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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

HEAVENLEE SEARS, et al., Plaintiffs, vs. SUMMIT FOOD SERVICE, LLC, TASHA CUMMINS, and JOY SMITH, Defendants.	Cause No. CV-25-108-GF-JTJ PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT JOINING ADDITIONAL PLAINTIFFS
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Plaintiffs, through counsel, move the Court pursuant to Fed. R. Civ. P. 15(a)(2), 16(b)(4), 20(a)(1), and 21 for leave to file the proposed Third Amended Complaint and Demand for Jury Trial attached to this motion as Exhibit A, which joins five (5) additional plaintiffs: Jittawee Bearcub, James Davis, Charles Devereaux, Joshua McKague, and Susan Rainingbird. Each proposed plaintiff was incarcerated at the Cascade County Detention Center on September 28, 2025 according to the roster provided by the Cascade County Sheriff's Office. The proposed Third Amended Complaint asserts the same claims, against the same Defendants, arising out of the same September 28, 2025, incident that is already before the Court. It adds no new claims, theories, or defendants.

Plaintiffs further request that the Court set a final deadline of 30 days after entry of its order for any motion seeking to join additional plaintiffs who (1) were incarcerated at the Cascade County Detention Center on September 28, 2025, and (2) allege that they consumed food involved in the contamination incident. A final joinder deadline will provide the parties and the Court with certainty regarding the composition of the plaintiff group well in advance of the June 4, 2027, discovery deadline. Plaintiffs further request that any later-filed action arising from the same incident be consolidated with this action, as appropriate, under Fed. R. Civ. P. 42(a) for discovery and pretrial proceedings.

Pursuant to L.R. 15.1, the proposed Third Amended Complaint is attached as Exhibit A. It is identical to the operative Second Amended Complaint (Doc. 21) except for the addition of the proposed plaintiffs to the caption and to the alphabetical list of plaintiffs. This motion is supported by the accompanying Brief in Support and the Declaration of Samir F. Aarab.

Pursuant to L.R. 7.1(c)(1), Plaintiffs' counsel contacted Defendants' counsel regarding this motion on July 29, 2026. Defendants object.

Respectfully submitted September 9, 2026.

By: /s/ Samir F. Aarab
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/s/ Caitlin Boland Aarab
BOLAND AARAB PLLP

/s/ John Heenan
HEENAN & COOK

/s/ Timothy M. Bechtold
BECHTOLD LAW FIRM PLLC

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2026, a true and correct copy of the foregoing Motion for Leave to File Third Amended Complaint was served by CM/ECF on the following counsel of record:

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Chad E. Adams
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Attorneys for Defendants

By: /s/ Charlotte Gwinn
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EXHIBIT A

Proposed Third Amended Complaint and Demand for Jury Trial

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

HEAVENLEE SEARS, JORDAN
AHENAKEW, CHARLOTTE
ANDRADE, COLE BAD HAWK,
MATTHEW BATTLE, CRYSTAL
BLAKELY, BRADLEY
BOULDUC, KYLE BROCKIE,
SHAWNA BROWN, JOSEPH
BROWN SR., MARSHALL BUCK

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

**[PROPOSED] THIRD
AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

ELK, EMMETT BUCKLES III,
PERRY BULLOCK, MARK
BURGESS, AMBER BURNETT,
TYLOR BUTTOLPH, TWILA
COCHRAN, ERIC COMBASS,
TARAH COUTURE, MONTANA
COVINGTON, CHAZ COX,
TRAVIS DABLER, ROSS DALE,
CODY DAVIDSON, SARAH
DAVIS, NEVAEH DECELLES-
GUARDIPEE, JOE
DEMONTINEY, CHRISTOPHER
DEMONTINEY BULL, ALBERT
DENNY, TYLER DILLON,
TRISTAN DODGE, MARSHAL
DUBOIS, ERYN FERGUSON,
HEATHER FOX, JAMES
GUARDIPEE III, KAYLOB
GARFIELD, DANIEL GARZA,
ANGELA GONYEA, MICHAEL
HAGMAN, JESSY JAMES
ZACHARIAH HARWOOD,
PATRICK HENDERSON,
JONATHAN HENDERSON,
KASEY HUGS, TORI
HUTZENBIELER, KAYLEE
JACKSON, TAISA JAIMES,
JEZREAL KERR, JENELL LEO,
HOLLEY LEO, KYLE
LEWELLEN, ALISSA
LOCKMAN, GLORIA LUCERO,
JOSHUA LYONS, MICHAEL
MAHSEELAH, RUSTY
MARCEAU, ANTHONY
MELBOURNE, MICHAEL

