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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CURTIS BOYD,)	Case No. 1:13-01966-LJO-SAB (PC)
)	
Plaintiff,)	
)	FINDINGS AND RECOMMENDATIONS
v.)	REGARDING DEFENDANTS' MOTION FOR
)	SUMMARY JUDGMENT
C. ETCHEBEHERE, et.al.)	
)	[ECF No. 84]
Defendants.)	
)	
)	

Plaintiff Curtis Boyd is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Defendants' motion for summary judgment, filed February 6, 2017.

**I.
RELEVANT HISTORY**

This action is proceeding on Plaintiff's first amended complaint against Defendants R. Guembe, C. Etchebehere, D. Perkins, B. Odle, F. Cote, J. Ojeda, J. Gallagher and D. Hetebrink for denial of Plaintiff's right under the First Amendment by requiring him to participate in the prison's Religious Meat Alternative Program in order to receive his religiously mandated Ramadan and evening meals.

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1 On March 25, 2016, Defendants filed an answer to the complaint. On March 30, 2016, the
2 Court issued the discovery and scheduling order.

3 As previously stated, on February 6, 2017, Defendants filed a motion for summary judgment.
4 Plaintiff filed an opposition on June 5, 2017, and Defendants filed a reply on June 7, 2017. (ECF Nos.
5 101, 102.)

6 On April 24, 2017, Plaintiff filed a motion to suppress his deposition, and Defendants filed an
7 opposition on April 27, 2017. The Court denied Plaintiff's motion on May 1, 2017.

8 II.

9 LEGAL STANDARD

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

21 In resolving cross-motions for summary judgment, the Court must consider each party's
22 evidence. Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 960 (9th Cir. 2011). Plaintiff bears the
23 burden of proof at trial, and to prevail on summary judgment, he must affirmatively demonstrate that
24 no reasonable trier of fact could find other than for him. Soremekun v. Thrifty Payless, Inc., 509 F.3d
25 978, 984 (9th Cir. 2007). Defendants do not bear the burden of proof at trial and in moving for
26 summary judgment, they 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).

1 In judging the evidence at the summary judgment stage, the Court does not make credibility
2 determinations or weigh conflicting evidence, Soremekun, 509 F.3d at 984 (quotation marks and
3 citation omitted), and it must draw all inferences in the light most favorable to the nonmoving party
4 and determine whether a genuine issue of material fact precludes entry of judgment, Comite de
5 Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation
6 marks and citation omitted).

7 In arriving at this recommendation, the Court has carefully reviewed and considered all
8 arguments, points and authorities, declarations, exhibits, statements of undisputed facts and responses
9 thereto, if any, objections, and other papers filed by the parties. Omission of reference to an argument,
10 document, paper, or objection is not to be construed to the effect that this Court did not consider the
11 argument, document, paper, or objection. This Court thoroughly reviewed and considered the
12 evidence it deemed admissible, material, and appropriate.

13 III.

14 SUMMARY OF PLAINTIFF'S COMPLAINT¹

15 In or around the year 2010, Catholic Chaplain J. Ojeda held a meeting with two Halal food
16 companies to evaluate the possibility of purchasing holistic Halal food. After being presented with
17 samples of Halal food trays, consisting of meats, vegetables, fruits and grains that make-up a Halal
18 diet, J. Ojeda recommended to staff at California Substance Abuse and Treatment Facility (SATF) a
19 Halal diet. Defendants J. Ojeda, F. Cote, and D. Perkins decided to provide only meat substitute to
20 any persons requesting a religious diet. The program was titled the Religious Meat Alternative
21 (RMA).

22 On or about June 5, 2012, C. Etchebehere was advised and informed by, food administrator L.
23 Maurino that there was presently an established procedure for Muslim inmates at SATF. According to
24 the procedure, Muslim inmates who wanted to participate in the coming Ramadan fasting would sign-
25 up at or from the Friday "Jumah" prayer service list.

26
27 ¹ This action is proceeding on Plaintiff's first amended complaint, filed November 6, 2015. (ECF No. 47.) Because
28 Plaintiff's first amended complaint is verified it constitutes an opposing affidavit for purposes of ruling on a motion for
summary judgment. Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004).

1 On or about June 18, 2012, Defendants C. Etchebehere, J. Ojeda, F Cote, J. Gallaher, B. Odle,
2 D. Perkins, D. Hetebrink and R. Guembe, agreed to change the enrollment procedure and criteria for
3 Muslim only participation and criteria for Muslim inmate at SATF, from the standard Muslim only
4 participation, by way of the use of the Friday “Jumah” prayer services sign-up procedures to the
5 exclusive use of the RMA list, which was for Muslims only. Not all Muslims were enrolled in the
6 RMA.

7 Defendants C. Etchebehere and F. Cote then forced Plaintiff under pains of hunger to enroll in
8 and participate in the RMA program with non-Muslims, in order to receive permission for SATF to
9 receive food for the early morning Sahoora, i.e. pre-dawn breakfast.

10 Plaintiff seeks compensatory and punitive damages as relief.

11 IV.

12 DISCUSSION

13 A. Statement of Undisputed Facts

14 1. During all times relevant to this lawsuit, Plaintiff Curtis Boyd (G-63575) was an inmate
15 in the custody of the California Department of Corrections and Rehabilitation (CDCR), and
16 incarcerated at the California Substance Abuse and Treatment Facility and State Prison – Corcoran
17 (SATF). (Pl.’s Compl., ECF No. 1 at 6.)²

18 2. During all times relevant to the First Amended Complaint (FAC), Defendant
19 Etchebehere was employed by CDCR as an Associate Warden at SATF, Complex IV. (Decl. of C.
20 Etchebehere, ¶ 2.)

21 3. As the Associate Warden of Complex IV, Defendant was responsible for overseeing the
22 religious programs at SATF. (Decl. of C. Etchebehere, ¶ 3; see Decl. of F. Cote, ¶ 3.)

23 4. During all times relevant to the FAC, Defendant Cote was employed by CDCR as a
24 Community Partnership Manager (CPM) at SATF. (Decl. of F. Cote, ¶ 2.)

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² Both Plaintiff’s original and first amended complaints are signed under penalty of perjury. (ECF Nos. 1 & 47.)

1 5. During all times relevant to the FAC, Defendants Guembe, Hetebrink, and Ojeda were
2 employed by CDCR as State Chaplains at SATF. (Decl. of R. Guembe, ¶ 1; Decl. of D. Hetebrink, ¶
3 3; Decl. of J. Ojeda, ¶ 2.)

4 6. During all times relevant to the FAC, Defendants Gallagher and Odle were employed
5 by CDCR as Correctional Lieutenants at SATF, acting in the capacity of Correctional Captains. (Decl.
6 of J. Gallagher, ¶ 2; Decl. of B. Odle, ¶ 2.)

7 7. During all times relevant to the FAC, Defendant Perkins was employed by CDCR as a
8 Correctional Food Manager II (CFM) at SATF. (Decl. of D. Perkins, ¶ 2.)

9 8. Plaintiff has been practicing Islam since 1979. (Decl. of A. Whisnand, Ex. A at
10 Whisnand.009 [Pl.'s Dep. at 22:19-25].)

11 9. Plaintiff believes that the Quran is the divinely-inspired word of God. (Decl. of A.
12 Whisnand, Ex. A at Whisnand.014 [Pl.'s Dep. at 28:23-25].)

13 10. During the time period relevant to the First Amended Complaint, Plaintiff could
14 practice his faith by saying his five daily prayers, praying privately in his cell, or by praying with other
15 inmates in their cells, the dayroom, or on the yard. (Decl. of A. Whisnand, Ex. A at Whisnand.010
16 [Pl.'s Dep. at 23:21-24:1]; see also id. at Whisnand.011 [Pl.'s Dep. at 24:3-7]; see also id. at
17 Whisnand.013 [Pl.'s Dep. at 26:5-22]; see also id. at Whisnand.014 [Pl.'s Dep., at 28:4-11]; see also
18 Decl. of C. Etchebehere, ¶ 43; see also Decl. of R. Guembe, ¶¶ 3-4.)

19 11. Plaintiff could also practice his faith by attending the Friday “Jumu’ah” congregational
20 prayer for Muslim inmates. (Decl. of A. Whisnand, Ex. A at Whisnand.010-011 [Pl.'s Dep. at 23:21-
21 24:2]; see also id. at Whisnand.011 [Pl.'s Dep. at 24:3-7]; see also id. at Whisnand.013 [Pl.'s Dep. at
22 26:5-22]; see also id. at Whisnand.014 [Pl.'s Dep. at 28:4-11]; see also Decl. of C. Etchebehere, ¶ 43;
23 see also Decl. of R. Guembe, ¶¶ 3-4.)

