

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 HOWARD ACKERMAN,)
4)
5 Plaintiff,)
6 vs.)
7 STATE OF NEVADA DEPARTMENT)
8 OF CORRECTIONS; BRIAN)
9 SANDOVAL, in his official and individual)
10 capacity; ROSS MILLER, in his official)
11 and individual capacity; CATHERINE)
12 CORTEZ-MASTO, in her official and)
his official and individual capacity,)
Defendants.)

Case No.: 2:11-CV-00883-GMN-PAL

ORDER

13 Pending before the Court is the Joint Motion to Amend (ECF No. 142),
14 accompanied by an Exhibit (ECF No. 143) jointly submitted by Plaintiff Howard
15 Ackerman and Defendants State of Nevada Department of Corrections (“NDOC” or “the
16 State”), Brian Sandoval, Ross Miller, Catherine Cortez-Masto, and James Cox
17 (collectively, “Defendants”).

18 **I. BACKGROUND**

19 Plaintiff Howard Ackerman filed his original Complaint (ECF No. 1) on June 1,
20 2011, alleging one cause of action for violations of the First Amendment and the
21 Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §
22 2000cc-1. Plaintiff filed an Amended Complaint (ECF No. 29) on January 3, 2012,
23 alleging two causes of action: (1) violations of the First Amendment and RLUIPA, 42
24 U.S.C. § 2000cc-1 on behalf of the class; and (2) Retaliation on behalf of himself, in his
25 individual capacity.

1 On March 23, 2012, the parties submitted a Stipulation and Proposed Order
2 Certifying Class (ECF No. 107) and the Court signed it on May 2, 2012 (ECF No. 114).
3 Pursuant to the Court's Order (ECF No. 114), the Class was defined as:

4 All prisoners confined with Nevada Department of Corrections facilities:

- 5 (i) Who have been identified to the Department of Corrections through
6 various procedures by Plaintiff (i.e., consultation with independent clergy,
7 declaration of faith responses, observed historical observances) as a
8 practicing Orthodox Jew and are currently receiving the current kosher diet;
9 (ii) Those individuals who have submitted an affidavit of inclusion in the
10 Class to Counsel for Plaintiff, Law Office of Jacob Hafter & Associates, on
11 or before March 20, 2012, whose religious beliefs command the
12 consumption of a kosher diet, a kosher diet is sincerely rooted in their
13 system of religious beliefs, and for whom the denial of a kosher meal would
14 constitute a substantial burden on the exercise of their Sincerely-held
15 religious beliefs; and
16 (iii) Those individuals who are currently receiving a kosher diet pursuant to
17 the United States District Court Order dated February 17, 2012, whose
18 religious beliefs command the consumption of a kosher diet, a kosher diet
19 is sincerely rooted in their system of religious beliefs, and for whom the
20 denial of a kosher meal would constitute a substantial burden on the
21 exercise of their sincerely-held religious beliefs, provided such individuals
22 follow an opt-in procedure set by this Court, as more fully described herein;

23 Plaintiff Ackerman's second cause of action for retaliation was not mentioned as
24 part of the definition of the class.

25 In the parties' original joint motion before the Court, the parties attached a
proposed settlement agreement (Ex. A to Joint Mot., ECF No. 137-1) and
requested:

- 26 (1) Court approval of the form and manner of class notice (Ex. B to Joint
27 Mot., ECF No. 137-1);
- 28 (2) that a deadline be set for class objections to be filed;
- 29 (3) that a date be set for a fairness hearing; and
- 30 (4) that a deadline be set for party reports to be filed with the Court.

1 (Joint Mot., ECF No. 137.) At the July 31, 2012, hearing on the original motion, the
2 Court directed the parties to amend the proposed Notice and re-submit it to the Court.
3 (Mins., ECF No. 139.) The motion was then denied without prejudice by written order.
4 (Order, August 8, 2012, ECF No. 141.) On August 9, 2012, the parties filed the instant
5 motion to amend (ECF No. 142), and on August 13, 2012, the parties submitted the
6 proposed notice as an exhibit to the motion (ECF No. 143).

7 **II. LEGAL STANDARD**

8 Rule 23(e) of the Federal Rules of Civil Procedure requires that “claims, issues, or
9 defenses of a certified class may be settled, voluntarily dismissed, or compromised only
10 with the court’s approval.” Furthermore, “[t]he court must direct notice in a reasonable
11 manner to all class members who would be bound by the proposal.” Id. “If the proposal
12 would bind class members, the court may approve it only after a hearing and on finding
13 that it is fair, reasonable, and adequate.” Id.

14 Any class member may object to any proposal requiring court approval under this
15 rule, and the objection may be withdrawn only with the court’s approval. Id.