MIZENKO, PAYTON
MONTCLAIR, DAVID MOORSE,
STEPHANIE NAVA, RICHARD
NIEMAN, JORDAN JONATHAN
NORUNNER, BLAINE OLDS,
KATRINA PALMER, ALBERO
PICOTTE JR., JAYLENE
PINKERTON, CHRISTOPHER
PLOUFFE, SIDNEY
PUDERBAUGH, DANIELLE
REBIMBAL, JOSEPH
REGIMBAL JR., JAMES
REYNOLD SR., FELICIA
ROBERTS, PAYTON SALIVA,
NEIL SAMOY, CHARLES
SANCHEZ, FRANK SANCHEZ,
KOLBY SCHMIDT, JAMES
SCHRECK, RYAN SHARP,
GORDON SMALL, SASHEN
SMITH, EVAN SPRY, KELSEY
STAIGMILLER, SIERRA
STANLEY, LANCE STODDARD
SR., HUNTER UNFRED, RAVEN
VOLKOMENER, MICHAEL
WAKEFORD, DIANE WALTERS,
BRANDON WEASELBOY,
RUSSELL WEAVING, CANDEN
WILKE, ROBERT AHENAKEW,
BRIAN AZURE, CURTIS
BABBITT, ERIC BARTLETT,
MARITA BEAR, NICHOLAS
BENJAMIN, JENNA BLAIR,
ROBERT BURSHIA JR., DAMON
CASTILLO SR., DANIEL
CHAPMAN, FORREST

CHURCH, MITCHELL
CONWAY, DANIEL
CRISTOFANO, SHAUN
DEBERRY, JAMES DENNIS,
ABRIANNE DESERLY,
MICHAEL DOWNING,
BRYLYNN FARMER,
LAWRENCE FASTHORSE,
JOHN FOWLER, KALEB
FREYHOLTZ, JEREMIAH
GIDEON, RODNEY GLADUE
JR., AUSTIN GOINGS,
HARMONIE GRAY WAGNER,
JOEL HADLEY III, AUSTIN
HAGMAN, JORDAN HATCH,
GABRIEL HAZARD, JOHN
HOLTZ, DEVLIN HOWARD,
JOHNNY HUNTER, THOMAS
JONES, RONALD KEMP,
MONTIE KOMEOTIS, LILLIAN
LAPIER, CHRISTOPHER
LEDEAU, FRANCISCO LITTLE
YOUNG MAN, ECHO LONG,
LATISA LUJAN, EMIL
LUNDSTROM, NAKITA
MARTIN, EUSEBIO MCGILLIS,
JAYLEE MARSETTE, RONALD
MUDD, LEVI NEWTON,
WILLIAM NOTTINGHAM,
RONALD PEARCE, OLIVER
PEROTI, SARAH PFAFF,
JUSTIN POPIEL-HANSON,
DALTON POWER, DIALLO
REDD, DEREK RIGHTHAND,
EMILIO RIVENES, JUAN

RODRIGUEZ, COREY ROGERS,
JOSHUA SCHMIEDEKE, SCOTT
SCHOENEN, COLIN
SCHWARTZ, TRISTEN SEE
JOHNSON, JUSTIN SHAW,
NEWLY SIVERTSEN, ADAM
SMITH, TYLER SNYDER,
JASON SPADT, SHELDEN
THIBERT, KEVIN TROMBLEY,
VINCENT VILLA, JAMES
WALKER, JENNIFER
WALKINGEAGLE, JEREMY
WELLING, JOHN WHEELER,
ERIC WICK, DAVID WILLMAN,
STEVEN WILSON, FRED
WOODS, BLAINE YANDELL,
JITTAWEE BEARCUB, JAMES
DAVIS, CHARLES
DEVEREAUX, JOSHUA
MCKAGUE, and SUSAN
RAININGBIRD

Plaintiffs,

v.