24 12. Plaintiff attended Friday Jumu’ah prayer on a regular basis. (Decl. of A. Whisnand,
25 Ex. A at Whisnand.013 [Pl.'s Dep. at 26:20-22]; see also id. at Whisnand.094 [Pl.'s Dep., Errata
26 Sheet]; Decl. of R. Guembe, ¶¶ 3-4.)

27 13. Plaintiff could also practice his faith by fasting. (Decl. of A. Whisnand, Ex. A at
28 Whisnand.010 [Pl.'s Dep., at 23:14-20]; see also id. at Whisnand.011 [Pl.'s Dep., at 24:3-7].)

1 14. Plaintiff could also practice his faith by possessing religious property, such as prayer
2 rugs, prayer beads, (“dhikr beads”), prayer oil, religious literature, and music. (Decl. of A. Whisnand,
3 Ex. A at Whisnand.011 [Pl.’s Dep. at 24:8-19]; see also Decl. of C. Etchebehere, ¶ 43.)

4 15. Plaintiff could also practice his faith by wearing religious headwear (“kufi cap”).
5 (Decl. of A. Whisnand, Ex A at Whisnand.011 [Pl.’s Dep. at 24:20-23]; see also Decl. of C.
6 Etchebehere, ¶ 42.)

7 16. Plaintiff could also practice his faith by owning and reading religious literature,
8 including the Quran. (Decl. of A. Whisnand, Ex. A at Whisnand.012 [Pl.’s Dep. at 25:17]; see also
9 Decl. of C. Etchebehere, ¶ 43.)

10 17. Plaintiff could also borrow religious books from the library or chapel. (Decl. of C.
11 Etchebehere, ¶ 43.)

12 18. Plaintiff also participated in Ramadan at SATF during the three years prior to 2012.
13 (Decl. of A. Whisnand, Ex. A at Whisnand.027 [Pl.’s Dep. at 44:14-23].)

14 19. In 2012, Plaintiff was able to participate in two religious festivals at SATF—the Eid ul-
15 Adha and the Eid ul-Fitr. (Pl.’s Compl, ECF No. 1 at 17, 21-22.)

16 20. Plaintiff believes that certain foods are permissible for Muslims to eat (“halal”) while
17 others are prohibited (“haram”).³

18 21. Generally, according to Plaintiff’s religious beliefs, anything that is not strictly haram
19 (prohibited), is halal (permissible). (Decl. of A. Whisnand, Ex. A at Whisnand.015-016 [Pl.’s Dep. at
20 31:22-32:7]; see also id. at Whisnand.016 [Pl.’s Dep. at 32:8-24]; see also id. at Whisnand.042 [Pl.’s
21 Dep. at 62:6-16.]

22 22. According to Plaintiff’s religious beliefs, foods that are haram, or prohibited, include
23 alcohol, pork, meat that is not killed in the name of Allah, and food that is contaminated with dyes or
24 pesticides. (Decl. of A. Whisnand, Ex. A at Whisnand.016 [Pl.’s Dep. at 32:8-24]; see also id. at
25 Whisnand.017-018 [Pl.’s Dep. at 33:5-34:4]; see also id. at Whisnand.021-022 [Pl.’s Dep. at 37:15-
26 38:16].)

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28 ³ Plaintiff was misquoted throughout his deposition as saying “haroun,” instead of “haram.” See Decl. of A. Whisnand,
Ex. A at Whisnand.094-098 [Pl.’s Dep., Errata Sheet].)

1 23. According to Plaintiff’s religious beliefs, food that was grown and sourced to be halal
2 can be rendered haram if the person handling the food was an idol worshiper. (Decl. of A. Whisnand.
3 Ex. A at Whisnand.048-050 [Pl.’s Dep at 70:7-72:10].)

4 24. According to Plaintiff’s religious beliefs, a prison diet that was otherwise halal could
5 become offensive to him if he learned that non-Muslim homosexuals or idol worshipers were also
6 consuming that diet. (Decl. of A. Whisnand, Ex. A at Whisnand.052-053 [Pl.’s Dep at 75:15-76:6];
7 see also id. at Whisnand.053-054 [Pl.’s Dep. at 76:7-77:9].)

8 25. According to Plaintiff’s religious beliefs, Plaintiff can eat haram foods if forced by
9 necessity to do so. (Decl. of A. Whisnand, Ex. A at Whisnand.019 [Pl.’s Dep. at 35:1-11]; see also id.
10 at Whisnand.022 [Pl.’s Dep. at 38:18-25].)

11 26. According to Plaintiff’s religious beliefs, Plaintiff can avoid the spiritual consequences
12 of eating haram food by praying for forgiveness and repenting. (Decl. of A. Whisnand, Ex. A at
13 Whisnand.018 [Pl.’s Dep. at 34:21-25].)

14 27. Plaintiff believes there may have been instances during his incarceration where he
15 unknowingly consumed haram foods. (Decl. of A. Whisnand, Ex. A at Whisnand.019-020 [Pl.’s Dep.
16 at 35:12-36:20].)

17 28. Plaintiff also believes that there may have been occasions prior to his incarceration
18 where he unknowingly consumed haram foods. (Decl. of A. Whisnand, Ex. A at Whisnand.020-021
19 [Pl.’s Dep. at 36:21-37:14].)

20 29. Ramadan is an annual, month-long religious fast and celebration observed by Muslims.
21 (Decl. of C. Etchebehere, ¶ 6; see also Decl. of A. Whisnand, Ex. A at Whisnand.023 [Pl.’s Dep at
22 39:4-8].)

23 30. According to Plaintiff’s religious beliefs, during the month of Ramadan he is required
24 to fast from sunrise to sunset, avoid idle talk, avoid impure thoughts, and do good deeds. (Decl. of A.
25 Whisnand, Ex. A at Whisnand.023-24 [Pl.’s Dep at 39:4-40:11].)

26 31. According to Plaintiff’s religious beliefs, he is not required to break his fast with any
27 particular food item—even water will suffice. (Decl. of A. Whisnand, Ex. A at Whisnand.025 [Pl.’s
28 Dep. at 41:8-18].)

1 32. According to Plaintiff’s religious beliefs, other than the fasting component, Ramadan
2 does not alter Islam’s religious dietary laws; during Ramadan, Plaintiff is only forbidden from eating
3 foods that are haram. (Decl. of A. Whisnand, Ex. A at Whisnand.025-026 [Pl.’s Dep at 41:19-42:4].)

4 33. During all times relevant to the FAC, SATF had several diet programs available to
5 inmates, including: the “mainline” or general population diet, the Jewish Kosher Diet, the Religious
6 Meat Alternate (RMA) Program, and the vegetarian diet. (Decl. of A. Whisnand, Ex. A at
7 Whisnand.035 [Pl.’s Dep. at 55:15-20].)

8 34. During normal feeding programming, all inmates, regardless of their diet program,
9 would receive two hot meals in the dining hall (breakfast and dinner) and a sack lunch, to be eaten in
10 their cells. (Decl. of C. Etchebehere, ¶ 8; see also Decl. of A. Whisnand, Ex. A at Whisnand.033 [Pl.’s
11 Dep at 53:4-17].)

12 35. In practice, inmates at SATF could keep items from their sack lunch in their cells.
13 (Decl. of A. Whisnand, Ex. A at Whisnand.034-035 [Pl.’s Dep. at 54:5-55:3-; see also Decl. of C.
14 Etchebehere, ¶ 9.)

15 36. Inmates could also purchase food from SATF’s canteen, such as ramen soups, beans,
16 instant rice, candy, or cookies. (Decl. of A. Whisnand, Ex. A at Whisnand.062-063 [Pl.’s Dep. at
17 90:15-91:2]; see also Decl. of C. Etchebehere, ¶ 9.)

18 37. Inmates were allowed to keep items that they had purchased from the canteen in their
19 cells. (Decl. of C. Etchebehere, ¶ 9; see also Decl. of A. Whisnand, Ex. A at Whisnand.075 [Pl.’s
20 Dep. at 108:3-14].)

21 38. Inmates at SATF routinely shared with each other items they had purchased from the
22 canteen. (Decl. of C. Etchebehere, ¶ 9.)

23 39. Inmates had access to water via a sink in their cells, water fountains, in the dayroom,
24 and water fountains on the yard. (Decl. of A. Whisnand, Ex. A at Whisnand.035 [Pl.’s Dep. at 55:4-
25 14]; see also id. Whisnand.088 [Pl.’s Dep. at 127:12-16]; see also Decl. of C. Etchebehere, ¶ 10.)

