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FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

APR 03 2008

Stephan Harris, Clerk
Cheyenne

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

JOSEPH MILLER,
and HURIE PURDIMAN, JR.

Plaintiffs,

vs.

MICHAEL MURPHY and,
ROBERT LAMPERT, in their official
and individual capacities,

Defendants.

Civ. No. 08 CV 090-B

COMPLAINT

PRELIMINARY STATEMENT

In 2000, Congress enacted the Religious Land Use and Institutionalized
Persons Act ("RLUIPA") to protect the sincerely held religious beliefs of persons
incarcerated in state prisons throughout the nation. As the U.S. Supreme Court

Receipt # Chy004131

Summons: 2 issued

 not issued

explained in 2005, "RLUIPA is the latest of long-running congressional efforts to accord religious exercises heightened protection from government-imposed burdens." *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005). The purpose of this federal law--passed by a unanimous Congress--is to protect "institutionalized persons who are unable freely to attend to their religious needs and are therefore dependent on the government's permission and accommodation for exercise of their religion." *Cutter*, 544 U.S. at 721. In a word, RLUIPA is designed to ensure that prisoners have *a right* to engage in certain religious exercises, even if is inconvenient for prison officials to accommodate that right, unless prison officials have a compelling need to suppress these religious activities.

The two named Plaintiffs in this lawsuit are Muslims incarcerated in the Wyoming State Penitentiary. As a matter of faith, Plaintiffs devote specific time each day to prayer, and certain days of each year to fasting. As a result of the prison policy challenged herein, Plaintiffs must choose between adhering to their deeply held religious beliefs and eating meals. Defendants' policy requires prisoners to eat their meals within twenty minutes after delivery, after which the meals are confiscated. Plaintiffs have requested of Defendants that they be exempted from this rule when a religious exercise, such as prayer or fasting, renders consuming the meal within twenty minutes impracticable, but Defendants have denied these requests. Consequently, Defendants' policy substantially burdens Plaintiffs' religion because it coerces them to violate their religious beliefs or forego a meal. Plaintiffs seek declaratory and injunctive relief and nominal damages.

JURISDICTION AND VENUE

1. This action seeks relief under the First Amendment to the United States Constitution, 42 U.S.C. § 2000cc-1, and 42 U.S.C § 1983. Accordingly, 28 U.S.C. §§ 1343(3) and (4) confer jurisdiction on the Court. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

2. Plaintiffs **Joseph Miller and Hurie Purdiman, Jr.** are serving criminal sentences in the state of Wyoming and are incarcerated in the Wyoming State Penitentiary (WSP). Plaintiffs have been placed under the care, custody, and control of the Wyoming Department of Corrections (WDOC). Each Plaintiff is a member of the Muslim faith.

3. Defendant **Michael Murphy** is a citizen and resident of Wyoming. At all times relevant to this action, Mr. Murphy has been the Warden of WSP. As such, he has a duty to operate and administer WSP in a manner consistent with state and federal law.

4. Defendant **Robert Lampert** is a citizen and resident of Wyoming. At all times material to this action, Mr. Lampert has been the Director of WDOC. As such, he is the official ultimately responsible under state law for the operation and administration of WSP, including the operation and implementation of the policy and practice challenged in this action, and he has a duty to ensure that WSP is administered in a manner consistent with state and federal law.

5. All acts and omissions of Defendants described below were done under color of state law and were performed during the scope of their employment. Both Defendants are sued in their official and individual capacities.

FACTUAL ALLEGATIONS

6. Defendants have issued, and they enforce, the following rule known herein as the "twenty-minute" rule. This rule affords prisoners only twenty minutes to eat their meals. After twenty minutes, prison guards are required to confiscate the prisoners' meals.

7. To Plaintiffs' knowledge, the "twenty-minute" rule has not been issued in written form. However, as discussed below, prison administrators have acknowledged the existence of the rule, and aggressively enforce it.

8. To Plaintiffs' knowledge, although Defendants claim that the "twenty-minute" rule has been in existence for years, Defendants began enforcing it only within the past few months.

