuine dispute of material fact that the policy, which prohibited head coverings other than Kufi caps, was "the least restrictive alternative available . . . to reach [the County's] compelling interest" in prison security. *Warsoldier v. Woodford*, 418 F.3d 989,

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[4] Alphonsis waived any challenge to the judgment on her free exercise claim premised on the prison's head cover policy by failing to address that in her opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985, 985 n.2 (9th Cir. 2009).

[5] Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc–2000cc-5 (RLUIPA).

[6] Alphonsis did not allege a RLUIPA claim premised on the purported confiscation of her Quran and prayer mat, nor did she address any such claim in her opening brief on appeal. *See Padgett*, 587 F.3d at 985, 985 n.2.

998 (9th Cir. 2005); *see also Walker v. Beard*, 789 F.3d 1125, 1137–38 (9th Cir. 2015).[7]

We do not consider arguments raised for the first time on appeal or matters not specifically and distinctly raised and argued in the opening brief. *See Padgett*, 587 F.3d at 985, 985 n.2.

AFFIRMED. Alphonsis's petition for an initial hearing en banc (9th Cir. Dkt. 6) is **DENIED**.

[7] The district court's error in failing to expressly consider the letter from Chaplain Khani was harmless because the letter did not contradict the County's evidence regarding the use and availability of Kufi caps. *See Las Vegas Sands*, 632 F.3d at 532–34; *Sanchez*, 590 F.3d at 1029.

APPENDIX C

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

Case No. CV 17-03650-ODW (DFM)

LILY CASSANDRA ALPHONSIS,

Plaintiff

v.

COUNTY OF LOS ANGELES & JOEL GARNICA,

Defendants

September 8, 2021

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LILY CASSANDRA ALPHONSIS, Plaintiff, v. CENTURY REGIONAL DETENTION FACILITY et al., Defendants.	Case No. CV 17-03650-ODW (DFM) Report and Recommendation of United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable Otis D. Wright, II, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. INTRODUCTION

At the time of relevant events, Lily Cassandra Alphonsis ("Plaintiff") was incarcerated at the Los Angeles County Sheriff Department's Century Regional Detention Facility ("CRDF"). See Dkt. 59-1, Defendants' Statement of Uncontroverted Facts and Conclusions of Law ("SUF"), SUF 1. She brings four claims in her Third Amended Complaint (Dkt. 20, "TAC"). First, she alleges that Deputy Garnica used excessive force in violation of the Eighth

Amendment in removing handcuffs. See TAC at 6-7.[1] Second, she alleges that the County's "head-cover" policy in place at the time of her incarceration violated the First Amendment's Free Exercise Clause, as did the removal of her copies of the Quran and prayer mats by unspecified defendants while she was in solitary confinement. See id. at 7-9. Third, she alleges that the same policy and actions violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). See id. Finally, she alleges that the County violated the Americans with Disabilities Act ("ADA") by denying her reentry into a vocational sewing class due to her dietary allergies. See id. at 9-10.

The County and Deputy Garnica move for summary judgment on Plaintiff's claims. See Dkt. 58, Motion for Summary Judgment ("MSJ"). Alternatively, Defendants move for partial summary judgment on each claim. See id. Plaintiff opposed. See Dkt. 64 ("Opposition"). Defendants filed a reply. See Dkt. 68. The Court held a hearing on the motion, and the parties filed supplemental briefing at the Court's request. See Dkts. 76-80.

As set forth below, the Court recommends that Defendants' Motion for Summary Judgment be granted in full.

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[1] When the Court dismissed Plaintiff's second amended complaint with leave to amend, it analyzed her excessive force claim against Deputy Garnica acting in his individual capacity. See Dkt. 19. The Court indicated that it would order service of a third amended complaint that was limited to this and certain other claims. See id. at 20. The TAC was limited to these claims. In the Court's order directing service of process of the TAC, the "official capacity" box was erroneously selected next to Deputy Garnica's name. See Dkt. 21. In his motion for summary judgment, Deputy Garnica briefed Plaintiff's individual capacity claim. See MSJ at 23-29. He therefore apparently has not suffered any prejudice from this clerical error.