26 40. The breakfasts and dinners on the RMA diet were typically identical to the mainline
27 diet, with the exception of the meat item (i.e., the “meat alternate”). (Decl. of A. Whisnand, Ex. A at
28 Whisnand.059-060 [Pl.’s Dep. at 84:11-85:22].)

1 41. The sack lunch for the RMA diet was often identical to the vegetarian diet. (Decl. of A.
2 Whisnand, Ex. A at Whisnand.036-037 [Pl.'s Dep at 56:19-57:9].)

3 42. Plaintiff enrolled in the RMA diet at SATF as early as July 2010. (Decl. of A.
4 Whisnand, Ex. A at Whisnand.055-058 [Pl.'s Dep. at 78:13-80:14]; see also id. at Whisnand.101-102
5 [Pl.'s Dep., Ex. 4].)

6 43. Three months later, however, in October 2010, Plaintiff cancelled his RMA diet and
7 returned to the mainline diet. (Decl. of A. Whisnand, Ex. A at Whisnand.058 [Pl.'s Dep. at 82:15-23];
8 see also id. at Whisnand.102 [Pl.'s Dep., Ex. 4]; see id. at Whisnand.061 [Pl.'s Dep at 87:3-12].)

9 44. Plaintiff cancelled his RMA diet because he could not be certain that the RMA diet was
10 halal: he could not verify how the food was handled or processed. (Decl. of A. Whisnand, Ex. A at
11 Whisnand.038-039 [Pl.'s Dep. at 58:23-59:18]; see also id. at Whisnand.039-041 [Pl.'s Dep. at 59:19-
12 61:1]; see also id. at Whisnand.043-044 [Pl.'s Dep. at 65:25-66:19].)

13 45. From October 2010 through September 2011, Plaintiff was enrolled in the mainline
14 diet. (Decl. of A. Whisnand, Ex. A at Whisnand.061 [Pl.'s Dep. at 87:3-12].)

15 46. In September 2011, Plaintiff applied for the vegetarian diet. (Decl. of A. Whisnand,
16 Ex. A at Whisnand.061 [Pl.'s Dep. at 87:3-12]; see also id. at Whisnand.045-046 [Pl.'s Dep. at 67:4-
17 68:2].)

18 47. As was true with the RMA diet, Plaintiff could not be sure that the vegetarian diet was
19 halal, because he could not verify whether the food was prepared or handled correctly. (Decl. of A.
20 Whisnand, Ex. A at Whisnand.041 [Pl.'s Dep. at 61:5-16]; see also id. at Whisnand.045-046 [Pl.'s
21 Dep. at 67:4-68:2].)

22 48. For the same reasons, Plaintiff could not be sure that any of the diets at SATF were
23 either halal or haram, because he could not verify how the foods were handled and processed. (Decl.
24 of A. Whisnand, Ex. A at Whisnand.046 [Pl.'s Dep. at 68:5-17]; see also id. at Whisnand.046-047
25 [Pl.'s dep. at 68:18-69:24]; see also id. at Whisnand.047-048 [Pl.'s Dep. at 69:25-70:6].)

26 49. In the prison context, it would be extremely difficult to ensure that every aspect of a
27 prison diet—from the sourcing of the food, to processing, packaging, handling, preparing, and
28

1 serving—was completely halal. (Decl. of A. Whisnand, Ex. A at Whisnand.046-047 [Pl.’s Dep. at
2 68:18-69:24].)

3 50. Prior to the start of Ramadan in July 2012, Plaintiff remained enrolled in the vegetarian
4 diet. (Decl. of A. Whisnand, Ex. A at Whisnand.041 [Pl.’s Dep. at 61:2-4].)

5 51. As the Associate Warden overseeing religious programs in 2012, Defendant
6 Etchebehere was responsible for coordinating the observance of Ramadan at SATF during the time
7 period relevant to the FAC. (Decl. of C. Etchebehere, ¶ 5.)

8 52. Typically, a Community Partnership Manager (CPM) would oversee the religious
9 program at SATF, but because the CPM did not start work until May 2012, the primary responsibility
10 for overseeing religious programs fell to Defendant Etchebehere. (Decl. of C. Etchebehere, ¶ 4; see
11 also Decl. of F. Cote, ¶ 3.)

12 53. Custody staff members, like Defendant Etchebehere, did not typically administer
13 religious programs. (Decl. of C. Etchebehere, ¶ 4.)

14 54. In 2012, Ramadan was observed at SATF beginning on the evening of July 19, 2012,
15 and ending on August 18, 2012. (Decl. of C. Etchebehere, ¶ 6; see also Decl. of A. Whisnand, Ex. A
16 at Whisnand.071-072 [Pl.’s Dep at 101:24-102:2]; see also Decl. of J. Ojeda, ¶ 3; see also Decl. of D.
17 Perkins, ¶ 3.)

18 55. In the years prior to 2012, Ramadan at SATF followed a basic framework: Inmates who
19 had been verified as Muslims were released to the dining halls after sunset on each night of Ramadan.
20 At the dining halls, the Muslim inmates would receive an evening meal and a sack “breakfast” to eat
21 in their cells before sunrise (i.e., the “Suhor” meal). (Decl. of C. Etchebehere, ¶ 7; see also Decl. of
22 A. Whisnand, Ex. A at Whisnand.031-032 [Pl.’s Dep., at pp. 50:7-51:11].)

23 56. Inmates not participating in Ramadan remained on the normal feeding schedule and
24 program: these inmates received a hot breakfast in the dining hall, a sack lunch to take back to their
25 cells, and a hot dinner in the dining hall. (Decl. of C. Etchebehere, ¶ 8; Decl. of A. Whisnand, Ex. A
26 at Whisnand.033-034 [Pl.’s Dep. at 53:4-54:4].)

27 57. In the years prior to 2012, Ramadan at SATF followed a basic framework: Inmates who
28 had been verified as Muslims were released to the dining halls after sunset on each night of Ramadan.

1 At the dining halls, the Muslim inmates would receive an evening meal and a sack “breakfast” to eat
2 in their cells before sunrise (i.e., the “Suhoor” meal). (Decl. of C. Etchebehere, ¶ 7; see also Decl. of
3 A. Whisnand, Ex. A at Whisnand.031-032 [Pl.’s Dep. at 50:7-51:11].)

4 58. During the planning process for Ramadan in 2012, SATF’s Muslim Chaplain position
5 was vacant. (Decl. of C. Etchebehere, ¶ 12; see also Decl. of R. Guembe, ¶ 6; see also Decl. of J.
6 Ojeda, ¶ 4; see also Decl. of D. Hetebrink, ¶ 4; see also Decl. of F. Cote, ¶ 4; see also Decl. of D.
7 Perkins, ¶ 5.)

8 59. Although SATF was in the process of hiring a Muslim Chaplain, Defendant
9 Etchebehere and her staff had to have a plan in place for Ramadan by no later than the middle of June
10 2012. (Decl. of C. Etchebehere, ¶ 14.)

11 60. Prior to 2012, Defendants Etchebehere and Cote had never planned for Ramadan at
12 SATF or any other CDCR institution. (Decl. of C. Etchebehere, ¶ 15; Decl. of F. Cote, ¶ 6.)

13 61. Defendant Etchebehere proposed to use the RMA diet list as a starting point for
14 identifying the Muslim inmates who were eligible to participate in Ramadan. (Decl. of C.
15 Etchebehere, ¶ 18; see also Decl. of R. Guembe, ¶ 9; Decl. of J. Ojeda, ¶ 7; Decl. of D. Hetebrink, ¶ 5;
16 Decl. of F. Cote, ¶ 7.)

17 62. This proposal was discussed at a meeting at SATF on June 18, 2012. (Decl. of C.
18 Etchebehere, ¶ 19; see also Decl. of J. Ojeda, ¶ 8; see also Decl. of F. Cote, ¶ 8; see also Decl. of B.
19 Odle, ¶ 4; see also Decl. of J. Gallagher, ¶ 3; see also Decl. of D. Perkins, ¶ 10; see also Decl. of R.
20 Guembe, ¶ 10.)

21 63. Only Defendants Etchebehere, Cote, Ojeda, Gallagher, Odle, and Perkins were present
22 for the June 18, 2012, Ramadan meeting. (Id.)

23 64. Defendant Hetebrink was not present for the June 18, 2012, Ramadan meeting. (Decl.
24 of D. Hetebrink, ¶ 6; see also Decl. of A. Whisnand, Ex. A at Whisnand.083 [Pl.’s Dep. at 122:21-23];
25 see also id. at Whisnand.132 [Pl.’s Dep., Ex. 8].)