16 **III. DISCUSSION**

17 Here, the Court finds that the proposed Notice (Ex. A to Joint Mot., ECF No. 143,
18 including the proposed attachment of the proposed settlement agreement (Ex. 1 to Joint
19 Mot., ECF No. 142-1) satisfies the Courts’ directives. The Court attaches the full
20 approved Notice to this Order.

21 **IV. CONCLUSION**

22 **IT IS HEREBY ORDERED** that the Joint Motion to Amend (ECF No. 142) is
23 **GRANTED**. The parties shall be permitted to distribute the amended Notice, as attached
24 to this Order, to the members of the Class.


1 **IT IS FURTHER ORDERED** that Defendants shall cause the approved Notice to
2 be delivered to each member of the class, no later than **August 20, 2012**.

3 **IT IS FURTHER ORDERED** that class members' objections, if any, shall be
4 submitted in accordance with the Courts' direction in the Notice and mailed to the Clerk
5 of the Court no later than **September 4, 2012**.

6 **IT IS FURTHER ORDERED** that counsel for the parties shall file any responses
7 to class members' objections, no later than **September 13, 2012**.

8 **IT IS FURTHER ORDERED** that a Fairness Hearing shall take place in
9 **Courtroom 7D of the Lloyd D. George United States Courthouse in Las Vegas,**
10 **Nevada, on October 11, 2012, at 1:30 p.m.**

11
12 DATED this 16th day of August, 2012.

13
14
15 
16 _____
17 Gloria M. Navarro
18 United States District Judge
19
20
21
22
23
24
25

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

2 *Ackerman v. Department of Corrections, et al.,*
3 *Case No. 2:11-cv-00883-GMN-PAL (D. Nev.)*

4 **TO: ALL PRISONERS WITHIN THE NEVADA DEPARTMENT OF**
5 **CORRECTIONS SYSTEM WHOM ARE MEMBERS OF THE ACKERMAN**
6 **CLASS**

7 **THE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF:**

- 8 • **THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT**
- 9
- 10 • **THE REASONS WHY CLASS COUNSEL BELIEVE THAT SETTLEMENT**
11 **IS IN THE BEST INTERESTS OF THE CLASS**
- 12 • **YOUR RIGHT TO OBJECT TO THE SETTLEMENT**
- 13

14 **BACKGROUND**

15 This case is an inmate-civil-rights action regarding kosher meals. In June of 2011, a
16 federal class action lawsuit was filed in the U.S. District Court for the District of Nevada
17 seeking to enjoin the Nevada Department of Corrections (“NDOC”) from substituting the
18 current kosher religious-dietary accommodation menu with a new religious-dietary
19 accommodation menu-program called the Common Fare Menu (“CFM”) on the grounds that
the CFM violates religious rights under the First Amendment and under the Religious Land
Use and Institutionalized Persons Act (“RLUIPA”) as codified at 42 U.S.C. § 2000cc-1 *et seq.*
for inmates whose sincerely held religious beliefs mandate the consumption of a kosher diet.

20 The Parties stipulated to certify this lawsuit as a class action to a class of prisoners
21 defined as:

22 All prisoners confined with Nevada Department of Corrections facilities:

- 23 (i) Who have been identified to the Department of Corrections through
24 various procedures by Plaintiff (i.e., consultation with independent
25 clergy, declaration of faith responses, observed historical
26 observances) as a practicing Orthodox Jew and are currently
27 receiving the current kosher diet;
- 28 (ii) Those individuals who have submitted an affidavit of inclusion in the
Class to Counsel for Plaintiff, Law Office of Jacob Hafter &
Associates, on or before March 20, 2012, whose religious beliefs
command the consumption of a kosher diet, a kosher diet is sincerely
rooted in their system of religious beliefs, and for whom the denial of
a kosher meal would constitute a substantial burden on the exercise

- 1 of their sincerely-held religious beliefs; and
2 (iii) Those individuals who are currently receiving a kosher diet pursuant
3 to the United States District Court Order dated February 17, 2012,
4 whose religious beliefs command the consumption of a kosher diet, a
5 kosher diet is sincerely rooted in their system of religious beliefs, and
6 for whom the denial of a kosher meal would constitute a substantial
7 burden on the exercise of their sincerely-held religious beliefs,
8 provided such individuals follow an opt-in procedure set by this Court,
9 as more fully described herein.

10 Pursuant to Religious Land Use and Institutionalized Persons Act (“RLUIPA”), codified
11 at 42 U.S.C. § 2000cc-1(a) *et seq.* money damages are not available to the members of the
12 Class in this case; instead, the Class has asked that the Court declare that the CFM was
13 unconstitutional, and order Defendants to continue to provide an acceptable kosher religious-
14 dietary accommodation menu-program.

