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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL CARMICHAEL,

 Plaintiff,

 v.

M. AGUILAR, et al.,

 Defendants.

Case No. 1:12-cv-01913 LJO-DLB PC

FINDINGS AND RECOMMENDATIONS
REGARDING DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT AND PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT
(Documents 43 and 45)

THIRTY-DAY OBJECTION DEADLINE

ORDER DENYING DEFENDANTS’
MOTION TO STRIKE
(Document 49)

Plaintiff Michael Carmichael (“Plaintiff”) is a prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed his complaint on November 26, 2012. Pursuant to Court order, he filed a First Amended Complaint on June 10, 2013. This action is proceeding on the following claims: (1) violation of the First Amendment against Defendants Meyer, Pressley, Wilson and Marshall; (2) violation of RLUIPA against Defendants Aguilar, Meyer, Pressley, Wilson and Marshall; and (3) violation of the Fourteenth Amendment against Defendants Meyer, Pressley and Marshall.

Defendants Aguilar, Meyer, Pressley and Wilson filed the instant motion for summary judgment¹ on October 21, 2014.² Plaintiff opposed the motion, and purported to move for summary

¹ Concurrently with their motion for summary judgment, Defendants served Plaintiff with the requisite notice of the requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir. 2012); Rand v. Rowland, 154 F.3d 952, 960-61 (9th Cir. 1998).

1 judgment, on November 4, 2014. Defendants filed their reply on November 17, 2014. The motion
2 is submitted upon the record without oral argument. Local Rule 230(l).

3 **I. SURREPLY**

4 Plaintiff filed a surreply on December 8, 2014. Defendants moved to strike the filing as
5 unauthorized on December 18, 2014.

6 Parties do not have the right to file surreplies and motions are deemed submitted when the
7 time to reply has expired. Local Rule 230(l). The Court generally views motions for leave to file a
8 surreply with disfavor. Hill v. England, 2005 WL 3031136, at *1 (E.D. Cal. 2005) (citing Fedrick v.
9 Mercedes-Benz USA, LLC, 366 F.Supp.2d 1190, 1197 (N.D. Ga. 2005)). However, district courts
10 have the discretion to either permit or preclude a surreply. See U.S. ex rel. Meyer v. Horizon Health
11 Corp., 565 F.3d 1195, 1203 (9th Cir. 2009) (district court did not abuse discretion in refusing to
12 permit “inequitable surreply”); JG v. Douglas County School Dist., 552 F.3d 786, 803 n.14 (9th Cir.
13 2008) (district court did not abuse discretion in denying leave to file surreply where it did not
14 consider new evidence in reply); Provenz v. Miller, 102 F.3d 1478, 1483 (9th Cir. 1996) (new
15 evidence in reply may not be considered without giving the non-movant an opportunity to respond).

16 Plaintiff’s surreply addresses what he perceives to be false statements made by Defendant
17 Meyer in his declaration in support of Defendants’ motion for summary judgment. Plaintiff did not
18 raise these issues in his opposition, and it appears that Plaintiff had other inmates submit requests for
19 interviews in an attempt to challenge Defendant Meyer’s statement that inmates could order food in
20 their special purchase packages as long as they had funds to do so. For example, Inmate Castillo
21 submitted a request for interview regarding the procedure for ordering food in a special purchase
22 package. In response, Defendant Meyer explained that an inmate needed approval to do so.
23 Although Plaintiff believes that he has caught Defendant Meyer in some kind of lie, he is incorrect.
24 In his declaration, Defendant Meyer does not state that authorization is *not* required, he only states
25 that an inmate must have sufficient funds.

26 Plaintiff’s surreply does not change the outcome of this motion, as discussed above. As the
27 Court has considered the surreply and addressed it, Defendants’ motion to strike is DENIED.

28 ² Defendant Marshall is represented by separate counsel, and filed his own motion for summary judgment on October 21, 2014.

