violation of his free exercise rights. Indeed, the uncontroverted evidence establishes that Defendant Blair did not participate in the decisions regarding those requests.

In Defendant Gold's discovery to Bock, he asked him to "[s]et forth every fact that supports your contention that, as alleged in Paragraph 6 of the Complaint, that each of the defendants had authority to approve the requested accommodations and chose not to do so." See Exhibit 2 at interrog. 18. Bock responded as follows: "Defendant Blair was the superintendent at NWSCF during Plaintiff's imprisonment there and thus the person with ultimate authority over everything that transpired at the facility." See id. at interrog. 18. Defendant Gold further requested that Bock "[s]et forth every fact that you contend supports your request for compensatory damages." See id. at interrog. 19. Bock responded as follows: "Defendants acted in violation of Vermont state statute, several of their own written policies and directives, the federal law known as RLUIPA and by virtue of their violation of RLUIPA, 42 USC 1983." See id. 19. He subsequently amended his answer and stated that Defendants caused him psychological distress, mental anguish and trauma "[b]y their violations of federal law, state law and their own D.O.C. policies and directives[.]" See Exhibit 3 at interrog. 19. Finally, Defendant Gold requested that Bock "[s]et forth every fact that you contend supports your request for punitive damages." See Exhibit 2 at interrog. 20. Bock responded as follows: "See answer to preceding interrogatory." See id. at interrog. 20. He subsequently amended his answer and stated that Defendants were repeatedly made aware of my religious needs on numerous occasions and failed to take any action and deliberately denied his requests for religious accommodations. See Exhibit 3 at interrog. 20.

In his interrogatories to Defendant Blair, Bock requested that she list everything she did about, including whatever manner you responded to, Plaintiff's requests for DOC accommodation for religious observances. See Exhibit 7 at interrog. 19. Defendant Blair answered as follows: "I do not recall receiving from Plaintiff requests for accommodation for religious observances. If I did, I would have referred them to David Turner to investigate and respond." See id. Bock also requested that Defendant Blair set forth the names of all persons involved in the decisions specific to Plaintiff's requests for religious accommodation, or who should have been involved, between October 2004 and May 2005. See id. at interrog. 23. Defendant Blair responded "Chris Barton, David Martinson, Brian Reed, David Turner, Brian Bilodeau, Mark Russell, and Robert Arkley were involved in the decisions specific to Plaintiff's requests for religious accommodation." See id. Thus, it is undisputed that Defendant Blair was not, nor should have been, personally involved in the response to Bock's request for accommodations to observe his religion. Bock has failed to come forward with any evidence that establishes Defendant Blair was personally involved in the alleged First Amendment and RLUIPA violations. Instead, he has only offered mere conclusory allegations that Defendant Blair violated his rights. Therefore, Defendant Blair is entitled to summary judgment on Bock's § 1983 and RLUIPA claims against her in her individual capacity.

X. Defendants are entitled to summary judgment on Bock's RLUIPA claims against them in their individual capacities because RLUIPA does not authorize the recovery of damages from state employees in their individual capacities.

A threshold issue is in the analysis of Bock's RLUIPA claim is whether that statute imposes liability for damages against government officials in their individual capacities. RLUIPA provides, in relevant part, that:

> *No government* shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person-
> (1) is in furtherance of a compelling governmental interest; and
> (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a) (emphasis added). It further provides that, "A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against *a government.*" 42 U.S.C. § 2000cc-2(a) (emphasis added). RLUIPA applies to government programs or activities that received Federal financial assistance. 42 U.S.C. § 2000cc-1(b)(1). Thus, the statute's proscriptive language addresses conduct by "government," not individuals, and, similarly, the statute's relief provision provides for judicial relief against "a government," not individuals.

