

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL GONZALEZ, et al.,
Plaintiffs,
v.
GREGORY J. AHERN, et al.,
Defendants.

Case No. [19-cv-07423-JSC](#)

**ORDER RE: PRELIMINARY
INJUNCTION**

Re: Dkt. Nos. 71, 92, 94

In this putative class action, Plaintiffs—current and former inmates of Santa Rita Jail (“the Jail”)—bring numerous Section 1983 conditions of confinement claims against Alameda County, Wellpath Management, Inc. (“Wellpath”), and Aramark Correctional Services LLC (“Aramark”). Plaintiffs’ motion for preliminary injunction seeking redress regarding the prison’s allegedly inadequate and unsanitary food is now pending before the Court.¹ (Dkt. No. 71.) Having considered the parties’ briefs and having the benefit of oral argument on February 11, 2021, the Court DENIES Plaintiffs’ motion for preliminary injunction.

BACKGROUND

A. Third Amended Complaint Allegations²

Alameda County contracts with Aramark to provide food services at the Jail and other jail facilities. (Third Amended Complaint (“TAC”), Dkt. No. 89 at ¶ 55.)³ The kitchen at the Jail is staffed primarily by prisoners that work under the supervision of Aramark. (*Id.* at ¶ 60.) In recent

¹ All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. No. 8, 16, 17, 21, 22, 68..)

² Plaintiffs labeled their Third Amended Complaint as “Second Amended Complaint,” but they previously filed a Second Amended Complaint on August 31, 2020. (*Compare* Dkt. No. 89 with Dkt. No. 50.)

³ Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 years, Alameda County and Aramark have overseen a prisoner food budget reduction of 25%—
 2 \$1.65 million. (*Id.* at ¶ 56.) These budget reductions have had a devastating effect on the quality
 3 and quantity of food at the prison. (*Id.* at ¶ 57.) Additionally, kitchen workers are not consistently
 4 tested for communicable diseases prior to beginning work in the kitchen. (*Id.* at ¶ 60.) For
 5 example, Willie Dudley, a former kitchen worker, was not tested for tuberculosis until two months
 6 after starting work in the kitchen. (*Id.*)

7 **i. Poor Kitchen Sanitation and Food Contamination**

8 Used food trays are collected and deposited in the kitchen where they attract a variety of
 9 animals and bugs. (*Id.* at ¶ 61, 64.) In addition, mice, rats, and birds eat food in the kitchen, leave
 10 droppings on food preparation surfaces, and have been found inside cooking pans. (*Id.* at ¶ 61–
 11 63.) The Jail food is served on plastic, reusable trays, but the tray washing system does not
 12 consistently or reliably remove old food or clean the food trays. (*Id.* at ¶ 66.) The cleaning
 13 process for used food trays requires that a worker dumps the trays in a large wash basin with
 14 soapy water where a pump circulates water that is intended to rinse the trays. (*Id.* at ¶ 68.) This
 15 soapy water is only changed once a day. (*Id.*) After the trays are removed from the soapy water,
 16 they are placed on a conveyor belt and run through a sanitization machine. (*Id.*) The sanitation
 17 process takes less than five minutes, and trays often still have food crusted to the bottom after
 18 being sanitized. (*Id.*) This is a longstanding problem that Defendants have failed to correct and is
 a result of Defendants’ custom of storing used food trays on the floor overnight. (*Id.* at ¶ 69.)

19 Plaintiff Larry Gerrans was a federal pretrial detainee during his incarceration at the Jail,
 20 and other inmates told him to reject any food trays that had yellow or brown liquid—indicating rat
 21 urine—on top of the tray’s plastic cover. (*Id.* at ¶ 77.) In late September or early October 2019,
 22 Gerrans noticed rat feces between two pieces of bread that he was served, and he immediately
 23 notified the housing unit deputy. (*Id.* at ¶ 78.) Upon Gerrans’s request, the housing unit deputy
 24 turned on his body-worn camera and documented the presence of rat feces; also, Gerrans filed a
 25 formal grievance. (*Id.*) Gerrans later learned that the housing unit deputy destroyed the rat feces
 26 and never submitted his formal grievance. (*Id.*) There are numerous other instances where
 27 prisoners have found dead animals, foreign objects, or animal droppings in their food. (*Id.* at ¶¶
 28 80–83.)

