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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 JOHN E. MITCHELL,
11 Plaintiff,
12 v.
13 D. DAVEY, et al.,
14 Defendants.

Case No. 1:16-cv-01148-DAD-EPG (PC)
FINDINGS AND RECOMMENDATIONS
TO DISMISS CLAIMS CONSISTENT
WITH MAGISTRATE JUDGE'S PRIOR
ORDER IN LIGHT OF WILLIAMS
DECISION
(ECF NOS. 16 & 26)
OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

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17 John E. Mitchell ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights
18 action filed pursuant to 42 U.S.C. § 1983. Plaintiff consented to magistrate judge jurisdiction.
19 (ECF No. 7). Defendants have not consented to magistrate judge jurisdiction.

20 The Court previously screened Plaintiff's complaint. (ECF No. 16). The Court found
21 that Plaintiff stated a cognizable claim against Defendants Thompson and Robicheaux for
22 violation of Plaintiff's free exercise rights under the First Amendment, and dismissed all other
23 claims. (ECF Nos. 16 & 26). Prior to the Court dismissing claims, Plaintiff agreed to proceed
24 only on the claims found cognizable by the Court (although he did object in order to preserve
25 his appellate rights). (ECF No. 25).

26 As described below, in light of Ninth Circuit authority, this Court is recommending that
27 the assigned district judge dismiss claims and defendants consistent with the order by the
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1 magistrate judge at the screening stage.

2 **I. WILLIAMS v. KING**

3 On November 9, 2017, the United States Court of Appeals for the Ninth Circuit held
4 that a magistrate judge lacked jurisdiction to dismiss a prisoner’s case for failure to state a
5 claim at the screening stage where the Plaintiff had consented to magistrate judge jurisdiction
6 and defendants had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017).
7 Specifically, the Ninth Circuit held that “28 U.S.C. § 636(c)(1) requires the consent of all
8 plaintiffs and defendants named in the complaint—irrespective of service of process—before
9 jurisdiction may vest in a magistrate judge to hear and decide a civil case that a district court
10 would otherwise hear.” Id. at 501.

11 Here, the defendants were not served at the time the Court issued its order dismissing
12 claims and defendants, and therefore had not appeared or consented to magistrate judge
13 jurisdiction. Accordingly, the magistrate judge lacked jurisdiction to dismiss claims and
14 defendants based solely on Plaintiff’s consent.

15 In light of the holding in Williams, this Court will recommend to the assigned district
16 judge that he dismiss the claims and defendants previously dismissed by this Court, for the
17 reasons provided in the Court’s screening order.

18 **II. SCREENING REQUIREMENT**

19 The Court is required to screen complaints brought by prisoners seeking relief against a
20 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
21 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
22 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
23 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
24 § 1915A(b)(1), (2).

25 A complaint is required to contain “a short and plain statement of the claim showing
26 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
27 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
28 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell

1 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
2 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.
3 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
4 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts
5 “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
6 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a
7 plaintiff’s legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

8 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
9 pleadings drafted by lawyers.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
10 *pro se* complaints should continue to be liberally construed after Iqbal).

11 **III. SUMMARY OF PLAINTIFF’S COMPLAINT**

12 On June 9, 2015, Plaintiff was transferred from the Substance Abuse Treatment Facility
13 (SATF) to California State Prison, Corcoran (CSP-COR). Prior to the transfer, Plaintiff told his
14 counselor that he feared retaliation by officers at CSP-COR based on a civil complaint he filed
15 that he had settled.

16 Upon arrival at CSP-COR, Plaintiff informed staff that he received a religious diet.
17 Plaintiff handed R&R staff his prison ID card with his religious diet card taped to it. It was not
18 returned.

19 On or about June 10, 2015, Plaintiff verbally requested his religious diet from
20 Defendants and correctional officers Huewe, Vargas, Alford, Tenorio, and Medina. He asked
21 them to call CSP-COR kitchen to have him put on the religious diet list. They all responded
22 that “‘it was not my Job to get you your religious diet.’” Plaintiff could not leave his cell
23 because he was on orientation status. Plaintiff also states that, when he would tell the kitchen
24 staff to ask these defendants if he was entitled to a halal diet, they would say “‘no I.d., no halal
25 diet.’”

26 On June 11, 2015, Plaintiff sent an inmate request to the warden requesting to be put on
27 the religious diet list. That request was forwarded to the Community Resource Manager,
28 Defendant M. Robicheaux. On July 11, 2015, Defendant Robicheaux responded “‘your [sic] on

1 the list.” Thereafter Plaintiff informed his mental health clinician Dr. Shivers, who faxed
2 Defendant Robicheaux about Plaintiff not receiving his religious diet.

