No. 21-15485

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALAMEDA COUNTY MALE PRISONERS AND FORMER PRISONERS, DANIEL GONZALEZ, ET AL. ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AS A CLASS, AND SUBCLASS,
Plaintiffs-Appellants,

v.

ALAMEDA COUNTY SHERIFF'S OFFICE, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California, Case No. 19-cv-07423-JSC
The Honorable Jacqueline Scott Corley

BRIEF OF PLAINTIFFS-APPELLANTS ALAMEDA COUNTY MALE PRISONERS AND FORMER PRISONERS, DANIEL GONZALEZ, ET AL. ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AS A CLASS, AND SUBCLASS

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I. JURISDICTIONAL STATEMENT

Plaintiffs brought this action in the District Court pursuant to the First, Fourth, Eighth, and Fourteenth Amendments to the United State Constitution by way of the Civil Rights Acts, 42 U.S.C. §§1981, 1983 et seq. and 1988. The District Court had jurisdiction under 28 U.S.C. §1331 (claims arising under the United States Constitution) and §1343 (claims brought to address deprivations, under color of state authority, of rights privileges, and immunities secured by the United States Constitution).

On March 1, 2021, the District Court issued an Order denying Plaintiffs' Motion for Preliminary Injunction, as well as Plaintiffs' request for an evidentiary hearing on the Motion. [ER 94] Plaintiffs timely filed their notice of appeal on March 13, 2021. [ER 779]

This Court has jurisdiction over the appeal of the District Court's order under 28 U.S.C. §1292(a)(1).

II. ISSUES PRESENTED FOR REVIEW

Whether the District Court erred in denying Plaintiffs, male prisoners of Santa Rita Jail who are likely to succeed on the merits of their causes of action for deprivation of federal civil rights, the following preliminary injunctions:

A. An order requiring Defendants to install a solid barrier between the Jail's kitchen and the outdoors to prevent vermin and other animals from

entering the kitchen per the California Health & Safety Code;

B. An order requiring Defendants to sanitize all dishwares and trays per the California Health & Safety Code; and

C. An order requiring Defendants to institute procedures to ensure that food served is sanitary, sufficient, and edible per the California Health & Safety Code.

III. STATEMENT OF THE CASE

A. The Plaintiffs

Plaintiffs, male prisoners of Santa Rita Jail, engaged in a strike in October 2019 over the unsanitary conditions and the unsafe, unsanitary and inedible food at Santa Rita Jail. [ER 640 ¶ 77 - ER 641; ¶ 84; ER 642 ¶ 88 – 90; ¶ ER 665; ¶ 175; ER 673, ¶ 206] Following the strike, they initiated this lawsuit in November 2019.

Plaintiffs documented the unsanitary practices and conditions at the jail and their resultant injuries through multiple personal declarations based on their own personal knowledge. While Plaintiffs initially sought several types of injunctive relief in their original motion for preliminary injunction, at the hearing they confirmed that they would seek only the most critical items of relief: an order requiring construction of a solid barrier between the kitchen and the outdoors to keep rodents, birds, and other animals out of the kitchen per California Health & Safety Code §114259 [ER 755, l. 6-10]; an order requiring Defendants to sanitize all dishwares and trays per

California Health & Safety Code §114099.1 [ER 762-763; ER 765 l. 19-22], and; an order requiring Defendants to institute procedures to ensure that all food served is sanitary and edible per the California Health & Safety Code §113980 and sufficient in quantity. [ER 767, l.24 – ER 768, l. 15]

B. Santa Rita Jail

Alameda County operates one jail in the county, Santa Rita Jail, located in Dublin, California. The jail is known as a "mega-jail" and Defendant Alameda County Sheriff's Office ("ACSO") touts it as "the third largest facility in California and the fifth largest in the nation," with capacity for 4,000 inmates. [ER 513, l. 5-8] 80.6% of the inmates at Santa Rita Jail are pretrial detainees, and 91.3% are male. [ER 513, l. 10]

The jail is situated "adjacent to significant open space", which is a natural animal and bird habitat. [ER 455, ¶ 12]

C. Santa Rita Jail's Kitchen

The jail has a large central industrial kitchen producing at least 12,000 to 16,000 meals per day. All inmates are fed from this kitchen. A robotic system delivers the food from the kitchen to the housing units. In addition to preparing food for inmates at Santa Rita Jail, the jail's kitchen also prepares food for a number of adult detention facilities and one juvenile facility.

The kitchen is operated by a for-profit entity, Defendant Aramark Correctional

Services. The kitchen is staffed by inmates and five Aramark paid employees. [ER 592, ¶16, l. 14-15] The majority of people working in the kitchen are inmates. Inmates work seven days per week, from 7 am to 10 pm. At the time the motion for preliminary injunction was filed, men worked the morning shift from 7 am through 3 pm. Women worked the afternoon shift from 3:30 pm to 9-9:30 pm. Thirty to 50 inmates work each shift. One Aramark employee is supposed to supervise each inmate workstation. [ER 592, ¶16, l. 13-14]

D. The Vermin, Birds, and Other Animals in Santa Rita Jail's Kitchen

Birds, mice, rats and cockroaches live in the Santa Rita Jail kitchen. [ER 539, ¶2-3; ER 542 ¶2; ER 591, ¶5; ER 619, ¶8-9, 12] The kitchen is open to the exterior because there are no doors separating the kitchen from the outside. [ER 570, ¶10] The only separation between the kitchen and the exterior are sheets of plastic, hung vertically. These sheets of plastic do not reach the ground, providing birds, rodents, and other animals with unfettered access to the kitchen area. Inmate kitchen workers have seen birds walk into the kitchen under the plastic. [ER 570, ¶10] Birds in the kitchen leave bird droppings and feathers on counter surfaces and the food preparation surfaces. Bird droppings are caked on the curved security mirrors upon the walls. [ER 619, ¶12]

An inmate kitchen worker reported that in November 2020 she witnessed rat droppings in another inmate's food tray in one instance and a cockroach in another

inmate's food tray in another instance. [ER 536, ¶4] An inmate kitchen worker, also in November, 2020, saw a mouse jump out of a box of cookies. [ER 539, ¶2] The same inmate also reported that at night there are birds living in the kitchen, flapping around. [Id. at ¶ 3] An inmate kitchen worker saw rodents in the dry storage area in the kitchen. [ER 542, ¶2, l. 12-13] An inmate, in July 2020, found what appeared to be rat or mouse feces in his cup at lunch. [ER 548, ¶2] Plaintiffs' counsel subsequently had the pellets tested by a licensed Alameda County Vector Ecologist who confirmed that the pellets were mouse fecal pellets. [ER 596, ¶2; ER 604] On October 13, 2020, a pretrial detainee reported seeing rat feces and cockroaches in the kitchen. [ER 570, ¶3] She has seen many rats in the kitchen. [*Id.* ¶ 5] She reported seeing a rat jump out of a pot of chili [*Id.* ¶ 6], and found a rat inside a box of condiments. [*Id.* ¶ 7] She saw cockroaches falling from the ceiling and vents in the kitchen scullery. [*Id.* ¶ 8] She has also seen birds walking into the kitchen under the plastic flaps because the plastic flaps do not go all the way to the floor. [*Id.* ¶ 10] On October 22, 2020, she reported finding a mouse in the kitchen break room. [*Id.* ¶ 11] Four days later she accidentally ate a cockroach that was in her food tray. [*Id.* ¶ 14] On November 15, 2020 she saw pigeons flying around the kitchen, and bird feces on the walls and kitchen lights. [*Id.* ¶ 15]

Another inmate kitchen worker has seen mice, rats, and birds in many parts of the kitchen, and has seen cockroaches, rat feces, bird droppings, and rodent urine.

[ER 591, ¶5] She saw the Aramark supervisor dust rat feces off trays and has also seen the Aramark supervisor pull bugs out of food with her bare hands. [*Id.* ¶ 10] The inmate found rat feces in food before it was sealed onto the trays, [*Id.* ¶ 13), and observed large bins filled with dirty food trays sitting out overnight. These dirty trays provide easy access and ample food for the rats and birds that live in the kitchen. [*Id.* ¶ 21] An inmate worker reported finding a rat in the freezer and maggots in his beans. [*Id.* ¶ 6] Another inmate kitchen worker reported an Aramark supervisor picked rat poop off of a food tray with her bare hand and threw it away. ER 618, ¶5] He stated that there are rats, birds, and cockroaches on the food preparation line. [*Id.* ¶ 8] He also reported seeing rats at least three times a week and said that there are rats coming in and out of a fist sized hole in the sheetrock of the scullery. [*Id.* ¶¶ 9, 11] Another inmate kitchen worker reported birds roosting in the kitchen and seeing birds at least three times a week in the kitchen. [*Id.* ¶ 12] He also said bird feathers and bird feces are in the kitchen. [*Id.* ¶ 12]

E. Defendants' Food Preparation System

Aramark runs a "cook-chill" process. The cook-chill method prepares food several days in advance of the food being served. Food, such as beans, rice, and oatmeal, is cooked in large batches, in metal tubs which hold over 100 gallons. The cooked foods are then loaded into large plastic tubes, approximately 3 feet long and 12 inches wide, and sealed. These tubes, filled with hot food, are then placed in a

machine that rolls these tubes in tunnels with cold water. After many hours when these tubes have finally cooled, these tubes are then stacked onto pallets and placed in the refrigerator. [ER 546, ¶2]

The process calls for taking these tubes and spooning the food onto plastic food trays that have built in cups. Other food, such as bread, is added. This is called the "line." [Id, ¶ 3, l. 10-11] Due to the limited number of workers, and the large number of meal trays prepared, menu items are often missing from the trays. Portion size also appears to fluctuate. [ER 551-553, ¶3-9] There does not appear to be a quality control mechanism for control of portion size, or to insure that all menu items are place on trays.

