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12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 UNITED POULTRY CONCERNS, a
15 Maryland nonprofit corporation,

16 **Plaintiff,**

17 **vs.**

18 CHABAD OF IRVINE, a California
19 corporation; ALTER TENENBAUM, an
20 individual; and DOES 1 through 50,

21 **Defendants.**

22) **CASE NO. 8:16-cv-01810-AB (GJSx)**

23) *Hon. André Birotte Jr., Ctrm 7B*

24) *Mag. Gail J. Standish, Ctrm 23*

25) **MEMORANDUM OF POINTS**
26) **AND AUTHORITIES IN**
27) **SUPPORT OF PLAINTIFF'S**
28) **MOTION FOR PRELIMINARY**
INJUNCTION

Date: January 23, 2017

Time: 10:00 a.m.

Location: Courtroom 7B

350 West First Street, Los Angeles

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1 **I. INTRODUCTION**

2 Plaintiff seeks a preliminary injunction to enjoin Defendants' unlawful business
3 practice of killing and discarding of chickens for fundraising purposes, when the chickens
4 are not used for food. The period between Rosh Hashana and Yom Kippur is a time of
5 reflection and atonement for most practicing Jews. Some groups and individuals perform
6 a ceremony during this time called Kapparot (or "Kaporos"), which usually involves saying
7 a prayer while waiving a bag of coins over their heads that is then donated to charity.
8 Defendants, however, charge participants a fee to waive a chicken over their heads and
9 then kill and discard the chickens, falsely telling the participants that the chickens will be
10 used to "feed the poor." (Hicks Decl. ¶5; Steinau Decl. ¶10; Mulato Decl. ¶3.)

11 Defendants claim using chickens in this manner has a lengthy history; however, it
12 has been practiced in the United States for only a few decades. Thus, as the newspaper *The*
13 *Jewish Star* noted, "The popularity of the ritual in America can largely be traced to the
14 work of one man and his family: Rabbi Shea Hecht. Rabbi Hecht's father began trucking
15 in chickens to Crown Heights in 1974 and the family has been continuing the practice
16 since."¹ Rabbi Hecht is chairman of the National Committee for the Furtherance of Jewish
17 Education ("NCFJE"), which is associated with Defendant Chabad of Irvine, and he is
18 related by marriage to Defendant Alter Tenenbaum. (Pease Decl., ¶ 3.)

19 Kapparot provides a major source of revenue for NCFJE and Defendants. Rabbi
20 Hecht told *The Jewish Star* that Kapparot is his group's "second largest annual fundraiser."²
21 Hecht went on to extol Kapparot as a money-making enterprise: "Hey it's capitalism,"
22 Hecht told the newspaper, "G-d bless this country."³ Kapparot's financial significance for
23
24

25 ¹ "Crying Foul Over Kaporos," September 15, 2010, *The Jewish Star*, attached as Ex. C
26 to Pease Decl.; <http://thejewishstar.com/stories/Crying-fouloverkaporos,2011>

27 ² *Ibid*

28 ³ *Ibid*

1 NCFJE and Defendants is typical for other organizations around the country as well. In a
2 lawsuit seeking to allow the ritual in the Detroit suburb of Farmington Hills, the
3 Congregation Bais Chabad of Farmington Hills argued the ritual must be allowed because
4 it is, in the words of the organization, “financially, the single most important event.”⁴

5 However, notwithstanding Kapparot’s enormous increase in profitability following
6 the introduction of chickens to the practice, using chickens in these rituals is not required
7 by any religious teaching. (Klein Decl. ¶¶ 3-4.) And unlike the animal sacrifice rituals
8 considered in *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 537-38
9 (1993) (“*Lukumi*”), the point of killing chickens for Kapparot is not to appease a deity, but
10 rather to produce an emotional reaction in the human participant. As Hecht said in a 2009
11 NPR interview, “The main part of the service is handing the chicken to the slaughterer and
12 watching the chicken be slaughtered. Because that is where you have an emotional
13 moment, where you say, Oops, you know what? That could have been me.”⁵