II. FACTS

The following summary is based on the parties' statements of facts,[2] excerpts from Plaintiff's deposition, and surveillance footage lodged by Defendants. See SUF; Dkt. 60 at 3-4, Exhs. 101 ("Camera One"), 102 ("Camera Two"), 103 ("Rec. Video"), 104 ("Interview Video"); TAC; Dkt. 64-1 (Plaintiff's declaration and exhibits); Dkt. 60-1 at 52-55 ("Plaintiff's Depo.").

A. Excessive Force Claim

On June 5, 2017, jail staff conducted a search of Plaintiff's housing module. See SUF 12. After the sweep, several deputies stood in front of approximately forty seated female inmates in a recreation room. See SUF 13; see also Rec. Video 0:00-1:16. While the deputies were addressing the inmates in an outdoor recreation room, the video shows that Plaintiff began speaking and waving her arms. See Rec. Video 1:16-1:29. According to Deputy Garnica, Plaintiff "created a disturbance by being loud and disrespectful," and

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[2] Defendants contend that Plaintiff was required to state in her filings that she made her allegations under penalty of perjury. Because Plaintiff is pro se, the Court must consider as evidence Plaintiff's contentions to the extent they are based on personal knowledge and set forth facts admissible in evidence. See Jones v. Blanas, 393 F.3d 918, 922-23 (9th Cir. 2004). While courts ordinarily require plaintiffs to sign motions and pleadings under penalty of perjury, in Fraser v. Goodale, the Ninth Circuit held that it was proper to consider as evidence unsworn statements written by the plaintiff in a diary. See 342 F.3d 1032 (9th Cir. 2003). The Ninth Circuit reasoned: "At the summary judgment stage, we do not focus on the admissibility of the evidence's form. We instead focus on the admissibility of its contents." Id. at 1036. To reject Plaintiff's statements, which would otherwise be admissible and based on personal knowledge, simply because she did not use the word "perjury" would elevate form over substance. See TAC at 11 (averring that her complaint contains "nothing but the truth of the events and circumstances as they unfolded"); Dkt. 64-1 at 1-2 (declaring that her exhibits are "exact copies retrieved from Plaintiff's email account and documents retrieved from Defendant's discoveries").

accordingly he ordered her to stand up and turn around to be handcuffed. Garnica Decl. ¶ 3. She and Deputy Garnica walked toward each other, and she turned her back to him for handcuffing. See Rec. Video 1:29-1:35. Deputy Garnica held Plaintiff by her right arm as he led her out of the recreation room and into the module for pre-disciplinary housing. See Rec. Video 1:35-1:59; SUF 17.

Once inside the module, Deputy Ochoa directed Deputy Garnica to a vacant cell. See Camera One 0:00-0:20; SUF 19. Deputy Garnica walked Plaintiff just across the threshold of the cell and continued to hold Plaintiff by her right arm as Deputy Ochoa to his left started to slide the cell door closed; Plaintiff stood with her back to the closing door. See Camera One 0:20-0:25. As the door closed, Deputy Ochoa reached through the door slot and Deputy Garnica released Plaintiff's arm. Camera One 0:22-0:26; Camera Two 0:24-0:26. A third deputy, Deputy Webster, observed from a few feet away to Deputy Ochoa's left. Id.

Plaintiff and Deputy Garnica appear to speak through the door for about twenty seconds, while Deputy Ochoa continued to reach through the slot. See Camera One 00:25-00:43. Deputy Garnica then reached his left hand through the slot as Deputy Ochoa crouched down and then stood back up, still bent over with her hands through the slot. See Camera One 00:43-55; see also Camera Two 00:42-00:44.[3] Deputy Garnica reached his other hand through the slot, and Deputy Ochoa removed her hands from the slot and stood to exchange words with and hand something to Deputy Webster. Camera One 00:55-01:09; Camera Two 00:54-01:06. At this point, Deputy Garnica was

[3] Camera Two's view of the incident was partially blocked by a support beam, which obscures the slot, Plaintiff, and the heads of Deputies Ochoa and Garnica.

standing still, bent at the waist with both hands through the slot. Id. Plaintiff continued to stand with her back toward the door. Id.