Once a tray is finished, it goes through a plastic sealing machine. Sealing the trays is important to keep vermin out and because the food is prepared days in advance. [ER 618, ¶6] Plastic sealing does not properly seal trays that are bent or cracked. [ER 618, ¶6, l. 22-23] The trays are then placed in crates and placed back into the refrigerator. The kitchen also sometimes uses paper trays. The paper trays are smaller than the plastic trays so that the sealing machine frequently fails to seal the paper trays. [ER 618, ¶6, l. 20-21; ER 563-564] At some point, these food trays for Santa Rita Jail are loaded onto carts for the jail's automated carts to convey these carts to various housing units. Breakfast and dinner have a hot tray and a cold tray. Lunch is generally bag lunch and sandwiches.

Once the carts arrive at the housing unit, the trays are supposed to be unloaded and refrigerated. The trays are then supposed to be loaded into warming ovens two hours before service of the meals.

F. Defendants' Scullery System Leaves Food Residues on Trays

Food trays at Santa Rita Jail are not clean, with residual food on the edges and bottom, and new food is dished on top of old crusted food. [ER 588, ¶6; ER 554, ¶13; ER 542 ¶2; ER 574 ¶3] The plastic trays consists of three compartments combined into a tray. [ER 564] Used dirty trays are collected and left in a tub on the ground. The tub is not secured, so animals, including mice and rats have access. [ER 593, ¶21] When the trays are washed, a large sink is filled with soap and water. A pump that circulates the water.

There are insufficient inmate workers assigned to washing trays and these inmate workers are not provided with the necessary tools or enough time to clean. [ER 593-4, ¶ 22] There are only two scullery workers, one to wash trays and the other to load the sanitizer. [ER 593, ¶22, l. 18-19] The inmate workers pull the used trays out of the containers and place approximately 100 trays into a tub of soapy water, so that 100 trays swish around in a tub of soapy water for about five (5) minutes before being fished out and run through the sanitizer. [ER 593-4, ¶22] The sanitizer sprays trays with a sanitizing spray but does not wash or remove food particles. The sanitizer cycle is very short, not more than 5 minutes. There is no

rinsing and no drying.

David Misch states that sometimes the corn tortillas in his food trays come wet, and taste like soap. [ER 554, ¶13] Because trays are wet when food is dished into the trays, dry cereal, kool-aid packets, and bread arrive wet and inedible. [ER 554, ¶13]The trays are not scraped prior to submersion into the tub. Astrid Taylor states in her declaration that although she is given a green scrub pad, the food is so caked on she really needs steel wool or a putty knife. [ER 593, ¶22] The tubs require so much time to drain and refill, that a tub is only filled, at most, once a work shift, at the start of the work shift. By the end of the shift "there is no way for the trays to get clean because the water is dirty and not warm." [ER 593-4, ¶22] An inmate reported receiving dirty and stained food trays on multiple occasions due to food from previous meals being cooked into the trays. [ER 542, ¶2] Another class member reported that over half the time his food trays are contaminated with food from a previous meal. [ER 588, ¶6] Another inmate reported that when he receives a hard-plastic tray it usually comes with food caked on the sides and bottom. [ER 554, ¶13] An inmate kitchen worker reported seeing the Aramark supervisor pulling dirty trays out of the garbage and reusing them. [ER 591, ¶9] Another inmate reported receiving a tray with old, residual food burnt into it in November 2020. [ER 613, ¶5]

Leanna Zamora states in her declaration that she would like to pressure wash

the line, where the trays are filled, regularly, but she has only been permitted to do so three to four times since April 2020, and only in preparation for inspections. [ER 619, ¶8]

When the plastic wrap is not properly sealed, the food spills out while traveling in the robot carts, or spoils while sitting in the various refrigerators, or dries out and desiccates during the reheating process. Inmate workers who distribute food trays report that every day there are at least a few trays that have damaged plastic wrap or are not fully sealed. [ER 574, ¶4] They also reported receiving dirty, cracked, and uncovered food trays as recently as September 2020. [Id, ¶2; ER 567, ¶6;ER 571, ¶12; ER 588, ¶7]

G. Defendants' Provision of Inedible and Insufficient Food to the Inmates of Santa Rita Jail

Plaintiffs' motion for preliminary injunction alleges that Defendants Aramark and County regularly serve inmates contaminated food at the jail. [ER 542, ¶ 2; ER 591, ¶ 5; ER 691, ¶¶ 8-9, 12] When rodent droppings are found on trays, inmates stated in declarations that Aramark employee Margarita will "dust off the poop with her bare hands. I have also seen Margarita pull bugs out of the food, with her hands." [ER 591, ¶10] Either the offending tray or the food is distributed for consumption. [Id. ¶9-10] Defendant Aramark worker pulls trays out of the trash that had been thrown away due to contamination. [Id., ¶9] When a loaf of bread has been

chewed by rodents, the individual slices are removed, but the rest of the loaf is served. When food falls on the floor, it is simply picked up and put back on the line. [Id. ¶ 8] Aramark workers do not wear plastic gloves, and inmate workers are not provided with sufficient time to wash their hands between tasks, so workers go from mopping floors to serving food without washing their hands. [Id. ¶ 12]

Inmates testify that the fruit and vegetables are so wilted that they are inedible. [ER 552-3, ¶9; ER 575, ¶6; ER 615, ¶7] They report numerous instances where individuals have been served food contains rat feces. [ER 548, ¶ 2, ER 566, ¶ 2–3; ER 640, ¶78] Plaintiffs' counsel has been provided fourteen grievances regarding rat feces found in the jail food. [ER 269-70, ¶1, 4-5] Others attest that food is left in warming ovens for hours so that the food has become so hard and dry that it is inedible. [ER 552, ¶8, l. 23-24; ER 567, ¶7, l. 13-14; ER 615 ¶8; ER 539 ¶5] Contributing to the food contamination issues, and as discussed above, inmates contend that the food trays are frequently not sealed by their required plastic covering. [ER 571, ¶12; ER 588, ¶7; ER 618, ¶6] Astrid Taylor found rat feces inside food bags. [ER 592, ¶13] When there were complaints that there were maggots in the beans, the deputies responded "Whoever doesn't want to eat it - don't eat it," or "this is all you get" without providing any replacement food. [ER 615, ¶7] In September 2020, an inmate reported finding and accidentally ingesting sharp metal pieces in his oatmeal. [ER 566, ¶¶ 2-4]

Inmate workers report that they are taking the initiative to throw away food they see with mold or which has been contaminated by vermin or rodents. When these issues have been reported to Aramark workers, the Aramark worker will put these foods back into circulation. Inmate workers report: "We have to fight to get Aramark to throw away food that is not fit to serve. Rather than make all new trays, they try to transfer the old food into a new tray." [ER 618, ¶5]

Astrid Taylor states that when she worked the line filling trays, "[i]f the kitchen doesn't have enough of something for what's on the menu, they just change the menu without checking with the dietician. We end up using whatever is leftover or whatever we have already." [ER 592, ¶17] Marcus Felder stated that he asked the jail dietician if he ever met with Aramark to ensure that the meals met specifications for a proper diet, and the dietician, Tran, stated that he does not. [ER 543, ¶7, l. 26-28]

Over 25 grievances were submitted by prisoners regarding insufficient portion size. David Misch, an inmate, submitted a detailed, sworn declaration that he was chronically hungry even after he ate everything on his tray, documenting daily shortages in his food trays. [ER 550 – 564] He documented repeated missed meals, insufficient quantity of items (½ cup of cold cereal, and half the allotted quantity of milk) and missing meal items (the protein item, peanut butter, is missing 25% of the time), resulting in the loss of 70 pounds between January and August, 2020. [ER

554, ¶ 15] And he reported two bouts of food poisoning. [ER 555, ¶ 10]

H. Defendants' System of Food Delivery Results In Inedible Food

Food is delivered from the kitchen to the housing units in plastic carts that are automated. The carts are not refrigerated. Nor do the doors close tightly. The carts run through the main yard, and when they arrive at the housing unit, the housing unit deputy must move the cart into the housing unit. Carts for breakfast arrive in the evening, between 5 pm and 9 pm. Breakfast is served at 6 am the next day. (*Upshaw et al. v. Alameda County, et al.* N.D. Cal. 3:18-cv-07814 JD, ECF 38.) The hot trays should be heated for two hours prior to being served. [ER 615, ¶3; ER 539, ¶6] Inmate workers rise at 5 am to serve breakfast, so if trays have to be loaded into the oven before 5 am, this task would fall to the deputy. Some deputies, to avoid having to load the trays into the warming ovens themselves, have the inmate workers load the trays into the warming ovens in the evening before lights out. [Id. ¶3] Lights out is at 11:00 pm. This means that food trays are sitting unrefrigerated in the warming ovens for up to 7 hours or more, before the warming oven is turned on. Cold trays, with milk or other perishables, are also not refrigerated, but simply stored at room temperature. This practice leads to food spoilage. [ER 619, ¶7; ER 552-3, ¶9-10] Or the trays are loaded early into the ovens and held in the ovens with the heat on. When food trays are held in the warming oven for excessive lengths of time, the food becomes dry and inedible. [ER 539, ¶5] "The food then becomes burnt, black, and

the food is so tough and dry, you have to scrape it with your fingernail to get it off the tray." [ER 615, ¶8]

