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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8
9 JOHN E. MITCHELL,
10 Plaintiff,
11 v.
12 CRM M.S. ROBICHEAUX,
13 Defendant.

Case No. 1:16-cv-01148-DAD-EPG (PC)
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
BE GRANTED AND THAT
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT BE DENIED

(ECF NOS. 128 & 130)

14 FINDINGS AND RECOMMENDATIONS
15 ON MISCELLANEOUS MOTIONS

16 (ECF NOS. 112, 135, 136, 141, 143, 147, &
17 148)

18 OBJECTIONS, IF ANY, DUE WITHIN
19 TWENTY-ONE DAYS

20 ORDER DENYING DEFENDANT'S
21 REQUEST FOR RULING AS MOOT AND
22 REQUIRING DEFENDANT TO SERVE
23 PLAINTIFF WITH A COPY OF HER
24 RESPONSES TO PLAINTIFF'S
25 DISCOVERY REQUESTS

(ECF NO. 149)

26 John E. Mitchell ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights
27 action filed pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff's original
28 complaint, which was filed on August 5, 2016. (ECF No. 1). This case is proceeding on
29 Plaintiff's claim against defendant Robicheaux ("Defendant") for violation of Plaintiff's First
30 Amendment free exercise rights. (ECF Nos. 26 & 93).

On August 22, 2019, Plaintiff moved for summary judgment on his claim against

1 Defendant. (ECF No. 128). On September 12, 2019, Defendant filed her opposition to the
2 motion. (ECF No. 133). On October 10, 2019, Plaintiff filed his reply. (ECF No. 139).

3 On August 23, 2019, Defendant moved for summary judgment. (ECF No. 130). On
4 September 9, 2019, Plaintiff filed his opposition to the motion. (ECF No. 132). On September
5 16, 2019, Defendant filed her reply. (ECF No. 134). On February 12, 2020, Defendant filed a
6 request for ruling on her motion for summary judgment. (ECF No. 149).¹

7 The motions for summary judgment are now before the Court. Also before the Court
8 are: Plaintiff's motion for a stay of proceedings/injunctive order (ECF No. 135); Plaintiff's
9 motion under the All Writs Act (ECF No. 136); Plaintiff's motion for court order and/or
10 intervention (ECF No. 141); Plaintiff's motion for a preliminary injunction/TRO (ECF No.
11 143); Plaintiff's motion for a temporary restraining order and preliminary injunction (ECF No.
12 147); and Plaintiff's motions for leave to submit a supplemental civil complaint pursuant to
13 Federal Rule of Civil Procedure 15(d) (ECF Nos. 112 & 148).

14 For the reasons that follow, the Court will recommend that Plaintiff's motion for
15 summary judgment be granted as to liability, with the amount of damages to be determined at
16 trial.²

17 The Court will also recommend that all of Plaintiff's other pending motions, as well as
18 Defendant's motion for summary judgment, be denied.

19 I. BACKGROUND

20 a. Summary of Plaintiff's Complaint

21 On June 9, 2015, Plaintiff was transferred from the Substance Abuse Treatment Facility
22 (SATF) to California State Prison, Corcoran (CSP-COR). At CSP-COR, Plaintiff's First
23 Amendment free exercise rights were infringed, because during Ramadan he could not obtain
24 meals consistent with the religion of Islam. Defendant was in charge of providing such meals.

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26 ¹ As the Court is issuing findings and recommendations on Defendant's motion for summary judgment,
27 Defendant's request for ruling will be denied as moot.

28 ² The Court is hopeful that damages may be resolved by mutual agreement, potentially with the benefit of
a settlement conference, rather than proceeding to trial. The Court will therefore also recommend that the parties
be ordered to confer about damages and to submit a status report fourteen days after the district judge rules on
these findings and recommendations.

1 However, she knowingly ignored information in Plaintiff’s C-File in order to withhold such
2 meals from Plaintiff.

3 b. Surviving Claim

4 This case is now proceeding only on Plaintiff’s claim against Defendant for violation of
5 Plaintiff’s First Amendment free exercise rights. (ECF Nos. 26 & 93).

6 **II. MOTIONS FOR SUMMARY JUDGMENT**

7 a. Legal Standards

8 i. *Summary Judgment*

9 Summary judgment in favor of a party is appropriate when there “is no genuine dispute
10 as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
11 P. 56(a); Albino v. Baca (“Albino II”), 747 F.3d 1162, 1169 (9th Cir. 2014) (*en banc*) (“If there
12 is a genuine dispute about material facts, summary judgment will not be granted.”). A party
13 asserting that a fact cannot be disputed must support the assertion by “citing to particular parts
14 of materials in the record, including depositions, documents, electronically stored information,
15 affidavits or declarations, stipulations (including those made for purposes of the motion only),
16 admissions, interrogatory answers, or other materials, or showing that the materials cited do not
17 establish the absence or presence of a genuine dispute, or that an adverse party cannot produce
18 admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

19 A party moving for summary judgment “bears the initial responsibility of informing the
20 district court of the basis for its motion, and identifying those portions of ‘the pleadings,
21 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
22 any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex
23 Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). If the moving party
24 moves for summary judgment on the basis that a material fact lacks any proof, the Court must
25 determine whether a fair-minded jury could reasonably find for the non-moving party.
26 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986) (“The mere existence of a scintilla
27 of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on
28 which the jury could reasonably find for the plaintiff.”). “[A] complete failure of proof

1 concerning an essential element of the nonmoving party’s case necessarily renders all other
2 facts immaterial.” Celotex, 477 U.S. at 322. Additionally, “[a] summary judgment motion
3 cannot be defeated by relying solely on conclusory allegations unsupported by factual data.”
4 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

5 In reviewing the evidence at the summary judgment stage, the Court “must draw all
6 reasonable inferences in the light most favorable to the nonmoving party.” Comite de
7 Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011). It
8 need only draw inferences, however, where there is “evidence in the record ... from which a
9 reasonable inference ... may be drawn...”; the court need not entertain inferences that are
10 unsupported by fact. Celotex, 477 U.S. at 330 n. 2 (citation omitted). Additionally, “[t]he
11 evidence of the non-movant is to be believed....” Anderson, 477 U.S. at 255. Moreover, the
12 Court must liberally construe Plaintiff’s filings because he is a prisoner proceeding *pro se* in
13 this action. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010).