Deputy Ochoa crouched down again and reached her hands back through the slot while Deputy Garnica continued to stand still, bent at the waist with his hands through the slot. Camera One 01:09-01:45. Throughout, Plaintiff stood straight up with her back to the door, occasionally turning her head to speak to the deputies through the door. See id. Plaintiff then jerked to her left, and a moment later Deputies Ochoa and Garnica stood upright, with Deputy Ochoa handing the unlocked handcuffs to Deputy Garnica. Camera One 01:45-01:53. Plaintiff turned to face the door as Deputies Ochoa and Webster walked away from the cell. Camera One 1:53-2:00. Deputy Garnica stood facing Plaintiff's cell door; most of Plaintiff's body is obscured due to the camera angle, but she pointed and gesticulated toward Deputy Garnica with her right arm. Camera One 1:53-02:24. Deputy Garnica walked away. Camera One 02:24-02:26.

Two days later, Plaintiff gave an interview to deputies. See Interview Video. She stated that Deputy Garnica asked her to bend down so that her handcuffs could be removed. Interview Video 01:23-01:29. "All along," his hand was pressing down on the chain in between the handcuffs. Interview Video 01:36-01:41. She told him that her left arm was uncomfortable and to release her so that she could find a comfortable position, but he refused. Interview Video 01:29-01:52. She stated in the interview that the deputies "used excessive force" by "pressing on the handcuffs" and she screamed at them that they were hurting her. Interview Video 01:52-02:20. A bruise was visible on the inside (i.e., thumb side) of her right wrist and a smaller bruise was visible on the inside of her left wrist. Interview Video 02:20-02:50.

According to Plaintiff's allegations in the TAC, Deputy Garnica put her in a cell and as the door slid closed, "grabbed" her handcuffs through the

"knee-level . . . slot hole" and "intentionally pressed on the handcuff" to "lower Plaintiff's body down," which "twisted her wrist" and ultimately "dislocated" her arm. TAC at 3. She "screamed in pain" and told him that he was hurting her and to let go of the handcuffs so she could adjust her arm. Id. Deputy Garnica, joined by a second deputy, "refused to let go and instead used force to press the handcuffs down on Plaintiff's wrist." Id. She sustained cuts and bruises and injured her back. See id.

B. Free Exercise and RLUIPA Claims

1. Prayer Mat and Quran

Following the June 2017 Garnica incident, Plaintiff's property was brought to solitary confinement. See Plaintiff's Depo. at 54. Her prayer mat and Quran were missing. Id.; TAC at 4. She received a new prayer mat and Quran from the chaplain upon request. Plaintiff's Depo. at 55. On three earlier occasions (in October 2015, February 2016, and August 2016), her copies of the Quran had gone missing while she was in solitary confinement, but she does not know what happened to them. See TAC at 4; Plaintiff's Depo. at 53. Whenever she asked for a replacement Quran, she received one from the chaplain. See Plaintiff's Depo. at 52. Jail policy requires that inmates be given access to religious texts of their choosing. See SUF 39.

2. Head Covers

The County permits Muslim inmates to use a Kufi cap, a tight-fitting knit cap. See SUF 27. The County did not at the time of Plaintiff's incarceration permit the use of hijabs. See SUF 35. In June 2015, Plaintiff submitted a request for a head cover and long sleeves to use for prayer. See TAC at 3. A deputy and the jail's chaplain told her that jail policy prohibited these items. See id. at 3-4. Plaintiff used a T-shirt to cover her head to pray and was told to remove the T-shirt. See id. at 4.

C. ADA Claim

When Plaintiff was initially incarcerated in 2013, the County learned that she had food allergies. See SUF 5. In August 2015, Plaintiff was admitted to an Education Based Incarceration ("EBI") vocational sewing program. See SUF 6. EBI programs are designed to reward model inmates and require inmates to maintain behavioral standards, including no disciplinary write-ups for between 30 and 90 days (depending on the nature of prior incidents). See SUF 7. At the time of entry into the program, Plaintiff had been discipline-free for 30 days and did not have multiple prior disciplinary write-ups. See id.

In September 2015, Plaintiff was briefly transferred to a different facility before being returned to CRDF in October 2015. See SUF 8. On November 2, 2015, she applied for reentry into the EBI sewing program. See SUF 9. Deputy Tammy Sherman reviewed Plaintiff's disciplinary history and determined that Plaintiff was ineligible for reentry due to recent writeups. See SUF 10-11.

