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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BILAL AHDOM,

12 Plaintiff,

13 vs.

14 C. ETCHEBEHERE, et al.,

15 Defendants.
16

1:13-cv-01623-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT DEFENDANT
ETCHEBEHERE'S MOTION FOR
SUMMARY JUDGMENT BE GRANTED
(ECF No. 44.)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

17 **I. BACKGROUND**

18 Bilal Ahdom ("Plaintiff") is a state prisoner proceeding pro se with this civil rights
19 action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action
20 on October 9, 2013. (ECF No. 1.) This case now proceeds on Plaintiff's Second Amended
21 Complaint (SAC), filed on December 8, 2015. (ECF No. 24.)

22 On January 20, 2017, Defendant filed a motion for summary judgment, or in the
23 alternative, a motion for an order requiring payment of security. (ECF No. 44.) On April 12,
24 2017, Plaintiff filed an opposition to Defendant's motion.¹ (ECF No. 52.) On April 19, 2017,
25 Defendant filed a reply to Plaintiff's opposition. (ECF No. 54.)
26

27 ¹ Concurrently with her motion for summary judgment, Defendant served Plaintiff with the
28 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). (ECF No. 44-4.)

1 The motion has been submitted upon the record without oral argument pursuant to
2 Local Rule 230(l), and for the reasons that follow, Defendant’s motion for summary judgment
3 should be granted.

4 **II. PLAINTIFF’S ALLEGATIONS IN THE SECOND AMENDED COMPLAINT**

5 Plaintiff is currently incarcerated at the California Substance Abuse Treatment Facility
6 (SATF) in Corcoran, California, in the custody of the California Department of Corrections and
7 Rehabilitation (CDCR), where the events at issue in the Second Amended Complaint allegedly
8 occurred. Plaintiff alleges as follows:

9 Plaintiff is a practicing Muslim and also a vegetarian with an approved vegetarian meal
10 card. During the month of Ramadan, fasting Muslims are required to partake of ceremonial
11 “sacred meals” known as Iftar and Suhoor meals.

12 On or about July 18, 2012, Plaintiff was sent to the Echo-Yard Chapel for a Ramadan
13 announcement. Plaintiff was informed by a female prison employee (Doe I), by way of a
14 7/11/12 memo by defendant Associate Warden Etchebehere, that he had to be a participant in
15 the CCR T15 Religious Meat Alternate Program (“RMA”) to receive his Ramadan meals. The
16 RMA meal is unofficially and erroneously termed the Halal Meal or Halal Religious Meal by
17 prison officials. Plaintiff alleges that the RMA meal can substitute for the Iftar meal during
18 Ramadan, but not for the Suhoor meal. The Suhoor meal is made up of different food items
19 than the RMA meal, and all of its foods are packaged for Trefit (contamination) protections.

20 Plaintiff asked Doe I why he was required to participate in the RMA program to receive
21 his Iftar and Suhoor meals. Plaintiff told Doe I that he was a vegetarian and asked why he was
22 required to give that up and sign up for the RMA meals. Plaintiff showed Doe I his vegetarian
23 meal card, but Doe I said she was not allowed to make an exception, and Plaintiff could “602”
24 it. Doe I denied Plaintiff’s requests to speak directly to defendant Etchebehere or to be added
25 to the Ramadan meal list without signing up for RMA meals. She told Plaintiff that defendant
26 Etchebehere was the only one who authorizes it. Plaintiff asked Doe I for a CDCR 3030-D
27 Religious Diet Request Form (to sign up for the RMA diet), and she told him he could get one
28 from the Chaplain.

1 On July 19, 2012, the first day of Ramadan, Plaintiff met with Catholic Chaplain
2 Guembe to sign up for the RMA diet. Plaintiff asked Guembe if Guembe could provide him
3 with Ramadan meals or add his name to the Ramadan participation list without Plaintiff signing
4 up for the RMA diet, in that way he would not have to give up his vegetarian diet and could
5 still receive his Iftar and Suhoor meals. Guembe told Plaintiff she was not authorized to do that
6 but would inform her supervisor and ask her to make the requests. Plaintiff filled out the diet
7 request form and handed it, and his vegetarian meal card, to Guembe, who took them with her
8 to the office. When Guembe returned she told Plaintiff she had forwarded everything to
9 Etchebehere, that it was approved, and that he would receive his Ramadan meals that evening.
10 Guembe returned Plaintiff's vegetarian meal card to him and left.

11 That evening, Plaintiff went to the dining facility for his Iftar and Suhoor meals. The
12 correctional officer told Plaintiff he was not on the Ramadan list. Plaintiff said he had been
13 approved by Guembe earlier in the day; the officer then told Plaintiff to talk to the Sergeant.
14 The Sergeant said custody [staff] has nothing to do with the Ramadan program, and Plaintiff
15 would have to talk to Guembe or Etchebehere tomorrow. Plaintiff told the Sergeant he did not
16 have any food to eat and asked for his meals. The Sergeant said he was not authorized to give
17 Plaintiff the meals unless he was on the Ramadan list.

18 During the next few days, Plaintiff tried but was unable to contact Guembe or
19 Etchebehere, and each day he was refused Ramadan meals because he was not on the list. By
20 July 21, 2012, Plaintiff developed a headache and was very weak from not eating anything
21 since July 18. Plaintiff continued to look for Guembe without success. By July 23, Plaintiff
22 still had not eaten and was too weak to get out of bed. Plaintiff thought that Guembe must have
23 lied to him about forwarding documents to defendant Etchebehere as well as the approval, but
24 he had no proof. Finally, on July 25, 2012, Plaintiff received his Iftar and Suhoor meals.

25 Plaintiff filed a prison grievance, and on February 1, 2013, at the third level of review,
26 prison officials decided that defendant Etchebehere's requirement for Plaintiff to be a
27 participant in the RMA meal program to receive Ramadan meals was inappropriate. Plaintiff
28 had suffered pain, weakness, isolation, and humiliation because of the denial of meals. He was

1 isolated from other fasting Muslims eating their sacred meals and unable to perform ceremonial
2 “Sunnah” rituals.

3 **III. PLAINTIFF’S CLAIMS**

4 The SAC named defendants Etchebehere, Guembe, and Does 1-4 for (1) violations of
5 religious rights under the First Amendment, (2) deliberate indifference under the Eighth
6 Amendment, and (3) discrimination under the Fourteenth Amendment. (ECF No. 24.) On
7 December 16, 2015, the court dismissed all of the claims against defendants Guembe and Does
8 1-4, based on Plaintiff’s failure to state any claims against them. (ECF No. 25 ¶VI(1).) As a
9 result, this case now proceeds only against defendant Etchebehere. On January 26, 2016, the
10 court directed the U.S. Marshal to serve process upon defendant Etchebehere. (ECF No. 27.)

11 Based on the following, this case now proceeds only against defendant Etchebehere in
12 her individual capacity on Plaintiff’s Free Exercise claim under the First Amendment, for
13 money damages.

14 **A. Claims Against Defendant Etchebehere**

15 **1. RLUIPA and First Amendment Free Exercise Claims**

16 In the December 16, 2015, screening order, the court found that Plaintiff stated a claim
17 against defendant Etchebehere under the Religious Land Use and Institutionalized Persons Act
18 of 2000 (“RLUIPA”) [42 U.S.C. § 2000cc-1]. (ECF No. 25.) The court later clarified that the
19 court intended in the December 16, 2015, order to permit Plaintiff to proceed against defendant
20 Etchebehere under both RLUIPA and the Free Exercise clause of the First Amendment. (ECF
21 No. 34 at 3.) However, on June 10, 2016, the court dismissed the RLUIPA claim with
22 prejudice, for failure to state a claim. (*Id.* at 11.)

23 **2. Eighth and Fourteenth Amendment Claims**

24 It appears that by inadvertent omission, the court also intended in the December 16,
25 2015, screening order to dismiss Plaintiff’s Eighth and Fourteenth Amendment claims against
26 defendant Etchebehere, because in the order, the court found the SAC appropriate for service
27 only on Plaintiff’s religious rights claims. The court acknowledged that the SAC included
28 claims under the First, Eighth, and Fourteenth Amendments, but in discussing the claims

1 against defendant Etchebehere, the court only addressed the RLUIPA and Free Exercise claims,
2 concluding that “an answer will be required [for] the claim that Associate Warden Etchebehere
3 violated Plaintiff’s rights under [RLUIPA].” (ECF No. 25 at 5-7.) A review of the SAC shows
4 that Plaintiff failed to state claims against defendant Etchebehere for deliberate indifference
5 under the Eighth Amendment, nor equal protection under the Fourteenth Amendment. This is
6 apparent for the reasons that follow. Further, the court finds that the deficiencies in the Eighth
7 and Fourteen Amendment claims outlined below are not capable of being cured by amendment,
8 and therefore amendment would be futile. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203
9 F.3d 1122, 1127 (9th Cir. 2000).

10 **Eighth Amendment – Deliberate Indifference**

11 The Eighth Amendment protects prisoners from inhumane methods of punishment and
12 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th
13 Cir. 2006). Extreme deprivations are required to make out a conditions of confinement claim,
14 and only those deprivations denying the minimal civilized measure of life’s necessities are
15 sufficiently grave to form the basis of an Eighth Amendment violation. Hudson v. McMillian,
16 503 U.S. 1, 9, 112 S.Ct. 995 (1992) (citations and quotations omitted). “An Eighth
17 Amendment claim that a prison official has deprived inmates of humane conditions of
18 confinement must meet two requirements, one objective and the other subjective.” Allen v.
19 Sakai, 48 F.3d 1082, 1087 (9th Cir. 2010) cert. denied, 514 U.S. 1065 (1995). First, the alleged
20 deprivation must be, in objective terms, “sufficiently serious.” Farmer v. Brennan, 511 U.S.
21 825, 834, 114 S.Ct. 1970 (1994). Second, subjectively, the prison official must “know of and
22 disregard an excessive risk to inmate health or safety.” Id. at 837; Anderson v. County of Kern,
23 45 F.3d 1310, 1313 (9th Cir. 1995). The objective requirement is met if the prison official’s
24 acts or omissions deprived a prisoner of “the minimal civilized measure of life’s necessities.”
25 Allen, 48 F.3d at 1087 (quoting Farmer, 511 U.S. at 834 (1994)). To satisfy the subjective
26 prong, a plaintiff must show more than mere inadvertence or negligence. Neither negligence
27 nor gross negligence will constitute deliberate indifference. Farmer at 833, & n. 4; Estelle v.
28 Gamble, 429 U.S. 97, 106 (1976). The Farmer court concluded that “subjective recklessness as

1 used in the criminal law is a familiar and workable standard that is consistent with the Cruel
2 and Unusual Punishments Clause” and adopted this as the test for deliberate indifference under
3 the Eighth Amendment. Farmer at 839-40.

4 Here, Plaintiff’s allegations in the SAC are insufficient to state a claim for deliberate
5 indifference. Plaintiff fails to make factual allegations demonstrating that defendant
6 Etchebehere knew about an excessive risk to Plaintiff’s health or safety and then acted or failed
7 to act while consciously disregarding the risk. Plaintiff’s speculation that Defendant ignored
8 Plaintiff’s enrollment in the RMA and failed to place his name on the Ramadan list is not
9 enough to show deliberate indifference. Therefore, Plaintiff failed to state an Eighth
10 Amendment claim against defendant Etchebehere.

11 **Fourteenth Amendment – Equal Protection**

12 The Equal Protection Clause requires that persons who are similarly situated be treated
13 alike. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439, 105 S.Ct. 3249
14 (1985); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may
15 be established by showing that Defendants intentionally discriminated against Plaintiff based
16 on his membership in a protected class, Comm. Concerning Cmty. Improvement v. City of
17 Modesto, 583 F.3d 690, 702-03 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071,1082 (9th
18 Cir. 2003), Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly
19 situated individuals were intentionally treated differently without a rational relationship to a
20 legitimate state purpose, Engquist v. Oregon Department of Agr., 553 U.S. 591, 601-02, 128
21 S.Ct. 2146 (2008); Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073
22 (2000); Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC
23 v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

24 Plaintiff did not allege any facts in the SAC demonstrating that he was intentionally
25 discriminated against on the basis of his membership in a protected class, or that he was
26 intentionally treated differently than other similarly situated inmates without a rational
27 relationship to a legitimate state purpose. Therefore, Plaintiff failed to state a claim under the
28 Fourteenth Amendment for violation of his right to equal protection.

1 **3. Relief Requested**

2 In the SAC, Plaintiff requested as relief monetary damages, attorney’s fees, costs of
3 suit, injunctive relief, and declaratory relief.

4 Plaintiff is not entitled to attorney’s fees if he prevails in this action because he is
5 representing himself in this action. A plaintiff who is not represented by an attorney is not
6 entitled to recover attorney’s fees if he prevails. See Friedman v. Arizona, 912 F.2d 328, 333
7 n.2 (9th Cir. 1990), superseded by statute as stated in Warsoldier v. Woodford, 418 F.3d 989
8 (9th Cir. 2005); Gonzalez v. Kangas, 814 F.2d 1411, 1412 (9th Cir. 1987); see also Rickley v.
9 Cnty. of Los Angeles, 654 F.3d 950, 954 (9th Cir. 2011) (“The Court accordingly adopted a per
10 se rule, categorically precluding an award of attorney’s fees under § 1988 to a pro se attorney-
11 plaintiff.”)

12 As for Plaintiff’s request for injunctive relief, any award of equitable relief is governed
13 by the Prison Litigation Reform Act, which provides in relevant part:

14 “[t]he court shall not grant or approve any prospective relief unless the court
15 finds that such relief is narrowly drawn, extends no further than necessary to
16 correct the violation of the Federal right, and is the least intrusive means
17 necessary to correct the violation of the Federal right. The court shall give
substantial weight to any adverse impact on public safety or the operation of a
criminal justice system caused by the relief.” 18 U.S.C. § 3626(a)(1)(A).

18 On June 10, 2016, the court found it “clear that Ahdom is not entitled to injunctive relief.”
19 (ECF No. 34 at 6.) Plaintiff has not requested any particular injunctive relief, and based on the
20 nature of the claims at issue in this action, which involve past conduct, Plaintiff is not entitled
21 to injunctive relief.

22 Plaintiff’s request for declaratory relief should be denied because it is subsumed by
23 Plaintiff’s damages claim. See Rhodes v. Robinson, 408 F.3d 559, 565-66 n.8 (9th Cir. 2005)
24 (because claim for damages entails determination of whether officers’ alleged conduct violated
25 plaintiff’s rights, the separate request for declaratory relief is subsumed by damages action); see
26 also Fitzpatrick v. Gates, No. CV 00-4191-GAF (AJWX), 2001 WL 630534, at *5 (C.D. Cal.
27 Apr. 18, 2001) (“Where a plaintiff seeks damages or relief for an alleged constitutional injury
28 that has already occurred declaratory relief generally is inappropriate[.]”)

1 **4. Official Capacity**

2 Plaintiff sues defendant Etchebehere in her individual and official capacities. “The
3 Eleventh Amendment bars suits for money damages in federal court against a state, its
4 agencies, and state officials in their official capacities.” Aholelei v. Dept. of Public Safety, 488
5 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). Without the RLUIPA claim, Plaintiff may
6 not bring a suit against Defendant in her official capacity. However, the Eleventh Amendment
7 does not bar suits seeking damages against state officials in their personal capacities. Hafer v.
8 Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003). Defendant
9 Etchebehere was a prison official employed by the CDCR when the events at issue occurred,
10 and therefore is limited to monetary damages as relief. In addition, Plaintiff may not proceed
11 against Defendant in her official capacity.

12 **IV. SUMMARY JUDGMENT STANDARD**

13 Any party may move for summary judgment, and the court shall grant summary
14 judgment if the movant shows that there is no genuine dispute as to any material fact and the
15 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks
16 omitted); Washington Mut. Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party’s
17 position, whether it be that a fact is disputed or undisputed, must be supported by (1) citing to
18 particular parts of materials in the record, including but not limited to depositions, documents,
19 declarations, or discovery; or (2) showing that the materials cited do not establish the presence
20 or absence of a genuine dispute or that the opposing party cannot produce admissible evidence
21 to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The court may consider
22 other materials in the record not cited to by the parties, but it is not required to do so. Fed. R.
23 Civ. P. 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir.
24 2001); accord Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

25 Defendant does not bear the burden of proof at trial and in moving for summary
26 judgment, he or she need only prove an absence of evidence to support Plaintiff’s case. In re
27 Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477
28 U.S. 317, 323, 106 S.Ct. 2548 (1986)). If the defendant meets his or her initial burden, the

1 burden then shifts to the plaintiff “to designate specific facts demonstrating the existence of
2 genuine issues for trial.” In re Oracle Corp., 627 F.3d at 387 (citing Celotex Corp., 477 U.S. at
3 323). This requires the plaintiff to “show more than the mere existence of a scintilla of
4 evidence.” Id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505
5 (1986)).

6 However, in judging the evidence at the summary judgment stage, the court may not
7 make credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless,
8 Inc., 509 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw
9 all inferences in the light most favorable to the nonmoving party and determine whether a
10 genuine issue of material fact precludes entry of judgment, Comite de Jornaleros de Redondo
11 Beach v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and
12 citation omitted). The court determines only whether there is a genuine issue for trial. Thomas
13 v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks and citations omitted).