I. Plaintiffs' Motion for Preliminary Injunction

On November 17, 2020, Plaintiff's brought a motion for preliminary injunction seeking various relief, including that Defendants be required: A) to install a solid barrier between the kitchen and the outdoors to keep rodents, birds, and other animals out of the kitchen; B) have all dishwares and trays cleaned and sanitized per the California Health & Safety Code; and C) to institute procedures to ensure that food served is sanitary, sufficient, and edible per the California Health & Safety Code. Plaintiffs submitted multiple declaration supporting their requests. [ER 535 thru 620]

In opposition to the motion, Defendant ACSO submitted declarations from Sgt. Stuart Barnes [ER453] and Mark Pittsenberger, a hired exterminator for Santa Rita Jail. [ER 460] Mr. Pittsenberger's declaration confirms the lack of a door to the kitchen, and the need for weekly insect extermination spraying. His declaration states that he has not caught any "rats" within the jail in the last several months but is silent on the mice he routinely catches. [ER 463 ¶14] Mr. Pittsenberger states he has been retained to install bird netting. [ER 364 ¶ 15]

Sgt. Barnes' declaration does not deny the presence of birds, cockroaches, mice and rats in the kitchen. He states that that the jail's remedy is installing additional

plastic strips. [ER 455 ¶13].

Defendant Aramark submitted three declarations from employees, Robin Weiss, the general manager; Joseph Martinez and Margarita Reyes; Cook Supervisors. Robin Weiss denies seeing cockroaches "falling" from the ceiling; and denies seeing in the food, "feces or dead rodents" [ER 423 ¶13), but does not deny the regular presence of vermin or mice and rats in the Santa Rita kitchen. Margarita Reyes' declaration has 13 lines of substantive information [ER 421] Joseph Martinez' declaration has six (6) lines of substantive information [ER417]. Neither Martinez nor Reyes deny that dirty trays encrusted with food are reused and refilled with food.

Robin Weiss's brief declaration does not state his/her job duties, his/her qualifications, nor the amount of time he/she is at Santa Rita Jail. Astrid Taylor, a jail worker who work in the jail kitchen daily and work in the kitchen stated in their declarations that they do not know who Robin Weiss is and have never met Robin Weiss during their work shifts. [ER 169, ¶2] Robin Weiss' declaration states portion size is insured through the use of portioning scoops, does not describe how scoops are used, nor what training is provided on portion control, or what quality control mechanisms are in place for portion size control. [ER 421]

Robin Weiss and Sgt. Barnes provide differing descriptions of the process by which trays are washed. Sgt. Barnes states he is in the kitchen up to 8 hours a day. Sgt. Barnes states that trays are "scraped" and then washed. He does not mention a

"dishwasher" or any machine used in the washing. [ER 454 ¶8] Robin Weiss declares that trays are "hosed off", then placed in "agitating tubs with soapy water" and then rinsed and sanitized in a "dishwasher". [ER 423 ¶20] Robin Weiss then states trays are "inspected" without specifying how these inspections occur, who does the inspections, nor a declaration from said person(s). [ER 424 ¶ 20(e)] Leanna Zamora, who has a Safe Serv certificate and worked in food services prior to her incarceration and works in the scullery states that the machine is a sanitizer not a dishwasher demonstrated by a machine cycle of less than 5 minutes. [ER179 ¶2] Prisoners report that trays are still regularly dirty, with left-over food from previous meals stuck on the bottom and sides of the food tray. [Id. ¶5]

Defendant County also submitted a declaration from Jane Auyeung, an Alameda County Department of Environmental Health employee who conducted an inspection of Santa Rita Jail on August 12, 2020, stating that the jail's kitchen passed a planned inspection. [ER 439] She notes that the kitchen "compares favorably regarding cleanliness when compared to other commercial facilities." [Id.] She noted mouse droppings but concluded that "they appeared to be old." [ER 439-440, ¶10] She did not state on what basis she concluded that the mouse droppings were old, or how old the droppings were. Her declaration stated that food storage was in compliance with code [Id. ¶10], but did not state that the facility in and of itself, with the plastic strips to exclude animals and rodents, was in

compliance with code.

J. The District Court's Denial of Plaintiff's Motion for Preliminary Injunction

After briefing by the parties, the District Court heard oral argument on the Plaintiffs' Motion for Preliminary Injunction on February 11, 2021. That same day, the Plaintiffs requested that the Court hold an evidentiary hearing before ruling on the motion. On March 1, 2021, the District Court issued its order denying the Motion for Preliminary Injunction, and also denying Plaintiffs' request for an evidentiary hearing. On the latter point, the order stated: "The Court agrees that resolution of the issues raised by the motion will require resolution of disputes of fact; however, such disputes cannot be adequately resolved without the benefit of discovery and testing of each party's evidence." [ER 016, l.19]

In its order, the Court noted that Plaintiffs had narrowed the relief they were seeking to the "construction of a solid door to the kitchen." [ER 012, l.2] The court stated the legal standard governing motions for preliminary injunction, including the well-known four factors – likelihood of success on the merits, irreparable harm, balance of equities, and public interest. [ER 006, l. 11] (adding that "[w]hen the government is a party, these last two factors merge") (quoting *E. Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 844-45 (9th Cir. 2020).) The court also correctly noted that in the Ninth Circuit, "'serious questions going to the merits' and a balance

of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." [ER 006, l. 14] (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).)

The court addressed only the first prong of the test, success on the merits of Plaintiffs' claims under the fourteenth amendment (for pretrial detainees) and the eighth amendment (for convicted prisoners). Because 85% of the Plaintiff class were pretrial detainees, the court "evaluate[d] their claim under the Fourteenth Amendment's more stringent deliberate indifference standard." [ER 008, l. 9] The court pointed to the numerous sworn declarations submitted by the Plaintiffs regarding the presence of pests (including mice, pigeons, and cockroaches) in the kitchen area, as well as rodent feces and bugs on food trays and in the food itself. [ER 11-13] These sworn statements were not contradicted by the Defendants' evidence. However, the court pointed to the fact that the jail facilities passed a health inspection in August 2020, as well as pest control measures put in place in 2019, to conclude: "While there clearly was a pest problem, at a minimum, under prong three of the deliberate indifference standard and on this record the Court cannot conclude that Defendants have not put sufficient measures in place." [ER 011, l. 27] The court concluded:

> Given Defendants' evidence—which has not been tested through discovery—Plaintiffs have not satisfied all of the elements of the

> deliberate indifference test required by the Fourteenth Amendment on any of their claims; therefore, Plaintiffs have not shown a likelihood of success on the merits and have not raised "serious questions" about their success on the merits.

[ER 016, L. 7]

Regarding Plaintiffs' request for an order that Defendants sanitize dishware and trays, the District Court gave credit to Aramark employee Weiss' declaration, despite Weiss lack of foundation and personal knowledge. The District Court perceived no contradiction between Barnes' declaration and Weiss' declaration and apparently found both outweighed the numerous declarations presented by Plaintiffs, stating that "Aramark . . . refutes the declarations provided by various inmates" [ER 013, L. 25] and had "submitted evidence that it has a comprehensive program in place to ensure kitchen cleanliness" [ER 013, l. 5] The District Court concluded its discussion by stating that "the Court does not find that Plaintiffs have shown a likelihood of success on the merits of their claim that Aramark's handling of food trays cleanliness is constitutionally deficient." [ER 014, L. 15]

Regarding Plaintiffs' request for an order that requiring Defendants to institute procedures to ensure that food served is sanitary, sufficient, and edible per the California Health and Safety Code, the Court again relied upon the declarations of Weiss and Barnes, finding that "[g]iven the procedures that Aramark and the County have put in place, Plaintiffs have not shown a likelihood of success on the merits of their claim that Defendants have been deliberately indifferent to their health and

safety needs because of food contamination at the Jail." [ER 015, l. 21]

The District Court concluded:

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

[ER 016, l. 6]

IV. SUMMARY OF ARGUMENT

Plaintiffs, inmates of the Santa Rita Jail, are likely to succeed on their causes of action for deprivation of their federal civil rights.

The installation of a solid barrier to keep rodents, birds, and other outdoor animals out of the jail's kitchen is required by California statutes and the Fourteenth Amendment and is essential to maintaining a vermin-free environment. Defendants' ongoing refusal to install such a barrier is illegal and demonstrates deliberate indifference to Plaintiffs' federal constitutional rights.

Similarly, sanitizing all dishwares and trays per the California Health and Safety Code is required by California statutes and the Fourteenth Amendment. Defendants' ongoing refusal to sanitize all dishwares and trays is illegal and demonstrates deliberate indifference to Plaintiffs' federal constitutional rights.