14 California Penal Code section 597(a) prohibits intentionally and maliciously killing
15 an animal. Malicious is defined in Penal Code section 7 as “intent to do a wrongful act,
16 established either by proof or presumption of law.” Penal Code section 599c provides
17 certain exceptions, such as killing animals used for food. However, causing a person to
18 think about his or her sins or bad acts is not a specified exception. Whether such an
19 exhibition is carried out for a secular or religious purpose, it is illegal in California to
20 intentionally kill and discard of an animal in order to have an “emotional moment.”
21

22 / /

23 / /

24 / /

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27 ⁴ *Ibid*

28 ⁵ “Swinging Chicken Ritual Divides Orthodox Jews,” September 26, 2009, NPR,
attached as Pease Decl. Ex. D

1 **II. FACTUAL PROCEDURAL HISTORY**

2 Plaintiff United Poultry Concerns (“UPC”) is a nonprofit organization incorporated
3 in Maryland and headquartered in Virginia. (Davis Decl. ¶ 2.) UPC is the world’s foremost
4 organization dedicated to promoting the respectful treatment of domestic fowl. As its core
5 mission, UPC runs a sanctuary for chickens in Virginia and teaches people about the egg
6 and chicken meat industries, the natural lives of free chickens, the benefits of chickens as
7 companion animals, and alternatives to chicken farming and the use of chickens in
8 education and scientific experimentation. (Davis Decl., ¶ 3.)

9 Plaintiff filed its complaint and ex parte request for temporary restraining order in
10 the present case on September 29, 2016 alleging a single count of unfair business practices
11 based on Defendants’ violation of California Penal Code section 597(a), which prohibits
12 intentionally and maliciously killing any animal. Plaintiff, a citizen of Maryland and
13 Virginia, seeks an injunction to prevent Defendants, who are California citizens, from
14 killing and discarding chickens in exchange for a fee or donation. This Court has diversity
15 jurisdiction due to the amount in controversy, based on the cost of the injunction to
16 Defendant as well as Plaintiff’s attorneys’ fees that Defendants will be liable for under
17 California’s private attorney general statute. (Verified Complaint ¶¶7-8.)

18 Plaintiff immediately electronically served the complaint and TRO request on
19 Defendants’ counsel in pending state court litigation, Leslie Kaufman, in order to provide
20 notice to Defendants. (Dkt. #2.) Plaintiff’s counsel and Mr. Kaufman have been routinely
21 serving each other electronically with documents in the state court litigation that has been
22 pending since September 2015 and has a trial date of June 19, 2017. That case involves a
23 different plaintiff seeking to require Defendant Chabad of Irvine to comply with laws
24 concerning animal treatment and confinement, environmental protection and public
25 sanitation, but not addressing Penal Code section 597(a) (at issue in the instant case), which
26 prohibits killing *per se* if the animal is not being used for food or other specified purposes.
27
28

1 Plaintiff also sent a hard copy of the complaint and TRO application by overnight mail
2 directly to Defendants on October 1, 2016. (Dkt. #13.)

3 Defendants never filed any response, and on October 7, 2016, this Court granted the
4 TRO to prevent Defendants from killing chickens in exchange for a fee or donation, unless
5 the chickens were being used for food. (Dkt. #18.) The Court set a preliminary injunction
6 hearing for October 13, 2016. Plaintiff's volunteer Cheryl Bernstein personally served the
7 summons, complaint and TRO on Defendants October 8, 2016. (Dkt. #19-21.) On October
8 10, 2016, Defendants conducted the Kapparot ritual at a live market and claimed the
9 carcasses of the chickens were being donated for food, although the truck used to transport
10 them was not refrigerated. (Mulato Decl. ¶¶ 2-3; Calvillo Decl. ¶¶3-5.)

11 On October 11, 2016, the day *after* Defendants had already performed the ritual
12 allegedly in compliance with state law and the TRO by doing it at a live market equipped
13 to prepare the carcasses for human consumption, attorneys with the First Liberty Institute
14 ("FLI") filed a 30 page motion on behalf of Defendants to dissolve the TRO, requesting an
15 immediate telephonic hearing. FLI describes itself as "the largest legal organization in the
16 nation dedicated exclusively to protecting religious freedom for all Americans." (See
17 <http://firstliberty.org>, last visited Dec. 23, 2016.)