Courts interpreting this statutory language have concluded that it permits claims against a governmental entity, but not against an individual officer, except in his or her official capacity. See Boles v. Neet, 402 F.Supp.2d 1237, 1240 (D.Colo. 2005) (citing Hale O Kaula Church v. Maui Planning Comm'n, 229 F.Supp.2d 1056, 1067 (D.Haw. 2002) ("RLUIPA provides a cause of action against 'governments' and does not appear to allow causes of action against individuals."); Morris-El v. Menei, 2006 WL 1455592, at *3 (W.D.Pa. 2006) (noting that RLUIPA does not authorize damages against individual defendants, but only "appropriate relief against a government"); Rowe v. Davis, 373 F.Supp.2d 822, 828 (N.D.Ind. 2005) (RLUIPA claim may proceed against correctional officer or his successor in an official capacity basis); Gooden v. Crain, 405 F.Supp.2d 714, 723 ("RLUIPA does not contemplate recovering damages from individuals); Smith v. Haley, 401 F.Supp.2d 1240, 1246 (M.D.Ala. 2005) (expressing doubt as to whether

RLUIPA authorizes individual damages); and Kay v. Friel, 2007 WL 295556 at *4 (D.Utah 2007) ("Defendants are not amendable to suit in their individual capacities under RLUIPA").

Defendants, in their individual capacities, are not parties to the Department of Corrections' acceptance of funds from the federal government in exchange for implementation of federal legislation. Thus, RLUIPA does not provide for individual liability. Indeed, the Second Circuit has found that other spending clause legislation is inapplicable to individual defendants. See Garcia v. S.U.N.Y. Health Sciences Center of Brooklyn, 280 F.3d 98, 107 (2d Cir. 2001) (neither Rehabilitation Act nor Americans with Disabilities Act, 42 U.S.C. § 12132, provide for individual capacity suits against state officials); see also Parkinson v. Goord, 116 F.Supp.2d 390, 399 (W.D.N.Y. 2000) (Larimer, Ch. J.) (same for claims under Americans with Disabilities Act). Therefore, Defendants are entitled to judgment as a matter of law on Bock's RLUIPA individual capacity claims for monetary damages.

XI. Defendant Turner is entitled to qualified immunity regarding Bock's RLUIPA and First Amendment claims.

As discussed in Sections VI-IX, *supra*, Defendants Gold, Ryan, Gladding and Blair entitled to summary judgment because they were not personally involved in the alleged denial of Bock's request for accommodations to exercise his religious beliefs. In regard to Defendant Turner, Bock was incarcerated at NWSCF where Defendant Turner works during Hanukkah and Purim, but not Passover. See Exhibit 1 at 10:7-18 and Exhibit 9 at Exhibit B. Bock was incarcerated at NSCF during Passover and Defendant Turner did not have the authority to grant Bock's request that NSCF provide him accommodations to practice his religion. See Exhibit 10. Bock admits that he was able

to make his own dietary provisions for Hanukkah. See Exhibit 1 at 15:2-19 and Exhibit 9 at Exhibit F (April 8, 2005 Grievance Form #1). He also requested that a Rabbi be permitted to bring a dreidel and menorah when he visited Bock for Hannukah. See Exhibit 9 at Exhibit A (Gordon Bock memo to Brian Reed). Defendant Turner approved Bock's request that the Rabbi bring a dreidel. See Exhibit 8 at Exhibit 1 (David Turner memo to Gordon Bock) and interrog. 22. He denied Bock's request that Rabbi bring a menorah because NWSCF does not allow lights or matches in the facility. See Exhibit 8 at Exhibit 1 (David Turner memo to Gordon Bock). However, Defendant Turner indicated that NWSCF would permit the Rabbi to bring an electric or battery operated menorah, provided that it is checked by security staff upon entering and the Rabbi takes it with him when he leaves. See Exhibit 8 at Exhibit 1 (David Turner memo to Gordon Bock) and interrog. 22. In regard to Plaintiff's request that the Rabbi bring in food associated with Purim, Defendant Turner denied that request because the introduction of food items from outside NWSCF poses a threat to the security of the facility. See Exhibit 8 at Exhibit 1 (David Turner memo to Gordon Bock) and interrog. 22.