26 65. Defendant Guembe was also not present for the June 18, 2012, Ramadan meeting.
27 (Decl. of R. Guembe, ¶ 10; see also Decl. of A. Whisnand, Ex. A at Whisnand.083-084 [Pl.’s Dep. at
28 122:24-123:4]; see also id. at Whisnand.132 [Pl.’s Dep., Ex. 8].)

1 66. At the time of the June 18, 2012, meeting, SATF was in the process of hiring a Muslim
2 Chaplain, A. Haroun. (Decl. of C. Etchebehere, ¶ 20.)

3 67. Chaplain Haroun was not scheduled to start work until July 2, 2012. (Decl. of C.
4 Etchebehere, ¶ 20; see also Decl. of A. Whisnand, Ex. A at Whisnand.092-093 [Pl.’s Dep. at 130:23-
5 131:11].)

6 68. There were between approximately 3,500 and 4,000 inmates across seven facilities at
7 SATF in July 2012. (Decl. of C. Etchebehere, ¶ 41.)

8 69. The Ramadan policy was adopted in a memorandum entitled “Ramadan,” dated July
9 11, 2012. (Decl. of C. Etchebehere, ¶ 26.)

10 70. July 11, 2012 was the first day that Muslim Chaplain Haroun was able to orient
11 himself and meet the inmates and staff on each of SATF’s facilities. (Decl. of C. Etchebehere, ¶ 29.)

12 71. On July 11, 2012, Defendant Etchebehere circulated the memorandum for approval and
13 signature by Defendant Perkins (CFM), Defendant Cote (CPM), the Facility Captains, including
14 Defendants Gallagher and Odle, the Associate Wardens, and the Warden. (Decl. of C. Etchebehere, ¶
15 28.)

16 72. Defendant Hetebrink did not sign the July 11, 2012, Ramadan memorandum. (Decl. of
17 D. Heterbrink, ¶ 8; see also Decl. of C. Etchebehere, Ex. E at Etchebehere.014-018.)

18 73. Defendant Guembe did not sign the July 11, 2012, Ramadan memorandum. (Decl. of
19 R. Guembe, ¶ 14.)

20 74. Defendant Ojeda did not sign the July 11, 2012, Ramadan memorandum. (Decl. of J.
21 Ojeda, ¶ 11.)

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

25 76. Defendant Etchebehere also forwarded the final memorandum to SATF’s Chaplains to
26 ensure that they would notify the inmates on their assigned yards. (Decl. of C. Etchebehere, ¶ 31.)

1 77. Defendant Etchebehere also personally instructed custody staff members to inform
2 inmates wishing to participate in Ramadan to contact Chaplain Haroun as soon as possible to confirm
3 their eligibility. (Decl. of C. Etchebehere, ¶ 32.)

4 78. Plaintiff received a copy of the July 11, 2012, memorandum by July 19, 2012, at the
5 latest. (Decl. of A. Whisnand, Ex. A at Whisnand.068-069 [Pl.'s Dep. at 98:17-99:21]; see also id. at
6 Whisnand.115-117 [Pl.'s Dep., Ex. 6]; see also id. at Whisnand.065-066 [Pl.'s Dep. at 93:24-94:22];
7 see also id. at Whisnand.067 [Pl.'s Dep. at 96:3-14].)

8 79. Plaintiff understood that the memorandum instructed that he must be enrolled in the
9 RMA diet in order to participate in Ramadan. (Decl. of A. Whisnand, Ex. A at Whisnand.070-071
10 [Pl.'s Dep. at 100:1-101:8]; see also Pl.'s Compl., ECF No. 1 at 7, ¶ 11.)

11 80. Plaintiff protested the policy to use the RMA diet list as the criteria for Ramadan
12 eligibility, because he was concerned that non-Muslims would be ducated for Ramadan. (Decl. of A.
13 Whisnand, Ex. A at Whisnand.051-052 [Pl.'s Dep. at 74:12-75:14]; see also id. at Whisnand.051-052
14 [Pl.'s Dep. at 76:11-77:9]; see also Pl.'s First Am. Compl., ECF No. 47 at 4 [“Defendants ... then
15 FORCED plaintiff ... to enroll in and participate in the Religious Meal Alternative program with non-
16 Muslims....”].)

17 81. Plaintiff's fear—that non-Muslims would participate in Ramadan because their names
18 appeared on the RMA list—never materialized. (Decl. of A. Whisnand, Ex. A at Whisnand.054-055
19 [Pl.'s Dep. at 77:14-78:12].)

20 82. Beginning on July 19, 2012, and continuing through the first week of Ramadan, it came
21 to Defendant Etchebehere's attention that there were a few Muslim inmates—the majority of whom
22 were on the vegetarian diet—who were not initially identified to receive their Ramadan meals. (Decl.
23 of C. Etchebehere, ¶ 34.)

24 83. Plaintiff claims that from July 19, 2012, through July 25, 2012, he was denied entry to
25 the dining halls to receive his Ramadan meals. (Decl. of A. Whisnand, Ex. A at Whisnand.074 [Pl.'s
26 Dep. at 107:15-18]; see also id. at Whisnand.081 [Pl.'s Dep. at 119:7-14].)

27 84. On July 19, 2012—the first day of Ramadan—Plaintiff was still enrolled in the
28 vegetarian diet. (Decl. of A. Whisnand, Ex. A at Whisnand.041 [Pl.'s Dep. at 61:2-4].)

1 85. Plaintiff did not sign up for the RMA diet until Saturday, July 21, 2012, by submitting
2 his Religious Diet Request Form to Defendant Guembe. (Decl. of R. Guembe, ¶ 12; see also
3 Whisnand, Ex. A at Whisnand.074 [Pl.'s Dep at 107:8-18]; see also id. Whisnand.077 [Pl.'s Dep. at
4 114:14-20].)

5 86. At the time he submitted his RMA request, Plaintiff knew that it would likely take a
6 couple of days for his request to be approved, and for his name to be added to the Ramadan
7 participation list. (Decl. of A. Whisnand, Ex. A at Whisnand.077 [Pl.'s Dep. at 114:21-25]; see also
8 id. at Whisnand.078 [Pl.'s Dep. at 115:10-15].)

9 87. Plaintiff did not submit an inmate grievance concerning his missed Ramadan meals
10 until July 22, 2012, the fourth day of Ramadan. (Decl. of A. Whisnand, Ex. A at Whisnand.079-080
11 [Pl.'s Dep. at 116:1-117:8]; see also id. at Whisnand.121 [Pl.'s Dep., Ex. 7].)

12 88. With the exception of contacting Defendant Guembe on July 19, 2012 and July 21,
13 2012, Plaintiff did not contact Defendants concerning the 2012 Ramadan policy. (Decl. of A.
14 Whisnand, Ex. A at Whisnand.114-115 [Pl.'s Dep. at 113:21-114:10-13]; see also id. at
15 Whisnand.082-083 [Pl.'s Dep. at 119:24-120:9]; see also id. at Whisnand.007-008 [Pl.'s Dep. at
16 10:16-11:14]; see also Decl. of C. Etchebehere, ¶ 39.)

17 89. Plaintiff was able to receive his Ramadan meals and participate in the remainder of
18 Ramadan beginning on July 26, 2012. (Decl. of A. Whisnand, Ex. A at Whisnand.081 [Pl.'s Dep. at
19 119:7-14].)

20 90. Beginning the second week of Ramadan in 2012, the Muslim inmates were also
21 afforded an additional thirty minutes of prayer time before their evening meal. Defendant helped
22 coordinate this accommodation. (Decl. of C. Etchebehere, ¶ 44.)

23 91. Throughout the period during which Plaintiff claims he was not receiving his Ramadan
24 meals, Plaintiff consumed items he had purchased from the canteen a week before Ramadan. (Decl. of
25 A. Whisnand, Ex. A at Whisnand.063-064 [Pl.'s Dep. at 91:3-92:24]; see also id. at Whisnand.113
26 [Pl.'s Dep., Ex. 5]; see also id. at Whisnand.075 [Pl.'s Dep. at 108:3-20]; see also id. at
27 Whisnand.087-088 [Pl.'s Dep. at 126:22-127:11]; see also id. at Whisnand.088-089 [Pl.'s Dep. at
28 127:17-128:18].)

1 92. Plaintiff did not ask any other inmates for food during the time period he claims he
2 went without his Ramadan meals. (Decl. of A. Whisnand, Ex. A at Whisnand.089-090 [Pl.’s Dep. at
3 128:24-129:2].)

