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CASE No. 21-16528

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS;
KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL REYNOLDS;
MONICA MASON; LOUIS NUNEZ-ROMERO; SCOTT ABBEY,
AND ALL OTHERS SIMILARLY SITUATED

Plaintiffs and Appellees,

v.

COUNTY OF ALAMEDA; SHERIFF GREGORY J. AHERN; ARAMARK
CORRECTIONAL SERVICES, LLC

Defendants and Appellants.

Appeal From The United States District Court,
Northern District of California, Case No. 4:19-cv-07637-JST,
Hon. Jon S. Tigar

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ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS;
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Defendants and Appellants.

Appeal From The United States District Court,
Northern District of California, Case No. 4:19-cv-07637-JST,
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EXCERPTS OF RECORD – VOLUME 1 OF 3

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS; KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL REYNOLDS; MONICA MASON; LUIS NUNEZ-ROMERO; SCOTT ABBEY; and all others similarly situated,

Plaintiffs,

v.

COUNTY OF ALAMEDA; GREGORY J. AHERN, SHERIFF; ARAMARK CORRECTIONAL SERVICES, LLC; and DOES 1 through 10,

Defendants.


Civil Case No.: 4:19-CV-07637 JST
~~PROPOSED~~ **ORDER GRANTING DEFENDANTS' ADMINISTRATIVE MOTION FOR CLARIFICATION AND CORRECTION PURSUANT TO LOCAL RULE 7-11**

Having considered the Administrative Motion for Clarification and Correction filed by Defendants Aramark Correctional Services, LLC, County of Alameda, and Gregory J. Ahern, Sheriff (collectively, "Defendants"), the papers filed in support of and the opposition, if any, thereto, and all records on file with the Court in this case, and good cause appearing therefore, IT IS HEREBY ORDERED that Defendants' Motion for Correction is GRANTED. The Court clarifies that all Defendants moved for an order certifying an interlocutory appeal, and that the Court's Order Granting Motion for Leave to Bring an Interlocutory Appeal (Dkt. 87) applies to all Defendants.

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IT IS SO ORDERED.

DATED: June 25, 2021



HON. JON S. TIGAR
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARMIDA RUELAS, et al.,

Plaintiffs,

v.

COUNTY OF ALAMEDA, et al.,

Defendants.

Case No. 19-cv-07637-JST

AMENDED ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS’ MOTIONS TO DISMISS

Re: ECF Nos. 51, 52

Before the Court are motions to dismiss the first amended complaint filed by Defendants Alameda County and Sheriff Gregory J. Ahern (“County Defendants”), ECF No. 51, and Defendant Aramark Correctional Services, LLC (“Aramark”), ECF No. 52. The Court will deny the motions in part and grant them in part.

I. BACKGROUND

A. Factual History¹

Plaintiffs Armida Ruelas, De’Andre Eugene Cox, Bert Davis, Katrish Jones, Joseph Mebrahtu, Dahryl Reynolds, Monica Mason, Luis Nunez-Romero, and Scott Abbey are or were “pre-trial detainees, detainees facing deportation, [and] federal detainees” confined in Alameda County’s Santa Rita Jail. First Amended Complaint (“FAC”), ECF No. 48 ¶ 1. Plaintiffs are or were performing “industrial food preparation services and cleaning” for Aramark pursuant to a contract between Aramark and Alameda County. *Id.* “Aramark is a private, for-profit company that sells food prepared by prisoners to third parties” outside of Alameda County. *Id.* This

¹ For purposes of these motions, the Court accepts as true the factual allegations of Plaintiffs’ first amended complaint. *Smith v. City of Oakland*, No. 19-cv-05398-JST, ___ F. Supp. 3d ___, 2020 WL 2517857, at *2 (N.D. Cal. Apr. 2, 2020).

1 contract was made possible by California Proposition 139, which allows private companies to hire
2 county jail inmates. *Id.* ¶ 18. Alameda County contracted with Aramark “as early as July 1,
3 2015.” *Id.* ¶ 22.

4 Plaintiffs allege that Aramark’s contract with Alameda County allows Aramark “to employ
5 persons imprisoned in Santa Rita Jail without compensating them.” *Id.* Under the contract,
6 “[p]risoners prepare and package food” in Santa Rita’s kitchen “and clean and sanitize the
7 kitchen” after preparation has finished. *Id.* ¶ 23. Plaintiffs allege that “Aramark employees
8 manage the kitchen operation and observe the Sheriff’s deputies’ supervision of the prisoner-
9 employees.” *Id.* Employees of Aramark “supervise the quality and amount of work that prisoners
10 accomplish” and “supervise prisoner-employee conduct and report misconduct to the deputies for
11 discipline.” *Id.* ¶ 24. Further, Aramark “establishes quotas for prisoners that dictate how much
12 work prisoners must complete before their shift ends” and “determines from its quotas how many
13 prisoner-employees are required to work and how many shifts are required.” *Id.* ¶ 25.

14 Plaintiffs allege that County Defendants may “remove [prisoner-employees’] eligibility to
15 work in the jail and subject them to disciplinary action” if Sheriff’s deputies are “displeased with
16 the quality or quantity of the work performed or the conduct of a prisoner-employee.” *Id.* ¶ 26.
17 Plaintiffs allege that “if Aramark is displeased with a prisoner-employee, it can tell the County that
18 the prisoner-employee may not return to work for Aramark.” *Id.* County Defendants and
19 Aramark “arranged to divide the work day so that male prisoners are assigned to longer, daytime
20 shifts, and female prisoners are assigned to shorter, nighttime shifts.” *Id.* ¶ 27. Plaintiffs allege
21 County Defendants “determine which prisoners are eligible to work and place them in worker
22 housing units,” and Aramark “assigns prisoner-employees to their specific tasks.” *Id.* ¶ 28.
23 Plaintiffs allege that “Sheriff’s deputies threaten plaintiffs and other prisoner-employees of
24 Aramark that if they refuse to work, they will receive lengthier jail sentences or be sent to solitary
25 confinement, where they would be confined to a small cell for 22 to 24 hours a day.” *Id.* ¶ 31.
26 The deputies “also threaten to terminate prisoners’ employment if they need to take a sick day or
27 are injured.” *Id.* Plaintiffs allege that such threats are sometimes made “in the presence of
28 Aramark employees,” *id.* ¶ 32, and that Aramark employees threaten “to report [prisoner-

1 employees] to the Sheriff’s deputies for punishment if they attempt to leave work early due to
2 illness or injury,” *id.* ¶ 33.

3 In late October 2019, male prisoner workers, including those working for Aramark, staged
4 a worker strike at Santa Rita “to advocate for improved conditions at the jail[.]” *Id.* ¶ 37.
5 Plaintiffs allege that in response, Sheriff’s deputies forced female prisoners, including Plaintiffs
6 Ruelas and Mason, to cover the men’s shifts “so that Aramark could meet their quotas[.]” *Id.*
7 Deputies allegedly threatened these women by telling them they would “not be provided meals
8 unless they worked.” *Id.*

9 **B. Procedural History**

10 Plaintiffs filed the original complaint on November 20, 2019 on behalf of themselves, a
11 class of individuals incarcerated in Santa Rita Jail who perform or performed services for
12 Aramark, ECF No. 1, Complaint ¶ 41, and three subclasses: (1) a “Pretrial Detainee Subclass,”
13 represented by Ruelas, Davis, and Mason and comprising pretrial detainees who perform or
14 performed services for Aramark while incarcerated at Santa Rita jail, *id.* ¶ 43; (2) the “Women
15 Prisoner Subclass,” represented by Ruelas, Jones, and Mason and comprising women who perform
16 or performed services for Aramark while incarcerated at Santa Rita Jail, *id.* ¶ 44; and (3) the
17 “Immigration Detainee Subclass,” represented by Nunez-Romero and comprising all detainees
18 awaiting immigration proceedings who perform or performed services for Aramark while
19 incarcerated at Santa Rita Jail, *id.* ¶ 45. Plaintiffs brought ten claims, including claims under the
20 Thirteenth Amendment, the Trafficking Victims Protection Act (“TVPA”), the Fourteenth
21 Amendment, the California Labor Code, California’s Unfair Competition Law (“UCL”), and
22 California’s Bane Act. *Id.* ¶¶ 67-108.

23 County Defendants moved to dismiss Plaintiffs’ complaint on December 13, 2019. ECF
24 No. 13. This Court took County Defendants’ motion under submission without a hearing. ECF
25 No. 36. Aramark moved to dismiss the complaint on January 17, 2020. ECF No. 23. The Court
26 held a hearing on March 4, 2020. ECF No. 37.

27 On June 26, 2020, this Court granted in part and denied in part County Defendants and
28 Aramark’s motions to dismiss. ECF No. 46. The Court dismissed Plaintiffs’ (1) TVPA claim

1 against Aramark; (2) Labor Code claim for failure to pay wages, but only as it pertained to
2 convicted plaintiffs; (3) Labor Code claims against County Defendants for failure to pay minimum
3 wage and overtime, but only as they pertained to convicted Plaintiffs; (4) Labor Code claims
4 against Aramark for failure to pay minimum wage and overtime; (5) Equal Pay Act claim; (6)
5 Bane Act claim, but only against Aramark; and (7) Plaintiffs Mebrahtu, Mason, and Nunez-
6 Romero’s Labor Code and Bane Act claims against County Defendants. *Id.* at 25. All dismissals
7 were with leave to amend except for the Labor Code claim for failure to pay convicted Plaintiffs
8 wages as well as Mebrahtu, Mason, and Nunez-Romero’s claims. *Id.*

9 On July 10, 2020, Plaintiffs filed the FAC. ECF No. 48. Plaintiffs add a new plaintiff,
10 Scott Abbey, *id.* ¶ 1, and reassert nine of the ten claims from the original complaint, *see id.* ¶ 74-
11 110. Plaintiffs add Jones, Reynolds, Cox, Mebrahtu, and Abbey as representatives of the pretrial
12 detainee subclass. *Id.* ¶ 51. Plaintiffs no longer bring claims under California’s Equal Pay Act.,
13 *cf. id.*, or seek to represent convicted jail inmates, *see id.* ¶ 50.

14 On August 14, 2020, County Defendants and Aramark filed the instant motions to dismiss.
15 ECF Nos. 51, 52. Plaintiffs opposed both motions and County Defendants and Aramark replied.
16 ECF Nos. 53, 54, 56, 57. The Court held a hearing on October 21, 2020.

17 **II. JURISDICTION**

18 As Plaintiffs make claims under 42 U.S.C. § 1983 and 18 U.S.C. § 1589, this Court has
19 subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction
20 over Plaintiffs’ state law claims under 28 U.S.C. § 1367.

21 **III. LEGAL STANDARD**

22 A complaint must contain “a short and plain statement of the claim showing that the
23 pleader is entitled to relief,” in order to “give the defendant fair notice of what the . . . claim is and
24 the grounds upon which it rests.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S.
25 544, 555 (2007) (citation omitted). “To survive a motion to dismiss, a complaint must contain
26 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
27 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has
28 facial plausibility when the plaintiff pleads factual content that allows the court to draw the

1 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Dismissal
2 under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or
3 sufficient facts to support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*,
4 521 F.3d 1097, 1104 (9th Cir. 2008). The Court must “accept all factual allegations in the
5 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”
6 *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

7 **IV. DISCUSSION**

8 County Defendants argue that Plaintiffs fail to state any claims under the California Labor
9 Code, the TVPA, or 42 U.S.C. § 1983. They additionally argue that Plaintiffs Mebrahtu, Mason,
10 and Nunez-Romero’s claims are barred because this Court previously dismissed their claims
11 without leave to amend, and that Plaintiff Abbey fails to state any claims against County
12 Defendants. Aramark argues that Plaintiffs fail to state a claim under the TVPA, the California
13 Labor Code, the UCL, or the Bane Act.

14 **A. TVPA Claims**

15 The pretrial and immigration detainee subclasses bring a claim under the TVPA against
16 both County Defendants and Aramark. FAC ¶¶ 77-79. Plaintiffs allege that they “were and
17 continue to be coerced to work without compensation under threat of physical punishment and
18 restraint.” *Id.* ¶ 78.

19 Subsection (a) of the TVPA imposes liability on primary offenders, or “[w]hoever
20 knowingly provides or obtains the labor or services of a person” by one or a combination of the
21 following four means:

- 22 (1) by means of force, threats of force, physical restraint, or threats of
23 physical restraint to that person or another person;
24 (2) by means of serious harm or threats of serious harm to that person
25 or another person;
26 (3) by means of the abuse or threatened abuse of law or legal process;
27 or
28 (4) by means of any scheme, plan, or pattern intended to cause the
person to believe that, if that person did not perform such labor or
services, that person or another person would suffer serious harm or
physical restraint[.]

18 U.S.C. § 1589(a)(1)-(4). Subsection (b) imposes liability on venture offenders, or any entity

1 that “knowingly benefits, financially or by receiving anything of value, from participation in a
2 venture which has engaged in” conduct prohibited by Subsection (a) where that entity knew or
3 acted with “reckless disregard of the fact that the venture has engaged in” the prohibited conduct.
4 *Id.* § 1589(b). Section 1595(a) authorizes civil remedies for violations of Section 1589. *Id.*
5 § 1595(a).

6 Plaintiffs argue that County Defendants are primary offenders of the TVPA, ECF No. 53 at
7 13, and that Aramark is liable as both a primary and a venture offender, ECF No. 54 at 10-14.
8 County Defendants move to dismiss the claim on the ground that the TVPA does not apply to
9 public entities. ECF No. 51 at 21. Aramark moves to dismiss Plaintiffs’ TVPA claim on the
10 grounds that Plaintiffs do not have standing to sue Aramark, ECF No. 52 at 15, and that Plaintiffs
11 failed to state a claim for either primary or venture liability under the TVPA, *id.* at 16.

12 **1. Standing to Sue Aramark**

13 Aramark argues that Plaintiffs lack standing to pursue a TVPA claim against Aramark
14 because “not one Plaintiff alleges that he or she was personally threatened by or in the presence of
15 any Aramark employee.” ECF No. 52 at 14. Aramark relies on *O’Shea v. Littleton*, 414 U.S. 488
16 (1974), for support. There, the Supreme Court held that general allegations were insufficient to
17 support standing because “[n]one of the named plaintiffs is identified as himself having suffered
18 any injury in the manner specified.” *O’Shea*, 414 U.S. at 495. Aramark asserts that no named
19 Plaintiff personally claims to have been “threatened by or in the presence of an Aramark
20 employee, much less that he or she involuntarily worked in the kitchen because of such threats.”
21 ECF No. 52 at 15. Accordingly, Aramark concludes, “Plaintiffs have failed to allege actual,
22 particularized injury against Aramark.” *Id.*

23 Plaintiffs argue that they have standing to bring their TVPA claim because, contrary to
24 Aramark’s assertions, each plaintiff need not “allege that he or she was personally threatened by or
25 in the presence of an Aramark employee.” ECF No. 54 at 9. Plaintiffs contend that their injury –
26 “being trafficked through forced labor – is direct and particularized.” *Id.* at 10.

27 Article III standing requires that a “plaintiff must have (1) suffered an injury in fact, (2)
28 that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be

1 redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).
 2 “To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally
 3 protected interest that is concrete and particularized and actual or imminent, not conjectural or
 4 hypothetical.” *Id.* at 1548 (internal quotation marks and citations omitted). “The party invoking
 5 federal jurisdiction bears the burden of establishing these elements.” *Lujan v. Defs. of Wildlife*,
 6 504 U.S. 555, 560 (1992). Accordingly, “each element must be supported . . . with the manner
 7 and degree of evidence required at the successive stages of litigation.” *Id.*

8 Plaintiffs have standing to sue Aramark. Contrary to Aramark’s argument, Plaintiffs need
 9 not plead that each of them “was *personally* threatened by or in the presence of an Aramark
 10 employee” to plead a particularized injury traceable to Aramark. *See* ECF No. 52 at 14 (emphasis
 11 in original). Rather, Plaintiffs need only show that they have “suffered an injury in fact,”
 12 “traceable to the challenged conduct” and “likely to be redressed by a favorable judicial decision.”
 13 *Spokeo*, 136 S. Ct. at 1547. Unlike *O’Shea*, where the Supreme Court found that “the claim
 14 against petitioners allege[d] injury only in the most general terms,” 414 U.S. at 495, Plaintiffs
 15 allege that Aramark and County Defendants forced them to work without compensation, even
 16 when they were sick or injured, through threats of discipline that included solitary confinement.
 17 ECF No. 54 at 10; *see* FAC ¶¶ 31-33. Plaintiffs’ injury is traceable to Aramark because Plaintiffs
 18 allege that Aramark coerced them into forced labor by threatening to report Plaintiffs to Sheriff’s
 19 deputies who could place them in solitary confinement, FAC ¶ 31. Plaintiffs’ injury is redressable
 20 by a favorable judicial decision if Aramark can be held liable as offenders under the TVPA. *See*
 21 *Lujan*, 504 U.S. at 560-61. The Court finds this sufficient to hold that Plaintiffs have standing.
 22 *See id.*; *see also Spokeo*, 136 S. Ct. at 1547.

23 2. Primary Offender Liability

24 a. County Defendants

25 County Defendants assert that they cannot be held liable as primary offenders because
 26 governmental entities cannot be held liable under the TVPA. ECF No. 51 at 21. County
 27 Defendants rely on *Nuñag-Tanedo v. E. Baton Rouge Parish Sch. Bd.*, 2011 WL 13153190 (C.D.
 28 Cal. May 12, 2011), to support their argument. *Nuñag-Tanedo* held that “neither the term

1 ‘perpetrator’ nor the term ‘whoever’ extend to governmental entities under the TVPA.” 2011 WL
2 13153190 at *12. Aramark also argues that County Defendants are not liable as primary
3 offenders, and cites an Eleventh Circuit opinion, *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269
4 (11th Cir. 2020), for additional support. In *Barrientos*, the Eleventh Circuit read the TVPA by
5 reference to the Dictionary Act, which defines “whoever” to “include corporations, companies,
6 associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” 951
7 F.3d at 1277. Aramark contends that because both *Nuñag-Tanedo* and *Barrientos* interpreted the
8 TVPA by reference to the Dictionary Act, this Court must also do so. ECF No. 57 at 11.

9 Plaintiffs respond that, as *Nuñag-Tanedo* acknowledged, there is no “hard and fast rule”
10 excluding a sovereign from the definition of “person,” and that *Nuñag-Tanedo*’s reading of the
11 TVPA as excluding governmental entities runs counter to Supreme Court precedent. ECF No. 53
12 at 13. For support, Plaintiffs first cite *Int’l Primate Prot. League v. Adm’rs of Tulane Educ. Fund*,
13 500 U.S. 72, 83 (1991), in which the Supreme Court wrote, “[O]ur conventional reading of person
14 may . . . be disregarded if the purpose, the subject matter, the context, the legislative history, or the
15 executive interpretation of the statute indicate an intent, by the use of the term, to bring state or
16 nation within the scope of the law.” 500 U.S. at 83 (internal quotation marks, alterations, and
17 citation omitted). Plaintiffs also cite *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S.
18 658 (1978), in which the Supreme Court held that a municipal corporation falls under the “usual
19 meaning of the word person,” 436 U.S. at 688 (internal quotation marks omitted). ECF No. 53 at
20 13. Plaintiffs contend further that following *Nuñag-Tanedo* would “render the Supreme Court’s
21 instruction in *Int’l Primate Prot. League* meaningless” because it “would foreclose courts’ future
22 inquiry into whether the definition of person included the sovereign.” *Id.* at 14.

23 Plaintiffs also point out that the TVPA was enacted to “implement the Thirteenth
24 Amendment against slavery or involuntary servitude.” *Id.* As such, given that counties may
25 decidedly be liable for violations of the Thirteenth Amendment, they must also be liable under the
26 statute that carries out its protections. *Id.* Finally, Plaintiffs argue that the TVPA’s legislative
27 history “demonstrates the legislature’s wide-ranging contempt for trafficking,” and “indicates that
28 the legislature intended the TVPA to be enforceable against anyone – including municipalities –

1 that violate its provisions.” *Id.*

2 The Court is persuaded by Plaintiffs’ argument that finding municipalities immune from
3 liability under the TVPA would contradict Supreme Court precedent. The Supreme Court
4 instructed in *Int’l Primate Prot. League* to disregard the usual reading of “person” if “the purpose,
5 the subject matter, the context, the legislative history, or the executive interpretation of the statute
6 indicate an intent to bring state or nation within the scope of the law.” 500 U.S. at 83 (internal
7 quotation marks, alterations, and citation omitted). County Defendants’ argument that
8 municipalities do not fall within the TVPA’s definition of “person” or “whoever” does not
9 comport with this instruction given the purpose and context of the TVPA.

10 The Court first notes that the TVPA was enacted to implement the Thirteenth Amendment.
11 *See United States v. Toviave*, 761 F.3d 623, 629 (6th Cir. 2014). The legislative history of the
12 TVPA demonstrates Congress’s contempt for human trafficking, and intent to bring all traffickers
13 within the TVPA’s ambit. ECF No. 53 at 14; H.R. Conf. Rep. 106-939, at 5-6 (2000) (deeming
14 trafficking “an evil requiring concerted and vigorous action” and “involving grave violations of
15 human rights”). Furthermore, Congress did not explicitly exclude municipalities from liability
16 under the TVPA. *See Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. at 688 (holding
17 that a municipal corporation falls under the “usual meaning of the word person” (internal
18 quotation marks omitted)). Defendants offer the Court no reason why Congress would have
19 excluded the sovereign from liability, without doing so explicitly, in the context of a law that was
20 intended to give “the highest priority to investigation and prosecution of trafficking offenses.”
21 H.R. Rep. 106-487(I), at 27 (1999).² And, as Plaintiffs rightly point out, it would be incongruous
22 that a county could be liable for violations under the Thirteenth Amendment, *Christie v. Iopa*, 176
23 F.3d 1231, 1234 (9th Cir. 1999), yet be excluded from liability under the statute that implements
24 that amendment’s protections. Accordingly, the Court concludes that the context of the TVPA
25 indicates an intent by Congress to bring the sovereign within the scope of the law. For these

26 _____
27 ² *Barrientos v. CoreCivic, Inc.* does not change the Court’s analysis. In *Barrientos*, the Eleventh
28 Circuit held that a for-profit government contractor could be held liable under the TVPA. *See Barrientos*, 951 F.3d at 1279-80. It did not address whether liability could lie against a governmental entity. *See id.*

1 reasons, the Court finds that Plaintiffs may sue County Defendants as primary offenders under the
2 TVPA, and denies County Defendants' motion to dismiss Plaintiffs' TVPA claim.

3 **b. Aramark**

4 Aramark argues that it cannot be liable as a primary offender because it "does not operate
5 the Santa Rita Jail and therefore lacks the power to coerce inmates into the kitchen." ECF No. 52
6 at 8. Aramark asserts that because it does not have the authority to punish Plaintiffs, Plaintiffs
7 cannot maintain a "claim of primary liability under Section 1589(a)." *Id.* at 16. Aramark notes
8 that "Plaintiffs' sole new allegation for primary offender liability is that unspecified Aramark
9 employees 'coerce' unspecified inmates 'by threatening to report them to Sheriff's deputies for
10 punishment'" for attempting to leave work early. *Id.* at 15 (citing FAC ¶ 33). Aramark contends
11 that this allegation is conclusory and insufficient given that Aramark does not have the authority to
12 punish Plaintiffs.

13 Plaintiffs respond that Aramark "perpetrates trafficking in violation of the TVPRA by
14 forcing plaintiffs' labor under the threat that Aramark will report plaintiffs to Sheriff's deputies for
15 punishment." ECF No. 54 at 10. For support, Plaintiffs cite *Owino v. CoreCivic, Inc.*, 2018 WL
16 2194644, at *24 (S.D. Cal. May 14, 2018), which held that plaintiffs alleging they were threatened
17 with solitary confinement had stated a claim against defendants. Plaintiffs further contend that
18 "[i]t is not necessary that the perpetrator have the means to impose the discipline," but rather,
19 "[t]he threat to turn plaintiffs over to an authority for discipline that is an abuse of the law is
20 sufficient." ECF No. 54 at 11. Plaintiffs rely on *Copeland v. C.A.A.I.R.*, 2019 WL 4307125, at *8
21 (N.D. Okla. Sept. 11, 2019), for this proposition.

22 The FAC alleges that "Aramark employees . . . coerce plaintiffs and other prisoner-
23 employees to work by threatening to report them to the Sheriff's deputies for punishment if they
24 attempt to leave work early due to illness or injury." FAC ¶ 33. The Court previously noted that
25 unlike the defendants in *Owino*, Aramark does not operate the Santa Rita Jail, and thus, Aramark
26 does not have the authority to punish or coerce Plaintiffs directly. ECF No. 46 at 7. However,
27 Plaintiffs' new allegation that Aramark employees threaten to report Plaintiffs to Sheriff's deputies
28 for punishment for attempting to leave work early when they are sick or injured, ECF No. 54 at

1 10, is sufficient to show that Aramark could be a primary offender under the TVPA. Even though
2 Aramark does not technically have the authority to place prisoner-employees in solitary
3 confinement, Plaintiffs sufficiently allege that Aramark obtains Plaintiffs' labor by threats of
4 physical restraint. That the physical restraint would be imposed by the County rather than
5 Aramark does not change the analysis. Aramark employees' threats to report Plaintiffs to coerce
6 them to work carry the same effect as if Sheriff's deputies made the threats; no matter who makes
7 the threats, they lead to Plaintiffs providing labor for fear that they will be placed in solitary
8 confinement. 18 U.S.C. § 1589(a)(1), (a)(4); *see Owino*, 2018 WL 2194644 at *24; *see also*
9 *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923, 952 (N.D. Cal. 2019) (threatened harm under the
10 TVPA must be "serious enough to compel a reasonable person to perform labor to avoid the
11 harm") (citation omitted).

12 Plaintiffs also rely on *Copeland*, which held that plaintiffs had alleged a TVPA claim
13 because defendants' threats of incarceration "constitute[d] threatened abuse of law or legal
14 process." 2019 WL 4307125 at *8. Here, Plaintiffs' allegation is similar in that Aramark
15 threatens to report prisoner-employees to Sheriff's deputies – who have the power to put them in
16 solitary confinement or impose lengthier sentences – for punishment if they refuse to work. FAC
17 ¶ 31. Plaintiffs sufficiently allege that Aramark abused the legal process. The purpose of longer
18 jail sentences and solitary confinement is not to force pretrial detainees to provide labor. Yet,
19 Aramark threatened inmates that they could face punishments – which Plaintiffs understood to
20 include solitary confinement and lengthier sentences – if they refused to work. 18 U.S.C.
21 § 1589(a)(3); *see Copeland*, 2019 WL 4307125 at *8 ("Abuse or threatened abuse of law or legal
22 process is defined as the use or threatened use of the law or legal process in any manner or for any
23 purpose for which the law was not designed, in order to exert pressure on another person to cause
24 that person to take some action or refrain from taking some action." (citing 22 U.S.C. § 7102(1))
25 (internal quotation marks omitted)). Accordingly, the Court finds that Plaintiffs have alleged
26 primary offender liability under the TVPA against Aramark.

27 3. Venture Offender Liability

28 In addition to Aramark's primary offender liability, the Court finds that Plaintiffs have also

1 sufficiently alleged that Aramark is a venture offender under the TVPA. *See Bistline v. Parker*,
2 918 F.3d 849, 871 (10th Cir. 2019).

3 Aramark argues that Plaintiffs cannot state a claim for venture liability under the TVPA
4 because Section 1589(b) requires a primary offender and Plaintiffs have not stated a cognizable
5 claim that County Defendants are primary offenders. ECF No. 52 at 16. Aramark further argues
6 that Plaintiffs fail to allege the knowledge or reckless disregard required to state a venture liability
7 claim under the TVPA. *Id.* Relying on *Noble v. Weinstein*, 335 F. Supp. 3d 504, 523-24
8 (S.D.N.Y. 2018), Aramark contends that liability under the TVPA “cannot be established by
9 association alone,” and that “specific conduct that furthered the forced labor venture” must be
10 alleged. *Id.* at 16-17 (alterations omitted). Aramark notes that although the FAC alleges that
11 Aramark employees “made or observed threats made by deputies, Plaintiffs do not identify a
12 single Aramark employee by name or function who allegedly made or observed such threats, nor
13 the substance of any such threats.” *Id.* at 17. Without more, Aramark argues, such assertions “are
14 entitled to no weight.” *Id.* (citing *Iqbal*, 556 U.S. at 678).

15 Plaintiffs assert that Aramark is liable even absent an “overt act in furtherance of the
16 venture.” ECF No. 54 at 12. Plaintiffs cite a recent decision holding that a plaintiff seeking a civil
17 remedy under Section 1595(a) “is not required to allege an overt act in furtherance of a . . .
18 trafficking venture in order to sufficiently plead her section 1595 civil liability claim.” *J.C. v.*
19 *Choice Hotels Int’l, Inc.*, No. 20-cv-00155-WHO, 2020 WL 3035794, at *1, n.1 (N.D. Cal. Jun. 5,
20 2020). Plaintiffs assert that they “may bring their claim against Aramark without bringing their
21 claim against the venture partner.” ECF No. 54 at 12.

22 As explained above, the Court holds that County Defendants are liable as primary
23 offenders under the TVPA. *See supra* IV.A.2.a. Thus, the only question left to resolve at this
24 stage is whether Plaintiffs have pleaded sufficient facts to state that Aramark is liable as a venture
25 offender. The Court finds that they have. Under the TVPA, “[w]hoever knowingly benefits,
26 financially . . . from participation in a venture which has engaged in the providing or obtaining of
27 labor or services by any means described in subsection (a), knowing or in reckless disregard of the
28 fact that the venture has engaged in the providing or obtaining of labor or services by any of such

1 means, shall be punished . . .” 18 U.S.C. § 1589(b). Plaintiffs allege that Aramark receives a
 2 financial benefit in the form of an “economic windfall as a result of the uncompensated labor of
 3 prisoners confined in Santa Rita Jail.” *Id.* ¶ 38. And Aramark is involved with scheduling work
 4 days for prisoner employees and assigning them to their specific tasks. *See* FAC ¶¶ 27-28.
 5 Plaintiffs also allege that Aramark employees “observe the Sheriff’s deputies’ supervision of the
 6 prisoner-employees, including threats of force,” and that Aramark employees themselves threaten
 7 to report employees to Sheriff’s deputies for punishment. *Id.* ¶¶ 23, 32, 33. These facts are
 8 sufficient to plead that Aramark knowingly benefited financially from its participation in the
 9 venture with County Defendants. Aramark’s observation of the threats demonstrates that it knew
 10 or should have known of County Defendants’ threats of force, yet continued to participate in the
 11 venture and receive a financial benefit notwithstanding. *See Lesnik*, 374 F. Supp. 3d at 953
 12 (“[G]iven [defendant’s] direct involvement in every aspect of the events at issue, the Court finds
 13 that [defendant] knew or should have known of [primary offender’s] treatment of its employees.”).
 14 Accordingly, Aramark’s motion to dismiss Plaintiffs’ TVPA claim is denied.

15 **B. Labor Code Claims**

16 Plaintiffs make three California Labor Code claims: (1) failure to pay wages, Cal. Lab.
 17 Code §§ 201, 202, 218; (2) failure to pay minimum wage, *id.* § 1194; and (3) failure to pay
 18 overtime premium wages, *id.* FAC ¶¶ 91-101. Plaintiffs argue that they are entitled to wages
 19 under California Proposition 139, which Plaintiffs state, “mandated that counties ‘operate and
 20 implement the program . . . by rules and regulations prescribed by . . . local ordinance.’” ECF No.
 21 53 at 7 (quoting Cal. Const. art. XIV, § 5). Plaintiffs further assert that the Labor Code, rather
 22 than the Penal Code, controls Plaintiffs’ claims. ECF No. 53 at 9; ECF No. 54 at 17-18. The
 23 Court concludes that although Proposition 139 does not support Plaintiffs’ claim for wages,
 24 Plaintiffs have pleaded sufficient facts to state claims against County Defendants and Aramark
 25 under Labor Code Section 1194.

26 **1. Proposition 139**

27 Proposition 139 allowed for-profit entities to contract with state prisons and county jails
 28 for the purpose of using inmate labor. Proposition 139 authorized joint employment ventures with

1 for-profit entities by amending the California Constitution to create prison work programs, which
2 county jail programs implement through local ordinances. ECF No. 24-2 at 2; Cal. Const. art. 14,
3 § 5.

4 County Defendants assert that Proposition 139 left individual municipalities to determine
5 how to compensate inmates held and performing work in county jails, if at all. ECF No. 51 at 14.
6 Thus, County Defendants conclude, Proposition 139 does not entitle Plaintiffs to wages because
7 Alameda County has not adopted an ordinance or provision in its administrative code requiring
8 wages be paid to county jail inmates performing work pursuant to contracts with private
9 companies. *Id.* at 15. Aramark similarly argues that Proposition 139 “forecloses the wage claims
10 of non-convicted jail inmates” because, as Aramark reads the proposition, “Plaintiffs’ prayer is
11 properly directed to the Alameda County Board of Supervisors – not to the federal court.” ECF
12 No. 52 at 20.

13 Plaintiffs assert that Proposition 139 mandated County Defendants to enact a local
14 ordinance regarding the compensation of prisoner-employees before contracting with Aramark to
15 provide inmate labor. *Id.* at 7-8. Consequently, Plaintiffs argue that County Defendants
16 “eschewed the directive of the California Constitution” when it entered into a contract with
17 Aramark “without a local ordinance.” ECF No. 53 at 8.

18 Plaintiffs argue further that “in the absence of a local ordinance regulating the program,”
19 County Defendants and Aramark are bound by their contract to pay inmate workers wages. ECF
20 No. 53 at 8; *see* ECF No. 55-3.³ The contract provides in pertinent part that

21 [p]ursuant to Labor Code Sections 1770 *et seq.*, [Aramark] shall pay
22 to person performing labor in and about Work provided for in
23 Contract not less than the general prevailing rate of per diem wages
24 for work of a similar character in the locality in which the Work is
performed, and not less than the general prevailing rate of per diem
wages for legal holiday and overtime work in said locality

25
26
27 ³ Plaintiffs filed an unopposed request for judicial notice of the contract between Aramark and
28 County Defendants, ECF No. 55-3 at 2, which the Court grants because the contract is a matter of
public record. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir.
2006).

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1 ECF No. 55-3 at 10-11. Because County Defendants and Aramark’s contract contains a clause
2 binding Aramark to pay for work performed, Plaintiffs argue that the Court should construe this
3 contract as a “local ordinance” pursuant to Article 14.

4 The Court does not find the contract between Aramark and County Defendants to be a
5 “local ordinance” under Article 14. Nowhere in Proposition 139 or the California Constitution
6 does it state that a contract can function as an ordinance in the absence of a local ordinance
7 governing county jail programs, and Plaintiffs cite no authority to support the position that it can.⁴
8 In addition, County Defendants were not mandated by Proposition 139 to enact a local ordinance
9 before entering a joint employment venture with Aramark. Plaintiffs cite no authority to support
10 their theory that such an ordinance is required, and the Court declines to read such a mandate into
11 Proposition 139. The Court therefore concludes that Proposition 139 does not provide Plaintiffs
12 with a right to compensation.

13 However, the Court also concludes that Proposition 139 does not preclude wage claims
14 under the Labor Code in all circumstances. Aramark argues that Proposition 139 gave local
15 governments the exclusive authority to determine wages for people incarcerated in county jails –
16 including pretrial detainees. Defendants reason that Plaintiffs therefore can be forced to work for
17 Aramark without wages because no local ordinance prohibits this arrangement. But the Court
18 does not interpret Proposition 139 to require that conclusion or to preclude application of the
19 Labor Code to Plaintiffs.

20 Proposition 139 makes no mention of pretrial detainees. It also does not address wages for
21 incarcerated individuals who reside in a jail that is not governed by a local ordinance prescribing
22 or prohibiting conditions for joint venture contracts between jails and private companies.
23 Proposition 139 therefore does not address the circumstances at hand. If anything, the text of
24 Proposition 139 – and specifically its requirements that (1) individuals incarcerated in state prisons
25 working for a private company be paid and (2) inmate labor not replace non-incarcerated

26 _____
27 ⁴ Unlike *Vasquez v. State of California*, 105 Cal. App. 4th 849 (2003), on which Plaintiffs rely,
28 Plaintiffs do not bring claims to compel County Defendants or Aramark to pay prevailing wages
under their contract. The Court therefore does not consider whether Defendants have fulfilled
their prevailing wage obligations under the contract.

1 individuals on strike – supports a finding that the voters intended non-convicted individuals
2 incarcerated in county jails working for private companies be paid for their labor. *See* Cal. Penal
3 Code § 2717.8.

4 Proposition 139 provides individuals incarcerated in state prison working for private
5 companies – who have been convicted of crimes, unlike the detainees at issue here – default wages
6 comparable to “non-inmate employees in similar work.” Cal. Penal Code § 2717.8. Although
7 these wages are subject to certain deductions, those deductions could “not, in the aggregate,
8 exceed 80 percent of gross wages.” *Id.* Proposition 139 also amended the California Constitution
9 to prohibit jails or prisons from entering a contract with an employer that would “initiate
10 employment by inmates in the same job classification as non-inmate employees of the same
11 employer who are on strike.” Cal. Const. Art. 14 § 5(b). The text of Proposition 139 therefore
12 reflects a careful balance of interests, including the interest of protecting jobs that would otherwise
13 go to non-incarcerated individuals. It is clear in context that the purpose of Proposition 139’s
14 wage provision is not only to benefit incarcerated individuals, but also to ensure that private
15 corporations could not replace a non-incarcerated workforce with free labor from the county jail.
16 The balance of interests reflected in Proposition 139 is inconsistent with an arrangement that
17 authorizes incarcerated individuals – including non-convicted detainees – to be forced to work for
18 a private company without wages, and it certainly does not require that result.

19 2. California Penal Code

20 County Defendants advance three arguments for why Plaintiffs’ claims for unpaid wages
21 lie in the Penal Code as opposed to the Labor Code. ECF No. 51 at 15-18. First, County
22 Defendants contend that the Labor Code does not apply in light of the “comprehensive statutory
23 scheme” governing inmate conditions, as laid out in the California Penal Code. ECF No. 51 at 15.
24 County Defendants argue that “[n]either the California Constitution nor Title 4 of the Penal Code
25 provides any rights for inmates of county jails to receive wages for the work performed while
26 incarcerated.” *Id.* at 16. For support, County Defendants direct the Court to the legislative context
27 of the Penal Code. *See id.* Specifically, County Defendants argue that the California legislature
28 has “addressed the availability of compensation [for] county jail inmates involved in work

1 programs through the use of credits and reductions in sentences . . . for satisfactorily performing
2 labor as required by the Sheriff” in Section 4019(b) of the Penal Code. *Id.* Section 4019(b) states,
3 in pertinent part, that

4 “for each four-day period in which a prisoner is confined in or
5 committed to a facility as specified in this section, one day shall be
6 deducted from the prisoner’s period of confinement unless it appears
7 by the record that the prisoner has refused to satisfactorily perform
labor as assigned by the sheriff, chief of police, or superintendent of
an industrial farm or road camp.”

8 Cal. Penal Code § 4019(b). County Defendants assert that by enacting the Penal Code, the
9 legislature has addressed the issue of compensation for all inmates and has decided not to provide
10 wages. ECF No. 51 at 24.

11 Second, County Defendants assert that the Labor Code addresses inmates solely in the
12 context of workers’ compensation, ECF No. 51 at 17 (citing Cal. Lab. Code § 3370, *et seq.*), and
13 that the Labor Code “otherwise conflicts with . . . the Penal Code.” *Id.* at 17-18. For example,
14 County Defendants point out that the Penal Code allows state prison inmates to be paid below the
15 minimum wage and classifies paid inmate work as a privilege, not a right. *Id.* County Defendants
16 read this to mean that “the Labor Code applies exclusively to non-incarcerated persons, and the
17 Penal Code applies exclusively to incarcerated persons, except in the sole context of workers’
18 compensation laws.” *Id.* at 18. County Defendants argue further that the same scheme applies to
19 detainees awaiting immigration proceedings because Section 4005(a) of the Penal Code states that
20 “[t]he sheriff shall receive, and keep in the county jail, any prisoner committed thereto by process
21 or order issued under the authority of the United States” Cal. Penal Code § 4005(a). *Id.*

22 Aramark similarly contends that the “Penal Code does not authorize non-convicted county
23 jail inmates to recover under the Labor Code.” ECF No. 52 at 21. Aramark argues that the
24 Court’s prior observation that relevant portions of the Penal Code are inconsistent with the Labor
25 Code applies “not only to convicted inmates – but to all Santa Rita Jail inmates, including the non-
26 convicted inmates” *Id.* Because the legislature made no distinction between convicted and
27 non-convicted inmates when enacting the Penal Code’s provisions pertaining to county jails,
28 Aramark argues, the Penal Code necessarily applies to all inmates, convicted or not. *Id.* at 22.

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1 Finally, County Defendants, as well as Aramark, assert that prisoners are not considered
2 employees under federal law. County Defendants primarily cite *Hale v. Arizona*, 993 F.2d 1387
3 (9th Cir. 1993), in support of this argument, *id.* at 19-20, which held that there was no employer-
4 employee relationship between state prisoners and the state under the economic realities test of the
5 Federal Labor Standards Act (“FLSA”). 993 F.2d at 1395. Aramark similarly argues that this
6 case is analogous to cases decided under the FLSA insofar as “[Plaintiffs’] liberty is lawfully
7 constrained during their incarceration and they are not able to participate freely in the labor
8 market, but their standard of living is provided for”; thus, pretrial detainees cannot be considered
9 employees under the Labor Code. *Id.* at 22-23.

10 Plaintiffs respond that the Penal Code does not control and is not adverse to their Labor
11 Code claims and that Plaintiffs may not be held under conditions that violate the Constitution.
12 ECF No. 53 at 9 (citing ECF No. 46 at 20); ECF No. 54 at 17. Plaintiffs assert that pretrial
13 detainees cannot be forced to perform uncompensated work under threat, and therefore, “any labor
14 referenced in the Penal Code as it applies to pretrial detainees cannot mean forced uncompensated
15 labor for a private company.” ECF No. 53 at 9. Plaintiffs further argue that nothing precludes
16 them from the protections of the Labor Code and that requiring they be paid for work performed
17 for a private contractor “does not offend any provision of the Penal Code or Labor Code.” ECF
18 No. 53 at 10.

19 In opposing Aramark, Plaintiffs argue that “[i]f for no other reason than their contract
20 demands it, Aramark must pay pretrial detainees.” ECF No. 54 at 17. Plaintiffs also ask the Court
21 to disregard cases that construe the FLSA to exclude pretrial detainees because this case is not
22 governed by federal labor law, but California labor law. *Id.* (citing *Owino v. CoreCivic, Inc.*, 2018
23 WL 2194644, at *24 (S.D. Cal. May 14, 2018)). In reply, Aramark argues that *Owino* is
24 inapposite because the plaintiffs were civil immigration detainees “subject not to the California
25 Penal Code, but to ICE regulations stating that detainees could only perform basic housekeeping
26 tasks.” ECF No. 57 at 16. Aramark argues that a better comparison is to *Villarreal v. Woodham*,
27 113 F.3d 202 (11th Cir. 1997). In *Villarreal*, the court held that pretrial detainees were not
28 entitled to wages under the FLSA because correctional facilities provide pretrial detainees with

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1 “everyday needs such as food, shelter, and clothing.” 113 F.3d at 206-07. Aramark does not ask
2 the Court to apply the FLSA’s economic realities test, but rather, to apply the same reasoning as
3 *Villarreal* in finding that Plaintiffs are not employees. ECF No. 57 at 16.

4 Defendants advance unpersuasive arguments for why the Penal Code and the Labor Code
5 are mutually exclusive. Contrary to County Defendants’ argument, nothing in the statutory
6 scheme governing the conditions of inmates indicates that the Labor Code excludes Plaintiffs, nor
7 that the Penal Code governs Plaintiffs. For example, insofar as the Labor Code addresses inmates,
8 it only discusses state prison inmates, without reference to county jail inmates. *See, e.g.*, Cal. Lab.
9 Code §§ 3370, 6304.2. As this Court noted in its previous order, the Penal Code presumes that the
10 Labor Code does not apply to convicted state prison inmates unless specifically indicated. ECF
11 No. 46 at 19; *see* Cal. Penal Code § 2811 (“[I]n no event shall [state prisoner compensation]
12 exceed one-half the minimum wage provided in Section 1182 of the Labor Code, *except as*
13 *otherwise provided in this code.*”) (emphasis added). However, while the Penal Code explicitly
14 addresses employment and wages of state prisoners, both in relation to the minimum wage, *see,*
15 *e.g., id.*, and in the context of incarcerated individuals working for a private company through a
16 joint venture program, *see id.* § 2717.8, the Penal Code does not address such matters for pretrial
17 detainees confined in county jails, *see id.* § 4000, *et seq.* Similarly, although the Penal Code
18 authorizes “the board of supervisors or city council” to require “[a]ll persons confined in the
19 county jail . . . *under a final judgment of imprisonment rendered in a criminal action or*
20 *proceeding . . . to perform labor on the public works or ways in the county or city,*” there is no
21 similar provision regarding non-convicted incarcerated persons. *Id.* § 4017. The Court reads
22 these omissions to imply that the California legislature did not intend to exclude non-convicted
23 detainees working for a private corporation from the Labor Code’s protections.

24 Cases involving claims under the FLSA do not determine the outcome here because, as
25 Plaintiffs note, this case is governed by California labor law rather than federal labor law. *See*
26 *Owino*, 2018 WL 2194644, at *24 (“The defect in Defendant’s argument is that California’s
27 employment definition is explicitly different from FLSA’s economic reality test. The California
28 Supreme Court cannot be much clearer when it said ‘[i]n no sense is the IWC’s definition of the

1 term ‘employ’ based on federal law.’”) (citations omitted). Furthermore, though this case involves
 2 a “custodial relationship” similar to the relationship described in *Villarreal*, 113 F.3d at 206, there
 3 are important distinctions. In *Villarreal*, the court noted that the FLSA did not apply because “the
 4 labor produce[d] goods and services utilized by the prison.” 113 F.3d at 207 (citation omitted).
 5 Here, Aramark, a private party, sells the goods that inmates produce to third parties outside of
 6 Alameda County. FAC ¶ 1. Thus, it cannot be said that the workers have been “taken out of the
 7 national economy” as they were in *Villarreal*.⁵ See 113 F.3d at 207 (quoting *Danneskjold v.*
 8 *Hausrath*, 82 F.3d 37, 42-43 (2d Cir. 1996)). The Court therefore declines to hold that this case is
 9 analogous to FLSA cases.

10 The fact that Plaintiffs were working for the benefit of Aramark, rather than to provide
 11 goods and services utilized by the prison or “on the public works or ways in the county,” also
 12 supports the Court’s conclusion that the Penal Code does not foreclose Plaintiffs’ Labor Code
 13 claims. See Cal. Penal Code § 4017 (“persons confined in the county jail . . . under a final
 14 judgment of imprisonment rendered in a criminal action . . . may be required by an order of the
 15 board of supervisors or city council to perform labor on the public works or ways in the county”
 16 (emphasis added)). And as Aramark acknowledges in its motion, “[w]ith respect to the payment
 17 of wages . . . Proposition 139 only amended . . . the Penal Code relating to state prisons,” rather
 18 than county jails. ECF No. 51 at 14. As discussed above, when the voters saw fit to allow joint
 19 venture programs between state prisons and private companies, it was with the understanding that
 20 incarcerated individuals would receive wages comparable to non-incarcerated employees of the
 21 private company, subject to certain deductions by the prison. See Cal. Penal Code § 2717.8. As a
 22 reflection of that mandate from the voters, the Penal Code distinguishes wages earned by
 23 incarcerated individuals working for a private company from wages earned by incarcerated
 24 individuals working for the Prison Industry Authority. Compare *id. with id.* §§ 2700, 2811. The

25 _____
 26 ⁵ The other cases that County Defendants and Aramark cite are similar to *Villarreal* insofar as
 27 plaintiffs there were taken out of the national economy. In *Tourscher v. McCullough*, 184 F.3d
 28 236, 243 (3d Cir. 1999), the economic reality was such that plaintiff’s labor “did not compete with
 private employers.” In *Hale*, where the labor was pursuant to mandated state prison work
 programs, the court held that the plaintiff’s labor “belonged to the institution.” 993 F.2d at 1395.