18
19 Later that same day, the Court held a teleconference with attorneys Bryan Pease and
20 David Simon for Plaintiff, and attorneys Michael Jones, Gregory Boden, Matthew Martens,
21 Stephanie Phillips, Hiram Sasser III and Jeremy Dys for Defendants, along with Attorney
22 Aryeh Kaufman representing proposed amicus Joshua Blackman. At the hearing,
23 Defendants' attorneys repeatedly claimed that Defendants were anxiously waiting to
24 perform the Kapparot ritual at that moment, and that if the Court did not immediately
25 dissolve the TRO, Defendants would be unable to perform the ritual in the manner that it
26 had been performed for hundreds of years. However, in reality, Defendants had already
27 performed the ritual the day before, and the TRO did not prevent Defendants from
28

1 performing it, but only prevented them from accepting money in exchange for killing
2 chickens to be discarded and not used for food.

3 Defendants' true objective in seeking the rushed teleconference the same day as
4 filing its 30 page over-limit brief was evidently to prevent Plaintiff from having any
5 meaningful opportunity to reply, under the guise that they needed the TRO lifted
6 immediately, even though the ritual for 2016 had actually already been completed, and to
7 then send out a press release about their "victory." (Pease Decl., Ex. F.)

8 The Court ultimately dissolved the TRO without prejudice, vacated the October 13
9 preliminary injunction hearing and granted Plaintiff leave to file a motion for preliminary
10 injunction after meeting and conferring on a new hearing date. The parties mutually
11 selected the date, and Plaintiff now brings the present motion.

12 **III. ARGUMENT**

13 The moving party bears the burden of demonstrating that "he is likely to succeed on
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
15 that the balance of equities tips in his favor, and that an injunction is in the public interest."
16 (*Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008.)) Although a plaintiff must
17 satisfy all four of the requirements set forth in *Winter*, this Circuit employs a sliding scale
18 whereby "the elements of the preliminary injunction test are balanced, so that a stronger
19 showing of one element may offset a weaker showing of another." (*Alliance for the Wild*
20 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).) Accordingly, if Plaintiff can
21 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in
22 the public interest, a preliminary injunction may issue so long as there are at least serious
23 questions going to the merits and the balance of hardships tips sharply in Plaintiff's favor.
24 (*Ibid.*)

25 **A. Probability of success on the merits**

26 As will be more fully briefed in Plaintiff's opposition to Defendants' motion to
27 dismiss being heard concurrently with this motion, this Court has diversity jurisdiction,
28

1 Plaintiff has standing under California’s Unfair Competition Law (“UCL”), and
2 Defendants are in clear violation of California Penal Code section 597(a) and lack any
3 exception or Constitutional defense for their conduct.

4 Diversity jurisdiction is based on both the cost of the injunction, which will exceed
5 \$75,000 over a reasonable period of time, as well as the attorneys’ fees incurred by
6 Plaintiff, which have already exceeded \$75,000 and are compensable pursuant to California
7 Code of Civil Procedure section 1021.5. Plaintiff has UCL standing under *Animal Legal*
8 *Def. Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270 (“*Napa Partners*”)
9 based on diversion of organizational resources to combat Defendant’s illegal conduct. (See
10 also *Animal Legal Defense Fund v. Great Bull Run* (June 6, 2014), Case No. 14-cv001171-
11 MEJ, 2014 WL 2568685, 2014 U.S. Dist. LEXIS 78367.)

12 There is no dispute that California Penal Code section 597(a) prohibits intentionally
13 and maliciously killing animals. There is also no dispute the legislature provided certain
14 specified exceptions in Penal Code section 599c⁶, and that killing and discarding of animals
15 for religious rituals is not such an exception. The question before the Court is whether an
16 exception the legislature did not see fit to include should be judicially created for behavior
17 that would otherwise be unlawful, just because it is part of a religious ritual.