4 93. Plaintiff did not seek medical attention during the period of July 19, 2012, through July
5 25, 2012. (Decl. of A. Whisnand, Ex. A at Whisnand.091 [Pl.’s Dep. at 130:6-22].)

6 **B. Findings on Defendants’ Motion**

7 As previously stated, Plaintiff contends that his rights to the free exercise of his religion were
8 violated by a prison policy that required him to enroll in a “halal” diet to receive meals and participate
9 in the month of Ramadan. At the time, Plaintiff was on a vegetarian diet, and was not initially
10 identified for Ramadan, and missed up to seven meals.

11 Defendants move for summary judgment because: (1) Plaintiff’s religious rights were not
12 substantially burdened by way of the 2012 Ramadan policy; (2) even if Plaintiff’s religious rights were
13 substantially burdened, using the RMA list was objectively reasonable under the circumstances, and
14 was rationally related to legitimate penological interests; (3) with respect to Defendants Gueembe,
15 Hetebrink , Cote, Odle, and Gallagher, the undisputed evidence shows that they did not play a
16 substantial role in adopting the Ramadan policy at issue in this suit; and (4) the undisputed evidence
17 show that Defendants are entitled to qualified immunity.

18 1. Substantial Burden by way of the 2012 Ramadan Policy

19 Defendants argue that requiring Plaintiff to enroll in the RMA diet in order to participate in
20 Ramadan did not substantially burden his religious rights.

21 “[P]risoners retain the protections of the First Amendment” but their “right to freely exercise
22 [their] religion is limited by institutional objectives and by the loss of freedom concomitant with
23 incarceration.” Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013)
24 (citing O’Lone v. Estate of Shabazz, 482 U.S. 342, 348, 107 S.Ct. 2400 (1997)). The protections of
25 the Free Exercise Clause are triggered when prison officials substantially burden the practice of an
26 inmate’s religion by preventing him from engaging in conduct which he sincerely believes is
27 consistent with his faith, but an impingement on an inmate’s constitutional rights will be upheld “if it
28 is reasonably related to legitimate penological interests.” Shakur v. Schriro, 514 F.3d 878, 884-85

1 (9th Cir. 2008) (quoting Turner v. Safley, 482 U.S. 78, 89 (1987)). Courts apply a four-part test to
2 balance the inmate’s free exercise right against the state’s legitimate penological interests to determine
3 if a regulation is reasonable and constitutional. Turner, 482 U.S. at 89.

4 The Ninth Circuit has recently explained:

5 A person asserting a free exercise claim must show that the government action in question
6 substantially burdens the person’s practice of her religion. A substantial burden...places more
7 than an inconvenience on religious exercise; it must have a tendency to coerce individuals into
8 acting contrary to their religious beliefs or exert substantial pressure on an adherent to modify
9 his behavior and to violate his beliefs.... To ensure that courts afford appropriate deference to
10 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.

11 Jones v. Williams, 791 F.3d 1023, 1031-32 (9th Cir. 2015) (internal quotations and citations omitted).

12 “It was well established in 2007, and remains so today, that government action places a substantial
13 burden on an individual’s right to free exercise of religion when it tends to coerce the individual to
14 forego her sincerely held religious beliefs or to engage in conduct that violates those beliefs.” Id. at
15 1033.

16 It is undisputed that Plaintiff was enrolled in the RMA diet for a period of approximately four
17 months in 2010. (UMF⁴ No. 42.) There were similarities between the RMA diet and the mainline diet
18 and between the RMA diet and the vegetarian diet. (UMF Nos. 45-46.) Indeed, Plaintiff has enrolled
19 in both the mainline diet and the vegetarian diet at SATF. (UMF Nos. 43, 45, 46, 50.) Further,
20 Plaintiff’s religious beliefs do not require him to eat certain foods during Ramadan. (UMF Nos. 31-
21 32.) Moreover, although Plaintiff claims that he cannot be sure that the RMA diet is actually halal
22 (UMF No. 44), such claim is speculative. Plaintiff acknowledged that he cannot be sure that any of
23 SATF’s diets are strictly halal (UMF Nos. 47-49), and nothing has prevented him from enrolling in
24 each of SATF’s diets during his incarceration (UMF Nos. 42, 43, 46). There is no evidence before the
25 Court to suggest that the food provided by the RMA diet would be impermissible for purposes of
26 breaking Plaintiff’s fast each night of Ramadan. (UMF Nos. 31-32.)

27
28

⁴ “UMF” refers to the Statement of Undisputed Facts set forth in section IV(A) herein.

1 Based on the undisputed facts and evidence before the Court, requiring Plaintiff to enroll in the
2 RMA diet was not a substantial burden on Plaintiff's religious rights. Alternatively, even assuming
3 that enrollment in the RMA posed a substantial burden on Plaintiff's religious practices, Defendants
4 are entitled to summary judgment because the RMA was reasonably related to legitimate penological
5 interests.

6 2. Analysis of Turner Factors

7 Defendants argue that the 2012 Ramadan policy was reasonably related to legitimate
8 institutional interests: to simplify the Ramadan process and to reduce administrative burdens.

9 “When a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if
10 it is reasonably related to legitimate penological interests.” Shakur, 514 F.3d at 884 (quoting Turner
11 v. Safley, 482 U.S. 78, 89 (1987)). In Turner, the Supreme Court articulated four factors to consider
12 in determining whether a prison regulation is valid:

- 13 (1) Whether there is a “valid, rational connection between the prison regulation and the
14 legitimate governmental interest put forward to justify it”;
- 15 (2) Whether there are “alternative means of exercising the right that remain open to prison
16 inmates”;
- 17 (3) Whether “accommodation of the asserted constitutional right” will “impact ... guards
18 and other inmates, and on the allocation of prison resources generally”; and
- 19 (4) Whether there is an “absence of ready alternatives” versus the “existence of obvious,
20 easy alternatives.”

21 Shakur, 514 F.3d at 882 (citing Turner, 482 U.S. at 89-90.)

22 **a. First Turner Factor**

23 In considering the first Turner factor, the court must “(1) determine whether the regulation is
24 legitimate and neutral, and (2) assess whether there is a rational relationship between the governmental
25 objective and the regulation.” Ashker, 350 F.3d at 922. The “orderly administration of a program that
26 allows ... prisons to accommodate the religious dietary needs of thousands of prisoners” is a
27 legitimate governmental interest. Resnick v. Adams, 348 F.3d 763, 769 (9th Cir. 2003).

28 Defendants argue that the 2012 Ramadan policy was a reasonable method to reduce
administrative burdens for Defendants, custody staff, Food Services, the inmates, and Chaplain

1 Haroun. (Decl. of C. Etchebehere, ¶¶ 22-25, 40-41; see also Decl. of D. Perkins, ¶¶ 12-13.)
2 Defendants specifically submit that at the time in question, there was not a Muslim chaplain at SATF
3 and it was determined that using the RMA list was the most efficient method to identify the majority
4 of Muslim inmates in a short period of time. (Decl. of C. Etchebehere, ¶¶ 21, 41; see also Decl. of R.
5 Guembe, ¶ 11; Decl. of J. Ojeda, ¶ 9; Decl. of D. Perkins, ¶¶ 12-13.) Because the RMA contained a
6 halal diet, Defendants reasonably assumed that most of SATF's Muslim inmates were either already
7 enrolled in the RMA, or would do so quickly after learning of the Ramadan policy. (Decl. of C.
8 Etchebehere, ¶¶ 18-19, 21; Decl. R. Guembe, ¶ 11; Decl. of J. Ojeda, ¶ 7; Decl. of D. Perkins, ¶ 9;
9 Decl. of A. Whisnand, Ex. A at Whisnand.070-071 [Pl.'s Dep., at pp. 100:7-101:8; Cal. Code Regs. tit.
10 15, § 3054.3 (2012).) In order to reduce the administrative burden on custody staff, one definitive list
11 would prevent staff from being burdened with additional last minutes requests, which had taken place
12 in prior years. (Decl. of C. Etchebehere, ¶¶ 13, 22-25, 40-41; Decl. of D. Perkins, ¶¶ 7-8, 12-13.) In
13 addition, it would prevent food services from having to prepare multiple types of meal trays for
14 Ramadan and prevent scrambling at the last minute. (Decl. of C. Etchebehere, ¶ 25; Decl. of D.
15 Perkins, ¶ 8.) To participate in Ramadan, it only required the Muslim who were not already on the
16 RMA diet to submit a religious diet request form to any chaplain. (Decl. of C. Etchebehere, ¶ 23.) To
17 facilitate reducing the administrative burden on the new Muslim chaplain (who could not meet with
18 the Muslim inmates until July 11, 2012) using the RMA list as the starting point prevented having to
19 create a list of the Muslim inmates from scratch. (Decl. of C. Etchebehere, ¶¶ 20, 29.)