14 In reviewing a summary judgment motion, the Court may consider other materials in
15 the record not cited to by the parties, but is not required to do so. Fed. R. Civ. P. 56(c)(3);
16 Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001).

17 ii. *First Amendment Right to Free Exercise of Religion*

18 “The First Amendment, applicable to state action by incorporation through the
19 Fourteenth Amendment, prohibits government from making a law prohibiting the free exercise
20 [of religion]. The Supreme Court has repeatedly held that prisoners retain the protections of the
21 First Amendment. A prisoner’s right to freely exercise his religion, however, is limited by
22 institutional objectives and by the loss of freedom concomitant with incarceration.” Hartmann
23 v. California Dep’t of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013) (alteration in
24 original) (citations and internal quotation marks omitted). “‘To ensure that courts afford
25 appropriate deference to prison officials,’ the Supreme Court has directed that alleged
26 infringements of prisoners’ free exercise rights be ‘judged under a ‘reasonableness’ test less
27 restrictive than that ordinarily applied to alleged infringements of fundamental constitutional
28 rights.” Jones v. Williams, 791 F.3d 1023, 1032 (9th Cir. 2015) (quoting O’Lone v. Estate of

1 Shabazz, 482 U.S. 342, 349 (1987)). “The challenged conduct ‘is valid if it is reasonably
2 related to legitimate penological interests.’” Id. (quoting O’Lone, 482 U.S. at 349).

3 “To merit protection under the free exercise clause of the First Amendment, a religious
4 claim must satisfy two criteria. First, the claimant's proffered belief must be sincerely held; the
5 First Amendment does not extend to so-called religions which ... are obviously shams and
6 absurdities and whose members are patently devoid of religious sincerity. Second, the claim
7 must be rooted in religious belief, not in purely secular philosophical concerns.” Malik v.
8 Brown, 16 F.3d 330, 333 (9th Cir. 1994) (alteration in original) (citations and internal quotation
9 marks omitted), supplemented, 65 F.3d 148 (9th Cir. 1995); see also Shakur v. Schriro, 514
10 F.3d 878, 884–85 (9th Cir. 2008) (noting the Supreme Court's disapproval of the “centrality”
11 test and finding that the “sincerity” test in Malik determines whether the Free Exercise Clause
12 applies).

13 Additionally, “[a] person asserting a free exercise claim must show that the government
14 action in question substantially burdens the person’s practice of her religion.” Jones, 791 F.3d
15 at 1031. “A substantial burden ... place[s] more than an inconvenience on religious exercise; it
16 must have a tendency to coerce individuals into acting contrary to their religious beliefs or
17 exert substantial pressure on an adherent to modify his behavior and to violate his beliefs.” Id.
18 at 1031–32 (alterations in original) (citation and internal quotation marks omitted).

19 b. Plaintiff’s Position

20 Plaintiff moves for summary judgment.³ (ECF No. 128).

21 Plaintiff alleges that he is a Muslim inmate, and has a documented history of being a
22 Muslim inmate. (Id. at 3). His belief is sincerely held and rooted in religious belief that a
23 Muslim must eat meat that is slaughtered in the name of God and/or prepared by another
24 Muslim who pronounces the name of God over the food. (Id. at 3–4). In addition, a Muslim

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27 ³ In addition to moving for summary judgment on his claim against Defendant for violation of his First
28 Amendment free exercise rights, Plaintiff also purports to move for summary judgment on a retaliation claim
against Defendant. (ECF No. 128, p. 1). However, Plaintiff’s retaliation claim against Defendant has been
dismissed. (ECF Nos. 86 & 93). Accordingly, the Court will not address Plaintiff’s arguments regarding the
retaliation claim.

1 must fast in the Holy Month of Ramadan. (Id. at 4). Plaintiff’s practice of Islam over the years
2 has convinced him that eating halal meat/foods during the “breakFest” heightens the believer’s
3 religious experience. (Id.).

4 Plaintiff alleges that his religious diet was not provided during the month of Ramadan.
5 (Id. at 3). Defendant provided no justification for the delay. (Id.). She “acted deliberately and
6 was indifferent in her conscious act[s] of delaying the religious diet until Ramadan was over.
7 These were not mere negligent acts.” (Id. at 5) (alteration in original). She took the adverse
8 action of withholding his religious diet from him for all of Ramadan because he filed 602s and
9 civil complaints against Defendant and other California Department of Corrections and
10 Rehabilitation (“CDCR”) employees. (Id. at 5).

11 Plaintiff argues that the evidence clearly shows that Defendant burdened the practice of
12 his religion without any justification related to legitimate penological interests. (Id. at 3).
13 Defendant intentionally delayed responses and ignored legal notices. (Id.). Her conduct
14 created more than an inconvenience to his religious practice. (Id.).

15 The burden on the exercise of Plaintiff’s religion was substantial, because it pressured
16 him to modify his behavior. (Id. at 4). Plaintiff had to eat non-halal foods, and felt as if he
17 should abandon the Fast altogether while housed at CSP-COR. (Id.). These modifications
18 violated Plaintiff’s sincerely held religious beliefs. (Id.)

19 Additionally, the burden was more than an inconvenience. (Id.). It was not temporary
20 or short in duration, and it was not resolved quickly once the problem was called to
21 Defendant’s attention. (Id.).

22 c. Defendant’s Position

23 Defendant also moves for summary judgment. (ECF No. 130). First, Defendant argues
24 that she did not violate Plaintiff’s First Amendment rights because she followed legitimate
25 prison policy. (Id. at 5–6). “In accordance with prison policy, Robicheaux attempted to
26 confirm that Mitchell was authorized to receive a religious meal. That Mitchell had already
27 received a diet card at another institution at which he had been housed previously did not
28 undermine the propriety of Robicheaux confirming Mitchell’s religious affiliation again at

1 CSP-COR — especially since Mitchell admits that he did not provide a copy of the prior 3030
2 diet request form or diet card to Robicheaux.” (Id. at 6).

3 “Requiring an inmate to complete an application in order to receive a religious meal is
4 constitutional. When Robicheaux was unable to confirm prior approval of a religious diet in
5 Mitchell’s C-File, on July 8, 2015, Robicheaux provided Mitchell with another 3030 diet form
6 to complete. Giving a prisoner a form and asking him to sign it, which is what Robicheaux did,
7 is *de minimis*. It is not unreasonable and does not substantially burden a prisoner's free
8 religious exercise, so as to burden his rights under the First Amendment. Mitchell returned the
9 3030 diet form with his 602 appeal on July 12, 2015. On July 15, 2015, he received his first
10 ‘official’ Halal meal although he had been receiving them on occasion before that date.” (Id. at
11 6–7) (citations omitted).