15 PROPOSED SETTLEMENT AGREEMENT

16 The Parties have agreed to settle this lawsuit on the terms stated below. The
17 Proposed Settlement Agreement does not constitute any admission of liability by the
18 Defendants. Defendants deny the truthfulness of the claims in this lawsuit and deny having
19 engaged in any culpable conduct.

20 After much deliberation, Class Counsel has concluded that the terms and conditions of
21 the Proposed Settlement Agreement are in the best interests of the Class.

22 **1. Why Class Counsel Support the Settlement**

23 In working on this case, Class Counsel has worked closely with the NDOC to assure
24 that the NDOC institutes a diet which meets the requirements of those who believe that they
25 are required to consume a kosher diet in order to practice their sincerely held and deeply
26 rooted religious beliefs. In deciding to support a settlement in this lawsuit, Class Counsel has
27 carefully evaluated the benefits of the proposed settlement terms against the risks of an
28 unfavorable outcome in the litigation and the time needed to prosecute the case through a trial
and likely appeals. After considering these issues, it is the professional opinion of Class
Counsel that the Proposed Settlement Agreement will assure that the kosher dietary religious
requirements of individuals incarcerated within the NDOC system are appropriately
accommodated and such is being accomplished more quickly and comprehensively than any
result that the Class might otherwise obtain through further litigation of this lawsuit.

29 **2. A Summary of the Key Terms of the Proposed Settlement Agreement**

- The Parties have agreed that rabbinic certification by Scroll K of NDOC kitchen facilities preparing and serving kosher meals to NDOC inmates will appropriately and adequately satisfy the religious dietary requirements of those individuals incarcerated

1 within the NDOC system whom believe that they are required to consume a kosher diet
2 to abide by their religious practices and beliefs.¹

3 The above summary does not include all the terms and conditions of the Proposed Settlement
4 Agreement. Attached hereto as Exhibit 1 is a copy of the Proposed Settlement Agreement.

5 **3. The Settlement Must Be Approved By The Court Before It is Final.**

6 Under federal class action rules, before this lawsuit can be settled, the Court must find
7 that the settlement terms are fair, reasonable, and adequate to all Parties. Court approval is
8 an additional level of protection for all class members. While Class Counsel strongly believes
9 that this settlement is in the best interests of all current and future prisoners within the NDOC
10 whom are required by their religious beliefs to consume a kosher diet, we recognize that some
11 class members may not support the settlement. If you do not think this settlement is a good
12 idea, you have the right to file a formal objection with the Court.

13 After reviewing all timely objections, the Court will hold a Fairness Hearing on
14 October 11, 2012 at 1:30 p.m., in the Lloyd D. George U.S. Courthouse in Las
15 Vegas Nevada, to decide whether or not to approve the Proposed Settlement Agreement. If
16 the Court decides that the settlement terms are fair, reasonable, and adequate, then the
17 Proposed Settlement Agreement will become final. If the Court approves the Proposed
18 Settlement Agreement, the parties will jointly move for the case to be dismissed with
19 prejudice. Thereafter, any disputes regarding implementation of the Agreement will be
20 handled through the dispute resolution mechanism set forth in the Agreement and/or state
21 court.

22 If the Court decides not to approve the Proposed Settlement Agreement, the settlement
23 will be voided and will have no further effect. The case will not be settled, but proceed
24 pursuant to the Federal Rules of Civil Procedure. If that happens, there is no assurance that
25 any decision at trial will be in favor of the class members, or would be upheld on appeal; or
26 that, even if there is a favorable trial decision, it will be as favorable to class members as the
27 Proposed Settlement Agreement would have been.

28 **4. You Have the Right to Object to the Settlement.**

If you have no objection to the Proposed Settlement Agreement, you do not have to do
anything.

If, however, you believe the Court should not approve the settlement because you
object for any reason to the terms of the Proposed Settlement Agreement, you may object.
You must submit your objection in writing to the Court. Any objection must contain the
following information:

a. The case name and number: ACKERMAN v. DEPARTMENT OF
CORRECTIONS, 2:11-cv-00883-GMN-PAL;

b. Your full name and NDOC number;

¹ This summary is not intended to act as a substitute for the terms of the Settlement Agreement.

1 c. A clearly written and concise explanation of why you object to the Proposed
2 Settlement Agreement; and

3 d. Any objections submitted **must** be titled in large, bold print with the words
4 "Objection to Proposed Settlement Agreement" and must include the case name
5 and number included on the title page.