The doctrine of qualified immunity shields public officials performing discretionary official functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 344-45 (1986). Ruling on the qualified-immunity defense requires a two-step inquiry. First, the court must consider whether the plaintiff's factual allegations, both those unchallenged and those as to which

the record creates a genuine dispute, "show the [official's] conduct violated a constitutional [or statutory] right." Saucier v. Katz, 533 U.S. 194, 201 (2001) (citing Stegert v. Gilley, 500 U.S. 226, 232 (1991)). When determining whether a right has been clearly established, the Second Circuit considers "(1) whether the right in question was defined with reasonable specificity; (2) whether the decisional law of the Supreme Court and the applicable circuit court supported the existence of the right in question; and (3) whether under preexisting law a reasonable defendant would have understood that his or her acts were unlawful." Taylor v. Vermont Dep't of Educ., 313 F.3d 768, 793 (2d Cir. 2002) (citing Jermosen v. Smith, 945 F.2d 547, 550 (2d Cir. 1991)). If the assumed facts do not establish a violation, the defendant must be granted summary judgment. Id. On the other hand, if violation of a right can be shown, "the next, sequential step is to ask whether the right was clearly established," id., and, if it was, whether "the evidence is such that, even when it is viewed in the light most favorable to the plaintiff[ ] and with all permissible inferences drawn in [his] favor, no rational jury could fail to conclude that it was objectively reasonable for the defendant[ ] to believe that [he][was] acting in a fashion that did not violate a clearly established right," In re State Police Litig., 88 F.3d 111, 123 (2d Cir. 1996).

Assuming that Defendant Turner's denial of Bock's request that a Rabbi bring him a menorah at Hanukkah and special food items at Purim violated Bock's right to have a Rabbi bring him those items, a rational jury could conclude that Defendant Turner believed he was acting in a manner that did not violate Bock's rights under RLUIPA or the First Amendment. It is self-evident that allowing the introduction of incendiary devices, such as matches or lighter to light candles on a menorah, into a correctional

facility creates a risk to the safety and security of that facility. Moreover, prohibiting the introduction of food into a prison by individuals not employed there furthers the Department's interest in maintaining security and the safety of staff and inmates at the prison because contraband could be hidden in such food. Conduct expressly aimed at protecting prison security is "legitimate" beyond question and is in fact "central to all other correctional goals." Thornburgh v. Abbott, 490 U.S. 401, 415 (1989) (quoting Pell v. Procunier, 417 U.S. 817, 823 (1973)). Thus, a rational jury could conclude that Defendant Turner believed he was he was acting in a fashion that violated Bock's rights because he acted to maintain the safety and security of NWSCF. Therefore, Defendant Turner is entitled to qualified immunity and summary judgment.

XII. Bock's claim for punitive damages fails because Defendants Gold, Ryan, Gladding and Blair did not participate in the decisions regarding Bock's request for accommodations and Bock has not produced any evidence showing that Defendant Turner was motivated by evil motive or callous indifference to Bock's rights.

Bock request punitive damages for Defendants' alleged unlawful conduct. See Complaint. In order to establish a claim for punitive damages, he must establish that Defendants' conduct was motivated by an evil motive or intent or involved reckless or callous indifference to his federally protected rights. Disorbo v. Hoy, 343 F.3d 172, 186 (2d Cir. 2003) (quoting Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625 (1983)). His proof must show malicious intent or deliberate indifference to the federally protected rights that are implicated. See Smith, 461 U.S. at 56, 103 S.Ct. at 1640. Rule 56(e) provides that a party opposing a properly supported motion for summary judgment may not rest upon "mere allegation ..., but must set forth specific facts showing that there is a genuine issue for trial.... This is true even where the evidence is likely to be within the

possession of the defendant [e.g. the defendant's state of mind], as long as the plaintiff has had a full opportunity to conduct discovery". Anderson, 477 U.S. at 256-57. Bock has not set forth any facts showing that Defendants acted with evil motive or intent or reckless or callous indifference to his rights, much less produced evidence of such motivation or conduct.

In Defendant Steven Gold's First Set of Interrogatories and Requests for Production of Documents, Defendant Gold requested that Plaintiff "[s]et forth every fact that you contend supports your request for punitive damages." See Exhibit 2 at interrog. 20. Plaintiff responded by referring to his answer to the preceding interrogatory, which states "Defendants acted in violation of Vermont state statute, several of their own written policies and directives, the federal law known as RLUIPA and by virtue of their violation of RLUIPA, 42 USC 1983." See id. at interrog. 19-20. In January 2007, Plaintiff revised his previous response to interrogatory 20 and claimed "Defendants were repeatedly made aware of my religious needs and requests on numerous occasions[.]" See Exhibit 3 at interrog. 20. He claims Defendants failed to take any action and deliberately denied his requests. See id. Bock asserts that Defendants failure to comply with his requests "leads to the inevitable conclusion that Defendants' actions were knowing, deliberate, willful and malicious." See id. However, he does not offer any facts or evidence that show that Defendants acted with malice or deliberate indifference. Far from hard evidence showing that Defendants acted with malice or deliberate indiffence to Bock's federally protected rights, his responses are little more than conclusory allegations, conjecture, and speculation.