12 Second, Defendant argues that a brief delay in providing a religious diet is not
13 unconstitutional. “Robicheaux did not deny Mitchell’s request for Halal meals. The
14 undisputed record shows that Mitchell was approved for placement in the religious diet
15 program. That the process took time does not subject Robicheaux to liability. Plaintiff cannot
16 show that Robicheaux engaged in any conduct that prohibited or substantially burdened
17 Plaintiff’s exercise of his religious beliefs.” (Id. at 7).

18 “While the record shows that there was some delay in Mitchell’s receipt of Halal
19 (RMA) meals, he has not alleged facts sufficient to constitute a constitutional violation because
20 Robicheaux’s delay in issuing the diet card was brief, no matter whether the delay is measured
21 from the first Form 22 (June 16, 2015) or the response from Robicheaux on July 7, 2015.”
22 (Id.).

23 Third, Defendant argues that “Plaintiff must assert more than negligence to state a valid
24 § 1983 claim for the violation of his Free Exercise rights. Instead, Plaintiff must prove
25 conscious or intentional acts that burden his free exercise of religion.” (Id.). In this case, “[a]t
26 most, Mitchell contends that Robicheaux negligently responded to his request concerning a
27 religious diet by failing to find confirmation of approval by the previous institution and/or
28 directing him to re-submit the 3030 diet form.” (Id.). Thus, Plaintiff’s claim fails.

1 Finally, Defendant argues that she is entitled to qualified immunity. “A short delay in
2 approval of a religious diet request does not constitute a constitutional violation. Mere
3 negligence does not support a claim under § 1983. Thus, no constitutional rights were violated
4 and Defendant is entitled to qualified immunity.” (ECF No. 130, p. 8).

5 “Robicheaux reasonably understood that the prison had a legitimate interest in requiring
6 Mitchell to provide proper documentation for his religious diet request, whether by proof of
7 prior approval or by filling out another 3030 form, and that compliance with that policy did not
8 violate Mitchell’s right to freely exercise his religion. Thus, Defendant is entitled to qualified
9 immunity.” (*Id.* at 8–9)

10 d. Evidentiary Objections

11 Defendant has made objections to Plaintiff’s evidence, which the Court has reviewed.
12 To the extent the Court necessarily relied on evidence that has been objected to, the Court
13 relied only on evidence it considered to be admissible. The Court does not generally rule on all
14 evidentiary objections individually in the context of summary judgment. “This is especially
15 true when, as here, ‘many of the objections are boilerplate recitations of evidentiary principles
16 or blanket objections without analysis applied to specific items of evidence.’” Capital Records,
17 LLC v. BlueBeat, Inc., 765 F.Supp.2d 1198, 1200 n.1 (C.D. Cal. 2010) (quoting Doe v.
18 Starbucks, Inc., 2009 WL 5183773, at *1 (C.D. Cal. Dec. 18, 2009)).

19 e. Analysis

20 The Court notes at the outset that Defendant did not submit a declaration from
21 Defendant or any other witness, either in support of her motion for summary judgment or in
22 opposition to Plaintiff’s motion for summary judgment. This failure to provide any evidentiary
23 support for many of the assertions in Defendant’s papers was quite notable. The Court
24 undertook a very detailed effort to determine what facts have been supported by admissible
25 evidence in these motions, and summarizes those facts below. Again, however, Defendant
26 failed to submit any declaration or other admissible evidence about why she acted or failed to
27 act in response to Plaintiff’s repeated requests. The only admissible evidence comes from
28 Plaintiff’s submissions, as well as Plaintiff’s deposition testimony, Plaintiff’s 602 request, and

1 Plaintiff's letter to Warden Davey.

2 i. *Undisputed Facts*

3 The Court takes judicial notice of the fact that Ramadan began on or about June 18,
4 2015, and ended on or about July 16, 2015. Fed. R. Evid. 201(b).

5 It is undisputed that Plaintiff was transferred to CSP-COR from SATF on June 9, 2015.
6 Defendant's Separate Statement of Undisputed Fact ("DSSUF") 2. On June 11, 2015, Plaintiff
7 wrote to the Warden stating that he was a Muslim and that he wanted his religious diet
8 transferred to him. DSSUF 3. On June 16, 2015, Plaintiff sent a CDCR 22 Form to Defendant,
9 seeking her assistance in receiving his religious diet. DSSUF 4. On or about July 7, 2015,
10 Defendant responded, stating that "[n]othing could be located in your C-File so I'm enclosing a
11 3030 diet form," which is the form used to request a religious diet. DSSUF 5; ECF No. 130-5,
12 p. 31.⁴ Despite Defendant's assertion, Plaintiff's C-File did contain an approved 3030 diet
13 form, which Plaintiff received a copy of on or about July 5, 2015. See DSSUF 6; ECF No. 132,
14 p. 7. "On July 11, 2015, Robicheaux responded 'you are on the list' to the note that Mitchell
15 had written to the Warden. Mitchell understood that to mean he was on the Ramadan list and
16 the religious diet list." DSSUF 7. On July 15, 2015, Plaintiff received a Halal meal.⁵ DSSUF
17 9; ECF No. 1, p. 7. "On July 22, 2015, Mitchell met with Ms. Robicheaux with regard to his
18 602 appeal. Ms. Robicheaux apologized and acknowledged fault for not providing the Halal
19 diet before Ramadan ended." DDSUF 18.

20 In response to Plaintiff's Interrogatory No. 10, Defendant, who was the Community
21 Resources Manager during the relevant time period, stated that, "through the supervision of
22 Chaplains, defendant generally coordinates, monitors, and supports all religious programming
23 and monitors the implementation of court-mandated religious services such as the provision of
24 inmate religious dietary needs." (ECF No. 132, pgs. 44-45).

26 ⁴ Plaintiff does not dispute this fact, but does allege that a diet form was not actually enclosed. (ECF No.
27 132, pgs. 10-11).

