Appendix* 2(a).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7360

MALCOLM MUHAMMAD,

Plaintiff - Appellant,

v.

WILLIAM E. JACKSON, Chaplain; JONES, Chaplain, Chaplain at SISP,

Defendants - Appellees,

and

WILLIAM JARRETT, Assistant Warden; GREGORY L. HOLLOWAY, Eastern Regional Administrator; R. WOODSON, Regional Ombudsmen; QUEEN GOODWYN, Food Service Manager; S. TURNER, Food Service Manager; E. WITT, Grievance Coordinator; TESEA HARVEY, Statewide Ombudsmen Manager,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, Senior District Judge. (1:19-cv-00746-LO-JFA)

Submitted: May 30, 2023 Decided: June 8, 2023

Before AGEE, THACKER, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Malcolm Muhammad, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Malcolm Muhammad appeals the district court's order granting summary judgment to Appellees and dismissing Muhammad's 42 U.S.C. § 1983 action. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *See Muhammad v. Jackson*, No. 1:19-cv-00746-LO-JFA (E.D. Va. Aug. 24, 2021). 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 1(a).

FILED: July 21, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7360
(1:19-cv-00746-LO-JFA)

MALCOLM MUHAMMAD

Plaintiff - Appellant

v.

WILLIAM E. JACKSON, Chaplain; JONES, Chaplain, Chaplain at SISP

Defendants - Appellees

and

WILLIAM JARRETT, Assistant Warden; GREGORY L. HOLLOWAY, Eastern Regional Administrator; R. WOODSON, Regional Ombudsmen; QUEEN GOODWYN, Food Service Manager; S. TURNER, Food Service Manager; E. WITT, Grievance Coordinator; TESEA HARVEY, Statewide Ombudsmen Manager

Defendants

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 Agee, Judge Thacker, and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk

S (a)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Malcolm Muhammad, **Plaintiff,**	)	
v.	)	**1:19cv746 (LO/JFA)**
Williams Jarrett, et al., **Defendants.**	)	

MEMORANDUM OPINION

Defendants William Jackson and Patrick Jones, the former and current chaplains, respectively, at Sussex I State Prison ("Sussex I" or "the prison") move for summary judgment on the remaining claims against them in this civil-rights suit claiming, as relevant here, that the chaplains violated plaintiff Malcolm Muhammad's right to exercise his religion freely while incarcerated at Sussex I. [Dkt. No. 81]. Muhammad, who is proceeding pro se, has received the notice required under Roseboro v. Garrison, 528 F.2d 309 (8th Cir. 1975), and Local Civil Rule 7(K) [Dkt. No. 83], and he opposes defendants' motion [Dkt. Nos. 86–88]. Because the undisputed record establishes that neither Jackson nor Jones violated Muhammad's rights under the Free Exercise Clause of the First Amendment, defendants' motion for summary judgment will be granted.[1]

I. Procedural History

Muhammad, a member of the Nation of Islam ("NOI"), brought claims under the First, Eighth, and Fourteenth Amendments, and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against Jackson, Jones, and seven others who worked at Sussex I or within the

[1] Before filing his opposition to defendants' motion for summary judgment, Muhammad moved for an extension of time. [Dkt. No. 85]. The motion will be granted nunc pro tunc through an order that will issue alongside this Memorandum Opinion.

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Virginia Department of Corrections ("VDOC"). [Dkt. No. 7, Operative Compl.]. Defendants moved to dismiss the complaint. [Dkt. Nos. 44, 66]. The Court granted the motions in part, disposing of all of plaintiff's claims except for the First Amendment claims seeking monetary damages against Jackson and Jones in their individual capacities. [Dkt. No. 74]. Defendants now move for summary judgment on the surviving claims. [Dkt. Nos. 81–82].

II. Summary Judgment Evidence

Muhammad is a member of the Nation of Islam. [Dkt. No. 88, Muhammad Summary J. Aff. ¶ 3]. The following facts, viewed in the light most favorable to plaintiff, the nonmoving party, see Evans v. Int'l Paper Co., 936 F.3d 183, 191 (4th Cir. 2019), relate to Muhammad's claims that his First Amendment right to exercise his religion freely was violated in the following three ways: (1) Jackson denied Muhammad access to NOI religious videos; (2) Jackson failed to provide a service and feast meal for the NOI holiday of Savior's Day in 2018; and (3) Jones failed to provide a service and feast meal for Savior's Day in 2019. Disputes of fact are noted where present.

A) Evidence related to NOI Videos

Muhammad avers that he submitted to former-chaplain Jackson requests for NOI videos related to black history month and Savior's day, and he has put into the record grievances he filed beginning in November 2017 purporting to show his efforts to obtain those videos. [Dkt. No. 88, Muhammad Summary J. Aff. ¶ 4; Dkt. No. 51]. Jackson, who was the chaplain at Sussex I from March 1, 2002 to July 31, 2018, attests by affidavit that "Muhammad had requested videos that were not on file in the Chaplain's office, and I informed him of this." [Jackson Aff. ¶¶ 1, 4]. Jackson adds that "[i]f a requested video were on file in the Chaplain's office, it would have been made available for Muhammad to view." [Id. ¶ 4].

