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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

BRIAN ELLIS PORTER,  
Plaintiff,  
v.  
CHERYLEE WEGMAN,  
Defendant.

Case No. 1:10-cv-01500-BAM (PC)  
**PRETRIAL ORDER**  
Defendant’s Motions in Limine Filing  
Deadline: **July 14, 2017**  
Plaintiff’s Motions in Limine Filing Deadline:  
**July 17, 2017**  
Oppositions to Motions in Limine Filing  
Deadline: **July 28, 2017**  
Telephonic Status Conference: **July 27, 2017**, at  
10:00 a.m. in Courtroom 8 (BAM)  
Motion in Limine Hearing: **August 14, 2017**, at  
10:00 a.m. in Courtroom 8 (BAM)  
Jury Trial: **August 29, 2017**, at 8:30 a.m. in  
Courtroom 8 (BAM)

Plaintiff Brian Ellis Porter (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. All parties have consented to magistrate judge jurisdiction. (ECF Nos. 5, 150.) This action proceeds on Plaintiff’s claims against Defendant Wegman for violation of the Free Exercise Clause of the First Amendment. In particular, this action proceeds on Plaintiff’s claim that Defendant Wegman violated his right to free exercise of his religion by switching him from a kosher diet to a vegetarian diet and denying

1 his requested dietary accommodations during multi-day Passover observances.

2 The parties submitted pretrial statements, and on July 11, 2017, the Court held a  
3 telephonic trial confirmation hearing. Plaintiff, appearing pro se, and Aseil Mohmoud and  
4 Monica Anderson, counsel for Defendant, attended the hearing. Having reviewed the parties'  
5 statements and the remainder of the file, and having considered the issues raised at the telephonic  
6 trial confirmation hearing, the Court issues the instant pretrial order.

7 **I. Jurisdiction and Venue**

8 The Court has subject matter jurisdiction over this federal civil rights action. 28 U.S.C.  
9 § 1331. Venue is proper because the conduct allegedly occurred in this judicial district. 28  
10 U.S.C. § 1391.

11 **II. Trial**

12 The parties demand a trial by jury. Fed. R. Civ. P. 38(b).

13 Trial is set for **August 29, 2017, at 8:30 a.m.** before U.S. Magistrate Judge Barbara A.  
14 McAuliffe in Courtroom 8 (BAM). The parties anticipate the trial will last approximately two (2)  
15 to three (3) days.

16 **III. Facts**

17 **A. Plaintiff's Undisputed Facts**

18 Plaintiff contends the following facts are undisputed:

- 19 1. Plaintiff Brian Ellis Porter is a California state prisoner housed at Kern Valley State  
20 Prison ("KVSP") in Delano, California, where the events giving rise to this action occurred.  
21 Plaintiff is proceeding against Defendant Cherylee Wegman, the Community  
22 Partnership/Resource Manager at KVSP.
- 23 2. Plaintiff is a member of the religion called the House of Yahweh ("HOY") and the tenets  
24 of the HOY religion require its members to maintain a Kosher diet and observe Passover Feast of  
25 Unleavened Bread ("Passover"). Passover lasts approximately eight calendar days where HOY  
26 members are required to destroy all leavened food in their possession just prior to the beginning  
27 of Passover, and refrain from eating leavened food or coming into contact with leavened food.  
28 During Passover, HOY members must eat some amount of unleavened bread each day of the

1 event, and eat some portion of the Passover sacrifice the night beginning the religious event  
2 which is Passover night.

3 3. Defendant Wegman is the Community Partnership Manager at KVSP. Defendant  
4 Wegman's responsibilities include planning, organizing, and directing community based  
5 programs for inmates related to religion, art, services to communities, self-help groups, and  
6 volunteers. At all times relevant hereto, Defendant Wegman was not a chaplain for CDCR.

7 4. In 2008, Plaintiff applied to receive a Kosher diet by submitting a CDC 3030 Religious  
8 Diet Request form to the appropriate staff, requesting only a Kosher diet. Plaintiff's request was  
9 approved soon thereafter, however, Plaintiff never received Kosher meals.

10 5. On November 21, 2008, Defendant Wegman circulated an email amongst KVSP staff that  
11 referred to the HOY as a "Religious hate group," a "cult" and saying that the HOY poses a "real  
12 danger."

13 6. Inmates wishing to celebrate a religious event can submit a Religious Event Package,  
14 which explains the event they request to commemorate and list the accommodations that are  
15 needed.

16 7. In 2009, Plaintiff and HOY members at KVSP submitted a Religious Event Package  
17 specifically to receive an eight-day modified meal plan for the observance of Passover, taking  
18 place from April 10, 2009 to April 17, 2009. Defendant Wegman circulated a memorandum  
19 dated April 17, 2009, suggesting to all KVSP staff that the two HOY elders/ministers be cell fed  
20 rather than participating in the Passover banquet with all the HOY members. Plaintiff and HOY  
21 members were granted one special meal to celebrate the HOY Passover on April 17, 2009.

22 8. In 2010, Plaintiff and HOY members at KVSP submitted a Religious Event Package,  
23 specifically to receive an eight-day modified meal plan for the observance of Passover, taking  
24 place from March 30, 2010, to April 6, 2010. Plaintiff and HOY members were granted one  
25 special meal to celebrate the HOY Passover on March 30, 2010.

26 9. In 2011, Plaintiff submitted a Religious Event Package, specifically to receive an eight-  
27 day modified meal plan for the observance of Passover, taking place from April 18, 2011, to April  
28 25, 2011. Plaintiff was denied his request in whole.