28 ⁵ The exact number of Halal meals Plaintiff received during Ramadan is unclear. Taking Defendant's
evidence as true, at most, Plaintiff "occasionally" received halal meals during Ramadan. DDSUF 14; ECF No.
130-5, p. 22

1 ii. *Sincerely Held Religious Belief*

2 “To merit protection under the free exercise clause of the First Amendment, a religious
3 claim must satisfy two criteria. First, the claimant's proffered belief must be sincerely held; the
4 First Amendment does not extend to so-called religions which ... are obviously shams and
5 absurdities and whose members are patently devoid of religious sincerity. Second, the claim
6 must be rooted in religious belief, not in purely secular philosophical concerns.” Malik, 16
7 F.3d at 333 (alteration in original) (citations and internal quotation marks omitted); see also
8 Shakur, 514 F.3d at 884–85 (noting the Supreme Court's disapproval of the “centrality” test and
9 finding that the “sincerity” test in Malik determines whether the Free Exercise Clause applies).

10 Plaintiff has alleged that he is a Muslim inmate, and that his beliefs regarding the
11 Ramadan fast are sincerely held and rooted in religious belief. (ECF No. 128, pgs. 3–4). “[A]
12 muslim must eat meat that is slaughtered in the Name of GOD and or prepared by another
13 Muslim who pronounces the name of God over that Food. In addition, a muslim must fast in
14 the Holy Month of Ramadan. Plaintiff practice of Islam over the years have convinced him
15 that eating halal meat/foods during the ‘breakFest’ heightens the believers religious
16 experience.”⁶ (Id. at 4). This allegation is supported by Plaintiff’s sworn testimony in the
17 record. “Plaintiff is a Muslim inmate and sincerely with consistency attempts to Follow the
18 tenets of Islam in regards to his religious diet and Fasting during the Holy Month of Ramadan.
19 In Islam we should only eat meat that is slaughtered in the name of ALLAH, usually meat
20 obtained from Following the tenets of Islam is pure with less contaminants because of the Feed
21 used believing this in addition to what ALLAH mandates in the Holy Quran ... a ‘religious
22 experience’ during the Holy Month of Ramadan is especially sought out.”⁷ (ECF No. 1, p. 9).
23 It is also supported by Plaintiff’s deposition testimony. (ECF No. 130-5, pgs. 6–9).

24 In reviewing the evidence at the summary judgment stage, the Court “must draw all
25 reasonable inferences in the light most favorable to the nonmoving party.” Comite de
26 Jornaleros de Redondo Beach, 657 F.3d at 942. It need only draw inferences, however, where

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28 ⁶ Typographical and grammatical errors in original.

⁷ Typographical and grammatical errors in original.

1 there is “evidence in the record ... from which a reasonable inference ... may be drawn....”
2 Celotex, 477 U.S. at 330 n. 2 (citation omitted).

3 Defendant did not submit any evidence to dispute the evidence in the record that
4 Plaintiff is a Muslim inmate, and that his beliefs regarding the Ramadan fast are sincerely held
5 and rooted in religious belief. Accordingly, the Court finds that, for purposes of this summary
6 judgment motion, Plaintiff has established that he is a Muslim inmate, and that his beliefs
7 regarding the Ramadan fast are sincerely held and rooted in religious belief.

8 *iii. Substantial Burden*

9 To prevail, Plaintiff must also show that Defendant’s actions substantially burdened the
10 practice of his religion. Jones, 791 F.3d at 1031. “A substantial burden ... place[s] more than
11 an inconvenience on religious exercise; it must have a tendency to coerce individuals into
12 acting contrary to their religious beliefs or exert substantial pressure on an adherent to modify
13 his behavior and to violate his beliefs.” Id. at 1031–32 (alterations in original) (citation and
14 internal quotation marks omitted).

15 “Inmates [] have the right to be provided with food sufficient to sustain them in good
16 health that satisfies the dietary laws of their religion.” McElyea v. Babbitt, 833 F.2d 196, 198
17 (9th Cir. 1987). However, this right is balanced against budgetary and administrative concerns
18 of the prison. Ward v. Walsh, 1 F.3d 873, 877 (9th Cir. 1993).

19 “To ensure that courts afford appropriate deference to prison officials, the Supreme
20 Court has directed that alleged infringements of prisoners’ free exercise rights be judged under
21 a reasonableness test less restrictive than that ordinarily applied to alleged infringements of
22 fundamental constitutional rights. The challenged conduct is valid if it is reasonably related to
23 legitimate penological interests.” Id. at 1032 (citations and internal quotation marks omitted).

24 Defendant does not dispute that, as the Community Resource Manager, she was at least
25 one of the individuals responsible for providing Plaintiff with access to a religious diet. As
26 summarized above, the undisputed evidence also shows that Plaintiff reached out to Defendant
27 regarding his religious diet, and that Defendant did not respond for approximately three weeks.
28 DSSUF 4; DSSUF 5; ECF No. 130-5, p. 31. When Defendant did respond, she told Plaintiff

1 that his 3030 diet form could not be located in his C-File, even though it is also undisputed that
2 this was false because Plaintiff's C-File did in fact contain the form. DDSUF 5; DDSUF 6;
3 ECF No. 132, p. 7. Finally, it is undisputed that "On July 22, 2015, Mitchell met with Ms.
4 Robicheaux with regard to his 602 appeal. Ms. Robicheaux apologized and acknowledged
5 fault for not providing the Halal diet before Ramadan ended." DDSUF 18.

6 While the exact number of halal meals Plaintiff missed during Ramadan is unclear, even
7 taking Defendant's evidence as true, at most, Plaintiff "occasionally" received halal meals
8 during Ramadan. DDSUF 14; ECF No. 130-5, p. 22.⁸ According to Plaintiff's deposition
9 testimony (which was submitted by Defendant, and which Defendant did not submit any
10 evidence to rebut), when Plaintiff did not receive the halal diet, he had to eat food that was not
11 compliant with the tenants of his Muslim faith. (ECF No. 130-5, p. 23). When asked how this
12 affected his ability to practice his religious, Plaintiff responded "[i]t is a religious experience
13 meaning that Ramadan is a time where we attempt to do things that please God in every way to
14 the best of our ability. And I believe that the eating of halal food, specifically during the month
15 of Ramadan, gives you a heightened religious experience during the month of Ramadan." (Id.
16 at 25).

17 Thus, Plaintiff has established that he had to eat non-halal meals for at least most of
18 Ramadan, which were not compliant with the tenants of his Muslim faith. This interfered with
19 Plaintiff's religious experience.