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B) Evidence Related to Savior's Day Programming

Muhammad authored an affidavit in which he attests that observing Savior's Day involves a prayer service, during which a portion of the Holy Quran is read, followed by a feast group meal. [Muhammad Summary J. Aff. ¶ 6.]. He has also submitted affidavits from two other NOI inmates housed at Sussex I during the period relevant to this lawsuit, each of whom attest that for Savior's Day in 2018 and 2019, the NOI inmates were not provided with a prayer service or celebratory feast meal. [Dkt. No. 51, Myles Aff. ¶ 3 & Carter Aff. ¶ 5].

Jackson has submitted as evidence (1) an affidavit he authored; (2) a copy of VDOC Operating Procedure ("OP") § 841.3 (in effect on Savior's Day 2018), which governs inmate religious programs; (3) the Master Religious Calendar in effect on Savior's Day 2018; and (4) a memorandum from Chief of Corrections Operations A. David Robinson related to first-quarter 2018 religious holidays. [Jackson Aff. Enclosure A, B, C]. OP § 841.3 specifies that "although each offender has the right to worship in their chosen manner, levels of offender participation and availability of facility resources and religious leaders do not permit separate services for every possible form of worship at every facility." OP § 841.3(IV)(C)(1). The provision further directs the Chief of Corrections Operations to issue a memorandum "as each holy day/season approaches announcing the eligible religions and dates for observance," using the Master Religious Calendar as a guide. Id. § 841.3(IV)(C)(2). In Robinson's December 5, 2017, memorandum sent to VDOC wardens and superintendents, he communicates that Savior's Day is approved for NOI inmates to observe on February 26, 2018 and directs them to the Master Religious Calendar to find "[s]pecific information concerning the provision of meals, fasting, services, and any work restrictions." [Jackson Aff. Enclosure C]. The Master Religious Calendar states that for the Savior's Day holiday, NOI inmates are authorized to have a group meal (lunch

or dinner from the regular menu without pork) separate from other general population and a special meeting or observance in conjunction with, or separate from, that meal. [Jackson Aff. Enclosure B].

In his affidavit, former-chaplain Jackson attests that his sole responsibility for organizing Savior's Day activities was to place NOI inmate names on the "Master Pass List." [Jackson Aff. ¶ 6]. The Master Pass List is a list of inmates that have signed up for regular, ongoing activities for a specified religion. VDOC OP § 841.3(IV)(A)(2)(b). Jackson further avers that he was not directly involved in planning the group meal; rather, he attests that food service and security staff would have been responsible for organizing the meal. [Jackson Aff. ¶ 6]. He adds that he did not have the authority to require other accommodations to be made for NOI inmates to celebrate Savior's Day. [Id.]. Finally, he attests that he did not personally observe an NOI group meal for Savior's Day in 2018, but "I have no reason to believe that this accommodation was not provided." [Id.].

Jones, who began serving as a chaplain at Sussex I on September 4, 2018, also submitted an affidavit, the memorandum from Chief of Corrections Operations Robinson related to the holy day/season for first-quarter 2019, and that year's Master Religious Calendar. [Jones Aff. Enclosures A & B]. Robinson's December 7, 2018, memorandum broadcasts that Savior's Day is to be observed on February 26, 2019, and directs the VDOC wardens and superintendent to the Master Religious Calendar for information about meals, fasting, services, and work restrictions. [Jones Enclosure B]. The Master Religious Calendar, again, states that NOI observants are authorized to have a group meal (lunch or dinner from the regular menu without pork) separate from general population inmates and a special meeting or observance in conjunction with, or separate from, that meal. [Id.].

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Jones also authored an affidavit attesting to how Savior's Day programming is scheduled at Sussex I. Typically, he avers, a VDOC staff member enters into the VDOC inmate case management system, known as CORIS, all of the parameters for the program, after which the chaplain would enter the NOI inmates' names for security to cross-check against the Master Pass List. [Jones Aff. ¶¶ 6–7]. He further avers that, "[f]or reasons unknown to me, the Savior's Day program was not set up in CORIS in 2019," and "[t]o the best of my knowledge, the Savior's Day program was omitted from the calendar due to inadvertence." [Id. ¶ 7]. Jones offered Muhammad a "make-up service for Savior's Day as soon as it was discovered that accommodations had not been made for gathering on February 26, 2019." [Id. ¶ 8]. Muhammad avers that he declined the make-up celebration in 2019 because "[n]o member of the Nation of Islam can add or change the date . . . to be celebrated for another day." [Muhammad Summary J. Aff. ¶¶ 5, 12].

III. Standard of Review

The Court will grant a motion for 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." Fed. R. Civ. P. 56(a). "[T]he relevant inquiry is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Gordon v. Schilling, 937 F.3d 348, 356 (4th Cir. 2019) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986)).

