UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DANIEL GREER	:	**CIVIL NO. 3:20-CV-350 (JAM)**
	:	
v.	:	
	:	
CONNECTICUT DEPARTMENT OF CORRECTION, ET AL.	:	**MARCH 24, 2020**

DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

FOR THE DEFENDANTS
Connecticut Department of Correction, Cheshire Correctional Institution, Rollin Cook, Commissioner, Department of Correction, In His Official Capacity Only

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DANIEL GREER	:	**CIVIL NO. 3:20-CV-350 (JAM)**
	:	
v.	:	
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CONNECTICUT DEPARTMENT	:	
OF CORRECTION, ET AL.	:	**MARCH 24, 2020**

DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

This case is a prisoner civil rights action brought by Daniel Greer, ("plaintiff'), a sentenced and incarcerated inmate, presently lawfully confined at Cheshire Correctional Institution ("CCI") in Cheshire, Connecticut. Plaintiff claims he is an Orthodox Jewish inmate and alleges his free exercise right to practice his religion is being violated because he erroneously believes he will not be provided proper Kosher for Passover meals during Passover. Plaintiff does not raise a claim under the First Amendment, but rather invokes the Religious Land Use and Institutionalized Person Act (RLUIPA), 42 U.S.C. § 2000cc-1, *et seq*., as well state law claims under Connecticut's Act Concerning Religious Freedom ("ACRF"), Conn. Gen. Stat. § 52-571b. The defendants are the Connecticut Department of Correction, the Cheshire Correctional Institution, and Rollin Cook, the Commissioner of the Department of Correction ("DOC") (hereinafter "Commissioner").

Defendants respectfully submit that the Court should deny plaintiff's motion. As set forth herein, plaintiff will get proper Passover meals. Based on the undisputable material facts, from percipient witnesses with personal knowledge of the facts, the defendants are entitled to dismissal of the action as it is moot. Plaintiff's declarations are based on incompetent assertions, speculation and hearsay, and are not admissible in evidence. Judgment as a matter of law should enter for the defendants.

FACTS

The plaintiff, Daniel Greer, is an inmate of the Connecticut DOC, presently incarcerated at CCI serving a total effective sentence of twenty years, execution suspended after twelve years, followed by ten years' probation, after having been convicted of four counts of Risk of Injury, Illegal Sexual Contact with victim under the age of 16, in violation of Connecticut General Statutes §53-21(a)(2).[1] (Exhibit ("Ex.") 1, Declaration of Michelle DeVeau, ¶ 4; Ex. 1-A, Mittimus). The plaintiff was first admitted into DOC custody as a sentenced inmate on December 2, 2019 and was housed at New Haven Correctional Center ("NHCC") until December 6, 2019. (Ex. 1, ¶¶ 5-6; Ex. 1-B, Daniel Greer's DOC Movement Sheet). On December 6, 2019, the plaintiff was transferred from NHCC to CCI, where he has been continuously housed since that date. (Ex. 1, ¶ 6; Ex. 1-B). The plaintiff is currently housed in the North Block 4 unit at CCI, which is a protective custody unit. (Ex. 2, Declaration of Chad Green, ¶ 10). The plaintiff is a self-identified practicing Orthodox Jewish individual, who continues to practice Orthodox Judaism while incarcerated. (Doc. No. 6, ¶¶ 5-6).

Any inmate within DOC can sign up to participate in any religious denomination, even if the person is not born and raised within the faith principles of a particular religion. (Ex. 3, Declaration of Rev. Dr. Charles F. Williams, ¶ 8). DOC does not discriminate against any individual inmate because they belong to a particular religion nor is any inmate required to participate in any religion. (*Id.*). DOC Administrative Directive ("AD") 10.8, entitled "Religious

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https://www.jud2.ct.gov/crdockets/CaseDetailDisp.aspx?source=Pending&Key=174c890a-7fe3-46a5-bf7d-8c992d619638; (visited March 18, 2020); http://www.ctinmateinfo.state.ct.us/detailsupv.asp?id_inmt_num=433222 (visited March 18, 2020).

Services", governs the process by which an inmate may choose a religious affiliation while incarcerated. (*Id.* at ¶ 9; Ex. 3-A, Administrative Directive 10.8, Religious Services). In particular, AD 10.8 provides, in relevant part, that "[a]n inmate may claim only one religion at a time, by completing CN 100801, Request for Designation of Religion"; however, "[a]n inmate shall not be required to choose a religion, and may choose no religion at all." (Ex. 3-A, ¶ 5(f); Ex. 3, ¶ 9). Additionally, AD 10.8 provides that "[a]n inmate may designate a change of religion not less than 90 consecutive calendar days from the date that his/her current religious designation becomes effective." (Ex. 3-B, ¶ 5(f)(i); Ex. 3, ¶ 9). DOC's Religious Services Unit aims to provide firm, fair, and consistent policies and procedures for all inmates regardless of the facility in which they are housed, and regardless of which faith or religious denomination they may practice. (Ex. 3, ¶ 4).

Currently, there are approximately 450 inmates within the entire DOC that are self-identified as Jewish. (Ex. 3, ¶ 10). DOC's Religious Services Unit employs two Rabbis: Rabbi Eli Ostrozynski and Rabbi Shaul Praver, both of whom advise DOC staff with respect to all aspects of Jewish religious practices, as they impact inmates within DOC, including but not limited to, the necessary accommodations for those inmates who wish to maintain a Kosher diet. (*Id.* at ¶¶ 1-2; Ex. 6, Declaration of Rabbi Praver, ¶ 1). DOC provides for a religious diet for Jewish inmates through the Common Fare program, and all food items and preparation procedures are inspected by one of the Rabbis to assure that they are acceptable for Jewish inmates who wish to maintain a Kosher diet. (Ex. 4, Declaration of John Deluca, ¶ 5; Ex. 6, ¶¶ 2-3). The Common Fare menu provides inmates with a diet that meets or exceeds the nutritional requirements set by the National Academy of Sciences, Institute of Medicine, Food, and Nutrition Board. (Ex. 5, Declaration of Robert DeVeau, ¶¶ 6-7).

In regards to the plaintiff's current diet, individual modifications of the Common Fare menu have been made to assure the strictest separation from any appliances, counter-tops for food preparation, and utensils, so that all of the items in the plaintiff's meals are completely separate and do not in any way commingle with any other surface, utensil, or preparation area. (Ex. 4, ¶ 6). Indeed, CCI kitchen staff have utilized a dedicated separate locked room in the CCI kitchen for preparing the plaintiff's food items,[2] and staff utilizes a locked dry storage cabinet, as well as a separate refrigerator, only for the plaintiff's Kosher items. (*Id.* at ¶¶ 7, 9). Additionally, the plaintiff's meals are prepared on a separate food preparation table, which is covered in both clear plastic wrap and parchment paper, prior to the preparation of any of the plaintiff's meals.[3] (*Id.* at ¶ 10). All the items on the plaintiff's menu are strictly Kosher and have been approved by both Rabbis Ostrozynski and Praver. (*Id.* at ¶¶ 8, 11). The meals are also served to the plaintiff in Styrofoam, closed clamshell containers, which are wrapped four times with clear plastic in each direction so that the meals could not possible be contaminated by anything non-Kosher. (*Id.* at ¶ 12). These specially wrapped meals are then separately placed and delivered to the plaintiff so that nothing could cross-contaminate these items. (*Id.* at ¶ 13).

In addition to the special measures taken generally for Jewish inmates regarding their diet, as well as the specific measures taken regarding the plaintiff's diet, DOC also provides a special menu for Jewish inmates who wish to keep Kosher for Passover. Indeed, the Religious Services Unit, including Rabbis Ostrozynski and Praver, work in close coordination

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[2] A photograph of the separate locked room in the CCI kitchen is contained in Exhibit D-1.