1 10. On April 30, 2009, Plaintiff attempted to file an institutional grievance, complaining about  
2 the prison's failure to provide Plaintiff with a Kosher diet as well as their failure to provide the  
3 necessary accommodations for the observance of Passover. However, Defendant Wegman  
4 obstructed the institutional grievance process, leaving Plaintiff with no means to exhaust his  
5 administrative remedies.

6 11. On April 18, 2010, Plaintiff filed an institutional grievance, appeal log no. KVSP-0-10-  
7 00851 directly against Defendant Wegman complaining about her failure to grant Plaintiff's  
8 request for necessary accommodations for the observance of Passover, and limiting the  
9 accommodations to one meal void of any religious significance. Plaintiff exhausted his appeal  
10 through all available levels.

11 12. On May 15, 2011, Plaintiff attempted to file an institutional grievance complaining about  
12 the prison's failure to provide Plaintiff with any accommodations for the observance of Passover  
13 despite his timely request thereto. KVSP obstructed the institutional grievance process, leaving  
14 Plaintiff with no means to exhaust his administrative remedies.

15 **B. Defendant's Undisputed Facts**

16 Defendant contends the following facts are undisputed:

- 17 1. Plaintiff Porter was in CDCR custody and housed at Kern Valley State Prison (KVSP).
- 18 2. At all times relevant to this case, Defendant C. Wegman was employed by CDCR as the  
19 Community Resource Manager at KVSP and remains in that capacity.
- 20 3. Plaintiff identifies as a member of the "House of Yahweh" faith.
- 21 4. Plaintiff requested a religious diet meal at KVSP as an alternative to the standard inmate  
22 meal.
- 23 5. Per CDCR regulations, Plaintiff qualified for vegetarian diet meal and was provided  
24 vegetarian meals to accommodate his religious needs.
- 25 6. Plaintiff refused to eat the vegetarian meals for a period of four-to-five days during  
26 Passover in 2009 and 2010 because he wanted a kosher diet meal.
- 27 7. CDCR's religious diet policy only allowed for Jewish inmates to be provided a kosher diet  
28 meal.

1 8. The “House of Yahweh” is not Judaism, nor is it a branch of Judaism.

2 9. Because Plaintiff was not Jewish, he could not be granted a kosher diet meal. Instead, he  
3 was provided vegetarian meals.

4 10. Vegetables are “kosher.”

5 11. Plaintiff chose not to eat the vegetarian meals at all for a period of four-to-five days  
6 during Passover in 2009 and 2010.

7 12. Plaintiff took part in a special event meal that the institution provided for the House of  
8 Yahweh inmates’ Feast of Tabernacles, yet Plaintiff refused to eat the food because he claimed  
9 the food was unsatisfactory.

10 **C. Plaintiff’s Disputed Factual Issues**

11 1. Defendant Wegman claims that in or about 2008, Defendant Wegman mistakenly  
12 approved inmate Porter’s request for a Kosher diet.

13 a. Plaintiff disputes this claim, alleging himself that in 2008, Plaintiff applied to  
14 receive a Kosher diet by completing a CDC Form 3030, Religious Diet Request, then submitting  
15 it to the Jewish chaplain, Daniel Mehlman, who later interviewed Plaintiff and subsequently  
16 approved his request.

17 2. Defendant Wegman claims that in 2010, members of the HOY requested to celebrate the  
18 Yahweh Passover feast, as well as an eight-day modified meal plan. The HOY members were  
19 provided with one special meal. However, they were denied the requested eight-days of special  
20 meals pursuant to Department Operations Manual (“DOM”) section 54080.13, which states:  
21 “Inmate religious groups shall not be permitted more than two events each year where foods with  
22 recognized religious significance are provided by the institution in place of the regularly planned  
23 meal.” Although the observance of Passover constitutes a single religious holiday, pursuant to  
24 DOM section 54080.14, the rules for Passover only apply to Jewish inmates desiring to practice  
25 Jewish Kosher law. CDCR policy does not authorize Passover observance for non-Jewish  
26 inmates.

27 a. Plaintiff disputes these claims, alleging that despite the fact that Passover is a  
28 week-long (approximately eight-days) religious observance requiring a specified meal plan,

1 Defendant Wegman decided on her own to modify the observance of Passover to a one day, one  
2 meal event for HOY members through her own misinterpretation of CDCR policy, to disparage  
3 against HOY.

4 b. Further, there is no CDCR policy that dictates that the week-long (approximately  
5 eight-day) observance of Passover is reserved exclusively for Jewish inmates and CDCR will  
6 only provide accommodations for proper observance of Passover to Jewish inmates despite an  
7 inmate's sincerely held belief that he/she must observe Passover the same way a Jewish inmate  
8 does. California Code of Regulations, Title 15 ("15 CCR") section 3054.2(e) and DOM section  
9 54080.14 simply defines the basic rules for Passover observance due to the Jewish Kosher Diet  
10 Program's ("JKDP") inherent accommodations for participants in the program (providing  
11 specified accommodations particular to proper Passover observance). However, these policies  
12 surrounding Passover (nor any other CDCR policy) in no way determines how HOY observes  
13 Passover, or what accommodations HOY can be provided, including a multi-day modified meal  
14 plan particular to proper observance of Passover for inmates outside of the JKDP desiring to  
15 observe Passover. To interpret these policies in such a way is discriminatory on its face.