18 Contrary to Defendants’ argument, *Lukumi, supra*, 508 U.S. 520, does not require a
19 religious exception for a particular practice whenever there are other exceptions to a
20 general law. *Lukumi* reaffirmed the holding in *Employment Division v. Smith*, 494 U.S. 872
21 (1990) (“*Smith*”), that “a law that burdens religious practice need not be justified by a
22 compelling governmental interest if it is neutral and of general applicability.” (*Lukumi* at
23 523.) The Supreme Court went on to discuss how the ordinances at issue in *Lukumi* were
24 not neutral or of general application because they had “*as their object* the suppression of
25

26
27
28 ⁶ Penal Code section 599c is a different statute from Penal Code section 599(c)

1 Santeria’s central element, animal sacrifice.” (*Ibid.*, emphasis added.) Additionally, the
2 “various prohibitions, definitions, and exemptions demonstrate that they were
3 ‘gerrymandered’ with care to proscribe religious killings of animals by Santeria church
4 members but to exclude almost all other animal killings.” (*Ibid.*)

5 In 1993, shortly after *Lukumi* was decided reaffirming *Smith* that strict scrutiny is
6 *not* required when a neutral law of general applicability happens to proscribe a religious
7 practice, and that strict scrutiny is *only* triggered when the law’s exceptions show that it is
8 intended to specifically target a religious practice, Congress passed the Religious Freedom
9 Restoration Act (42 U.S. Code Chapter 21B “RFRA”), which requires the application of
10 strict scrutiny to any federal laws that burden religion. States then began passing versions
11 of RFRA as well. However, California is not such a state.

12 In *Merced v. Kasson*, 577 F.3d 578 (2009) (“*Merced*”), the Fifth Circuit considered
13 another animal sacrifice case in which state law prohibited the killing. Another religious
14 liberty law firm, the Becket Fund, represented petitioner Jose Merced, and advocated for
15 the same broad interpretation of *Lukumi* that FLI advocates for in the present case.
16 However, the Fifth Circuit based its decision on the Texas Religious Freedom Restoration
17 Act, specifically declining to address Merced’s argument that exceptions to the general
18 animal cruelty law at issue should require a judge-made exception for religious sacrifice
19 under the Free Exercise Clause of the First Amendment. (*Merced* at 595.)

20 Like FLI in the present case, the Becket Fund relied heavily on *Fraternal Order of*
21 *Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (“*Newark Lodge*”), which considered
22 a police department’s “no beards” policy. Justice Alito, then on the D.C. Circuit, wrote the
23 opinion. After the policy had been implemented, two exceptions were considered
24 simultaneously: a medical and religious one. The department allowed a medical exception
25 and denied a religious exception. In requiring a religious exception analogous to the
26 medical one, the D.C. Circuit found “the Department’s decision to provide medical
27 exemptions while refusing religious exemptions *is sufficiently suggestive of discriminatory*
28

1 *intent* so as to trigger heightened scrutiny under *Smith* and *Lukumi*.” (*Id.* at 365, emphasis
2 added.) However, the state law at issue in the present case was passed well before any
3 religious exception was requested or even contemplated. There is no evidence this law was
4 passed with discriminatory intent, nor that religious rituals were even considered in passing
5 this general law.

6 If *Lukumi* required a religious exception whenever there is another exception in a
7 law as Defendants mistakenly argue, the Fifth Circuit could easily have stated this in
8 *Merced* rather than relying exclusively on the TRFRA. While there was one ordinance
9 considered in *Lukumi* that was a neutral law of general applicability, the Supreme Court
10 made clear it was striking down this ordinance along with the other three passed at the
11 same time because of the *discriminatory intent* in passing it:

12 Ordinance 87-72 -- unlike the three other ordinances -- does appear to apply to
13 substantial nonreligious conduct and not to be overbroad. For our purposes here,
14 however, the four substantive ordinances may be treated as a group for neutrality
15 purposes. Ordinance 87-72 was passed the same day as Ordinance 87-71 and was
16 enacted, as were the three others, in direct response to the opening of the Church. It
17 would be implausible to suggest that the three other ordinances, but not Ordinance
18 87-72, *had as their object the suppression of religion*. We need not decide whether
19 Ordinance 87-72 could survive constitutional scrutiny if it existed separately; it must
20 be invalidated because it functions, with the rest of the enactments in question, to
21 suppress Santeria religious worship.