Finally, instituting procedures to ensure that food served to Santa Rita inmates is sanitary, sufficient, and edible is required by California statutes and the Fourteenth

Amendment. Defendants' ongoing refusal to institute such procedures is illegal and demonstrates deliberate indifference to Plaintiffs' federal constitutional rights.

This Court should reverse the District Court's order and require Defendants, per the California Health and Safety Code to A) install a solid barrier between the kitchen and the outdoors to prevent vermin and other animals from entering the jail's kitchen; B) sanitize all dishwares and trays and; C) institute procedures to ensure that food served is sanitary, sufficient and edible.

V. STANDARD OF REVIEW

This Court reviews "the legal premises underlying a preliminary injunction" de novo. *A&M Records, Inc. v Napster, Inc.*, 284 F.3d 1091, 1096 (9th Cir. 2002). Otherwise, the district court's entry of the preliminary injunction is reviewed for abuse of discretion. *Id.* Thus, this Court may vacate the preliminary injunction if the district court failed to apply the correct legal standard, rested the decision "on a clearly erroneous finding of fact that is material to the decision," or applied "an acceptable preliminary injunction standard in a manner that results in an abuse of discretion." *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 724 (9th Cir. 1983).

VI. ARGUMENT

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction

is in the public interest." *California Trucking Ass'n v. Bonta*, 996 F.3d 644, 652 (9th Cir. 2021) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365 (2008)). In the Ninth Circuit, "serious questions going to the merits," as well as "a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 652 n.6 (citation omitted).

The Fourteenth Amendment protects a pretrial detainee from "unconstitutional conditions of confinement." *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018), *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019). All such claims require a showing that the defendants had the requisite state of mind that preceded or accompanied the violation-defined by "an objective deliberate indifference standard." *Id*. at 1124-25. Under this standard, the court analyzes whether there was "a substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the [defendant] did not take, thus causing the injury that the plaintiff suffered." *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602 (9th Cir. 2019). Unlike the Eighth Amendment standard for convicted felons, for pretrial detainees' claims, "[t]here is no separate inquiry into [a defendant's] subjective state of mind." *Id*.

To satisfy this objective deliberate indifference standard, plaintiffs must prove

that: (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved-making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018), *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019). As to the third element, plaintiffs must "prove more than negligence but less than subjective intent-something akin to reckless disregard." *Id.*

"Deliberate indifference may also be inferred from the failure of a governmental official to perform specific duties required under statute. . . . This inference arises from the fact that duties of governmental officials are generally defined at least in part by state or federal law. Consequently, it is natural to presume that governmental officials will familiarize themselves at least with those statutes which have a direct bearing on their official conduct. However, it is very important to distinguish between those laws which simply create general, vaguely defined duties and those which mandate specific conduct under particularized circumstances. As stated by the Court in *Doe v. New York City Department of Social Services*, 649 F.2d

at 146:

> The more a statute or regulation clearly mandates a specific course of conduct, the more it furnishes a plausible basis for inferring deliberate indifference from a failure to act, even without any specific knowledge of harm or risk. This is because failure to undertake a specific course of action in vindication of a general duty can reasonably be attributed to a bona fide difference of opinion as to how the duty should be performed. However, no such alternative explanation for nonfeasance can be raised where the task mandated is specific and unequivocal.

Jensen v. Conrad, 570 F. Supp. 114, 122-23 (D.S.C. 1983). *See also Williams v. Edwards*, 547 F.2d 1206, 1214 (5th Cir. 1977):

> In the past we have affirmed findings of constitutional violations based in part on state code violations . . . . It is "significant that the current conditions at (the prison) even fail to comply with the state standards, much less constitutional norms." *Gates v. Collier*, *supra*, 501 F.2d at 1302. State codes reveal to the District Judge the minimum standards by which the state itself proposes to govern itself concerning habitability. Such a standard is a valuable reference for what is minimal for human habitation in the public view, thus serving as an indicator of "evolving notions of decency," *Newman v. Alabama*, *supra*, 503 F.2d at 1330 n.14; *see Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958). State codes also are a valuable index into what levels of decency the public, expressing itself through the Legislature, is prepared to pay for. Therefore, we approve the use of state sanitation and fire codes because in this manner the federal district judge can minimize his intrusion into the details of prison administration, allowing the state's own published standards to govern. The District Judge did not err in making use of the state fire and sanitation codes.

Williams, 547 F.2d at 1214; *Jackson v. Walker*, 2009 WL 1743639 (E.D. Cal. June 17, 2009) ("the state is obligated to provide nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it . . . the state health code, while not

establishing 'constitutional minima,' is relevant in making a finding regarding the constitutionality of existing conditions.").

A. Plaintiffs Are Entitled to A Preliminary Injunction Requiring Defendants to Install a Solid Barrier Between the Jail's Kitchen and the Outdoors to Prevent Vermin and Other Animals from Entering the Kitchen Per the California Health and Safety Code

Contrary to the findings of the district court, Plaintiffs are likely to succeed on the merits of their cause of action for deprivation of federal civil rights. The installation of a solid barrier to keep rodents, birds, and other outdoor animals out of the jail's kitchen is essential to maintaining a vermin-free environment and is required by California statutes and the Fourteenth Amendment. Defendants' admitted ongoing refusal to install such a barrier is illegal and demonstrates deliberate indifference to Plaintiffs' federal constitutional rights. This Court should require the District Court to issue a preliminary injunction requiring Defendants to install a such a barrier.

1. Defendants' Refusal to Install a Solid Barrier Between the Jail's Kitchen and the Outdoors Violates State Law and the Fourteenth Amendment

County jail food operations are regulated by 15 Cal. Code of Reg §§1230-1245. Section 1245 of the California Code of Regulations does not articulate independent standards but adopts the California Retail Food Code, which is part of the California

Health and Safety Code.[1] Contrary to the District Court's conclusion, California Retail Food Code requires the installation of solid barriers to keep rodents, birds, and other outdoor animals out of kitchens. Section 114266 of the Code requires that every food facility "shall be fully enclosed in a building consisting of permanent floors, walls, and an overhead structure[.]" Cal. Health and Safety Code §114266(a). Section 114259 requires that "[a] food facility shall *at all times* be constructed, equipped, maintained, and operated as *to prevent the entrance* and harborage of animals, birds, and vermin, including, but not limited to, rodents and insects." Cal. Health and Safety Code §114259 (emphasis added). Similarly, other provisions of the Code require solid barriers to prevent vermin from accessing food. *See* Cal. Health and Safety Code §114145(h) ("The dispensing compartment of a vending machine shall be equipped with a self-closing door or cover if the machine is located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment[.]"); Cal. Health and Safety Code §114303(a) ("Employee entrance doors to food preparation areas shall be self-closing and kept closed when not in use.") (mobile food facilities).

Plastic strips, such as those in use at Santa Rita Jail's kitchen, are not permanent

[1] *See* 15 Cal. Code of Reg. §1245(a) ("Kitchen facilities, sanitation, and food preparation, service, and storage shall comply with standards set forth in Health and Safety Code, Division 104, Part 7, Chapters 1-13, Sections 113700 et seq. California Retail Food Code.").

and do not prevent the entrance of birds, vermin, and other animals into Santa Rita Jail's kitchen. The absence of a permanent, solid barrier between the kitchen and the outdoors to prevent the entrance of such animals violates the California Retail Food Code, which is applicable to jails and prisons. Cal. Health and Safety Code §§114259, 114266(a); 15 Cal. Code of Reg §1245.

The California Health and Safety Code prohibits animals, rodents and birds in a food facility and does not hold that adequate remediation is to allow them entry and then hunt or trap them. The Code requires exclusion of animals and vermin from kitchen facilities by a solid barrier. Defendants refuse to do this. By not complying with health and safety standards, Defendants permit, daily, rodents and birds to enter the kitchen and create an unsanitary food preparation facility. On an objective analysis, defendants have failed to take adequate measures. *See Robles v. Michienzi*, 902 F.2d 40, 1990 WL 54272 (9th Cir. 1990) (allegation of feces in food given to the prisoners is sufficient for an Eighth Amendment claim).

In its order denying Plaintiffs' motion, the district court did not mention Section 114266, referring only to Section 114259 and noting that it did not expressly require a door to prevent vermin from entering a facility. This overly technical reading of one section of the governing statutes ignores Section 114266 and the rest of the code, which call for physical barriers to protect against vermin; and leads to an absurd result, where a food facility that permit the unmitigated entrance of vermin through a

huge opening is still be found in compliance with the Code.

Defendants' illegal refusal to install a sold barrier between the Jail's kitchen and the outdoors leading to an infestation of birds, vermin, and other animals in the Jail and unsanitary kitchen conditions also violates Plaintiffs' constitutional rights under the Fourteenth Amendment. "A prolonged pest infestation, specifically a significant infestation of cockroaches and mice," may be considered a deprivation sufficient to constitute a constitutional violation. *Sain v. Wood*, 512 F.3d 886, 894 (7th Cir. 2008). *See also Robles v. Michienzi*, 902 F.2d 40, 1990 WL 54272 (9th Cir. 1990) (allegation of feces in food given to the prisoners is sufficient for an Eighth Amendment claim); *Jackson v. Walker*, 2009 WL 1743639 (E.D. Cal. June 17, 2009) ("the state is obligated to provide nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it . . . the state health code, while not establishing 'constitutional minima,' is relevant in making a finding regarding the constitutionality of existing conditions."); *Williams v. Edwards*, 547 F.2d 1206, 1214 (5th Cir. 1977) ("In the past we have affirmed findings of constitutional violations based in part on state code violations . . . . State codes reveal to the District Judge the minimum standards by which the state itself proposes to govern itself concerning habitability. . . . State codes also are a valuable index into what levels of decency the public, expressing itself through the Legislature, is prepared to pay for. Therefore, we

approve the use of state sanitation and fire codes because in this manner the federal district judge can minimize his intrusion into the details of prison administration, allowing the state's own published standards to govern.")

The District Court pointed to the fact that the jail passed a scheduled health inspection in August 2020 and the pest control measures put in place in 2019 to support its order denying Plaintiff's motion for preliminary injunction. However, the court itself acknowledged that mouse droppings were found during the inspection (though they "appeared to be old"). While the inspector's declaration stated that the facility passed inspection "without further remedy required" [ER 011, l. 17, quoting declaration], the inspection reports attached to the declaration indicate that numerous items were flagged for correction. The inspection report for the bakery – which the declarant herself did not inspect – deducted points for the presence of vermin [ER 445] adding: "Observed several dry mouse droppings on a pallet in the upstairs dry storage area. Facility must be free of vermin activity. . . . Clean and sanitize area immediately." [ER 446] Points were also deducted for the "vermin proofing" item [ER 445] with a note to seal gaps at a walk in cooler "to prevent vermin issues," to be corrected within seven (7) days. [ER 447] Other items going to cleanliness were also flagged for correction, such as the improper storage of wet mops which allowed standing water to accumulate on the floor. *Id.* Plaintiffs submitted declarations chronicling vermin sightings and activities after the

date of this inspection, which were not disputed. [ER 009]

Similarly, the declaration submitted by the pest control employee does not counter the evidence submitted by the Plaintiffs. Indeed, the court noted in its order that the traps outside the kitchen caught "far more rodents than the traps inside the kitchen," acknowledging that there are still rodents. [Id] While the declaration stated that they had not caught a rat in several months, this was not stated as to the other pests seen by inmates such as mice, birds, and cockroaches. The pest control employee stated that their program "focuses on denying mice shelter by removing entry points," yet acknowledged that the jail "employs strip doors to mitigate entry into the kitchen" for birds. [ER 460, ¶15] Indeed, not a single defense declaration states unequivocally that there are no birds, vermin or rodents in the kitchen. Not a single defense declaration states that the kitchen does not permit the entry of birds and rodents.

Even if, however, the traps and other measures taken by Defendants were currently effective, which they are not, the threat of future harm of vermin and other animals wandering into the kitchen also violates Plaintiffs' rights under the Fourteenth Amendment. *See*, *e.g.*, *Drake v. Velasco*, 207 F. Supp. 2d 809 ("Aramark argues that Drake has only alleged the threat of future injuries. . . . In unsafe water cases, courts have allowed claims to proceed without a showing of present injury. . . . The Supreme Court observed that "[w]e would think that a prison inmate also could successfully

complain about demonstrably unsafe drinking water without waiting for an attack of dysentery." *Helling*, 509 U.S. at 33, 113 S.Ct. 2475. Eighth Amendment protection extends to future, as well as current serious health problems."); *Campbell v. Cal. Dep't of Corr. & Rehab.*, 2010 U.S. Dist. LEXIS 81998, *66 (ED Cal, 8/11/2010, S-07-1419 WBS GGH P) (a request for injunctive relief is "a claim for which no actual injury need be shown — imminent, foreseeable injury would be sufficient.").s

2. Defendants' Illegal Refusal to Install a Solid Barrier Between the Jail's Kitchen and the Outdoors Demonstrates Deliberate Indifference to Plaintiffs

Defendants were clearly aware of these long-standing problems. The vermin issues were brought to Defendants' attention in multiple ways including i) pending litigation in *Mohrbacher et al. v. Alameda County Sheriff's Office, et al.*, 3:18-cv-00050-JD in which Defendants ACSO and Aramark are both parties; ii) Plaintiffs' verbal complaints and written grievances [ER566 ¶ 3; ER 55 ¶ 2; ER 573 ¶ 1; ER 547 ¶ 2; ER 539 ¶¶ 2, 3); *see generally* SAC: ER 621¶¶ 70, 78, 21, 82, 85, 86, 90; iii) inmate strike [Id ¶5, 16]; iv) group grievance letters [ER 708, 713]; and v) this present case filed one year ago.

Nevertheless, Defendants refused to take the reasonable, and legally required, step of installing a solid barrier between the kitchen and the outdoors, thus causing an infestation of vermin, birds, and other animals that injures Plaintiffs. Defendants have

thus shown deliberate indifference towards Plaintiffs. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (deliberate indifference shown where (i) defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) defendant did not take reasonable available measures to abate that risk and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.).

By failing to perform the specific duty mandated by Sections 114259 and 114266 of the Health and Safety Code, namely to install a solid barrier between the kitchen and the outdoors, Defendants also demonstrated deliberate indifference. *Jensen v. Conrad*, 570 F. Supp. 114, 122-23 (D.S.C. 1983) ("Deliberate indifference may also be inferred from the failure of a governmental official to perform specific duties required under statute. . . . This inference arises from the fact that duties of governmental officials are generally defined at least in part by state or federal law. . . . The more a statute or regulation clearly mandates a specific course of conduct, the more it furnishes a plausible basis for inferring deliberate indifference from a failure to act, even without any specific knowledge of harm or risk. This is because failure to undertake a specific course of action in vindication of a general duty can reasonably be attributed to a bona fide difference of opinion as to how the duty should be performed. However, no such alternative explanation for nonfeasance can be raised

where the task mandated is specific and unequivocal.") (*quoting Doe v. New York City Department of Social Services*, 649 F.2d 134, 146 (2d Cir. 1981).

Defendants point to pest control measures put in place in 2019 to argue that they cannot be found to be deliberately indifferent to Plaintiffs. However, rodents and other pests continue to have access to the kitchen because the kitchen is open to the exterior. While this problem has a simple and obvious solution – a solid barrier (as required by statute) – Defendants have failed to implement this solution. Instead, they take remedial steps at the periphery, with pest deterrence and traps, while leaving the source of the problem unaddressed. This is particularly egregious because the solution is simple and relatively low-cost, as compared to the seriousness of the risk to both convicted inmates and pretrial detainees.

Numerous courts under similar facts have found similar Defendants deliberately indifferent. *See*, *e.g.*, *Bentz v. Hardy*, 638 Fed. Appx. 535, 537-38 (7th Cir. 2016) ("The defendants make much of the fact that Stateville employed a pest control company to spray for bugs once each month. But evidence of a pest control contract alone does not necessarily exculpate the defendants since persisting in an ineffective method of pest control may be evidence of deliberate indifference. . . . .The monthly sprayings may have been rendered entirely ineffective by the broken window . . . ."); *Lippert v. Hardy*, 2017 WL 3070713, *5 (N.D. Ill. 2017) ("Defendants also point out that Critter Ridder sprayed for pests and that sanitary measures were taken in the

kitchen, but such evidence does not necessarily exculpate the defendants . . . . Plaintiff has submitted sufficient evidence of . . . the defective windows . . . and that no measures were taken to prevent birds from entering.") (citations omitted); *Gray v. Hardy*, 826 F.3d 1000 (7th Cir. 2016) ("We accept the warden's point that a broken window at a detention facility is not, itself, a constitutional violation. . . . . But Gray is not presenting a stand-alone complaint about the windows. He asserts instead that the birds infesting the prison fly in through the windows, and that any remedy must involve fixing those entry points. . . . The warden . . . argues that the prison took reasonable steps to address the problems about which Gray complains, through its trimonthly bird removal program and its monthly exterminator visits. Gray asserts, however, from his personal experience, that these efforts were ineffective, perhaps because the vermin came right back in through the broken windows . . . .")

As a matter of common sense, the long-standing and well-documented infestation issues at the jail cannot be permanently solved so long as there is no solid barrier between the kitchen and the outdoors. This simple solution is all that the Plaintiffs asked of the District Court. Yet the District Court rejected the Plaintiff's argument that the California Retail Food Code required the use of a solid door rather than the plastic strips used by the jail to separate the kitchen from the outdoors. As discussed above, this conclusion is both incorrect and inapposite. It ignores provisions of the governing code, and more ignores the fact that a physical barrier –

not plastic strips – is the only real solution to the vermin problems at the Jail, and the Defendants' refusal to correct this deficiency evidences their "deliberate indifference" to the Plaintiffs' health and safety. *Bentz*, *supra*; *Lippert*, *supra*; *Gray*, *supra*; *Jensen*, *supra*; *Gordon*, *supra*.

B. Plaintiffs Are Entitled to a Preliminary Injunction Requiring Defendants to Have All Dishwares and Trays Sanitized per the California Health and Safety Code

Sanitizing all dishwares and trays per the California Health and Safety Code is required by California statutes and the Fourteenth Amendment. Defendants' ongoing refusal to sanitize all dishwares and trays is illegal and demonstrates deliberate indifference to Plaintiffs' federal constitutional rights.

1. Defendants' Refusal to Sanitize Dishwares and Trays Violates State Law and the Fourteenth Amendment

Section 114097 of the California Health and Safety Code provides:

> Equipment food-contact surfaces and multiservice utensils shall be effectively washed to remove or completely loosen soils by the use of manual or mechanical methods necessary, such as the application of detergents containing wetting agents and emulsifiers, acid, alkaline, or abrasive cleaners, hot water, brushes, scouring pads, high pressure sprays, or ultrasonic devices.

See also Section 113980 ("All food shall be . . . served so as to be pure and free from adulteration and spoilage . . . shall be protected from dirt, vermin . . . or other environmental sources of contamination . . . .").

As the evidence presented above indicates (*see* Statement of the Case, F. Defendants' Scullery System, *infra*), Defendants violation of these statutes is ongoing, with chronic problems involving dirty and unsanitary food trays and dishware.

Defendants' illegal refusal to sanitize dishwares and trays also violates Plaintiffs' constitutional rights under the Fourteenth Amendment Constitution. *Rhodes v. Chapman*, 452 U.S 337, 364 (1981). "A sanitary environment is a basic human need that a penal institution must provide for all inmates." *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1411 (N.D. Cal. 1984). Sanitation includes "the control of vermin and insects, food preparation, clean places for eating." *Rhodes v. Chapman*, 452 U.S. 337, 364 (1981) (Brennan, J., concurring). Food provided to inmates must not only be "nutritionally adequate," but also "prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it." *Ramos v. Lamm*, 639 F.2d 559, 570-71 (10th Cir. 1980).

2. Defendants' Illegal Refusal to Sanitize Dishwares and Trays Demonstrates Deliberate Indifference to Plaintiffs

The ongoing issue regarding unsanitary dishware and food trays was brought to Defendants' attention in multiple ways, including in numerous grievances since 2018, and in the complaints of *Mohrbacher v. Ahern*. Defendant Aramark is a defendant and

participant in the *Mohrbacher* case, and so was informed of these issues. In addition, there have been a significant number of grievances spanning at least two years on this issue. (See Exhibits A, B, C, D, & E attached to Dec. of J Swartz).

Nevertheless, Defendants refused to take the reasonable, and legally required, step of sanitizing all dishwares and trays. Defendants have thus shown deliberate indifference towards Plaintiffs. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (deliberate indifference shown where (i) defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) defendant did not take reasonable available measures to abate that risk and (iv) by not taking such measures, the defendant caused the plaintiff's injuries).

By failing to perform the specific duties mandated by Section 114097 and Section 113980 of the Health and Safety Code, namely to sanitize all dishwares and trays, Defendants also demonstrated deliberate indifference. *Jensen v. Conrad*, 570 F. Supp. 114, 122-23 (D.S.C. 1983) ("Deliberate indifference may also be inferred from the failure of a governmental official to perform specific duties required under statute. . . . This inference arises from the fact that duties of governmental officials are generally defined at least in part by state or federal law. . . . The more a statute or regulation clearly mandates a specific course of conduct, the more it furnishes a plausible basis for inferring deliberate indifference from a failure to act, even without

any specific knowledge of harm or risk.") (*quoting Doe v. New York City Department of Social Services*, 649 F.2d 134, 146 (2d Cir. 1981).

The District Court's reliance upon the declarations of Aramark employee Robin Weiss and Sgt. Barnes while discounting the numerous declarations provided by Plaintiffs was improper. Robin Weiss's brief declaration does not state his/her job duties, his/her qualifications, nor the amount of time he/she is at Santa Rita Jail. Astrid Taylor, a jail worker who work in the jail kitchen daily and work in the kitchen stated in their declarations that they do not know who Robin Weiss is and have never met Robin Weiss during their work shifts. [ER 169, ¶2] Robin Weiss' declaration states portion size is insured through the use of portioning scoops, but does not describe how scoops are used, nor what training is provided on portion control, or what quality control mechanisms exist for portion size control.

Robin Weiss and Sgt. Barnes provide differing descriptions of the process for washing. Sgt. Barnes states he is in the kitchen up to 8 hours a day. Sgt. Barnes states that trays are "scraped" and then washed. He does not mention a "dishwasher" or any machine used in the washing. Robin Weiss declares that trays are "hosed off", then placed in "agitating tubs with soapy water" and then rinsed and sanitized in a "dishwasher". Robin Weiss then states trays are "inspected" without identification of who does the inspecting nor a declaration from said person(s). Leanna Zamora, who has a Safe Serv certificate and worked in food services prior to her incarceration and

works in the scullery states that the machine is a sanitizer not a dishwasher. [ER179 ¶2] Prisoners report that trays are still regularly dirty, with residual food from previous meals stuck on the bottom and sides of the food tray. [Id. ¶5]

Plaintiffs are entitled to a preliminary injunction requiring Defendants to provide clean and sanitize dishwares and trays per the California Health & Safety Code.

C. Plaintiffs Are Entitled to A Preliminary Injunction Requiring Defendants To Institute Procedures To Ensure That Food Served is Sanitary, Sufficient, and Edible Per The California Health and Safety Code

The institution of procedures to ensure that food served is sanitary, sufficient, and edible is required by the California Health and Safety Code and the Fourteenth Amendment. Defendants' admitted refusal to institute such procedures is illegal and demonstrates deliberate indifference to Plaintiffs' federal constitutional rights. This Court should require the district court to issue a preliminary injunction requiring Defendants to institute such procedures.

1. Defendants' Refusal to Institute Procedures to Ensure that All Food Served is Sanitary, Sufficient, and Edible Violates State Law and the Fourteenth Amendment

Section 113980 of the California Health and Safety Code provides:

> All food shall be manufactured, produced, prepared, compounded, packed, stored, transported, kept for sale, and served so as to be pure and free from adulteration and spoilage; shall have been obtained from approved sources; shall be protected from dirt, vermin, unnecessary handling, droplet contamination, overhead leakage, or other environmental sources of contamination; shall otherwise be fully fit for human consumption; and shall conform to the applicable provisions of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875).

As the evidence presented above indicates (*see* Statement of the Case, H. Defendants' Provision of Inedible and Insufficient Food to the Inmates of Santa Rita Jail , *infra*), Defendants violation of this statute is ongoing, with chronic problems involving the provision of unsanitary, inedible, and insufficient food to the inmates of Santa Rita Jail. Plaintiffs have presented evidence that Aramark maintains operational practices that have "had a devastating impact on the quantity and quality of food provided to prisoners at SRJ." [ER 635 ¶ 57] Aramark's operational practices have resulted in appalling, filthy conditions in the kitchen, with rats and mice; where birds roost and cockroaches roam, as detailed by sworn declarations submitted by current inmates. [ER 541 ¶ 2; ER 591 ¶ 5; ER 619 ¶8,9, 12]

Defendants' illegal refusal to provide, sanitary, edible, and sufficient food also violates Plaintiffs' constitutional rights under the Fourteenth Amendment. The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." In accordance with this directive, it requires that prisoners receive food that is adequate to maintain health. *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993). The

Fourteenth Amendment sets a higher standard for the treatment of pretrial detainees than the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 537 (1979). There can be no "punishment," and if there is no "expressed intent to punish," the analysis "generally will turn on 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'" *Bell*, *supra* at 538 (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) (brackets in original). The condition must be "reasonably related to a legitimate nonpunitive objective, it does not, without more, amount to punishment." *Id*. at 539-40. Legitimate objectives include both insuring that the pretrial detainee is available for trial and to facilitate the effective management of the jail. *Id*. Neither inedible nor inadequate food serve a legitimate nonpunitive objective.

"Adequate food is a basic human need protected by the [Constitution]." *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996) (citing *Hoptowit v. Ray*, 682 F.2d at 1246), *amended by* 135 F.3d 27 1318 (9th Cir. 1998). "Food that is spoiled would be inadequate to maintain health." *Keenan*, 83 F.3d at 1091. *See also Doreh v. Rodriguez*, 723 Fed. App'x 530, 531 (9th Cir. 2018) (the provision of expired food can state a claim when plaintiff alleges resultant injury). "When 'the cumulative impact of the conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates,' the court must conclude that the conditions violate the

Constitution." *Rhodes v. Chapman*, 452 U.S 337, 364 (1981). *See also Nixson v. Batson*, 2006 WL 3306888 (N.D. Fla. Nov. 13, 2006) (finding Aramark liable for violation of prisoners' Eighth Amendment rights due to Aramark's provision of spoiled food to prisoners).

"A sanitary environment is a basic human need that a penal institution must provide for all inmates." *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1411 (N.D. Cal. 1984). Sanitation includes "the control of vermin and insects, food preparation, clean places for eating." *Rhodes v. Chapman*, 452 U.S. 337, 364 (1981) (Brennan, J., concurring). Food provided to inmates must not only be "nutritionally adequate," but also "prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it." *Ramos v. Lamm*, 639 F.2d 559, 570-71 (10th Cir. 1980).

"[I]nmates rely on prison officials to provide them with adequate sustenance on a daily basis." *Foster v. Runnels*, 554 F.3d 807, 814 (9th Cir. 2009). The "repeated and unjustified failure" to provide inmates adequate sustenance "'amounts to a serious depr[i]vation'" in violation of the Eighth Amendment. *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1259 (9th Cir. 2016) (quoting *Foster*, 554 F.3d at 814). "The more basic the need, the shorter the time it can be withheld." *Hoptowit*, *supra*, 682 F.2d at 1259. Insufficient food and water for inmates during a 19-hour period satisfied the objective prong of an Eighth Amendment violation. *Johnson v. Lewis*, 217 F.3d 726,

732 (9th Cir. 2000). Serving inmates a diet with insufficient calories for an extended period raises serious constitutional concerns. *Hutto v. Finney*, 437 U.S. 678 (1978); *see also Phelps v. Kapnolas*, 308 F.3d 180, 186 (2d Cir. 2002) (the deprivation of a nutritionally adequate diet for multiple days may underlie an Eighth Amendment claim).

"Courts have held that even temporary unsanitary conditions may result in an Eighth Amendment violation where the prisoner suffers injury. See *Sherman v. Gonzalez*, No. 1:09-cv-0420-LJO-SKO, 2010 U.S. Dist. LEXIS 70634, 2010 WL 2791565, at **4-6 (E.D. Cal. July 14, 2010) (plaintiff states a sufficiently serious deprivation from five-hour exposure to sewage where it seriously exacerbated plaintiff's asthma), rep. and reco. adopted, 2010 U.S. Dist. LEXIS 90121, 2010 WL 3432240 (E.D. Cal. Aug. 31, 2010)." *Garcia v. Foulk*, 2020 U.S. Dist. LEXIS 19339, *36 (ED Cal; 2:14-cv-2378 JAM DB P; 2/5/2020).

Once an inmate shows that there was a substantial deprivation of jail food, the burden of proof shifts to the defendants to prove that the jail provided adequate nutrition. *Cunningham v. Jones*, 567 F.2d 653, 660 (6th Cir 1977). In the present case, plaintiffs have made a prima facie case that defendant Aramark regular shorted inmates of food, including serving just slightly over half the carrots, 1.6 ounces instead of the 3 ounces as required. Accumulated over time, this is a significant amount of food as demonstrated by David Misch's weight loss and records. Fresh

fruits and vegetables are a premium item, as the jail food is high in sugar and white flour. And while David Misch has been persistent and vocal in his complaints, every inmate who receives that meal is similarly deprived of almost half his/her vegetable allotment.

A systematic failure to provide food in sufficient quantity to maintain normal health violates the Eighth Amendment. *See Phelps v. Kapnolas*, 308 F.3d 180, 187 (2d Cir. 2002) (inmate alleged he had been placed on nutritionally inadequate restricted diet for fourteen days); *Reed v. McBride*, 178 F.3d 849, 853-56 (7th Cir. 1999) (alleged deprivation of food was sufficiently serious and prison officials' deliberate indifference was obvious); *Simmons v. Cook*, 154 F.3d 805, 807-09 (8th Cir. 1998) (inmates were deprived of four consecutive meals); *Robles v. Coughlin*, 725 F.2d 12, 15-16 (2d Cir. 1983) (deprivation of meals for twelve days during a fifty-three day period); *Cunningham v. Jones*, 567 F.2d 653, 660 (6th Cir. 1977) (remanding for consideration of whether one meal per day which was provided was nutritionally adequate to maintain normal health).

2. Defendants' Illegal Refusal to Institute Procedures to Ensure that All Food Served is Sanitary, Sufficient, and Edible Demonstrates Deliberate Indifference to Plaintiffs

The ongoing issue regarding Defendants' lack of procedures to ensure that all food served is sanitary, sufficient and edible was brough to Defendants' attention in

multiple ways, including in numerous grievances since 2018, and in the complaints of *Mohrbacher v. Ahern*. Defendant Aramark is a defendant and participant in the *Mohrbacher case*, and so was informed of these issues. In addition, there have been over 135 grievances on these food issues spanning at least two years. [ER 273 thru 347]

Nevertheless, Defendants refused to take the reasonable, and legally required, step of instituting procedures to ensure that all food served is sanitary, sufficient and edible. Defendants have thus shown deliberate indifference towards Plaintiffs. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (deliberate indifference shown where (i) defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) defendant did not take reasonable available measures to abate that risk and (iv) by not taking such measures, the defendant caused the plaintiff's injuries).

By failing to perform the specific duties mandated by Section 113980 of the Health and Safety Code, namely to institute procedures to ensure that all food served is sanitary, sufficient and edible, Defendants also demonstrated deliberate indifference. *Jensen v. Conrad*, 570 F. Supp. 114, 122-23 (D.S.C. 1983) ("Deliberate indifference may also be inferred from the failure of a governmental official to perform specific duties required under statute. . . . This inference arises from the fact

that duties of governmental officials are generally defined at least in part by state or federal law. . . . The more a statute or regulation clearly mandates a specific course of conduct, the more it furnishes a plausible basis for inferring deliberate indifference from a failure to act, even without any specific knowledge of harm or risk.") (*quoting Doe v. New York City Department of Social Services*, 649 F.2d 134, 146 (2d Cir. 1981).

Defendant Aramark argues that it has established policies and practices which shield it from liability. Even assuming arguendo that defendant Aramark had fully enacted an appropriate policy, this does not absolve defendant Aramark of the responsibility of enforcing and carrying out that policy. And based upon the repeated and long-lasting issues with Santa Rita Jail's lack of food sanitation, food contamination and food spoilage, the routine failure to follow any existing defendant Aramark policy constitutes a custom or policy which overrides, for *Monell* purposes, defendant Aramark's other policies. *Redman v. County of San Diego*, 942 F.2d 1435, 1445, *citing City of Oklahoma v. Tuttle*, 471 U.S. 808, 823, (1985).

D. The District Court Erred in Issuing An Order Based upon Conclusory and Insufficient Declarations

The District Court's reliance upon the declarations of Aramark employee Robin Weiss and Sgt. Barnes and discounting of the numerous declarations provided by Plaintiffs was improper. "[W]hen the primary evidence introduced is an affidavit

made on information and belief rather than on personal knowledge, it generally is considered insufficient to support a motion for preliminary injunction." 11A Wright & Miller, Federal Practice and Procedure §2949 (2d ed.1995). See also *Chandler v. Coughlin*, 763 F.2d 110 (2d Cir. 1985) (reliance on affidavit for preliminary injunction improper where affidavit was both secondhand and factually sparse, with matters set forth therein only "upon information and belief); *Atari Games Corp. v. Nintendo of Am., Inc*., 897 F.2d 1572, 1575 (Fed.Cir.1990) (Vague or conclusory affidavits are insufficient to satisfy the movant's burden for a preliminary injunction). Courts have wide discretion to assess the affidavit's credibility and generally consider affidavits made on information and belief to be insufficient for a preliminary injunction. See 11A Charles Alan Wright et al., Federal Practice and Procedure §2949 (2d ed. 1995); See *Mullins v. City of New York*, 634 F. Supp. 2d at 373, 385, 390 n.115 ((declining to fully credit the "defendants' hearsay affidavit" and noting that while the court "may consider hearsay evidence in a preliminary injunction hearing . . . , a court may weigh evidence based on whether such evidence would be admissible under the Federal Rules of Evidence")

Aramark employee Robin Weiss' declaration is conclusory and skinny on details and facts. Robin Weiss provides no information on her/his qualifications or background, nothing on how often he/she is at the jail kitchen, nor her/his responsibilities with regard to the Santa Rita Jail kitchen. Robin Weiss does not give

any details on his/her opportunity to observe the Santa Rita Jail food preparation process. Astrid Taylor, a jail worker who work in the jail kitchen daily and work in the kitchen stated in her declaration that she does not know who Robin Weiss is and have never met Robin Weiss during her work shifts, [ER 169, ¶ 2] which explains why Robin Weiss' declaration is replete with conclusions unsubstantiated by facts and details.

What defendant Aramark offered are conclusory statements without identifying who is responsible for carrying out or ensuring that these tasks are properly executed. Neither do the other two Aramark employees, Martinez nor Reyes concur or support Weiss' conclusions, even though they are food supervisors, ostensibly Aramark employees who work fulltime at the jail and are in direct, daily contact with the inmate workers.

Robin Weiss' declaration states portion size is insured through the use of portioning scoops but does not describe how scoops are used, nor what training is provided on portion control, or what quality control mechanisms are in place for portion size control.

Members of the class, and kitchen Leanna Zamora and Astrid Taylor dispute many of the conclusory opinions offered by Robin Weiss, by providing clear and detailed descriptions of what does actually take place in the jail kitchen.