SUMMIT FOOD SERVICE, LLC,
TASHA CUMMINS, and JOY
SMITH,

Defendants.

Plaintiffs bring this action against Defendants Summit Food Service, LLC, (“Summit”), Tasha Cummins, and Joy Smith and submit their Complaint and Demand for Jury Trial as follows:

SUMMARY OF ACTION

1. Plaintiffs were each inmates in the Cascade County Detention Center (“CCDC”) on or about September 28, 2025, and bring this action against Defendants for negligence and other violations in the service of food contaminated by human blood to CCDC inmates on that date.

2. Summit is a South Dakota based company that was providing food services at CCDC on or about September 28, 2025.

3. Tasha Cummins was an employee acting in the course and scope of her employment with Summit who was participating in and supervising the preparation and serving of the meal at issue at CCDC on September 28, 2025.

4. Joy Smith was an employee acting in the course and scope of her employment with Summit who was participating in and supervising the preparation and serving of the meal at issue at CCDC on September 28, 2025.

5. Summit, through its employees acting in the course and scope of their employment, served food it knew or should have known

was contaminated by human blood to Plaintiffs at CCDC on or about September 28, 2025.

6. The individual whose blood contaminated the food at issue was positive for Hepatitis C.

7. Plaintiffs were each provided food contaminated by human blood by Defendants on or about September 28, 2025 and were thereby damaged.

8. Through this Complaint, Plaintiffs seek to remedy these harms for being served food contaminated with Hepatitis C infected human blood on or about September 28, 2025, by Defendants.

JURISDICTION AND VENUE

9. Plaintiffs are citizens and residents of Montana.

10. Summit is a New Mexico limited liability company with its principal place of business in South Dakota.

11. On information and belief, Tasha Cummins is a citizen and resident of Montana.

12. On information and belief, Joy Smith is a citizen and resident of Montana.

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as Plaintiffs' claims under 42 U.S.C. § 1983 arise under the Constitution of the United States.

14. The exercise of personal jurisdiction over Defendants comports with both due process and Montana's long-arm statute as each Defendant is either found in Montana or purposefully directed activities into Montana. Moreover, Plaintiffs' claims arise out of this contact with Montana, including the transaction of business within Montana, entry into a contract for services to be rendered in Montana, and the commission of acts resulting in the accrual of a tort action within Montana.

15. Venue is proper in the Great Falls Division pursuant to Local Rule 1.2(c)(3) and 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claim occurred in Cascade County, Montana.

FACTUAL ALLEGATIONS

16. On September 28, 2025, Defendants were preparing food and supervising the preparation of food to be served for lunch to inmates at CCDC that same day.

17. At approximately 11:12 a.m. that day, an individual inmate working on preparing and serving food while being supervised by Defendants Cummins and Smith suffered a nosebleed during preparation of the meal.

18. The individual's blood contaminated the food being prepared.

19. Another individual inmate being supervised by Defendants Cummins and Smith witnessed the contamination and attempted to dispose of the contaminated food.

20. Defendant Cummins prohibited the individuals from disposing of the contaminated food despite being informed of the contamination, explaining that inmates could "scoop around" the blood.

21. Defendant Cummins directed the inmates to place the contaminated food back into the serving line.

22. On information and belief, Defendant Smith was supervising Defendant Cummins and was promptly informed of the incident and, despite knowing that blood had contaminated food, failed to ensure that the contaminated food was removed from the meal prior to service.

23. The individual whose blood fell into the food was positive for

Hepatitis C.

24. The blood-contaminated food was ultimately served to inmates of CCDC on September 28, 2025.

25. Plaintiffs here were each inmates of CCDC who were served the contaminated food on September 28, 2025.

26. Plaintiffs each either saw the blood in the tray of food served to them on September 28, 2025, or were later made aware that the food they had been served was contaminated with human blood.