6 For your objection to be considered by the Court, you **must** mail it by September 4, 2012, to the
7 Clerk of the Court for electronic filing at the following address:

8 Clerk of the Court
9 ATTN: ACKERMAN v. DEPARTMENT OF CORRECTIONS, 2:11-cv-00883-GMN-PAL
10 Lloyd D. George U.S. Courthouse
11 United States District Court
12 District of Nevada – Las Vegas
13 333 Las Vegas Blvd. South
14 Las Vegas, NV 89101

15 **5. Money Issues**

16 **This lawsuit does not involve money damages, so whether or not this case
17 settles or goes to trial, no class member will obtain money from the Defendants.**

18 The proposed settlement provides that Defendants shall pay Plaintiffs' Counsel a one-
19 time lump sum of \$50,000 to cover some of their fees and costs incurred as a result of
20 pursuing this litigation. Pursuant to 42 U.S. C. § 1988, attorneys' fees and costs are
21 permissible in this type of a case.

22 **6. Questions About the Proposed Settlement Agreement**

23 If you have any questions about the proposed settlement, you may contact Class
24 Counsel by writing to:

25 Jacob L. Hafter, Esq.
26 Michael Naethe Esq.
27 ATTN: ACKERMAN v. DEPARTMENT OF CORRECTIONS, 2:11-cv-00883-
28 GMN-PAL
29 Law Office of Jacob Hafter & Associates
30 7201 W. Lake Mead Blvd., Suite 210
31 Las Vegas, Nevada 89128

EXHIBIT 1

EXHIBIT 1

SETTLEMENT AGREEMENT

In The Matter of *Ackerman v. State of Nevada, et al.*, Case No. 02:11-cv-00883-GMN-PAL

THIS SETTLEMENT AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Howard Ackerman, on behalf of himself and all persons included in the certified class within the lawsuit styled *Ackerman v. State of Nevada, et al.*, Case No. 2:11-cv-00883-GMN-PAL, in the United States District Court for the District of Nevada (herein collectively referred to as “PLAINTIFFS”), with the advice and approval of his attorneys, the Law Offices of Jacob Hafter & Associates and Jacob Hafter, Esq., and the Nevada Department of Corrections (“NDOC”) and Director James Cox (hereinafter collectively referred to as “DEFENDANTS”), with the advice and approval of their counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, and Micheline N. Fairbank, Deputy Attorney General, as of the date this Agreement is signed by the parties hereto.

I. RECITALS

A. On or about June 1, 2011, Howard Ackerman, a prisoner in the custody of the NDOC, commenced a class action lawsuit on behalf of himself and all prisoners similarly situated, in the United States District Court for the District of Nevada styled *Ackerman v. State of Nevada, et al.*, Case No. 2:11-cv-00883-GMN-PAL (herein the “*Ackerman Litigation*”). The *Ackerman Litigation* asserts two claims against DEFENDANTS. One claim seeks to enjoin DEFENDANTS from substituting the current kosher religious-dietary accommodation menu (“CKM”) with a new religious-dietary accommodation menu-program called the Common Fare Menu (“CFM”) on the grounds that the CFM violates PLAINTIFFS’ rights under the First Amendment and under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), codified at 42 U.S.C. § 2000cc-1(a) *et seq.* (hereafter referred to as the “Class Claims”). The second claim, which is asserted only by Howard Ackerman, seeks damages from DEFENDANTS on the basis of allegations that DEFENDANTS: (a) violated Mr. Ackerman’s

First Amendment and RLUIPA rights when they transferred him from Northern Nevada Correctional Center (“NNCC”) to Lovelock Correctional Center (“LCC”) in retaliation for Mr. Ackerman’s institution of the *Ackerman Litigation*; and (b) served Mr. Ackerman non-kosher meals or food items at LCC.

B. The PLAINTIFFS recognize that pursuant to the Prison Litigation Reform Act (“PLRA”) and RLUIPA, compensatory damages are not permitted, and as such PLAINTIFFS shall not be entitled to any monetary damages as a result of this Action.

C. Although the *Ackerman Litigation* also included Brian Sandoval, Catherine Cortez Masto and Ross Miller as named defendants, PLAINTIFFS have dismissed, without prejudice, Brian Sandoval, Catherine Cortez Masto and Ross Miller, who are, therefore, not included as parties to this Agreement.

D. PLAINTIFFS and DEFENDANTS desire to compromise, settle and resolve their disputes and to terminate the Class Claims in the *Ackerman Litigation*.

E. It is agreed and understood that this Agreement does not compromise, settle and/or resolve the individual retaliation claims of Mr. Ackerman as set forth in Count 2 of his First Amended Complaint, and such claims are personal to Mr. Ackerman and not claims of the PLAINTIFFS compromised by the Complaint or this Agreement.