IV. Analysis

A. Claim (1): NOI Videos

Defendants first argue that Muhammad has not put forth evidence demonstrating that his inability to view the NOI videos amounted to a substantial burden on his religious practice, and thus, they are entitled to judgment as a matter of law.

The Court agrees. As a threshold matter, an inmate pursuing a claim under the First Amendment's Free Exercise Clause must put forth evidence demonstrating that "(1) he holds a sincere religious belief; and (2) a prison practice or policy places a substantial burden on his ability to practice his religion." Wilcox v. Brown, 877 F.3d 161, 168 (4th Cir. 2017). A substantial burden in placed on an inmate when "a state or local government, through act or omission, puts substantial pressure on an adherent to modify his behavior and to violate his beliefs." Bethel World Outreach Ministries v. Montgomery Cnty. Council, 706 F.3d 548, 555 (4th Cir. 2013) (internal quotation marks, citation, and alteration omitted). Muhammad has not demonstrated, let alone even explained, how he purportedly was substantially pressured to modify his behavior and violate his religious beliefs when he could not view the requested NOI videos. At most, he has divulged that the videos are related to black history month and Savior's Day, but he makes no mention of their significance in exercising his faith. "Summary judgment is the proverbial put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." Weaver v. Champion Petfoods USA Inc., 3 F.4th 927, 938 (7th Cir. 2021) (internal citation omitted). Because Muhammad has not submitted any evidence from which a factfinder could accept that Jackson placed a substantial burden on Muhammad's religious exercise, defendants motion for summary judgment on the NOI video claim will be granted. Krieger v. Brown, 496 F. App'x 322, 326 (4th

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Cir. 2012) (opining that district court did not err in concluding that prisoner-plaintiff failed to produce sufficient evidence to support claim that prison inflicted substantial burden on religious exercise when plaintiff made only "blanket assertion" that requested religious items denied "were 'necessary' to perform 'well-established rituals.'").

B) Claims (2) & (3): Savior's Day Accommodations in 2018 and 2019

Defendants next argue that the undisputed facts do not demonstrate that either Jackson or Jones were personally involved in arranging the Savior's Day programming and, thus, even assuming arguendo that Muhammad's First Amendment right to exercise his religion freely had been violated, defendants cannot be held accountable under § 1983. In support of their argument, defendants first point to Jackson's testimony in which he avers that he was not in charge of Savior's Day programming beyond entering the names of NOI inmates into the Master Pass List. Second, they highlight Jones's testimony attesting that he does not know why the holiday was not set up in CORIS in 2019.

In § 1983 actions "liability will only lie where it is affirmatively shown that the official charged acted personally in the deprivation of the plaintiffs' rights," Wilcox, 877 F.3d at 170, and Muhammad has not put forth evidence that disputes defendants' sworn testimony. In particular, Muhammad had not submitted any evidence to directly contradict Jackson's testimony that he was not responsible for organizing any Savior's Day programming outside of entering names into the Master Pass List and Jones's testimony that he was not involved with the CORIS mishap. Instead, Muhammad attempts to create a material dispute of fact by pointing to VDOC operating procedures that detail job duties of institutional chaplains. One provision states that chaplains "shall serve as an advocate for equitable accommodation of all religious faiths." VDOC OP § 841.3(IV)(A)(6) (effective 2018 and 2019). Another provision Muhammad cites

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states that "Chaplains maintain oversight and scheduling ability for day to day operations of religious groups within their facilities." Id. § 841.3(IV)(A)(6)(g)(i) (effective 2018 and 2019). In Muhammad's view, a reasonable jury could conclude that these provisions cast doubt on the chaplains' testimony that they were not involved in facilitating the Savior's Day programming in 2018 and 2019 and accept his version of events. But even assuming the chaplains, in practice, were not personally handling all the responsibilities envisioned by OP § 841.3, there is no evidence in the record to establish that either defendant acted intentionally to deprive Muhammad of his ability to celebrate Savior's Day. And "only intentional conduct is actionable under the Free Exercise Clause." Lovelace v. Lee, 472 F.3d 174, 201 (4th Cir. 2006). At most, an inference can be raised that the chaplains were negligently performing their job duties. But "negligent acts by officials causing unintended denials of religious rights do not violate the Free Exercise Clause." Id. Therefore, summary judgment in defendants' favor is warranted for Muhammad's claims related to Savior's Day accommodations in 2018 and 2019.

V. Conclusion

For the reasons outlined above, and through an Order that will issue alongside this Memorandum Opinion, the defendants' motion for summary judgment [Dkt. No. 81] will be granted.

The Clerk is directed to send a copy of this Order to plaintiff and to counsel of record for defendants.

Entered this 23rd day of August 2021.

Alexandria, Virginia

/s/

Liam O'Grady
United States District Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Malcolm Muhammad, **Plaintiff,**	)	
v.	)	**1:19cv746 (LO/JFA)**
Williams Jarrett, et al., Defendants.	)	

ORDER

For the reasons stated in the accompanying Memorandum Opinion, defendants' motion for summary judgment [Dkt. No. 81] is GRANTED; and it is further

ORDERED that plaintiff's motion for an extension of time to respond to defendants' motion for summary judgment [Dkt. No. 85] be and is GRANTED nunc pro tunc; and it is further

ORDERED that this civil action be and is DISMISSED.