20 While some deference is given to prison officials, there is no evidence in the record that
21 Defendant's conduct was reasonably related to a legitimate penological interest. Defendant
22 does not dispute that Plaintiff should have received halal meals during Ramadan. Defendant
23 received a CDCR 22 Form on the issue, yet failed to respond for three weeks, while Ramadan

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28 ⁸ According to the declaration Plaintiff submitted in opposition to Defendant's motion for summary judgment, Plaintiff "may have received one maybe two Halal meals prior to July 16, 2015." (ECF No. 132, p. 11)

1 was in process. This delay violated prison policy.⁹ Again, it is also undisputed that the
2 approved 3030 diet form was in Plaintiff's C-File at this time.

3 As the evidence in the record shows that Defendant's actions (or inactions) coerced
4 Plaintiff to act contrary to his religious belief on numerous occasions, and as there is no
5 evidence in the record of a legitimate penological interest in delaying Plaintiff's access to halal
6 meals, Plaintiff has established that Defendant substantially burdened the exercise of his
7 religion.

8 *iv. Defendant's Arguments*

9 Defendant makes various arguments as to why Plaintiff's motion for summary
10 judgment should be denied and her's should be granted, but, especially in the absence of any
11 declaration or admissible evidence from Defendant as to why she failed to timely respond to
12 Plaintiff's CDCR 22 Form and why her response was not accurate, the Court finds these
13 arguments unpersuasive.

14 Defendant argues that she is entitled to summary judgment because she followed
15 legitimate prison policy. According to Defendant, "[t]he prison has a legitimate government
16 interest in not providing Plaintiff a religious meal without adequate documentation," and she
17 was following prison policy when she "attempted to confirm that Mitchell was authorized to
18 receive a religious meal." (ECF No. 130, p. 6). However, Plaintiff is not challenging the
19 documentation requirement. Instead, the undisputed record shows that Plaintiff complied with
20 prison documentation policy. Plaintiff had an approved 3030 diet form in his C-File, and
21 timely filed a CDCR 22 Form regarding the issue. In other words, the undisputed facts
22 establish that Plaintiff complied with prison procedures that were in place to ensure he received
23 religious meals during Ramadan, and that he failed to receive these meals due to Defendant's
24 conduct.

25 Rather than submit a declaration from Defendant, Defendant makes an unsupported

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27 ⁹ "Within three working days after receipt of the form [22], the responding employee shall: (A) Note his
28 or her decision on the form. (B) Sign and date the form. (C) Retain a copy for his or her records. (D) Return the
original and remaining copy of the form to the inmate or parolee." Cal. Code Regs. tit. 15, § 3086(f)(4)(A)-(D).

1 argument that a brief delay in providing a religious diet is not unconstitutional because “[i]t is a
2 common occurrence in everyday life (not just in prisons) for paperwork to be misdirected,
3 misfiled, or lost,” and that filling out a form for a second time “is generally nothing more than
4 an annoyance.” (Id. at 7). However, there is no evidence that paperwork was in fact misfiled,
5 misdirected, or lost. There is again no explanation given as to why Defendant failed to find the
6 approved 3030 diet form in Plaintiff’s C-File, or why it took her three weeks to respond to
7 Plaintiff’s CDCR 22 Form. It is true that Defendant wrote in her response to Plaintiff’s CDCR
8 22 Form that “[n]othing could be located in your C-file” (ECF No. 130-5, p. 31), but she does
9 not include a declaration under penalty of perjury that this response was true. Moreover, the
10 undisputed evidence shows that Plaintiff’s approved 3030 diet form was exactly where it
11 should have been. Additionally, the almost three-week delay in responding to Plaintiff’s
12 CDCR Form 22 violated prison policy. As for Defendant’s argument that filling out a form is
13 merely an annoyance, Plaintiff has submitted admissible evidence that missing religious meals
14 during Ramadan, when he had already been approved for such meals, was not a mere
15 annoyance.

16 Additionally, Plaintiff alleges, under penalty of perjury, that on December 9, 2010,
17 Defendant responded to a 602 Plaintiff filed, granting Plaintiff’s request to be placed on the
18 Halal diet. (ECF No. 128, p. 12). In addition to his declaration, Plaintiff submitted a copy of
19 the response to his 602. (Id. at 17). While the events at issue in this case occurred years later,
20 Defendant provided no evidence to suggest that the delay in processing Plaintiff’s CDCR 22
21 Form (in violation of prison policy) was caused by misdirected, misfiled, or lost paperwork.
22 Defendant also provided no evidence to explain why she told Plaintiff that his C-File did not
23 contain an approved 3030 diet form, even though it did.

24 As to the cases Defendant cites to regarding a delay in processing a religious diet
25 application, these cases have no relevance here because, as discussed above, this is not a case
26 about the processing of Plaintiff’s religious diet application, and Plaintiff is not challenging a
27 prison policy. The undisputed evidence in this case shows that Defendant failed to provide
28 Plaintiff with a religious diet during Ramadan, even though Plaintiff had an approved 3030 diet

1 form in his C-File. Not providing a religious diet during Ramadan can violate an inmate's
2 religious rights. See, e.g., Washington v. Brown, 2009 WL 160311, at *18–19 (E.D. Cal. Jan.
3 21, 2009), report and recommendation adopted, 2009 WL 532615 (E.D. Cal. Mar. 3, 2009)
4 (denying summary judgment to certain defendants on the plaintiff's First Amendment free
5 exercise claims where there was a genuine dispute of material fact as to whether those
6 defendants were at least partially responsible for delaying the plaintiff's participation in the
7 Ramadan fast); Tamayo v. Fisher, 2015 WL 1829504, at *3–4 (E.D. Cal. Apr. 9, 2015), report
8 and recommendation adopted, 2015 WL 3562873 (E.D. Cal. May 28, 2015) (allowing a First
9 Amendment free exercise claim to proceed past screening where the plaintiff alleged that
10 certain defendants ignored his request to be placed on the list for Ramadan meals, "which
11 prevented him from receiving Ramadan meals in 2010").

12 Next, Defendant argues that mere negligence does not give rise to a constitutional
13 violation, and cites to a Ninth Circuit concurrence, an out of circuit case, and district court
14 cases. However, Defendant's assertion of negligence is unsupported by any evidence. The
15 undisputed evidence discussed above is sufficient to establish that Defendant acted
16 intentionally, or at least arbitrarily or capriciously. See Hayes v. Idaho Corr. Ctr., 849 F.3d
17 1204, 1211 (9th Cir. 2017) (holding that "[t]wo or three pieces of [legal] mail opened in an
18 arbitrary or capricious way suffice to state a [First Amendment] claim") (first alteration in
19 original) (quoting Merriweather v. Zamora, 569 F.3d 307, 318 (6th Cir. 2009)).