1 Penal Code was not similarly amended as to county jails because Proposition 139 left wages to be
2 determined by local ordinance. The Penal Code therefore does not give any guidance regarding
3 the wages owed to non-convicted detainees working for a private company in a county jail and
4 cannot be read to preclude this population from the protections of the Labor Code.

5 In the absence of regulation from the Penal Code or any relevant local ordinance, the Court
6 concludes that Plaintiffs – non-convicted detainees working for a private company that sells the
7 goods produced by Plaintiffs to third parties outside of Alameda County – are entitled to the
8 protections of the Labor Code.

9 3. Failure to Pay Wages (Labor Code Sections 201 and 202)⁶

10 The Court now considers whether Plaintiffs allege claims under Sections 201 and 202 of
11 the Labor Code. The Court will deny Plaintiffs’ Section 201 and 202 claims for failure to state a
12 claim.

13 Aramark argues that Plaintiffs do not allege facts sufficient to demonstrate that they are
14 entitled to wages under Sections 201 and 202 because those sections are “facially inapplicable.”
15 ECF No. 52 at 26. Aramark asserts that “Sections 201 and 202 require that employers pay

16
17 ⁶ In its prior order, the Court denied the Defendants’ motions to dismiss Plaintiffs’ claim for
18 failure to pay wages as made by non-convicted Plaintiffs because “Defendants ma[d]e no
19 arguments as to why, despite [the Thirteenth Amendment prohibition on involuntary servitude],
20 pretrial detainees are not entitled to wages or Labor Code protections.” ECF No. 46. County
21 Defendants now argue that pretrial detainees are not entitled to wages under either the Labor Code
22 or the Thirteenth Amendment. ECF No. 51 at 25. Aramark also argues that the Thirteenth
23 Amendment does not establish a right to wages, and that the Labor Code was not enacted to
24 implement the Thirteenth Amendment. ECF No. 52 at 21. The Court recognizes that Plaintiffs
25 allege both forced labor claims (under the TVPA and the Thirteenth Amendment) and
26 uncompensated labor claims (under the Labor Code), and that Plaintiffs argue that unpaid wages is
27 an appropriate remedy under the Thirteenth Amendment. The Court addresses Parties’ arguments
28 regarding Plaintiffs’ Thirteenth Amendment claim below, *see infra* IV.C.1, but need not address
the Thirteenth Amendment in the context of Plaintiffs’ Labor Code claims. The Court also need
not reach Plaintiffs’ prayer for relief – which is a remedy, not a claim – at this stage. Fed. R. Civ.
P. 12(b)(6); *see Mecum v. Wells Fargo Bank, N.A.*, No. C15-1302JLR, 2016 WL 1047435, at *5
(W.D. Wash. Mar. 9, 2016) (“Because a prayer for relief is a remedy and not a claim, a Rule
12(b)(6) motion to dismiss for failure to state a claim is not a proper vehicle to challenge the
requested relief.”); *Monaco v. Liberty Life Assur. Co.*, No. C06-07021 MJJ, 2007 WL 420139, at
*6 (N.D. Cal. Feb. 6, 2007) (holding that “a complaint is not subject to a motion to dismiss for
failure to state a claim under Rule 12(b)(6) because the prayer seeks relief that is not recoverable
as a matter of law” (emphasis omitted)).

1 employees within a certain amount of time upon separation of employment,” and since Plaintiffs
 2 do not allege that they resigned or were terminated from the kitchen, the claims should be
 3 dismissed. *Id.* Aramark and Plaintiffs both rely on *Ambriz v. Coca Cola Co.*, No. 13-cv-03539-
 4 JST, 2013 WL 5947010, at *7 (N.D. Cal. Nov. 5, 2013), which denied a defendant’s motion to
 5 dismiss plaintiffs’ failure to pay final wages claim. Aramark asks the Court to follow *Ambriz*
 6 insofar as some form of termination or resignation must have occurred for Plaintiffs to have valid
 7 Section 201 and 202 claims. ECF No. 52 at 26 (citing *Ambriz*, 2013 WL 5947010, at *7).
 8 Plaintiffs, on the other hand, read *Ambriz* to support the proposition that whether Plaintiffs were
 9 terminated or resigned is “immaterial” because “the time to pay plaintiffs unpaid earned wages has
 10 passed under any . . . circumstance.” ECF No. 54 at 23.

11 The Court concludes that Plaintiffs have not pleaded sufficient facts to state a claim under
 12 either Section 201 or Section 202. Plaintiffs do not allege that they resigned or were terminated,
 13 or when. The approximate dates of employment listed in the FAC, *see* FAC ¶¶ 45, 47, 48, without
 14 more, are insufficient to show resignation or termination under Sections 201 and 202. Plaintiffs
 15 have not alleged any facts regarding how or why their employment ended, and the Court cannot
 16 conclude whether a plaintiff resigned or was terminated merely from a date. The Court also
 17 observes that the notion that an inmate could “resign” is incompatible with Plaintiffs’ allegations
 18 that inmates were forced to work. The Court therefore dismisses Plaintiff’s Section 201 and 202
 19 failure to pay wages claim with leave to amend. *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.
 20 1995) (“a district court should grant leave to amend . . . unless it determines that the pleading
 21 could not possibly be cured by the allegation of other facts”) (citation omitted).

22 4. Failure to Pay Minimum and Overtime Wages (Section 1194 Claims)

23 Aramark contends that even if Plaintiffs can avail themselves of the Labor Code, Plaintiffs
 24 have failed to state any Labor Code claims against Aramark because Plaintiffs fail to allege an
 25 employment relationship with Aramark, ECF No. 52 at 24. In *Martinez*, the California Supreme
 26 Court held that the Industrial Welfare Commission’s (“IWC”) wage orders define an “employer”
 27 as a person who “directly or indirectly, or through an agent or any other person, employs or
 28 exercises control over the wages, hours, or working conditions of any person.” 49 Cal. 4th at 52,

1 71, 109 (quoting Wage Order No. 14) (emphasis omitted). Pursuant to the IWC, “employ” is
2 defined to mean “to engage, suffer, or permit to work.” *Id.* at 57 (quoting Wage Order No. 14).
3 “To employ, then, under the IWC’s definition, has three alternative definitions. It means: (a) to
4 exercise control over the wages, hours or working conditions, *or* (b) to suffer or permit to work, *or*
5 (c) to engage, thereby creating a common law employment relationship.” *Id.* at 64. “Any of the
6 three is sufficient to create an employment relationship.” *Ochoa v. McDonald’s Corp.*, 133 F.
7 Supp. 3d 1228, 1233 (N.D. Cal. 2015). “While [the] plaintiff is not required to conclusively
8 establish that defendants [a]re her joint employers at the pleading stage, [the] plaintiff must at least
9 allege some facts in support of this legal conclusion.” *Johnson v. Serenity Transp., Inc.*, 141 F.
10 Supp. 3d 974, 988 (N.D. Cal. 2015) (quoting *Hibbs-Rines v. Seagate Techs., LLC*, No. 08-cv-
11 05430-SI, 2009 WL 513496, at *5 (N.D. Cal. Mar. 2, 2009)).

12 The Court finds that Plaintiffs have alleged an employment relationship with Aramark
13 under the first *Martinez* prong. Under that prong, “control over ‘any one of the three aspects –
14 wages, hours, or working conditions – is sufficient to impute employer liability under California
15 wage and hour law.’” *Haralson v. United Airlines, Inc.*, 224 F. Supp. 3d 928, 939 (N.D. Cal.
16 2016) (quoting *Torries v. Air to Ground Servs., Inc.*, 300 F.R.D. 386, 395 (C.D. Cal. 2014)).
17 “Supervision of the work, in the specific sense of exercising control over how services are
18 performed, is properly viewed as one of the ‘working conditions’ mentioned in the wage order.”
19 *Martinez*, 49 Cal. 4th at 76. However, a “single conclusory allegation . . . that [the plaintiff] was
20 supervised and/or managed by [defendant] employers” is not sufficient to support an inference of
21 control. *Haralson*, 224 F. Supp. 3d at 939-40.

22 Plaintiffs allege the following: “Aramark employees and County of Alameda Sheriff’s
23 deputies both supervise prisoner-employees to make sure they do not violate safety rules.
24 Aramark employees supervise the quality and amount of work that prisoners accomplish.
25 Aramark employees also supervise prisoner-employee conduct and report misconduct to the
26 deputies for discipline.” FAC ¶ 24. Plaintiffs further allege that “Aramark establishes quotas for
27 prisoners that dictate how much work prisoners must complete before their shift ends.” *Id.* ¶ 25.
28 Plaintiffs also allege that “if Aramark is displeased with a prisoner-employee, it can tell the

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1 County that the prisoner-employee may not return to work for Aramark.” *Id.* ¶ 26. In its previous
2 order, the Court found that Plaintiffs’ threadbare allegation that Aramark supervised Plaintiffs was
3 insufficient to allege any control by Aramark over their work conditions. ECF No. 46 at 21.
4 However, Plaintiffs’ new allegations demonstrate that Aramark dictates the length of prisoner-
5 employees’ shifts, and that Aramark can effectively terminate them if Aramark is dissatisfied with
6 them. Plaintiffs thus allege sufficient facts to show that Aramark exercises some control over
7 Plaintiffs’ working conditions. *See Johnson v. Serenity Transportation, Inc.*, No. 15-cv-02004-
8 JSC, 2016 WL 270952, at *16 (N.D. Cal. Jan. 22, 2016) (holding that defendant’s removal of
9 truck drivers from their work route effectively removed the drivers from employment, sufficient to
10 show that defendant exercised control over the drivers’ working conditions). Therefore, the
11 allegations support a finding of an employment relationship under the first prong of *Martinez*.
12 Accordingly, the Court denies Aramark’s motion to dismiss Plaintiffs’ Section 1194 claims for
13 failure to pay minimum wage and overtime.

14 The Court need not consider whether Plaintiffs have asserted an employment relationship
15 with County Defendants under the first prong of *Martinez* because, as the Court held in its
16 previous order, Plaintiffs’ allegations support a finding of an employment relationship under
17 *Martinez*’s second prong. *See* ECF No. 46 at 23. Under *Martinez*’s second prong – to suffer or
18 permit to work – “the basis of liability is defendant’s knowledge of and *failure to prevent* the work
19 from occurring.” 49 Cal. 4th at 70 (emphasis in original). In *Martinez*, defendants did not have
20 the power to prevent the plaintiffs from working because a third party “had the exclusive power to
21 hire and fire [the] workers, to set their wages and hours, and to tell them when and where to report
22 to work.” *Id.* As this Court explained in its prior order, every aspect of Plaintiffs’ lives was or is
23 controlled by the County, the Sheriff, and their agents. ECF No. 46 at 23. Plaintiffs allege that
24 Sheriff’s deputies force them to work and “threaten to terminate prisoners’ employment if they
25 need to take a sick day or are injured.” FAC ¶ 31. This is sufficient to demonstrate that the
26 County Defendants suffer or permit the Plaintiffs to work. Thus, Plaintiffs have sufficiently
27 alleged that they were employed by County Defendants for the purposes of Section 1194.

28 Finally, County Defendants assert that the Section 1194 claim for unpaid overtime fails

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1 because state law regulations “exempt employees of the State or any political subdivision thereof,
2 including any city, county, or special district from the overtime requirements of the Labor Code.”
3 ECF No. 51 at 18 (citing 8 Cal. Code of Regulations § 11010). Plaintiffs make no argument to the
4 contrary. Because County Defendants are exempt from the state overtime laws, 8 Cal. Code of
5 Regulations § 11010, their motion to dismiss Plaintiffs’ Section 1194 claim for failure to pay
6 overtime wages is granted. Dismissal is without leave to amend because amendment would be
7 futile. *See Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013).

8 For the foregoing reasons, Plaintiffs have alleged an employment relationship with all
9 Defendants. Therefore, the Court denies Aramark’s motion to dismiss Plaintiffs’ Section 1194
10 claims for failure to pay minimum wage and overtime wages. The Court denies County
11 Defendants’ motion to dismiss Plaintiffs’ Section 1194 claim for failure to pay minimum wage,
12 but grants County Defendants’ motion to dismiss Plaintiffs’ Section 1194 claim for failure to pay
13 overtime wages because state entities are exempt from state overtime laws.

14 **C. Claims Under 42 U.S.C. § 1983**

15 County Defendants submit that Plaintiffs’ claims under Section 1983 fail because they are
16 premised on the fact that Plaintiffs are entitled to compensation for work performed in Santa Rita
17 Jail, which, County Defendants argue, they are not. ECF No. 51 at 23.

18 42 U.S.C. § 1983 provides:

19 Every person who, under color of any statute, ordinance, regulation,
20 custom, or usage, . . . subjects, or causes to be subjected, any citizen
21 of the United States or other person within the jurisdiction thereof to
22 the deprivation of any rights, privileges, or immunities secured by the
23 Constitution and laws, shall be liable to the party injured in an action
24 at law, suit in equity, or other proper proceeding for redress

25 To state a claim under Section 1983, a plaintiff must allege two elements: (1) that a right secured
26 by the Constitution or laws of the United States was violated; and (2) that the violation was
27 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).
28 Liability under Section 1983 “arises only upon a showing of personal participation by the
defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citations omitted). Respondeat
superior liability does not lie in Section 1983; a supervisor is only liable under Section 1983 “if

1 the supervisor participated in or directed the violations, or knew of the violations and failed to act
2 to prevent them.” *Id.*

3 **1. Thirteenth Amendment Claim**

4 The Thirteenth Amendment provides: “Neither slavery nor involuntary servitude, except as
5 punishment for crime whereof the party shall have been duly convicted, shall exist within the
6 United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII, § 1. Plaintiffs
7 who have not been convicted of crimes are protected by the Thirteenth Amendment’s prohibition
8 against involuntary servitude. *See McGarry v. Pallito*, 687 F.3d 505, 511 (2d Cir. 2012).

9 County Defendants contend that Plaintiffs’ Thirteenth Amendment claim fails because
10 they have no right to compensation for work performed in Santa Rita Jail. ECF No. 51 at 23-24.
11 County Defendants argue that all Plaintiffs – pretrial detainees and immigration detainees included
12 – “are governed by Title 4 of the California Penal Code” *Id.* at 24. County Defendants
13 conclude that because Plaintiffs cannot be compensated for their labor, they are, “like convicted
14 criminals,” not entitled to the Thirteenth Amendment’s protection from involuntary servitude. *Id.*
15 at 25.

16 Plaintiffs respond that Section 1983 authorizes damages against County Defendants for
17 violating Plaintiffs’ Thirteenth Amendment rights. ECF No. 53 at 15. Plaintiffs argue that they
18 may seek compensatory, nominal, and punitive damages in the form of wages under the Thirteenth
19 Amendment because “[w]ages are suitable compensatory damages for forced labor,” and
20 “[d]efendants cite no contrary case law.” *Id.*

21 As the Court noted above, the issue of remedies for any violation of the Thirteenth
22 Amendment is not before the Court at this stage of the proceedings. *See supra* IV.B.3 n.6. At this
23 stage, the Court need only resolve whether Plaintiffs have sufficiently pleaded a Thirteenth
24 Amendment claim against County Defendants under Section 1983.

25 Plaintiffs allege that County Defendants force them to work before they have been
26 convicted or while awaiting immigration proceedings. FAC ¶¶ 51, 53, 75, 76. Rather than refute
27 this allegation, County Defendants argue that Plaintiffs have not stated a Thirteenth Amendment
28 claim because they are not entitled to payment for their labor and the Thirteenth Amendment

1 therefore does not apply. ECF No. 51 at 23-24. As the Court noted, claims of unpaid labor are
 2 distinct from claims of forced labor. *See supra* IV.B.3 n.6. In support of their forced labor claims,
 3 Plaintiffs allege that County Defendants forced them to work under the threat of punishment,
 4 including lengthier sentences and solitary confinement. This allegation is sufficient to plead that
 5 County Defendants have violated Plaintiffs' Thirteenth Amendment rights, and Plaintiffs therefore
 6 satisfy the first element of a Section 1983 claim. *See Atkins*, 487 U.S. at 48. Plaintiffs have also
 7 sufficiently pleaded that the persons who violated their rights were acting under color of state law,
 8 as County Defendants are governmental entities who were acting under state law as the
 9 administrators of Santa Rita Jail. *Id.* As such, County Defendants' motion to dismiss Plaintiffs'
 10 Thirteenth Amendment claim is denied.⁷

11 2. Fourteenth Amendment Claims

12 The Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life,
 13 liberty or property, without due process of law; nor deny to any person within its jurisdiction the
 14 equal protection of the laws." U.S. Const. amend. XIV, § 1.

15 a. Equal Protection Claim

16 The women prisoner subclass alleges a violation of the Fourteenth Amendment's equal
 17 protection clause against County Defendants. FAC ¶¶ 80-84. County Defendants move to dismiss
 18 on the ground that the FAC does not allege that the denial of out of cell time caused any plaintiff
 19 any injury.⁸ ECF No. 51 at 25. According to County Defendants, "the generic statement that out
 20 of cell time is crucial for the physical and mental health of prisoners is wholly insufficient to state
 21

22 ⁷ Plaintiffs have not brought a Thirteenth Amendment claim against Aramark. Nonetheless,
 23 Plaintiffs argue that Aramark violated the Thirteenth Amendment and that "the gravamen of
 24 [Plaintiffs'] complaint puts Aramark on notice that they . . . have violated plaintiffs' right to be
 25 free from forced labor." ECF No. 54 at 17. Plaintiffs request leave by the Court to add a Section
 26 1983 claim against Aramark for violating the Thirteenth Amendment. *Id.* The Court grants
 Plaintiffs' request. *See Topadzhikyan v. Glendale Police Dep't*, 2010 WL 2740163, at *3 n.1
 (C.D. Cal. May 21, 2010) (plaintiff was permitted to add new claims where the court granted leave
 to amend without limitation in its dismissal order).

27 ⁸ County Defendants also argue that the women prisoner subclass was treated "exactly the same as
 28 the male inmates," ECF No. 51 at 25, insofar as all of them received no compensation. This point
 is irrelevant to Plaintiffs' equal protection claim, which is based on the difference in out of cell
 time.

1 a claim for injury” under Section 1983. *Id.* County Defendants further argue that Plaintiffs have
2 alleged no facts suggesting that “the Sheriff personally deprived any Plaintiff of any out of cell
3 time.” *Id.* at 26.

4 To prevail on an equal protection claim, plaintiffs “must allege facts plausibly showing
5 that the defendants acted with an intent or purpose to discriminate against them based upon
6 membership in a protected class.” *Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114,
7 1123 (9th Cir. 2013). Supervisory liability exists under Section 1983 where the supervisor is
8 either personally involved in the constitutional deprivation or there is a sufficient causal
9 connection between the supervisor’s wrongful conduct and the constitutional violation. *Rodriguez*
10 *v. Cnty. of Los Angeles*, 891 F.3d 776, 798 (9th Cir. 2018).

11 County Defendants misunderstand the question, which is not whether the denial of out-of-
12 cell time *caused* the Women Subclass injury but *whether the denial itself was the injury*. “When
13 the government erects a barrier that makes it more difficult for members of one group to obtain a
14 benefit than it is for members of another group . . . [t]he ‘injury in fact’ in an equal protection case
15 . . . is the denial of equal treatment resulting from the imposition of the barrier[.]” *Ne. Fla.*
16 *Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666,
17 (1993). Similarly here, the injury for equal protection purposes is not the effect of the loss of out-
18 of-cell time, but rather the fact that such time has been taken away in the first place on the basis of
19 gender. *See Coal. for Econ. Equity v. Wilson*, 122 F.3d 692, 704 (9th Cir. 1997), *as amended on*
20 *denial of reh’g and reh’g en banc* (Aug. 21, 1997), *as amended* (Aug. 26, 1997) (“Where a state
21 denies someone a job, an education, or a seat on the bus because of her race or gender, the injury
22 to that individual is clear.”)⁹ The Court finds that Plaintiffs have stated an injury insofar as the
23 County Defendants’ practices deprive women prisoners of equal time outside their cells on the
24 basis of gender, and out of cell time positively affects their physical and mental health. *See* FAC ¶

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⁹ In any event, it cannot seriously be argued that out-of-cell time is not valuable to prisoners. *See, e.g., Ashker v. Newsom*, 968 F.3d 939, 942 (9th Cir. 2020) (class member prisoners alleging violation of agreement to provide out-of-cell time); *Salvador Venegas v. Stan Sniff*, No. 5:18-cv-02293-JLS(SHK), 2020 WL 6723353, at *8 (C.D. Cal. Sept. 8, 2020) (ordering defendant county to provide jail inmate with a specific amount of out-of-cell time per week).

1 82.

2 Plaintiffs have also alleged sufficient facts to show that the Sheriff personally participated
3 in the arrangement that treats women unequally. *See* FAC ¶¶ 27, 37, 52, 81, 84. For example,
4 Plaintiffs specifically allege that Sheriff Ahern, along with other Defendants, “divide the work day
5 so that male prisoners are assigned to longer, daytime shifts, and female prisoners are assigned to
6 shorter, nighttime shifts.” FAC ¶ 27. The Court finds that this allegation is sufficient to plead that
7 Sheriff Ahern personally participated in the constitutional violation. *See Rodriguez*, 891 F.3d at
8 798. Accordingly, County Defendants’ motion to dismiss the women prisoner sub-class’s equal
9 protection claim is denied.

10 **b. Procedural Due Process Claim**

11 “[S]ome kind of hearing is required” under the Fourteenth Amendment before the state
12 may deprive a person of his or her property. *Parratt v. Taylor*, 451 U.S. 527, 540
13 (1981), *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986).

14 Plaintiffs allege that County Defendants failed to provide them due process by denying
15 them wages without a meaningful opportunity to be heard beforehand. FAC ¶¶ 36, 85-90. County
16 Defendants move to dismiss on the ground that Plaintiffs have no protected property interest in
17 wages for work performed in the Santa Rita jail kitchen. ECF No. 51 at 27. County Defendants
18 rely on *Voris v. Lampert*, 7 Cal. 5th 1141 (2019) to support their argument.

19 Plaintiffs contend that inmates “working for private companies whose wages are governed
20 by statute, in this case the California Labor Code, are entitled to due process before being denied
21 wages for work that they have performed.” ECF No. 53 at 16. Plaintiffs cite *Piatt v. MacDougall*,
22 773 F.2d 1032 (9th Cir. 1985) for support and argue that *Voris* is inapplicable. *Id.* at 17.

23 The Court holds that *Piatt v. MacDougall* controls. *Piatt* held that a state prisoner could
24 not be denied compensation without being afforded due process where an Arizona statute
25 authorized compensation for work done in prisons and “his work was done as part of a contract
26 with a private entity.” *Piatt*, 773 F.2d at 1036. The Court has found that Plaintiffs have
27 sufficiently alleged that County Defendants denied them wages in violation of the Labor Code.
28 *See supra* IV.B.4 (denying motion to dismiss failure to pay minimum wage claim). Like *Piatt*,

1 Plaintiffs have alleged a right to compensation, and that right to compensation cannot be denied
2 without due process of law. 773 F.2d at 1036. But Plaintiffs contend that County Defendants
3 provided them with no hearing before denying them wages. FAC ¶ 36. Therefore, Plaintiffs
4 sufficiently allege that County Defendants denied Plaintiffs due process of law by denying them
5 pay without providing an opportunity to be heard.

6 *Voris* is inapposite. In *Voris*, a terminated employee brought a common law conversion
7 action against his former employer to recover unpaid wages. 7 Cal. 5th at 1149. The California
8 Supreme Court rejected the employee’s attempt to use the common law tort of conversion to
9 recover unpaid wages “[i]n light of the extensive remedies that already exist to combat wage
10 nonpayment in California.” *Id.* at 1162. County Defendants read *Voris* to stand for the
11 proposition that there is no valid property interest in unpaid wages. ECF No. 51 at 27. However,
12 that was not *Voris*’s holding. It held only that the tort of conversion cannot be used to recover
13 unpaid wages. *Cf.* 7 Cal. 5th at 1149.

14 The motion to dismiss Plaintiffs’ Section 1983 claim for failing to provide Plaintiffs due
15 process is denied.

16 **D. Individual Plaintiffs’ Claims**

17 County Defendants contend that the FAC fails to state any claim for relief for Plaintiffs
18 Mebrahtu, Mason, or Nunez-Romero because the Court previously dismissed their claims without
19 leave to amend. ECF No. 51 at 28. Plaintiffs submit that Mebrahtu, Mason, and Nunez-Romero
20 amended their claims against County Defendants “such that they state federal claims only”
21 ECF No. 53 at 17. In its previous order, the Court dismissed Mebrahtu’s state law claims against
22 County Defendants because he did not sufficiently allege that he suffered an injury within one
23 year of filing the class claim, ECF No. 46 at 13, and Mason and Nunez-Romero’s state law claims
24 for failure to comply with the Government Claims Act, *id.* at 14. This has no effect on Mebrahtu,
25 Mason, and Nunez-Romero’s federal claims. Additionally, the Court has held that Plaintiffs have
26 alleged sufficient facts to state TVPA and Section 1983 claims against County Defendants. *See*
27 *supra* IV.A.2.a, IV.C. The Court will not dismiss Plaintiffs Mebrahtu, Mason, and Nunez-
28 Romero’s federal claims.

1 County Defendants also argue that Plaintiff Abbey fails to state any claims against County
2 Defendants because the FAC does not contain specific facts pertaining to Abbey nor any claim for
3 relief that he asserts. ECF No. 51 at 28-29. Plaintiffs plead that Abbey worked in the Santa Rita
4 Jail kitchen and include dates on which he worked. FAC ¶¶ 13, 48. Plaintiffs contend that, “[l]ike
5 all plaintiffs and the putative class, [Abbey] was forced to work without compensation and under
6 threat of solitary confinement.” ECF No. 53 at 17. Plaintiffs included Abbey as one of the
7 representative plaintiffs for the pretrial detainee subclass. FAC ¶ 51. Finally, Plaintiffs use the
8 term “Plaintiffs” to refer to all named plaintiffs, including Abbey, in allegations against County
9 Defendants. *See, e.g., id.* ¶ 31. From these facts, the Court concludes that Abbey’s claims against
10 County Defendants are properly pleaded. The Court likewise declines to dismiss Abbey’s claims.

11 E. UCL Claim

12 Aramark moves to dismiss Plaintiffs’ UCL claim on the ground that Plaintiffs have not
13 stated any claim under other laws or statutes that could tether a UCL claim. ECF No. 52 at 26-27;
14 *see Willner v. Manpower, Inc.*, 35 F. Supp. 3d 1116, 1132 (N.D. Cal. 2014) (“An act is unlawful
15 under the UCL if it violates another law.”). As discussed above, Plaintiffs have sufficiently
16 alleged a TVPA claim and Labor Code claims against Aramark. Because “virtually any state,
17 federal or local law can serve as the predicate for an action under [the UCL],” *Davis v. HSBC*
18 *Bank Nev., N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012), the Court concludes that Plaintiffs have
19 stated a UCL claim and denies Aramark’s motion to dismiss this claim.

20 F. Bane Act Claim¹⁰

21 Lastly, Aramark moves to dismiss Plaintiffs’ Bane Act claim for failure to state a claim.
22 ECF No. 52 at 27. Aramark contends that Plaintiffs have not alleged either of the required
23 elements for a Bane Act claim. *Id.* The necessary elements for a Bane Act claim are “(1)
24 intentional interference or attempted interference with a state or federal constitutional or legal
25 right, and (2) the interference or attempted interference was by threats, intimidation or coercion.”
26 *Lawrence v. City and Cnty. of San Francisco*, 258 F. Supp. 3d 977, 994-95 (N.D. Cal. 2017)

27 _____
28 ¹⁰ County Defendants do not move to dismiss Plaintiffs’ Bane Act claim. The Court analyzes solely whether Plaintiffs state a claim under the Bane Act against Aramark.

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1 (citing *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 67 (2015)); *see also* Cal. Civ. Code §
2 52.1(b)-(c). The right at issue must be constitutional or statutory. *Venegas v. Cnty. of Los*
3 *Angeles*, 32 Cal. 4th 820, 843 (2004).

4 Plaintiffs have met the first element by alleging that Aramark intentionally interfered with
5 Plaintiffs' right to minimum and overtime wages under California Labor Code Section 1194.

6 The test under the second element is "whether a reasonable person, standing in the shoes of
7 the plaintiff, would have been intimidated by the actions of the defendants and have perceived a
8 threat of violence." *Richardson v. City of Antioch*, 722 F. Supp. 2d 1133, 1147 (N.D. Cal. 2010).

9 Aramark argues that Plaintiffs fail to meet the second element because "speech alone is
10 insufficient to support a Bane Act claim, 'except upon a showing that the speech itself threatens
11 violence against a specific person or a group [of] persons.'" ECF No. 52 at 27 (citing Cal. Civ.
12 Code § 52.1(k)). Plaintiffs respond that Aramark's threats to turn Plaintiffs over to the Sheriff's
13 deputies for discipline are sufficient to meet the second element. ECF No. 54 at 24.

14 Under the *Richardson* test, the second element of the Bane Act is satisfied if a reasonable
15 person "would have been intimidated by the actions of the defendants and have perceived a threat
16 of violence." 722 F. Supp. 2d at 1147. While threats of solitary confinement would meet this test,
17 *see Owino*, 2018 WL 2193644, at *11, Plaintiffs do not allege that Aramark employees make
18 these threats. *Cf.* FAC ¶ 31. Instead, Plaintiffs allege that Aramark employees threaten to turn
19 Plaintiffs over to be disciplined by Sheriff's deputies for misconduct, *id.* ¶ 24, or attempting to
20 leave work early due to injury or illness, *id.* ¶ 33. Nonetheless, the Court finds that Plaintiffs have
21 sufficiently alleged that Aramark coerces Plaintiffs into working without compensation,
22 interfering with their right to minimum and overtime wages. It matters not whether Aramark has
23 the actual authority to place prisoners in solitary confinement, only whether a reasonable person,
24 "standing in the shoes of the plaintiff," would have perceived a threat. *Richardson*, 722 F. Supp.
25 2d at 1147. The Court finds that a reasonable person standing in Plaintiffs' place would have been
26 intimidated by Aramark's threats to report Plaintiffs for discipline by Sheriff's deputies, who
27 Plaintiffs believed would place them in solitary confinement if they refused to work. Accordingly,
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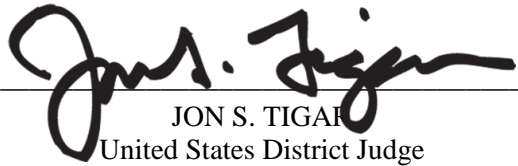
Aramark’s motion to dismiss the Bane Act claim is denied.¹¹

CONCLUSION

For the foregoing reasons, County Defendants and Aramark’s motions to dismiss are granted in part and denied in part. The Court dismisses Plaintiffs’ (1) Labor Code Section 201 and 202 claims for failure to pay wages with leave to amend and (2) Labor Code Section 1194 claim against County Defendants for failure to pay overtime without leave to amend. The motions are denied in all other respects.

IT IS SO ORDERED.

Dated: June 24, 2021



JON S. TIGAI
United States District Judge

¹¹ Because the Court finds that Plaintiffs have met the second element on the Bane Act under *Richardson*, the Court will not address Plaintiffs’ theory that Aramark aided and abetted County Defendants. *See* ECF No. 54 at 24.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARMIDA RUELAS, et al.,

Plaintiffs,

v.

COUNTY OF ALAMEDA, et al.,

Defendants.

Case No. 19-cv-07637-JST

**ORDER GRANTING MOTION FOR
LEAVE TO BRING AN
INTERLOCUTORY APPEAL**

Re: ECF No. 70

Before the Court is Defendant Aramark Correctional Services, LLC’s (“Aramark”) motion for an order certifying for immediate interlocutory appeal one legal issue decided in this Court’s order granting in part and denying in part Defendants’ motions to dismiss. ECF No. 70. The Court grants the motion and clarifies the statement of the issue to be decided.

In a simultaneously-filed order, the Court modifies the order granting in part and denying in part Defendants’ motions to dismiss to more thoroughly explain the Court’s reasoning on the issue certified for interlocutory appeal.

I. BACKGROUND

Plaintiffs Armida Ruelas, De’Andre Eugene Cox, Bert Davis, Katrish Jones, Joseph Mebrahtu, Dahryl Reynolds, Monica Mason, Luis Nunez-Romero, and Scott Abbey are or were “pre-trial detainees[and] detainees facing deportation” confined in Alameda County’s Santa Rita Jail. First Amended Complaint (“FAC”), ECF No. 48 ¶ 1. The facts of this case are discussed in greater detail in the Court’s order granting in part and denying in part Defendants’ motion to dismiss the FAC, ECF No. 66, and are summarized briefly here. Plaintiffs are or were performing “industrial food preparation services and cleaning” for Aramark pursuant to a contract between Aramark and Alameda County. FAC ¶ 1. “Aramark is a private, for-profit company that sells

1 food prepared by prisoners to third parties” outside of Alameda County. *Id.* This contract was
2 made possible by California Proposition 139, which allows private companies to hire county jail
3 inmates. *Id.* ¶ 18. Alameda County contracted with Aramark “as early as July 1, 2015.” *Id.* ¶ 22.

4 Plaintiffs allege that Aramark’s contract with Alameda County allows Aramark “to employ
5 persons imprisoned in Santa Rita Jail without compensating them.” *Id.* Under the contract,
6 “[p]risoners prepare and package food” in Santa Rita’s kitchen “and clean and sanitize the
7 kitchen” after preparation has finished. *Id.* ¶ 23. Employees of Aramark “supervise the quality
8 and amount of work that prisoners accomplish” and “supervise prisoner-employee conduct and
9 report misconduct to the deputies for discipline.” *Id.* ¶ 24. Plaintiffs allege that Defendants
10 Alameda County and Sheriff Gregory J. Ahern (“County Defendants”) may “remove [prisoner-
11 employees’] eligibility to work in the jail and subject them to disciplinary action” if Sheriff’s
12 deputies are “displeased with the quality or quantity of the work performed or the conduct of a
13 prisoner-employee.” *Id.* ¶ 26. Plaintiffs allege that “Sheriff’s deputies threaten plaintiffs and
14 other prisoner-employees of Aramark that if they refuse to work, they will receive lengthier jail
15 sentences or be sent to solitary confinement, where they would be confined to a small cell for 22
16 to 24 hours a day.” *Id.* ¶ 31. The deputies “also threaten to terminate prisoners’ employment if
17 they need to take a sick day or are injured.” *Id.* Plaintiffs allege that such threats are sometimes
18 made “in the presence of Aramark employees,” *id.* ¶ 32, and that Aramark employees threaten “to
19 report [prisoner-employees] to the Sheriff’s deputies for punishment if they attempt to leave work
20 early due to illness or injury,” *id.* ¶ 33.

21 On June 26, 2020, this Court granted in part and denied in part County Defendants and
22 Aramark’s motion to dismiss the original complaint. ECF No. 46. All dismissals were with leave
23 to amend except for the Labor Code claim for failure to pay convicted Plaintiffs wages as well as
24 Mebrahtu, Mason, and Nunez-Romero’s Labor Code and Bane Act claims against County
25 Defendants. *Id.* On July 10, 2020, Plaintiffs filed the FAC. ECF No. 48. Plaintiffs added a new
26 plaintiff, Scott Abbey, *id.* ¶ 1, and reasserted nine of the ten claims from the original complaint,
27 *see id.* ¶ 74-110. Plaintiffs no longer brought claims under California’s Equal Pay Act., *cf. id.*, or
28 sought to represent convicted inmates, *see id.* ¶ 50. In August 2020, Aramark and County

1 Defendants filed their motions to dismiss the FAC. ECF Nos. 51, 52.

2 The Court granted in part and denied in part the motions to dismiss. ECF No. 66 (“MTD
3 Order”). The Court dismissed Plaintiffs’ (1) Labor Code Section 201 and 202 claims for failure to
4 pay wages and (2) Labor Code Section 1194 claim against County Defendants for failure to pay
5 overtime, and otherwise denied the motions. In the MTD Order, the Court decided the following
6 question of law in Plaintiffs’ favor:

7 1. Do non-convicted incarcerated individuals performing services in county jails for a
8 for-profit company that sells goods produced by incarcerated individuals to third
9 parties outside of the county have a claim for minimum wages and overtime under
10 Section 1194 of the California Labor Code in the absence of any local ordinance
11 prescribing or prohibiting the payment of wages for these individuals?

12 Aramark has filed this motion to seek interlocutory appeal of this conclusion. Plaintiffs
13 oppose the motion, ECF No. 74, and Aramark has filed a reply, ECF No. 77.

14 **II. JURISDICTION**

15 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court has
16 supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. § 1367.

17 **III. LEGAL STANDARD**

18 The final judgment rule ordinarily provides that courts of appeal shall have jurisdiction
19 only over “final decisions of the district courts of the United States.” 28 U.S.C. § 1291. However,
20 “[w]hen a district judge, in making in a civil action an order not otherwise appealable under this
21 section, shall be of the opinion that such order involves a controlling question of law as to which
22 there is substantial ground for difference of opinion and that an immediate appeal from the order
23 may materially advance the ultimate termination of the litigation, he shall so state in writing in
24 such order.” 28 U.S.C. § 1292(b). “The Court of Appeals which would have jurisdiction of an
25 appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such
26 order.” *Id.* “Certification under § 1292(b) requires the district court to expressly find in writing
27 that all three § 1292(b) requirements are met.” *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th
28 Cir. 2010). “These certification requirements are (1) that there be a controlling question of law,

1 (2) that there be substantial grounds for difference of opinion, and (3) that an immediate appeal
2 may materially advance the ultimate termination of the litigation.” *In re Cement Antitrust Litig.*
3 (*MDL No. 296*), 673 F.2d 1020, 1026 (9th Cir. 1981), aff’d sub nom. *Arizona v. Ash Grove*
4 *Cement Co.*, 459 U.S. 1190 (1983). “Section 1292(b) is a departure from the normal rule that only
5 final judgments are appealable, and therefore must be construed narrowly.” *James v. Price Stern*
6 *Sloan, Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002). To that end, “section 1292(b) is to be
7 applied sparingly and only in exceptional cases.” *In re Cement Antitrust Litig.*, 673 F.2d at 1027.

8 **IV. DISCUSSION**

9 The Court addresses each § 1292(b) requirement in turn.

10 First, the Court notes that “all that must be shown in order for a question to be ‘controlling’
11 is that resolution of the issue on appeal could materially affect the outcome of litigation in the
12 district court.” *In re Cement Antitrust Litig.*, 673 F.2d at 1026. However, “the legislative history
13 of 1292(b) indicates that this section was to be used only in exceptional situations in which
14 allowing an interlocutory appeal would avoid protracted and expensive litigation.” *Id.* “A
15 steadily growing number of decisions” have found “that a question is controlling, even though its
16 disposition might not lead to reversal on appeal, if interlocutory reversal might save time for the
17 district court, and time and expense for the litigants.” 16 Wright, Miller & Cooper, Fed. Prac. &
18 Proc. (Juris.) § 3930 (3d ed.) (citing cases).

19 The question of law Aramark seeks to appeal is likely to significantly affect the outcome of
20 this litigation. Although Plaintiffs point to “six claims for damages unrelated to the California
21 Labor Code that remain to be litigated in this case,” ECF No. 74 at 6, the Court relied on
22 Plaintiffs’ California Labor Code claims in its discussion of at least two of these claims, *see* ECF
23 No. 66 at 27-30 (discussing claims brought under the due process clause and the California Bane
24 Act). And Plaintiffs admit that the damages they seek under other legal claims also implicate the
25 question at issue because the amount of damages “may be informed by the wages a person
26 performing similar work would be owed.” ECF No. 74 at 6. Given the number of issues that
27 involve the Court’s holding that the Labor Code wage provisions apply to Plaintiffs, this case
28 would be streamlined if the issue is resolved in Aramark’s favor on appeal. The Court also finds

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United States District Court
Northern District of California

1 that a non-convicted detainee’s right to bring claims under the California Labor Code when forced
2 to work for a private corporation in a county jail that is not governed by a relevant local ordinance
3 could have “substantial public policy importance to the state as a whole.” *See Su v. Siemens*
4 *Indus., Inc.*, No. 12-cv-03743-JST, 2014 WL 2600539, at *2 (N.D. Cal. June 10, 2014).

5 Second, “[t]o determine if a ‘substantial ground for difference of opinion’ exists under §
6 1292(b), courts must examine to what extent the controlling law is unclear.” *Couch*, 611 F.3d at
7 633. “Courts traditionally will find that a substantial ground for difference of opinion exists where
8 ‘the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on
9 the point, if complicated questions arise under foreign law, or if novel and difficult questions of
10 first impression are presented.’” *Id.* (quoting 3 Federal Procedure, Lawyers Edition § 3:212
11 (2010) (footnotes omitted)). “A substantial ground for difference of opinion exists where
12 reasonable jurists might disagree on an issue’s resolution, not merely where they have already
13 disagreed.” *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011).

14 The question presented here is a question of first impression. Plaintiffs emphasize two
15 district court opinions that have held that the California Labor Code applies to detainees in federal
16 immigration facilities. *See* ECF No. 74 at 7 (citing *Owino v. CoreCivic, Inc.*, No. 17-CV-1112
17 JLS (NLS), 2018 WL 2193644, at *20-27 (S.D. Cal. May 14, 2018) and *Novoa v. GEO Grp., Inc.*,
18 No. EDCV172514JGBSHKX, 2018 WL 3343494, at *9 (C.D. Cal. June 21, 2018). But these
19 cases did not address the implications of Proposition 139 or the California Penal Code. Plaintiffs
20 also emphasize that Aramark has not pointed to any case conflicting with this Court’s
21 “construction or application of California Labor Code section 1194.” ECF No. 74 at 9 (quotation
22 marks and citation omitted). Not only is that not a requirement of Section 1292(b), but it could
23 hardly be otherwise, given that no other court has considered this issue. The Court finds that a
24 reasonable jurist could adopt Aramark’s position that the Court’s reasoning regarding the Penal
25 Code’s preclusive effect on convicted individuals’ assertion of claims under the Labor Code
26 should also apply to non-convicted detainees, despite the Penal Code’s emphasis on “persons
27 confined in the county jail . . . under a final judgment of imprisonment rendered in a criminal
28 action or proceeding” in the provision granting “the board of supervisors or city council” the

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United States District Court
Northern District of California

1 authority to require convicted detainees “to perform labor on the public works or ways in the
2 county or city.” Cal. Penal Code § 4017 (emphasis added); *see also* ECF No. 52 at 9. Therefore,
3 as in *Su*, the Court’s legal determination here is “on [an] unsettled or disputable area[] of
4 California law, and there are substantial grounds for a difference of opinion.” 2014 WL 2600539,
5 at *3

6 Finally, “neither § 1292(b)’s literal text nor controlling precedent requires that the
7 interlocutory appeal have a final, dispositive effect on the litigation, only that it ‘may materially
8 advance’ the litigation.” *Reese*, 643 F.3d at 688. As one commentator has put it, “[i]deally, §
9 1292(b) could be used to allow interlocutory appeals whenever the district court and court of
10 appeals agree that immediate review is a good gamble.” 16 Wright, Miller & Cooper, *supra*, at §
11 3930.

12 An interlocutory appeal would materially advance the litigation because several claims
13 implicate the legal question Aramark seeks to appeal. Aramark argues that in addition to
14 potentially reducing the number of issues for resolution, an immediate appeal would also “shap[e]
15 any future settlement discussions.” ECF No. 77 at 5. The Court rejects Plaintiffs’ argument that
16 “an appeal would only serve to significantly delay the final resolution of this action” because
17 Defendants have not requested a stay pending resolution of the appeal. ECF No. 74 at 10. This
18 litigation will therefore proceed apace regardless of whether the Ninth Circuit accepts this appeal.

19 The Court concludes that all three requirements of § 1292(b) are met and that interlocutory
20 appeal is warranted.

21 CONCLUSION


22 For the foregoing reasons, the Court GRANTS Aramark’s motion for leave to bring an
23 interlocutory appeal. The Court now certifies the following question for interlocutory appeal:

- 24 1. Do non-convicted incarcerated individuals performing services in county jails for a
25 for-profit company that sells goods produced by incarcerated individuals to third
26 parties outside of the county have a claim for minimum wages and overtime under
27 Section 1194 of the California Labor Code in the absence of any local ordinance
28 prescribing or prohibiting the payment of wages for these individuals?

1 Any application to the Ninth Circuit must be made “within ten days after the entry of” this order.
2 28 U.S.C. § 1292(b).

3 **IT IS SO ORDERED.**

4 Dated: June 24, 2021

5 
6 JON S. TIGAR
United States District Judge

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United States District Court
Northern District of California

CASE No. 21-16528

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS;
KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL REYNOLDS;
MONICA MASON; LOUIS NUNEZ-ROMERO; SCOTT ABBEY,
AND ALL OTHERS SIMILARLY SITUATED

Plaintiffs and Appellees,

v.

COUNTY OF ALAMEDA; SHERIFF GREGORY J. AHERN; ARAMARK
CORRECTIONAL SERVICES, LLC

Defendants and Appellants.

Appeal From The United States District Court,
Northern District of California, Case No. 4:19-cv-07637-JST,
Hon. Jon S. Tigar

EXCERPTS OF RECORD – VOLUME 2 OF 3

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20 **UNITED STATES DISTRICT COURT**
 21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 22 **OAKLAND DIVISION**

23 ARMIDA RUELAS; DE'ANDRE EUGENE COX;
 24 BERT DAVIS; KATRISH JONES; JOSEPH
 25 MEBRAHTU; DAHRYL REYNOLDS; MONICA
 26 MASON; LUIS NUNEZ-ROMERO; SCOTT
 27 ABBEY; and all others similarly situated,

28 Plaintiffs,

v.

COUNTY OF ALAMEDA; GREGORY J.
 AHERN, SHERIFF; ARAMARK
 CORRECTIONAL SERVICES, LLC; and DOES 1
 through 10,

Defendants.

Civil Case No.: 4:19-CV-07637 JST

**DEFENDANT ARAMARK
 CORRECTIONAL SERVICES, LLC'S
 ANSWER AND AFFIRMATIVE
 DEFENSES TO THE FIRST AMENDED
 COMPLAINT**

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PRELIMINARY STATEMENT

Defendant Aramark Correctional Services, LLC (“Aramark”) respectfully submits this Answer to Plaintiffs’ First Amended Class Action Complaint (ECF No. 48) (the “FAC”). Aramark reserves the right to amend and supplement its Answer as may be appropriate or necessary. Except as otherwise expressly stated herein, Aramark denies each and every allegation in the FAC—including any allegations in any unnumbered Paragraphs, subparagraphs, prayer for relief, headings, or subheadings—and specifically denies liability to Plaintiffs. To the extent not expressly denied, all allegations for which Aramark denies possessing knowledge or information sufficient to form a belief are denied.

RESPONSE TO THE PRELIMINARY STATEMENT

1. Aramark admits that Armida Ruelas, De’Andre Eugene Cox, Bert Davis, Katrish Jones, Joseph Mebrahtu, Dahryl Reynolds, Monica Mason, Luis Nunez-Romero and Scott Abbey are the named Plaintiffs in the FAC. Aramark admits that Plaintiffs purport to bring the FAC on their own behalf and on behalf of a purported class. Aramark admits that it is a for-profit company. Aramark states that it has a contract with Alameda County to operate the food services program at Santa Rita Jail, and further states that Jail inmates volunteer to participate in food preparation and cleaning in the Jail kitchen. Aramark is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 1 and, on that basis, denies those allegations. Aramark denies the remaining allegations in Paragraph 1.

