

In the
Supreme Court of the United States

Ammon Ra Sumrall,
Petitioner,

v.

Georgia Department of Corrections, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' SUPPLEMENTAL APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Ammon RA Sumrall,
Plaintiff,
v.

CASE NO:
5:21-CV-00128-MTT-MSH

Georgia Department
of Corrections, et al.,
Defendants.

FILED '22 04 28 AM 09:13 MDC/MLP

PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

Comes now Plaintiff Ammon RA Sumrall, pro se and pursuant to Federal Rules of Civil Procedure 56, to submit the following undisputed material facts:

1. The Georgia Department of Corrections (GDC) did not offer prisoners vegan meals when Plaintiff entered the penal system in 1992.
2. In the late 1990s, Plaintiff stopped eating the meat that was served on his trays because it was against his religious beliefs to eat animals. (Ex. A, Sumrall aff, para. 5)
3. In 2006, the GDC established the Alternative Entrée Program (AEP) to accommodate prisoners' religious diets by serving them vegan meals.
4. Plaintiff signed up for the AEP in 2007 because he believed a vegan diet would conform with his religious belief that God

- wants humans to protect animals instead of killing them for food and clothing. (Ex. A, Sumrall Aff., para. 9)
5. The AEP sign up sheets Plaintiff submitted in 2007 and 2018 advised that anyone who gets caught getting a regular tray while on the AEP "can receive disciplinary action and/or be removed from the program." (Ex. B, AEP sign up form).
 6. The AEP is governed by SOP 409.04.28. Although the SOP went into effect in 2006, it was revised in 2018 and October 2020.
 7. The 2006 and 2018 versions of SOP 409.04.28, VI, H, both list the following grounds prisoners may be removed from the AEP?
 - (1) When a prisoner misses 7 or more meals in a 7-day period,
 - (2) When a prisoner misses 15 or more meals in a 30-day period,
 - and (3) When a prisoner is caught picking up a regular tray. (Ex. C, ~~2006 version of SOP 409.04.28 (IV Lot 0027)~~; Ex. D, 2018 version of SOP 409.04.28, pg. 7)
 8. On August 2, 2019, Plaintiff filed grievance #293355 about Food Service workers not giving vegans food that they should have received, as well as they put white bread on vegan trays for lunch. (~~Ex. D, grievance #293355~~).
 9. Defendant Singleton reviewed grievance #293355 and determined that Plaintiff had "violated the vegan meal requirements" by purchasing beef and chicken soups, then he had Plaintiff removed from the AEP without notice nor a hearing.
 10. Plaintiff was able to get back on the AEP after he told other staff members about what Defendant Singleton had done to him.

11. In July 2020, Defendant Singleton put L-building on quarantine because someone in the building had caught Covid. As such, officers took trays to the building so that prisoners could eat in their dorms.
12. Some of the vegan trays that were taken to L-building were inadequate, which resulted in a few prisoners complaining about their food to Defendants Singleton and Ashley. (Ex. D, Anu Campbell Aff, para 3-4; Ex. E, Clayton Carleton Aff., para. 2-3).
13. In July 2020, Defendants Singleton and Ashley removed a number of prisoners from the AEP because they had previously ~~bought~~ bought non-vegan store goods. (Ex. D, Anu Campbell Aff, para. 4; Ex. E, Clayton Carleton Aff., para. 3).
14. On July 29, 2020, Plaintiff was denied vegan meals because Defendants Singleton and Ashley had him removed from the AEP for having previously bought non-vegan store goods. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 8).
15. In July 2020, SOP 409.04.28 did not list buying non-vegan store goods as a ground for removal from the AEP. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 9)
16. Since as late as 2017, SOP 101.02, III, I, defined standard operating procedures as, "Established procedures to be followed in carrying out given operations or in given situations. A set of fixed instructions or steps for carrying out routine operations."
17. Defendants Singleton and Ashley did not give Plaintiff notice nor a hearing before they removed him from the AEP in 2019 and 2020. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 10).

18. On July 31, 2020, Plaintiff filed grievance # 312076 that complained about him being denied vegan meals for the previous two days due to Defendant Ashley removing him from the AEP because he had purchased non-vegan store goods. (~~Ex. H, grievance # 312076~~).
19. Defendant Singleton admitted in his response to grievance # 312076 that Plaintiff was removed from the AEP for buying non-vegan store goods, but he also said, "Your allegation that you have not eaten in two days is unfounded, because you are able to utilize and report to the dining hall and receive a non-vegan tray. (Ex. G, Plaintiff's RFAs to Defendant GDC, pg. 10-11, para. 6).
20. On August 3, 2020, Plaintiff wrote GDC Commissioner Timothy Ward and advised him of Plaintiff's intent to sue because he had been improperly removed from the AEP.
21. On September 23, 2020, Plaintiff submitted a three page Special Religious Request that asked the GDC to: (1) offer Plaintiff vegan meals to eat, (2) allow Plaintiff to order a pair of vegan athletic shoes, (3) allow Plaintiff to have an Ankh sent to him, and (4) require the prison to sell vegan food, including pre-cooked meals. (~~Ex. I, Plaintiff's Special Religious Request form, pg. 3~~).
22. On September 30, 2022, Plaintiff submitted a medical request to be seen about fatigue and other health issues, and was subsequently prescribed Vitamin D pills because medical testing revealed that he had a Vitamin D deficiency and a low white blood cell count. (Ex. A, Sumrall aff., 24; Ex. J, Lab reports for October 8, 2020).

23. ON October 13, 2020, the GDC's Amendment to SOP 409.04.28 went into effect to include buying non-vegan food as a ground for possible removal from the AEP.
24. ON October 15, 2020, Plaintiff submitted a second medical request to be seen about pain in his back, stomach, and other parts of his body; he was subsequently prescribed 800 mg of Ibuprofen because medical testing revealed that he had Arthritis in his neck and bone weakness in his back. (Ex. A, Summ'l Aff. p. 25; Ex. K, Lab report for October 20, 2020).
25. ON October 19, 2020, Plaintiff received the GDC's denial of his Special Religious Request; the GDC claimed that Plaintiff "failed to identify what diet he is seeking, what sort of religious medication he is requesting, or what other accommodations he wants." (Ex. I, Special Religious Request form, pg. 1).
26. IN reference to paragraph 25, the GDC's statements about Plaintiff not saying what he wanted was proven false during discovery. (Ex. G, Plaintiff's RFAs to Defendant Ashley, pg. 13, para. 8).
27. The AEP meals that the GDC provided prisoners in 2020 were nutritionally adequate. (Ex. G, Plaintiff's RFAs to Defendant Ashley, pg. 12, para. 5).
28. Plaintiff was not on the AEP list from July 29, 2020 to October 19, 2020. (~~Ex. G~~, Plaintiff's RFAs to Defendant Ashley, pg. 12, para. 2).
Ex. C

April 25, 2022 Ammon R. Summell 719855

P.O. Box 397
Abbeville, GA 31001

2/11/22, 2:14 PM

6a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:09

Transaction Date:05/07/2020 @ 10:57

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BABY RUTH | 801 | 1 | 1.00 | 1.00 |
| BBQ CORN CHIPS | 700 | 1 | 3.00 | 3.00 |
| C & C ORANGE | 422 | 3 | 1.00 | 3.00 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| COOKQUIK REFRIED BEANS | 540 | 1 | 2.20 | 2.20 |
| COOKQUIK WHITE RICE | 637 | 2 | 0.90 | 1.80 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| FIREBALLS | 815 | 1 | 1.00 | 1.00 |
| ICED HONEY BUN | 636 | 13 | 0.85 | 11.05 |
| JOLLY RANCHERS | 825 | 1 | 1.20 | 1.20 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 3 | 0.90 | 2.70 |
| LDM SALTINES | 750 | 1 | 2.20 | 2.20 |
| PICKLE | 530 | 1 | 0.95 | 0.95 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.15 | 3.45 |
| SOUP - BEEF | 204 | 10 | 0.45 | 4.50 |
| SOUP - CHICKEN | 200 | 10 | 0.45 | 4.50 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| STRAWBERRY COOKIES | 7783 | 1 | 1.70 | 1.70 |
| TOPS MESQUITE BBQ CHIPS | 711 | 2 | 1.80 | 3.60 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 2 | 1.00 | 2.00 |

Sales Total: \$64.40**Offender's Account Ending Balance: \$178.47**

GDC000055

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7a
Offender Demographics**ffender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:14

Transaction Date:05/14/2020 @ 10:05

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BUTTERFINGER | 850 | 1 | 1.00 | 1.00 |
| C & C ORANGE | 422 | 3 | 1.00 | 3.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| COOKQUIK REFRIED BEANS | 540 | 2 | 2.20 | 4.40 |
| COOKQUIK WHITE RICE | 637 | 3 | 0.90 | 2.70 |
| DORITOS NACHO CHIPS | 785 | 2 | 0.90 | 1.80 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| FIREBALLS | 815 | 1 | 1.00 | 1.00 |
| FRUIT PUNCH MIX | 450 | 1 | 3.05 | 3.05 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JALAPENO PRETZEL PIECES | 720 | 1 | 1.05 | 1.05 |
| JOLLY RANCHERS | 825 | 1 | 1.20 | 1.20 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 1 | 0.90 | 0.90 |
| MAGIC SHAVE SOFTSHEEN | 182 | 1 | 1.85 | 1.85 |
| PEANUTS | 740 | 2 | 0.60 | 1.20 |
| PICKLE | 530 | 2 | 0.95 | 1.90 |
| PROVECHO FLOUR TORTILLA | 7786 | 2 | 1.15 | 2.30 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| SOUP - CREAMY CHICKEN | 283 | 10 | 0.45 | 4.50 |
| SOUP - ORIENTAL | 260 | 10 | 0.45 | 4.50 |
| STRAWBERRY COOKIES | 7783 | 1 | 1.70 | 1.70 |
| TEK TOOTHBRUSH | 181 | 1 | 0.65 | 0.65 |
| TOPS MESQUITE BBQ CHIPS | 711 | 2 | 1.80 | 3.60 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 2 | 1.00 | 2.00 |

Sales Total: \$69.85**Offender's Account Ending Balance: \$108.62**

GDC000056

2/11/22, 2:08 PM

8a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:08

Transaction Date:05/20/2020 @ 12:39

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| AA BATTERIES | 971 | 1 | 2.15 | 2.15 |
| BBQ CORN CHIPS | 700 | 1 | 3.00 | 3.00 |
| BUTTERFINGER | 850 | 1 | 1.00 | 1.00 |
| C & C ORANGE | 422 | 3 | 1.00 | 3.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| COOKQUIK REFRIED BEANS | 540 | 2 | 2.20 | 4.40 |
| COOKQUIK WHITE RICE | 637 | 3 | 0.90 | 2.70 |
| DORITOS NACHO CHIPS | 785 | 2 | 0.90 | 1.80 |
| FIREBALLS | 815 | 1 | 1.00 | 1.00 |
| HOT CHILI W/BEANS | 280 | 1 | 3.31 | 3.31 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JOLLY RANCHERS | 825 | 1 | 1.20 | 1.20 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| MOUNTAIN DEW 20 OZ | 493 | 1 | 1.45 | 1.45 |
| PEANUTS | 740 | 2 | 0.60 | 1.20 |
| PICKLE | 530 | 2 | 0.95 | 1.90 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.15 | 3.45 |
| SOUP - CHICKEN | 200 | 10 | 0.45 | 4.50 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| SOUP - CREAMY CHICKEN | 283 | 6 | 0.45 | 2.70 |
| STRAWBERRY COOKIES | 7783 | 2 | 1.70 | 3.40 |
| TOPS MESQUITE BBQ CHIPS | 711 | 2 | 1.80 | 3.60 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 2 | 1.00 | 2.00 |

Sales Total: \$69.91**Offender's Account Ending Balance: \$38.71**

GDC000057

2/11/22, 2:15 PM

9a
Offender Demographics**ffender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:15

Transaction Date:05/28/2020 @ 11:53

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| C & C STRAWBERRY | 405 | 2 | 1.00 | 2.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CHIPS - BUFFALO WING | 008 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| COOKQUIK REFRIED BEANS | 540 | 2 | 2.20 | 4.40 |
| COOKQUIK WHITE RICE | 637 | 2 | 0.90 | 1.80 |
| DORITOS NACHO CHIPS | 785 | 1 | 0.90 | 0.90 |
| ICED HONEY BUN | 636 | 8 | 0.85 | 6.80 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 3 | 0.50 | 1.50 |
| LDM SALTINES | 750 | 1 | 2.20 | 2.20 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.15 | 3.45 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| SOUP - CREAMY CHICKEN | 283 | 5 | 0.45 | 2.25 |
| SOUP - ORIENTAL | 260 | 4 | 0.45 | 1.80 |
| STRAWBERRY COOKIES | 7783 | 1 | 1.70 | 1.70 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| TRIPLE CHEESE POPCORN | 783 | 1 | 1.10 | 1.10 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 1 | | |

GDC000058

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10a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:15

Transaction Date:06/03/2020 @ 16:04

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BBQ CORN CHIPS | 700 | 1 | 3.00 | 3.00 |
| BUTTERFINGER | 850 | 1 | 1.00 | 1.00 |
| C & C STRAWBERRY | 405 | 2 | 1.00 | 2.00 |
| C & C ORANGE | 422 | 2 | 1.00 | 2.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CHIPS - BUFFALO WING | 008 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 4 | 0.90 | 3.60 |
| COOKQUIK REFRIED BEANS | 540 | 2 | 2.20 | 4.40 |
| COOKQUIK WHITE RICE | 637 | 4 | 0.90 | 3.60 |
| DORITOS NACHO CHIPS | 785 | 1 | 0.90 | 0.90 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JOLLY RANCHERS | 825 | 1 | 1.20 | 1.20 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 5 | 0.50 | 2.50 |
| LAY'S CLASSIC 1.5 OZ | 779 | 1 | 0.90 | 0.90 |
| PEANUTS | 740 | 3 | 0.60 | 1.80 |
| PICKLE | 530 | 2 | 0.95 | 1.90 |
| REESE CUPCAKE | 7773 | 2 | 1.30 | 2.60 |
| SOUP - CHICKEN | 200 | 10 | 0.45 | 4.50 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| SOUP - LOW SODIUM CHICKEN | 270 | 10 | 0.45 | 4.50 |
| STRAWBERRY COOKIES | 7783 | 2 | 1.70 | 3.40 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 3 | 1.00 | 3.00 |

Sales Total: \$70.00**Offender's Account Ending Balance: \$139.01**

GDC000059

2/11/22, 2:16 PM

11a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:16

Transaction Date:06/09/2020 @ 14:44

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BBQ CORN CHIPS | 700 | 1 | 3.00 | 3.00 |
| BEEF & CHEESE STICK | 505 | 2 | 0.65 | 1.30 |
| C & C ORANGE | 422 | 2 | 1.00 | 2.00 |
| C & C PEACH DRINK | 401 | 2 | 1.00 | 2.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHIPS - BUFFALO WING | 008 | 2 | 0.65 | 1.30 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| COOKQUIK WHITE RICE | 637 | 4 | 0.90 | 3.60 |
| DIAL SOAP | 091 | 1 | 1.05 | 1.05 |
| HONEY ROASTED PEANUTS | 7815 | 2 | 0.90 | 1.80 |
| HOT CHILI W/BEANS | 280 | 1 | 3.31 | 3.31 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JOLLY RANCHERS | 825 | 2 | 1.20 | 2.40 |
| LANCE CHEESE & PNB CRACKER | 7711 | 3 | 0.50 | 1.50 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 2 | 0.90 | 1.80 |
| PICKLE | 530 | 2 | 0.95 | 1.90 |
| REESE CUPCAKE | 7773 | 2 | 1.30 | 2.60 |
| SOUP - CHICKEN | 200 | 10 | 0.45 | 4.50 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| STRAWBERRY COOKIES | 7783 | 1 | 1.70 | 1.70 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VODOO CHIPS | 782 | 3 | 1.00 | 3.00 |

Sales Total: \$62.06**Offender's Account Ending Balance: \$76.95**

Offender Name: _____

GDC000060

2/11/22, 2:16 PM

12a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:16

Transaction Date:06/22/2020 @ 09:30

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BABY RUTH | 801 | 1 | 1.00 | 1.00 |
| BBQ CORN CHIPS | 700 | 2 | 3.00 | 6.00 |
| BUTTERFINGER | 850 | 1 | 1.00 | 1.00 |
| C & C STRAWBERRY | 405 | 2 | 1.00 | 2.00 |
| C & C ORANGE | 422 | 3 | 1.00 | 3.00 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| HOT CHILI W/BEANS | 280 | 2 | 3.31 | 6.62 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JOLLY RANCHERS | 825 | 2 | 1.20 | 2.40 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 4 | 0.50 | 2.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 2 | 0.90 | 1.80 |
| PEANUTS | 740 | 3 | 0.60 | 1.80 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.15 | 3.45 |
| SOUP - BEEF | 204 | 5 | 0.45 | 2.25 |
| SOUP - CHICKEN & MUSHROOM | 211 | 5 | 0.45 | 2.25 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| SOUP - ORIENTAL | 260 | 10 | 0.45 | 4.50 |
| STRAWBERRY COOKIES | 7783 | 2 | 1.70 | 3.40 |
| TOPS MESQUITE BBQ CHIPS | 711 | 2 | 1.80 | 3.60 |
| WHOLE SHABANG | 7766 | 3 | 0.60 | 1.80 |
| ZAPPS VOODOO CHIPS | 782 | 3 | 1.00 | |

GDC000061

2/11/22, 2:17 PM

13a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/11/2022 @ 14:16

Transaction Date:06/30/2020 @ 09:14

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BBQ CORN CHIPS | 700 | 2 | 3.00 | 6.00 |
| C & C ORANGE | 422 | 5 | 1.00 | 5.00 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| HOT CHILI W/BEANS | 280 | 2 | 3.31 | 6.62 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JALAPENO PRETZEL PIECES | 720 | 1 | 1.05 | 1.05 |
| JOLLY RANCHERS | 825 | 1 | 1.20 | 1.20 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 4 | 0.50 | 2.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 2 | 0.90 | 1.80 |
| PEANUTS | 740 | 2 | 0.60 | 1.20 |
| PICKLE | 530 | 2 | 0.95 | 1.90 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.15 | 3.45 |
| SOUP - CHICKEN & MUSHROOM | 211 | 5 | 0.45 | 2.25 |
| SOUP - CHILI | 202 | 10 | 0.45 | 4.50 |
| SOUP - LOW SODIUM CHICKEN | 270 | 5 | 0.45 | 2.25 |
| SOUP - ORIENTAL | 260 | 5 | 0.45 | 2.25 |
| SOUP - PICANTE CHICKEN | 213 | 5 | 0.45 | 2.25 |
| SPANISH RICE | 514 | 2 | 1.00 | 2.00 |
| STRAWBERRY COOKIES | 7783 | 2 | 1.70 | 3.40 |
| TOPS MESQUITE BBQ CHIPS | 711 | 2 | 1.80 | 3.60 |
| WHOLE SHABANG | 7766 | 3 | 0.60 | 1.80 |

Sales Total: **\$69.92**Offender's Account Ending Balance: **\$87.06**

Offender Name: _____

2/14/22, 9:36 AM

14a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/14/2022 @ 09:36

Transaction Date:07/28/2020 @ 13:58

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BBQ CORN CHIPS | 700 | 1 | 3.00 | 3.00 |
| C & C ORANGE | 422 | 3 | 1.02 | 3.06 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHIPS - BUFFALO WING | 008 | 2 | 0.65 | 1.30 |
| CINNAMON ROLL | 7772 | 4 | 0.90 | 3.60 |
| DORITOS NACHO CHIPS | 785 | 2 | 0.90 | 1.80 |
| DUPLEX COOKIES | 611 | 2 | 1.72 | 3.44 |
| HERSEY BAR 1.55 OZ | 835 | 2 | 1.03 | 2.06 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JOLLY RANCHERS | 825 | 1 | 1.24 | 1.24 |
| LANCE CHEESE & PNB CRACKER | 7711 | 2 | 0.50 | 1.00 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 2 | 0.90 | 1.80 |
| PEANUTS | 740 | 1 | 0.60 | 0.60 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.17 | 3.51 |
| REESE CUPCAKE | 7773 | 1 | 1.30 | 1.30 |
| REFRIED BEANS | 522 | 3 | 2.20 | 6.60 |
| SAFEGUARD | 114 | 1 | 1.05 | 1.05 |
| SOUP - CHICKEN & MUSHROOM | 211 | 10 | 0.45 | 4.50 |
| SOUP - PICANTE BEEF | 214 | 10 | 0.45 | 4.50 |
| SOUP - PICANTE CHICKEN | 213 | 10 | 0.45 | 4.50 |
| STRAWBERRY COOKIES | 7725 | 1 | 1.72 | 1.72 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 1 | 1.00 | 1.00 |

Sales Total:**\$68.58**

GDC000063

2/14/22, 9:36 AM

15a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/14/2022 @ 09:36

Transaction Date:07/22/2020 @ 09:45

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BABY RUTH | 801 | 2 | 1.03 | 2.06 |
| C & C ORANGE | 422 | 3 | 1.02 | 3.06 |
| CHEESY SPANISH RICE | 605 | 1 | 0.85 | 0.85 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CHIPS - BUFFALO WING | 008 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 4 | 0.90 | 3.60 |
| DR. PEPPER 20 OZ BOTTLE | 473 | 1 | 1.47 | 1.47 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.72 | 3.44 |
| EMERY BOARD | 137 | 2 | 0.30 | 0.60 |
| HOT CHILI W/BEANS | 280 | 2 | 3.31 | 6.62 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JALAPENO PRETZEL PIECES | 720 | 1 | 1.05 | 1.05 |
| LANCE CHEESE & PNB CRACKER | 7711 | 1 | 0.50 | 0.50 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| LAY'S CLASSIC 1.5 OZ | 779 | 1 | 0.90 | 0.90 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.17 | 3.51 |
| REESE CUPCAKE | 7773 | 1 | 1.30 | 1.30 |
| REFRIED BEANS | 522 | 1 | 2.20 | 2.20 |
| SOUP - CHILI | 202 | 30 | 0.45 | 13.50 |
| STRAWBERRY COOKIES | 7783 | 1 | 1.72 | 1.72 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| TORTILLA CHIPS | 705 | 1 | 1.25 | 1.25 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 3 | 1.00 | 3.00 |

Sales Total:**\$68.93**

GDC000064

2/14/22, 9:34 AM

16a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/14/2022 @ 09:34

Transaction Date:07/15/2020 @ 14:24

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BABY RUTH | 801 | 2 | 1.00 | 2.00 |
| C & C ORANGE | 422 | 3 | 1.00 | 3.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CINNAMON ROLL | 7772 | 4 | 0.90 | 3.60 |
| DR. PEPPER 20 OZ BOTTLE | 473 | 1 | 1.45 | 1.45 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| HOT CHILI W/BEANS | 280 | 2 | 3.31 | 6.62 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 6 | 0.50 | 3.00 |
| LDM SALTINES | 750 | 1 | 2.20 | 2.20 |
| PROVECHO FLOUR TORTILLA | 7786 | 3 | 1.15 | 3.45 |
| REESE CUPCAKE | 7773 | 1 | 1.30 | 1.30 |
| REFRIED BEANS | 522 | 1 | 2.20 | 2.20 |
| SOUP - CHILI | 202 | 30 | 0.45 | 13.50 |
| STRAWBERRY COOKIES | 7783 | 2 | 1.70 | 3.40 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| TORTILLA CHIPS | 705 | 1 | 1.25 | 1.25 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |
| ZAPPS VOODOO CHIPS | 782 | 3 | 1.00 | 3.00 |

Sales Total:**\$68.02**

GDC000065

2/14/22, 9:34 AM

17a
Offender Demographics**Offender Store Details For**

Offender SUMRALL, AMMON - GDC ID: 719855
WILCOX STATE PRISON D-4-238-B
at WILCOX STATE PRISON - SOUTH
 Printed On:02/14/2022 @ 09:34

Transaction Date:07/08/2020 @ 11:31

| Item | Item Code | Qty | Price | Total Price |
|------------------------------|-----------|-----|-------|-------------|
| BABY RUTH | 801 | 2 | 1.00 | 2.00 |
| BBQ CORN CHIPS | 700 | 1 | 3.00 | 3.00 |
| C & C ORANGE | 422 | 3 | 1.00 | 3.00 |
| CHEETOS CRUNCHY 2 OZ | 728 | 1 | 0.80 | 0.80 |
| CHEETOS JALAPENO | 725 | 1 | 0.65 | 0.65 |
| CHIPS - BUFFALO WING | 008 | 2 | 0.65 | 1.30 |
| CINNAMON ROLL | 7772 | 2 | 0.90 | 1.80 |
| DORITOS NACHO CHIPS | 785 | 2 | 0.90 | 1.80 |
| DR. PEPPER 20 OZ BOTTLE | 473 | 1 | 1.45 | 1.45 |
| DUPLEX CREME COOKIES 13 OZ | 610 | 2 | 1.70 | 3.40 |
| HOT CHILI W/BEANS | 280 | 2 | 3.31 | 6.62 |
| ICED HONEY BUN | 636 | 12 | 0.85 | 10.20 |
| JALAPENO PRETZEL PIECES | 720 | 1 | 1.05 | 1.05 |
| JOLLY RANCHERS | 825 | 2 | 1.20 | 2.40 |
| LANCE GRILLED CHEESE CRACKER | 7782 | 4 | 0.50 | 2.00 |
| LDM SALTINES | 750 | 1 | 2.20 | 2.20 |
| NEKOT CRACKERS | 784 | 1 | 0.50 | 0.50 |
| PEANUTS | 740 | 1 | 0.60 | 0.60 |
| PICKLE | 530 | 2 | 0.95 | 1.90 |
| PROVECHO FLOUR TORTILLA | 7786 | 2 | 1.15 | 2.30 |
| SOUP - CHILI | 202 | 30 | 0.45 | 13.50 |
| SPANISH RICE | 514 | 1 | 1.00 | 1.00 |
| STRAWBERRY COOKIES | 7783 | 1 | 1.70 | 1.70 |
| TOPS MESQUITE BBQ CHIPS | 711 | 1 | 1.80 | 1.80 |
| WHOLE SHABANG | 7766 | 2 | 0.60 | 1.20 |

Sales Total:**\$68.17**

GDC000066

16. LEGAL ARGUMENT

I. First Amendment Violation: The Free Exercise Clause of the First Amendment requires government respect for, and non-interference with, the religious beliefs and practices of Americans. Cutter v. Wilkinson 544 U.S. 709, 719, 125 S.Ct. 2113 (2005). However, to plead a valid free exercise claim, a plaintiff must allege that the government has impermissibly burdened one of his sincerely held religious beliefs. Watts v. Fla. Intl Univ. 495 F.3d 1289, 1294 11th Cir. (2007). In this circuit, it has been said that an individual's exercise of religion is substantially burdened if a regulation completely prevents the individual from engaging in religious mandated activity, or if the regulation requires participation in an activity prohibited by religion. Midrash Sephardi, Inc. v. Town of Surfside 366 F.3d 1214, 1227 11th Cir. (2004).

Plaintiff sincerely believes that God, or a Higher Power, wants humans to protect animals, not eat them. As such, Plaintiff had received vegan meals to accommodate his religious beliefs. (See Lake v. Howell 2014 U.S. Dist. Lexis 198484, "Plaintiff's vegetarian religious belief, as alleged, is constitutionally protected as a religious belief under the First Amendment.").

However, when Defendants Singleton and Ashley denied Plaintiff vegan meals and tried to force him to eat food made with animals, said Defendants violated Plaintiff's First Amendment right to practice his sincerely held religious beliefs.

II. Eighth Amendment Violation: The Eighth Amendment requires prison staff to ensure that prisoners receive adequate food, FARMER V. BRENNAN 511 U.S. 825, 832, 114 S.Ct 1970 (1994), which means prisoners must receive well-balanced meals with sufficient nutritional value to preserve health. HAMM V. DeKalb Cty. 774 F.2d 1567 11th Cir. (1985).

However, Defendants Singleton and Ashley violated the Eighth Amendment when they denied Plaintiff nutritionally adequate vegan meals. (see Harris v. Ostrout 65 F.3d 912 11th Cir. (1995), holding that Plaintiff asserted valid Eighth Amendment claim where he alleged prison refused to offer adequate vegetarian diet). As such, their actions caused Plaintiff to have a low white blood cell count and a Vitamin D deficiency, which not only weakened Plaintiff's immune system during his bout with Covid-19, but also caused Plaintiff to endure weeks of depression, fatigue, arthritis, and pain in his back and stomach.

III. Fourteenth Amendment Equal Protection Violation: In part, the Fourteenth Amendment of the U.S. Constitution prohibits the government from denying any person within its jurisdiction the equal protection of the laws. However, to establish an equal protection claim, a prisoner must demonstrate that (1) he is similarly situated with other prisoners who received more favorable treatment; and (2) his discriminatory treatment was based on some constitutionally protected interest such as race. Jones v. Ray et al., 279 F.3d 944 (11th Cir. 2001)

In this case, the record shows that Defendants Singleton

And Ashley removed Plaintiff (and other Black prisoners who lived in F-2) from the AEP for buying non-vegan store goods, but they didn't remove any of the CAUCASIAN/Jewish prisoners for buying non-vegan store goods even though they lived in F-2 and were similarly situated with Plaintiff.

IV. Fourteenth Amendment, Due Process Violation: In part, the Fourteenth Amendment prohibits the government from depriving citizens of life, liberty and property without due process of law. As such, prisoners are deprived of their liberty when the state has consistently bestowed a certain benefit to prisoners, usually through statute or administrative policy, and the deprivation of that benefit imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life, Kirby v. Siegelman 195 F.3d 1285, 1290-91 (11th Cir. 1999).

Even though Plaintiff was entitled to vegan meals due to the First Amendment, the GDC had consistently provided Plaintiff with vegan meals for over 10 years pursuant to S.O.P. 409,04.28. However, when Defendants Singleton and Ashley removed Plaintiff from the AEP without due process, they caused Plaintiff to experience malnutrition, which was an atypical and significant hardship.

V. RLUIPA VIOLATION: The Religious Land Use and Institutionalized Persons Act prohibits the government from, inter alia, imposing a substantial burden on the religious exercise of prisoners unless the government demonstrates their actions were in the furtherance of a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.

In this case, the Defendants violated RLUIPA when they removed Plaintiff from the AEP for buying non-vegan store goods even though their S.O.P. 409.04.28 did not prohibit him from doing so. Moreover, they also violated RLUIPA when they failed to accommodate Plaintiff's special religious request that the GDC (1) offer him vegan meals, (2) allow him to receive vegan gym shoes, (3) allow him to receive an Ankh from an outside source, and (4) require WSP staff to sell vegan food.

Indeed, despite having repeatedly imposed a burden on Plaintiff's right to exercise his religion, at no time has the Defendants tried to show that their actions were in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest.

VI. State Law Intentional Infliction of Emotional Distress Violation

In order to sustain an IIED claim, a plaintiff must show that: (1) the conduct giving rise to the claim was either intentional or in reckless disregard for the rights of others; (2) the conduct was extreme and outrageous; (3) the conduct caused emotional distress, and (4) the emotional

distress was severe. McGinnis v. Am. Home Mortg. Servicing 2014 ~~WL 2949216~~ WL 2949216.

Without doubt, Plaintiff clearly had RLUIRA and First Amendment rights to receive vegan meals, yet Defendants Singleton and Ashley intentionally and recklessly removed Plaintiff from the AEP in violation of his rights. Their actions were not only extreme because they intentionally deprived Plaintiff of vegan meals to eat, but also outrageous because they had the audacity to religiously and racially discriminate against Plaintiff by punishing him for buying non-vegan store goods while not doing anything to the CAUCASIAN/Jewish vegans in the dorm who did the same thing.

Consequently, the act of depriving Plaintiff of meals while discriminating against him in the process caused him to experience severe emotional distress.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Ammon RA Sumrall,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants

NO. 5:21-CV-00128-MTT-MSH

PLAINTIFF'S OBJECTIONS TO THE COURT'S
SEPTEMBER 22, 2021 ORDER

Comes now Plaintiff Ammon RA Sumrall, pro se, to file the following objections to said order:

1. Plaintiff objects to the court's failure to sanction an Equal Protection Claim against Defendant Ashley, given the complaint shows that she participated in discriminatory conduct against Plaintiff.
2. Plaintiff objects to the court's failure to sanction a Due Process claim against Defendants Singleton and Ashley, given their removal of Plaintiff from the AEP caused him an atypical and significant hardship.
3. Plaintiff objects to the court's failure to sanction a state

Intentional Infliction of Emotional Distress Claim (IIED)
Against Defendants Singleton and Ashley, given their in-
tentional removal of Plaintiff from the AEP not only
caused him an atypical and significant hardship, but it
also caused him severe emotional distress.

October 3, 2021 Ammon RA Sumrall 719855
P.O. Box 397
Abbeville, GA 31001

SO ORDERED, this 16th day of December, 2021.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

REC'D 22 JAN 13 AM 10 25 MDGAMPC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

QUESTIONNAIRE FOR THE PRISONERS PROCEEDING
PRO SE UNDER 42 U.S.C. § 1983

AMMON RA SUMRALL
719855

(GIVE FULL NAME AND PRISON NUMBER OF PLAINTIFF)

Plaintiff

CIVIL ACTION NO:

5:21-cv-128-MTT-MSH

VS.