20 Finally, Defendant argues that she is entitled to qualified immunity because: 1) "[a]
21 short delay in approval of a religious diet request does not constitute a constitutional violation";
22 2) "[m]ere negligence does not support a claim under § 1983"; and 3) Defendant "reasonably
23 understood that the prison had a legitimate interest in requiring Mitchell to provide proper
24 documentation for his religious diet request..." (ECF No. 130, p. 8). These arguments fail for
25 the reasons discussed above. This is not a case about the processing of Plaintiff's religious diet
26 application, and Plaintiff's evidence shows more than mere negligence.

27 In her opposition to Plaintiff's motion for summary judgment, Defendant argues that
28 Plaintiff's motion is procedurally defective. Defendant is correct that Plaintiff failed to strictly

1 comply with Federal Rule of Civil Procedure 56(c)(1)(A), as well as Local Rule 260. While
2 Plaintiff included evidence with his motion, he failed to cite to particular parts of materials in
3 the record when listing undisputed facts. However, the Ninth Circuit has “held consistently
4 that courts should construe liberally motion papers and pleadings filed by *pro se* inmates and
5 should avoid applying summary judgment rules strictly.” Thomas v. Ponder, 611 F.3d 1144,
6 1150 (9th Cir. 2010). Additionally, there is evidence in the record supporting Plaintiff’s
7 motion, and the Court “may consider other materials in the record.” Fed. R. Civ. P. 56(c)(3).
8 Moreover, Defendant herself failed to strictly comply with Local Rule 260 in her response to
9 Plaintiff’s statement of undisputed facts, as Defendant does not cite to any evidence in her
10 response to Plaintiff’s statement of undisputed facts. (See ECF No. 133-1, pgs. 1–4).
11 Accordingly, the Court will not deny Plaintiff’s motion simply because Plaintiff failed to
12 strictly comply with Federal Rule of Civil Procedure 56(c)(1)(A) and Local Rule 260.

13 Finally, Defendant argues that Plaintiff’s motion is not supported by admissible
14 evidence,¹⁰ and that Plaintiff failed to meet his burden of proof. However, these arguments fail
15 for the reasons discussed above.

16 As Plaintiff has established that: 1) he is a Muslim inmate; 2) his beliefs regarding the
17 Ramadan fast are sincerely held and rooted in religious belief; and 3) Defendant substantially
18 burdened those beliefs, the Court will recommend that Plaintiff’s motion for summary
19 judgment be granted and that Defendant’s motion for summary judgment be denied.

20 **III. PLAINTIFF’S MOTIONS TO SUPPLEMENT**

21 Plaintiff filed two motions for leave to submit a supplemental civil complaint pursuant
22 to Federal Rule of Civil Procedure 15(d), along with copies of the proposed supplemental
23 pleadings. (ECF Nos. 112, 113, 146 & 148). The Court will recommend that both of these
24 motions be denied.

25
26
27 ¹⁰ The Court reiterates that it is Defendant who failed to support her positions with evidence. Defendant
28 submitted no evidence in opposition to Plaintiff’s motion for summary judgment, and in her own motion, included
only: 1) portions of the transcript of Plaintiff’s deposition (ECF No. 130-5, pgs. 1-29); 2) a copy of a letter
Plaintiff sent to Warden Davey, which is dated June 11, 2015 (id. at 30); and 3) a copy of the CDCR 22 Form
Plaintiff sent to Defendant on June 16, 2015 (id. at 31)

1 As Defendant points out, in denying Plaintiff’s request for joinder, to which Plaintiff
2 attached what appeared to be a supplemental complaint, the Court warned Plaintiff that,
3 “[u]nless prior approval to the contrary is obtained from the Court, every pleading to which an
4 amendment or supplement is permitted as a matter of right or has been allowed by court order
5 shall be retyped and filed so that it is complete in itself without reference to the prior or
6 superseded pleading. No pleading shall be deemed amended or supplemented until this Rule
7 has been complied with.” (ECF No. 80, p. 2) (quoting Local Rule 220). Despite this warning,
8 neither proposed supplement is complete in itself. Accordingly, Plaintiff’s motions should be
9 denied.

10 Even were the Court to ignore this defect, Plaintiff’s motions would be denied. The
11 latest occurrence alleged in Plaintiff’s first proposed supplement occurred on January 13, 2016.
12 (ECF No. 113, p. 7). Plaintiff filed the complaint commencing this action on August 5, 2016.
13 As the incidents alleged in the supplement occurred prior to the commencement of this case,
14 Plaintiff’s first motion to submit a supplemental complaint should be denied. Fed. R. Civ. P.
15 15(d) (“On motion and reasonable notice, the court may, on just terms, permit a party to serve a
16 supplemental pleading setting out any transaction, occurrence, or event that happened *after the*
17 *date of the pleading to be supplemented.*”) (emphasis added).¹¹

18 As to the second motion to submit a supplemental complaint, the incidents did occur
19 after the date the complaint was filed. However, Plaintiff is attempting to add claims against
20 seven defendants (none of which are currently defendants in this case), based on incidents that
21 occurred years after the incidents alleged in Plaintiff’s complaint and at a different prison. For
22 example, Plaintiff alleges that in October of 2019, while he was incarcerated at Kern Valley
23 State Prison, Dr. Wang refused to appropriately treat his swollen ankle, and then removed
24 Plaintiff’s ankle support and other DME appliances needed to support his ankle from his list of
25 chronos. Plaintiff alleges that this violated his Eighth Amendment rights. Plaintiff also alleges
26

27 ¹¹ In this motion Plaintiff also requests a modification of the schedule while his new claims are processed.
28 (ECF No. 112, pgs. 5-6). As the Court is recommending that this motion be denied, the Court will recommend
that this request be denied as well.

1 that in November of 2019 T. Rodriguez violated his First Amendment rights by retaliating
2 against him for filing a grievance by failing to give him his religious chain/medallion.