1 **II. LEGAL STANDARD**

2 Any party may move for summary judgment, and the Court shall grant summary judgment if
3 the movant shows that there is no genuine dispute as to any material fact and the movant is entitled
4 to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); Washington Mutual
5 Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party’s position, whether it be that a fact is
6 disputed or undisputed, must be supported by (1) citing to particular parts of materials in the record,
7 including but not limited to depositions, documents, declarations, or discovery; or (2) showing that
8 the materials cited do not establish the presence or absence of a genuine dispute or that the opposing
9 party cannot produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation
10 marks omitted). The Court may consider other materials in the record not cited to by the parties, but
11 it is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified School Dist.,
12 237 F.3d 1026, 1031 (9th Cir. 2001); accord Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017
13 (9th Cir. 2010).

14 Defendants do not bear the burden of proof at trial and in moving for summary judgment,
15 they need only prove an absence of evidence to support Plaintiff’s case. In re Oracle Corp.
16 Securities Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S.
17 317, 323, 106 S.Ct. 2548 (1986)). If Defendants meets their initial burden, the burden then shifts to
18 Plaintiff “to designate specific facts demonstrating the existence of genuine issues for trial.” In re
19 Oracle Corp., 627 F.3d at 387 (citing Celotex Corp., 477 U.S. at 323). This requires Plaintiff to
20 “show more than the mere existence of a scintilla of evidence.” Id. (citing Anderson v. Liberty
21 Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505 (1986)).

22 In judging the evidence at the summary judgment stage, the Court may not make credibility
23 determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984
24 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all inferences in the light
25 most favorable to the nonmoving party and determine whether a genuine issue of material fact
26 precludes entry of judgment, Comite de Jornaleros de Redondo Beach v. City of Redondo Beach,
27 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation omitted), cert. denied, 132 S.Ct.
28 1566 (2012). The Court determines only whether there is a genuine issue for trial, and Plaintiff’s

1 filings must be liberally construed because he is a pro se prisoner. Thomas v. Ponder, 611 F.3d
2 1144, 1150 (9th Cir. 2010) (quotation marks and citations omitted).

3 **III. SUMMARY OF PLAINTIFF'S ALLEGATIONS**

4 Plaintiff alleges that he was transferred to McFarland Community Correctional Facility
5 ("MCCF") on September 16, 2011. Soon after, he told staff that he was Muslim and was a
6 participant in the Religious Diet Program known as "Halal Meat Alternative." Plaintiff indicated
7 that he needed a transfer to an institution that could accommodate him, but he was told MCCF
8 accommodates Muslims.

9 On September 27, 2011, Plaintiff put in a request to Counselor Castaneda. He also had
10 verbal communications with Defendant D. Meyer, Assistant Warden. Defendant Meyer said he
11 would research it, but instead stalled for months.

12 Plaintiff alleges that Defendant Aguilar, Food Manager, failed to order meat classified as
13 Halal, stating on numerous occasions that it was not in the budget.

14 Plaintiff further alleges that Defendant Meyer denied him the opportunity to purchase Halal
15 meat through special purchase, though he permitted a Jewish inmate to purchase kosher foods
16 though special purchase twice.

17 Plaintiff also contends that Defendant Pressley, Assistant Warden, denied him a religious
18 diet, stating that it was not within the budget to provide a Halal diet. He also said that CDCR did not
19 indicate that the money for feeding inmates was also meant to include "Muslim inmates needing a
20 Halal diet."

21 Plaintiff alleges that Defendant Wilson, Warden, also denied him a religious diet. He
22 contends that she has been aware of the situation since she has been in a position of authority.
23 Plaintiff contends that Defendant Wilson has burdened the practice of his religion.

24 Finally, Plaintiff alleges that Defendant Marshall, Counselor, denied Plaintiff a transfer to
25 another prison where his diet needs could be accommodated. Although Defendant Meyer told
26 Muslims that if they continued to complain about Halal meals, they would be transferred later,
27 Defendant Marshall told Plaintiff that because MCCF was not an "institution," they were not
28 obligated to provide Halal meals to Muslims.

1 **IV. UNDISPUTED MATERIAL FACTS**³

2 MCCF is a medium-security prison designed to house inmates and parole violators for
3 CDCR, and it is owned and operated by The Geo Group, Inc. MCCF has contracted with CDCR to
4 provide services since 1997. ECF No. 43-2, at 3.

5 Defendant Meyer is the Associate Warden of Programs at MCCF. He is responsible for all
6 vocational, educational, recreation and religious programming at MCCF. ECF No. 43-2, at 3.