[3] A photograph of the separate preparation table where the plaintiff's meals are prepared is contained in Exhibit D-2.

with DOC's Director of Food Services and Correctional Food Services Supervisors in order to be in compliance with the strict separation protocols required for Passover, as well as purchasing appropriate Kosher for Passover food items. (Ex. 3, ¶ 5; Ex. 6, ¶¶ 1-5). Rabbis Ostrozynski and Praver also work closely with DOC food service staff in order to provide two ceremonial Seder meals to Jewish inmates during Passover. (Ex. 3, ¶ 5). DOC has had a very successful Kosher for Passover and Passover meal programs for many years, and for calendar year 2020, as has been the case in past years, inmates who wish to observe Kosher for Passover meals and participate in the Seder for the first two nights of Passover, are offered a form to sign up to participate. (*Id.* at ¶¶ 6-7; Ex. 3-B, Passover 2020 Sign-up Form). Passover will take place this year beginning on April 8, 2020 and extends through nightfall on April 16, 2020, and as indicated on the form any Jewish inmate may sign up for the Passover meals by submitting the form before March 31, 2020. (Ex. 3-B). Jewish inmates who sign up for Passover will receive six boxes of Kosher for Passover matzo and will also receive two Seder plates, one for each of the first two nights of Passover.[4] (Ex. 3, ¶ 10). Jewish inmates who sign up for Passover will also be provided with Kosher for Passover meals for each day during Passover. (*Id.* at ¶ 6). These meals offered to Jewish inmates during Passover are unique and are different than the Common Fare meals provided during the other weeks of the year. (Ex. 3, ¶ 6).

A copy of the 2020 Kosher for Passover menu that will be offered to Jewish inmates during Passover is contained in Exhibit 4-B. (See Ex. 4-B, Passover 2020 Menu). All the food items on the 2020 Passover menu are Kosher for Passover and have been reviewed

[4] Additionally, inmates that sign-up for Passover will also receive Rabbinical instruction on the Seder from the two Jewish Chaplains in "model Seders" before Passover starts. (Ex. 3, ¶ 10).

by Rabbi Praver. (Ex. 6, ¶¶ 2-5). DOC requires for Passover that all food items bear the Kosher for Passover designation, and only such Kosher for Passover food is allowed during the eight days of Passover. (Ex. 4, ¶ 11; Ex. 4-A, OU Kosher for Passover Certification). Additionally, all Passover items at CCI are stored separately and are prepared in a completely locked and separated area within the CCI kitchen. (Ex. 4, ¶ 7; Ex. 6, ¶ 6). Extreme precautions are taken and maintained during the preparation of the Passover meals to keep everything separated, including separate individual one-use only Styrofoam containers, disposable utensils, and the preparation of each Passover meal is also separated by having rolls of white paper covering all surfaces so that no items touch any surfaces. (Ex. 6, ¶ 6; Ex. 4, ¶¶ 10, 12). Each meal is served to the plaintiff, and other Jewish inmates observing Passover, in Styrofoam, closed clamshell containers, which are wrapped four times with clear plastic in each direction so that the meals could not possibly be contaminated by anything non-Kosher. (Ex., ¶ 12). These specially wrapped meals are then separately placed and delivered so that nothing could cross-contaminate these items. (*Id.* at ¶ 13). Therefore, any Jewish inmate within DOC, including the plaintiff, who signs up and chooses to participate in the 2020 Passover meal program will be eating meals that are entirely consistent with Kosher for Passover dietary law. (Ex. 6, ¶ 5). The DOC Kosher for Passover meal program will not force any observant Orthodox Jewish inmate, including the plaintiff, to violate Kosher for Passover laws. (*Id.*). Moreover, the food items on the Kosher for Passover menu will provide Jewish inmates, including the plaintiff, with adequate sustenance and nutritional value during Passover. (Ex. 5, ¶¶ 8-11).

STANDARDS OF REVIEW

A. Plaintiff Does Not Meet the Standard For A Mandatory Preliminary Injunction That Grants All The Relief He Seeks In The Action

The Court should apply the more stringent standard for preliminary injunctive relief here, as granting the preliminary injunction motion would provide substantially all the relief the plaintiff ultimately seeks.[5] Thus, a more stringent standard than that required for a grant of a garden variety negative injunction should be applied. *See Abdul Wali v. Coughlin*, 754 F.2d 1015, 1026 (2d Cir. 1985). Accordingly, the plaintiff must show a substantial likelihood of success on the merits, *i.e.,* that his cause is considerably more likely to succeed than fail (together, of course, with the requisite irreparable injury). *Abdul Wali at* 1026. This he cannot do. He certainly cannot do so on such an inadequate, incompetent, and inaccurate record, relying on allegations which lack foundation, and are not based on personal knowledge, but are rather, pure speculation. Importantly, there is no likelihood of success on the merits, as explained further below, because plaintiff has failed to properly and fully exhaust his administrative remedies.

"A party moving for a mandatory injunction that alters the status quo by commanding a positive act must meet a higher standard, however. *Tom Doherty Assocs., Inc. v. Saban Entm't, Inc.,* 60 F.3d 27, 33–34 (2d Cir. 1995). That is, in addition to demonstrating irreparable harm, '[t]he moving party must make a clear or substantial showing of a likelihood of success' on the merits, *Jolly v. Coughlin,* 76 F.3d 468, 473 (2d Cir.1996) (internal quotation marks omitted), a standard especially appropriate when a preliminary injunction is sought against

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[5] Plaintiff's Memorandum at page 8 fails to recite the correct legal standard. In addition, plaintiff ignores the limitations on injunctive relief imposed by the Prison Litigation Reform Act ("PLRA"). 18 U.S.C. §3626 prohibits the entry of an injunction in this case.

government. *Mastrovincenzo v. City of New York,* 435 F.3d 78, 89 (2d Cir.2006)." *D.D. ex rel. V.D. v. New York City Bd. of Educ.,* 465 F.3d 503, 510 (2d Cir. 2006), *opinion amended on denial of reh'g,* 480 F.3d 138 (2d Cir. 2007).

This Court recently denied a motion for a preliminary injunction in *DeAngelis v. Ashraf*, No. 3:18-CV-1689 (MPS), and noted that "[p]reliminary injunctive relief is an extraordinary remedy and is never awarded as a matter of right. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *Johnson v. Newport Lorillard*, No. 01-Civ-9587 (SAS), 2003 WL 169797, at *1 (S.D.N.Y. Jan. 23, 2003)." *DeAngelis v. Ashraf*, No. 3:18-CV-1689 (MPS), 2019 WL 2453766, at *1 (D. Conn. June 12, 2019). "[I]nterim injunctive relief is an 'extraordinary and drastic remedy which should not be routinely granted.'" *Buffalo Forge Co. v. Ampco–Pittsburgh Corp.,* 638 F.2d 568, 569 (2d Cir.1981) (quoting *Medical Society of New York v. Toia,* 560 F.2d 535, 538 (2d Cir.1977)). "In addition, a federal court should grant injunctive relief against a state or municipal official 'only in situations of most compelling necessity.' *Vorbeck v. McNeal,* 407 F. Supp. 733, 739 (E.D.Mo.), *aff'd,* 426 U.S. 943, 96 S.Ct. 3160, 49 L.Ed.2d 1180 (1976)." *Vega v. Lantz*, No. 3:04-CV-1215(DFM), 2005 WL 1802145, at *1 (D. Conn. July 27, 2005*), aff'd,* 173 F. App'x 74 (2d Cir. 2006). As explained further below, there is no danger of any imminent risk nor is there irreparable injury.

For many years, the DOC has had a tremendously successful Passover holiday meal program that provides, in addition to eight days of Kosher for Passover meals, two additional Seder plates for the first two nights of the Passover celebration. (See Ex. 3, ¶¶ 6-7). The DOC has implemented a reasonable and appropriate Passover policy and procedure, reviewed by two Rabbis, Rabbi Praver and Rabbi Ostrozynski. (*Id.* at ¶ 2, 5; Ex. 4, ¶¶ 5, 8). Plaintiff's demand for specialized pre-packaged meals is not required by either RLUIPA or

ACRF,[6] or well-established Second Circuit law. Accordingly, his motion for a preliminary injunction, should be denied.

B. Deference to Prison Officials

When considering all of the claims in this case, it is important for this Court to recognize that it is well-established that prisons are unique environments "fraught with dangers." "A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). The law also requires that courts should give due deference to the experienced judgment of prison officials. In *Procunier v. Martinez,* 416 U.S. 396, 405, (1974), the United States Supreme Court recognized the expertise of prison officials and that the judiciary is "ill-equipped to deal with the increasingly urgent problems of prison administration," and emphasized that courts should afford "deference to the appropriate prison authorities."

It is critical that state officials are granted the necessary authority and capacity to administer and manage the prisons and prisoners they oversee. *See, e.g., Turner v. Safley*, 482 U.S. 78 (1987). "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Id.*, at 84-85. To respect these imperatives, courts must exercise restraint in supervising the minutiae of prison life.

[6] Defendants choose to use the acronym "ACRF" for the state statute, Conn. Gen. Stat. §52-571b, to avoid confusion with the Federal Religious Freedom Restoration Act ("RFRA") that was found unconstitutional as applied to the states. See *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997) ("RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance.")