20 Defendants have presented sufficient evidence to demonstrate that the 2012 Ramadan policy
21 was a reasonable method to reduce administrative burdens for Defendants, custody staff, Food
22 Services, the inmates, and Chaplain Haroun. There is a valid rational connection between prison
23 officials' interest in a simplified, orderly and cost-efficient food system and the 2012 Ramadan policy
24 was a reasonable method to reduce administrative burdens to all parties involved. Resnick v. Adams,
25 348 F.3d at 769.

26 Considering the evidence of the circumstances surrounding the regulation, this factor weighs in
27 favor of Defendants in serving a legitimate and neutral penological objective.

28 ///

1 **b. Second Turner Factor**

2 The second Turner factor considers “not whether the inmate has an alternative means of
3 engaging in the particular religious practice that he or she claims is being affected; rather, ... whether
4 the inmates have been denied all means of religious express.” Ward v. Walsh, 1 F.3d 873, 877-78 (9th
5 Cir. 1993) (citing O’Lone, 482 U.S. at 351-52).

6 An inmate who has ““alternative means by which he can practice his religion”” has not been
7 deprived of all means of religious expression. Shakur, 514 F.3d at 886 (citing Ward, 1 F.3d at 877)
8 (Muslim inmate who did not receive a Kosher diet not deprived of all means of religious expression
9 where he could possess a Quran, prayer rug, and religious items, could visit an imam upon request,
10 and could participate in various rituals and ceremonies); Boyd v. Lehman, No. C 05-0020-JLR, 2006
11 WL 1442201, at *6 (W.D. Wash. May 19, 2006) (same, where Muslim inmate could not receive halal
12 meats, but could receive a halal vegetarian diet, could attend two religious holidays per year, could
13 participate in five daily prayers, could fast during Ramadan, and could visit a Muslim chaplain); see
14 also O’Lone, 482 U.S. at 351-52 (same, where Muslim inmate could not attend weekly Jumu’ah
15 prayer during working hours, but could congregate for prayer when not at work, could access a
16 Muslim imam, could eat a religious diet, and could observe Ramadan).

17 In this instance, Plaintiff had various different ways to practice his faith, including: praying his
18 five daily prayers, praying privately in his cell, or praying with other inmates in their cells, the
19 dayroom, or on the yard (UMF No. 10); regularly attending the Friday “Jumu’ah” congregational
20 prayer for Muslim inmates (UMF Nos. 11-12); fasting (UMF No. 13); possessing religious property,
21 such as prayer rugs, prayer beads (“dhikr beads”), prayer oil, religious literature, and music (UMF No.
22 14); wearing religious headwear (“kufi cap”) (UMF No. 15); owning and reading religious literature,
23 including the Quran (UMF No. 16); borrowing religious books from the library or chapel (UMF No.
24 17); participating in Ramadan during the three years prior to 2012 (UMF No. 18), and, in 20120,
25 participating in two religious festivals (UMF No. 19).

26 Although it is undisputed that Plaintiff did not receive Ramadan meals for seven days, it is also
27 undisputed that Plaintiff had various other alternative avenues to practice his religion, and this factor
28 weighs in favor of Defendants.

1 **c. Third Turner Factor**

2 The third consideration is to determine the impact the accommodation of the asserted
3 constitutional right will have on guards and other inmates, and on the allocation of prison resources
4 generally. Turner, 482 U.S. at 90. “When an accommodation of an asserted right will have a
5 significant ‘ripple effect’ on fellow inmates or on prison staff, courts should be particularly deferential
6 to the informed discretion of corrections officials.” Id.

7 Here, Defendants assert that proceeding without a definitive list of Ramadan participants—
8 such as the one intended here—would have placed an undue burden on custody staff and food
9 services. With respect to food services, Defendants argue although there would have been little cost
10 difference in providing a vegetarian meal to Plaintiff during Ramadan, there would have been a burden
11 on food services if they had to prepare different types of meals for Ramadan. With regard to custody
12 staff, Defendants argue that instead of focusing on maintaining the security of the dining halls, officers
13 would have had to contend with inmates demanding to participate at the last minute, which was a
14 documented problem in prior years.

15 There is insufficient evidence before the Court to determine the third Turner factor that
16 requiring enrollment in the RMA would have a marked effect on CDCR. Defendants merely speculate
17 as to a “ripple effect,” and there is insufficient evidence to support such assertion. However, it is
18 questionable whether this factor is even applicable because Plaintiff was ultimately accommodated,
19 and to the extent this factor applies to the seven day delay in receiving Ramadan meals, the delay was
20 reasonable given that Plaintiff was not enrolled in the RMA diet and staff had to process and
21 implement his request. (Pl.’s Dep. at 107, 11-114.) Nonetheless, this factor weighs in favor of
22 Plaintiff.

23 **d. Fourth Turner Factor**

24 As to the fourth Turner factor, the Court determines whether the regulation is an “exaggerated
25 response” to the prison’s concerns. Turner, 482 U.S. at 90-91. “The burden is on the prisoner
26 challenging the regulation to show that there are obvious, easy alternatives to the regulation.” Chau v.
27 Young, No. C 13-764 SI (PR), 2014 WL 4100635, *6 (N.D. Cal. Aug. 20, 2014) (citing O’Lone, 482
28 U.S. at 350). This determination is “not a ‘least restrictive alternative’ test: prison officials do not

1 have to set up and then shoot down every conceivable alternative method of accommodating the
2 claimant’s constitutional complaint.” Turner, 482 U.S. at 91. Rather, the relative inquiry is “whether
3 the prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted
4 right while not imposing more than a de minimis cost to the valid penological goal.” Overton v.
5 Bazzetta, 539 U.S. 126, 135-36 (2003).

6 Defendants submit that without the assistance of a Muslim chaplain, with limited experience in
7 planning for Ramadan, and without any institutional guidelines to follow, Defendants needed a way to
8 quickly identify the majority of the Muslim inmates for Ramadan.

9 In his opposition, Plaintiff claims, without evidentiary support, that “the less restrictive choice
10 was [to use] the Friday Jumah prayer list” to identify inmates for Ramadan, because it was “the most
11 comprehensive listing of Muslim inmates at SATF....” (ECF No. 101 at 9.) However, the
12 determination of whether the Friday Jumah prayer list was the “less restrictive choice” is not
13 dispositive. See, e.g., O’Lone v. Estate of Shabazz, 482 U.S. at 349 (under Turner factors, the prison
14 officials are not required to “set up and shoot down every conceivable alternative method....”).
15 Defendants submit that such method was too administratively burdensome, and using the RMA list as
16 a starting point was the most efficient approach that Defendants could employ under the
17 circumstances. Defendant Etchebehere declares that “[b]eginning as early as May 2012, Chaplain
18 Ojeda, Chaplain Guembe, Chaplain Hetebrink, Correctional Food Manager (CFM) Perkins, and I
19 started the process of planning for Ramadan. Early on in the planning process, however, we
20 encountered difficulties identifying the Muslim inmates who could participate in Ramadan. I was
21 informed that, in the years prior to my arrival, the preferred approach was to have the Muslim
22 Chaplain prepare the list of the Muslim inmates who would participate in Ramadan. But during the
23 planning process for Ramadan, SATF’s Muslim Chaplain position was vacant. (I was informed that
24 the previous Muslim Chaplain left SATF in 2010.) Without a Muslim Chaplain, we did not have an
25 efficient method to identify which inmates would be eligible to participate in Ramadan. I do not recall
26 if I learned how SATF prepared for Ramadan without a Muslim Chaplain prior to my assignment as
27 Associate Warden. However, I do recall discussing with my staff that the method used in prior years
28 was administratively burdensome. In 2011, officers were calling in at the last minute with inmates’

1 requests to be added to the list, causing a burden on custody staff and food services.” (Decl. of C.
2 Etchebehere, ¶¶ 11-13; see also Decl. of J. Ojeda, ¶¶ 4-7.)