II. **TERMS AND CONDITIONS OF SETTLEMENT**

NOW THEREFORE, in furtherance of their desire to compromise, settle and resolve their disputes and terminate the Class Claims in the *Ackerman Litigation*, PLAINTIFFS and DEFENDANTS hereby covenant and agree as follows:

A. CONSIDERATION

The parties mutually exchange the following legal and sufficient consideration:

1. At DEFENDANTS' expense, the Scroll K organization has certified:
 - (a) That the CFM and the NDOC's associated culinary facilities used in preparation of the CFM are kosher;
 - (b) That the CFM menu, such as the menu attached hereto as Exhibit A for sample purposes, shall be certified by a registered dietician, approved by the NDOC, to provide proper nutritional values for the dietary requirements of an adult male between the ages of 21-55 years of age with moderate active physical activity (30 minutes or more) ; and
 - (c) NDOC has demonstrated its ability to maintain such certification upon the execution of this Agreement and NDOC has in place a readily available kosher alternative to the CFM should an alternative be necessary.
2. That PLAINTIFFS, whom are eligible for a reduction in their classification and be determined to be eligible for placement at a NDOC minimum security facility and/or conservation camp, shall be afforded the opportunity to be placed at a NDOC minimum security facility and/or conservation camp which has a kosher certified CFM diet available.
3. That if the contracted certifying organization of rabbis whom has certified as kosher the NDOC's associated culinary facilities used in the preparation of the CFM need to be substituted with another certifying organization, the NDOC shall consult with Rabbi Shea Harlig of Chabad of Southern Nevada, or whomever may be the lead rabbi of such organization at the time a substitute Kashrus agency is solicited, regarding identifying an appropriate substitute certifying organization to certify the NDOC associated culinary facilities used in preparation of the CFM as kosher.
4. It is understood and agreed that DEFENDANTS may subsequently determine that the CFM menu, as certified, no longer meets the NDOC institutional operational policies and procedures; and if at any point in time DEFENDANTS discontinue the CFM menu,

PLAINTIFFS, whom make a request, shall be provided a rabinically certified kosher diet which shall conform with the religious and spiritual mandates of Kashrut as applicable to PLAINTIFFS under RLUIPA.

5. It is further understood and agreed that PLAINTIFFS are not being offered or guaranteed any special future rights or privileges by virtue of this Agreement. It is further understood and agreed that PLAINTIFFS and DEFENDANTS are required to fully comply with, and abide by, any and all NDOC Administrative Regulations, Operational/Institutional Procedures, and/or other policies and procedures, and that execution of this Agreement does not affect that requirement.

6. Upon execution of this Agreement and within fifteen (15) working days following approval of this Agreement by the requisite court, DEFENDANTS will pay legal fees and costs incurred by PLAINTIFFS a one-time lump sum payment in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00) to The Law Office of Jacob Hafter & Associates.

7. Except as to the provision for payment, as set forth in section II.A.7 of this Agreement, of PLAINTIFFS' fees and costs herein, each party shall bear his, hers, its or their own attorneys' fees and costs.

8. Upon court approval of this Agreement, the parties will execute and cause to be filed a stipulation of dismissal with prejudice of the Class Claims in the *Ackerman Litigation*.

B. SCOPE OF AGREEMENT

This agreement shall apply to all Class Claims and disputes between PLAINTIFFS and DEFENDANTS over facts and circumstances alleged and all Class Claims asserted in the *Ackerman Litigation*.

C. RELEASE AND WAIVER OF RIGHTS

The parties agree this Agreement constitutes a complete compromise and settlement of all Class Claims asserted or unasserted, known or unknown, whether or not they could have been discovered, between PLAINTIFFS and DEFENDANTS relating to the facts and circumstances alleged in the *Ackerman Litigation*. Neither this Agreement nor anything contained herein shall be construed as an admission of liability or fault on the part of any party. Further, this Agreement constitutes a full and final release of all Class Claims known, unknown, anticipated, and unanticipated, of every nature whatsoever, and all damages arising therefrom, in relation to the facts and circumstances asserted in the *Ackerman Litigation*. This Agreement shall serve as a bar against and given preclusive effect against any Class Claim or assertion of right made in or related to the facts and circumstances alleged and asserted in the *Ackerman Litigation*.

D. AUTHORITY TO EXECUTE AGREEMENT

Mr. Ackerman, acting in the capacity of Class Plaintiff, warrants, represents and agrees that he has fully read this Agreement, that he fully understands this Agreement, that the legal effect of the terms, covenants and conditions set forth in this Agreement have been fully explained to him by class counsel, that he acknowledges and agrees that class counsel is capable and competent in the matter of this Agreement and that he has no complaints about the manner in which his counsel has represented him and the Plaintiff Class in connection with the *Ackerman Litigation* or this Agreement.

Class Counsel warrants and represents that they are and have been fully authorized to conduct settlement negotiations on behalf of the Class Plaintiff and the Class and to enter into, and to execute, this Agreement on their behalf, with the understanding that it shall have full

binding effect subject to approval pursuant to Fed. R. Civ. P. 23(e) by the court in which the *Ackerman Litigation* is pending.

E. BINDING EFFECT UPON SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of all officials, employees, representatives, heirs, successors and assigns of DEFENDANTS and PLAINTIFFS.