7 Plaintiff arrived at MCCF on September 16, 2011. ECF No. 43-1, at 4. Prior to his transfer,
8 he received the Religious Meat Alternate diet. ECF No. 43-1, at 36-37.

9 Soon after Plaintiff's arrival, he requested a Halal diet. Until then, Defendant Meyer had not
10 heard of a Halal diet. MCCF did not offer a Halal diet at that time, as the contract with CDCR did
11 not provide for a Halal diet. Defendant Meyer believes that Plaintiff was the first inmate to request a
12 Halal diet since 1997. After Plaintiff made his request, Defendant Meyer contacted the Corporate
13 Vice President of Programs in Florida for guidance on how to respond. He was advised that
14 MCCF's common-fare vegetarian diet met the religious needs of all religious groups, with the
15 exception of Jewish inmates. In light of this information, Defendant Meyer placed Plaintiff on the
16 vegetarian diet while he further investigated Plaintiff's request for a Halal diet. ECF No. 43-2, at 3.

17 During this period, Defendant Meyer and other administrators sought direction from
18 corporate headquarters and from CDCR as to how to proceed to accommodate Plaintiff's request.
19 Because he knew it would take time to resolve the issue, Defendant Meyer reminded Plaintiff that he
20 could purchase Halal food from the canteen to supplement his vegetarian diet. ECF No. 43-2, at 4.

21 Plaintiff received a vegetarian diet from September 17, 2011, to September 20, 2013.

22 Ultimately, MCCF began to offer the Religious Meat Alternate diet, as defined in California
23 Code of Regulations, title 15, section 3054.3, offered at CDCR institutions. MCCF contracted with
24 Sysco Food Services to provide Halal meat, and the Halal diet became available at MCCF on or
25 about September 2013. ECF No. 43-2, at 4.

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³ Plaintiff neither filed his own separate statement of disputed facts nor admitted or denied the facts set forth by
28 Defendants as undisputed. Local Rule 260(b). Therefore, Defendants' statement of undisputed facts is accepted except
where brought into dispute by Plaintiff's verified complaint or opposition. Jones v. Blanas, 393 F.3d 918, 923 (9th Cir.
2004); Johnson v. Meltzer, 134 F.3d 1393, 1399-1400 (9th Cir. 1998).

1 Plaintiff began receiving a Halal diet on September 20, 2013. ECF No. 43-1, at 4.

2 MCCF currently has a volunteer Muslim chaplain. ECF No. 43-1, at 23. There are formal
3 religious services on Fridays at MCCF. There are also classes for Muslim inmates at MCCF on
4 Wednesdays. ECF No. 43-1, at 25-26.

5 Plaintiff prays every day at MCCF and celebrates Ramadan. EFC No. 43-1, at 26, 28.

6 MCCF offers Halal fish at the canteen, which has been available to Plaintiff during his
7 incarceration at MCCF. ECF No. 43-1, at 46-47. Inmates can purchase \$220 worth of items
8 monthly from the canteen, and Plaintiff regularly supplemented his vegetarian diet with food from
9 the canteen. ECF No. 43-2, at 4, 32-40.

10 Plaintiff could also order meat in his quarterly package. ECF No. 43-1, at 49. Inmates can
11 purchase up to 30 pounds of food in their quarterly packages. ECF No. 43-2, at 4. Plaintiff also got
12 four special purchase packages a year for “religious purchases.” ECF No. 43-1, at 50. Plaintiff
13 ordered both quarterly and special purchase packages. ECF No. 43-1, at 50.