9. The "twenty-minute" rule is ignored by some guards but enforced by others. Some guards, for instance, have permitted Plaintiffs to complete their prayers and then eat their meals, whereas other guards have refused to accommodate Plaintiffs religious exercises and have confiscated Plaintiffs' meals when they were not eaten within twenty minutes. This same discriminatory enforcement of the "twenty-minute" rule has been applied to Jewish prisoners, as well. One prisoner is prepared to testify, for instance, that he heard a guard make the following statement when a Jewish prisoner requested additional time to finish a meal due to his religious fasting: "I don't give a s_ _ _ about your Jew stuff. Comply with the twenty-minute rule or don't eat." A prisoner will also testify that he observed a guard remove meals being eaten by Jewish prisoners when time expired and laughing about it as he threw their meals in the garbage.

10. Like millions of other Muslims, Plaintiffs formally pray several times a day and also fast on certain occasions. When Plaintiffs fast, they do not consume food from sunrise to sunset. On those occasions when a meal is delivered prior to sunset and a prisoner is fasting, the meal may be confiscated if it is not consumed within twenty minutes, and the fasting prisoner must then wait until the next morning before receiving a meal.

11. Plaintiffs are confined in a "close custody" housing unit, C-Unit. Prisoners in C-Unit are locked in individual cells for more than 22 hours a day. Meals are brought into C-Unit and are served in a common area. Once the meals are available, an announcement is made and a guard begins opening individual cell doors so that prisoners may exit their cells to eat their meals. However, if the Plaintiffs are praying at the time their door is ready to be opened, they must immediately choose between interrupting their prayer or exiting the cell to eat. If they do not quickly exit, many (but not all) guards will not give them another chance to exit within the next twenty minutes, and their meals are discarded. Recently, for instance, one Plaintiff finished his prayer a few minutes after a guard offered to open his cell door. Plaintiff then asked the officer in the Control Center if he could be allowed out of his cell to eat. The officer replied: "Your prayer, your problem," and refused to allow the Plaintiff to access his meal.

12. Plaintiffs' exercise of religion has been substantially burdened as a result of Defendants' "twenty-minute" rule. This rule forces Plaintiffs to choose between observing their sincerely held religious beliefs and eating their food, and imposes on them substantial pressure to violate those beliefs.

13. In Plaintiffs' religious belief system, prayer is necessary to obtain salvation; to lead a spiritual, fulfilling, and meaningful life; and to remain healthy in mind and body. Prayer at particular intervals, as is common for Muslims the world over, is also a unifying force, uniting all believers in one spiritual discipline.

14. RLUIPA expressly protects all religious exercises, even those "not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7). In this instance, however, the religious exercise at issue--prayer--is central to Plaintiffs' religion. No religious exercise is more important to Plaintiffs than prayer.

15. Jewish prisoners at WSP, as well as Muslim prisoners, have been adversely impacted by Defendants' "twenty-minute" rule. Both Jewish and Muslim prisoners have grieved the rule through the prison's administrative grievance process, to no avail.

16. In response to one Jewish prisoner's grievance, Acting-Chaplain Sergeant Denise Neu stated:

It is reasonable to say that each person has a right to practice a religion and a belief of their own and to follow in the ways of the religion(s) [sic] faith and beliefs as scripted by time, but regardless an inmate's chosen religious belief, an unfortunate consequence of his incarceration is that one may be required to consume their meal in a manner which may not be to their religious preference. The 20 minutes is reasonable for consumption and for which the time frames are allotted by the institution.

See Memorandum of Denise Neu dated January 28, 2008 (attached as "Exhibit 1").

17. Plaintiff Purdiman submitted an institutional grievance complaining about the fact that a guard had confiscated his meal as a result of the "twenty-minute" rule. WSP's Grievance Manager, Jason Bohl, responded to this grievance on January 16, 2008. Mr. Bohl justified the confiscation of Mr. Purdiman's food on the following grounds:

At present time, a memorandum does not exist indicating that religious diets be confiscated after a specific period of time. However, the warden has agreed with this practice to ensure that inmates receiving these diets are not hoarding food or maintaining possession of the plastic bag it is delivered in, which may be used in the process of fermentation.

