

1 consistent with' a defendant's liability" falls short of satisfying the plausibility standard. Iqbal, 556
2 U.S. at 678; Moss, 572 F.3d at 969.

3 **III.**

4 **COMPLAINT ALLEGATIONS**

5 Plaintiff is a practicing Sunnah Muslin and his relief belief is Al-Islam. In order for Plaintiff to
6 adhere to the strict Al-Islamic tenants of his faith he is forbidden to eat "dead animals, cattle-beast non
7 slaughtered, blood, the flesh of swine, and the meat of that which has been slaughtered as a sacrifice
8 for others than Allah, or has been slaughtered for Idols, or which Allah's name has not been
9 mentioned while slaughtering, or by a violent blow, or by a head long fall, or by the goring of horns,
10 and that which has been (partly) eaten by wild animals unless you are able to slaughter it (before its
11 death) and that which is sacrificed (slaughtered) on stone alters."

12 On March 5, 2016, Plaintiff submitted a CDCR Form 22 to the correctional food manager
13 which stated, "lately for the past month or two months the food portions have been inadequate."
14 Correctional cook S. Rolin responded stating "thank you for bringing this to our attention, we will
15 monitor and supervise the preparation of the food more closely to ensure the proper portions are being
16 served."

17 On March 6, 2016, Plaintiff received a Halal/RMA tray which was missing mashed potatoes.

18 On March 7, 2016, peanut butter was missing on Plaintiff's Halal diet tray.

19 On March 14, 2016, Plaintiff submitted another CDCR Form 22 to the correctional food
20 manager asking why the food trays do not contain the appropriate ounces of food and requested that
21 the food service manager monitor the amount of good that is placed on the inmate trays. Plaintiff felt
22 that the sensitive need yard buildings (and his religious meals as well) were the only food trays being
23 impacted.

24 On March 16, 2016, the meat alternative was missing from Plaintiff's food tray.

25 On March 22, 2016, Plaintiff only received cornmeal mush and apple sauce.

26 On March 23, 2016, the religious Halal meat alternative of eggs was missing from Plaintiff's
27 food tray.

1 On March 23, 2016, mop head fragments were in the coffee that was served at morning
2 breakfast, and Plaintiff filed a complaint.

3 On March 26, 2016, S. Rolin interviewed Plaintiff and she told him that staff monitor the
4 portions of the food on the tray, and staff will continue to perform such monitoring.

5 On March 27, 2016, Plaintiff did not receive the Halal substitute of breaded chicken patty.

6 On March 28, 2016, S. Rolin informed Plaintiff that staff would continue to monitor the food.

7 On April 3, 2016, Plaintiff submitted a request for medication because of the emotional stress
8 due to the food service problems.

9 On April 5, 2016, Plaintiff submitted a CDCR Form 22 which indicated that on April 1, 2016,
10 his food tray contained no potatoes, and on April 3, 2016, Plaintiff did not receive carrots.

11 On April 9, 2016, S. Rolin advised Plaintiff that staff would continue to monitor the
12 preparation of the coffee and beverages more closely.

13 On April 10, 2016, Plaintiff submitted a CDCR Form 22 indicating that he received a complete
14 breakfast, but his lunch did not contain the meat substitute.

15 On April 11, 2016, S. Rolin advised Plaintiff that staff would continue to monitor the food
16 trays.

17 On April 13, 2016, Plaintiff was interviewed by Doctor Allen.

18 On April 16, 2016, Plaintiff's religious meal contained inadequate portions of vegetables.

19 Plaintiff submitted another CDCR Form 22 on April 18, 2016.

20 On April 19, 2016, Plaintiff received his religious meal at dinner, everything was okay but
21 there was "literally 12 beans."

22 On April 21, 2016, Plaintiff was interviewed by Doctor Rahman who prescribed antipsychotic
23 and anxiety medications.

24 On April 22, 2016, Plaintiff submitted a CDCR Form 22 indicating that Plaintiff's lunch was
25 missing carrots and 2 of the 4 slices of bread.