Id. Where, as here, a state penal system is involved, federal courts have "additional reason to accord deference to the appropriate prison authorities." *Id.*; see also e.g. *McKune v. Lile,* 536 U.S. 24, 39 (2002).

The plaintiff's demand asks the Court to become involved in the minutiae of the day to day operations of CCI, without any regard for the inevitable ripple effects and perceptions of favoritism that plaintiff's demand implicates. Plaintiff's demand for specific pre-packaged Passover meals exemplifies what the Supreme Court characterized as an injunction that is "inordinately—indeed, wildly—intrusive." *Lewis v. Casey*, 518 U.S. 343, 362 (1996). "One need only read the order, [in this case, plaintiff's motion and supporting papers], to appreciate that it is the *ne plus ultra* of what our opinions have lamented as a court's 'in the name of the Constitution, becom[ing] ... enmeshed in the minutiae of prison operations.'" *Id.* [8]

The plaintiff is not being required to violate his religious beliefs. The United States Supreme Court has analyzed prison policies that the Court found do impose such a requirement. In *Holt v. Hobbs*, the United States Supreme Court scrutinized the Arkansas grooming policy, which required the Arkansas prisoner to shave his beard and thus to "engage in conduct that seriously violates [his] religious beliefs." *Holt v. Hobbs*, 574 U.S. 352, 135 S. Ct. 853, 862 (2015). Here, however, unlike in *Holt*, there is no reason why plaintiff cannot accept and participate in the Passover celebration, which includes a full array of Kosher for Passover foods, boxes of Kosher for Passover matzoh which the plaintiff can keep in his cell throughout the eight-day celebration of Passover, two ceremonial Seder plates, in

[8] For example, plaintiff demands not only Kosher for Passover meals, but rather particular meals, prepackaged from a preferred vendor, the Aleph Institute, without following any proper state bidding procedures and in violation of strict security and food safety procedures that requires that all meals must be prepared by DOC food services staff. See ECF Doc. #7; plaintiff's motion is similarly detailed with minutiae, ECF Doc. # 3.

addition to his Passover evening meals, on each of the first two nights of the Passover celebration. Despite the plaintiff's fears and misunderstandings, there is simply no basis to claim that he will be forced to engage in conduct that seriously violates his religious beliefs. Certainly, there is no basis in fact to claim the meals are not appropriate and Kosher for Passover. Even more absurd is the plaintiff's exaggerated claims that he will be "forced to choose between starving for the eight days of Passover or violating his sincerely held religious beliefs." (Doc. No. 6, Declaration of Daniel Greer, ¶ 4). Plaintiff also alleges that "[g]iven his advanced age and poor health, this could be a life-threatening decision." (*Id.*)

Plaintiff's invocation of the Religious Land Use and Institutional Persons Act (RLUIPA), does not change the analysis or alter the balance in favor of safety, security and order. In *Cutter v. Wilkinson*, the Supreme Court again acknowledged and emphasized that in enacting RLUIPA, Congress "anticipated that courts would apply the Act's standard with 'due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.'" *Id.* 544 U.S. at 722-723. (citation omitted). Thus, the Court did "not read RLUIPA to elevate accommodation of religious observances over an institution's need to maintain order and safety." *Id.* at 722. This District Court has held that RLUIPA does not change the calculus that the Court must still defer to security judgments and policies made by experienced correctional administrators and implemented to assure safe, secure and orderly prisons, even when such policies arguably impact on the practice of religion in prison. See *Clark v. Levesque*, 3:03CV 795 (DFM), 2006 WL 691999, at *5 (D. Conn. Mar. 17, 2006), *aff'd,* 336 F. App'x 93 (2d Cir. 2009).

C. Standard For Injunctive Relief Under Federal Law

Plaintiff's claim for injunctive relief is also barred by the limitations on injunctive relief contained in the Prison Litigation Reform Act ("PLRA"). Not only does the PLRA require complete exhaustion of administrative remedies prior to even bringing an action under federal law, *see* 42 U.S.C. §1997e(a), (which plaintiff has failed to do), but also prohibits courts from entering intrusive injunction orders in the absence of ongoing violations of federal rights. In light of the fact that there is no underlying constitutional or federal statutory violation, 18 U.S.C. §3626 prohibits the entry of an injunction in this case. 18 U.S.C. § 3626 provides in part, as follows:

> Appropriate remedies with respect to prison conditions
>
> (a) Requirements for relief.
> (1) Prospective relief.
> (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. (emphasis added)

Thus, any prospective relief ordered in this case must "extend no further than necessary to correct the violation of the *Federal* right of [this] particular ... plaintiff." *Handberry v. Thompson*, 446 F.3d 335, 344–45 (2d Cir. 2006)(emphasis in original). Accordingly, this Court is without authority under the PLRA's provisions to order any relief based on Connecticut's Act Concerning Religious Freedom ("ACRF") codified at Conn. Gen. Stat. §52-

571b. See *Handberry* at 346 ("the district court was not permitted to order prospective relief to remedy an asserted violation of state law only.")

The injunctive claims raised by the plaintiff in this case are not narrowly drawn, extend further than necessary, and are not the least intrusive means of addressing plaintiff's allegations. In considering the claims for injunctive relief, "**The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.**" 18 U.S.C. § 3626(a)(1)(A). Accordingly, the affidavits, declarations and opposing papers filed by the defendants are entitled, as a matter of law, to substantial weight. The case law further requires substantial deference to the defendants' professional opinions. Under these standards, the Court should deny plaintiff's motion and grant summary judgment to defendants on all claims in this case.

D. **The Court Can Deny The Plaintiff's Motion Without A Hearing, But Cannot Grant The Motion Without A Hearing**

In *DeAngelis v. Ashraf*, *supra*, this Court denied the plaintiff's motion for a preliminary injunction without a hearing. This Court further stated,

> "There is no hard and fast rule in this circuit that oral testimony must be taken on a motion for a preliminary injunction or that the court can in no circumstances dispose of the motion on the papers before it. A hearing is not required for a preliminary injunction when the relevant facts either are not in dispute or have been clearly demonstrated at prior stages of the case, or when the disputed facts are amenable to complete resolution on a paper record." *Riddick v. Maurer*, 730 F. App'x 34, 38 (2d Cir. 2018) (internal citations and alterations omitted).

DeAngelis v. Ashraf, No. 3:18-CV-1689 (MPS), 2019 WL 2453766, at *1. "Although a hearing is generally required on a *properly supported motion* for preliminary injunction, oral argument and testimony are not required in all cases. *See Drywall Tapers & Pointers Local 1974 v. Local 530,* 954 F.2d 69, 76–77 (2d Cir.1992). Indeed, neither the plaintiffs' motion nor their

memorandum of law even asks for oral argument or testimony as required by Local Rule 7(a)1. Where, as here, 'the record before a district court permits it to conclude that there is no factual dispute which must be resolved by an evidentiary hearing, a preliminary injunction may be granted or denied without hearing oral testimony.' 7 James W. Moore, et al., *Moore's Federal Practice* ¶ 65.04[3] (2d ed.1995)." *Vega v. Lantz*, No. 3:04CV1215(DFM), 2005 WL 1802145, at *1 (D. Conn. July 27, 2005), *aff'd,* 173 F. App'x 74 (2d Cir. 2006) (emphasis added).[9] Here, there are material facts in dispute.

As noted below in footnote 10, hearsay evidence may be admissible in the Court's consideration of a preliminary injunction motion, ordinarily a prohibitive injunction motion which seeks to maintain the status quo, but here, such assertions are entitled to little weight, because they lack foundation, and are based on conjecture and surmise, and ultimately are

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[9] Plaintiffs' motion for preliminary injunction is not "properly supported." The Complaint is not a verified complaint and none of the plaintiff's supporting papers have provided competent evidence based on personal knowledge. While some district courts have exercised discretion to allow affidavits based on hearsay, when considering a Rule 65 motion, conclusory statements, conjecture and surmise, such as those in the complaint and in the Greer and Deren Affidavits, standing alone, cannot take the place of the evidentiary showing required to obtain a preliminary injunction. *See Asdourian v. Konstantin,* 50 F. Supp. 2d 152, 159 (E.D.N.Y. 1999) (denying preliminary injunction where allegations in the complaint were based upon hearsay, surmise and conjecture); *Juniper Entm't, Inc. v. Calderhead*, No. CV-07-2413 (ADS)(AKT), 2007 WL 9723385, at *8 (E.D.N.Y. Aug. 17, 2007);

However, in the context of other Rule 65 proceedings, in which a preliminary injunction only has the effect of maintaining the position of the parties until the trial can be held, a court may consider affidavits which do not necessarily measure up to the standards of summary judgment affidavits, so long as the injunction motion is not based solely on information and belief. *Bowles v. Montgomery Ward & Co.*, 143 F.2d 38, 42 (7th Cir. 1944); 11A Charles Wright & Arthur R. Miller, Federal Practice & Procedure § 2949 (2d ed. 1995). *Juniper Entm't, Inc. v. Calderhead*, *supra*, at *8. Here, however, the plaintiff's motion in effect seeks a permanent injunction and all of the relief sought in the complaint and, thus, plaintiff must meet a higher standard. Here, hearsay, surmise and conjecture are not sufficient to warrant the granting of the extraordinary remedy of a permanent mandatory injunction.

unpersuasive and inconclusive. *See Mullins v. City of N.Y.*, 626 F.3d 47, 52 (2d Cir. 2010) (noting that "hearsay evidence may be considered by a district court in determining whether to grant a preliminary injunction" and that the fact that evidence is hearsay "goes to weight, not preclusion, at the preliminary stage"); *Country Fare LLC v. Lucerne Farms*, No. 3:11-CV-722 (VLB), 2011 WL 2222315, at *9 (D. Conn. June 7, 2011); *UBS Fin. Servs. Inc. v. Fiore*, No. 17-CV-993 (VAB), 2017 WL 3167321, at *12 (D. Conn. July 24, 2017)

Respectfully, the defendants submit that the plaintiff's motion may be denied without any hearing but may not be granted in the absence of a hearing. *See Jacobson & Co. v. Armstrong Cork Co.,* 548 F.2d 438, 441 (2d Cir. 1977). In *Jacobson*, the Second Circuit stated, "Defendant did not request an evidentiary hearing below and therefore 'cannot be heard to complain' that a hearing was not conducted. *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197, 1205 (2d Cir. 1970).[10] As we said in *Securities and Exchange Commission, v. Frank*, 388 F.2d 486, 493 (2d Cir. 1968), "if a party is unwilling to have the issuance of a temporary injunction decided on affidavits, he must make his objection known; he may not gamble on the judge's accepting his affidavits rather than his adversary's and then seek a reversal if the result is disappointing." Thus, the defendants respectfully request that an evidentiary hearing be held prior to the granting of any relief in this case. Unlike in *Forts v. Ward,* 566 F.2d 849, 851 (2d Cir. 1977), where a motion for preliminary injunction was supported by four affidavits of four inmates, here, none of the plaintiff's allegations, or

[10] See accompanying motion for an evidentiary hearing. Defendants respectfully submit that this entire action should be disposed of on the papers, and defendants intend to file a motion for summary judgment in the next several days, as it is undisputed that plaintiff failed to exhaust administrative remedies. *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016); *see also Jones v. Bock*, 539 U.S. 199, 211 (2007); *Booth v. Churner*, 532 U.S. 731, 741 (2001).

moving affidavits are entitled to any weight because they lack foundation based on personal knowledge, but rather are based on hearsay, conjecture or surmise. "It is well established that motions for preliminary injunctions should not be resolved on the basis of affidavits which evince disputed issues of fact." *Forts v. Ward*, 566 F.2d 849, 851 (2d Cir. 1977).

Here, there are disputed issues of fact with regard to the merits.[11] For example, plaintiff's motion and moving papers assert that Common fare meals will be provided during Passover. Instead, there is a special Kosher for Passover eight-day holiday menu in which individualized prepared Kosher for Passover meals are served to each inmate who wishes to observe Kosher for Passover dietary practices. (See Ex. 3, ¶¶ 6-7, 10; Ex. 4, ¶¶ 8, 11 14; Ex. 4-B; Ex. 6, ¶¶ 3-5).

ARGUMENT

I. THE COURT SHOULD NOT MICROMANAGE THE MINUTIAE OF PRISON LIFE

As stated above, the overarching principle that applies when considering all of the claims in this case is that the Court must defer to the expertise of the defendant prison officials, and it may not intrude on the day to day operations of a state prison and the state correctional system. *Beard v. Banks*, 548 U.S. 521, 530 (2006) ("our inferences must accord deference to the views of prison authorities").

"Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Turner.*, 482 U.S. at 84-85. To respect these imperatives, courts must exercise restraint in supervising the minutiae of prison life.

[11] As detailed herein, there are, however, no dispute that the plaintiff failed to fully and properly exhaust his administrative remedies prior to commencing this actions, as required by the PLRA.

Id. Where, as here, a state penal system is involved, federal courts have "additional reason to accord deference to the appropriate prison authorities." *Id.*; *McKune v. Lile*, 536 U.S. 24, 37 (2002).

The plaintiff's demand effectively asks the Court to become involved in the minutiae of the day to day operation regarding Passover meals in the protective custody unit at CCI. Plaintiff's demand seeking an injunction concerning, *inter alia*, purchasing particularized pre-packaged Kosher for Passover meals from a preferred vendor, i.e. the Aleph Institute, is exactly what the Supreme Court described as "the ne plus ultra of what our opinions have lamented as a court's 'in the name of the Constitution, becoming . . . enmeshed in the minutiae of prison operations.' *Bell v. Wolfish*, 441 U.S. 520, 562… (1979)." *Lewis v. Casey*, 518 U.S. 343, 362 (1996). The entry of such an order as sought by the plaintiff would be, as described the Supreme Court, "inordinately --indeed, wildly -- intrusive*." Id. See also, e.g., Procunier v. Martinez*, 416 U.S. 396, 404-05, (1974). The Supreme Court noted: "Courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. . . . Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." *Id*. at 405. See *Cutter v. Wilkinson,* 544 U.S. 709, 717 (2005) (Lawmakers anticipated that courts entertaining complaints under RULIPA would accord "due deference to the experience and expertise of prison and jail administrators").

Plaintiff's invocation of RLUIPA does not change the analysis or alter the balance in favor of safety, security and order. In *Cutter v. Wilkinson*, the Supreme Court again acknowledged and emphasized that in enacting RLUIPA, Congress "anticipated that courts would apply the Act's standard with 'due deference to the experience and expertise of prison

and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.'" *Id.* 544 U.S. at 722-723. (citation omitted). As discussed in more detail below, plaintiff fails to acknowledge that well-established Second Circuit case law does not require prepackaged Kosher meals as a matter of a federally protected right. Instead, the question of how to accommodate religious diets in a manner consistent with federal law is left to the discretion of prison officials. In *Benjamin v. Coughlin,* 905 F.2d 571, 579 (2d Cir.) cert. denied 498 U.S. 951(1990) the Second Circuit held that excessive costs and administrative burdens can justify denial of religious diets even though prisoners have a right "to receive diets consistent with their religious scruples." *Kahane v. Carlson*, 527 F.2d 492, 495 (2d Cir.1975). In *Kahane*, the Second Circuit made clear that prison officials, not prisoners, were authorized to consider budgetary limitations and existing, available food sources. *Id.* at 496. Plaintiff's invocation of RLUIPA does not change the calculus or require the granting of his motion, since the Kosher for Passover meals that DOC provides do not constitute a substantial burden on plaintiff's exercise of religion. Moreover, as explained immediately below, plaintiff has no likelihood of success on the merits, because he failed to exhaust his administrative remedies, thus, his motion for a preliminary injunction must be denied.

II. PLAINTIFF FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

Plaintiff cannot prevail on the prong of the preliminary injunction test that he must show a strong likelihood of success of the merits, not only because he has misperceived the facts related to meeting his heavy burden regarding Kosher for Passover meals in the DOC, but also because he failed to exhaust his administrative remedies, as required by the PLRA, prior to bringing this action.

A. PLRA Exhaustion Requirement

The Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e(a), requires inmates to exhaust administrative remedies before seeking relief in federal court. *Porter v. Nussle*, 534 U.S. 516, 532 (2002). The exhaustion provision of the PLRA provides in relevant part that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). In enacting 1997e, Congress sought to afford prison officials time and opportunity to address complaints internally and reduce the quantity, and improve the quality, of prisoner suits. *Porter,* 534 U.S. at 524-25. The Supreme Court has consistently found the language of the PLRA exhaustion provision to be mandatory. *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016); *see also Jones v. Bock*, 539 U.S. 199, 211 (2007) ("There is no question that exhaustion is mandatory under the PLRA."). The Supreme Court has held that inmates must exhaust administrative remedies before filing any type of action "about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter,* 534 U.S. at 532. The PLRA exhaustion requirement applies regardless of whether the inmate may obtain the specific relief he desires through the administrative process. *Booth v. Churner*, 532 U.S. 731, 741 (2001).

An inmate who fails to file administrative grievances and exhaust his remedies may not bring the claim in federal court. *Adekoya v. Federal Bureau of Prisons*, 375 Fed. App'x. 119, 121 (2d Cir. April 29, 2010) (barring inmate federal lawsuit where inmate failed to exhaust administrative remedies). Further, "[p]roper exhaustion demands compliance with an agency's deadlines and other critical procedural rules." *Woodford v. Ngo*, 548 U.S. 81,

90-91 (2006); *see also Ruggiero v. County of Orange*, 467 F.3d 170, 176 (2d Cir. 2006). "An 'untimely or otherwise procedurally defective administrative grievance' . . . does not constitute proper exhaustion." *Snyder v. Whittier*, 428 Fed. App'x. 89, 91 (2d Cir. 2011) (quoting *Woodford*, 548 U.S. at 83-84). To properly exhaust a claim, a prisoner must comply with the prison grievance procedures, including utilizing each step of the administrative appeal process. *Snyder,* 428 Fed. App'x. at 91 (citing *Jones v. Bock*, 549 U.S. 199, 218 (2007)); *see also Ruggiero*, 467 F.3d at 176 ("PLRA requires 'proper exhaustion,' which 'means using all steps that the agency holds out and doing so properly.'") (quoting *Woodford*, 548 U.S. at 89).

The PLRA exhaustion requirement may only be excused where administrative remedies were not available to the inmate. *Ross,* 136 S. Ct. at 1862. The Supreme Court has identified three circumstances in which an administrative remedy is not available for an inmate to obtain relief: (1) "the administrative remedy may operate as a 'dead end,' such as where the office to which inmates are directed to submit all grievances disclaims the ability to consider them . . . [(2)] the procedures may be so confusing that no ordinary prisoner could be expected to 'discern or navigate' the requirements . . . [a]nd [(3)] prison officials may 'thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.'" *Shehan v. Erfe*, No. 3:15-CV-1315 (MPS), 2017 WL 53691, * 6 (D. Conn. Jan. 4, 2017) (quoting *Ross*, 136 S. Ct. at 1859-60).

The PLRA defines a "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 42 U.S.C. § 1997e(h). There is no dispute that at the time of the allegations in

the instant suit, as well as at the time the plaintiff filed the instant suit, the plaintiff was a "prisoner" as defined in the PLRA as he was incarcerated within DOC facilities. Additionally, there is no question that the exhaustion requirement of the PLRA applies to the plaintiff's claim for injunctive relief under RLUIPA, which is federal law codified at 42 U.S.C. § 2000cc, et seq. In fact, RLUIPA contains a provision that affirmatively states that nothing in RLUIPA "shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by the Act)." 42 U.S.C. § 2000cc-2(e). The United States Supreme Court similarly noted that "a prisoner may not sue under RLUIPA without first exhausting all available administrative remedies." *Cutter v. Wilkinson*, 544 U.S. 709, 723 n. 12 (2005) (citing 42 U.S.C. § 2000cc-2(e) & 42 U.S.C. § 1997e(a)). Accordingly, the exhaustion requirement of the PLRA applies to the instant action.

B. Plaintiff Failed to Exhaust His Administrative Remedies

For the plaintiff to properly exhaust his administrative remedies, DOC requires the plaintiff to file grievances and follow the procedures imposed by Administrative Directive ("AD") 9.6. (Ex. 2-A, DOC Administrative Directive 9.6); *see also Riles v. Buchanan*, 656 Fed. App'x. 577, 579 (2d Cir. 2016) (Summary Order) ("The Connecticut Department of Correction ('DOC') requires inmates to submit grievances in accordance with Administrative Directive 9.6 ('AD 9.6')"); *Sheehan,* 2017 WL 53691, at *6. AD 9.6 requires an aggrieved inmate to first seek informal resolution of his issues, in writing, through the use of an Inmate Request Form (Form No. CN 9601), prior to filing a formal grievance. (Ex. 2-A, p. 5, ¶ 6); *Sheehan,* 2017 WL 53691, at *6. AD 9.6 requires that in the Inmate Request Form, the "inmate must clearly state the problem and the action requested to remedy the issue" and provides that the appropriate correctional official has fifteen business days to respond. (Ex.

2-A, p. 5, ¶ 6). If the inmate is not satisfied with the response he receives or does not receive a response, the inmate must file a Level-1 grievance (Form No. CN 9602) by depositing it in the "Administrative Remedies box" and attach his Inmate Request Form showing his attempts to resolve the issue informally. (*Id.* at 5-6, ¶ 6(C)); *Sheehan,* 2017 WL 53691, at *6; *Jones v. Johnson*, No. 3:15-CV-1135 (DJS), 2017 WL 1843692, at * 4 (D. Conn. May 8, 2017). The Level-1 grievance must be submitted within thirty days "of the occurrence or discovery of the cause of the grievance," and provides that the appropriate correctional official has thirty business days to respond. (Ex. 2-A, p. 5-6, ¶ 6(C)). If the inmate is not satisfied with the response to his Level-1 grievance, or no response is provided within the thirty days, the inmate may submit a Level-2 appeal within five days after receipt of the response or the date the response was due. (*Id.* at 7, ¶ 6 (I), (K)). The Level-2 appeal constitutes the final level of appeal for all inmate grievances except for those that (a) challenge department policy, (b) challenge the integrity of the grievance procedure, or (c) exceed the thirty-day limit for a Level-2 appeal response. (*Id.* at 7, ¶ 6(L)); *Jones,* 2017 WL 1843692, at *4.

At CCI, where the plaintiff is housed, inmates file their administrative remedies, including grievances and grievance appeals, in a designated "Administrative Remedies" box that is clearly marked and located within each housing unit at Cheshire.[12] (Ex. 2, Declaration of Chad Green, ¶ 6). At CCI, the administrative remedies boxes are locked, and the Administrative Remedies Coordinator ("ARC"), Counselor Chad Green, has the key to each of these boxes and collects the grievances on a daily basis, Monday through Friday. (Ex. 2,

[12] The plaintiff is currently housed in the North Block 4 unit at CCI, which is a protective custody unit, and this unit contains its own Administrative Remedies box, which is accessible to the inmates within that unit, including the plaintiff. (Ex. 2, ¶ 10)

¶ 7). Upon collection and review of the grievances, ARC Green assigns each properly filed grievance a tracking number, logs it into the Cheshire Grievance Log, and provides the inmate with a receipt for the grievance. (Ex. 2, ¶ 8).

The plaintiff's instant action relates to his alleged complaints that the defendants have refused to serve the plaintiff kosher meals for Passover and have failed to provide the plaintiff with provisions for two ceremonial dinners on the first two nights of Passover. The record evidence, however, demonstrates that the plaintiff failed to properly exhaust his administrative remedies in accordance with AD 9.6 regarding these complaints, which form the basis for the plaintiff's instant action. During the time period that the plaintiff has been housed at CCI, from December 6, 2019 until present, the plaintiff has filed only one administrative remedy. (Ex. 2, ¶¶ 10-11). As attested to by ARC Green, the keeper of records of administrative remedies filed by inmates at CCI, the sole administrative remedy filed by the plaintiff at CCI was an appeal of a disciplinary report for which he was found guilty. (*Id.* at ¶¶ 11-12). This disciplinary appeal was received on January 6, 2020, and a true copy of this appeal is contained in Exhibit 2-B**.** (*Id.* at ¶ 12; Ex. 2-B, Disciplinary Appeal). This is the sole administrative remedy the plaintiff has filed at CCI. (Ex. 2, ¶¶ 11-12).

Critically, the plaintiff did not file any grievances related to kosher meals or the provisions for Passover, which form the basis for his instant claims. (Ex. 2, ¶ 13). ARC Green's review of the Cheshire Grievance Log from December 1, 2019 until March 18, 2020 confirms that the plaintiff failed to file any grievances regarding kosher meals or Passover, and the only remedy filed by the plaintiff was the disciplinary appeal referenced above. (*Id.* at ¶ 14). Simply put, the record evidence demonstrates that the plaintiff failed to exhaust his administrative remedies regarding the complaints he now brings in federal court, as required

by the PLRA. *See Jones v. Bock*, 539 U.S. 199, 211 (2007) ("There is no question that exhaustion is mandatory under the PLRA.").

The administrative remedies established by DOC in AD 9.6 were available to the plaintiff. The Second Circuit has held that DOC's AD 9.6 “is not so opaque as to be unavailable.” *Riles,* 656 Fed. App’x at 581. The plaintiff has made no claim that he was unable to navigate the grievance procedure, nor could he. In fact, the plaintiff has demonstrated his ability to navigate the remedy procedures in AD 9.6 with the filing of his disciplinary appeal. (Ex. 2, ¶¶ 11-12; Ex. 2-B); *see also Gonzalez v. Fenton*, No. 3:17-CV-309 (JAM), 2018 WL 4323812, *3 (D. Conn. Sept. 10, 2018) (rejecting inmate’s contention that he was unable to file grievances, finding that the inmate’s “filing of [an] earlier grievance demonstrates that [the inmate] was capable of accessing the prison grievance system”). Lastly, the plaintiff has made no claim that his attempts to file grievances have in anyway been thwarted or interfered with or that he was unable to file grievances. To the contrary, the plaintiff affirmatively states in his affidavit that he “submitted numerous complaints and grievances to CTDOC and Cheshire Correctional requesting proper kosher food and accommodation for Passover.” (Doc. No. 6, ¶ 24). As a result, the plaintiff cannot be excused from the PLRA exhaustion requirement, as by his own admission, the administrative remedies were available to him. *See Ross,* 136 S. Ct. at 1862.

In sum, the plaintiff failed to exhaust his administrative remedies prior to commencing this action, which relates to his complaints about DOC’s failure to provide him with kosher meals and accommodations for Passover. The record is clear that the plaintiff never properly exhausted his administrative remedies related to these complaints, therefore, the plaintiff’s instant suit is barred by the PLRA.

III. THE PLAINTIFF'S RIGHT TO A "RELIGIOUS DIET" IS NOT VIOLATED BY DOC'S KOSHER FOR PASSOVER INDIVIDUAL MEALS AND SEDER PLATES

The plaintiff alleges, incorrectly, that his Passover meals will be the meals prepared pursuant to the Common Fare menu. (Doc. No. 1, Complaint, ¶¶ 30, 31, 32). It is disputed that Common Fare meals will be provided to Jewish inmates who wish to keep Kosher during Passover. Instead, DOC provides a special for Jewish inmates who wish to keep Kosher for Passover, and these meals offered to Jewish inmates who sign up for Kosher for Passover meals are unique and are different than the Common Fare meals provided during the other weeks of the year. (Ex. 3, ¶ 6; Ex. 4-B). All the food items on the 2020 Passover menu are Kosher for Passover and have been reviewed by Rabbi Praver. (Ex. 6, ¶¶ 2-5; Ex. 4-A).[22] Additionally, all Passover items at CCI are stored separately and are prepared in a completely locked and separated area within the CCI kitchen, and extreme precautions are taken and maintained during the perpetrating of these Passover meals to ensure that everything is separated. (Ex. 4, ¶¶ 7, 10, 12; Ex. 6, ¶ 6). Moreover, each Passover meal is served to the plaintiff, and other Jewish inmates observing Passover, in Styrofoam, closed clamshell containers, which are wrapped four times with clear plastic in each direction so that the meals could not possibly be contaminated by anything non-Kosher. (Ex. 4, ¶ 12). These specially wrapped meals are then separately placed and delivered so that nothing could cross-contaminate these items. (*Id.* at ¶ 13).

The Second Circuit has already acknowledged in *Benjamin v. Coughlin,* 905 F.2d 571, 579 (2d Cir. 1990) that excessive costs and administrative burdens can justify denial of

[22] Attached as Exhibit 4-A is an Orthodox Union ("OU") Kosher for Passover Certification, and "OU Kosher provides kosher certificates for over 1 million products in more than 8,500 plants worldwide. It is by far the world's largest kosher certification and kosher supervision agency." See https://oukosher.org/ (last visited March 19, 2020).

religious diets even though prisoners have a right "to receive diets consistent with their religious scruples. " *Kahane v. Carlson*, 527 F.2d 492, 495 (2d Cir.1975). Common Fare food items which are served to Jewish inmates throughout the year complies with Kosher religious scruples, and all foods on the distinct and unique Kosher for Passover 2020 menu are permissible foods for Orthodox Jewish inmates to eat during the observance of Passover. (Ex. 4, ¶ 5; Ex. 6, ¶¶ 2-6). Thus, both Common Fare and the DOC's Kosher for Passover meals are permissible under *Kahane*, where the Second Circuit refused to dictate to prison officials how to provide a Kosher diet, but instead stated that prison officials could use their discretion and could provide foods from already existing sources, such as hard boiled eggs and "tinned fish." Id. at 496. Courts, however, are reluctant to grant dietary requests where the cost is prohibitive, *see Martinelli v. Dugger*, 817 F.2d 1499, 1507 & n. 29 (11th Cir. 1987), cert. denied, 484 U.S. 1012 (1988) (emphasis added); *Kahey v. Jones*, 836 F.2d 948, 951 (5th Cir. 1988), or the accommodation is administratively unfeasible, *Kahey*, 836 F.2d at 951; *Kahane,* 527 F.2d at 495. (emphasis added). In *Kahane* at 496 the Second Circuit made clear that prison officials, not prisoners, were authorized to consider budgetary limitations and existing, available food sources stating,

> Such details are best left to the prison's management which can provide from the food supplies available within budgetary limitations. Prison authorities have reasonable discretion in selecting the means by which prisoners' rights are effectuated. (emphasis added)

There are a number of decisions from the United States District Court for the District of Connecticut which have scrutinized the Connecticut DOC Common Fare diet, for both orthodox Muslim inmates who wish to keep a Halal diet and for Orthodox Jewish inmates who wish to maintain a Kosher diet. *See e.g. Rahman v. Meachum*, Civ. No N-90-277 (JAC)

(D. Conn. Nov. 19, 1993); *Alim v. Meachum*, Civ. No. N-90-340 (JAC) (D. Conn. Aug. 31, 1992), (copies attached) (correctly concluding that Common Fare does not violate the constitutional rights of the plaintiffs. *Alim* at 7, n. 9 (denying Halal meats); *Rahman* at 3; (denying injunction for Halal meats); *Hayes v. Bruno*, 171 F. Supp. 3d 22, 33 (D. Conn. 2016) (no evidence showing that the Common Fare meal preparation process substantially burdens sincerely held religious beliefs of Orthodox Jewish inmate, granting defendants summary judgment on both First Amendment and RLUIPA claims). In *Kramer v. DOC*, Judge Chatigny recently granted the DOC defendants summary judgment in a case in which an Orthodox Jewish inmate claimed he was entitled to prepackaged meals (the plaintiff in *Kramer* was also supported by Rabbi Katz of the Aleph Institute), but this Court found instead that:

> Defendants have explained that each of these requests was denied to protect legitimate penological interests. Specialty food items cannot be donated or purchased because that might create the appearance of special treatment, there would be no way to ensure that the food was safe, contraband could be smuggled in through the food, and permitting inmate requests for specialty items could strain logistical and financial resources.

Kramer v. Dep't of Correction, No. 3:15-CV-00251 (RNC), 2019 WL 4805152, at *10 (D. Conn. Sept. 30, 2019).

Many other courts have rejected inmates' demands for specialized or prepackaged meals, including meals that include Halal or Kosher meats, and instead defer to experienced corrections professional as to how to administer a necessarily simplified meal service program in a correctional institution. This Court has held that the DOC Common Fare menu satisfied a Hebrew Israelite inmate's religious requirement for a kosher diet. *See Thompson v. Lantz,* No. 3:04cv2084(AWT) (D. Conn. Mar. 28, 2011); *Wortham v. Lantz*, No. 3:10-CV-1127 DJS, 2014 WL 4073201, at *3 (D. Conn. Aug. 13, 2014). In both *Thompson* and

Wortham, the inmate plaintiffs both claimed they had to adhere to strict Orthodox Kosher dietary laws. In *Vega*, this Court, after a bench trial, concluded that the DOC Common Fare meal plan furthered a compelling governmental interest, was the least intrusive manner of providing religious meals, and was lawful under a RULIPA analysis. *Vega v. Lantz,* No. 304CV1215 (DFM), 2009 WL 3157586, at *5–8 (D. Conn. Sept. 25, 2009). The DOC Common Fare menu, although not providing halal meat, did not violate either the First Amendment or RLUIPA, since that requirement was "in furtherance of compelling governmental interests including prison security, controlling costs and maintaining workable administrative procedures." *Vega v. Lantz,* No. 304CV1215DFM, 2009 WL 3157586, at *5–8 (D. Conn. Sept. 25, 2009).

Contrary to plaintiff's demand as set forth in his preliminary injunction motion, the law does not require specialized, prepackaged meals. Prison officials have discretion as to how to provide religious diets for prisoners. See *Kahane, supra*, at 496. For example, courts have found that vegetarian or ovo-lacto vegetarian meals meet the religious requirements for Muslims. *Williams v. Morton*, 343 F.3d 212, 218 (3rd Cir. 2003) (vegetarian meals); *Salaam v, Collins*, 830 F.Supp 853, 861 (D.Md. 1993) (lacto-ovo-vegetarian meals), *aff'd sub nom Calhoun-El v. Robinson*, 70 F.3d 1261 (4th Cir. 1995); *Abdullah v. Fard*, 974 F.Supp. 1112, 1118 (N.D. Ohio 1997) (vegetarian meals) *aff'd* 173 F.3d 854, (6th Cir. 1999); *Cochran v. Schotten,* 172 F.3d 47 (6th Cir. 1998) (ovo-lacto-vegetarian diet).

A more recent survey of the applicable case law under RLUIPA scrutiny reveals even more Circuit Courts of Appeals have rejected the claims by prisoners for Halal meat as part of a Muslim religious diet. The Ninth Circuit has rejected the demand for specialty foods not available from already existing food supplies, including having to provide Halal meats. *Spruel*

v. Williams, 207 F. App'x 765, 765 (9th Cir. 2006) (affirming the denial of a preliminary injunction under RLUIPA for a Muslim diet demanding Halal meat where an ovo-lacto diet is provided); see *also Watkins v. Shabazz,* 180 F. App'x 773, 775 (9th Cir. 2006) (defendants did not substantially burden the free exercise of Watkins' religion in violation of RLUIPA because they gave him nutritionally adequate alternatives to eating non-Halal meat).

The same rationale applies here. There is no material dispute that the Kosher for Passover meals being provided to plaintiff by the DOC have been reviewed and analyzed by a certified, registered dietician, and they are nutritionally adequate.[23] (Ex. 5, ¶¶ 7-11). Moreover, both the method of preparation as well as the individualized food items provided to inmates who wish to participate in the Kosher for Passover meal program, have been reviewed by Rabbi Praver, and they conform with Orthodox Kosher dietary requirements. (Ex. 3, ¶ 5; Ex. 4, ¶¶ 8, 11; Ex. 6, ¶¶ 4-6).

Two more additional cases under RLUIPA should be mentioned, because they are both relevant and analogous. First, under RLUIPA, Courts have uniformly found that the denial of Halal meat is not a substantial burden since everything on the Common Fare menu is Halal, or permissible to eat. Although RLUIPA does not define "substantial burden," courts have found that it must be "oppressive" to a "significantly great" extent, such that it renders religious exercise "effectively impracticable." *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1034-35 (9th Cir. 2004). In *Spruel v. Clark,* the court found denial of

[23] Nor does is the plaintiff currently facing any imminent or life-threatening medical conditions that would affect his diet. (Ex. 7, Declaration of Deborah Broadley, ¶ 9). Moreover, the plaintiff's most recent bloodwork does not indicate that the plaintiff is suffering from any nutritional deficiencies. (*Id.* at ¶ 8). Finally, the plaintiff will continue to receive medical treatment and monitoring, and the plaintiff has access to medical staff at CCI at any time. (*Id.* at ¶ 10).

Halal meat was not a substantial burden on religion, noting that RLUIPA does not define what constitutes a substantial burden on religious exercise. *Spruel v. Clarke*, No. C06-5021RJB, 2007 WL 1577729, at *2 (W.D. Wash. May 31, 2007). The factual scenario in the instant case is precisely analogous to that in *Spruel*, where, as here, plaintiff wants specific prepackaged meals from a personally preferred private vendor, the Aleph Institute, even though the foods that are already provided do not in any way force plaintiff to eat food forbidden by his religion. The plaintiff's entire lawsuit is based on fear, speculation, and a lack of knowledge of the facts regarding the provision of Kosher for Passover meals in the DOC. In *Spruel,* the district court stated,

> The court assumes that plaintiff believes that his religion requires him to eat halal meat . Arguably, therefore, defendants' failure to provide him with halal meat burdens the exercise of his religion. Nonetheless, plaintiff has not met his burden to establish that denial of halal meat constitutes a substantial burden on the exercise of his religious beliefs. The diet that is provided to plaintiff does not force him to eat meat prepared in a way that is forbidden by his religion. The ovo-lacto vegetarian diet simply denies plaintiff one of the foods that he contends he should be provided. Further, even if plaintiff had met his burden to establish that defendants' conduct constituted a substantial burden on the exercise of his religion, defendants have demonstrated that the Department of Corrections has a compelling interest in reducing costs, streamlining food production, limiting the number of required staff, maintaining consolidation of its vendors, and preventing security risks by providing an ovo-lacto vegetarian diet that does not include halal meat.

Spruel v. Clarke, No. C06-5021RJB, 2007 WL 1577729, at *3 (W.D. Wash. May 31, 2007). The provision of Kosher for Passover food items from already existing established contracts hired and vetted in accordance with state contracting laws is both consistent with the Second Circuit's long-standing rule enunciated in *Kahane, supra*, and also complies with RLUIPA, as it imposes no substantial burden on the plaintiff. The same conclusion should be reached here. *See also Phipps v. Morgan,* No. CV–04–5108–MWL, 2006 WL 543896, at *2 (E.D. Wash. Mar. 6, 2006) (holding nutritionally adequate alternatives to halal meat diet do not

offend RLUIPA, free exercise, or equal protection); *Abdul–Malik v. Goord,* No. 96 CIV. 1021, 1997 WL 83402, at *6 (S.D.N.Y. Feb.27, 1997) (noting that "[a]ll that is required for a prison diet not to burden an inmate's free exercise of religion is 'the provision of a diet sufficient to sustain the prisoner in good health without violating [his religion's] dietary laws" ') (quoting *Kahane v. Carlson,* 527 F.2d 492, 496 (2d Cir.1975)); *Collins v. Bruno*, No. 3:08-CV-1943 AVC, 2010 WL 3955810, at *4 (D. Conn. Sept. 16, 2010) (concluding that DOC's Common Fare did not substantially burden the exercise of religion and met scrutiny under RLUIPA).

The Second Circuit has noted that RLUIPA presents novel and complex legal issues which requires a compelling state interest to justify a substantial burden on an institutionalized person's religious exercise. See *McEachin v. McGuinness*, 357 F.3d 197 (2d Cir. 2004)(noting that RLUIPA may present complex legal issues). The defendants' policies and practices involving Common Fare with regard to Orthodox Muslim and Orthodox Jewish religious practices have been subject to continuous court scrutiny for nearly thirty years. In this regard, Common Fare has been judicially scrutinized, has withstood such judicial scrutiny and has been given the imprimatur of approval from this this District Court which has declared with uniformity in numerous cases that Common Fare does not violate the constitutional or federal statutory rights under RLUIPA rights of Orthodox Muslim or Orthodox Jewish inmates. The facts of this case are not materially different, and in fact, the plaintiff, like all other Jewish inmates who wish to keep Kosher for Passover, will receive a special and distinct Kosher for Passover menu during the eight days of Passover, including two ceremonial Seder plates, which is separate from the Common Fare menu. This Court can easily determine from the defendants' opposition papers, that plaintiff's motion for

preliminary injunction is misinformed, and non-meritorious. Accordingly, the motion for preliminary injunction should be denied.

IV. CONGREGATE GATHERINGS PRESENT THREATS TO SAFETY AND SECURITY

A. Allowing Religious Congregate Groups Fosters "Big Wheels" In Prisons

The late Judge Blumenfeld in *Paka v. Manson*, 387 F. Supp. 111 at 121-122 (D. Conn. 1974) correctly anticipated *Jones v. N.C. Prisoners' Union*, 433 U.S. 119 (1977), which was decided three years later, and rejected a demand for a prisoners' union at CCI-Somers, citing the court's awareness of the violence and potential for violence in prison. Judge Blumenfeld cited to the Second Circuit Court of Appeals which has noted that "[the] authoritarian ' boss' inmate is no chimera. " *Sostre v. McGinnis*, 442 F.2d 178, n. 47, 202 (2nd Cir. 1971). Inmate leaders or "big wheels" in prison are a significant security concern, and defendants have a compelling interest in preventing congregational groupings for Seder meals, without a DOC staff chaplain being present, especially in light of the present state of emergency and social distancing protocols required to prevent contagion in prison from the Corona virus, and the spread of COVID-19. (See Ex. 8, Declaration of Karen Martucci, ¶¶ 4-8).[25] Allowing inmate groups to worship in congregation would most definitely promote inmate leaders, whether they be inmate Imams or inmate Rabbis. Here, the perception of favoritism, preferred meals, or the risks of introducing contraband or worse—contagious

[25] This Court can take judicial notice of its own website and the website of the DOC. See GENERAL ORDER, IN RE: COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY COVID-19; http://ctd.uscourts.gov/sites/default/files/general-ordes/20-4_%20%28EXT%29%20In%20Re%20Court%20Operations%20Under%20COVID-19.pdf; SEE ALSO https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories; (Coronavirus Information) (last visited March 20, 2020).

disease—all in violation of food safety measures is unacceptable. All religious holiday meals must comply with state food safety codes and by supplied by DOC. (See Ex. 3-A, ¶ 14.)

There is precedent in this Court rejecting a demand for inmate imams. *See Anderson v. Strange*, 3:95CV1003 (GLG) (D. Conn. Aug. 2, 1996); *Vega v. Lantz*, No. 304CV1215DFM, 2009 WL 3157586, at *10 (D. Conn. Sept. 25, 2009*), on reconsideration,* No. 3:04CV1215 (DFM), 2012 WL 5831202 (D. Conn. Nov. 16, 2012). In *Vega,* the inmate plaintiff claimed he had a right under RLUIPA to congregate with other Muslim inmates for daily prayers, even though it was impossible for there to be a DOC staff chaplain, who is an Imam, to lead the prayer group, but this District Court found that the prohibition of such inmate led groups is in furtherance of compelling government interests of prison security and order and is the least restrictive means of furthering that compelling government interest. *Id.* Thus, there is no RLUIPA violation. This conclusion is even more compelling in light of the present state of emergency due to the risks presented by COVID-19. Plaintiff cannot reasonably argue that restricting Seders to individual personal Seder meals and avoiding large groups is not a compelling governmental interest.[26]

In *Benjamin v. Coughlin*, 905 F.2d 571, 577 (2nd Cir.), *cert. denied*, 498 U.S. 951 (1990), the Second Circuit affirmed the limitations on congregational worship to those which can be properly supervised by staff chaplains or an approved sponsor. The Second Circuit stated,

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[26] Plaintiff does not seek in his prayer for relief a demand for communal Seder meals. However, in an abundance of caution the defendants address this point because in the body of the Complaint, plaintiff makes allegations concerning an ability to celebrate a Seder meal e.g. Doc. No. 1, ¶ 33, demanding “provisions for two ceremonial *Seder* dinners, consistent with his religious beliefs.” To be clear, in this time of COVID-19 emergency measures, it is extremely unlikely there will be a communal gathering for a Seder meal.

> The sponsor requirement is said to be intended to ensure that the meeting is convened for religious purposes and not to hold kangaroo courts, foster extortion, or provide a venue for the dissemination of conspiratorial information. As well, the use of sponsors is thought to minimize conflicts among inmates as to the nature and content of the service. Other circuits have given their imprimatur to the requirement of free-world sponsors based upon similar security concerns. See, e.g., *Johnson-Bey v. Lane*, 863 F.2d 1308, 1310-11 (7th Cir. 1988); *Cooper v. Tard*, 855 F.2d 125, 129-30 (3d Cir. 1988); *Hadi v. Horn*, 830 F.2d 779, 784-86 (7th Cir. 1987); *Tisdale v. Dobbs*, 807 F.2d 734, 736, 740 (8th Cir. 1986).

Benjamin v. Coughlin, 905 F.2d at 577-578. Thus, the defendants' requirement that all congregational activities be supervised by a staff chaplain or approved volunteer[27] is consistent with both sound correctional practices promoting safety and security, as well as Second Circuit case law.

B. <u>There Are No Zones of Privacy or Right to Assemble in Prisons and Jails</u>

In *Paka*, 387 F. Supp at 121-122, Judge Blumenfeld derived, "[a]dditional guidance in making an analysis of whether the restriction challenged in this case is inconsistent with the plaintiff's status as a convicted prisoner may be derived from other cases adjudicating the legality of restraints on the associational rights of prisoners. In upholding the dismissal of a prisoner's action alleging that his right to privacy was violated by monitoring his conversations with prisoners, the court in *Christman v. Skinner*, 468 F.2d 723, 726 (2d Cir. 1972), quoted from *Lanza v. New York*, 370 U.S. 139, 143, 8 L. Ed. 2d 384, 82 S. Ct. 1218 (1962), "'that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room.'" Protection of privacy does not extend to the inmates of a prison confined there after a due process determination that they have violated criminal laws.

[27] Present COVID-19 protocols prohibit volunteers from entering DOC facilities. Ex. 8.

Conviction of crime carries not only loss of liberty, but also other impairments associated with membership in a closely supervised prison community. The range of free activity for prisoners within the prison is relatively small." *Paka* at 121-122.

Prisoners do not have the right to congregate when and where they wish. The practicalities of running a prison, require that approximately 1,200 inmates at CCI get three meals a day, go to sick call, get phone calls, showers, and other operations consistent with the COVID-19 contagion protocols. It would simply be impossible to run all these activities, in effect, impossible to run the prison, if plaintiff's demands were accommodated. Such an accommodation would clearly have an "**adverse impact on public safety or the operation of a criminal justice system caused by the relief."** 18 U.S.C. § 3626(a)(1)(A). Additionally, there are no admissible facts to meet plaintiff's extraordinarily high burden for a mandatory preliminary injunction based on an alleged substantial burden on plaintiff's exercise of his religion.

V. THE COURT DOES NOT HAVE SUPPLEMENTAL JURISDICTION OVER STATE LAW INJUNCTIVE CLAIMS WHICH MUST BE DISMISSED

As briefly discussed above, 18 U.S.C. §3626 prohibits the entry of an injunction in this case. Any prospective relief ordered in this case must "extend no further than necessary to correct the violation of the *federal* right of [this] particular ... Plaintiff." *Handberry v. Thompson*, 446 F.3d 335, 344–45 (2d Cir. 2006) (emphasis in original). Accordingly, this court is without authority under the PLRA's provisions to order any relief based on Connecticut's act concerning religious freedom ("ACRF") codified at Conn. Gen. Stat. §52-571b. See *Handberry* at 346("the district court was not permitted to order prospective relief to remedy an asserted violation of state law only."). Very recently, this district court, in another first amendment case brought by prisoners seeking injunctive relief, concluded that the

district court did not have supplemental jurisdiction over the plaintiffs' state-law claims. *Reynolds v. Cook*, No. 3:13-cv-388 (SRU), 2020 WL 1140885, at *25 (D. Conn. Mar. 9, 2020). The district court in *Reynolds* concluded that the PLRA's limitations on the federal court's ability to order injunctive relief as to state law claims in certain instances was a repeal of supplemental jurisdiction and acted to negate the general rule that a federal court might "normally" exercise supplemental jurisdiction over the plaintiffs' state-law claims because they are so related to the federal claims in this action that "they form part of the same case or controversy." 28 U.S.C. § 1367(a).

In *Reynolds*, Judge Underhill stated that "the Second Circuit has held that 18 U.S.C. § 3626(a)(1)(a) impliedly repealed 28 U.S.C. § 1367(a) in part. *See Handberry*, 446 F..3d at 344–46. Thus, I am 'not permitted to order prospective relief to remedy an asserted violation of state law only.' *Id.* at 346." *Reynolds v. Cook*, No. 3:13-cv-388 (SRU), 2020 WL 1140885, at *25 (D. Conn. Mar. 9, 2020). Accordingly, the state law claims were dismissed without prejudice as the court lacks supplemental jurisdiction. The same result should apply here, and the plaintiff's state law claims should be dismissed.

CONCLUSION

For all of the foregoing reasons, the defendants respectfully request the Court to deny plaintiff's motion for a preliminary injunction, and since nothing else remains to be decided by the Court, to render judgment in favor of the defendants.

Respectfully submitted,

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CERTIFICATION

I hereby certify that on March 24, 2020, a copy of the foregoing was filed electronically and served by mail on anyone not able to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Steven R. Strom___________
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