14 **V. UNDISPUTED FACTS**

15 Unless otherwise noted, the following facts are undisputed by the parties based on a
16 thorough review of the record.²

17 1. During all times relevant to the Second Amended Complaint (SAC), Plaintiff
18 Bilal Ahdom was a Muslim inmate who practiced Islam. (Decl. A. Whisnand, Ex. A at
19 Whisnand.009-010 [Pl.’s Dep., p. 25:17–26:1]; see also id. at Whisnand.011 [Pl.’s Dep., p.
20 27:16-17].)³

21 2. During all times relevant to the SAC, Plaintiff was in the custody of the
22 California Department of Corrections and Rehabilitation (CDCR), and incarcerated at the
23

24 ² These facts are taken from Defendant’s Separate Statement of Undisputed Facts, ECF No. 44-
25 3, Plaintiff’s Statement of Facts, ECF No. 53, and Defendant’s Response to Plaintiff’s Statement of Facts, ECF
26 No. 56. The court has considered all declarations, affidavits, and exhibits submitted in support of each statement.
27 Some facts have been altered by the court, as indicated in the court’s footnotes. These facts are undisputed only
28 for purposes of Defendant’s motion for summary judgment.

³ All page numbers cited herein, except those designating pages of Plaintiff’s deposition, are
those assigned by the court’s CM/ECF system and not based on the parties’ pagination of their briefing materials.

1 California Substance Abuse Treatment Facility and State Prison – Corcoran (SATF). (Pl.’s
2 SAC, ECF No. 24 at 1.)

3 3. From March 12, 2012, until approximately late July or early August 2012,
4 Defendant was employed by CDCR as an Associate Warden at SATF, Complex IV. (Decl. C.
5 Etchebehere, ¶2.)

6 4. As the Associate Warden of Complex IV, Defendant was responsible for
7 overseeing the religious programs at SATF. (Decl. C. Etchebehere, ¶3.)

8 5. Typically, a Community Partnership Manager (CPM) would oversee the
9 religious programs at SATF, but because the CPM did not start work until May 2012, the
10 primary responsibility for overseeing religious programs fell to Defendant. Custody staff
11 members, like Defendant, did not typically administer religious programs. (Decl. C.
12 Etchebehere, ¶4.)⁴

13 6. As the Associate Warden overseeing religious programs in 2012, Defendant was
14 responsible for coordinating the observance of Ramadan during the time period relevant to the
15 SAC. (Decl. C. Etchebehere, ¶5.)

16 7. Ramadan is an annual, month-long religious fast observed by Muslims. During
17 Ramadan, Muslims fast from dawn to sunset, and only eat food and drink from sunset to
18 sunrise. (Decl. C. Etchebehere, ¶6.)

19 8. According to Plaintiff’s religious beliefs, he is required to fast from sunrise to
20 sunset, pray, read the Quran, and limit conversation during the month of Ramadan. (Decl. A.
21 Whisnand, Ex. A at Whisnand.010-011[Pl.’s Dep., p. 26:19 – 27:15]; see Decl. C. Etchebehere,
22 ¶6.)

23 9. In 2012, Ramadan was observed at SATF beginning on the evening of July 19,
24 2012, and ending on August 18, 2012. (Decl. C. Etchebehere, ¶6.)

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26 ⁴ FACT No. 5. Plaintiff disputes this fact, stating that Chaplain Guembe was responsible for
27 placing Plaintiff’s name on the weekly list for Islamic services, for special religious events, and for approving
28 religious meal applications. However, Plaintiff has not disputed that Defendant had the *primary* responsibility for
overseeing religious programs. The fact that Chaplain Guembe was responsible for *some* religious tasks does not
cause a dispute of fact. Therefore, this fact is undisputed.

1 10. In the years prior to Defendant’s assignment as an Associate Warden, Ramadan
2 at SATF followed a basic framework: Inmates who had been verified as Muslims were released
3 to the dining halls after sunset on each night of Ramadan. At the dining halls, the Muslim
4 inmates would receive an evening meal and a sack “breakfast” to eat in their cells before
5 sunrise. (Decl. C. Etchebehere, ¶7.)

6 11. Inmates not participating in Ramadan remained on the normal feeding schedule
7 and program: these inmates received a hot breakfast in the dining hall, a sack lunch to take back
8 to their cells, and a hot dinner in the dining hall. (Decl. C. Etchebehere, ¶8.)⁵

9 12. All inmates—whether participating in Ramadan or not—were permitted to keep
10 food in their cells that they had purchased from the canteen, such as: ramen soups, beans,
11 candy, cookies, and other snacks. (Decl. C. Etchebehere, ¶9.)

12 13. Additionally, inmates at SATF routinely shared with each other items they had
13 purchased from the canteen. (Decl. C. Etchebehere, ¶9.)

14 14. Inmates also commonly kept items from their sack lunches in their cells. (Decl.
15 C. Etchebehere, ¶ 9.)

16 15. Beginning as early as May 2012, Defendant, the chaplains, and the Correctional
17 Food Manager (CFM) Perkins began to plan for Ramadan at SATF. Early in the planning
18 process, however, these individuals encountered difficulties identifying the Muslim inmates
19 who could participate in Ramadan. (Decl. C. Etchebehere, ¶11.)⁶

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23 ⁵ FACT No. 11. Plaintiff disputes this fact, stating that he was denied other foods by custody
24 staff when he told them his name was not on the Ramadan list, and that he was not allowed to enter the dining hall,
25 eat during regular meal times, or take sack lunches from the dining room when he was fasting. This does not
cause a dispute of fact, because FACT No. 11 concerns inmates who, unlike Plaintiff, were not participating in
Ramadan. Therefore, this fact is undisputed.

26 ⁶ FACT No. 15. Plaintiff disputes this fact, stating that Defendant failed to use the policy
27 already in place by resident chaplains to approve and maintain Muslim inmate service lists, events, and religious
28 diets, and to identify eligible Muslims for Ramadan participation. This does not cause a dispute of the fact that the
named individuals had difficulties early in the planning process identifying Muslim inmates who could participate
in Ramadan. Therefore, this fact is undisputed.

1 16. Defendant was informed that, in the years prior to her arrival, the preferred
2 approach was to have the Muslim chaplain prepare the list of inmates to participate in
3 Ramadan. (Decl. C. Etchebehere, ¶12.)

4 17. SATF’s new Muslim chaplain began work on July 2, 2012. (Decl. C.
5 Etchebehere, ¶20.)⁷

6 18. Without the assistance of a Muslim chaplain until July 2, 2012, Defendant and
7 her staff found it more difficult to identify the Muslim inmates who could participate in
8 Ramadan. (Decl. C. Etchebehere, ¶12.)⁸

9 19. Defendant and her staff sought to have a plan in place for Ramadan by no later
10 than the middle of June 2012. (Decl. C. Etchebehere, ¶14.)⁹

11 20. Prior to May 2012, Defendant had never planned for Ramadan at SATF or any
12 other CDCR institution. (Decl. C. Etchebehere, ¶15.)

13 21. **THIS FACT IS DISPUTED:** CDCR did not have any predefined policies or
14 regulations that Defendant could consult regarding identifying the Muslim inmates for
15 Ramadan. (Decl. C. Etchebehere, ¶¶16-17; Pl.’s Affidavit, ECF No. 42, ¶¶10, 22, 25.)

16 22. After speaking with SATF’s chaplains, it was Defendant’s understanding that
17 most of SATF’s Muslim inmates participated in the Religious Meat Alternate diet (RMA).
18 (Decl. C. Etchebehere, ¶¶18-19.)

19 23. The RMA—colloquially called the “halal diet”—is a diet program that serves
20 meat that is certified as “halal” and was designed for Muslim inmates. (Decl. C. Etchebehere,
21 ¶18; see also Decl. A. Whisnand, Ex. A at Whisnand.014 [Pl.’s Dep., p. 32:16-32]; see also id.

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24 ⁷ FACT No. 17. Based on disagreement between the parties about how long the planning
25 process for Ramadan lasted, this fact has been altered by the court and is now undisputed.

26 ⁸ FACT No. 18. Based on disagreement between the parties about whether an easy method
27 existed to identify Muslim inmates who could participate in Ramadan, this fact has been altered by the court and is
28 now undisputed.

⁹ FACT No. 19. Based on disagreement between the parties about whether a plan for Ramadan
had to be in place by June 2012, this fact has been altered by the court and is now undisputed.

1 at Whisnand.057-058 [Pl.'s Dep., Ex. 3]; see also id. at Whisnand.019-020 [Pl.'s Dep., pp.
2 40:10 – 41:14]; see also Cal. Code Regs. tit. 15, § 3054.3.)

3 24. According to Plaintiff's religious beliefs, foods that are halal are lawful for
4 Muslims to consume, similar to the concept of "kosher" in Judaism. (Decl. A. Whisnand, Ex.
5 A at Whisnand.011-012 [Pl.'s Dep., pp. 27:22 – 28:6].)

6 25. Defendant proposed to use the RMA diet list as a starting point for identifying
7 the Muslim inmates who were eligible to participate in Ramadan. (Decl. C. Etchebehere,
8 ¶18.)¹⁰

9 26. Defendant assumed that because the RMA diet served meat that was "certified
10 as halal" and was designed for Muslim inmates, most of SATF's inmates were either already
11 enrolled in the RMA or would quickly enroll after learning of the Ramadan policy. (Decl. C.
12 Etchebehere, ¶21.)¹¹

13 27. At the time Defendant proposed this policy, SATF was in the process of hiring a
14 Muslim chaplain, A. Haroun. (Decl. C. Etchebehere, ¶20.)¹²

15 28. Chaplain Haroun was not scheduled to start work until July 2, 2012. (Decl. C.
16 Etchebehere, ¶20.)

17 29. Defendant and her staff intended to use the RMA list as an initial method for
18 identifying Muslim inmates who would participate in Ramadan, with the understanding that

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22 ¹⁰ FACT No. 25. Plaintiff disputes this fact, offering as evidence an email from Defendant dated
23 June 15, 2012, in which Defendant states "a Muslim Chaplain is scheduled to be on board the first week of July
24 and we will leave the decision to him to ducat the inmates who will be participating in Ramadan." (ECF No. 52 at
75.) This does not create a dispute of fact whether Defendant proposed to use the RMA list as a starting point for
identifying Muslim inmates. Therefore, this fact is undisputed.

25 ¹¹ FACT No. 26. Plaintiff disputes this fact, offering as evidence an email from Defendant dated
26 July 19, 2012, in which Defendant states that "the Muslim inmates added to the list were primarily vegetarians."
27 (ECF No. 52 at 77.) Plaintiff's evidence does not create a dispute of fact as to what Defendant's assumption was
at the time she planned to use the RMA list to identify Muslim inmates. Therefore, this fact is undisputed.

28 ¹² FACT No. 27. Plaintiff disputes this fact but offers no evidence that Defendant did not
propose this policy at the time SATF was in the process of hiring Chaplain Haroun. Therefore, this fact is
undisputed.

1 Chaplain Haroun would immediately identify any inmates who wanted to participate but were
2 not initially identified. (Decl. C. Etchebehere, ¶20.)¹³

3 30. Upon starting work, Chaplain Haroun was expected to meet the Muslim inmates
4 on each of the facilities, and then reconcile the RMA list with the Muslim inmate population to
5 determine which inmates were eligible to participate in Ramadan. (Decl. C. Etchebehere,
6 ¶20.)¹⁴

7 31. The goal of the policy was to quickly and efficiently identify as many of the
8 potential Ramadan participants as possible, in order to reduce administrative burdens and to
9 simplify the process for inmates, custody staff, and Food Services. (Decl. C. Etchebehere, ¶22-
10 25, 43-44.)¹⁵

11 32. The Ramadan policy was adopted in a memorandum entitled “Ramadan,” dated
12 July 11, 2012. (Decl. C. Etchebehere, ¶26.)

13 33. Although the memorandum stated that there would be “no additions” to the list
14 of Ramadan participants after the list had been finalized, Defendant intended for the Muslim
15 chaplain to have discretion to add additional inmates if necessary. (Decl. C. Etchebehere,
16 ¶27.)¹⁶

17 ///

19 ¹³ FACT No. 29. Plaintiff disputes this fact, offering as evidence an email from Defendant dated
20 June 15, 2012, in which Defendant states that “a Muslim Chaplain is scheduled to be on board the first week of
21 July and we will leave the decision to him to ducat the inmates who will be participating in Ramadan.” (ECF No.
22 52 at 75.) This does not create a dispute of fact whether Defendant proposed to use the RMA list as a starting
23 point for identifying Muslim inmates. Therefore, this fact is undisputed.

24 ¹⁴ FACT No. 30. Plaintiff disputes this fact, offering as evidence emails from Defendant dated
25 June 15, 2012, and July 19, 2012. (ECF No. 52, Ex. E, F.) Neither of these emails creates a dispute of fact about
26 what Chaplain Haroun was expected to do upon starting work or whether he was expected to reconcile the list.
27 Therefore, this fact is undisputed.

28 ¹⁵ FACT No. 31. Plaintiff disputes this fact, offering as evidence emails from Defendant dated
June 15, 2012, and July 19, 2012. (ECF No. 52, Ex. E, F.) However, Plaintiff offers no evidence creating a
dispute of fact as to the goals of the policy. Therefore, this fact is undisputed.

¹⁶ FACT No. 33. Plaintiff disputes this fact, offering as evidence emails from Defendant dated
June 15, 2012, and July 19, 2012. (ECF No. 52, Ex. E, F.) However, Plaintiff’s evidence does not create a dispute
of fact about Defendant’s intentions. Therefore, this fact is undisputed.

1 34. Defendant circulated the memorandum for approval on July 11, 2012. (Decl. C.
2 Etchebehere, ¶28.)

3 35. July 11, 2012, was the first day that Chaplain Haroun was able to orient himself
4 and meet the inmates and staff on each of SATF's facilities. (Decl. C. Etchebehere, ¶29.)¹⁷

5 36. On July 16, 2012, the office of the Chief Deputy Warden circulated the final,
6 signed copy of the July 11, 2012, memorandum to the Facility Captains, the Associate
7 Wardens, CFM Perkins, and CPM Cote. (Decl. C. Etchebehere, ¶30.)

8 37. Defendant also forwarded the final memorandum to all of SATF's chaplains to
9 ensure that they would notify the inmates on their respective yards. (Decl. C. Etchebehere,
10 ¶31.)

11 38. Defendant also personally instructed custody staff members to inform inmates
12 wishing to participate in Ramadan to contact Chaplain Haroun as soon as possible to confirm
13 their eligibility. (Decl. C. Etchebehere, ¶32.)¹⁸

14 39. Plaintiff claims that on July 18, 2012, the day before Ramadan began, all of the
15 Muslim inmates on E-Facility were called to the E-Facility chapel for a Ramadan
16 announcement. (Decl. A. Whisnand, Ex. A at Whisnand.012 [Pl.'s Dep., p. 28:7-17]; see also
17 Pl.'s SAC, ECF No. 24 at 3-4.)

18 40. Plaintiff claims that during this announcement, CPM Coté notified him of the
19 July 11, 2012, memorandum and the policies for Ramadan (i.e., that the Ramadan list would be
20 based on the RMA diet list. (Decl. A. Whisnand, Ex. A at Whisnand.013-014 [Pl.'s Dep., pp.
21 31:18 – 32:6]; see also Pl.'s SAC, ECF No. 24 at 3.)

22 41. As of July 18, 2012, Plaintiff was enrolled in the vegetarian diet. (Decl. A.
23 Whisnand, Ex. A at Whisnand.015 [Pl.'s Dep., p. 33:1-5].)

24
25 ¹⁷ FACT No. 35. Plaintiff disputes this fact with evidence that Chaplain Haroun started work on
26 July 2, 2012. However, Plaintiff provides no evidence that the chaplain was able to orient himself and meet
inmates and staff before July 11, 2012. Therefore, this fact is undisputed.

27 ¹⁸ FACT No. 38. Plaintiff disputes this fact with evidence that he was not informed that he
28 should consult Chaplain Haroun about his Ramadan eligibility. This evidence does not create a dispute of fact as
to what Defendant instructed her staff to do. Therefore, this fact is undisputed.

1 42. Despite the fact that the RMA diet served meat that was “certified as halal,”
2 Plaintiff was not enrolled in the RMA diet because he believed he could not be certain that the
3 RMA meats were actually halal (i.e., whether the meats were slaughtered by Islamic butchers,
4 handled correctly by food staff, packaged to be free from contamination, etc.). (Decl. A.
5 Whisnand, Ex. A at Whisnand.015-017 [Pl.’s Dep., pp. 33:6 – 35:3]; see also id. at
6 Whisnand.020-021 [Pl.’s Dep., pp. 41:15 – 42:10].)

7 43. But by the same token, Plaintiff could not be certain that all of the items in the
8 vegetarian diet were actually halal. (Decl. A. Whisnand, Ex. A at Whisnand.017 [Pl.’s Dep., p.
9 35:12-19].)¹⁹

10 44. Plaintiff claims that CPM Coté also told him that he could file an inmate
11 grievance if he was dissatisfied with the Ramadan policy. (Decl. A. Whisnand, Ex. A at
12 Whisnand.022-023 [Pl.’s Dep., p. 44:8 – 45:2]; see also Pl.’s SAC, ECF No. 24 at 5 ¶15 – 8
13 ¶25 & Ex. B.)