14 Defendant Meyer acknowledges that it took time for MCCF to offer the Halal diet.
15 However, the delay was not to discriminate against Plaintiff. MCCF had never been presented with
16 such a request, and it took time to get budgetary approval from corporate headquarters, to determine
17 the legality and sincerity of the request, to review the contract with CDCR, to get CDCR’s feedback
18 on the issue, to coordinate the purchase of Halal foods, to prepare kitchen staff for the new meal
19 option, and to consult a nutritionist. ECF No. 43-2, at 4.⁴

20 Defendant Aguilar is the Food Manager at MCCF. She managed all dietary services,
21 including operational planning and management of the kitchen, service line, and dining area staff.
22 She also managed the food service budget. Defendant Aguilar is aware of Plaintiff’s allegation that
23 she had authority to order Halal meat before the implementation of the Halal diet. However, as food
24 manager, she did not have the authority to implement new diets, or purchase new foods, without the
25 authorization of the Corporate Food Services Director. She did not have this authorization in this
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28 ⁴ Plaintiff attempts to dispute this by claiming, without support, that the delay showed that they were “not diligent in their duties and neglected the plaintiff’s needs.” ECF No. 45, at 14. Plaintiff’s speculative statement does not create a dispute as to Defendant Meyer’s facts.

1 case. Defendant Aguilar did not participate in the decision to implement the Halal diet. ECF No.
2 43-2, at 60-61.

3 **V. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

4 “[W]hen parties submit cross-motions for summary judgment, [e]ach motion must be
5 considered on its own merits.” Fair Hous. Council of Riverside County, Inc. v. Riverside Two, 249
6 F.3d 1132, 1136 (9th Cir. 2001) (internal quotations and citation omitted).

7 Here, although Plaintiff captions his opposition as a motion for summary judgment, the
8 evidence he provides is provided in opposition to Defendants’ motion for summary judgment.
9 Plaintiff also makes no arguments in support of his own motion, but rather argues against
10 Defendants’ motion.

11 To the extent that Plaintiff attempts to support his “motion for summary judgment” by simply
12 repeating the allegations in his First Amended Complaint, this is insufficient. Arguments or
13 contentions do not constitute evidence. See Coverdell v. Dep’t of Soc. & Health Servs., 834 F.2d
14 758, 762 (9th Cir. 1987) (recitation of unsworn facts not evidence).

15 Accordingly, the Court recommends that Plaintiff’s motion for summary judgment be
16 DENIED.

17 **VI. DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

18 1. RLUIPA

19 A RLUIPA claim for may proceed only for injunctive relief against defendants acting within
20 their official capacities. See Wood v. Yordy, 753 F.3d 899, 904 (9th Cir.2014) (RLUIPA does not
21 contemplate liability of government employees in individual capacity); see also Holley v. Cal. Dep’t
22 of Corr., 599 F.3d 1108, 1114 (9th Cir. 2010) (“The Eleventh Amendment bars [the plaintiff’s] suit
23 for official-capacity damages under RLUIPA.”).

24 Therefore, Plaintiff is only entitled to injunctive relief under RLUIPA. However, as
25 Defendants argue, Plaintiff’s subsequent receipt of a Halal diet in September 2013 moots his request
26 for injunctive relief. Injunctive relief becomes moot when a party receives the requested relief after
27 filing an action. See Johnson v. Moore, 948 F.2d 517, 519 (9th Cir.1991) (per curiam).

1 The Court therefore recommends that summary judgment be granted on the RLUIPA against
2 all Defendants.

3 2. First Amendment

4 “Inmates . . . retain protections afforded by the First Amendment, including its directive that
5 no law shall prohibit the free exercise of religion.” O’Lone v. Estate of Shabazz, 482 U.S. 342, 348
6 (1987) (internal quotations and citations omitted). The protections of the Free Exercise Clause are
7 triggered when prison officials substantially burden the practice of an inmate’s religion by
8 preventing him from engaging in conduct which he sincerely believes is consistent with his faith.
9 Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008); Freeman v. Arpaio, 125 F.3d 732, 737 (9th
10 Cir. 1997), overruled in part by Shakur, 514 F.3d at 884-85.

11 Defendants first argue that Plaintiff’s request for a Halal diet was not religious in nature, and
12 therefore not deserving of protection under the First Amendment. They point to Plaintiff’s
13 statements that when he was served macaroni on the first day, “it wasn’t a problem,” ECF No. 43-1,
14 at 38-39, and that he didn’t mind being served vegetarian items occasionally. Using these
15 statements, Defendants argue that Plaintiff’s request for the Halal diet was not religious in nature,
16 but was instead based on his perceived quality of the vegetarian diet.