See Memorandum of Jason Bohl dated January 16, 2008 (attached as "Exhibit 2.")

18. Plaintiff Miller has also grieved the "twenty-minute" rule. On January 22, 2008, Warden Murphy sent a memorandum to Mr. Miller in which he claimed that "for years now" the prison has maintained a policy that allows WSP prisoners only "twenty (20) minutes to eat their meals." According to the Warden, the purpose of the rule is to prevent prisoners from hoarding their food. See Memorandum of Warden Michael Murphy dated January 22, 2008 (attached as "Exhibit 3.") Relying on his unwritten rule, Defendant Murphy rejected Plaintiff Miller's request for additional time to consume his meal on those occasions when he is praying or fasting at the time that the meal is delivered.

19. Warden Murphy's January 22, 2008 Memorandum ("Exhibit 3") indicates that all Unit Managers and Lieutenants at WSP were issued a copy of the memorandum.

20. Plaintiff Miller appealed the Warden's decision through the grievance process, and his appeal was answered by Deputy Director of WDOC, Steve Lindly. Mr. Lindly affirmed the Warden's decision and upheld the strict enforcement of the "twenty-minute" rule. According to Mr. Lindly, the strict enforcement of this rule "seems to make the matter of eating meals and the time allowed more equal, rather than less equal." See Memorandum of Steve Lindly dated January 29, 2008 (attached as "Exhibit 4.") Using that rationale, Mr. Lindly denied Plaintiff Miller's request for additional time to eat his meals on those occasions when a meal is delivered during a religious exercise.

21. Notably, in none of these responses to prisoner grievances has any prison official sought to address the critical issue of whether WSP's "twenty-minute" rule furthers a compelling governmental interest or whether any such interest could be accomplished in a less restrictive manner on those occasions when a meal is delivered during the time that a prisoner is engaging in a religious exercise.

21. The Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), states that prison facilities may not "substantially burden" a prisoner's religious exercise unless the prison demonstrates that the imposition of the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." See 42 U.S.C. § 2000cc-1. RLUIPA also states that the government must meet this stricter standard even in

those instances when the burden on a prisoner's religion "results from a rule of general applicability." See *id.*

22. Warden Murphy has failed to demonstrate, and cannot demonstrate, that the "twenty-minute" rule furthers a compelling governmental interest and is the least restrictive means of furthering that interest. Prison officials, in response to prisoner grievances, have identified two justifications for the rule. One justification is that the rule prevents the hoarding of food. However, allowing prisoners engaged in a religious exercise to have more time, such as two hours for instance, in which to consume their meals would not undermine that governmental interest. A two-hour limit would still prevent the hoarding of food. The other justification offered by defendants is that the plastic bags distributed with Plaintiffs' meals can be used for fermentation. But here again, allowing prisoners engaged in a religious exercise to return their plastic bags two hours after receiving them rather than in twenty minutes would not undermine that governmental interest, as it would still prevent the bag from being used for fermentation.

23. Moreover, the prison maintains a Commissary from which prisoners are allowed to purchase a wide variety of food products, many of which are wrapped in plastic, and to store these items in their cells for days at a time. Indeed, the Commissary's "Canteen Price List" contains a recipe for "Spread," which (according to the recipe) serves four persons and requires five packages of Ramen Noodles, which come in plastic wrapping. Thus, while defendants claim that religious adherents must eat their meals within twenty minutes in order

to avoid hoarding and to prevent prisoners from storing plastic wrapping, Defendants permit all prisoners to purchase and to store food in their cells with plastic wrapping.

24. Mr. Lindly stated in his memorandum to Plaintiff Miller that requiring all prisoners to finish their meals within twenty minutes fosters equality among prisoners. See Exhibit 4. However, Mr. Lindly's analysis contravenes federal law. Congress has determined that public officials may *not* enforce rules of "general applicability" so as to unnecessarily burden any individual's freedom of religion. See 42 U.S.C. § 2000cc-1. Stated differently, under RLUIPA, all persons are equally entitled to an accommodation or exemption in those situations where, as here, a rule of general applicability will impose an unnecessary and substantial burden on a religious exercise.