F. NO SIGNATORY IS THE DRAFTER

None of the Signatories hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter hereof.

G. GOOD FAITH SETTLEMENT

This AGREEMENT is entered into in good faith, in accordance with Federal Rule of Civil Procedure 23(e), and the parties will use their best efforts and good faith to jointly petition the Court to further the settlement, compromise, and voluntary dismissal with prejudice of the Class Claims in the *Ackerman Litigation*.

H. CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT

This AGREEMENT shall be construed, interpreted, and enforced in accordance with the laws, rules of procedure, and/or common law of the State of Nevada.

I. NOTICE OF THE AGREEMENT TO CLASS

DEFENDANTS shall ensure that written notice to members of the class approved by the Court is personally delivered to each member of the class within ten (10) days following the Court's approval of the form of such notice.

J. COURT APPROVAL

1. PLAINTIFFS AND DEFENDANTS acknowledge that Rule 23(e) of the Federal Rules of Civil Procedure requires that the Court must direct notice to the class and approve this Agreement. Therefore, the parties shall seek approval from the Court pursuant to Fed. R. Civ. P. 23(e) upon approval of this agreement by Counsel for PLAINTIFFS and DEFENDANTS.

2. Defendants shall ensure that notice, as defined and ordered by the Court, is provided to the class and that such notice shall be provided to each class member no later than ten (10) days following the Court's approval of the form and manner of such notice.

3. Following the date that class members receive notice of this Agreement, class members must submit any objections to the Agreement within ten (10) days, the Agreement shall be submitted for Court approval and all duties and obligations under this Agreement are contingent upon such final approval by the Court.

4. DEFENDANTS will promptly, upon presentation, execute all documents reasonably necessary to indicate their joinder in PLAINTIFF's request and their support for Court approval.

K. INTERPRETATION AND ENFORCEMENT

This Agreement shall be construed, interpreted, and enforced in accordance with the applicable laws of the State of Nevada. Any future claim or cause of action arising out of this Agreement shall be brought only before the First Judicial District Court of the State of Nevada.

L. COMPLETE AGREEMENT

This Agreement contains the entire understanding between the parties with respect to the matters set forth herein. There are no representations, warranties, agreements,

arrangements, or undertakings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

M. COUNTERPARTS AND FACSIMILE COPIES

This Agreement may be executed in counterparts. PLAINTIFFS and DEFENDANTS agree that photocopies of this Agreement, as well as facsimile signatures, shall be presumed to be authentic, valid, and binding, subject to challenges and proof to the contrary.

N. SEVERABILITY

PLAINTIFFS and DEFENDANTS agree that, in the event that any portion, term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, for any reason whatsoever, then those portions, terms or provisions shall be severed from this Agreement as if they were never incorporated into this Agreement and the remainder of the Agreement shall survive and be given full force and effect.

Dated this ____ day of _____, 2012.

Nevada DEPARTMENT OF CORRECTIONS
Director of Department of Corrections

By: _____
JAMES G. COX

Dated this ____ day of _____, 2012.

By: _____
HOWARD ACKERMAN

APPROVED AS TO FORM AND CONTENT.

Dated this ____ day of _____, 2012.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
MICHELINE N. FAIRBANK
Deputy Attorney General
Nevada Bar No. 8062
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1250
Fax: (775) 684-1275

*Attorneys for Defendants State of Nevada
Department of Corrections and James Cox*

Dated this ____ day of _____, 2012.

JACOB HAFTER AND ASSOCIATES

By: _____
JACOB L. HAFTER, Esq.
MICHAEL NAETHE Esq.
7201 W. Lake Mead Boulevard, Suite
210
Las Vegas, Nevada 89128

Attorneys for Plaintiffs

EXHIBIT A

EXHIBIT A

Mary Agnes Boni, MPH, RD
5055 Offenhauser Dr
Winnemucca, NV 89445
775-623-5649 (o)

February 17, 2012

Dawn Rosenberg
Chief of Purchasing
Department of Corrections
P.O. Box 7011
Carson City, NV 89702

Ms. Rosenberg:

This letter is to certify that the **NDOC Common Fare Menu with Sack Lunches**, (dated February 14, 2012) has been analyzed and reviewed for nutritional adequacy. The criteria used to certify this menu was based on a male, 5' 10", 19-50 years old with low activity level (30 – 60 minutes per day). This population requires approximately 2500-2900 calories per day.

According to the information received and reviewed, the NDOC Common Fare Menu with Sack lunches, for a two week cycle, meets or exceeds all minimum requirements for adult males as specified by the Recommended Dietary Allowances (RDA) and the Dietary Reference Intakes (DRIs) as established by the Food and Nutrition Board Institute of Medicine, National Academies.