According to Plaintiff, she was not permitted to participate in the EBI program due to her "severe food allergies." TAC at 5. She recalls being denied reentry in late 2015, and she alleges that she reapplied in January 2016 and was again rejected. See Opposition at 17. In or around July 2016, an EBI class was introduced in Module 2700, where she was housed. Id. at 10. A July 21, 2016 write-up reflects that Plaintiff exhibited a "negative attitude," and the prison official noted that Plaintiff was not ready "to be in EBI and would be better off housed in general population." Dkt. 60-1 at 13. Plaintiff contends that she "was removed from the EBI module after a deputy refused to hand over her special diet, which was specifically ordered to be delivered to her in person upon returning from the medical facility." Opposition at 10. On the same day, Deputy Adjufoh told her that "her special diet is an issue, and therefore she cannot be housed in the EBI module." Id.

On April 20, 2017, Plaintiff submitted a grievance claiming that Sherman told her she was a "liability to be enrolled because of [her] special diet needs." Dkt. 64-1 at 33.

III. LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the nonmovant, indicates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). Summary adjudication, or partial summary judgment on "part of each claim or defense" is appropriate where there is no genuine dispute of material fact as to that portion of the claim. Fed. R. Civ. P. 56(a); see also Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often fall short of a final determination, even of a single claim." (citation omitted)).

Material facts are those necessary to the proof or defense of a claim, and are determined by reference to substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his [or her] favor." Id. at 255. However, when the non-movant's purported evidence or interpretation of events is "blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007).

The moving party has the initial burden of establishing the absence of a material fact for trial. See Anderson, 477 U.S. at 256. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . . the court may . . . consider the fact undisputed." Fed. R.

Civ. P. 56(e)(2). Furthermore, "Rule 56[(a)] mandates the entry of summary judgment . . . against a party who 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 Corp., 477 U.S. at 322.

IV. DISCUSSION

A. Excessive Force Claim against Deputy Garnica

"When prison officials use excessive force against prisoners, they violate the inmates' Eighth Amendment right to be free from cruel and unusual punishment." Clement v. Gomez, 298 F.3d 898, 903 (9th Cir. 2002). However, "[f]orce does not amount to a constitutional violation in this respect if it is applied in a good faith effort to restore discipline and order and not 'maliciously and sadistically for the very purpose of causing harm.'" Id. (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). The Court must consider the following factors to determine if the force was excessive under the Eighth Amendment: the extent of injury suffered, the need for application of force, the relationship between that need and the amount of force used, the threat to the safety of staff and inmates reasonably perceived by the responsible officials, and any efforts to temper the severity of a forceful response. See Hudson v. McMillian, 503 U.S. 1, 7 (1992) (quoting Whitley, 475 U.S. at 322).

Deputy Garnica is entitled to summary judgment as a matter of law. Each of the Hudson factors cuts in his favor. First, Plaintiff suffered minimal injuries from the unhandcuffing. She claims that one of her arms was dislocated, yet she produces no medical evidence of this and admits in her opposition that she lifted her hands to show Deputy Garnica her injuries after he removed her handcuffs. See Opposition at 12. The video confirms this. Her wrists were apparently bruised by the incident, but minor bruising alone does not defeat summary judgment. See Poe v. Huckabay, No. 07-00413, 2012 WL

273290, at *8 (E.D. Cal. Jan. 30, 2012) (granting summary judgment on excessive force claim where plaintiff sustained "minor scrapes, bruises, and abrasions to his face and back of the head"—i.e., "minor and temporary" injuries consistent with defendants' version of events—not the broken jaw and other significant injuries he claimed).

Next, some force was necessary to remove Plaintiff's handcuffs, and the video does not indicate that the officers used more force than necessary to remove them. For over a minute, Deputy Ochoa tried to get Plaintiff to put her hands near or through the slot so that she could remove the handcuffs. Plaintiff claims that she could not do so, saying that the slot was at "knee level" when it was, at the lowest, at her hip level (based on the Court's review of the video footage)—i.e., where her wrists would have been when handcuffed behind her back. Plaintiff may not have actively resisted the deputies in their efforts to remove her handcuffs, but neither did she make any visible efforts to help remove them.