17 Defendants take Plaintiff’s testimony out of context, however. For example, when Plaintiff
18 indicated that being served macaroni on his first day was not a problem, he was answering a question
19 asking whether he had to eat the standard meat on the day he arrived. Similarly, Plaintiff’s statement
20 that vegetarian items were occasionally okay was made in explaining that he understood that
21 sometimes the standard diet did not include meat. He continued to explain, however, that his
22 problem is the denial of a Halal diet altogether. ECF No. 43-1, at 45.

23 Therefore, the Court declines to find that Plaintiff’s request for a Halal diet was not religious
24 in nature.

25 As noted above, a First Amendment violation exists only where the exercise of religion has
26 been substantially burdened. While it is not for the Court to question Plaintiff’s practices or beliefs,
27 Hernandez v. C.I.R., 490 U.S. 680, 699 (1989), the Court questions whether Plaintiff has
28 demonstrated that the denial of a Halal diet is a substantial burden where (1) he admits to purchasing

1 Halal meet from the canteen to supplement that diet; and (2) is able to purchase Halal food in his
2 quarterly packages. Nonetheless, viewing the evidence in the light most favorable to Plaintiff, the
3 Court will assume a substantial burden and continue with the analysis.

4 a. *Turner Factors*

5 “Prison walls do not form a barrier separating prison inmates from the protections of the
6 Constitution.” Turner v. Safley, 482 U.S. 78, 84 (1987). “Thus, [a] prisoner retains those First
7 Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate
8 penological objectives of the corrections system.” Ashker v. California Dep’t Of Corr., 350 F.3d
9 917, 922 (9th Cir. 2003) (internal citations and quotations omitted).

10 A regulation that burdens the First Amendment right to free exercise may be upheld only if it
11 is reasonably related to a legitimate penological interest. Turner, 482 U.S. at 89. This determination
12 requires analysis of four prongs: (1) there must be a valid, rational connection between the regulation
13 and the legitimate governmental interest; (2) whether there are alternative means of exercising the
14 right that remain open to inmates; (3) the impact accommodation of the right will have on guards
15 and other inmates, and on the allocation of prison resources; and (4) the absence of ready
16 alternatives. Id. at 90.

17 1. Valid, Rational Connection

18 In considering the first Turner factor, the Court must determine whether there was a
19 legitimate penological interest that is rationally related to the disputed regulation. Id., at 89.

20 Here, it is undisputed that for approximately two years, Plaintiff was placed on the vegetarian
21 diet because MCCF did not have a Halal diet option, and MCCF’s contract with CDCR did not
22 provide for such a diet. Defendants argue that there was a legitimate governmental interest in not
23 immediately providing Plaintiff with a Halal diet that it did not offer. In this regard, it is undisputed
24 that it took time to get budgetary approval from corporate headquarters, to determine the legality and
25 sincerity of the request, to review the contract with CDCR, to get CDCR’s feedback on the issue, to
26 coordinate the purchase of Halal foods, to prepare kitchen staff for the new meal option, and to
27 consult a nutritionist. Based on these undisputed facts, the Court finds that there was a legitimate
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1 governmental interest in taking appropriate steps prior to instituting the diet, and that this interest
2 was rationally related to the initial denial.

3 Plaintiff acknowledges that Defendants began the process of implementing a Halal diet
4 almost immediately after he requested one. He also acknowledges that implementing new programs
5 takes time, but suggests, without evidence, that Defendants were not diligent in their duties and
6 “neglected” his needs. ECF No. 45, at 14.

7 Plaintiff also states, without support, that Defendants “made no effort” to accommodate him.
8 ECF No. 45, at 3. He fails, however, to provide any evidence to dispute Defendants’ actions upon
9 learning of his request. In fact, as noted above, he acknowledged Defendants’ efforts. Plaintiff’s
10 contradictory and conclusory statement is insufficient to create a dispute of fact.

11 2. *Alternative Means*

12 Under the second factor, the Court must consider whether Plaintiff has “alternative means by
13 which he can practice his religion” or is “denied all means of religious expression.” Shakur, 514
14 F.3d at 886 (citing Ward v. Walsh, 1 F.3d 873, 877 (9th Cir. 1993)).