1 **ii. Grievances regarding Food Issues**

2 Plaintiffs and class members have notified sheriff's deputies and filed grievances because
3 of the unsanitary food service conditions. (TAC at ¶¶ 70, 78, 82, 84, 85, 90.) As recently as
4 August 14, 2020, class members filed a grievance because of dirty food service trays. (*Id.* at ¶ 70.)
5 Plaintiffs allege that these grievances have been denied and Defendants have not changed their
6 procedures or improved sanitation practices. (*Id.*)

7 Class members have struggled to use the Jail's grievance process to address these
8 sanitation issues. (*Id.* at ¶¶ 84–86.) Housing unit deputies have told class members that food
9 sanitation issues cannot be resolved by the grievance process because Aramark is responsible for
10 food at the Jail, and housing unit deputies have refused to accept grievances, thrown away
11 grievances, refused to turn on their body-worn cameras to document incidents, and destroyed
12 evidence. (*Id.* at ¶ 84.) Class member Darnell Ellis describes an incident where he had difficulty
13 obtaining a paper grievance form, and after obtaining and submitting the required paperwork, the
14 housing unit deputies refused to process the grievance, assign it a number, and only processed it
15 five days later due to his persistence. (*Id.* at ¶ 85.) After weeks, the Jail had still not responded to
16 his grievance. (*Id.*)

17 In addition, Plaintiffs allege that Alameda County and Aramark were placed on notice of
18 the rat infestation and food sanitation issues because the female prisoners at the Jail filed a lawsuit
19 that mirrors many of their claims, *Mohrbacher, et al. v. Alameda County Sheriff's Office, et al.*,
20 3:18-00050JD (filed January 4, 2018). (*Id.* at ¶ 86.) On August 26, 2020, there was an inspection
21 of the kitchen, but Plaintiffs say the prison officials purposefully steered inspectors away from the
22 scullery and the kitchen sanitation procedures were not appropriately inspected. (*Id.* at ¶ 87.) The
23 Defendants have failed to fix, correct, or take affirmative action to remedy the problem of animals
24 in the kitchen. (*Id.* at ¶ 86.)

24 **B. Procedural Background**

25 Plaintiffs initially filed this putative class action on November 12, 2019, but did not serve the
26 defendants until after filing their amended complaint on May 7, 2020. (Dkt. Nos. 1, 12, 13, 15.) On
27 the same day Plaintiffs filed their amended complaint, they filed a motion for a temporary restraining
28 order that the Court subsequently denied. (Dkt. Nos. 12, 41.) While the motion for a temporary

1 restraining order was pending, the County Defendants, Wellpath, and Aramark each filed separate
 2 motions to dismiss which the Court granted in part and denied in part. (Dkt. Nos. 18, 41, 34, 49.) The
 3 Court denied the motion as to Defendants' exhaustion argument but found that Plaintiffs had failed to
 4 adequately allege their myriad constitutional claims challenging 20 separate conditions of confinement
 5 at the Jail. Plaintiffs were granted leave to amend (except with respect to their Fifth Amendment
 6 claim). Plaintiffs thereafter filed a second amended complaint repleading all of their conditions of
 7 confinement claims (except for the Fifth Amendment claim) and Defendants again moved to dismiss.
 8 (Dkt. Nos. 50, 51, 52.)

9 While the motion to dismiss was pending, Plaintiffs filed a motion for preliminary
 10 injunction against Alameda County and Aramark regarding the food issues at the Jail. (Dkt. No.
 11 71.) Plaintiffs ask that the Court require Defendants to:

12 (1) Implement and maintain a jail kitchen that is constructed,
 13 equipped and operated in a clean and sanitary manner and is free of
 14 animals, birds, rodents, insects and vermin;

15 (2) All dishware and trays shall have residual food scrapped off,
 16 washed, rinsed and sanitized per California Code and no dishware and
 17 tray shall be reused unless said dishware and tray is free of food
 18 residue and has been washed, rinsed and sanitized;

19 (3) Institute procedures and quality control processes to insure that all
 20 food served is edible including:

- 21 a. No spoiled food;
- 22 b. No food with foreign objects – particularly non-food
 23 objects;
- 24 c. No food which has been contaminated by animals, birds,
 25 rodents, insects and vermin; and,
- 26 d. All food is properly handled, refrigerated and heated,
 27 without excessive heating;

28 (4) Quality controls are implemented to insure that trays meet portion
 size and has all items called for in the menu;

(5) Food production adheres to menus; and,

(6) Special diet needs are met.

(Dkt. No. 71 at 3.) The motion for preliminary injunction is now fully briefed and Alameda
 County has raised an objection to the Plaintiffs' reply. (Dkt. No. 90.)

Two days after the preliminary injunction motion was filed, the Court granted in part and
 denied in part the Defendants' motion to dismiss. (Dkt. No. 73.) As relevant here, the motion was
 denied as to the Plaintiffs' claims regarding the unsanitary and contaminated condition of the food,

1 but was granted as to complaints about the food’s nutritional content with leave to amend. (*Id.*)
 2 Plaintiffs filed the now operative Third-Amended Complaint after the motion for a preliminary
 3 injunction was fully briefed. (Dkt. No. 89.) They did not plead any new food-related claims,
 4 including any claims about the food’s nutritional content. *Compare* (Dkt No. 89 ¶¶ 71–76, 88–90)
 5 *with* (Dkt. No. 50 ¶¶ 71–76, 88–90) (same).

