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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DARYL ARMSTEAD,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>MOTI RAGHUNATH, C.F.M. 1 and CURTIS WELLS, Assistant F.M.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 09-57005

D.C. No. 2:07-cv-02246-CJC-
AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Daryl Armstead, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that prison officials retaliated against him for exercising his First Amendment rights. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's summary judgment, *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc), and for an abuse of discretion the district court's denial of a motion to amend, *City of Los Angeles v. San Pedro Boat Works*, 635 F.3d 440, 446 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment because Armstead failed to create a genuine dispute of material fact as to whether defendants were aware of his grievance prior to changing the lunch and dinner menus. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (listing elements of a retaliation claim); *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995).

The district court did not abuse its discretion by denying Armstead's motion for leave to amend where the motion was filed after briefing on defendants' summary judgment motion was complete. *See M/V Am. Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1492 (9th Cir. 1983).

AFFIRMED.