27. Plaintiffs were each subsequently made aware that the individual whose blood had contaminated the food served to them on September 28, 2025, was positive for Hepatitis C.

28. Plaintiffs experienced, among other things, revulsion, disgust, anger, horror, humiliation, embarrassment, despair, anxiety, worry, concern, and nausea at being served food contaminated with human blood.

29. Plaintiffs experienced, among other things, further revulsion, disgust, anger, horror, humiliation, embarrassment, despair, anxiety, worry, concern, and nausea when they were informed that the blood in the food was positive for Hepatitis C.

30. Plaintiffs have been offered bloodborne pathogen testing after the incident on September 28, 2025, and have been informed they will need to re-test 60 to 90 days after initial testing.

31. Some of Plaintiffs have had to pay for their own bloodborne pathogen testing.

32. Some of Plaintiffs have since tested positive for the first time in their lives with Hepatitis C.

33. Plaintiffs who have tested positive for Hepatitis C for the first time after the incident on September 28, 2025, have experienced further revulsion, disgust, anger, horror, humiliation, embarrassment, despair, nausea, anxiety, worry, and concern, among other things, as a result of being informed they have Hepatitis C and have further experienced, among other things, jaundice, weight loss, confusion, and fatigue.

34. Plaintiffs who have tested positive for Hepatitis C for the first time after the incident on September 28, 2025, have incurred medical expenses and are likely to incur additional medical expenses in the future treating Hepatitis.

FIRST CAUSE OF ACTION
Negligence

35. Plaintiffs incorporate the above allegations as if fully set forth here.

36. Defendants assumed or otherwise owed Plaintiffs a duty of care to prevent food Defendants knew or should have known was contaminated with human blood from being served to Plaintiffs.

37. Defendants breached this duty of care by prohibiting the disposal of food Defendants knew or should have known was contaminated with human blood and serving the contaminated food to Plaintiffs.

38. Summit negligently trained and/or supervised Defendants Cummins and Smith by failing to ensure that both understood basic sanitation requirements for the preparation and distribution of food.

39. Summit is liable for the actions of Defendants Cummins and Smith who were acting in the course and scope of employment with Summit at all relevant times.

40. Defendants' negligence caused Plaintiffs to suffer revulsion, disgust, anger, horror, humiliation, embarrassment, despair, anxiety, worry, concern, and nausea as a result of being served with, or learning

that they had been served with food contaminated with human blood positive for Hepatitis C.

41. Defendants' negligence caused those Plaintiffs who have since testified positive for Hepatitis C for the first time in their lives to suffer further revulsion, disgust, anger, horror, humiliation, embarrassment, despair, nausea, anxiety, worry, and concern as a result of testing positive, pain and suffering as a result of having Hepatitis C, and past and future medical expenses related to treating Hepatitis C.

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

42. Plaintiffs incorporate the above allegations, as if fully set forth here.

43. Defendants were engaged in the performance of a traditional government function of incarceration in providing food to inmates at CCDC and were, consequently, state actors at all times relevant to Plaintiffs' Complaint.

44. Defendants Cummins and Smith knew or should have known that human blood in food served to inmates had substantial risk of harming inmates who ingested the human blood and disregarded

that risk and reprimanded the individual who attempted to dispose of the food and instead directed the food to be placed back into the service line.

45. Defendants Cummins' and Smith's conduct was inconsistent with contemporary standards of decency, shocks the conscious, and was deliberately indifferent to Plaintiffs' rights protected by the Eighth and Fourteenth Amendments to the United States Constitution—specifically Plaintiffs' rights to be free from cruel and unusual punishment, rights to basic human needs including adequate food and sanitation, and rights to substantive due process.

46. Administrative remedies have been unavailable to Plaintiffs, or some of them, owing to the temporary nature of confinement and/or transfers to other facilities.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Montana Constitutional Rights

47. Plaintiffs incorporate the above allegations, as if fully set forth here.

48. Defendants are state actors and entities subject to the Montana Constitution.

49. Plaintiffs are persons protected by the Montana Constitution.

50. The Montana Constitution, Article II, §17 provides: “No person shall be deprived of life, liberty, or property without due process of law.”