AMENDED COMPLAINT

Georgia Department of Corrections
Artis Singleton
Tonya Ashley

(NAME OF EACH DEFENDANT)

Defendant(s)

I. GENERAL INFORMATION

1. Your full name and prison number AMMON RA SUMRALL 719855

2. Name and location of prison where you are now confined Wilcox SP; Abbeville, GA

3. Sentence you are now serving (how long?) Life

(a) What were you convicted of? Felony Murder, Armed robbery, Aggravated Assault, burglary, impersonating a police officer, possession of firearm during crime

(b) Name and location of court which imposed sentence DeKalb Co, Superior Court

(c) When was sentence imposed? October 5, 1992

(d) Did you appeal your sentence and/or conviction? Yes No

(e) What was the result of your appeal? Denied

(ATTACHMENT 1)

(f) Approximate date your sentence will be completed N/A

II. PREVIOUS LAWSUITS

NOTE: FAILURE TO DISCLOSE ALL PRIOR CIVIL CASES MAY RESULT IN THE DISMISSAL OF THIS CASE. IF YOU ARE UNSURE OF ANY PRIOR CASES YOU HAVE FILED, THAT FACT MUST BE DISCLOSED AS WELL.

4. Other than an appeal of your conviction or sentence, and other than any habeas action, have you filed a lawsuit dealing with the same or similar facts or issues that are involved in this action?

Yes No

5. If your answer to question 4 is "Yes," list that lawsuit below, giving the following information:

(IF YOU HAVE FILED MORE THAN ONE LAWSUIT, LIST OTHER LAWSUITS ON A SEPARATE SHEET OF PAPER, GIVING THE SAME INFORMATION FOR EACH)

(a) Parties to the previous lawsuit INVOLVING SAME FACTS:

Plaintiff(s): _____

Defendant(s): _____

(b) Name of Court: _____

(c) Docket Number: _____ When did you file this lawsuit? _____

(d) Name of judge assigned to case: _____

(e) Is this case still pending? Yes No

(f) If your answer to (e) is "No", when was it disposed of and what were the results?

(DID YOU WIN? WAS THE CASE DISMISSED? DID YOU APPEAL?)

6. Other than an appeal of your conviction or sentence, and other than any habeas action, have you ever filed any lawsuit while incarcerated or detained? Yes No

7. If your answer to question 6 is "Yes," list that lawsuit below, giving the following information:

(IF YOU HAVE FILED MORE THAN ONE LAWSUIT, LIST OTHER LAWSUITS ON A SEPARATE SHEET OF PAPER, GIVING THE SAME INFORMATION FOR EACH)

(a) Parties to the previous lawsuit:

Plaintiff(s): (SEE ATTACHED)

Defendant(s): _____

(b) Name of Court: _____

(c) Docket Number: _____ When did you file this lawsuit? _____

(d) Name of judge assigned to case: _____

(e) Is this case still pending? Yes No

(f) If your answer to (e) is "No", when was it disposed of and what were the results?
(DID YOU WIN? WAS THE CASE DISMISSED? DID YOU APPEAL?)

8. AS TO ANY LAWSUIT FILED IN ANY FEDERAL COURT in which you were permitted to proceed *in forma pauperis*, was any suit dismissed on the ground that it was frivolous, malicious, or failed to state a claim? Yes No

If your answer is Yes, state the name of the court and docket number as to each case:

Northern District of GA. _____
1:08-cv-3909 _____

III. PLACE OF INCIDENT COMPLAINED ABOUT

9. Where did the matters you complain about in this lawsuit take place? _____
Wilcox SP

(a) Does this institution have a grievance procedure? Yes No

(b) If your answer to question 9(a) is "Yes", answer the following:

(1) Did you present your complaint(s) herein to the institution as a grievance?

Yes No

(2) If Yes, what was the result? Denied

(3) If No, explain why not: _____

(c) What, if anything else, did you do or attempt to do to bring your complaint(s) to the attention of prison officials? Give dates and places and the names of persons talked to.

On August 3, 2020, I wrote GDC Commissioner Timothy Ward to advise him of my predicament and my intent to file this lawsuit

(d) Did you appeal any denial of your grievance to the highest level possible in the prison system? Yes No

(1) If Yes, to whom did you appeal and what was the result? Appealed to Commissioner's level, but they were denied.

(2) If No, explain why you did not appeal:

10. In what other institutions have been confined? Give dates of entry and exit.

Coastal SP 10/92 to 1/93; GA. SP 1/93 to 10/06; Hays SP 10/06 to 1/07; Johnson SP 1/07 to 3/07; Telfair SP 3/07 to 6/07; Macon SP 6/07 to 10/09; Autry SP 10/09 to 6/19/2013; Dooly SP 6/19/2013; Wilcox SP 6/20/2013 to present.

IV. PARTIES TO THIS LAWSUIT

11. List your CURRENT place of incarceration/ mailing address.

Wilcox State Prison
P.O. Box 397
Abbeville, GA 31001

12. List the full name, the official position, and the place of employment of each defendant in this lawsuit. (ATTACH ADDITIONAL PAGES IF NECESSARY)

Georgia Department of Corrections
Artis Singleton, Warden, Georgia Department of Corrections
Tonya Ashley, Deputy Warden, Georgia Department of Corrections

V. STATEMENT OF CLAIM

13. In the space hereafter provided, and on separate sheets of paper if necessary, set forth your claims and contentions against the defendant(s) you have named herein. Tell the court WHAT you contend happened to you, WHEN the incident(s) you complain about occurred, WHERE the incident(s) took place, HOW your constitutional rights were violated, and WHO violated them? Describe how each defendant was involved, including the names of other persons who were also involved. If you have more than one claim, number and set forth each claim SEPARATELY.

DO NOT GIVE ANY LEGAL ARGUMENT OR CIT ANY CASES OR STATUTES AT THIS TIME; if such is needed at a later time, the court will advise you of this and will afford you sufficient time to make such arguments. KEEP IN MIND THAT RULES 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE REQUIRES THAT PLEADINGS BE SIMPLE, CONCISE, and DIRECT! If the court needs additional information from you, you will be notified.

WHERE did the incident you are complaining about occur? That is, at what institution or institutions? Wilcox SP

WHEN do you allege this incident took place? "See Attached"

WHAT happened? _____

"SEE ATTACHED"

14. List the name and address of every person you believe was a WITNESS to the incident(s) you complain about, BRIEFLY stating what you believe each person knows from having seen or heard what happened. (USE ADDITIONAL SHEETS, IF NECESSARY)

15. BRIEFLY state exactly what you want the court to do for you. That is, what kind of relief are you seeking in this lawsuit? Do not make any legal arguments and do not cite any cases or statutes! (USE ADDITIONAL SHEETS, IF NECESSARY)

1. Grant Plaintiff a jury trial.
2. Grant Plaintiff compensatory, punitive and any other damages available.
3. Grant Plaintiff injunctive relief.
4. Grant Plaintiff declaratory judgment.

16. You may attach additional pages if you wish to make any legal argument. However, legal arguments are NOT required in order for you to obtain relief under §1983. If the court desires legal argument from you, it will request it. If any defendant presents a legal argument, you will be afforded an opportunity to respond thereto.

17. KEEP IN MIND THAT ONCE YOUR LAWSUIT IS FILED, THE COURT WILL REQUIRE YOU TO DILIGENTLY PROSECUTE IT. That means that you will be required to go forward with your case without delay. Thus, if you fail to adequately prepare your case before you file it, you may find your lawsuit dismissed for failure to prosecute if you take no action once it is filed. YOU WILL RECEIVE NO FURTHER INSTRUCTIONS FROM THE COURT TELLING YOU WHAT TO DO OR HOW TO DO IT! IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO PROSECUTE YOUR OWN CASE! If you fail to prosecute your case, it will be dismissed under Rule 41 of the Federal Rules of Civil Procedure.

Signed this 10 day of January, 2022.

Ammon R. Sumrell
PLAINTIFF

II. PREVIOUS LAWSUITS

1. Sumrall v. Garner, et al., 6:99-cv-195, GA.S.D. I can't recall filing date, but I lost at trial before Judge Graham.
2. Sumrall v. Wetherington, et al., 6:01-cv-20, GA.S.D. I can't recall filing date, but I lost at trial, I can't recall judge's name.
3. Sumrall v. Washington, et al., 3:07-cv-64, GA.S.D. I can't recall filing date, but I lost at trial before Judge Bowen.
4. Sumrall v. Hall 1:08-cv-3909, GA.N.D. I can't recall filing date but the case was dismissed.
5. Sumrall v. Donald, et al., 2011-cv-199168, Fulton Co. Sup. Court. I can't recall filing date, but case was dismissed as moot.
6. Sumrall v. Harris, et al., 1:10-cv-128, GA.M.D. I can't recall filing date, but I won at trial before Judge Sands; a post-verdict settlement was made.
7. Sumrall v. Georgia Dept. of Corr., 2019-cv-066. I initially filed this case on 9-18-15, but it is pending in Wilcox Superior Court, before Judge Chasteen.
8. Sumrall v. Utz Quality Foods Inc., 5:18-cv-453, GA.M.D. I can't recall filing date, but I voluntarily dismissed case before it was screened.
9. Sumrall v. Hunter, et al., 18PA1279, DeKalb Co. Sup. Court. Filed on 7/12/2018, but in forma pauperis status was denied by Judge Seeliger.
10. Sumrall v. Seeliger 18PA1477, DeKalb Co. Sup. Court. Filed 12/18/2018. In forma pauperis status was denied by Judge Irwin.
11. Sumrall v. Long, 20-ID-6, Butts Co. Sup. Court. Judge Fears ordered clerk to not file complaint.
12. Sumrall v. Long, A22A0445, Court of Appeals. Notice of appeal was filed on July 26, 2021, but case is still pending.
13. I may have filed other lawsuits, but I can't recall them.

V. STATEMENT OF CLAIM

1. On April 7, 1991, Plaintiff was arrested in DeKalb County Georgia for committing numerous crimes.
 2. Plaintiff was a Christian at the time of his arrest. However, he converted to Islam in October 1991 because he was told that Islam was the closest thing to the "Black man's original religion."
 3. However, after Plaintiff learned that Islam wasn't the closest thing to his ancestors' original religion, and that Muslims had played a significant role in enslaving Black people, Plaintiff abandoned Islam in 1992 and has not joined any organized religion since.¹
 4. In October 1992, Plaintiff was convicted by a jury in DeKalb County Georgia, and was subsequently sent into the custody of the Georgia Department of Corrections (GDC), a defendant in this case.
 5. The GDC did not offer vegetarian nor vegan meals to prisoners in the 1990s. However, Plaintiff became vegetarian in the late 1990s because he believed that it's inherently wrong to kill and eat innocent animals to satisfy human appetite.
 6. More specifically, Plaintiff believed then, as he does now, that the Higher Power gave humans the intellect to protect the planet and all animal species. As such, Plaintiff believes that when humans kill animals and other humans unnecessarily,
-
1. Even though Plaintiff abandoned organized religions in 1992, he has always believed in a Higher Power.

We have violated God's will.

7. In the year 2000, Plaintiff learned that his ancient African ancestors had worshipped Ammon Ra, the Sun God, who was supreme over all deities.
8. Plaintiff saw pictures of Ra, who had animal features and was accompanied with animals, Ra also held an ankh, which is the symbol of life. These pictures confirmed Plaintiff's belief that the Higher Power wants all forms of life to be treasured and protected, and that humans and animals are meant to co-exist.
9. Plaintiff was so impressed with the concept of what Ammon Ra represented that he adopted Ammon Ra as his name and has used it since the early 2000s, including in previous lawsuits.
10. In 2007, Plaintiff was housed in Telfair SP when he learned that the GDC had recently established the Alternative Entrée Meal Program (AEP), which offered prisoners vegan meals.
11. The AEP was established to accommodate prisoners' religious, dietary beliefs/restrictions.
12. However, the 2007 version of S.O.P. 409.04.28, allowed prison staff to remove prisoners from the AEP if the prisoners: (a) missed a certain amount of meals within two specified number of days, or (b) got caught trying to pick up a regular tray.
13. After Plaintiff read the AEP participation form, he signed it because he believed that vegan meals would accommodate

his religious beliefs regarding not eating meat or animal by-products.

14. Shortly after Plaintiff signed the AEP participation form, the CDC sent him to Macon SP to participate in the AEP.
15. While at Macon SP, Plaintiff received nutritionally adequate vegan meals that conformed with his religious beliefs.
16. In 2009, Plaintiff was transferred to Austry SP, where he received nutritionally adequate meals that conformed with his religious beliefs.
17. In 2013, Plaintiff was transferred to Wilcox SP, where he received vegan meals. However, food service workers often prepared and served vegan meals incorrectly, which caused Plaintiff to file grievances.
18. On July 1, 2018, Defendant Artis Singleton became warden of Wilcox SP.
19. In July or August 2019, Plaintiff filed a grievance about how Wilcox SP's food service workers had repeatedly violated the AEP.
20. In August 2019, Mr. Singleton responded to the aforementioned grievance by, inter alia, accusing Plaintiff of not respecting the AEP because Plaintiff had previously bought non-vegan store goods.
21. Shortly thereafter, Mr. Singleton had Plaintiff removed from the AEP.
22. Plaintiff discussed the aforementioned situation with

Certain staff members, who ultimately helped Plaintiff get put back on the AEP because they knew he was a sincere vegan.

23. As a result of Plaintiff being put back on the AEP, he didn't file a grievance on Mr. Singleton for retaliating against him, though he should have.
24. In June or July 2020, Mr. Singleton put L-building on quarantine for several weeks. As such, trays were taken to the building because the prisoners who lived in L-building were prohibited from going to the mess hall.
25. However, several of the L-building prisoners were vegan, but the trays that they received were inadequate. So they complained to Mr. Singleton and Deputy Warden Ashley about their trays.
26. Instead of correcting the problems the L-building prisoners had with their trays, Defendants Singleton and Ashley retaliated against them by removing them from the AEP under the pretext that they had bought non-vegan store goods.
27. On July 29, 2020, Plaintiff found out that Defendants Singleton and Ashley had removed Plaintiff from the AEP for having bought non-vegan store goods. They took this action against Plaintiff, even though he lived in F-building at the time.
28. Plaintiff later discovered that Defendants Singleton and Ashley had also removed all of the Black vegans in F-2 for having bought non-vegan store goods, but they did

not remove any of the CAUCASIAN/Jewish prisoners in F-2 from the AEP, even though they had also bought non-vegan store goods.

29. On July 31, 2020, Plaintiff filed a grievance about him being removed from the AEP, because S.O.P. 409.04.28, which governed the AEP, did not list buying non-vegan store goods as a reason for removing vegans from the AEP.
30. By Plaintiff being removed from the AEP, his only source of well-balanced meals were regular trays.
31. However, Plaintiff chose not to eat regular trays because they were made with meat and animal by-products, and thus would have violated Plaintiff's religious beliefs.
32. On August 4, 2020, Plaintiff filed a second grievance that alleged Wilcox SP staff had racially and religiously discriminated against him.
33. On August 12, 2020, Plaintiff saw a prisoner standing in the dayroom area of the F-2 dorm; he was disoriented and on the verge of collapsing.
34. Consequently, Plaintiff went to the prisoner and guided him to a bench to sit down before he fell on the ground. Plaintiff then talked with the prisoner to see what was wrong and if he needed medical help.
35. The prisoner responded that he was dizzy and would probably feel better after he ate breakfast, which is

what he, Plaintiff and other prisoners were waiting on at the time.²

36. However, after Plaintiff and other prisoners walked the ill prisoner to the messhall, prison staff noticed the condition the ill prisoner was in, and took him to medical.
37. Shortly thereafter, the ill prisoner was diagnosed, hospitalized, and treated for having Covid-19.
38. On August 16, 2020, Plaintiff began experiencing fever, disorientation, and other Covid-19 symptoms.
39. However, when Plaintiff lost his sense of smell and felt chest pains, he became scared of dying from Covid-19.
40. Plaintiff endured Covid-19 for a few weeks without seeking medical treatment.
41. On September 23, 2020, Plaintiff submitted a Special Religious Request (SRR) form to his counselor that explained Plaintiff's religious beliefs prohibited him from eating meat and animal by-products, as well as wearing clothes made from animals. As such, Plaintiff requested that the CDC: (1) offer him vegan meals, (2) allow him to receive vegan gym shoes from an outside source, (3) allow him to receive an anklet from an outside source, and (4) require Wilcox SP to sell vegan food.
42. On September 30, 2020, Plaintiff submitted a medical request to be seen about fatigue and other health issues.

2. Even though Plaintiff was not on the AEP, he often went to the messhall to give someone the regular tray, or trade it with someone who was on the AEP. However, Plaintiff left the messhall without eating the majority of times.

43. On October 1, 2020, Plaintiff went to medical and gave blood and urine samples in relation to the health issues mentioned in paragraph 42.
44. On October 8, 2020, Plaintiff returned to medical and was told that the results of his blood and urine tests revealed that Plaintiff had a Vitamin D deficiency and a low white blood cell count (WBC). Consequently, Plaintiff was prescribed Vitamin D pills to address his deficiencies.
45. On October 13, 2020, the GDC amended S.O.P. 409.04.28, to allow staff to remove prisoners from the AEP if they bought non-vegan store goods.
46. On October 15, 2020, Plaintiff submitted a second medical request to be seen about back pain, stomach spasms, and arthritis he felt in various parts of his body.
47. On October 19, 2020, Plaintiff went to medical regarding the health problems mentioned in paragraph 46.
48. Also on October 19, 2020, Plaintiff received the GDC's response to his SRR; in short, the request was denied because the GDC claimed Plaintiff "did not say what he wanted." As such, Plaintiff filed a grievance that same day against the GDC for denying his SRR.
49. On October 21 and 28, 2020, Plaintiff took x-rays related to the health problems mentioned in paragraph 46; the results revealed that Plaintiff had bone weakness in his back and arthritis in his neck.

50. Consequently, Plaintiff was prescribed 800 mg of Ibuprofen to combat the pain he felt.
51. A Vitamin D deficiency typically stems from an inadequate diet and is known to cause back and muscle pain, as well as fatigue, arthritis and depression.
52. However, prior to being denied nutritionally adequate AEP meals by Defendants Singleton and Ashley, Plaintiff had never simultaneously experienced back pain, painful stomach spasms, arthritic pain, and depression.
53. A low white blood cell count is also caused by an inadequate diet. This can be harmful because white blood cells play an important role in helping the body fight bacteria, germs and viruses.
54. The GDC, through its Food and Farm Services division, created the AEP to meet the nutritional needs of vegan prisoners.
55. However, when Defendants Singleton and Ashley removed Plaintiff from the AEP from July 29, 2020 to October 19, 2020, they caused Plaintiff's nutritional needs to go unmet.
56. Consequently, the aforementioned actions of Defendants Singleton and Ashley were the proximate cause of Plaintiff's Vitamin D deficiency and low white blood cell count.
57. Thus, Defendants Singleton and Ashley's aforementioned actions caused Plaintiff's immune system to become

weak, which resulted in Plaintiff having a difficult time with fighting Covid-19.

58. Further, the aforementioned actions of Defendants Singleton and Ashley were the proximate cause of the arthritic, back and stomach pain Plaintiff experienced for several weeks, as well as depression.

59. Consequently, Defendants Singleton and Ashley are being sued in their individual capacities for compensatory and punitive damages, and any other appropriate relief.

60. The GDC is being sued for injunctive relief.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Ammon Ra Sumrall,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants.

CASE NO:

5:21-CV-00128-MTT-MSH

FILED '22 04 28 AM 09:13 MDC/MAC

PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT

Comes now Plaintiff Ammon Ra Sumrall, pro se and pursuant to Rule 56 of the Federal Rules of Civil Procedure, to partially move for summary judgment on his RLUIPA, First, Eighth, and Fourteenth Amendment Due Process claims. Plaintiff asserts, and his attached brief shows, that he is entitled to judgment as a matter of law because there are no genuine issues of material fact in dispute.

Wherefore, Plaintiff hopes that this Court grant this motion and enter an order that:

1. Grant Plaintiff a jury trial on the issue of damages on his First, Eighth, and Due Process claims,
2. Require Defendants to allow Plaintiff's family to order ^{him} a pair of vegan athletic shoes once a year from an established online store like Amazon or a shoe manufacturer like Adidas.

3. Require Defendants to Allow Plaintiff's family to order him vegan food packages at least four times a year from an established online store like Amazon or one that sells only vegan food products,
4. Require Defendants to establish and utilize a meaningful due process procedure for prisoners who the GDC wants to deprive of food or otherwise remove from the AEP,
5. Require Defendants to create store lists that display or otherwise inform prisoners of which products are vegan,
6. Declare that the Defendants violated Plaintiff's RLUIPA, First, Eighth, and Fourteenth Amendment rights, and
7. Grant Plaintiff any other relief that is available and the Court believes is appropriate.

April 25, 2022 Ammon RA Sumrell 719855
P.O. Box 397
Abbeville, GA 31001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Ammon Ra Sumrall,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants.

CASE NO:

5:21-CV-00128-MTT-MSH

PLAINTIFF'S BRIEF IN SUPPORT OF HIS PARTIAL
MOTION FOR SUMMARY JUDGMENT

Comes now Plaintiff Ammon Ra Sumrall, pro se, to submit this brief in support of his partial motion for summary judgment. Plaintiff further shows:

I. Statement of The Case.

Plaintiff is a prisoner of the Georgia Department of Corrections (GDC). He filed this §1983 lawsuit in 2021 against the GDC and other Defendants because they violated, inter alia, several of his Constitutional and RLUIPA rights while working under color of state law.

II. Statement of Facts.

When Plaintiff entered the penal system in 1992, he didn't

belong to any organized religion but he believed in God. However, during Plaintiff's early years of imprisonment, he was afforded countless opportunities to read and reflect on the purpose of human life. Such contemplations resulted in Plaintiff concluding that God wants humans to protect the earth and all animal species, particularly because humans were given the intellect and physical abilities to do it. As such, Plaintiff believes very strongly that humans violate God's purpose of us being here when we harm the planet and kill animals for food and clothing. (Ex. A, Sumrall aff., para. 5).

In the late 1990s and early 2000s, Plaintiff studied ancient African religions because he wanted to learn the religious practices of his ancestors. Consequently, Plaintiff discovered that his ancestors recognized Ammon Ra, the Sun God, as the Supreme Authority over all gods and forms of life. However, Plaintiff became convinced that humans and animals are meant to coexist after he saw pictures that showed Ammon Ra with animal features and accompanied with animals. But in the end, Plaintiff was so impressed with what Ammon Ra symbolized that he took Ammon Ra as his name, and even used it in his first lawsuits. (Ex. A, Sumrall aff., para. 7).

In 2006, the GDC established its Alternative Entrée Program (AEP) to accommodate prisoners' religious diets by serving them vegan meals. When Plaintiff found out about the AEP in 2007, he signed up for it because he believed that a vegan diet would conform with God's purpose of humans protecting animals instead of killing them for food and clothing. (Ex. A, Sumrall aff., para. 9).

The AEP is governed by SOP 409.04.28. The 2006 and 2018

versions of the SOP contain possible grounds for removal from the AEP, but buying non-vegan store goods isn't one of them. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 9). However, after Plaintiff filed a grievance against food service workers on August 2, 2019, Defendant Singleton punished Plaintiff by using his purchases of non-vegan store goods as a pretext to remove Plaintiff from the AEP. (Ex. A, Sumrall aff., para. 19).

A similar incident occurred in July 2020, but involved other vegan prisoners who had complained to Defendants Singleton and Ashley about their food. But this time, the Defendants reacted by removing prisoners from the AEP who had previously purchased non-vegan store goods, including Plaintiff. And like ~~this~~ before, they took action despite the fact that SOP 409.04.28 did not prohibit AEP prisoners from buying non-vegan store goods. (Ex. D, Anu Campbell aff., para. 2-4; Ex. E, Clayton Carleton aff., para. 2-3).

Plaintiff wasn't given any type of notice nor hearing before he was denied vegan meals in 2019 and 2020. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 10). However, during the time that Plaintiff was denied such meals from July 29, 2020 to October 19, 2020, he experienced malnutrition and other painful ailments that required medical attention. (Ex. A, Sumrall aff., para. 24; Ex. C, Plaintiff's RFAs to Defendant Ashley, pg. 12, para. 2; Ex. J, Oct. 8, 2020 lab report; Ex. K, Oct. 20, 2020 lab report.)

In September 2020, Plaintiff submitted a Special Religious Request that asked for the GDC to offer him vegan meals and other things, but the request was denied on the false

claim that Plaintiff failed to say what he wanted. (Ex. C, Plaintiff's RFAs to Defendant Ashley, pg. 13, para. 8).

III. Memorandum of Law.

1. First Amendment, U.S. Const.
2. Eighth Amendment, U.S. Const.
3. Fourteenth Amendment, U.S. Const.
4. RLUIPA
5. F.R.C.P.
6. *Benning v. Georgia* 845 F.Supp. 1372 (M.D. GA, 2012)
7. *Cooper v. Sheriff, Lubbock Co.* 929 F.2d, 1078 (5th Cir, 1991)
8. *Cutter v. Wilkinson* 544 U.S, 709 (2005)
9. *Farmer v. Brennan* 511 U.S. 825 (1994)
10. *Glassroth v. Moore* 335 F.3d 1282 (11th Cir, 2003)
11. *Hamm v. Dekalb County* 774 F.2d, 1567 (11th Cir, 1985)
12. *Kirby v. Siegelman* 195 F.3d 1285 (11th Cir. 1999)
13. *Lake v. Howell* 2014 U.S.Lexis 198484
14. *Midrash v. Sephardi, Inc. v. Town of Surfside* 366 F.3d 1214 (11th Cir, 2004)
15. *Sardin v. Conner* 515 U.S. 472 (1995)
16. *Solomon v. Zant* 888 F.2d 1579 (11th Cir. 1990)
17. *Thomas v. Review Bd. of Ind. Employment Sec. Div.* 450 U.S. 707 (1981).
18. *Turner v. Warden, GDCP* 650 Fed.Appx. 695 (11th Cir. 2016)
19. *Watts v. Fla. Intl Univ.* 495 F.3d, 1289 (11th Cir, 2007)

IV. Argument and Citation of Authority

Based on Rule 56(A) of the Federal Rules of Civil Procedure, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." This Court has recognized that a "factual dispute is genuine only if a reasonable jury could return a verdict for the nonmoving party," Benning v. Georgia 845 F. Supp. 2d 1372, 1375 (M.D. GA. 2012).

This brief will show that Plaintiff is entitled to judgment as a matter of law, and that no reasonable jury would return a verdict for the Defendants on Plaintiff's RLUIPA, First, Eighth, and Fourteenth Amendment claims.

A. FIRST AMENDMENT VIOLATION

The Free Exercise Clause of the First Amendment requires government respect for, and noninterference with, the religious beliefs and practices of Americans. Cutter v. Wilkinson 544 U.S. 709, 719 (2005). For First Amendment purposes, religion includes non-Christian faiths and those that do not profess belief in the Judeo-Christian God; indeed, includes the lack of faith. Glassroth v. Moore 335 F.3d 1282, 1294 (11th Cir. 2003). As such, it has been concluded in this circuit that a plaintiff's "vegetarian religious belief" is constitutionally protected as a religious belief under the First Amendment. Lake v. Howell 2014 U.S. Dist. Lexis 198484, pg. 8.

However, in order to state a valid free exercise claim, a plaintiff must allege that the government has impermissibly

burdened one of his sincerely held religious beliefs, Watts v. Fla. Int'l Univ., 495 F.3d, 1289, 1294 (11th Cir. 2007). A substantial burden occurs when "a regulation completely prevents the individual from engaging in religiously mandated activity, or if the regulation requires participation in an activity prohibited by religion." Midrash Sephardi, Inc. v. Town of Surfside 366 F.3d. 1214, 1227 (11th Cir. 2004).

In this case, the Defendants admit that the vegan diet Plaintiff was on "is a religious diet," (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 10, para. 5), so there is no question that Plaintiff's participation in the AEP was protected by the First Amendment. Therefore, the relevant question is did the Defendants substantially burden Plaintiff's Free Exercise rights when they removed him from the AEP in 2019 and 2020? The answer is yes.

To prove this, we need to look no further than grievance # 312076, in which Plaintiff complained about being denied vegan meals for two days. In part, Mr. Singleton responded, "Your allegation that you have not eaten in two days is unfounded, because you are able to utilize and report to the dining hall and receive a non-vegan tray." (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 10-11, para. 6).

Plaintiff had been vegan since 2007, yet Mr. Singleton asserted that Plaintiff should violate his religious beliefs and eat non-vegan trays to avoid hunger. This is a textbook example of an official applying "substantial pressure on an adherent to modify his behavior and violate his beliefs." Thomas v. Review Bd. of Ind. Employment Sec. Div. 450 U.S. 707, 718 (1981).

Defendants may assert that they were justified in denying

Plaintiff vegan meals for over 90 days because he had purchased non-vegan store goods. But that is a ruse, particularly because SOP 409.04.28 did not prohibit AEP prisoners from buying non-vegan food at either time that Plaintiff was removed from the AEP in 2019 and 2020. (Ex. C, Plaintiff's RFAs to the GDC, pg. 11, para. 9). Moreover, when Mr. Singleton was given the chance to prove the legitimacy of his actions, he refused. For example:

Interrogatory #3: State the dates that I was removed from the AEP in 2019 and 2020, and name the SOPs, LOPs and other documents in place at those times that permitted staff to remove prisoners from the AEP if they bought non-vegan store goods.

Mr. Singleton: Defendant objects because this interrogatory seeks information that is no longer in his possession. Defendant retired from the GDC in 2020.

Because his response was purely evasive, a fact-finder wouldn't be wrong for believing that Mr. Singleton didn't provide any evidence to support his actions because he doesn't have any to provide. And given the fact that Americans have cherished and protected the concepts of liberty and justice for centuries, it is highly unlikely that any reasonable citizen who heard Mr. Singleton's response would find anything remotely fair and justified about someone being punished for violating a rule that did not exist.

Therefore, the Court should hold that Defendants Singleton and Ashley substantially burdened Plaintiff's Free Exercise rights

when they denied him vegan meals in 2019 and 2020, and accordingly grant Plaintiff summary judgment because no reasonable jury would return a verdict for the Defendants on Plaintiff's First Amendment claim.

B. EIGHTH AMENDMENT VIOLATION

The Eighth Amendment to the U.S. Constitution prohibits the government from subjecting citizens to cruel and unusual punishment. This rule applies to incarcerated citizens, in that prison and jail officials must provide prisoners with adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee their safety. Farmer v. Brennan 511 U.S. 825, 832 (1994). But to prevail on an Eighth Amendment claim, a prisoner must show that a condition is an objectively cruel and unusual deprivation, and second, that the officials responsible for the conditions had the subjective intent to punish. Turner v. Warden, GDCP 650 Fed. Appx. 695, 701 (11th Cir, 2016).

1. Objective Component.

Defendants admit that the AEP diet Plaintiff was on in 2020 was nutritionally adequate. (Ex. C, Plaintiff's RFAs to Defendant Ashley, pg. 12, para. 5). And they also admit that they are responsible for Plaintiff not being on the AEP from July 29, 2020 to October 19, 2020. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 8; Ex. C, Plaintiff's RFAs to Defendant Ashley, pg. 12, para. 2). Based on these facts, it should not be considered a coincidence that Plaintiff experienced a Vitamin D deficiency, low white blood cell count, and other ailments during the time that he was not on the AEP. (Ex. A, Sumrall aff., para. 24; Ex. J, Oct. 8, 2020 lab

report; Ex. K, Oct. 20, 2020 lab report).

Plain and simple, Defendants failed to provide Plaintiff [with] well balanced meals with sufficient nutritional value to preserve [his] health. Hamm v. DeKalb County 774 F.2d. 1567, 1575 (11th Cir. 1985). Hence, it cannot be denied that Plaintiff's inadequate diet was objectively serious.

2. Subjective Component.

The record shows that after Plaintiff and other prisoners complained about how their AEP meals were prepared and served, Defendants Singleton and Ashley reacted by removing prisoners off the AEP. (Ex. A, Sumrall Aff., para. 19; Ex. D, Anu Campbell Aff., para. 3-4; Ex. E, Clayton Carleton Aff., para. 2-3). Their actions support a strong inference of retaliation and punishment. But that inference is strengthened when considering the fact that the Defendants punished Plaintiff for breaking a rule that didn't exist. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 9).

Additional evidence of the Defendants' intent to punish Plaintiff comes from their own words. Take the following interrogatories for example:

Mr. Singleton's Interrogatory #15: Before your administration removed me from the AEP in 2019 and 2020, did you consider the possibility that I never ate the non-vegan store goods that I bought, and that I wouldn't eat regular trays? If not, explain why you didn't make such considerations.

Answer: Defendant does not recall attempting to guess Plaintiff's possible thought processes in response to Plaintiff's removal from the AEP."

the State shall not deprive any person of life, liberty, or property without due process of law. But States may under certain circumstances create liberty interests which are protected by the Due Process Clause, Sandin v. Conner 515 U.S. 472, 483 (1995), particularly when they have consistently provided a benefit to a prisoner and deprivation of that benefit imposes an atypical and significant hardship on the inmate. Kirby v. Siegelman 195 F.3d. 1285, 1290-91 (11th Cir. 1999).