Moreover, any delay in removing Plaintiff's handcuffs could have presented a security risk to jail staff or other inmates. Three deputies were occupied by the efforts to remove Plaintiff's handcuffs, detaining them from their other duties in what was undoubtedly a busy and crowded facility. See, e.g., Rec. Video 0:00-1:16

Finally, the footage shows the deputies remaining calm and relatively still throughout the incident—as was Plaintiff until the moment of removal. They tried several different methods and positions in their efforts to remove Plaintiff's handcuffs.

In sum, given the footage and Plaintiff's minimal injuries, no reasonable trier of fact could conclude that Deputy Garnica, in assisting with the removal of Plaintiff's handcuffs, applied force maliciously and sadistically rather than to maintain discipline. See Scott, 550 U.S. at 380 (rejecting plaintiff's version of

events where it had been "utterly discredited" by the video record such that no reasonable jury could have believed him). Summary judgment is warranted on this claim.

B. Free Exercise Claim against the County

1. The Free Exercise Clause

Prisoners "do not forfeit all constitutional protections by reason of their conviction and confinement in prison." Bell v. Wolfish, 441 U.S. 520, 545 (1979). Inmates retain the protections afforded by the First Amendment, "including its directive that no law shall prohibit the free exercise of religion." O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987). However, "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Id. (citation omitted).

"[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). Turner sets forth four factors to be balanced in determining whether a prison regulation is reasonably related to legitimate penological interests:

> (1) Whether there is a "'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it";
>
> (2) Whether there are "alternative means of exercising the right that remain open to prison inmates";
>
> (3) Whether "accommodation of the asserted constitutional right" will "impact . . . guards and other inmates, and on the allocation of prison resources generally"; and
>
> (4) Whether there is an "absence of ready alternatives" versus the "existence of obvious, easy alternatives."

Id. at 89-90 (citation omitted).

2. Analysis

a. Missing Copies of Quran and Prayer Mats

To establish § 1983 municipal liability, a plaintiff must satisfy one of three conditions:

> First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity. Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with final policy-making authority and that the challenged action itself thus constituted an act of official governmental policy. Whether a particular official has final policy-making authority is a question of state law. Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it.

Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996) (quoting Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992). Plaintiff apparently seeks to meet the first of these three alternatives. She has not provided any evidence that the County had a formal policy that Qurans or prayer mats should not be supplied to prisoners in solitary confinement or on request. The County on the other hand has supplied evidence that jail policy requires that inmates be provided with religious items of their choice, which are to be provided by chaplains. See SUF 39. Thus, the Court assumes that Plaintiff seeks to show that the County has a longstanding practice or custom of discarding prisoner copies of the Quran and their prayer mats while those prisoners are in solitary confinement.

The County is entitled to judgment as a matter of law on the free exercise claim related to the prayer mats and the Quran. Reading the record in a light favorable to Plaintiff, on four occasions over almost two years, her copies of the Quran were either lost or discarded while she was in solitary confinement. Her prayer mat was lost or discarded at least once. She always received replacements when she requested them, per official jail policy. These allegations, even if true, do not reflect a custom so "persistent and widespread" that it constitutes a "permanent and well settled [jail] policy." Monell v. Dept. of Soc. Serv. of N.Y., 436 U.S. 658, 691 (1978) (citations omitted). "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy."[4] Trevino, 99 F.3d at 918. Further, Plaintiff conceded at deposition that she did not know what jail staff do with her copies of the Quran or her prayer mat. She provides no evidence that the copies were discarded rather than lost, stolen or borrowed by another inmate, or misplaced. "When one must resort to inference, conjecture and speculation to explain events, the challenged practice is not of sufficient duration, frequency and consistency to constitute an actionable policy or custom." Id. at 920.