3 There is no allegation that Defendant was involved in these incidents in any way. As
4 Plaintiff is attempting to add separate, distinct, and new causes of action, this motion should be
5 denied as well. Planned Parenthood of S. Arizona v. Neely, 130 F.3d 400, 402 (9th Cir. 1997)
6 (“While leave to permit supplemental pleading is favored, it cannot be used to introduce a
7 separate, distinct and new cause of action.”) (citations and internal quotation marks omitted).

8 Additionally, both of Plaintiff’s motions should be denied because granting them would
9 violate the purpose of Rule 15(d). Rule 15(d) is meant to avoid the costs, delays, and waste
10 associated with separate actions. Keith v. Volpe, 858 F.2d 467, 473 (9th Cir. 1988); see also
11 Planned Parenthood of S. Arizona, 130 F.3d at 402 (“judicial efficiency” is the “the goal of
12 Rule15(d)”). Here, allowing either supplement would create delays and hinder judicial
13 efficiency. This case, which was filed in 2016, is nearing its end. However, if the Court were
14 to grant either motion to supplement, the case would essentially restart. The new defendants
15 would need to be served, discovery would have to be reopened so that the parties could conduct
16 discovery regarding the new claims, and the new parties would have an opportunity to file
17 dispositive motions on the claims. Thus, both of Plaintiff’s motions to supplement should be
18 denied for this reason as well.

19 The Court notes that it is not making any recommendations on the merits of the claims,
20 and that nothing in these findings and recommendations prevents Plaintiff from filing separate
21 action(s) based on the allegations in his proposed supplements.

22 **IV. MISCELLANEOUS MOTIONS**

23 Also pending are: 1) Plaintiff’s motion for a stay of proceedings/injunctive order (ECF
24 No. 135); 2) Plaintiff’s motion under the All Writs Act (ECF No. 136); 3) Plaintiff’s motion for
25 court order and/or intervention (ECF No. 141); 4) Plaintiff’s motion for a preliminary
26 injunction/TRO (ECF No. 143); and 5) Plaintiff’s motion for a temporary restraining order and
27 preliminary injunction (ECF No. 147).

28 For the reasons that follow, the Court will recommend that all of these motions be

1 denied.

2 a. Legal Standards

3 A federal district court may issue emergency injunctive relief only if it has personal
4 jurisdiction over the parties and subject matter jurisdiction over the lawsuit. See Murphy Bros.,
5 Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one “becomes a
6 party officially, and is required to take action in that capacity, only upon service of summons or
7 other authority-asserting measure stating the time within which the party served must appear to
8 defend.”). The court may not attempt to determine the rights of persons not before it. See, e.g.,
9 Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229, 234-35 (1916); Zepeda v. INS, 753 F.2d
10 719, 727-28 (9th Cir. 1983); see also Califano v. Yamasaki, 442 U.S. 682, 702 (1979)
11 (injunctive relief must be “narrowly tailored to give only the relief to which plaintiffs are
12 entitled”). Under Federal Rule of Civil Procedure 65(d)(2), an injunction binds only “the
13 parties to the action,” their “officers, agents, servants, employees, and attorneys,” and “other
14 persons who are in active concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C). “When a
15 plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not
16 have the authority to issue an injunction.” Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.,
17 810 F.3d 631, 633 (9th Cir. 2015).

18
19 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the
20 Prison Litigation Reform Act, which requires that the Court find that the “relief [sought] is
21 narrowly drawn, extends no further than necessary to correct the violation of the Federal Right,
22 and is the least intrusive means necessary to correct the violation of the Federal Right.”
23 On the merits, “[a] plaintiff seeking a preliminary injunction must establish that he is likely to
24 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
25 relief, that the balance of equities tips in his favor, and that an injunction is in the public
26 interest.” Glossip v. Gross, 135 S. Ct. 2726, 2736-37 (2015) (quoting Winter v. Natural Res.
27 Def. Council, Inc., 555 U.S. 7, 20 (2008)). “Under *Winter*, plaintiffs must establish that
28 irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.”

1 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011).

2 Under the All Writs Act, federal courts “may issue all writs necessary or appropriate in
3 aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28
4 U.S.C. § 1651(a). “The power conferred by the Act extends, under appropriate circumstances,
5 to persons who, though not parties to the original action or engaged in wrongdoing, are in a
6 position to frustrate the implementation of a court order or the proper administration of justice,
7 and encompasses even those who have not taken any affirmative action to hinder justice.”

8 United States v. New York Tel. Co., 434 U.S. 159, 174 (1977) (footnote and citations omitted).

9 “Thus, use of the All Writs Act is appropriate in prisoner civil rights cases where non-
10 party correctional officials are impeding the prisoner-plaintiff’s ability to litigate his pending
11 action.” Hammler v. Haas, 2019 U.S. Dist. LEXIS 48377, *3-4. See also Mitchell v. Haviland,
12 2015 U.S. Dist. LEXIS 109106, *5 (“Use of the All Writs Act is appropriate in cases where
13 prison officials, not named as defendants, allegedly have taken action that impedes a prisoner’s
14 ability to litigate his case”); Lopez v. Cook, 2014 U.S. Dist. LEXIS 52198, 2014 WL 1488518
15 (issuing an order under the All Writs Act requiring prison officials to provide Plaintiff, who
16 was in the Segregated Housing Unit for non-disciplinary reasons, with two contact visits with
17 his counsel). However, “injunctive relief under the All Writs Act is to be used sparingly and
18 only in the most critical and exigent circumstances,” and only “if the legal rights at issue are
19 indisputably clear.” Brown v. Gilmore, 533 U.S. 1301, 1303 (2001) (citations and internal
20 quotation marks omitted).

21 b. Plaintiff’s Motions

22 In Plaintiff’s motion for a stay of proceedings/injunctive order (ECF No. 135), Plaintiff
23 alleges that he is being held in Administrative Segregation at R.J. Donovan Correctional
24 Facility, and that all his legal and personal property is being withheld. Plaintiff asks for a stay
25 of the proceedings. He also makes numerous requests for injunctive relief under the All Writs
26 Act, including a request that his legal documents be inventoried and/or returned to him.

27 In Plaintiff’s motion under the All Writs Act (ECF No. 136), which was filed in the
28 same week as Plaintiff’s motion for a stay of proceedings/injunctive order, Plaintiff makes

1 numerous allegations that have no relation to the claim proceeding in this case. Plaintiff also
2 alleges that he is being denied access to his legal property and the law library, and asks for a
3 Court order directing the Warden at R.J. Donovan Correctional Facility to order his employees
4 to return his legal property.