To appeal this decision, plaintiff must file a Notice of Appeal ("NOA") with the Clerk's Office within thirty (30) days of the date of this Order, including in the NOA the date of the Order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the appellate court. Failure to file a timely NOA waives the right to appeal this Order.

The Clerk is directed, pursuant to Federal Rule of Civil Procedure 58, to enter final judgment in favor defendants; to send a copy of this Order to plaintiff and to counsel of record for defendants; and to close this civil action.

Entered this 23rd day of August 2021.

Alexandria, Virginia

/s/ LOG
Liam O'Grady
United States District Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Malcolm Muhammad,	)	
Plaintiff,	)	
	)	
v.	)	**1:19cv746 (LO/JFA)**
	)	
William Jarrett, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION

Under consideration is a motion to dismiss filed by defendants William Jarrett, Gregory L. Holloway, R. Woodson, Chaplain William Jackson, Chaplain Patrick Jones, E. Witt, and Teresa Harvey and joined by defendants Queen Goodwyn and Stacie Turner. See Dkt. Nos. 44-45, 66-68.[1] Defendants' motion is filed under Rule 12(b)(6) of the Federal Rules of Civil Procedure and argues that the allegations in plaintiff's amended complaint [Dkt. No. 7] are insufficient to support his claims for relief under the First, Eighth, and Fourteenth Amendments as well as the Religious Land Use and Institutionalized Persons Act ("RLUIPA").[2] Plaintiff was provided the notice required by Local Rule 7(K) and the opportunity to file responsive materials pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and opposes defendants' motion. See Dkt. Nos. 50, 70.

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[1] Defendants Goodwyn and Turner have filed a motion to dismiss of their own in which they claim not to have acted under the color of state law and additionally state that "they remain entitled to dismissal for the same reasons as Co-Defendants." See Dkt. No. 68. Accordingly, they have "adopt[ed] and incorporate[d] by reference the Co-Defendants' Motion and supporting Memorandum as it relates to the claims against them." Id.

[2] Defendants, however, simultaneously appear to concede that at least some claims raised against defendants Jackson and Jones will survive the instant motion. See Dkt. No. 45 (requesting dismissal only of claims for injunctive relief against defendants Jackson and Jones as well as claims raised against them in their official capacity).

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I. Standard of Review

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint; it does not resolve contests surrounding facts, the merits of a claim, or the applicability of defenses.[3] Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). To survive a 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible if "the factual content of a complaint allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Nemer Chevrolet, Ltd. v. Consumeraffairs.com Inc., 591 F.3d 250, 256 (4th Cir. 2009) (quoting Iqbal, 556 U.S. at 678). A plaintiff must allege facts in support of each element of each claim he or she raises; "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient. Iqbal, 556 U.S. at 678.

II. Background

It bears noting that rearticulating the allegations in the amended complaint was made difficult by plaintiff's use of stilted language and his decision to state facts only by alleging the content of informal complaints and grievances he claims to have filed. Indeed, as defendants note, plaintiff "makes no direct allegations regarding the substance of his claims." See Dkt. No. 45, n.4. What follows, then, is the Court's best attempt to construe the assertions plaintiff claims

[3] Plaintiff appears to misunderstand the basis of defendants' Rule 12(b)(6) motion. Because such a motion "tests the sufficiency of a complaint," see Martin, 980 F.2d at 952, the mountain of documentary evidence plaintiff has submitted in opposition to defendants' motion is irrelevant to the adjudication of the matter at hand.

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to have made in grievances as substantive allegations of fact. So construed, the following allegations are assumed true for the purpose of ruling on defendants' motion to dismiss.

Plaintiff Malcolm Muhammad is an adherent of the Nation of Islam ("NOI") faith who was incarcerated at Sussex I State Prison ("SISP") at all times relevant to this suit. Dkt. No. 7 ("Am. Compl.") ¶¶ 4, 22. Plaintiff was transferred to Keen Mountain Correctional Center ("KMCC") in February 2020. See Dkt. No. 22.[4]

Allegations Regarding Nation of Islam Videotapes

On September 24, 2017, plaintiff sent a request to defendant Jackson asking to be provided approved NOI "video tapes." Dkt. No. 7 ("Am. Compl.") ¶ 1. On September 27, he filed an informal complaint requesting the same. Id. Jackson responded to plaintiff's requests, stating, "There are no approved NOI videos for the NOI program." Id. Plaintiff grieved this response, and his grievance was denied on October 11; the denial stated that plaintiff had not been affected personally. Id. This decision was upheld on appeal. Id. at ¶ 3.