Even drawing reasonable inferences in her favor, Plaintiff has not adequately supported her assertion that the County had a persistent, widespread, and well-settled jail custom of "discarding Islamic inmates' Quran[s] and prayer mat[s] during discipline," TAC at 4, such that the custom

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[4] Plaintiff alleges that she heard that other inmates experienced similar events. See TAC at 4-5. She does not supply any declarations from these inmates or any other source. See Blair Foods, Inc. v. Ranchers Cotton Oil, 610 F.2d 665, 667 (9th Cir. 1980) (noting that hearsay evidence is inadmissible and may not be considered in deciding summary judgment motion).

had the "force of law." Monell, 436 U.S. at 691 (citation omitted); see also Meehan v. County of Los Angeles, 856 F.2d 102, 107 (9th Cir. 1988) (holding that two unconstitutional assaults occurring 3 months apart were insufficient to show custom or practice); contrast Oyenik v. Corizon Health Inc., 696 F. App'x 792, 794 (9th Cir. 2017) (reversing grant of summary judgment where plaintiff showed "at least a dozen instances" of delay in medical treatment within 1 year).

b. Restrictions on Use of Hijabs

Plaintiff challenges as a prohibition on the free exercise of religion the jail's prior policy prohibiting the use of hijabs.[5] See TAC at 7-8.

The Court applies the four Turner factors to Plaintiff's claim. The first question is whether there was a legitimate penological interest rationally related to the policy. According to the County, restrictions placed on the use of hijabs or makeshift hijabs are intended to prevent inmates from possessing and concealing contraband, like drugs and weapons. A rational nexus exists between the County's restrictions on hijabs and its legitimate safety concerns. See Standing Deer v. Carlson, 831 F.2d 1525, 1528 (9th Cir. 1987) (where

[5] Plaintiff also cites the Equal Protection Clause, alleging that other inmates could wear yarmulkes, rosaries, and prayer beads. See TAC at 8 (citing Ninth Circuit case law addressing Equal Protection Clause claims). In dismissing her second amended complaint, the Court warned Plaintiff that she continued to fail to state an equal protection claim and advised her that it would order service of a third amended complaint that was limited to her excessive force, free exercise, RLUIPA, and ADA claims. See Dkt. 19 at 20. In her Third Amended Complaint, she included headings corresponding to these limitations. The Court therefore ordered service of the TAC despite her continued reference to the Equal Protection Clause. To the extent she persists in such a claim, it should be dismissed for the reasons set out in the Court's orders dismissing earlier versions of her pleading. See Dkt. 19 at 16-17; Dkt. 7 at 21 (noting the significant difference between a rosary and a hijab).

inmates argued that headband had special religious significance for Native Americans, affirming grant of summary judgment where prison policy restricted use of hats or headgear in dining hall, because policy was logically connected to concerns of cleanliness, security, and safety, and inmates offered no evidence that concerns were illegitimate).

The second question is whether Plaintiff had "alternative means" to practice her religion or was "denied all means of religious expression." Ward v. Walsh, 1 F.3d 873, 877 (9th Cir. 1993). It is undisputed that Plaintiff had several other means of practicing her religion. She could keep a copy of the Quran in her cell, along with a prayer rug. She had frequent access to a chaplain. She was permitted to pray within her cell, as long as she did not use a T-shirt to cover her head. She "retained the ability to participate in other significant rituals and ceremonies" of her faith. Id. Thus, the second Turner factor also weighs in the County's favor.

Third, the Court must consider the "impact [the] accommodation . . . will have on guards and other inmates, and on the allocation of prison resources generally." Washington v. Harper, 494 U.S. 210, 225 (1990) (citation omitted). It is clear that permitting prisoners to wear hijabs at all times could have adverse effects on the jail, in that prisoners could conceal weapons or drugs in the hijabs. Plaintiff suggests that she would only use the hijab in her cell during prayer. See TAC at 4, 7. Even this however could negatively impact guards, inmates, and the jail generally. She states that she prays five times a day. See id. at 7. Guards walking by her cell might not be able to tell whether it was her or another inmate in the cell, and it is important for guards to identify inmates quickly and easily. Any guard or inmate who needed to interrupt her prayers would be unable to tell if she had a weapon or contraband concealed under the hijab. The third Turner factor, like the first two, weighs in the County's favor. See Standing Deer, 831 F.2d at 1529 (finding that even brief

delays caused by inspecting religious headgear in feeding line would give rise to other problems and adversely affect penological objectives).

Finally, the fourth Turner factor requires considering whether "there are ready alternatives to the prison's current policy that would accommodate [Plaintiff] at de minimis cost to the prison." Ward, 1 F.3d at 879. Plaintiff has not suggested any such alternatives. See Standing Deer, 831 F.2d at 1529 ("The inmates have not pointed to an obvious, easy alternative that fully accommodates their rights at de minimis cost to penological interests.").