5 In Plaintiff's motion for court order and/or intervention (ECF No. 141), Plaintiff alleges
6 that he does not have access to his property, and asks for a Court order directing the Warden at
7 Kern Valley State Prison to give him access to all the property he is allowed to possess.

8 In Plaintiff's motion for a preliminary injunction/TRO (ECF No. 143), Plaintiff makes
9 numerous allegations that have no relation to the claim proceeding in this case. Plaintiff also
10 alleges that he was eventually given "what was left of his legal property," (Id. at 2), and asks
11 for an injunction preventing certain prison officials (and people acting in concert with them)
12 from discarding, disposing of, or confiscating his legal property without authorization from a
13 United States district court judge or magistrate judge.

14 In Plaintiff's motion for a temporary restraining order and preliminary injunction (ECF
15 No. 147), Plaintiff makes numerous allegations that have no relation to the claim proceeding in
16 this case.

17 c. Analysis

18 Plaintiff largely seeks injunctive relief against non-defendants, and the acts alleged in
19 all of the motions occurred at different institutions than the acts alleged in the complaint.
20 Additionally, none of the requests have anything to do with the claim proceeding in this
21 action.¹² Thus, these requests for injunctive relief should be denied.¹³

22 Plaintiff does make allegations that he is being denied access to his legal property and
23 the law library, which he alleges is interfering with his ability to prosecute this case. The Court
24 takes these allegations seriously. However, based on Plaintiff's filings, after he was transferred
25 to Kern Valley State Prison, he was eventually given "what was left of his legal property."

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27 ¹² For example, Plaintiff seeks an order preventing him from being transferred, directing officials to
return religious artifacts, and directing officials to place him on single cell status.

28 ¹³ If Plaintiff believes his civil rights are being violated, he may file a separate action and request
injunctive relief in that action.

1 (ECF No. 143, p. 2). Additionally, in the motions filed after he was transferred, Plaintiff makes
2 no further allegations of lack of law library access. Thus, injunctive relief under the All Writs
3 Act is not appropriate at this time. Brown v. Gilmore, 533 U.S. at 1303 (“[I]njunctive relief
4 under the All Writs Act is to be used sparingly and only in the most critical and exigent
5 circumstances.”) (citation and internal quotation marks omitted).

6 However, Plaintiff does identify particular items of legal property that were not returned
7 to him, and that he believes he needs to prosecute this case. (ECF No. 142, pgs. 1-2). Plaintiff
8 alleges that he needs the defense’s responses to his discovery requests, in particular
9 “Interrogatories Responses For set one and two including in Supplemental Responses and the
10 request for Admissions Set one and two.”¹⁴ (Id.). Instead of recommending that injunctive
11 relief under the All Writs Act be granted, as copies of these documents are likely in the
12 possession of Defendant, in order to facilitate the expeditious resolution of this case the Court
13 will direct Defendant to serve Plaintiff with a copy of these documents.

14 As to Plaintiff’s request for a stay due to his inability to access his legal property, this
15 request appears to be moot. As discussed above, Plaintiff was given access to what was left of
16 his legal property, and the Court will order Defendant to provide Plaintiff with copies of certain
17 documents that were not returned to him. The Court notes that if there is any particular
18 deadline Plaintiff is unable to meet, he should file a request for an extension of that deadline.

19 Accordingly, that Court will recommend that the following motions to be denied: 1)
20 Plaintiff’s motion for a stay of proceedings/injunctive order (ECF No. 135); 2) Plaintiff’s
21 motion under the All Writs Act (ECF No. 136); 3) Plaintiff’s motion for court order and/or
22 intervention (ECF No. 141); 4) Plaintiff’s motion for a preliminary injunction/TRO (ECF No.
23 143); and 5) Plaintiff’s motion for a temporary restraining order and preliminary injunction
24 (ECF No. 147).

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28 ¹⁴ Typographical and grammatical errors in original.

1 **V. RECOMMENDATIONS**

2 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 3 1. Plaintiff’s motion for summary judgment (ECF No. 128) be GRANTED, with
4 the amount of damages to be determined at trial.
- 5 2. The parties be ordered to confer about damages and to submit a status report
6 fourteen days after the district judge rules on these findings and
7 recommendations.
- 8 3. Defendant’s motion for summary judgment (ECF No. 130) be DENIED.
- 9 4. Plaintiff’s request for a modification of the schedule (ECF No. 112, pgs. 5-6) be
10 DENIED.
- 11 5. Plaintiff’s motions for leave to submit a supplemental civil complaint pursuant
12 to Federal Rule of Civil Procedure 15(d) (ECF Nos. 112 & 148) be DENIED.
- 13 6. The following motions be DENIED:
- 14 a. Plaintiff’s motion for a stay of proceedings/injunctive order (ECF No.
15 135).
- 16 b. Plaintiff’s motion under the All Writs Act (ECF No. 136).
- 17 c. Plaintiff’s motion for court order and/or intervention (ECF No. 141).
- 18 d. Plaintiff’s motion for a preliminary injunction/TRO (ECF No. 143).
- 19 e. Plaintiff’s motion for a temporary restraining order and preliminary
20 injunction (ECF No. 147).

21 These findings and recommendations are submitted to the United States district judge
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-
23 one (21) days after being served with these findings and recommendations, any party may file
24 written objections with the court. Such a document should be captioned “Objections to
25 Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be
26 served and filed within seven (7) days after service of the objections. The parties are advised
27 that failure to file objections within the specified time may result in the waiver of rights on
28 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,

1 923 F.2d 1391, 1394 (9th Cir. 1991)).

2 Additionally, IT IS ORDERED that:

- 3 1. Defendant's request for ruling on motion for summary judgment (ECF No. 149)
4 is DENIED as moot.
- 5 2. Within fourteen days of the date of service of this order, Defendant shall serve
6 Plaintiff with copies of her responses to Plaintiff's discovery requests, in
7 particular a copy of "Interrogatories Responses For set one and two including in
8 Supplemental Reponses and the request for Admissions Set one and two."¹⁵
9 (ECF No. 142, pgs. 1-2).

10 IT IS SO ORDERED.

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12 Dated: March 27, 2020

13 /s/ Eric P. Groj
14 UNITED STATES MAGISTRATE JUDGE

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¹⁵ Typographical and grammatical errors in original.