In a case that primarily dealt with the First Amendment, the Eleventh Circuit gave examples of when due process is required for prisoners. Specifically, the court said that "if [an official] sought to punish [a prisoner] beyond enforcing the restriction, [the prisoner] would be entitled to a hearing. [The official] could not have imposed physical punishment, denied [the prisoner] food, or imposed other disciplinary measures without due process." Solomon v. Zant 888 F.2d. 1579, 1582 (11th Cir. 1990).

The Fifth Circuit applied Solomon the following year in a case where food deprivation was actually at issue, Cooper v. Sheriff, Lubbock Co. 929 F.2d. 1078, 1084 (5th Cir. 1991), but also recognized that courts are "required to look at the regulation to determine whether the officials acted within the scope of the regulation and whether the regulation was valid." Id. at 1084.

There is no question that there was no rule that prohibited Plaintiff from buying non-vegan food when Defendants punished him by removing him from the AEP, thus their actions were invalid. But even if such a rule existed, Plaintiff was still entitled to a hearing because Defendants had consistently pro-

vided AEP meals to him for over 10 years, and he experienced an atypical and significant hardship during the time that he was denied those meals. (Ex. A, Sumrall Aff., para. 24; Ex. C, Plaintiff's RFAs to Defendant Ashley, pg. 12, para. 2; Ex. J, Oct. 8, 2020 lab report; Ex. K, Oct. 20, 2020 lab report).

Because the Defendants didn't give Plaintiff a hearing before they removed him from the AEP in 2019 and 2020, and their actions caused him an atypical and significant hardship, Plaintiff is entitled to summary judgment as a matter of law.

D. RLUIPA VIOLATION

Section 3(A) of the Religious Land Use and Institutionalized Persons Act established 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.

To establish a prima facie case under RLUIPA, a plaintiff must demonstrate (1) that he engaged in a religious exercise; and (2) that the religious exercise was substantially burdened. Benning v. Georgia 845 F. Supp. 2d. 1372, 1376 (M.D. Ga. 2012). To constitute a substantial burden, the government action must significantly hamper one's religious practice. Smith v. Allen 502 F.3d. 1255, 1277 (11th Cir. 2007), abrogated on other grounds by Sossamon v. Texas 131 S.Ct. 1651 (2011).

Plaintiff has been vegan since 2007 because his sincerely held religious beliefs require him to avoid eating and wearing products made with animals. (Ex. A, Sumrall Aff., para. 8). However, the GDC substantially burdened Plaintiff's right to exercise his religious beliefs when it denied his Special Religious Request that asked the GDC to: (1) offer him vegan meals to eat, (2) sell vegan food, (3) allow Plaintiff to get a pair of vegan athletic shoes sent to him, and (4) allow Plaintiff to get an Ankh sent to him. The denial was based on the false claim that Plaintiff didn't say what he wanted, but evidence shows that he did. (Ex. L, Special Religious Request form, pg. 1-3; Ex. C, Plaintiff's RFAs to Defendant Ashley, pg. 13, para. 8).

Based on the fact that the GDC did not, and cannot show that it applied the least restrictive means of furthering a compelling governmental interest when it denied Plaintiff's religious requests, the Court must grant Plaintiff summary judgment on his RLUIPA claim.

V. Conclusion.

Based on the affidavits and other documents attached to this brief, as well as Plaintiff's statement of undisputed material facts, the Court must grant Plaintiff summary judgment on all of the claims raised in this motion. Wherefore, Plaintiff hopes that the Court grant the requested relief.

April 25, 2022 Ammon RA Sumrall 719855
P.O. Box 397
Abbeville, GA 31001

Special Religious Request

Attachment 1
SOP 105.11
02/06/17

Wilcox

Facility

Nature of Request:

- Religious Paraphernalia
- Diet
- Literature
- Personal Grooming
- Religious Medallions
- Religious Headwear
- Other

Offender Name: Ammon Sumrell ID#: 719855 Date: 9-23-20

Reason and Justification for exception to normal allowances: Must include length of commitment or involvement in faith. Must include the religious scripture or reference this request is based upon. (Any offender proven to be abusing the rights obtained through this request shall be subject to disciplinary action and rights will be terminated. Do not complete this form to request regular items already approved for possession such as religious medallions.)

SEE ATTACHES

Linda Taylor 9-25-20 Approved/Disapproved (Circle one)

[Signature] 9-28-20 Approved/Disapproved (Circle one)

[Signature] 10/7/20 Approved/Disapproved (Circle one)

[Signature] 10/3/20 Approved/Disapproved (Circle one)

A. Steve Jones Approved/Disapproved (Circle one)

[Signature] 10/13/20 Approved/Disapproved (Circle one)

Ammon Sumrell
Offender's Signature

Comments: IM failed to identify what diet he is seeking, what sort of religious medallion he is requesting, or what other accommodations he wants

Retention Schedule: Upon completion, this attachment shall be maintained in the offender's institutional file according to the retention schedule for state government records.

EX.L

COPY

SPECIAL RELIGIOUS REQUEST CONTINUED

I. Basis of Religious Beliefs

i AM NOT affiliated with any organized religion, but i believe that a higher power created everything on earth. i also believe this higher power wants humans to preserve the earth and protect other species because humans have the intellect and capability to do it. In short, i believe the higher power wants humans to co-exist with other forms of life.

i developed the aforementioned beliefs over 20 years ago after reading various materials from different organized religious groups. For instance, the Golden Rule of "Do unto others as you would have them do unto you" (Matthew 7:12), is a guiding principle that controls my behavior and is applicable not only to humans, but also to animals because they are emotional creatures like humans. As such, i identify with them.

i also studied ancient African religions in the late 1990s so i could learn about my ancestors' belief systems. Consequently, my studies led me to adopt the name Ammon Ra,¹ which belonged to a popular Egyptian God. Ra is said to have been the "Sun God," which means his primary function was to provide warmth and light to the world. And depictions of Ammon Ra often show him with animals and an Ankh, which is a symbol of LIFE.

i believe Ammon Ra was a positive force who not only promoted the concept of LIFE as he gave light and warmth to the world, but he also had good relations with animals. As such, i believe all forms of life should be respected and protected, and that includes animals. So that makes me

1. i have used Ammon Ra for at least 20 years, including in lawsuits that i have filed.

COPY

An "Ethical Vegan" because i'm Against the exploitation and unjust killing of innocent animals. Moreover, my belief that all forms of life should be respected and protected is just as strong as any Christian's belief in God. (See "Veganism and Sincerely Held Religious Beliefs," by Donna D. Page)

II. Religious Request and Justification For It

By me being against the exploitation and unjust killing of all forms of life, including animals, i request that the CDC:

1. Offer me Vegan meals to eat;
2. Allow me to order a pair of Vegan athletic shoes because the current package vendor only sells shoes that are made with leather I.E., animals;
3. Allow me to have an Ankh sent in because the current package vendor doesn't sell AnKhs; and
4. Require the prison i'm in to sell Vegan food products, including pre-cooked meals as they do for non-Vegans.

Note: i was initially placed on the AEP-Vegan diet in 2007 and remained on it until Warden Singleton had me removed last year after i filed a grievance about how Food Service workers mis-handled vegan trays. Fortunately, i was placed back on the AEP until Warden Singleton and staff removed me in July 2020, because i had previously bought non-Vegan store goods.

If i knew there was a rule that prohibited vegans from buying non-Vegan food, i would have not violated it. But no such rule exist; Besides, i dont eat meat or animal by-products.

Ammon Sumrell 719855

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Ammon Ra Sumrall,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants.

CASE NO:
5:21-CV-00187-MTT-MSH

PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Comes now Plaintiff Ammon Ra Sumrall, pro se, to submit this brief in opposition to Defendants' motion for summary judgment. Plaintiff further shows:

I. STANDARD FOR SUMMARY JUDGMENT

Summary judgment should be granted only 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. F.R.C.P. 56(A). The moving party must carry its burden by presenting credible evidence affirmatively showing that... no reasonable jury could find for the nonmoving party. United States v. Four Parcels of Real Prop. 941 F.2d 1428, 1438 (11th Cir. 1991).

The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Thus, the Court can only grant summary judgment if everything in the record demonstrates that no genuine issue of material fact exists. Tippen v. Celotex Corp. 805 F.2d 949, 952 (11th Cir. 1986). A factual dispute is genuine only if a reasonable jury could return a verdict for the nonmoving party. Benning v. Georgia 845 F.Supp.2d 1372, 1375 (M.D.GA. 2012). The standard of review for cross-motions for summary judgment does not differ from the standard applied when only one party files a motion. Id.

II. ARGUMENT AND CITATION OF AUTHORITY

Defendants' motion for summary judgment raised a number of claims and defenses for relief, but none of their argument entitles them to relief. Plaintiff's brief will address each of their claims.

A. DEFENDANTS SINGLETON AND ASHLEY ARE NOT ENTITLED TO QUALIFIED IMMUNITY ON ANY OF PLAINTIFF'S CLAIMS

Qualified immunity offers complete protection for public officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Kingsland v. City of Miami 382 F.3d 1220, 1231 (11th Cir. 2004). For qualified immunity to attach, a public official must first prove that he was acting within the scope of his discretionary

Authority when the wrongful act occurred. Lee v Ferraro 284 F.3d 1185, 1194 (11th Cir. 2002). To establish that the challenged actions were within the scope of his discretionary authority, a defendant must show that those actions were: (1) undertaken pursuant to the performance of his duties, and (2) within the scope of his authority. Estate of Cummings v. Davenport 906 F.3d 934, 940 (11th Cir. 2018); A bald assertion that the acts were taken pursuant to the performance of duties and within the scope of duties will not suffice. Harbert International, Inc. v James 157 F.3d 1271, 1282 (11th Cir. 1998).

I. DEFENDANTS SINGLETON AND ASHLEY DID NOT HAVE AUTHORITY TO MAKE ANY RULES REGARDING THE ALTERNATIVE ENTREEE PROGRAM (AEP)

After Plaintiff filed a grievance in 2019 about how staff ran the AEP, Defendant Singleton removed Plaintiff from the AEP because Plaintiff had previously bought non-vegan store goods. (Ex. A, Sumrall Aff. para. 1). In 2020, Defendants Singleton and Ashley removed Plaintiff and other prisoners from the AEP after certain prisoners complained about how their food was prepared and served to them while quarantined; again, the justification for the removals was the purchase of non-vegan store goods. (Ex. B, Campbell Aff., para. 2; Ex. C, Carleton Aff., para. 2).

Plaintiff submits that Defendants acted beyond the scope of their discretionary authority, specifically because at the

times Plaintiff was removed from the AEP, S.O.P. 409.04.28 did not prohibit vegans from buying non-vegan store goods. (Ex. A, Sumrall Aff., para. 6). And while the Defendants' motives for removing Plaintiff from the AEP may be debatable, there is no question that they didn't have the authority to make any rule to remove Plaintiff from the AEP, because that duty rest exclusively with the Board of Corrections (Board). Indeed, the Georgia Constitution requires the Board to promulgate, adopt, and establish rules and regulations for the administration of the Georgia Department of Corrections (GDC). GA. Const. 1982, Art. XI, Sec. 1; GA. Comp. R. & Regs. R. 125-1-1.02. And though the Commissioner of the GDC shall formulate and submit to the Board those reasonable rules and regulations or changes thereto which are required to govern the Corrections system, Board approval shall be required prior to processing of new or revised rules for publication and implementation. GA. Const. 1982, Art. XI, Sec. 1; GA. Comp. R. & Regs. R. 125-1-1.07 (1, 2).

Based on the Georgia Constitution, Board rules and pertinent statutory law, it is clear that Defendants Singleton and Ashley had neither discretion nor authority to make any rules regarding the AEP. In fact, as mere personnel, they were "required to adhere to applicable rules, regulations, policies, procedures and directives published by the Department of Corrections and local implementing procedures promulgated in consonance therewith." GA. Const. 1983, Art. XI, Sec. 1, par. (b); GA. Comp. R. & Regs. R. 125-2-1.01 (d); O.C.G.A. 42-10-2; O.C.G.A. 42-5-12. Said differently, the Defendants'

duties and responsibilities required them to follow and obey GDC rules and regulations, not create them.

"When a governmental official goes completely outside the scope of his discretionary authority, he ceases to act as a government official and instead acts on his own behalf." Harbert International, Inc. v. James, 157 F.3d 1271, 1281 (11th Cir. 1998). "For that reason, if a government official is acting wholly outside the scope of his discretionary authority, he is not entitled to qualified immunity regardless of whether the law in a given area was clearly established." Id. And this applies to Defendants Singleton and Ashley on all of Plaintiff's claims.

Finally, although courts look to state law to determine the scope of a state official's discretionary authority, Estate of Cummings v. Davenport, 906 F.3d 934, 940 (11th Cir. 2018), Harbert mandates that if, and only if officials establish that they acted within the scope of their discretionary authority will plaintiffs have to prove that their rights were clearly established. Id., 157 F.3d at 1282. But in this case, the Defendants didn't come close to meeting their burden. Instead, they tried to dupe the Court by saying on pages 18 and 19 of their motion, that, "Plaintiff cannot contest that Defendants Singleton and Ashley's alleged actions were taken within the scope of their discretionary authority. Thus, Defendants have met their initial qualified immunity burden of showing that they acted within the scope of their discretionary authority." (citation omitted).

What Plaintiff quoted is a "bald assertion," which the Court must reject. See, Witt v. Town of Brookside, 2021 U.S. Dist. Lexis 199085 (... "the officers fail to support their 'bald assertions' that they acted within their discretionary authority with factual allegations showing they are entitled to immunity," at *32; Robinson v. Ash, 805 Fed. Appx 634, 640 (11th Cir. 2020)

("Ash has thus failed to show that he acted within the scope of his authority.... Having concluded that Ash's conduct was beyond the scope of his authority, we can go no further.")

Because Defendants have not shown through state law that they had discretionary authority to make any rules regarding Plaintiff's removal from the AEP, the Court's inquiry into whether Defendants are entitled to qualified immunity must end.

2: DEFENDANTS VIOLATED PLAINTIFF'S CLEARLY ESTABLISHED CONSTITUTIONAL RIGHTS

For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Hope v. Pelzer, 536 U.S. 730, 739 (2002). This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in light of preexisting law the unlawfulness must be apparent. Id.

In Hope, the U.S. Supreme Court stressed that "preexisting caselaw with 'materially similar' or 'fundamentally similar' facts is not always necessary to give an official fair warning of unlawful behavior." Willingham v. Loughman, 321 F.3d 1299, 1301 (11th Cir. 2003). Indeed, "general statements of the law contained within the Constitution, statute, or caselaw may sometimes provide 'fair warning' of unlawful conduct." Id.

Even though Plaintiff has shown that Defendants are not entitled to qualified immunity, he will still show that his rights were clearly established before Defendants broke them, and

that he is entitled to summary judgment.

A. PLAINTIFF'S FREE EXERCISE RIGHT WAS CLEARLY ESTABLISHED

The Free Exercise Clause of the First Amendment requires government respect for, and noninterference with, the religious beliefs and practices of Americans. Cutter v. Wilkinson, 544 U.S. 709, 719 (2005). However, after Plaintiff and other prisoners respectively complained about how their AEP meals were prepared and served in 2019 and 2020, Defendants removed Plaintiff from the AEP pursuant to a rule that did not exist. (Ex. A, Sumrall Aff., para. 6). As such, their actions substantially burdened Plaintiff's Free Exercise Right because they denied Plaintiff vegan meals to eat, and tried to make him eat non-vegan food in violation of his religious beliefs. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 10-11, para. 6)

In 2019, it was clearly established in this circuit that a substantial burden occurs when a regulation completely prevents the individual from engaging in religiously mandated activity, or if the regulation requires participation in an activity prohibited by religion. Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004). Even though the "regulation" at issue in this case was a rule that did not exist, it was used as a pretext to substantially burden Plaintiff's Free Exercise right.

Defendants seem to weakly assert that Plaintiff is an insincere vegan because of his store purchases prior to his 2020 removal from the AEP. However, Defendants have no knowledge of Plaintiff ever eating regular trays in the

dining hall (Ex.C, RFAs to Ms. Ashley, para. 9), and nor have they produced one store receipt that shows Plaintiff purchased non-vegan store goods after he was informed that Defendants would use such store purchases to justify removing vegans from the AEP.

It must be noted that Defendants didn't cite any literature, scholarly or otherwise, that opined as to why it is unethical, immoral, or illegal for vegans to buy non-vegan food. Instead, they made a long and confusing argument about "cocaine purchases," "negligent conduct," and "misapplied policies." Honestly, none of their rambling made sense given the weight of evidence that shows Defendants knew exactly what they were doing when they violated Plaintiff's rights. (See page 4, where Plaintiff showed how Defendants willfully acted beyond the scope of their discretionary authority).

More importantly, out of all the rambling Defendants did, not one line explained how their actions and regulation were reasonably related to legitimate penological interests.¹ Consequently, "because controlling precedent clearly establishes an inmate's right to religious dietary accommodations, and because Defendants did not point to any legitimate penological concerns in stopping Plaintiff's vegan diet, qualified immunity, and by extension summary judgment, must be denied," Smith v. Hatcher, 2021 U.S. Dist. Lexis 242348, at *18. However, Plaintiff is entitled to summary judgment as a matter of law.

1. Turner v. Safley, 482 U.S. 78 (1987)

B. PLAINTIFF'S EIGHTH AMENDMENT RIGHT TO RECEIVE NUTRITIOUS FOOD WAS CLEARLY ESTABLISHED

In 1985, the 11th Circuit held that prisoners are entitled to receive well-balanced meals with sufficient nutritional value to preserve health, Hamm v. DeKath City, 774 F.2d 1567, 1575. Nine years later, the U.S. Supreme Court made it clear that prison officials must ensure that inmates receive adequate food. Farmer v. Brennan, 511 U.S. 825, 832 (1994). And though neither the U.S. Supreme Court nor the 11th Circuit has ever held that the Eighth Amendment requires prison officials to "indulge inmate's dietary preferences," the latter court's suggestion that a prisoner's allegation of an inadequate vegetarian diet stated a valid Eighth Amendment claim, Harris v. Ostrout, 65 F.3d 912, 918 (11th Cir. 1995), was sufficiently clear to put Defendants on notice that they could violate the Eighth Amendment if they: (1) denied Plaintiff AEP meals, which (2) resulted in Plaintiff being harmed or injured.

With regard to the objective component of Plaintiff's Eighth Amendment claim, Defendants argue that "Plaintiff hasn't claimed - nor does he have any evidence - that any meals provided at Wilcox State Prison are nutritionally inadequate." This argument misses the point, particularly because Plaintiff's

2. In RPD #2 to Mr. Singleton, Plaintiff requested: All documents that list the nutritious facts of AEP meals from 2019 to present. Response? Defendant Singleton objects because this request is not proportional to the issues raised in this lawsuit and is unduly burdensome. More directly, Singleton, who retired from GDC in [sic] 2022, is not in possession of any responsive documents.

lawsuit does not contest the adequacy of prison meals. Rather, he claims and has shown that Defendants denied him AEP meals for approximately 90 days, and Defendants don't dispute it. And during those 90 days, Plaintiff developed a Vitamin D deficiency, low white blood cell count, and experienced a number of painful health problems; Defendants have not seriously disputed this either.

Moreover, Defendants have not shown that Plaintiff's nutritional needs would have been met had Plaintiff ate regular trays with or without meat during the time that they denied him AEP meals. Based on the record, Defendants have not put up any evidence to rebut the evidence Plaintiff submitted to satisfy the objective component of his Eighth Amendment claim.

As for the subjective component, Defendants falsely claim that Plaintiff has "no evidence of what Defendants Singleton and Ashley knew about Plaintiff regarding the Chandler subjective standard." Again, this is false because the record shows that after Plaintiff complained about being denied AEP meals for two days in grievance #312076, Mr. Singleton responded to the grievance by suggesting that Plaintiff eat regular trays. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 10-11, para. 6). Furthermore, when Mr. Singleton and Ms. Ashley were asked during discovery about any measures they took to make sure that Plaintiff wouldn't go hungry while he was denied AEP meals, they respectively responded that they didn't "recall attempting to guess Plaintiff's possible thought processes in response to Plaintiff's removal from the AEP." (See Plaintiff's Brief In Support of Summary Judgment, pgs. 9-10).

Make no mistake about it, Defendants denied Plaintiff AEP meals for approximately 90 days, and were fully aware of their actions because they wanted Plaintiff to suffer. And because Defendants have offered no evidence that proves otherwise, Plaintiff is entitled to summary judgment on his Eighth Amendment claim, and Defendants are not.

C. PLAINTIFF'S RIGHT TO PROCEDURAL DUE PROCESS WAS CLEARLY ESTABLISHED

It is axiomatic that the State shall not deprive any person of life, liberty, or property without the due process of law. Even prisoners may claim the protections of the Due Process Clause. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Indeed, the 11th Circuit has identified two situations in which due process is required before prisoners can be deprived of a liberty interest. In this case, the relevant one is "when the State has consistently bestowed a certain benefit to prisoners, usually through statute or administrative policy, and the deprivation of that benefit imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Baker v. Rexroad, 159 F. Appx 61, 83 (11th Cir.); Kirby v. Siegler, 195 F.3d 1285, 1290-91 (11th Cir. 1999)

As shown on page four, the Georgia Constitution authorized the Board of Corrections to create and establish rules and policies for the GDC to follow. One of those policies is SOP 409.04.28 (AEP), which went into effect in 2006. Notably, SOP 409.04.28 was created to accommodate the religious diets and restrictions of prisoners; the SOP also had a section that listed grounds for removal from the AEP, but buying non-vegan food was not one of them. (Ex. C, Plaintiff's RFAs to Defendant GDC, pg. 11, para. 9).

The AEP form Plaintiff signed in 2007 to participate in the AEP warned that anyone who got caught trying to get a regular tray "can receive disciplinary action and/or be removed from the program." (Ex. B, AEP sign up form). So

based on SOP 409.04.28 and the aforementioned sign-up sheet, there was a clear understanding that Plaintiff would receive AEP meals unless he got caught trying to get a regular tray or missed a certain amount of meals within a specified number of days. (See, Barnes v. Zaccari, 669 F.3d 1295, 1305 (11th Cir. 2012) ("The Policy Manual and the Code permit VSU to impose disciplinary sanctions only for cause. The cause at issue here is a violation of the Code. Until a student violates it, that student has a legitimate claim of entitlement to continued enrollment at VSU under Georgia law.")

Plaintiff was entitled to remain on the AEP until or unless he violated one of the AEP's rules. And he was certainly entitled to due process before Defendants Singleton and Ashley removed him from the AEP, particularly because the State had consistently provided AEP meals that Plaintiff benefitted from for over 10 years, and his denial of AEP meals resulted in him having health problems, which constitute[d] an atypical and significant hardship. Kirby 195 F.3d at 1290-91.

Defendants cited a number of cases to support their argument that Plaintiff wasn't entitled to due process regarding his removal from the AEP. However, Plaintiff's case is distinguishable from all of those cases for several important reasons: (1) Plaintiff has shown that his right to participate in the AEP extended from the State Constitution, but the other prisoners didn't make a similar showing, (2) Plaintiff has shown that the State had consistently provided him with AEP meals that he benefitted from for over 10 years, but the other prisoners didn't make a similar showing, (3) none of the other prisoners showed that they were injured as a result of being denied religious meals, but Plaintiff has made such a showing.

And (4) most of the other prisoners were removed for violating written rules that governed their religious diets, but the rule that Plaintiff allegedly broke didn't exist at the time he was removed from the AEP.

The touchstone of due process is protection of the individual against arbitrary action of government, Wolff v. McDonnell, 418 U.S. 539, 557 (1974), but Plaintiff didn't receive any protection. Moreover, Defendants' proposition that Plaintiff could be removed from the AEP for violating a rule that did not exist is nothing short of scary and must be rejected. After all, "elementary notions of fairness enshrined in our jurisprudence dictate that a person receive notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." BMW of North America, Inc. v. Gore, 517 U.S. 559, 574 (1996). That's why a government official's decision to "punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978).

Indeed, the concept of notice and fair warning is so deeply rooted in American jurisprudence that it has been applied in so many different situations that it's illogical to think that such concepts would not apply in the prison context. (See, Willingham v. Loughnan, 321 F.3d 1299, 1301 (11th Cir. 2003) ("...an official is entitled to notice [his] conduct is unlawful ... and to fair warning that his conduct deprived his victim of a constitutional right."); C & W Facility Servs. v. Sec'y of Labor 22 F.4th 1284, 1287 (11th Cir. 2022) ("Due process mandates that an employer receive notice of the requirements of any administration regulation before he is cited for an alleged..."))

violation."); Rogers v. Tennessee, 532 U.S. 451, 462 (2001) ("While the Ex Post Facto Clause does not of its own force apply to the Judicial Branch, the Due Process Clause encompasses the ex post facto principle of fair warning."); Hernandez v. Acosta Tractors, Inc., 898 F.3d 1301, 1306 (11th Cir. 2018) ("In order for a court to impose a sanction pursuant to its inherent authority, it must make a finding that the sanctioned party acted with subjective bad faith. And such a bad faith finding must be made in compliance with the mandates of due process, requiring fair notice and an opportunity to be heard.")

Because Defendants Singleton and Ashley denied Plaintiff the procedural protections clearly established in Wolff v McDonnell before they removed Plaintiff from the AEP, and that denial resulted in Plaintiff experiencing an atypical and significant hardship, Plaintiff is entitled to summary judgment but Defendants are not.

D. PLAINTIFF'S RIGHT TO EQUAL PROTECTION WAS CLEARLY ESTABLISHED

Equal protection is essentially a direction that all persons similarly situated should be treated alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). But to establish an equal protection claim, a prisoner must demonstrate that (1) he is similarly situated with other prisoners who received more favorable treatment, and (2) his discriminatory treatment was based on some constitutionally protected interest such as race. Jones v. Ray et al., 279 F.3d 944, 946-47 (11th Cir. 2001). Proof of discriminatory intent or purpose is a necessary prerequisite to any Equal Protection Clause claim. Mencer v. Hammonds 134

F.3d 1066, 1070 (11th Cir. 1998). Further, possible indicia of discriminatory intent include a clear pattern of disparate impact, unexplainable on grounds other than race; the historical background of the challenged decision or the specific events leading up to the decision; procedural or substantive departures from the norm; and the legislative or administrative history of the challenged statute. Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 266-68 (1977).

After Black prisoners complained to the Defendants in July 2020 about how their AEP meals were prepared and served to them during quarantine, Defendants responded by removing only Black prisoners from the AEP under the pretext that they had purchased non-vegan store goods. (Ex. A, Sumrall Aff., para. 5; Ex. D, Anu Campbell Aff., para. 2-4; Ex. E, Clayton Carleton Aff., para. 2-3). Every Black person in the dorm with Plaintiff was removed from the AEP, but none of the white and Jewish prisoners, even though they had also purchased and eaten non-vegan food from the prison store and food vendors. (Ex. F, Michael Cwikla Aff., para. 4; Ex. G, James America Aff., para. 4)

The aforementioned Caucasian and Jewish prisoners were treated more favorably solely because of their race and religion, despite the fact that they were similarly situated with Plaintiff in every material sense, in that they: (1) lived in the same dorm, (2) were convicted felons, (3) were on the AEP for religious reasons, (4) were subjected to the same rules and policies regarding the AEP and inmate discipline, and (5) had all previously purchased non-vegan food. But because of their race and religion, none of them were removed from the AEP.

The Defendants deny that they discriminated against Plaintiff, but the Court should find their denial incredible in light of the fact that they can't keep their story straight. For example, in paragraph #5 of Ms. Ashley's "declaration," she said, "The Wilcox State Prison inmates removed from the AEP in July 2020 belong to a number of racial groups, including White, Black, and Hispanic." However, when Plaintiff respectively asked Defendants Singleton and Ashley about Caucasian and Jewish prisoners in his dorm not being removed from the AEP even though they had bought non-vegan food, they both said, in part, "Defendant does not know the races of all of the offenders who were removed from the AEP in 2020," (Ex. C, Interr. for Singleton, p.5, para. 23; Interr. for Ashley, p.6-7, para. 19).

Moreover, Ms. Ashley claimed that she could not admit or deny that no Caucasian and Jewish prisoners in Plaintiff's dorm (F-2) were removed from the AEP "because of a lack of information about the race and religion of offenders who were removed from the AEP in July 2020," (Ex. C, RFAs to Ashley, p.11, para. 1). Since Defendants claimed to not know the races of the prisoners that they removed from the AEP during discovery, the Court should hold them to their statements, especially since Ms. Ashley's unsupported declaration doesn't prove anything about the race and religion of the prisoners in question.

Therefore, the Court should find that when Defendants acted beyond the scope of their authority to remove only Black prisoners from the AEP, their actions constituted a "procedural or substantive departure from the norm," Arlington, 429 U.S. at 266-68, and is sufficient indicia of their discriminatory intent. Id. Consequently, although Plaintiff did

not move for summary judgment on his Equal Protection claim, he does so now because Defendants have not put up any evidence, competent or otherwise, that would lead a reasonable jury to deliver a verdict in their favor. Hence, Plaintiff is entitled to summary judgment on his Equal Protection claim, but Defendants are not.

E. DEFENDANTS' VIOLATED PLAINTIFF'S RLUIPA RIGHTS

In Defendants' motion, they correctly stated the requirements RLUIPA imposes on prisoners and prison officials. However, they misinterpreted the facts and failed to meet their statutory burden. Specifically, Plaintiff was removed from the AEP in 2014 and July 2020, but he didn't submit his Special Religious Request (SRR) until September 23, 2020. That request asked the GDC to: (1) offer him vegan meals, (2) allow him to order a pair of vegan athletic shoes, (3) allow him to receive an Ankh, and (4) require Wilcox State Prison to sell vegan food, including pre-cooked meals. (Ex. C, RFAs to Ashley, p. 13, para. 8)

Instead of accommodating Plaintiff's simple request, the GDC denied it not because of Plaintiff's store purchases at least two months earlier as Defendants assert, but because of the false claim that Plaintiff didn't say what he wanted! Absurd. Indeed, Plaintiff merely wanted nutritious food to eat, as well as clothing that conformed with his religious beliefs. However, Defendants totally denied Plaintiff's request, which substantially burdened his RLUIPA rights. Given that the record shows that the Defendants failed to show that their actions were: (1) in furtherance of a compelling

governmental interest; AND (2) the least restrictive means of furthering that compelling governmental interest, Plaintiff is entitled to summary judgment as a matter of law, but Defendants are not.

CONCLUSION

Defendants have not submitted any competent evidence, and nor have they made any convincing arguments that entitles them to summary judgment on Plaintiff's RLUIPA, FREE EXERCISE, EQUAL PROTECTION, PROCEDURAL DUE PROCESS, AND EIGHTH AMENDMENT claims. IN short, the facts and law are not on Defendants' side, therefore they are not entitled to summary judgment.

Alternatively, Defendants did not sufficiently contest Plaintiff's motion for summary judgment. IN fact, they put up virtually no evidence. Therefore, the Court should grant Plaintiff's requested relief and any other relief that the Court believes is appropriate.

i declare under penalty of perjury that the foregoing is true and correct.

June 29, 2022 Ammon RA Sumrall 719855
P.O. Box 397
Abbeville, GA 31001

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

| | | |
|------------------------------|---|-------------------------|
| AMMON RA SUMRALL, | : | |
| | : | |
| Plaintiff, | : | |
| | : | NO. 5:21-CV-187-MTT-MSH |
| VS. | : | |
| | : | |
| GEORGIA DEPARTMENT OF | : | |
| CORRECTIONS, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| _____ | : | |

REPORT AND RECOMMENDATION

Plaintiff Ammon Ra Sumrall, an inmate currently incarcerated at Wilcox State Prison in Abbeville, Georgia, has filed a *pro se* complaint (ECF No. 1) seeking relief under 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s motion for partial summary judgment (ECF No. 31) and Defendants’ motion for summary judgment (ECF No. 41). For the reasons stated below, the Court recommends that Plaintiff’s motion be **DENIED**, and Defendants’ motion be **GRANTED**.

BACKGROUND

Plaintiff’s claims arise from his incarceration at Wilcox State Prison (“WSP”) in Abbeville, Georgia. Plaintiff names as defendants the Georgia Department of Corrections (“GDC”), Warden Artis Singleton (“Singleton”), and Deputy Warden Tonya Ashley (“Ashley”). Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.*, arguing

Defendants violated his rights by depriving him of the vegan diet he practices pursuant to his religion. Compl., ECF No. 1.

The Court received Plaintiff's complaint (ECF No. 1) on June 7, 2021. After preliminary review, all of Plaintiff's claims against Defendants were allowed to proceed for further factual development. Order 1-9, ECF No. 7; Suppl. Order 5, ECF No.13; Order 1-2, Dec. 16, 2021, ECF No. 20 (adopting Order and Suppl. Order). Plaintiff amended his complaint on January 13, 2022 (ECF No. 25). On April 28, 2022, Plaintiff filed a motion for partial summary judgment (ECF No. 31), to which Defendants responded (ECF No. 35) on May 19, 2022. On June 10, 2022, Defendants filed a motion for summary judgment (ECF No. 41). Plaintiff responded (ECF No. 45) on July 5, 2022. Defendants replied (ECF No. 49) to Plaintiff's response on August 5, 2022. Defendants' motion for summary judgment and Plaintiff's motion for partial summary judgment are ripe for review.