25. Warden Murphy has exhibited a similar indifference towards, and intolerance of, Plaintiffs' religious freedoms in other decisions regarding Plaintiffs' religious beliefs. For instance, Plaintiff Purdiman asked Warden Murphy to be given food consistent with a strict Halal diet, as required by his religious dietary needs. In a memorandum dated January 2, 2008, Warden Murphy rejected Mr. Purdiman's request on the following grounds: "I have great confidence in the advice and counsel of Mr. [Doe, a WSP employee], a faithful, practicing, and knowledgeable Muslim. He has told me that a faithful Muslim can eat the no-pork option meal that WSP offers and be in full adherence to the Muslim faith. Therefore at this point I consider your request for a strict Halal diet is only your personal preference, not an authoritative requirement of your faith." The

Warden's unwritten rule of "If it's good enough for Mr. [Doe], it's good enough for you" violates the standards set forth in RLUIPA. The issue is not whether some other adherent might be satisfied with the Warden's decision. The question is whether WSP has a compelling governmental interest that outweighs *Mr. Purdiman's* sincerely held religious beliefs, an issue that Warden Murphy refuses to consider. As one court stated in a similar context: "While defendants argue that other Muslims interpret these creeds less strictly, . . . for the purposes of the RLUIPA, it matters not whether the inmate's religious belief is shared by ten or tens of millions. All that matters is whether the inmate is sincere in his or her own views." See *Williams v. Bitner*, 359 F. Supp.2d 370, 375-76 (M.D. Pa. 2005). See also *Kikumura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001). Thus, Defendant Murphy consistently applies the wrong legal standard in determining whether to accommodate the sincerely held religious beliefs of prisoners who are members of minority faiths.

26. To whatever extent the "twenty-minute" rule furthers a legitimate penological interest, it is an exaggerated response to that interest. Far less onerous restrictions on religious exercises than this one are available to Defendants that would not unduly compromise their legitimate interests.

27. Based on information and belief, Plaintiffs allege that WDOC and WSP receive, directly or indirectly, federal monies, thus making RLUIPA applicable in this context.

CLAIM FOR RELIEF

26. Based on the facts set forth above, Plaintiffs Miller and Purdiman seek injunctive relief, enjoining Defendants Lampert and Murphy in their official capacities (and all persons acting under their command) from enforcing their present policy under which employees are required to remove Plaintiffs' meals after twenty minutes even in those instances when Plaintiffs are engaged in a religious exercise at the time their meals are delivered. Defendants' policy violates rights secured to the Plaintiffs by the First Amendment to the U.S. Constitution and by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* Plaintiffs also seek nominal damages pursuant to 42 U.S.C. § 2000cc and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

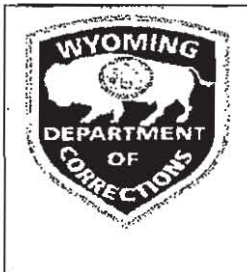
WHEREFORE, Plaintiffs respectfully pray that this Honorable Court will:

1. Issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that Defendants' "twenty-minute" rule violates Plaintiffs' rights under the First Amendment to the U.S. Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.*
2. Issue injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure on behalf of Plaintiffs Miller and Purdiman, enjoining Defendants from enforcing their "twenty-minute" rule or any other such strict time limit in a manner that substantially burdens Plaintiffs' religious exercise and violates their federal rights.
3. Grant Plaintiffs Miller and Purdiman nominal damages.

4. Grant such additional and further relief as the Court may deem proper under the circumstances, including an award of attorneys' fees and costs incurred in this litigation.


Stephen L. Pevar


Jennifer Horvath



*Office of the: INSTITUTIONAL
ACTIVITIES
COORDINATOR*

January 28, 2008

SUBJECT: Inmate Grievance Form #321
Received January 24, 2008

Mr. Jones #14474

I am in receipt of your grievance form #321.