Plaintiff filed another request on October 8, inquiring what had happened to NOI videos "that was approved in [Jackson's] office?" Id. at ¶ 2. Jackson responded, stating on this occasion, "Now there are limited videos for the NOI." Id. Plaintiff filed yet another request on October 12, to which Jackson responded that there were no "new" videos for NOI offenders. Id.

On November 4, 2017, plaintiff filed yet another grievance regarding NOI videos. Id. Defendant Witt responded to the grievance, asking plaintiff to specify the dates on which his requests for the videos were denied. Id. Plaintiff replied with the dates requested, and Witt responded on November 13 that the period for filing his grievance had expired. Id. Plaintiff

[4] The Court takes judicial notice of plaintiff's institutional transfer. See Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007) (noting that a court may consider matters subject to judicial notice when considering a motion to dismiss under Rule 12(b)(6)).

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received the grievance response on November 17 and appealed the decision one day later. Id. On November 28, plaintiff received a denial of his appeal, accompanied by a response which stated that plaintiff had not acted within the five-day appeal period. Id.

On January 20, 2018, plaintiff filed another request for NOI videos. Id. at ¶ 4. Jackson responded on January 26, stating that he was not in possession of any approved videos. Id. Plaintiff filed a grievance on February 1; defendant Witt denied the grievance on February 5 as an improper request for service. Id. Plaintiff appealed the decision, but the decision was upheld on appeal. Id.

On February 24, 2018, plaintiff submitted yet another request for NOI videos relevant to Black History Month. Id. at ¶ 8. Jackson responded on March 6 that his office did not possess any approved NOI videos. Id. Plaintiff grieved this response; the grievance was denied on March 14 by defendant Witt, who stated that the issue did not affect plaintiff personally and found that plaintiff had not actually been denied the videos because Jackson did not possess the videos in the first instance. Id. Plaintiff appealed, but the decision was again upheld. Id.

Allegations Regarding 2018 Savior's Day Accommodations

On February 26, 2018, plaintiff complained to defendant Jackson that he had not been allowed to celebrate "Savior's Day," an NOI holiday. Id. at ¶ 5. Jackson responded on March 6, stating that a memo had been sent to the facility regarding the holiday. Id. Muhammad filed a grievance on the issue, which defendant Witt responded to on March 14, stating that plaintiff was not entitled to a celebratory Savior's Day meal that was in any way different from his regular meals. Id. Plaintiff appealed the decision, and, on March 21, the regional officer overturned Witt's response and referred the grievance to the Warden's office. Id. at ¶¶ 5-6. Defendant Jarrett responded, stating that there was no evidence plaintiff had not been served a celebratory

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meal but also finding that no celebration had occurred. Id. at ¶ 6. Plaintiff appealed the decision, which defendant Holloway upheld on May 8. Id.

The same day plaintiff initially complained to defendant Jackson regarding Savior's Day, he filed an informal complaint to defendants Goodwyn and Turner, who did not respond to the complaint in the timeline envisioned by Virginia Department of Corrections ("VDOC") policy. Id. at ¶ 7. Plaintiff grieved the non-response on March 20. The grievance was denied as duplicative of the grievance filed with respect to defendant Jackson's Savior's Day response. Id. Plaintiff states that defendants Jarrett and Holloway later responded to the complaint, but plaintiff does not allege the manner in which they did so. Id.

Plaintiff filed another informal complaint with defendant Jackson on May 30, 2018, asking him to investigate why no Savior's Day feast had taken place that year. Id. at ¶ 9. Jackson responded on June 14, stating that he had delivered memos regarding Savior's Day and could not determine why no observance had actually occurred. Id. Plaintiff appealed the decision. Witt responded on June 25, stating that the time period for filing had expired. Id. Woodson upheld the determination on appeal. Id.

Allegations Regarding 2019 Savior's Day Accommodations

On February 26, 2019, plaintiff filed two informal complaints: one stating that he was again denied the ability to celebrate Savior's Day, and another stating that he was denied a "regular feast meal after the prayer service of Master Fard Muhammad's Birthday." Id. at ¶ 12. He wrote to Witt and another unnamed official requesting grievance receipts, which he did not receive. Id. He then wrote a letter to the VDOC regional office indicating he had not received the receipts he had requested. Id. at ¶ 13. Woodson responded, instructing plaintiff to file another informal complaint. Id. at ¶ 14.

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On March 5, plaintiff filed two or three[5] more informal complaints regarding the same issues he complained of on February 26. Id. at ¶ 15. These complaints were directed to defendants Jones, Goodwyn, and Turner. Id. at ¶¶ 15-16. Jones responded to one complaint, stating that "he would establish another Savior Day Celebration on another day." Id. at ¶ 15. Plaintiff grieved the response. Defendant Witt denied the grievance, finding that it raised "more than one issue."[6] Id. Defendants Goodwyn and Turner did not respond to the informal complaints directed at them. Id. at ¶ 16. Plaintiff grieved the non-response, and Witt denied the grievance. Id. Plaintiff has written letters to the VDOC regional office and claims that defendant Harvey has merely "turn[ed] the blind eye" to plaintiff's allegations. Id.