51. Pursuant to the Montana Constitution, see *Dorwart v. Caraway*, 58 P.3d 128 (Mont. 2002), Plaintiffs have the fundamental, inalienable, and self-executing rights not to be deprived of life, liberty, or property without due process of law; not to be deprived the equal protection of the laws; to be free from unlawful incarceration; and to be free from excessive use of force.

52. These Constitutional Rights are fundamental, self-executing, and violations of these rights are remedied by injunctive, declaratory, and monetary damages.

53. Defendants’ acts and omission related to the incident described above violated Plaintiffs’ rights established by the Montana Constitution.

54. The acts and omissions of Defendants related to the incident described violated Plaintiffs’ rights under the Montana Constitution.

55. Plaintiffs have the right to seek recourse against those who violate their constitutional rights.

56. Plaintiffs are entitled to compensatory damages and attorneys' fees for Defendants' violations of their state constitutional rights.

FOURTH CAUSE OF ACTION
Battery

57. Plaintiffs incorporate the above allegations, as if fully set forth here.

58. Defendants Cummins and Smith knowingly caused harmful or offensive contact through contaminated food without Plaintiffs' consent, which constitutes battery under Montana law.

59. Plaintiffs suffered harm from the contact with contaminated food, including physical harm, emotional distress, and offense to their personal dignity.

60. Defendants Cummins and Smith were acting at all relevant times in the course and scope of her employment with Summit and in pursuit of the interests of Summit.

61. Summit is vicariously liable for the conduct of Defendants Cummins and Smith.

FIFTH CAUSE OF ACTION
Punitive Damages

62. Plaintiffs incorporate the above allegations as if fully set forth here.

63. Defendants Cummins and Smith acted knowingly, deliberately, intentionally, and maliciously without regard for Plaintiffs' rights, interests, and well-being.

64. Defendants Cummins and Smith exhibited a reckless or callous disregard for Plaintiffs' rights and well-being, and their conduct was precipitated by evil motive or intent.

65. Defendants Cummins and Smtih were acting at all relevant times in the course and scope of her employment with Summit and in pursuit of the interests of Summit.

66. Summit is vicariously liable for the conduct of Defendants Cummins and Smith.

67. Defendants' unlawful acts and omissions were willful and/or reckless; Defendants deliberately acted with indifference to the high probability of injury to Plaintiffs. Such conduct justifies the imposition of punitive damages under MCA §§ 27-1-220, 221, in the amount that a jury at trial finds to be sufficient to punish Defendants and to serve as a

warning to other persons and legal entities similarly situated that conduct of the kind engaged in by Defendants is unacceptable in our society and will not be tolerated.

JURY DEMAND

68. Plaintiffs demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for Orders:

- A. entering judgment for Plaintiffs;
- B. awarding Plaintiffs compensatory and punitive damages;
- C. awarding Plaintiffs attorneys' fees;
- D. awarding pre- and post-judgment interest as prescribed by law; and
- E. granting such further and other relief as may be just and proper.

Respectfully submitted September 9, 2026.

By: /s/Timothy M. Bechtold
Timothy M. Bechtold
BECHTOLD LAW FIRM
Attorney for Plaintiffs

By: /s/John Heenan
John Heenan
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Attorneys for Plaintiffs

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Attorney for Plaintiffs

By: /s/ Caitlin Boland Aarab
Caitlin Boland Aarab
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Attorney for Plaintiffs

Certificate of Service

I hereby certify that on September 9, 2026, a copy of the foregoing document was served on the following persons by the following means:

1,2 CM-ECF
 Hand Delivery
 Mail
 Overnight Delivery Service
 Fax
 E-mail

1. Clerk, United States District Court

2. Summit Food Service, LLC
500 East 52nd Street
Sioux Falls, SD 57104
Attorney for Defendant

By: /s/ Samir F. Aarab
Samir F. Aarab
BOLAND AARAB PLLP
Attorney for Defendant