14 45. On July 18, 2012, Plaintiff requested a form to enroll in the RMA diet and was
15 referred to the Chaplain. The next day, July 19, 2012, Plaintiff met with the Chaplain and filled
16 out the form to enroll in the RMA diet. (Decl. A. Whisnand, Ex. A at Whisnand.024-025 [Pl.’s
17 Dep., pp. 47:15 – 48:6]; see also Pl.’s SAC, ECF No. 24 at 7.)²⁰

18 46. Plaintiff did not attempt to file an inmate grievance on July 18, 2012. (Decl. A.
19 Whisnand, Ex. A at Whisnand.023 [Pl.’s Dep., p. 45:5-10]; see also id. at Whisnand.041-042
20 [Pl.’s Dep., pp. 72:25 – 73:14]; see also Pl.’s SAC, ECF No. 24 at 11.)

21 ///

23 ¹⁹ FACT No. 43. Plaintiff disputes this fact, offering as evidence his affidavit of April 9, 2017,
24 in which he states, “In Islam, all edible vegetables are Halal (lawful). I participated in the vegetarian diet knowing
25 that the majority of the food items on the tray would be Halal (lawful).” (ECF No. 52 at 60 ¶41.) Plaintiff appears
to concede in his affidavit that he does *not* know if “all” of the foods on the vegetarian meal tray are halal.
Therefore, this fact is undisputed.

26 ²⁰ FACT No. 45. Plaintiff disputes this fact, offering as evidence the allegations in his SAC, in
27 which he states that that on July 18, 2012, he asked prison employee Doe I for a Religious Diet Request form, to
28 sign up for the RMA diet, and was referred to the Chaplain. The next day, on July 19, 2012, Plaintiff met with the
Chaplain, obtained the form, filled it out, and gave it to the Chaplain. (ECF No. 24 at 5 ¶15 – 8 ¶25 & Ex. B.) For
clarification, this fact has been altered by the court and is now undisputed.

1 47. On July 19, 2012, the first day of Ramadan, Plaintiff claims that he went to the
2 E-Facility chapel and contacted Chaplain Guembe about enrolling in the RMA diet. Decl. A.
3 Whisnand, Ex. A at Whisnand.024-025 [Pl.’s Dep., pp. 47:15 – 48:6]; see also Pl.’s SAC, ECF
4 No. 24 at 7.)

5 48. Plaintiff does not know how late it was when he met Chaplain Guembe to enroll
6 in the RMA diet. (Decl. A. Whisnand, Ex. A at Whisnand.025 [Pl.’s Dep., p. 48:7-11].)²¹

7 49. Plaintiff claims that on July 19, 2012, he completed a CDCR Form 3030-D
8 “Religious Diet Request,” and submitted it to Chaplain Guembe, who immediately signed her
9 approval onto the form. (Decl. A. Whisnand, Ex. A at Whisnand.025-026 [Pl.’s Dep., pp.
10 48:12 – 49:15]; see also id. at Whisnand.028- 029 [Pl.’s Dep., pp. 51:19 – 52:19]; see also id. at
11 Whisnand.060-062 [Pl.’s Dep., Ex. 4]; see also Pl.’s SAC, ECF No. 24 at 7-8; Pl.’s Affidavit,
12 ECF No. 52 at 55 ¶4.)²²

13 50. Plaintiff claims that Chaplain Guembe informed him that she would forward the
14 paperwork to her supervisor for approval. (Decl. A. Whisnand, Ex. A at Whisnand.025-026
15 [Pl.’s Dep., pp. 48:12 – 49:15]; see also id. at Whisnand.028- 029 [Pl.’s Dep., pp. 51:19 –
16 52:19]; see also id. at Whisnand.060-062 [Pl.’s Dep., Ex. 4]; see also Pl.’s SAC, ECF No. 24 at
17 7-8.)²³

18 ///

19 _____
20 ²¹ FACT No. 48. Plaintiff disputes this fact, offering as evidence his entire SAC, ECF No. 24.
21 (ECF No. 53 at 6 ¶48.) The court finds no evidence in the SAC of the time of day Plaintiff met with the Chaplain.
For clarification, this fact has been altered by the court and is now undisputed.

22 ²² FACT No. 49. Plaintiff disputes this fact, stating in his April 9, 2017, affidavit, “On July 19,
23 2012, I filled out the RMA application and submitted it to Chaplain Guembe. I discovered she approved the
24 application many days after she informed me that she was forwarding my application. Guembe informed me that I
25 should receive my meals that night.” (ECF No. 52 at 55 ¶4.) However, Plaintiff does not dispute the fact that
Guembe’s signature on the RMA application is dated July 19, 2012, and that she told him that day the application
was approved. (ECF No. 44-2 at 64, 65; ECF No. 24 at 8 ¶25.) Therefore, this fact, as altered by the court, is
undisputed.

26 ²³ FACT No. 50. Plaintiff disputes this fact, offering as evidence his affidavit, in which he
27 states, “Guembe also approved my RMA application on 07/19/12, but did not place my name on the Ramadan list.
28 She informed me that she would forward my application to someone who was authorized to do so.” (ECF No. 52
at 55 ¶10.) Here, Plaintiff offers clarification but does not cause the fact as written to be disputed. Therefore, this
fact is undisputed.

1 51. Plaintiff does not know whether Chaplain Guembe immediately submitted his
2 paperwork, or to whom she submitted it. (Decl. A. Whisnand, Ex. A at Whisnand.027 [Pl.'s
3 Dep., p. 50:2-22]; see also id. at Whisnand.029 [Pl.'s Dep., p. 52:20-25].)²⁴

4 52. Plaintiff cannot be sure that Chaplain Guembe immediately submitted the
5 paperwork to Defendant Etchebehere. (Decl. A. Whisnand, Ex. A at Whisnand.027-028 [Pl.'s
6 Dep., pp. 50:23 – 51:18]; see also id. at Whisnand.035 [Pl.'s Dep., p. 58:6-20]; see also id. at
7 Whisnand.049-051 [Pl.'s Dep., pp. 86:13 – 88:3].)

8 53. Plaintiff's name was likely not on the list of Ramadan participants for July 19,
9 2012. (Decl. C. Etchebehere, ECF No. 44-5, ¶33; Decl. A. Whisnand, Ex. A at Whisnand.031-
10 032 [Pl.'s Dep., pp. 54:6 – 55:10].)²⁵

11 54. On July 19, 2012, Defendant's staff updated the Ramadan list to include
12 inmates who were not initially identified to participate in Ramadan, including certain inmates
13 who were on the vegetarian diet. (Decl. C. Etchebehere, ECF No. 44-5, ¶¶33-34.)²⁶

14 55. But because the updated list was finalized late in the day—after the food for July
15 19, 2012 had already been prepared—it was not effective until July 20, 2012. (Decl. C.
16 Etchebehere, ECF No. 44-5, ¶34.)²⁷

17 ///

18 _____
19 ²⁴ FACT No. 51. Plaintiff disputes this fact, offering as evidence ¶10 of his affidavit and pp. 49-
20 50 of his deposition. The court finds that Plaintiff's deposition testimony at pp. 50:8 – 51:18 confirms that
21 Plaintiff did not know whether Chaplain Guembe immediately submitted his paperwork, or to whom she submitted
22 it, and ¶10 of Plaintiff's affidavit offers no evidence to the contrary. (ECF No. 44-2 at 31-32, ECF No. 52 at 55
23 ¶10.) Therefore, this fact is undisputed.

24 ²⁵ FACT No. 53. Plaintiff disputes this fact, offering as evidence his affidavit, ¶¶5, 14, 23, in
25 which he alleges that his name was not on the Ramadan list until the night of July 25, 2012. Plaintiff's evidence
26 supports FACT No. 53. Therefore, this fact is undisputed.

27 ²⁶ FACT No. 54. Plaintiff disputes this fact, offering as evidence his affidavit, ¶¶5, 12, 13, 14,
28 23, in which he alleges that his name was not on the Ramadan list until the night of July 25, 2012. However, the
fact that his name was not on the list used by the correctional officers does not create a dispute of fact whether
Defendants' staff updated the list as stated. Therefore, this fact is undisputed.

²⁷ FACT No. 55. Plaintiff disputes this fact, offering as evidence his affidavit, ¶¶5, 12, 13, 14,
23, in which he alleges that his name was not on the Ramadan list until the night of July 25, 2012. However, the
fact that his name was not on the list does not cause a dispute of fact of when the updated list became effective.
Therefore, this fact is undisputed.

1 56. Plaintiff's name appeared on the list that was updated by Defendant on July 19,
2 2012, and effective on July 20, 2012. (Decl. C. Etchebehere, ECF No. 44-5, ¶40.)²⁸

3 57. Defendant circulated the updated list to the chaplains and the Facility Captains,
4 among others, with instructions that the list would be effective July 20, 2012. (Decl. C.
5 Etchebehere, ¶¶35-36, 38.)²⁹

6 58. Defendant also instructed these individuals to inform the Muslim inmates to
7 contact Chaplain Haroun if they had any trouble receiving their Ramadan meals. (Decl. C.
8 Etchebehere, ¶37.)³⁰

9 59. Plaintiff claims he was unable to receive his Ramadan meals on July 19, 2012,
10 because his name did not appear on the list. (Decl. A. Whisnand, Ex. A at Whisnand.031-032
11 [Pl.'s Dep., pp. 54:6 – 55:10].)

12 60. At the time Plaintiff was denied entry to the dining hall on July 19, 2012,
13 Defendant had already left the institution for the day. (See Decl. A. Whisnand, Ex. A at
14 Whisnand.033-034 [Pl.'s Dep., pp. 56:19 – 57:21].)

15 ///

17 ²⁸ FACT No. 56. Plaintiff disputes this fact, offering evidence that he was denied Ramadan
18 meals between July 19, 2012, and July 25, 2012, because his name was not on the list being used by correctional
19 officers to decide which inmates could enter the dining hall. (Pl.'s Affidavit, ECF No. 52, ¶¶5, 12, 13, 14, 23.)
20 Defendant's evidence shows that Plaintiff's name was on the updated list for July 20, 2012. (Ex. H to Decl. C.
21 Etchebehere, ECF No. 44-5 at 81.) However, Defendant acknowledges that it is possible that custody staff who
22 worked Facility E's dining hall did not receive or print the updated list that she sent out on July 19, 2012. (Decl.
C. Etchebehere, ECF No. 44-5, ¶42.) Defendant also admits that she does not know why Plaintiff was denied
entrance to the dining hall from July 20, 2012 through July 24, 2012. (*Id.*, ¶40.) This fact as written is undisputed;
however, it is also undisputed that Plaintiff claims he was denied entrance to the dining hall because his name was
not on the list being used by correctional officers (*See* UF #61.).

23 ²⁹ FACT No. 57. Plaintiff disputes this fact, stating that on the nights of July 19, 2012, through
24 July 24, 2012, prison officials denied Plaintiff entry into the dining hall because his name was not on the Ramadan
25 list, that officials showed Plaintiff the list, and that Plaintiff confirmed that his name was not on the list (Pl.'s
Affidavit, ECF No. 52, ¶¶5, 12, 23). (ECF No. 53 at 7 ¶57.) However, Plaintiff provides no evidence that
Defendant did not circulate the updated lists as stated. Therefore, this fact is undisputed.

26 ³⁰ FACT No. 58. Plaintiff disputes this fact, stating that no one informed him to contact the
27 Chaplain "prior to July 18, 2012 to July 25, 2012," or informed him that his problem had been resolved or that he
28 would be receiving his Ramadan meals starting on July 20, 2012 (Pl.'s Affidavit, ECF No. 52, ¶¶11, 27). (ECF
No. 53 at 7 ¶58.) Plaintiff provides no evidence contesting what Defendant instructed her employees to do if
inmates had trouble receiving their Ramadan meals. Therefore, this fact is undisputed.

1 61. Plaintiff claims that he was also denied entry to the dining hall for Ramadan
2 from July 20, 2012, through July 24, 2012. (Decl. A. Whisnand, Ex. A at Whisnand.037 [Pl.'s
3 Dep., p. 67:10-21]; id. at Whisnand.038-039[Pl.'s Dep., pp. 68:21 – 69:4]; id. at Whisnand.039-
4 030 [Pl.'s Dep., pp. 69:19 – 70:2]; id. at Whisnand.040 [Pl.'s Dep., p. 70:8-21]; id. at
5 Whisnand.043 [Pl.'s Dep., p. 75:2-21].)

6 62. Defendant does not know why Plaintiff could not receive his Ramadan meals
7 beginning on July 20, 2012, as his name appeared on the updated list. (Decl. C. Etchebehere,
8 ¶¶40, 42.)³¹

9 63. Defendant was not present at the dining halls on each night of Ramadan when
10 individual inmates were being let into the dining halls. (Decl. C. Etchebehere, ¶41.)³²

11 64. Plaintiff did not file an inmate grievance until the night of July 23, 2012 – four
12 days after Ramadan had begun. (Decl. A. Whisnand, Ex. A at Whisnand.023 [Pl.'s Dep., p.
13 45:5-10]; see also id. at Whisnand.041-042 [Pl.'s Dep., pp. 72:25 – 73:14]; see also Pl.'s SAC,
14 ECF No. 24 at 11; id. at 27.)

15 65. Plaintiff was allowed entry in the E-Facility dining hall on July 25, 2012, to
16 receive his Ramadan meals. (Decl. A. Whisnand, Ex. A at Whisnand.044 [Pl.'s Dep., p.
17 76:18]; see also id. at Whisnand.049 [Pl.'s Dep., p. 86:1-3].)

18 66. From July 25, 2012 onward, Plaintiff was able to receive Ramadan meals for the
19 remainder of Ramadan. (Decl. A. Whisnand, Ex. A at Whisnand.044 [Pl.'s Dep., p. 76:19-22].)

20 67. Defendant did not intend to exclude Plaintiff, or any Muslim inmate, from
21 receiving their Ramadan meals.³³

22
23 ³¹ FACT No. 62. Plaintiff disputes this fact, claiming that his name did not appear on the
24 Ramadan list until the night of July 25, 2012, and Defendant was solely responsible for ensuring that Plaintiff's
25 name was on the list. (ECF No. 52 ¶¶13, 18, 19.) However, Plaintiff offers no evidence or personal knowledge
26 showing that Defendant knows what happened. Therefore, this fact is undisputed.

27 ³² FACT No. 63. Plaintiff disputes this fact, claiming that Defendant was personally responsible
28 for violation of his rights. However, Plaintiff has not disputed that Defendant was not present at the dining halls
on each night of Ramadan. ECF No. 56 at 22 ¶63.) The court has altered this fact for clarification, and this fact is
now undisputed.

³³ FACT No. 67. Plaintiff disputes this fact, asserting that Defendant was responsible for him
being deprived of Ramadan meals because his name did not appear on the list and Defendant required him to

1 68. Plaintiff has never met Defendant Etchebehere. (Decl. A. Whisnand, Ex. A at
2 Whisnand.018 [Pl.’s Dep., p. 37:8-22]; see also id. at Whisnand.035-036 [Pl.’s Dep., pp. 58:18
3 – 59:2].)

4 69. Defendant also did not intend to coerce Plaintiff or any Muslim inmates to enroll in
5 the RMA diet.³⁴

6 70. In addition to celebrating Ramadan every year, Muslim inmates at SATF could
7 practice their religion in a multitude of ways, such as: praying on their own or with others in
8 their cells, the dayroom, or the yard; attending regularly scheduled religious services (e.g.,
9 weekly “Jumu’ah” prayer on Fridays); using prayer rugs; and reading the Quran. (Decl. C.
10 Etchebehere, ¶46; see Decl. A. Whisnand, Ex. C at Whisnand.078-079 [Pl.’s Resps. Def.’s
11 RFAs Nos. 1-8 (re: religious property)].)³⁵

12 71. Beginning the second week of Ramadan in 2012, the Muslim inmates were also
13 afforded an additional thirty minutes of prayer time before their evening meal. Defendant
14 helped coordinate this accommodation. (Decl. C. Etchebehere, ¶47.)

15 72. Even when Plaintiff was unable to attend Ramadan, he still was able to attend
16 prayer sessions with fellow Muslim inmates. Decl. A. Whisnand, Ex. A at Whisnand.030 [Pl.’s
17 Dep., p. 53:1-17]; see also id. at Whisnand.030-031 [Pl.’s Dep., pp. 53:25 – 54:5]; see also id.
18 at Whisnand.037 [Pl.’s Dep., p. 67:10-21]; see also id. at Whisnand.038 [Pl.’s Dep., p. 68:17-
19 20].)³⁶

20
21 participate in the RMA diet in order to receive Ramadan meals. (Pl.’s Affidavit, ECF No. 52 at 54, ¶¶1, 13, 15,
22 16.) However, Plaintiff offers no evidence of Defendant’s state of mind. Therefore, this fact is undisputed.