Inmate Statement:

This WDOC grievance addresses and challenges as patently unconstitutional, Under definition of the First Amendment to the United States Constitutional, the recently formulated and placed into practice WSP rule which require that under pain of complete forfeiture, Jewish prisoners receiving Kosher dietary bags must consume the food stuffs within twenty (20) minutes from delivery. The rule is being enforced on the Saturday (Sabbath) when the meal is delivered at approximately 1600 hours but under Hebrew law cannot be heated or consumer until after sundown.

Response:

It does state in the Judaism religion that there are general rules for preparing, cleansing, and consumption of the kosher meal.

It does state in the Judaism religion that Shabbath (Shabbat) is the most important ritual observance in Judaism. It is the only ritual observance instituted in the Ten Commandments. It is also the most important special day. Shabbat is primarily a day of rest and spiritual enrichment. The word "Shabbat" comes from the root Shin-Beit-Tav, meaning to cease, to end, or to rest.

A Typical Shabbat (day of rest).

Shabbat, like all Jewish days, begins at sunset (Friday), because in the story of creation in Genesis Ch. 1, you will notice that it says, "And there was evening, and there was morning, one day." From this, we infer that a day begins with evening, that is, sunset.

Conclusion:

It is reasonable to say that each person has a right to practice a religion and a belief of their own and to follow in the ways of the religion(s) faith and beliefs as scripted by time, but regardless an inmate's chosen religious beliefs, an

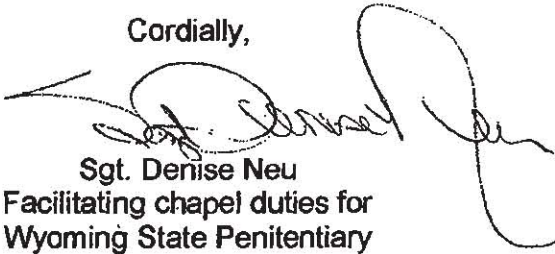
EXHIBIT

tabbies

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unfortunate consequences of his incarceration is that one may be required to consume their meal in a manner which may not be to their religious preference. The 20 minutes is reasonable for consumption and for which the time frames are allotted by the institution.

Cordially,



Sgt. Denise Neu
Facilitating chapel duties for
Wyoming State Penitentiary



STATE OF WYOMING

MEMORANDUM

TO: Hurie Purdiman #22768

DATE: 01/16/2008

FROM: Jason Bohl
Grievance Manager

SUBJECT: Grievance 21*

Summary: You contend that on 12/31/2007, you claim that Officer Dauwen came into your cell and took a letter from the warden that was in your possession for the purpose of making a copy. Initially, said officer did not return this letter to your cell however after speaking with Sergeant Romero, the letter was then returned to you. In addition to this incident, Officer Lynch confiscated your Halal meal bag shortly after it was prepared in the microwave for you. You feel that the officers are harassing you based on your religious preference and skin color and have requested that any similar behavior no longer occur in the future.

Investigation: Information from assigned staff member.

Conclusion: At present time, a memorandum does not exist indicating that religious diets be confiscated after a specific period of time however the warden has agreed with this practice to ensure that inmates receiving these diets are not hoarding food or maintaining possession of the plastic bag it is delivered in which may be used in the process of fermentation. As such, this writer finds that Officer Lynch was without fault in requesting your Halal meal bag on said date.

In reference to the letter you claim Officer Dauwen removed from your cell, this writer was informed by Lt. Kevin Edwards, who spoke with Officer Dauwen, that you willingly gave the letter to said officer through the cuff port after he asked to view it. The officer made a copy of the letter at which time it was returned to you. There is no substantiation to your claims that this action or those of Officer Lynch were representative of harassment. As stated in a previous response by this writer, you may want to reevaluate what issues truly merit the grievance process as some can be resolved simply by speaking with the staff member involved. Obviously you have raised several issues involving your religious beliefs or tenets being violated and in several of these cases this writer genuinely feels that it was a misunderstanding or miscommunication between yourself and staff.