On March 29, plaintiff appealed Witt's denial of his grievances concerning the 2019 Savior's Day, along with her earlier denial of grievance receipts, to the regional office. Woodson rejected his appeals, stating that he needed to follow informal complaint procedures. Id. at ¶¶ 17, 19.

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[5] It is unclear whether plaintiff filed two or three complaints on this date due to the imprecise nature of plaintiff's language. In paragraph fifteen, plaintiff claims to have filed two informal complaints on March 5, complaints regarding the two issues he grieved on February 26. See Am. Compl. ¶ 15. In paragraph sixteen, he claims to have "also filed on 03/05/19 a second informal complaint to defendants Goodwyn and Turner." Id. at ¶ 16. It is therefore unclear whether the "second informal complaint" directed to Goodwyn and Turner was the second complaint referenced in paragraph fifteen or if plaintiff intended to state that he filed a third complaint on that date that happened to be the second complaint directed to Goodwyn and Turner. This unclear description is emblematic of the complaint as a whole, which is difficult to interpret and organized neither chronologically nor by claim.

[6] Plaintiff characterizes this action as retaliatory in nature. Because this constitutes a legal conclusion, it is not included in the list of facts on which the motion to dismiss will be adjudicated. See Papasan v. Allain, 478 U.S. 265, 286 (1986) (In adjudicating a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation.").

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Plaintiff additionally claims to have made at unspecified times "several complaints to defendant Turner" regarding an alleged denial of his common fare religious diet. Id. at ¶ 18. He specifically states, verbatim, as follows:

> Plaintiff was being denied his common fare religious diet fruits and juices due to Food Service place these items within a food cart with "plastic-bags wrapped around the food carts doors for security locks and when the food carts are pushed to the building by offenders, the fruits and juices are taken from the carts and when officials request food service for these items, food service would not allow any more fruits or juices pass out for the missing items, which imposes a substantial burden on plaintiff religious diet and free exercise of religion

Id. at ¶ 18. Turner apparently responded to this complaint on March 23, 2019, stating that "no special date" was set up for the Savior's Day meal. Id. at ¶ 20.

Allegations Regarding Grievances and Retaliation

On December 19, 2018, plaintiff filed an informal complaint, alleging that Witt's responses to his grievances were retaliatory in nature. Id. at ¶ 10. Witt responded, stating that plaintiff had not explained how he was being retaliated against and informed plaintiff he could appeal the decision. Id. Plaintiff did appeal, but Witt's decision was upheld by Woodson. Id.

On January 22, 2019, plaintiff filed a grievance stating that Witt had "falsified" and changed what he had written in an informal complaint. Id. at ¶ 11. Witt responded, stating that the words she used "may not have been the exact words you wrote down." Id. Plaintiff filed a grievance and appealed the denial, but, on February 19, 2019, Woodson upheld the decision, finding that plaintiff had suffered no personal loss or harm. Id.

Plaintiff has on more than one unspecified date written letters to the VDOC regional office and to defendant Harvey, complaining of Witt and Woodson's handling of his grievances. Despite these letters, no corrective action has been taken. Id. at ¶¶ 16, 21.

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III. Analysis

Plaintiff's list of claims is disorganized and separates issues that are logically combined. The Court interprets the complaint as seeking relief on the four following bases:

1. Defendants Jackson, Woodson, and Witt failed to provide plaintiff with NOI videos, denying plaintiff the ability to practice his religion, thereby violating the First and Fourteenth Amendments in addition to RLUIPA. Am. Compl. ¶¶ 23, 25.

2. Defendants Goodwyn, Turner, Jackson, Jarrett, and Holloway failed to provide a feast meal and other accommodations for the NOI holiday of Savior's Day in 2018, thereby violating the First and Fourteenth Amendments in addition to RLUIPA. Am. Compl. ¶ 24.

3. Defendants Jones, Goodwyn, and Turner failed provide a feast meal for the NOI holiday of Savior's Day in 2019 and failed to meet plaintiff's religious dietary needs by failing to secure food carts, thereby violating the First and Fourteenth Amendments as well as RLUIPA. Am. Compl. ¶ 28.

4. Defendant Witt retaliated against plaintiff for filing grievances, acts which defendants Woodson and Harvey failed to correct, thereby violating the First, Eighth, and Fourteenth Amendments. Am. Compl. ¶¶ 26, 27.

A. Limitation of Remedies

Defendants begin their analysis by arguing that plaintiff is foreclosed from some of the relief he seeks in this action. Defendants are correct. For the reasons explained below, in this action, plaintiff is limited to the provision of monetary relief from defendants sued in their individual capacities.

1. Official and Individual Capacity Claims

Defendants first argue that plaintiff is not entitled to any monetary damages from defendants to the extent he seeks to sue them in their official capacities. They additionally argue that plaintiff is not entitled to any injunctive relief from defendants *except* to the extent he sues

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them in their official capacities. See Dkt. No. 45. Plaintiff, unsurprisingly, takes an adverse position.