DISCUSSION

I. Plaintiff's and Defendants' Motions for Summary Judgment

Plaintiff moves for partial summary judgment on his RLUIPA, First, Eighth, and Fourteenth Amendment Due Process claims. Pl.'s Partial Mot. for Summ. J. 1, ECF No. 31. Plaintiff makes seven requests in his motion. *Id.* Plaintiff asks the court to (1) grant Plaintiff a jury trial on the issue of damages on his "First, Eighth, and Due Process claims;" (2) require Defendants to allow Plaintiff's family to order him a pair of vegan athletic shoes each year; (3) require Defendants to allow Plaintiff's family to order him vegan food packages "at least four times a year;" (4) require Defendants to "establish and utilize a meaningful due process procedure for prisoners who the GDC wants to deprive of food or

otherwise remove from the AEP;” (5) require Defendants to create a store list that informs prisoners of which products are vegan; (6) declare that Defendants violated Plaintiff’s RLUIPA, First, Eighth, and Fourteenth Amendment rights; and (7) grant Plaintiff any other available and appropriate relief.¹ *Id.* at 1-2.

Defendants responded (ECF No. 35) to Plaintiff’s motion for partial summary judgment and filed their own motion for summary judgment (ECF No. 41), arguing they are entitled to judgment as a matter of law on all claims because Defendants (1) did not violate Plaintiff’s rights; (2) did not violate Plaintiff’s Eighth Amendment rights; (3) did not violate Plaintiff’s Fourteenth Amendment due process and equal protection rights; (4) did not violate Plaintiff’s First Amendment rights; and (5) did not violate RLUIPA. Defs.’ Mot. for Summ. J. 8-16. Further, Defendants assert they are entitled to dismissal of Plaintiff’s state tort claim for intentional infliction of emotional distress and they are entitled to qualified immunity. *Id.* at 16-19.

II. Summary Judgment Standard

Summary judgment may be granted only “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). In determining whether a *genuine* dispute of *material* fact

¹ The Court need not address Plaintiff’s second, third, fourth, and fifth requests, that he be provided vegan shoes and food packages and that the GDC develop a procedure for removal from the AEP and store lists that note which products are vegan. Plaintiff has not shown he is entitled to judgment as a matter of law on these claims. Fed. R. Civ. P. 56(a). Plaintiff claims he specifically requested the vegan shoes and the GDC denied his requests. *See, e.g.*, Pl.’s Dep. 13, 34-41, ECF No. 35-1. However, Plaintiff has not shown that he has exhausted his administrative remedies as to that request or any of his other requests. *See Turner v. Burnside*, 541 F.3d 1077, 1082 (11th Cir. 2008). Further, since the Court recommends denial of Plaintiff’s motion, these requests should likewise be denied.

exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, drawing all justifiable inferences in the opposing party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A fact is *material* if it is relevant or necessary to the outcome of the suit. *Id.* at 248. A factual dispute is *genuine* if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Id.*

III. Undisputed Material Facts

Plaintiff has been incarcerated in Georgia state prisons since 1992. Pl.'s Br. in Supp. of Partial Mot. for Summ. J. 1-2, ECF No. 31-1. Since the late-1990s, Plaintiff has practiced a faith based upon the beliefs of his African ancestors' worship of the Sun God Ammon Ra. *Id.* at 2. Part of Plaintiff's belief system is that it is a violation of God's will to kill animals unnecessarily, thus he adheres to a vegan diet. *Id.* In 2007, Plaintiff learned that the Alternative Entrée Meal Program ("AEP") offered by the GDC would accommodate his religious dietary beliefs, and he signed up for it and remained on the program until 2019. *Id.* at 2. Around July or August 2019, Defendant Singleton removed Plaintiff from the AEP because Plaintiff consistently purchased various non-vegan goods from the prison store. Defs.' Mot. for Summ. J. 2-3, 5-6. Plaintiff quickly reenrolled in the AEP but was removed by Defendants Singleton and Ashley again in July 2020 for the same reason. *Id.* at 7. Plaintiff concedes that he purchased non-vegan goods, including chicken and beef ramen soup and chili, but claims that he purchased these items to eat in a vegan manner or to sell to other inmates. Pl.'s Dep. 29, 71-74, ECF No. 35-1; Pl.'s Aff. ¶¶ 17-18, ECF No. 30-3.

Thereafter, Plaintiff was off the AEP from July 29, 2020, to October 19, 2020. *Id.* at ¶ 19. Plaintiff alleges that, during that time, he suffered “weeks of bad health,” including stomach spasms, back pain, muscle aches, and fatigue. *Id.* at ¶ 20-21. Plaintiff admits, though, that he believes he contracted Covid-19 before he began experiencing any of the symptoms he describes. *Id.* at ¶ 22. However, Plaintiff claims that, while other inmates recovered from Covid-19, his “body and life seemed to worsen,” and medical testing revealed a Vitamin D deficiency and a low white blood cell count, both of which he attributes to poor nutrition. *Id.* at ¶ 23-24. Plaintiff does not explain, however, how he was able to purchase multiple food items per week while he was on the AEP but became ill due to poor nutrition as soon as he was removed from the program. *Id.* at ¶ 22. In October of 2020, Plaintiff was admittedly reinstated in the AEP and has remained on the program since. *Id.* at 16, 20.

Plaintiff further claims that Defendants only removed African American inmates from the AEP and not the white and Jewish prisoners who made similar non-vegan purchases from the commissary. Pl.’s Dep. 14. At the same time, Plaintiff alleges that Defendants removed him from the AEP “out of retaliation” for his past grievances regarding the vegan meals. Pl.’s Aff. ¶ 16, 19, ECF No. 31-3. Plaintiff does not provide any substantive evidence for Defendants’ alleged discriminatory behavior, other than uncorroborated accounts from other inmates and “gossip” Plaintiff heard about inmates removed from the AEP list. Pl.’s Dep. 42-48; Defs.’ Mot. for Summ. J. 4. Ultimately, Plaintiff only has personal knowledge of the seven or eight individuals from his dorm—which is one of about twenty in the jail—who were removed from the AEP. *Id.*

IV. Eighth Amendment Claim

Plaintiff contends both that he should be granted a jury trial on the issue of damages on his Eighth Amendment claims and that the Court should declare that Defendants violated his Eighth Amendment rights. Pl.'s Mot. for Partial Summ. J. 1-2. Defendants argue they are entitled to summary judgment because Plaintiff has met neither the objective nor the subjective standards required to support his claim. Defs.' Mot. for Summ. J. 9-10. The Court agrees with Defendants and recommends that their motion be granted on this ground.

A. Eighth Amendment Standard

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment by the government. The Supreme Court has recognized that prisons must provide inmates' basic needs, including "adequate food, clothing, shelter, and medical care." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). However, to successfully plead a conditions-of-confinement claim, a prisoner must show that the deprivations he suffers are objectively and sufficiently "serious" or "extreme" to constitute a denial of the "minimal civilized measure of life's necessities." *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010). This standard is only met when the challenged conditions pose "an unreasonable risk of serious damage to [the prisoner's] future health or safety," *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (internal quotation marks omitted), or if society "considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk," *Helling v. McKinney*, 509 U.S. 25, 36 (1993). A prisoner must also meet an objective standard and

show that prison officials had the requisite state of mind, *i.e.*, that the officials knew of the excessive risk to inmate health or safety and disregarded that risk. *See Campbell v. Sikes*, 169 F.3d 1353, 1364 (11th Cir. 1999).

B. Plaintiff's Claims

Plaintiff's allegations do not satisfy the standard for an Eighth Amendment conditions-of-confinement claim as Plaintiff has failed to allege facts sufficient to show the type of extreme deprivation that would violate the Eighth Amendment. As to the objective "unreasonable risk" component, Plaintiff correctly asserts that the Constitution requires prisoners be provided "reasonably adequate food[;]" however, "[a] well-balanced meal, containing sufficient nutritional value to preserve health, is all that is required." *Hamm v. DeKalb Cnty.*, 774 F.2d 1567, 1575 (11th Cir. 1985); Pl.'s Br. in Supp. of Partial Mot. for Summ. J. 8-9. Plaintiff concedes that the AEP meals are nutritionally adequate, but asserts that, during the time he was not on the AEP, his health suffered because of an inadequate diet. *Id.* However, the Eighth Amendment does not require that prisons provide meals to conform to inmates' dietary preferences—religious or otherwise. *See Robbins v. Robertson*, 782 F. App'x 794, 805 (11th Cir. 2019) ("Neither we nor the Supreme Court have ever held that the Eighth Amendment requires prison officials to indulge inmates' dietary preferences—regardless of whether those preferences are dictated by religious, as opposed to non-religious, reasons."). Plaintiff does not allege that any of the meals provided at WSP are inadequate, just that *his diet* was inadequate for the period he was not on the AEP. Therefore, Plaintiff has not alleged facts to show that Defendants created an unreasonable risk to his safety.

As to the subjective component, Plaintiff does not allege that Defendants knew about or disregarded any unreasonable risk to his safety. Instead, Plaintiff claims only that Defendants removed him from the AEP as retaliation for his complaints over how vegan meals were prepared and served. Pl.'s Br. in Supp. of Partial Mot. for Summ. J. 9-10. Plaintiff does not present any evidence that he even spoke to Defendants about his dietary preferences, much less that they knew of or disregarded any risk as to Plaintiff's health. Because Plaintiff's claims fail as to both components of the Eighth Amendment standard, Defendants are entitled to summary judgment on that ground.

V. Fourteenth Amendment Claims

Plaintiff contends he should be granted a jury trial on the issue of damages on his Fourteenth Amendment claims and the Court should declare that Defendants violated his Fourteenth Amendment rights. Pl.'s Mot. for Partial Summ. J. 1-2. Defendants argue they are entitled to summary judgment because Defendants did not violate Plaintiff's rights under either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment. Defs.' Mot. for Summ. J. 10-13. The Court agrees with Defendants and recommends that their motion be granted on this ground.

A. Equal Protection

The Equal Protection Clause of the Fourteenth Amendment provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. A claim under the Equal Protection Clause requires a plaintiff to "demonstrate that (1) he is similarly situated to other prisoners who received more favorable treatment; and (2) the state engaged in invidious discrimination against him

based on race, religion, national origin, or some other constitutionally protected basis.” *Sweet v. Sec’y Dep’t of Corr.*, 467 F.3d 1311, 1318-19 (11th Cir. 2006). It is not enough that the alleged action “results in a . . . disproportionate impact.” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 256 (1977). “Proof of [] discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” *Id.*

Plaintiff alleges that Defendants only removed African American prisoners from the AEP and not the white or Jewish prisoners, though those prisoners also purchased non-vegan store items. Pl.’s Dep. 14. Plaintiff admits, however, that he only had personal knowledge of the AEP status of prisoners in the dorm he was in at the time. *Id.* at 49-51. The remainder of his information about which prisoners were removed from the AEP came from “gossip” he heard from other inmates. *Id.* Plaintiff claims other inmates could corroborate his allegations, but he has not produced any declarations or affidavits from those individuals. *Id.* at 42-48. In sum, Plaintiff cannot show he was treated differently than similarly situated prisoners on any constitutionally protected basis, or that Defendants possessed any discriminatory intent. Plaintiff was removed from the AEP due to his non-vegan store purchases. Prisoners of various races and religions were removed from the program at the same time, for the same reason. *See* Declaration of Def. Ashley ¶¶ 7-8, ECF No. 41-2. Thus, Defendants are entitled to summary judgment on Plaintiff’s Equal Protection claim.

B. Due Process

The Fourteenth Amendment’s Due Process Clause provides for procedural protections, “requiring the government to follow appropriate procedures when its agents

decide to deprive any person of life, liberty, or property[.]” *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (internal quotation marks omitted). “To make out a denial-of-procedural-due-process claim under § 1983, a plaintiff must establish three elements: (1) a deprivation of a constitutionally protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process.” *Quintanilla v. Bryson*, 730 F. App’x 738, 743 (11th Cir. 2018) (per curiam) (citing *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)).

The Eleventh Circuit recognizes two situations where a prisoner may be further deprived of his liberty such that due process is required. *Kirby v. Seigelman*, 195 F.3d 1285, 1290 (11th Cir. 1999). Relevant here, a liberty interest can arise when the state has consistently provided a benefit to a prisoner and “the deprivation of that benefit imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 1291 (citing *Sandlin v Conner*, 515 U.S. 472, 484 (1980) (internal quotations omitted)). The crux of Plaintiff’s argument is that he had a liberty interest in continuation in the AEP and he was entitled to notice and a hearing before removal from the program; however, Plaintiff does not have a liberty interest in remaining in the AEP and a temporary suspension of his access to the program did not violate his due process rights. *See Hathcock v. Cohen*, 287 F. App’x 793, 801 (11th Cir. 2008) (holding that “[a] jail should accommodate an inmate’s religious dietary restrictions, subject to budgetary and logistical limitations, but only when the belief is ‘truly held[.]’ and affirming prison officials’ ability to inquire into the sincerity of an inmate’s beliefs); *see also Reed v. Bryant*, No. CIV-16-461-C, 2019 WL 3939068 at *12-13 (W.D. Okla. Jun. 4, 2019) (holding it was not a violation of a prisoner’s due process to temporarily suspend a religious diet when

informed of inmates consumption of items inconsistent with that diet). Plaintiff concedes he purchased multiple non-vegan items from the prison store, an action inconsistent with his professed religious diet. Thus, Defendants did not violate the Due Process Clause by temporarily suspending his access to the AEP.

Further, Plaintiff points to the fact that the Standard Operating Procedures (“SOPs”) in place at the time of his removal did not specifically prohibit inmates in the AEP from buying non-vegan items from the store, which he claims prohibits removal from the program for that reason. Pl.’s Br. in Supp. of Partial Mot. for Summ. J. 2-3. However, Plaintiff concedes that the specific prohibition on purchasing non-vegan items now appears in the SOPs and he does not challenge that provision. Pl.’s Dep. 52. Further, many other inmates were likewise removed from the AEP for purchasing non-vegan store items at the same time as Plaintiff. Declaration of Def. Ashley at ¶ 7-8. In sum, Defendants did not violate Plaintiff’s due process rights and are entitled to summary judgment on that claim.

VI. First Amendment and RLUIPA Claim

Plaintiff requests he be granted a jury trial on the issue of damages on his First Amendment claim and the Court should declare that Defendants violated his First Amendment and RLUIPA rights. Pl.’s Mot. for Partial Summ. J. 1-2. Defendants argue they are entitled to summary judgment on these claims because they did not violate his First Amendment rights and did not violate RLUIPA. Defs.’ Mot. for Summ. J.13-16. The Court agrees with Defendants and recommends that Defendants’ motion be granted on these grounds.

A. First Amendment and RLUIPA Standards

The First Amendment, as applied to the states through the Due Process Clause of the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I. “To establish a violation of his [or her] right to free exercise, [a plaintiff] must first establish that a state actor imposed a ‘substantial burden’ on his practice of religion.” *Wilkinson v. GEO Grp., Inc.*, 617 F. App’x 915, 917 (11th Cir. 2015) (per curiam) (citing *Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater*, 2 F.3d 1514, 1549 (11th Cir.1993)). The prisoner’s beliefs must be sincere, meaning they are “truly held and are religious in nature.” *Williams v. Sec’y for Dept. of Corr.*, 131 F. App’x 682, 685 (11th Cir. 2005) (per curiam). Prison officials may limit a prisoner’s free exercise of sincerely held religious beliefs if such “limitations are ‘reasonably related to legitimate penological interests.’” *Johnson v. Brown*, 581 F. App’x 777, 780 (11th Cir. 2014) (per curiam) (quoting *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987)).

RLUIPA requires the government to justify any substantial burden on a prisoner’s religious exercise by demonstrating a compelling governmental interest. *See Smith v. Allen*, 502 F.3d 1255, 1266 (11th Cir. 2007), *abrogated on other grounds by Sossamon v. Texas*, 563 U.S. 277 (2011). “To establish a *prima facie* case under section 3 of RLUIPA, a plaintiff must demonstrate 1) that he engaged in a religious exercise; and 2) that the religious exercise was substantially burdened.” *Smith v. Governor for Ala.*, 562 F. App’x 806, 813 (11th Cir. 2014) (per curiam) (citation and internal quotation marks omitted). Once a Plaintiff makes such a showing, “the burden then shifts to the defendant to prove

the challenged regulation is the least restrictive means of furthering a compelling governmental interest.” *Smith v. Owens*, 848 F.3d 975, 979 (11th Cir. 2017).

B. Plaintiff’s Motion

Plaintiff asserts that Defendants “substantially burden[ed] Plaintiff’s Free Exercise rights when they removed him from the AEP in 2019 and 2020.” Pl.’s Br. in Supp. of Mot. for Partial Summ. J. 6. He states that, in response to Plaintiff’s grievance about being denied vegan meals for two days, Defendant Singleton stated he could go to the dining hall for a non-vegan tray. *Id.* Plaintiff claims this is “an example of an official applying substantial pressure on an adherent to modify his behavior and violate his beliefs” (citing *Thomas v. Rev. Bd. Of Ind. Employ. Sec. Div.*, 450 U.S. 707, 718 (1981) (internal quotation marks omitted)). *Id.* Ultimately, Plaintiff claims that Defendants’ denying him access to the AEP for about 90 days denied him the ability to practice his religion in violation of RLUIPA and the First Amendment. *Id.* at 6-8.

C. Defendants’ Motion

Defendants argue that Plaintiff has not shown his religious rights were substantially burdened. Defs.’ Mot. for Summ J. 13-16. Specifically, they contend that Plaintiff was removed from the AEP for a legitimate reason, namely the purchase of numerous non-vegan items from the prison store. *Id.* at 13. As to the alleged RLUIPA violation, Defendants assert that Plaintiff’s religious exercise has not been substantially burdened because “Plaintiff objectively failed to adhere to a vegan diet.” Defs.’ Mot. for Summ. J. 16. The Court agrees.

D. Substantial Burden Standard

The Eleventh Circuit has “applied similar definitions of ‘substantial burden’ when assessing claims under both RLUIPA and the Free Exercise Clause.” *Robbins*, 782 F. App’x at 802 n.5 (citing *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226 (11th Cir. 2004)). “[A]n individual’s exercise of religion is ‘substantially burdened’ if a regulation completely prevents the individual from engaging in religiously mandated activity, or if the regulation requires participation in an activity prohibited by religion.” *Midrash*, 366 F.3d at 1227. It means “more than an inconvenience on religious exercise” but instead is “akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly.” *Id.* Under this definition, Plaintiff’s religious exercise has not been substantially burdened.

Plaintiff was not coerced to deviate from his religious exercise, he was merely inconvenienced by his lack of access to the AEP for about 90 days. During that time, Plaintiff could have eaten the vegan elements of the standard food trays, or, more realistically, he could have purchased acceptable food items from the prison store. Plaintiff admits—and records reveal—that he purchased multiple food items from the store each week. *See* ECF No. 41-1 (showing Plaintiff’s store purchases from May to July 2020); *see also* Pl.’s Dep. 29, 71-74. Plaintiff does not explain how or why he could not continue to purchase food items to sustain himself for the brief time he was off the AEP. Plaintiff’s contention that Defendant Singleton’s suggestion that he eat the non-vegan trays lacks merit. Merely suggesting an alternative does not amount to coercion or undue pressure.

Further, Plaintiff's removal from the AEP was pursuant to valid prison policy. Plaintiff admits that the prison's SOPs now contain a provision prohibiting inmates in the AEP from buying non-vegan products from the prison store. Pl.'s Dep. 52. However, Plaintiff argues his removal from the AEP violated his rights because it predated the codification of the non-vegan purchase rule in the GDC's SOPs. But, as Defendants correctly state, the policy "just codified common sense[.]" Defs.' Mot. for Summ. J. 13. If an inmate claims they are vegan for religious reasons, but buys non-vegan items from the prison store, "GDC employees can legitimately and objectively adjudge those purchases as irreconcilable with the prisoner's professed vegan lifestyle" and can remove prisoners from the AEP for that reason. *Id.* GDP's policy is valid. Prison officials may evaluate the sincerity of an inmate's beliefs in determining whether a religious accommodation is necessary. *See Hathcock*, 287 F. App'x at 801. Further, officials may use a prisoner's commissary purchase history as a proxy to assess sincerity of need for religious dietary accommodations. *See Hill v. Hill*, No. 6:20-cv-23, 2022 WL 2793371 at *7 (S.D. Ga., Jun. 24, 2022).

Plaintiff's religious beliefs were not substantially burdened. Therefore, Plaintiff cannot show a violation of his right to free exercise under the First Amendment. Similarly, under RLUIPA, because Plaintiff has not shown that his religious exercise was substantially burdened, the government need not demonstrate a compelling governmental interest. Thus, Defendants' motion for summary judgment should be granted on First Amendment and RLUIPA grounds, and Plaintiff's motion should be denied.

VII. Intentional Infliction of Emotional Distress

Plaintiff alleges a state law tort claim of intentional infliction of emotional distress. Pl.'s Legal Arg. 4-5, ECF No. 1-2. Plaintiff claims that Defendants "intentionally and recklessly removed Plaintiff from the AEP in violation of his rights." *Id.* at 5. He asserts Defendants "religiously and racially discriminate[d] against Plaintiff by punishing him for buying non-vegan store goods[.]" *Id.* Defendants move for summary judgment on this ground, arguing that Plaintiff's claim is barred under the Georgia Tort Claims Act ("GTCA"). The Court agrees and recommends that Defendants' motion be granted.

Plaintiff's state law tort claim is deficient for several reasons. As Defendants correctly argue, the GTCA bars Plaintiff's state law claims against them in their official capacities. Defs.' Mot. for Summ. J. 16-18. The GTCA "constitutes the exclusive remedy for any tort committed by a state officer or employee." O.C.G.A. § 50-21-25(a). "A state officer or employee who commits a tort while acting within the scope of his or her official duties or employment is not subject to lawsuit or liability therefor." *Id.* The GTCA instructs tort claimants to "name as a party defendant *only* the state government entity for which the state officer or employee was acting and shall not name the state officer or employee individually." O.C.G.A. § 50-21-25(b). Should the claimant name the individual officer or employee, "the state government entity for which the state officer or employee was acting must be substituted as the party defendant." *Id.*

However, even if Plaintiff substitutes the GDC, the appropriate government entity, for Defendants Singleton and Ashley, Plaintiff's claims remain futile for failing to comply with GTCA's service and ante litem requirements. *Id.* at 17. The GTCA mandates that a

plaintiff initiating a civil suit against Georgia “must both: (1) cause process to be served upon the chief executive officer of the state government entity involved at his or her usual office address; and (2) cause process to be served upon the director of the Risk Management Division of the Department of Administrative Services at his or her usual office address.” O.C.G.A. § 50-21-35. Further, no civil “action against the state under [the] [GTCA] shall be commenced and the courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state[.]” *Id.* § 50-21-26(a)(3). Plaintiff has not demonstrated that he complied with these procedural requirements. Therefore, Plaintiff’s claims are barred under the GTCA. *See Lewis v. Stewart*, No. 5:18-cv-00110-TES, 2018 WL 6046832, at *2 (M.D. Ga. Nov. 19, 2018) (dismissing the plaintiff’s state-law claims for failure to “effectuate service or provide the required ante litem notice”); *see also Cummings v. Ga. Dep’t of Juv. Just.*, 653 S.E.2d 729, 731-32 (Ga. 2007).

Further, even if Plaintiff named the GDC as a party and followed procedural requirements, his claim would fail because the GTCA does not waive sovereign immunity for tort actions brought against the GDC in federal court. O.C.G.A. § 50-21-23(b). Therefore, even if the GDC was substituted as a party, it would be immune from suit in federal court under Eleventh Amendment immunity. *See Jones v. Ga. Dep’t of Corr.*, 763 F. App’x 906, 907 (11th Cir. 2019); O.C.G.A. § 50-21-23(b) (Georgia waives its sovereign immunity only to the extent and manner set forth in the GTCA and only for actions brought in Georgia state courts); *see also Presnell v. Paulding Cnty., Ga.*, 454 F. App’x 763, 766 (11th Cir. 2011) (“[T] GTCA does not waive Georgia’s immunity from suit in federal

courts.”). Thus, Plaintiff’s state law tort claim is barred, and Defendants’ motion for summary judgment should be granted on that ground.

VIII. Qualified Immunity

Defendants argue that, even assuming Plaintiff could show a First Amendment, RLUIPA, or Equal Protection violation, they are entitled to qualified immunity. Defs.’ Mot. for Summ. J. 18-19. The Court agrees, and therefore, recommends that in the alternative Defendants’ motion be granted on this ground.

A. Qualified Immunity Standard

“[Q]ualified immunity offers complete protection for government officials sued in their individual capacities as long as their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known.” *Oliver v. Fiorino*, 586 F.3d 898, 904 (11th Cir. 2009) (internal quotation marks omitted). A defendant seeking qualified immunity must show that at the time of the alleged wrongful acts, “he was acting within the scope of his discretionary authority.” *Id.* at 905. Once this is established, “the burden then shifts to the plaintiff to show that the grant of qualified immunity is inappropriate.” *Id.* To do so, a plaintiff must “demonstrate: first, that the facts when viewed in a light most favorable to the plaintiff establish a constitutional violation; and, second, that the illegality of the officer’s actions was clearly established at the time of the incident.” *Id.* (internal quotation marks omitted).

B. Defendants’ Motion

Defendants argue they are entitled to qualified immunity on each of Plaintiff’s claims because Plaintiff failed to show a violation of his constitutional rights. Defs.’ Mot.

for Summ. J. 19. Plaintiff asserts that Defendants are not entitled to summary judgment on this ground because Defendants acted outside the scope of their discretionary authority when they removed Plaintiff from the AEP and they lacked the authority to promulgate rules regarding the AEP. Pl.'s Br. in Opp'n to Defs.' Mot. for Summ. J. 2-4, ECF. No. 45.

For the reasons stated above, Court finds that Defendants did not violate Plaintiff's constitutional rights. Further, despite Plaintiff's argument to the contrary, Defendants acted within their discretionary authority when they removed Plaintiff from the AEP. Their actions "(1) were undertaken pursuant to the performance of [their] duties, and (2) were within the scope of [their] authority." *Dang ex rel. Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1279 (11th Cir. 2017). The record shows that, in acting as correctional staff at WSP when they removed Plaintiff from the AEP and when they reviewed inmates' commissary purchases, Defendants acted within the scope of their authority. *See Hill*, 2022 WL 2793371 at * 5. Therefore, Defendants are entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, the Court **RECOMMENDS** that Plaintiff's motion for partial summary judgment (ECF No. 31) be **DENIED**, and Defendants' motion for summary judgment (ECF No. 41) be **GRANTED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 29th day of August, 2022.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Ammon RA Sumrall,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants.

CASE NO:

5:21-CV-00187-MTT-MSH

PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE'S
REPORT AND RECOMMENDATIONS REGARDING BOTH
PARTIES' RESPECTIVE MOTIONS FOR SUMMARY JUDGMENT

Comes now Plaintiff Ammon RA Sumrall, pro se, to file his objections to the Magistrate's Report that recommended that Plaintiff's motion for partial summary judgment be denied, and that Defendants' motion for summary judgment be granted. Plaintiff further shows his specific objections in the numbered paragraphs below:

1. THE MAGISTRATE FAILED TO VIEW THE RECORD IN THE LIGHT MOST FAVORABLE TO PLAINTIFF AND ALSO IMPROPERLY RESOLVED MATERIAL ISSUES OF DISPUTED FACTS

↳ The record before the Court supports a strong, undeniable inference that the heart of this case is about retaliation.

Indeed, undisputed evidence shows that the Defendants removed Plaintiff and other Black prisoners from the AEP right after they complained about how their meals were prepared and served. (Plaintiff's Compl., para. 33-43; Ex. A, Sumrall Aff., para. 19, Docs. 31-3; Ex. D, Anu Campbell Aff., para. 2-4, Docs. 31-6, 45-5; Ex. E, Clayton Carleton Aff., para. 2-3, Docs. 31-7, 45-6).

In short, Plaintiff has claimed that Defendants did not have a legitimate reason for removing him from the AEP. And equally important, Plaintiff has argued from the beginning, and showed in his brief in opposition to the Defendants' motion, that the rule that the Defendants created to remove Plaintiff from the AEP was invalid because they didn't have the authority to make such a rule, let alone apply it retroactively. (Plaintiff's Opposition brief, pgs. 3-6; 12-15, Doc. 45).

Nevertheless, the Magistrate drew critical inferences in the light favorable to the Defendants; accepted their version of the facts as true; and resolved disputed material facts in their favor. For example, on page four of his "Undisputed Facts," the Magistrate claimed that in 2019, "Defendant Singleton removed Plaintiff from the AEP because Plaintiff had consistently purchased non-vegan goods from the prison store;" that "Plaintiff was removed from the AEP due to his non-vegan store purchases," (p.9); that prisoners of various races and religions were removed from the program at the same time, for the same reason," citing Declaration of Defendant Ashley, (p.9); and he agreed with the Defendants' contention that "Plaintiff was removed

from the AEP for a legitimate reason, namely the purchase of numerous non-vegan items from the prison store," (p. 13); and he also concluded that "Plaintiff's removal from the AEP was pursuant to valid prison policy," (p. 15).

As the Court already knows, a fact is material if it is relevant or necessary to the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). It is against this backdrop that the aforementioned disputes that the Magistrate settled are undeniably material, given the fact that he cited the legitimacy of the Defendants' actions and policy to support his recommendation that Defendants be granted summary judgment on Plaintiff's RLUIPA, First, and both Fourteenth Amendment claims.

When courts review motions for summary judgment, they must view all evidence in the light most favorable to the nonmoving party, and resolve all reasonable doubts about the facts in its favor. Benning v. Georgia, 845 F. Supp. 2d, 1372, 1375 (M.D. GA. 2012). Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions and cannot be made by the district court. Anderson, 477 U.S. at 255. Because the Magistrate failed to view critical evidence in the light most favorable to Plaintiff, and improperly settled material disputes for the Defendants, the Court should reject the Magistrate's recommendations and deny Defendants' motion for summary judgment.

2. THE MAGISTRATE ERRED WHEN HE CONCLUDED THAT PLAINTIFF FAILED TO MEET BOTH STANDARDS OF HIS EIGHTH AMENDMENT CLAIM

With regard to the objective standard of an Eighth Amendment claim, the record shows that during the time that the Defendants denied Plaintiff AEP meals in 2020, he ultimately became ill and sought medical help. The record also shows that as a result of seeking medical help, Plaintiff was diagnosed with, and treated for, a Vitamin D deficiency, low white blood cell count, a number of painful ailments that Defendants have not even tried to disprove. (Plaintiff's Compl., para. 59-76; Ex. A, Sumrall's Aff., para. 20-26, Doc. 31-3; Ex. J, Oct. 8, 2020 Lab report, Doc. 31-8; Ex. K, Oct. 21, 2020 Radiology Report, Doc. 31-9).

The Eleventh Circuit has concluded that a medical need that is serious enough to satisfy the objective component is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. Goebert v. Lee County, 510 F.3d. 1312, 1326 (11th Cir. 2007). As such, it cannot be seriously disputed that Plaintiff's overall condition was objectively serious, given that he received medical treatment for pain and other ailments that persisted for weeks, and at one point felt like he was being tortured on a daily basis.

Moreover, courts have allowed prisoners to go forward with claims of physical injuries that were not nearly as

bad as Plaintiff's. (See, Thompson v. Sec, Florida D.O.C., 551 F.Appx. 555 (11th Cir. 2014), where court concluded that diet which caused headaches, weakness, cold sweats, dizziness, weight loss, numbness in ARM, and high blood sugar that caused fainting for an extended period of time, rose above the de minimis threshold set out in Harris v. Garner, 190 F.3d. 1279, 1286-87; Robbins v. Robertson, 2022 U.S. Dist. Lexis 2536 (M.D. GA. JAN. 6, 2022), where court denied defendants qualified immunity and summary judgment on Plaintiff's First and Eighth Amendment claims, in case where prisoner alleged that his AEP meals were nutritionally inadequate and caused him throbbing headaches, weight loss, fatigue, abdominal pains, dizziness, lack of concentration, and weakness in his extremities; Jones v. Iko, 2015 U.S. Dist. Lexis 148789 (E.D. Ark. 2015), where court found genuine dispute of material fact in case that vegan prisoner claimed medical staff were deliberately indifferent for not providing him with multi-vitamins and Vitamin D supplements).

As for the subjective component, the Magistrate incorrectly stated that "Plaintiff does not present any evidence that he even spoke to Defendants about his dietary preferences, much less that they knew of or disregarded any risk to Plaintiff's health," (p.8). The Magistrate is incorrect because Plaintiff has repeatedly cited grievance #312076, in which he complained about being denied AEP meals for two days. Defendant Singleton responded to the

grievance by telling Plaintiff to eat regular trays. (Ex. C, Plaintiff's RFAs to Defendant GDC, p. 10-11, para. 6, Doc. 45-4).¹ Furthermore, in Plaintiff's brief in support of his motion for partial summary judgment, he quoted Defendants Singleton and Ashley's respective responses to interrogatories that basically asked them if they considered the possibility that Plaintiff would not eat regular trays if he was removed from the AEP, and what measures did they take to ensure that Plaintiff would not go hungry. They both responded:

"Defendant does not recall attempting to guess Plaintiff's possible thought processes in response to Plaintiff's removal from the AEP." (Doc. 31-1, p. 9-10)

The Defendants' grievance and interrogatory responses, as shown above, are clear evidence that they were fully aware that removing Plaintiff from the AEP could cause his nutritional needs to go unmet,² yet they chose to do nothing to prevent it from happening because they wanted Plaintiff to suffer because of his past complaints.