16 3. Defendant Wegman claims that although Porter requested a Kosher diet and Passover  
17 accommodations, pursuant to DOM sec 54080.13 and 15 CCR secs. 3053, 3054, 3084, and 3210,  
18 Defendant Wegman did not have the authority or ability to provide him with accommodations  
19 that he did not meet the criteria for under those regulations.

20 a. Plaintiff disputes this claim, alleging himself that Plaintiff did meet the criteria for  
21 both religious accommodations for Passover as well as a Kosher diet. Defendant Wegman used  
22 her own discretion, absent of CDCR policy to limit the observance of Passover for Plaintiff to a  
23 one day, one meal event void of any religious significance, and revoke Plaintiff's Kosher diet  
24 (JKDP) approval. Defendant Wegman is not a chaplain and has never had the authority to  
25 determine inmate's request, including Plaintiff's request for a religious diet or requests for  
26 religious event accommodations and she violated CDCR policy by doing so. No CDCR policy  
27 restricts a chaplain's ability and/or authority to provide Plaintiff with accommodations for each  
28 day of Passover.

1 4. Defendant Wegman claims that she never denied Porter Kosher meals or accommodations  
2 for Passover because of animosity or ill feelings for him or his religion, rather, she denied his  
3 request for a Kosher diet and Passover accommodations because she was not authorized to  
4 provide him with the accommodations under CDCR policy, which she is bound to adhere to.

5 a. Plaintiff disputes this claim, alleging himself that Defendant Wegman did hold  
6 contempt towards the HOY which she clearly expressed through a pattern of disparate and  
7 disparaging actions, including: 1) the circulation of an email amongst KVSP staff, describing the  
8 HOY as a “religious hate group,” a dangerous group and a potentially dangerous cult, and also  
9 Defendant Wegman’s prejudice reason for circulating this email; 2) Defendant Wegman’s  
10 subversion of the Religious Diet Program policies by acting in place of the chaplain for the  
11 purpose of determining Plaintiff’s eligibility in his request for a Kosher diet, and determining  
12 Plaintiff’s religious needs for Passover, denying Plaintiff any accommodations that held religious  
13 significance; 3) suggesting to KVSP staff that the HOY ministers/elders at KVSP be cell fed  
14 during the Passover banquet of 2009, rather than participating in the banquet along with all the  
15 other HOY members; 4) denying Plaintiff and all other HOY members their requested religious  
16 accommodations for Passover on a discriminatory basis; 5) misinterpreting CDCR policy to  
17 discriminate specifically against HOY; and 6) manipulation of the CDCR inmate appeal process  
18 to avoid responding to Plaintiff’s appeals concerning Passover, and undermine his attempts to  
19 resolve his issues at the administrative level.

20 **D. Defendant’s Disputed Factual Issues**

21 1. Whether Plaintiff, an inmate identifying as a member of the House of Yahweh faith, was  
22 entitled to the institutional kosher diet meal from 2008–2011 at KVSP.

23 2. Whether Officer Wegman, as the Community Resource Manager at KVSP, violated  
24 CDCR policy by not providing Plaintiff with a kosher diet meal once per day during Passover in  
25 2009–2010.

26 3. Whether Plaintiff was entitled to a “special event” meal during Passover in 2009–2010  
27 that was “kosher” per his standards.

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1           **E. Disputed Evidentiary Issues**<sup>1</sup>

2                   **1. Plaintiff's Disputed Evidentiary Issues**

3           Plaintiff has identified no disputed evidentiary issues.

4                   **2. Defendant's Disputed Evidentiary Issues**

5           a) Defendant objects to any evidence submitted by Plaintiff based upon or containing  
6 inadmissible hearsay, or evidence that is irrelevant, immaterial, or incompetent.

7           b) Defendant will contest the admissibility of any written statements by inmates whom  
8 Plaintiff claims are witnesses including, but not limited to, any statement signed by said inmates.

9           c) Defendant objects to any opinion testimony from Plaintiff or any non-expert witnesses  
10 regarding any matters that call for medical expertise, including the cause of injuries, if any.

11           d) Defendant reserves objections to specific testimony and exhibits until such time as  
12 Defendant has had the opportunity to hear such testimony and examine such exhibits. Defendant  
13 will also file specific objections to Plaintiff's exhibits once they have been exchanged with  
14 Defendant.

15           e) Should Plaintiff or any other incarcerated witnesses testify, Defendant will seek to  
16 impeach such witnesses by presenting evidence of prior felony convictions, pursuant to Federal  
17 Rules of Evidence, Rule 609. The verdict in this case will be affected by the credibility of  
18 witnesses. Therefore, Defendant argues that no one who has suffered a prior felony conviction is  
19 entitled to the false aura of veracity which would occur if impeachment were not allowed.

20           **F. Special Factual Information**

21           Not applicable.

22           **IV. Relief Sought**

23           Plaintiff seeks a declaratory judgment, compensatory damages, punitive damages,  
24 litigation fees and costs, and a permanent injunction.

25           Defendant seeks a judgment in her favor with Plaintiff taking nothing, and an award of  
26 attorney fees and costs.

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<sup>1</sup> The parties may file motions in limine, addressed below, and/or object to the introduction of evidence at trial.

1 **V. Points of Law**

2 **A. Imposition of Liability Under Section 1983**

3 Under § 1983, Plaintiff is required to prove that Defendant (1) acted under color of state  
4 law and (2) deprived him of rights secured by the First Amendment of the United States  
5 Constitution. Long v. Cty. of L.A., 442 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff must prove that  
6 Defendant personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d  
7 930, 934 (9th Cir. 2002). “A supervisor is liable under § 1983 for a subordinate’s constitutional  
8 violations ‘if the supervisor participated in or directed the violations, or knew of the violations  
9 and failed to act to prevent them.’” Maxwell v. Cty. of San Diego, 708 F.3d 1075, 1086 (9th Cir.  
10 2013) (quoting Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)).

