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IN THE UNITED STATES DISTRICT COURT
FOR THE
GREAT FALLS DIVISION

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DAVIS, NEVAEH
DECELLESGUARDIPEE, JOE
DEMONTINEY,
CHRISTOPHER DEMONTINEY

Case No. CV-25-108-GF-JTJ

**DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND
AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES,
AND DEMAND FOR JURY
TRIAL**

BULL, ALBERT DENNY, TYLER
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LUNDSTROM, NAKITA

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JAYLEE MARSETTE, RONALD
MUDD, LEVI NEWTON, WILLIAM
NOTTINGHAM,
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NEWLY SIVERTSEN, ADAM
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JASON SPADT, SHELDEN
THIBERT, KEVIN TROMBLEY,
VINCENT VILLA, JAMES
WALKER, JENNIFER
WALKINGEAGLE, JEREMY
WELLING, JOHN WHEELER,
ERIC WICK, DAVID WILLMAN,
STEVEN WILSON, FRED
WOODS and BLAINE YANDELL,

Plaintiffs,

v.

SUMMIT FOOD SERVICE, LLC and
DOES 1-5,

Defendants Summit Food Service, LLC, Tasha Cummins, and Joy Smith
("Defendants"), through their counsel of record, Browning, Kaleczyc, Berry &

Hoven, P.C., submit the following Answer to Plaintiff Heavenlee Sears et al.'s ("Plaintiffs") Second Amended Complaint and Demand for Jury Trial.

FIRST DEFENSE

FAILURE TO STATE A CLAIM

Plaintiffs' Complaint fails to state a claim against the Defendants upon which relief can be granted.

ANSWER

Defendants admit, deny and assert with respect to the allegations contained in Plaintiffs' Second Amended Complaint as follows:

SUMMARY OF ACTION

1. In response to paragraph 1, Defendants deny the same.
2. In response to Paragraph 2, Defendants admit the same.
3. In response to Paragraph 3, Defendants admit the same.
4. In response to Paragraph 4, Defendants admit the same.
5. In response to Paragraph 5, Defendants lack sufficient knowledge to affirm or deny the allegation that food containing contaminated human blood was served and therefore deny the same.
6. In response to Paragraph 6, Defendants lack sufficient knowledge to affirm or deny the allegation that any of the alleged blood was contaminated with Hepatitis C. The remaining allegations of Paragraph 6 are denied.

7. In response to Paragraph 7, Defendants deny the same.

8. In response to Paragraph 8, Defendants deny the same.

JURISDICTION AND VENUE

9. In response to Paragraph 9, Defendants lack sufficient knowledge to affirm or deny the allegation that the Plaintiffs are citizens and residents of Montana and therefore deny the same.

10. In response to Paragraph 10, Defendants admit the same.

11. In response to Paragraph 11, Defendants admit the same.

12. In response to Paragraph 12, Defendants admit the same.

13. In response to Paragraph 13, Defendants admit the Court has subject matter jurisdiction and denies the remaining allegations.

14. In response to Paragraph 14, Defendants admit that this Court has personal jurisdiction over the named Defendants. The remaining allegations of Paragraph 14 are denied.

15. In response to Paragraph 15, Defendants admit that venue is proper in the Great Falls Division of the Federal District Court of Montana. The remaining allegations of Paragraph 15 are denied.

FACTUAL ALLEGATIONS

16. In response to Paragraph 16, Defendants deny that they were preparing any food to be served to inmates. The remainder of the allegations are admitted.

17. In response to Paragraph 17, Defendants admit that an Inmate suffered a nosebleed while on the serving line serving food into trays around 11:12 a.m., and that Defendant Cummins was supervising on the line at the same time. The remaining allegations of Paragraph 17 are denied.

18. In response to Paragraph 18, Defendants admit that a small amount of the Inmate's blood entered the pan from which food was being served. The remaining allegations of Paragraph 18 are denied.

19. In response to Paragraph 19, Defendants admit that Inmate Henderson threw out most of the food in the subject pan. The remaining allegations of Paragraph 19 are denied.

20. In response to Paragraph 20, Defendants admit that Defendant Cummins placed the remaining food in the pan back into the serving area. The remaining allegations of Paragraph 20 are denied.

21. In response to Paragraph 21, Defendants deny the same.

22. In response to Paragraph 22, Defendants admit that Defendant Cummins advised Defendant Smith of an inmate having a bloody nose, and that some of the blood entered a pan of food. The remaining allegations of Paragraph 22 are denied.

23. In response to Paragraph 23, Defendants lack sufficient knowledge to affirm or deny that the Inmate whose blood fell into the pan was positive for Hepatitis C and therefore denies the same.

24. In Response to Paragraph 24, Defendants admit that some of the remaining food in the subject pan was served to 17 inmates but deny that such food was contaminated by such blood for lack of information sufficient to form a belief about the same. These 17 meals were only placed on Cart 3 of that lunch service, which was only delivered to Station 2 in the jail (pods G, H, J, and K). After which, the balance of the food left in the pan was removed from the serving line and thrown out. A new tray was placed on the line and properly served to the remaining inmates. The remaining allegations of Paragraph 24 are denied.