Plaintiff's arguments fall flat, for it is well established that "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office" and is "no different from a suit against the State itself." Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). Accordingly, the Eleventh Amendment bars plaintiff's claims for monetary damages against defendants in their official capacities. Cf. Fauconier v. Clarke, 966 F.3d 265, 279-280 (4th Cir. 2020) (affirming district court dismissal of claims for money damages raised against state employees in official capacities).

It is equally clear that defendants are not subject to suit under § 1983 for injunctive or declaratory relief in their individual capacities. See Brown v. Montoya, 662 F.3d 1152, 1161 n. 5 (10th Cir. 2011) ("Section 1983 plaintiffs may sue individual-capacity defendants only for money damages and official-capacity defendants only for injunctive relief."); Greenawalt v. Ind. Dep't of Corr., 397 F.3d 587, 589 (7th Cir. 2005) (noting that while the defense of official immunity is applicable only to liability for damages, section 1983 does not permit injunctive relief against state officials sued in their individual capacities).

2. RLUIPA

Citing Rendelman v. Rouse, 569 F.3d 182, 189 (4th Cir. 2009), and Sossaman v. Texas, 563 U.S. 277, 285-86 (2011), defendants next assert that plaintiff is not entitled to any monetary relief for his RLUIPA claims. Defendants' position is correct. It is noted, however, that these cases interpreted RLUIPA as enacted pursuant to the Constitution's Spending Clause and explicitly declined to assess whether individual capacity claims for monetary damages would be permissible if assessed under the subsection of RLUIPA which invokes the language of the

Commerce Clause. See 42 U.S.C. § 2000cc-1(b) (RLUIPA applies whenever "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.").

Reading Rendelman as leaving individual capacity damage claims potentially available, plaintiff baldly asserts that "defendants' actions violated RLUIPA when it affected interstate commerce," entitling him to collect monetary damages from defendants in their individual capacities. See Dkt. No. 50, pp. 10-11. Unfortunately for plaintiff, his complaint is bereft of allegations that would support any inference of interstate commercial impact, and the conclusory statement in his opposition is too little and too late to salvage the claim. See Hooker v. Disbrow, No. 1:16cv1588, 2017 WL 1377696, at *4 (E.D. Va. Apr. 13, 2017) (A district court need not consider "new allegations or new facts" that were available to the plaintiff when it filed the complaint but were only introduced "in an opposition to a defendants' motion to dismiss.") (citing Barclay White Skanska, Inc. v. Battelle Mem'l Inst., 262 F. App'x 556, 563 (4th Cir. 2008)). Because plaintiff has not satisfactorily alleged that he would even abstractly be entitled to such relief, this Court elects to mirror the Fourth Circuit in Rendelman, declining to assess whether RLUIPA, analyzed under the Commerce Clause, would authorize individual capacity damages claims.

In light of the above, it is clear that plaintiff is limited to the receipt of injunctive or declaratory relief with respect to his RLUIPA claims.

3. Injunctive Relief, Declaratory Relief, and Mootness

Defendants next assert that plaintiff's requested injunctive relief—the provision of "security locks on food carts" at SISP—is not tailored to the claims he asserts and is, in any respect, moot. Opposing the argument, plaintiff states without any supporting argument that the

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relief he seeks *is*, in fact, appropriately tailored to his claims. See Dkt. No. 50, p. 12. The Court, however, needs not consider the relationship between plaintiff's claims and his requested injunctive relief because defendants are correct that plaintiff's transfer from SISP to KMCC has rendered his claims for injunctive and declaratory relief moot. See Incumaa v. Ozmint, 507 F.3d 281, 286-87 (4th Cir. 2007); Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991) (transfer to different prison rendered moot prisoner's claims for injunctive and declaratory relief with respect to time at original institution).

4. Summary of Available Remedies

Plaintiff is foreclosed from obtaining injunctive or declaratory relief by virtue of the fact that his claims for these forms of relief are moot. Nor can plaintiff obtain any relief—injunctive, declaratory, or monetary—under RLUIPA. Finally, it is clear that plaintiff is foreclosed from obtaining monetary relief from defendants to the extent they are sued in the individual capacities. Accordingly, the only relief to which plaintiff may demonstrate an entitlement is monetary relief obtained from defendants sued in their individual capacities.

B Claims One, Two, and Three – Free Exercise[7]

[7] Plaintiff sought relief under RLUIPA with respect to Claims One, Two, and Three. As noted above, however, it is clear that plaintiff is not entitled to any such relief, and these subsections therefore do not address this body of law. Similarly, although plaintiff asserts that he is entitled to relief under the Fourteenth and Eighth Amendments for defendants' actions, it is clear that his arguments are more firmly rooted in the First Amendment. "Where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." Albright v. Oliver, 510 U.S. 266, 273 (1994). Accordingly, here, where plaintiff's claims obviously invoke the Free Exercise Clause and First Amendment retaliation doctrine, this Court declines to consider the claims under the Eighth and Fourteenth Amendments as requested by plaintiff.