The menu meets the minimum requirements for the RDA/DRI's, including the recommended levels for total fat and saturated fat. The values for sodium and protein appear to be on the high side. According to the average American diet, this meal pattern is very typical. Over a long period of time, these excesses may be indicative of health problems.

As a group, this menu should be adequate for most men served by the Nevada Department of Corrections.

If you have any questions, or need any additional information, please feel free to contact me.

Sincerely,


Mary Agnes Boni, MPH, RD

Feb. 27.2012

Nevada Department of Corrections Common Fare Menu

Attachment C

WEEK 1

Sabbath - cold meals											
SATURDAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY					
B Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece
R Bran Flakes	1.13 dry oz	Farina cooked	3/4 cup	Oatmeal Cooked	3/4 cup	Farina, cooked	3/4 cup	Farina, cooked	3/4 cup	Farina, Cooked	3/4 cup
E Bread-Kosher	4 slices	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz
A Jelly 5 oz P/C	2 ea./ 1 Tbs.	Bread-Kosher	2 slices	Bread-Kosher	2 slices	Bread-Kosher	2 slices	Bread-Kosher	2 slices	Bread-Kosher	2 slices
K Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Jelly 5 oz P/C	2 ea./ 1 Tbs.
F Hard Boiled Egg	2 ea.	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp
A Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz
S Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz
T											
L Bread	4 Slices	Fruit	1 whole piece	Bread	4 Slices	Fruit	1 whole piece	Bread-Kosher	4 Slices	Fruit	1 whole piece
U Tuna (Stores pak) Ind. P/C	2.5 oz/ 1 ea.	Peanut Butter .50 oz P/C	6 ea.	Tuna (Stores pak) Ind. P/C	2.5 oz/ 1 ea.	Peanut Butter .50 oz P/C	6 ea.	Chicken Bologna slices/Portion P	4 oz/ 1 pack	Peanut Butter .50 oz P/C	6 ea.
N Mayonnaise 9 gr. P/C	2 ea.	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Mayonnaise 9 gr. P/C	2 ea.	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Mayonnaise 9 gr. P/C	2 ea.	Jelly 5 oz P/C	2 ea.
C Mustard 5 gr. P/C	1 ea.	Hard Boiled Egg	1 Each	Mustard 5 gr. P/C	1 ea.	Hard Boiled Egg	1 ea.	Mustard 5 gr. P/C	1 ea.	Hard Boiled Egg	1 Each
H Relish 9 gr. P/C	1 ea.	Veggie Sticks	App. 5 oz. wt	Relish 9 gr. P/C	1 ea.	Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Relish 9 gr. P/C	1 ea.	Veggie Sticks	App. 5 oz. wt
E Hard Boiled Egg	1 ea.	Bread-Kosher	4 Slices	Hard Boiled Egg	1 ea.	Bread-Kosher	4 Slices	Hard Boiled Egg	1 ea.	Bread-Kosher	4 Slices
Veggie Sticks (Carrots/Celery)	App. 5 oz. wt			Veggie Sticks (Carrots/Celery)	App. 5 oz. wt			Veggie Sticks (Carrots/Celery)	App. 5 oz. wt		
D Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece
I Turkey Slices/Portion Pak	4 oz/ 1 pack	Beef/Rice/ Veg	1 1/2 cups	Vegetarian Refried Beans	1 1/2 cups	Chicken/Rice/Veg	1 1/2 cup	Tuna	2.5 oz/ 1 ea.	Sausage/ Rice/ Veg	1 1/2 cup
N Bell Pepper	1/2 cup	Vegetarian Refried Beans	1 1/2 cups	Bell Pepper	1/2 cup	Vegetarian Refried Beans	1 1/2 cups	Vegetarian Beans	1 1/2 cup	Cucumber	1/2 cup
N Var. Veg. (Green Beans) Raw Cold	1 cup	Onion	1/2 cup	Var. Veg. (Zucchini)	1 cup	Cabbage	1 cup	Var. Veg. (Beans)	1 cup	Tomato	1/2 cup
E Lettuce	1 cup	Cabbage	1 cup	Lettuce	1 cup	Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Lettuce	1 cup	Lettuce	1 cup
R Bread-Kosher	4 Slices	Bread-Kosher	4 ea.	Bread-Kosher	4 ea.	Bread-Kosher	4 ea.	Bread-Kosher	4 ea.	Bread-Kosher	4 ea.
Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp	Margarine 5 gr. Prints	2 pats/ 1 tsp	Relish 9 gr. P/C	2 pk	Margarine 5 gr. Prints	2 pats/ 1 tsp
								Mayonnaise	2 pk		
								Margarine 5 gr. Prints	2 pats/ 1 tsp		
										Var. Veg. (Green Beans)	1 cup
										Veggie Sticks (Carrots/Celery)	App. 5 oz. wt.
										Bread-Kosher	4 Slices