6 LEGAL STANDARD

7 “On a motion for a preliminary injunction, plaintiffs must make a ‘threshold showing’ of
 8 four factors.” *E. Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 844-845 (9th Cir. 2020) (internal
 9 citation omitted).

10 Plaintiffs must show that (1) they are likely to succeed on the merits, (2)
 11 they are likely to “suffer irreparable harm” without relief, (3) the balance
 of equities tips in their favor, and (4) an injunction is in the public
 interest. When the government is a party, these last two factors merge.

12 *Id.* Alternatively, “‘serious questions going to the merits’ and a balance of hardships that tips
 13 sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the
 14 plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the
 15 public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (“[W]e
 16 hold that the ‘serious questions’ approach survives *Winter* when applied as part of the four-
 17 element *Winter* test.”). The party seeking an injunction bears the burden of establishing these factors
 18 are satisfied. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009). A preliminary
 19 injunction is an “extraordinary and drastic remedy, one that should not be granted unless the movant,
 20 by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th
 21 Cir. 2012) (internal quotation marks and citation omitted).

22 DISCUSSION

23 I. PLRA Exhaustion

24 As a threshold matter, the County argues that Plaintiffs have failed to exhaust their
 25 administrative remedies under the Prison Litigation Reform Act (“PLRA”). Under the PLRA,
 26 “[n]o action shall be brought with respect to prison conditions under . . . [42 U.S.C. § 1983], or
 27 any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until
 28 such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a) (2018).
 “Courts may not engraft an unwritten ‘special circumstances’ exception onto the PLRA’s

1 exhaustion requirement. The only limit to § 1997e(a)'s mandate is the one baked into its text: An
 2 inmate need exhaust only such administrative remedies as are 'available.' *Ross v. Blake*, 136 S.
 3 Ct. 1850, 1862 (2016) (internal citation and quotation marks omitted). A remedy is unavailable
 4 where: (1) the procedure "operates as a simple dead end" because the "relevant administrative
 5 procedure lacks authority to provide any relief" or "administrative officials have apparent
 6 authority, but decline ever to exercise it[;]" (2) the "administrative scheme [is] so opaque that . . .
 7 no reasonable prisoner can use them[;]" or (3) when "prison administrators thwart inmates from
 8 taking advantage of a grievance process through machination, misrepresentation, or intimidation."
 9 *Id.* at 1859–60 (internal citations omitted).

10 Plaintiffs' TAC alleges that prisoners have attempted, but were thwarted, from exhausting
 11 their claims regarding the food sanitation issues, and provides specific examples where
 12 Defendants failed to accept grievances, respond to grievances, and properly document issues
 13 raised by prisoners. *See, e.g.*, (Dkt. No. 89 ¶¶ 84–85.) Further, as exhaustion is a non-
 14 jurisdictional affirmative defense, the County bears the burden of proving that there was an
 15 available remedy that was not exhausted. *See Rumbles v. Hill*, 182 F.3d 1064, 1067–68 (9th Cir.
 16 1999), overruled on other grounds by *Booth v. Churner*, 532 U.S. 731, 731 (2001); *see also*
 17 *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015) ("[A] defendant must first prove that
 18 there was an available administrative remedy and that the prisoner did not exhaust that available
 19 remedy . . . Then, the burden shifts to the plaintiff, who must show that there is something
 20 particular in his case that made the existing and generally available administrative remedies
 21 effectively unavailable to him by showing that the local remedies were ineffective, unobtainable,
 22 unduly prolonged, inadequate, or obviously futile . . . The ultimate burden of proof, however,
 23 remains with the defendants."). Defendants have not offered any evidence of additional
 24 administrative remedies; they merely assert: "Plaintiffs do not present adequate evidence to excuse
 25 them from exhaustion, and Defendants challenge the Petition on this basis as well." (Dkt. No. 80
 26 at 5 n.1.) Given Plaintiffs' allegations that they attempted to exhaust, but were thwarted, and the
 27 County's failure to identify administrative remedies that the prisoners did not exhaust, the County
 28 has not met its burden of demonstrating that Plaintiffs' claims are barred for failure to exhaust
 under the PLRA.