25. In response to Paragraph 25, Defendants deny the same.

26. In response to Paragraph 26, Defendants lack sufficient knowledge to affirm or deny the allegations and therefore deny the same.

27. In response to Paragraph 27, Defendants lack sufficient knowledge to affirm or deny the allegation that plaintiffs were subsequently made aware that the Inmate who bled had Hepatitis C and therefore deny the same.

28. In response to Paragraph 28, Defendants lack sufficient knowledge to affirm or deny the allegations identifying what Plaintiffs experienced and therefore deny the same.

29. In response to Paragraph 29, Defendants deny the same.

30. In response to Paragraph 30, Defendants admit all potentially affected inmates were offered testing for Hepatitis C. Defendants lack sufficient knowledge

to affirm or deny the remaining allegations of Paragraph 30, and thus the same are denied.

31. In response to Paragraph 31, Defendants lack sufficient knowledge to affirm or deny the allegations and therefore deny the same.

32. In response to Paragraph 32, Defendants lack sufficient knowledge to affirm or deny the allegations and therefore deny the same.

33. In response to Paragraph 33, Defendants lack sufficient knowledge to affirm or deny the allegations of Paragraph 33, and thus they are denied.

34. In response to Paragraph 34, Defendants lack sufficient knowledge to affirm or deny these allegations and therefore deny the same.

FIRST CAUSE OF ACTION

Negligence

35. In response to Paragraph 35, Defendants incorporate the foregoing answers as if fully set forth here.

36. In response to Paragraph 36, this allegation constitutes a legal conclusion to which no answer is required. However, Defendants admit that they had a duty of reasonable care. Defendants deny the remaining allegations of Paragraph 36.

37. In response to Paragraph 37, Defendants admit that 17 trays of food from the subject pan were served to inmates. Defendants deny whether such food was actually contaminated for lack of information sufficient to form a belief about the same. Defendants deny the remaining allegations of paragraph 37.

38. In response to Paragraph 38, Defendants deny the same.

39. In response to Paragraph 39, Defendants admit Cummins and Smith were acting in the course and scope of their employment. Defendants deny they served or allowed to be served contaminated food and that doing so would be in pursuit of the interests of Summit. Other allegations are denied.

40. In response to Paragraph 40, Defendants deny the same.

41. In response to Paragraph 41, Defendants deny the same.

SECOND CAUSE OF ACTION
42 U.S.C § 1983

42. In response to Paragraph 42, Defendants incorporate the foregoing answers as if fully set forth here.

43. In response to Paragraph 43, this paragraph contains a legal conclusion to which no response is required. To the extent any answer is required, Defendants deny the allegations of Paragraph 43.

44. In response to Paragraph 44, Defendants admit that Defendants Cummins and Smith knew proper food preparation and service procedures. Defendants deny the remaining allegations of Paragraph 44.

45. In response to Paragraph 45, Defendants deny the same.

46. In response to Paragraph 46, Defendants deny the same.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Montana Constitutional Rights

47. In response to Paragraph 47, Defendants incorporate the foregoing answers as if fully set forth here.

48. In response to Paragraph 48, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants deny the same.

49. In response to Paragraph 49, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants deny the same.

50. In response to Paragraph 50, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants assert the Montana Constitution speaks for itself.

51. In response to Paragraph 51, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants assert the Montana Constitution speaks for itself.

52. In response to Paragraph 52, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants deny the same.

53. In response to Paragraph 53, Defendants deny the same.

54. In response to Paragraph 54, Defendants deny the same.

55. In response to Paragraph 55, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants deny the same.

56. In response to Paragraph 56, Defendants deny the same.

FOURTH CAUSE OF ACTION
Battery

57. In response to Paragraph 57, Defendants incorporate the foregoing answers as if fully set forth here.

58. In response to Paragraph 58, Defendants deny the same.

59. In response to Paragraph 59, Defendants deny the same.

60. In response to Paragraph 60, Defendants admit Cummins and Smith were acting in the course and scope of their employment. Defendants deny they served or allowed to be served contaminated food and that doing so would be in pursuit of the interests of Summit. Other allegations are denied.

61. In response to Paragraph 61, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants deny the same.

FIFTH CAUSE OF ACTION
Punitive Damages

62. In response to Paragraph 62, Defendants incorporate the foregoing answers as if fully set forth here.

63. In response to Paragraph 63, Defendants deny the same.

64. In response to Paragraph 64, Defendants deny the same.

65. In response to Paragraph 65, Defendants admit Cummins and Smith were acting in the course and scope of their employment. Defendants deny they served or allowed to be served contaminated food and that doing so would be in pursuit of the interests of Summit. Other allegations are denied.

66. In response to Paragraph 66, this paragraph is a legal conclusion for which no answer is necessary. To the extent any answer is required, Defendants deny the same.