15 The undisputed evidence shows that Plaintiff was able to supplement his diet with Halal food
16 purchased from the canteen. He was also able to purchase religious items in packages, attend formal
17 religious services for Muslims on Fridays, attend classes on Wednesdays, pray daily and celebrate
18 Ramadan.

19 These undisputed facts weigh heavily in favor of Defendants. Williams v. Morton, 343 F.3d
20 at 219 (holding that the second Turner factor is satisfied if a prison allows daily prayer, attendance of
21 special weekly services, and observance of religious holidays, even if inmates could eat vegetarian
22 meals but not Halal meat).

23 3. *Impact of Accommodation*

24 Under the third Turner factor, the Court considers the “impact [the] accommodation ... will
25 have on guards and other inmates, and on the allocation of prison resources generally.” Shakur, 514
26 F.3d at 886 (citing Ward, 1 F.3d at 878). Defendants argue, and the Court agrees, that this factor is
27 inapplicable because Plaintiff was ultimately accommodated. To the extent this factor applies to the
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1 two year time period, any delay was reasonable given the actions necessary to implement an entirely
2 new religious meal program.

3 4. *Absence of Alternatives*

4 Finally, the Court must consider whether “there are ready alternatives to the prison’s current
5 policy that would accommodate [plaintiff] at de minimis cost to the prison.” Shakur, 514 F.3d at
6 887 (citing Ward, 1 F.3d at 879). The “existence of obvious, easy alternatives may be evidence that
7 the regulation is not reasonable, but is an ‘exaggerated response’ to prison concerns.” Id. (citing
8 Turner, 482 U.S. at 90). The Plaintiff carries the burden of demonstrating obvious, easy alternatives.
9 O’Lone v. Shabazz, 482 U.S. 342, 350 (1987).

10 Plaintiff argues that the vegetarian diet was not sufficient, but he does not suggest an
11 alternative to the path Defendants took to implement a Halal diet.⁵ To the extent that Plaintiff argues
12 that he received a Halal diet at his prior institution, or that MCCF/CDCR violated various policies by
13 not immediately providing him with a Halal diet, neither of these issues are relevant to analyzing
14 Defendants’ actions in response to Plaintiff’s request under Turner.

15 The Court finds that the undisputed facts weigh heavily in favor of Defendants under the
16 Turner analysis, and that they are entitled to summary judgment on Plaintiff’s First Amendment
17 claim.

18 3. Equal Protection

19 “The Equal Protection Clause . . . is essentially a direction that all persons similarly situated
20 should be treated alike.” City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985)
21 (citing Plyler v. Doe, 457 U.S. 202, 216 (1982)). A prisoner is entitled “to ‘a reasonable opportunity
22 of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to
23 conventional religious precepts.’” Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008) (quoting
24 Cruz v. Beto, 405 U.S. 319, 321-22 (1972) (per curiam)). To state a claim, a plaintiff must allege
25 facts sufficient to support the claim that prison officials intentionally discriminated against him on
26 the basis of his religion by failing to provide him a reasonable opportunity to pursue his faith
27 compared to other similarly situated religious groups. Cruz, 405 U.S. at 321-22; Shakur, 514 F.3d at

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⁵ Plaintiff’s request for a transfer was discussed in the Findings and Recommendations regarding Defendant Marshall’s motion for summary judgment.

1 891; Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003); Lee v. City of Los Angeles, 250 F.3d
2 668, 686 (9th Cir. 2001); Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997), overruled in part on
3 other grounds by Shakur, 514 F.3d at 884-85.

4 In his First Amended Complaint, Plaintiff contends that Defendant Meyer violated the
5 Fourteenth Amendment when he denied Plaintiff the opportunity to purchase food through special
6 purchase packages, but permitted a Jewish inmate to do so.

7 It is undisputed that inmates are allowed four special purchase packages a year for religious
8 purchases. The parties dispute, however, whether Plaintiff was denied the opportunity to purchase
9 food in his special purchase package while a Jewish inmate was allowed to do so.

10 Even taking Plaintiff's allegations as true, however, Plaintiff cannot show a genuine dispute
11 of fact as to whether Plaintiff was treated different *on the basis of his religion*. Plaintiff's
12 conclusory, unsupported statement in his First Amended Complaint that Defendants discriminated
13 against him because he was Muslim is not sufficient. In attempting to establish the existence of a
14 factual dispute, Plaintiff may not rely upon the mere allegations or denials of his pleading; he is
15 required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery
16 material, in support of its contention that the dispute exists. Fed. R. Civ. P. 56(e); Matsushita, 475
17 U.S. at 586 n.11.