11 There is no respondeat superior liability under section 1983, and Defendant is only liable  
12 for her own misconduct. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009).

13 **B. First Amendment – Free Exercise**

14 A person asserting a free exercise claim must show that the government action in question  
15 substantially burdens the person's practice of their religion. Graham v. C.I.R., 822 F.2d 844, 851  
16 (9th Cir. 1987), aff’d sub nom. Hernandez v. C.I.R., 490 U.S. 680, 699 (1989). “A substantial  
17 burden . . . place[s] more than an inconvenience on religious exercise; it must have a tendency to  
18 coerce individuals into acting contrary to their religious beliefs or exert substantial pressure on an  
19 adherent to modify his behavior and to violate his beliefs.” Ohno v. Yasuma, 723 F.3d 981, 1101  
20 (9th Cir. 2013) (quoting Guru Nanak Sikh Soc’y of Yuba City v. Cty. of Sutter, 456 F.3d 978,  
21 998 (9th Cir. 2006) (internal quotation marks and alterations omitted)).

22 “The right to exercise religious practices and beliefs does not terminate at the prison door.  
23 The free exercise right, however, is necessarily limited by the fact of incarceration, and may be  
24 curtailed in order to achieve legitimate correctional goals or to maintain prison security.”  
25 McElyea v. Babbitt, 833 F.2d 196, 197 (9th Cir. 1987) (per curiam) (citations omitted); see also  
26 O’Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987); Shakur v. Schriro, 514 F.3d 878, 883–84  
27 (9th Cir. 2008). In order to implicate the Free Exercise Clause, the prisoner’s belief must be both  
28 sincerely held and rooted in religious belief. Shakur, 514 F.3d at 885 (citations omitted). The

1 challenged conduct “is valid if it is reasonably related to legitimate penological interests.” Turner  
2 v. Safley, 482 U.S. 78, 89, (1987).

### 3 **C. Qualified Immunity**

4 The doctrine of qualified immunity protects government officials from civil liability  
5 where “their conduct does not violate clearly established statutory or constitutional rights of  
6 which a reasonable person would have known.” Pearson v. Callahan, 555 U.S. 223, 231 (2009)  
7 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Qualified immunity protects “all but  
8 the plainly incompetent or those who knowingly violate the law.” Ashcroft v. al-Kidd, 563 U.S.  
9 731 (2011) (citations omitted).

10 To determine if an official is entitled to qualified immunity the court uses a two part  
11 inquiry. Saucier v. Katz, 533 U.S. 194, 200 (2001), overruled in part by Pearson, 555 U.S. at 236.  
12 The court determines if the facts as alleged state a violation of a constitutional right and if the  
13 right was clearly established at the time of the challenged conduct. Ashcroft, 563 U.S. at 735.  
14 This does not require that the same factual situation must have been decided, but that existing  
15 precedent would establish the statutory or constitutional question beyond debate. Id. at 741;  
16 Mattos v. Agarano, 661 F.3d 433, 442 (9th Cir. 2011). The inquiry as to whether the right was  
17 clearly established is “solely a question of law for the judge.” Dunn v. Castro, 621 F.3d 1196,  
18 1199 (9th Cir. 2010) (quoting Tortu v. Las Vegas Metro. Police Dep’t, 556 F.3d 1075, 1085 (9th  
19 Cir. 2009)). District courts are “permitted to exercise their sound discretion in deciding which of  
20 the two prongs of the qualified immunity analysis should be addressed first in light of the  
21 circumstances in the particular case at hand.” Pearson, 555 U.S. at 236.

22 “For a constitutional right to be clearly established, its contours ‘must be sufficiently clear  
23 that a reasonable official would understand that what he is doing violates that right.’” Hope v.  
24 Pelzer, 536 U.S. 730, 739 (2002) (citation omitted). Official action is entitled to protection  
25 “unless the very action in question has previously been held unlawful.” Id. “Specificity only  
26 requires that the unlawfulness be apparent under preexisting law,” Clement v. Gomez, 298 F.3d  
27 898, 906 (9th Cir. 2002) (citation omitted), and prison personnel “can still be on notice that their  
28 conduct violates established law even in novel factual circumstances,” Hope, 536 U.S. at 741.

1 The salient question is whether the state of the law at the time gave defendants fair warning that  
2 their alleged treatment of plaintiff was unconstitutional. Id.

3 **D. Punitive Damages**

4 Plaintiff has the burden of proving what, if any, punitive damages should be awarded by a  
5 preponderance of the evidence. NINTH CIRCUIT MODEL CIVIL JURY INSTRUCTIONS § 5.5  
6 (2008). The jury must find that Defendant’s conduct was “motivated by evil motive or intent,  
7 or . . . involves reckless or callous indifference to the federally protected rights of others.” Smith  
8 v. Wade, 461 U.S. 30, 56 (1986). Acts or omissions which are malicious, wanton, or oppressive  
9 support an award of punitive damages. Dang v. Cross, 422 F.3d 800, 807–08 (9th Cir. 2005).

10 **E. Federal Rules of Evidence**

11 Federal Rule of Evidence 609 provides that evidence of a witness’s prior felony  
12 conviction may be used to impeach that witness’s testimony. Fed. R. Evid. 609.