1 **II. Preliminary Injunction**

2 **1. Likelihood of Success on the Merits**

3 The first preliminary injunction factor is the most important—likely success on the merits.
 4 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The rights of pretrial detainees arise
 5 under the Fourteenth Amendment’s due process clause and the rights of convicted prisoners arise
 6 under the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 527–28 (1979); *see also Castro v.*
 7 *Cty. of Los Angeles*, 833 F.3d 1060, 1067–68 (9th Cir. 2016) (“Inmates who sue prison officials
 8 for injuries suffered while in custody may do so under the Eighth Amendment’s Cruel and
 9 Unusual Punishment Clause or, if not yet convicted, under the Fourteenth Amendment’s Due
 10 Process Clause.”) Because 85% of Plaintiffs and class members are pretrial detainees, the Court
 11 evaluates their claim under the Fourteen Amendment’s more stringent deliberate indifference
 12 standard. (Dkt. No. 89 at ¶ 11; Dkt. No. 73 at 6.) Under this standard, a pretrial detainee must
 13 demonstrate:

14 (i) the defendant made an intentional decision with respect to the
 15 conditions under which the plaintiff was confined; (ii) those
 16 conditions put the plaintiff at substantial risk of suffering serious
 17 harm; (iii) the defendant did not take reasonable available measures
 18 to abate that risk, even though a reasonable official in the
 19 circumstances would have appreciated the high degree of risk
 20 involved—making the consequences of the defendant's conduct
 21 obvious; and (iv) by not taking such measures, the defendant caused
 22 the plaintiff's injuries.

23 *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). With respect to the third element,
 24 “the plaintiff must ‘prove more than negligence but less than subjective intent—something akin to
 25 reckless disregard.’” *Id.*

26 Plaintiffs’ motion raises three primary concerns: inadequate kitchen cleanliness,
 27 contaminated food, and food that lacks sufficient nutritional value. The Court addresses these
 28 issues in turn.

29 **a. Inadequate Kitchen Cleanliness**

30 Plaintiffs’ cleanliness issues are two-fold: (1) that there are pest and vermin issues, and (2)
 31 that there are insufficient cleaning procedures for the food trays.

32 **i. Pests and Vermin**

33 Plaintiffs allege that the Jail kitchen is insufficiently clean and houses numerous pests and

1 vermin whose droppings get in the food. An inmate kitchen worker reported that in November
2 2020 she witnessed rat droppings in another inmate's food tray in one instance and a cockroach in
3 another inmate's food tray in another instance. (Dkt. No. 71-2, Anderson Decl. ¶ 4.) An inmate
4 kitchen worker, also in November, 2020, saw a mouse jump out of a box of cookies. (Dkt. No.
5 71-3, Barajas Decl. ¶ 2, 3.) The same inmate also reported that at night there are birds living in
6 the kitchen, flapping around. (*Id.* at ¶ 3.) An inmate kitchen worker saw rodents in the dry
7 storage area in the kitchen. (Dkt. No. 71-4, Felder Decl. ¶ 3.) An inmate, in July 2020, found
8 what appeared to be rat or mouse feces in his cup at lunch. (Dkt. No. 71-6, Mellion Decl. ¶ 2.)
9 Plaintiffs' counsel subsequently had the pellets tested by a licensed Alameda County Vector
10 Ecologist that confirmed the pellets were mouse fecal pellets. (Dkt. No. 71-14, Swartz Decl. ¶ 2.)
11 On October 13, 2020, a pretrial detainee reported seeing rat feces and cockroaches in the kitchen.
12 (Dkt. No. 71-9, Reeves Decl. ¶ 3.) She said that the Jail kitchen does not have a door; instead,
13 there are plastic flaps hanging from the doorways (strip doors), but they do not go all the way to
14 the floor—this contributes to the vermin infestation. (*Id.* at ¶ 10.) She has seen many rats in the
15 kitchen, but no traps. (*Id.* at ¶ 5.) She reported seeing a rat jump out of a pot of chili, (*Id.* at ¶ 6),
16 and found a rat inside a box of condiments. (*Id.* at ¶ 7.) She saw cockroaches falling from the
17 ceiling and vents in the kitchen scullery. (*Id.* at ¶ 8.) She has also seen birds walking into the
18 kitchen under the plastic flaps. (*Id.* at ¶ 10.) On October 22, 2020, she reported finding a mouse
19 in the kitchen break room. (*Id.* at ¶ 11.) Four days later she accidentally ate a cockroach that was
20 in her food tray. (*Id.* at ¶ 14.) On November 15, 2020 she saw pigeons flying around the kitchen,
and bird feces on the walls and kitchen lights. (*Id.* at ¶ 15.)