18 Defendant Meyer denies any type of discrimination and states that all inmates, regardless of
19 ethnicity, could order food in special purchase packages as long as they had money in their accounts.
20 ECF No. 43-2, at 4. In attempting to create a dispute of fact, Plaintiff states that he was told to use
21 his regular quarterly package to purchase Halal food because it "wouldn't be fair to the rest of the
22 inmates to allow Plaintiff to purchase food on a special purchase package." ECF No. 45, at 7.
23 Plaintiff also argues that inmate David Cohn, a Jewish inmate, was permitted to purchase Kosher
24 food in his special purchase packages beginning in September 2011.⁶ ECF No. 45, at 46.

25 Plaintiff's evidence does not, in any way, suggest that he was discriminated against on the
26 basis of his Muslim religion. This is especially true where the undisputed evidence shows that

27 ⁶ Plaintiff submits an institutional document, signed by Inmate Cohn, that indicates that Inmate Cohn was permitted to
28 supplement his diet with Kosher items purchased at the canteen and through "approved quarterly packages." ECF No.
45, at 46. He also submits a 602 signed by Inmate Cohn where he complains of nutritionally deficient vegetarian meals.
In response, Defendant Meyer states that Inmate Cohn agreed to supplement his diet with Kosher foods acquired through
special purchase. ECF No. 45, at 44.

1 Plaintiff was permitted to purchase Halal meat from the canteen and through at least general
2 quarterly packages, was permitted to practice his religion in almost all other respects, and was
3 eventually accommodated with a Halal diet. In other words, despite the dispute as to whether he was
4 able to purchase Halal foods in his special purchase package, there is no evidence of intentional
5 discrimination on the basis of Plaintiff's Muslim faith.

6 Insofar as Plaintiff suggests in his opposition that Defendants violated the Fourteenth
7 Amendment by not providing menu rotations to Muslim inmates while providing them for recipients
8 of the regular diet, Kosher diet and vegetarian diet, he cannot expand his claims by way of his
9 opposition. This claim was not stated in his First Amended Complaint and it is not before the Court.
10 See eg. Fossen v. Blue Cross and Blue Shield of Montana, Inc., 660 F.3d 1102, 1115 (9th Cir. 2011).

11 The Court finds that Defendants are entitled to summary judgment on Plaintiff's Fourteenth
12 Amendment claim.⁷

13 **VII. FINDINGS AND RECOMMENDATIONS**

14 The Court finds that Defendants' motion for summary judgment should be GRANTED, and
15 that Plaintiff's motion for summary judgment should be DENIED.

16 These Findings and Recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
18 days after being served with these Findings and Recommendations, the parties may file written
19 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendations." Replies may be filed within fourteen (14) days of service of
21 objections. The parties are advised that failure to file objections within the specified time may result

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25 ⁷ Plaintiff also alleges that Defendant Pressley violated the First and Fourteenth Amendments when he told Plaintiff that
26 the money set aside to feed inmates does not contemplate offering a Halal diet to Muslims. Similarly, he alleges that
27 Defendant Wilson violated the First Amendment when he told Plaintiff that MCCF did not have to provide Muslims with
28 a Halal diet. Although Defendants do not specifically address these allegations, they have provided undisputed evidence
that Plaintiff was not denied a Halal diet in violation of the First Amendment and was not discriminated against in
violation of the Fourteenth Amendment. Given that Plaintiff's vague statements in his First Amendment Complaint are
the only allegations made against Defendants Pressley and Wilson, the rulings apply to Defendants Pressley and Wilson,
as well. The Court also notes that other than Plaintiff's conclusory statements in his First Amended Complaint, he has
not offered any evidence specifically addressing either Defendants Pressley or Wilson.

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in the waiver of rights on appeal. Wilkerson v. Wheeler, ___ F.3d ___, ___, No. 11-17911, 2014 WL 6435497, at *3 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: March 11, 2015

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE