

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

DANIEL GREER

Plaintiff,

-v-

CONNECTICUT DEPARTMENT OF
CORRECTION; CHESHIRE CORRECTIONAL
INSTITUTION; and ROLLIN COOK,
Commissioner for the Department of Correction
in the State of Connecticut,

Defendants.

Civil Action No. 3:20-cv-00350-JAM
MARCH 27, 2020

**AFFIDAVIT OF RABBI ISRAEL DEREN IN FURTHER SUPPORT OF
DANIEL GREER’S MOTION FOR PRELIMINARY INJUNCTION**

I, Israel Deren, affirm as follows:

1. I am an ordained Rabbi, Regional Director of Chabad Lubavitch institutions in Connecticut and Western Massachusetts, and Senior Rabbi in Stamford.
2. I have reviewed the Defendants’ Memorandum in Opposition to Motion for Preliminary Injunction (the “Memo”), and the declarations of Mr. Deluca (“Exhibit 4”) and Rabbi Praver (“Exhibit 6”).
3. As I explain below, the Memo and Exhibits 4 and 6 confirm that the food and provisions offered at Cheshire Correctional Institution (“CCI”) will not satisfy the requirements of Jewish law required for food to be kosher for Passover (“KFP”).

I. PRISON ACCOMMODATIONS AND JEWISH LAW

4. An essential part of Passover observance is adherence to special dietary laws that apply in addition to the standard rules of kosher. Notably, Rabbi Praver did not disagree with my discussion of these laws and rules.
5. It is clear the provisions offered by CCI do not meet the Passover requirements I laid out in my previous declaration, dated March 13, 2020.
6. A primary component of Passover observance is eating *matza*, or unleavened bread. I understand that Jewish inmates who sign up for Passover meals will receive six boxes of KFP unleavened bread to keep in their cell during Passover (Memo at 4, 9). While Exhibit 4-A lists a number of KFP items that are certified by the Orthodox Union (“OU”), a preeminent arbiter of what food qualifies as kosher for Orthodox Jews, Defendants do not confirm whether the *matza* provided to inmates is, in fact, an item from that list. Defendants also fail to indicate whether the *matza* is delivered to inmates in a manner that secures its KFP status.
7. Moreover, the *matza* required for the *seder* is specifically handmade *shmura* (literally, “watched”) *matza*. This is made with flour that has been supervised from the moment the wheat was harvested in the field, to ensure it never came into contact with leavened products or became leavened.¹ Defendants do not confirm that handmade *shmura matza* will be provided.
8. During Passover, Jews abstain from eating leavened products and *kitniyot*. I understand that inmates may request and receive so-called “Passover” meals from lunch on April 8 through dinner on April 16 this year. Mr. Deluca claims that all

¹ For more information, please see <https://oukosher.org/passover/articles/getting-to-know-your-matzah/>.

items on the Passover menu bear a KFP designation, but he does not substantiate the claim. Instead, he cites to an OU certification that lists only cake meal and *matza* products (Ex. 4, ¶ 11; Ex. 4-A). The Passover menu, however, includes items not listed in Exhibit 4-A, such as boiled eggs, celery, baked potatoes, butter pats, tuna, and juice (Ex. 4-B). Rabbi Praver states that the menu is KFP, but he also does not support his claim (Ex. 6 ¶ 3).

9. To be KFP, the food must itself be certified KFP, and it must be prepared in a manner that maintains its KFP status. The items on the Passover menu do not appear to be certified KFP, and moreover, they appear to require preparation that would render even KFP products, non-KFP.
10. Food that would ordinarily be KFP may be rendered non-KFP if: (1) prepared in a kitchen that has not been adequately *kashered* (loosely translated, “made fit”) for Passover, or (2) if not prepared in accordance with KFP law, e.g., it comes into any contact whatsoever with leavened products. If certified, sealed KFP products are opened and prepared (e.g., the tuna can, opened; the potato, baked; the butter pat, spread) in the CCI kitchen under the circumstances explained by the Defendants, they will be made non-KFP. (Rabbi Praver notes that the items are “pre-boiled”, but that seems to apply only to the egg, and he does not explain how its KFP status will be maintained (Ex. 6 ¶ 6)).
11. I understand that KFP items at CCI are stored separately and prepared in a separate, locked area within the CCI kitchen. I understand further that the Passover meals are served in individual, wrapped, single-use containers with disposable utensils and are prepared on surfaces covered with white paper (Ex. 6 ¶

- 6). Defendants note that “extreme precautions are taken and maintained during the perpetrating [sic] of these Passover meals to ensure that everything is separated” (Memo at 24). But individuals not intimately familiar with the complex laws of Passover cannot know what “extreme precautions” are required to properly separate KFP foods.
12. Moreover, keeping KFP items separate from other kosher and non-kosher items is insufficient to ensure KFP status. One of many requirements is that for food processed in any manner to be considered KFP, it must be under Orthodox rabbinic supervision from its processing through its being served to the consumer. The consumer can be assured of proper supervision only by receiving the food in its original sealed container, with the seal of the Orthodox rabbinic supervisor.
13. Defendants further claim the meals are served in “closed clamshell containers, which are wrapped... so that the meals could not possibly be contaminated by anything non-[k]osher.” This statement reveals a lack of understanding regarding the laws of KFP, which extend far beyond the packaging stage of food preparation.
14. For an item to be KFP, it must itself be a KFP item (e.g., an egg, not a cracker). It must further maintain its KFP status by avoiding contamination at every step of preparation through delivery to the consumer. The possibilities for contamination are endless, and may include, for example, being cut with a non-KFP knife or coming into contact with a non-KFP item or surface. An Orthodox Jew cannot be assured of an item’s KFP status by receiving a Styrofoam container that was wrapped four times by someone not knowledgeable in the laws of KFP and

without rabbinic supervision, particularly when wrapped in a CCI food preparation area.

15. This lack of understanding of KFP is further apparent in the Defendants' neglect to provide the sort of information that would be relevant to an Orthodox Jew trying to determine KFP status. For example, is the separate area reserved for Passover all year round, or is it the same area used for supposedly kosher food the rest of the year? Is this space cleaned before Passover, consistent with the KFP laws? Is there a separate refrigerator for Passover items? Is the white paper fastened in any way, is it a single layer, and what is the procedure when it rips?
16. If the KFP products undergo any sort of preparation at CCI, for those products to remain KFP, an independent Sabbath-observant Jew must supervise the entire process. He would need to be the only person with the key to the locked area. This is the only way to satisfy the minimum requirements of Jewish law ensuring food retains its KFP status.
17. Without such supervision, the food can easily be contaminated. A CCI staff member might bring a snack into the room, accidentally spilling cracker crumbs into the food. If the KFP knife is dull, he or she might use a sharper, non-KFP one. If KFP food comes into contact with leavened products, the CCI staff would have little incentive to report it, but would likely be tempted to brush it off and serve the food. Even if the staff at CCI are unfailingly trustworthy, as a matter of Jewish law, constant supervision by an independent, Sabbath-observant Jew is required.²

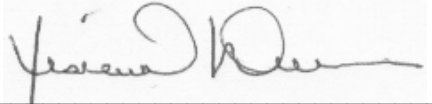
² For more information on this topic, please see Exhibits A and B, which are, respectively, letters from Organized Kashruth Laboratories and the Orthodox Union, both highly reputable *kashrus* agencies.

18. Rabbi Praver mentions the practice of *yotzei v' nichnas* (literally, leave and return), which refers to unannounced spot-checks. Firstly, he does not say that such checks are conducted at CCI, only that the practice is spreading within state facilities (Ex. 6 ¶ 3). Secondly, this principle is applied in specific situations only, typically when there are strong reasons to believe the food will be prepared in accordance with Jewish law. Thirdly, the practice hinges upon the staff assuming the rabbi may enter at any moment, and that there will be severe consequences in the event he discovers any violations. Here, at a prison, a rabbi cannot make surprise, unannounced visits. And in any food service facility staffed by people who do not keep kosher and where non-kosher food is also prepared, there is no reason to assume the food will be prepared in accordance with Jewish law. Additionally, the CCI staff is not concerned about being fired, or the loss of kosher certification, the way restaurant staff would be. I understand Rabbi Praver is an employee of CCI, and it does not appear to me that he is independent. There is no basis in Jewish law for relying on the *yotzei v' nichnas* leniency in a facility such as CCI at any time, and certainly not on Passover.
19. In my past declaration, I provided very specific details regarding the requirements of the *seder* plate, which must include bitter herbs, haroses, a vegetable, an egg, and a piece of roasted meat. Defendants mention only that Jewish inmates who sign up for Passover will receive two *seder* plates, one for each of the first two nights of Passover. Again, they neglect to provide critical information that would be relevant to an Orthodox Jew, including what is provided in the *seder* plates and their KFP certification status.

20. Four cups of wine or grape juice are required for the *seder*. CCI never addresses this requirement.
21. Furthermore, Rabbi Greer cannot rely on purchasing items from the commissary, as none of those items are certified KFP.
22. Finally, Rabbi Praver states, “The DOC Kosher for Passover meal program does not in any way force any observant Orthodox Jewish inmate to violate acceptable Kosher for Passover laws.” I disagree. Eating food prepared in the manner described would constitute an egregious violation of Jewish law. I also find it telling that while an Orthodox rabbi, Rabbi Eli Ostrozyński, is mentioned numerous times in the Memo, he does not offer his approval of the Passover accommodations at CCI.
23. The easiest way to provide truly KFP meals remains to offer sealed, prepackaged meals that are certified KFP by a reputable kosher agency, as is done in many correctional facilities throughout the United States.³ Defendants never address why these cannot be provided.

I affirm under penalty of perjury that the foregoing is true and correct.

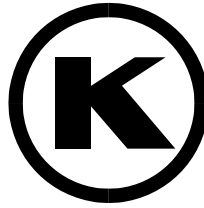
Executed: Stamford Connecticut
March 27, 2020



Rabbi Israel Deren

³ Please find attached as Exhibit C a partial list, provided by the Aleph Institute, of some facilities that offer prepackaged kosher meals.

Exhibit A



ORGANIZED KASHRUTH LABORATORIES

RABBI DON YOEL LEVY
Kashruth Administrator

391 TROY AVE.
BROOKLYN, NY 11213
TEL: 718 756-7500
FAX: 718 756-7503

16 Shvat 5780
February 11, 2020

OK Kosher, as well as other mainstream, reputable kosher certifying agencies, require a qualified "Mashgiach Tmidi" (continuous kosher supervisor) during kosher sensitive production.

A qualified Mashgiach Tmidi is one who is Orthodox, fully Sabbath observant and provides 2 Orthodox rabbinic references who can attest to this status. Further, the Mashgiach Tmidi must be independent (e.g. no ownership interest) of the facility at which they are providing kosher supervision services.

Kosher sensitive production includes, but is not limited to, production of meat, Passover, facilities which produce kosher products of various statuses (pareve and/or dairy and/or meat), fast paced production environments such as caterers and restaurants, and facilities producing both kosher and non-kosher food.

There are several reasons for the requirement of a Mashgiach Tmidi in the above cited scenarios. A basic fundamental reason is that kosher food production is a costly endeavor and there are obvious motives for deception as kosher ingredients typically cost more, and in some cases a lot more, than their non kosher counterparts. Further, there are complicated kosher laws and requirements relative in food service establishments (restaurants, caterers, commercial kitchens, etc...) that can only be properly addressed if and when there is a Mashgiach Tmidi on site at all times to monitor and assist in the kosher production.

We welcome the opportunity to discuss this subject with you in greater detail, and can be reached at the number above.

Exhibit B

Established 1898



Orthodox Union

Union of Orthodox Jewish Congregations of America • איחוד קהילות האורתודוקסים באמריקה
Eleven Broadway • New York, NY 10004-1303 • Tel: 212-563-4000 • Fax: 212-564-9058 • www.ou.org

KASHRUTH DIVISION

MOISHE BANE
President

Gary Torgow
Chairman

Rabbi Yitzchak Fund
Vice Chairman

RABBI MENACHEM GENACK
Rabbinic Administrator, CEO

RABBI ALEXANDER S. ROSENBERG
Rabbinic Administrator (1950-1972)

February 7, 2020

To Whom It May Concern:

Many factors come in to play in making food kosher. Kosher law is a conglomeration of many Torah commandments. While there are settings such as factories that may not require the constant supervision of a Kosher supervisor, the meal preparation/ kitchen setting does require constant supervision. I will explain.

One of the salient aspects of kosher law is the types of animal whose meat we may consume and how it must be prepared. Torah law precludes pork and shellfish and many other commonly consumed types of meat and fish. In addition, the animals and birds must be ritually slaughtered by an expert who is certified for that task after which, the meat must be deveined, soaked and salted to remove the blood. The integrity of the meat must be guarded by always being under the supervision of a Kosher observant Jew or by being sealed by such an individual. The equipment upon which the food is prepared must be kosher as well which means that non kosher food has not been cooked using that equipment. Meat and dairy cannot be mixed or prepared together or with the same equipment. Many types of foods require a Jewish participation in the cooking to be kosher. This is impossible to achieve without the constant presence of an Orthodox kosher supervisor who can monitor the preparation of the meal to ensure that all this is taken care of.

The supervisor certifies to the end user that all requirements necessary for the food to be Kosher have been fulfilled. The Kosher consumer will look for the seal of the supervisor to be able to determine that the food is kosher and would not eat the food unless the seals are intact. For that reason, it is imperative that the supervisor be a religiously observant Jew. It is advisable that a reputable Kosher agency be engaged to oversee the certification so that the supervisor has an authority to consult with any issues and also in order that the end user feel comfortable that the food is being adequately supervised.

In contrast, many factories produce products that do not require Jewish participation in the cooking (bread and pastries or items that can be eaten raw or will not be served at elegant events). They do not produce products that contain meat. These facilities can produce kosher products without constant supervision.

For more information, feel free to contact me at lennys@ou.org or by phone (212) 613 8281.

Sincerely,
UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA

Rabbi Leonard Steinberg
Rabbinic Coordinator

Exhibit C

**PARTIAL LIST OF STATE CORRECTIONAL ENTITIES THAT
PROVIDE KOSHER VENDOR SEALED MEALS**

Arizona ("only prepackaged items bearing the appropriate kosher certification symbol are served and all kosher items are stored separately from non-kosher food and in areas designated exclusively for the storage of kosher items" Davitashvili v. Schomig, 2012 U.S. Dist. LEXIS 1069, *32).

Colorado ("Following the comprehensive review, the DCJ elected to serve a certified kosher diet prepared and prepackaged by food [*4] suppliers in accordance with acceptable religious practices because it represented a more cost-effective solution than other alternatives, such as preparing kosher meals in-house." Handy v. Diggins, 2013 U.S. Dist. LEXIS 45542, *3-4).

California ("All designated institutions shall adhere to the CDCR standardized Jewish kosher menus and approved procedures for purchasing, preparing, and serving Jewish kosher meals." CDCR Operations Manual).

Florida – (See US v. FDOC, Case 1:12-cv-22958-PAS, Final Order – Pacer Document 548)

Idaho – (See Bartlett v. Atencio, Case 1:17-cv-00191-CWD, Partial Settlement Agreement – Pacer Document 32-1 Filed 08/11/17 Page 1 of 9)

Illinois (Gakuba was placed on a kosher diet, which includes the options of prepackaged turkey breast; chicken breast, Salisbury steak, spaghetti, or fish fillet. Gakuba v. Henderson, 2020 U.S. Dist. LEXIS 2161, *2).

Michigan ("MDOC already has agreed to provide pre-packaged kosher meals in its settlement of Plaintiffs' cross-contamination claim." Ackerman v. Washington, 2020 U.S. Dist. LEXIS 15685, *31).

New Jersey

Ohio ("Prepackaged Kosher meals are served to inmates who have been approved by the Religious Service Administrator [*17] for religious meal accommodations." Tolliver v. Noble, 2019 U.S. Dist. LEXIS 104255, *16-17);

Oklahoma ("The record includes [*13] a rabbinic opinion of Rabbi Y. Weiss of The Aleph Institute [Doc. No. 49] as to what constitutes kosher food acceptable in the prison environment. According to Rabbi Weiss, "[T]he preparation and cooking of the food also matters." [Doc. No. 149 at 3]. "The food must only be prepared and cooked with utensils and ovens only used for Kosher ... [T]o ensure the kitchen is Kosher, there is supposed to be a rabbi present in the kitchen supervising at all times to watch and make sure the food is Kosher according to Jewish law." Id. Rabbi Weiss recognizes that having fulltime rabbinic supervision is obviously not always possible or practical in a jail facility. Id. Thus, most jails offer prepackaged kosher meals. Id. Those meals are cooked and prepared in kosher kitchens with rabbinic supervision. They come double-sealed and can

be warmed in any microwave or oven "as long as the double seal remains intact and is not broken." Id... "The record includes [*13] a rabbinic opinion of Rabbi Y. Weiss of The Aleph Institute [Doc. No. 49] as to what constitutes kosher food acceptable in the prison environment. According to Rabbi Weiss, "[T]he preparation and cooking of the food also matters." [Doc. No. 149 at 3]. "The food must only be prepared and cooked with utensils and ovens only used for Kosher ... [T]o ensure the kitchen is Kosher, there is supposed to be a rabbi present in the kitchen supervising at all times to watch and make sure the food is Kosher according to Jewish law." Id. Rabbi Weiss recognizes that having fulltime rabbinic supervision is obviously not always possible or practical in a jail facility. Id. Thus, most jails offer prepackaged kosher meals. Id. Those meals are cooked and prepared in kosher kitchens with rabbinic supervision. They come double-sealed and can be warmed in any microwave or oven "as long as the double seal remains intact and is not broken." Id. *Chichakli v. Samuels*, 2018 U.S. Dist. LEXIS 113590, *12-13 and FN 12.

Virginia (See Consent Order in *Estes v. Clarke* USDC WDV Case No. 7:15-cv-00155).

Washington ("prepackaged, unopened kosher entrees are purchased from an outside vendor and distributed to DOC facilities and are kept separate from other non-kosher food. Dkt. 52 at 2; Dkt. 52-1 at 3. At SCCC, kitchen staff members reheat the meals and serve them to inmates." *Pennick v. DeHaven*, 2019 U.S. Dist. LEXIS 177408, *6).

Wisconsin ("Kosher religious diet meals most commonly consist of nonfat dry milk to be mixed with water, fresh and/or canned fruits and vegetables, fruit and vegetable juices, mashed potatoes, prepackaged certified kosher meals containing meat, hard cooked eggs, lettuce salads, fruit cocktail and graham crackers. *Buie v. Mitchell*, 2018 U.S. Dist. LEXIS 146159, *5).