Additionally, you failed in this grievance and many previous grievances to make an attempt to resolve these issues using the communication continuum. As such, this writer will no longer accept grievances unless you have made an attempt to resolve at the lowest level possible. Several issues you have grieved recently were reasonable concerns and this writer has continued to allow them through in an effort to help resolve them however this writer will no longer be so generous. Please follow all steps of the grievance policy before you turn in a grievance form.

EXHIBIT

2



STATE OF WYOMING

MEMORANDUM

The Grievance Manager finds grievance 21* resolved. You may appeal my decision by submitting a form 322 within seven days to the Warden.

**FOR THE DEPARTMENT OF CORRECTIONS
WYOMING STATE PENITENTIARY**

J. Bohl

Jason Bohl
Grievance Manager

Cc: grievance files
Central Office



Wyoming State Penitentiary Office of the Warden

January 22, 2008

Joseph Miller #23387
Unit C-2

Re: Meal Timelines

Dear Mr. Miller,

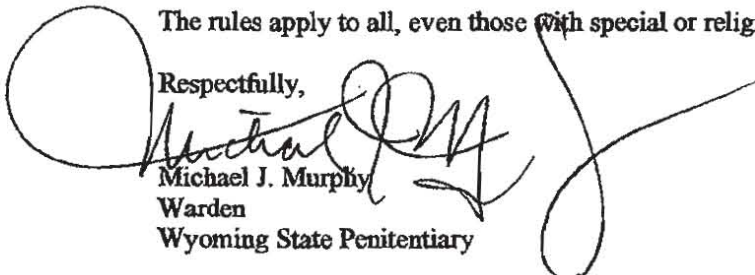
Twice now you have written to me regarding the timelines for serving meals. Unit Manager Ron Schmitz gave you a thorough reply to your answers, and did so on my behalf.

For years it has been the practice to allow WSP inmates twenty (20) minutes to eat their meals, longer on those special meal days such as Thanksgiving Day. This is pretty much the standard at prisons across the country. I do not know why this rule has suddenly become an issue for you.

The rule is also applied to those who eat their meals in the pod or cells. In that food is not allowed to be taken out of the dining hall, neither are inmates in the units allowed to save back food. Food that is saved back creates sanitary issues and sometimes security issues.

The rules apply to all, even those with special or religious diets.

Respectfully,


Michael J. Murphy
Warden
Wyoming State Penitentiary

Cc: E. J. Wilson, Deputy Warden
Ron DeFauw, Unit Manager
Ron Schmitz, Unit Manager
Janell Thayer, Unit Manager
Major John Jacobs
All Lieutenants
Jason Bohl, Grievance Manager

EXHIBIT

3



Department of Corrections

700 West 21st Street
Cheyenne, Wyoming 82002
Telephone: (307) 777-7208
Fax: 307-777-7479

Dave Freudenthal
Governor

Robert O. Lampert
Director

January 29, 2008

Mr. Joseph S. Miller #23387
P.O. Box 400
Rawlins, WY 82301

Dear Mr. Miller:

Thank you for your letter dated January 1, 2008, related to a 20 minute time limit to eat your meals, as well as other issues related to a lack of showers and flag time while on PDS, along with missing property. I had hoped to respond sooner.

You may know the answer to your question about the 20 minutes to eat your meals by the time you receive my letter. It is my understanding the matter was initially raised as to why all inmates were not kept to the same amount of time to eat a meal, which is 20 minutes. For example, inmates receiving non-religious diet trays must return them within 20 minutes. It should not be applied in a bias way and, in fact, seems to make the matter of eating meals and the time allowed more equal, rather than less equal.

Warden Murphy has advised the staff to enforce the standard of 20 minutes to eat a meal. It would seem if you are expected to warm your meals and the unit microwave is not working, some exception would have to be made for that situation. I am uncertain if the Warden has put out a memo to the inmates advising them of the meal time frame.

I will ask Warden Murphy for his input relative your issues while in PDS, including the missing property.

We need to enforce rules and policies in a consistent manner and it appears that is what Warden Murphy is attempting to do around the meal issue. Hopefully I have addressed your question on the meal issue.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lindly".
Steve Lindly
Deputy Director

xc: Warden Murphy