23 ³⁴ FACT No. 69. Plaintiff disputes this fact, stating that “C. Etchebehere did require me to
24 participate in the RMA diet in order to receive my Iftar and Suhoor Meals.” (Ptf’s Affidavit, ECF No. 52, ¶¶1, 13,
25 15, 17.) However, the fact that Plaintiff was required to be on the RMA diet list to participate in Ramadan is not
26 evidence of coercion. Therefore, this fact is undisputed.

27 ³⁵ FACT No. 70. This fact has been altered by the court in response to Plaintiff’s statement in
28 his affidavit that “[p]urchasing, borrowing or listening to music is not a form of religious practice of expression in
Islam.” (ECF No. 52 at 60 ¶42.) Therefore, this fact is undisputed.

³⁶ FACT No. 72. Plaintiff disputes this fact, submitting as evidence his affidavit of April 9,
2017, ¶¶16, 17, ECF No. 52 at 56. (ECF No. 53 at 8 ¶72.) Plaintiff’s affidavit, ¶¶16, 17 offers no evidence that
this fact is not true. Therefore, this fact is undisputed.

1 73. Plaintiff never asked other inmates for food during the period in which he could
2 not receive his Ramadan meals. (Decl. A. Whisnand, Ex. A at Whisnand.045 [Pl.'s Dep., p.
3 80:2-5].)

4 74. Plaintiff never sought medical attention for the headaches he claims to have
5 suffered during the period of July 19, 2012, through July 25, 2012. (Decl. A. Whisnand, Ex. A
6 at Whisnand.045 [Pl.'s Dep., p. 80:6-16]; see also id. at Whisnand.008 [Pl.'s Dep., p. 15:7-14].)

7 75. Plaintiff has no documents to support his claim that he experienced emotional
8 distress as a result of the conduct at issue in the Second Amended Complaint. Decl. A.
9 Whisnand, Ex. A at Whisnand.007-008 [Pl.'s Dep., pp. 14:20 – 15:6].)

10 **VI. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

11 Defendant Etchebehere moves for summary judgment on Plaintiff's claim for violation
12 of the Free Exercise Clause of the First Amendment, on the grounds that (1) Defendant was not
13 personally responsible for at least five of the six days that Plaintiff did not receive his Ramadan
14 meals, and that missing one day of Ramadan meals was not a substantial burden on Plaintiff's
15 religious rights; (2) Defendant's proposal to use the RMA list as the starting point for
16 identifying the Muslim inmates was reasonably related to legitimate institutional interests; and
17 (3) Defendant is entitled to qualified immunity, because no reasonable prison official in
18 Defendant's position would have believed that her conduct violated Plaintiff's clearly
19 established religious rights.

20 Defendant offers as evidence her own declaration (ECF No. 44-5), the declaration of
21 defense counsel A. Whisnand (ECF No. 44-2), excerpts from Plaintiff's deposition transcript
22 (ECF No. 44-2, Ex. A), Ramadan Memo by Defendant dated July 12, 2012 (ECF No. 44-2, Ex.
23 2), documentation of the 2012 Ramadan schedule at SATF (Exhibits to ECF No. 44-5),
24 Plaintiff's prison appeal submitted on July 23, 2012 (ECF No. 44-2, Ex. 5), Plaintiff's RMA
25 diet application (ECF No. 44-2, Ex. 4), Title 15 § 3054 (CDCR regulations – Religious Diet
26 Program) (ECF No. 44-2, Ex. 3), and Plaintiff's responses to Defendant's request for
27 admissions (ECF No. 44-2, Ex. B).

28 ///

1 **A. Defendant Not Responsible**

2 Defendant argues that she was not personally responsible for Plaintiff missing more
3 than one day of Ramadan meals because Plaintiff did not attempt to enroll in the RMA diet
4 until the first day of Ramadan and cannot be sure he enrolled in time or that his form was
5 immediately sent to Defendant so that Plaintiff could be added to the Ramadan list. Defendant
6 cites the following evidence.

7 Plaintiff testified at his deposition:

8 Q. All right. Now, in your Second Amended Complaint, and that's the most
9 recent Complaint, so, that's what I'm going to be talking about today,
10 you state that on July 18th, 2012, which if I'm not mistaken was the day
11 before Ramadan was supposed to start, that your building officer sent
you to the Echo yard chapel for Ramadan announcement. What time of
day was that announcement; if you can recall?

12 A. It had to be after 12:00 o'clock. I believe it was after 12:00 o'clock,
somewhere around 1:00, 1:30. It had to be in the afternoon.

13 (Pl.'s Dep., p. 28:7-17, ECF No. 44-2, Ex A.)

14 Q. So, a moment ago you were testifying how Ms. Cote was explaining who
15 could participate in Ramadan. What did she say about that?

16 A. Well, she just was letting us know that the Ramadan was starting
17 tomorrow, around tomorrow, and that the only people that were going to
18 be allowed to participate in the program were those who were on a halal
RMA, not the -- but the RMA, which is a religious meat alternate
program, those individuals that were signed up for that particular
program.

19 Q Okay.

20 A. And if we weren't on the list to receive the RMA meals, that we were not
21 going to be allowed to participate on Ramadan.

22 (Id., pp. 31:18 – 32:6.)

23 In the SAC, Plaintiff stated:

24 On or around July 18, 2012, my building officers sent me to the Echo-Yard
25 Chapel for a Ramadan announcement. When I arrived, Doe I (a petite hispanic
26 or Native American female employee) informed me, by way of a 7/11/12 memo
authored and signed by Defendant Etchebehere, that I had to be a participant in
the CCR T15 Religious Meat Alternate Program (hereinsfter "RMA") in order
to receive my Ramadan Meals.

27 (ECF No. 24 at 3-4.)

1 Q. Okay. So, I think that kind of summarizes your claim, but I'm going to
2 break it down a little bit day by day. So, on July 18th, after you received
3 this announcement from Cote, you had decided that you were going to
4 sign up for the RMA diet; is that right?

5 A. Yeah.

6 Q. Then on July 19th, that's the date that you go to the chapel and you
7 speak to, I think her name is pronounced Guembe?

8 A. Guembe.

9 Q. Guembe?

10 A. Guembe.

11 Q. Yeah. You approached her about signing up for the RMA diet on the
12 19th?

13 A. Uh-huh.

14 Q. Was that a yes, I'm sorry?

15 A. Yes.

16 Q. And what time of day was that that you spoke with Chaplain Guembe?

17 A. I don't know if it was in the morning -- I don't know if it was in the
18 morning or afternoon. I can't recall.

19 (Pl.'s Dep., pp. 47:15-48:11, ECF No. 44-2, Ex. A.)

20 On July 19, 2012, (first day of Ramadan), I went to the Echo-Yard Chapel and
21 met with Defendant Guembe to sign-up for the R.M.A. diet.

22 (ECF No. 24 at 7 ¶21.)

23 Q. Okay. So, what did that exchange look like? You go to the chapel and
24 Guembe is there. What happens? What do you say to each other?

25 A. As soon as I come in she says "Happy Ramadan." I said "Thank you." I
26 said, "I'm here. I'm going to need a religious diet because I'm being
27 required to sign up for the RMA." And her response was, "Yeah. I saw
28 that. I don't know why, you know, they're making you get rid of your
vegetarian diet and have to sign up for that." We exchanged that. I asked
her, I said, "Well, can you call, and, you know, have me placed on a
Ramadan?" She said "Well, no, I can't do that." I asked her if she can
just put me on Ramadan and she said "No, I can't do that." I said, "Well,
can you call the person responsible and see if I can be held exempt from
having to sign up for this RMA diet and just without -- and get my
Ramadan meals?" And she says, well, she would let her supervisor
know. She couldn't call, but she would let her supervisor know. I said
"Okay." I filled out the application anyway, and she asked me to step
out of the office, and she locked it and went into the program office.
Then she came back, called me in and said, "Okay. Everything's done. I
forwarded everything over and you should get your Ramadan meals

1 tonight.” That’s the exchange that I had with her on that particular day, I
2 think it was the 19th, the day that I signed the application.

3 (Pl.’s Dep., pp. 48:12-49:15, ECF No. 44-2, Ex. A.)

4 Q. But she didn’t -- she didn’t explain to you what she was doing in the
5 office?

6 A. No. She just told me to come out. She left, took papers with her and
7 came back and gave me back my ID card, my vegetarian card, and told
8 me that I should be approved and I should be on the list tonight.

9 Q. So, she didn’t say that she had called anybody or faxed anything. She
10 just basically said that you should be good to go, but didn’t give details?

11 A. I just assumed that’s what she was doing, that she was going to fax my
12 application because I just signed and I filled out the application, because
13 that’s what she had in her in hand when she went to the program office. I
14 can’t say what she did in the program office. She did -- when she came
15 back, she called me back into the office and gave me -- she said she
16 wanted to get a copy of my vegetarian card, and she took that, she came
17 back, she handed it to me and told me that I should be getting my
18 Ramadan meals tonight, and that was on the 19th.

19 Q. Okay. That makes sense. On your Complaint, on page 7 –

20 A. Uh-huh.

21 Q. -- paragraph 24, you state something similar to what you just said, and I
22 just want to confirm. “She – “meaning Guembe,” -- said she wanted to
23 get me a copy of it because she was going to forward them both to
24 Etchebehere right away so that I would be put on the Ramadan
25 participation list.” Did she say those exact words, that she was going to
26 forward them to Etchebehere? Did she say Etchebehere’s name?

27 A. She didn’t say Etchebehere’s name.

28 Q. Okay.

 A. But when I realized who was the person was responsible for the
program, I put that in there. I put that because I thought this was the
person that she was going to be forwarding to. So, I put that in there,
okay. I have no idea who she forwarded it to. I just assumed, because she
said I should be on the list tonight, I assumed this was the person that
could only give her that type of confirmation was Etchebehere.

 (Id., pp. 50:2-51:18.)

 Q. I’d like to circle back to a couple things we talked about at the
beginning. So, on July 19th, which is the date that you talked to Guembe
and she copied your Religious Diet Request Form, I believe you testified
earlier that she took it back into the program office or the chapel office;
is that correct?

 A. She asked me to step out, she locked the chapel door and then she
walked to the program office.

1 Q. And how long was she gone for?

2 A. I was sitting out in front of the chapel for about maybe five minutes, five,
3 six minutes.

4 Q. And when she comes back, to the extent that you can remember exactly
5 what she said, I'd like you to tell me exactly what she said, but if you
6 don't, if you can just summarize the gist of what she said to you.

7 A. She opened the chapel door and called me back into her office. She said,
8 "Okay" – she handed me my vegetarian diet card. She said "I forwarded
9 everything and you should be receiving your Ramadan meals tonight."

10 Q. She didn't say how she forwarded it, did she?

11 A. No. No.

12 Q. She didn't say like I faxed it or emailed it or anything?

13 A. No.

14 Q. And she didn't say who she forwarded it to?

15 A. No. What she told me was, she asked me before she left, or before she
16 put me out of the chapel she said "Let me get your -- do you have your
17 vegetarian card?" I said "Yeah." She said "Well, I want to get a copy of
18 that." Then when she came back, she left, came back, and then she called
19 me back in and gave me back my ID card and said "I forwarded
20 everything. You should be receiving your Ramadan meals tonight."
21 That's it.

22 Q. As of today, did you ever learn who she forwarded that information
23 onto?

24 A. No.

25 (Id., pp. 86:13-88:3.)

26 Defendant Etchebehere declares:

27 Using the list provided by Chaplain Haroun, Office Assistant J. Hilger typed up
28 the initial Ramadan eligibility list on or about July 18, 2012—the day before
Ramadan. I am unable to locate a copy of the list that was used on the evening
of July 19, 2012—the first night of Ramadan. Inmate Ahdom attached to his
Second Amended Complaint what appears to be the eligibility list from July 19,
2012 (*see* ECF No. 24 at 23), but I am unable to verify whether that document is
authentic. Inmate Ahdom's name does not appear on that list. On July 19, 2012,
Office Assistant Hilger updated the Ramadan list to include additional inmates,
including certain inmates who were on the vegetarian diet and therefore were
not initially identified to participate in Ramadan. Mr. Hilger forwarded the
updated list to me on July 19, 2012, at 3:12 p.m. Unfortunately, by this time, the
updated list could not be used until the next day, July 20, 2012, because the food
for July 19, 2012 had already been prepared. I forwarded the updated Ramadan
list to the Facility Captains and the Chaplains shortly after Mr. Hilger sent it to
me. A true and correct copy of the e-mail I forwarded from Mr. Hilger on July

1 19, 2012, is attached as Exhibit G. (Ex. G at Etchebehere.024-035.) In red font,
2 bolded and in capital letters, I noted: "THIS LIST WILL NOT BE EFFECTIVE
3 UNTIL TOMORROW (FRIDAY, JULY 20, 2012) NIGHT AS THE FOOD
4 FOR TONIGHT HAS ALREADY BEEN PREPARED." (Ex. G at
5 Etchebehere.025.) I wanted to make it clear to custody staff that they should
6 print off the updated list and have it ready for July 20, 2012.

7 (Decl. C. Etchebehere, ¶¶33-36.)

8 I also wrote: "If any inmates come up to your staff and insist they are Muslim
9 and should be practicing Ramadan tonight, please inform them that an updated
10 list will be coming out tomorrow. They can contact the Muslim Chaplain, A.
11 Haroun, tomorrow if there is a problem." (Ex. G at Etchebehere.025.) A few
12 minutes later, I also forwarded this e-mail, including the attached updated
13 eligibility list to the Lieutenants and Correctional Counselor Supervisors on my
14 Complex. A true and correct copy of this e-mail and attachment is attached to
15 this declaration as Exhibit H. (Ex. H at Etchebehere.036-047.)

16 (Id. ¶¶37, 38.)

17 I am aware of inmate Ahdom's claim that he was not permitted to enter the
18 dining hall for Ramadan from the evening of July 19, 2012, through the evening
19 of July 24, 2012. I would expect that inmate Ahdom was denied entrance to the
20 dining hall on July 19, 2012, because custody staff could not yet use the updated
21 list until July 20, 2012. However, I do not know why inmate Ahdom was denied
22 entrance to the dining hall from July 20, 2012 through July 24, 2012. Inmate
23 Ahdom's name appeared on the updated list, therefore the custody staff from
24 Facility E should have permitted him to enter the dining hall for Ramadan
25 beginning on July 20, 2012.

26 (Id. ¶40.)

27 It is possible that custody staff who worked Facility E's dining hall did not
28 receive or print the updated list that I sent out on July 19, 2012. (Ex. G at
Etchebehere.025.) I re-forwarded the updated list to Facility E's Captain, R.
Tolson, on July 23, 2012 at 2:48 p.m. I do not recall why I re-forwarded the e-
mail, because the body of the e-mail is blank. A true and correct copy of the e-
mail that I forwarded to Captain Tolson is attached as Exhibit I. (Ex. I at
Etchebehere.048-059.)

(Id. ¶42.)

I was not responsible for letting individual inmates into the dining halls each
night of Ramadan.

(Id. ¶41.)

B. One Day Not a Substantial Burden

Defendant argues that missing one day of Ramadan meals did not substantially burden
Plaintiff's religious rights, because Ramadan is a month-long observance and missing one day,
or even six, out of thirty is a de minimis burden, and there is no evidence that Plaintiff was
unable to observe the other aspects of Ramadan, such as praying, reading the Quran, and

1 limiting conversation. Defendant further argues that Plaintiff failed to take measures to limit
2 the harm, such as picking up a normal sack lunch to take back to his cell, purchasing items
3 from the canteen, asking other inmates to share their canteen items with him, seeking medical
4 attention, or timely filing an inmate grievance. Defendant offers the following evidence.

5 Q. Before we went off the record, Mr. Ahdom, we were talking about how Ms.
6 Cote indicated that you could 602 or appeal the Ramadan policy. Did – when
7 did you file a 602 on that policy?

8 A. I believe it was on the 23rd, July 23rd. Yeah, July 23rd.

9 (Pl.'s Dep., pp. 44:5-10, ECF No. 44-2, Ex. A.)

10 Q. Okay. So, it's the night of July 23rd that you file your 602, correct?

11 A. That's correct.

12 Q. Okay. Go ahead and turn to the document in front of you that I labeled
13 Exhibit 5, and I'll ask the court reporter to attach it to the record, and it
14 appears to be an Inmate Parolee Appeal CDCR Form 602, and I'll ask
15 you, Mr. Ahdom, whether you recognize this document here.

16 (Whereupon Exhibit 5 is marked.)

17 THE WITNESS: Yes.

18 BY MR. WHISNAND:

19 Q. Is this the 602 or inmate appeal we've been talking about?

20 A. Yes, it is.

21 (Id., pp. 72:25-73:14.)

22 And on July 23, 2012, I filed an official grievance challenging Defendant
23 Etchebehere's denial of my Ramadan (Iftar and Sujhoor) meals because I was
24 not a participant in the R.M.A. Program.

25 (SAC, ECF No. 24 at 11 ¶36.) (The copy of Plaintiff's prison appeal also shows it was
26 submitted on July 23, 2012. (Id. at 27.))

27 **C. Policy Reasonably Related to Legitimate Penological Interests**

28 Defendant argues that even if Plaintiff's rights were substantially burdened,
Defendant's proposal to use the RMA list was objectively reasonable under the circumstances,
and the policy underlying its use advanced legitimate penological interests. Defendant argues
that without a Muslim chaplain to assist her, using the RMA list was the most efficient and

1 viable way for Defendant to identify the majority of the Muslim inmates without undue
2 administrative burden. Defendant submits the following evidence.

3 Ramadan is an annual, month-long religious fast observed by Muslims. During
4 Ramadan, Muslims fast from dawn to sunset, and only eat food and drink from
5 sunset to sunrise. In 2012, Ramadan was observed at SATF beginning on the
evening of July 19, 2012, and ending on August 18, 2012.

6 (Decl. C. Etchebehere, ¶6.)

7 Q. So, the difference being that you went to the chow hall, then your name
was on the list that night on the 25th?

8 A. Yes. I don't know if it was on the list, but they gave me access to the --
9 when I gave them my ID card, he said, "Come on in." I didn't look at the
10 actual document that he had in his hand, but he took my ID card and said
"Go in."

11 Q. Then, from that night, the 25th, until the end of Ramadan, were you able
to go each subsequent night into the chow hall to receive your meal?

12 A. Yes, I was.

13 (Pl.'s Dep., pp. 76:11-22, ECF No. 44-2, Ex. A.)

14 Q. And then on the 25th is the first evening you're able to go to Ramadan,
15 right --

16 A. That's correct.

17 (Id., pp. 86:1-3.)

18 In 2012, Ramadan was observed at SATF beginning on the evening of July 19,
2012, and ending on August 18, 2012.

19 (Decl. C. Etchebehere, ¶6.)

20 In addition to celebrating Ramadan every year, Muslim inmates at SATF could
21 practice their faith in a multitude of ways, including: praying on their own or
with others in their cells, the dayroom, or the yard; attending regularly scheduled
22 religious services (e.g., weekly "Jumu'ah" prayer on Fridays); using prayer rugs;
reading the Quran; borrowing religious books from the library or chapel; and
23 purchasing various religious property, such as music, prayer oils, beads, and
caps, from approved vendors. Additionally, on July 27, 2012, the Warden's
24 office sent out an e-mail to custody supervisors, including me, attaching a
memorandum entitled "Ramadan Prayer Time," dated July 26, 2012. The
25 memorandum stated that, at the request of Chaplain Haroun, Muslim inmates
were to be released to the dining halls thirty minutes early for the remainder of
26 Ramadan, in order that the inmates could have dedicated prayer time before
their meal. I forwarded the e-mail and the attached memorandum to my staff,
27 and instructed them to distribute it to the lieutenants who would be on shift
during the prayer time. I wanted to ensure that the third watch lieutenants
28 communicated to their staff that the Muslim inmates were to receive their
additional thirty minutes of prayer time. I also forwarded this e-mail to all of the

1 Chaplains. True and correct copies of the e-mails that I received from the
2 Warden, forwarded to my staff, and forwarded to the Chaplains are attached as
3 Exhibit J, Exhibit K, and Exhibit L, respectively. (Ex. J at Etchebehere.060.063;
4 Ex. K at Etchebehere.064-067; Ex. L at Etchebehere.068-071.)

5 (Decl. C. Etchebehere, ¶¶46, 47.)

6 **Request For Admission No. 1:**

7 Admit that in July 2012, at the California Substance Abuse Treatment Facility
8 and State Prison – Corcoran (SATF), you could possess a Quran.

9 **Response To Request For Admission No. 1:**

10 Plaintiff has made a reasonable inquiry and admits that he could possess
11 a Quran.

12 **Request For Admission No. 2:**

13 Admit that in July 2012, at the California Substance Abuse Treatment Facility
14 and State Prison – Corcoran (SATF), you could possess prayer oil.

15 **Response To Request For Admission No. 2:**

16 Plaintiff has made a reasonable inquiry and admits that he could have
17 possessed prayer oil.

18 **Request For Admission No. 3:**

19 Admit that in July 2012, at the California Substance Abuse Treatment Facility
20 and State Prison – Corcoran (SATF), you could possess a prayer mat/rug.

21 **Response To Request For Admission No. 3:**

22 Plaintiff has made a reasonable inquiry and admits that he could have
23 possessed a prayer mat/rug.

24 **Request For Admission No. 4:**

25 Admit that in July 2012, at the California Substance Abuse Treatment Facility
26 and State Prison – Corcoran (SATF), you could possess prayer beads.

27 **Response To Request For Admission No. 4:**

28 Plaintiff has made a reasonable inquiry and admits that he could have
possessed prayer beads.

Request For Admission No. 5:

Admit that in July 2012, at the California Substance Abuse Treatment Facility
and State Prison – Corcoran (SATF), you could possess a religious medallion.

Response To Request For Admission No. 5:

Plaintiff has made a reasonable inquiry and admits that he could have
possessed a religious medallion.

1 **Request For Admission No. 6:**

2 Admit that in July 2012, at the California Substance Abuse Treatment Facility
3 and State Prison – Corcoran (SATF), you could possess a Kufi cap.

4 **Response To Request For Admission No. 6:**

5 Plaintiff has made a reasonable inquiry and admits that he could have
6 possessed a Kufi cap.

7 **Request For Admission No. 7:**

8 Admit that in July 2012, at the California Substance Abuse Treatment Facility
9 and State Prison – Corcoran (SATF), you could possess a Miswak.

10 **Response To Request For Admission No. 7:**

11 Plaintiff has made a reasonable inquiry and admits that he could have
12 possessed a Miswak.

13 **Request For Admission No. 8:**

14 Admit that in July 2012, at the California Substance Abuse Treatment Facility
15 and State Prison – Corcoran (SATF), you could possess religious
16 books/literature.

17 **Response To Request For Admission No. 8:**

18 Plaintiff has made a reasonable inquiry and admits that he could have
19 possessed religious books/literature.

20 (Pl.'s Resps. Def.'s RFAs Nos. 1-8 (re: religious property))

21 Q. Okay. Okay. Now, I'd like to talk about the evening of July 19th. So,
22 after you had given this to Guembe and she had said that she would take
23 care of it, what happened after that?

24 A. I left and went home, I believe. I left and went home.

25 Q. And then later that night did you go back to the chapel?

26 A. I did.

27 Q. Okay. Who did you approach at the chapel?

28 A. Well, we had a -- we had our prayer service at the chapel, and I hadn't
 approached anyone regarding receiving the Ramadan meals because at
 that particular time I thought everything was going to be fine with me
 receiving my Ramadan meal. So, I had no reason to talk to anyone
 regarding the Ramadan meal, because I had already spoken to Guembe.

 (Pl.'s Dep., p. 53:1-17, ECF No. 44-2, Ex. A.)

 Q. Okay. And, so, you had -- you went to a prayer service, what time was
 that prayer service?

1 A. The Ramadan program, I believe back then it started at about right after
2 count clears, 5:30, 6:00 o'clock, they release us to go to the chapel, right
after the count clears.

3 (Id., pp. 53:25-54:5.)

4 Q. Basically, what happens when you go to the chapel on 20th?

5 A. When I go to the chapel I -- we do our Ramadan program. We do our
6 prayer, and sunset, we do another prayer before we go to the chow hall,
and when we got to the chow hall and an officer came out and he
7 beckoned us towards the door, and everybody was giving him anxiety.
He was checking off who was on the Ramadan list, and when I got to the
8 door and handed him my ID card, he said, "You're not on the list." So, I
didn't have access, he turned it around, and I got to go back to the cell.

9 (Id., p. 67:10-21.)

10 Q. Okay. Then that evening, did you attend the prayer service again as you
11 did in the chapel as you did the night before?

12 A. I did.

13 (Id., p. 68:17-20.)

14 By contrast, inmates not participating in Ramadan would remain on the normal
15 feeding schedule and program: these inmates would receive a hot breakfast in
the dining hall, a sack lunch to take back to their cells, and a hot dinner in the
16 dining hall. All inmates—whether participating in Ramadan or not—were
permitted to keep in their cells food that they had purchased from the canteen.
17 The canteen at SATF sold a variety of food items at that time, such as ramen
soups, beans, candy, cookies, and other snacks. Additionally, although inmates
18 were technically prohibited from exchanging food, inmates at SATF routinely
shared with each other items that they had purchased from the canteen. Inmates
also commonly kept items from their sack lunches in their cells.

19 (Decl. C. Etchebehere, ¶¶8, 9.)

20 Q. And why is that that you wouldn't ask any inmates for food during that
21 time period?

22 A. That's just not something that I would do. I don't do that.

23 Q. At any point from July 19th through July 25th, did you seek medical
attention for the headaches you were experiencing?

24 A. I don't -- I don't remember. I don't recall. I don't recall if I -- because I
25 knew where the headaches were coming from. I knew it wasn't
something that I had the flu or anything. I knew what the cause of my
26 pain and suffering was from. So, it was not like a medical professional
could cure that. The only thing that could cure that is if I was being
27 provided with some food. So, no.

28 (Pl.'s Dep., p. 80:2-16, ECF No. 44-2, Ex. A.)

1 Q. Okay. Request for Production No. 7 says "All documents that support
2 your claim that you have experienced pain and suffering as a result of the
3 alleged wrongful conduct of defendant as described in your Second
4 Amended Complaint." Are there any documents responsive to that
5 request?

6 A. No documents.

7 (Id., p. 15:7-14.)

8 Q. In the Complaint you also state at the July 18 meeting with Ms. Cote,
9 that she told that you could 602 the Ramadan policy, and what do you
10 mean by "602"?

11 A. She said that you 602 it, you know. She was not -- she was not
12 authorized to go outside of the memorandum and what Etchebehere had
13 actually ordered in the memorandum, and she couldn't overturn that by
14 providing me with -- make an exception for me because I was a
15 vegetarian, you know. She would have to follow, you know, the actual
16 memorandum.

17 Q. Right.

18 A. And she was not authorized to do that.

19 Q. Right.

20 A. That's basically what I'm saying here.

21 Q. Now, I think I understand what you mean by saying that you could 602
22 it, but just for the record, what does that mean, to 602 something?

23 A. That means that I can appeal the decision of Etchebehere.

24 (Id., p. 44:8-45:2.)

25 Q. Before we went off the record, Mr. Ahdom, we were talking about how Ms.
26 Cote indicated that you could 602 or appeal the Ramadan policy. Did -- when
27 did you file a 602 on that policy?

28 A. I believe it was on the 23rd, July 23rd. Yeah, July 23rd.

(Id., pp. 44:5-10.)

Q. Okay. So, it's the night of July 23rd that you file your 602, correct?

A. That's correct.

Q. Okay. Go ahead and turn to the document in front of you that I labeled
Exhibit 5, and I'll ask the court reporter to attach it to the record, and it
appears to be an Inmate Parolee Appeal CDCR Form 602, and I'll ask
you, Mr. Ahdom, whether you recognize this document here.

(Whereupon Exhibit 5 is marked.)

THE WITNESS: Yes.

1 BY MR. WHISNAND:

2 Q. Is this the 602 or inmate appeal we've been talking about?

3 A. Yes, it is.

4 (Id., pp. 72:25-73:14.)

5 And on July 23, 2012, I filed an official grievance challenging Defendant
6 Etchebehere's denial of my Ramadan (Iftar and Sujhoor) meals because I was
not a participant in the R.M.A. Program.

7 (SAC, ECF No. 24 at 11 ¶36.) (The copy of Plaintiff's prison appeal also shows it was
8 submitted on July 23, 2012. (Id. at 27.))

9
10 **D. Rational connection between regulation and legitimate governmental
interest**

11 Defendant argues that even if Plaintiff's rights were burdened, the 2012 Ramadan
12 policy was reasonably related to legitimate institutional interests: to simplify the Ramadan
13 process and to reduce administrative burdens. First, Defendant argues that it was reasonable
14 for Defendant to believe using the RMA diet would identify the majority of Muslim inmates in
15 an expedient manner because she was informed that most of SATF's Muslim inmates
16 participated in the RMA diet. Second, Defendant argues that it was reasonable for her to
17 believe that her proposal would reduce administrative burdens for inmates and staff. Defendant
18 offers the following evidence.

19 I was informed that, in the years prior to my arrival, the preferred approach was
20 to have the Muslim Chaplain prepare the list of the Muslim inmates who would
21 participate in Ramadan. But during the planning process for Ramadan, SATF's
22 Muslim Chaplain position was vacant. (I was informed that the previous Muslim
Chaplain left SATF in 2010.) Without a Muslim Chaplain, we did not have an
easy method to identify which inmates would be eligible to participate in
Ramadan.

23 (Decl. C. Etchebehere, ¶12.)

24 From March 12, 2012, until approximately late July or early August 2012, I was
25 employed by CDCR as an Associate Warden at the California Substance Abuse
26 Treatment Facility and State Prison – Corcoran (SATF), Complex IV. As the
27 Associate Warden of Complex IV, I oversaw two facilities, including a Level II
28 Sensitive Needs Yard (SNY) and a Level II General Population (GP) Yard. I
was also responsible for overseeing SATF's educational programs and its
religious programs. Normally, a Community Partnership Manager (CPM)
would coordinate the religious programs at SATF. However, the CPM at that
time, F. Coté, was also new to her role, having only started in May 2012.

1 Therefore, the primary responsibility for overseeing religious programs fell to
2 me. Associate Wardens typically do not oversee the religious programs, because
3 these programs are not administered by custody staff.

4 (Id., ¶¶2, 3, 4.)

5 Prior to May 2012, I had never planned for Ramadan at SATF or any other
6 CDCR institution. Both Title 15 of the California Code of Regulations and
7 CDCR's Department Operations Manual (DOM) provide that an institution may
8 make variations to the two-hot-meals-per-day requirement to accommodate
9 religious observances—which would include the observance of Ramadan for
10 Muslim inmates. Neither the regulations nor the DOM, however, provide any
11 guidance as to the form those variations may take. To my knowledge, there were
12 no predefined CDCR policies concerning planning for Ramadan. Furthermore,
13 although CDCR headquarters provided guidance on certain administrative issues
14 relating to Ramadan (e.g., staffing issues, menu suggestions, etc.), the issue of
15 how to identify the inmates who were eligible for Ramadan was left to each
16 individual institution to resolve.

17 (Id., ¶¶15, 16, 17.)

18 This proposal was discussed at a June 18, 2012, meeting at SATF. The
19 following individuals were present for the meeting: Catholic Chaplain Ojeda;
20 acting Facility Captains Odle and Gallagher; CPM Coté; and CFM Perkins. A
21 true and correct copy of the minutes from the June 18, 2012, meeting are
22 attached as Exhibit B. (Ex. B at Etchebehere.004-005.) Facility Captains Odle
23 and Gallagher did not play a major role in developing this policy: their only
24 involvement in the meeting was to coordinate security coverage for the
25 Ramadan accommodations. At the time we discussed this proposal, SATF was
26 in the process of hiring a Muslim Chaplain. The new Muslim Chaplain, A.
27 Haroun, was scheduled to start work on July 2, 2012. The plan was to use the
28 RMA list as an initial method for identifying the Muslim inmates who would
participate in Ramadan, with the understanding that Chaplain Haroun would
identify any inmates who wanted to participate but were not initially identified.
Chaplain Haroun was expected to immediately introduce himself to the Muslim
inmates on each of the facilities, and then reconcile the RMA list with the
Muslim inmate population to determine which inmates were eligible to
participate in Ramadan.

(Id., ¶¶19, 20.)

After talking with the Chaplains, it was my understanding that most of SATF's
Muslim inmates participated in the Religious Meat Alternate diet (RMA)—a
diet program which served meat that was certified as "halal" and was designed
for Muslim inmates. (Although some non-Muslim inmates also participated in
the RMA diet, for various religious reasons, it was my understanding that most
of the inmates on the RMA diet were Muslims. In fact, the RMA diet was often
colloquially referred to as the "halal diet" by inmates and staff.) Accordingly,
we proposed to use the RMA diet list as a starting point for identifying which
inmates would be eligible to participate in Ramadan.

(Id., ¶18.)

///

///

1 Q. Mr. Ahdom, you mentioned the RMA, can you describe what the RMA
2 was in 2012?

3 A. In Title 15, the RMA is -- the acronym, RMA, it stands for the Religious
4 Meats Alternate Program, which is a program that's designed to
5 accommodate individuals who take issues with the meat diets that are
6 offered by CDCR. So, instead of receiving a regular meat item on their
7 regular CDCR meal or lunch or dinner, they sign up for this particular
8 program, and they will receive a meal with a meat item that has been, I
9 don't know, identified as being a halal meat, or -- yeah a halal meat item.

10 (Pl.'s Dep., p. 32:14-25, ECF No. 44-2, Exh A.)

11 Exhibit 3 to Plaintiff's Deposition contains a copy of the official description of
12 the R.M.A. Program, pursuant to Cal. Code Regs. tit. 15, § 3054.3(a):

13 **3054.3 Religious Meat Alternate Program.**

14 (a) Religious meat alternates (meat that has been certified as halal) shall be
15 available for all institutions. Muslim inmates may participate in the program, as
16 determined by a Muslim Chaplain or designee Chaplain. Non-Muslim inmates
17 with a religious dietary need may seek participation in the program by
18 submitting to any appropriate Chaplain a CDCR Form 3030 (Rev. 08/09),
19 Religious Diet Request, which is incorporated by reference, for determination by
20 the Religious Review Committee (RRC).

21 (Id., Ex. 3; Cal. Code Regs. tit. 15, § 3054.3(a).)

22 Q. Okay. Now, I understand that the diet itself is called the RMA meal or
23 RMA diet, but are you aware that Title 15 describes it as containing meat
24 that is certified as halal and offered to Muslim inmates?

25 A. Well, I did read the Title 15 where it says that it is -- they have it is -- the
26 place they procure the meat from is halal certified. I believe that's to the
27 language in there. You say it's something else?

28 Q. Let's take a look at it because I have a copy of it.

A. Okay.

MR. WHISNAND: I believe it's Exhibit 3, and 24 I'll ask the court reporter
to attach to the record what I've pre-labeled as Exhibit No. 3, and it
looks like its excerpts from Title 15.

(Whereupon Exhibit 3 is marked.)

BY MR. WHISNAND:

Q. The part I'm talking about, Mr. Ahdom, is Section 3054.3. It's the
bottom right of that first page of the exhibit.

A. Uh-huh.

///

///

1 Q. And it says “Religious meat alternate program. Religious meat alternate”
2 and in parentheses it says “Meat that has been certified as halal shall be
3 available at all institutions. Muslim inmates may participate in the
4 program as determined by a Muslim 13 chaplain or designee chaplain.”

5 A. Uh-huh.

6 (Id., pp. 40:10-41:14.)

7 Q. What does it mean for something to be halal or not halal?

8 A. Well, halal is basically what is lawful for us to consume. What is lawful
9 for us to eat. Like the word “kosher,” is an -- it is a mandate, an
10 ordinance. Pretty much the guidelines of what we can and cannot
11 consume. It has to be lawful for us to consume. So, the actual word
12 basically means just what’s lawful.

13 (Id., pp. 27:22-28:6.)

14 The goal of the policy was to quickly and efficiently identify as many of the
15 potential Ramadan participants as possible, in order to reduce administrative
16 burdens. I had intended that this policy would simplify the Ramadan process for
17 inmates, custody staff, and Food Services, as discussed below. With respect to
18 simplifying the process for the inmates: instead of having to verify their
19 eligibility with the Muslim Chaplain—who did not start work until July 2,
20 2012—inmates who were not on the RMA diet simply needed to complete a
21 CDCR Form 3030, Religious Diet Request, and submit it to any Chaplain at the
22 institution. (Any Chaplain could approve an inmate for the RMA diet—not just
23 a Muslim Chaplain.) The Chaplain would then sign the form and deliver it to my
24 secretary, who would forward it to Food Services. Under this policy, inmates
25 would know exactly where they stood: if they were enrolled in the RMA diet,
26 they would be eligible for Ramadan. With respect to simplifying the process for
27 custody staff: similarly, custody staff would know exactly which inmates were
28 eligible to participate in Ramadan. I was informed that in 2011, inmates waited
until the last minute to get their names added to the Ramadan list, which caused
an undue administrative burden on custody staff. (*See* Ex. B at
Etchebehere.005.) Instead of having a constantly changing list, with inmates
asking to be added at the last minute, the goal was to have a comprehensive list
that was prepared in advance of the start of Ramadan. With respect to
simplifying the process for Food Services: under this policy, Food Services only
had to prepare and set aside one type of meal tray for Ramadan—the RMA
meal. Although there would have been little cost difference between providing
an RMA meal and a mainline meal or vegetarian meal, there would have been a
burden on Food Services if they had to prepare different types of meals for
Ramadan, because the meals for Ramadan were prepared apart from the regular
process.

(Decl. C. Etchebehere, ¶¶22-25.)

I did not help create the 2012 Ramadan policy in order to discriminate against
Plaintiff’s race, his religion, or any other personal characteristic. Without a
Muslim Chaplain, using the RMA list was the most expedient way of identifying
the inmates who would participate in Ramadan. I do not recall discussing any
other viable options with the Chaplains or CFM Perkins. There were between
approximately 3,500 and 4,000 inmates across seven facilities at SATF in July

1 2012—without a Muslim Chaplain, any other method would have been too
administratively burdensome to implement in such a short period of time.

2 (Id., ¶¶43-44.)

3 At the time we discussed this proposal, SATF was in the process of hiring a
4 Muslim Chaplain. The new Muslim Chaplain, A. Haroun, was scheduled to start
5 work on July 2, 2012. The plan was to use the RMA list as an initial method for
6 identifying the Muslim inmates who would participate in Ramadan, with the
7 understanding that Chaplain Haroun would identify any inmates who wanted to
participate but were not initially identified. Chaplain Haroun was expected to
immediately introduce himself to the Muslim inmates on each of the facilities,
and then reconcile the RMA list with the Muslim inmate population to
determine which inmates were eligible to participate in Ramadan.

8 (Id., ¶20.)

9 July 11, 2012 was also the first day that Chaplain Haroun was able to properly
10 orient himself at SATF. That day, Chaplain Haroun met the Muslim inmates
and custody staff in each of SATF's facilities. After orienting himself, Chaplain
11 Haroun was expected to immediately assist with preparing for Ramadan. His
chief assignment was to prepare the list of Muslim inmates, using the RMA list
12 as a starting point. As of Friday evening, July 13, 2012, Chaplain Haroun was
still in the process of compiling the list of Ramadan participants. I asked
13 Chaplain Haroun to submit the final list to me by the close of business on
Tuesday, July 17, 2012, which was two days before the start of Ramadan.
14 (Chaplain Haroun worked on Tuesdays through Fridays.) A true and correct
copy of an e-mail thread between myself and Chaplain Haroun discussing these
15 issues, dated July 6, 2012, through July 13, 2012, is attached as Exhibit D. (Ex.
D at Etchebehere.010-013.)

16 (Id., ¶29.)

17 **(E-mail thread referred to directly above.)**

18 Friday, July 6, 2012, 12:08PM
19 From: Haroun
To: Etchebehere

20 This is from A. Haroun, The new Muslim chaplain. I 'am writing to
21 bring to your notice and to ask your permission that I would like to be
here on duty from Tuesdays to Fridays. Am coming from Los Angeles
22 and as you already know and am trying to get adjusted to the system and
to learn more from you al. Thank you for the assistance and support you
23 have given to me so far.

24 Friday, July 6, 2012, 1:55PM
25 From: Etchebehere
To: Haroun

26 I see you have your email. ... yeah!!! I am good with your schedule.
27 What hours will you be working? I will make sure [redacted] has this
information also.

28 ///

1 Thursday, July 12, 2012, 5:31PM
2 From: Haroun
3 To: Etchebehere

4 Sorry for not responding to you sooner I was way too busy going around
5 to get acquainted with the system and to get introduced to both the
6 Muslim inmates in all 8 yards as well as to the security personnel in each
7 yard. So I did not remember to read emails are [sic] were sitting in my
8 inbox. The answer to your request is: 10 fours. i.e. 8:am to -6:00pm you
9 said you will inform [redacted] about that too. On the other hand, after I
10 left your office yesterday July 12 with Chaplain J- I decided to decline
11 the request form [sic] the inmate who ordered the hard back books in
12 order to keep sure that the inmates adhere strictly to the rule of law and
13 to send strong message to them that you want your request to be
14 approved it is simple as ABC. Play by the rules and laws you know
15 much about. So I went to yard E and said to the inmate, look your
16 request is not approved by me and by my superior because it is not in
17 conformity with the law. Besides, it requires extra work and
18 responsibility to tear off the cover, an act that in itself represent
19 disrespect to the book. So the he should search for a soft cover and I will
20 not hesitate to approve it. He was satisfied and glad that I came back to
21 talk and explain this to him. This process was easy because I had not
22 given him copy of my approval which I brought to you. I did that
23 because I wanted to have your consent first before a copy is provided to
24 him. So please discard the copy you have over this request and consider
25 this file closed. Thank you very much for your genuine and friendly
26 advice. I am grateful and proud that you are my supervisor. Am still in
27 the learning process, so please don't leave me alone.

28 Friday, July 6, 2012, 12:40PM
From: Etchebehere
To: Haroun

Thank you. I don't want to be too tough but also want to protect you and
the rest of our staff. I appreciate your openness!!! Don't forget about the
list of Muslims for the Ramadan. If I can get that by close of Business
Tuesday, it would be great!! Did you get a chance to meet with the Food
Manager, D. Perkins yet? I hope so. He is the most knowledgeable
about the feeding rules!!

Friday, July 13, 2012, 6:53PM
From: Haroun
To: Etchebehere

No, not at all. You are not too tough. You are too right. I am very open
person and love to deal with openness. Thank you for your support and
leadership. Throughout the week, I have been working on getting the
final Halal diet list to you [sic] am almost there. I received the master
list from the food service department to compare to the those I have in
order to make sure the list I send to you represent those who are actually
Halal eligible. The process was interrupted with the incident in C Yard
which has the longest list and needed to be trimmed to its actual size. So
I will do my best to address this issue first thing on Tuesday and turn in
the list to you. I will work closely with the my [sic] Chaplain community
to see how to deal with the growing list of the C yard. On the other

1 hand, I had a friendly phone talk with Mr. D. and what he said is, if the
2 donor/s or the donating agency can issue documentations indicating the
3 source of these dates, then he does not see any problem serving the dates
4 to the Muslim inmates, provided you do the paper work to allow it in.
5 This said, I will let you know if there is any luck in securing the dates.
6 My initial inquiry about this issue is to know, whether or not, getting
7 these dates to the in mates in this Month is a possibility. So with [your]
8 response, I will go ahead and look for it and will keep you updated.
9 Thanking you very much for everything, it is great experience having
10 you as my boss. I am truly blessed.

11 (Ex. D to Decl. C. Etchebehere, ECF No. 44-5 at 21-23.)

12 With respect to simplifying the process for custody staff: similarly, custody staff
13 would know exactly which inmates were eligible to participate in Ramadan. I
14 was informed that in 2011, inmates waited until the last minute to get their
15 names added to the Ramadan list, which caused an undue administrative burden
16 on custody staff. (See Ex. B³⁷ at Etchebehere.005.) Instead of having a
17 constantly changing list, with inmates asking to be added at the last minute, the
18 goal was to have a comprehensive list that was prepared in advance of the start
19 of Ramadan. With respect to simplifying the process for Food Services: under
20 this policy, Food Services only had to prepare and set aside one type of meal
21 tray for Ramadan—the RMA meal. Although there would have been little cost
22 difference between providing an RMA meal and a mainline meal or vegetarian
23 meal, there would have been a burden on Food Services if they had to prepare
24 different types of meals for Ramadan, because the meals for Ramadan were
25 prepared apart from the regular process.

26 (Decl. C. Etchebehere, ¶¶24, 25.)

27 **E. Alternative means of exercising the right**

28 Defendant argues that although Plaintiff did not receive Ramadan meals for six days, he
was not deprived of all means of religious expression, because he received Ramadan meals on
at least twenty-four of thirty days of Ramadan, he had access to various religious diets, he had
access to a Muslim chaplain beginning on July 2, 2012, and he could pray, read a Quran, attend
regularly-scheduled services, and possess several types of religious property. Defendant offers
the following evidence.

Ramadan is an annual, month-long religious fast observed by Muslims. During
Ramadan, Muslims fast from dawn to sunset, and only eat food and drink from

³⁷ Ex. B to Etchebehere's declaration is a copy of the minutes signed by defendant
Etchebehere of the Ramadan Meeting held on June 18, 2012, at SATF, which states in part, "Last year
after the lists had been completed, officers were calling in at the last minute to add names to the list. Per
Ms. Etchebehere, this year no one will be added after paperwork is submitted. All inmates should have
their Diet Card, and that is what the list will be based on. Also, the new Muslim Chaplain will be here
and he can also make the determination." (Ex. B to Decl. C. Etchebehere, ECF No. 44-5 at 15.)

1 sunset to sunrise. In 2012, Ramadan was observed at SATF beginning on the
2 evening of July 19, 2012, and ending on August 18, 2012.

3 (Decl. C. Etchebehere, ¶6.)

4 Q. Then, from that night, the 25th, until the end of Ramadan, were you able
5 to go each subsequent night into the chow hall to receive your meal?

6 A. Yes, I was.

7 (Pl.'s Dep., p. 76:19-22, ECF No. 44-2, Ex. A.)

8 Q. And then on the 25th is the first evening you're able to go to Ramadan,
9 right –

10 A. That's correct.

11 (Id., p. 86:1-3.)

12 At the time we discussed this proposal, SATF was in the process of hiring a
13 Muslim Chaplain. The new Muslim Chaplain, A. Haroun, was scheduled to start
14 work on July 2, 2012. The plan was to use the RMA list as an initial method for
15 identifying the Muslim inmates who would participate in Ramadan, with the
16 understanding that Chaplain Haroun would identify any inmates who wanted to
17 participate but were not initially identified. Chaplain Haroun was expected to
18 immediately introduce himself to the Muslim inmates on each of the facilities,
19 and then reconcile the RMA list with the Muslim inmate population to
20 determine which inmates were eligible to participate in Ramadan.

21 (Decl. C. Etchebehere, ¶20.)

22 July 11, 2012 was also the first day that Chaplain Haroun was able to properly
23 orient himself at SATF. That day, Chaplain Haroun met the Muslim inmates and
24 custody staff in each of SATF's facilities. After orienting himself, Chaplain
25 Haroun was expected to immediately assist with preparing for Ramadan. His
26 chief assignment was to prepare the list of Muslim inmates, using the RMA list
27 as a starting point. As of Friday evening, July 13, 2012, Chaplain Haroun was
28 still in the process of compiling the list of Ramadan participants. I asked
Chaplain Haroun to submit the final list to me by the close of business on
Tuesday, July 17, 2012, which was two days before the start of Ramadan.
(Chaplain Haroun worked on Tuesdays through Fridays.) A true and correct
copy of an e-mail thread between myself and Chaplain Haroun discussing these
issues, dated July 6, 2012, through July 13, 2012, is attached as Exhibit D. (Ex.
D at Etchebehere.010-013.)

(Id., ¶29.)³⁸

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³⁸ Also see the following evidence set forth hereinabove in this order at section V.C.: (Decl. C. Etchebehere, ¶¶46, 47.); (Pl.s Resps. Def.'s RFAs Nos. 1-8 (re: religious property)); (Pl.'s Dep., p. 53:1-17.); (Pl.'s Dep., pp. 53:25-54:5.); (Pl.'s Dep., p. 67:10-21.); (Pl.'s Dep., p. 68:17-20.)

1 **F. Impact of Accommodation on guards, other inmates, and allocation**
2 **of prison resources**

3 Defendant argues that accommodating Plaintiff’s right to exercise his religious
4 rights would have been a burden on Food Services if they had to prepare different types
5 of meals for Ramadan. Defendant argues that proceeding without a definitive list of
6 Ramadan participants would have placed an undue burden on custody staff because
7 instead of focusing on maintaining the security of the dining halls, officers would have
8 had to contend with inmates demanding to participate at the last minute, which was a
9 documented problem in prior years. Defendant argues that this factor weighs in favor
10 of Defendant. Defendant offers her declaration as evidence.

11 With respect to simplifying the process for custody staff: similarly, custody staff
12 would know exactly which inmates were eligible to participate in Ramadan. I
13 was informed that in 2011, inmates waited until the last minute to get their
14 names added to the Ramadan list, which caused an undue administrative burden
15 on custody staff. (*See* Ex. B at Etchebehere.005.) Instead of having a constantly
16 changing list, with inmates asking to be added at the last minute, the goal was to
17 have a comprehensive list that was prepared in advance of the start of Ramadan.
18 With respect to simplifying the process for Food Services: under this policy,
19 Food Services only had to prepare and set aside one type of meal tray for
20 Ramadan—the RMA meal. Although there would have been little cost
21 difference between providing an RMA meal and a mainline meal or vegetarian
22 meal, there would have been a burden on Food Services if they had to prepare
23 different types of meals for Ramadan, because the meals for Ramadan were
24 prepared apart from the regular process.

25 (*Id.*, ¶¶24, 25.)

26 **G. Absence of ready alternatives vs. existence of obvious, easy**
27 **alternatives**

28 Defendant argues that there were no viable alternatives to the methods she used to
identify the vast majority of Muslim inmates eligible for Ramadan meals in such a short period
of time. Defendant asserts that she did not have the benefit of a Muslim chaplain to help her in
identifying the Muslim inmates for Ramadan, and she could not wait until the newly-hired
Muslim chaplain started work. Defendant also argues that using the RMA list as a starting
point was the most efficient approach that she and her staff could employ under the
circumstances. Defendant argues that this factor weighs in favor of Defendant. Defendant
offers the following evidence.

1 Beginning as early as May 2012, Chaplain Ojeda, Chaplain Guembe, Chaplain
2 Hetebrink, Correctional Food Manager (CFM) Perkins, and I started the process
3 of planning for Ramadan. Early on in the planning process, however, we
4 encountered difficulties identifying the Muslim inmates who could participate in
5 Ramadan. I was informed that, in the years prior to my arrival, the preferred
6 approach was to have the Muslim Chaplain prepare the list of the Muslim
7 inmates who would participate in Ramadan. But during the planning process for
8 Ramadan, SATF's Muslim Chaplain position was vacant. (I was informed that
9 the previous Muslim Chaplain left SATF in 2010.) Without a Muslim Chaplain,
10 we did not have an easy method to identify which inmates would be eligible to
11 participate in Ramadan. I do not know how SATF prepared for Ramadan
12 without a Muslim Chaplain prior to my assignment as Associate Warden.
13 Although SATF had scheduled interviews for the vacant Muslim Chaplain
14 position for the end of May 2012, we could not wait until the Muslim Chaplain
15 arrived to plan for Ramadan. Due to policy constraints, we had to start the event
16 planning process for Ramadan no later than the middle of June 2012. A true and
17 correct copy of an e-mail I sent to Chaplain Ojeda discussing these issues, dated
18 May 16, 2012, is attached as Exhibit A. (Ex. A at Etchebehere.001- 003.)

19 (Decl. C. Etchebehere, ¶¶12-15.)

20 Ex. A to Decl. C. Etchebehere contains an e-mail exchange between defendant
21 Etchebehere and Chaplain Ojeda dated May 16, 2012, as follows:

22 Wednesday, May 16, 2012, 10:00AM

23 From: Ojeda

24 To: Etchebehere

25 Attached is the Memorandum for Ramadan from last year. There are
26 some changes that need to be made:

27 Dates for this hat [sic] need to be made:

- 28 • Dates for this year Ramadan begins on June 30, July 1 and ends July
29 30, August 1, 2012
- 30 • Review the Pre-dawn bag I need if we are to stay within the
31 Kitchen's allowance for breakfast and lunch
- 32 • Most important, the two religious meals at the end of Ramadan need
33 not be part of this memo if we are to conform to the freeze on all
34 religious meals from last month.

35 Let me know if we need to meet to discuss these items.

36 Wednesday, May 16, 2012, 12:37PM

37 From: Etchebehere

38 To: Ojeda

39 I just spoke with headquarters and it appears that Ramadan is going to be
40 recognized from approx July 18/19 through August 18/19. There will be
41 a memo coming down from headquarters regarding the scheduling for
42 the pre-dawn and after sunset feeding due to the late hour. It has been
43 discussed with State wide Food Services also. And the directive from
44 headquarters is that they do get a fast breaking meal celebration. Not
45 100% sure about the second one....will follow up on that.

46 ///

47 ///

1 Wednesday, May 16, 2012, 1:31PM
2 From: Ojeda
3 To: Etchebehere

4 Do we need to meet and make changes to the memorandum I attached?
5 Let me know.

6 Wednesday, May 16, 2012, 2:23PM
7 From: Etchebehere
8 To: Ojeda

9 We may, but give me a few days. BTW, we are interviewing for Muslim
10 Chaplain at the end of the month. Maybe he can take care of this. We
11 have until the middle of June to start the event package process.

12 (Ex. A to Decl. C. Etchebehere, ECF No. 44-5 at 12-13.)

13 The portion of the memorandum that stated there would be “no additions” to the
14 list after the start of Ramadan was an overstatement: as was discussed at the
15 June 18, 2012, meeting, we had intended for the Muslim Chaplain to have
16 discretion to add additional inmates to the eligibility list if necessary. On or
17 about July 11, 2012, I circulated the memorandum for final approval and
18 signature by CFM Perkins, CPM Coté, the Facility Captains, the Associate
19 Wardens, and the Warden.

20 (Decl. C. Etchebehere, ¶¶27, 28.)

21 **VII. PLAINTIFF’S MOTION TO DEEM EVIDENCE INADMISSIBLE**

22 On April 12, 2017, Plaintiff filed a motion to deem some of Defendant’s evidence
23 inadmissible because it was altered. (ECF No. 52 at 3.) On April 19, 2017, Defendant filed a
24 response to the motion. (ECF Nos. 54, 55.)

25 Plaintiff requests the court to deem inadmissible certain evidence he contends was
26 altered by Defendant. Plaintiff questions the authenticity of Defendant’s documentary evidence
27 that the Ramadan list was updated on July 19, 2012, to include inmates who were not initially
28 identified to participate in Ramadan, including Plaintiff. Specifically, Plaintiff challenges
29 Defendant’s explanation of why the updated list, allegedly prepared on July 19, 2012, is dated
30 July 20, 2016. Plaintiff calls the explanation a “manufactured statement of fact.” (ECF No. 52
31 at 4.) Plaintiff also claims that other documents dated July 20, 2016, were altered in the same
32 way. Plaintiff asserts that contrary to Defendant’s claim that the alterations were in the upper-
33 *right* corner of each page, evidence shows that the original dates in the upper-*left* corner were
34 completely removed and replaced with “July 20, 2016.” (Id.) In another document, Plaintiff

1 claims that the date was removed and replaced with “WEDNESDAY, July 20, 2016.” (Id. at 4-
2 5.)

3 Defendant responds that she did not alter evidence, and that she and defense counsel
4 thoroughly explained in Defendant’s declaration, ECF No. 44-2 at 2-3, that the list attached to
5 the declaration bears the wrong date-stamp due to the way Microsoft Excel processes a
6 “[Date]” formula in one of the cells of the spreadsheet. Concurrently with her April 19, 2017,
7 response, Defendant lodged a copy of the Excel file with the Court, ECF No. 55, and states that
8 “[b]y simply opening the Excel File, the Court can verify that the day’s date is automatically
9 populated into the upper-right corner of the document,” ECF No. 54 at 3:1-3. Defendant argues
10 that Plaintiff’s claim that the July 20, 2012, Ramadan list is a “manufactured statement of fact”
11 lacks foundation in evidence and cannot create a genuine dispute of fact. Defendant also
12 asserts that Plaintiff fails to explain why Defendant or defense counsel would alter the list.

13 **Discussion and Conclusion**

14 The court finds no evidence that Defendant purposely altered any the subject documents
15 in evidence by improperly changing the date-stamp. The court is familiar with spreadsheets
16 that automatically populate documents with the same day’s date under certain circumstances.
17 The court has opened Defendant’s Excel file and observed that today’s date was automatically
18 inserted on the spreadsheet. Thus, Plaintiff’s motion to deem the evidence inadmissible is
19 denied.

20 **VIII. PLAINTIFF’S MOTION FOR APPOINTMENT OF EXPERT WITNESSES,
21 MOTION FOR STAY, AND MOTION FOR APPOINTMENT OF COUNSEL**

22 Plaintiff brings a motion for appointment of expert witnesses, a motion for stay of the
23 motion for summary judgment, and a motion for appointment of counsel. (ECF Nos. 28, 48,
24 50.)

25 **A. Motion for Appointment of Expert Witnesses**

26 The court has the discretion to appoint an expert pursuant to Rule 706(a) of the Federal
27 Rules of Evidence. In relevant part, Rule 706 states that “[o]n a party’s motion or on its own,
28 the court may order the parties to show cause why expert witnesses should not be appointed . .

1 .” Fed. R. Evid. 706(a); Walker v. American Home Shield Long Term Disability Plan, 180 F.3d
2 1065, 1071 (9th Cir. 1999). Pursuant to Rule 702, “a witness who is qualified as an expert by
3 knowledge, skill, experience, training or education may testify in the form of an opinion or
4 otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the
5 trier of fact to understand the evidence or to determine a fact in issue . . .” Fed. R. Evid. 702.
6 While the court has the discretion to appoint an expert and to apportion costs, including the
7 appointment of costs to one side, Fed. R. Evid. 706; Ford ex rel. Ford v. Long Beach Unified
8 School Dist., 291 F.3d 1086, 1090 (9th Cir. 2002); Walker, 180 F.3d at 1071, where the cost
9 would likely be apportioned to the government, the court should exercise caution. Moreover,
10 Rule 706 is not a means to avoid the in forma pauperis statute and its prohibition against using
11 public funds to pay for the expenses of witnesses, Manriquez v. Huchins, 2012 WL 5880431,
12 *12 (E.D.Cal. 2012), nor does Rule 706 contemplate court appointment and compensation of
13 an expert witness as an advocate for Plaintiff, Faletogo v. Moya, 2013 WL 524037, *2
14 (S.D.Cal. 2013).

15 Plaintiff requests the court to appoint a forensic computer analyst and an Islamic
16 Scholar as expert witnesses to provide testimony in support of his opposition to Defendant’s
17 motion for summary judgment. (ECF No. 52 at 28-31.) Plaintiff contends that the expert
18 witnesses will assist the court in deciding whether to grant or deny the motion for summary
19 judgment.

20 Plaintiff contends that “Defendant has admittedly introduced altered material evidence,
21 claiming that a computer program’s “[Date]” formula is responsible for altered (removed and
22 replaced) days and dates in several documents and e-mail memos” submitted in evidence. (Id.
23 at 29.) Plaintiff asserts that “defendant’s attorney offered expert testimony stating how one of
24 the cells in the formula works, and offered to lodge a copy of a computer software file, to the
25 Judge, to corroborate his ‘expert’ testimony.” (Id.) Plaintiff seeks appointment of an expert
26 forensic computer analyst to respond to Defendant’s expert witness.

27 Plaintiff also seeks expert testimony to support his claim that Defendant substantially
28 burdened his right to religious exercise, and to respond to Defendant’s evidence that Islam

1 “provides fasting Muslims with an ‘alternative’ to the partaking of the Iftar and Suhoor at their
2 prescribed times.” (Id. at 29-30.) Plaintiff asserts that Defendant submitted a witness list for
3 trial that included Chaplain Haroun, an Islamic scholar, as an expert witness, and Plaintiff
4 contends that Plaintiff is required by law to offer expert testimony.

5 **Discussion**

6 While Plaintiff argues that expert witnesses would assist the court in its ruling, it is
7 nonetheless apparent that Plaintiff seeks the appointment of experts for the purpose of
8 submitting competing expert opinions to support his own arguments. That is not the function
9 of a neutral expert witness. While the court is cognizant of the challenges an IFP litigant faces
10 in retaining an expert witness, the IFP statute does not grant the court the authority to appoint
11 expert witnesses on behalf of a party. 28 U.S.C. § 1915; See also Pedraza v. Jones, 71 F.3d
12 194, 196 (5th Cir. 1995).

13 With respect to Plaintiff’s deprivation of Ramadan meals, the issue here is whether
14 Defendant’s Ramadan policy caused a violation of Plaintiff’s rights under the Free Exercise
15 Clause of the First Amendment. Plaintiff’s allegations are no more complex than those found
16 in the majority of Free Exercise cases pending before this court. The court does not require
17 expert witnesses to determine whether Plaintiff’s religious rights were violated or to explain
18 how the computer software used by Defendant works. Plaintiff is not required by law to offer
19 expert testimony. Therefore, Plaintiff’s request for the appointment of expert witnesses shall
20 be denied.

21 **B. Motion for Stay**

22 Plaintiff brings a motion to stay the ruling on Defendant’s motion for summary
23 judgment to allow him time to obtain testimony from his court-appointed expert witnesses.
24 Given the court’s decision to deny Plaintiff’s motion for appointment of expert witnesses, the
25 motion for stay is moot and shall be denied as such.

26 **C. Motion for Appointment of Counsel**

27 Plaintiff seeks the appointment of counsel to assist him with this litigation. Plaintiff
28 does not have a constitutional right to appointed counsel in this action, Rand, 113 F.3d at 1525,

1 and the court cannot require an attorney to represent Plaintiff pursuant to 28 U.S.C. §
2 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S.
3 296, 298 (1989). However, in certain exceptional circumstances the court may request the
4 voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

5 Without a reasonable method of securing and compensating counsel, the court will seek
6 volunteer counsel only in the most serious and exceptional cases. In determining whether
7 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
8 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
9 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

10 In the present case, the court does not find the required exceptional circumstances.
11 Defendant’s motion for summary judgment has been fully briefed and is pending for the court’s
12 decision. Plaintiff argues that he suffers from diminished physical and cognitive functions due
13 to a history of stroke and limited use of his right extremities. However, a review of the record
14 shows that Plaintiff is responsive, adequately communicates, and is able to articulate his claims.
15 Plaintiff’s claims that he was deprived of Ramadan meals for six days, in violation of the Free
16 Exercise clause of the First Amendment, is not complex. Therefore, Plaintiff’s motion for
17 appointment of counsel shall be denied, without prejudice.

18 **IX. DEFENDANT’S BURDEN**

19 Based on the foregoing, the court finds that Defendant has met her burden of setting
20 forth evidence that there is no genuine issue of material fact for trial, which shifts the burden to
21 Plaintiff to submit admissible evidence showing the existence of genuine issues for trial.

22 **X. DISCUSSION**

23 **A. Legal Standards**

24 **1. 42 U.S.C. § 1983 – Personal Participation**

25 The Civil Rights Act under which this action was filed provides:

26 Every person who, under color of any statute, ordinance, regulation, custom, or
27 usage, of any State or Territory or the District of Columbia, subjects, or causes
28 to be subjected, any citizen of the United States or other person within the
jurisdiction thereof to the deprivation of any rights, privileges, or immunities

1 secured by the Constitution and laws, shall be liable to the party injured in an
2 action at law, suit in equity, or other proper proceeding for redress

3 42 U.S.C. § 1983.

4 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
5 under color of state law and (2) the defendant deprived him of rights secured by the
6 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
7 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
8 “under color of state law”). A person deprives another of a constitutional right, “within the
9 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
10 omits to perform an act which he is legally required to do that causes the deprivation of which
11 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
12 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)); “The requisite causal
13 connection may be established when an official sets in motion a ‘series of acts by others which
14 the actor knows or reasonably should know would cause others to inflict’ constitutional harms.”
15 Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
16 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
17 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
18 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

19 To prevail against a defendant under section 1983, the plaintiff must prove that the
20 defendant either personally participated in the alleged deprivation of constitutional rights; knew
21 of the violations and failed to act to prevent them; or promulgated or “implemented a policy so
22 deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force
23 of the constitutional violation.’” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal
24 citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

25 **2. First Amendment Free Exercise Clause**

26 The Free Exercise Clause provides, “Congress shall make no law . . . prohibiting the
27 free exercise” of religion. U.S. CONST. amend I. Inmates retain the protections afforded by
28 the First Amendment, “including its directive that no law shall prohibit the free exercise of
religion.” O’Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987) (citing Cruz v. Beto, 405

1 U.S. 319, 322 (1972) (per curiam)). The protections of the Free Exercise Clause are triggered
2 when prison officials substantially burden the practice of an inmate’s religion by preventing
3 him from engaging in conduct which he sincerely believes is consistent with his faith. Shakur
4 v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008); Freeman v. Arpaio, 125 F.3d 732, 737 (9th
5 Cir. 1997), *overruled in part by Shakur*, 514 F.3d at 884-85. The First Amendment is made
6 applicable to state action by incorporation through the Fourteenth Amendment. Everson v. Bd.
7 of Educ. of Ewing Twp., 330 U.S. 1, 8 (1947).

8 However, “[l]awful incarceration brings about the necessary withdrawal or limitation of
9 many privileges and rights, a retraction justified by the considerations underlying our penal
10 system.” Id. (quoting Price v. Johnston, 334 U.S. 266, 285 (1948)). “To ensure that courts
11 afford appropriate deference to prison officials, . . . prison regulations alleged to infringe
12 constitutional rights are judged under a ‘reasonableness’ test less restrictive than that ordinarily
13 applied to alleged infringements of fundamental constitutional rights.” O’Lone, 382 U.S. at
14 349. A prison regulation may therefore impinge upon an inmate’s right to exercise his religion
15 if the regulation is “reasonably related to legitimate penological interests.” Shakur, 514 F.3d at
16 884. Thus, prisons may lawfully restrict religious activities for security purposes and other
17 legitimate penological reasons. Turner v. Safley, 482 U.S. 78, 89–90 (1987); Pierce v. County
18 of Orange, 526 F.3d 1190, 1209 (9th Cir. 2008). Furthermore, the Supreme Court has held that
19 generally-applicable laws that incidentally burden a particular religion’s practices do not
20 violate the First Amendment. Employment Div. v. Smith, 494 U.S. 872, 878 (1990).

21 Claims for violation of the Free Exercise Clause of the First Amendment are used to
22 challenge state or government statutes, regulations, and/or established policies. Thus, in order
23 to state a cognizable claim for their violation, a plaintiff must identify an allegedly offending
24 statute, regulation, or established policy. Under Turner, the court considers: (1) whether the
25 restriction has a logical connection to the legitimate government interests invoked to justify it;
26 (2) whether there are alternative means of exercising the rights that remain open to the inmate;
27 (3) the impact that accommodation of the asserted constitutional right will have on other
28 inmates, guards, and institution resources; and (4) the presence or absence of alternatives that

1 fully accommodate the inmate’s rights at de minimis cost to valid penological interests. Turner,
2 483 U.S. at 89-91.

3 De minimis or minor burdens on the free exercise of religion are not of a constitutional
4 dimension, even if the belief upon which the exercise is based is sincerely held and rooted in
5 religious belief. See e.g., Rapier v. Harris, 172 F.3d 999, 1006 n. 4 (7th Cir. 1999) (the
6 unavailability of a non-pork tray for inmate at 3 meals out of 810 does not constitute more than
7 a de minimis burden on inmate’s free exercise of religion).

8 **B. Sincere Belief That Religious Exercise is Consistent With Faith**

9 The parties do not dispute that during all times relevant to the Second Amended
10 Complaint, Plaintiff Bilal Ahdom was a Muslim inmate who practiced Islam, and that
11 according to Plaintiff’s religious beliefs, he is required to participate in Ramadan, an annual,
12 month-long religious fast observed by Muslims, during which Plaintiff was required to fast
13 from sunset to sunrise, pray, read the Quran, and limit conversation. (UF #1, 7, 8.)

14 **C. Prison Policy and Defendant’s Personal Liability**

15 Defendant Etchebehere argues that she is not personally responsible for Plaintiff
16 missing more than one day of Ramadan meals because it is not her fault that Plaintiff waited
17 until the first day of Ramadan to enroll in the RMA diet, or that his form was not submitted in
18 time for him to be added to the Ramadan list.

19 As discussed above, to prevail against a defendant under section 1983, the plaintiff must
20 prove that the defendant either personally participated in the alleged deprivation of
21 constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or
22 “implemented a policy so deficient that the policy ‘itself is a repudiation of constitutional
23 rights’ and is ‘the moving force of the constitutional violation.’” Hansen, 885 F.2d at 646.

24 Here, to prove that his rights under the Free Exercise Clause were violated, Plaintiff
25 must show that a prison policy or regulation violated his rights to freely exercise his religion
26 and was not reasonably related to legitimate penological interests. In this case, the prison
27 policy at issue is the plan developed by Defendant Etchebehere for the Ramadan observance in
28 2012 at SATF. Pursuant to the plan, Defendant and her staff used the RMA diet list as a

1 starting point for identifying the Muslim inmates who were eligible to participate in Ramadan.
2 Therefore, to state a claim against Defendant, Plaintiff must show that Defendant's plan for
3 Ramadan caused his rights to be violated and was not reasonably related to legitimate
4 penological interests.

5 **D. Substantial Burden**

6 Defendant argues that it was not a substantial burden for Plaintiff to be required to sign
7 up for the RMA diet in order to be eligible for Ramadan meals. The Ninth Circuit has recently
8 explained:

9 A person asserting a free exercise claim must show that the government action
10 in question substantially burdens the person's practice of her religion. A
11 substantial burden . . . places more than an inconvenience on religious exercise;
12 it must have a tendency to coerce individuals into acting contrary to their
13 religious beliefs or exert substantial pressure on an adherent to modify his
14 behavior and to violate his beliefs. . . . To ensure that courts afford appropriate
deference to prison officials, the Supreme Court has directed that alleged
infringements of prisoners' free exercise rights be judged under a reasonableness
test less restrictive than that ordinarily applied to alleged infringements of
fundamental constitutional rights. The challenged conduct is valid if it is
reasonably related to legitimate penological interests.

15 Jones v. Williams, 791 F.3d 1023, 1031-32 (9th Cir. 2015) (internal quotations and citations
16 omitted). "It was well established in 2007, and remains so today, that government action places
17 a substantial burden on an individual's right to free exercise of religion when it tends to coerce
18 the individual to forego her sincerely held religious beliefs or to engage in conduct that violates
19 those beliefs." *Id.* at 1033.

20 The undisputed facts and evidence before the court show that the requirement for
21 Plaintiff to sign up for the RMA diet to be eligible for Ramadan meals was not a substantial
22 burden on Plaintiff's religious rights. There is no evidence that requiring Plaintiff to enroll in
23 the RMA diet coerced Plaintiff to forego his religious beliefs or engage in conduct that violates
24 those beliefs.

25 Even if the requirement caused Plaintiff to be deprived of Ramadan meals, the
26 deprivation caused by the policy only affected the first day of Ramadan. After that, the policy
27 changed, and other Muslims, including Plaintiff, were allowed on the list even if they had not
28 signed up for the RMA diet. Defendant's evidence shows that Plaintiff's name was added to

1 the list for July 20, 2012, making him eligible to enter the dining room on that day. (ECF No.
2 44-5 at 81 (Ex. H)). While Plaintiff declares that a correctional officer showed him the list and
3 his name was not on it, this is not evidence that the policy was at fault. Evidence shows that
4 after the first day, if Plaintiff's name was not on the Ramadan list, it was for reasons other than
5 the policy. UF #57, 58, 62. Deprivation of one day of Ramadan meals is only a de minimus
6 burden on Plaintiff's religious rights.

7 Alternatively, even if the policy's requirement was a substantial burden on Plaintiff's
8 right to practice religion, Defendant is entitled to summary judgment because the Ramadan
9 policy was reasonably related to legitimate penological interests at SATF, as shown by analysis
10 under the Turner factors.

11 **E. Turner Factors**

12 **(1) Whether the restriction has a logical connection to the legitimate**
13 **government interests invoked to justify it**

14 “In considering the first Turner factor, the court must ‘(1) determine whether the
15 regulation is legitimate and neutral, and (2) assess whether there is a rational relationship
16 between the governmental objective and the regulation.’” Boyd v. Etchebehere, 1:13-01966-
17 LJO-SAB (PC), 2017 WL 2791660 at *11, (E.D.Cal. June 17, 2017) (citing Ashker v.
18 California Dept. of Corrections, 350 F.3d 917, 922 (9th Cir. 2003.) “The ‘orderly
19 administration of a program that allows . . . prisons to accommodate the religious dietary needs
20 of thousands of prisoners’ is a legitimate governmental interest.” Id. (quoting Resnick v.
21 Adams, 348 F.3d 763, 769 (9th Cir. 2003)).

22 Here, Defendant argues that the 2012 Ramadan policy was a reasonable way to
23 determine which of the Muslim inmates were eligible for Ramadan meals. The goal of the
24 policy was to quickly and efficiently identify as many of the potential Ramadan participants as
25 possible, to reduce administrative burdens and simplify the process for inmates, custody staff,
26 and Food Services. (Decl. C. Etchebehere, ¶22.) Inmates who were not already on the RMA
27 diet simply needed to complete a CDCR Form 3030, Religious Diet Request, and submit it to
28 any Chaplain at the institution. (Id., ¶23.) Custody staff would know exactly which inmates

1 were eligible to participate in Ramadan, and Food Services only had to prepare and set aside
2 one type of meal tray for Ramadan. (Id., ¶¶24, 25.) Instead of having a constantly changing
3 list, with inmates asking to be added at the last minute, the goal was to have a comprehensive
4 list that was prepared in advance of the start of Ramadan. (Id., ¶24.) The idea to start with the
5 RMA diet list was agreed upon by Defendant after speaking with SATF’s chaplains, UF #22,
6 25, and Defendant assumed that most of the Muslim inmates would be enrolled in the RMA
7 diet because the diet served halal meats and was known as the halal diet. UF #23, 26.

8 Plaintiff argues that Defendant’s goal was to coerce him into signing up for the RMA
9 diet and cause him to be deprived of Ramadan meals. This argument is not supported by
10 evidence.

11 In sum, the first Turner factor is satisfied in Defendant’s favor.

12
13 **(2) Whether there are alternative means of exercising the rights that remain open to the inmate**

14 “The second Turner factor considers ‘not whether the inmate has an alternative means
15 of engaging in the particular religious practice that he or she claims is being affected; rather, . .
16 . whether the inmates have been denied all means of religious expression.’” Boyd, 2017 WL
17 2791660 at *12 (quoting Ward v. Walsh, 1 F.3d 873, 877-78 (9th Cir. 1993) (citing O’Lone,
18 482 U.S. at 351-52). “An inmate who has ‘alternative means by which he can practice his
19 religion’ has not been deprived of all means of religious expression.” Id. (quoting Shakur, 514
20 F.3d at 886 (citing Ward, 1 F.3d at 877) (Muslim inmate who did not receive a Kosher diet not
21 deprived of all means of religious expression where he could possess a Quran, prayer rug, and
22 religious items, could visit an imam upon request, and could participate in various rituals and
23 ceremonies); Boyd v. Lehman, No. C 05-0020-JLR, 2006 WL 1442201, at *6 (W.D. Wash.
24 May 19, 2006) (same, where Muslim inmate could not receive halal meats, but could receive a
25 halal vegetarian diet, could attend two religious holidays per year, could participate in five
26 daily prayers, could fast during Ramadan, and could visit a Muslim chaplain); see also O’Lone,
27 482 U.S. at 351-52 (same, where Muslim inmate could not attend weekly Jumu’ah prayer

28 ///

1 during working hours, but could congregate for prayer when not at work, could access a
2 Muslim imam, could eat a religious diet, and could observe Ramadan).

3 Defendant argues that Plaintiff had other rights available to practice his religion.
4 Plaintiff argues that because he was not on the Ramadan list, he could not enter the dining hall
5 to attend the Ramadan observance with fellow Muslim inmates or receive the official Ramadan
6 meals, and because he was fasting he could not eat regular meals or take a sack lunch to his cell
7 to eat. (SAC, ECF No. 24 ¶¶24, 26, 38; Pl.’s Affidavit, ECF No. 52, ¶9.) Plaintiff also argues
8 that there are no alternative means of religious expression for God’s command to partake of
9 Halal foods at the prescribed times during the month of Ramadan. (Pl.’s Affidavit, ECF No.
10 52, ¶17.)

11 The question in Turner is not whether Plaintiff was deprived of participation in
12 Ramadan, but whether Plaintiff was denied *all* means of religious expression. Even if
13 Defendant’s policy caused Plaintiff to miss out on several days of Ramadan, Plaintiff was still
14 able to observe Ramadan during the remaining days of the month-long observance, and could
15 still attend prayer sessions with fellow Muslim inmates, attend weekly Jumu’ah prayer services,
16 use prayer rugs, and read the Quran. UF #70, 72. It is undisputed that Plaintiff could still fast
17 for Ramadan during the day and eat food before sunrise and after sunset if he purchased food
18 from the canteen, shared other inmates’ food, or kept food in his cell. UF #12-14. Plaintiff has
19 admitted that he was able to possess a Quran, prayer oil, prayer beads, a prayer mat/rug, a
20 religious medallion, a Kufi cap, and a Miswak. (Pl.’s Resps. Def.’s RFAs Nos. 1-8 (re:
21 religious property)). Therefore, Plaintiff had alternative means to practice his religion. The
22 second Turner factor is satisfied in Defendant’s favor.

23
24 **(3) The impact that accommodation of the asserted constitutional right will
have on other inmates, guards, and institution resources**

25 “The third consideration is to determine the impact the accommodation of the asserted
26 constitutional right will have on guards and other inmates, and on the allocation of prison
27 resources generally.” Boyd, 2017 WL 2791660 at *12 (citing Turner, 482 U.S. at 90). “When
28 an accommodation of an asserted right will have a significant ‘ripple effect’ on fellow inmates

1 or on prison staff, courts should be particularly deferential to the informed discretion of
2 corrections officials.” Id.

3 Defendant argues that without a definitive list prepared before Ramadan, custody staff
4 would be faced with inmates waiting until the last minute to be added to the list. Defendant
5 asserts that she was informed that this same situation in 2011 caused an undue administrative
6 burden. (Id., ¶24.) Instead of focusing on maintaining the security of the dining halls, officers
7 would have had to contend with inmates demanding to participate at the last minute. Food
8 Services would have been unduly burdened if inmates whose names did not appear on the list
9 were permitted to enter the dining room for Ramadan meals. Food Services employees would
10 not know how many Ramadan meals to prepare, and it would affect administrative costs if they
11 overestimated the number of meals. This factor weighs in favor of Defendant.

12
13 **(4) The presence or absence of alternatives that fully accommodate the inmate’s rights at de minimis cost to valid penological interests**

14 “As to the fourth Turner factor, the Court determines whether the regulation is an
15 ‘exaggerated response’ to the prison’s concerns.” Boyd, 2017 WL 2791660 at *13 (quoting
16 Turner, 482 U.S. at 90-91.) “‘The burden is on the prisoner challenging the regulation to show
17 that there are obvious, easy alternatives to the regulation.’” Id. (quoting Chau v. Young, No. C
18 13-764 SI (PR), 2014 WL 4100635, *6 (N.D. Cal. Aug. 20, 2014) (citing O’Lone, 482 U.S. at
19 350)). “This determination is ‘not a “least restrictive alternative” test: prison officials do not
20 have to set up and then shoot down every conceivable alternative method of accommodating
21 the claimant's constitutional complaint.’” Id. (quoting Turner, 482 U.S. at 91). “Rather, the
22 relative inquiry is ‘whether the prisoner has pointed to some obvious regulatory alternative that
23 fully accommodates the asserted right while not imposing more than a de minimis cost to the
24 valid penological goal.’” Id. (quoting Overton v. Bazzetta, 539 U.S. 126, 135-36 (2003)).

25 Defendant argues that there were no viable alternatives to the methods she used to
26 identify the vast majority of Muslim inmates eligible for Ramadan meals in such a short period
27 of time, because she did not have the benefit of a Muslim chaplain to help her, and she could
28 not wait until the newly-hired Muslim chaplain started work. (Decl. C. Etchebehere, ¶¶12-15.)

1 Plaintiff argues that Defendant had many ready alternatives to using the RMA diet list
2 for identifying Muslim inmates. Plaintiff asserts that prior to Ramadan, CDCR's policy for
3 identifying adherents to the Islamic religion was for Chaplain Guembe to place names on a
4 weekly list for Islamic services, special religious events, and approving religious meal
5 applications. (Pl.'s Affidavit, ECF No. 52, ¶10.) Plaintiff argues that Defendant failed to use
6 the already in-place policy used by resident facility chaplains. (Id. ¶¶ 22, 25.) However,
7 Defendant was taxed with identifying Muslim inmates among more than 3,000 inmates across
8 seven facilities, (Decl. C. Etchebehere, ECF No. 44-5, ¶44), and Plaintiff provides no evidence
9 that the lists used by Chaplain Guembe, who was not a Muslim Chaplain, would have identified
10 more of the Muslim inmates eligible for Ramadan meals than the policy used by Defendant,
11 without affecting valid penological interests. Therefore, this factor weighs in favor of
12 Defendant.

13 **F. Conclusion**

14 Based on the foregoing analysis, the court finds that Plaintiff's rights to practice his
15 religion were not substantially burdened because he was required, under Defendant's Ramadan
16 plan, to enroll in the RMA diet plan to be eligible for Ramadan meals at SATF. Even if the
17 policy caused Plaintiff to miss some of his Ramadan meals, he was still able to practice his
18 religion in other ways. The court also finds that even if Plaintiff's rights were substantially
19 burdened, the Ramadan plan was reasonably related to legitimate penological interests at
20 SATF. Therefore, Defendant's motion for summary judgment should be granted.

21 **XI. QUALIFIED IMMUNITY**

22 "Qualified immunity shields government officials from civil damages liability unless
23 the official violated a statutory or constitutional right that was clearly established at the time of
24 the challenged conduct." Taylor v. Barks, --- U.S. ---, 135 S.Ct. 2042, 2044 (June 1, 2015)
25 quoting Reichle v. Howards, 566 U. S. 658, 132 S.Ct. 2088, 2093 (2012). Qualified immunity
26 analysis requires two prongs of inquiry: "(1) whether 'the facts alleged show the official's
27 conduct violated a constitutional right; and (2) if so, whether the right was clearly established'
28 as of the date of the involved events 'in light of the specific context of the case.'" Tarabochia

1 v. Adkins, 766 F.3d 1115, 1121 (9th Cir. 2014) (quoting Robinson v. York, 566 F.3d 817, 821
2 (9th Cir. 2009)).

3 The court has found that Defendant is entitled to summary judgment as a matter of law
4 on Plaintiff's Free Exercise claim under the First Amendment. Because of this finding, it is
5 unnecessary to reach Defendant's argument that she is entitled to summary judgment based on
6 qualified immunity.

7
8 **XII. MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT AND
9 REQUIRE PAYMENT OF SECURITY BEFORE THIS ACTION PROCEEDS**

10 In the alternative to summary judgment, Defendant requests that even if the court finds
11 that a disputed issue of material fact precludes summary judgment, the court should issue an
12 order, pursuant to Local Rule 151(b), requiring Plaintiff to post \$2,550.00 in security before
13 this action proceeds, on the grounds that (1) Plaintiff has maintained at least nine unsuccessful
14 suits as a pro se litigant over the past seven years; and (2) there is no reasonable probability that
15 he will prevail at trial.

16 Given that the court has found that Defendant is entitled to summary judgment, it is
17 unnecessary to consider Defendant's motion to declare Plaintiff a vexatious litigant and require
18 payment of security. Thus, this motion is moot.³⁹

19 **XIII. CONCLUSION AND RECOMMENDATIONS**

20 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 21 1. In the event that there is any confusion about whether Plaintiff's claims under
22 the Eighth and Fourteenth Amendments were previously dismissed, it is
23 recommended that they be dismissed by this order;
- 24 2. Plaintiff's motion to deem evidence inadmissible be DENIED;
- 25 3. Plaintiff's motion for the appointment of expert witnesses be DENIED;
- 26 4. Plaintiff's motion for stay to allow further discovery be DENIED;
- 27 5. Plaintiff's motion for the appointment of counsel be DENIED;

28 ³⁹ Defendant's related request for judicial notice is also moot. (ECF No. 44-1.)