26 On April 23, 2016, Plaintiff received only 2 of the 3 pancakes and the religious meal trays
27 were not wrapped. On this same date, for dinner Plaintiff only received 1 of the 2 turkey hot dogs.

28 On May 3, 2016, Plaintiff did not receive his religious lunch.

1 IV.

2 DISCUSSION

3 A. Free Exercise of Religion and Religious Land Use and Institutionalized Persons
4 Act

5 “[P]risoners retain the protections of the First Amendment” but their “right to freely exercise
6 [their] religion is limited by institutional objectives and by the loss of freedom concomitant with
7 incarceration.” Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013)
8 (citing O’Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1997)). The protections of the Free Exercise
9 Clause are triggered when prison officials substantially burden the practice of an inmate’s religion by
10 preventing him from engaging in conduct which he sincerely believes is consistent with his faith, but
11 an impingement on an inmate’s constitutional rights will be upheld ““if it is reasonably related to
12 legitimate penological interests.”” Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008) (quoting
13 Turner v. Safley, 482 U.S. 78, 89 (1987)).

14 The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) provides:

15 No government shall impose a substantial burden on the religious exercise of a person
16 residing in or confined to an institution. . . , even if the burden results from a rule of
17 general applicability, unless the government demonstrates that imposition of the burden
18 on that person—

- 17 (1) is in furtherance of a compelling government interest; and
18 (2) is the least restrictive means of furthering that compelling government interest.

19 42 U.S.C. § 2000cc-1. Plaintiff bears the initial burden of demonstrating that defendants substantially
20 burdened the exercise of his religious beliefs. Warsoldier v. Woodford, 418 F.3d 989, 994-95 (9th Cir.
21 2005). If plaintiff meets his burden, defendants must demonstrate that “any substantial burden of
22 [plaintiff’s] exercise of his religious beliefs is *both* in furtherance of a compelling governmental
23 interest *and* the least restrictive means of furthering that compelling governmental interest.” Id.
24 (emphasis in original). “RLUIPA is to be construed broadly in favor of protecting an inmate’s right to
25 exercise his religious beliefs.” Id.

26 Plaintiff’s allegations of occasional missing and/or incomplete food items are the sort of
27 “relative short-term and sporadic” intrusions that do not amount to a substantial burden on a prisoner’s
28 First Amendment free exercise rights, see Canell v. Lightner, 143 F.3d 1210, 1215 (9th Cir. 1998), or

1 RLUIPA rights, see generally San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1034
2 (9th Cir. 2004). The incomplete meals took place infrequently and appear to have been prepared by
3 fellow inmates with supervision by staff. Plaintiff was repeatedly assured that staff monitored the
4 food preparation and distribution, and after Plaintiff complained he was again assured that Plaintiff
5 would look into the situation and continue to monitor the food preparation. On these facts, the Court
6 does not find a violation of the First Amendment and/or RLUIPA, and the action should be dismissed
7 for failure to state a cognizable claim for relief.

8 **V.**

9 **RECOMMENDATIONS**

10 Plaintiff was previously notified of the applicable legal standards and the deficiencies in his
11 pleading, and despite guidance from the Court, Plaintiff's third amended complaint is largely identical
12 to the second amended complaint. Based upon the allegations in Plaintiff's original and amended
13 complaints, the Court is persuaded that Plaintiff is unable to allege any additional facts that would
14 support a violation of the First Amendment and/or RLUIPA, and further amendment would be futile.
15 See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may not deny leave to
16 amend when amendment would be futile.") Based on the nature of the deficiencies at issue, the Court
17 finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.
18 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

19 Accordingly, it is HEREBY RECOMMENDED that:

- 20 1. This action be dismissed for failure to state a cognizable claim for relief; and
21 2. The Clerk of Court be directed to terminate this action.

22 These Findings and Recommendations will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
24 being served with these Findings and Recommendations, Plaintiff may file written objections with the
25 Court. The document should be captioned "Objections to Magistrate Judge's Findings and
26 Recommendations." Plaintiff is advised that failure to file objections within the specified time may

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result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: March 21, 2017


UNITED STATES MAGISTRATE JUDGE