67. In response to Paragraph 67, Defendants deny the same.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses:

1. CLAIMS BARRED BY FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES: Pursuant 42 USCS § 1997e(a), the claims of any plaintiff who failed to fully exhaust their administrative remedies before filing suit are barred.

2. CLAIMS BARRED BY FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES: To the extent any of the named plaintiffs have failed to exhaust any administrative remedies pursuant to the policies and procedures of the Cascade County Detention Center or Federal regulations, those claims are barred.

3. NO BREACH OF CONSTITUTIONAL RIGHTS: Plaintiffs failed to specifically plead which rights, if any, under the Montana and Federal constitutions were allegedly violated. Defendants assert no such rights were violated as a result of the subject incident alleged in the Complaint.

4. NO CONSTITUTIONAL CLAIMS: Certain rights under the Montana and Federal Constitutions may not be self-executing, and Plaintiffs failed to specifically plead which rights were allegedly violated as a result of the allegations in the subject Complaint.

5. CONTRIBUTORY NEGLIGENCE: Some of the Plaintiffs' alleged damages, if any, were caused or contributed to by some of the Plaintiffs' own negligence or fault, and therefore, some of the Plaintiffs' recovery herein is either barred or must be reduced in proportion of negligence or fault attributable to those Plaintiffs.

6. COMPARATIVE FAULT: To the extent any of the inmates who were personally involved in the service of the subject food are plaintiffs herein, their liability for serving the contaminated food should be compared to the Defendants' liability.

7. NO CAUSATION: Defendants did not cause Plaintiffs' alleged damages.

8. NO CAUSATION AND NO DAMAGES: If and to the extent anyone actually contracted Hepatitis C as a result of the incident alleged in the Complaint,

the probability of which is miniscule, damages should be limited because Hepatitis C is treatable and curable.

9. NO CAUSATION: Hepatitis C cannot be transmitted via ingestion of blood droplets on food.

10. NO BATTERY: Plaintiffs' allegations fail to properly allege the intentional element required for the civil tort of battery and, therefore, such claim should be dismissed.

11. NO LIABILITY AS TO MOST CLAIMANTS: Plaintiffs' claims herein should be dismissed as to all but 17 individuals who actually received food from the subject serving tray. No other persons were exposed or could have been exposed as a matter of fact.

12. DAMAGES LIMITED: Pursuant to MCA § 27-1-308, Plaintiff's compensatory damages for medical services are limited to the amounts paid for such services.

13. DAMAGES LIMITED: Damages must be limited by the Prison Litigation Reform Act.

14. DAMAGES LIMITED: Pursuant 42 USCS § 1997e(e), any plaintiff failing to show physical injury is barred from recovering for mental or emotional injury related to the Complaint.

15. FAILURE TO MITIGATE: Plaintiffs may have failed to mitigate their damages by failing to follow testing and treatment options and protocols.

16. ATTORNEY’S FEES: If attorney’s fees are awarded, they must be reasonable and consistent with the Prison Litigation Reform Act.

17. NO CAUSATION AND NO DAMAGES: To the extent the source inmate may not have had an active viral load of Hepatitis C, it is unlikely the virus was transmitted to anyone in the subject incident alleged in the Complaint. As such, Plaintiffs have no damages.

18. NO COMPENSATORY DAMAGES: Plaintiffs incurred no compensatory damages as a result of the allegations in the Second Amended Complaint.

19. NO PRE-JUDGMENT INTEREST: Plaintiffs have no right to pre-judgment interest because their damages are not certain or capable of being made certain by calculation and the right to recover did not vest on any particular day. MCA § 27-1-211.

20. PUNITIVE DAMAGES: Plaintiffs’ Second Amended Complaint, to the extent it seeks punitive damages pursuant to MCA § 27-1-221, violates Defendants’ due process rights under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Montana because of lack of sufficient standards governing such damage awards. Such claim also violates Defendants’ rights to protection from “excessive fines” as provided in the Eighth

Amendment of the United States Constitution and Article II Section 22 of the Constitution of the State of Montana.

Defendants reserve the right to amend their Answer to add additional defenses that become known during the course of discovery. The answering Defendants have asserted the foregoing affirmative defenses upon information and belief that they are or may be applicable to the present claim presented by Plaintiffs. In the event the affirmative defenses are legally or factually unwarranted, any such inapplicable affirmative defenses will be voluntarily withdrawn at the close of discovery. Likewise, any additional information or any additional affirmative defenses which become known through the course of discovery will be asserted.

WHEREFORE, having answered Plaintiffs' Complaint, Defendants respectfully pray for judgment as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. That Judgment be entered in favor of Defendants and against Plaintiffs;
3. For costs and fees allowed by law; and
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendants demand this matter be tried by a jury.

DATED this 17th day of July, 2026.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/Michael L. Rausch

Michael L. Rausch

Chad E. Adams

Noah P. Gipson

Attorneys for SUMMIT FOOD SERVICE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2026, a true copy of the foregoing was served via ECF to the following parties:

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