22 (*Id.* at 539-540, emphasis added.)

23 *Lukumi* was immediately misunderstood by the press and even officials who enforce
24 animal cruelty laws as confirming a right to engage in animal sacrifice. As one prominent
25 commentator noted, “Americans who get their constitutional law from newspaper
26 headlines probably thought . . . that the Supreme Court had announced a constitutional right
27 to engage in animal sacrifice. Of course it did no such thing.” (Kenneth L. Karst, *Religious
28 Freedom and Equal Citizenship: Reflections on Lukumi*, 69 Tul. L. Rev. 335, 335 (1994).)

1 Defendants' argument that *Lukumi* requires an exception for religious behavior
2 whenever a statute provides exceptions for secular behavior would cause absurd results
3 and wreak havoc on any penal code to which it is applied. For example, California Penal
4 Code section 207, which defines the crime of kidnapping, provides exceptions for lawful
5 arrests made by peace officers or private persons and for actions intended to protect a child
6 from imminent harm. Under Defendants' misguided reading of *Lukumi*, the fact that
7 section 207 carves out these exceptions from the definition of kidnapping means it must
8 also provide an exception for anyone who, in the course of a religious ritual, engages in
9 kidnapping – a result no rational person would support. Accordingly, *Lukumi* clearly does
10 *not* – and in the application of basic common sense, *cannot* – mandate a religious exception
11 to an otherwise neutral, general statute simply because the statute provides one or more
12 nonreligious exceptions.

13 Without any evidence of discriminatory intent in passage of California Penal Code
14 section 597(a), and without a state law version of RFRA, Defendants are not entitled to a
15 judge-made exception for their conduct in killing and discarding of chickens for a fee in a
16 parking lot – conduct that directly violates a neutral law of general applicability. (Boks
17 Decl. ¶5; Cheever Decl. ¶4; May Decl. ¶9; Voulgaris Decl. ¶3; Kelch Decl. ¶4.)

18 The legislature has made a determination that killing and discarding animals simply
19 to teach someone a lesson is against public policy and illegal, regardless of religious intent,
20 and has not seen fit to provide an exception for religious rituals. The statute against
21 intentionally killing animals does not mention religion, and there is no evidence Kapparot
22 was even practiced in the U.S. at the time the statute was passed. As discussed in the
23 introduction, this trend began in the 1970's, well after California Penal Code section 597(a)
24 was adopted. (Pease Decl. ¶12.) Accordingly, unlike the ordinances in *Lukumi*, this statute
25 could not possibly have been directed at Defendants' religion.
26

27 Penal Code section 597(a) does not single out atonement or sacrifice as an improper
28 purpose for killing an animal. Rather, it bans *all* intentional animal killing and then allows

1 some exceptions, but atonement or sacrifice are not included in these exceptions. The fact
2 that the legislature has enacted special protection for Kosher and Halal slaughter of animals
3 *used for food* even when such methods might otherwise violate humane slaughter laws
4 shows that the legislature knows how to create a religious exception when it desires to.
5 Defendants' quarrel in the present case is with the legislature, which has passed a general
6 law against intentionally killing and discarding animals without including any exception
7 for religious sacrifice or rituals of atonement. If Defendants use the birds for food, killing
8 the birds would fall under an exception regardless of their religious intent. However, the
9 Court should not create an exception that is not in the statute to allow Defendants to
10 intentionally kill and discard chickens.