3 Defendant D. Perkins (CFM) further declares that without a Muslim Chaplain there was not an
4 efficient and cost-effective way to prepare for Ramadan. (Decl. of D. Perkins, ¶ 6.) Further, “[i]n the
5 preceding years, SATF had used the attendance rolls from the Muslim services as the starting point for
6 identifying the inmates who would participate in Ramadan. Typically, an inmate representative from
7 each facility would work with the State Chaplain assigned to their facility to prepare a ‘ducat’ list.
8 SATF took this approach primarily because there was no Muslim Chaplain to help assemble the
9 Ramadan list. Moreover, this method was inefficient, and put an undue burden on food services. In
10 2011, custody staff members were calling in at the last minute to have inmates added to the list. This
11 presented a host of problems for [f]ood [s]ervices. My line staff would feel pressured by custody
12 staff—sometimes higher ranking staff, such as lieutenants—to try to accommodate these inmates, but
13 there simply were not resources to do so. The food for Ramadan was often prepared ahead of time,
14 and the kitchens would be closed by the time the sun had set. There simply was not enough food to
15 add inmates to the list at the last minute. Moreover, oftentimes a portion of the sack meal that the
16 Muslim inmates received was comprised of donated food items: [f]ood [s]ervices had to apportion
17 these items amongst the participants, and there were no extra items to accommodate inmates added
18 late. Lastly, the meals for Ramadan were oftentimes prepared in one location in the institution, and
19 then sent to another location. Adding inmates at the last minute would burden my staff by forcing
20 them to make separate food deliveries—assuming there was even food for additional inmates. For all
21 of these reasons, it was critical that [f]ood [s]ervices had as comprehensive of a list as possible for
22 each night of Ramadan, so that inmates were not being added at the last minute.” (Decl. of D. Perkins,
23 ¶¶ 7-8.)

24 Plaintiff also argues that “Defendants ... knew from the on[set] that the RMA list would not
25 identify all the Muslim inmates at SATF that wanted to participate in the 2012 Ramadan fast.” (ECF
26 No. 101 at 4.) However, Defendant Etchebehere declares that after speaking with SATF’s Chaplains,
27 it was her understanding that most of SATF’s Muslim inmates participated in the RMA diet, and she
28 therefore proposed to use the RMA diet list as a starting point for identifying the Muslim inmates who

1 were eligible to participate in Ramadan. (Decl. of C. Etchebehere, ¶¶ 18-20; Decl. of R. Guembe, ¶
2 11; Decl. of J. Ojeda, ¶ 7.) Plaintiff further argues that Defendant Etchebehere should have known
3 how the institution had identified inmates for Ramadan in prior years. (ECF No. 101 at 4.) However,
4 Defendant Etchebehere was informed that using the Jumah prayer list was too administrative
5 burdensome. (Decl. of C. Etchebehere, ¶¶ 12-13, 24-25; Decl. of D. Perkins, ¶¶ 5-8; Decl. of R.
6 Guembe, ¶¶ 6, 8; Decl. of J. Ojeda, ¶¶ 4, 6; Decl. of D. Hetebrink, ¶ 4; Decl. of F. Cote, ¶ 4.)

7 Plaintiff further argues that the Muslim Chaplain did not have the authority to add inmates to
8 the Ramadan list, and cites a July 18, 2012, memorandum which states: “Only those Muslim inmates
9 approved on the halal meal list as of the day before Ramadan (July 18, 2012) will be allowed to
10 participate. There will be no additions after this date” (ECF No. 101 at 9; ECF No. 84-4 at 117.)
11 However, Plaintiff overlooks the fact that Defendant Etchebehere told prison staff that the Muslim
12 Chaplain had the authority to add inmates to the list, and the Chaplain in fact added inmates to the list,
13 including Plaintiff, even after Ramadan had begun. (Decl. of C. Etchebehere, ¶¶ 20, 27; Decl. of D.
14 Perkins, ¶ 11; Decl. of A. Whisnand, Ex. A at Whisnand.081 [Pl.’s Dep., at p. 119:7-14].)

15 Given the evidence submitted by Defendants, there was not an easy and obvious ready
16 alternative “that fully accommodates the asserted right while not imposing more than a de minimis
17 cost to the valid penological goal.” Overton v. Bazzetta, 539 U.S. 126, 135-36 (2003). It is
18 undisputed that use of the Friday Jumah prayer list caused administrative problems in the past and
19 Defendants employed the most efficient approach feasible at that time in 2012, because it was not
20 realistic to wait until the Muslim Chaplain started to attempt to identify the Muslim inmates. In
21 addition, it is immaterial as to who informed Defendants Etchebehere and Perkins of the issue.
22 Accordingly, this factor weighs in favor of Defendant.

23 On balance and consideration, although the third Turner factor weighs slightly in Plaintiff’s
24 factor, it does not outweigh the other three Turner factors in favor of Defendants, and Defendants are
25 entitled to summary judgment on Plaintiff’s First Amendment claim.

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1 3. Defendants Guembe, Hetebrink, Cote, Odle and Gallagher

2 Defendants Guembe, Hetebrink, Cote, Odle and Gallagher argue that they did not play a major
3 or substantial role in proposing or adopting the 2012 Ramadan policy, and therefore did not cause the
4 alleged constitutional harm to Plaintiff.

5 Absent a more fully developed record as to the duties and responsibilities of these Defendants
6 and their role in considering and developing a plan for the 2012 Ramadan policy, including the degree
7 of their participation in gathering information, making suggestions and attending various meetings
8 and/or off-record discussions where the 2012 Ramadan policy was considered by prison officials, the
9 undersigned cannot conclude that they are entitled to summary judgment in their favor on this basis.

10 4. Qualified Immunity

11 Defendants argue in the alternative that no constitutional violation occurred because Plaintiff's
12 religious rights were not substantially burdened by missing a short period of Ramadan meals, and
13 because the Ramadan policy was reasonably related to legitimate institutional interests. The Court
14 agrees.

15 Qualified immunity is "immunity from suit rather than a mere defense to liability; and like an
16 absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." Mueller v.
17 Auker, 576 F.3d 979, 993 (9th Cir. 2009) (citation and internal quotations omitted). Qualified
18 immunity shields government officials from civil damages unless their conduct violates "clearly
19 established statutory or constitutional rights of which a reasonable person would have known."
20 Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see also Mullenix v. Luna, 136 S.Ct. 305, 308 (2015).

21 "A clearly established right is one that is 'sufficiently clear that every reasonable official would
22 have understood what he is doing violates that right.'" Mullenix, 136 S.Ct. at 308 (quoting Reichle v.
23 Howards, 132 S.Ct. 2088, 2093 (2012)).

24 The Supreme Court recently cautioned that, when conducting an inquiry into qualified
25 immunity, courts should not define clearly established law at a high level of generality. Mullenix, 136
26 S.Ct. at 308. "The dispositive question is 'whether the violative nature of *particular* conduct is clearly
27 established.'" Id. (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011) (emphasis in original)).
28 "This inquiry 'must be undertaken in light of the specific context of the case, not as a broad general

1 proposition.” Mullenix, 136 S.Ct. at 308 (quoting Brosseau v. Haugen, 543 U.S. 194, 198 (2004) (per
2 curiam)).

3 “Qualified immunity balances two important interests – the need to hold public officials
4 accountable when they exercise power irresponsibly and the need to shield officials from harassment,
5 distraction, and liability when they perform their duties reasonably,” Pearson v. Callahan, 555 U.S.
6 223, 231 (2009), and it protects “all but the plainly incompetent or those who knowingly violate the
7 law,” Malley v. Briggs, 475 U.S. 335, 341 (1986).

8 In resolving the claim of qualified immunity, the Court must determine whether, taken in the
9 light most favorable to Plaintiff, Defendant’s conduct violated a constitutional right, and if so, whether
10 the right was clearly established. Saucier v. Katz, 533 U.S. 194, 201 (2001); Mueller, 576 F.3d at 993.
11 While often beneficial to address in that order, the Court has discretion to address the two-step inquiry
12 in the order it deems most suitable under the circumstances. Pearson, 555 U.S. at 236 (overruling
13 holding in Saucier that the two-step inquiry must be conducted in that order, and the second step is
14 reached only if the court first finds a constitutional violation); Mueller, 576 F.3d at 993-94.

15 Although it is beyond dispute that “[i]nmates . . . have the right to be provided with food
16 sufficient to sustain them in good health that satisfies the dietary laws of their religion,” McElyea v.
17 Babbitt, 833 F.2d 196, 198 (9th Cir. 1987); see also Ward, 1 F.3d at 877, the dispositive determination
18 is ‘whether the violative nature of *particular* conduct is clearly established.’” Id. (quoting Ashcroft v.
19 al-Kidd, 563 U.S. 731, 741 (2011) (emphasis in original). Plaintiff bears the burden of proving the
20 existence of a “clearly established” right at the time of the alleged impermissible conduct. See
21 Maraziti v. First Interstate Bank, 953 F.2d 520, 523 (9th Cir. 1992).