Given the above, the Court recommends granting summary judgment on Plaintiff's free exercise claim regarding the jail's prior policy prohibiting hijabs. See Safouane v. Barnard, No. 00-621, 2003 WL 27385241, at *6 (W.D. Wash. Aug. 22, 2003) ("Accordingly, Defendants' motion for summary judgment on this claim should be granted because the policy that did not allow Sarah Safouane to wear her hijab in the jail is logically related to legitimate penological interests, and does not amount to a constitutional violation.").

C. RLUIPA Claim against the County

RLUIPA provides, in relevant part, that:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a). RLUIPA defines "religious exercise" as including "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." Id. § 2000cc–5(7)(A).

Government action imposes a substantial burden on a religious exercise for purposes of RLUIPA if it puts "substantial pressure on an adherent to modify his [or her] behavior and to violate his [or her] beliefs." Hartmann v. California Department of Corrections and Rehabilitation, 707 F.3d 1114, 1125 (9th Cir. 2013) (citation omitted). If a plaintiff makes the required showing, the burden shifts to the defendant to establish that, as applied to the plaintiff, the challenged action furthered a compelling governmental interest, and that the defendant used the least restrictive means to further that interest. See Holt v. Hobbs, 574 U.S. 352, 362-63 (2015).

The County argued at the hearing that Plaintiff had not shown a substantial burden, because her definition of a hijab is an article of clothing meant to cover her head and hair during prayer in her cell—a goal accomplished by a kufi cap—not to cover her neck and head in public. Plaintiff alleges that in Islam, "a woman must cover her head in order to perform the act of worship and perform her daily prayers." TAC at 7. Defendant would have the Court interpret Plaintiff's allegations strictly rather than liberally. She used her T-shirt as a substitute hijab, suggesting that the kufi cap did not meet her definition of a hijab. The Court therefore assumes without deciding that the policy substantially burdened her religious exercise.

The remaining questions are whether the policy furthered a compelling interest and was the least restrictive means of doing so. Prison security is "clearly" a compelling governmental interest. Warsoldier v. Woodford, 418 F.3d 989, 998 (9th Cir. 2005). Furthermore, the County has shown that its policy at the time was the least restrictive means of furthering that interest.

"'The least-restrictive-means standard is exceptionally demanding,' and it requires the government to 'sho[w] that it lacks other means of achieving its desired goal'" other than the challenged policy. Holt, 574 U.S. at 364 (quoting Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 686 (2014)). "[I]f a less

restrictive means is available for the Government to achieve its goals, the Government must use it." Id. (citation omitted).

The County has submitted a supplemental declaration averring that at the time of Plaintiff's incarceration (May 2015 through September 2017), a custody safe hijab—i.e., a tight-fitting, transparent hijab—was not available for procurement. See Dkt. 79 ¶ 9. The County did provide to male and female inmates, upon request, "kufi caps," which are large but tight-fitting knit caps that cover the head down to the ears and neck. Id. ¶ 10; see also Dkt. 60-1 at 40 (photograph of kufi cap). After Plaintiff was released, a custody safe hijab became available and is now provided to inmates on request. See Dkt. 79 ¶ 11. Plaintiff does not counter this evidence, except to speculate that there "has not been any . . . so-called custody safe hijab that became available after Plaintiff left custody." Dkt. 80 at 5. Thus, at the time of Plaintiff's incarceration, the County's policy of supplying prisoners with kufi caps was the least restrictive means of furthering its compelling interest in prison security. Summary judgment is therefore warranted on Plaintiff's RLUIPA claim.

D. ADA Claim against the County

1. Law

Title II of the Americans with Disabilities Act ("ADA") provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The ADA defines a disability as: "(A) a physical or mental impairment that substantially limits one or more major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." Id. § 12102(1).

To state a Title II claim, a plaintiff must allege: (1) that she is an individual with a disability; (2) that she is otherwise qualified to participate in

or receive the benefit of some public entity's services, programs, or activities; (3) that she was either excluded from participation in or denied the benefits of the public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and (4) that such exclusion, denial of benefits, or discrimination was by reason of her disability. See Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002). Title II covers inmates in state prisons and county jails. See Penn. Dept. of Corrections v. Yeskey, 524 U.S. 206, 208-10 (1998) (noting that prisons provide inmates with many activities and vocational programs that could be covered by ADA); Pierce v. County of Orange, 526 F.3d 1190, 1214 (9th Cir. 2008) ("It is undisputed that Title II applies to the Orange County jails' services, programs, and activities for detainees.").