11 Defendants oddly rely on *Stormans v. Wiesman*, 794 F.3d 1064 (2015), which found
12 that only a rational basis analysis was necessary to require pharmacies to provide birth
13 control to customers without a religious exception, even though there were other
14 exceptions. Defendants quote the general rule which cites *Lukumi*, "A law is not generally
15 applicable if its prohibitions substantially underinclude non-religiously motivated conduct
16 that might endanger the same governmental interest that the law is designed to protect."
17 (*Stormans* at 1079.) However, the next sentence in this analysis is, "In other words, if a
18 law pursues the government's interest 'only against conduct motivated by religious belief'
19 but fails to include in its prohibitions substantial, comparable secular conduct that would
20 similarly threaten the government's interest, then the law is not generally applicable."
21 (*Ibid.*) *Stormans* goes on to analyze the exceptions at issue and explain how there was no
22 discriminatory intent to single out religious beliefs, or "unfettered discretion that would
23 permit *discriminatory treatment of religion* or religiously motivated conduct." (*Id.* at 1082,
24 emphasis added.)
25

26 In the present case, there is simply no argument that by having exceptions for food,
27 medical research and hunting, California's ban on intentionally killing animals is intended
28 to discriminate against religious conduct. Unlike the laws at issue in *Lukumi*, which

1 accomplished a “religious gerrymander” solely around killing motivated by religion, Penal
2 Code section 597(a) is not concerned with motivation at all but rather what the animal is
3 being used for. Religious motivation for the killing is not targeted, and religious ceremonies
4 or rituals around the killing can be carried out legally in California, so long as the animal
5 is being used for food rather than discarded.

6 **B. Irreparable harm**

7 Allowing Defendants to charge a fee to hundreds of participants to kill and discard
8 chickens would cause irreparable harm to Plaintiff, its members and the general public by
9 creating general social harm for which there is no remedy at law. If Defendants are allowed
10 to continue to flout the law, wantonly killing hundreds of chickens in their parking lot and
11 tossing them in trash cans, there is no monetary amount that can compensate for the damage
12 to the social fabric in which people are entitled to live in a society where the rule of law
13 applies to everyone, regardless of their personal or religious beliefs.

14 **C. Balance of equities**

15 This is the main issue on which the Court based its ruling dissolving the TRO,
16 finding that the Court cannot question the validity of a religious practice. However, even
17 under the TRO that was in effect and now the preliminary injunction being sought,
18 Defendants are not being enjoined from using chickens in the Kapparot ceremony. The
19 injunction would only prevent Defendants from performing the ritual in a way that violates
20 California law, i.e. by killing the chickens and discarding their carcasses, rather than using
21 them for food as they falsely tell participants they are doing, and as their own religion
22 dictates they should.

23
24 Further, since this is an unfair business practices case, and Plaintiff cannot directly
25 enforce California Penal Code section 597(a), the injunction sought only applies if
26 Defendants are accepting money in exchange for killing and discarding the chickens. Since
27 Plaintiff offered to post a bond for the TRO (Dkt. #2 at p.9) and continues to be willing to
28 post a bond for a preliminary injunction, the only harm to Defendants if the preliminary

1 injunction is issued is monetary, which Defendants will be compensated for through the
2 bond if it is later determined the case lacked merit.

3 The case relied on by the Court to dissolve the TRO, *Hernandez v. Comm’r*, 490
4 U.S. 680 (1989), was not yet briefed by Plaintiff because it was cited on page 20 of the 30
5 page brief Defendants submitted prior to the Court and the parties having a telephonic
6 hearing on the matter just hours later. In *Hernandez*, the Court found that quid pro quo
7 payments to the Church of Scientology were not charitable contributions, and denial of
8 requested deductions did *not* violate either the Establishment Clause or the Free Exercise
9 Clause of the First Amendment because the statute was secular in purpose and neither
10 advanced nor inhibited religion. The Court held the public interest in maintaining a uniform
11 tax system also outweighed the potential burden on petitioners.

12 The “not within the judicial ken” language relied on by the Court, which was quoted
13 by Defendants in their motion to dissolve the TRO, is language Defendants cherry picked
14 from the overall context of the paragraph in which it appears, which explained that the
15 burden imposed by the law on the religious practices of petitioners was not substantial, and
16 that “even a substantial burden would be justified by the ‘broad public interest in
17 maintaining a sound tax system,’ free of ‘myriad exceptions flowing from a wide variety
18 of religious beliefs.’” (*Id.* at 699-700.)