22 Here, a reasonable prison official would have believed it was unlawful to require a Muslim
23 inmate to participate in the RMA diet, or “halal” diet, in order to receive Ramadan meals and
24 participate in Ramadan activities. Defendants have submitted evidence that the RMA diet served
25 “meat that has been certified as halal,” and a majority of SATF’s Muslim inmates were enrolled in the
26 diet, and a reasonable officer would have therefore understood that the RMA diet was designed to
27 accommodate Muslims, not to burden them. It was reasonable for Defendants to believe that most, if
28 not all, of the Muslim inmates at SATF were already on the RMA diet, or would quickly enroll upon

1 learning of the policy. (Decl. of C. Etchebehere, ¶ 21.) In addition, a reasonable official would have
2 believed that the steps that Defendant Etchebehere took to circulate the policy were appropriate.
3 (Decl. of C. Etchebehere, ¶¶ 26-32.) Accordingly, under these circumstances, reasonable prison
4 officials would have believed that they were not violating Plaintiff’s clearly established religious
5 rights, and Defendants are entitled to qualified immunity.

6 **C. Plaintiff’s Request for Sanctions**

7 Concurrently with his opposition to Defendants’ motion for summary judgment, Plaintiff
8 moves for sanctions and for an order holding Defendants and their counsel in contempt of court. In
9 support of his request, Plaintiff cites to several alleged instances of misconduct, fraud, and discovery
10 abuses. For the reasons explained below, Plaintiff’s request for sanctions should be denied.

11 1. Discrepancy Between Defendant Etchebehere’s Answer and Summary Judgment
12 Declaration

13 Plaintiff claims that there is a discrepancy between Defendant Etchebehere’s answer and her
14 summary judgment declaration. In her answer, Defendant Etchebehere stated that she “was no
15 responsible for arranging and providing for meals” for Ramadan (ECF No. 12 at 9, ¶ 24), and in her
16 declaration in support of the summary judgment motion she stated, “I was responsible for coordinating
17 and accommodations for Ramadan[,]” (ECF No. 84-5.) Contrary to Plaintiff’s argument, these two
18 statements are not contradictory. It is possible for Defendant Etchebehere to be responsible for the
19 overall oversight of Ramadan, but still not be personally responsible for coordinating food for
20 Ramadan. To this end, Correctional Food Manager, Defendant Perkins, declared the she was
21 responsible for coordinating meals. (ECF No. 84-11.)

22 2. Defendant Etchebehere’s Affirmative Defense Regarding Third-Party Liability

23 Plaintiff contends that Defendant Etchebehere initially raised the affirmative defense of third-
24 party liability in her answer and denied authoring the 2012 Ramadan memorandum, yet according to
25 the Ramadan committee meeting minutes, it was her decision to require the use of the RMA list as a
26 requirement for enrollment in the Ramadan fast. Plaintiff fails to demonstrate how this affirmative
27 defense is not applicable, particularly since Defendant Etchebehere argues she was not aware that
28 Plaintiff was not receiving his Ramadan meals. (ECF No. 84-3 at 16.)

1 3. Defendant Etchebehere’s Assistance in Drafting the July 11, 2012, Ramadan
2 Memorandum

3 Plaintiff contends that Defendant “Etchebehere denies ‘authoring’ 2012 Ramadan
4 memorandum” in her answer, yet admits doing so in her summary judgment declaration. (ECF No.
5 101 at 2.) However, Defendant submits that in her answer in response to the claim “On or around
6 July 11th 2012, Plaintiff was informed by Defendant Etchebehere that he could not receive his
7 mandatory religious meals ... if he was not a participant in [the RMA diet]” (ECF No. 1 at 7),
8 Defendant stated: “[D]enies. Rather, Defendant signed a memorandum dated July 11, 2012, regarding
9 ... the religious observance of Ramadan.” (ECF No. 12 at 4, ¶ 11.) Defendant submits that she
10 construed Plaintiff’s complaint as alleging that she personally informed Plaintiff of the Ramadan
11 policy, which she denied doing, and therefore Etchebehere never denied authoring the memorandum
12 because that was not the allegation posed. The Court agrees with Defendant’s interpretation and there
13 is simply no basis for sanctions.

14 4. Minutes from Ramadan Planning Meetings at the Institution

15 Plaintiff continues to argue that Defendant have withheld “minutes” from Ramadan planning
16 meetings that took place at the institution in prior years. The Court has previously ruled on this issue
17 on three separate occasions and issued an order requiring Plaintiff to pay Defendants’ reasonable
18 expenses which as stayed. (ECF Nos. 55, 65, 75, 81, 86, 88.) As Plaintiff has previously been
19 advised, Defendants have attested that turned over all of the “minutes” they could locate, and no
20 further order is warranted. (ECF No. 81.)

21 Plaintiff also contends that Defendants refused to provide Defendant Etchebehere’s training
22 records which would purportedly show that she was trained on how to route these minutes to CDCR
23 headquarters. (ECF No. 101 at 19-20.) Defendant Etchebehere submits that she has previously denied
24 possessing records regarding such training. (See ECF No. 79-7 at 65-67.) Furthermore, Defendant
25 Etchebehere began overseeing the religious programs in March 2012, and therefore any previous
26 minutes that were supposed to be forwarded prior to that date would not have been the responsible of
27 Defendant Etchebehere.

1 5. Denial of Individual Responsible for Proposing to Use the RMA/Halal Diet List as
2 Starting Point for Identifying Inmates for Ramadan

3 Plaintiff claims that, in her responses to Plaintiff’s second set of requests for admission,
4 Defendant Etchebehere denied knowing the individual who proposed to use the RMA diet list for
5 identifying Muslim inmates for Ramadan, but in her declaration she later stated that it was her
6 responsibility. (ECF NO. 101 at 2.) Contrary to Plaintiff’s argument, a review of Defendant
7 Etchebehere’s request for admissions responses does not reflect such statement. In addition, in her
8 declaration, Defendant Etchebehere stated “we proposed to use the RMA diet list as the starting point
9 for identifying which inmates would be eligible to participate in Ramadan.” (ECF No. 84-5 at 4, ¶
10 18.) Accordingly, there is no support for Plaintiff’s argument that Defendant Etchebehere
11 contradicted herself in identifying the responsible individual for proposing to use the RMA/Halal diet
12 list.

13 6. Defendant Etchebehere’s Personal knowledge Regarding How the Institution Planned
14 for Ramadan Prior to Her Arrival

15 Plaintiff argues that Defendant Etchebehere should have been more diligent in discovering how
16 the institution planned for Ramadan prior to her arrival. (ECF No. 101 at 5.) Plaintiff contends there
17 is a contradiction between Etchebehere’s request for admission responses (stating she lacked
18 knowledge of the issue) and her summary judgment declaration (stating that he had been informed of a
19 “basic framework” as to how Ramadan was planned). As evidenced by a full reading of Defendant
20 Etchebehere’s declaration, the “basic framework” referenced to in the declaration is the basic concept
21 of assembling a list of Ramadan-eligible inmates. (ECF No. 84-5 at 2.) In the declaration,
22 Etchebehere does not indicate that she specifically knew how the list was created, and she has denied
23 such knowledge. (Id. at 3, ¶ 13.) Accordingly, there is no contradiction established.

24 7. Attorney Certification to Declarations

25 Plaintiff argues that all of the Defendants’ declarations are deficient because they were
26 submitted without “attorney certification under FRCP 26(g).” (ECF No. 101 at 5.) Plaintiff’s
27 argument is misplaced. Rule 26(g) deals with attorney verification of a “discovery request, response
28

1 or objection,” not declarations submitted in support of a motion for summary judgment. Fed. R. Civ.
2 P. 26(g). Accordingly, Plaintiff’s argument lacks merit.

3 8. Review and Changes to Deposition Transcript

4 Plaintiff contends, as previously raised by way of a motion to suppress his deposition, that “no
5 copy [of his deposition transcript was] given to [him] for review.” (ECF No. 101 at 3.) As determined
6 in the Court’s May 1, 2017, order, Plaintiff had the opportunity to review and make changes to his
7 deposition transcript, and signed a declaration under penalty of perjury stating that he in fact had done
8 so. (ECF No. 99.) Accordingly, there is no merit to Plaintiff’s argument.

9 **V.**

10 **RECOMMENDATIONS**

11 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 12 1. Defendants’ motion for summary judgment be granted; and
13 2. Plaintiff’s motion for sanctions be denied.

14 These Findings and Recommendations will be submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
16 being served with these Findings and Recommendations, the parties may file written objections with
17 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
18 Recommendations.” The parties are advised that failure to file objections within the specified time
19 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.
20 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: June 27, 2017



UNITED STATES MAGISTRATE JUDGE