Bock conceded at his deposition that he does not even know what Defendant Gold, Ryan, or Gladding did to burden the practice of his religion. See Exhibit 1 at 29:5 – 33:4; 38:15 – 43:15. Moreover, neither Bock nor any Department employee informed Defendants Gold and Ryan that Bock was seeking accommodations to practice his religion. See Exhibit 4 at interrog. 16-19 and Exhibit 5 at inerrog. 16-19. Bock conceded at his deposition that he doesn't know if Defendants Gold or Ryan were aware that he was seeking accommodations to practice his religion. See Exhibit 1 at 86:13 – 87:6. Bock further testified that he doesn't recall if he communicated his requests for accommodations to Defendant Gold and doesn't know if anyone did. See id. at 136:2-19. He also testified that he does not have any knowledge that Defendant Ryan chose not to grant his request for accommodations, despite explicitly alleging in his Complaint that she did so. See id. at 122:6-9 and Complaint at ¶ 6(b). The only request for accommodations that was communicated to Defendant Gladding was Bock's request to wear a yarmulke. See Exhibit 6 at interrog. 16-19. That request was granted. See Exhibit 1 at 90:9-13. Bock also testified that he does not know why Defendant Blair did not grant his request for accommodations. See Exhibit 1 at 125:12-22. Furthermore, Defendants Gold, Ryan, Gladding, and Blair were not involved with the decisions regarding Bock's request for accommodations. See Exhibits 4, 5, 6, and 7 at interrog. 23. Defendants Gold, Ryan, Gladding and Blair did not deny Bock's request for accommodations to practice his religion. Accordingly, they could not have acted with evil motive or intent or reckless or callous indifference to Bock's federally protected rights by denying his requests for accommodations because they did not deny his request, nor were they even aware of the requests.

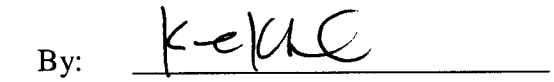
With respect to Defendant Turner, he granted numerous of Bock's requests for accommodations, such as allowing a Rabbi to visit him, allowing the Rabbi to bring tefillin, a dreidel and electric or battery-operated menorah with him when he visited Bock. See Exhibit 8 at Exhibit 1 (David Turner memo to Gordon Bock) and interrog. 22. Bock conceded at his deposition that he was able to make his own provisions for Hanukkah. See Exhibit 1 at 15:2-19 and Exhibit 9 at Exhibit F (April 8, 2005 Grievance Form #1). The only other holiday that occurred while Bock was incarcerated at NWSCF was Purim. See Exhibit 1 at 10:7-9 and Exhibit 9 at Exhibit B. Defendant Turner did not grant Bock's request that a Rabbi bring in a menorah and food associated with Purim because it could pose a threat to the security of the facility. See id. Far from showing malicious intent or deliberate indifference to Bock's federally protected rights, this establishes that Defendant Turner's decision was based upon concerns for the safety of the staff and inmates at NWSCF.

Defendants are entitled to summary judgment on Bock's claims for punitive damages because the undisputed evidence establishes that Defendants Gold, Ryan, Gladding and Blair did deny Bock's request for accommodations to practice his religion that is the subject of this lawsuit. Accordingly, they did not with evil motive or intent or reckless or callous indifference to Bock's rights. Moreover, Defendant Turner's denial of Bock's request that a Rabbi bring him food associated with Purim was based upon the threat to the security of the facility that such action would pose. Ensuring the safety of a correctional facility is not an evil motive, nor does it constitute reckless or callous indifference to Bock's rights. Therefore, Defendant Turner is also entitled to summary judgment on Bock's claims for punitive damages.

WHEREFORE, Defendants requests that this Honorable Court enter summary judgment in their favor.

DATED at Waterbury, Vermont this 27th day of February 2007.

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

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