Robin Weiss and Sgt. Barnes provide differing descriptions of the process by

which trays are washed. Sgt. Barnes states he is in the kitchen up to 8 hours a day. Sgt. Barnes states that trays are "scraped" and then washed. He does not mention a "dishwasher" or any machine used in the washing. Robin Weiss declares that trays are "hosed off", then placed in "agitating tubs with soapy water" and then rinsed and sanitized in a "dishwasher". Robin Weiss then states trays are "inspected" without identification of who does the inspecting nor a declaration from said person(s). Leanna Zamora, who has a Safe Serv certificate and worked in food services prior to her incarceration and works in the scullery states that the machine is a sanitizer not a dishwasher demonstrated by a machine cycle of less than 5 minutes. [ER179 ¶2] Prisoners report that trays are still regularly dirty, with residual food from previous meals stuck on the bottom and sides of the food tray. [Id. ¶5]

Defendant Aramark also attempts to escape responsibility for their wholly unsanitary and inadequate food services by claiming that any lapses are "occasional." [ER 372] However, these problems are long standing, for years. Grievances on food contamination goes back at least three years from 2018, when Plaintiffs' counsel began receiving these grievances. Plaintiffs in support of this motion, have submitted multiple grievances on all manner of inedible food ranging from contamination by extraneous objects including razors to spoilage. [DR 273]

Furthermore, none of the declarations submitted by defendant Aramark verify or substantiate that Aramark's claims that food leaving the Santa Rita Jail kitchen is

not been contaminated by animal feces or insects, regularly or frequently. The Declaration of Joseph Martinez only rebuts three claims involving his conduct and does not deny the regular presence in the kitchen of vermin, birds and rodents, nor does he deny that food is contaminated by vermin or rodents. The Declaration of Margarita Reyes similarly, while denying seeing "rat poop on top of the trays," does not deny the presence of rodent feces or vermin in the kitchen and frequently in the food. Even the Manager, Robin Weiss, states that he/she has not seen cockroaches "falling" from air vents, and has not seen "feces or dead rodents in the food". Tellingly, Robin Weiss does not state that he/she has not seen cockroaches n the food. And none of these Aramark employees state that they were unaware or had been uninformed of these food complaints by prisoners of contaminated, including spoilt and inedible food and inadequate portions.

The best that defendant County has to offer is the declaration of Sgt. Barnes, who proffers conjecture. Sgt. Barnes' declaration is silent on food spoilage, but starts off his opinion by explaining that in reality, he has no basis for giving opinions because he does not observe the meal trays being put together. "[W]e are not working the food service lines…." [ER 454, l.25] Based on his lack of observation of the food line, Sgt. Barnes chooses to opine that although "it is possible for a tray to leave the kitchen unsealed" contamination or spoilage, " is highly unlikely". [ER 455 ¶15] Similarly, Sgt. Barnes states that he finds it also "highly unlikely that the razor

blades" found in prisoners food "were placed in their food prior to those inmates' receiving the food in the housing units." [ER 458 ¶35-36] Yet, since he and other deputies are not supervising the food lines, he has no first-hand knowledge of what is or what is not taking place when meal trays are assembled, including whether dangerous objects such as razors are being inserted into food being placed on the meal trays, or whether foods with contamination is being placed on trays destined for inmate consumption.

For the District Court to base its denial of Plaintiffs' motion for preliminary injunction on defendants' conclusory declarations replete with ultimate facts and no foundational facts demonstrating personal knowledge, while downplaying and minimizing Plaintiffs' declarations which are full of rich and detailed descriptions, is an abuse of discretion. " 'An abuse of discretion exists where the district court's decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact.' Am. Civil Liberties Union of N.J. v. Black Horse Pike Reg'l Bd. of Educ., 84 F.3d 1471, 1476 (3d Cir. 1996)." *Arrowpoint Capital Corp. v. Arrowpoint Asset Mgmt.*, LLC, 793 F.3d 313, 318 (3rd Cir. 2015) In Arrowpoint, the Court held that the District Court's rejection of submitted affidavits, while failing to hold an evidentiary hearing, amounted to error. *Arrowpoint*, supra, at 325.

This Court should hold that the District Court's order, which results from a

wholesale rejection of Plaintiffs' submitted affidavits, much of which is uncontradicted, and failure to hold an evidentiary hearing, amounts to error.

E. Plaintiffs Will Suffer Further Irreparable Harm if the Preliminary Injunctions Are Not Granted

If the requested preliminary injunctions are not granted, Plaintiffs will suffer further irreparable harm. David Misch and Marcus Felder, for example, have submitted declarations stating significant weight loss due to the insufficient food they receive. David Misch stated that some of the food upsets his stomach; the apples are so sour they hurt his mouth to eat, and he has had two bouts of gastroenteritis, caused by spoilt or contaminated food. Both David Misch and Marcus Felder both described the regular hunger they experience. David Misch stated that he is are always hungry, Marcus Felder states he is constantly hungry, even after meals, and that the hunger makes him short tempered. Both these men, class members, have described serious injuries. And out of 103 days, only eight (8) of those days, did David Misch receive fruit with his lunch, and when he did receive vegetables, 15% of the time, the vegetables were spoilt.

Kajuan Paschal was injured when he swallowed a piece of metal razor which contaminated his oatmeal. Even if the razor did not perforate his intestines, the incident resulted in the danger of imminent harm. Ebony Reeves described eating a cockroach in her sandwich, which caused her to throw up. Banning rodents and their

attendant rodent feces are important public health concerns because rodent feces are a cause of hantavirus, which causes a sometimes fatal pulmonary disease. Cockroaches are banned by public health due to the role of cockroaches in spreading microorganisms and pathogens. There is no justification for spoilt, unsafe, and contaminated food, produced under unsanitary conditions. Plaintiffs will suffer further irreparable harm if the requested preliminary injunctions are not granted.

F. The Balance of Equities and the Public Interest Tip In Plaintiffs' Favor

"A court must 'balance the interests of all parties and weigh the damage to each' in determining the balance of the equities." *CTIA – The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 852 (9th Cir. 2019) (*quoting Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009)). Rather than approaching the public interest assessment as a "balancing of the hardships, it is better seen" as a separate element with an inquiry on the "impact on non-parties rather than parties." *See id.* at 766. Where the government is a party, the two factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F3d 1073, 1092 (9th Cir. 2014), *citing Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009).

The Alameda County Sheriff's Office, a governmental entity, has no legitimate interest in depriving inmates of food, or in serving unsanitary or unsafe food. "[I]t cannot suffer harm from an injunction that merely ends an unlawful practice."

Rodriguez v. Robbins, 715 F.3d 1127, 1145 (9th Cir. 2013). And, any argument defendants raise to the effect that comporting with the Constitution will require resources is, by definition, not compelling. Complaints that a preliminary injunction is "prohibitively burdensome" on the government, have been considered flawed even where there are "severe logistical difficulties", involved in government avoiding practices that may run afoul of the Constitution. *Id.* at 1145. Protection of constitutional rights such as the Plaintiffs' under the Eighth and Fourteenth Amendments is a recognized compelling public interest, *see United States v. Raines*, 362 U.S. 17, 27 (1960), which "weighs heavily in the balancing of harms, for the protection of those rights is not merely a benefit to plaintiff but to all citizens." *Int'l Society for Krishna Consciousness v. Kearnes*, 454 F.Supp. 116, 125 (E.D. Cal. 1978).

G. Plaintiffs Lack An Adequate Remedy at Law

The only way to stop Defendants' routine and daily conduct, which has continued for almost three years, uncorrected, is to enjoin Defendants' conduct. Defendants have shown that they are resistant to correcting these harmful actions. Money damages are inadequate to address the harms the Plaintiffs have and will suffer because the conditions giving rise to their injuries would nevertheless continue unabated, and there is no legal basis to continue and sanction the imposition of cruel and unusual punishment. Money damages cannot ameliorate the daily hunger the prisoners experience. Timely enforcement of statutory standards of sanitation is

urgently needed to protect and sustain plaintiffs' basic health. "[I]t is clear that it would not be equitable or in the public's interest to allow the state to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (*quoting U.S. v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011)); *Arizona Dream Act Coalition v. Brewer*, 855 F.3d 957, 978 (9th Cir. 2017). Furthermore, administrative remedies through the prison grievance process, despite repeated applications, have proven futile. Only by enjoining Defendants' wrongful conduct, will additional injuries cease.

H. If the Court is Not Now Inclined to Grant Plaintiffs' Requested Preliminary Injunctions, the Court Should Require the District Court to Hold an Evidentiary Hearing

If this court considers that there are some remaining factual disputes, then the appropriate step forward is to permit quick, early discovery of the remaining dispute issues raised by plaintiffs' preliminary injunction motion, and to hold an evidentiary hearing. *See Thomas v. County of Los Angeles*, 978 F.2d 504 (9th Cir. 1992) (Directing trial court to hold evidentiary hearings to resolve factual dispute before entering preliminary injunction).

VII. CONCLUSION

For the reasons above, this Court should reverse the District Court's order and

require Defendants to: A) to install a solid barrier between the kitchen and the outdoors to prevent vermin and other animals from entering the Santa Rita Jail's kitchen; B) to have all dishwares and trays sanitized; and C) to institute procedures to ensure that food served is sanitary, sufficient, and edible per the California Health and Safety Code.

Dated: August 12, 2021

Respectfully submitted,

LAW OFFICES OF YOLANDA HUANG

By: *s/ Yolanda Huang*
Yolanda Huang
Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached Answering Brief of Defendants-Appellees is proportionately spaced, has a typeface of 14 points or more and contains, from the Introduction through the Conclusion, approximately 13,875 words (less than the allowable 14,000 words) including headings and quotations. In determining the number of words contained in the brief, the undersigned has relied on the word counting system of the word-processing program used to prepare the brief.

Dated: August 12, 2021

s/ Yolanda Huang

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 12, 2021

s/ Yolanda Huang