13 Federal Rule of Evidence 404(b) provides that evidence of prior crimes, wrongs, or acts  
14 cannot be used to prove the character of the person in order to show conduct in conformity with  
15 that character trait. Fed. R. Evid. 404(b). Such prior acts may be admissible for other purposes  
16 only, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or  
17 absence of mistake or accident. Id.

18 **VI. Abandoned Issues**

19 Plaintiff abandoned all claims against former Defendants Biter, Castro, and Grewal.  
20 Plaintiff also abandoned his Eighth Amendment claim; 42 U.S.C. §§ 2000cc et seq. claim; 42  
21 U.S.C. § 2000d claim; and 42 U.S.C. § 3789d(c)(1) claim.

22 **VII. Witnesses**

23 **The following is a list of witnesses that the parties expect to call at trial, including**  
24 **rebuttal and impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN**  
25 **THIS SECTION, MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE**  
26 **OR UPON A SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT**  
27 **“MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule 281(b)(10).**

28 ///

1           **A.     Plaintiff's Witness List**<sup>2</sup>

- 2       1.     Brian Ellis Porter, Plaintiff
- 3       2.     Rabbi Paul Shleffar, Jewish Chaplain of CDCR
- 4       3.     Denice Porter
- 5       4.     Ellis Porter
- 6       5.     Lisa Turner
- 7       6.     Francisco Diaz, Catholic Chaplain, KVSP
- 8       7.     Maurice Howard, Muslim Chaplain, KVSP

9           **B.     Defendant's Witness List**<sup>3</sup>

- 10      1.     C. Wegman, Defendant
- 11      2.     Custodian of Records for Plaintiff's Prison Central File
- 12      3.     Custodian of Records for Plaintiff's Prison Medical File
- 13      4.     D. Skaggs, Community Resource Manager (expert witness)
- 14      5.     E. Krants, Chaplain at KVSP (expert witness)
- 15      6.     Rabbi D. Mehlman, Jewish Chaplain at KVSP (expert witness)

16      **VIII. Exhibits**

17           **The following is a list of documents or other exhibits that the parties expect to offer**

18 **at trial. NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE**

19 **ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS**

20 **ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R.**

21 **Civ. P. 16(e); Local Rule 281(b)(11).**

22           **A.     Plaintiff's Exhibits**

- 23      1.     HOY letter, dated August 7, 2002

24           \_\_\_\_\_  
25           <sup>2</sup> Plaintiff is not required to call all of the witnesses listed. However, witnesses the parties plan to call must be  
26           available on August 29, 2017, by 9:30 a.m., unless otherwise ordered by the Court. The Court will not delay the  
27           proceedings because of witness unavailability. Also, although Plaintiff has not named the Defendant as a witness, he  
28           may call Defendant as a witness in his case-in-chief. The Court will address Plaintiff's motion for incarcerated and  
          unincarcerated witnesses by separate order. (ECF No. 157.)

<sup>3</sup> Defendant is not required to call all of the witnesses listed. However, as is the Court's general practice in cases  
          such as this, witnesses the defense plans to call shall be present on August 29, 2017, by 9:30 a.m. and shall be  
          available for Plaintiff to call for direct examination.

- 1 2. KVSP Kosher Diet Card (2008)
- 2 3. Vegetarian Diet Card
- 3 4. Vegetarian Diet Chrono
- 4 5. Kosher Diet Card (2015)
- 5 6. Kosher Diet Chrono
- 6 7. Kosher Diet Request Form (approved by Shleffar)
- 7 8. Religious Diet Request Form CDC 3030
- 8 9. 2009 KVSP Passover Menu
- 9 10. Fellowship Banquet Memorandum, dated February 10, 2009
- 10 11. HOY Passover Memorandum, dated April 7, 2009
- 11 12. Email from Defendant Wegman
- 12 13. Religious Event Packages (2009–2016)
- 13 14. Denice Porter’s Letter to Defendant Wegman, dated April 12, 2011
- 14 15. Letter to Chaplain Diaz, dated March 3, 2009
- 15 16. Allen Williams’ Letter to Chaplain Diaz, dated February 27, 2009
- 16 17. Yahweh’s 613 Laws (excerpts – A House of Yahweh Production)
- 17 18. The Blood and Body of Messiah – A House of Yahweh Production (excerpts)
- 18 19. Yahweh’s Passover and Yahshua’s Memorial – A House of Yahweh Production (excerpts)
- 19 20. Letter to CDCR Community Resource Manager, Barry Smith
- 20 21. Response from Barry Smith
- 21 22. 2009 Appeal and Response from Defendant Wegman (unexhausted)
- 22 23. 2010 Appeal Log No. KVSP-0-10-00851
- 23 24. 2010 Appeal Log No. KVSP-0-10-01432
- 24 25. 2011 Appeal (unexhausted)
- 25 26. 2011 Denial of Passover Accommodations
- 26 27. Memorandum to HOY Member
- 27 28. George Hamilton’s Appeal, Log No. SATF-02-04501
- 28 29. George Hamilton’s Civil Rights Complaint Response