WEEK 2

Sabbath - cold meals											
SATURDAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY					
B Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece
R Bran Flakes	1.13 dry oz	Farina, Cooked	3/4 cup	Oatmeal Cooked	3/4 cup	Farina, Cooked	3/4 cup	Farina, Cooked	3/4 cup	Farina, Cooked	3/4 cup
E Bread-Kosher	4 Slices	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz	Bran Flakes	1.13 dry oz
A Jelly 5 oz P/C	2 ea./ 1 Tbs.	Bread-Kosher	2 Slices	Bread-Kosher	2 Slices	Bread-Kosher	2 Slices	Bread-Kosher	2 Slices	Bread-Kosher	2 Slices
K Hard Boiled Egg	2 eggs	Margarine 5 gr. Prints	2 pats/ 1 tsp	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Margarine 5 gr. Prints	2 pats/ 1 tsp	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Margarine 5 gr. Prints	2 pats/ 1 tsp
F Margarine 5 gr. Prints	2 pats/ 1 tsp	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Margarine 5 gr. Prints	2 pats/ 1 tsp	Jelly 5 oz P/C	2 ea./ 1 Tbs.	Margarine 5 gr. Prints	2 pats/ 1 tsp	Jelly 5 oz P/C	2 ea./ 1 Tbs.
A Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz	Smart Milk or Powdered	16 fl. oz
S Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz	Milk Replacer	8 fl. oz
T											
L Fruit	1 whole piece	Veggie Sticks (Carrots/Celery)	5.3 oz	Fruit	1 whole piece	Chicken Bologna Slices/PP	4 oz.	Fruit	1 whole piece	Tuna (Stores pak)	2.5 oz/ 1 ea.
U Peanut Butter .50 oz P/C	6 ea.	Tuna (Stores pak) Ind. P/C	2.5 oz/ 1 ea.	Peanut Butter .50 oz P/C	6 ea.	Bread-Kosher	4 slices	Peanut Butter .50 oz P/C	6 ea.	Bread-Kosher	4 Slices
N Jelly 5 oz P/C	2 ea.	Bread-Kosher	4 Slices	Jelly 5 oz P/C	2 ea.	Mayonnaise 9 gr. P/C	1 ea.	Jelly 5 oz P/C	2 ea.	Mayonnaise 9 gr. P/C	2 pk
C Hard Boiled Egg	1 ea.	Mayonnaise 9 gr. P/C	2 ea.	Hard Boiled Egg	1 ea.	Mustard 5 gr. P/C	1 ea.	Hard Boiled Egg	1 ea.	Mustard 5 gr. P/C	1 pk
H Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Relish 9 gr. P/C	1 ea.	Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Relish 9 gr. P/C	1 ea.	Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Relish 9 gr. P/C	1 pk
Bread-Kosher	4 Slices	Hard Boiled Egg	1 ea.	Bread-Kosher	4 Slices	Hard Boiled Egg	1 each	Bread-Kosher	4 Slices	Hard Boiled Egg	1 ea.
		Mustard Ind. P/C	1 ea.			Veggie Sticks (Carrots/Celery)	App. 5 oz. wt.			Veggie Sticks	App. 5 oz. wt.
D Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece	Fruit	1 whole piece
I Salsami Slices/Portion Pak	4 oz/ 1 pack	Beef/Rice/ Veg	1 1/2 cups	Peanut Butter .50 oz P/C	6 ea.	Chicken/ Rice/Veg	1 1/2 cup	Vegetarian Refried Beans	1 1/2 cups	Sausage/Rice/Veg	1 1/2 cup
N Mustard Ind. P/C	2 ea.	Cabbage	1 cup	Jelly 5 oz P/C	2 ea.	Vegetarian Refried Beans	1 1/2 cups	Cucumber	1 cup	Vegetarian Refried Beans	1 1/2 cups
N Var. Veg. (Zucchini)	1 cup	Spinach	1 cup	Vegetarian Refried Beans	1 1/2 cups	Cabbage	1 cup	Var. Veg. (Green Beans)	1 cup	Onion	1/4 cup
E Lettuce	1 cup	Lettuce	1 cup	Bell Pepper	1/2 cup	Bread-Kosher	4 slices	Lettuce	1 cup	Veggie Sticks (Carrots/Celery)	App. 5 oz. wt
R Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Veggie Sticks (Carrots/Celery)	App. 5 oz. wt	Var. Veg. (Peas)	1 cup	Bread-Kosher	4 Slices	Bread-Kosher	4 Slices	Var. Veg. (Green Beans/Zucchini)	1 cup
Bread-Kosher	4 ea.	Bread-Kosher	4 Slices	Lettuce	1 cup	Rice	1/2 cup	Bread-Kosher	4 Slices	Bread-Kosher	4 Slices
		Margarine 5 gr. Prints	2 pats/ 1 tsp								