3 Plaintiff filed a grievance on June 14, 2015. Plaintiff sent a CDCR 22 request to
4 Defendant Robicheaux prior to the start of Ramadan. On July 7, 2015, Defendant Robicheaux
5 responded “nothing could be found in your C-File so I’m enclosing a 30/30 diet form.”

6 On July 5, 2015, Plaintiff sent a CDCR 22 inmate request form to his counselor CCI
7 Combs, who accessed his central file and gave him a copy of his already approved 30/30 diet
8 contract, which was renewed on or about May 10, 2014.

9 On July 8, 2015, Plaintiff sent a CDC 22 inmate request form to C/O Robles and C.S.C.
10 Lively in the kitchen, who responded that Plaintiff had been on the RMA list since July 8,
11 2015, and that an updated list had been given to staff in the 3b-05 building where he was
12 housed on July 10, 2015.

13 On July 15, 2015, Plaintiff received a halal religious diet meal.

14 On or about July 22, 2015, Plaintiff met with Defendant Robicheaux, who accepted
15 fault for not providing Plaintiff his religious diet. Ramadan was over by this time.

16 On or about August 24, 2015, Defendant Lieutenant Thompson took Plaintiff’s CDC ID
17 card and religious diet card at meal time and never returned them. When Plaintiff asked for
18 them back, Defendant Thompson said he did not have them. Plaintiff was not given a religious
19 diet because he lacked an ID card.

20 On both August 26, 2015, and September 15, 2015, Plaintiff sent a CDC 22 requesting
21 another religious ID card. Plaintiff received no response to the request he made on August 26,
22 2015. Even though Defendants Huewe, Vargas, and Tenorio knew Plaintiff was approved to
23 receive halal meals, they would not allow him to receive one.

24 On October 19, 2015, Plaintiff sent a CDC 22 form to Defendant Robicheaux
25 requesting a religious diet ID card. He received the card that same day.

26 On or about November 16, Plaintiff’s ID card and religious diet card were not returned
27 to him after he left the law library. Upon information and belief, LTA Carmichael sent the ID
28 back to 3b-04 and gave it to Defendant correctional officer Baeza, who never returned it to

1 Plaintiff.

2 Additionally, CSP-COR violates the purity in the way the food is served. Meats are
3 served cold, and halal meals are often not provided because of supply, so Plaintiff has to eat a
4 non-halal diet or nothing at all. During Ramadan in 2016, Plaintiff's name was again not on
5 the list to receive a halal diet at dinner with the rest of the Muslim inmates who received dinner
6 at sunset.

7 Defendant Robicheaux was the Community Resource Manager responsible for most of
8 the religious diet requests and programs at both SATF and CSP-COR at the time Plaintiff's
9 religious rights were previously violated. At one point, Defendant Robicheaux wrote to
10 Plaintiff that "nothing could be located in your c-file so I'm enclosing a 30/30 diet form."
11 However, Plaintiff's counselor had already sent him a copy of his approved diet agreement
12 from his central file.

13 **IV. ANALYSIS OF FIRST AMENDMENT CLAIM FOR FAILURE TO**
14 **PROVIDE RELIGIOUS MEALS**

15 "Inmates retain the protections afforded by the First Amendment, 'including its
16 directive that no law shall prohibit the free exercise of religion.'" Shakur v. Schriro, 514 F.3d
17 878, 883–84 (9th Cir. 2008) (quoting O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987)).
18 To implicate the Free Exercise Clause, a prisoner must show that the belief at issue is both
19 "sincerely held" and "rooted in religious belief." Malik v. Brown, 16 F.3d 330, 333 (9th Cir.
20 1994); see Shakur, 514 F.3d 884–85 (noting the Supreme Court's disapproval of the
21 "centrality" test and finding that the "sincerity" test in Malik determines whether the Free
22 Exercise Clause applies). If the inmate makes his initial showing of a sincerely held religious
23 belief, he must establish that prison officials substantially burden the practice of his religion by
24 preventing him from engaging in conduct which he sincerely believes is consistent with his
25 faith. Shakur, 514 F.3d at 884–85.

26 A regulation or policy that burdens the First Amendment right to free exercise may be
27 upheld only if it is reasonably related to a legitimate penological interest. Turner v. Safley, 482
28 U.S. 78, 89 (1987). This determination requires analysis of four factors: (1) there must be a

1 valid, rational connection between the regulation and the legitimate governmental interest; (2)
2 whether there are alternative means of exercising the right that remain open to inmates; (3) the
3 impact that accommodation of the right will have on guards, other inmates, and the allocation
4 of prison resources; and (4) the absence of ready alternatives. Id. at 89-90.