Hence, the Court should reject the Magistrate's recommendation and deny Defendants' motion regarding Plaintiff's

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1. Even though the Magistrate claimed Plaintiff failed to show that the Defendants were aware of Plaintiff's situation, he interpreted the grievance response as "merely suggesting an alternative." (p. 14)
 2. This is another inference that should've been drawn in Plaintiff's favor, but the Magistrate chose to side with the Defendants

Eighth Amendment claim.

3. THE MAGISTRATE ERRED WHEN HE CONCLUDED THAT PLAINTIFF CANNOT SHOW THAT HE WAS TREATED DIFFERENTLY THAN OTHER PRISONERS REGARDING HIS EQUAL PROTECTION CLAIM

In response to Plaintiff's Equal Protection claim regarding his removal from the AEP, Defendant Ashley submitted a declaration that the Magistrate interpreted as having said, "Prisoners of various races and religions were removed from the program at the same time, for the same reason," (p.9). However, Plaintiff rebutted the Ashley declaration with several affidavits that showed only Black prisoners were removed from the AEP, (Ex. A, Sumrall Aff., para. 5, Doc. 45-2; Ex. F, Michael Cwikla Aff., para. 4, Doc. 45-7; Ex. G, James America Aff., para. 3-6, Doc. 45-8).

If the Magistrate would have followed Anderson and viewed all evidence favorably to Plaintiff, he would have recognized that a genuine dispute existed and recommended that Defendants be denied summary judgment. And this is especially true since Ms. Ashley didn't offer any proof to support her declaration, and equally important, her declaration contradicted the responses she and Mr. Singleton gave during discovery. Indeed, they claimed to "not know the races of all of the offenders who were removed from the AEP in 2020," and couldn't admit or deny that no Caucasian or Jewish prisoners in F-2 were removed from the AEP

when he said that Plaintiff hasn't shown that Defendants "knew of or disregarded any risk as to Plaintiff's health."

"because of a lack of information about the race and religion of offenders who were removed from the AEP in July 2020." (Ex. C, Interr. for Singleton, p. 5, para. 23; Interr. for Ashley, p. 6-7, para. 19; Ex. C, RFAs to Ashley, p. 11, para. 1. Doc. 45-4)

The Magistrate also seemed to accept the Defendants' view that Plaintiff's Equal Protection claim is deficient because it's based on Plaintiff's personal knowledge, yet neither Defendants nor the Magistrate cited any authority to support their position. F.R.C.P. 56(c)(4) requires affidavits to be based on personal knowledge, so Plaintiff should not be punished for complying with the rules. And nor should Plaintiff be criticized for not providing more evidence of the Defendants' racial and religious animus, or for being unable to name more Black prisoners who were affected by the Defendants' conduct, because when he tried to compel the Defendants to provide documents and meaningful answers that could lead to more relevant evidence, the Court rejected Plaintiff's attempt.³ (Doc. 36).

In the end, the truth is Defendants created an authorized rule to remove prisoners from the AEP, but they applied it retroactively to only Black prisoners; and the reason why is because Black prisoners had complained about how their AEP meals were prepared and served. Consequently, Defendants should be denied summary judgment.

3. Ms. Ashley objected to interrogatory #3 that asked about her religious affiliation on the grounds of harassment, oppression, intimidation and not relevant to this lawsuit, boilerplate. Also see her responses to interrogatories #15 and 16. Doc. 30-1, p. 9 of 12.

4. THE MAGISTRATE APPLIED AN INCORRECT ANALYSIS OF PLAINTIFF'S DUE PROCESS CLAIM

The Magistrate said on page 10 of his Report that Plaintiff does not have a liberty interest in remaining in the AEP, but he failed to explain why. Instead, he claimed that a "temporary suspension from the AEP did not violate Plaintiff's due process rights," then cited Hathcock v. Cohen, 287 F.Appx 793 (11th Cir. 2008) and Reed v. Bryant, 2019 WL 3939068.

Neither case applies to this one. For instance, Hathcock concerned, inter alia, a sincerity test for a jail detainee who sought to participate in a religious diet, while Plaintiff had been on the AEP over 10 years before he was removed from it. And Reed concerned a prisoner who allegedly ate food that violated the prison's established rules, while Plaintiff was removed from the AEP for violating a rule that did not exist. And most important, neither case involved facts that inherently entitled the prisoners to a liberty interest that warranted due process protections, but Plaintiff's case has such facts.

Under Sardin v. Conner, 515 U.S. 472 (1995) and Kirby v. Siegelman, 195 F.3d 1285 (11th Cir. 1999), the due process analysis in cases like this one require two questions to be asked: (1) Did the State consistently provide a benefit to Plaintiff, and (2) Did the deprivation of that benefit impose an atypical and significant hardship on Plaintiff in relation to the ordinary incidents of prison life? Because the Magistrate did not answer either question, the Court should reject

his recommendation and deny Defendants summary judgment.⁴

Finally, there is no doubt that Plaintiff did not have "fair warning" before he was removed from the AEP. And nor is there any dispute that the AEP S.O.P. in effect at the time of Plaintiff's removal allowed vegans to buy non-vegan store goods. (See, Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978), ("To "punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.") As such, the arbitrary removal of Plaintiff from the AEP was not just legally wrong, but was also fundamentally unfair.

5. THE MAGISTRATE ERRED WHEN HE CONCLUDED THAT PLAINTIFF'S FIRST AMENDMENT AND RLUIPA RIGHTS WERE NOT SUBSTANTIALLY BURDENED

Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d.1214,1227 (11th Cir. 2004), defines a substantial burden as the complete prevention of an individual from "engaging in religiously mandated activity, or if the regulation requires participation in an activity prohibited by religion." In this case, Plaintiff was completely prevented from eating religiously required AEP meals for an improper reason (I.E., retaliation). And when he filed a grievance about the 2020 removal, Defendant Singleton partly responded, "Your allegation that you have not eaten in two days is unfounded, because you are able to utilize and report

4. Defendants have not denied that Plaintiff had consistently benefitted from being on the AEP, and nor have they denied that the health problems he endured while off the AEP constitute an atypical and significant hardship.

to the dining hall and receive a non-vegan tray." (Ex. C, Plaintiff's RFAs to Defendant GDC, p. 10-11, para. 6, Doc. 31-5).

Plaintiff believes Mr. Singleton's statement constitute undue pressure of trying to get Plaintiff to engage in activity prohibited by his religious beliefs, but the Magistrate, once again, viewed this evidence in Defendants' favor by interpreting the statement as a harmless suggestion. The meaning behind the statement is a question of fact, in which only a jury should decide. But regardless of the intentions behind the statement, the key point is Mr. Singleton saw non-vegan trays as a viable, if not exclusive option to the AEP meals that he deprived Plaintiff of, and that, within itself, is the essence of Plaintiff's Free Exercise claim because eating non-vegan food is a violation of his religious beliefs. ⁵

As for the coercive aspect of Mr. Singleton's statement, a jury could infer that Plaintiff could resume getting AEP meals if he stopped complaining about how the meals were prepared and served. But there is simply no reason to believe that a jury would conclude that Plaintiff's Free Exercise right was ~~merely~~ ^{merely} inconvenienced if shown that the deprivation of AEP meals resulted in Plaintiff suffering health problems because of malnutrition.

The Magistrate also claimed that Plaintiff was removed from the AEP pursuant to a valid prison policy, but it could not be valid, as Plaintiff has shown, because it was created in an unauthorized manner and utilized for retaliatory reasons. More-

5. It stands to reason that if Mr. Singleton believed store goods would have met Plaintiff's nutritional needs, he would've "suggested" that Plaintiff eat those things to avoid hunger and malnutrition.

over, it was applied retroactively, so the Court would not be wrong for not considering the revised version of the SOP that the Defendants and Magistrate claim "codified common sense."⁶ After all, in Brown v. Thomas 3:20-cv-726-BJD-MCR (M.D. Fla. March 24, 2022), the defendant submitted a policy that he believed was helpful to his case, but it went into effect after the incidents that gave rise to the lawsuit. The district court said that it "will not consider Unit Procedure 698 as its effective date renders it inapplicable to the allegations raised in the Complaint." Id at *25. As such, the Court should disregard any and all references to the revised version of the AEP S.O.P. that now makes it permissible to remove vegan prisoners from the AEP if they buy non-vegan store goods, because the revision is irrelevant to this case.

Finally, even though the Magistrate erroneously concluded that Plaintiff was removed from the AEP pursuant to a "valid policy," he failed to explain, like the Defendants, how and why the removal of Plaintiff from the AEP was reasonably related to legitimate interests. Turner v. Safley, 482 U.S. 78 (1987). Therefore, Defendants should be denied summary judgment because they substantially burdened Plaintiff's First Amendment right to freely exercise his religion when they completely prevented him from eating AEP meals.

With regard to Plaintiff's RLUIRA claim, it is based on

6. In interrogatories #4 and #10 to Ms. Ashley, Plaintiff basically asked her questions about whether the Defendants believed Plaintiff was an insincere vegan. She responded, in part, "SOP 409.04.28 does not require a determination of sincerity." (Doc 30-1, p. 10-11). If ~~that's~~ the case, how did the revision of SOP 409.04.28 codify common sense?

his September 23, 2020 Special Religious Request that asked the GDC to: (1) offer him vegan meals to eat, (2) sell vegan food, (3) allow Plaintiff to get a pair of athletic shoes sent to him, and (4) allow Plaintiff to get an Ankh sent to him. Defendant GDC denied Plaintiff's request, which completely prevented Plaintiff from exercising his religion, based on the false claim that Plaintiff didn't say what he wanted. (Ex. L, Special Religious Request form, p. 1-3; Ex. C, Plaintiff's RFAs to Defendant Ashley, p. 13, para. 8, Doc. 45-4).

The Magistrate made absolutely no mention of Plaintiff's Special Religious Request. Instead, he, once again, accepted the Defendants' version of facts and concluded that Plaintiff's RLUIPA rights were not substantially burdened because "Plaintiff objectively failed to adhere to a vegan diet." (p. 13). But as previously mentioned, the GDC officially claimed that Plaintiff's Special Religious Request was denied because Plaintiff didn't say what he wanted. Based on the record, the Court should reject the Magistrate's recommendation and deny Defendants summary judgment on Plaintiff's RLUIPA claim.⁷

6. THE MAGISTRATE ERRED WHEN HE CONCLUDED THAT DEFENDANTS ACTED WITHIN THE SCOPE OF THEIR AUTHORITY

The Defendants asserted the defense of qualified immunity in their motion for summary judgment, but they failed to

⁷ In Interrogatory #24 to the GDC, Plaintiff basically asked if the GDC was opposed to Plaintiff receiving vegan shoes and monthly food packages from society, and the GDC said No. (Ex. C, Interrog. to GDC, p. 3, para. 24, Doc. 45-4). The response to interrogatory #25 is also telling.

offer any evidence to show that they acted within the scope of their authority when they created a rule to justify removing Plaintiff from the AEP. Plaintiff's brief in opposition showed that only the Board of Corrections has the authority to make rules and set policy for how the Department of Corrections operated, and that Defendants Singleton and Ashley, as employees, were obligated to follow the Board's rules. (Doc. 45, p. 3-6).

Whether an official was acting within his discretionary authority is a question of fact. Espanola Way Corp. v. Meyerson, 690 F.2d 827, 830 (11th Cir. 1982). However, it is the defendant official's burden, and his alone, to establish that he was acting within his discretionary authority. McCullough v. Antolini 559 F.3d. 1201, 1205 (11th Cir. 2009). Defendants must ground their claim of qualified immunity in factual assertions regarding the scope and source of their official authority. Dean v. O'Leary, 2019 U.S. Dist. Lexis 2278252, at ¶7, 8, (N.D.GA. June 7, 2019) (citing Beech v. City of Mobile, 874 F. Supp 1305, 1310 (S.D. Ala. 1994), where court concluded defendants failed to show discretionary authority and giving examples of potentially probative evidence, such as "standard operating procedures contained in their policy manuals.")

In this case, the Defendants offered bald assertions about them having discretionary authority to make any rules regarding Plaintiff's removal from the AEP,⁸ and the Magistrate accepted those assertions by citing Hill v. Hill, 2022 WL 2793371. But Hill is inapplicable because the plaintiff in that case did not claim that the defendant had acted outside the scope of his discretionary authority. As such, the court did not ~~describe~~^{describe} how the Defendant proved that his

⁸ Mr. Singleton was asked in interrogatory #3 to name, inter alia, the

Actions fell within his discretionary authority.

The Defendants in this case did not carry their burden of proving that they acted within the scope of their discretionary authority. Therefore, the Court should reject the Magistrate's recommendation and deny Defendants qualified immunity.

7. THE MAGISTRATE ERRED WHEN HE CONCLUDED THAT PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT ON ALL OF HIS CLAIMS

The party seeking summary judgment bears the initial burden of demonstrating to the court, by reference to the record, that there are no genuine issues of material fact to be determined at trial. Clark v. Coats & Clark Inc., 929 F.2d 604, 608 (11th Cir. 1991). When a moving party has discharged its burden, the non-moving party must then go beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is no genuine issue for trial. Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590, 593-94 (11th Cir. 1995). A mere scintilla of evidence in support of the non-moving party's position is insufficient to defeat a motion for summary judgment. Kesinger ex rel. Estate of Kesinger v. Herrington, 381 F.3d 1243, 1247 (11th Cir. 2004).

S.O.P.s, L.O.P.s And other documents... that permitted staff to remove prisoners from the AEP if they bought non-vegan store goods." He objected. (Doc. 30-1, p. 9 of 12)

The record shows that Plaintiff submitted Affidavits, medical documents, and various discovery responses to support every claim he made for summary judgment. But Defendants only presented a "mere scintilla of evidence" to rebut some claims, and absolutely nothing on others. That is not enough to defeat Plaintiff's motion for summary judgment. For instance:

A. FIRST AMENDMENT CLAIM

Defendants admit that Plaintiff was removed from the AEP in 2019 shortly after he filed a grievance about how the AEP was operating. And they did not deny that in July 2020, prisoners in L-building complained to Defendants Singleton and Ashley about how their meals were prepared and served. (Ex. C, Plaintiff's RFAs to Defendant GDC, para. 7, p. 4 of 6, Doc. 31-5). This was the same month that Defendants removed a number of prisoners from the AEP for buying non-vegan store goods, including Plaintiff.

Given the fact that Defendants have never explained why they decided to implement a mass removal of prisoners from the AEP in 2020, nor explain how their actions were related to legitimate penological interests, a reasonable jury could infer Defendants had a retaliatory motive when they removed Plaintiff from the AEP both times. And such an inference would be strengthened when shown that the Defendants intentionally violated the AEP when they permitted vegans to be fed beef hamburgers and chicken burgers.⁹

9. Defendant Ashley denied that she ordered vegans to be fed impermissible food, but she doesn't deny that she and other Defen-

Based on the facts above, there is no doubt that a jury could find that Plaintiff's Free Exercise right was violated, irrespective of how one may interpret Mr. Singleton's aforementioned statement that Plaintiff is able to eat non-vegan trays (which would totally violate Plaintiff's religious beliefs). Still, the point is Defendants have not put up any evidence that would require a jury to return a verdict for them, so Plaintiff is entitled to summary judgment.

B. EIGHTH AMENDMENT CLAIM

Plaintiff's affidavit and medical records show that he endured an objectively serious medical condition as a result of being denied AEP meals in 2020. However, Defendants didn't put up any evidence to dispute the seriousness of Plaintiff's health problems, let alone try to create doubt that their actions were the proximate cause of Plaintiff's health problems.

With regard to the subjective component, Plaintiff submitted his affidavit, referenced Mr. Singleton's grievance response, and cited Defendants' interrogatory and RFA responses to show that the Defendants were fully aware that Plaintiff was being denied nutritious AEP food. Yet they did nothing because they wanted Plaintiff to suffer. And once again, Defendants put up no evidence to dispel the notion that they were subjectively aware of Plaintiff's situation. Therefore, Plaintiff is entitled to summary judgment on this claim.

dants allowed it to happen. (Ex. C, Plaintiff's RFAs to Ashley, para. 15, p. 6 of 6, Doc. 31-5)

C. DUE PROCESS CLAIM

Along with his affidavit, Plaintiff submitted an AEP sign-up sheet that warned prisoners if they got caught violating an AEP rule that they could face disciplinary action. (Ex. B, AEP sign-up form, Doc. 31-4). This implies that some form of due process is possible, but the Defendants didn't provide it and they don't deny it.

Under Sandin v. Conner, 515 U.S. 472 (1995) and Kirby v. Siegelman, 195 F.3d 1285 (11th Cir. 1999), it has been recognized that prisoners can have a liberty interest that requires due process when the State has (1) consistently provided a benefit to prisoners, and (2) the deprivation of that benefit imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

The record shows - and Defendants have not disputed - that Plaintiff had consistently benefitted from being on the AEP for over 10 years, and that he suffered malnutrition when he was removed from the AEP, thus constituting an atypical and significant hardship. Because the Defendants failed to put up any evidence to dispute these facts, Plaintiff is entitled to summary judgment on his Due Process claim.

D. EQUAL PROTECTION CLAIM

Plaintiff has claimed that the Defendants created an unauthorized rule to remove prisoners from the AEP, but they applied it retroactively to only Black prisoners because they had previously complained about the AEP. In support of his Equal Protection claim, Plaintiff submitted several affidavits that show how the Defendants discriminated against Black prisoners for racial and religious reasons.

The only evidence Defendants submitted to dispute Plaintiff's claim is Ms. Ashley's declaration. However, her declaration didn't offer any proof that prisoners of all races and religions were removed from the AEP when Plaintiff was removed. Moreover, she and her co-defendants claimed during discovery that they didn't know the races of all the prisoners that they had removed from the AEP. As such, Ms. Ashley's declaration is incredible. Accordingly, Plaintiff is entitled to summary judgment on this claim.

E. RLUIPA CLAIM

Plaintiff submitted the Special Religious Request form, his affidavit, and Defendants' discovery responses to show that the Defendants denied his request for religious accommodation on the false claim that he didn't say what he wanted.

This Court has said that in order to succeed on a RLUIPA claim, a plaintiff must first establish a prima facie case that he: (1) engaged in a religious exercise, that (2)

was substantially burdened, Benning v. Georgia, 845 F. Supp. 2d 1372, 1376 (M.D. GA 2012). If a prisoner meets this burden, the government must then demonstrate that the imposition of the burden or refusal to accommodate a plaintiff's belief furthers a compelling government interest by the least restrictive means, Id. at 1377.

Given the fact that the GDC regularly allows non-vegan prisoners to order food and clothing packages throughout the year, it cannot be disputed that Plaintiff's request that he be allowed to receive vegan food and athletic shoes was reasonable. However, Plaintiff's request was denied, which substantially burdened his ability to practice his religion by eating vegan food and not wearing shoes that are made from animals.

Defendants didn't even try to offer a compelling governmental interest; instead, they lied to justify their denial. Therefore, the Court should grant Plaintiff summary judgment on his RLUIPA claim.

CONCLUSION

Defendants are not entitled to qualified immunity because they failed to show that they acted within the scope of their discretionary authority when they created a rule to justify removing Plaintiff from the AEP. The Magistrate's recommendations should be denied in their entirety, because he viewed critical evidence favorably to Defendants, and also resolved material disputes in their favor.

Plaintiff's motion should be granted because Defendants have not presented any evidence to create a genuine dispute for trial, except for the Ashley declaration. But as

Plaintiff has shown, her declaration is not credible because it contradicts statements that she and co-defendants made during discovery.

Wherefore, the Court should reject the Magistrate's recommendations and DENY Defendants Summary Judgment, but GRANT Plaintiff's motion for summary judgment.

I declare under penalty of perjury that the foregoing is true and correct.

September 11, 2022 Annou RA Sumrall 719855
P.O. Box 397
Abbeville, GA 31001

CERTIFICATE OF SERVICE

This is to certify that on the date signed below, I used sufficient first-class postage to mail the foregoing documents, by placing it in the prison mail box, to be sent to:

Crowder Steward, LLP
P.O. Box 160
Augusta, GA 30903

I declare under penalty of perjury that the foregoing is true and correct.

Sept. 11, 2022 Ammon R. Sumrell 719855
P.O. Box 397
Abbeville, GA 31001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

AMMON RA SUMRALL,

Plaintiff,

v.

GEORGIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

CIVIL ACTION NO. 5:21-CV-187 (MTT)

ORDER

United States Magistrate Judge Stephen Hyles recommends denying Plaintiff Ammon Ra Sumrall’s motion for partial summary judgment (Doc. 31) and granting the defendants’ motion for summary judgment (Doc. 41). Doc. 51. Sumrall objects. Docs. 52; 53. Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews de novo the portions of the Recommendation to which he objects.¹

For the reasons stated, the Recommendation (Doc. 51) is **ADOPTED in part and REJECTED in part**. Sumrall’s Eighth Amendment and Fourteenth Amendment equal protection claims fail because he has not shown that Defendants Singleton and Ashley violated his constitutional rights, and Sumrall’s Fourteenth Amendment due process and First Amendment claims fail because Singleton and Ashley are entitled to qualified immunity. But issues of fact remain regarding whether Sumrall could

¹ Sumrall does not object to the Magistrate Judge’s recommendation that summary judgment on his state law claim for intentional infliction of emotional distress is appropriate. Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews this portion of the Recommendation for clear error. The Court finds none.

accommodate his vegan diet without the Alternative Entrée Program (“AEP”). Thus, summary judgment on Sumrall’s Religious Land Use and Institutionalized Persons Act (“RLUIPA”) claim against the Georgia Department of Corrections (“GDC”) is inappropriate. Accordingly, the defendants’ motion for summary judgment (Doc. 41) is **GRANTED in part and DENIED in part** and Sumrall’s partial motion for summary judgment (Doc. 31) is **DENIED**.

I. BACKGROUND

Sumrall’s claims arise from his removal from the AEP, a vegan diet program, while incarcerated at Wilcox State Prison. Docs. 31-2 ¶ 13; 31-3 ¶¶ 9, 15; 35 ¶ 13. Singleton is the warden of Wilcox State Prison and Ashley is the deputy warden. Docs. 25 at 4; 41-2 ¶ 1. Since the late 1990s, Sumrall began adhering to a vegan diet based on his religious beliefs in the African Sun God Ammon Ra. Docs. 31-2 ¶ 2; 31-3 ¶ 7; 35 ¶ 2. In 2007, Sumrall registered for the AEP. Docs. 31-2 ¶ 4; 35 ¶ 4. In August 2019, the defendants began removing inmates from the AEP if they purchased non-vegan food from the prison commissary.² Docs. 31-2 ¶¶ 8-9; 35 ¶¶ 8-9. Sumrall was removed from the AEP in August 2019 for purchasing non-vegan food from the prison commissary. Docs. 31-2 ¶¶ 8-9; 35 ¶¶ 8-9; 35-1 at 10:12-24. Sumrall reenrolled in the AEP but was removed again on July 29, 2020 for purchasing non-vegan food. Docs. 31-2 ¶¶ 10, 14; 35 ¶¶ 10, 14. Sumrall reenrolled in the AEP on October 20, 2020 and is currently in the program. Docs. 31-2 ¶ 28; 35 ¶ 28; 35-1 at 16:22-23, 19:9-20:20.

The parties dispute whether Sumrall could accommodate his vegan diet without the AEP. Docs. 41-4 ¶ 18; 45-1 ¶ 18. The GDC argues that Sumrall could have eaten

² The GDC’s Standard Operating Procedures did not include purchasing non-vegan food as a justification for removing inmates from the AEP until October 13, 2020. Docs. 31-2 ¶ 23; 35 ¶ 23.

the vegan elements of the non-vegan food trays and purchased food from the prison commissary during the approximately 90 days he was removed from the AEP. Docs. 41 at 3; 41-3 at 10-11 ¶¶ 6; 41-4 ¶¶ 18. The GDC highlights Sumrall's extensive commissary purchase lists as evidence that Sumrall was not reliant on the AEP to accommodate his religious diet. Doc. 41-4 ¶¶ 18. Sumrall, on the other hand, argues that he did not eat the non-vegan food he purchased. Docs. 35-1 at 71:18-72:5; 45-1 ¶¶ 18. Rather, Sumrall claims he ate the vegan elements of the non-vegan food and resold the non-vegan elements to other inmates. Docs. 35-1 at 71:18-72:5; 45-1 ¶¶ 18. Sumrall contends that his diet while removed from the AEP was "inadequate" and resulted in "fatigue and other health issues." Docs. 31-2 ¶¶ 22; 31-3 ¶¶ 26.

After his removal from the AEP, Sumrall brought claims under 42 U.S.C. § 1983, alleging violations of his First, Eighth, and Fourteenth Amendment rights, and RLUIPA. Doc. 25. Sumrall's RLUIPA claim is predicated upon the denial of his "Special Religious Request." Docs. 31-1 at 12-13; 52 at 12-13, 19-20. Sumrall's "Special Religious Request" asked the GDC to (1) "offer [him] vegan meals"; (2) "allow [him] to order a pair of vegan athletic shoes"; (3) "allow [him] to have an Ankh"; and (4) "require the prison ... to sell vegan food." Doc. 31-10 at 3. Sumrall's First Amendment claims are based on his 90-day removal from the AEP and Singleton's statement that Sumrall could eat without the AEP because he is "able to utilize and report to the dining hall and receive a non-vegan tray." Docs. 31-1 at 5-8; 52 at 10-12, 16-17. Sumrall claims Singleton's statement was an attempt to coerce him to eat non-vegan food and violate his religious beliefs. Docs. 31-1 at 5-8; 52 at 10-12, 16-17. Sumrall's Eighth Amendment claims are based on his 90-day removal from the AEP, which he contends resulted in a "Vitamin D

deficiency, low white blood cell count, and other ailments.” Docs. 31-1 at 8-10; 52 at 4-7, 17. Sumrall’s Fourteenth Amendment due process claims are based on Singleton’s and Ashley’s failure to provide him with a hearing prior to removing him from the AEP. Docs. 31-1 at 10-12; 52 at 9-10, 18. Finally, Sumrall’s Fourteenth Amendment equal protection claims are based on his contention that while black inmates, such as himself, were removed from the AEP for purchasing non-vegan food from the prison commissary, white and Jewish inmates who purchased non-vegan food were not removed from the AEP. Docs. 45 at 15-18; 52 at 7-8, 19.

II. DISCUSSION

A. RLUIPA Claim

The Magistrate Judge recommends that the Court grant summary judgment on Sumrall’s RLUIPA claim against the GDC. Doc. 51 at 11. Sumrall argues that the GDC violated RLUIPA when it denied his “Special Religious Request.” Docs. 31-1 at 12-13; 52 at 12-13. Sumrall’s “Special Religious Request” asked the GDC to (1) “offer [him] vegan meals”; (2) “allow [him] to order a pair of vegan athletic shoes”; (3) “allow [him] to have an Ankh”; and (4) “require the prison ... to sell vegan food.” Doc. 31-10 at 3. The GDC focused on Sumrall’s first request, arguing that Sumrall’s RLUIPA claim failed because he could accommodate his religious diet without the AEP based on his extensive prison commissary purchases. Doc. 41 at 15-16. The Magistrate Judge agreed. Doc. 51 at 14. Sumrall objects and argues that the Magistrate Judge’s recommendation is incorrect because it “made absolutely no mention of Plaintiff’s Special Religious Request.” Doc. 52 at 13, 19-20.

While the Magistrate Judge did not explicitly reference Sumrall's "Special Religious Requests," the Recommendation does address Sumrall's claim that the GDC substantially burdened his religious rights by denying his request to sell vegan food, provide him with vegan shoes, provide him with an Ankh, and provide him with vegan meals.³ Doc. 51 at 2-3, 14-15. The Magistrate Judge recommends denying Sumrall's requests because Sumrall's religious rights were not substantially burdened.⁴ Doc. 51 at 3 n.1, 14-15. The Court agrees in part. Sumrall has not established that his religious rights were substantially burdened by the GDC's denial of his request to sell vegan food, provide him with vegan shoes, or provide him with an Ankh. However, issues of fact remain as to whether Sumrall could accommodate his vegan diet without the AEP and, as a result, whether Sumrall's religious rights were substantially burdened during the 90 days the GDC refused to provide him with vegan meals.

Sumrall's religious rights were not substantially burdened by the GDC's refusal to sell vegan food, provide him with vegan athletic shoes, or provide him with an Ankh. "[A] 'substantial burden' must place more than an inconvenience on religious exercise ... [and] is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004). Because the GDC offers vegan meals through

³ The Magistrate Judge analyzed the requests Sumrall made in his partial motion for summary judgment. Doc. 51 at 2-3, 14-15. These requests are essentially identical to the requests Sumrall made in his "Special Religious Request." Compare Doc. 31 at 1-2 with Doc. 31-10 at 3. For example, Sumrall's partial motion for summary judgment requests that the Court "require Defendants to allow Plaintiff's family to order him a pair of vegan athletic shoes ... [and] require Defendants to create store lists that display or otherwise inform prisoners of which products are vegan." Doc. 31 at 1-2.

⁴ The Magistrate Judge also recommends denying Sumrall's request because Sumrall did not exhaust his administrative remedies. Doc. 51 at 3 n.1. Exhaustion is not an appropriate basis for denying Sumrall's request because Sumrall alleged that he exhausted his administrative remedies and the defendants do not provide any evidence to the contrary. Doc. 25 at 3-4.

the AEP, Sumrall has not established that the GDC's refusal to "sell" vegan meals is more than a "inconvenience." Docs. 31-2 ¶ 3; 35 ¶ 3. Furthermore, Sumrall does not provide any legal basis for concluding that the GDC's refusal to provide him with vegan shoes substantially burdened his religious rights. Docs. 31-1 at 12-13; 45 at 18-19; 52 at 12-13, 19-20. Sumrall's discussion of the "substantial burden" prong merely states that "[g]iven the fact that the GDC regularly allows non-vegan prisoners to order food and clothing ... it cannot be disputed that plaintiff's request" for vegan athletic shoes "was reasonable" and the denial of that request "substantially burdened his ability to practice his religion." Doc. 52 at 20. However, Sumrall conceded that the GDC sells "rubber" shoes, but because they are not "athletic" shoes they do not satisfy his request. Doc. 35-1 at 34:21-35:4. As a result, Sumrall fails to address how the denial of vegan athletic shoes does anything more than "inconvenience" his religious exercise. Finally, Sumrall admitted that the GDC sells Ankh necklaces and that this request is "moot." Doc. 35-1 at 33:9-34:4; *see also Benning v. Georgia*, 845 F. Supp. 2d 1372, 1381 (M.D. Ga. 2012) (requiring the plaintiff to purchase a religious item from the prison commissary was not a substantial burden on the plaintiff's religious exercise). In sum, Sumrall fails to demonstrate how the GDC's denial of his request to sell vegan food, provide him with vegan athletic shoes, and provide him with an Ankh necklace substantially burdened his religious exercise.

However, issues of fact remain regarding whether Sumrall could accommodate his vegan diet without the AEP and, as a result, whether Sumrall's religious rights were substantially burdened during the 90 days the GDC refused to provide him with vegan meals. The GDC argues that Sumrall could have eaten the vegan elements of the non-

vegan food trays and purchased food from the prison commissary during his 90-day removal from the AEP. Docs. 41 at 3; 41-3 at 10-11 ¶ 6; 41-4 ¶ 18. Sumrall, on the other hand, contends that his diet while removed from the AEP was “inadequate” and resulted in “fatigue and other health issues.” Docs. 31-2 ¶ 22; 31-3 ¶ 26.

The Eleventh Circuit has held that an inmate’s religious beliefs are substantially burdened when he is “forced to choose between abandoning his religious precepts ... or suffering serious health consequences.” *Robbins v. Robertson*, 782 F. App’x 794, 802-03 (11th Cir. 2019)⁵; see also *United States v. Sec’y, Fla. Dep’t of Corr.*, 2015 WL 1977795, at *11 (S.D. Fla. Apr. 30, 2015), *aff’d*, 828 F.3d 1341 (11th Cir. 2016) (finding that a policy which removed an inmate from the religious diet plan if he purchased food from the prison canteen that violated the inmate’s religious diet requirements imposed a substantial burden on the inmate’s religious beliefs); *Reed v. Bryant*, 719 F. App’x 771, 778 (10th Cir. 2017) (same). Sumrall presents evidence that he could not accommodate his religious diet without the AEP. Docs. 31-3 ¶¶ 19-26; 35-1 at 58:12-16. For example, when asked whether his removal from the AEP meant “that there was no vegan food available to [him]” or “there was no food” at all, Sumrall testified that being removed from the AEP was “the same as no food.” Doc. 35-1 at 58:12-16. Based on this testimony, a factfinder could conclude that Sumrall did not have access to an alternative source of food that complied with his religious diet. Therefore, when the GDC removed Sumrall from the AEP he was forced to choose between eating food that

⁵ The plaintiff in *Robbins* brought a claim under the First Amendment rather than RLUIPA. 782 F. App’x at 803. But the Eleventh Circuit has “applied similar definitions of ‘substantial burden’ when assessing claims under both RLUIPA and the Free Exercise Clause.” *Id.* at 802 n.5; *Midrash*, 366 F.3d at 1226 (“The Supreme Court’s definition of ‘substantial burden’ within its free exercise cases is instructive in determining what Congress understood ‘substantial burden’ to mean in RLUIPA.”). Consequently, although *Robbins* is an unpublished decision involving a claim under the First Amendment, its facts are very similar to those before the Court and its reasoning is persuasive.

violated his religious beliefs or facing malnutrition—a choice the Eleventh Circuit held constitutes a substantial burden on an inmate’s religious exercise.⁶ *Robbins*, 782 F. App’x at 802-03.