- 1 30. Complaint from Allen B. Williams
- 2 31. Appeal Log No. KVSP-14-02674
- 3 32. California Code of Regulations, Title 15, 2008–2016
- 4 33. Notice of Change to Text, dated August 11, 2009
- 5 34. DOM excerpts
- 6 35. OP excerpts
- 7 36. Robinson v. Delgado case
- 8 37. Allen v. Virga case
- 9 38. In re Keith Allen Lewis case
- 10 39. Declaration of Denice Porter
- 11 40. Declaration of Lisa Turner
- 12 41. Declaration of Jimmy Serna
- 13 42. Ramadan Religious Event Memorandum
- 14 43. KVSP Ramadan Menu
- 15 44. Ramadan Menu
- 16 45. Community Partnership/Resource Manager Job Duties
- 17 46. KVSP Staff Log Book Entry
- 18 47. 2010 HOY Member HOY Passover Memorandum
- 19 48. 2010 KVSP Passover Memorandum
- 20 49. Plaintiff's Trust Account Records
- 21 50. Health Yahweh's Way, A House of Yahweh Production

22 **B. Defendant's Exhibits**

- 23 1. Relevant portions of Plaintiff's canteen records.
- 24 2. Letter from House of Yahweh Inmate Representative, A. Quiroz, dated October 20, 2011.
- 25 3. CDCR Religious Event Request Packets submitted by House of Yahweh inmates at KVSP
- 26 for Feast of Tabernacles, dated April 17, 2009, April 19, 2011, October 20, 2011, October 12,
- 27 2011, including the corresponding referral memorandum route slips from the institution.

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- 1 4. All CDCR Religious Event Request Packets submitted by Plaintiff for Feast of
- 2 Tabernacles, including the packet dated April 17, 2009.
- 3 5. CDCR Records from 2009 and 2010 documenting inmates who partook in hunger strikes
- 4 during the relevant time period.
- 5 6. CDCR Regulations and Policies in effect from 2008–2011 regarding religious diet meals.
- 6 7. Photos of the regular meals offered to inmates.
- 7 8. Photos of the kosher diet meals offered to inmates.
- 8 9. Photos of the vegetarian diet meals offered to inmates.
- 9 10. CDCR records of the cost of religious diet meals, as compared to standard meals.
- 10 11. Plaintiff’s Abstract of Judgment for his current commitment offense.
- 11 12. Relevant case records from a similar lawsuit filed by inmate Williams and Plaintiff on
- 12 similar facts, titled Williams v. Wegman, Case No. F12907764, dated March 7, 2009.
- 13 13. CDCR 3030 forms for KVSP House of Yahweh inmates from the relevant time period.
- 14 14. Plaintiff’s trust account statements from the relevant time period.
- 15 15. Letter response from Defendant Wegman to Plaintiff, dated June 22, 2010.
- 16 16. Letter from inmate Porter dated April 2010.
- 17 17. Memorandum from C. Wegman re the Feast of Tabernacles, dated April 17, 2010.
- 18 18. Record of inmates who engaged in a hunger strike on October 10, 2010.
- 19 19. March 29, 2010 food inventory for House of Yahweh Feast of Unleavened Bread Event.
- 20 20. CDCR Religious Services Meal Schedule for the relevant time period.
- 21 21. Letter response from Defendant Wegman to D. Porter, dated April 6, 2011.

22 **IX. Discovery Documents to be Used at Trial**

23 Plaintiff anticipates offering the following discovery documents:

- 24 1. Defendant C. Wegman’s response to Plaintiff Brian E. Porter’s Request for Admission,
- 25 Set One, Admission Request/Response numbers 1–7, 9–12, and 14–15;
- 26 2. Response to Request for Admissions from Defendant C. Wegman, Set Two, Admission
- 27 Request/Response numbers 1–4, 9–10, 12, 23–24, and 26–31;

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1 3. Response to Interrogatories from Defendant C. Wegman, Set One,  
2 Interrogatories/Response numbers 1–21;

3 4. Responses to Interrogatories from Defendant M. Biter, Set One, Interrogatories/Response  
4 numbers 1–2, 4–6, 9, 11, 13, 15–18, and 20–21; and

5 5. Deposition of Brian Ellis Porter

6 Defendant anticipates offering Plaintiff’s Answers to Interrogatories, Responses to  
7 Requests for Admissions, Responses to Requests for Production, deposition transcript and all  
8 supporting exhibits, or portions thereof, for purposes of impeachment or rebuttal.

9 The parties are warned that the Court generally does not allow the admission into  
10 evidence of discovery documents, including responses or transcripts, in their entirety.

11 **X. Further Discovery or Motions**

12 Defendant does not contend that further discovery should be conducted. Defendant further  
13 contends that no further discovery related Motions should be filed, other than Motions in Limine.

14 **XI. Stipulations**

15 None.

16 **XII. Amendments/Dismissals**

17 None.

18 **XIII. Settlement Negotiations**

19 The parties have engaged in prior settlement discussions. Defendant does not believe any  
20 further settlement conference will be helpful. Plaintiff states that he is willing to settle and  
21 believes settlement would be helpful, and therefore requests a court settlement conference  
22 pursuant to Local Rule 270.

23 As discussed on the record, the parties will advise the Court if a court settlement  
24 conference prior to trial would be beneficial to this action.