21 Another inmate kitchen worker has seen mice, rats, and birds in many parts of the kitchen,
22 and has seen cockroaches, rat feces, bird droppings, and rodent urine. (Dkt. No. 71-13, Taylor
23 Decl. ¶ 5.) She saw the Aramark supervisor dust rat feces off trays, and has also seen the Aramark
24 supervisor pull bugs out of food with her bare hands. (*Id.* at ¶ 10.) The inmate found rat feces in
25 food before it was sealed onto the trays, (*Id.* at ¶ 13), and observed large bins filled with dirty trays
26 sitting out overnight; these dirty trays provide easy access and ample food for the rats and birds
27 that live in the kitchen. (*Id.* at ¶ 21.) An inmate worker reported finding a rat in the freezer and
28 maggots in his beans. (*Id.* at ¶ 6.) Another inmate kitchen worker reported an Aramark supervisor

1 picked rat poop off of a food tray with her bare hand and threw it away. (Dkt. No. 71-17, Zamora
2 Decl. ¶ 5.) He stated that there are rats, birds, and cockroaches on the food preparation line. (*Id.*
3 at ¶ 8.) He also reported seeing rats at least three times a week and said that there are rats coming
4 in and out of a fist sized hole in the sheetrock of the scullery. (*Id.* at ¶ 9, 11.) Another inmate
5 kitchen worker reported birds roosting in the kitchen and seeing birds at least three times a week
6 in the kitchen. (*Id.* at ¶ 12.) He also said bird feathers and bird feces are in the kitchen. (*Id.* at ¶
7 12.)

8 There is no dispute that the County—not Aramark—is the party responsible for kitchen
9 pest control. The County offers evidence that it has taken numerous steps to ensure that the
10 kitchen remains free of vermin and outside animals. Since October 2019, it has contracted with
11 McCauley Agricultural Pest Services to perform integrated pest management at the Jail five days a
12 week. (Dkt. No. 80-3, Pittsenbarger Decl. at ¶ 7.) These services include inspecting traps and
13 monitoring the perimeter of the kitchen, bakery, dry storeroom, and all associated closets and
14 mechanical rooms. (*Id.* at ¶ 8.) McCauley logs how much pest activity is observed and notes
15 every area where there is pest activity. (*Id.*) McCauley sprays the kitchen on a bi-weekly basis to
16 control insects. (*Id.* at ¶ 9.) Within the kitchen, there are 30 multi-catch traps to snare rodents and
17 insects. (*Id.* at ¶ 10.) Within the dry storage there are 10 snap-type single-catch traps along the
18 pipe chases. (*Id.* at ¶ 10.) There are 20–30 glue board monitors, which catch all types of pests, in
19 the oven control areas, closets, and sprinkler risers. (*Id.* at ¶ 10.) Also, the exterior perimeter of
20 the facility has 40 rodent stations to stop rodents from entering the building, and those are checked
21 multiple times a week. (*Id.* at ¶ 11.) According to McCauley, the traps outside the kitchen catch
22 far more rodents than the traps inside the kitchen, and McCauley believes that their program is
23 effective because they have not caught a rat inside the Jail for several months. (*Id.* at ¶ 13–14.) In
24 addition, the Jail utilizes strip doors to prevent bird entry into the kitchen, and the Jail has utilized
25 McCauley to install bird netting on the exterior of the facility that minimizes the birds’ ability to
26 perch around the facility. (*Id.* at ¶ 15.)

26 Stuart Barnes, the Sergeant responsible for oversight of the Jail kitchen, bakery, and food
27 transport, attests there are vermin and pest traps throughout the kitchen and storage areas, and bulk
28 food and ingredients are stored off of the ground. (Dkt. No. 80-2, Barnes Decl. ¶ 4, 12, 14); *see*

1 also (Dkt. No. 81-4, Weiss Decl. ¶¶ 14, 19) (corroborating the precautions mentioned by Sergeant
2 Barnes).

3 In August 2020 the kitchen and bakery passed its Environmental Health Inspection. (Dkt.
4 No. 80-1, Auyeung Decl. ¶ 8.) The main kitchen was inspected by Jane Auyeung, a Supervising
5 Environmental Health Specialist with the Alameda County Department of Environmental Health.
6 (*Id.* at ¶ 2.) Ms. Auyeung has worked as an Environmental health specialist and inspected retail
7 food facilities for thirteen years. (*Id.* at ¶ 6.) One of her responsibilities is oversight of the team of
8 Registered Environmental Health Specialists that monitors all retail food facilities within the
9 County, except the City of Berkeley. (*Id.* at ¶ 3.) During the most recent inspection of the
10 kitchen, she noted how well-run the kitchen facility was and how it compared favorably to other
11 commercial facilities. (*Id.* at ¶ 9.) There were no issues related to vermin, and there was no
12 evidence of any infestation of rats, mice, birds, or other pests. (*Id.* at ¶ 9.) All of the food was
13 stored as required by the California Retail Food Code. (*Id.* at ¶ 9.) Ms. Auyeung also supervised
14 the most recent inspection of the Jail's bakery. (*Id.* at ¶ 10.) There were mouse droppings found
15 during that inspection, but they appeared to be old and there was no evidence of an active
16 infestation of mice or any other vermin in the facility. (*Id.*) The County Department of
17 Environmental Health verified that the Jail has a pest control service, and the facility was overall
18 clean and well run—it passed inspection without further remedy required. (*Id.*)

19 Likewise, Joseph Martinez is the Jail Lead Cook Supervisor for Aramark and he
20 specifically denies that an inmate kitchen worker told him she witnessed a mouse jump out of a
21 box of cookies, that he giggled when told pigeons were flying around the kitchen, or that he threw
22 away a bag of Sloppy Joe sauce with a cockroach in it. (Dkt. No. 81-2, Martinez Decl. ¶ 2–5.)
23 Aramark's General Manager at the Jail, Robin Weiss, personally investigated the claim that there
24 were maggots in the beans; she found these were not maggots, but instead the skins of the beans
25 that separate from cooked navy beans. (Dkt. No. 81-4, Weiss Decl. ¶ 15.)

26 In light of the County's evidence, Plaintiffs have not shown a likelihood to succeed on the
27 merits. While there clearly was a pest problem, at a minimum, under prong three of the deliberate
28 indifference standard and on this record the Court cannot conclude that Defendants have not put
sufficient measures in place. Indeed, in light of these measures, at oral argument Plaintiffs

1 confirmed that they have narrowed the preliminary injunctive relief they seek on this issue to
2 construction of a solid door to the kitchen. They contend that California Retail Food Code §
3 114259 “require[s] replacing the hanging plastic sheets with a solid barrier outdoors to prevent the
4 entry of vermin, rodents, and birds.” (Dkt. No. 71-1, Memorandum of Points and Authorities at
5 16.) Not so. The Code requires that “[a] food facility shall at all times be constructed, equipped,
6 maintained, and operated as to prevent the entrance and harborage of animals, birds, and vermin,
7 including, but not limited to, rodents and insects.” Cal. Retail Food Code § 114259 (2007). Given
8 that the Jail kitchen passed inspection, and the record evidence, the Court cannot conclude that the
9 Jail door violates state law.

10 **ii. Food Tray Cleanliness**

11 Plaintiffs further allege that food service trays are not clean, and there are insufficient
12 workers in the scullery. All food trays are supposed to come wrapped in plastic wrap, and one of
13 the inmate workers that distributes food trays reports that every day there are at least a few trays
14 that have damaged plastic wrap or are not fully sealed. (Dkt. No. 71-10, Rivera Decl. ¶ 4.) He
15 also reported that four to five times a week he finds leftover remnants from previous meals on his
16 tray of food. (*Id.* at ¶ 3.) An inmate reported receiving dirty and stained food trays on multiple
17 occasions due to food from previous meals being cooked into the trays. (Dkt. No. 71-4, Felder
18 Decl. ¶ 2.) They also reported receiving dirty, cracked, and uncovered food tray as recently as
19 September 2020. (*Id.*) Another inmate reported that when he receives a hard-plastic tray it
20 usually comes with food caked on the sides and bottom. (Dkt. No. 71-7, Misch Decl. ¶ 13.) In
21 September 2020, an inmate reported finding and accidentally ingesting sharp metal pieces in his
22 oatmeal. (Dkt. No. 71-8, Paschal Decl. ¶ 2–4.) He subsequently stopped eating food served on
23 trays, but recalls that around three times a week the plastic cover on his food tray was not sealed.
24 (*Id.* at ¶ 6.) An inmate kitchen worker reported seeing three to four trays a day that are not sealed
25 by their plastic covering. (Dkt. No. 71-9, Reeves Decl. ¶ 12.) Another class member reported that
26 over half the time his food trays are contaminated with food from a previous meal. (Dkt. No. 71-
27 12, Shackelford Decl. ¶ 6.) Another inmate reports that a third of the time, the plastic on his tray
28 is not sealed. (Dkt. No. 71-10, Rivera Decl. ¶ 7.) An inmate kitchen worker reported seeing the
Aramark supervisor pulling dirty trays out of the garbage and reusing them. (Dkt. No. 71-13,

1 Taylor Decl. ¶ 9.) She also said that there are inadequate workers and tools to clean trays in the
2 scullery. (*Id.* at ¶ 22.) Another inmate reported receiving a tray with old, residual food burnt into
3 it in November 2020. (Dkt. No. 71-15, Upshaw Decl. ¶ 5.)

4 In contrast to the pest issue, Aramark is the party responsible for cleanliness of the kitchen
5 and trays. Aramark submits evidence that it has a comprehensive program in place to ensure
6 kitchen cleanliness: dirty trays are initially placed in large bins; the trays are then placed on racks
7 where they are hosed off; the trays are then placed in two large industrial agitating tubs with soapy
8 water, the tubs are drained and refilled with fresh soapy water every couple of hours; the trays are
9 then loaded into an industrial dishwasher where they are rinsed and then sanitized. (Dkt. No. 81-
10 4, Weiss Decl. ¶ 20.) According to Aramark, any tray that is not clean is washed again, trays are
11 inspected before they are sent down the line for meal assembly, and if a tray is not clean, it is
12 placed in a bin and rewashed. (*Id.*) Aramark also asserts that there are four to twelve people
13 working in the scullery at a time. (*Id.* at ¶ 21.)

14 These cleanliness procedures are corroborated by Sergeant Barnes—he reports inmate
15 kitchen workers are trained to remove dirty trays from the line and place them in the scullery.
16 (Dkt. No. 80-2, Barnes Decl. ¶ 8.) Likewise, deputies are instructed to report dirty trays to kitchen
17 workers. (*Id.* at ¶ 10.) Sergeant Barnes reports that after trays are sealed they are inspected by
18 inmate kitchen workers and Aramark employees, and there are several layers of inspection to
19 check for improperly sealed trays. (*Id.* at ¶ 15.) He also investigated the report that an inmate had
20 swallowed a sharp metal object, and he concluded that it was highly unlikely that razor blades
21 were placed in an inmate’s food. (*Id.* at ¶ 34–36.) (basing his determination on a number of
22 factors, including the fact that there is no way for an inmate to know where the food was going to
23 be delivered, there is no guarantee that an inmate will not receive contaminated food themselves,
24 and inmates are monitored by deputies throughout their time in the kitchen). Additionally, the Jail
25 kitchen provides food to other facilities in other counties, and Sergeant Barnes has not received
26 reports from other facilities similar to those provided by Plaintiffs. (*Id.* at ¶ 37.)

27 Aramark also refutes the declarations provided by various inmates. Margarita Reyes is the
28 Aramark Cook Supervisor for the Jail, and she has worked in the Jail kitchen for 21 years. (Dkt.
No. 81-3, Reyes Decl. ¶ 1–2.) Ms. Reyes stated that she has never seen rat feces on the trays,

1 dusted rat feces off of a tray, pulled bugs out of the food, or pulled trays out of the garbage to be
2 used on the meal assembly line. (*Id.* at ¶ 3–7.)

3 During oral argument, Plaintiffs alleged that the cleaning procedures described by Sergeant
4 Barnes and Robin Weiss are inconsistent. They are not. Sergeant Barnes maintains: “The food
5 trays go through a rigorous washing process wherein the uneaten food is thrown away and scraped
6 from the trays before the trays are then washed in the scullery.” (Dkt. No. 80-2, Barnes Decl. ¶ 8.)
7 This description of the kitchen’s cleaning process does not contradict the account offered by Robin
8 Weiss. (Dkt. No. 81-4, Weiss Decl. ¶ 20.) Plaintiffs also argued that Sergeant Barnes does not
9 have any personal knowledge of the kitchen. Again, this assertion ignores the record. Sergeant
10 Barnes attests that he spends eight to ten hours a day in the food preparation areas, and he is
11 responsible for oversight of the kitchen, bakery, and food transport at the Jail. (Dkt. No. 80-2,
12 Barnes Decl. ¶ 8.) These responsibilities give Sergeant Barnes personal knowledge of what is
13 happening in the Jail’s food preparation areas.

14 As with the vermin/pest issue, given the state of record the Court does not find that
15 Plaintiffs have shown a likelihood of success on the merits of their claim that Aramark’s handling
16 of food trays cleanliness is constitutionally deficient.

17 **b. Food Contamination**

18 Plaintiffs also allege that the kitchen regularly serves inmates contaminated food at the Jail.
19 (Dkt. No. 71-4, Felder Decl. ¶ 2); (Dkt. No. 71-13 Taylor Decl. ¶ 5); (Dkt. No. 71-17, Zamora Decl. ¶
20 8–9, 12.) They allege that the fruit and vegetables are so wilted that they are inedible. (Dkt. No.
21 71-7, Misch Decl. ¶ 9); (Dkt. No. 71-10, Rivera Decl. ¶ 6); (Dkt. No. 71-6, Mellion Decl. ¶ 6.) They
22 report numerous instances where individuals have been served food that is laden with foreign
23 objects or rat feces. (Dkt. No. 71-8, Kajuan Decl. ¶ 2–3); (Dkt. No. 71-6, Mellion Decl. ¶ 2.)
24 Others attest that food is left in warming ovens for hours. (Dkt. No. 71-16, Vargas Decl. ¶ 3.)
25 Contributing to the food contamination issues, and as discussed above, inmates contend that the
26 food trays are frequently not sealed by their required plastic covering. (Dkt. No. 71-17, Zamora
27 Decl. ¶ 6.)