2. Analysis

The Court need not determine whether Plaintiff's allergies qualify as a disability, because the record is clear that she was not otherwise qualified to re-enter that program in the relevant periods.

The County concedes that it knew of Plaintiff's allergies as of 2013. See SUF 5. The County admitted Plaintiff to the EBI program in July 2015 despite this knowledge. Plaintiff presents no evidence to support her allegation that it was "EBI policy" to prevent inmates with "severe food allergies" from participating in EBI. TAC at 5. Given the County's initial acceptance of Plaintiff into the program, the Court concludes that no such policy existed.

As for the County's denying Plaintiff reentry into the program, Plaintiff first alleges that she was denied entry in or around November 2015 and January 2016. Prison records reflect that she had three disciplinary write-ups in the 90 days prior to November 2, 2015, including two in the 30 days prior. See Dkt. 60-1 at 13-17. These records further reflect that she had a writeup on January 7, 2016, for a "major" infraction, as well as two writeups in the 90

days before that (including a "major" infraction). Id. Thus, at whatever point in January she applied for reentry, she would not have been eligible for the EBI program.

The evidence also reflects that Plaintiff was transferred out of her EBI module in July 2016 not because of EBI policies regarding her diet, but because prison officials determined that she was not "ready" for EBI given her "negative attitude" when her special diet was not personally delivered to her. Dkt. 60-1 at 13. A July 2016 write-up noted that, when Plaintiff exhibited a "negative attitude" in complaining that her special diet had not been given to her, Plaintiff was not ready "to be in EBI and would be better off housed in general population." Id. Plaintiff herself admits that she "was removed from the EBI module after a deputy refused to hand over her special diet, which was specifically ordered to be delivered to her in person upon returning from the medical facility." Opposition at 10.

Plaintiff does not specifically allege that she reapplied for the EBI program in 2017. She did file a grievance on April 20, 2017, however, alleging that Sherman had told her that she was ineligible for reentry due to her diet. Plaintiff received two writeups in February 2017 (one "major) and two in mid-April 2017 before she filed her grievance. See Dkt. 60-1 at 4-8. Even drawing justifiable inferences in Plaintiff's favor, no genuine issue of a material fact exists as to her eligibility for the program in that period.

Given that she was never eligible for reentry to the EBI program in the relevant periods, the Court recommends granting summary judgment on Plaintiff's ADA claim. See Smith v. Roberts, No. 16-04764, 2017 WL 4236922, at *5-6 (N.D. Cal. Sept. 25, 2017) (granting summary judgment on ADA claim where inmate plaintiff was "not otherwise qualified to participate in the job program"), aff'd, 749 F. App'x 586 (9th Cir. 2019).

E. Qualified Immunity

Because the Court concludes that Deputy Garnica did not use excessive force in removing Plaintiff's handcuffs, it does not consider whether he violated rights that were clearly established. See Pearson v. Callahan, 555 U.S. 223, 242 (2009).

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) accepting this Report and Recommendation; (2) granting Defendants' Motion for Summary Judgment; and (3) dismissing the TAC with prejudice.

Date: September 8, 2021

DOUGLAS F. McCORMICK
United States Magistrate Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LILY CASSANDRA ALPHONSIS, Plaintiff, v. CENTURY REGIONAL DETENTION FACILITY, et al., Defendants.	Case No. CV 17-03650-ODW (DFM) Order Accepting Report and Recommendation of United States Magistrate Judge

Pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings and all the records and files herein, along with the Report and Recommendation of the assigned United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report and Recommendation to which objections have been made. The Court accepts the findings, conclusions, and recommendations of the United States Magistrate Judge.

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IT IS THEREFORE ORDERED that Defendants' motion for summary judgment be GRANTED. Judgment shall be entered dismissing the Third Amended Complaint with prejudice

Date: October 7, 2021

OTIS D. WRIGHT II
United States District Judge