25 **XIV. Agreed Statement**

26 Plaintiff has not proposed an agreed statement.

27 Defendant has proposed the following “agreed statements,” based on uncontested facts in  
28 Plaintiff’s operative Complaint, Pretrial Statement, and the pleadings before the Court:

- 1 1. Plaintiff Porter was in CDCR custody and housed at Kern Valley State Prison (KVSP).
- 2 2. At all times relevant to this case, Defendant C. Wegman was employed by CDCR as the
- 3 Community Resource Manager at KVSP and remains in that capacity.
- 4 3. Plaintiff identifies as a member of the “House of Yahweh” faith.
- 5 4. Plaintiff requested a religious diet meal at KVSP as an alternative to the standard inmate
- 6 meal.
- 7 5. Per CDCR regulations, Plaintiff qualified for vegetarian diet meal and was provided
- 8 vegetarian meals to accommodate his religious needs.
- 9 6. Plaintiff refused to eat the vegetarian meals for a period of four-to-five days during
- 10 Passover in 2009 and 2010 because he wanted a kosher diet meal.
- 11 7. CDCR’s religious diet policy only allowed for Jewish inmates to be provided a kosher diet
- 12 meal.
- 13 8. The “House of Yahweh” is not Judaism, nor is it a branch of Judaism.
- 14 9. Because Plaintiff was not Jewish, he could not be granted a kosher diet meal. Instead, he
- 15 was provided vegetarian meals.
- 16 10. Vegetables are “kosher.”
- 17 11. Plaintiff chose not to eat the vegetarian meals at all for a period of four-to-five days
- 18 during Passover in 2009 and 2010.
- 19 12. Plaintiff took part in a special event meal that the institution provided for the House of
- 20 Yahweh inmates’ Feast of Tabernacles, yet Plaintiff refused to eat the food because he claimed
- 21 the food was unsatisfactory.

## 22 **XV. Separate Trial of Issues**

23 Defendant requests that the issue of punitive damages be bifurcated, and at the telephonic  
24 trial confirmation hearing, Plaintiff confirmed that he does not object to such bifurcation.

25 As is the Court’s general practice, the punitive damages phase, if any, will be bifurcated.

## 26 **XVI. Impartial Experts – Limitation of Experts**

27 Plaintiff requests that this Court appoint impartial expert witnesses that may provide  
28 expert testimony to: 1) The House of Yahweh religion; 2) prisoner’s religious rights; and 3)

1 inmate package companies and their package catalogs (namely Access Secure Pak, Union Supply,  
2 and Walkenhorst's). (ECF No. 162, pp. 12–13.)

3 Plaintiff claims that impartial experts are needed “for the sake of fairness,” and it is clear  
4 that Plaintiff seeks experts who will corroborate his testimony and serve as advocates, rather than  
5 assist the Court. Federal Rule of Evidence 706 does not contemplate court appointment and  
6 compensation of an expert witness as an advocate for Plaintiff. Brooks v. Tate, 2013 WL  
7 4049043, \*1 (E.D. Cal. Aug. 7, 2013) (denying appointment of medical expert on behalf of state  
8 prisoner in section 1983 action); Gorrell v. Sneath, 2013 WL 3357646, \* 1 (E.D. Cal. Jul. 3,  
9 2013) (purpose of court-appointed expert is to assist the trier of fact, not to serve as an advocate  
10 for a particular party). Moreover, Rule 706 is not a means to avoid the in forma pauperis statute  
11 and its prohibition against using public funds to pay for the expenses of witnesses. Manriquez v.  
12 Huchins, 2012 WL 5880431, \* 12 (E.D. Cal. 2012).

13 For these reasons and as stated on the record, Plaintiff's request for the appointment of  
14 impartial experts is denied.

15 **XVII. Attorney's Fees**

16 Plaintiff intends to seek attorney's fees if he is successful in this case.

17 Defendant will request the award of costs after trial should Defendant prevail.

18 **XVIII. Trial Exhibits**

19 Plaintiff intends to present several religious items as evidence during trial. These items  
20 include The Book of Yahweh; Yahweh's 613 Laws; and Yahweh's 613 Laws, Commentary,  
21 Volume One. These religious items are considered Holy to Plaintiff, where Plaintiff requests to  
22 be the only person to handle these religious items.

23 Special handling of Plaintiff's inmate records may be appropriate as to any confidential  
24 sections where disclosure may compromise the safety and security of the institution, staff, or  
25 other inmates, or impinge on Plaintiff's medical privacy.

26 The court will address special handling of exhibits at trial

27 **XIX. Trial Protective Order**

28 In the event that Defendant is required to disclose information concerning her financial

1 status, Defendant will request that the Court issue a Protective Order concerning this information,  
2 under Local Rule 141.1(b)(2).

3 **XX. Miscellaneous**

4 **A. Further Trial Preparation**

5 **1. Motions in Limine**

6 **a. Briefing Schedule**

7 Any party may file a motion in limine, which is a procedural mechanism to limit in  
8 advance testimony or evidence in a particular area. United States v. Heller, 551 F.3d 1108, 1111  
9 (9th Cir. 2009) (quotation marks omitted). In the case of a jury trial, the Court's ruling gives  
10 Plaintiff and Defendant's counsel advance notice of the scope of certain evidence so that  
11 admissibility is settled before attempted use of the evidence before the jury. Id. at 1111–12  
12 (quotation marks omitted).

13 Any motion in limine by Defendant must be served on Plaintiff, and filed with the Court  
14 by **July 14, 2017**. Any motion in limine by Plaintiff must be served on Defendant, and filed with  
15 the Court by **July 17, 2017**. Any motion in limine must clearly identify the nature of the  
16 evidence that the moving party seeks to prohibit the other side from offering at trial.

17 Any opposition to a motion in limine must be served on the other party, and filed with the  
18 Court by **July 28, 2017**. **No reply briefs shall be submitted by the parties.**

19 An order may be issued prior to trial resolving these motions. Otherwise, a motion in  
20 limine hearing will be held, telephonically, on **August 14, 2017 at 10:00 a.m.** in Courtroom 8  
21 (BAM).