19 The paragraph starts by explaining the basis for the Free Exercise inquiry, which
20 “asks whether government has placed a substantial burden on the observation of a central
21 religious belief or practice and, if so, whether a compelling governmental interest justifies
22 the burden.” (*Id.* at 699.) In noting it is “not within the judicial ken to question the centrality
23 of particular beliefs or practices to faith,” the Court went on to “have doubts whether the
24 alleged burden imposed by the deduction disallowance on the Scientologists’ practices is
25 a substantial one.” (*Ibid.*) And, the Court *did* inquire into whether petitioners had
26 adequately alleged a violation of their professed beliefs, noting: “Neither the payment nor
27 the receipt of taxes is forbidden by the Scientology faith generally, and Scientology does
28

1 not proscribe the payment of taxes in connection with auditing or training sessions
2 specifically.” (*Ibid.*) The Court went on to find that any “burden imposed on auditing or
3 training therefore derives solely from the fact that, as a result of the deduction denial,
4 adherents have less money available to gain access to such sessions.” (*Ibid.*)

5 In the present case, Defendants do not allege they must discard the chickens rather
6 than use them for food. In fact, their own stated view of their religion says the opposite –
7 that they use the animals for food (as proclaimed on Defendants’ website which they cited
8 in their motion to dissolve the TRO). Presumably, the only reason Defendants now seek to
9 discard the chickens rather than give them to the poor to eat as their religion actually
10 dictates is that it would be more expensive to use refrigeration and follow health code laws
11 with the carcasses.

12 A preliminary injunction requiring Defendants to follow the law if they are going to
13 accept money in exchange for killing chickens would thus not substantially burden
14 Defendants’ religion. It may mean Defendants will have less money, as in *Hernandez*, and
15 it may mean Defendants will be required to comply with health code laws and actually use
16 the chickens for food as they have been telling their congregants they do, but it would not
17 require Defendants to violate any professed religious belief.

18 **D. Public interest**

19 The public interest is always served by requiring corporations like Chabad of Irvine
20 to follow the law. Violating the law in the name of religion is a violation of the public
21 interest, because the legislature and not private religious organizations determine what laws
22 everyone must follow.

23 The declaration of Ed Boks shows that when he was general manager of Los Angeles
24 Animal Services, he would certainly have enforced Penal Code section 597(a) against
25 anyone killing an animal as atonement for his or her own bad conduct if the killing was not
26 part of a religious ritual, but he was unable to take action against the Kapparot killings due
27
28

1 to a general reluctance of city management based on the newspaper headline reading of
2 *Lukumi* that Defendants advocate for here.

3 The declaration of Michael McCabe shows that there is also a large public health
4 threat being caused in Los Angeles by the massive Kapparot killings that occur here, in
5 operating makeshift open-air slaughterhouses without refrigeration for the carcasses. A
6 ruling in the present case that California Penal Code section 597(a) prohibits killing and
7 disposing of chickens in a parking lot by *anyone*, and that religious motivation is irrelevant,
8 would benefit the public interest by educating law enforcement that such conduct need not
9 be tolerated simply because it has a purportedly religious motivation. The public interest
10 would not be served by allowing Defendants to continue flouting the law.

11 **IV. CONCLUSION**

12 Plaintiff is not asking this Court to determine in what manner Defendants should
13 perform its Kapparot ritual. Rather, Plaintiff is seeking an injunction to require Defendants
14 to stop engaging in a specific illegal act that is not required by their religion—killing and
15 disposing of chickens rather than using them for food. There is no harm in reinstating the
16 TRO as a preliminary injunction and continuing to prohibit Plaintiff from accepting money
17 in exchange for killing chickens, unless the chickens are being used for food, as state law
18 requires. Defendants can and did carry out the ritual in this manner in October 2016 while
19 the TRO was in effect, and the preliminary injunction would continue to preserve the status
20 quo while this matter is pending.

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22 Respectfully submitted,

SIMON LAW GROUP
LAW OFFICE OF BRYAN W. PEASE

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25 Dated: December 26, 2016

By: /s/ Bryan W. Pease

26 David R. Simon
27 Bryan W. Pease
28 Attorneys for Plaintiff
United Poultry Concerns