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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CURTIS HARVEY MERCHANT,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>H. LOPEZ, Correctional Food Manager II; et al.,</p> <p>Defendants - Appellees.</p>
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No. 11-55724

D.C. No. 3:09-cv-00856-WQH-NLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

California state prisoner Curtis Harvey Merchant appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging retaliation in violation of the First Amendment. We have jurisdiction under 28

* 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).

U.S.C. §1291. We review de novo. *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Merchant failed to raise a genuine dispute of material fact as to whether defendants' actions did not reasonably advance a legitimate correctional goal in light of defendant Weitzel's stated concern for her safety. *See Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995) (a prisoner plaintiff "bears the burden of pleading and proving the absence of legitimate correctional goals for the conduct of which he complains"); *see also Karam v. City of Burbank*, 352 F.3d 1188, 1194 (9th Cir. 2003) (speculation as to defendant's improper motive does not rise to the level of evidence sufficient to raise a triable dispute of fact).

AFFIRMED.