5 Here, Plaintiff has alleged that his exercise of religion was infringed at CSP-COR for
6 certain parts of 2015, including Ramadan, because he could not obtain meals consistent with
7 the religion of Islam. He also alleges that CSP-COR often does not have such meals available,
8 and they do not meet Muslim standards. He alleges that his beliefs are sincerely held and
9 religious in nature.

10 The Court finds that Plaintiff has alleged that his religious rights were infringed. The
11 more difficult question is who is to blame for this violation of constitutional rights. On a
12 number of occasions, it appears that prison officials took or lost his religious diet card, and that
13 as a result, prison officials refused to provide him with religious meals. Sometimes Plaintiff
14 names the official who took his religious diet card, and sometimes they are not known. To the
15 extent someone at the prison took his religious diet card, Plaintiff states a claim against them.
16 For this reason, Plaintiff states a claim against Defendant Thompson. If Plaintiff chooses to
17 request leave to amend his complaint to name the other prison officials who took his prison diet
18 card(s), it is possible that Plaintiff has a claim against them as well.

19 Plaintiff also states a claim against Defendant Robicheaux because it is alleged that she
20 was in charge of providing such meals, and also that she knowingly ignored information in
21 Plaintiff's central file in order to withhold such meals from Plaintiff.

22 Although Plaintiff alleges that certain correctional officers also withheld religious meals
23 from Plaintiff, it appears to be on the basis that Plaintiff lacked the necessary documentation.
24 Compliance with documentation rules alone does not appear to violate Plaintiff's constitutional
25 rights. Put another way, the prison has a legitimate government interest in not providing
26 Plaintiff a religious meal if Plaintiff lacks adequate documentation.

27 The Court does not find sufficient allegations against any other defendant for denial of
28 Plaintiff's free exercise rights under the First Amendment.

1 The Court also does not find a claim based on the content of the religious meals.
2 Plaintiff asserts at the end of his factual summary that when his religious meals are served, they
3 are served in a way that violates the purity of the food served. While if true, this could
4 establish a claim, Plaintiff's factual allegations about the availability and content of the meals is
5 insufficient and largely conclusory. They are insufficient for the Court to find that CSP-COR's
6 provision of religious Muslim meals generally violated Plaintiff's First Amendment rights.
7 Moreover, Plaintiff does not allege who is responsible for providing such meals in order to
8 assess liability against a specific defendant.

9 **V. EVALUATION OF PLAINTIFF'S RETALIATION CLAIM**

10 Allegations of retaliation against a prisoner for exercising his First Amendment rights
11 may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985); see
12 also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d
13 802, 807 (9th Cir. 1995). A retaliation claim requires "five basic elements: (1) an assertion that
14 a state actor took some adverse action against an inmate (2) because of (3) that prisoner's
15 protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment
16 rights, and (5) the action did not reasonably advance a legitimate correctional goal." Rhodes v.
17 Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted); accord Watson v. Carter,
18 668 F.3d 1108, 1114-15 (9th Cir. 2012); Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir.
19 2009).

20 Plaintiff alleges that Defendants violated his religious rights because of a settlement in a
21 case against certain defendants, which occurred before these events. The Court finds that
22 Plaintiff has not alleged sufficient facts to establish a cause of action for retaliation. Although
23 the settlement occurred before the conduct occurred, there is insufficient facts that would
24 establish that defendants were acting in order to retaliate, such as something they said or did
25 that would allow an inference to be drawn that their conduct was related to the settlement.
26 Moreover, there is insufficient information about which defendants were part of, or knew
27 about, the earlier settlement.

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1 **VI. CONCLUSION AND RECOMMENDATIONS**

2 For the foregoing reasons, IT IS HEREBY RECOMMENDED that all claims and
3 defendants be DISMISSED, except for Plaintiff’s claim against Defendants Thompson and
4 Robicheaux for violation of Plaintiff’s free exercise rights under the First Amendment.¹

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
7 (14) days after being served with these findings and recommendations, any party may file
8 written objections with the court. Such a document should be captioned “Objections to
9 Magistrate Judge's Findings and Recommendations.” Any reply to the objections shall be
10 served and filed within seven (7) days after service of the objections. The parties are advised
11 that failure to file objections within the specified time may result in the waiver of rights on
12 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,
13 923 F.2d 1391, 1394 (9th Cir. 1991)).

14 IT IS SO ORDERED.

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16 Dated: October 2, 2018

17 /s/ Eric P. Gray
18 UNITED STATES MAGISTRATE JUDGE

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28 ¹ The Court gave Plaintiff leave to amend when it initially screened Plaintiff’s complaint. (ECF No. 16). While Plaintiff did object to preserve his appellate rights, he also opted to proceed on the claim found cognizable by the Court instead of filing an amended complaint. (ECF No. 25).