28 The County responds that it has instituted several policies and procedures to ensure that the
food service meets all the required health and safety regulations. In particular, Sergeant Barnes

1 reports that food is packaged and sealed onto clean food trays to prevent spoilage. (Dkt. No. 80-2,
2 Barnes Decl. ¶ 14.) He attests that he has personally witnessed kitchen workers removing trays
3 that did not seal properly and returning trays to the sealing machine. (*Id.* at ¶ 15.) The Jail
4 requires that housing unit deputies unload the food service carts shortly after arriving in the
5 housing units, and an alarm or the Jail’s control center prevents food from sitting out for too long.
6 (*Id.* at ¶ 19.) Trays must be offloaded quickly because the carts must return to the kitchen so that
7 the next meal can be served. (*Id.* at ¶ 21.) The Jail makes extra meals available in case a prisoner
8 complains that there is an issue with their food. (*Id.* at ¶ 23.) Sergeant Barnes is unaware of any
9 instances where food was left in the warming ovens for an excessively long period of time, and if
10 a housing unity deputy did this they would be subject to disciplinary action. (*Id.* at ¶ 32.)

11 Aramark likewise contends that it has a number of policies designed to prevent food
12 contamination. Aramark has established procedures to ensure a sanitary kitchen and it requires
13 that Aramark employees and inmate workers are trained on these procedures. (Dkt. No. 81 at 9.)
14 Aramark attests that it complies with all of the requirements of the California Department of
15 Public Health. (Dkt. No. 81-4, Weiss Decl. ¶ 9.) All Aramark managers have Serv Safe
16 certifications.⁴ (*Id.*) Meals are inspected for palatability and to ensure that no contamination has
17 occurred both before and after the meals are placed on individual trays and sealed; trays that do
18 not seal properly are returned to the sealing machine. (*Id.* at ¶ 11, 12.) Food or trays that fall on
19 the floor are immediately discarded or washed. (*Id.* at ¶ 10.)

20 Given the procedures that Aramark and the County have put in place, Plaintiffs have not
21 shown a likelihood of success on the merits of their claim that Defendants have been deliberately
22 indifferent to their health and safety needs because of food contamination at the Jail.

23 c. Food Lacking Nutritional Value

24 The Court granted Defendants’ motion to dismiss Plaintiffs’ claims of constitutional harm
25 due to the inadequate nutritional value of the food, but granted Plaintiffs leave to amend “[t]o the
26 extent that Plaintiffs can allege specific facts suggesting that the nutritional content of the food is

27 ⁴ “ServSafe is a food and beverage safety training and certificate program administered by the
28 U.S. National Restaurant Association. The program is accredited by ANSI and the Conference for
Food Protection.” *ServSafe*, WIKIPEDIA (last updated Jan. 19, 2021),
<https://en.wikipedia.org/wiki/ServSafe>.

1 constitutionally deficient.” (Dkt. No. 73 at 15.) Plaintiffs did not amend their complaint to allege
 2 that the nutritional content of the prison’s food was constitutionally deficient. *Compare* (Dkt No.
 3 89 ¶¶ 71–76, 88–90) *with* (Dkt. No. 50 ¶¶ 71–76, 88–90) (same); *see* (Dkt. No. 89 ¶¶ 206–10.)
 4 Furthermore, at oral argument, Plaintiffs confirmed that they were no longer seeking a preliminary
 5 injunction on this ground.

6 ***

7 Given Defendants’ evidence—which has not been tested through discovery—Plaintiffs
 8 have not satisfied all of the elements of the deliberate indifference test required by the Fourteenth
 9 Amendment on any of their claims; therefore, Plaintiffs have not shown a likelihood of success on
 10 the merits and have not raised “serious questions” about their success on the merits.

11 **EVIDENTIARY OBJECTIONS**

12 In light of the Court’s ruling, it overrules Defendants’ objections to Plaintiffs’ evidence.
 13 The Court notes however, that the inmate witness declarations are acceptable. Plaintiffs cannot be
 14 expected to obtain physically-signed declarations given restrictions in place due to the Covid-19
 15 pandemic.

16 **REQUEST FOR EVIDENTIARY HEARING**

17 Shortly after oral argument on the preliminary injunction motion, Plaintiffs filed a request
 18 for an evidentiary hearing. (Dkt. No. 94.) The Court agrees that resolution of the issues raised by
 19 the motion will require resolution of disputes of fact; however, such disputes cannot be adequately
 20 resolved without the benefit of discovery and testing of each party’s evidence. Further, it may be
 21 a circumstance where consolidation of a preliminary injunction motion with a trial on the merits is
 22 required. *See* Fed. R. Civ. P.65(a)(2). As discussed at oral argument, written discovery can
 23 commence on claims that survived the motion to dismiss, as well as any agreed-to inspections of
 24 the premises.

25 **CONCLUSION**

26 For the reasons explained above, the motions for a preliminary injunction and an
 27 evidentiary hearing are DENIED.

28 This Order disposes of Docket Nos. 71, 92, 94.

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United States District Court
Northern District of California

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IT IS SO ORDERED.

Dated: March 1, 2021

Jacqueline Scott Corley
JACQUELINE SCOTT CORLEY
United States Magistrate Judge