22 **Whether or not a party files a motion in limine, that party may still object to the**  
23 **introduction of evidence during the trial.**

24 **2. Other**

25 **a. Trial Briefs**

26 The parties are relieved of their obligation under Local Rule 285 to file a trial brief. If the  
27 parties wish to submit a trial brief, they must do so on or before **August 21, 2017**.

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**b. Verdict Form**

The Court will prepare the verdict form, which the parties will have the opportunity to review on the morning of trial. If the parties wish to submit a proposed verdict form, they must do so on or before **August 21, 2017**.

**c. Jury Instructions**

The Court will prepare the jury instructions, which the parties will have the opportunity to review on the morning of trial. **The parties shall also meet and confer, by telephone or other means, to agree upon jury instructions for use at trial.** Defendant shall file proposed jury instructions as provided in Local Rule 163 on or before **August 21, 2017**. Plaintiff is not required to file proposed jury instructions but if he wishes to do so, he must file them on or before **August 21, 2017**.

All jury instructions shall indicate the party submitting the instruction (e.g., Plaintiff or Defendant), the number of the proposed instruction in sequence, a brief title for the instruction describing the subject matter, the text of the instruction, and the legal authority supporting the instruction. **Defendant shall also provide the Court with a copy of her proposed jury instructions in Word format via e-mail at: bamorders@caed.uscourts.gov.**

The parties shall use Ninth Circuit Model Civil Jury Instructions to the extent possible. Ninth Circuit Model Jury Instructions SHALL be used where the subject of the instruction is covered by a model instruction. Otherwise, BAJI or CACI instructions SHALL be used where the subject of the instruction is covered by BAJI or CACI. All instructions shall be short, concise, understandable, and neutral and accurate statements of the law. Argumentative or formula instructions will not be given and must not be submitted. Quotations from legal authorities without reference to the issues at hand are unacceptable.

The parties shall, by italics or underlining, designate any modification of instructions from statutory or case authority, or any pattern or form instruction, such as the Ninth Circuit Model Jury Instructions, BAJI, CACI, or any other source of pattern instructions. The parties must specifically state the modification made to the original form instruction and the legal authority supporting the modification.

1 The Court will not accept a mere list of numbers of form instructions from the Ninth  
2 Circuit Model Jury Instructions, CACI, BAJI, or other instruction forms. The proposed jury  
3 instructions must be in the form and sequence which the parties desire to be given to the jury.

4 All blanks to form instructions must be completed. Irrelevant or unnecessary portions of  
5 form instructions must be omitted.

6 **d. Proposed Voir Dire**

7 Proposed voir dire questions, if any, shall be filed on or before **August 21, 2017**, pursuant  
8 to Local Rule 162.1.

9 **e. Statement of the Case**

10 The parties may serve and file a non-argumentative, brief statement of the case which is  
11 suitable for reading to the jury at the outset of jury selection on or before **August 21, 2017**. The  
12 Court will consider the parties' statements but will draft its own statement. The parties will be  
13 provided with the opportunity to review the Court's prepared statement on the morning of trial.

14 **f. Trial Exhibits**

15 The original and two (2) copies of all trial exhibits, along with exhibit lists, shall be  
16 submitted to **Courtroom Deputy Harriet Herman no later than August 21, 2017**. The parties  
17 shall also serve one (1) copy of all trial exhibits, along with their exhibit list, on each other no  
18 later than **July 14, 2017**. This includes any demonstrative evidence the parties intend to use.  
19 Plaintiff's exhibits shall be pre-marked with the prefix "PX" and numbered sequentially  
20 beginning with 100 (e.g., PX-100, PX-101, etc.). Defendant's exhibits shall be pre-marked with  
21 the prefix "DX" and numbered sequentially beginning with 200 (e.g., DX-200, DX-201, etc.).  
22 Exhibits which are multiple pages shall be marked with page numbers in addition to the prefix  
23 and exhibit number, on each page of the exhibit (e.g., PX-100, page 1 of 2, PX-100, page 2 of 2,  
24 etc.). Defendant's exhibits shall also be separated by tabs.

25 **The parties are required to meet and confer, by telephone or other means, to agree**  
26 **upon and identify their joint exhibits, if any.** Joint exhibits shall be pre-marked with the prefix  
27 "JT" and numbered sequentially beginning with 1 (e.g., JT-1, JT-2, etc.), and Defendant's counsel  
28 shall submit the original and two (2) copies of the joint trial exhibits, with exhibit lists and

1 separated by tabs, no later than **August 21, 2017**.

2 **XXI. Objections to Pretrial Order**

3 Written objections to the pretrial order, if any, must be filed within **ten (10) days** of the  
4 date of service of this order. Such objections shall specify the requested modifications,  
5 corrections, additions, or deletions.

6 **XXII. Compliance with Pretrial Order**

7 Strict compliance with this order and its requirements is mandatory. The Court will  
8 strictly enforce the requirements of this pretrial order, and counsel and parties are subject to  
9 sanctions for failure to fully comply with this order and its requirements. The Court will modify  
10 the pretrial order “only to prevent manifest injustice.” Fed. R. Civ. P. 16(e). The Court  
11 ADMONISHES the parties and counsel to obey the Federal Rules of Civil Procedure and the  
12 Court’s Local Rules and orders. The failure to do so will subject the parties and/or counsel to  
13 sanctions as the Court deems appropriate.

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15 IT IS SO ORDERED.

16 Dated: July 11, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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