But Sumrall received the relief he requested. Based on Sumrall’s “Special Religious Request,” Sumrall requested that the GDC “offer [him] vegan meals.” Doc. 31-10 at 3; *see also* Docs. 25 ¶ 15; 31 at 2. Sumrall was reenrolled in the AEP on October 20, 2020. Docs. 31-2 ¶ 28; 35-1 at 16:22-23, 19:9-20:20; 35 ¶ 28. As a result, Sumrall’s request is likely moot. *See Smith v. Owens*, 13 F.4th 1319, 1327 (11th Cir. 2021) (holding that the district court erred when it evaluated remedies not proposed by the plaintiff); *Sossamon v. Texas*, 563 U.S. 277 (2011) (holding that injunctive and declaratory relief are the only remedies available to inmates suing a state or its agencies under RLUIPA).

The Court **ORDERS** the parties to file supplemental briefs no later than March 1, 2023 addressing whether Sumrall’s RLUIPA request to receive vegan meals is moot. For now, the GDC’s motion for summary judgment on Sumrall’s RLUIPA claims is **GRANTED** to this extent: the GDC did not substantially burden Sumrall’s religious rights by denying his request to sell vegan food, provide him with vegan athletic shoes, and

⁶ A factfinder might not believe Sumrall’s self-serving statements that he could not accommodate his religious diet without the AEP, especially given that Sumrall purchased dozens of food items from the prison commissary to accommodate his religious diet prior to his removal from the AEP. But it is the providence of the factfinder to resolve such factual disputes. *See United States v. Stein*, 881 F.3d 853, 857, 858-59 (11th Cir. 2018).

Furthermore, the GDC’s removal policy might qualify as the least restrictive means of furthering a compelling government interest. *See Smith v. Owens*, 848 F.3d 975, 979 (11th Cir. 2017). But the GDC did not make this argument.

provide him with an Ankh necklace. Otherwise, the motion is **DENIED without prejudice.**

B. Eighth Amendment Claims

The Magistrate Judge recommends that the Court grant summary judgment on Sumrall's Eighth Amendment claims against Singleton and Ashley. Doc. 51 at 6-8. The Court agrees. Sumrall's Eighth Amendment conditions of confinement claims fail because he has not presented evidence of an objective and unreasonable risk. Sumrall objects to this conclusion because while he was removed from the AEP, he was diagnosed with "a vitamin D deficiency, low white blood cell count, [and] a number of painful ailments." Doc. 52 at 4. But Sumrall does not claim that the non-vegan food trays he was given were nutritionally inadequate. Doc. 35-1 at 58:20-59:4. Rather, Sumrall claims that *his* diet was inadequate because he was unable to eat the non-vegan food trays. *Id.*

The Eleventh Circuit has held that while prison officials must provide inmates with "reasonably adequate food," a "well-balanced meal, containing sufficient nutritional value to preserve health, is all that is required." *Hamm v. DeKalb Cnty.*, 774 F.2d 1567, 1575 (11th Cir. 1985) (internal quotations and citations omitted). "Neither [the Eleventh Circuit] nor the Supreme Court have ever held that the *Eighth Amendment* requires prison officials to indulge inmates' dietary preferences—regardless of whether those preferences are dictated by religious, as opposed to non-religious, reasons." *Robbins*, 782 F. App'x at 805 (emphasis added); *see also LaFevers v. Saffle*, 936 F.2d 1117, 1120 (10th Cir. 1991) (holding that "the mere denial of a [Seventh Day Adventist's] requested vegetarian diet is insufficient to establish a cognizable Eighth Amendment

claim” because he was not entitled “to obtain the diet of his choice”); *McEachin v. McGuinnis*, 357 F.3d 197, 199 (2d Cir. 2004) (affirming the dismissal of an inmate’s Eighth Amendment claim based on the prison’s failure to serve the inmate a religious diet for one week when the plaintiff failed to alleged that the non-religious food was nutritionally inadequate).

Because the Eighth Amendment only guarantees the right to nutritionally adequate food and because Sumrall does not claim that the non-vegan food he was given was nutritionally inadequate, he fails to satisfy the objective component of his Eighth Amendment claim. Sumrall’s reliance on *Robbins v. Robertson* does not, as Sumrall argues, require a different result. Doc. 52 at 5; 2022 WL 80476 (M.D. Ga. Jan. 6, 2022). In *Robertson*, the plaintiff challenged the nutritional adequacy of the vegan and non-vegan food. 2022 WL 80476, *6. The court denied summary judgment to the defendants on the plaintiff’s Eighth Amendment claim because the plaintiff offered evidence that *all* of his meal options were nutritionally inadequate. *Id.* Sumrall, on the other hand, admits that he is not challenging the nutritional adequacy of GDC’s meals, vegan or non-vegan. Doc. 35-1 at 58:20-59:12. Accordingly, Singleton and Ashley are entitled to summary judgment on Sumrall’s Eighth Amendment claims.

C. Fourteenth Amendment Equal Protection Claims

The Magistrate Judge recommends that the Court grant summary judgment on Sumrall’s Fourteenth Amendment equal protection claims against Singleton and Ashley. Doc. 51 at 8-9. The Court agrees. Sumrall’s Fourteenth Amendment equal protection claims fail because he has established neither that he was treated differently than any similarly situated prisoner, nor that Singleton and Ashley possessed discriminatory

intent when they removed him from the AEP. Sumrall objects to this conclusion citing his testimony and the affidavits of two other prisoners. Doc. 52 at 7-8. But Sumrall's evidence is insufficient to support his equal protection claims because it lacks sufficient detail, is not based on personal knowledge, and includes inadmissible hearsay.

"To establish an equal protection claim, a prisoner must demonstrate that (1) he is similarly situated to other prisoners who received more favorable treatment; and (2) the state engaged in invidious discrimination against him based on race, religion, national origin, or some other constitutionally protected basis." *Sweet v. Sec'y, Dep't of Corr.*, 467 F.3d 1311, 1318-19 (11th Cir. 2006).

Sumrall testified that "seven or eight" black prisoners were removed from the AEP after purchasing non-vegan food, but three white inmates, Ralph Benning, Michael Cwikla, and John Peak, purchased non-vegan food and were not removed from the AEP. Doc. 35-1 at 44:5-7, 48:7-11. Sumrall does not provide detail surrounding the circumstances of these prisoners' food purchases, such as when these prisoners purchased non-vegan food and whether Singleton and Ashley knew about these purchases. The Court does not have enough information to determine whether these prisoners are similarly situated to Sumrall. Furthermore, Sumrall's testimony is not based on facts that would be admissible in evidence. "Rule 56(e) of the Federal Rules of Civil Procedure requires that affidavits that support or oppose summary judgment motions shall be made on personal knowledge, and shall set forth such facts as would be admissible in evidence. This rule also applies to testimony given on deposition." *Macuba v. Deboer*, 193 F.3d 1316, 1322-23 (11th Cir. 1999) (cleaned up). Sumrall's testimony is based on his "discuss[ions]" with inmates in his dorm, which is inadmissible

hearsay.⁷ Doc. 35-1 at 41:23-44:7, 47:23-49:22; *see also Reeves v. Thigpen*, 879 F. Supp. 1153, 1163-66 (M.D. Ala. 1995). Thus, Sumrall's testimony is insufficient to support his equal protection claims.

Cwikla, a white, Jewish prisoner in the AEP, testified by affidavit that "the Defendants did not remove [him] nor any other Jewish/Caucasian prisoner from the AEP even though [they] also bought (and buy) non-vegan store items." Doc. 45-7 ¶ 4. Cwikla's testimony does not save Sumrall's claims because Cwikla is not a similarly situated prisoner. To support an equal protection claim, a prisoner must be "similarly situated in all material respects." *See Sweet*, 467 F.3d at 1318-19; *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1218 (11th Cir. 2019); *Martinez v. Hall*, 2020 WL 1069795, at *5 (S.D. Ga. Mar. 5, 2020), *report and recommendation adopted*, 2020 WL 1816497 (S.D. Ga. Apr. 9, 2020), *aff'd*, 848 F. App'x 864 (11th Cir. 2021) (applying the "similarly situated in all material respects" test to a prisoner's equal protection claim). A similarly situated comparator will have engaged in the same basic conduct as the plaintiff. *Lewis*, 918 F.3d at 1227. Therefore, a prisoner that is "similarly situated in all material respects" to Sumrall would have been enrolled in the AEP and purchased non-vegan food before July 2020, when prison officials reviewed the prison commissary purchases list. Doc. 41-2 ¶ 4. Cwikla's affidavit includes a store receipt showing that he purchased non-vegan food on August 19, 2020; there is no evidence that Cwikla had purchased non-vegan food when prison officials reviewed the prison commissary purchase lists in July 2020. Doc. 45-7 at 4. Thus, Cwikla is not "similarly situated in all

⁷ "Inadmissible hearsay is an out-of-court statement, not otherwise excepted under the Federal Rules of Evidence, offered to prove the truth of the matter asserted therein." *Ashley v. S. Tool Inc.*, 201 F. Supp. 2d 1158, 1164 n.7 (N.D. Ala. 2002) (citing *Macuba v. Deboer*, 193 F.3d 1316, 1322 n.11 (11th Cir.1999); Fed. R. Evid. 801-804)).

material respects,” because he purchased non-vegan food in August 2020—after prison officials reviewed the prison commissary purchase lists.⁸

America, a black prisoner, testified by affidavit that “[w]hite and Jewish prisoners ... bought non-vegan store goods, but the Defendants didn’t remove any of them from the AEP.” Doc. 45-8 ¶ 4. This conclusory statement is insufficient to support Sumrall’s equal protection claim. America does not provide any information about the circumstances surrounding these “white and Jewish” prisoners’ purchases (e.g., names, dates, circumstances, decision-makers) that may have impacted whether these prisoners remained in the AEP. For example, America does not aver that Singleton and Ashley knew these prisoners were buying non-vegan food. Thus, these prisoners, like Cwikla, could have purchased non-vegan food after prison officials reviewed the prison commissary purchase lists, which would explain why they remained in the AEP. As a result, America’s testimony does not provide enough information to determine whether these prisoners are similarly situated to Sumrall.

Additionally, America does not aver the basis for his knowledge. *Reeves*, 879 F. Supp. at 1164 (“Because affidavits proffered in opposition to a motion for summary judgment must be based upon personal knowledge, a statement merely indicating that an affidavit is based upon information and belief is insufficient as a matter of law.”). For example, in *Reeves*, the plaintiff, an African American corrections officer, was discharged after she was arrested for shoplifting. *Id.* at 1160-61. The plaintiff brought an equal protection claim alleging that similarly situated white officers had not been

⁸ But even if Cwikla is a similarly situated prisoner, a single comparator is likely insufficient to establish an equal protection claim. See *Lewis*, 918 F.3d at 1228 n.14 (noting that the number of comparators can be a relevant factor when determining whether the defendant engaged in unlawful discrimination).

terminated after being arrested. *Id.* In opposition to the defendant's motion for summary judgment, the plaintiff submitted an affidavit where she named three other white officers that were arrested but not terminated. *Id.* at 1162 n.4. The court concluded that because the plaintiff had personal knowledge of the facts in her statement, but not "personal knowledge of the events described in that statement," the affidavit could not be considered on the motion for summary judgment. *Id.* at 1163 (emphasis added). Similarly, America does not aver that he has personal knowledge of the events described in his statement. Rather, America asserts in a conclusory fashion that Singleton and Ashley removed black but not white or Jewish prisoners from the AEP and "conclusory allegations without specific supporting facts have no probative value." *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Therefore, America's affidavit is insufficient to support his equal protection claim.⁹

In any event, it is undisputed that Sumrall purchased from the commissary non-vegan food, and he has no evidence to dispute Ashley's declaration testifying that he was removed from the AEP for that reason. Doc. 41-2. And while Sumrall quarrels with Ashley's testimony that prisoners of various races and religions were removed from the AEP at the same time, for the same reason, he has not refuted that testimony. In short, there is no evidence that Singleton and Ashley acted with discriminatory intent. See *Sweet*, 467 F.3d at 1318-19. Accordingly, Singleton and Ashley are entitled to summary judgment on Sumrall's Fourteenth Amendment equal protection claims.

⁹ Cwikla's general statement that "other Jewish/Caucasian prisoners" have not been removed from the AEP is insufficient for the same reasons—it lacks sufficient detail and is not based on personal knowledge. Doc. 45-7 ¶ 4.

D. Qualified Immunity

The Magistrate Judge recommends that the Court grant summary judgment on Sumrall's Fourteenth Amendment due process and First Amendment claims against Singleton and Ashley. Doc. 51 at 9-15, 18-19. The Court agrees. Sumrall's Fourteenth Amendment due process and First Amendment claims fail because Singleton and Ashley are entitled to qualified immunity.

“Qualified immunity offers complete protection for individual public officials performing discretionary functions ‘insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Sherrod v. Johnson*, 667 F.3d 1359, 1363 (11th Cir. 2012) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “Once discretionary authority is established, the burden then shifts to the plaintiff to show that qualified immunity should not apply.” *Edwards v. Shanley*, 666 F.3d 1289, 1294 (11th Cir. 2012) (quoting *Lewis v. City of W. Palm Beach*, 561 F.3d 1288, 1291 (11th Cir. 2009)). To meet this burden, a plaintiff typically must establish that “the officer’s conduct amounted to a constitutional violation” and “the right violated was ‘clearly established’ at the time of the violation.” *City of W. Palm Beach*, 561 F.3d at 1291.

1. Discretionary Authority

Singleton and Ashley acted within their discretionary authority when they removed Sumrall from the AEP. See Doc. 51 at 19. “To establish that the challenged actions were within the scope of his discretionary authority, a defendant must show that those actions were (1) undertaken pursuant to the performance of his duties, and (2) within the scope of his authority.” *Est. of Cummings v. Davenport*, 906 F.3d 934, 940

(11th Cir. 2018) (quoting *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1282 (11th Cir. 1998)). “In applying each prong of this test, [the Court] look[s] to the general nature of the defendant’s action, temporarily putting aside the fact that it may have been committed for an unconstitutional purpose, in an unconstitutional manner, to an unconstitutional extent, or under constitutionally inappropriate circumstances.” *Mikko v. City of Atlanta*, 857 F.3d 1136, 1144 (11th Cir. 2017) (quoting *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1266 (11th Cir. 2004)). “[A] government official can prove he acted within the scope of his discretionary authority by showing ‘objective circumstances which would compel the conclusion that his actions were undertaken pursuant to the performance of his duties and within the scope of his authority.’” *Est. of Cummings*, 906 F.3d at 940 (quoting *Rich v. Dollar*, 841 F.2d 1558, 1564 (11th Cir. 1988)).

It is rarely disputed that a defendant acted within his discretionary authority, and the defendants reasonably assumed that issue was undisputed here. See Doc. 41 at 18-19. But Sumrall contends that Singleton and Ashley somehow left the broad bounds of their discretionary authority as correctional officers when they removed him from the AEP. Doc. 52 at 14-15. Sumrall’s arguments are without merit. Prison officials, such as Singleton and Ashley, have the authority to remove inmates from the AEP. Docs. 31-2 ¶ 7; 35 ¶ 7; 41-3 at 2 ¶¶ 15-16. Sumrall acknowledges that prison officials have the authority to remove inmates from the AEP; rather, Sumrall disputes that the manner in which *he* was removed was lawful. Docs. 35-1 at 51:22-54:5; 45 at 3-6; 52 at 14-15. But the question is not whether it was within the defendants’ authority to commit an allegedly unlawful act. *Mikko*, 857 F.3d at 1144. Framing the inquiry in that manner

conflates the distinct questions of whether the defendants acted lawfully with the question of whether they acted within the scope of their discretion. *Sims v. Metro. Dade Cnty.*, 972 F.2d 1230, 1236 (11th Cir. 1992). Clearly, Singleton and Ashley, the warden and deputy warden of Wilcox State Prison, could remove Sumrall, an inmate, from the AEP. Docs. 35-1 at 51:22-54:5; 45 at 3-6; 52 at 14-15. And even if, as Sumrall contends, removing Sumrall from the AEP for purchasing non-vegan food was contrary to prison policy, that fact is not dispositive. *Gaillard v. Commins*, 562 F. App'x 870, 873 (11th Cir. 2014) (“[A]n officer may act within his discretionary function even when he is off-duty or when his conduct possibly violates a department policy.”). In short, Singleton and Ashley were acting within their discretionary authority when they removed Sumrall from the AEP.

2. Fourteenth Amendment Due Process Claims

Singleton and Ashley are entitled to qualified immunity on Sumrall’s Fourteenth Amendment due process claims because Sumrall has not demonstrated that they violated his constitutional rights or that the law is clearly established.

“[A] § 1983 claim alleging a denial of procedural due process requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process.” *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). The Eleventh Circuit recognizes two situations where a prisoner may be further deprived of his liberty such that due process is required. *Kirby v. Seigelman*, 195 F.3d 1285, 1290-91 (11th Cir. 1999). Relevant here, a liberty interest can arise when the state has consistently provided a benefit to a prisoner and “the deprivation of that benefit imposes an atypical and significant hardship

on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 1291 (internal quotation marks and citation omitted).

Sumrall has not demonstrated that his temporary suspension from the AEP constitutes the deprivation of a protected liberty interest. While prisons “should accommodate an inmate’s religious dietary restrictions,” those dietary preferences are “subject to budgetary and logistical limitations” and should only be accommodated “when the belief is truly held.” *Hathcock v. Cohen*, 287 F. App’x 793, 801 (11th Cir. 2008) (cleaned up) (holding that the temporary denial of religious meals resulting from an inmate’s failure to provide information to confirm the sincerity of his religious beliefs was insufficient to demonstrate a First Amendment violation). And the “temporary loss of privileges does not rise to the level of a protected liberty interest.” *Moulds v. Bullard*, 345 F. App’x 387, 396 (11th Cir. 2009) (concluding that the temporary denial of one meal per day was insufficient to support a due process claim).¹⁰ Thus, inmates do not have a liberty interest in remaining enrolled in the AEP and the temporary suspension of Sumrall’s access to the program did not violate his due process rights. *See, e.g., Greer v. Dowling*, 2017 WL 8222640, at *4 (W.D. Okla. June 22, 2017), *report and recommendation adopted*, 2018 WL 1322050 (W.D. Okla. Mar. 14, 2018), *rev’d on other grounds*, 947 F.3d 1297 (10th Cir. 2020) (“[T]he deprivation of a religious diet for a short time does not implicate a constitutionally protected liberty or property interest.”); *Daly v. Davis*, 2009 WL 773880, at *2 (7th Cir. 2009) (same); *Russell v. Wilkinson*, 79 F. App’x 175, 178 (6th Cir. 2003) (same); *Dove v. Broome Cnty. Corr. Facility*, 2011 WL 1118452, at *12 (N.D.N.Y. Feb. 17, 2011), *report and recommendation adopted*, 2011

¹⁰ Although *Hathcock* and *Moulds* are unpublished decisions and thus non-binding, their facts are very similar to those before the Court and their reasoning is persuasive.

WL 867072 (N.D.N.Y. Mar. 10, 2011) (same); *Reed v. Bryant*, 2019 WL 3939068, at *12-13 (W.D. Okla. Jun. 4, 2019) (same).

Sumrall argues the Magistrate Judge improperly relied on *Reed* and *Hathcock*. Doc. 52 at 9-10. Sumrall contends that *Reed*, 2019 WL 3939068, at *12-13 (W.D. Okla. Jun. 4, 2019), a district court case decided in 2019, was “reversed” by the Tenth Circuit in 2017. Doc. 53 at 3-5; *Reed*, 719 F. App'x at 773. While discussion of unreported Tenth Circuit decisions is probably unnecessary, the fact is that the Tenth Circuit did not hold that placement on a religious dietary program constituted a protected liberty interest. *Reed*, 719 F. App'x at 777. Rather, the Tenth Circuit remanded the case to the district court to make this determination. *Id.*

With regard to *Hathcock*, Sumrall argues it is distinguishable because *Hathcock* involved a pretrial detainee “while [he] had been on the AEP over 10 years.” Doc. 52 at 9; 287 F. App'x at 795. Thus, Sumrall contends that his extended time on the AEP means that his removal constituted “an atypical and significant hardship.” Doc. 52 at 9-10; *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *Kirby*, 195 F.3d at 1291. While the plaintiff in *Hathcock* only requested religious meals for a few days and Sumrall “had been on the AEP over 10 years,” this difference is not material. Doc. 52 at 9; 287 F. App'x at 801. For example, in *Greer* the plaintiff was enrolled in a kosher diet program for three years. 2017 WL 8222640, at *3. The court held that the prison did not violate the plaintiff’s due process rights by removing him from the religious diet program for 120 days following his consumption of non-kosher food. *Id.* at *4-5; *see also Reed*, 2019 WL 3939068, at *1-2, 12-13 (concluding that an inmate enrolled in a kosher diet program for three years and removed for 78 days did not experience an atypical and

significant hardship). Thus, Sumrall's reliance on the AEP for "over 10 years" does not change the Court's conclusion.

Furthermore, the Magistrate Judge relied on *Hathcock*, which analyzed a *First Amendment claim*, only for the proposition that jails and prisons can inquire into the sincerity of a prisoner's religious beliefs before accommodating their religious requests. Doc. 51 at 10; 287 F. App'x at 799-801. This principle applies to pretrial detainees *and* convicted prisoners. See *Bell*, 441 U.S. at 545; *Osuna v. Clark*, 2007 WL 2461903, at *2 n.1 (M.D. Ala. Aug. 29, 2007) ("[T]his court will rely on cases interpreting ... the First Amendment's protections of religious freedom, and not the Fourteenth Amendment's guarantee of due process, when addressing the plaintiff's claims for relief because the standard for violations of the ... First Amendment[] appl[ies] to pretrial detainees through the Due Process Clause of the Fourteenth Amendment.").

In any event, when analyzing Sumrall's due process claim, the Magistrate Judge applied the *Sandin* standard, the same standard Sumrall urges the Court to apply. Docs. 51 at 10; 52 at 2. Under this standard the Magistrate Judge concluded that the deprivation of AEP meals for a short period of time did not pose "an atypical and significant hardship." Doc. 51 at 10. And the Court, as discussed above, agrees.

Even if Singleton and Ashley violated Sumrall's due process rights, Sumrall cites no clearly established law demonstrating that an inmate's temporary suspension from a religious diet program constitutes the deprivation of a protected liberty interest. A plaintiff can show a right is clearly established in three ways: first, by pointing to "relevant case law at the time of the alleged violation that would have made it obvious to the officer that his actions violated federal law." *J W ex rel. Tammy Williams v.*

Birmingham Bd. of Educ., 904 F.3d 1248, 1259 (11th Cir. 2018). Relevant case law is a published opinion from the United States Supreme Court, the Eleventh Circuit, or the Georgia Supreme Court. *Id.* at 1260 n.1; *Vinyard v. Wilson*, 311 F.3d 1340, 1351 (11th Cir. 2002). Second, a plaintiff “can identify a broader, clearly established principle that should govern the novel facts of the situation.” *J W ex rel. Tammy Williams*, 904 F.3d at 1259. Third, the plaintiff “can show that the conduct at issue so obviously violated the Constitution that prior case law is unnecessary.” *Id.* at 1259-60.

Here, the conduct at issue is the defendants’ decision to remove inmates from the AEP, without first providing a hearing, because those inmates purchased non-vegan food from the prison commissary. See Docs. 31-1 at 12; 45 at 15. Sumrall argues that his right to notice and a hearing before being removed from the AEP was clearly established because “the concept of notice and fair warning is so deeply rooted in American jurisprudence.” Doc. 45 at 14; see *also* Doc. 52 at 9-10. But such general propositions rarely are sufficient, and general due process protections are clearly inadequate to establish that it would have been obvious to Singleton and Ashley that removing Sumrall from the AEP, without first conducting a hearing, violated his due process rights. See *Corbitt v. Vickers*, 929 F.3d 1304, 1316 (11th Cir. 2019) (holding the district court erred when relying on a general proposition to clearly establish the law in an excessive force case). Instead, Sumrall must cite binding case law that clearly establishes the defendants’ conduct was unlawful. See *Plumhoff v. Rickard*, 572 U.S. 765, 780 (2014). He has not done so. Accordingly, Singleton and Ashley are entitled to summary judgment on Sumrall’s Fourteenth Amendment due process claims.

3. *First Amendment Claims*

Singleton and Ashley are also entitled to qualified immunity on Sumrall's First Amendment claims because Sumrall cites no clearly established law demonstrating that using commissary purchases as a proxy to judge the sincerity of a prisoner's stated religious beliefs violates the First Amendment. Again, Sumrall does not cite a published, factually similar case from the Eleventh Circuit, the Georgia Supreme Court, or the United States Supreme Court. Rather, he relies on *Smith v. Hatcher*, an unpublished district court opinion, and *Robbins*, an unpublished Eleventh Circuit opinion. Docs. 45 at 8; 52 at 5; 2021 WL 6006298, at *1 (S.D. Ga. Dec. 20, 2021); 782 F. App'x at 802-03. But unpublished circuit and district court cases cannot define clearly established law. *Vinyard*, 311 F.3d at 1351; *JW*, 904 F.3d at 1260 n.1; see also *Crocker v. Beatty*, 995 F.3d 1232, 1241 n.6 (11th Cir. 2021). As a result, Singleton and Ashley are entitled to qualified immunity. See also *Hill v. Hill*, 2022 WL 2793371, at *7 (S.D. Ga. June 24, 2022), *report and recommendation adopted*, 2022 WL 2793089 (S.D. Ga. July 15, 2022) ("The Court has not identified any cases which would clearly establish the use of commissary purchases to gauge sincerity violates clearly established law [under the First Amendment]."). Accordingly, Singleton and Ashley are entitled to summary judgment on Sumrall's First Amendment claims.

III. CONCLUSION

For the reasons stated, the Recommendation (Doc. 51) is **ADOPTED in part and REJECTED in part**. Sumrall's Eighth Amendment and Fourteenth Amendment equal protection claims fail because he has not shown that Defendants Singleton and Ashley violated his constitutional rights, and Sumrall's Fourteenth Amendment due

process and First Amendment claims fail because Singleton and Ashley are entitled to qualified immunity. But issues of fact remain regarding whether Sumrall could accommodate his vegan diet without the AEP. Thus, summary judgment on Sumrall's RLUIPA claim against the GDC is inappropriate. Accordingly, the defendants' motion for summary judgment (Doc. 41) is **GRANTED in part and DENIED in part** and Sumrall's partial motion for summary judgment (Doc. 31) is **DENIED**.

SO ORDERED, this 17th day of February, 2023.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

FILED '23 03 14 AM 09:19 MDGA-MAC

Ammon RA Sumrall,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants.

CASE NO:

5:21-CV-187-MTT

PLAINTIFF'S BRIEF THAT ASSERTS HIS
RLUIPA REQUEST FOR VEGAN MEALS IS NOT MOOT

Comes now Plaintiff Ammon RA Sumrall, pursuant to the Court's February 17, 2023 order, to show that his religious request for vegan meals is not moot. Plaintiff further shows:

I. THE DEFENDANTS HAVE DISCONTINUED THE AEP

In 2002, a Jewish prisoner named Ralph Benning sued the State of Georgia to accommodate his religious beliefs regarding food and dress. (See Benning v. Georgia, 2018 U.S. Dist. Lexis 182410). That litigation was settled and ultimately led to the creation of the AEP. However, Mr. Benning filed a second lawsuit regarding the same matter because AEP meals were not kosher. And once again, a private settlement was reached in 2021 between Mr. Benning and Georgia.

(Ex. A, Benning v. Georgia Department of Corrections, et. al., 5:19-cv-248-MTT, Settlement Agreement).

Even though said agreement says that Mr. Benning's meals would be comparable in nutritional and caloric intake to "the current restricted Alternative Meal plan," it does not mention the word vegan nor does it say that vegan principles shall apply to how meals are prepared and served. Instead, the focus is that Mr. Benning receive pre-packaged meals that are kosher.

On July 25, 2022, Plaintiff filed a grievance about food service workers serving him non-vegan food on two occasions.¹ The warden responded to the grievance by saying, in part, that Plaintiff should've received a pre-packaged AEP meal. (Ex. B, grievance 343305). Then on November 8, 2022, Plaintiff filed a grievance about him being switched from regular vegan to restricted vegan and how the change violated some of his constitutional rights. (Ex. C, grievance 345828).

Under O.C.G.A. 31-1-1, a contract is defined as an agreement between two or more parties for the doing or not doing of some specified thing. Plaintiff submits that he is not a party to any agreement Mr. Benning has with the Defendants, yet Plaintiff is being forced to practice Mr. Benning's religion. And while the warden called pre-packaged meals "AEP" in his response to grievance 343305, the language in the 2021 agreement clearly shows that Mr. Benning's diet is separate from the AEP. Moreover, the agreement does not prohibit the Defendants from serving Mr. Benning non-vegan food, and it is unknown if they already have.

1. Food service workers and staff have knowingly and consistently violated the AEP since Plaintiff has been here. (Ex. E, E-1, E-2, E-3).

As far as Plaintiff knows, the S.O.P. (409.04.28) that governs the AEP is still in effect. However, Plaintiff has not received AN AEP Meal since October 2022 because Defendants have discontinued the program and replaced it with pre-packaged kosher meals that Plaintiff cannot say are vegan or will be vegan in the future.

II. PLAINTIFF'S RIGHT TO PRACTICE HIS RELIGION IS BEING SUBSTANTIALLY BURDENED BY THE PRE-PACKAGED MEALS

When the Defendants switched Mr. Benning's meals in 2021 from restricted vegan to pre-packaged kosher meals, it did the same to all of the prisoners in Wilcox State Prison who were on the restricted vegan diet. But there were problems from the start, with complaints about food being spoiled and outdated. (Ex. D, Antonio Jones grievance 331549). And although the Defendants have been aware of these problems for two years, nothing, as of this date, has been done to correct them. (Ex. C, grievance 345828).²

By pre-packaged meals being largely inedible, Plaintiff estimates that he eats less than one meal per day. Consequently, he suffers daily hunger, stomach pains, dizziness, weakness, and often feels like he's going to pass out. And his condition has been noticed by others. For instance, on January 12, 2023, Plaintiff went to the medical department for a telemed meeting with a urologist in Atlanta; such meetings are held in the office of Dr. Ahmed, the prison's doctor.

When Plaintiff entered Dr. Ahmed's office, the first thing he

2. IF the basic concept underlying the 8th Amendment is nothing less than the dignity of man, Atkins v. Virginia 536 U.S. 304, 311 (2002), then man should

he said when he saw Plaintiff was, "You've lost a lot of weight," And after the telemed meeting ended, Dr. Ahmed asked Plaintiff if he ever had thyroid problems. Plaintiff said, no. Then Dr. Ahmed looked into Plaintiff's eyes and said that he wanted to conduct blood tests. But because of understaffing and possibly incompetence and indifference, Plaintiff's blood was not taken until January 30, 2023, and he still does not know the results.

III. CONCLUSION

Article III of the Constitution limits the jurisdiction of federal courts to the consideration of cases and controversies, Smith v. Allen, 502 F.3d 1255, 1266 (11th Cir. 2007). As such, a case is moot when events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief. Pacific Ins. Co. v. General Dev. Corp., 28 F.3d 1093, 1096 (11th Cir. 1994). However, as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot. Beem v. Ferguson, 683 F.Appx. 924, 927 (11th Cir. 2017).

Plaintiff has a religious right to receive AEP meals but he hasn't received them since October 2022. Instead, the Defendants have made Plaintiff practice Judaism by serving him kosher meals based on a private agreement Defendants have with Ralph Benning — an agreement that does not prohibit non-vegetarian meals to be served. Moreover, the pre-packaged kosher meals are largely inedible and has caused Plaintiff to lose weight, suffer daily hunger, and experience health problems.

Thus, the Court can grant Plaintiff meaningful relief be-
not: have to compromise his dignity by being forced to eat food that violate his religious beliefs. 4

Cause the Aforementioned situation constitutes a live case or controversy. To that end, Plaintiff asks the Court to issue an order that:

1. Requires Defendants to restore the AEP to the form that it was in prior to October 2022, wherein S.O.P. 409, 04.28 established a vegan or regular vegan category for prisoners who did not require kosher meals;
2. Requires Defendant to hire a private vegan company to prepare and serve vegan meals due to the Defendants' inability and unwillingness to make food service staff respect veganism. (See, Bay v. GA Dept. of Corrs., 5:19-cv-236-MTT, "RLUIPA expressly contemplates costs by stating that RLUIPA may require a government to incur expenses in its own operations to avoid a substantial burden on a prisoner's religious exercise."); [↑] imposing
3. Require Defendants to assign vegan prisoners to prepare and serve vegan meals before they assign non-vegan prisoners; this is needed because non-vegan prisoners who work in food service do not respect veganism and their superiors also don't respect veganism;
4. Require Defendants to immediately allow Plaintiff to order or receive vegan food from an established distributor of vegan food. This request is justified because Plaintiff does not have access to enough nutritious food to keep him from being hungry and the prison store does not meet his dietary and health needs; and
5. Grant Plaintiff any other relief that the Court deems just and necessary.