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Claim One charges defendants Jackson, Woodson, and Witt with failing to provide plaintiff with NOI videos and thereby denying him the ability to practice his religion. Claim Two charges defendants Goodwyn, Turner, Jackson, Jarrett, and Holloway with failing to provide a feast meal and other accommodations for the NOI holiday of Savior's Day in 2018, thereby violating the First Amendment. Finally, Claim Three charges defendants Jones, Goodwyn, and Turner with failing to provide a feast meal for the NOI holiday of Savior's Day in 2019 and failing to meet plaintiff's religious dietary needs by failing to secure the contents of food carts, thereby violating the First Amendment.

Defendants do not argue that plaintiff has failed to state a claim against defendant Jackson or Jones in these claims, and this case shall accordingly proceed against these two defendants, at least to that extent. The allegations with respect to defendants Goodwyn, Turner, Jarrett, Woodson, Witt and Holloway, however, are clearly insufficient to support viable causes of action. Indeed, plaintiff does not allege that these defendants were responsible for and failed to provide him with the NOI videos he requested or the Savior's Day Celebrations in 2018 and 2019. Instead, plaintiff's allegations against these defendants reduce to claims regarding the institutional grievance process. In sum, plaintiff claims that defendants Witt, Goodwyn, and Turner at various times denied or failed to respond to his grievances. He similarly claims that defendants Woodson, Jarrett, and Holloway, in most cases, upheld the denials of those grievances.

These allegations simply do not suffice to support First Amendment claims against these six defendants. See, e.g., George v. Smith, 507 F.3d 605, 609 (7th Cir. 2007) ("Ruling against a prisoner on an administrative complaint does not cause or contribute to [a constitutional] violation.") In fact, inmates do not have a constitutionally protected right to participate in the

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grievance procedure in the first instance. See, e.g., Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994). Accordingly, defendants Goodwyn, Turner, Jarrett, Holloway, Witt and Woodson are not liable under § 1983 for their responses to plaintiff's grievances or appeals. See Brown v. Va. Dep't Corr., No. 6:07cv33, 2015 U.S. Dist. LEXIS 12227 at *8, 2009 WL 87459, at *13 (W.D. Va. Jan. 9, 2009); see also Brooks v. Beard, 167 F. App'x 923, 925 (3d Cir. 2006) (holding that allegations that prison officials and administrators responded inappropriately to inmate's later-filed grievances do not establish the involvement of those officials and administrators in the alleged underlying deprivation). Absent allegations that support a finding that these defendants themselves acted to directly deprive plaintiff of his First Amendment rights, these claims may not proceed.

C. **Claim Four – First Amendment Retaliation**

Claim Four charges defendants Witt, Woodson, and Harvey with First Amendment retaliation related to the handling of plaintiff's grievances and appeals. Although retaliation "is not expressly referred to in the Constitution, [it] is nonetheless actionable [under § 1983] because retaliatory actions may tend to chill individuals' exercise of constitutional rights." Am. Civil Liberties Union v. Wicomico Cty., 999 F.2d 780, 785 (4th Cir. 1993). To prevail as to a First Amendment retaliation claim, a prisoner-plaintiff's complaint must allege facts (1) that the plaintiff engaged in protected First Amendment activity, (2) that the defendant took some action that adversely affected the plaintiff's First Amendment rights, and (3) that there was a causal relationship between plaintiff's protected activity and the defendant's conduct. Martin v. Duffy, 858 F.3d 239, 249 (4th Cir. 2017).

With respect to the first element, it is well settled that prison officials may not retaliate against an inmate for filing a prison grievance. See Booker v. S.C. Dep't of Corr., 855 F.3d 533,

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

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Alexandria Division

Malcolm Muhammad, **Plaintiff,**	)	
v.	)	**1:19cv746 (LO/JFA)**
William Jarrett, et al., Defendants.	)	

ORDER

For the reasons stated in the accompanying Memorandum Opinion, defendants' William Jarrett, Gregory L. Holloway, R. Woodson, Chaplain William Jackson, Chaplain Patrick Jones, E. Witt's motion to dismiss [Dkt. No. 44] be and is GRANTED IN PART AND DENIED IN PART such that all claims against these defendants must be dismissed with the exception of the First Amendment claims raised against defendants Jackson and Jones in their individual capacities. Additionally, defendants Goodwyn and Turner's motion to dismiss [Dkt. No. 66], through which they joined the motion just discussed is GRANTED such that the claims against these defendants are dismissed. Accordingly, it is hereby

ORDERED that the claims against defendants Jarrett, Holloway, Woodson, Witt, Harvey, Goodwyn, and Turner be and are DISMISSED WITH PREJUDICE for failure to state a claim; and it is further

ORDERED that counsel of record for defendants Jackson and Jones file or expressly decline to file a motion for summary judgment with respect to the remaining claims within forty-five (45) days of this Order's issuance.

The Clerk is directed to send a copy of this Order to plaintiff and to counsel of record for defendants.

Entered this 23rd day of December 2020

Alexandria, Virginia

/s/
Liam O'Grady
United States District Judge