I declare under penalty of perjury that the foregoing is true and correct. March 10, 2023 Ammon R. Sumrell 719855
P.O. Box 397
Abbeville, GA 31001

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing document(s) upon the parties listed below by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure that it reaches its destination.

Crowder Stewart LLP
PO Box 160
Augusta, GA 30903

This the 10th day of March, 2023.

Ammon R. Sumrell
719855
P.O. Box 397
Abbeville, GA 31001

Note: Exhibits A - E-2 were not attached to Defendants' copy of this filing because Plaintiff only had one copy of them. Ex. E, E-1 and E-2 are letters from Food & Farm Services respectively dated Jan. 8, 2014, June 5, 2014, and Dec. 22, 2014.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

AMMON RA SUMRALL,
Plaintiff,

v.

Georgia Department
of Corrections, et al.,
Defendants.

CASE NO:
5:21-CV-187-MTT

PLAINTIFF'S RESPONSE TO DEFENDANTS'
ASSERTION THAT PLAINTIFF'S RLUIPA CLAIM IS MOOT

Comes now Plaintiff Ammon RA Sumrall, pro se, to respond to Defendants' March 13, 2023 filing that claimed Plaintiff's RLUIPA request for vegan meals is moot. Plaintiff further shows:

There is no dispute that Defendant Singleton removed Plaintiff from the AEP in 2019 after Plaintiff filed a grievance about how his AEP meals were prepared and served. The following year, Defendants Singleton and Ashley removed Plaintiff and other Black prisoners from the AEP after Black prisoners in a different dorm than Plaintiff complained about their AEP meals. (Doc. 45 at 16). Singleton admitted that the 2019 removal was related to the grievance Plaintiff filed (Doc. 45-

4, pg. 4, para. 16), but none of the Defendants have ever explained why they suddenly decided to remove vegans from the AEP for having previously purchased non-vegan store goods in 2020.

As a result of Plaintiff being improperly denied vegan meals, he filed two grievances and also wrote the Commissioner of the GDC to advise him of Plaintiff's intent to sue the Defendants. (Plaintiff's Supp. Evid., Ex. T, Letter to Commissioner Ward). Then on September 23, 2020, Plaintiff submitted a Special Religious Request that asked the Defendants to, inter alia, provide him with vegan meals. Although Defendants denied Plaintiff's request based on the lie that Plaintiff did not say what he wanted (Doc. 31-2, para. 25-26), the chaplain put Plaintiff back on the AEP after he told her about his situation.

The Defendants claim that Plaintiff's RLUIPA claim is moot because he was put back on the AEP, thus implying "voluntary cessation." However, voluntary cessation of challenged practice renders a case moot only if there is no reasonable expectation that the challenged practice will resume after the lawsuit is dismissed. Jews for Jesus Inc. v. Hillsborough County Aviation Authority, 162 F.3d 627, 629 (11th Cir. 1998).

The record shows that Defendants have a pattern of removing prisoners from the AEP if they complain about how their meals are prepared and served. And throughout this litigation they have denied all wrongdoing. Consequently, the Court should hold that Plaintiff has a religious right to receive vegan meals, and further enjoin the Defendants from removing Plaintiff from the AEP. I declare under penalty of perjury that the foregoing is true and correct. MARCH 22, 2023 Annunzio R. Sumrell 719855
2 of 2 P.O. Box 397 Abbeville, GA 31001

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing document(s) upon the parties listed below by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure that it reaches its destination.

Crowder Stewart LLP
P.O. Box 160
Augusta, GA 30903

This the 22 day of March, 2023.

Ammon R. Sumrell
P.O. Box 397
Abbeville, GA

United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

AMMON SUMRALL,
Plaintiff – Appellant,

v.

**GEORGIA DEPARTMENT OF CORRECTIONS, WARDEN ARTIS
SINGLETON, AND DEPUTY WARDEN TONYA ASHLEY,**
Defendants – Appellees.

**Appeal from the United States District Court
for the Middle District of Georgia**

OPENING BRIEF OF APPELLANT AMMON SUMRALL

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November 4, 2024

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Counsel for Plaintiff-Appellant Ammon Sumrall certifies that the following persons and entities may have an interest in the outcome of this case:

- Ashley, Tonya, Appellee;
- Carr, Christopher M., Attorney General, Counsel for Appellees;
- Crowder, Kenneth, Trial Counsel for Appellees;
- Cusimano, Ellen, Assistant Attorney General, Counsel for Appellees;
- Georgia Department of Corrections, Appellee;
- Hashimoto, Erica, Counsel for Appellant;
- Hyles, M. Stephen, United States Magistrate Judge;
- Lones, Laura, Senior Assistant Attorney General, Counsel for Appellees;
- Pinkston-Pope, Loretta L., Deputy Attorney General, Counsel for Appellees;
- Shell, Eva, Counsel for Appellant.
- Stewart, David, Trial Counsel for Appellees;

- Sumrall, Ammon, Appellant;
- Treadwell, Marc T., United States District Judge; and
- Warden of Wilcox State Prison.

Counsel for Plaintiff-Appellant Ammon Sumrall further certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

This Court has classed this civil appeal for oral argument, as noted in its August 5, 2024 letter to appointed counsel. Plaintiff-Appellant Ammon Ra Sumrall respectfully requests oral argument because this case presents important questions as to whether prison officials violate an incarcerated person's constitutional and statutory rights when they remove the person's access to religiously compliant meals and attire. Oral argument would assist the Court in answering these questions, which will have significant implications for Mr. Sumrall and similarly situated plaintiffs, as well as prison officials and administrators.

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**STATEMENT OF SUBJECT-MATTER AND APPELLATE
JURISDICTION**

Plaintiff-Appellant Ammon Ra Sumrall filed suit against the Georgia Department of Corrections (GDC) and two Wilcox State Prison officials alleging constitutional claims under 42 U.S.C. § 1983 and violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.* Doc. 1; Doc. 1-1; Doc. 1-2; Doc. 25. The district court exercised jurisdiction pursuant to 28 U.S.C. § 1331.

The district court entered summary judgment against Mr. Sumrall on all claims except one RLUIPA claim. Doc. 56. On April 26, 2023, the district court dismissed Mr. Sumrall's remaining RLUIPA claim as moot and entered a final judgment against him. Doc. 72; Doc. 73. Mr. Sumrall filed a timely but unsigned notice of appeal that was docketed on May 24, 2023. Doc. 78; *see* Fed. R. App. P. 4(a)(1)(A). The Clerk notified Mr. Sumrall of the deficiency and granted him leave to file a signed notice within 21 days. Docket Notice, May 24, 2023. Mr. Sumrall timely did so on June 13, 2023. Doc. 83; Doc. 83-2; *see* Fed. R. App. P. 4(c)(1)(A)(ii). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether Mr. Sumrall's RLUIPA claim against GDC for denial of his religious diet remains viable when he has not received his requested relief and GDC has not shown its voluntary cessation of illegal activity is permanent.
2. Whether a reasonable jury could find GDC and Wilcox officials' denial of religiously compliant food and shoes violated Mr. Sumrall's right to freely exercise his religion under the First Amendment and RLUIPA.
3. Whether a reasonable jury could find that by denying Mr. Sumrall his religious diet, Wilcox officials:
 - a. Violated his Fourteenth Amendment equal protection right by discriminating against him based on his race and religion;
 - b. Denied him Fourteenth Amendment procedural due process protections by revoking his religious diet without notice or a hearing; and
 - c. Violated his Eighth Amendment right by denying him access to food that his religion permitted him to eat, causing his malnourishment for approximately three months.

STATEMENT OF THE CASE

Plaintiff-Appellant Ammon Ra Sumrall is an incarcerated man whose devout religious beliefs prevent him from eating or wearing animal products. He contends that Defendant-Appellee Georgia Department of Corrections (GDC), as well as Defendants-Appellees Warden Artis Singleton and Deputy Warden Tonya Ashley (collectively, Wilcox officials) violated his constitutional and statutory rights by removing him for three months from the prison's religious meal plan and for denying him food and shoes that are not made from animal products. Mr. Sumrall appeals the district court's grant of summary judgment against him on these claims.

A. Procedural History.

Mr. Sumrall's June 2021 complaint alleged that Wilcox officials violated the First, Eighth, and Fourteenth Amendments when they removed him from his religious meal plan, and that GDC and Wilcox officials violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) for the same reason. Doc. 1; Doc. 1-2. He alleged an

additional RLUIPA violation because GDC refused to sell him vegan food or allow him access to vegan shoes. Doc. 1-2 at 4.¹

The district court screened Mr. Sumrall's complaint pursuant to 28 U.S.C. § 1915A and allowed his RLUIPA claims to proceed against GDC and his constitutional claims to proceed against Wilcox officials. Doc. 7 at 5-9; Doc. 13 at 2-5. Mr. Sumrall amended his complaint, reiterating the factual basis of his claims and seeking compensatory and punitive damages from Wilcox officials and injunctive relief from GDC. Doc. 25 at 8-16.

Following discovery, Mr. Sumrall moved for partial summary judgment. Doc. 31. GDC and Wilcox officials opposed that motion and filed a cross motion for summary judgment on all claims. Doc. 35; Doc. 41. A Magistrate Judge issued a report recommending that GDC and Wilcox officials' motion be granted and Mr. Sumrall's motion be denied. Doc. 51. Mr. Sumrall filed timely objections. Doc. 52; Doc. 53.

On February 17, 2023, the district court adopted the Magistrate Judge's dispositions in part. Doc. 56. Finding against Mr. Sumrall, the

¹ Mr. Sumrall also asserted a RLUIPA claim for denial of an Ankh necklace, and a state claim for intentional infliction of emotional distress, which are not at issue in this appeal. Doc. 1-2 at 4-5.

court granted summary judgment on the constitutional claims against Wilcox officials and on the RLUIPA claim against GDC for the sale of vegan food and shoes. *Id.* at 1-2, 8-9. But the court rejected the recommendation relating to the RLUIPA claim against GDC for depriving Mr. Sumrall of his religious diet. *Id.* at 1-2.

Regarding the Eighth Amendment claim, the district court found that Mr. Sumrall had not shown that his conditions of confinement presented an objective and unreasonable risk of harm. *Id.* at 9. The court concluded that the non-vegan food trays he was given were “nutritionally adequate,” even though Mr. Sumrall was unable to eat them for religious reasons. *Id.*

On the Fourteenth Amendment equal protection claim, the court found that Mr. Sumrall had not identified a similarly situated person who received more favorable treatment, and that he had not established that Wilcox officials possessed discriminatory intent when they removed him from the religious meal plan. *Id.* at 10-14.

The district court resolved Mr. Sumrall’s Fourteenth Amendment procedural due process and First Amendment free exercise claims on qualified immunity grounds. Doc. 56 at 15-22. First, the court found that

Wilcox officials acted within their discretionary authority when they removed Mr. Sumrall from the religious meal plan. *Id.* at 15-17. It next found that Mr. Sumrall's religious diet was neither a liberty interest nor an interest that was clearly established. *Id.* at 17-21. On the First Amendment claim, the court found Wilcox officials were entitled to qualified immunity because Mr. Sumrall did not cite law clearly establishing that his commissary purchases could not be used to assess the sincerity of his religious beliefs. *Id.* at 22.

Regarding Mr. Sumrall's RLUIPA claim for denial of religiously compliant shoes and food to purchase, the district court found the denials of his accommodation requests were an inconvenience but not a substantial burden on his religious exercise. *Id.* at 5-6.

The district court rejected the Magistrate Judge's disposition and denied summary judgment to GDC on the merits of Mr. Sumrall's RLUIPA claim regarding his removal from the religious meal plan. Doc. 56 at 1-2, 6-8. The court reasoned that because denial of meals without animal products was the same as a complete lack of food for Mr. Sumrall, a reasonable jury could conclude that his religious exercise was substantially burdened without access to his religious meals. *Id.* at 6-8.

But, reasoning that RLUIPA provides only injunctive relief and Mr. Sumrall had been reenrolled in the meal plan three months after being removed in July 2020, the district court requested supplemental briefing on mootness. *Id.* at 8. In Mr. Sumrall's responses, he argued that his claim was not moot because he was receiving largely inedible meals and GDC had failed to show that it would not arbitrarily deny him religiously compliant meals in the future. Doc. 63; Doc. 66. He also moved for reconsideration of the district court's rulings in favor of GDC and Wilcox officials. Doc. 61.

On April 26, 2023, the district court found that Mr. Sumrall's RLUIPA claim for removal from the religious meal plan was moot because he had been "reenrolled" and had not provided evidence that GDC would remove him again. Doc. 72 at 7-10. The court denied Mr. Sumrall's motion for reconsideration and issued a judgment dismissing the case. *Id.* at 5-6; Doc. 73. Mr. Sumrall filed a timely notice of appeal. Doc. 78; Docket Notice, May 24, 2023; Doc. 83; Doc. 83-2. After informal briefing, this Court appointed undersigned counsel to represent Mr. Sumrall.

B. Statement of Facts.*1. Mr. Sumrall's Religious Background.*

Mr. Sumrall believes, as many of his African ancestors did, that Ammon Ra, the Egyptian Sun God, is the God of all gods. Doc. 31-3 at 2. Core to Mr. Sumrall's faith is the idea that humans have a God-given duty to prevent harm to animals. *Id.* Studying visual depictions of Ammon Ra with animal features reinforced Mr. Sumrall's belief in the sacredness of all life. *Id.* Accordingly, Mr. Sumrall believes that it is "inherently wrong to kill animals for clothing and to satisfy human appetite." *Id.* To comply with this religious precept, Mr. Sumrall stopped eating meat in the late 1990's. *Id.* Because GDC did not offer vegetarian or vegan meals at the time, Mr. Sumrall gave away or traded the meat on his meal trays. *Id.* To further respect his God, Mr. Sumrall adopted the name Ammon Ra in the late 2000's. *Id.*

In 2006, through Standard Operating Procedure 409.04.28 (SOP), GDC established the Alternative Entree Program (AEP) to accommodate religious diets. Doc. 31-2 at 1, 2; Doc. 35 at 2, 3; Doc. 41-3 at 2. When Mr. Sumrall learned of the AEP in 2007, he promptly signed up because a vegan diet better aligned with his religious belief that all life is sacred.

Doc. 31-3 at 2. Over the years, Mr. Sumrall remained steadfast in his commitment to the AEP even though it meant forgoing opportunities for favorable prison transfers and vocational training programs at facilities that did not offer the religious diet. *Id.* at 3-4. For example, GDC transferred Mr. Sumrall to a facility in 2013 that had an unfenced yard and a reputation for granting parole. *Id.* at 4. Despite these benefits, Mr. Sumrall immediately requested a transfer because the institution did not offer the AEP, which meant that he would “starve.” *Id.*

2. Mr. Sumrall’s Experience with Religious Meals at Wilcox.

In 2013, Mr. Sumrall was transferred to Wilcox, which offered the AEP. Doc. 31-3 at 4. But he soon discovered that the AEP meals contained meat and dairy. *Id.* He complained to administrators, who said they would retrain the food service staff. *Id.*; Doc. 63-6 at 1-3. But problems with meal preparation and service continued. Doc. 45-2 at 2.

Wilcox officials removed Mr. Sumrall from the AEP twice: in 2019 for five days and in 2020 for eighty-three days. Doc. 31-3 at 5; Doc. 41-3 at 10. During the eighty-three-day removal, Artis Singleton and Tonya Ashley served as warden and deputy warden of Wilcox, respectively. Doc. 35-1 at 15; Doc. 41-2 at 1. Both removals purportedly stemmed from

Mr. Sumrall's purchases at the prison store. Doc. 31-2 at 2, 3; Doc. 35 at 3; Doc. 41-3 at 10, 11.

Wilcox has a commissary where Mr. Sumrall and other incarcerated people routinely purchase products. Doc. 41-1; Doc. 45-7 at 2; Doc. 45-8 at 2. Items in the commissary are not labeled vegan or non-vegan. Doc. 41-3 at 13; *see* Doc. 35-1 at 27-30, 78. When Mr. Sumrall purchased non-vegan products, he either traded them for goods and services or consumed the vegan elements where possible to supplement his AEP diet. Doc. 35-1 at 71-73; Doc. 31-3 at 4. Mr. Sumrall did not eat the non-vegan items he purchased because eating food made from animal products violates his religion. *See* Doc. 35-1 at 58, 71-72.

On August 2, 2019, Mr. Sumrall filed a grievance alleging that AEP trays were missing food and contained non-vegan elements. Doc. 31-2 at 2; Doc. 35 at 3; Doc. 41-3 at 10. Warden Singleton responded by removing Mr. Sumrall from the AEP on August 26, 2019, stating that Mr. Sumrall's commissary purchases "violated the vegan meal requirements." Doc. 41-3 at 10. At the time, the SOP authorized removal from the AEP only for people who: (1) missed seven meals during a seven-day period; (2) missed fifteen meals during a thirty-day period; or (3) picked up non-AEP trays

from the mess hall. Doc. 31-2 at 2; Doc. 35 at 3; Doc. 41-3 at 10. Mr. Sumrall was reinstated to the AEP four days later, on August 30, 2019. Doc. 41-3 at 10.

In July 2020, Mr. Sumrall was removed from the AEP again—this time for nearly three months. Doc. 31-3 at 5. During a Covid-19 quarantine, several people on the AEP who lived in the “L4” dorm complained about missing items from their food trays and poor meal quality, including Anu Campbell, a black man. Doc. 31-6 at 1-2.² Warden Singleton and Deputy Warden Ashley responded by removing a group of black, non-Jewish people from the AEP, including those who complained in the “L4” dorm as well as several people from the “F2” dorm—which included Mr. Sumrall. Doc. 35-1 at 14, 48-50; Doc. 45-5 at 2; Doc. 45-8 at 2.

The purported basis for the removal of Mr. Sumrall and the other black, non-Jewish people was their non-vegan purchases from the commissary. Doc. 35-1 at 14; Doc. 41-3 at 11; Doc. 45-5 at 2; Doc. 45-8 at 2. At the time, like in 2019, the SOP did not include non-vegan store

² According to the GDC website, Mr. Cambell is a black man. *See* <https://services.gdc.ga.gov/GDC/OffenderQuery/jsp/OffQryRedirector.jsp>

purchases as an authorized basis for removal. Doc. 41-3 at 11. GDC only added that prohibition to the SOP months later, on October 13, 2020. Doc. 31-2 at 5; Doc. 35 at 4; Doc. 41-3 at 11; *see* GDC Standard Operating Procedures Policy Number 409.04.28 (hereinafter “current SOP”) at 8, <https://public.powerdms.com/GADOC/documents/105540> [<https://perma.cc/HL7X-L4P8>]. Mr. Sumrall and other affiants stated that Wilcox officials did not remove white and Jewish people who lived in Mr. Sumrall’s dorm and purchased non-vegan food, including Michael Cwikla. Doc. 35-1 at 14, 41-42; Doc. 45-7 at 2; Doc. 45-8 at 2. Deputy Warden Ashley stated that people of several different races, including white people, were removed from the AEP in July 2020. Doc. 41-2 at 2.

Unable to eat food made of animal products without violating his religion, Mr. Sumrall became very ill while Wilcox officials denied him AEP meals. Doc. 31-3 at 5-6. He filed a grievance on July 31, 2020, to which Warden Singleton responded: “your allegation that you have not eaten in two days is unfounded, because you are able to utilize and report to the dining hall and receive a non-vegan tray.” Doc. 41-3 at 10-11. Without food, Mr. Sumrall experienced violent stomach spasms that “felt like torture.” Doc. 31-3 at 5. He had “devastating” and “daily” pain in

his back and neck that felt like being stabbed with long needles. *Id.* His pain was coupled with fatigue, weight loss, prolonged Covid-19, and depression. *Id.* at 5-6. Mr. Sumrall had never experienced such symptoms before Wilcox officials removed him from the AEP. *Id.* at 5; Doc. 35-1 at 61-62. Medical tests in October 2020 revealed a Vitamin D deficiency, low white blood cell count, bone weakness in his back, and arthritis in his neck. Doc. 31-3 at 6; Doc. 31-8; Doc. 31-9. In addition to prescribing medication, medical staff told Mr. Sumrall that his Vitamin D and white blood cell deficiencies could be the result of malnutrition. Doc. 31-3 at 6.

On September 23, 2020, after being denied his religious diet for nearly two months, Mr. Sumrall submitted a Special Religious Request, asking for: (1) “vegan meals to eat”; (2) the opportunity to purchase vegan (non-leather) athletic shoes; and (3) the option to purchase vegan food. Doc. 31-10 at 3; Doc. 41-3 at 13. Warden Singleton and others denied the request on the basis that Mr. Sumrall did not specify what he wanted. Doc. 31-10 at 1; Doc. 35-1 at 13; Doc. 41-3 at 3. After receiving this denial, Mr. Sumrall explained his situation to a chaplain, who facilitated his reinstatement to the AEP on October 19, 2020—after eighty-three days

of not having access to religious meals. Doc. 31-3 at 5; Doc. 35-1 at 19-20.

That did not end Mr. Sumrall's hardships. On October 31, 2022, he was shifted from the regular vegan AEP meal plan to a "restricted vegan" plan. Doc. 63-4 at 2. Instead of mess hall meals, this plan exclusively consists of prepackaged kosher meals. *Id.* at 1-2. Finding the restricted vegan plan plagued by spoilage and undercooking, Mr. Sumrall filed a grievance, stating that most of the meals are "inedible." *Id.* at 2. The warden denied this grievance on January 4, 2023, claiming that Wilcox "is not responsible for the Vegan meals/diets" that it provides incarcerated people. *Id.* at 1.

C. Standards of Review.

This Court reviews the district court's grant of summary judgment for GDC and Wilcox officials *de novo*, viewing the evidence and drawing all reasonable inferences in the light most favorable to the non-movant, Mr. Sumrall. *E.g., T.R. by & through Brock v. Lamar Cnty. Bd. of Educ.*, 25 F.4th 877, 882 (11th Cir. 2022). Summary judgment is inappropriate if there is a "genuine issue as to any material fact." *Rich v. Sec'y, Fla.*

Dep't of Corr., 716 F.3d 525, 530 (11th Cir. 2013). Questions of mootness are reviewed *de novo*. *Smith v. Owens*, 848 F.3d 975, 978 (11th Cir. 2017).

SUMMARY OF THE ARGUMENT

Mr. Sumrall presented more than enough evidence to defeat a motion for summary judgment on his constitutional and RLUIPA claims against GDC and Wilcox officials. The district court correctly found a triable issue of fact as to whether Mr. Sumrall's religious exercise was burdened by not having access to his religious diet for three months. But it erred in dismissing as moot Mr. Sumrall's RLUIPA claim for denial of this diet. Mr. Sumrall's claim is not moot because he has not received the relief he requested—*edible* vegan meals. Further, GDC failed to show that its arbitrary actions are unlikely to recur. Mr. Sumrall's additional RLUIPA claim should also be decided by a factfinder, as a reasonable jury could find that GDC substantially burdened his religious exercise without justification by denying him the ability to buy vegan food and shoes.

The district court erroneously granted Wilcox officials qualified immunity on Mr. Sumrall's First Amendment claim for deprivation of his religious diet. Wilcox officials were not entitled to qualified immunity because the SOP did not give them discretionary authority to remove Mr. Sumrall from the AEP based on commissary purchases.

Additionally, Wilcox officials ignored precedent clearly establishing that an incarcerated person's sincere religious beliefs are burdened in violation of the First Amendment when they are arbitrarily denied a religious diet.

Summary judgment was inappropriate on Mr. Sumrall's equal protection claim because he provided the court with evidence that white and Jewish prisoners received favorable treatment despite being similarly situated to Mr. Sumrall in all material respects. Wilcox officials' arbitrary conduct and the removal of only black and non-Jewish people from the AEP are circumstantial evidence of invidious discrimination.

A reasonable jury could also find that Wilcox officials violated Mr. Sumrall's procedural due process rights when they denied him his religious diet without notice or a hearing. Wilcox officials were not entitled to qualified immunity on this claim. The law clearly establishes that Mr. Sumrall's removal from the AEP—a state-created benefit—deprived him of a liberty interest because he could not eat regular meals without violating his religious beliefs. This impossible choice between religious adherence and starvation is neither typical nor insignificant.

Finally, Mr. Sumrall presented evidence that Wilcox officials violated the Eighth Amendment by depriving him of a basic need—his religious meal plan—and subjected him to a serious risk of harm from hunger. A reasonable jury could find that Mr. Sumrall’s longstanding history as a devout person requiring a vegan diet gave Wilcox officials subjective knowledge of the wanton and unnecessary physical and mental pain he suffered when they deprived him of those meals.

ARGUMENT

Mr. Sumrall's claims rely on an overlapping series of events that demonstrate GDC's and Wilcox officials' blatant disregard for his constitutional and statutory rights. Both RLUIPA and the First Amendment require reasonable accommodation of incarcerated people's religious beliefs, and GDC designed the AEP to satisfy this obligation. Because Mr. Sumrall's sincere beliefs compel him to observe a vegan diet and refrain from wearing apparel made from animals, he joined the AEP in 2007. He remained on the AEP nearly uninterrupted for thirteen years, until July 29, 2020, when he was removed from the program for eighty-three days for purchasing non-vegan goods from the commissary.

The circumstances of Mr. Sumrall's removal were both arbitrary and invidious. No GDC policy authorized Mr. Sumrall's removal from the AEP, and he received neither notice nor a hearing. Crucially, although Mr. Sumrall was purportedly removed because of his non-vegan commissary purchases, he did not eat those items—he bartered them. Like Mr. Sumrall, other non-Jewish and black prisoners were removed for the same purported reason, while white and Jewish prisoners who purchased non-vegan items were not removed from the AEP.

Mr. Sumrall did not eat non-vegan food during the nearly three months Wilcox officials deprived him of his religious diet. His health suffered, and he experienced violent pain and depression. Wilcox officials ignored his dire situation until he was reinstated to the AEP in October 2020. But in 2022, GDC began serving Mr. Sumrall inedible meals. These events, both past and ongoing, give rise to Mr. Sumrall's claims under RLUIPA, the First Amendment, the Eighth Amendment, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

I. MR. SUMRALL'S RLUIPA CLAIM ARISING FROM THE DENIAL OF RELIGIOUS MEALS IS NOT MOOT.

Mr. Sumrall's complaint requested that GDC provide him vegan meals that he could eat. Doc. 1-2 at 4; Doc. 25 at 13; *see* Doc. 31-10 at 3. RLUIPA prevents governments from imposing a substantial burden on the religious exercise rights of incarcerated people, unless the burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc-1(a)(1)-(2). The district court construed this claim as one for injunctive relief against GDC, *see* Doc. 7 at 6-7 & n.2, and erroneously dismissed it as moot, *see* Doc. 72 at 6-11.

Mr. Sumrall's claim is not moot because there is "a live controversy with respect to which the court can give meaningful relief." *United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008) (citation omitted). A court can offer meaningful relief if the original request sought by the plaintiff has gone unmet. *See Smith v. Owens*, 848 F.3d 975, 978-79 (11th Cir. 2017). In *Smith*, for example, an incarcerated person challenged a policy against growing an "uncut beard." *Id.* at 976. Although the policy was later amended to allow half-inch beards, this Court held that the case was not moot because the plaintiff's initial request had not been satisfied. *Id.* at 979.

Like the plaintiff in *Smith*, Mr. Sumrall's *original* request for vegan meals to eat has gone unmet because the prepackaged kosher meals he has received since October 2022 are "largely inedible." Doc. 63 at 3. Far from being fit for human consumption, the meals are often spoiled, undercooked, or hardened and impossible to break apart with utensils. *Id.*; Doc. 63-4 at 2. That is why Mr. Sumrall filed a grievance in November of 2022—to reiterate his initial request to be "serv[ed] vegan meals." *Id.* Serving *inedible* food is the same as serving no food at all. The core RUILPA violation persists.

The district court misunderstood Mr. Sumrall's claim. To be sure, the court started down the right path: it acknowledged that Mr. Sumrall's RLUIPA claim was based on his Special Religious Request, in which he asked GDC for "vegan meals to eat." Doc. 31-10 at 3; Doc. 72 at 6. But the court mistook Mr. Sumrall's claim as seeking mere reenrollment in the AEP. Doc. 72 at 7-9. Mr. Sumrall did not ask to be placed on the "restricted vegan" plan with its inedible food. *See* Doc. 63-4 at 2. He sought meals that would nourish him without violating his religion, regardless of the label GDC assigned to the program. Spoiled or inedible food does not satisfy this request.

Because the current AEP meals are largely inedible, Mr. Sumrall experiences ongoing suffering. His caloric intake has plummeted, and his doctor is worried. During an appointment on January 23, 2023, Mr. Sumrall's doctor remarked, "You've lost a lot of weight," and scheduled him for blood tests. Doc. 63 at 3-4. Mr. Sumrall's total food consumption amounts to "less than one meal per day," and he suffers "daily hunger, stomach pains, dizziness, weakness, and often feels like he's going to pass out." *Id.* at 3. Under these circumstances, Mr. Sumrall

has not obtained *meaningful* relief on his RLUIPA claim against GDC for denial of an edible religious diet. Indeed, he has not received relief at all.

Alternatively, the claim is not moot because GDC has not met its burden under the voluntary cessation doctrine. If reenrollment in the AEP satisfied Mr. Sumrall's request for relief, then GDC voluntarily ceased the offending activity—which means it bears the “heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again.” *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (cleaned up). In *Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525, 530 (11th Cir. 2013), this Court rejected a similar argument that a plaintiff's claim was moot because the state had restored the kosher program he was requesting, as there was “nothing to suggest” that the state would not simply discontinue the program in the future as it had done in the past. *Id.* at 532.

Like the state in *Rich*, GDC has not made it “*absolutely* clear that the allegedly wrongful behavior [can]not reasonably be expected to recur.” *Rich*, 716 F.3d at 531 n.6 (quoting *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000)). In its supplemental briefs on mootness, GDC merely pointed to Mr. Sumrall's reenrollment in the AEP in October

2020. Doc. 62 at 1-2; Doc. 67 at 4. GDC did not even proffer, let alone submit evidence, that it will not arbitrarily remove Mr. Sumrall from the AEP again as it did in 2019 and 2020. See Doc. 31-2 at 2, 3; Doc. 35 at 3; Doc. 41-3 at 10. GDC must do more. It must provide reasons for the court to believe that it will not arbitrarily deny Mr. Sumrall his religious meals again in the future. See *Friends of the Earth*, 528 U.S. at 189. Therefore, the claim is not moot.

Damages claims against Wilcox officials in their individual capacities would provide an additional reason why Mr. Sumrall's RLUIPA claim is not moot. But this Court has held that government employees cannot be sued for damages in their individual capacities under RLUIPA because there is a fundamental distinction between an official and their office. See *Smith v. Allen*, 502 F.3d 1255, 1271-75 (11th Cir. 2007), *overruled on other grounds by Sossamon v. Texas*, 563 U.S. 277 (2011),³ and *Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021).

³ In *Sossamon v. Texas*, 563 U.S. 277, 293 (2011), the Supreme Court held that damages are not available against state governments under RLUIPA. Nevertheless, in *Ravan v. Talton*, No. 21-11036, 2023 WL 2238853, at *6 (11th Cir. Feb. 27, 2023), a panel of this Court held that a county jail's food service company in Georgia could be sued for damages if it received federal funding through GDC, because "institutions that

Although a panel of this Court cannot overrule its precedent, *see McGinley v. Houston*, 361 F.3d 1328, 1331 (11th Cir. 2004), Mr. Sumrall preserves a request that this Court revisit its holding in *Smith v. Allen*, which was based on reasoning that the Supreme Court has since rejected. In *Tanzin v. Tanvir*, 592 U.S. 43 (2020), the Court interpreted an identical provision in the Religious Freedom Restoration Act as allowing damages against officials in their individual capacities because the term “official does not refer solely to an office, but rather to the actual person who is invested with an office.” *Id.* at 47; *see* 42 U.S.C. §§ 2000bb-1(c), 2000cc-2(a).⁴

Damages are the only form of relief that can remedy some RLUIPA violations. *Cf. Tanzin*, 592 U.S. at 51.⁵ Mr. Sumrall urges this Court to

receive federal funding are liable for monetary damages for violating RLUIPA.”

⁴ The appellant in *Landor v. Louisiana Dep’t of Corr. & Pub. Safety*, 82 F.4th 337 (5th Cir. 2023), has filed a certiorari petition on this issue. Relying on *Tanzin*, the appellant-petitioner is asking the Court to rule that plaintiffs can seek money damages from prison officials in their individual capacities under RLUIPA.

See https://www.supremecourt.gov/DocketPDF/23/23-1197/309025/20240503154415792_No.-%20Landor%20Petition%20and%20Appendix%20Combined.pdf.

⁵ This Court may have been sensitive to that fact in *Mays v. Joseph*, No. 21-10919, 2022 WL 18981, at *3 (11th Cir. Jan. 3, 2022), where a panel

clarify its jurisprudence on the availability of monetary damages under RLIUPA, reverse the district court's dismissal of his RLUIPA claims against Wilcox officials, *see* Doc. 7 at 6-7 & n.2, and hold that he can sue these officials in their individual capacity for damages.

II. GDC AND WILCOX OFFICIALS VIOLATED MR. SUMRALL'S RIGHTS TO FREE EXERCISE UNDER THE FIRST AMENDMENT AND RLUIPA WHEN THEY DENIED HIM RELIGIOUSLY COMPLIANT FOOD AND SHOES.

Wilcox officials are not entitled to summary judgment on Mr. Sumrall's First Amendment claim for denial of his religious diet. Summary judgment is also not warranted for GDC on Mr. Sumrall's RLUIPA claim for denial of vegan shoes and vegan food to purchase. Both the First Amendment and RLUIPA protect Mr. Sumrall's right to live his daily life in conformity with his religion. A reasonable jury could conclude that Wilcox officials and GDC impermissibly crossed both constitutional and statutory lines when they denied him food and shoes that his sincere religious beliefs require.

held that an incarcerated person could pursue a RLUIPA claim for damages against a prison warden in his individual capacity.

A. Wilcox Officials Violated Mr. Sumrall's Clearly Established Free Exercise Right Under the First Amendment When They Deprived Him of His Religious Diet for Three Months.

The First Amendment, as applicable to the states through the Fourteenth Amendment, prevents GDC from prohibiting Mr. Sumrall's free exercise of religion. U.S. Const. amend. I; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). The Free Exercise Clause “does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life.” *Kennedy*, 597 U.S. at 524. Mr. Sumrall is entitled to this protection in his everyday life, including his diet, because “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*, 482 U.S. 78, 84 (1987).

The district court correctly concluded that GDC burdened Mr. Sumrall's sincere religious exercise under RLUIPA by removing him from the AEP in July 2020. Doc. 56 at 1-2, 6-8; see *Thai Meditation Ass'n of Alabama, Inc. v. City of Mobile, Alabama*, 980 F.3d 821, 829-31 (11th Cir. 2020) (detailing the RLUIPA substantial burden analysis); *United States v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1341, 1346 (11th Cir. 2016) (finding it beyond question that denying kosher meals to Jewish

prisoners substantially burdened their religion under RLUIPA). Because the substantial burden analysis is similar for the First Amendment and RLUIPA, the same conclusion is warranted for Wilcox officials under the First Amendment. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226 (11th Cir. 2004) (explaining that “[t]he Supreme Court’s definition of ‘substantial burden’ within its free exercise cases is instructive in determining what Congress understood ‘substantial burden’ to mean in RLUIPA”).

Denial of Mr. Sumrall’s religious meals was a substantial burden. By removing Mr. Sumrall from the AEP, Wilcox officials applied “significant pressure” that “directly coerce[d]” him to conform his behavior by choosing between malnourishment and religious adherence. *See Thai Meditation*, 980 F.3d at 831. Additionally, Wilcox officials denied Mr. Sumrall his religious meals without justification, purportedly basing their decision on an unwritten and unannounced policy that they, as opposed to the SOP’s language, created. *See* Doc. 31-2 at 2, 3; Doc. 35 at 3; Doc. 41-3 at 10. Absent any legitimate penological reason for forcing him to choose between malnutrition and religion for three months, a reasonable jury could find that Wilcox officials violated the First

Amendment by arbitrarily burdening Mr. Sumrall's religious exercise. *See Turner*, 482 U.S. at 80-90.

The district court's holding that qualified immunity bars the First Amendment claim against Wilcox officials, *see* Doc. 56 at 15-17, 22, is wrong for two reasons: (1) Wilcox officials acted outside their discretionary authority, and (2) Mr. Sumrall had a clearly established right to a religious diet. As to the first, Wilcox officials are not entitled to qualified immunity because they acted beyond the authority granted by the SOP when they relied on Mr. Sumrall's non-vegan commissary purchases to remove him from the AEP. *See Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1263-64 (11th Cir. 2004).

The SOP defines the bounds of Wilcox officials' discretion by carefully delineating when removal from the AEP is appropriate. Promulgated by GDC's Executive Division under the authority of its Commissioner, the SOP specified three conditions authorizing AEP removal in July 2020. *See* Doc. 31-2 at 2; Doc. 35 at 3; *see* Current SOP at 1, <https://perma.cc/HL7X-L4P8>. Commissary purchases was not one of them. Doc. 41-3 at 11. Wilcox officials also lacked authority to add that condition to the SOP because only the GDC Board of Corrections can

amend GDC's policies. *See* Ga. Comp. R. & Regs. 125-1-1-.07(1)-(2), 125-1-2-.01(a)-(b). Therefore, Wilcox officials exceeded their authority.

When officials take actions that exceed the scope of their defined duties or powers, this Court consistently denies qualified immunity. *See, e.g., Holloman*, 370 F.3d at 1283 (denying qualified immunity to public-school teacher who led her classroom in prayer because she exceeded her authority as a public educator); *Lenz v. Winburn*, 51 F.3d 1540, 1546-47 (11th Cir. 1995) (denying qualified immunity to guardian *ad litem* who provided direct care to a child because state law only authorized her to act as the child's legal representative).

In the prison context, this Court has denied qualified immunity to a warden who entered a do-not-resuscitate order for an incarcerated person. *Est. of Cummings v. Davenport*, 906 F.3d 934, 940-42 (11th Cir. 2018). While “decision-making related to the provision of medical care” fell within the warden's purview, he acted outside his discretionary authority because state law did not authorize the specific medical decision at issue. *Id.* at 941-42 (citation omitted). Like the warden in *Cummings*, Wilcox officials had no authority for depriving Mr. Sumrall of his religious diet based on his commissary purchases. They failed to

“prove that their acts [fell] within the scope of their discretionary authority” and are not entitled to qualified immunity. *See Espanola Way Corp. v. Meyerson*, 690 F.2d 827, 830 (11th Cir. 1982).

Second, Wilcox officials are not entitled to qualified immunity because depriving an incarcerated person of their religious diet is a clearly established violation of the First Amendment. As explained *supra*, pages 27-29, Wilcox officials substantially burdened Mr. Sumrall’s free exercise right. And the “contours” of this right were “sufficiently clear” that Wilcox officials had fair warning that their actions were impermissible. *See Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (citation omitted); *see also e.g., Mercado v. City of Orlando*, 407 F.3 1152, 1159 (11th Cir. 2005).

The district court misapplied the qualified immunity analysis by faulting Mr. Sumrall for not citing to a “factually similar case.” Doc. 56 at 22. The precise act in question—removing a person from a religious diet for violating a rule that did not yet exist—need not have been previously found unlawful; the unlawfulness must simply be apparent considering pre-existing law. *See Hope*, 536 U.S. at 739. Importantly,

“[t]he reasoning, though not the holding” of prior cases could warn Wilcox officials about the unlawfulness of their behavior. *See id.*

Almost four decades of clear and consistent precedent protecting the religious liberty of incarcerated people gave Wilcox officials fair warning. This Court established in *Martinelli v. Dugger*, 817 F.2d 1499 (11th Cir. 1987), *superseded by statute*, 42 U.S.C. § 2000bb *et seq.*, the general principle that prisons must accommodate incarcerated persons’ religious dietary restrictions when their beliefs are truly held, subject only to legitimate penological limitations. *See Hathcock v. Cohen*, 287 F. App’x 793, 801 (11th Cir. 2008) (explaining *Martinelli*). More recently, in *Sec’y, Fla. Dep’t of Corr.*, 828 F.3d at 1346, this Court did not even question that denying kosher meals to Jewish prisoners substantially burdens their religion. Just one year before the events here, this Court in *Robbins v. Robertson*, 782 F. App’x 794, 802 (11th Cir. 2019), held that prison officials substantially burden an incarcerated person’s religious exercise if they force him to choose between malnutrition or his religious beliefs.

These decisions cement that an incarcerated person’s sincere religious beliefs are burdened in violation of the First Amendment when

the person is denied a religious diet for no justifiable penological reason. Because the Wilcox officials ignored these warnings and acted unreasonably by removing Mr. Sumrall from the AEP, they cannot benefit from qualified immunity.

B. GDC Violated RLUIPA By Refusing Mr. Sumrall's Religious Accommodation Requests for the Sale of Vegan Food and Shoes.

RLUIPA provides even greater protections of religious liberty than the First Amendment. Under RLUIPA, 42 U.S.C. § 2000cc *et seq.*, governments may not substantially burden the religious exercise of incarcerated persons unless the burden serves a compelling purpose and is the least restrictive means of achieving that purpose. *Id.* § 2000cc-1(a)(1)-(2). In addition to the denial of Mr. Sumrall's religious diet, *see supra*, Part I & Part II.A, a reasonable jury could conclude that GDC substantially burdened Mr. Sumrall's religious exercise without justification by denying his requests for the sale of vegan food and shoes.

Mr. Sumrall met his initial obligation under RLUIPA to show his religious beliefs are sincere and GDC's denial of his accommodation requests substantially burdens the exercise of those beliefs. *See Holt v. Hobbs*, 574 U.S. 352, 360-61 (2015). Mr. Sumrall's need for a diet and

shoes free from animal products is grounded in the sincere belief that he can only serve his God-given purpose by avoiding unnecessary harm to animals. Viewed in the light most favorable to Mr. Sumrall, the factual record demonstrates his decades-long commitment to his religion and cements the sincerity of his beliefs. *See* Doc. 31-3 at 2-4 (detailing the centrality of veganism in Mr. Sumrall’s religious worldview).

GDC substantially burdens Mr. Sumrall’s religious exercise under RLUIPA by denying his request to make vegan food available for purchase. To establish a substantial burden on his religion, Mr. Sumrall need not show that GDC’s actions led him to “completely surrender” his religious beliefs. *Thai Meditation*, 980 F.3d at 831. Instead, “modified behavior, if the result of government coercion or pressure, can be enough.” *Id.* Viewing the record in the light most favorable to Mr. Sumrall, he has met this standard. Because the commissary does not designate items as vegan or non-vegan, Mr. Sumrall cannot know if the products comply with his religious beliefs. *See* Doc. 35-1 at 27-30, 78; Doc. 41-3 at 13. Now that GDC has added the non-vegan-purchase prohibition to the SOP, Mr. Sumrall can lose his religious diet if he buys the wrong item. *See* Current SOP at 8, <https://perma.cc/HL7X-L4P8>.

GDC's denial of his request pressures him to either use the commissary, risking removal from the AEP, or stop using the commissary altogether. This is a substantial burden. *See Thai Meditation*, 980 F.3d at 831.

In addition to failing to accommodate Mr. Sumrall's food-related requirements, GDC substantially burdens his religious exercise under RLUIPA by refusing him access to athletic shoes that are not made from animal products. *See* Doc. 31-10; Doc. 35-1 at 38. Because the only religiously compliant alternative to leather sneakers is rubber slides—which are not gym shoes—Mr. Sumrall cannot exercise without violating his religious beliefs. *See* Doc. 35-1 at 34-35; Doc. 46-6 at 1-2. This too is a substantial burden. *See Thai Meditation*, 980 F.3d at 831.

GDC failed to satisfy RLUIPA's stringent requirement that burdening Mr. Sumrall's religious exercise furthers "a compelling governmental interest" through the "least restrictive means." 42 U.S.C. § 2000cc-1(a)(1)-(2). Mr. Sumrall's requests were plainly written: "Allow me to order a pair of vegan athletic shoes because the current package vendor only sells shoes that are made with leather, i.e. animals;" and "Require the prison I'm in to sell vegan food products, including pre-cooked meals as they do for non-vegans." Doc. 31-10 at 3. GDC denied

these requests on the nonsensical basis that the officials who read them could not identify what Mr. Sumrall was asking for. *Id.* at 1. This Court should hold GDC to its “statutory burden” and should not defer to the officials’ “mere say-so that they could not accommodate” Mr. Sumrall’s requests. *See Holt*, 574 U.S. at 369. RLUIPA required GDC to justify its denial, *see* § 2000cc–1(a)(1)-(2), and GDC ignored that statutory command.

III. WILCOX OFFICIALS VIOLATED MR. SUMRALL’S EQUAL PROTECTION AND DUE PROCESS RIGHTS AND IMPOSED CRUEL AND UNUSUAL PUNISHMENT WHEN THEY DEPRIVED HIM OF HIS RELIGIOUS DIET.

Wilcox officials created a web of constitutional violations when in July 2020 they arbitrarily removed Mr. Sumrall from the religious diet that he relied on for spiritual and physical nourishment. In addition to unjustifiably burdening his religious exercise, *see supra*, Part II.A, there is evidence that Wilcox officials violated equal protection by treating similarly situated people differently because of racial and religious animus. A reasonable jury could also find that Wilcox officials denied Mr. Sumrall procedural due process when they revoked his religious meal plan without notice or a hearing. And because Mr. Sumrall suffered physical and mental anguish when Wilcox officials decided to remove his

religious meals, there is a triable issue as to whether they imposed cruel and unusual punishment.

A. Wilcox Officials Violated Equal Protection by Denying Mr. Sumrall His Religious Diet on the Basis of His Race and Religion.

Wilcox officials are not entitled to summary judgment on the claim that they violated Mr. Sumrall's Fourteenth Amendment right to equal protection when they removed him from the AEP for nearly three months in 2020. *See* U.S. Const. amend. XIV, § 1. The first element of an equal protection claim is that a similarly situated person received more favorable treatment. *Damiano v. Fla. Parole & Prob. Comm'n*, 785 F.2d 929, 932 (11th Cir. 1986); *see City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Mr. Sumrall satisfied this element because he introduced evidence that people of other races and religions who purchased non-vegan items were not removed from the AEP. The second element requires a showing of invidious discrimination based on race or religion. *Damiano*, 785 F.2d at 932-33. There is sufficient evidence for a jury to conclude that Wilcox officials were motivated by intentional discrimination in revoking Mr. Sumrall's religious diet.

1. *Similarly Situated People Received More Favorable Treatment Than Mr. Sumrall.*

Mr. Sumrall has identified at least one similarly situated person who received more favorable treatment from Wilcox officials. Similarly situated means “similarly situated in all material respects.” *Lewis v. City of Union City, Georgia*, 934 F.3d 1169, 1185 (11th Cir. 2019). Michael Cwikla, a white and Jewish man, was enrolled in the AEP and purchased non-vegan food before GDC added the non-vegan purchase prohibition in October 2020. Doc. 45-7 at 2. Despite being similarly situated to Mr. Sumrall in all material respects, Mr. Cwikla’s affidavit shows that he received more favorable treatment. *Id.*

Mr. Cwikla’s affidavit presented specific facts from personal knowledge that the district court should not have dismissed. *See* Doc. 56 at 12-13; *Perry v. Thompson*, 786 F.2d 1093, 1095 (11th Cir. 1986) (explaining that courts may not dismiss sworn testimony of specific facts when considering summary judgment). Mr. Cwikla averred that around the time Mr. Sumrall was removed from the AEP, “the defendants did not remove me nor any other Jewish/Caucasian prisoner from the AEP even though we also bought (and buy) non-vegan store items.” Doc. 45-7 at 2. He described his personal experience in straightforward terms: he

was not removed from the AEP although he, like Mr. Sumrall, bought non-vegan items. *See id.* Mr. Cwikla's affidavit was written in both past and present continuous tense, indicating that his purchases span a range of time. *See id.* Further, Mr. Sumrall testified in his deposition that Mr. Cwikla had a longstanding practice of buying non-vegan food. Doc. 35-1 at 46.

Like Mr. Cwikla's declarations about himself, his statements about other prisoners are reasonably read as stemming from personal knowledge. *See* Doc. 45-7 at 2. As a devout Jew, he has likely been on the AEP since 2014 when he entered Wilcox. *See id.* at 1. In this time, he has likely observed members of his Jewish community receive vegan trays and purchase non-vegan store items.

This evidence is buttressed by the affidavit of James America, a black person on the AEP who lived in Mr. Sumrall's dorm in summer 2020. *See* Doc. 45-8 at 1-2. In August 2020, Deputy Warden Ashley informed Mr. America and several other black prisoners that they were removed from the AEP because they purchased non-vegan items from the store. *Id.* at 2. Mr. America wrote, "based on personal knowledge," that "white and Jewish prisoners [in the same dorm] had also previously

bought non-vegan goods, but the Defendants didn't remove any of them from the AEP." *Id.* at 1-2. Deputy Warden Ashley stated in her affidavit that people of various races were removed from the AEP in July 2020. *See* Doc. 41-2 at 2. But she did not say that any white, Jewish people were removed for purchasing non-vegan commissary food. *See id.* The affidavits and testimony that Mr. Sumrall produced are sufficient evidence from which a reasonable jury could conclude that similarly situated people were treated differently.

2. There Is Circumstantial Evidence That Wilcox Officials Intentionally Discriminated Against Mr. Sumrall Because Of His Race and Religion.

A reasonable jury could also conclude that Wilcox officials were motivated, at least in part, by a discriminatory purpose when they removed Mr. Sumrall from the AEP. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (holding that a plaintiff is not required "to prove that the challenged action rested solely on racially discriminatory purposes"). To determine whether invidious discrimination motivated Wilcox officials, this Court must undertake a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.* at 266. If "the circumstantial evidence raises a

reasonable inference [of discrimination] against [Mr. Sumrall], summary judgment is improper.” *See Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011) (emphasis added).

Mr. Sumrall presented evidence that would give “a reasonable jury . . . reason to doubt [Wilcox officials’] asserted nondiscriminatory reason” for his removal. *See Bogle v. McClure*, 332 F.3d 1347, 1356 (11th Cir. 2003). Doubt exists because Wilcox officials “failed to clearly articulate and follow [their] formal policies” when they removed him from the AEP in July 2020. *See Lewis*, 934 F.3d at 1186. At that time, the SOP did not prohibit individuals on the AEP from purchasing non-vegan store items. Doc. 41-3 at 11. This means that Mr. Sumrall was removed based on an unwritten and unannounced policy—which could cause a jury to find that Wilcox officials’ purported reason was not the actual motivation for their actions.

Finally, a reasonable jury could infer that Wilcox officials were actually motivated, at least in part, by racial and religious animus because no white or non-Jewish person was removed for the same reason as Mr. Sumrall. *See Lewis*, 934 F.3d at 1187-88 (explaining that more favorable discretionary treatment of a white man versus a black woman

can be evidence of discriminatory intent). While Deputy Warden Ashley asserted that people of different races were removed from the AEP in July 2020, she did not state the *reason why* any white person was removed. Doc. 41-2 at 2. And she did not state that any Jewish people were removed. *See* Doc. 41-2. Mr. Sumrall, on the other hand, presented evidence that Wilcox officials did not remove any white or Jewish person from the AEP for purchasing non-vegan items. Doc. 35-1 at 14, 41-46; Doc. 45-7 at 2; Doc. 45-8 at 2. At the very least, this creates a dispute of material fact that should be decided by a jury. Presented with evidence that Wilcox officials acted outside the governing SOP to remove only black people of non-Jewish faiths, a reasonable jury could find Wilcox officials acted with discriminatory intent.

B. Wilcox Officials Violated Mr. Sumrall's Clearly Established Right to Due Process When They Deprived Him of His Religious Diet Without Notice or A Hearing.

A reasonable jury could conclude that Mr. Sumrall was denied procedural due process when Wilcox officials revoked his religious diet without notice or a hearing. State officials cannot deprive any person of liberty without due process of law. U.S. Const. amend. XIV, § 1. This Court requires three elements for a procedural due process violation:

(1) deprivation of a liberty interest; (2) state action; and (3) inadequate process. *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). Wilcox officials did not contest that Mr. Sumrall's deprivation was caused by state action and that they failed to provide process; they instead asserted that Mr. Sumrall did not have a liberty interest in a religious diet. *See* Doc. 41 at 11-13. Their argument fails because the AEP provided Mr. Sumrall with a liberty interest, and the First Amendment guaranteed it.

1. Wilcox Officials Deprived Mr. Sumrall Of a Liberty Interest Without Due Process by Forcing Him to Choose Between His Religion and Starvation.

The AEP created a liberty interest by providing religiously compliant meals. States create liberty interests for incarcerated persons through benefit-providing policies. *Bass v. Perrin*, 170 F.3d 1312, 1318 (11th Cir. 1999). The AEP is intended to provide the benefit of religious meals for Mr. Sumrall. *See* Doc. 41-3 at 2 (“The AEP was developed to allow GDC to accommodate as many religions as possible”). Because removal from the AEP imposed an “atypical and significant hardship” on Mr. Sumrall “in relation to the ordinary incidents of prison life,” his interest in a religious diet was a liberty interest protected by due process.

See Kirby v. Siegelman, 195 F.3d 1285, 1291 (11th Cir. 1999) (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)).

When Wilcox officials deprived Mr. Sumrall of AEP meals, they forced him to make an impossible choice: either abandon his religion so he could eat or refrain from eating so he could respect his beliefs. While Mr. Sumrall chose to starve and suffer health consequences so he could be at peace with his conscience and honor his religious teachings, there is nothing ordinary or typical about being coerced to make that choice.

A deprivation that causes a substantial toll on an incarcerated person's body and mind, compared to ordinary prison life, is a significant and atypical hardship. *See Bass*, 170 F.3d at 1318. In *Bass*, this Court held that depriving individuals in solitary confinement the benefit of two hours of yard time was a protected liberty interest, noting that being forced to remain indoors can drive someone "insane." *Id.* at 1316 & n.4, 1318. Mr. Sumrall also suffered an atypical hardship on his body and mind when Wilcox officials forced him to choose between religion and hunger for nearly three months. That is not an "ordinary incident of prison life." *See id.* at 1318.

The liberty interest created by the AEP is further bolstered by Mr. Sumrall's right to free exercise under the First Amendment, because a right grounded in the First Amendment "is plainly a 'liberty' interest within the meaning of the Fourteenth Amendment even though qualified of necessity by the circumstance of imprisonment." *Procunier v. Martinez*, 416 U.S. 396, 418 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989).

Because Mr. Sumrall had a protected liberty interest in religiously compliant meals, he was entitled to due process when he was removed from the AEP in July 2020. *See Kirby*, 195 F.3d at 1290-91. At a minimum, due process required notice so Mr. Sumrall could object or conform his behavior to avoid a violation, and a hearing or equivalent opportunity to show Wilcox officials that he was not eating the non-vegan food he purchased from the commissary. *See Dorman v. Aronofsky*, 36 F.4th 1306, 1316 (11th Cir. 2022); *Young v. Jones*, 37 F.3d 1457, 1459–60 (11th Cir. 1994) (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-66 (1974)). Because Wilcox officials failed in both respects, they violated Mr. Sumrall's due process rights.

2. *Wilcox Officials Are Not Entitled to Qualified Immunity.*

For the reasons stated *supra*, pages 29-31, Wilcox officials acted outside their discretionary authority and are not entitled to qualified immunity. Additionally, the district court erred in granting Wilcox officials qualified immunity, *see* Doc. 56 at 17-21, because they had fair warning that forcing Mr. Sumrall to choose between starvation and religion was a significant hardship. Broad statements of law contained in cases can provide notice of unconstitutional conduct. *T.R. by & through Brock v. Lamar Cnty. Bd. of Educ.*, 25 F.4th 877, 882 (11th Cir. 2022); *Mercado*, 407 F.3d at 1159. Specifically, the reasoning of prior cases like *Bass* and *Sandin* established principles applicable to Mr. Sumrall's situation. *See Hope*, 536 U.S. at 743 (explaining that the reasoning of previous caselaw gives warning to reasonable officials).

Bass gave Wilcox officials fair warning that anguishing Mr. Sumrall with the impossible choice between his God or his nourishment, like denying prisoners any outdoor time, is an atypical hardship. *See* 170 F.3d at 1316 & n.6, 1318. While both hardships take a toll on body and mind, depriving someone of food for three months is arguably even more severe than denying time outdoors. A second

principle comes from *Sandin*, where the Supreme Court emphasized that a hardship is evaluated by comparing it to the “ordinary incidents of prison life.” *See Sandin*, 515 U.S. at 484. A reasonable official had fair warning—from both law and common sense—that facing starvation for three months is not a regular aspect of prison life. *See Hope*, 536 U.S. at 743.

Additionally, this Court has repeatedly affirmed the close connection between religious diets and an incarcerated person’s free exercise right. *See, e.g., Robbins*, 782 F. App’x at 802; *Sec’y, Fla. Dep’t of Corr.*, 828 F.3d at 1346. And the Supreme Court has affirmed that a prisoner’s First Amendment right is a liberty interest protected by the Due Process Clause. *See Martinez*, 416 U.S. at 418. These long-established principles provided fair warning that Mr. Sumrall’s deprivation of a religious diet was deprivation of a liberty interest.

C. Wilcox Officials Violated the Eighth Amendment by Denying Mr. Sumrall a Religious Diet and Causing Him to Starve.

By depriving Mr. Sumrall of religious meals for nearly three months, Wilcox officials caused him to starve. This was an extreme deprivation. Even more, Wilcox officials were subjectively aware that

their action posed a substantial risk of harm to his health, but they did it anyway. Subjecting Mr. Sumrall to inhumane conditions of confinement violated the Eighth Amendment. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994); U.S. Const. amend. VIII. An Eighth Amendment challenge to conditions of confinement has an objective and a subjective element. *Farmer*, 511 U.S. at 834. Mr. Sumrall established the objective element by demonstrating that his removal from the AEP was “sufficiently serious” and exposed him to an unreasonable risk of serious damage to his health. *See id.* (citation omitted); *Helling v. McKinney*, 509 U.S. 25, 35 (1993). He also established that Wilcox officials were “subjectively aware that [their] own conduct . . . put [Mr. Sumrall] at substantial risk of serious harm.” *See Wade v. McDade*, 106 F.4th 1251, 1258 (11th Cir. 2024).

1. *Wilcox Officials Deprived Mr. Sumrall of a Basic Need and Exposed him to an Unreasonable Risk of Serious Damage to his Health.*

Mr. Sumrall is entitled to “the minimal civilized measure of life’s necessities.” *Chandler v. Baird*, 926 F.2d 1057, 1064 (11th Cir. 1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). Deprivations of such necessities are “sufficiently grave” to satisfy the objective prong of

an Eighth Amendment claim. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). Access to “adequate food” is a basic need that Wilcox officials may not disregard. *Farmer*, 511 U.S. at 832. Such disregard amounts to an “unnecessary and wanton infliction of pain . . . without penological justification.” *Hope*, 536 U.S. at 737 (2002) (cleaned up).

Wilcox officials deprived Mr. Sumrall of a basic need and forced him to starve by denying him access to meals he could consume. Although vegan food was available to others through the AEP, Wilcox officials forced Mr. Sumrall to go hungry. Doc. 31-3 at 2-6; Doc. 35-1 at 60; Doc. 45-7 at 2. Food deprivation for nearly three months is objectively extreme because it is an affront to the “contemporary standards of decency” that should guide the treatment of incarcerated people. *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Indeed, it is a disregard of human dignity, which is “[t]he basic concept underlying the Eighth Amendment.” *Trop v. Dulles*, 356 U.S. 86, 100 (1958). Mr. Sumrall did not starve to death, due in part to people like Mr. Cwikla, who shared some of their vegan food with him. Doc. 45-7 at 2. But he experienced intense periods of hunger and developed medical complications as a result. Doc. 31-3 at 5-6; Doc. 35-1 at 14, 60-64.

Wilcox officials exposed Mr. Sumrall to “an objectively unreasonable risk of serious damage” to his health. *Brooks v. Warden*, 800 F.3d 1295, 1303 (11th Cir. 2015) (cleaned up). Unfortunately, harm did not remain a probability—it occurred. A reasonable jury could find that Mr. Sumrall’s removal caused the medical complications and pain that he experienced. *See Sconiers v. Lockhart*, 946 F.3d 1256, 1263-64 (11th Cir. 2020) (holding that summary judgment is precluded if factual questions remain on whether a plaintiff suffered harm or injury from prison officials’ allegedly wrongful conduct).

After being denied food that complied with his religion, Mr. Sumrall developed a vitamin D deficiency, a low white blood cell count, and a weakened immune system that hampered his ability to fight Covid-19. Doc. 31-3 at 6. He also experienced fatigue, disorientation, arthritic pain, back pain, and stomach spasms that “protruded several inches.” *Id.* at 5; Doc. 35-1 at 62. These spasms were so agonizing that Mr. Sumrall “cried tears to stop from screaming.” Doc. 31-3 at 5. In addition to physical ailments, Mr. Sumrall experienced depression. *Id.* at 6; *see Thomas v. Bryant*, 614 F.3d 1288, 1308-10 (11th Cir. 2010) (holding that psychological injuries are cognizable under the objective element). Being

subjected to such physical and mental torment offends the “evolving standards of decency that mark the progress of a maturing society.” *Estelle*, 429 U.S. at 102 (cleaned up).

2. *Wilcox Officials Were Subjectively Aware that Mr. Sumrall Faced a Substantial Risk of Harm from Starvation.*

Considering the facts in the light most favorable to Mr. Sumrall, a reasonable jury could find that Wilcox officials were aware that denying him access to religious meals carried a substantial risk of serious harm. The subjective element of Eighth Amendment liability is “deliberate indifference.” *Farmer*, 511 U.S. at 835-36. To succeed under this prong, a plaintiff “must demonstrate that the defendant acted with subjective recklessness as used in the criminal law.” *Wade*, 106 F.4th at 1262 (cleaned up). This means that the “defendant official was subjectively aware that [their] own conduct . . . put the plaintiff at substantial risk of serious harm.” *Id.* at 1258.

Direct evidence of subjective knowledge is not required to prove deliberate indifference. The question of whether Wilcox officials “had the requisite knowledge of a substantial risk is a *question of fact* subject to demonstration in the usual ways, including inference from circumstantial evidence.” *Caldwell v. Warden, FCI Talladega*, 748 F.3d

1090, 1100 (11th Cir. 2014) (quoting *Rodriguez v. Sec’y for Dep’t of Corr.*, 508 F.3d 611, 617 (11th Cir. 2007)). Mr. Sumrall may also satisfy this standard by showing that “a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Farmer*, 511 U.S. at 842; *see, e.g., Caldwell*, 748 F.3d at 1101 (holding that the risk of harm was obvious where prison officials housed someone with a cellmate who had a record of violence).

There is sufficient circumstantial evidence for a jury to find that Wilcox officials knew they were exposing Mr. Sumrall to a substantial risk of harm. Since at least 2007, Mr. Sumrall’s strict adherence to a religious diet is well documented within GDC’s system. Mr. Sumrall demonstrated the sincerity of his beliefs by requesting transfers from non-AEP prisons, refusing to eat non-vegan meals, and filing grievances protesting violations of the AEP by prison officials. Doc. 31-3 at 2-4; Doc. 41-3 at 10-11 Doc. 63-6 at 1-3.

Despite this consistent record of religious adherence, Warden Singleton characterized Mr. Sumrall’s complaints of malnutrition in his July 2020 grievance as “unfounded.” 41-3 at 10-11. In Mr. Sumrall’s Special Religious Request, which Warden Singleton also denied,

Mr. Sumrall explained his longstanding religious practice and requested meals that did not violate his beliefs. Doc. 31-10 at 1-3. These records are evidence that Wilcox officials knew Mr. Sumrall was steadfast in his demonstrated beliefs—which meant he was starving without his religious diet—and did nothing to stop the harm. *See Goebert v. Lee Cnty.*, 510 F.3d 1312, 1327 (11th Cir. 2007) (holding an incarcerated person’s complaints gave the official “sufficient information for him to have subjective knowledge of her serious medical need”).

The risk of harm to Mr. Sumrall’s health was also obvious. *See McElligott v. Foley*, 182 F.3d 1248, 1256 (11th Cir. 1999) (holding that the risk of harm was obvious where doctor and nurse ignored signs that the incarcerated person was experiencing serious pain). It was obvious that Mr. Sumrall would not eat non-vegan food because he had never been removed from the AEP in the past either for taking a non-AEP tray in the mess hall or for missing AEP meals.⁶ Wilcox officials chose to ignore this fact. Even more, Deputy Warden Ashley admitted that she had no knowledge of Mr. Sumrall eating non-vegan food in the dining hall

⁶ The SOP authorized removal for people who missed seven meals in a seven-day period, missed fifteen meals in a thirty-day period, or picked up a regular tray. Doc. 31-2 at 2; Doc. 35 at 3.

from 2019 and throughout the period he was removed from the AEP. Doc. 41-3 at 13. In sum, Wilcox officials knew that Mr. Sumrall's religious beliefs were sincere, and as such were aware that if they took him off the AEP, he would not eat regular meals. The risk of harm from starvation was obvious, yet they ignored it. Accordingly, a reasonable jury could find that they acted with deliberate indifference.

CONCLUSION

For the reasons stated herein, Mr. Sumrall respectfully asks this Court to vacate the district court's grant of summary judgment to GDC and Wilcox officials and remand for further proceedings.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,540 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

Respectfully Submitted,

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Dated: November 4, 2024

CERTIFICATE OF SERVICE

I, Eva Shell, certify that on November 4, 2024, I electronically filed the foregoing Opening Brief of Appellant via this Court's CM/ECF system, which will send notice of such filing to counsel of record in the above-captioned case.

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