RESPONSE TO JURISDICTION AND VENUE

2. The allegations in Paragraph 2 state legal conclusions to which no response is required. To the extent that a response is required, Aramark admits that the Court currently has subject matter jurisdiction over this action.

3. The allegations in Paragraph 3 state legal conclusions to which no response is required. To the extent that a response is required, Aramark admits that the Court currently has supplemental jurisdiction over Plaintiffs’ state law claims.

4. The allegations in Paragraph 4 state legal conclusions to which no response is required. To the extent that a response is required, Aramark admits that venue is proper in this District.

RESPONSE TO PARTIES

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2 5. Aramark is without knowledge or information sufficient to form a belief as to the truth of
3 the allegation that Armida Ruelas was incarcerated at Santa Rita Jail and, on that basis, denies that
4 allegation. Aramark denies the remaining allegations in Paragraph 5.

5 6. Aramark is without knowledge or information sufficient to form a belief as to the truth of
6 the allegation that De'Andre Eugene Cox was incarcerated at Santa Rita Jail and, on that basis, denies that
7 allegation. Aramark denies the remaining allegations in Paragraph 6.

8 7. Aramark is without knowledge or information sufficient to form a belief as to the truth of
9 the allegation that Bert Davis was incarcerated at Santa Rita Jail and, on that basis, denies that allegation.
10 Aramark denies the remaining allegations in Paragraph 7.

11 8. Aramark is without knowledge or information sufficient to form a belief as to the truth of
12 the allegation that Katrish Jones was incarcerated at Santa Rita Jail and, on that basis, denies that
13 allegation. Aramark denies the remaining allegations in Paragraph 8.

14 9. Aramark is without knowledge or information sufficient to form a belief as to the truth of
15 the allegation that Joseph Mebrahtu was incarcerated at Santa Rita Jail and, on that basis, denies that
16 allegation. Aramark denies the remaining allegations in Paragraph 9.

17 10. Aramark is without knowledge or information sufficient to form a belief as to the truth of
18 the allegation that Dahryl Reynolds was incarcerated at Santa Rita Jail and, on that basis, denies that
19 allegation. Aramark denies the remaining allegations in Paragraph 10.

20 11. Aramark is without knowledge or information sufficient to form a belief as to the truth of
21 the allegation that Monica Mason was incarcerated at Santa Rita Jail and, on that basis, denies that
22 allegation. Aramark denies the remaining allegations in Paragraph 11.

23 12. Aramark is without knowledge or information sufficient to form a belief as to the truth of
24 the allegation that Luis Nunez-Romero was incarcerated at Santa Rita Jail and, on that basis, denies that
25 allegation. Aramark denies the remaining allegations in Paragraph 12.

26 13. Aramark is without knowledge or information sufficient to form a belief as to the truth of
27 the allegation that Scott Abbey was incarcerated at Santa Rita Jail and, on that basis, denies that allegation.
28 Aramark denies the remaining allegations in Paragraph 13.

1 14. Aramark avers that the allegations in Paragraph 14 are not asserted against Aramark and
2 state conclusions of law, and thus no response is required. To the extent that a response is required,
3 Aramark states upon information and belief that Alameda County is a public entity operating under the
4 laws of the State of California, that Alameda County employs the Alameda County Sheriff and Sheriff's
5 deputies, and that Alameda County owns and operates the Santa Rita Jail. Aramark is without knowledge
6 or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14, and,
7 on that basis, denies those allegations.

8 15. Aramark avers that the allegations in Paragraph 15 are not asserted against Aramark and
9 state conclusions of law, and thus no response is required. To the extent that a response is required,
10 Aramark states upon information and belief that Gregory J. Ahern is the Sheriff of Alameda County.
11 Aramark admits that Plaintiffs purport to sue Defendant Ahern in his individual and official capacities.
12 Aramark is without knowledge or information sufficient to form a belief as to the truth of the remaining
13 allegations in Paragraph 15 and, on that basis, denies those allegations.

14 16. Aramark admits that it has been and is a for-profit company. Aramark denies the remaining
15 allegations in Paragraph 16.

16 17. Aramark is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in Paragraph 17 and, on that basis, denies those allegations.

18 **RESPONSE TO STATEMENT OF FACTS**

19 18. Aramark admits that California voters approved Proposition 139 in 1990, and refers the
20 Court to Proposition 139 and to Article 14, Section 5 of the California Constitution for the meaning and
21 effect of Proposition 139. Aramark denies the remaining allegations in Paragraph 18.

22 19. The allegations of Paragraph 19 state legal conclusions to which no response is required.
23 To the extent that a response is required, Aramark denies the allegations in Paragraph 19.

24 20. Aramark states, upon information and belief, that Santa Rita Jail is owned and operated by
25 Alameda County. Aramark is without knowledge or information to form a belief as to the truth of the
26 remaining allegations in Paragraph 20 and, on that basis, denies those allegations.

27 21. Aramark is without knowledge or information sufficient to form a belief as to the truth of
28 the allegations in Paragraph 21 and, on that basis, denies those allegations.

1 22. Aramark admits that it entered into a contract with Alameda County with an effective date
2 of July 1, 2015 and refers the Court to that document for its contents. Aramark denies the remaining
3 allegations in Paragraph 22.

4 23. Aramark states that Jail inmates volunteer to participate in the food services program that
5 Aramark operates at the Santa Rita Jail pursuant to its contract with Alameda County. Aramark denies
6 the remaining allegations in Paragraph 23.

7 24. Aramark states that it implements safety and food preparation protocols at the Santa Rita
8 Jail kitchen. Aramark further states that Sheriff's deputies are responsible for addressing inmate
9 misconduct at Santa Rita Jail, and that Aramark has a right to inform Sheriff's deputies of inmate
10 misconduct in the Jail kitchen. Aramark is without knowledge or information sufficient to form a belief
11 as to the truth of the allegations regarding the first sentence of Paragraph 24, and, on that basis, denies
12 those allegations. Aramark denies the remaining allegations in Paragraph 24.

13 25. Aramark denies the allegations in Paragraph 25.

14 26. Aramark is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations in the first sentence of Paragraph 26 and, on that basis, denies those allegations. Aramark
16 denies the remaining allegations in Paragraph 26.

17 27. Aramark denies the allegations in Paragraph 27.

18 28. Aramark is without knowledge or information sufficient to form a belief as to the truth of
19 the allegations in the first sentence of Paragraph 28 and, on that basis, denies those allegations. Aramark
20 denies the remaining allegations in Paragraph 28.

21 29. Aramark is without knowledge or information sufficient to form a belief as to the truth of
22 the allegation that Plaintiffs participated in food preparation and/or cleaning at the Santa Rita Jail kitchen,
23 and, on that basis, denies that allegation. Aramark denies the remaining allegations in Paragraph 29.

24 30. Aramark states that inmate volunteers in the Santa Rita Jail kitchen do not receive wages.
25 Aramark denies the remaining allegations in Paragraph 30.

26 31. Aramark denies that inmate volunteers in the Santa Rita Jail kitchen are employees of
27 Aramark. Aramark is without knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations in Paragraph 31 and, on that basis, denies those allegations.

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1 32. Aramark denies the allegations in Paragraph 32.

2 33. Aramark denies the allegations in Paragraph 33.

3 34. Aramark is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations in Paragraph 34 regarding Sheriff's deputies and, on that basis, denies those allegations.
5 Aramark denies the remaining allegations in Paragraph 34.

6 35. Aramark states that inmate volunteers in the Santa Rita Jail kitchen are not paid wages.
7 Aramark further states that inmate volunteers are not in their cells when in the Jail kitchen, which can be
8 beneficial to their physical and mental health. Aramark further states that inmate volunteers in the Jail
9 kitchen can obtain additional food for their own enjoyment and nutrition. Aramark is without knowledge
10 or information sufficient to form a belief as to the remaining allegations in Paragraph 35 and, on that basis,
11 denies those allegations.

12 36. Aramark avers that the allegations in Paragraph 36 are not specifically asserted against
13 Aramark and therefore no response is required. To the extent that a response is required, Aramark is
14 without knowledge or information sufficient to form a belief as to the allegations in Paragraph 36 and, on
15 that basis, denies those allegations.

16 37. Aramark states that in 2019, certain inmates at Santa Rita Jail staged what they called a
17 strike. Aramark denies that inmate volunteers in the Jail kitchen are employees of Aramark. Aramark is
18 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
19 in Paragraph 37 and, on that basis, denies those allegations.

20 38. Aramark states that it provides food prepared at Santa Rita Jail to other correctional
21 facilities pursuant to agreements with Alameda County and those other facilities. Aramark denies the
22 remaining allegations in Paragraph 38.

23 39. The allegations in Paragraph 39 state a legal conclusion to which no response is required.
24 To the extent that a response is required, Aramark admits that it has entered into one or more contracts
25 with Alameda County and refers the Court to those documents for their contents. Aramark denies the
26 remaining allegations in the first sentence of Paragraph 39. Aramark is without knowledge or information
27 sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 39 and, on
28 that basis, denies those allegations.

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1 51. The allegations in Paragraph 51 state a legal conclusion to which no response is required.
2 To the extent that a response is required, Aramark admits that the Plaintiffs identified in Paragraph 51
3 seek to represent the subclass described in Paragraph 51. Aramark denies that class certification is
4 appropriate and further denies the remaining allegations in Paragraph 51.

5 52. The allegations in Paragraph 52 state a legal conclusion to which no response is required.
6 To the extent that a response is required, Aramark admits that the Plaintiffs identified in Paragraph 52
7 seek to represent the subclass described in Paragraph 52. Aramark denies that class certification is
8 appropriate and further denies the remaining allegations in Paragraph 52.

9 53. The allegations in Paragraph 53 state a legal conclusion to which no response is required.
10 To the extent that a response is required, Aramark admits that the Plaintiff identified in Paragraph 53 seeks
11 to represent the subclass described in Paragraph 53. Aramark denies that class certification is appropriate
12 and further denies the remaining allegations in Paragraph 53.

13 54. The allegations in Paragraph 54 state legal conclusions or argument to which no response
14 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 54.

15 55. Aramark admits that Plaintiffs purport to reserve the right to amend or modify the class
16 and subclass descriptions and limit the purported class or subclasses to particular issues. Aramark denies
17 that class certification is appropriate and further denies the remaining allegations in Paragraph 55.

18 56. The allegations in Paragraph 56 state legal conclusions or argument to which no response
19 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 56.

20 57. Aramark is without information or belief as to the allegations in Paragraph 57 regarding
21 County of Alameda records and, on that basis, denies them. Aramark denies the remaining allegations in
22 Paragraph 57.

23 58. The allegations in Paragraph 58 state legal conclusions or argument to which no response
24 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 58.

25 59. The allegations in Paragraph 59 state legal conclusions or argument to which no response
26 is required. To the extent that a response is required, Aramark is without information or belief as to the
27 allegations in Paragraph 59, and, on that basis, denies them.
28

1 60. The allegations in Paragraph 60 state legal conclusions or argument to which no response
2 is required. To the extent that a response is required, Aramark is without information or belief as to the
3 allegations in Paragraph 60, and, on that basis, denies them.

4 61. Because Paragraph 61 is blank, no response is required.

5 62. The allegations in Paragraph 62 state legal conclusions or argument to which no response
6 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 62.

7 63. The allegations in Paragraph 63 state legal conclusions or argument to which no response
8 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 63.

9 64. The allegations in Paragraph 64 state legal conclusions or argument to which no response
10 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 64.

11 65. The allegations in Paragraph 65 state legal conclusions or argument to which no response
12 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 65.

13 66. The allegations in Paragraph 66 state legal conclusions or argument to which no response
14 is required. To the extent that a response is required, Aramark is without information or belief as to the
15 allegations in Paragraph 66, and, on that basis, denies them.

16 67. The allegations in Paragraph 67 state legal conclusions or argument to which no response
17 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 67.

18 68. The allegations in Paragraph 68 state legal conclusions or argument to which no response
19 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 68 and
20 denies that Plaintiffs are entitled to any relief.

21 69. The allegations in Paragraph 69 state legal conclusions or argument to which no response
22 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 69.

23 70. The allegations in Paragraph 70 state legal conclusions or argument to which no response
24 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 70.

25 71. The allegations in Paragraph 71 state legal conclusions or argument to which no response
26 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 71.

27 72. The allegations in Paragraph 72 state legal conclusions or argument to which no response
28 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 72.

RESPONSE TO EXHAUSTION

1
2 73. Aramark avers that the allegations in Paragraph 73 are not asserted against Aramark and
3 thus no response is required. To the extent that a response is required, Aramark is without knowledge or
4 information sufficient to form a belief as to the truth of the allegations in Paragraph 73 and, on that basis,
5 denies those allegations.

RESPONSE TO FIRST CLAIM FOR RELIEF

6
7 74. Aramark incorporates by reference its answers to Paragraphs 1 through 73 as though fully
8 set forth herein.

9 75. Aramark avers that the allegations in Paragraph 75 are not asserted against Aramark and
10 thus no response is required. To the extent that a response is required, Aramark denies the allegations in
11 Paragraph 75.

12 76. Aramark avers that no response is required to the allegations in Paragraph 76 because those
13 allegations are not asserted against Aramark and because they state legal conclusions or argument. To the
14 extent that a response is required, Aramark denies the allegations in Paragraph 76.

RESPONSE TO SECOND CLAIM FOR RELIEF

15
16 77. Aramark incorporates by reference its answers to Paragraphs 1 through 76 as though fully
17 set forth herein.

18 78. Aramark denies the allegations in Paragraph 78.

19 79. Aramark denies the allegations in Paragraph 79.

RESPONSE TO THIRD CLAIM FOR RELIEF

20
21 80. Aramark incorporates by reference its answers to Paragraphs 1 through 76 as though fully
22 set forth herein.

23 81. Aramark avers that the allegations in Paragraph 81 are not asserted against Aramark and
24 thus no response is required. To the extent that a response is required, Aramark denies the allegations in
25 Paragraph 81.

26 82. Aramark avers that the allegations in Paragraph 82 are not asserted against Aramark and
27 thus no response is required. To the extent that a response is required, Aramark is without knowledge or
28

1 information sufficient to form a belief as to the allegations in the first sentence of Paragraph 82 and, on
2 that basis, denies those allegations. Aramark denies the remaining allegations in Paragraph 82.

3 83. Aramark avers that the allegations in Paragraph 83 are not asserted against Aramark and
4 thus no response is required. To the extent that a response is required, Aramark denies the allegations in
5 Paragraph 83.

6 84. Aramark avers that no response is required to the allegations in Paragraph 84 because those
7 allegations are not asserted against Aramark and because they state legal conclusions or argument. To the
8 extent that a response is required, Aramark is without knowledge or information sufficient to form a belief
9 as to the allegations in Paragraph 84 and, on that basis, denies those allegations.

10 **RESPONSE TO FOURTH CLAIM FOR RELIEF**

11 85. Aramark incorporates by reference its answers to Paragraphs 1 through 84 as though fully
12 set forth herein.

13 86. Aramark avers that no response is required to the allegations in Paragraph 86 because those
14 allegations are not asserted against Aramark and because they state legal conclusions or argument. To the
15 extent that a response is required, Aramark denies the allegations in Paragraph 86.

16 87. Aramark avers that no response is required to the allegations in Paragraph 87 because those
17 allegations are not asserted against Aramark and because they state legal conclusions or argument. To the
18 extent that a response is required, Aramark denies the allegations in Paragraph 87.

19 88. Aramark avers that no response is required to the allegations in Paragraph 88 because those
20 allegations are not asserted against Aramark and because they state legal conclusions or argument. To the
21 extent that a response is required, Aramark denies the allegations in Paragraph 88.

22 89. Aramark avers that the allegations in Paragraph 89 are not specifically asserted against
23 Aramark and thus no response is required. To the extent that a response is required, Aramark states that
24 Plaintiffs and any inmates performing services in the Jail kitchen are not entitled to wages, and Aramark
25 denies the allegations in Paragraph 89.

26 90. Aramark avers that no response is required to the allegations in Paragraph 90 because those
27 allegations are not asserted against Aramark and because they state legal conclusions or argument. To the
28 extent that a response is required, Aramark denies the allegations in Paragraph 90.

RESPONSE TO FIFTH CLAIM FOR RELIEF

1
2 91. Aramark incorporates by reference its answers to Paragraphs 1 through 90 as though fully
3 set forth herein.

4 92. Aramark avers that no response to Paragraph 92 is necessary because the Court granted
5 Aramark's motion to dismiss Plaintiffs' fifth claim for relief. Additionally, the allegations in Paragraph
6 92 state legal conclusions or argument to which no response is required. To the extent that a response is
7 required, Aramark denies the allegations in Paragraph 92.

8 93. Aramark avers that no response to Paragraph 93 is necessary because the Court granted
9 Aramark's motion to dismiss Plaintiffs' fifth claim for relief. Additionally, the allegations in Paragraph
10 93 state legal conclusions or argument to which no response is required. To the extent that a response is
11 required, Aramark denies the allegations in Paragraph 93.

RESPONSE TO SIXTH CLAIM FOR RELIEF

12
13 94. Aramark incorporates by reference its answers to Paragraphs 1 through 93 as though fully
14 set forth herein.

15 95. The allegations in Paragraph 95 state legal conclusions or argument to which no response
16 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 95.

17 96. The allegations in Paragraph 96 state legal conclusions or argument to which no response
18 is required. To the extent that a response is required, Aramark states that Plaintiffs and any inmates
19 performing services in the Jail kitchen are not entitled to wages, and Aramark denies the allegations in
20 Paragraph 96.

RESPONSE TO SEVENTH CLAIM FOR RELIEF

21
22 97. Aramark incorporates by reference its answers to Paragraphs 1 through 97 as though fully
23 set forth herein.

24 98. The allegations in Paragraph 98 state legal conclusions or argument to which no response
25 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 98.

26 99. The allegations in Paragraph 99 state legal conclusions or argument to which no response
27 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 99.
28

1 100. The allegations in Paragraph 100 state legal conclusions or argument to which no response
2 is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 100.

3 101. The allegations in Paragraph 101 state legal conclusions or argument to which no response
4 is required. To the extent that a response is required, Aramark states that Plaintiffs and any inmates
5 performing services in the Jail kitchen are not entitled to wages, and Aramark denies the allegations in
6 Paragraph 101.

7 **RESPONSE TO EIGHTH CLAIM FOR RELIEF**

8 102. Aramark incorporates by reference its answers to Paragraphs 1 through 101 as though fully
9 set forth herein.

10 103. The allegations in Paragraph 103 consist of legal conclusions or argument to which no
11 response is required. To the extent that a response is required, Aramark respectfully refers the Court to
12 California Business and Professions Code §§ 17200, et seq., for its complete content and context.

13 104. The allegations in Paragraph 104 consist of legal conclusions or argument to which no
14 response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph
15 104.

16 105. The allegations in Paragraph 105 consist of legal conclusions or argument to which no
17 response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph
18 105.

19 106. The allegations in Paragraph 106 consist of legal conclusions or argument to which no
20 response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph
21 106.

22 107. The allegations in Paragraph 107 consist of legal conclusions or argument to which no
23 response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph
24 107.

25 108. The allegations in Paragraph 108 consist of legal conclusions or argument to which no
26 response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph
27 108.
28

NINTH CLAIM FOR RELIEF

109. Aramark incorporates by reference its answers to Paragraphs 1 through 108 as though fully set forth herein.

110. The allegations in Paragraph 110 consist of legal conclusions or argument to which no response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 110.

RESPONSE TO PUNITIVE DAMAGES

111. The allegations in Paragraph 111 consist of legal conclusions or argument to which no response is required. To the extent that a response is required, Aramark denies the allegations in Paragraph 111.

RESPONSE TO DAMAGES

112. The allegations in Paragraph 112, including each of its subparagraphs, consist of legal conclusions or argument to which no response is required. To the extent that a response is required, Aramark denies that Plaintiffs or the putative class have suffered any injury or damages and further denies the remaining allegations in Paragraph 112.

RESPONSE TO PRAYER FOR RELIEF

The allegations in the numbered Paragraphs following Paragraph 112 contain Plaintiffs' Prayer for Relief, to which no response is required. To the extent that a response is required, Aramark denies that Plaintiffs are entitled to the relief requested or to any other relief.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden that it would not otherwise have, Aramark asserts the following additional defenses set forth below:

1. The FAC fails to state a claim upon which relief can be granted.
2. Plaintiffs and putative class members lack standing to assert any claims because they did not suffer any legally cognizable harm as a result of any alleged act or omission of Aramark.
3. Plaintiffs' and the putative class members' claims are barred in whole or in part under the applicable statutes of limitation and/or statutes of repose.

1 4. Plaintiffs' and the putative class members' claims are barred in whole or in part by
2 waiver.

3 5. Plaintiffs' and the putative class members' claims are barred in whole or in part by the
4 doctrines of estoppel, acquiescence, and/or ratification.

5 6. This action cannot properly be maintained as a class action because Plaintiffs cannot
6 satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

7 7. Plaintiffs' and the putative class members' claims are barred in whole or in part because
8 Plaintiffs and the putative class members cannot establish that they suffered any actual damages as a
9 result of any alleged act or omission by Aramark and/or because the alleged injury is too speculative
10 and uncertain, and it is impossible to ascertain and allocate such alleged damages with reasonable
11 certainty.

12 8. Plaintiffs' and the putative class members' claims are barred in whole or in part because
13 Aramark did not cause and otherwise is not responsible or liable for the alleged damages.

14 9. Statutory and/or punitive damages should not be awarded or should otherwise be
15 limited because: (i) such an award would violate the substantive and procedural safeguards guaranteed
16 by the Fifth and Fourteenth Amendments to the United States Constitution and by the common law;
17 and (ii) the imposition of such an award would constitute an excessive fine or penalty under the Eighth
18 Amendment to the United States Constitution.

19 10. Plaintiffs and the putative class members' claims for injunctive and equitable relief are
20 barred because any alleged injury to Plaintiffs and the putative class members is not immediate or
21 irreparable and Plaintiffs and the putative class members have an adequate remedy at law.

22 11. Plaintiffs' assertion of an adequate legal remedy precludes their UCL claim under
23 *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020).

24 12. At all relevant times, Aramark has acted in good faith and in compliance with law.

25 13. Aramark's actions have at all relevant times been based on reasonable interpretations
26 of law and fact.

27
28

1 14. Plaintiffs’ and the putative class members’ claims are barred because Plaintiffs and the
2 putative class members lack statutory standing to bring a UCL claim under California Business &
3 Professions Code § 17204.

4 15. Plaintiffs’ and the putative class members’ claims are barred because Aramark’s
5 conduct was not unlawful, unfair, or fraudulent, within the meaning of California Business &
6 Professions Code § 17200 or otherwise.

7 16. To the extent Plaintiffs seek monetary damages or disgorgement of profits, such
8 remedies are barred in their entirety by California Business and Professions Code §17200, *et seq.*, and
9 other applicable legal authority.

10 17. Aramark did not knowingly obtain the labor or services of Plaintiffs or the putative
11 class members in violation of the Trafficking Victims Protection Act, 18 U.S.C. § 1589.

12 18. Aramark did not knowingly benefit from participation in a venture that it knew or
13 should have known was in violation of the Trafficking Victims Protection Act, 18 U.S.C. § 1589.

14 19. Plaintiffs’ and the putative class members’ claims are barred by the civic duty exception
15 to the Trafficking Victims Protection Act, 18 U.S.C. § 1589.

16 20. No reasonable person in Plaintiffs’ situation would have believed that they were forced
17 to perform services in the Santa Rita Jail kitchen.

18 21. No reasonable person in Plaintiffs’ situation would have been intimidated by or perceived
19 a threat of violence from Aramark employees in the Santa Rita Jail kitchen.

20 * * *

21 Aramark reserves its right to assert and rely upon any other defenses that are not stated here,
22 including any which may become available or appear during discovery proceedings or otherwise in this
23 case, and Aramark hereby reserves its right to amend this Answer to assert any such other defenses.

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WHEREFORE, Aramark prays for judgment in its favor, dismissing with prejudice the FAC and all claims and causes of action asserted against it therein, together with costs and disbursements and attorney's fees payable to Aramark, and for such other and further relief as the Court deems proper.

DATED: April 22, 2021

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CORTLIN H. LANNIN
ISAAC D. CHAPUT

BY: /s/ Eric C. Bosset
Eric C. Bosset

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8 Attorneys for Defendants
 COUNTY OF ALAMEDA and SHERIFF
 9 GREGORY J. AHERN

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

13 ARMIDA RUELAS; DE' ANDRE EUGENE
 COX; BERT DAVIS; KATRISH JONES;
 14 JOSEPH MEBRAHTU; DAHRYL
 REYNOLDS; MONICA MASON; LUIS
 15 NUNEZ-ROMERO; SCOTT ABBEY; and all
 others similarly situated,

16 Plaintiffs,

17 v.

18 COUNTY OF ALAMEDA; GREGORY
 19 J. AHERN, SHERIFF; Aramark
 Correctional Services, LLC, and DOES 1
 20 through 10,

21 Defendants.

Case No. 4:19-CV-07637 JST

**DEFENDANTS COUNTY OF ALAMEDA
 AND SHERIFF GREGORY J. AHERNS'
 ANSWER TO FIRST AMENDED
 COMPLAINT FOR DAMAGES AND
 DECLARATORY AND INJUNCTIVE
 RELIEF**

Case Filed: November 20, 2019
 Trial Date: None set

23 Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendants COUNTY OF
 24 ALAMEDA and SHERIFF GREGORY J. AHERN ("Defendants") answer the First Amended
 25 Complaint for Damages and Declaratory and Injunctive Relief ("FAC") of Plaintiffs ARMIDA
 26 RUELAS, DE' ANDRE EUGENE COX, BERT DAVIS, KATRISH JONES, JOSEPH
 27 MEBRAHTU, DAHRYL REYNOLDS, MONICA MASON LUIS NUNEZ-ROMERO, and
 28 SCOTT ABBEY ("Plaintiffs").

DENIAL UNLESS EXPRESSLY ADMITTED

1
2 Defendants deny each and every allegation contained in Plaintiffs' FAC that is not
3 expressly admitted herein.

PRELIMINARY STATEMENT

4
5 1. Defendants lack knowledge or information sufficient to admit or deny Plaintiffs'
6 allegations in the third sentence and on that basis deny them. The final sentence of this paragraph
7 sets forth a legal conclusion for which no answer is required. Defendants deny the remainder of
8 Plaintiffs' allegations in Paragraph 1, except that Defendants and Defendant Aramark Correctional
9 Services, LLC ("Aramark") had a contractual relationship and that Plaintiffs were not paid wages
10 by Defendants while they were incarcerated at Santa Rita Jail as either pre-trial detainees,
11 detainees, facing deportation, federal detainees, and post-conviction inmates.

JURISDICTION AND VENUE

12
13 2. This paragraph sets forth Plaintiffs' jurisdictional allegations that present legal
14 conclusions and questions of law, to which no answer is required. To the extent that a response is
15 required, Defendants admit that the Court has jurisdiction over claims arising under the U.S.
16 Constitution under 28 U.S.C. § 1331, over claims brought to redress deprivations, under color of
17 state authority, of rights, privileges, and immunities secured by the U.S. Constitution under 28
18 U.S.C. § 1343, and over claims made under 42 U.S.C. § 1983.

19 3. This paragraph sets forth Plaintiffs' jurisdictional allegations that present legal
20 conclusions and questions of law, to which no answer is required. To the extent that a response is
21 required, Defendants admit that jurisdiction for Plaintiffs' state law claim is determined under 28
22 U.S.C. § 1367.

23 4. This paragraph sets forth Plaintiffs' venue allegations that present legal conclusions
24 and questions of law, to which no answer is required. To the extent that a response is required,
25 Defendants admit that the proper venue for Plaintiffs' claims are determined under 28 U.S.C. §
26 1391.

PARTIES

27
28 5. Defendants admit Armida Ruelas was an inmate at Santa Rita Jail but deny the

1 remainder of the allegations contained in Paragraph 5.

2 6. Defendants admit De'Andre Eugene Cox was incarcerated at Santa Rita Jail but
3 deny the remainder of the allegations contained in Paragraph 6.

4 7. Defendants admit Bert Davis was incarcerated at Santa Rita Jail but deny the
5 remainder of the allegations contained in Paragraph 7.

6 8. Defendants admit Katrish Jones was incarcerated at Santa Rita Jail but deny the
7 remainder of the allegations contained in Paragraph 8.

8 9. Defendants admit Joseph Mebrahtu was incarcerated at Santa Rita Jail but deny the
9 remainder of the allegations contained in Paragraph 9.

10 10. Defendants admit Dahryl Reynolds was incarcerated at Santa Rita Jail but deny the
11 remainder of the allegations contained in Paragraph 10.

12 11. Defendants admit Monica Mason was incarcerated at Santa Rita Jail but deny the
13 remainder of the allegations contained in Paragraph 11.

14 12. Defendants admit Luis Nunez-Romero was incarcerated at Santa Rita Jail but deny
15 the remainder of the allegations contained in Paragraph 12.

16 13. Defendants admit Scott Abbey was incarcerated at Santa Rita Jail but deny the
17 remainder of the allegations contained in Paragraph 13.

18 14. Defendants admit that the County of Alameda is a public entity operating under the
19 laws of the State of California and that they are responsible for Santa Rita Jail. Defendants lack
20 knowledge or information about the "acts and omissions" at issue sufficient to admit or deny the
21 remainder of Plaintiffs' allegations in this paragraph and on that basis deny them.

22 15. Defendant admits that Gregory J. Ahern is and was the Sheriff of Alameda County.
23 The remainder of the allegations in this paragraph sets forth legal conclusions and questions of law
24 to which no answer is required. To the extent a response is required, Defendants are without
25 sufficient knowledge or information to form a belief as to the truth of the remaining allegations
26 contained in this paragraph, and on that basis deny them.

27 16. Defendants are without sufficient knowledge or information to form a belief as to
28 the truth of the allegations contained in this paragraph, and on that basis deny them.

1 17. This paragraph sets forth legal conclusions and questions of law to which no
2 answer is required. To the extent a response is required, Defendants are without sufficient
3 knowledge or information to form a belief as to the truth of the allegations contained in this
4 paragraph, and on that basis deny them.

5 18. This paragraph sets forth legal conclusions and questions of law to which no
6 answer is required.

7 19. This paragraph sets forth legal conclusions and questions of law to which no
8 answer is required.

9 20. Admit.

10 21. Admit.

11 22. Defendants admit that the County of Alameda County has contracted with Aramark
12 but deny the remainder of allegations in Paragraph 22.

13 23. Defendants admit that inmates may prepare and package food at Santa Rita Jail.
14 Defendants admit that Sheriff's deputies guard inmates when they are present in the kitchen.
15 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
16 allegations in the third sentence, and on that basis deny them. Defendants deny the remainder of
17 the allegations in Paragraph 23.

18 24. Defendants admit that Sheriff deputies ensure that inmates follow Santa Rita Jail's
19 conduct and safety rules. Defendants are without sufficient knowledge or information to form a
20 belief as to the truth of the allegations contained in this paragraph about Aramark employees, and
21 on that basis deny them. Defendants deny the remainder of the allegations in Paragraph 24.

22 25. Defendants are without sufficient knowledge or information to form a belief as to
23 the truth of the allegations contained in this paragraph, and on that basis deny the allegations in
24 Paragraph 25.

25 26. Defendants admit that inmates may be subject to penalties or discipline for
26 breaking conduct rules, but deny the remainder of the allegations in Paragraph 26.

27 27. Defendants admit that male and female inmates are separated for purposes of
28 maintaining order and safety. Defendants are without sufficient knowledge or information to form

1 a belief as to the truth of the remainder of the allegations in this paragraph and on that basis denies
2 them.

3 28. Defendants admit that Sheriff deputies are responsible for determining which
4 inmates are eligible for work or for the work housing unit. Defendants are without sufficient
5 knowledge or information to form a belief as to the truth of the remainder of the allegations in this
6 paragraph and on that basis denies them.

7 29. Defendants admit that Sheriff deputies guard inmates at Santa Rita Jail but deny the
8 remainder of the allegations in Paragraph 29.

9 30. This paragraph sets forth legal conclusions and questions of law, to which no
10 answer is required. To the extent that a response is required, Defendants admit that they do not
11 pay minimum wage or overtime to inmates but deny the remainder of the allegations in Paragraph
12 30.

13 31. Deny.

14 32. Deny.

15 33. Defendants deny knowledge of anyone attempting to coerce plaintiffs or inmates to
16 work. Defendants are without sufficient knowledge or information to form a belief as to the truth
17 of the remaining allegations in this paragraph and on that basis denies them.

18 34. Defendants deny that they cause inmates to work through illness and injury.
19 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
20 remaining allegations in this paragraph and on that basis denies them.

21 35. Defendants admit that inmates who volunteer to work in the kitchen receive
22 benefits and compensation for their work, including but not limited to additional time outside of
23 their cells and additional food. Defendants are without sufficient knowledge or information to
24 form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

25 36. This paragraph sets forth legal conclusions and questions of law, to which no
26 answer is required. To the extent that a response is required, Defendants deny the allegations in
27 Paragraph 36.

28 37. Deny.

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1 38. Defendants are without sufficient knowledge or information to form a belief as to
2 the truth of the allegations contained in this paragraph, and on that basis deny the allegations in
3 Paragraph 38.

4 39. This paragraph sets forth legal conclusions and questions of law to which no
5 answer is required. To the extent a response is required, Defendants deny the allegations in
6 Paragraph 39.

7 40. Defendants are without sufficient knowledge or information to form a belief as to
8 the truth of the allegations in the first and second sentences of this paragraph (regarding whether
9 and when Plaintiff Ruelas was employed by Aramark) and on that basis deny them. In response to
10 the allegations in the third and fourth sentences in Paragraph 40, Defendants admit that Plaintiff
11 Armida Ruelas performed work in the kitchen while she was a prisoner at Santa Rita Jail.
12 Defendants deny the allegations in the fifth sentence of this paragraph. The final sentence sets
13 forth legal conclusions and questions of law to which no answer is required. To the extent a
14 response is required, Defendants deny the allegations in the final sentence of Paragraph 40.

15 41. Defendants are without sufficient knowledge or information to form a belief as to
16 the truth of the allegations in the first sentence of this paragraph (regarding whether and when
17 Plaintiff Cox was employed by Aramark) and on that basis deny them. In response to the
18 allegations in the second sentence of Paragraph 41, Defendants admit that Plaintiff Cox performed
19 work in the kitchen while he was a prisoner at Santa Rita Jail. The third and fourth sentence set
20 forth legal conclusions and questions of law to which no answer is required. To the extent a
21 response is required, Defendants deny the allegations in the third and fourth of Paragraph 41.

22 42. Defendants are without sufficient knowledge or information to form a belief as to
23 the truth of the allegations in the first and second sentences of this paragraph (regarding whether
24 and when Plaintiff Davis was employed by Aramark) and on that basis deny them, except that
25 Defendants admit that Plaintiff Davis was a pre-trial detainee between October 29, 2018 and
26 March 2019. In response to the allegations in the third sentence in Paragraph 42, Defendants
27 admit that Plaintiff Bert Davis performed work in the kitchen while he was a prisoner at Santa Rita
28 Jail. The fourth and fifth sentences set forth legal conclusions and questions of law to which no

1 answer is required. To the extent a response is required, Defendants deny the allegations in the
2 fourth and fifth sentences of Paragraph 42.

3 43. Defendants are without sufficient knowledge or information to form a belief as to
4 the truth of the allegations in the first sentence of this paragraph (regarding whether and when
5 Plaintiff Jones was employed by Aramark) and on that basis deny them. In response to the
6 allegations in the second sentence in Paragraph 43, Defendants admit that Plaintiff Jones
7 performed work in the kitchen while she was a prisoner at Santa Rita Jail. The final sentence sets
8 forth legal conclusions and questions of law to which no answer is required. To the extent a
9 response is required, Defendants deny the allegations in the final sentence of Paragraph 43.

10 44. Defendants are without sufficient knowledge or information to form a belief as to
11 the truth of the allegations in the first sentence of this paragraph (regarding whether and when
12 Plaintiff Mebrauhtu was employed by Aramark) and on that basis deny them. In response to the
13 allegations in the second sentence in Paragraph 44, Defendants admit that Plaintiff Mebrahtu
14 performed work in the kitchen while he was a prisoner at Santa Rita Jail. The third and fourth
15 sentences set forth legal conclusions and questions of law to which no answer is required. To the
16 extent a response is required, Defendants deny the allegations in the third and fourth sentences of
17 Paragraph 44.

18 45. Defendants are without sufficient knowledge or information to form a belief as to
19 the truth of the allegations in the first sentence of this paragraph (regarding whether and when
20 Plaintiff Reynolds was employed by Aramark) and on that basis deny them. In response to the
21 allegations in the second and third sentences in Paragraph 45, Defendants admit that Plaintiff
22 Reynolds performed work in the kitchen while he was a prisoner at Santa Rita Jail. The fourth and
23 fifth sentences set forth legal conclusions and questions of law to which no answer is required. To
24 the extent a response is required, Defendants deny the allegations in the fourth and fifth sentences
25 of Paragraph 45.

26 46. Defendants are without sufficient knowledge or information to form a belief as to
27 the truth of the allegations in the first and second sentences of this paragraph and on that basis
28 deny them. In response to the allegations in the third and fourth sentences in Paragraph 46,

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1 Defendants admit that Plaintiff Monica Mason performed work in the kitchen while she was a
2 prisoner at Santa Rita Jail. Defendants deny the allegations in the fifth sentence of this paragraph.
3 The sixth sentences set forth legal conclusions and questions of law to which no answer is
4 required. To the extent a response is required, Defendants deny the allegations in the sixth
5 sentences of Paragraph 46.

6 47. Defendants are without sufficient knowledge or information to form a belief as to
7 the truth of the allegations in the first through third sentences of this paragraph and on that basis
8 deny them. In response to the fourth sentence in this paragraph, Defendants admit that Plaintiff
9 Luis Nunez-Romero performed work in the kitchen while he was a prisoner at Santa Rita Jail.
10 The fifth through seventh sentences set forth legal conclusions and questions of law to which no
11 answer is required. To the extent a response is required, Defendants deny the allegations in the
12 fifth through seventh sentences of Paragraph 47.

13 48. Defendants are without sufficient knowledge or information to form a belief as to
14 the truth of the allegations in the first sentence of this paragraph (regarding whether Plaintiff
15 Abbey worked for Aramark) and on that basis deny them. In response to the allegations in the
16 second through fifth sentences in this paragraph, Defendants admit that Plaintiff Scott Abbey
17 performed work in the kitchen while he was a prisoner at Santa Rita Jail. The sixth sentence sets
18 forth legal conclusions and questions of law to which no answer is required. To the extent a
19 response is required, Defendants deny the allegations in the sixth sentence of Paragraph 46.

20 **CLASS ALLEGATIONS**

21 49. This paragraph sets forth legal conclusions and questions of law to which no
22 answer is required. To the extent a response is required, Defendants deny that class certification is
23 warranted or appropriate.

24 50. This paragraph sets forth legal conclusions and questions of law to which no
25 answer is required. To the extent a response is required, Defendants admit that Plaintiffs seek to
26 represent the referenced class.

27 51. This paragraph sets forth legal conclusions and questions of law to which no
28 answer is required. To the extent a response is required, Defendants admit that the referenced

1 Plaintiffs seek to represent the referenced subclass.

2 52. This paragraph sets forth legal conclusions and questions of law to which no
3 answer is required. To the extent a response is required, Defendants admit that the referenced
4 Plaintiffs seek to represent the referenced subclass.

5 53. This paragraph sets forth legal conclusions and questions of law to which no
6 answer is required. To the extent a response is required, Defendants admit that the referenced
7 Plaintiff seeks to represent the referenced subclass.

8 54. This paragraph sets forth legal conclusions and questions of law to which no
9 answer is required. To the extent a response is required, Defendants deny that Plaintiffs and
10 putative class members have suffered any injury or damages.

11 55. This paragraph sets forth legal conclusions and questions of law to which no
12 answer is required. To the extent a response is required, Defendants deny the allegations in
13 Paragraph 55.

14 **NUMEROSITY**

15 56. This paragraph sets forth legal conclusions and questions of law to which no
16 answer is required. To the extent a response is required, Defendants deny that certification of the
17 putative class and/or subclasses is warranted or appropriate.

18 57. This paragraph sets forth legal conclusions and questions of law to which no
19 answer is required. To the extent a response is required, Defendants deny that records will support
20 the certification of any proposed class or subclass.

21 **COMMONALITY AND PREDOMINANCE**

22 58. This paragraph sets forth legal conclusions and questions of law to which no
23 answer is required. To the extent a response is required, Defendants deny the allegations in
24 Paragraph 58.

25 59. This paragraph sets forth legal conclusions and questions of law to which no
26 answer is required. To the extent a response is required, Defendants deny the allegations in
27 Paragraph 59.

28 60. This paragraph sets forth legal conclusions and questions of law to which no

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1 answer is required. To the extent a response is required, Defendants deny the allegations in
2 Paragraph 60.

3 61. There are no allegations in this paragraph and thus no answer is required.

4 62. This paragraph sets forth legal conclusions and questions of law to which no
5 answer is required. To the extent a response is required, Defendants deny the allegations in
6 Paragraph 62.

7 63. This paragraph sets forth legal conclusions and questions of law to which no
8 answer is required. To the extent a response is required, Defendants deny the allegations in
9 Paragraph 63.

10 64. This paragraph sets forth legal conclusions and questions of law to which no
11 answer is required. To the extent a response is required, Defendants deny the allegations in
12 Paragraph 64.

13 65. This paragraph sets forth legal conclusions and questions of law to which no
14 answer is required. To the extent a response is required, Defendants deny the allegations in
15 Paragraph 65.

16 66. This paragraph sets forth legal conclusions and questions of law to which no
17 answer is required. To the extent a response is required, Defendants deny the allegations in
18 Paragraph 66.

19 67. This paragraph sets forth legal conclusions and questions of law to which no
20 answer is required. To the extent a response is required, Defendants deny the allegations in
21 Paragraph 67.

22 68. This paragraph sets forth legal conclusions and questions of law to which no
23 answer is required. To the extent a response is required, Defendants deny the allegations in
24 Paragraph 68.

25

26

TYPICALITY

27 69. This paragraph sets forth legal conclusions and questions of law to which no
28 answer is required. To the extent a response is required, Defendants deny the allegations in

1 Paragraph 69.

2 **ADEQUACY OF REPRESENTATION**

3 70. This paragraph sets forth legal conclusions and questions of law to which no
4 answer is required. To the extent a response is required, Defendants are without sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained in this
6 paragraph, and on that basis deny them.

7 **SUPERIORITY OF CLASS ACTION**

8 71. This paragraph sets forth legal conclusions and questions of law to which no
9 answer is required. To the extent a response is required, Defendants deny the allegations in
10 Paragraph 71.

11 72. This paragraph sets forth legal conclusions and questions of law to which no
12 answer is required. To the extent a response is required, Defendants deny the allegations in
13 Paragraph 72.

14 **EXHAUSTION**

15 73. Admit.

16 **FIRST CLAIM FOR RELIEF FOR INVOLUNTARY SERVITUDE IN**
17 **VIOLATION OF THE THIRTEENTH AMENDMENT (42 U.S.C. § 1983)**

18 74. Defendants repeat and incorporate their answers to all of the proceeding allegations
19 within Paragraphs 1-73 as if set forth fully in their response to Paragraph 74.

20 75. This paragraph sets forth legal conclusions and questions of law to which no
21 answer is required. To the extent a response is required, Defendants deny the allegations in
22 Paragraph 75.

23 76. This paragraph sets forth legal conclusions and questions of law to which no
24 answer is required. To the extent a response is required, Defendants deny the allegations in
25 Paragraph 76.

26 **SECOND CLAIM FOR RELIEF FOR VIOLATION OF THE TRAFFICKING**
27 **VICTIMS PROTECTION ACT (18 U.S.C. § 1589)**

28 77. Defendants repeat and incorporate their answers to all of the proceeding allegations

1 within Paragraphs 1-76 as if set forth fully in their response to Paragraph 77.

2 78. This paragraph sets forth legal conclusions and questions of law to which no
3 answer is required. To the extent a response is required, Defendants deny the allegations in
4 Paragraph 78.

5 79. This paragraph sets forth legal conclusions and questions of law to which no
6 answer is required. To the extent a response is required, Defendants deny the allegations in
7 Paragraph 79.

8 **THIRD CLAIM FOR RELIEF FOR VIOLATION OF THE EQUAL PROTECTION**
9 **CLAUSE OF THE FOURTEENTH AMENDMENT (42 U.S.C. § 1983)**

10 80. Defendants repeat and incorporate their answers to all of the proceeding allegations
11 within Paragraphs 1-79 as if set forth fully in their response to Paragraph 80.

12 81. Defendants admit that female plaintiffs who volunteer to work in the kitchen are
13 assigned to different shifts of from male prisoners for purposes of maintaining safety and order.
14 Defendants lack sufficient knowledge or information to form a belief regarding the remainder of
15 Plaintiffs' allegations in this paragraph and on that basis deny them.

16 82. The first sentence consists of Plaintiffs' speculation and opinion to which no
17 answer is required. To the extent a response is required, Defendants lack sufficient knowledge or
18 information to form a belief and on that basis deny the allegations in the first sentence of this
19 paragraph. The second sentence sets forth legal conclusions and questions of law to which no
20 answer is required. To the extent a response is required, Defendants deny the allegations in the
21 second sentence of this paragraph.

22 83. This paragraph sets forth opinions, legal conclusions, and questions of law to which
23 no answer is required. To the extent a response is required, Defendants deny the allegations in
24 Paragraph 83, except with regard to the allegation that out of cell time is crucial for the physical
25 and mental health of inmates, which Defendants lack sufficient knowledge or information to form
26 a belief and on that basis deny it.

27 84. This paragraph sets forth legal conclusions and questions of law to which no
28 answer is required. To the extent a response is required, Defendants deny the allegations in

1 Paragraph 84.

2 **FOURTH CLAIM FOR RELIEF FOR FAILURE TO PROVIDE DUE PROCESS IN**
3 **VIOLATION OF THE FOURTEENTH AMENDMENT (42 U.S.C. § 1983)**

4 85. Defendants repeat and incorporate their answers to all of the proceeding allegations
5 within Paragraphs 1-84 as if set forth fully in their response to Paragraph 85.

6 86. This paragraph sets forth legal conclusions and questions of law to which no
7 answer is required. To the extent a response is required, Defendants deny the allegations in this
8 paragraph.

9 87. This paragraph sets forth legal conclusions and questions of law to which no
10 answer is required. To the extent a response is required, Defendants lack sufficient knowledge or
11 information to form a belief and on that basis deny the allegations in this paragraph.

12 88. This paragraph sets forth legal conclusions and questions of law to which no
13 answer is required. To the extent a response is required, Defendants deny the allegations in this
14 paragraph.

15 89. This paragraph sets forth legal conclusions and questions of law to which no
16 answer is required. To the extent a response is required, Defendants deny the allegations in this
17 paragraph.

18 90. This paragraph sets forth legal conclusions and questions of law to which no
19 answer is required. To the extent a response is required, Defendants deny the allegations in this
20 paragraph.

21 **FIFTH CLAIM FOR RELIEF FOR FAILURE TO PAY WAGES (Cal. Lab. Code §§**
22 **201, 202, 218)**

23 91. Defendants repeat and incorporate their answers to all of the proceeding allegations
24 within Paragraphs 1-90 as if set forth fully in their response to Paragraph 91.

25 92. This paragraph sets forth legal conclusions and questions of law to which no
26 answer is required. To the extent a response is required, Defendants deny the allegations in this
27 paragraph.

28 93. This paragraph sets forth legal conclusions and questions of law to which no

1 answer is required. To the extent a response is required, Defendants deny the allegations in this
2 paragraph.

3 **SIXTH CLAIM FOR RELIEF FOR FAILURE TO PAY MINIMUM WAGE (Cal.**
4 **Lab. Code § 1194)**

5 94. Defendants repeat and incorporate their answers to all of the proceeding allegations
6 within Paragraphs 1-93 as if set forth fully in their response to Paragraph 94.

7 95. This paragraph sets forth legal conclusions and questions of law to which no
8 answer is required. To the extent a response is required, Defendants deny the allegations in this
9 paragraph.

10 96. This paragraph sets forth legal conclusions and questions of law to which no
11 answer is required. To the extent a response is required, Defendants admit that they did not pay
12 inmates minimum wage.

13 **SEVENTH CLAIM FOR RELIEF FOR FAILURE TO PAY OVERTIME**
14 **PREMIUM WAGES (Cal. Lab. Code § 1194)**

15 97. Defendants repeat and incorporate their answers to all of the proceeding allegations
16 within Paragraphs 1-96 as if set forth fully in their response to Paragraph 97.

17 98. This paragraph sets forth legal conclusions and questions of law or claims
18 dismissed against Defendants via Judge Tigar's February 2, 2019 Order Granting in Part and Deny
19 in Part Defendants' Motion to Dismiss (ECF No. 66) to which no answer is required. To the
20 extent a response is required, Defendants deny the allegations in this paragraph.

21 99. This paragraph sets forth legal conclusions and questions of law or claims
22 dismissed against Defendants via Judge Tigar's February 2, 2019 Order Granting in Part and Deny
23 in Part Defendants' Motion to Dismiss (ECF No. 66) to which no answer is required. To the
24 extent a response is required, Defendants deny the allegations in this paragraph.

25 100. This paragraph sets forth legal conclusions and questions of law or claims
26 dismissed against Defendants via Judge Tigar's February 2, 2019 Order Granting in Part and Deny
27 in Part Defendants' Motion to Dismiss (ECF No. 66) to which no answer is required. To the
28 extent a response is required, Defendants deny the allegations in this paragraph.

1 101. This paragraph sets forth legal conclusions and questions of law or claims
2 dismissed against Defendants via Judge Tigar's February 2, 2019 Order Granting in Part and Deny
3 in Part Defendants' Motion to Dismiss (ECF No. 66) to which no answer is required. To the
4 extent a response is required, Defendants deny the allegations in this paragraph.

5 **EIGHTH CLAIM FOR RELIEF FOR UNFAIR COMPETITION (Cal. Bus. & Prof. Code §**
6 **17200 et seq.)**

7 102. Defendants repeat and incorporate their answers to all of the proceeding allegations
8 within Paragraphs 1-101 as if set forth fully in their response to Paragraph 102.

9 103. This paragraph sets forth legal conclusions and questions of law to which no
10 answer is required.

11 104. This paragraph sets forth allegations against Aramark and/or legal conclusions and
12 questions of law to which no answer is required by Defendants. To the extent a response is
13 required, Defendants lack sufficient knowledge or information to form a belief and on that basis
14 deny the allegations in this paragraph.

15 105. This paragraph sets forth allegations against Aramark and/or legal conclusions and
16 questions of law to which no answer is required by Defendants. To the extent a response is
17 required, Defendants lack sufficient knowledge or information to form a belief and on that basis
18 deny the allegations in this paragraph.

19 106. This paragraph sets forth allegations against Aramark and/or legal conclusions and
20 questions of law to which no answer is required by Defendants. To the extent a response is
21 required, Defendants lack sufficient knowledge or information to form a belief and on that basis
22 deny the allegations in this paragraph.

23 107. This paragraph sets forth allegations against Aramark and/or legal conclusions and
24 questions of law to which no answer is required by Defendants. To the extend a response is
25 required, Defendants deny the allegations in this paragraph.

26 108. This paragraph sets forth allegations against Aramark and/or legal conclusions and
27 questions of law to which no answer is required by Defendants. To the extend a response is
28 required, Defendants deny the allegations in this paragraph.

1 **NINTH CLAIM FOR RELIEF FOR VIOLATION OF CALIFORNIA BANE ACT (Cal.**
 2 **Civ. Code Code § 52.1)**

3 109. Defendants repeat and incorporate their answers to all of the proceeding allegations
 4 within Paragraphs 1-108 as if set forth fully in their response to Paragraph 109.

5 110. This paragraph sets forth legal conclusions and questions of law to which no
 6 answer is required. To the extend a response is required, Defendants deny the allegations in this
 7 paragraph.

8 **PUNITIVE DAMAGES**

9 111. This paragraph sets forth allegations against Aramark and/or legal conclusions and
 10 questions of law to which no answer is required by Defendants. To the extend a response is
 11 required, Defendants deny the allegations in this paragraph.

12 **DAMAGES**

13 112. This paragraph sets forth legal conclusions and questions of law to which no
 14 answer is required. To the extent a response is required, Defendants deny the allegations in this
 15 paragraph.

16 **PRAYER FOR RELIEF**

17 The remainder of the FAC constitutes Plaintiffs' request for relief to which no responsive
 18 pleading is necessary. To the extent a responsive pleading is required, Defendants deny that
 19 Plaintiffs are entitled any relief sought against Defendants.

20 **SEPARATE AFFIRMATIVE DEFENSES**

21 As a separate and further answer to Plaintiffs' FAC, Defendants allege upon information
 22 and belief the following affirmative defenses:

23 **FIRST AFFIRMATIVE DEFENSE**

24 **(Failure to State a Claim)**

25 Plaintiffs' claims failure to allege sufficient facts to state a claim upon which relief can be
 26 granted.

27 **SECOND AFFIRMATIVE DEFENSE**

28 **(Statute of Limitations)**

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1 Plaintiffs' claims are barred by the applicable statutes of limitation; including but not
2 limited to, the statute of limitations contained in California Code of Civil Procedure §§ 337, 338,
3 339, and 343; California Labor Code § 1197.5, California Business and Professions Code § 17208,
4 and any other applicable statutes of limitation.

5 **THIRD AFFIRMATIVE DEFENSE**

6 **(Plaintiff's' Breach of Statutory Obligations)**

7 Plaintiffs' FAC and all purported claims for relief therein are barred by Plaintiffs' breach
8 of their statutory obligations.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 Upon information and belief, Plaintiffs' FAC, and each claim for relief alleged against
12 Defendants, is barred by the doctrine of unclean hands.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(Waiver)**

15 By their conduct, Plaintiffs have waived any right to recover any relief under the FAC, or
16 any purported claim for relief alleged therein.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 Plaintiffs are estopped by their conduct from recovering any relief under their FAC, or any
20 purported claim for relief alleged therein.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Failure to Mitigate Damages)**

23 Any recovery on Plaintiffs' FAC, or any purported claim for relief alleged therein, is
24 barred in whole or in part by Plaintiffs' failure to mitigate their damages. Consequently, any
25 damages suffered by Plaintiffs must be reduced in an amount by which Plaintiffs and/or their
26 agents could have mitigated those damages, if any.

27 **EIGHTH AFFIRMATIVE DEFENSE**

28 **(Laches)**

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1 Upon information and belief Plaintiffs are guilty of undue delay in filing and prosecuting
2 this suit, and accordingly, this action is barred by laches.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Payment of Wages)**

5 Without conceding that there are any wages due, there exists a good faith dispute regarding
6 the payment of wages. Thus, penalties are not warranted.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(Performance Excused)**

9 Defendants allege that they followed all appropriate terms and conditions of the contractual
10 relationship, if any, between the Defendants and Aramark.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Frivolous Claims)**

13 Plaintiffs' claims against Defendants are asserted in bad faith, and are frivolous,
14 unreasonable and without foundation. Defendants are therefore entitled to an award of costs and
15 expenses of litigation, including reasonable attorney's fees.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 **(Failure to Exhaust Internal and Administrative Remedies)**

18 Plaintiffs' FAC and any purported claim for relief alleged therein, is barred by Plaintiffs'
19 failure to exhaust administrative and internal remedies available under state and federal laws,
20 including, without limitation, the Prisoners Legal Remedies Act and Defendants' internal policies
21 and procedures.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 **(Payment and Release)**

24 Upon information and belief, Plaintiffs received all payment and benefits they were
25 entitled to and therefore Defendants are released from any and all continuing obligations to them.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 **(Adequate Remedy at Law)**

28 Plaintiffs have an adequate remedy at law. Thus, injunctive and/or declaratory relief is

1 inappropriate.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 **(Receipt of All Sums and Benefits)**

4 Plaintiffs have received all sums and benefits due by virtue of their relationship with the
5 Defendants.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 **(No Standing)**

8 Plaintiffs have no standing to bring some or all of the claims which are therefore barred.
9 Plaintiffs also have no standing to serve as an adequate class representative.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 **(Defendants Acted in Good Faith)**

12 At all relevant times herein, Defendants allege that Defendants complied in good faith with
13 all applicable laws, and reasonable interpretations of the same, pertaining to the use of Plaintiffs as
14 laborers, as may be alleged in this action.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 **(Preemption)**

17 Defendants allege that Plaintiffs' FAC, and the claims for relief contained therein, are
18 preempted by federal law, including the Fair Labor Standards Act, and other applicable Federal
19 Laws. Accordingly, the FAC and all causes of action therein are barred against Defendants.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 **(Failure to Accurately Report Hours Worked)**

22 Defendants allege that Plaintiffs did not accurately report the hours for which they seek
23 allegedly unpaid wages; therefore, Plaintiffs are barred from seeking to recover any such amounts
24 from Defendants.

25
26 **TWENTIETH AFFIRMATIVE DEFENSE**

27 **(Claims Not Representative of Class)**

28 Defendants allege that the claims of the named Plaintiffs are not representative of the

1 claims of the members of the putative class, and therefore this action is not properly maintained as
2 a class action. Defendants further allege that neither Plaintiffs nor their counsel are proper class
3 representatives.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 **(Claims Not Numerous)**

6 Defendants allege that the putative class is not so numerous that joinder of all members is
7 impracticable; therefore, Plaintiffs cannot meet the prerequisites to a class action set forth in
8 California Code of Civil Procedure section 382 or Federal Rules of Civil Procedure (“FRCP”) 23.
9 Further, to the extent Defendants are determined to be Plaintiffs’ employer or the class is limited
10 to the class Plaintiffs represent, the class is not sufficiently numerous to continue as a class action.

11 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

12 **(No Common Questions of Law or Fact)**

13 Defendants allege that there are not questions of law or fact common to the putative class;
14 rather, individualized questions of law and fact predominate over any semblance of common
15 questions. In addition, the proof peculiar to Plaintiffs’ claims and the defenses thereto will vary
16 widely as an individualized determination needs to be made as to whether Plaintiffs and other
17 detainees were required to be paid or forced to work, unlike the claims of the putative class
18 members. Therefore, Plaintiffs cannot meet the prerequisites to a class action set forth in Section
19 382 of the California Code of Civil Procedure or FRCP 23.

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

21 **(Claims Not Typical of Class)**

22 Defendants allege that the claims of Plaintiffs and Defendants’ defenses thereto are not
23 typical of the putative claims or related defenses of the putative class as a whole, and Plaintiffs are
24 not a suitable class representative. Therefore, Plaintiffs cannot satisfy the prerequisites to a class
25 action set forth in section 382 of the California Code of Civil Procedure or FRCP 23.

26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

27 **(Class Action Not Practical)**

28 Defendants allege that this case is not properly maintained as a class action because the

1 prosecution of separate actions by individual members of the putative class would not create a risk
2 of inconsistent or varying adjudications or adjudications that as a practical matter would be
3 dispositive of the interests of other members not parties to the action.

4 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

5 **(Class Action Not Proper)**

6 Defendants allege that this action is not properly maintained as a class action because
7 concentrating the litigation of the Plaintiffs' claims, as to which individualized facts and proof will
8 predominate, in one particular forum is not desirable.

9 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

10 **(Class Not Manageable)**

11 Defendants allege that this case is not properly maintained as a class action because of the
12 difficulties likely to be encountered in the management of a class action.

13 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

14 **(No Questions of Common or General Interest)**

15 Defendants allege that this FAC does not raise questions of a common or general interest;
16 therefore, this case may not be properly maintained as a class action under California Code of
17 Civil Procedure section 382 or FRCP 23.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 **(Reasonable Wages)**

20 Defendants allege that the actual compensation Plaintiffs received, which are the subject of
21 this action, were reasonable and appropriate herein.

22 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

23 **(Absolute Good Faith)**

24 Defendants allege that they acted in good faith reliance upon the reasonable interpretation
25 of applicable law and the opinion(s) of the California courts, federal courts, California statutes,
26 federal statutes and California and federal administrative agencies.

27 **THIRTIETH AFFIRMATIVE DEFENSE**

28 **(Waiver, Estoppel and/or Ratification)**

1 The relief sought by Plaintiffs is barred in whole or in part, by the doctrines of waiver,
2 estoppel and/or ratification.

3 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

4 **(Disregard of Policies)**

5 Defendants allege, that to the extent that any all inmates have alleged they have not been
6 paid in full, they have disregarded Defendants' policies regarding receipt of compensation and
7 benefits, if any.

8 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

9 **(Quantum Meruit – Reasonable Wages)**

10 Defendants allege that the actual compensation and benefits received, which are the subject
11 of this action, were commensurate and appropriate with the services and work actually performed.

12 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

13 **(Quantum Meruit – Wages Accepted by Plaintiffs)**

14 Defendants allege that the actual compensation and benefits received, which are the subject
15 of this action, and/or calculation of the same, were accepted and/or approved by all inmates and
16 relied upon by Defendants.

17 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

18 **(Set-Off)**

19 Any monies or other consideration claimed to be owed Plaintiffs represents amounts to
20 which this Defendants are entitled to equitable, statutory, and/or contractual set-off.

21 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

22 **(Plaintiffs' Willful Misconduct)**

23 Plaintiffs' claims are barred by Plaintiffs' willful misconduct.

24 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

25 **(Speculative Damages)**

26 Plaintiffs are barred from any recovery against Defendants because Plaintiffs' alleged
27 damages are speculative.

28 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

1 **(Payment in Full)**

2 Plaintiffs have received all consideration due or claimed to be due.

3 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(Accord and Satisfaction)**

5 Plaintiffs has received all consideration due and that, as such, the parties have achieved a
6 full accord and satisfaction with respect to those claims asserted against Defendants.

7 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

8 **(Plaintiffs' Misrepresentation)**

9 Plaintiffs are not entitled to the relief requested as a result of fraud and/or
10 misrepresentation (whether intentional or negligent) perpetrated by Plaintiffs and/or their agents.

11 **FORTIETH AFFIRMATIVE DEFENSE**

12 **(Constitutional Violation)**

13 Defendants allege that insofar at the instant complaint is an attempt to recover fines or
14 penalties from Defendants, it violates the following Principles of the United States Constitution
15 and California State Constitution:

- 16 (a) Excessive fines clause of the United States Constitution, Eighth Amendment and
17 Fourteenth Amendment;
- 18 (b) The contract clause, Article I, Section 10, clause 1, and the Fourteenth Amendment
19 of the United States Constitution;
- 20 (c) The due process clause of the United States Constitution, Fourteenth Amendment;
- 21 (d) The equal protection clause of the United States Constitution;
- 22 (e) The California Constitution due process and equal protection clauses, Article 1,
23 Section 7(a); and
- 24 (f) The California Constitution excessive fines clause Article 1, Section 17.

25
26 **FORTY-FIRST AFFIRMATIVE DEFENSE**

27 **(Impossibility)**

28 Defendants allege that any duty or obligation they may have had to perform certain acts for

1 the benefit of Plaintiffs was rendered impossible to perform due to the conduct of Plaintiffs.

2 **FORTY-SECOND AFFIRMATIVE DEFENSE**

3 **(No Jurisdiction)**

4 Defendants allege that this Court has no personal or subject matter jurisdiction over this
5 matter.

6 **FORTY-THIRD AFFIRMATIVE DEFENSE**

7 **(Failure to Comply with Conditions)**

8 Defendants allege that Plaintiffs have failed to comply with the necessary conditions
9 precedent, concurrent, or subsequent for bringing this action, including but not limited to
10 compliance with any and all applicable state and/or federal laws.

11 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

12 **(In Pari Delicto)**

13 Defendants allege that the claims are barred by reason of the fact that Plaintiffs have
14 engaged in acts and courses of conduct which rendered Plaintiffs in pari delicto.

15 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

16 **(Defendants' Detrimental Reliance)**

17 Defendants allege that the relief prayed for in the FAC against Defendants, is barred
18 because of the consideration received, which are the subject of this action, and/or calculation of
19 same, were accepted and/or approved by the receiving party and relied upon by Defendants.

20 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

21 **(Privilege)**

22 Defendants allege that the relief prayed for in the FAC is barred by Civil Code section
23 47(c) in that the statements attributed to Defendants, if made, were communications made to
24 interested person(s), without malice, to interested person(s) who requested the information.

25
26 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

27 **(No Discrimination)**

28 To the extent Plaintiffs claim or establish that female inmates were subject to less

1 preferential treatment, including reduced out of cell time, than male inmates, Defendants assert
2 that any such action or decision was based on legitimate, nondiscriminatory reasons.

3 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(Avoidable Consequences)**

5 Defendants allege that the relief prayed for in the FAC against Defendants is barred by the
6 Ellerth/Faragher defense/avoidable consequences doctrine or Plaintiffs' failure to take advantage
7 of the preventative or corrective opportunities provided by Defendants to avoid the harm alleged
8 in the FAC.

9 **FORTY-NINTH AFFIRMATIVE DEFENSE**

10 **(Mixed Motive)**

11 Defendants allege, arguendo, that even if Plaintiffs produce sufficient evidence to show
12 that discrimination was a substantial motivating factor in Defendants' personnel decision(s),
13 which Defendants contend Plaintiffs cannot do, Defendants would have the same decision(s) with
14 respect to Plaintiffs' work assignments solely for legitimate, non-discriminatory reasons.
15 Consequently, Defendants reserve the right to allege that Plaintiffs' claims and damages are barred
16 by the mixed motives and analysis/defense. *Harris v. City of Santa Monica*, 56 Cal. 4th 2013
17 (2013).

18 **FIFTIETH AFFIRMATIVE DEFENSE**

19 **(Proposition 139)**

20 Defendants allege that the relief prayed for in the FAC is barred by Proposition 139 as
21 codified in the California Constitution, which only provides a right to payment for state inmates
22 and provides that persons incarcerated in county jail are not entitled to wages unless the county
23 enacts a local ordinance providing for the payment of wages.

24 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

25 **(Penal Code Governs Work in County Jails)**

26 Defendants allege that the relief prayed for in the FAC is barred by the comprehensive
27 scheme set forth in the California Penal Code regarding the rights and benefits of persons
28 incarcerated in county jail and that Plaintiffs received all benefits and consideration they were

1 entitled to under the California Penal Code.

2 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

3 **(Plaintiffs Were Not Employees)**

4 Defendants allege that the relief prayed for in the FAC is barred because all applicable
5 California and federal law provides that detainees and inmates incarcerated in the county jail are not
6 employees of the Defendants. The Plaintiffs did not work to turn profits for the Jail and the
7 Sheriff but rather as a means of rehabilitation and job training. There was no bargained-for
8 exchange of labor for mutual economic gain that occurs in a true employer-employee relationship.
9 Because the Jail provides them with the food, shelter, and clothing that employees would have to
10 purchase in a true employment situation, there is no need to pay them minimum wage to maintain
11 a standard of living necessary for health, efficiency, and general well-being that the minimum
12 wage is intended to provide. Accordingly, Plaintiffs have no right to wages under the California
13 Labor Code or any other law or statute.

14 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

15 **(Public Entity Exemption)**

16 Defendants allege that the relief prayed for in the FAC is barred because liability for
17 violation of the TVPA and the Labor Code provisions at issue does not extend to governmental
18 entities such as Defendants.

19 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

20 **(No Cognizable Injury under 42 U.S.C. §1983)**

21 Defendants allege that the relief prayed for in the FAC is barred because under 42 U.S.C. §
22 1983 a plaintiff must suffer some cognizable injury due to the deprivation of some constitutional
23 right. Theoretical injury or the generic statement that out of cell time is crucial for the physical and
24 mental health of inmates is insufficient to state a claim for injury under 42 U.S.C. § 1983 because
25 it is not deprivation of constitutional right.

26 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

27 **(Qualified Immunity)**

28 Defendants are immune from suit based on the doctrine of qualified immunity, as

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1 Defendants' "conduct did not violate clearly established statutory constitutional rights of which a
2 reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

3 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

4 **(No Attorneys' Fees)**

5 The FAC, and each cause of action alleged therein, fails to state a claim for attorneys' fees.

6 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

7 **(Sheriff's Exclusive Jurisdiction Over County Jail)**

8 The FAC, the relief prayed for therein, each of the FAC's causes of action are barred
9 because California Government Code section 26605 provides the Sheriff "the sole and exclusive
10 authority to keep the county jail and the prisoners in it." Cal. Gov. Code § 26605.

11 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

12 **(Additional Affirmative Defenses)**

13 Defendants reserve the right to amend this answer to assert additional defenses and/or
14 supplement, alter or change this answer as may be warranted by the revelation of information
15 during discovery and investigation.

16 **PRAYER**

17 WHEREFORE, Defendants pray for relief as follows:

- 18 1. That Plaintiffs take nothing by the FAC on file herein, and that the FAC be
19 dismissed with prejudice;
- 20 2. That judgment be entered in favor of Defendants;
- 21 3. For costs of the suit incurred herein, including reasonable attorneys' fees where
22 afforded; and
- 23 4. For such other and further relief as the Court may deem just and proper.
- 24
- 25
- 26
- 27
- 28

1 DATED: April 22, 2021

HANSON BRIDGETT LLP

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By: /s/ Winston K. Hu

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jon S. Tigar, Judge

ARMIDA RUELAS, ET AL.,)	
)	
Plaintiffs,)	
)	
VS.	)	NO. CV 19-07637-JST
)	
COUNTY OF ALAMEDA, ET AL.,)	
)	
Defendants.)	
)	

Oakland, California
Wednesday, October 21, 2020

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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ERIC BOSSET, ESQUIRE**

Reported By: Pamela Batalo-Hebel, CSR No. 3593, RMR, FCRR
Official Reporter

1 Monday - October 19, 2020

2:18 p.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Your Honor, now calling CV 19-7637, Armida
5 Ruelas, et al. vs. County of Alameda, et al.

6 If counsel could please state their appearances for the
7 record, starting with counsel for plaintiffs.

8 **MS. JOHNS:** Good afternoon, Your Honor. EmilyRose
9 Johns and Dan Siegel on behalf of the Plaintiffs.

10 **MR. GLASER:** Good morning, Your Honor. Joel Glaser on
11 behalf of the County of Alameda and Sheriff Ahern.

12 **MR. LANNIN:** Good afternoon, Your Honor. Cortlin
13 Lannin of Covington & Burling for the Defendant Aramack. I
14 apologize. My partner Eric Bosset is scheduled to argue this
15 motion, and I don't see him on the panel.

16 **THE COURT:** Let me look in the attendees column.

17 **THE CLERK:** I didn't see him. I'm sorry.

18 **THE COURT:** I don't see him either.

19 Mr. Lannin, I don't want your side to feel that it's been
20 disadvantaged in any way. Perhaps there is a technical
21 difficulty. Do you want to step off the Zoom and call him and
22 then come back into the Zoom and let us know how that went?

23 **MR. LANNIN:** I would appreciate that opportunity.

24 **THE COURT:** That's fine.

25 (Pause in proceedings.)

1 **MR. LANNIN:** Your Honor, I have Eric on the line.
2 Apparently he can see us but we can't see him obviously, but he
3 is in contact with our Help Desk and is trying urgently to
4 resolve that.

5 **THE COURT:** That's fine. My suggestion would be that
6 we just all agree -- it's now 2:22. Why doesn't the Court take
7 a recess until 2:30. That will take a little bit of the heat
8 off the Covington Help Desk and hopefully that will enable your
9 law partner to join the conference. Let's do that.

10 Court will be in recess until 2:30.

11 **MR. LANNIN:** Thank you, Your Honor.

12 (Recess taken at 2:22 p.m.)

13 (Proceedings resumed at 2:30 p.m.)

14 **THE COURT:** Okay. Ms. Lee, I think we might be ready
15 to go.

16 **THE CLERK:** One moment, Your Honor. I had Mr. Bosset,
17 but I'm seeing now that he -- now that he is connected to
18 video, I don't see a microphone next to his name so I don't
19 think that, Mr. Bosset, you're connected to audio so that
20 you'll be able to speak with the Court.

21 **MR. LANNIN:** Yeah. Your Honor, I do apologize to you
22 and the parties. I'm on with Eric, and he is on in Washington,
23 and Help Desk is trying to get his camera and audio up. They
24 are trying to unblock whatever they can to make it work.

25 **THE COURT:** Let's hang on a few more minutes. COVID

1 has caused me to exercise my patience muscle much more often.

2 Mr. Lannin, are you familiar with the plot of a play
3 called *Cyrano de Bergerac*?

4 **MR. LANNIN:** I have seen, I think, the modern
5 interpretation of it, Your Honor, the movie.

6 **THE COURT:** There is a Steve Martin interpretation
7 called *Roxanne*, which is a little light. There is also a
8 Gérard Depardieu interpretation in France which is one of the
9 best movies I've ever seen.

10 Anyway, for those of you who don't know -- just trying to
11 fill the time here for a second -- but for those of you who
12 have not seen the play or read it or seen the movie, the theory
13 is that there is a French guardsman at a time when people
14 fought with swords, and *Cyrano de Bergerac*, he's just a
15 phenomenal. He is incredibly capable. He is very smart. He
16 is very witty. He has an enormous nose. He is in love with
17 his cousin, whose name is *Roxanne*. He is convinced that
18 *Roxanne* could never love him because of his appearance.

19 There is a very handsome young man who isn't very smart,
20 but he is good looking, who also wants to pursue *Roxanne*, and
21 so *Cyrano* agrees to help him because he doesn't think he could
22 ever get *Roxanne*, and *Christian* stands underneath *Roxanne's*
23 window while *Cyrano* feeds him the lines. And perhaps you and
24 Mr. Bosset could do something similar. That's where I'm going
25 with this. I don't know how fast a typist he is, though, so

1 maybe that wouldn't work.

2 **MR. LANNIN:** I'm afraid we would all be disserved if
3 it came to that, Eric having put in a substantial amount of
4 time to prepare for today and my not so much, but let's hope
5 that the Covington Help Desk can get its act together.

6 **MR. GLASER:** Cortlin, this is Joel. Do you see next
7 to your mute button, there is an up arrow, and you could click
8 on it, and there's a -- there's a description "switch to phone
9 audio" with three dots next to it.

10 **MR. LANNIN:** Yeah.

11 **MR. GLASER:** If you provide that information to Eric,
12 he could probably call in and join us.

13 **THE COURT:** Oh, that's not a bad idea. I thought I
14 had learned everything about Zoom.

15 **THE CLERK:** Judge, I also messaged him via Zoom and
16 provided him with conference numbers as well so he could dial
17 in.

18 **MR. LANNIN:** I will do that right now as well.

19 Joel, you may have saved our day; although, Your Honor,
20 I'm afraid you'll miss his visage, but at least you can hear
21 his voice.

22 All right. Give me one second. Let me go on mute.

23 (Pause in proceedings.)

24 **MR. BOSSET:** I am very, very sorry to Your Honor and
25 the rest of the guests for the hearing today. We have not had

1 success in getting a video connection, but at least I hope you
2 can hear me.

3 **THE COURT:** Quite clearly. Thank you.

4 Mr. Bosset, will you state your appearance, please.

5 **MR. BOSSET:** Eric Bosset on behalf of Defendant
6 Aramack with Covington & Burling. Thank you.

7 **THE COURT:** Thanks. I think all the appearances that
8 need to be made have been made. Let me just say a few words
9 and then describe how the hearing will proceed this afternoon.

10 I'm going to limit argument to an hour total, not because
11 this case couldn't easily absorb more argument than that, but I
12 can't absorb more than that. I have done this enough times to
13 know that just in terms of my ability to synthesize the
14 comments as they're coming in, about an hour in any one case is
15 what I can comfortably listen to.

16 So we've got two separate motions to dismiss. There are
17 some overlapping issues. I don't know if Defendants discussed
18 any kind of division of time before they got here, but this is
19 how I would like to proceed.

20 I would like to allocate 30 minutes to the Defendants as a
21 group and 30 minutes to the Plaintiffs in combination. I will
22 hear first from the Defendants and then from the Plaintiffs and
23 then from the Defendants. There is no -- I don't have any
24 division in mind for the Defendants between your opening
25 argument and your rebuttal argument. You are robbing Peter to

1 pay Paul every time you talk while you're making your opening
2 argument.

3 I don't know that the Plaintiffs will need all that time.
4 I'm not sure the Defendants will either, provided that if an
5 issue has already been raised by the first person arguing for
6 the Defendant, the next lawyer arguing for the other Defendant
7 doesn't also feel the need to address that issue, but we'll see
8 how that plays out.

9 I'm going to hear first from Aramack; then I'm going to
10 hear from the County; then I'm going to hear from the
11 Plaintiffs. Who goes first on rebuttal argument for the
12 Defendants is -- you can figure that out. By the time you get
13 to that point, you can send each other text messages or emails
14 and just whoever wants to go first as between the County and
15 Aramack at that stage can do that.

16 It's possible that the Plaintiffs will ask if they can
17 have a second chance at the microphone. I say it's possible
18 because that's happened in every single motion hearing I have
19 ever conducted in the 20 years I've been a judge -- almost 20
20 years I've been a judge. So that might happen, and if it
21 happens and if the Plaintiffs have any time left on their
22 clock, it's possible I might let them do that. And then the
23 case will go under submission.

24 I'm not going to rule from the bench today. I don't --
25 you have so many issues in these various motions, and I'm not

1 going to make comments about all of them. Most of them I'm not
2 going to say anything about now.

3 There are a few things that leapt out at me, though, from
4 your briefs, and I thought I would just commend these to you as
5 topics in case you want to address them while you're speaking
6 today.

7 First I would just observe globally there isn't much
8 authority on some of the very key questions that you're
9 debating in your briefs, and so it may be that as to certain
10 things, I'm just going to wind up having to take my best guess.

11 One question I have pertains to California -- California
12 Constitution, Article XIV, Section 5, and this -- Section A is
13 only two sentences. The second sentence reads, "Such programs
14 shall" -- "shall" -- "be operated and implemented pursuant to
15 statutes enacted by or in accordance with the provisions of the
16 Prison Inmate Labor Initiative of 1990 and by rules and
17 regulations prescribed by the Director of Corrections and for
18 county jail programs by local ordinances."

19 The parties have divergent views as to what that sentences
20 means or as to the import of that sentence.

21 Let me suggest all of you mute your microphones right now.
22 Someone is doing something near their microphone that is making
23 a noise.

24 Anyway, the Defendants look at that language and they say,
25 well, County of Alameda didn't actually enact any local

1 ordinance so they can do whatever they want. It's fine. There
2 is no -- there is absolutely no encumbrance legally whatsoever
3 on their ability to enter into these contracts.

4 I wonder what the word "shall" means. What does it mean?
5 If somebody wants to ask for an opportunity to brief that issue
6 further because you don't think you exhausted the well, I
7 probably would look favorably on that request because of course
8 the Plaintiffs look at that language and they take the
9 180-degree opposite view which is well, "shall" means if you
10 haven't enacted local ordinances, you can't do it.

11 I suppose you both have some common sense on your side.
12 It would be nice to know if there is any authority. But that's
13 one dispute. And if there is authority in the briefs and I'm
14 not remembering it, please feel free to remind me. I have read
15 all of your briefs carefully.

16 Next, the Defendants make much of the statute, and I'm not
17 going to cite -- I'm not -- I didn't write this down in my
18 notes so I'm not going to cite the statute, but they make much
19 of the statute that says if you're in custody, you get
20 good-time credits unless you didn't do the work the Sheriff
21 made you do, essentially. And that is the benefit that inmates
22 get, they say, so there isn't any real need to consider other
23 questions of compensation or things that look like
24 compensation.

25 My question -- and this is really just for the

1 Defendants -- is a pretrial detainee isn't necessarily ever
2 going to serve a sentence. Their case might be dismissed.
3 They might proceed to trial and be acquitted. They might be
4 convicted but receive a sentence of credit for time served, in
5 which case the calculation described in that statute would not
6 come into play. And so my question for the Defendants is what
7 do I do about that fact, the fact I just stated, which is not,
8 I don't think, addressed in the briefs.

9 For both parties, although maybe a little more for
10 Plaintiffs -- and this is my last question -- the Labor Code
11 Sections 201/202 claims require the payment of wages after what
12 I'll call a terminating event: a layoff, a resignation, a
13 termination of employment. And the Plaintiffs say -- the
14 Defendants say, "Well, you can't identify that date. And if
15 you can't identify that date because none of your class members
16 were laid off or terminated and none of them resigned -- if you
17 can't identify that date, you don't have a claim." The
18 Plaintiffs say -- the Plaintiffs sort of duck the question, and
19 they say, "Well, we don't know, but regardless, so much time
20 has passed it shouldn't matter."

21 I think the parties are not really giving me the best
22 options there in terms of my ability to do a legal analysis. I
23 need to understand what is the significance of the terminating
24 event. Is it properly understood as an element of the claim?
25 Are there situations in the law -- can either side identify any

1 situation in which Section 201 or Section 202 were applied or
2 someone tried to apply them or one of them in the absence of
3 what we would all agree is a resignation, a termination, or a
4 layoff, or is this the first situation like that anybody has
5 ever seen? If it is, it is. But, you know, in the common law,
6 we reason by analogy. It would be nice to know if there were
7 any analogies out there.

8 So I have a lot of questions, but those are the only ones
9 I feel like putting on the record at the beginning of the
10 hearing.

11 Mr. Bosset, you have the floor.

12 **MR. BOSSET:** Thank you, Your Honor. I will launch
13 right in.

14 So Aramack has moved to dismiss all of the claims in the
15 First Amended Complaint against it. With Your Honor's
16 permission, we will address first the TVPA claim and then move
17 to Labor Code claims and then finally the remaining state
18 claims.

19 **THE COURT:** That's fine.

20 **MR. BOSSET:** Starting with the TVPA, Your Honor, the
21 new Complaint fails to cure the defects this Court identified
22 with the initial Complaint. Recapping briefly the essential
23 facts, Aramack contracts with the County to prepare food using
24 inmate labor pursuant to a program authorized under the
25 California Constitution, as you just noted. Aramack does not

1 own or operate the jail, and it has no role in deciding how an
2 inmate gets assigned to the kitchen. Aramack can't send
3 inmates to solitary confinement or impose other discipline. It
4 prepares and distributes food. That's all.

5 The Complaint fails to plead again that Aramack is a
6 primary offender under the TVPA which requires that an entity
7 knowingly obtain labor by means of force or serious harm or
8 threats of the same. The Complaint contains a single
9 conclusory assertion that Aramack threatens to report inmates
10 who attempt to leave the kitchen early to Sheriff's deputies.
11 That's paragraph 33.

12 This falls well short of the force or serious harm
13 necessary to state a claim under Section 1589(a). The Ninth
14 Circuit held in the *Church of Scientology* case, which we cited
15 in our reply brief, that courts applying the TVPA must
16 distinguish between improper coercion and force and permissible
17 warnings of adverse but legitimate consequences. Inmates are
18 not free to roam the jail at will, and Aramack is within its
19 rights to inform deputies if an inmate seeks to leave the
20 kitchen.

21 The Complaint also fails to plead that Aramack is a
22 venture offender under the TVPA which requires participation
23 with a primary offender in reckless disregard that the venture
24 engaged in prohibited conduct. This claim --

25 **THE COURT:** Can I ask you a question? You said a

1 moment ago Sheriff's deputies are free to inform -- excuse
2 me -- Aramack employees are free to inform Sheriff's deputies
3 if inmates are leaving the kitchen, but if the Court were to
4 conclude that there were a TVPA claim stated against the
5 County, then could I still conclude that Aramack employees'
6 activity in telling the Sheriff's deputies about what the
7 inmates were doing was proper?

8 **MR. BOSSET:** Your Honor, we don't think reporting an
9 inmate to the -- to the deputies rises to the level of a threat
10 of serious harm or force or coercion or the other types of high
11 egregious conduct that the statute was designed to address and
12 prohibit, so we don't think that that activity of reporting one
13 person to another, you know, rises to that level of regulated
14 conduct under either Section 1589(a) or 1589(b), which I'll
15 turn to next.

16 So we don't -- while we believe that it is inappropriate
17 for us to do that under the *Church of Scientology* decision, we
18 think it falls in the category of permissible warning with a
19 legitimate consequence as opposed to a conduct of improper
20 coercion or force.

21 **THE COURT:** All right.

22 **MR. BOSSET:** With respect to the venture offender
23 claim, we again feel that this claim, too, is lacking for two
24 separate reasons and should be again dismissed as the Court did
25 the first time around.

1 First, an independent reason is that the County can't be a
2 primary offender under the TVPA. I will defer mainly to the
3 County with regard to this argument, and I will say only at
4 this point that the sovereign generally is not liable under
5 federal statutes absent express authorization by Congress, and
6 the TVPA's text omits government entities pursuant -- and in
7 connection with the Dictionary Act, which two courts have now
8 cited as the operative statute with regard to the scope of the
9 TVPA.

10 We think the text of the statute is dispositive, but even
11 if not, the result makes sound policy sense. Plaintiff has
12 suggested otherwise. We disagree. I mean, the TVPA was aimed
13 at sex trafficking and slave laboring, and there were no
14 legislative findings that state and local governments were
15 engaged in such conduct. And applying the TVPA against
16 sovereigns would unleash a flood of damages claims by
17 lawfully-confined inmates against their public jailers, and we
18 don't think that was the intent of the statute, and there is
19 nothing in the statute that suggests that that was the intent.

20 So without a primary offender in this case, there can't be
21 a venture liability claim against Aramark under the TVPA, but
22 even if the Court were to conclude, you know, contrary to the
23 arguments of Defendants, that government could be a primary
24 offender, we still think that the Section 1589(b) claim should
25 be dismissed because the Plaintiffs have again failed to

1 plausibly allege that Aramack recklessly disregarded the
2 alleged violations by the Sheriff. The Complaint pleads in
3 only the most conclusory way that the deputies sometimes made
4 unspecified threats to unspecified inmates in the presence of
5 unspecified Aramack employees. That's paragraph 32.

6 **THE COURT:** Let me ask you about that also because
7 that argument is made in the briefs. Of course there are
8 things that needed to be -- that need to be pleaded with
9 particularity under Rule 9(b), fraud claims, for example, who,
10 what, where, when. We've all seen the "who, what, where, when"
11 test more times than we can count. Is that that claim, though?
12 Is there anything in the law that says that you have to allege
13 who, what, where, when?

14 The Plaintiffs say in their opposition brief, "Hey, there
15 are a couple paragraphs in the Complaint which say that certain
16 of these things happened in the Plaintiffs' presence." It's
17 true they don't name Aramack employees or the deputy or the
18 particular Plaintiffs, but are they required to do that?

19 **MR. BOSSET:** Your Honor, our argument is not based on
20 a sort of Rule 9 analysis along the lines that you raise. It
21 is an argument that is based on Article III standing, and the
22 law is very clear there that a named plaintiff has to plead
23 particularized injury to himself or herself that's traceable,
24 in this case, to Aramack. And that's clear under the Supreme
25 Court's decision in *O'Shea* and the Ninth Circuit's decision in

1 *Lierboe vs. State Farm* and the other cases we cited.

2 Here none of the four named Plaintiffs identifies any such
3 interaction with an Aramack employ. None alleges that he or
4 she was seriously threatened in the presence of an Aramack
5 employee and then worked in the kitchen for that reason.
6 Instead, the Complaint engages an improper group pleading, the
7 very kind of group pleading that the Supreme Court rejected,
8 expressly rejected in *O'Shea*, and we describe *O'Shea* in some
9 detail in our moving paper, and the Plaintiffs didn't even
10 address it in their opposition.

11 We would also rely on the Court's statement in *Padilla vs.*
12 *Willner* where Your Honor indicated that plaintiffs cannot rely
13 on the injuries of unnamed members of the proposed class for
14 the purposes of standing.

15 So we believe the law is clear under Article III that for
16 this Court to have jurisdiction, the named Plaintiffs at least
17 have to allege injury befell them individually, at least one of
18 them, and there is no such claim -- no such allegation in the
19 Complaint.

20 So for that reason, we think, in addition to the other
21 reasons that we've articulated, that the claim should again be
22 dismissed and that the Plaintiffs this time around should not
23 be given a third bite at the apple.

24 I'll turn to the Labor Code claim, Your Honor, unless
25 there were more questions with regard to the TVPA.

1 **THE COURT:** Oh, no. Please, go ahead.

2 **MR. BOSSET:** With regard to the Labor Code claim,
3 opposition is the claims for wages should be dismissed as a
4 matter of law. The Court has already held that Proposition 139
5 did not require wage payments to county jail inmates, and like
6 Proposition 139, Chapter 4 of the Penal Code also leaves this
7 issue to the discretion of local governments. And, Your Honor,
8 I made reference at the outset to a provision of the Penal Code
9 that related to sentencing credit. I believe that was a
10 provision cited in the brief by the County, among others. Not
11 the only one.

12 Aramack actually cited and relied on a different provision
13 in Chapter 4. That's Section 4019.3. And that is right on
14 point. And what that provision of the code allows, but does
15 not require, county boards to credit wages of two dollars for
16 each of eight hours worked by jail inmates. And Alameda County
17 has the ability to do that if it wants for Santa Rita Jail
18 inmates, but it has elected not to do that. It has not passed
19 such an ordinance, and our position is it's not required to do
20 so. There is nothing that suggests with regard to the Penal
21 Code provision that the County or any local government is
22 obligated to exercise its discretion. It has that discretion,
23 and it could decide as it sees fits given its own budgetary
24 circumstances.

25 I do want to address the Court's separate question

1 regarding the constitutional language, and we would be happy to
2 brief that issue, you know, further if -- you know, based on
3 the Court's inquiry. We would certainly do that if the Court
4 continues to have questions in that regard following the
5 hearing, but I guess our position with regard to that is that
6 the -- the statute, like the Penal Code, Proposition 139, like
7 the Penal Code, left this to the discretion of counties as to
8 how to implement, and to the extent that the Plaintiffs believe
9 they have a claim that the program is not authorized at all in
10 the absence of an ordinance, that it's, in effect, *ultra vires*,
11 that's not this case. That has nothing to do with whether the
12 Plaintiffs are entitled to wages.

13 If there are is a question about the lawfulness of the
14 program sort of *ab initio*, that's either a question to bring to
15 the Board or maybe another case. I'm not sure the Plaintiffs
16 have standing to bring that case. But it is not this case.
17 And the answer to that question I don't think weighs one way or
18 the other on the validity of the Plaintiffs' assertion that
19 they should receive wages under the Labor Code.

20 What they want the Court to do, Your Honor, is really
21 disregard the County's authority under the Penal Code and
22 instead authorize the payment of wages and overtime under the
23 Labor Code in the absence of any state legislative or state
24 appellate court authority suggesting that that is permissible.
25 And no other California court, to our knowledge, has held that

1 jail detainees are covered by the wage provisions of the Labor
2 Code, and the Plaintiffs should not expect a court sitting in
3 diversity to extend that code's provisions in this manner
4 absent such clear direction from the legislature or appellate
5 courts.

6 As this Court itself stated in its prior ruling, it cannot
7 conclude Plaintiffs are included in the Labor Code unless the
8 Penal Code says so. And just as was true with respect to
9 convicted inmates, it's also true with respect to detained
10 inmates that Plaintiffs point to no portion of the Penal Code
11 indicating that the wage provisions of the Labor Code should be
12 applying to non-convicted detainees. It is, in fact, the
13 opposite. Section 4019.3, which this Court did cite in its
14 initial opinion, presumes that the Labor Code does not apply to
15 any jail inmates convicted or otherwise. There is no
16 segregation in that provision between categories of jail
17 inmates.

18 So we think that's actually the most on-point provision
19 with respect to our argument that the Penal Code covers this
20 issue exclusively and precludes reliance that the Plaintiffs
21 are seeking on the Labor Code to actually receive much more
22 than either they would be allowed under the Penal Code or even
23 state prisoners would be allowed under a separate section of
24 the Penal Code. And we respectfully ask that the Court, for
25 that reason, you know, especially sitting in diversity, not

1 reach that determination.

2 We don't think the Thirteenth Amendment bridges the gap
3 that we've described between the Penal Code and the Labor Code.
4 The Thirteenth Amendment does not establish any right to wages,
5 and there is no other court, to our knowledge, that has held
6 that a claim for wages can be brought under the Labor Code or
7 any other state law, to our knowledge, for alleged violations
8 of the Thirteenth Amendment; that that would be the basis for
9 affording protection and a right to wages under a separate
10 state wage statute. Even if it were, in this instance, the
11 Complaint doesn't assert a claim against Aramack under the
12 Thirteenth Amendment.

13 **THE COURT:** Mr. Bosset, you have one minute remaining.

14 **MR. BOSSET:** Okay.

15 Let me move then with respect to even if there could be a
16 claim asserted, we don't think there can be. The Plaintiffs
17 haven't alleged the requisite control by Aramack over their
18 working conditions in hiring and firing to state that -- an
19 employment relationship with Aramack. The allegation that we
20 can report inmates to deputies just underscores that it's the
21 County, not Aramack, that has the power to discipline, remove,
22 etc.

23 Aramack's role in food preparation also doesn't create an
24 employment relationship. Courts have recognized that ensuring
25 the quality and safety of food is not the kind of control over

1 working conditions, hiring or firing, that meet the *Martinez*
2 test, even if it did apply here. We cited the *Salazar vs.*
3 *McDonalds* case for that proposition. That case in turn relied
4 on the *Patterson vs. Domino's* California Supreme Court case.

5 In short, we don't think Plaintiffs have pled -- and they
6 can't plead -- that Aramack is their employer in jail. And so
7 for that reason independently, even if the Court were to
8 otherwise conclude that a claim could be stated, we think that
9 it should be dismissed in this instance because it has not been
10 adequately pled, and given that the Plaintiffs have now had two
11 times, it should be dismissed with prejudice because it can't
12 be adequately pled.

13 I'll reserve whatever time we have remaining to address
14 the other claims later, and I will defer to my colleague,
15 Mr. Glaser.

16 **THE COURT:** Thank you, Mr. Bosset. Your time has
17 actually elapsed.

18 Mr. Glaser. You're on mute, Mr. Glaser. Mr. Glaser,
19 you're on mute.

20 **MR. GLASER:** Can you hear me now?

21 **THE COURT:** I can. Thanks.

22 **MR. GLASER:** Your Honor, I'll start with the Labor
23 Code claims. Neither California -- neither the California
24 Constitution nor Title IV of the Penal Code provides any rights
25 of inmates of county jails to receive wages for work performed

1 while incarcerated. You could look at California Penal Code
2 Sections 4000 through 4032, and you will not see that written
3 anywhere.

4 Furthermore, the Penal Code provides a comprehensive
5 statutory scheme for the treatment of inmates, not just
6 convicted -- not just convicted inmates, pretrial detainees,
7 too. And many -- and where there is a comprehensive statutory
8 scheme, the Court is to look to the statute, not to common law,
9 to address -- to address this particular issue, and you can
10 look at the *Voris vs. Lambert* case for that, which specifically
11 says that in regard to -- in regard to applying the Labor Code
12 on a conversion claim where instead of the -- instead of
13 allowing a plaintiff to assert a conversion claim for theft of
14 wages, Your Honor.

15 Next and more importantly, there is no case that holds
16 that the -- that inmates or pretrial detainees are employees,
17 Your Honor. The issue here, which Plaintiffs have confused in
18 the first motion to dismiss and again in this case, is they're
19 trying to argue well, the County is an employer, but that's not
20 the issue, Your Honor. The issue and the same issue that's
21 been addressed in every case is whether an inmate or a pretrial
22 detainee is an employee under the FLSA or the Labor Code
23 sufficient to enable them to get minimum wages, overtime,
24 penalties, anything else that is provided under either statute.
25 And here the weight of -- overwhelming weight of authority --

1 and there is no authority contrary -- is that -- is that the --
2 is that the County and -- is not -- the County inmates and the
3 pretrial detainees are not employees.

4 In fact, Plaintiff has done nothing to distinguish the
5 *Villarreal* and *Matherly* cases which held that pretrial
6 detainees were not employees under the FLSA. And I don't
7 see --

8 **THE COURT:** Isn't that a different test, though?
9 FLSA -- I'm sorry. The FLSA test is very different from the
10 *Martinez* test.

11 **MR. GLASER:** It's different from the *Martinez* case,
12 but, again, the *Martinez* case applies to whether someone's an
13 employer, Your Honor.

14 My argument here is that, number one, the Penal Code is a
15 comprehensive statutory scheme, and if it doesn't provide for
16 payment of wages, you don't get paid wages, number one.

17 **THE COURT:** Well, isn't that -- but hold on a moment.
18 I didn't interrupt you before.

19 That argument is that a comprehensive statutory scheme
20 displaces a claim under the common law, but aren't all of
21 Plaintiffs' claims here statutory or constitutional? They're
22 not common law claims, are they?

23 **MR. GLASER:** Exactly. So you can't apply the common
24 law to determine whether Plaintiff is an employee.

25 And more importantly, you -- I think when you are looking

1 at the FLSA, you're -- the FLSA test versus the *Martinez* test,
2 you're looking as to who constitutes an employee. And the --
3 the issue here is who is an employee. And the fact that
4 there's no California case on point that holds that an inmate
5 or detainee is an employee, Your Honor has the right and, in my
6 opinion, the obligation to look at federal precedent that has
7 held time and time again that no convicted inmate and no
8 pretrial detainee -- and there are plenty of examples of it --
9 look at *Villarreal*, look at *Matherly*, look at the other cases
10 cited in both my motion and my reply -- all hold that
11 because -- because an inmate or pretrial detainee does not have
12 the same pecuniary interest as a private employee, that they --
13 that they do not get paid wages under the FLSA.

14 The same reason applies to the Labor Code, Your Honor.
15 They are -- the same rationale applies to the Labor Code. They
16 did not have a pecuniary interest here because their food,
17 their clothing, their shelter, it's all taken care of by the
18 County, so they do not have the same interest as an employee
19 seeking to get paid fair wages under the Labor Code. And
20 it's -- it's just completely wrong to hold that an inmate or a
21 detainee is subject to -- subject to a statute which was not
22 designed for them. And there's no case saying it was designed
23 for them. And the only precedent out there is a federal
24 precedent saying that neither of them should be an employee
25 entitled to wages. And the -- and neither the California

1 Constitution or the California Penal Code say they are entitled
2 to wages.

3 So you got all this different law all over the place
4 but -- that's saying that inmates and pretrial detainees don't
5 get wages, and there's nothing the Plaintiff can say that
6 changes that, Your Honor. They're just asking you to legislate
7 from the bench, and I think that's completely improper.

8 If the California legislature wanted to make inmates or
9 detainees subject to the Labor Code, they've had plenty of
10 opportunity to do that. They could have done that when -- they
11 could have done it in connection with the -- with the
12 legislation that followed Proposition 139. They didn't do it
13 for a reason.

14 And with respect to Proposition 139, I think my co-counsel
15 is completely correct in saying that unless the County enacts
16 an ordinance, which is within their discretion to decide to
17 enact, there is no right -- there is no right to wages on the
18 county level.

19 Now, getting past that to the TVPA claim, that claim fails
20 because government entities and elected officials, including
21 Sheriff Ahern, cannot be held liable for violations of the
22 TVPA. The *Nunag-Tanedo* case holding that the TVPA does not
23 apply to governmental entities is soundly reasoned, persuasive,
24 and directly on point. Plaintiff has not cited to a single
25 case that distinguished, overruled, or in any way questioned

1 the *Nunag-Tanedo* case.

2 In my opinion, Your Honor, you have to follow the
3 precedent that the County -- the County and Sheriff Ahern
4 cannot be held liable under the TVPA. And obviously Aramack
5 can't be held liable as a secondary defender if the County
6 isn't a primary defender.

7 The next couple points, which are self-evident, are that
8 Plaintiffs Mebrahtu, Mason, and Luis Nunez-Romero cannot be
9 parties to this First Amended Complaint because in your ruling
10 on the earlier motion to dismiss, you said so. You ruled --
11 you sustained -- I mean, you granted our motion to dismiss
12 without leave to amend to these three people. You said they
13 could be class members, but they can't be named plaintiffs. So
14 they can't just revitalize these claims on amendment of these
15 three individuals.

16 The last guy, Scott Abbey, he just doesn't allege any
17 facts to entitle him to any claim for relief in this case,
18 Your Honor. I mean, you just read the Complaint. There's
19 vague, generalized facts as to him; nothing specific that would
20 lead -- that would include him in any of the claims for relief
21 alleged in this case, Your Honor. It's the County's position
22 that -- that the first, third, fourth through seventh, and
23 ninth claims of relief have to fail because they're not
24 entitled to wages.

25 **THE COURT:** Mr. Glaser, let me ask you a question

1 about the three Plaintiffs whose claims were dismissed with
2 prejudice previously. I think I get the argument.

3 **MR. GLASER:** Sure.

4 **THE COURT:** Certainly these Plaintiffs could not
5 attempt to bring the same claims that I dismissed with
6 prejudice. That would be -- I think "improper" is not the
7 right word, but it wouldn't be successful. We could agree on
8 that. But there is no -- they're not -- I think we can agree,
9 probably, they're not prohibited from filing suit against the
10 County for the rest of their lives on any ground. They could
11 file a lawsuit if they wanted to. They just couldn't bring
12 those claims; right?

13 **MR. GLASER:** They just can't bring the same claims
14 that were in the original Complaint against the County, and
15 there is no new claims in the First Amended Complaint.

16 **THE COURT:** They can't bring the claims that were
17 dismissed with prejudice before.

18 **MR. GLASER:** Correct.

19 **THE COURT:** We could have a discussion now about
20 whether they are barred by my prior order from bringing new
21 claims in this case, which is what you're urging, that they be
22 barred from bringing any new claims in this case.

23 Would anything prevent them from filing these claims as a
24 separate case?

25 **MR. GLASER:** I -- to file these same claims, I think

1 they would be precluded by your order, Your Honor.

2 **THE COURT:** The same claims that they're trying to
3 bring now?

4 **MR. GLASER:** Correct. That would be -- I think your
5 prior order is either collateral estoppel or res judicata
6 against them bringing those claims, Your Honor.

7 **THE COURT:** I see. Okay.

8 **MR. GLASER:** As far as bringing a brand new claim
9 which isn't before the Court today, I don't know. I would have
10 to see the new claim and then do a legal analysis on that, but
11 that's not before the Court. What's before the Court is the
12 claims that are in this case.

13 **THE COURT:** Right. Okay.

14 **MR. GLASER:** So, you know, Your Honor, I'm going to
15 reserve the rest of my time for rebuttal.

16 **THE COURT:** All right. Thank you.

17 Ms. Johns, who will argue for the Plaintiffs this
18 afternoon?

19 **MS. JOHNS:** I will be arguing, Your Honor.

20 **THE COURT:** Very good. You have the floor.

21 **MS. JOHNS:** Thank you.

22 Just, I think, briefly so that we can get these particular
23 arguments out of the way, I'll address the arguments in a
24 different order.

25 Mr. Glaser's last arguments regarding three of the

1 Plaintiffs against whom the order -- that the Court issued
2 originally -- dismissed claims for, those individuals' claims
3 were dismissed only as to the state claims, that they -- the
4 Court found failed to properly exhaust under the Government
5 Claims Act.

6 Plaintiffs in their Amended Complaint made clear that
7 those individuals are only bringing their claims that were not
8 dismissed by the Court in the previous order, which are the
9 federal claims against the County and all of the claims against
10 Aramack which do not require that exhaustion requirement, the
11 Government Claims Act exhaustion requirement. So there is no
12 issue here for those Plaintiffs. They are only asserting --
13 and I think the Complaint makes quite clear -- the claims that
14 were not dismissed by the Court --

15 **THE COURT:** I wouldn't take up any more time on this.

16 **MS. JOHNS:** Thank you.

17 So I'd like to speak about the Trafficking Victims
18 Protection Reauthorization Act. As we allege in our Complaint,
19 the Plaintiffs in this case are forced to work. They are
20 forced to work under threats that they -- if they do not work
21 or if they leave work because they are ill, that they will be
22 punished with solitary confinement. The Complaint describes
23 what solitary confinement in the Alameda County -- in the
24 Alameda County Jail means.

25 Those threats are issued by the Sheriff, and they are

1 issued by -- by the Sheriff to Plaintiffs. They are issued by
2 the Sheriff in front of Aramack employees, and Aramack
3 employees also threatened to refer Plaintiffs to the Sheriff's
4 deputies for punishment, and that's an important part of the
5 allegation that Aramack leaves out.

6 Aramack employees threaten to refer the Plaintiffs to the
7 County deputies for punishment if they need to leave work early
8 because they are ill. The allegation is not that Aramack
9 threatens to report misconduct that would be properly subject
10 to punishment, but only that if Plaintiffs try to leave work
11 because they are ill, that they will be punished under the --
12 according to the punishment that the County Sheriff's deputies
13 can impose, such as solitary confinement, and that is
14 impermissible.

15 Those allegations make Aramack liable as a primary
16 offender. It is different -- it is distinct from the
17 *Scientology* case that Aramack cites and is much more analogous
18 to the TVPA cases that deal with primary offenders who threaten
19 to refer people to law enforcement or threaten to refer people
20 for punishment that they should not be subject to. Leaving
21 work early due to illness is not conduct that should be
22 punished by solitary confinement. Aramack therefore is -- the
23 allegations in the Complaint are sufficient to show that
24 Aramack is a primary offender.

25 Aramack can also be a secondary offender whether or not

1 the County is a primary -- excuse me -- liable as this
2 secondary offender whether or not the County is liable for --
3 under the TVPA as a primary offender, although I believe the
4 County can be.

5 But to speak specifically to Aramack, the statute that
6 allows for civil liability allows for Plaintiffs to sue either
7 the primary offender or the person who benefits from a venture
8 that results in forced labor. And the provisions that allow
9 for civil liability specifically enforce -- enforce labor
10 portions of the statute that are separate from sex trafficking
11 portions of the statute. The statute scheme does address both.
12 It does not solely address sex trafficking, as I feel was
13 implied in the arguments about the purpose of the statute by
14 Defendant Aramack.

15 They can be sued -- and the cases that the -- excuse me --
16 the Northern District is now addressing with some frequency
17 against hotels where individuals have been in those cases sex
18 trafficked but are being sued under the same statute that we
19 seek to sue Aramack and hold Aramack accountable here, that
20 those hoteliers are being -- they are able to be sued even if
21 they don't take any overt acts in furtherance of the sex
22 trafficking kind of joint venture that's occurring -- they
23 don't take any overt acts to further the forced labor scheme,
24 but they simply benefit from the forced labor scheme, and they
25 know about it, which our Complaint alleges that both are true,

1 that they can be held liable whether or not the primary
2 offender is sued, is prosecuted, or has any, you know,
3 liability or accountability at all. The person seeking to sue
4 can sue either the primary offender or the beneficiary under
5 the joint venture section of that -- of the TVPA.

6 In addition, the County can be liable as a primary
7 offender because although there is this unpublished case that
8 the County cited or the County referenced in their argument
9 that indicates that if you look at the Dictionary Act, that
10 first you look at perpetrator. Perpetrator is a person. And
11 then if you look at the Dictionary Act, the person does not
12 include the County. What I think the Supreme Court --

13 **THE COURT:** Ms. Johns, there was one instance -- and I
14 don't remember which it was, and it might be what you're
15 talking about -- in which someone cited an unpublished
16 California appellate case. Is it that?

17 **MS. JOHNS:** This is not a California appellate case,
18 Your Honor.

19 **THE COURT:** Okay. That's fine. There are -- I will
20 just say a couple things since I have now stolen the
21 microphone.

22 One is that the distinction at the district court level
23 between published and unpublished cases is irrelevant. The
24 decisions about whether to -- a case is published by which I
25 mean appears in a numbered volume of the Federal Supplement or

1 Federal Rules decisions, those decisions are made almost
2 entirely by a staff attorney at Westlaw without consultation
3 with chambers. And occasionally those of us on the bench might
4 take it upon ourselves to ask them to designate something as
5 published, but for the most part, we don't do that. I do it
6 incredibly rarely.

7 So when people are citing authority to the Court, at the
8 court of appeals level, that makes a big difference. At the
9 district court level, it makes zero difference.

10 Also one of you -- and I don't remember who -- cited an
11 unpublished California state court case at the California Court
12 of Appeal level. Those cases are not citable within the
13 California court system, and a local rule of this federal
14 district provides that if authority is not citable in its
15 originating jurisdiction, it's not citable to us either, and so
16 whenever I got to that case, I just had to skip over it because
17 that's the way our rules work.

18 Anyway, Ms. Johns, let me give you back the microphone.

19 **MS. JOHNS:** Thank you, Your Honor.

20 We encourage, when the Court is looking to interpret
21 whether the County as a public agency can be held liable as the
22 primary offender, to look at the purpose of the statute which
23 when determining whether the sovereign should be included in
24 the -- should be covered by a federal statute, the Supreme
25 Court says look to the history, look to the purpose of the

1 statute, and as we cited in our papers, the purpose of the
2 statute was to implement the Thirteenth Amendment. The County
3 certainly is not free to violate the Thirteenth Amendment and
4 may be held liable and accountable under Section 1983. But we
5 argued that they can also be held liable for their conduct that
6 would also violate the Thirteenth Amendment under the TVPA.
7 And certainly the Sheriff as an individual can be held liable,
8 and so if the County is immune because they are not
9 considered -- they cannot be considered a perpetrator, the
10 County Sheriff can be considered a perpetrator as an
11 individual, and we have allegations in our Complaint that the
12 County Sheriff participated in the construction of this venture
13 that we describe as a forced labor venture and violative of the
14 TVPA -- the TVPRA. Excuse me.

15 In addition -- so I think that addresses the TVPRA, that
16 we can sue the County as a primary offender, we can sue Aramack
17 as a primary offender, and we can sue Aramack as a secondary
18 offender, whether or not the County is held liable. We believe
19 we have alleged sufficient facts and directed the Court to
20 those facts in our papers, and therefore the TVPRA claims may
21 proceed.

22 To speak to the Labor Code claims, Your Honor asked a
23 question about the meaning of the word "shall" in the
24 California Constitution, Article XVI, Section 5.

25 **THE COURT:** Yes. I think I'm going to have difficulty

1 accepting your invitation to find -- to construe the contract
2 as an ordinance. I just think that does -- I'm not -- I'm not
3 going to reach any conclusions at this hearing in any final
4 way, but I just don't think that maybe that's the way the
5 English language works.

6 **MS. JOHNS:** Certainly. And the Court does not need to
7 agree with that in order to find that Plaintiffs and other
8 pretrial detainees who are forced to work within the jail are
9 covered by the Labor Code, but I did -- I'll address "shall"
10 and then I will speak to why the Court can find that they are
11 covered under the Labor Code.

12 The change in the Constitution -- we briefed this more
13 thoroughly in our opposition to the first round of motions to
14 dismiss and can brief it again. I don't believe that it's
15 briefed very thoroughly in this set of motions, but we do
16 describe that "shall" has the effect of mandatory language that
17 the County must regulate these kinds of programs, but that
18 that -- whether or not the County regulates these kinds of
19 programs through a local ordinance, that the -- finding that
20 the Plaintiffs are employees of the County and employees of
21 Aramack under a joint employer relationship, which is what we
22 invite, it's not necessary that the Court determine whether or
23 not the County has implemented this -- implemented their
24 "program" -- I use that term in quotation marks because that's
25 what the California Constitution Article XVI, Section 5 says --

1 but whether or not they've implemented this pursuant to
2 regulation, the Labor Code applies under California law when a
3 person is an employee. Right? And a person is an employee
4 when somebody takes that person's labor, suffers and permits
5 them to work.

6 As the Court noted in its order -- and it's not argued in
7 the County Defendant's motion to dismiss -- the County controls
8 everything that Plaintiffs do when they are pretrial detainees,
9 when they are in the custody of the County, and therefore the
10 County is having these Plaintiffs work. They're suffering or
11 permitting them to work --

12 **THE COURT:** The *Martinez* test is not hard for you to
13 meet.

14 **MS. JOHNS:** I agree, both for the County and for
15 Aramack. *Dynamex* makes clear -- and, again, we didn't argue
16 this much in our papers because the County doesn't raise it --
17 but *Dynamex* makes clear that "suffer or permit to work" is the
18 standard under which a person is an employer or an employee in
19 this case. Our Plaintiffs are employees. They are employees
20 of the County. They are jointly employed by Aramack because
21 Aramack controls certain portions of their working condition,
22 including being able to terminate them by telling the County
23 Sheriffs that they cannot come back to work. This person is
24 terminated and they may not return to the kitchen.

25 They -- Aramack also, as we've alleged, says that --

1 excuse me -- evaluates Plaintiffs to determine where -- what
2 parts of the kitchen they get to work in, and we've described
3 Plaintiffs working in the scullery, preparing meals, doing
4 cleaning and sanitation, all roles in the kitchen that a person
5 can play that is a role that is assigned by Aramack with
6 consultation -- in consultation with the County because certain
7 classifications may prevent an employee, you know, for
8 instance, from having -- holding a knife as a part of their
9 meal preparation, so maybe that person will be in sanitation.
10 But that Aramack does this evaluation and makes those
11 decisions, and their employees do those evaluations and makes
12 those decisions.

13 So we believe that all the Court has to find in order to
14 find that the Labor Code applies in this case is that
15 Plaintiffs are -- suffered -- were permitted to work, that the
16 County in this instance does not argue that that is not the
17 case here, and that as Plaintiffs allege and argue in their
18 opposition to Aramack's motion, that Aramack has control over
19 certain aspects of their work and supervision and is therefore
20 a joint employer. And in that case, the Labor Code would
21 apply. That's -- it's very simple in California.

22 As the Court notes, the Fair Labor Standards Act and the
23 Economics Realities Test is -- is and should not be persuasive
24 in this case because the courts in California, including
25 California Supreme Court, have been very clear that the Fair

1 Labor Standards Act, Economic Realities Test, is not the
2 controlling test for who is an employee or an employer in any
3 circumstance. Therefore, the Court is free to and should apply
4 the Labor Code to individuals who are employees because they
5 meet the definition of "suffer or permit to work" and because
6 they meet any one of the three tests under *Martinez* for a joint
7 employer relationship with Aramack.

8 I don't think that the Court needs to get too far into
9 what Proposition 139 did or did not allow because Proposition
10 139 and the Penal Code do not define who is an employee and
11 entitled to the protections of the Labor Code. The Labor Code
12 does that, and the California Supreme Court has done that in
13 *Dynamex* and *Martinez* and many cases that follow.

14 I also want to address the Court's question about whether
15 or not it is important to -- for the Court -- I guess for the
16 Court to understand Labor Code Section 201 and 202 and
17 understand the significance of the terminating event. Our
18 allegation -- I -- I think what -- excuse me. I think what the
19 Defendants -- what Aramack was arguing and what we were
20 responding to but seems like maybe it wasn't, Your Honor said,
21 kind of directly on point, but we believed that we were
22 responding directly on point -- is Aramack was arguing that
23 because the Complaint seeks relief under those labor codes, it
24 is crucial that an individual say whether or not -- whether
25 they were terminated or whether they were -- whether they

1 were -- excuse me -- whether they resigned. Whether they were
2 terminated or whether they resigned.

3 Plaintiffs argued that the distinction is not important
4 here because once we get to the point of -- once we get to the
5 calculation that -- of what wages Plaintiffs are owed, if a
6 Plaintiff is still working, then -- for the County under this
7 statutory scheme, then they are not subject to Labor Code 201
8 or 202 because a terminating event has not occurred. However,
9 once the terminating event has occurred, it is the distinction
10 between whether all wages are owed that day in the case of
11 termination or three days from then in the case of
12 resignation -- or three days from then in the case of
13 resignation, and that's immaterial because by the time that we
14 get to that --

15 **THE COURT:** Let me ask you a question. I suppose I
16 could have looked this up before the hearing, but I didn't.
17 What if an employee -- if a free-world employee dies. Does
18 that employee have rights under -- now, I'm sure they weren't
19 laid off so we can forget 201, but does that person's estate
20 have rights under 202, or does someone substituting in for the
21 plaintiff -- for a plaintiff have rights under 202, or does
22 that will claim die with the employee?

23 **MS. JOHNS:** Your Honor, I don't know the answer to
24 that without additional briefing and research because I think
25 it would --

1 **THE COURT:** I understand your argument, but the
2 argument taken to its logical conclusion is that the end of
3 employment by itself for any reason has to constitute an event
4 under either Section 201 or 202, and I understand the equitable
5 argument that in this case, if people are being made to work
6 against their will and they're in custody, they shouldn't lose
7 the protection of Section 201/202 just because they're not in a
8 traditional employment relationship where they get a notice of
9 termination from HR. But just because someone is receiving an
10 injury doesn't mean that they're entitled to every potential
11 remedy under the law. It's just not the way remedies work.

12 So one of the things I have to figure out is what is the
13 role of that terminating event, and I get your argument. You
14 made it in the briefs and you're making it again right now,
15 which is hey, look, so much time has passed, whatever. It's
16 got to be one of those. And my point to you is I don't think
17 it has to be one of those. It doesn't mean you lose. It just
18 means I think "whatever" just is never going to get me there.

19 **MS. JOHNS:** Certainly, Your Honor. And I didn't mean
20 to imply that we were saying "whatever." I think what we are
21 saying is that they have relief under these portions of the
22 Labor Code and then facts that we will prove -- largely I would
23 argue with the records that we believe are held and kept by
24 Aramack and/or the County about when a person was employed,
25 when they started their work, when they finished their work,

1 the reasons that that work was finished, either because they
2 were terminated, because they were -- because they were
3 released from jail, because they were moved to prison, whatever
4 that event may be. That's something that is subject to proof.
5 We don't just get those damages without proving that that event
6 occurred. But we get to argue that we have relief under
7 those -- under those sections of the Labor Code and that a
8 penalty will apply because there had not -- there has not been
9 a payment of wages to the Plaintiffs --

10 **THE COURT:** I know these claims are not the center of
11 gravity of the whole case, but this is probably the -- of the
12 things that are not clear, this is the thing that is most
13 unclear to me so that's why I'm hovering right here.

14 Let me ask you another question about this. Of course
15 people have the right to plead in the alternative as I have
16 ruled many times, but isn't there some very significant tension
17 between the idea that people are being made to work against
18 their will, but they don't -- I mean, they don't have the
19 opportunity to resign. They couldn't have resigned. If they
20 could resign, presumably they would have not worked. They
21 would have said, "I don't want to work because I'm being made
22 to perform slave labor." And similarly, I would be surprised
23 if there could be a termination event because termination
24 implies that the employer is doing something affirmative to end
25 the employment relationship, and in this case, Aramack may have

1 a lot of control, but they certainly don't have that power.
2 And even the County, writ large the Sheriff, is not the one
3 with the occasional exception. For the most part, the Sheriff
4 is not the one deciding that somebody is not going to be held
5 in custody anymore. That's a decision that is made by the
6 courts.

7 So I'm just wondering how -- just mechanically how could
8 you get to a resignation or how could you get to a termination.
9 So I don't want to use up all of our time, but at least I have
10 now explained what my question is.

11 **MS. JOHNS:** Yeah. Respectfully, Your Honor, I believe
12 that Aramack and we allege that Aramack can terminate an
13 employee by saying that they cannot come and work in the
14 kitchen anymore, for whatever reason, and, you know, as we've
15 investigated, there have been many reasons why people have been
16 terminated in that sense, told that they cannot return to the
17 kitchen, and that that is something within the control of the
18 Aramack employees by Aramack saying to the Sheriff deputies
19 they cannot return, and the Sheriff deputy does not bring them
20 back to work.

21 The resignation -- I appreciate --

22 **THE COURT:** Do any of your -- I have not memorized the
23 First Amended Complaint. Do any of your Plaintiffs or do your
24 Plaintiffs as a group allege that they were terminated by
25 Aramack? Not that Aramack had that power, but that they

1 actually were terminated in the way you have described. Does
2 anyone make that allegation?

3 **MS. JOHNS:** Our Complaint does not specify how
4 individuals stopped working in the kitchen. Some Plaintiffs
5 were terminated, some were released, some were transferred to
6 other prisons, and I think in those situations where you're
7 right about the second condition, is it essentially a
8 resignation if the courts have ordered a prisoner released or
9 have ordered the prisoner transferred to state prison after
10 suffering a conviction -- is that a condition where -- that
11 would be considered a resignation under the law or termination
12 under the law, and I -- without briefing that further, I -- I
13 can't --

14 **THE COURT:** There is no volitional act on the part of
15 the putative employee in that hypothetical. They're simply
16 being told, "You are not living in that jail anymore, so bye."
17 Right? They couldn't -- I don't know how it's a resignation.
18 They couldn't continue to work there if they wanted to.

19 Anyway, I think you should make your other -- you're doing
20 what I would do, and that is the Court is stuck on something
21 and so you're just stuck there with the Court. I would make
22 the other arguments you came to make with the time that you
23 have. I think we have exhausted the utility of this.

24 **MS. JOHNS:** Thank you, Your Honor.

25 I actually believe that I have made the arguments that I

1 intended to make, especially with respect to the Labor Code and
2 the TVPA. I think I have responded to the what the Defendants
3 said, so I can reserve my additional time, if I'm nearing the
4 end of it, to respond to the Defendants' counter-arguments, if
5 the Court would allow.

6 **THE COURT:** All right. Thank you.

7 Ms. Lee, how much time does Mr. Glaser have left?

8 **THE CLERK:** Three minutes, Your Honor.

9 **THE COURT:** Very good. Mr. Glaser --

10 **MR. GLASER:** How many minutes do I have left?

11 **THE CLERK:** Three.

12 **MR. GLASER:** Three minutes. Okay. I will speak fast.

13 **THE COURT:** Don't speak so fast. This is being
14 reported. Go ahead.

15 **MR. GLASER:** Okay. Your Honor, thanks for the
16 opportunity.

17 It's our position that *Martinez* and *Dynamex* apply to
18 private employers, and this issue was not decided by the
19 Supreme Court of whether an inmate is an employee. I
20 understand how Plaintiffs' counsel wants to churn the *Martinez*
21 and *Dynamex* decisions on their head and determine that
22 automatically means an inmate is an employee, but that's not
23 what they -- first of all, they're deciding whether a private
24 employer -- a private entity is an employer under those cases,
25 and that's what the Supreme Court decided, but she's trying to

1 turn it on its head and say no, they're talking about the
2 County and they're talking about inmates. That's completely
3 incorrect.

4 Second of all, the termination issues that you discuss
5 under Labor Code 201 and 202, in my opinion, just further
6 underscore that the Labor Code was not intended for inmates.
7 You know, she argues that the Labor Code applies when a person
8 has suffered or is permitted to work, but I think that ignores,
9 number one, the comprehensive statutory scheme of the Penal
10 Code. It ignores the federal precedent. It asks Your Honor to
11 legislate from the bench creating a right to wages to all
12 detainees throughout this entire state and perhaps to the
13 entire nation, Your Honor, causing the state and -- and
14 governments throughout the United States to possibly have
15 millions, if not billions, of new liability.

16 I think that Your Honor should think very clearly, should
17 read all of the federal cases on this before -- and should
18 reread *Martinez* and *Dynamex* with an eye of whether this applies
19 to a governmental entity before Your Honor -- Your Honor
20 goes -- goes to this great length of deciding that every county
21 jail in the United States is -- is an employer and owes minimum
22 wage and overtime wages and meal breaks and rest breaks and
23 waiting time penalties and wage statement penalties and
24 attorneys' fees.

25 Your Honor, there's a lot of damages here that -- that

1 you're forcing on the County, and if you add a Business &
2 Professions Code claim to it, that is going back four years of
3 liability for every inmate in the -- every county inmate in the
4 United States? This is craziness, Your Honor.

5 I think that we need to take a step back and think long
6 and hard about Proposition 139, think long and hard about the
7 fact that there has to be a local ordinance, and it's the
8 discretion of the County whether to enact it, and we need to
9 think long and hard about applying a state statute where the
10 rationale is clear that it applies to private employees who
11 have a pecuniary interest with the entity employing them and
12 applying that to a county jail, Your Honor.

13 I think there is -- I think there's a huge leap being made
14 here. It's creating law that is solely intended for the
15 legislature, and that we need to think long and hard before we
16 go there.

17 **THE COURT:** Does he have any more time?

18 **MR. GLASER:** Finally under the TVPA --

19 **THE COURT:** Mr. Glaser, I'm pretty confident your time
20 has elapsed.

21 Ms. Lee?

22 **THE CLERK:** Yes, sir.

23 **THE COURT:** All right. Thanks.

24 Ms. Johns, you get the last word. I'm not sure how much
25 time you have. A couple minutes, something like that.

1 Ms. Lee, what does she have?

2 **THE CLERK:** Two minutes.

3 **THE COURT:** Two minutes? Okay.

4 Ms. Johns, two minutes.

5 **MS. JOHNS:** Thank you, Your Honor.

6 This is a situation that I don't think is going to have
7 the sweeping effect that the County Defendants suggest --

8 **THE COURT:** That policy argument will not be
9 determinative in this case.

10 **MS. JOHNS:** Thank you.

11 This is a case where the County is forcing Plaintiffs to
12 work for a private employer. As we allege, the private
13 employer is benefiting from this by selling the Plaintiffs'
14 labor or the fruits of Plaintiffs' labor to other counties in
15 the form of selling meals that the Plaintiffs are preparing.

16 This is a case that very clearly again -- and wasn't
17 alleged by the County that they don't -- that Plaintiffs don't
18 fall under the definition of "employee," but this is a case
19 where Plaintiffs are to be considered employees of the County
20 because that is alleged in the motion to dismiss, and we allege
21 that there is a joint employer relationship, and the Plaintiffs
22 should be entitled to wages under the Labor Code for this
23 forced labor that they are experiencing, the pretrial detainees
24 in this jail in Santa Rita.

25 Thank you, Your Honor.

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THE COURT: Thank you, Ms. Johns.

Thank you all for your arguments.

Mr. Bosset, I'm glad we were able to finally get you hooked in. I appreciated all the arguments I heard this afternoon, and these two motions to dismiss are now under submission. Thank you.

(Proceedings adjourned at 3:43 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, October 27, 2020

Pamela Batalo Hebel

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter

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 9 BERT DAVIS, KATRISH JONES,
 JOSEPH MEBRAHTU, DAHRYL REYNOLDS,
 10 MONICA MASON, and LUIS NUNEZ-ROMERO
 and SCOTT ABBEY

11
 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

<p>14 15 ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS; KATRISH JONES; 16 JOSEPH MEBRAHTU; DAHRYL REYNOLDS; MONICA MASON; LUIS 17 NUNEZ-ROMERO, and SCOTT ABBEY; and all others similarly situated, 18 Plaintiffs, 19 vs. 20 21 COUNTY OF ALAMEDA; GREGORY J. AHERN, SHERIFF; ARAMARK 22 CORRECTIONAL SERVICES, LLC; and DOES 1 through 10, 23 Defendants. 24 25</p>	<p>) Case No. 4:19-cv-07637-JST)) PLAINTIFFS' REQUEST FOR) JUDICIAL NOTICE IN SUPPORT) OF THEIR OPPOSITION TO) DEFENDANT ARAMARK'S) MOTION TO DISMISS PLAINTIFFS') FIRST AMENDED COMPLAINT)) Hearing: October 21, 2020) Time: 2 p.m.) Courtroom: Oakland Courthouse,) Courtroom 6 – 2nd Floor) 1301 Clay Street, Oakland, CA 94612)) Hon. Jon S. Tigar))</p>
--	--

Case 4:19-cv-07637-JST Document 55 Filed 09/18/20 Page 2 of 2

1 Pursuant to Federal Rule of Evidence 201, plaintiffs seek judicial notice of the
2 Summary Action Minutes from the Alameda County Board of Supervisors meeting on
3 July 21, 2015, which is attached as Exhibit 1 to the Declaration of EmilyRose Johns, filed
4 concurrently with this request.

5 Additionally, plaintiffs seek judicial notice of Attachment 52 to the Summary
6 Action Minutes from the Alameda County Board of Supervisors meeting on July 21,
7 2015, attached as Exhibit 2 to the Declaration of EmilyRose Johns, filed concurrently
8 with this request.

9 The Court may take judicial notice of documents that are publicly available on a
10 government website, and to which the authenticity of the website nor the accuracy of the
11 information is not disputed. *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 n.3 (9th
12 Cir. 2018).

13
14 Dated: September 18, 2020

15 SIEGEL, YEE, BRUNNER & MEHTA

16
17 By /s/EmilyRose Johns
18 EmilyRose Johns

19 Attorneys for Plaintiffs
20 ARMIDA RUELAS, DE'ANDRE EUGENE
21 COX, BERT DAVIS, KATRISH JONES,
22 JOSEPH MEBRAHTU, DAHRYL REYNOLDS,
23 MONICA MASON LUIS NUNEZ-ROMERO,
24 and SCOTT ABBEY
25
26
27
28

Ruelas v. County of Alameda, No. 4:19-cv-07637-JST
Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Opposition to County's
and Sheriff's Motion to Dismiss - 2

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 15 MONICA MASON, LUIS NUNEZ-ROMERO,
 16 and SCOTT ABBEY

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19	ARMIDA RUELAS; DE'ANDRE EUGENE	) Case No. 4:19-cv-07637-JST
20	COX; BERT DAVIS; KATRISH JONES;)
21	JOSEPH MEBRAHTU; DAHRYL	) DECLARATION OF EMIL ROSE
22	REYNOLDS; MONICA MASON; LUIS	) JOHNS IN SUPPORT OF
23	NUNEZ-ROMERO, and SCOTT ABBEY;	) PLAINTIFFS' REQUEST FOR
24	and all others similarly situated,	) JUDICIAL NOTICE
25)
26	Plaintiffs,	) Hearing: October 21, 2020
27		) Time: 2 p.m.
28	vs.	) Courtroom: Oakland Courthouse,
		) Courtroom 6 – 2nd Floor
	COUNTY OF ALAMEDA; GREGORY J.	) 1301 Clay Street, Oakland, CA 94612
	AHERN, SHERIFF; ARAMARK)
	CORRECTIONAL SERVICES, LLC; and) Hon. Jon S. Tigar
	DOES 1 through 10,)
)
	Defendants.)

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I, EMILYROSE JOHNS, declare as follows:

1. I am an attorney licensed to practice in the State of California and a senior associate in the law firm Siegel, Yee, Brunner & Mehta, the attorneys for the plaintiffs in this case.

2. This declaration is based upon my personal knowledge, and I am competent to testify with respect to the matters stated herein.

3. Attached hereto as Exhibit 1 is a true copy of the Summary Action Minutes from the Alameda County Board of Supervisors meeting on July 21, 2015, *available at* http://alamedacounty.granicus.com/DocumentViewer.php?file=alamedacounty_d7d6008c974e7e7d6831c730258c24b7.pdf&view=1.

4. Attached hereto as Exhibit 2 is a true copy of Attachment 52 of to the Summary Action Minutes from the Alameda County Board of Supervisors meeting on July 21, 2015, *available at* http://www.acgov.org/board/bos/calendar/documents/DocsAgendaReg_07_21_15_PUBLIC_20PROTECTION_Regular_20Calendar_Sheriff_GSA_220751.pdf

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Executed on September 18, 2020, at Oakland, California.

/s/ EmilyRose Johns
EmilyRose Johns

Case 4:19-cv-07637-JST Document 55-2 Filed 09/18/20 Page 1 of 26

Exhibit 1



BOARD OF SUPERVISORS

Regular Meeting

Tuesday, July 21, 2015

COUNTY ADMINISTRATION BUILDING
SUPERVISORS' CHAMBERS
1221 OAK STREET
FIFTH FLOOR, ROOM 512
OAKLAND, CALIFORNIA

SCOTT HAGGERTY, PRESIDENT
RICHARD VALLE
WILMA CHAN, VICE-PRESIDENT
NATE MILEY
KEITH CARSON

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

DONNA ZIEGLER
COUNTY COUNSEL

MISSION

TO ENRICH THE LIVES OF ALAMEDA COUNTY RESIDENTS THROUGH VISIONARY POLICIES AND ACCESSIBLE, RESPONSIVE, AND EFFECTIVE SERVICES.

VISION

ALAMEDA COUNTY IS RECOGNIZED AS ONE OF THE BEST COUNTIES IN WHICH TO LIVE, WORK AND DO BUSINESS.

The Board of Supervisors welcomes you to its meetings and your interest is appreciated. If you wish to speak on a matter on the agenda or during public input, please fill out a speaker slip at the front of the Chambers and turn it in to the Clerk as soon as possible. When addressing the Board, please give your name for the record prior to your presentation. If you wish to speak on a matter **not** on the agenda, please wait until the President calls for public input at the end of the Regular Calendar. **NOTE:** Only matters within the Board of Supervisors' jurisdiction may be addressed. Time limitations shall be at the discretion of the President of the Board.

Pursuant to Board Policy: (1) Signs or demonstrations are prohibited during Board meetings; (2) Any Board Member may request a **two-week** continuance on any item appearing for the first time; (3) All agenda items shall be received by the County Administrator prior to 3 p.m. on Tuesday **two** weeks before the meeting date or earlier when a Holiday intervenes.

Hearing difficulty? Please ask the Clerk for use of a personal sound receiver. The Board of Supervisors' meetings are wheelchair accessible. Call (510) 208-4949 (voice) or (510) 834-6754 (TDD) to request a sign-language interpreter. Five working days' notice is required. If you have questions regarding the agenda, please call (510) 208-4949.

Attention: The Alameda County internet address is www.acgov.org. All regular Board of Supervisors' meetings held in the Board Chamber can be heard live on the Board's web page. In order to log on, please do the following: click on the County's homepage as noted above and click on the "[Board of Supervisors Meeting - LIVE! Broadcast](#)" link. You may also access archived audio recordings, meeting agenda and minutes, as well as meeting dates on the Board's web page <http://www.acgov.org/board/index.htm>. All documents are archived on the web page for a period of 6 months.

Normally, the Board meets on Tuesdays and their **meeting begins no earlier than 10:45 a.m.** and may begin later, depending on the Closed Session, which normally begins at 9:30 a.m.

Note: The Agenda includes the addition of two Closed Session items, one Regular item #9.1 and item #35 was withdrawn

AGENDA INCLUDING ADDENDA

9:30 A.M.

CALL TO ORDER AND SALUTE TO FLAG

APPROVAL OF MINUTES

REGULAR MEETING: TUESDAY, JUNE 23, 2015

REGULAR MEETING: TUESDAY, JUNE 30, 2015

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

- A. Agency Negotiators: Mary Welch and Cynthia Baron - Employee Organization: Deputy Sheriff's Association
- B. Agency Negotiators: Mary Welch and Cynthia Baron - Employee Organization: Union of American Physicians and Dentists
- C. Agency Negotiators: Mary Welch and Cynthia Baron - Employee Organization: Building and Construction Trades Council
- D. Agency Negotiators: Mary Welch and Cynthia Baron - Employee Organization: Service Employees International Union, Local 1021, Alameda County Management Employees Association
- E. Agency Negotiators: Mary Welch and Cynthia Baron - Employee Organization: All Labor Organizations
- F. Agency Negotiator: Mary Welch - Employee Organization: Unrepresented Management

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

- A. Initiation of litigation pursuant to Subdivision (d)(4) of Government Code § 54956.9: (Five Cases);
- B. Significant exposure to litigation pursuant to Subdivision (d)(2) of Government Code § 54956.9: (Four Cases)

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

- A. County of Alameda v. AIG Financial Products Corp., et al., United States District Court, Southern District of New York, Case No. 08 Civ. 6340

AGENDA INCLUDING ADDENDA

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

- A. Property: O.Co Stadium (7000 Coliseum Way, Oakland, CA)
- Agency Negotiator: Aki Nakao, Real Property Negotiator
- Negotiating Parties: Oakland Raiders, Oakland Athletics, the City of Oakland and New City Development, LLC
- Under Negotiation: Price and Terms of Payment
- B. Property: APN: 41-3902-21, Oakland, CA (Located on Oakport Street)
- Agency Negotiator: Caroline Judy, Acting Director, General Services Agency
- Negotiating Parties: Successor Agency to the Oakland Redevelopment Agency
- Under Negotiation: Price and Terms of Payment

PUBLIC EMPLOYEE RECRUITMENT

- A. Director, General Services Agency

10:45 A.M. - SET MATTERS

- 1. CONSENT CALENDAR (See Appendix, Item Numbers 58 - 99)

10:45 A.M. - REGULAR CALENDAR

COUNTY COUNSEL: REPORT ON ACTION TAKEN IN CLOSED SESSION

BOARD OF SUPERVISORS' REMARKS

PUBLIC ASSISTANCE

2. *Social Services Agency* - Approve the following recommendations:
 - A. Authorize the President of the Board to sign Alternative Payment Contract Number CAPP-5000, General Fund, Project No. 01-2401-00-5, with the California Department of Education in the amount of \$753,601 for Child Care and Development Services, effective 7/1/15 - 6/30/16;
 - B. Approve the following four service agreements to current community-based organization (CBO) Master Contractors at Fiscal Year 2015 - 2016 award levels funded through the Contract Number CAPP-5000, totaling \$708,385 for specific Resource and Referral and Alternate Payment Provider Child Care contractors, and delegate authority to the Agency Director or her designee, to sign and execute the contracts under the master contracting process:
 - i. Master Contract No. 900153, Procurement Contract No. 12403 with Bananas, Inc. (Principal: Richard Winefield; Location: Oakland), in the amount of \$406,945;
 - ii. Master Contract No. 900158, Procurement Contract No. 12406 with Child Care Links (Principal: Carol Thompson; Location: Pleasanton), in the amount of \$120,576;
 - iii. Master Contract No. 900164, Procurement Contract No. 12405 with Community Child Care Council of Alameda County (Principal: Renee Herzfeld; Location: Hayward), in the amount of \$120,576
 - iv. Master Contract No. 900086, Procurement Contract No. 12407 with Davis Street Community Center (Principal: Rose Johnson; Location: San Leandro), in the amount of \$60,288;
 - C. Approve Fiscal Year 2015 - 2016 funding distributions for the following six service agreements totaling \$139,592 to CBO Master Contractors - Maintenance of Effort Child Care providers and delegate authority to the Agency Director or her designee, to sign and execute the contracts under the master contracting process:
 - i. Master Contract No. 900653, Procurement Contract No. 12409 with 24 Hour Oakland Parent Teacher Children Center (Principal: Nina Tanner-Smith; Location: Oakland), in the amount of \$14,515;
 - ii. Master Contract No. 900654, Procurement Contract No. 12408 with Ephesians Children's Center (Principal: Newt McDonald; Location: Berkeley), in the amount of \$12,977;
 - iii. Master Contract No. 900186, Procurement Contract No. 12414 with Kidango, Inc. (Principal: Paul Miller; Location: Fremont), in the amount of \$50,653;
 - iv. Master Contract No. 900657, Procurement Contract No. 12415 with Saint Vincent's Day Home, Inc. (Principal: Corinne Mohrmann; Location: Oakland), in the amount of \$34,220;
 - v. Master Contract No. 900658, Procurement Contract No. 12412 with Supporting Future Growth Child Development Center (Principal: Deborah McFadden; Location: Oakland), in the amount of \$12,802;
 - vi. Master Contract No. 900701, Procurement Contract No. 12413 with The Salvation Army Booth Memorial Center (Principal: Ron Strickland; Location: Oakland), in the amount of \$14,425;
 - D. Authorize the President of the Board to sign additional Agreement Attachments: Contractor Certification Clauses and Federal Certifications for Lobbying, Debarment, Suspension, Other Responsibility Matters and Drug Free Workplace Requirements;
 - E. Adopt a Resolution entering into a transaction with the California Department of Education to provide child care and development services; and
 - F. Authorize the Auditor-Controller to make related budget adjustments
- CAO Recommends: Approve - (4/5 Vote)

AGENDA INCLUDING ADDENDA

Case 4:19-cv-01631-USD Document 68-1 Filed 09/18/20 Page 6 of 26

[Attachment 2](#)

3. *Social Services Agency* - Approve the following recommendations:
 - A. Accept an allocation of \$249,999 on behalf of the Alameda County Workforce Investment Board from the City of Sunnyvale H1-B Ready-to-Work Grant Project;
 - B. Approve the contract with the City of Sunnyvale under a U.S. Department of Labor H1-B Grant Project, in the amount of \$249,999, for the contract term retroactive from 11/1/14 - 9/30/15;
 - C. Authorize the President of the Board of Supervisors to execute the new contract with the City of Sunnyvale on behalf of the Alameda County Workforce Investment Board; and
 - D. Authorize the Agency Director or her designee, to execute renewal contracts under the H1-B Ready-to-Work Grant Project for three additional years through 10/31/18

- CAO Recommends: Approve
[Attachment 3](#)

4. *Social Services Agency* - Approve an extension to the current adopted version of the 2011 - 2015 Chief Local Elected Official Agreement between the Alameda County Board of Supervisors and the Alameda County Workforce Investment Board, for the implementation of the Workforce Innovation and Opportunity Act, extending the term of 12/20/11 - 6/30/15, by 12 months to 6/30/16 - CAO Recommends: Approve
[Attachment 4](#)

HEALTH CARE SERVICES

5. *Behavioral Health Care Services* - Approve the following recommendations:
 - A. Approve master contract augmentations for the following community-based organizations to provide intensive counseling enriched special day classes at five school sites within Oakland Unified School District, for the period 7/1/15 - 6/30/16:
 - i. Master Contract No. 900112; Procurement Contract No. 11611 with East Bay Agency for Children (Principal: Josh Leonard; Location: Oakland), to provide an intensive counseling enriched special day class at Think College Now Elementary, increasing the procurement amount from \$6,372,304 to \$6,612,099 (\$239,795 increase);
 - ii. Master Contract No. 900117; Procurement Contract No. 11637 with Lincoln Child Center (Principal: Christine Stoner-Mertz; Location: Oakland), to provide intensive counseling enriched special day classes at Hoover Elementary and Fremont High School, increasing the procurement amount from \$7,701,939 to \$8,171,753 (\$469,814 increase);
 - iii. Master Contract No. 900121; Procurement Contract No. 11649 with Seneca Family of Agencies (Principal: Ken Berrick; Location: San Leandro), to provide intensive counseling enriched special day classes at Bridges Academy at Melrose and Castlemont High School, increasing the procurement amount from \$20,567,449 to \$21,047,449 (\$480,000 increase); and
 - B. Delegate authority to the Agency Director, his designee to execute the contracts on your behalf

- CAO Recommends: Approve
[Attachment 5](#)

6. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Approve a master contract augmentation (Master Contract No. 900895; Procurement Contract No. 11648) with R House, Inc. (Principal: Sabrina Coyle-Johnson; Location: Santa Rosa), to provide continuing services to youth while the California Human Development Corporation moves forward with its acquisition and transfer of the current R House mental health programs in Fiscal Year 2015 - 2016, for the period of 7/1/15 - 12/31/15, increasing the funding from \$0 to \$93,997;
 - B. Approve the execution of an interim contract while the contract and exhibits for the provision of services for amount and time period noted above are being negotiated; and
 - C. Authorize the Agency Director or his designee to negotiate and execute master contract exhibits on your behalf and submit originals to the Clerk of the Board for filing
- CAO Recommends: Approve
[Attachment 6](#)
7. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Approve a master contract augmentation (Master Contract No. 900937; Procurement No. 11551) with Center Point, Inc. (Principal: Sushma Taylor; Location: San Rafael), to develop and administer a call center to provide screening, care management and reporting services for substance use disorder clients in Alameda County, for the period of 7/1/15 - 6/30/16, increasing funding from \$80,000 to \$540,360 (\$460,360 increase); and
 - B. Authorize the Agency Director, or his designee to execute the contract exhibits on your behalf and submit the originals to the Clerk of Board for filings
- CAO Recommends: Approve
[Attachment 7](#)
8. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Approve a master contract augmentation (Master Contract No. 900136; Procurement Contract No. 10175) for the Mental Health Association of Alameda County (Principal: Steve Bischoff; Location: Oakland), for the Family Education and Resource Center program to cover additional costs due to an increased demand for trainings, for the period of 7/1/14 - 6/30/15, increasing the procurement contract funding from \$2,824,678 to \$2,962,887 (\$138,209 increase);
 - B. Approve a master contract augmentation (Master Contract No. 900136; Procurement Contract No. 11640) for the Mental Health Association of Alameda County (Principal: Steve Bischoff; Location: Oakland), to support the following program services: delivery of additional training through the Family Education and Resource Center, an increase in the number of Crisis Intervention Trainings provided for law enforcement, and administration of stipends for the newly formed Veterans Committee, for the period of 7/1/15 - 6/30/16, increasing the procurement contract funding from \$2,858,153 to \$3,230,415 (\$372,262 increase); and
 - C. Delegate authority to the Agency Director or his designee to execute the contract exhibits on your behalf, and submit the originals to the Clerk of the Board for filing
- CAO Recommends: Approve
[Attachment 8](#)
9. *Environmental Health* - Authorize the President of the Board to sign an agreement (Contract No. 12219) with the City of Berkeley, to continue to reimburse the City of Berkeley, for the provision of vector control services within Berkeley, for the period of 7/1/15 - 6/30/16, in the amount of \$309,543 - CAO Recommends: Approve
[Attachment 9](#)

Case 4:19-cv-00632-USD Document 58-2 Filed 09/08/20 Page 8 of 26
AGENDA INCLUDING ADDENDA

- 9.1. *Health Care Services Agency* - Authorize the President of the Board to execute an amendment to the Emergency Medical Services Ambulance Transport Provider Amended Agreement with Paramedics Plus, LLC (Principal: Ron Schwartz; Location: Tyler, Texas) effective 8/1/15 and approve related financial and budget adjustments
[Attachment 9.1](#)
10. *Public Health Department* - Approve the following recommendations:
- A. Execute the Grant Agreement and Contractor Certification Clauses for the Achieving Tobacco-Related Health Equity project with The California Department of Public Health to implement and evaluate policy, system and environment change efforts aimed at preventing and reducing tobacco use among population groups with high rates of smoking, for the period of 7/1/15 - 6/30/20, in the amount of \$750,000 (\$150,000 per fiscal year for 5 years);
 - B. Authorized the Auditor-Controller to make the related budgetary adjustments;
 - C. Approve amendment to Master Contract No. 900116; Procurement Contract No. 12231 with La Clinica De La Raza Inc (Principal: Peter Manoleas; Location: Oakland), to lead policy and community education regarding regulating flavored tobacco products and requiring a minimum pack size for cigarillos, in the amount of \$375,000 (\$75,000 per fiscal year for 5 years), for the period of 7/1/15 - 6/30/20; and
 - D. Authorize the Agency Director or his designee to sign the Master Contract Exhibit A&B coversheet and submit originals to the Clerk of the Board for filing
- CAO Recommends: Approve - (4/5 Vote)
[Attachment 10](#)
11. *Public Health Department* - Approve a Standard Services Agreement (Procurement Contract No. 11872) with Alegria Community Living (Principal: Karen Toto; Location: Oakland), to provide grant coordination services for the period of 6/10/15 - 6/30/16 in the amount of \$75,000 - CAO Recommends: Approve
[Attachment 11](#)
12. *Public Health Department* - Approve the following recommendations:
- A. Adopt a Resolution and execute the award for comprehensive Safe Routes to School project from California Department of Transportation, to encourage and support safe walking and bicycling to schools in targeted areas of Oakland, for the period of 7/1/15 - 6/30/18, in the amount of \$988,000;
 - B. Authorize the Auditor-Controller to make the related budget adjustments;
 - C. Approve an amendment (Master Contract No. 900322; Procurement Contract No. 12210) with Oakland Unified School District (Principal: Antwan Wilson; Location: Oakland), to promote walking and rolling to school, for the period of 7/1/15 - 9/30/17, in the amount of \$399,313; and
 - D. Authorize the Agency Director or his designee to sign the Master Contract Exhibit A & B amendments and submit originals to the Clerk of the Board for filing
- CAO Recommends: Approve - (4/5 Vote)
[Attachment 12](#)

13. *Public Health Department* - Approve the following recommendations:
- A. Execute the Contract for Services No. COC2015-2016-01 award from First 5 Alameda County to provide prenatal and postpartum home visiting services and work as a multidisciplinary team with First 5 staff to serve enrolled pregnant women and families with newborns in Alameda County for the period of 7/1/15 - 6/30/16, in the amount of \$2,800,000;
 - B. Execute the Contract for Services No. COC2015-2017-002 award from First 5 Alameda County to provide training, technical assistance and consultation support to pediatric practices on early identification through standardized developmental screening and referral pathways for children 0-5 years of age with specialized health and developmental needs for the period of 7/1/15 - 6/30/17, in the amount of \$190,000; and
 - C. Authorize the Auditor-Controller to decrease appropriation and revenue in the amount of \$59,860
- CAO Recommends: Approve
[Attachment 13](#)
14. *Public Health Department* - Authorize the Auditor-Controller to issue stipend payments via Direct Claim to one intern to provide support for the Alameda County Public Health Department and Family Health Services program, for the period of 5/1/15 - 9/30/15, not to exceed a total of \$2,000 - CAO Recommends: Approve
[Attachment 14](#)
15. *Public Health Department* - Authorize the Auditor-Controller to issue stipend payments via Direct Claim, to four peer educators participating in the Alameda County Diabetes Education program, for the period of 7/1/15 - 6/30/16, not to exceed a total of \$16,000 - CAO Recommends: Approve
[Attachment 15](#)
16. *Public Health Department* - Approve the following recommendations:
- A. Approve the new amendments to Fiscal Year 2015 - 2016 Public Health Master Contracts for 53 contracts with community-based organizations and government agencies, to provide uninterrupted public health, dental, and health education services to children, youth, seniors and adults, in an amount not to exceed a total of \$6,378,582.74;
 - B. Approve an allocation of Measure A one-time funds to provide public health services through the HIV needle exchange program, in the amount of \$150,000; and
 - C. Authorize the Director or his designee to execute the Master Contract Exhibits A&B amendments and submit originals to the Clerk of the Board for filing
- CAO Recommends: Approve
[Attachment 16](#)

GENERAL ADMINISTRATION

17. *Supervisor Chan* - Approve the following recommendations:
- A. Approve the use of District 3 Fiscal Year 2016 Fiscal Management Reward funds to support the Public Defender: Learn Your Rights in California" (LYRIC) program to educate students about their constitutional rights; and
 - B. Increase appropriations by \$250,000 offset by \$250,000 in Intra-Fund transfers
- (4/5 vote)
[Attachment 17](#)

18. *Supervisor Miley* - Authorize the Auditor-Controller to increase District 4 appropriations by \$15,000 to be offset by Violence Prevention Initiative trust funds as indicated in the financial recommendation to support local violence prevention efforts provided by the following non-profit organizations:
- A. \$5,000 to First 5 Alameda County (Principal: Kevin Bremond; Location: Alameda), for Alameda County Fathers Corp's Father Engagement Focus Groups and Media Outreach Campaign designed to engage fathers not currently involved in the lives of their children;
 - B. \$5,000 to the O.K. Program (Principal: Bob Jackson; Location: Oakland), to support their camping retreat where seventy five boys and ten O.K. mentors will participate in a variety of team building exercises, leadership development and critical thinking seminars; and
 - C. \$5,000 to E.C. Reems Community Services (Principal: Maria Reems; Location: Oakland), to support their 6th Annual Free Job and Health Fair where participants will receive free mental health workshops, health screenings, employment training and related resources
- (4/5 vote)
[Attachment 18](#)
19. *Auditor-Controller Agency* - Authorize the President of the Board to execute a Standard Services Agreement (Procurement Contract No. 12269) between the County of Alameda and artist David Burke (Location: Oakland), to design public artwork to be integrated into the entry and lobby wall of the Cherryland Fire Station 23 Project, the artwork design is to be completed by 12/31/15, in an amount not to exceed \$13,500. The Agreement states that the benchmark deliverables and end date are flexible to allow for adjustment to construction schedule of the overall building project - CAO Recommends: Approve
[Attachment 19](#)
20. *Auditor-Controller Agency* - Approve the following recommendations:
- A. Adopt a Resolution naming the Arts Commission as the Alameda County's designated State-Local Partner with the California Arts Council, for the period of 10/1/15 - 9/30/16;
 - B. Authorize the Arts Commission to apply to the California Arts Council for a \$12,000 grant to provide for continued participation in the State-Local Partnership Program and to partially fund Arts Commission staff and programs; and
 - C. Delegate authority to the Executive Director or designee, upon review and approval by County Counsel, to execute the grant contract and expend grant funds through the Arts Commission's proposed Fiscal Year 2015 - 2016 budget
- CAO Recommends: Approve
[Attachment 20](#)
21. *Auditor-Controller Agency and General Services Agency* - Authorize the Purchasing Agent to execute a contract (Master Contract No. 901360; Procurement Contract No. 12196) with Studio Frameworks LLC (Principal: Aletha Worrall; Location: Oakland), to provide fine art framing services to the Alameda County Arts Commission, for the term of 8/1/15 - 7/31/18, in the amount of \$650,000 - CAO Recommends: Approve
[Attachment 21](#)

22. *Community Development Agency* - Approve Agreement No. 15-0287-SF between the Community Development Agency and the State of California Department of Food and Agriculture to continue funding for a Pest Exclusion Dog Team Program, for the period of 7/1/15 - 6/30/16, in the amount of \$293,644.51 - CAO Recommends: Approve
[Attachment 22](#)
23. *Community Development Agency* - Approve Procurement Contract No. 11366 with Abode Services (Principal: Louis D. Chicoine; Location: Fremont), for supportive services at Bridgeway Apartments for homeless individuals and families in Fremont, Hayward and Union City, for the period of 4/1/15 - 3/31/16, in the amount of \$41,567 - CAO Recommends: Approve
[Attachment 23](#)
24. *Community Development Agency* - Approve Procurement Contract No. 11375 with Allied Housing (Principal: Louis D. Chicoine; Location: Fremont), for the operation of housing and supportive services at Lorenzo Creek Apartments Supportive Housing Program for homeless families with disabilities, located at 22198 Center Street, Castro Valley, for the period of 2/1/15 - 1/31/16, in the amount of \$97,491 - CAO Recommends: Approve
[Attachment 24](#)
25. *Community Development Agency* - Approve Procurement Contract No. 11379 with Alameda Point Collaborative (Principal: Douglas Biggs; Location: Alameda), to provide supportive services at the Multi - Service Center for homeless individuals and families at Alameda Point, for the period of 4/1/15 - 3/31/16, in the amount of \$1,074,781 - CAO Recommends: Approve
[Attachment 25](#)
26. *Community Development Agency* - Approve Procurement Contract No. 11386 with Oakland Housing Authority (Principal: Eric Johnson; Location: Oakland), for the provision of permanent supportive housing for homeless people disabled by serious mental illness, chronic alcohol and other drug problems, and/or HIV under the Shelter Plus Care Sponsor-based Rental Assistance Program, for the term of 5/1/15 - 4/30/16, in the amount of \$1,113,937 - CAO Recommends: Approve
[Attachment 26](#)

27. *General Services Agency* - Approve the following recommendations:
- A. Authorize the execution of contracts for Americans with Disabilities Act upgrades, major maintenance and tenant improvement projects, the term of these contracts will be for one-year beginning approximately 8/3/15 - 8/3/16, with the possible extension to amend each contract up to a maximum of \$3,000,000 each as authorized by Public Contract Code Section 20128.5:
 - i. MTM Construction Inc, (Principal: Hac Song Lee; Location: City of Industry), Master Contract No. 901321; Procurement Contract No. 12178; Project No. 15012, in the amount of \$1,000,000;
 - ii. STS Construction Inc. (Principal: Young Hyun Lee; Location: Diamond Bar), Master Contract No. 901322; Procurement Contract No. 12206; Project No. 15013, in the amount of \$1,000,000;
 - iii. A CST Group Inc. dba Dynasel USA (Principal: Jamal Laique; Location: Berkeley), Master Contract No. 901323; Procurement Contract No. 12205; Project No. 15014, in the amount of \$1,000,000; and
 - B. Authorize the Agency Director to prepare the proper contract documents and bond forms for completion by the Contractor, have said documents reviewed and approved by County Counsel, and executed by the President of the Board
- CAO Recommends: Approve
[Attachment 27](#)
28. *General Services Agency* - Approve the following recommendations:
- A. Accept the bid and award a contract to Avidex Industries, LLC (Principal: Shedan Magzi, Location: Fremont), for installation of audio visual and television equipment for the Highland Hospital Acute Care Tower Project's Acute Care Tower, in an amount not-to-exceed \$243,636;
 - B. Approve the encumbrance of an additional \$24,363 as a Supplemental Work Allowance for a total encumbered amount of \$267,999, and authorize the Agency Director to issue change orders, as necessary, against the Supplemental Work Allowance; and
 - C. Authorize the Agency Director to prepare the proper contract documents, have said documents reviewed and approved by County Counsel and executed by the General Services Agency Director
- CAO Recommends: Approve
[Attachment 28](#)
29. *General Services Agency* - Approve the following recommendations:
- A. Authorize the Auditor-Controller to issue a Purchase Order (Master Contract No. 901389, Procurement Contract No. 11957) to Protection1 Security Solutions (Principal: Steve Goodrich; Location: Pleasanton), to perform the fire sprinkler piping corrective work at the Glenn Dyer Detention Facility, for the period of 7/31/15 - 12/31/15, in the amount of \$49,790; and
 - B. Approve the encumbrance of an additional \$4,980, as a Supplemental Work Allowance (SWA) for a total encumbrance of \$54,770, and authorize the Agency Director to issue change orders, as necessary against the SWA
- CAO Recommends: Approve
[Attachment 29](#)

30. *General Services Agency* - Authorize the Purchasing Agent to execute a contract (Master Contract No. 901036, Procurement Contract No. 11187) with U.S. Bank National Association (Principal: Jeffrey Rankin; Location: Minneapolis, Minnesota), to provide a purchasing card program to the Alameda County General Services Agency, for the term of 8/1/15 - 7/31/20, in the amount of \$362,500 in rebates to the County - CAO Recommends: Approve
[Attachment 30](#)
31. *General Services Agency* - Approve the following recommendations:
- A. Reject all bids received for the Santa Rita Jail Condenser Project CPM15E150080000 (Master Contract No. 901933); and
 - B. Authorize the General Services Agency to re-bid the project in accordance with the County's Enhanced Construction Outreach Process and return to your Board with a recommendation for award
- CAO Recommends: Approve
[Attachment 31](#)
32. *Human Resource Services* - First reading and introduction of a Salary Ordinance amendment to:
- A. Establish a new classification of Departmental Facilities Coordinator position to coordinate all matters concerning building and facility activities that will be located in various County Departments;
 - B. Increase the salary for the Assistant Director, Area Agency on Aging based on revisions to the job specification that included expansion of the scope of responsibilities and span of control for the position;
 - C. Add footnote compensation for one position of Specialist Clerk I, when assigned lead and training responsibilities for the Oakland Branch Office within the Public Defender's Office;
 - D. Add footnote compensation for one position of Institutional Supervisor II, when assigned to supervise the functions of the Professional Standards Unit, in the Probation Department; and
 - E. Add footnote compensation for one position of Administrative Specialist II, when assigned full supervision of support staff positions in the County Administrator's Office
- CAO Recommends: Approve
[Attachment 32](#)
33. *Human Resource Services* - First reading and introduction of an Ordinance amending Chapter 3.20 Sick Leave, of the Alameda County Administrative Code and adopt sixteen Sideletters of Agreement with various Labor Organizations to implement changes related to the State of California's new Paid Sick Leave Law, Healthy Families Act (AB1522) - CAO Recommends: Approve
[Attachment 33](#)

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AGENDA INCLUDING ADDENDA

34. *Human Resource Services* - Approve the following recommendations:
- A. First reading and introduction of an Ordinance approving the 6/22/14 - 9/15/19 Memorandum of Understanding between the Alameda County Welfare Fraud Investigators Association (ACWFIA) and the County of Alameda;
 - B. First reading and introduction of a Salary Ordinance amendments amending Sections of Article 7, to implement changes agreed to with the ACWFIA; and
 - C. Adopt two sideletters of agreement
- CAO Recommends: Approve
[Attachment 34](#)
35. Item Withdrawn by department.
36. *Library* - Approve the following recommendations:
- A. Accept a grant agreement between First Five Alameda County and Alameda County Library to provide early literacy activities and early childhood services to children up to five years of age at library branches, for the period 7/1/15 - 6/30/17, in the amount of \$86,000; and
 - B. Authorize the County librarian to sign the grant agreement
- CAO Recommends: Approve
[Attachment 36](#)
37. *Library* - Approve the following recommendations:
- A. Approve the Memorandum of Understanding (MOU) between Alameda County Office of Education and Alameda County Library, to provide literacy instruction and library services at the Juvenile Justice Center and Camp Sweeney, for the period 7/1/15 - 6/30/16, in the amount of \$49,284; and
 - B. Authorize the County Librarian to administer the MOU, including but not limited to the execution of any forms or other documents necessary to carry out County's obligations under the MOU
- CAO Recommends: Approve
[Attachment 37](#)
38. *Library* - Approve a contract between the City of Union City and the Alameda County Library to provide 22 additional hours of service each week at the Union City Library, for the period of 7/1/15 - 6/30/16, in the amount of \$296,243 - CAO Recommends: Approve
[Attachment 38](#)
39. *Library* - Approve Procurement Contract No. 12260 with Innovative Interfaces Inc. (Principal, Neil Block; Location: Emeryville), to provide hardware and software maintenance services for Alameda County Library's materials acquisition, cataloging, tracking system and Link Plus, for the period of 7/1/15 - 6/30/16, in the amount of \$163,213.89 - CAO Recommends: Approve
[Attachment 39](#)
40. *Library* - Approve Procurement Contract No. 12274 between the City of Albany and the Alameda County Library to provide janitorial services for the Albany Library, for the period of 7/1/15 - 6/30/16, in the amount of \$31,610.16 - CAO Recommends: Approve
[Attachment 40](#)

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AGENDA INCLUDING ADDENDA

41. *Library* - Approve Procurement Contract No. 12279 between the City of Union City and the Alameda County Library to provide janitorial services for the Union City Library for the period, 4/1/15 - 6/30/16, in the amount of \$37,500 - CAO Recommends: Approve
[Attachment 41](#)
42. *Library* - Approve a Contract between the City of Albany and the Alameda County Library to provide 25.5 additional hours of service each week at the Albany Library, for the period of 7/1/15 - 6/30/16, in the amount of \$725,440 - CAO Recommends: Approve
[Attachment 42](#)
43. *Library and General Services Agency* - Authorize the Purchasing Agent to execute Master Contract No. 901331; Procurement Contract No. 12030, with 3M Company (Principal: Mary Zilles; Location: St. Paul, Minnesota), to provide the automated materials handling system to the Alameda County Library, for the term of 7/22/15 - 7/21/18, in the amount of \$170,129 - CAO Recommends: Approve
[Attachment 43](#)
44. *County Administrator's Office* - Authorize the Purchasing Agent to execute a contract (Master Contract No. 901328; Procurement Contract No. 11812) with Law Enforcement Psychological Services, Inc., (Principal: Michael Roberts; Location: Los Gatos), to provide pre-employment psychological evaluation services to the County Administrator's Office Risk Management Unit, for the period of 7/28/15 - 7/28/18, in the amount of \$340,200, and by mutual agreement allows for options to renew for up to two additional one-year terms
[Attachment 44](#)
45. *County Administrator's Office* - Adopt a Resolution authorizing the issuance and sale of bonds of the Oakland Unified School District, prescribing the terms of sale of not to exceed \$180,000,000 of said bonds by a negotiated sale pursuant to one or more Bond Purchase Agreements, approving the form of and authorizing the execution and delivery of said Bond Purchase Agreements, approving the forms of one or more Paying Agent Agreements, and authorizing the execution of necessary documents and certificates relating to said bonds
[Attachment 45](#)
46. *County Administrator's Office and General Services Agency* - Authorize the Purchasing Agent to issue two separate Request for Proposals, one State and one Federal, for legislative advocacy services for the purpose of retaining full-service legislative advocacy firms resulting in one, three-year contract for each with the option to renew two, one-year extensions each by mutual agreement
[Attachment 46](#)

PUBLIC PROTECTION

47. *Probation Department* - Approve the following recommendations:
- A. Authorize the execution of Master Contract No. 900117; Procurement Contract No. 12215 with Lincoln Child Center (Principal: Christine Stoner-Mertz; Location: Oakland), for Freedom School to provide summer educational and enrichment programming at Camp Sweeney, for the period of 6/29/15 - 9/1/15, in the amount of \$99,950; and
 - B. Authorize the Chief Probation Officer or her designee, to execute the Exhibits A and B under the Master contracting process and approve a contract retroactive date of 6/29/15
- CAO Recommends: Approve
[Attachment 47](#)
48. *Probation Department and General Services Agency* - Authorize the Purchasing Agent to amend Master Contract No. 901177, Procurement Contract No. 10014, with Leaders in Community Alternatives, Inc. (Principal: Linda Connelly; Location: Oakland), to provide transition/day reporting center services to the Alameda County Probation Department, extending the current term of 10/1/14 - 9/30/15, by 24 months to 9/30/17, and increasing the contract amount of \$818,031 to \$2,696,381 (\$1,878,350 increase) - CAO Recommends: Approve
[Attachment 48](#)
49. *Probation Department and Health Care Services Agency* - Approve the following recommendations:
- A. Authorize the Probation Department to accept the Proud Parenting Grant, to administer evidence based prenatal and early childhood nurse visitation program that improves the health and social functioning of first time mothers, their partners and their babies, for the period of 7/1/15 - 6/30/16, in the amount of \$119,285;
 - B. Authorize the Auditor-Controller to make the related budget adjustments; and
 - C. Adopt a Resolution, delegating authority to the Chief Probation Officer or her designee to submit grant proposal for Proud Parenting Grant and sign Grant Agreement with the Board of State and Community Corrections, including any amendments thereof
- CAO Recommends: Approve - (4/5 Vote)
[Attachment 49](#)
50. *Sheriff* - Approve the following recommendations:
- A. Authorize the Sheriff to enter into agreements of limited duration with public and private entities for use of their facilities during the Urban Shield 2015 First Responder Training Exercise, for the period of 9/7/15 - 9/16/15; and
 - B. Authorize the Sheriff or his designee to negotiate and sign required documents for procurement of services and supplies necessary to facilitate the Urban Shield 2015 First Responder Training Exercise
- CAO Recommends: Approve
[Attachment 50](#)

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AGENDA INCLUDING ADDENDA

51. *Sheriff* - Approve the following recommendations:
- A. Approve a waiver of the County competitive bidding and purchasing process and allow the Sheriff's Office to spend allocated grant funds from the 2013 Department of Homeland Security Port Security Grant that will expire on 8/31/15, in the amount of \$785,811.09; and
 - B. Authorize the Auditor-Controller to make the related budget adjustments
- CAO Recommends: Approve - (4/5 Vote)
[Attachment 51](#)
52. *Sheriff and General Services Agency* - Authorize the Purchasing Agent to execute a contract, for Master Contract No. 901240; Procurement Contract No. 11293, with Aramark Correctional Services, LLC (Principal: Tim Bartrum; Location: Philadelphia, Pennsylvania) to provide food services delivery to the Alameda County Sheriff's Office, for the term of 8/1/15 - 7/31/18, in the amount of \$19,097,148 - CAO recommends: Approve
[Attachment 52](#)

PUBLIC WORKS

53. *Public Works Agency* - Authorize the President of the Board to execute a contract between the County of Alameda and the California State University, East Bay to provide street light maintenance within the California State University, East Bay campus, from 7/1/15 - 6/30/20, in the amount not to exceed \$25,000 (\$5,000/year) - CAO Recommends: Approve
[Attachment 53](#)
54. *Public Works Agency* - First reading and introduction of an Ordinance amending Chapter 1, relating to "Traffic Regulations – County Highways" and Chapter 2, relating to "Traffic Regulations – State Highways" of Title 6, relating to "Vehicles and Traffic" of the Alameda County Public Works Traffic Code - CAO Recommends: Approve
[Attachment 54](#)

11:00 A.M. - SET MATTER(S)

PROCLAMATIONS/COMMENDATIONS

55. *President Haggerty* - Acknowledge the 25th Anniversary of the Signing of the Americans with Disabilities Act
[Attachment 55](#)
56. *Supervisor Valle* - Proclaim July 30, 2015 as "National Day of Action for Medicare's 50th Anniversary"
[Attachment 56](#)

GENERAL ADMINISTRATION

- 57. *Treasurer-Tax Collector* - Approve the following recommendations:
 - A. Conduct a public hearing to consider the petition for rescission of the tax sale of APN 99-51-3-2, property located at Gardella Plaza Livermore to Copper Hill Inc. (Principal: Louis Yun; Location: Los Altos), filed by Russel and Wolf, parties of interest, and further consider the submissions and statements from any interested parties that may make an appearance at the hearing;
 - B. Upon reviewing all of the submissions of the interested parties and the Tax Collector, under the provisions of Revenue and Taxation Code, Section 3731, that the Board of Supervisors rescind the tax sale of APN 99-51-3-2, provided the Board concurs with the Tax Collector's recommendation to rescind the sale; and
 - C. In the event, after due consideration and deliberation, the Board concurs with the Tax Collector's recommendation, direct the following:
 - i. Tax Collector to prepare and execute a Rescission of Tax Deed to Purchaser of Tax-Defaulted Property;
 - ii. Tax Collector Refund to Purchaser \$226,100, with interest on that amount as determined under Revenue and Taxation Code section 5151; and
 - iii. County Clerk-Recorder to record the Rescission of Tax Deed without charge

[Attachment 57](#)

PUBLIC INPUT (TIME LIMIT: 3 MINUTES PER SPEAKER)

ADJOURNMENT

NEXT MEETINGS:

TUESDAY, JULY 28, 2015	REGULAR CALENDAR
TUESDAY, AUGUST 4, 2015	RECESS
TUESDAY, AUGUST 11, 2015	RECESS
TUESDAY, AUGUST 18, 2015	RECESS
TUESDAY, AUGUST 25, 2015	RECESS
TUESDAY, SEPTEMBER 1, 2015	RECESS
TUESDAY, SEPTEMBER 8, 2015	HOLIDAY
TUESDAY, SEPTEMBER 15, 2015	REGULAR CALENDAR AND PLANNING MEETING

APPENDIX**CONSENT CALENDAR**

(ANY BOARD MEMBER MAY PULL ANY CONSENT ITEM FOR DISCUSSION OR SEPARATE VOTE)

PUBLIC ASSISTANCE

58. *Social Services Agency* - Approve the following recommendations:
- A. Accept the Medi-Cal Renewal Assistance Award of \$490,310 for performance period of 1/1/15 - 12/31/16, funding is from the State Department of Health Care Services;
 - B. Waive the competitive bid requirements and approve a sole source contract (Master Contract No. 900148; Procurement Contract No. 12217) with the Alameda Health Consortium (Principal: Ralph Silber; Location: San Leandro), for Medi-Cal renewal assistance services, retroactive to 5/1/15 - 1/31/16, in the amount of \$165,000 and delegate authority to the Agency Director or her designee, to execute the contract under the master contracting process;
 - C. Authorize the Auditor-Controller's Office to make retroactive payments to Alameda Health Consortium, effective 5/1/15 for Medi-Cal renewal assistance services rendered; and
 - D. Approve the Financial Recommendation to increase Social Services Agency Fiscal Year 2015 - 2016 budget appropriation and revenue by \$329,736
- (4/5 Vote)
[Attachment 58](#)
59. *Social Services Agency* - Approve the following recommendations:
- A. Approve a First Amendment to the contract (Master Contract No. 900216; Procurement Contract No. 10942) with Abode Services (Principal: Louis Chicoine; Location: Fremont), for CalWORKs Work Experience/Community Service program services, extending the current term of 7/1/14 - 6/30/15, by an additional 6 months to 12/31/15 and increasing the contract amount from \$433,371.48 to \$656,559 (\$223,187.52 increase); and
 - B. Approve a First Amendment to the contract (Master Contract No. 900142; Procurement Contract No. 10943) with Lao Family Community Development, Inc. (Principal: Kathy Chao-Rothberg; Location: Oakland), for CalWORKs Work Experience/Community Service program services, extending the current term of 7/1/14 - 6/30/15, by an additional 6 months to 12/31/15 and increasing the contract amount from \$551,474.22 to \$835,485 (\$284,010.78 increase)
- [Attachment 59](#)
60. *Social Services Agency and General Services Agency* - Approve the following recommendations:
- A. Authorize the President of the Board to execute a Third Modification of lease between Eastmont Office Owner, LLC, a Delaware limited liability company (Principal: Hamid Rezapour; Location: Walnut Creek), and the County of Alameda, expanding the lease by approximately 6,912 square feet of additional office space at 7200 Bancroft Avenue, Suite 36 (also known as 6955 Foothill Blvd, Suite 15), Oakland, California, for the Social Services Agency's Self-Sufficiency Center for the term of 9/1/15 - 11/30/24, in the amount of \$1,321,933;
 - B. Approve the one-time cost of \$27,500 for tenant improvements (in excess of the landlord's Tenant Improvement allowance of \$57,935); and
 - C. Authorize adjustments to Social Services Agency and General Services Agency's Fiscal Year 2015-2016 budget as detailed in the financial recommendation
- (4/5 Vote)
[Attachment 60](#)

HEALTH CARE SERVICES

61. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Accept a grant award of \$75,000 from Zellerbach Family Foundation to fund a Cross-Systems Trauma Informed Care Coordinator consultant, grant period from 7/1/15 - 6/30/16;
 - B. Delegate authority to the Behavioral Health Care Services director or designee to execute and submit all grant documents, including but not limited to, applications, agreements, modifications, augmentations, amendments, grant renewals, extensions, and payment requests that may be necessary for completion of the project; and
 - C. Authorize the Auditor-Controller to make the related budget adjustments
- (4/5 Vote)
[Attachment 61](#)
62. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Approve a master contract augmentation (Master Contract No. 900709; Procurement Contract No. 11617) with Family Services Agency of San Francisco (Principal: Robert Bennett; Location: San Francisco), to provide enhanced capacity building and training to support individuals experiencing First Episode Psychosis, for the period of 7/1/15 - 6/30/16, increasing the contract amount from \$835,249 to \$855,711 (\$20,462 increase); and
 - B. Delegate authority to the Agency Director, or his designee to execute the contract exhibits on your behalf
[Attachment 62](#)
63. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Approve a master contract augmentation (Procurement No. 11564) for The Institute for the Advanced Study of the Black Family Life and Culture, Inc. (Principal: Wade Nobles; Location: Oakland), to expand the current program for youth in the criminal justice system and developing a Substance Use Prevention Services Video, for the period of 7/1/15 - 6/30/16, increasing the amount from \$257,523 to \$378,259 (\$120,736 increase); and
 - B. Authorize the Agency Director, or his designee to execute the contract exhibits on your behalf and submit the originals to the Clerk of the Board
[Attachment 63](#)
64. *Behavioral Health Care Services* - Approve the following recommendations:
- A. Approve a master contract reduction (Procurement Contract No. 11576) for West Oakland Health Council, Inc. (Principal: Sandy Haskins; Location: Oakland), due to underutilization of the services for adults, for the period 7/1/15 - 6/30/16, decreasing the contract amount from \$1,666,666 to \$1,595,930 (\$70,736 decrease); and
 - B. Authorize the Director or his designee to execute the contract exhibits on your behalf and submit the originals to the Clerk of the Board
[Attachment 64](#)
65. Item Withdrawn by department.
66. *Health Care Services Agency* - Approve a Second Amendment (Procurement Contract No. 9285) with Seneca Family of Agencies (Principal: Janet Briggs; Location: San Leandro) to continue to provide school-based behavioral health services to students who are not eligible for Medi-Cal at Hayward High School in School Year 2015 - 2016, extending the contract period of 7/1/13 - 6/30/15, by 12 months to 6/30/16, and increasing the contract amount from \$80,000 to \$120,000 (\$40,000 increase)
[Attachment 66](#)

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AGENDA INCLUDING ADDENDA

67. *Health Care Services Agency and Behavioral Health Care Services* - Approve and sign the Second Amendment (Procurement Contract No. 5558) with WestEd (Principal: Joann Izu; Location: Oakland), to complete a Family Partner Outcome Study/Report for the provision of Early Connection 0-5 System of Care evaluation services, extending the contract term of 9/1/10 - 9/30/15, by 3 months to 12/31/15, increasing the contract amount from \$1,079,207 to \$1,145,707 (\$66,500 increase)
[Attachment 67](#)
68. *Public Health Department* - Approve the following recommendations:
- A. Approve Master Contract Amendment (Master Contract No. 900486; Procurement Contract No. 12093) with Lucile Packard Children Hospital (Principal: Dana Hearing; Location: Palo Alto), to promote medical homes and early development screening, for the period 7/1/15 - 6/30/17 in the amount of \$618,355; and
 - B. Authorize the Director or designee to sign the Master Contract Exhibits A&B and submit originals to the Clerk of the Board for filing
- [Attachment 68](#)
69. *Public Health Department* - Approve the following recommendations:
- A. Accept Amendment No. 04 to the Subagreement No. 00008019 from the Regents of the University of California for Best Babies Zone to support health, parent-child relationships, early learning and education for every baby/child in the Castlemont neighborhood, and to create opportunities for residents to be participants and drivers of a growing grassroots local economy extending the service period of 3/1/12 - 2/28/15 through 2/29/16, in the amount of \$332,600, with 1 year rollover funding; and
 - B. Authorize the Agency Director or his designee to execute the Amendment No. 04 to the Subagreement No. 00008019, subject to approval as to form by County Counsel, and submit the originals to the Clerk of the Board for filing
- [Attachment 69](#)

GENERAL ADMINISTRATION

70. *Supervisor Chan* - Approve a Fourth Amendment to Procurement Contract No. 7209 with Full Court Press Communications, Inc. (Principal: Dan Cohen; Location: Oakland), to provide media consultant services to District 3, extending the term of 7/1/14 - 6/30/15, by 12 months to 6/30/16, and increasing the amount from \$104,000 to \$129,000 (\$25,000 increase)
[Attachment 70](#)
71. *Supervisor Miley* - Authorize the Auditor-Controller to override the County policy that caps the amount to a single vendor at \$3,000 per fiscal year and approve 3 vouchers totaling \$4,200 for interns who worked in Fiscal Year 2015
[Attachment 71](#)
72. *Auditor-Controller Agency and General Services Agency* - Authorize the Purchasing Agent to amend Master Contract No. 900757; Procurement Contract No. 6570, with HOV Services, Inc. (Principal: Suresh Yannamani; Location: Cerritos), to provide microfilm processing services to the Auditor Controller's Agency, Clerk Recorder's Office, extending the current term of 10/1/11 - 9/30/15, by an additional 12 months to 9/30/16, increasing the contract amount of \$313,400 to \$393,400 (\$80,000 increase)
[Attachment 72](#)

73. *Community Development Agency* - Approve a Fourteenth Amendment to Procurement Contract No. 1017 with Jones & Stokes Associates, Inc. (Principal: Trina L. Prince; Location: San Francisco), to assist in the development of the Resource Conservation, Open Space and Agriculture Elements of the General Plan, and other services that would continue implementation of Measure D and extend the current contract period of 3/1/02 - 7/31/15, by an 17 months to 12/31/16, with no change to the contract amount of \$317,136
[Attachment 73](#)
74. *General Services Agency* - Authorize the Agency Director to amend Master Contract No. 901033 for as-needed environmental consulting services, extending the current term of 8/14/12 - 8/13/15, by 12 months to 8/13/16, and increasing the contract amount from \$600,000 to \$800,000 (\$200,000 increase) for the following vendors:
- A. Procurement Contract No. 7894 with Sensible Environmental Solutions, Inc. (Principal: Robert Sutton; Location: Oakland);
 - B. Procurement Contract No. 7895 with ACC Environmental, Inc. (Principal: James Wilson; Location: Oakland);
 - C. Procurement Contract No. 7896 with RGA Environmental, Inc. a Terracon Company (Principal: Steffen Steiner; Location: Emeryville);
 - D. Procurement Contract No. 7981 with Forensic Analytical Consulting, Inc. (Principal: David Kahane; Location: Hayward); and
 - E. Procurement Contract No. 7898 with Vista Environmental, Inc. (Principal: Charles R. Bove; Location: San Leandro)
- [Attachment 74](#)
75. *Human Resource Services* - Approve the classification actions taken by the Civil Service Commission for Assessor's Office, Health Care Services Agency, Social Services Agency, Sheriff's Office and Zone 7 on 6/24/15
[Attachment 75](#)
76. *Library* - Approve funding renewal for Fiscal Year 2015 - 2016 on contract No. C-87-253 between the City of Fremont and the Alameda County Library, to provide landscape maintenance and operations at Fremont Library for the period of 6/23/87 - 6/23/37, in the amount of \$60,000
[Attachment 76](#)
77. *Treasurer-Tax Collector* - Accept the Treasurer's investment report for May 2015
[Attachment 77](#)

PUBLIC PROTECTION

78. *Probation Department and General Services Agency* - Authorize the Purchasing Agent to amend Master Contract No. 901095; Procurement Contract No. 9374 with A1 Protective Services, Inc. (Principal: Paula Jones; Location: Oakland), to provide amended guard services to the Alameda County Probation Department, extending the current term of 12/2/13 - 12/1/15 by 12 months to 11/30/16, and increasing the contract amount of \$368,000 to \$629,000 (\$261,000 increase)
[Attachment 78](#)

79. *Sheriff* - Approve an agreement between the County of Alameda and Wente Vineyards (Principal: Lindsay Knight; Location: Livermore), to provide law enforcement services for a musical event on 9/5/15, at a cost of \$1,269.32
[Attachment 79](#)
80. *Sheriff* - Approve the first amendment between the Sheriff's Office and the Alameda County Employees' Retirement Association (Principal: Kathy Foster; Location: Oakland), for law enforcement services at monthly meetings, for the period of 7/9/15 - 7/8/16, at an estimated cost of \$10,155
[Attachment 80](#)
81. *Sheriff* - Approve the agreement between the County of Alameda and the Castro Valley Unified School District (Principal: Jim Negri; Location: Castro Valley), for police services at various schools and campuses for the period of 7/1/15 - 6/30/16, in the amount of \$185,000
[Attachment 81](#)

PUBLIC WORKS

82. *Public Works Agency* - Approve the following recommendations:
- A. Adopt a Resolution that authorizes acceptance of the dedication of real property in fee (No. 36298), located at 21631 & 21633 Garden Avenue in the unincorporated area of Eden Township, (APN: 432-0016-024-02 and 025-02);
 - B. Authorize recordation of a Grant Deed from 9 Kearny Street, LLC., dated 6/19/15; and
 - C. Declare the parcels of real property (No. 36298) hereby acquired a part of the County System of Highways
- [Attachment 82](#)
83. *Public Works Agency* - Approve a Second Amendment to Procurement Contract No. 10553 with MaintStar, Inc., formerly known as Bender Engineering, Inc., (Principal: Dimitry Poretsky; Location: Irvine), to provide a new module installation and support services for Community/Citizen Access for the MaintStar Asset & Maintenance Management Systems, with no change to the current contract period of 5/17/09 - 5/17/19, and increase the contract amount from \$1,053,532 to \$1,139,032 (\$85,500 increase)
[Attachment 83](#)

PERSONNEL, ADMINISTRATION, AND LEGISLATION COMMITTEE

84. Approve the following recommendations and include as amendments to the County's 2015 Legislative Platform:
- A. AB 50 (Mullin) Medi-Cal: Evidence-Based Home Visiting Program - Support if Amended; and
 - B. SB 33 (Hernandez) Medi-Cal: Estate Recovery - Support
- [Attachment 84](#)

BOARDS AND COMMISSIONS

85. *President Haggerty* - Reappoint Darien Louie to the Workforce Investment Board, term ending 6/30/17
[Attachment 85](#)
86. *President Haggerty* - Reappoint Steven Sherman to the Alameda County Source Reduction and Recycling Board, term ending 7/30/17
[Attachment 86](#)
87. *President Haggerty* - Reappoint Lalit Mathur to the Human Relations Commission, term ending 4/15/18
[Attachment 87](#)
88. *President Haggerty* - Reappoint Linda Evens to the Workforce Investment Board, term ending 6/30/17
[Attachment 88](#)
89. *President Haggerty* - Reappoint Gerald V. Beemiller to the Sunol Citizens Advisory Council, term ending 2/9/18
[Attachment 89](#)
90. *President Haggerty* - Appoint Stanley Kiang to the Treasury Oversight Committee
[Attachment 90](#)
91. *President Haggerty* - Accept the resignation of Michael L. Emerson from the Hayward Veterans Memorial Building Commission
[Attachment 91](#)
92. *President Haggerty* - Accept the resignation of the following members from the Alameda Health System Board of Trustees:
 - A. Valerie Lewis; and
 - B. James Potter[Attachment 92](#)
93. *President Haggerty* - Accept the resignation of the following members from the Workforce Investment Board:
 - A. Stacy McAfee;
 - B. Joe Goigiandia;
 - C. Brett Knight; and
 - D. Theresa Woo[Attachment 93](#)

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AGENDA INCLUDING ADDENDA

94. *Supervisor Carson* - Accept the resignation of Anne Peason from the Public Health Commission
[Attachment 94](#)
95. *Supervisor Carson* - Appoint Sbeydeh Viveros Walton to the Human Relations Commission, term ending 5/22/16
[Attachment 95](#)
96. *Supervisor Chan* - Reappoint Marie Gilmore to the Commission on the Status of Women, term ending 7/11/17
[Attachment 96](#)
97. *Supervisor Chan* - Appoint Njeri McGee-Tyner to the Human Relations Commission, term ending 11/5/16
[Attachment 97](#)
98. *Supervisor Chan* - Appoint Estelle E. Clemons to the Public Health Commission, term ending 2/9/16
[Attachment 98](#)
99. *Supervisor Chan* - Accept the resignation of Dr. Hal G. Gin from the West County Board of Zoning Adjustments
[Attachment 99](#)

End of Consent

OUT-OF-STATE TRAVEL

100. *Auditor-Controller Agency* - Division Chief - PeopleSoft Reconnect Conference - Chicago, Illinois, 7/21/15 - 7/23/15 (\$1,934.20)
[Attachment 100](#)
101. *Community Development Agency* - Deputy Agricultural Commissioner/Sealer - Western Weights and Measures Association - Boise, Idaho, 9/27/15 - 10/1/15 (\$3,000)
[Attachment 101](#)
102. *District Attorney* - Deputy District Attorney - National Pretrial Services Conference and Site Visit - Louisville, Kentucky, 7/12/15 - 7/15/15 (No County Cost)
[Attachment 102](#)
103. *Probation Department* - Acting Deputy Chief - Kentucky Court of Justice Pretrial Services Program site visit - Louisville, Kentucky, 7/13/15 - 7/15/15 (\$400)
[Attachment 103](#)

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AGENDA INCLUDING ADDENDA

104. *Public Health Department* - Senior Program Specialist - American Public Health Association Annual Meeting and Exposition - Chicago, Illinois, 10/30/15 - 11/04/15 (\$1,900)
[Attachment 104](#)
105. *Sheriff* - Lieutenant, Sergeant, Deputy, and Probation Officer - Arizona Narcotic Officer's Association Conference - Tempe, Arizona, 7/19/15 - 7/23/15 (No County Cost)
[Attachment 105](#)
106. *Sheriff* - Four Sheriff Deputies - Reno K-911 2015 - Reno, Nevada, 8/17/15 - 8/28/15 (\$800 each)
[Attachment 106](#)
107. *Social Services Agency* - Assistant Agency Director - Urban Child Welfare Leaders Meeting - Washington, D.C., 7/20/15 - 7/22/15 (\$2,400)
[Attachment 107](#)
108. *Social Services Agency* - Staff Development Specialist - DEVLEARN: Innovation in the Making - Las Vegas, Nevada, 9/27/15 - 10/2/15 (\$2,600)
[Attachment 108](#)

Exhibit 2

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

July 9, 2015

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

Dear Board Members:

SUBJECT: AWARD A CONTRACT FOR FOOD SERVICES DELIVERY, REQUEST FOR PROPOSAL NO. 901240; AMOUNT: \$19,097,148

RECOMMENDATION:

Approve and authorize the Purchasing Agent to execute a contract, for Master Contract No. 901240, Procurement Contract No. 11293, with Aramark Correctional Services, LLC (Principal: Tim Barttrum; Location: Philadelphia, PA) to provide food services delivery to the Alameda County Sheriff's Office, for the approximate term of 08/01/15 – 07/31/18, in the amount of \$19,097,148.

DISCUSSION/SUMMARY:

The Alameda County Sheriff's Office (ACSO) is responsible for the care, custody, and control of inmates incarcerated at Santa Rita Jail and Glenn E. Dyer Detention Facility. These two facilities house up to 4,800 inmates and ACSO is required to provide three meals a day to these individuals. ACSO's main detention facility, Santa Rita Jail in Dublin, operates a fully functional commercial-grade kitchen/production facility. This kitchen facility utilizes inmate labor to produce all meals provided to the inmate population and inmates at court service locations within Alameda County.

In addition to providing food services to the inmate population, services are also provided to staff members. Staff members assigned to detentions and corrections are required to remain at their assigned facility for their entire shift. Due to this requirement, food services for staff meals are prepared and served on-site in a staff dining room atmosphere at the Oakland and Dublin facilities.

SELECTION CRITERIA/PROCESS:

The ACSO has determined that the County does not currently have the resources to provide inmate food service delivery.

The ACSO worked with General Services Agency (GSA)-Procurement & Support Services to develop and issue a Request for Interest (RFI). The RFI was issued on April 28, 2014, to approximately 2911 subscribers to GSA Goods and Services-Current Contract Opportunities

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Honorable Board Members

Page 2

July 9, 2015

mailing services via E-Gov, including certified Small Local Emerging Businesses (SLEB). The RFI was posted on the GSA Current Contracting Opportunities website for approximately 150 days and resulted in two responses. Subsequently, a Request for Proposal (RFP) was issued on September 2, 2014; posted on the website for 66 days; sent to the 16 responders and 2944 subscribers to the E-Gov Goods and Services-Current Contract Opportunities mailing service. Two mandatory site visits and bidders conferences were held and were attended by two vendors.

On November 7, 2014, two responses to the RFP were received. All responses were evaluated by the County Selection Committee (CSC) comprised of: one representative from the Alameda County Sheriff's Office, one representative from the Alameda County Probation Department, and one representative from the San Francisco Sheriff's Department. Both vendors that submitted a proposal were interviewed by the CSC. A maximum total of 550 evaluation points were available for this RFP.

Aramark Correctional Services, LLC. was the highest scoring qualified vendor and has agreed to subcontract 15% of the contract to Atlantis Food Services, Corp. (Principal: Anton Haddad; Location: Union City; Certified Small: 07-91050; Expiration: 05/31/16) to provide paper products and dry groceries and 5% of the contract to LeBlanc Dairy (Principal: Joseph C. LeBlanc; Location: Oakland; Certified Small: 10-00190; Expiration: 06/30/17) to provide dairy and juice.

The following is a summary of the evaluation:

<i>Vendor</i>	<i>Location</i>	<i>Local</i>	<i>SLEB</i>	<i>Evaluation Points</i>
<i>Aramark Correctional Services, LLC.</i>	<i>Philadelphia, PA</i>	<i>N</i>	<i>N</i>	<i>493.33</i>
<i>Trinity Food Services</i>	<i>Oldsmar, FL</i>	<i>N</i>	<i>N</i>	<i>296.52</i>

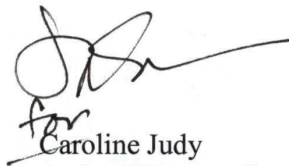
FUNDING:

Appropriations for this contract are included in the ACSO FY 2015-16 Budget and will be requested in future budget years. No additional appropriations are required, and there will be no increase to net County cost.

Respectfully submitted,



Gregory J. Ahern
Sheriff/Coroner



Caroline Judy
Acting Director, General Services Agency

CJ:\UW\ns\I:\Board Letters\Purchasing\FY 2015-16\901240_BL_Food Services Delivery.docx

Attachment

cc: Susan S. Muranishi, County Administrator
Steve Manning, Auditor-Controller/Clerk-Recorder
Donna R. Ziegler, County Counsel

ATTACHMENT

FOOD SERVICES DELIVERY
 RFP No. 901240
 AUGUST 1, 2015 – JULY 31, 2018

<i>Vendor</i>	<i>Location</i>	<i>Dollar Value of Contract Award</i>	<i>Local Participation</i>		<i>SLEB Participation</i>	
			<i>Percentage</i>	<i>Dollar Amount</i>	<i>Percentage</i>	<i>Dollar Amount</i>
<i>Aramark Correctional Services, LLC</i>	<i>1101 Market Street Philadelphia, PA 19107</i>	<i>\$19,097,148</i>	<i>20%</i>	<i>\$3,819,430</i>	<i>20%</i>	<i>\$3,819,430</i>

<i>SLEB Subcontracting Information</i>			
<i>Atlantis Food Services, Corp. Anton Haddad Certified Small Certification No. 07-91050 Valid through: 05/31/16</i>	<i>30470 Whipple Road Union City, CA 94587</i>	<i>15%</i>	<i>\$2,864,572</i>
<i>Leblanc Dairy Joseph C. LeBlanc Certified Small Certification No. 10-00190 Valid through: 06/30/17</i>	<i>4073 Oak Hill Road Oakland, CA 94605</i>	<i>5%</i>	<i>\$954,858</i>

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110-23

Master Contract No. 901240
Procurement Contract No. 11293**QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS**

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: Aramark Correctional Services, LLC DEPT #: 290541TITLE/SERVICE: Food Services DeliveryDEPT. CONTACT: Reynaldo Bondoc PHONE: 510-208-9767**I. INFORMATION ABOUT THE CONTRACTOR** YES NO

1. Is the contractor a corporation or partnership? (X) ()
2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()
3. If the answer to BOTH questions is YES, provide the employer ID number here: 23-2573585
No other questions need to be answered. Withholding is not required.
4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.
5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES YES NO

1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()
2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? () ()
3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()
4. Is the relationship between the County and the contractor intended to be ongoing? () ()

110-23

Master Contract No. 901240
Procurement Contract No. 11293

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES** **NO**

- 1. Is the contractor being hired for a period of time rather than for a specific project? () ()
- 2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()


IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES** **NO**

- 1. Will the agreement be with an individual who does not have an outside practice? () ()
- 2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3. () ()
- 3. Will the County provide more than 20% of the contractor's income? () ()
- 4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

A "YES" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.




Contractor Signature

Mark R. Adams, Vice President Finance

Printed Name

6-2-15

Date



Agency/Department Head/Designee
Signature

John Olam

Printed Name

7/29/15

Date

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2015, is by and between the **County of Alameda**, hereinafter referred to as the "County", and **Aramark Correctional Services, LLC.**, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain food services which are more fully described in Exhibit A hereto ("Services"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Food Services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit A-1 Specific Requirements
- Exhibit A-2 Deliverables/Reports
- Exhibit A-3 Subcontractors
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements
- Exhibit F The Iran Contracting Act (ICA) of 2010
- Exhibit G Micros POS System

The term of this Agreement shall be from July 1, 2015 through June 30, 2018.

The compensation payable to Contractor hereunder shall not exceed nineteen million, ninety seven thousand, and one hundred forty eight dollars (\$19,097,148) for the term of this Agreement.

Master Contract No. 901240
Procurement Contract No. 11293

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

ARAMARK CORRECTIONAL SERVICES, LLC.

By:  _____
Signature

By:  _____
Signature

Name: John Glann
(Printed)

Name: Mark R. Adams
(Printed)

Title: Purchasing Agent

Title: Vice President Finance

Date: 7/29/15

Date: 6-2-15

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

Master Contract No. 901240
Procurement Contract No. 11293

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of

Master Contract No. 901240
Procurement Contract No. 11293

Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar

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character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

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7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

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Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County’s rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor’s services as set forth in Exhibit “A” of this Agreement have been fully performed or paid for.

In Contractor’s contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor’s Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit “A”, and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County’s rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the

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performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

- 13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Alameda County Sheriff's Office
1401 Lakeside Dr., 12th Floor
Oakland, CA 94612
Attn: Reynaldo Bondoc

To Contractor: Aramark Correctional Services, LLC.
1101 Market Street
Philadelphia, PA 19107
Attn: Karen Russell

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective

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as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam-era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam-era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam-era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority-owned and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

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16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. **AUDITS: ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3)

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years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. TERMINATION: The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its food services delivery shall not exceed \$19,097,148 in payments for services provided hereunder prior to the effective date of said suspension, termination, or abandonment.
21. SMALL LOCAL AND EMERGING BUSINESS PARTICIPATION: Contractor shall subcontract with the SLEB subcontractors identified in Exhibit A-3 designated small local and emerging business entities-for services to be provided under this Agreement for a total of twenty percent (20%) of the contract value of this Agreement in accordance with County's Small and Emerging Local Business provision, which includes but is not limited to:
 - a. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
 - b. As is applicable, Contractor shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this contract.
 - c. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).

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- d. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System. Contractor and Contractor's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the Elation web-based compliance system as described in Exhibit E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation compliance system. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

County will be under no obligation to pay contractor for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor-Controller's Office of Contract Compliance (OCC) via e-mail at ACSLEBcompliance@acgov.org.

22. FIRST SOURCE PROGRAM: For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.
24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and

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includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including,

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without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.

- d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
 32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
 33. PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
 - a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor

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Products: or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.

- c. Notwithstanding this Section 33. County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
- 34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
- 35. EXTENSION: This agreement may be extended for an additional two years by mutual agreement of the County and the Contractor.
- 36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

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ADDITIONAL PROVISIONS

I. Additional Terms

37. **Prohibition on Contraband:** Contractor will do its best to ensure that no contraband and/or other prohibited items make its way into the county jails through the delivery and/or preparation of food by Contractor. If not already in place, Contractor shall develop a plan and policy to address how it can limit the addition and/or placement of contraband and/or other prohibited items into its products within sixty (60) days after this Agreement becomes effective. This policy shall be presented to ACSO as soon as it is drafted. Should ACSO discover that any contraband or other prohibited items has entered the county jails through Contractor services, it shall be considered a material breach and ACSO will have the right to terminate this Agreement without notice. Moreover, Contractor agrees to fully indemnify and defend the County and ACSO for any incidents where such contraband or other prohibited items can be traced to Contractor.
38. **Compliance with Law:** Contractor shall, at its sole expense, conduct and cause to be conducted all activities in the jails and on any Alameda County property in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, whether presently in effect or subsequently adopted, and whether or not in the contemplation of the Parties. Contractor shall, at its sole expense, procure and maintain in force at all times during the contract any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Nothing herein shall limit in any way Contractor's obligation to obtain any required regulatory approvals from County departments, boards or commissions or other governmental regulatory authorities or limit in any way County's exercise of its police powers, including approval of all individuals who may enter any of the County jails.
39. **Safety:** Contractor agrees to conduct its activities at all times in a safe and prudent manner with full regard to the jail policy and safety and the public safety and to observe all applicable rules, regulations, policies and requests of the County, ACSO, and other government agencies responsible for public safety.
40. **Security:** Contractor acknowledges that pursuant to entering the Agreement with the County and performing services, Contractor may be exposed to and may review, see, or observe security procedures, information, data, and/or records that constitute secure, safety, valuable, confidential and proprietary information, know-how, jail procedures, and trade secrets, belonging to County and ACSO, or their agents, entities, or affiliates and/or third parties (hereinafter referred to as "Confidential Information") In consideration of being made privy to such Confidential Information, Contractor hereby agrees to hold the same in strict confidence, and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of the Confidential Information. Contractor

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understands that disclosure of any such information, or failure to follow ACSO procedures could result in extreme harm including possibly great bodily harm or death of inmates, County staff, the public and Contractor.

- 41. **Regulatory Changes:** Should a change in Federal, State, and/or County laws or regulations affect the terms of this Agreement, the Parties agree to modify and/or adjust this Agreement to reflect those changes.

II. Revisions to General Terms and Conditions:

- 1. The following is added to Provision 6, CONFORMITY WITH LAW AND SAFETY:

- d. Contractor shall adopt and comply with the Prison Rape Elimination Act (PREA) standards, and make information available to Alameda County, as required under 28 CFR § 115.12, to demonstrate its PREA compliance. 28 CFR §115.401 requires Contractor to engage in receive a PREA audit at least once during each three-year audit cycle beginning period starting on August 20, 2013. Contractor will make available to Alameda County Sheriff's Office Contract Monitor Contractor the auditor's final report after completion of an audit. Until the first audit report becomes available, Contractor shall demonstrate PREA compliance to Alameda County by furnishing a copy of its PREA policy to Alameda County Sheriff's Office Contract Monitor Contractor

- 2. Paragraph 20, TERMINATION, is amended by adding the following sentence:

County shall provide Contractor sixty (60) days' prior notice of termination pursuant to this section.

County Counsel Signature:  _____

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EXHIBIT A

DEFINITION OF SERVICES

Contractor shall provide food services with the Specific Requirements.

Deliverables/Reports set on this Exhibit A, Exhibit A-1, and Exhibit A-2.

- a. This Exhibit A has been drafted to include the requirements contained in the Request for Proposal (RFP) No. 901240, including any addenda, the proposal response of Contractor (Response), and additional services that the County obtained through negotiations, if any. In the event of any conflict (direct or indirect) among any of the exhibits, the RFP and the Response, the more stringent requirements providing the County with the broader scope of services shall have precedence, such that this Exhibit A including all attachments, the scope of work described in the RFP and the scope of work described in Contractor's proposal shall be performed to the greatest extent feasible. This incorporation specifically excludes the liquidated damages provision, contained in Section R, beginning on page 39 and the Exhibit E.
 - b. The RFP and Response may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.
2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

Key Personnel	Title
Karen Russell	Director of Business Development
Eric Johnson	Regional President
Lori McConnell	Resident District Manager
Kristen J. Scott	Food Service Director, Operations
Brian Savannah	Food Service Director, Cook Chill Production
Cynthia Irizarry	Director of Nutritional and Operational Support
Kelly Merrick	Regional Finance Director
Ari Phillips	Human Resources Director
Joseph LeBlanc	SLEB Subcontractor (J. LeBlanc Dairy)
Anton Haddad	SLEB Subcontractor (Atlantis Food Services Corp.)

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

3. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT A-1**SPECIFIC REQUIREMENTS**

1. Contractor's Responsibilities

a. General Requirements:

The Contractor shall have full responsibility for the operation of the Alameda County Sheriff's Office (ACSO) food service program. The work detailed shall proceed with promptness and diligence and shall be executed in accordance with the highest professional workmanship standards in the field and to the satisfaction of the County of Alameda. Further, all work, materials, and services not expressly called for, but may be necessary for the complete and proper performance of the work, shall be performed or furnished by the Contractor.

Contractor shall be responsible for ensuring levels of sanitation meet the food standards required by ACA standards, local regulations, and Hazardous Critical Control Points (HACCP). The contractor shall adhere to all Food Safety and Sanitation Codes and Rules and Regulations as detailed by the County of Alameda's Public Health Regulations Governing Food Service/Preparation.

b. The Contractor shall be responsible for:

- (1) The purchase, maintenance and control of food and supplies, and the provision of meals that are to be delivered to areas specified for inmates and staff at all ACSO facilities, satellite facilities, and off-site facilities in accordance with the menu requirements, meal service requirements, quality requirements, and sanitation requirements established in this Specific Requirements and the Contract;
- (2) The provision, supervision, and training of all contractor staff required to provide food delivery service operations to ACSO;
- (3) The planning, scheduling, supervision, and training of all inmate food service workers;
- (4) All contractor's employees shall be required to attend a civilian training course provided by ACSO and will be certified on up-to-date expectations, security policies, sexual harassment training, etc. Documentation will be kept by contractor to memorialize attendance to such training;
- (5) The effective use of any County Jail Facility ("Jail") "cook-chill" production facility to ensure that it is utilized to its fullest capacity;

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- (6) The safe, careful, and sanitary operation of all ACSO kitchen facilities and equipment to ensure the highest levels of sanitation and maintenance are consistent with the ACSO's policies and procedures, the laws of the United States, the laws of the State of California, and the ordinances and regulations of Alameda County;
- (7) Contractor shall utilize re-usable trays in serving plated inmate meals, except for agreed upon inmate populations. Contractor shall take necessary actions to ensure trays remain in service for their lifetime by implementing inventory control measures, and ensuring proper sanitation and cleaning procedures;
- (8) Contractor shall utilize re-usable cutlery (sporks) for inmate meals as directed by the ACSO staff. Contractor shall not distribute disposable cutlery in meals delivered to housing units using re-usable cutlery;
- (9) Staying abreast of changes to all laws and regulations governing the service of inmate food services;
- (10) The compliance of all employees and inmate workers under contractor's direction, according to the policies and procedures established by ACSO; particularly those involving security operations;
- (11) The development and implementation of a continuous quality improvement program designed to immediately identify and correct any deficiencies within the contractor's food services operation; and
- (12) The development of a successful working relationship with ACSO management and staff through the continuous provision of a high quality food service program.

2. Operational Requirements

- a. Cook-Chill Production Requirements: Alameda County uses an advanced "cook-chill" production system in the food service production center that also includes a "blast-chill" component. The contractor shall be responsible for the effective use of the Alameda County "cook-chill" production facility to ensure that it is utilized to fullest capacity consistent with the County's needs while preserving the County's investment in the facility
- b. Environmental Initiatives: Contractor shall ensure recyclable and compostable items generated in kitchen and onsite office operations are separated appropriately by inmate and Contractor staff and disposed of in appropriate hauler provided collection containers. At minimum, the following materials shall be sorted, managed and disposed of to ensure recycling:

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- (1) Corrugated cardboard;
 - (2) #10 tin cans;
 - (3) Other packaging materials acceptable in hauler provided recycling program; and
 - (4) Office paper, paperboard, newspaper and other paper products acceptable in hauler provided recycling program.
- c. Food Labeling:
- (1) The contractor shall possess or develop a system, including a time coding system, where applicable, that will prevent foods from being served that do not meet the minimum quality standards.
 - (2) "Cook-chill" items maintained in the Food Bank Inventory shall indicate the item name, date of production, batch number, and the date of expiration for each batch of food prepared and placed into the tumbler chiller for cooling. The final bag leaving the preparation area shall be marked with the batch number as well as notation of final bag.
- d. Temperatures: "Cook-chill" refrigerated foods will be maintained at a temperature between 28.5°F and 31°F.
- e. Use of Standardized Recipes:
- (1) The contractor will possess, or will develop, test, and use standard recipes. Quality, consistency, portion control, and cost control will be maintained by the use of these and other means.
 - (2) All recipes will be developed with Hazardous Critical Control Points (HACCP) criteria identified. The recipe will include identified potential hazards to each food item, the identity of the critical control points and will indicate the method of control.
- f. Purchasing:
- (1) Contractor shall meet minimum purchasing specifications or the County of Alameda's specifications, whichever is higher, to be used in the purchase of all food products, small wares, utensils, and disposable service ware, which will include spoons (sporks).

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- (2) ACSO shall approve, in writing, any changes from the stated specifications. Proposed exceptions must be clearly detailed by the contractor and submitted in writing for review.
- (3) The minimum grade specifications are to be as follows for inmate meals:
 - (a) Beef – U.S.D.A. Select or better:
 - (b) Pork – U.S.D.A. Select or better;
 - (c) Lamb – U.S.D.A. Select or better;
 - (d) Processed Meat From U.S.D.A. government inspected plants;
 - (e) Poultry – U.S.D.A. Grade B or better;
 - (f) Dairy – Eggs U.S.D.A. or State Graded A;
 - (g) Fish and Seafood – Fresh or frozen, must be packed under continuous inspection of U.S. Department of Commerce;
 - (h) Canned Fruits or Vegetables – U.S.D.A. Grade B or better or Fancy; and
 - (i) Frozen Fruits and Vegetables – U.S.D.A. Grade 6 or better.
- (4) Staff meals will utilize USDA Choice meats, as well as Grade "A" fruits and vegetables.

g. Menu:

- (1) During the term of the Agreement, the Contractor shall suggest changes to the menu. Changes in the menu should consider improved nutritional value, variety, choice, contrast, visual appeal, customer preference, contemporary food standards, and seasonal variations.
- (2) Although equipped for "cook-chill" production, Contractor is free to include "pre-cook" or other cook systems if the ACSO facilities are equipped for such production and upon approval by ACSO.
- (3) In no case will alcoholic beverages be used, consumed, or kept on the premises.
- (4) All changes in the menu must have prior written approval by the Contractor's dietitian, ACSO Contracts Captain/Lieutenant, and ACSO Inmate Medical Services Provider.

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- (5) The menu cycle used at ACSO is a four-week cycle menu. The menu must include two (2) hot meals (breakfast and dinner) and a cold meal for lunch. The Contractor shall provide proposed four-week menus.
 - (6) All meals shall be served on a three (3)-compartment plastic/polymer tray suitable for use with the "cook-chill" food preparation and distribution process, and whose approval for use is reserved for the Contracts Unit of ACSO. The current tray being utilized by ACSO is 6.25" x 8.5" x 1.5" in depth.
- h. Nutritional Value and Quality:
- (1) The Contractor shall provide well-balanced meals meeting the nutritional guidelines set forth in Title 15 Minimum Jail Standards and any applicable California and County laws.
 - (2) Nutritional Analysis – All menus shall be reviewed and certified as to nutritional adequacy and compliance with specifications by a Registered Dietitian (Certified by the Commission on Dietetic Registration) provided by the proposer.
 - (3) The Contractor shall provide a nutrient analysis, recipe, ready-to-eat weight for each serving size portion, and recipes for every menu item. All recipes must be appropriate for the size of the population and all recipes must be submitted to ACSO upon request.
- i. Regular Menu – Inmate Meals:
- (1) Hot/Cold Breakfast – The contractor will prepare breakfast items utilizing "cook-chill" production. The Contractor shall prepare and ship breakfast meals each day at the time designated. Food items will be prepared and served with a hot and cold tray. Meals shall be prepared and shipped to appropriate locations within ACSO facilities prior to the morning court schedule to ensure all inmates receive their meal before leaving the ACSO facilities. All breakfast meals will be served and prepared utilizing Title 15 guidelines and keeping in mind maximum allowable timeframes between served meals.
 - (2) Cold Lunch – The Contractor shall prepare and ship lunch meals each day at the time designated, seven (7) days a week. All lunch meals will be prepared as a bag lunch to ensure portability and opportunity for consumption by court-attending inmates. All lunch meals will be served and prepared utilizing Title 15 guidelines and keeping in mind maximum allowable timeframes between served meals.

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- (3) Hot Dinner Meals – The contractor shall prepare and ship dinner meals each day at the time designated. All dinner meals will be served with a hot and cold tray. All dinner meals will be served and prepared utilizing Title 15 guidelines and keeping in mind maximum allowable timeframes between served meals.
- (4) Intake, Transfer, and Release Meals:
- (a) The Contractor shall be required to prepare cold lunch meals for both male and female inmates. These meals will be primarily served to inmates awaiting processing in intake, transfer and release, work details, and outside trips.
- (b) The Contractor shall vary the type of meat and other similar items in the sandwiches to avoid repetition.
- (5) Court Meals: The Contractor shall prepare and deliver court meals to the housing units of each facility. Each court meal must be bagged.
- (6) Medical Diet Menus: (a)
- General
- The Contractor shall provide medical diet meals such as, but not limited to, allergy, diabetic, low salt, low fat, dental soft, dental liquid, pregnancy, renal, vegetarian, and special meals in accordance with ACSO procedures and as ordered by medical staff. Medical staff will continue to record special diet orders that are satisfied by the Universal Menu.
 - Medical diets shall be served during normal hours in the manner specified by the physician. Arrangements shall be made to provide meals beyond the scheduled meal hours when so ordered by the physician.
 - The Contractor shall prepare written four-week cycle menus for each approved medical diet. All menus will include portion sizes. The contractor shall consult with its own dietitian and Food Services Coordinator to ensure that the requirements of each diet type are met.
- (b) Medical Diet Notification: Medical diets are determined by the medical provider. Contractor shall be responsible for obtaining medical diet notifications via the medical provider.

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- (c) Medical Diet Menu Requirements. The written medical diet menu shall:
- Identify all food items to be served to meet diet requirements.
 - Reflect portion sizes consistent with diabetic exchanges and/or food manipulation (i.e. Puree) as required to meet the diet requirements.
 - Be acceptable to ACSO as evidenced by periodic meal inspection reports.
 - Medical Diet Recipes – The contractor shall develop standardized recipes to ensure consistency of medical diet menu items and will be formulated.
- (7) Menu Changes and Substitutions:
- (a) The Contractor shall make all menu changes requested by the Commanding Officer of the facility (or her/his designee(s)) as long as the change does not increase the price per meal to ACSO and meets all menu requirements.
- (b) To plan for such changes, the Contractor shall utilize the four-week menu cycle. Changes shall be submitted for review and approval by the Contract Administrator four (4) weeks prior to the effective date of the next menu cycle.
- (c) Except in an emergency, the Contractor shall not change, by deletion or substitution, items on any menu that have been approved by the ACSO Contract Manager without prior written approval.
- (d) In a situation requiring a menu substitution, the Contractor shall notify the ACSO Contract Manager 24 hours in advance. Once approved, notice shall also be forwarded to each facility.
- (e) The Contractor shall prepare a written report and forward it to the Contract Administrator within 24 hours of the occurrence of a menu substitution. The report will document the reason for the substitution, the number of substitute meals served, the menu of the substitute meals served, the location of substitute meals served and steps the Contractor will take to prevent future substitutions.
- (f) In the event of an emergency change, the Contractor shall make

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best efforts to meet the nutritional content for that meal. (8)

Holiday and Special Meals Menus:

- (a) The Contractor shall provide special meals related to specific holidays and themes.
- (b) At a minimum, special meal programs shall be required for the following Holidays:
 - New Year’s Day;
 - Ramadan – observed for practicing inmates;
 - Easter Sunday;
 - Thanksgiving Day; and
 - Christmas Day
- (c) Religious Menus – The Contractor shall provide menus at all meals that comply with the religious requirements of the inmates and approved by the ACSO Detentions and Corrections Commander, Detentions and Corrections Captain ACSO’s Contract Administrator, and Inmate Services Chaplain. Contractor must initiate diet service within no more than 24 hours of notification. Examples of religious menus include, but are not limited to, Kosher, Halal, and Ovo-Vegetarian. Contractor shall keep up-to-date with current law and adjust its menus according to controlling state and federal law, including case law.

(9) Staff Menus:

- (a) The health and well-being of sworn and non-sworn staff is a very high priority for ACSO. Contractor shall provide tasty, appetizing, wholesome quality meals to the staff at any County run Jail Facility. Officer’s Dining Rooms will be open to staff 24-7. Beverage and Coffee service will be available 24 hours per day. Inmate labor will not be used in the production or service of these meals. Additionally, there will be defined locations in the jail and administration where the Contractor shall be responsible for stocking coffee and condiments.

Meal times for the Santa Rita Jail are:

Graveyard: 0001-0500
Day: 0900-1600
Swing: 1630-2100

Meal Times for the Glenn E. Dyer Detention Facility are:

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Graveyard: 0100-0500
Day: 0900-1400
Swing: 1630-2100

Meals served to any Jail Facility staff in the staff dining room shall be displayed in an appealing manner. The following specifications shall apply except where there is a lack of appropriate equipment.

- (b) The Contractor shall provide a separate four-week menu plan for the staff dining room.
- The Contractor shall provide MICROS POS system for staff to pay for their meals;
 - The Contractor shall provide a Healthy Menu, utilizing a nationally recognized food distributor such as Sysco Food Services;
 - Contractor shall not utilize inmate menu items for staff;
 - Contractor shall use a standard recipes based on a business services model;
 - Contractor shall provide tableside condiments such as hot sauce, salt and pepper, soy sauce, and specialty items as required by the menu are mandatory;
 - Contractor shall provide a self-service salad bar is required for each meal period. The salad bar shall contain a minimum of three (3) dressings, a variety of 12 or more toppings to include vegetables, yogurt, cottage cheese, a lean protein source (i.e. tuna fish, cubed boneless/skinless chicken, etc.), and shredded cheese. Salad mix must have a variety of green leafy lettuces. A minimum of three (3) fruits (at least one (1) must be fresh) shall be offered. Salad bar must include yogurt mixing items (i.e. granola, nuts, raisins, etc.);
 - Contractor shall provide a deli station for each meal period. A variety of whole muscle lunch meats such as turkey, roast beef, and ham shall be available at each meal service. A minimum of three (3) cheeses shall be offered. These shall be natural cheeses such as Swiss, Monterey jack, and cheddar;

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- Soft Serve ice cream and/or frozen yogurt shall be offered for each meal period;
- A daily entrée shall be offered for each meal. This can be the same entree for the lunch and dinner meal. A breakfast menu shall be offered for the graveyard shift;
- The beverage station shall include a variety of milk, juices, and sodas;
- The coffee station shall include all condiments to include dairy and non-dairy creamers, to-go cups, and lids. Cups shall be paper-based. Styrofoam cups are not acceptable;
- Re-useable plates, bowls, and glasses shall be used in the staff dining. Replacement of these items shall be the responsibility of the contractor. Disposables shall be provided for staff members who are unable to take their meal breaks in the staff dining room. Disposable silverware is acceptable, but must be heavy weight;
- Meals shall be billed at a separate cost from the inmate meal; and
- Contractor MICROS POS system shall be used to maintain a log of meals served. Log shall include the name of staff or contractor who has purchased the meal. No cash is to be exchanged.

j. Special Catering:

- (1) In the event that food and/or beverages for meetings, luncheons, dinners, inmate related functions are requested, they shall be provided at cost.
- (2) Separate records of direct expenses will be maintained. Cost estimates or maximum costs shall be provided prior to the commencement of such functions. Outside labor may be brought in for such functions, as required and as approved by ACSO. k.

Meal Service:

- (1) Responsibilities

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- (a) The contractor shall provide all specified meal service for inmates, staff and guests regardless of holidays, weather conditions, work stoppages, lack of availability of inmate staff or any other adverse or emergency conditions that shall occur.
 - (b) If, for any reason, the contractor fails to provide food service, the ACSO shall obtain the required meal(s) from the most expedient source, and the contractor shall be responsible for any and all charges, including consequential expenses incurred by ACSO for food service. Charges will be deducted from outstanding invoices and additional damages may be imposed.
- (2) Set Up: Consistent with the food service delivery system in each facility the contractor shall be responsible to ensure that all meals are in place and ready to serve at the hours specified in that facility
- (3) Transportation: All transportation from any Jail of prepared food, whether trayed or bulk to facilities, is the responsibility of the Contractor. Consistent with the food service delivery system in each facility, contractor shall be responsible for transporting all food to the dining areas, rethermalization areas, serving areas, and for returning all trays, utensils, and equipment to the food preparation or washing areas, as appropriate. Contractor is responsible for maintaining logs and inventory of all trays which have been delivered, as well as picked up from each facility.
- (4) Inmate Feeding
- (a) Time – Consistent with the food service delivery system in each facility, contractor shall be responsible for serving during hours as required by the Title 15, ACSO, and American Correctional Association (ACA) guidelines.
 - (b) Locations – Inmates are to be fed at the designated locations. ACSO reserves the right to amend these locations, which may include the designation of additional locations, as may be required for the overall operation of the ACSO, at no additional cost.
- (5) Medical Diets
- (a) The Contractor shall clearly delineate medical diet meals for inmates.
 - (b) Meals shall be marked with clear and obvious markings so that the person taking the meal shall know that his/her dietary needs are being fulfilled.

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- (6) Religious Diets: The Contractor shall clearly delineate religious diet meals for inmates. Meals shall be marked with clear and obvious markings so that the person taking the meal shall know that his/her dietary needs are being fulfilled.
- (7) Appearance
- (a) Food shall be served in such a fashion as to be appealing to the inmate and staff. It shall be served in sufficient quantity and at the appropriate temperature as to make the food offered acceptable. All equipment and utensils used in the service of meals shall be clean and free of defects that will render the food unappealing.
 - (b) The Contractor shall ensure that all foods and beverages are presented and prepared in a sanitary manner.
 - (c) The general cleanliness of the serving areas shall be the contractor's responsibility. Contractor shall be responsible for expeditiously reporting facility sanitation and maintenance issues in serving areas.
 - (d) A National Sanitation Foundation (NSF) approved ounce scale shall be provided at all food preparation serving areas to ensure portion controls.
 - (e) The Contractor shall possess or develop a system to prevent foods or beverages from deteriorating while holding. Such a system shall ensure that food quality (taste, appearance, texture, temperature) does not deviate from the minimum quality standards.
 - (f) Thermometers shall be used on service lines to ensure all foods/beverages are being held at proper temperatures. Thermometers used must be consistent in all facilities. Thermometers must be NSF and HACCP approved. The type of thermometers must be comparable to a Fluke FoodPro infrared thermometer.
 - (g) The use of instruments that indicate temperature will be subject to the inspection and approval of the County of Alameda.
3. Staff Requirements: Contractor shall also provide adequate, competent support staff that shall be able to service the County during normal working hours, Monday through Friday. Such representative(s) shall be knowledgeable about the contract, products offered and able to identify and resolve quickly any issues including, but not limited to, order and invoicing problems.
- a. Account Manager

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- (1) Responsibilities: Contractor shall provide overall planning, direction and operation for the successful food service operation at the Alameda County Sheriff's facilities with particular attention to the issues of food service quality control, sanitation, and inmate vocational training.
- (2) Experience: Contractor's account manager shall have a minimum of five (5) years of managing a large scale food service operation in an institutional, commercial, industrial, or similar organization, with at least two (2) years in a major correctional facility or equivalent.

b. Cook-Chill Production Supervisor

- (1) Responsibilities: Contractor shall direct the product planning and oversee the quality control operations of the "cook-chill" production facility at the Santa Rita location. This employee should be dedicated to the "cook-chill" area only.
- (2) Experience: Contractor's Cook-Chill Production Supervisor shall have a minimum of two (2) years supervisory experience in correctional Cook/Chill techniques and applications.

4. ACA Compliance:

Contractor's quality assurance process shall be based on ACA standards and ensure compliance at every meal, every day. Compliance reviews shall be completed by Resident District Manager, Lori McConnell, on a monthly basis to be used as a continuous self-evaluation of contractor's performance. ACA Compliance operations shall be inspected by Contractor's Regional Team Members, Nutrition and Operation Support Services, Finance Officers and Operation Support Directors. Contractor shall also collect data from audits conducted by health inspectors and accreditation audits performed by the ACA and American Jail Association (AJA).

Contractors food safety Quality Assurance Review (QAR) standardization process shall be utilized to ensure perform at the highest levels of safety across all food service portfolios. QAR shall consist of site visits by objective third-party consultant EcoSure5,

(a leading food safety, and operational firm) which will evaluate the level of quality at the venue, and provide corrective action plans where necessary.

Failure to comply with and achieve ACA standards will result in a \$50,000 penalty and potential breach of contract.

5. Inmate Training Programs:

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Contractor training programs shall culminate in meaningful certification which shall be clearly delineated. Contractor shall manage the IN2WORK (I2W) Program, in conjunction with the ROP Culinary Program currently in place at the Santa Rita Jail. I2W shall be a comprehensive curriculum entailing both classroom and on-the-job components. Selected offender workers shall learn foundational food and retail skills. Each working offender shall be given their own workbook, structured pre-work, quizzes, and test on food service operations and shall be issued certifications upon their successful completion of vocational training.

Additionally, Contractor shall implement its FreshFavorites program. This program shall be used as a tool to reward appropriate behavior. FreshFavorites shall offer popular takeout-style foods to working offenders. FreshFavorites shall be paid for by offenders thus generating additional revenue for the facility. FreshFavorites shall be a key component on I2W as participation shall allow offenders the knowledge of how to prepare and serve take-out food as they would in a retail food environment. FreshFavorites shall be made fresh onsite and can be offered on a daily or weekly basis as determined by ACSO.

6. Community Outreach Initiative:

Contractor shall support inmates returning to the community. As the vast majority of inmates from County run jails return to local residences, there is a substantial need for re-entry programs that can assist these individuals in becoming positive and contributing members of the community. Contractor's support shall include programs that support this goal.

Contractor shall support reentry efforts through partnerships with one or more community agencies and the private sector to offer inmate training programs which provide employability skills and assist in job placement in the community. Contractor's efforts shall be done with the goal to help released inmates transition to gainful employment, family stability, and community engagement. In addition, Contractor will make reasonable efforts to employ, within its organization but outside the corrections setting, successful participants of reentry programs. Contractor may also provide support through grants to programs helping released inmates transition to gainful employment, family stability, and community engagement.

Contractor shall provide an annual written report on the efforts and results of meeting these community outreach initiatives.

7. Performance:

An assessment shall be imposed/assessed to Contractor in each of the following categories. The Alameda County Sheriff Office, or its designee, shall notify Contractor of any occurrence and the proposed assessment. Contractor shall have five days to respond before a final determination is made related to the assessment. After consideration of the

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response and factual situation, an assessment may be made by the County against Contractor and the full amount of the assessment shall be reflected as credit to the County in next invoice. If any credit exceeds the amount of the invoice Contractor shall submit a check for the credit balance to County with the invoice. The notice and reply period is for assessments only, it does not excuse or extend the time required under any term of this Agreement, include preapproval requirements or correction of deficiencies. This is not a liquidated damages provision and any assessment does not excuse Contractor from their obligations under this Agreement or any breach.

Type of Incident	Assessment Amounts
Late Meal Service	\$5,000 per occurrence
Improper Meal Substitutions	\$5,000 per occurrence
Inadequate Staff/Inmate Ratio	\$5,000 per occurrence
Sanitation Deficiencies	\$5,000 per occurrence
Equipment Damage	\$5,000 per occurrence
Security Breach	\$5,000 per occurrence
Failing to meet American Correctional Association Standards (ACA)	\$50,000 per occurrence
Failing to meet Alameda County Health Regulations	\$5,000 per occurrence
Failing to meet California Minimum Jail Standards Title 15	\$5,000 per occurrence

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EXHIBIT A-2

DELIVERABLES/REPORTS

1. Contractor shall maintain at each facility the following records, reports, and deliverables which shall be made available for monthly review by ACSO, or as specified:
 - a. A current staffing chart and work schedule for all employees, which conforms to the provisions of this agreement. Contractor shall provide written notice one (1) week in advance to the appropriate facility administrator and the contract administrator of any scheduled absence by the Contractor's General Manager, which may be required for corporate training or other matters;
 - b. A complete job description for all the positions and inmate assignments utilized at the facility;
 - c. Any vacancies due to extended illness or termination will be filled within 30 days;
 - d. Daily records of meals served for each location and for any additional satellite facilities contracts by Contractor, according to established meal count procedures and County supplied inmate labor;
 - e. Daily and/or weekly summary records documenting all applicable contractor and food service industry standard quality assurance procedures, to include the testing of temperatures in the refrigeration, cooking and serving areas, and any other records necessary to meet health care standards, inspections, or inquiries, In addition, all records (recipes, production sheets, etc.) necessary to document the minimum portion standards and nutritional adequacy of each meal served;
 - f. Nutritional analysis and recipes and portion sizes of menus;
 - g. Maintain for 72 hours a frozen sample meal of each meal trayed at the "cook-chill" Production Kitchen;
 - h. A sample meal of each served meal will be kept refrigerated for a period of three days at all facilities;
 - i. All HAACP, Cook/Chill charts, records, and perpetual cooked product inventories will be kept for a period of one year at the Cook/Chill Production Kitchen;
 - j. The required ACA documentation in order to comply with ACA standards for accreditation; and

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- k. Contractor shall provide meal counts for satellite facilities and other appropriate documentation to ACSO including but not limited to satellite facilities billing invoices in order to record the number of meals provided to each facility.
2. Contractor shall maintain and make available to ACSO the following required communication and reports for each ACSO facility:
 - a. Weekly reports of meals served;
 - b. Daily records of testing of meal temperatures as provided in item;
 - c. Records of nutritional analysis, recipes, and portion sizes;
 - d. A quarterly financial statement in accordance with industry standards, which shows all contractor income, expenses and profit or loss, related to this contract. This information will be treated by ACSO as confidential and will be made available only to ACSO, the ACSO Contract Administrator, the County Administrator, and/or the County Board of Supervisors;
 - e. Meal cart distribution sheets for meal carts leaving the kitchen, which shall be signed by contractor supervisors after verification of the number of meals prepared and loaded onto the meal carts. ACSO will sign for the designation dispatching of the food service carts. Jails will have random audits by the contract monitor or ACSO kitchen staff to validate meal counts;
 - f. Federal/State/local required forms relating to food services;
 - g. Analysis of nutrients showing Recommended Daily Allowance for this type of age group; and
 - h. Monthly status report on maintenance of capital equipment to include damaged equipment and equipment in need of repair or preventative maintenance.
3. Contractor shall have monthly scheduled meetings with the ACSO to discuss Contractor performance and other items of mutual interest to this Agreement.
4. Contractor shall have a two-way communication system in place during meal preparation and delivery hours to insure communication between the office personnel and the staff on the main kitchen floor.
5. Sustainable Food Service
 - a. Contractor shall follow a Sustainable Food Service Action Plan (the "Plan"). Contractor shall meet with the County GSA Sustainability Team regarding the Plan prior to July 1, 2015. Contractor shall finalize and implement an approved Plan by September 1, 2015

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- b. Contractor shall meet with County on a regular basis to review and update the Plan, including revisions to incorporate additional efforts for continuous improvement.
- c. Contractor shall provide regular reports that demonstrate how it reduces the environmental impact of food service delivery and operations associated with this Agreement.
- d. At a minimum, the Plan and reports shall identify efforts Contractor takes to minimize the generation of waste, divert waste that is generated from landfill, and strategies to minimize the life cycle environmental and social impacts associated with the provision of food. Examples of efforts the Contractor shall address include, but are not limited to:
 - (1) Packaging waste minimization;
 - (2) Food waste minimization;
 - (3) Other waste minimization actions;
 - (4) Surplus food diversion (e.g. for human or animal consumption);
 - (5) Recycling and composting implementation plan, including staff and inmate worker training, infrastructure (i.e. collection bins), and integration into work duty;
 - (6) Food sourcing strategies to minimize lifecycle greenhouse gas emissions intensity of food, such as locally grown foods, moving toward protein sources with lower emissions profiles and toward foods produced with no or low chemical inputs (e.g. fertilizers and pesticides);
 - (7) Food sourcing strategies that assure no human rights abuses though out the supply chain;
 - (8) Operational practices that conserve energy and water; and
 - (9) Additional operational or corporate practices that result in an improved environmental and social impact footprint of the food service delivery and operation for which the contractor is contracted to provided.
- e. The Contractor shall develop and track metrics that measure and evaluate achievement in meeting the goals of the plan. Metrics shall be collected on an ongoing basis, and shall be reported quarterly to ACSO and GSA.

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- f. Contractor shall update the Sustainable Food Service Action Plan annually in consultation with ACSO and GSA. The annual update to the plan shall incorporate a summary of the metrics from previous contract year(s), a summary of the environmental and social footprint improvements achieved, and seek to identify opportunities for continuous improvement in addressing the environmental and social impacts of the food service operation.

- g. To support sustainability goals, Contractor shall incorporate composting into their food services program. This will include, an investment of approximately \$100,000 to install composting equipment at the Santa Rita Jail kitchen facilities. The installation of this equipment is part of the services being provided under this Agreement and shall become the property of County at termination of the Agreement. However, Contractor shall remove the equipment if requested by County prior to the termination of the Contract.

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EXHIBIT A-3

SUBCONTRACTORS

Pursuant to the terms of this Agreement, Contractor shall use the following subcontractors:

- Atlantis Food Services, Corp.
30470 Whipple Road, Union City, CA
Principal: Anton Haddad
In an amount equal to fifteen percent (15%)
- J. Leblanc Dairy
4073 Oak Hill Road, Oakland, CA
Principal: Joseph C. LeBlanc
In an amount equal to five percent (5%)

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT B**PAYMENT TERMS**

- County will use reasonable efforts to make payment to Contractor upon successful completion and acceptance of the following services within thirty (30) days upon receipt and approval of invoice.

- Costs

Description	Unit of Measure	Year 1	Year 2	Year 3
		Unit Cost	Unit Cost	Unit Cost
SRJ-Inmate Meals	Each	\$ 1.349	\$ 1.383	\$ 1.417
SRJ-Court Meals	Each	\$ 1.349	\$ 1.383	\$ 1.417
SRJ-Staff Meals	Each	\$ 4.700	\$ 4.818	\$ 4.938
GEDDF-Inmate	Each	\$ 1.349	\$	\$
GEDDF-Staff Meals	Each	\$ 4.700	\$	\$

SLIDING SCALE

Population Scale		Price/Meal
2000	2199	\$ 1.764
2200	2399	\$ 1.676
2400	2599	\$ 1.602
2600	2799	\$ 1.562
2800	2999	\$ 1.508
3000	3199	\$ 1.460
3200	3399	\$ 1.418
3400	3599	\$ 1.382
3600	3799	\$ 1.349
3800	3999	\$ 1.323
4000	4199	\$ 1.300

- Invoices will be reviewed for approval by the Alameda County Sheriff Agency.
- Total payment under the terms of this Agreement will not exceed the total amount of \$17,520,319. This cost includes all taxes and all other charges.
- Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.

Exhibit B
Page 1 of 1

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability, Products and Completed Operations, Contractual Liability, Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> -- Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. -- Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision. 	

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**CERTIFICATE OF LIABILITY INSURANCE** Page 1 of 1DATE (MM/DD/YYYY)
05/15/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Willis of Pennsylvania, Inc. c/o 26 Century Blvd. P. O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME: PHONE (A/C, NO, EXT): E-MAIL ADDRESS:	877-945-7378 certificates@willis.com	FAX (A/C, NO): 888-467-2378
INSURED	Aramark Correctional Services, LLC Aramark Services, Inc. Its Divisions & Subsidiaries Aramark Tower, 1101 Market Street, 30th Floor Philadelphia, PA 19107	INSURER(S) AFFORDING COVERAGE	NAIC #	
		INSURER A: ACE American Insurance Company		22667-003
		INSURER B: Indemnity Insurance Company of North Amer		43575-001
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 23163276

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY	Y		HDOG27335457	10/1/2014	10/1/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ Included MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ None PRODUCTS - COM/PROP AGG \$ None
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						
	<input checked="" type="checkbox"/> Liquor Law Liability						
	<input checked="" type="checkbox"/> Vendors Liability						
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	POLICY PROJECT LOC OTHER						
A	AUTOMOBILE LIABILITY			ISAH08827011	10/1/2014	10/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> ANY AUTO						
	ALL OWNED AUTOS		SCHEDULED AUTOS				
	HIRED AUTOS		NON-OWNED AUTOS				
	<input checked="" type="checkbox"/> Self-Insured for	<input checked="" type="checkbox"/>	Auto Physical Damage				
	UMBRELLA LIAB		OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB		CLAIMS-MADE				AGGREGATE \$
	DED		RETENTIONS				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			AOS WLRC48013570	10/1/2014	10/1/2015	<input checked="" type="checkbox"/> PER STATUTE OTHER
A	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	CA & MA WLRC48013569	10/1/2014	10/1/2015	E.L. EACH ACCIDENT \$ 1,000,000
A				WI SCFC48013582	10/1/2014	10/1/2015	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ARAMARK's General Liability and Auto Liability policies are noncancellable. Workers' Compensation notices of cancellation are in accordance with each state law. Products/Completed Operations and Contractual Liability are included under General Liability.

County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives are included as Additional Insureds per policy terms & conditions.

CERTIFICATE HOLDER**CANCELLATION**

County of Alameda 1401 Lakeside Dr. 12th Floor Oakland, CA 94612	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

Coll: 4690070 Tpl: 1858331 Cert: 23163276 © 1988-2014 ACORD CORPORATION. All rights reserved.

ACORD 25 (2014/01)

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ER-215

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Named Insured: Aramark Correctional Services, LLC
Insuring Company: ACE American Insurance Company
Policy Number: HDOG27335457
Policy Effective: 10/1/2014

Endorsement No. 88

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided in the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Schedule

Name of Person or Organization

- 1) Any person, organization or entity for whose protection and benefit the Named Insured has or shall have, by contract or agreement, agreed to procure liability insurance; or
- 2) Any person, organization or entity designated as an additional insured by a Certificate of Insurance.

WHO IS AN INSURED (Section II) is amended to include as an insured the person, organization or entity shown in the Schedule above, but only with respect to liability arising out of the Named Insured's operations or work performed by the Named Insured or others acting on the Named Insured's behalf, or premises owned, managed or controlled by or rented to the Named Insured.

With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Additionally, the coverage provided to the additional insured shall not exceed, and is limited by, the scope of coverage that the Named Insured has agreed by contract or agreement to procure for the Additional Insured.

This endorsement is issued by the Company designated in the Declarations.

All other provisions of the policy remain unchanged.



Authorized Agent

MS1185/1212

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Aramark Correctional Services, LLC

PRINCIPAL: Mark R. Adams TITLE: Vice President Finance

SIGNATURE:  DATE: 6-2-15

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT E

**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at <http://www.elationsys.com/elationsys/ContactUs.aspx> or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT F

**COUNTY OF ALAMEDA
THE IRAN CONTRACTING ACT (ICA) OF 2010
For Procurements of \$1,000,000 or more**

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who “engages in investment activities in Iran” is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

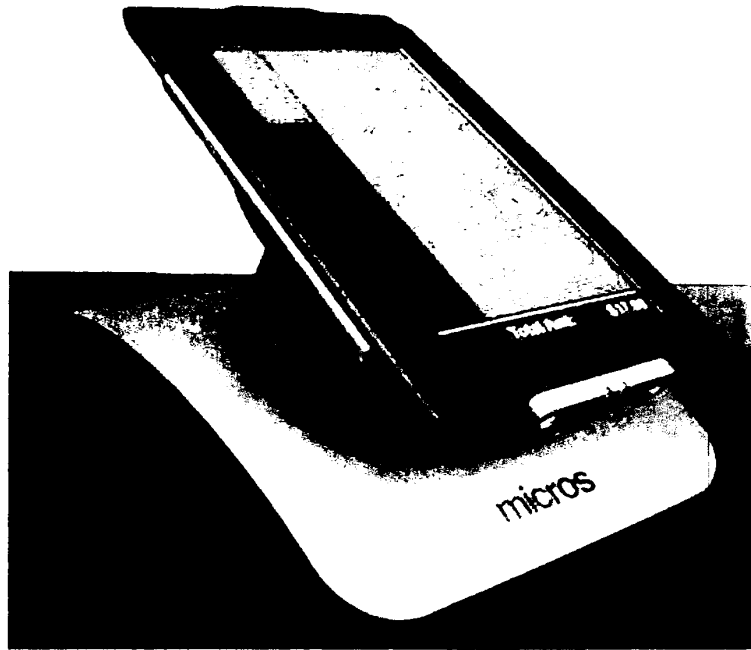
NAME: Aramark Correctional Services, LLC

PRINCIPAL: Mark R. Adams TITLE: Vice President Finance

SIGNATURE:  DATE: 6-2-15

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT G
MICROS POS SYSTEM



PDF Attached Hereto

mWorkstation – Product Overview



MICROS mTablet and mStation



The mTablet and mStation are currently supported by the following MICROS applications:

Application	Version Supporting mTablet/mStation
Simphony 1	V1.6 MR4
RES	5.2

mWorkstation – Product Overview



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mWorkstation – Product Overview



Feature Summaries

Specification/Feature	mTablet
Processor	Freescall i.MX6 Dual Core ARM Cortex A9 1GHz
Memory	1G DDR3 800MHz RAM
Storage	4G Fixed NAND Flash Internal 8G Removable microSD Standard
Operating System	Microsoft Windows Embedded Compact 7 (EC7)
Display	10.1" WVGA (1024x600) TFT LCD
Touchscreen	10.1" Hardened Projected Capacitive Sensor
Screen Orientation	Portrait or Landscape, Auto Rotating
Magnetic Card Reader	Modular Integrated 3-Track MCR Capable of Hardware Encryption at the Swipe
Network	802.11 a/b/g/n Dual Band Radio (WPA, WPA2, TKIP, AES Support) Bluetooth 2.1
Battery	Integrated Lithium Ion Battery 21.8Wh Provides 6 Hours of Operation in Typical Usage
USB	1 Below Modular MCR Cover for Future Accessories 1 USB "On the Go" Port
Serial Ports	1 Reserved for MCR
Operating Temperature Range	-10 to 60C (14-140F) Normal Operation 0 to 45C (32 to 113F) when charging battery
Enclosure	Magnesium Alloy, PC-ABD and Nylon Materials. Spill & Drop Resistant Enclosure
Certifications	FCC Class A, UL, CE, TUV, RoHS, China RoHS
Specification/Feature	mStation
USB 2.0	4 Standard USB 2.0 1 MICROS 12V Powered USB
Serial Ports	Com 1 DB9 RS232 – 5/9/12V Selectable Power Com 2 DB9 RS232 – 12V Power Com 5 RJ45 RS232 MICROS IDN Port RJ45 RS422/RS232
Cash Drawers	2 MICROS "Series 2" Cash Drawer Ports
Customer Display	1 MICROS Customer Display Port
Power Output	1 12V Output
Network	10/100/1G RJ45 Ethernet – only when mTablet Installed
Power Supply	Internal Universal 100W Power Supply
Battery	Optional Internal High Capacity Battery

mWorkstation – Product Overview



mStation/WS5A/PCWS2015/KW270 Differences Summary

The MICROS mTablet and mStation provide a high degree of connectivity and flexibility and are ideal for many use cases, however, care should be taken to ensure customers are provided with the best device for their particular needs and investment protection. The chart below highlights some key distinctions in the current MICROS workstation line

Specification/Feature/Functionality	mStation	WS5A	PCWS2015	KW270
Processor	Freescale i.MX6	Intel Atom N450	Intel Celeron or Core i5	Freescale i.MX27
Architecture	ARM	X86	X86	ARM
CPU Frequency	1GHz	1.6GHz	1.86 or 2.4GHz	800MHz
Processor Power	Mid	High	Very High	Low
RAM	DDR3 800	DDR2 667	DDR3 1066	DDR 333
USB 2.0 Ports	6 Total <ul style="list-style-type: none"> 4 on I/O Panel 1 MICROS 12V Powered USB 1 Below MCR Cap for Future Use 	8 Total <ul style="list-style-type: none"> 4 on I/O Panel 1 Internal for Flash Drive 2 Internal for Options 1 MICROS Powered USB 	9 Total <ul style="list-style-type: none"> 4 on I/O Panel 1 Internal for Flash Drive 2 Internal for Options 2 MICROS Powered USB 	6 Total <ul style="list-style-type: none"> 4 on I/O Panel 1 Internal for Flash Drive 1 Internal for Options
USB Control	Power to USB ports can be controlled	USB ports can be independently disabled for security.	USB ports can be independently disabled for security.	NA
SATA Interface	NA	SATA Interface Standard	2 SATA 2 Interface	NA
Expansion Bus	NA	Optional PCIe Express Expansion	Mini-PCI and Optional Express Card	NA
Serial Ports	4 Available <ul style="list-style-type: none"> 1 5/9/12V Powered DB9 RS232 1 12V Powered DB9 RS232 1 RJ45 RS232 1 RJ45 RS422/RS232/IDN 	4 Available <ul style="list-style-type: none"> 1 DB9 RS232 2 RJ45 RS232 1 RJ45 RS422/RS232 IDN 	4 Available <ul style="list-style-type: none"> 2 DB9 RS232 1 RJ45 RS232 1 RJ45 RS422/232/IDN 	3 Available <ul style="list-style-type: none"> 1 DB9 RS232 1 RJ45 RS232 1 RJ45 RS422/RS232 2 IDN

mWorkstation – Product Overview



Specification/Feature/Functionality	mStation	WS5A	PCWS2015	KW270
VGA Output	NA	1 VGA Connector on I/O Panel (provides mirrored display output with Windows CE, dual independent display output with Win32 OS)	1 VGA Connector on I/O Panel	NA
Factory Recovery	Standard, activated via <ul style="list-style-type: none"> Power Button Utility Both password protected	Standard, activated via: <ul style="list-style-type: none"> Hotkey Combo CMOS Menu 	Standard, activated via: <ul style="list-style-type: none"> Hotkey Combo CMOS Menu 	NA
Operating System Support	<ul style="list-style-type: none"> Windows Embedded Compact 7 	<ul style="list-style-type: none"> Windows Embedded CE 6.0 R3 Windows POSReady 2009 Windows POSReady 7 Windows 7 	<ul style="list-style-type: none"> Microsoft Windows 7 Pro Microsoft POSReady 7 Microsoft POSReady2009 	<ul style="list-style-type: none"> Windows Embedded CE 6.0
Operator LED	Blue LED	White LED	Green LED	Green LED
Application Support	<ul style="list-style-type: none"> Simphony 1.6 MR4 RES 5.2 	<ul style="list-style-type: none"> 9700 E7 RES Simphony 1 Simphony 2 	<ul style="list-style-type: none"> 9700 RES Simphony 1 Simphony 2 	<ul style="list-style-type: none"> 9700 Simphony 1
Integrated Finger Printer Reader	NA	Optional	Optional	NA
Customer Display	1 Customer Display Port	2 Customer Display Ports	2 Customer Display Ports	1 Integrated Customer Display 1 External Customer Display Port
Accessory Power	12V Out	Optional 12V Out	12V Out	9V & 12V Out
Cash Drawer Ports	2 – Series 2 CD Ports Requires adapter cable for legacy CD support	2 – MICROS CD Ports	2 – MICROS CD Ports	2 – MICROS CD Ports

mWorkstation – Product Overview



mTablet & mStation Overview

The MICROS mTablet is an all new tablet designed specifically with POS requirements and harsh hospitality environments in mind. Featuring a 10.1" display with a projected capacitive touch screen, the mTablet utilizes the latest technologies, including a cutting edge dual core processor. A modular design allows the mTablet to feature a secure, integrated magnetic card reader that is capable of hardware encryption of track data, which can be quickly replaced with additional peripheral devices such as scanner/imagers and RFID readers as they become available.

To meet the needs of the hospitality environment, including both indoor and outdoor environments, the mTablet features an extremely wide operating temperature range, a robust casework and hardened touch screen for a superior level of durability and drop protection, and a tight design to withstand the worst spills and weather.

When the mTablet is combined with the mStation, the result is a complete POS client featuring a full range of peripheral and connectivity options. The mStation allows customers to use all of their existing peripheral devices, from printers and cash drawers to customer displays, scanners, scales and more. Additionally, when wireless networks are not present or have gaps in signal coverage the mStation allows customers to take advantage of traditional wired networks, with a 10/100/1G capability.



The mTablet and mStation provide MICROS customers with a tailored solution for their business needs. Unlike consumer products, these devices are tailored for the hospitality and retail environments, providing a clean, secure, integrated device hardened to withstand the day to day abuse common in these environments. As with all MICROS hardware, the mTablet and mStation achieve a set of goals to provide maximum benefit to MICROS customers. These goals include simplified installation, high levels of reliability, unobtrusiveness, and adaptability to various operational requirements.

Installation

Each mTablet ships with the MICROS Client Application Loader (CAL) installed. CAL is key to the highly intuitive installation and configuration of the mTablet, and provides ongoing monitoring and updating of the device.

MICROS CAL on the mTablet allows for device configuration to occur through either a wired network (when installed on an mStation) or wireless. In a wired network, the Client Application Loader takes care of assigning an IP address, and downloads the correct database for the mTablet, so it is quickly up and running. If platform updates are available the CAL will download and install those as well, including new drivers, firmware, even an entire OS update. These capabilities are available in both wired and wireless configurations.

mWorkstation – Product Overview



Reliable

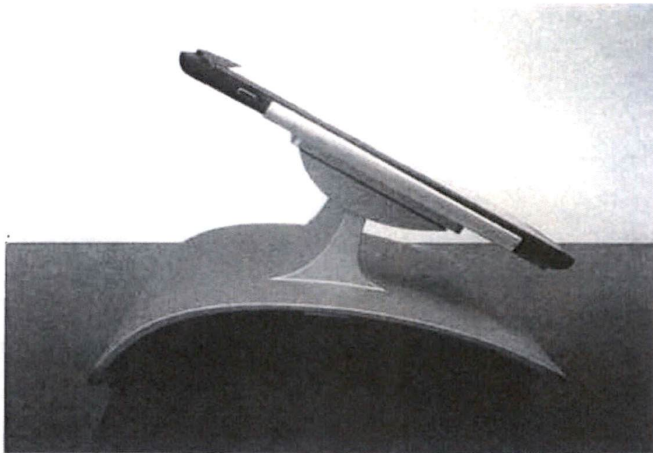
MICROS products have set high standards for reliability. The mTablet and mStation are designed to continue this trend of long lasting, trouble free operation.

Even though passively cooled, the mTablet and mStation retain MICROS' commitment to spill resistance and wide operating temperature ranges.

The mTablet features full gasketing internal to the assembly, and electrically isolated connectors along its lower edge, making it immune to damage from spills, rain, snow and standing liquids. The mStation is also designed for maximum protection. The power supply is mounted internally, ensuring it is always correctly placed and not subject to the abuse and spills that plague external units and peripheral cables are securely held in place, immune to splash, debris or tampering.

MICROS workstations are installed in a variety of locations, frequently in less than ideal environments. In addition to spill resistance, the mTablet is designed to operate in temperatures ranging from -10° centigrade (14°F) to 60° centigrade (140°F), allowing the device to be used in areas that are not temperature controlled, including patios, poolside, in outdoor concessions and elsewhere. The mTablet is constructed of magnesium alloy and PC-ABS, which provide a robust casework that can withstand years of abuse. The raised front bezel provides an attractive finish to the mTablet, while providing protection for the touchscreen and LCD. This design provides the mTablet with a level of impact resistance that consumer products cannot achieve.

Unobtrusive

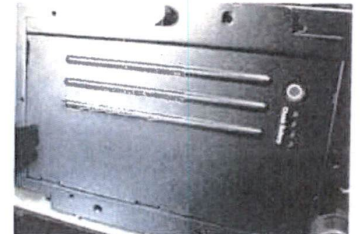


The sleek styling of the mStation complements any décor, with an attractive finish, low profile and small footprint. The mStation requires very little counter space, leaving this valuable area open for customer interactions.

The mStation allows the installed mTablet to be oriented in either portrait or landscape modes, with the magnetic card reader positioned at the top, or either the left or right side of the terminal. The self-tightening hinges of the mStation allow for easy angular adjustment.

Special care was taken to make sure the mStation provides a stable base, is easy to install, and reduces the overall footprint of the device. The raised feet of the mStation ensure spills and standing liquids do not interfere with operations. These feet are also designed to guide data lines from the customer displays, ensuring a clean appearance and proper strain relief.

The mStation also accommodates an optional high capacity battery, allowing the unit to be used completely unplugged from electrical sources. The optional battery also provides power to the I/O panel and integrated peripheral devices, as well as maintaining charge to an installed mTablet. The optional battery is installed in the bottom of the mStation and is charged by the mStation when AC power is connected. An indicator light on the front of the mStation provides



mWorkstation – Product Overview



charge status of the battery. The battery can be easily accessed by removing the cover plate, or the cover plate can be locked into place with the provided security screw.

The mStation is easy to use, and mounting the mTablet is quick and intuitive. Channels along the side of the mTablet engage rails on the mStation, allowing for fast alignment. Two captive screws below the mating connection of the mStation allow users to lock the mTablet into place if desired.

The mStation also provides mounting locations for modular peripheral integration, including customer display options and soon to be released scanner and printer modules.

Adaptable

The flexibility of the mTablet and mStation is greatly enhanced by its modular design and available options.

Mobile Operation

The integrated wireless capabilities of the mTablet allow customers the flexibility of providing service at any point in their establishment, whether table side, line busting, or in seat service. The rugged design of the mTablet ensures it will withstand the abuse, spills and extreme temperatures found in these environments.

Fixed & Portable Operation

The mStation provides peripheral connectivity for the mTablet, and allows connection to AC power and wired networks. When docked, the mTablet initializes the ports of the mStation – this process can take several seconds. Each mStation is assigned a unique identifier by the MICROS application, allowing the tablet to identify key attributes of the mStation, including cash drawer assignments by employee. The mStation also charges the mTablet when installed. When the mTablet is undocked, the peripheral ports on the mStation lose all functionality. There is no standalone functionality of the mStation.

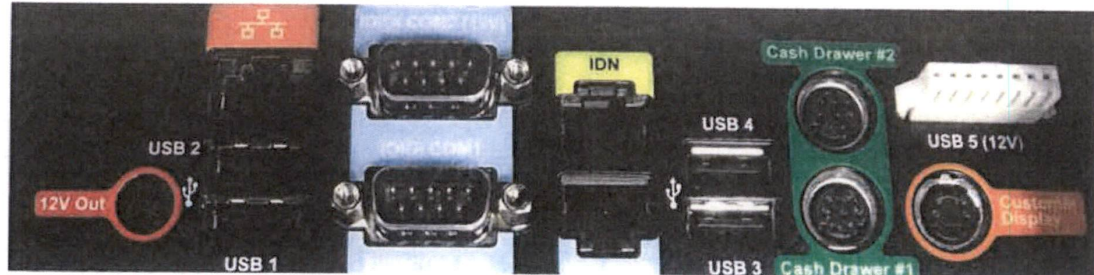
The mStation can be equipped with an optional high capacity battery. This is the same battery used by the MICROS Keyboard Workstation 270. Unlike the KW270, all mStation units are "battery ready". When equipped with a battery, the mStation can provide full portable operation of an mTablet and modular peripherals, unplugged from AC power.

A special Concessions configuration of the mTablet that removes wireless capabilities and the tablet's internal battery is available for situations where a removable, mobile tablet is not necessary. This configuration must be mounted within the mStation at all times, and either AC power or the mStation high capacity battery must be present to provide power to the device. It should be noted that there is **no field upgrade** to add wireless capabilities (802.11 or Bluetooth) to this configuration at a later time.

Peripheral Support

The mStation supports a wide variety of peripherals. The I/O panel features 2 MICROS Series 2 cash drawer ports, 10/100/1000BaseT network, 4 USB 2.0, 4 Serial ports (1 - RS-232 DB9 w/5/9/12V software selectable power, 1 RS-232 w/12V power, 1 IDN- switchable, 1 RJ45 serial), 1 MICROS customer display, 1 MICROS Powered USB (12V) ensure the mStation will accommodate the range of devices found in typical hospitality installations.

mWorkstation – Product Overview



The mStation I/O panel includes some significant changes from previous generations of MICROS products. The traditional MICROS cash drawer ports have been replaced with Series 2 ports. These new cash drawer ports are significantly smaller than the previous generation, and occupy less space on the I/O panel and circuit board. The Series 2 ports also feature an expanded number of connectors, allowing for future options on the cash drawer interface. An adapter cable to provide backwards compatibility to existing MICROS cash drawers is available.

In addition, the mStation features a single customer display port. This port is compatible with existing MICROS pole displays. The mStation integrated customer displays will also use this connector, replacing the integrated customer display connector found on the WS5/WS5A and PCWS 2015.

The 12V power output can be used to power external peripheral devices.

mWorkstation – Product Overview



Customer Displays

The MICROS 240x64 customer display has been redesigned to match the look of the mStation. The integrated display mounts directly to the mStation and has a fixed angle. The display connects to the single customer display port at the I/O panel. Alternatively the customer display port can be used for an external 240x64 pole display.



The redesigned pole display matches the styling of the mStation as well. The oval base of the pole features a screw hole pattern that aligns with the mounting locations on MICROS cash drawers. The pole display comes with a 3' cable and connects to the I/O panel of the mStation.

MICROS also offers an LCD pole display Y cable, allowing two LCD pole displays to be connected to the mStation simultaneously. This cable is useful in locations such as cafeteria lines, where customers may approach the cashier station from either side.

At this time there is only a single 18" pole display offering. Additional configurations may be offered in the future. Existing MICROS pole displays are compatible with the mStation.

Depot Maintainable

The fundamental goal of the mTablet and mStation is to provide the most reliable, trouble free operation of any device on the market, while delivering the performance and capability required by current applications. MICROS achieves this goal through the combination of many years of experience, thorough engineering research and design, and the selection of superior components.

The second goal is to reduce the impact of a hardware problem, in both cost and, more importantly, down time. It is a recognized fact that no device is impervious to failure. How quickly and easily a system can be repaired or replaced is an important consideration in the hardware selection process. The following tools allow the mTablet achieve its second goal.

Personality Module

The qualities that make the mTablet easy to install also make it ideal for depot maintenance. While the mTablet features a rugged design, accidents can and do happen. When it is necessary, employees with little or no previous training can replace the device. The mTablet retains MICROS' unique "Personality Module", making swapping mTablets as easy as replacing a flash memory card in a camera.

Each mTablet maintains identifying information on an integrated microSD card. Applications, registry data and offline totals are all stored in the Personality Module. Moving the personality module from one device to another effectively "swaps" the identity of the units.

If an mTablet fails, replacing it can be as simple as unboxing a new device, removing the microSD from the broken unit and installing it in the new one and powering up.

MICROS Factory Recovery

Like previous generations of MICROS hardware, the mTablet has incorporated MICROS Factory Recovery, which allows a technician to easily and quickly restore a device to its factory fresh, out of the box condition.

mWorkstation – Product Overview



The mTablet implements recovery through a password protected utility accessed either by pressing the power button for several seconds, or through a utility in the boot directory of the operating system. After activating factory recovery the mTablet will reload its original Windows Embedded Compact 7 operating system image, drivers, and CAL client, then format the microSD card, making the unit ready to be rotated into a depot inventory. If the integrated encrypting magnetic stripe reader has been set to encrypting mode, factory recovery will reset to the factory default of non-encrypting.

mTablet and mStation Technology

To meet design objectives, MICROS carefully selected each component of the mTablet. Special emphasis was placed on selecting components that are reliable, efficient, and available for many years to come.

The mTablet and mStation are designed around embedded and industrial components; those items identified by their manufacturer for long life cycle, superior specification and tightly controlled quality.

Processor

The latest Freescale processor, the i.MX6, was selected to meet the balance of high performance and low power consumption. This new processor is based on the ARM Cortex A9 architecture. The Freescale i.MX6 family of processors allows for a range of performance options. MICROS has selected a dual core, 1GHz model for use in the mTablet, which provides an excellent balance of performance and battery conservation.

Persistent Storage

The mTablet features two storage locations. A fixed, 4G eMMC flash device on the main board is configured in multiple partitions, and encompasses the "boot" partition as well as the recovery partitions.

The secondary storage device is the microSD flash card. The microSD is a removable file system storage device that was chosen for its reliability and relative low cost per GB. The microSD stores the tablet specific registry hive, as well as applications and off line totals.

The mTablet comes standard with the microSD installed and this device is **REQUIRED** for all MICROS applications. The removable nature of the microSD was also required to support the MICROS identity-swapping, *Personality Module* feature. The microSD card is located under the magnetic card reader assembly of the mTablet, which is secured by 4 Allen head screws. Each mTablet comes with a tool for removal of these screws as necessary.

Encryption Ready Magnetic Stripe Reader (MSR)

The integrated magnetic stripe reader features a three track titanium head, for excellent wear characteristics, allowing for more than 2 million reads. The head is also capable of providing bank card encryption at the swipe, providing a hardware level security to credit card acceptance.

The MSR encryption utilizes a Triple Data Encryption (TDES or 3DES) algorithm with a Derived Unique Key Per Transaction (DUKPT) key rotation algorithm. These techniques are industry standards to ensure secure encryption and key management.

The magnetic stripe reader is currently preinjected with a Merchantlink key and shipped in a non-encrypting mode. Additional keys will be available in the future. MICROS applications which support encryption at the swipe will enable encryption when POS operations begin. By encrypting track data at the swipe, the mTablet may



mWorkstation – Product Overview



allow customers to be eligible for reductions in PCI assessment. Customers should discuss the advantages of hardware level encryption with their assessor.

Double Molded Casework

The rear casework of the mTablet is made of highly durable PC-ABS plastic, and is constructed with a unique "double mold" process, which allows for the permanent integration of a soft gasket material around the perimeter of the case. This gasketing process makes the mTablet impervious to spills, rain, snow and even periods of time in standing liquids.

In addition to the gasketing around the casework, the I/O connections of the tablet are gasketed and electrically isolated, ensuring there are no issues if liquids come in contact with this area of the device.

Environmental Regulations

MICROS has been at the forefront of the move to more environmentally friendly design and manufacturing processes. MICROS workstations, including the mTablet and mStation, are designed to meet current and anticipated environmental regulations, including international requirements.

The mTablet and mStation, (as well as the PCWS 2015, WS5A, KW270, WS5, WS4 LX, WS4 and KWS4) meet the strict European Union Reduction of Hazardous Substance (RoHS) initiative, as well as the similar RoHS initiatives implemented by China.

In addition to meeting governmental regulations, MICROS has implemented other, smaller measures to minimize our products environmental impact, including:

- Continuing efforts to reduce power consumption while retaining high performance levels. MICROS workstations require on average half the energy of competitive products.
- Maintaining wide operating temperature ranges so that the POS equipment does not dictate room cooling or heating requirements.
- Screensavers with automatic backlight controls to greatly increase the life of LCD backlights.

mWorkstation – Product Overview



Operating System and Platform Software

Windows® Embedded Compact 7

The mTablet comes preinstalled with the latest embedded operating system from Microsoft, Windows Embedded Compact (EC) 7. By taking advantage of the modular nature of this embedded operating system, MICROS is able to tailor an OS image specifically for the mTablet. This ensures the image only contains components and drivers relevant to the hardware, dramatically reducing the OS size and resource requirements.



This strict control of the operating system also allows MICROS to improve the security of the mTablet. By choosing not to include an e-mail client, drive letters, scripting components, and other components often targeted by developers of malware, MICROS has greatly reduced the chances of the mTablet being afflicted by a virus, spyware or other destructive programs.

Utilizing Windows Embedded Compact 7 provides a number of other advantages to the mTablet, including:

Lower Operating System licensing cost – Windows EC7 is dramatically less expensive than Windows 7 or POSReady 7. Not only does this lower initial cost, but keeps future upgrade costs down as well.

Less Maintenance – Since the mTablet operating system is tightly controlled by MICROS, there is no need for end users to monitor and install upgrades and hot fixes issued by Microsoft on a weekly basis.

Registry Hive – Key to the functionality of the Personality Module, EC7 provides the ability to “hive” the registry on the microSD, while the operating system itself resides on the eMMC. This makes the registry portable, enabling the ability to swap it from a failed unit into a new mTablet.

Ability to Upgrade OS Remotely – The small footprint of the Windows EC7 operating system makes it possible for CAL to download and upgrade the operating system on an mTablet in a completely unattended manner.

Long Term Operating System Support – Microsoft has extended support for the EC7 operating system, ensuring at least 10 years of ongoing support.

mTablet Platform Software

The mTablet platform software consists not only of the Windows Embedded Compact 7 operating system, but also several other components that MICROS has developed specifically for the device. All of these components come pre-loaded on the mTablet. These software components include:

- A bootloader tailored for the mTablet, to provide pre-boot functionality such as the MICROS Factory Recovery and Auto Flash Upgrade.
- The OEM Abstraction Layer (OAL), essential software that allows the Windows Embedded Compact 7 OS to control the mTablet hardware.
- Hardware Device Drivers, specific to the unique capabilities of the mTablet and mStation.

mWorkstation – Product Overview



- mTablet API Driver, to allow application programs to easily access the various functions of the mTablet.
- A Diagnostic Utility, providing a resource to test the functionality and validate software versions of both the mTablet and mStation. The Diagnostic Utility provides the ability to test peripheral components such as the magnetic card reader, cash drawers, operator display, customer displays and more.

MICROS Client Application Loader

The mTablet comes pre-loaded with the MICROS Client Application Loader (CAL). The CAL is an intelligent software agent designed to remotely manage the software on the mTablet. The CAL is open in design and can be used with both MICROS and non-MICROS applications. The cost of the CAL is included in the cost of the mTablet.

mWorkstation – Product Overview



Orderable Parts

mTablet/mStation

The **mTablet** is available in two configurations. Each contains the following:

- mTablet
- 2 MICROS Employee Cards
- Allen key for MSR Assembly

The **mStation** is available in one configuration, which contains the following:

- mStation
- 3 MICROS Employee Cards
- US Power Cord
- 8 Cable Ties
- Allen Key for Battery Cover Security Screw

Part Number	Description
400962-002	mTablet, Standard Display, EC7
400962-000*	mTablet, Std Disp. No Battery, No Wireless. * <u>Must Use with mStation</u>
700351-031	AC Wall Adapter for mTablet Charging (not needed when mTablet used with mStation)
400374-020	mStation
700043-900	Battery for mStation

*Please note that this configuration is intended primarily for use as a Concessions terminal. It has no wireless network capability, including 802.11 or Bluetooth. There is no internal battery in this device. Field upgrades of this system **are not possible**.

Customer Displays

Part Number	Description
400380-001	Rear Customer Display (240x64)for mStation
700827-028	Pole Display , 240x64, 18" Pole
300107-030	Y Cable for 240x64 Pole Display

Cash Drawers

The mStation uses a new cash drawer connector which is not compatible with existing MICROS cash drawers, unless an adapter cable is utilized. The cash drawers below are the initial offerings featuring this new connector, additional drawers will be added in the future.

Part Number	Description
400018-226	Cash Drawer, Series 2 Connector, Dual Media Slot, 5 Bill, 5Coin w/Roll Coin Storage, 18"x16.7"x4.17. APG Series 4000
400018-233	Cash Drawer, Series 2 Connector, 13"x17", APG SERIES 4000 JD030-BL1317-B1A
300290-020	Cash Drawer Conversion Cable - Adapts MICROS Series 1 Cash Drawers to Series 2

mWorkstation – Product Overview



Serial Port Conversion Cables

Converts RJ45 Serial Port Connection to RS-232 DB9 Serial Connection

Part Number	Description
300319-102	Cable Assy, IDN to RS232, No Handshaking, RJ45 To DE-9P
300319-103	Cable Assy, RS232 with Handshaking, RJ45 to DE-9P

Warranty Information

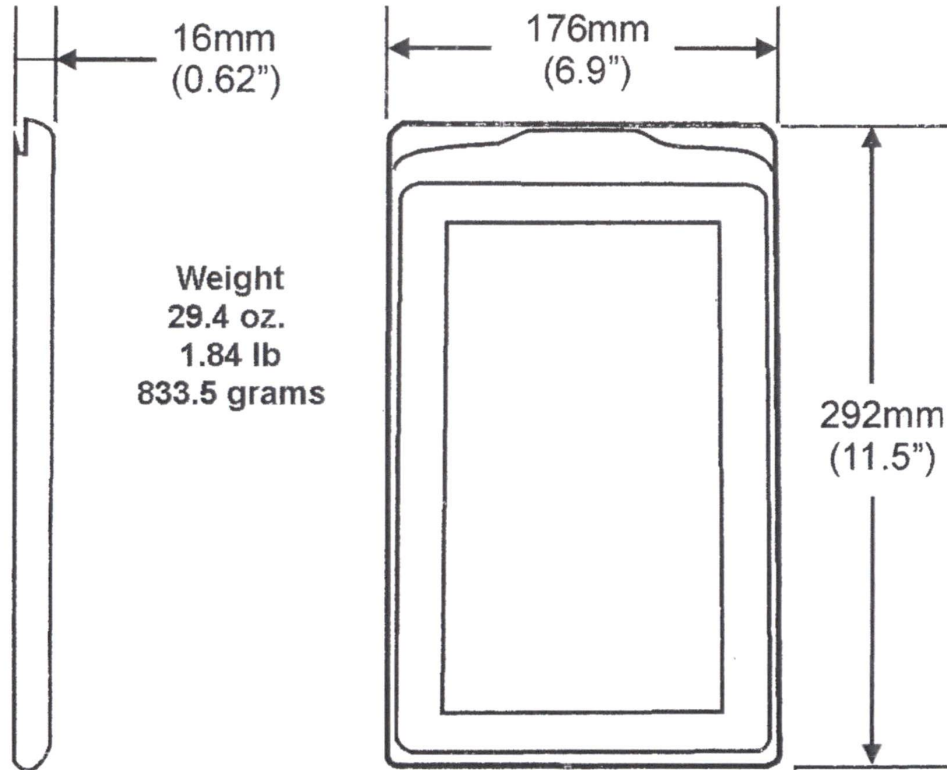
Direct End-user Warranty and Maintenance Information

The mTablet and mStation and customer displays are sold with a 1 year, "all zones", on-site, extended hours of coverage (9:00AM to 10:00PM, 365 days) warranty to MICROS Direct End-users.

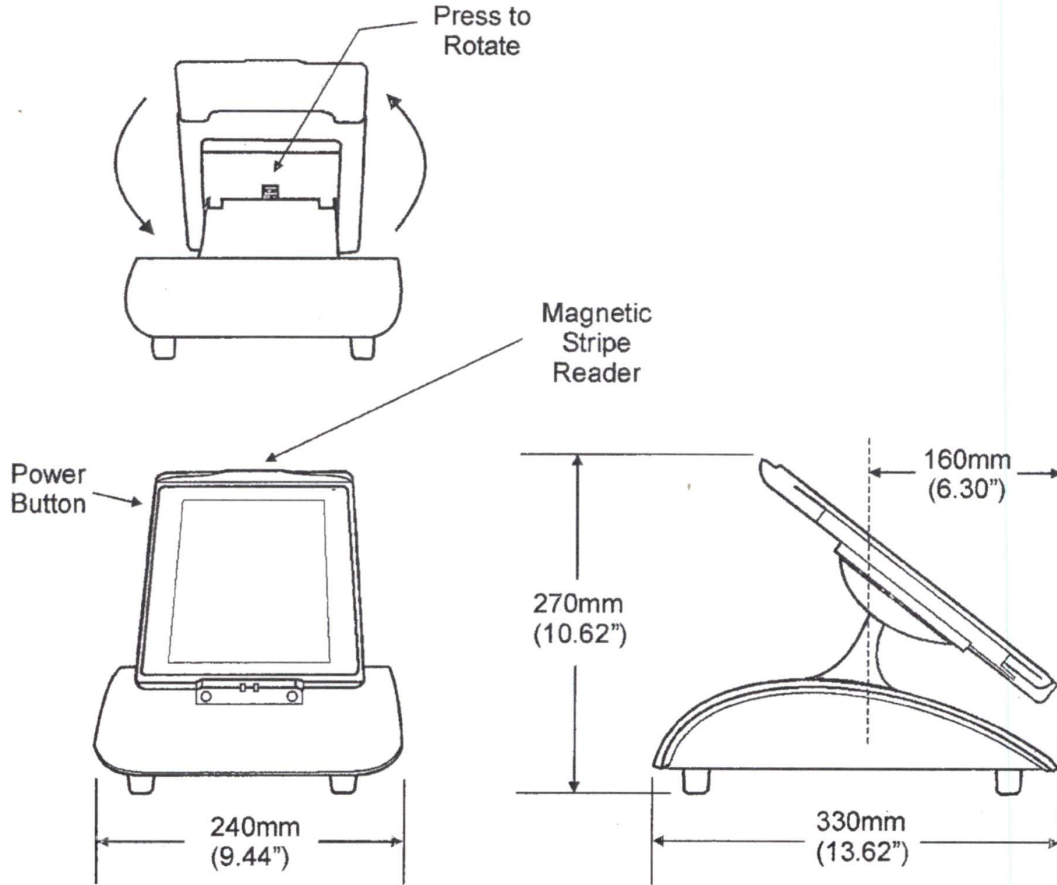
mWorkstation – Product Overview



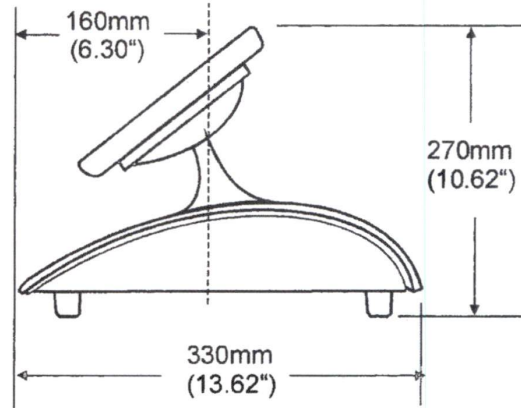
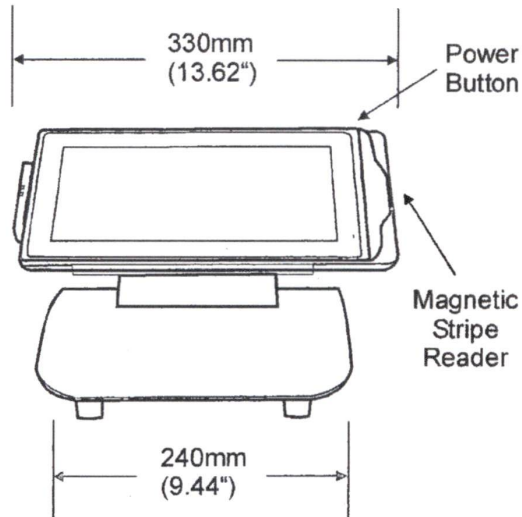
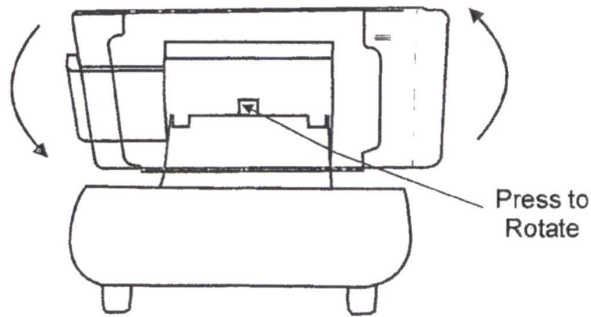
Appendix A - Dimensions



mWorkstation – Product Overview



mWorkstation – Product Overview



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 10 and Gregory J. Ahern, Sheriff

11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14

15 ARMIDA RUELAS; DE ANDRE
 16 EUGENE COX; BERT DAVIS;
 17 KATRISH JONES; JOSEPH
 18 MEBRAHTU; DAHRYL REYNOLDS;
 19 MONICA MASON; LUIS NUNEZ-
 20 ROMERO; and all others similarly
 21 situated,

22 Plaintiffs,

23 v.

24 COUNTY OF ALAMEDA; GREGORY
 25 J. AHERN, SHERIFF; Aramark
 26 Correctional Services, LLC, and DOES 1
 27 through 10,

28 Defendants

Case No. Case No. 4:19-CV-07637 JST

Hon. Jon S. Tigar

**NOTICE OF MOTION AND MOTION
 TO DISMISS PLAINTIFFS' FIRST
 AMENDED COMPLAINT FOR
 FAILURE TO STATE A CLAIM
 UPON WHICH RELIEF CAN BE
 GRANTED; MEMORANDUM OF
 POINTS AND AUTHORITIES**

**[Concurrently served with Request for
 Judicial Notice and Declaration of Joel
 Glaser]**

FRCP 12(b)(6)

Date: October 21, 2020

Time: 2:00 p.m.

Location: 1301 Clay Street,
 Oakland, CA 94612,
 Courtroom 6

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on October 21, 2020 at 2:00 p.m., or as soon
3 thereafter as the matter may be heard in the above-entitled court, located at 1301
4 Clay Street, Oakland, CA 94612, Courtroom 6 defendants the County of Alameda
5 and Gregory J. Ahern, Sheriff (collectively “Defendants”) will and hereby do, move
6 the court pursuant to FRCP 12(b)(6) for an order dismissing the First, Second,
7 Third, Fourth, Fifth, Sixth, Seventh, and Ninth claims asserted against the moving
8 Defendants in Plaintiffs’ First Amended Complaint (“FAC”) on the grounds the
9 FAC fails to state any claim for which relief may be granted.

10 The first claim for violation of the Thirteenth Amendment under 42 U.S.C. §
11 1983 fails to state a claim for which relief may be granted because, pursuant to
12 California law, prisoners in County Jails may be required to perform labor and are
13 not entitled to compensation for labor performed at the jail or for private contractors.
14 Therefore, Plaintiffs have not been deprived of any rights protected under the
15 Constitution.

16 Moreover, because the FAC fails to allege that Defendant personally deprived
17 any Plaintiff of any rights and Defendants cannot be held liable for violation of 42
18 U.S.C. § 1983 under the doctrine of respondeat superior. Therefore, the FAC fails to
19 state a first claim for which relief may be granted.

20 The second claim for relief for violation of the Trafficking Victims Protection
21 Act, 18 U.S.C. § 1589 (the “TVPA”) fails to state a claim for which relief may be
22 granted because Government entities, and by extension, elected officials, cannot be
23 held liable for violations of the TVPA.

24 The third claim for relief for violation of the equal protection clause of the
25 Fourteenth Amendment under 42 U.S.C. § 1983 fails to state a claim for which relief
26 may be granted because pursuant to California law, prisoners in County Jails are not
27 employees entitled to compensation for labor performed, and because no prisoners
28 received compensation for their labor, the Women Prisoner Subclass Plaintiffs were

1 not treated differently than male inmates due to their sex.

2 Moreover, because the FAC fails to allege either Defendant personally
3 deprived any Plaintiff of any rights, and Defendants cannot be held liable for
4 violation of 42 U.S.C. § 1983 under the doctrine of respondeat superior, the FAC
5 fails to state a third claim for which relief may be granted.

6 The fourth claim for relief, for failure to provide due process in violation of
7 the Fourteenth Amendment under 42 U.S.C § 1983 fails to state a claim for which
8 relief may be granted because prisoners in County Jails are not employees entitled to
9 compensation for labor performed, and thus, Plaintiffs were not deprived of any
10 property rights in the form of payment of wages. In addition, under California law
11 individuals have no property rights in wages due and owing and cannot be deprived
12 of said rights.

13 Moreover, because the FAC fails to allege either Defendant personally
14 deprived any Plaintiff of any rights, and Defendants cannot be held liable for
15 violation of 42 U.S.C. § 1983 under the doctrine of respondeat superior, the FAC
16 fails to state a fourth claim for which relief may be granted.

17 The fifth, sixth and seventh claims for relief for failure to pay wages, failure to
18 pay minimum wages and failure to pay overtime in violation of the California Labor
19 Code fail to state claims for which relief may be granted because prisoners in
20 County Jails are not employees and are not entitled to compensation for labor
21 performed.

22 All claims by Plaintiffs Joseph Mebrahtu, Monica Mason and Luis Nunez-
23 Romero, are barred due to the fact the court granted Defendants' motions to dismiss
24 these Plaintiffs' claims without leave to amend when it ruled on Defendants'
25 previous motions to dismiss.

26 Finally, any claim for relief by newly named Plaintiff Scott Abbey ("Abbey")
27 fails because the FAC fails to allege any facts entitling Abbey to relief on any claim
28 against any Defendant.

1 This motion is made pursuant to FRCP 12(b)(6) and on the grounds the
2 complaint fails to state any claim upon which relief can be granted.

3 This motion will be based on this Notice of Motion and Motion, the
4 Memorandum of Points and Authorities filed herewith, the concurrently filed request
5 for judicial notice, the pleadings and papers filed herein and upon such other
6 evidence or argument as may be presented to the Court at the time of the hearing.

7 **STATEMENT OF ISSUES TO BE DECIDED**

8 1. Whether, pursuant to Federal Rule of Civil Procedure 12(b)(6), the
9 First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Ninth Claims of the First
10 Amended Complaint against Defendants should be dismissed because Plaintiffs have
11 failed to state any claim upon which relief can be granted.

12 2. Whether the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and
13 Ninth Claims of the First Amended Complaint against Defendants should be
14 dismissed with prejudice because amendment would be futile.

15 3. Whether all claims by Plaintiffs Joseph Mebrahtu, Monica Mason and
16 Luis Nunez-Romero are barred based upon the Court’s previous order dismissing
17 these claims with prejudice.

18 4. Whether all claims by Plaintiff Scott Abbey should be dismissed for
19 failure to state any claim upon which relief can be granted.

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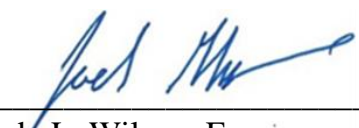
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DATED: August 14, 2020

SKANE WILCOX LLP

By:



Wendy L. Wilcox, Esq.
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Attorneys for Defendants the County of
Alameda and Gregory J. Ahern, Sheriff

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 RITA JAIL 4

Similarly, a 2020 California case has also held that county jail inmates involved
 in work programs are not employees for purposes of the California Fair
 Employment and Housing Act, Government Code § 12900 et seq. (“FEHA.”)
 See, *Talley v County of Fresno (Decided July 10, 2020)* --- Cal.Rptr.3d ----2020
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Federal Cases

974 F.2d 10

Alexander v. SARA, Inc.,
559 F. Supp. 42 (M.D.La.)(M.D.La.) 10

Ashcroft v. Iqbal,
556 U.S. 662, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009)(2009) 3, 17

Atieh v. Riordan
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Balistreri v. Pacifica Police Dept.,
901 F.2d 696 (9th Cir.1990) 3

Burleson v. California,
83 F.3d 311 (9th Cir. 1996) 10-11

Colwell v. Bannister
(9th Cir. 2014) 763 F.3d 1060 17

Coto Settlement v. Eisenberg
(9th Cir. 2010) 593 F3d 1031 4

Draper v. Rhay,
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Hale v Arizona,
993 F.2d 1387 (9th Cir. 1993) 9, 10

Hudgins v. Hart,
323 F.Supp. 898 (E.D.La. 1971) 10

Int'l Primate Protection League v. Administrators of Tulane,
500 U.S. 72–83 (1991)(1991) 13

Jones v. Williams,
(9th Cir. 2002) 297 F.3d 930 17

Mendaros v. JPMorgan Chase Bank, N.A., No. 14-cv-1260-JST,
2014 WL 3373447 (N.D. Cal. July 9, 2014) 6

Sims v. Parke Davis Co.,

1 334 F. Supp. 774 (E.D.Mich.)(E.D.Mich.) 10

2 *Skilstaf, Inc. v. CVS Caremark Corp*

3 (9th Cir. 2012) 669 F3d 1005 4

4 *Strom v. United States*

5 (9th Cir. 2011) 641 F3d 1051 3

6 *the FLSA. In Matherly v. Andrews*

7 FLSA. In Matherly v. Andrews (2017) 859 F.3d 264 11

8 *TVPA.” Nunag-Tanedo v. E. Baton Rouge Parish Sch. Bd., No. SACV 10-1172-AG*

9 (MLGx), 2011 WL 13153190 (C.D. Cal. May 12, 2011) 12

10 *United States v. Bly,*

11 510 F.3d 453–65 (2007)(2007) 13

12 *United States v. Mine Workers,*

13 330 U.S. 258 (1947)(1947) 13

14 *Villarreal v. Woodman,*

15 113 F.3d 202 (11th Cir. 1997) 10

16 *Von Saher v. Norton Simon Museum of Art at Pasadena*

17 (9th Cir. 2010) 592 F3d 954 4

18 *Watson v. Graves,*

19 909 F.2d 1549 (5th Cir. 1990) 10

20 *Watson, supra* 10

21 **Federal Statutes**

22 1 U.S.C. § 1 13

23 18 U.S.C. § 1589 ii

24 18 U.S.C. § 1595 12

25 18 U.S.C.S. § 4248 11

26 42 U.S.C § 1983 iii

27 42 U.S.C. § 1983 ii, iii, 14, 16, 17, 18

28 § 1595 12, 14

State Cases

1 *Cortez v. Purolator Air Filtration Products Co.*
2 (2000) 23 Cal.4th 163 (“Cortez”) 18

3 *Martinez v. Combs,*
4 49 Cal. 4th 35 (2010)(2010) 8

5 *Talley v County of Fresno*
6 (Decided July 10, 2020) --- Cal.Rptr.3d ----2020 12

7 *Voris v Lambert*
8 (2019) 7 Cal. 5th 1141 8, 18

9 **State Statutes**

10 Business & Professions Code § 17200, et seq. 18

11 Cal. Lab. Code § 3370 et seq. 8

12 Cal. Penal Code § 2717.2 5

13 Cal. Penal Code § 2717.8 5

14 Cal. Penal Code § 4000 et seq. 6, 15

15 Cal. Penal Code § 4019 7, 15

16 Cal. Penal Code §§ 2717.1-2717.9 5

17 Cal. Penal Code §§ 4000-4032 7, 15

18 Government Code § 12900 et seq. 12

19 Penal Code § 4005 7, 16

20 Section 5 5

21 Section 1194 4

22 Sections 201, and 218 4

23 § 11010 9

24 **Rules**

25 Federal Rule of Civil Procedure 12 iv, 3

26 FRE 201 4

27 Rule 12 3

28 **Other**

Cal. Code Regs., tit. 15, §§ 3040, 3041.2 9

1	Cal. Const. Art. 14, § 5(a)	6, 7, 15
2	Vanskike, supra	10
3	<i>Williams v. Navarro</i>	
4	(S.D. California, 2020) 2020 WL 619625	17
5	<i>Williams v. Navarro, supra</i>	18
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF FIRST AMENDED**
3 **COMPLAINT**

4 Plaintiffs, current and former inmates at the Santa Rita Jail (the “Jail”) in
5 Alameda County, have alleged various Federal and State law Claims against the
6 County of Alameda (the “County”) and Gregory J. Ahern, the Sheriff of Alameda
7 County (the “Sheriff”), Aramark Correctional Services, LLC and various doe
8 defendants. The First Amended Complaint (“FAC”) alleges the Jail is operated by
9 the Alameda County Sheriff’s Department. (FAC ¶21)

10 The FAC alleges the County contracted with Defendant Aramark Correctional
11 Services, LLC (“Aramark”) to allow Aramark to employ Jail inmates in the Jail’s
12 kitchen to provide food preparation services, scullery services, and perform general
13 cleaning and sanitation. (FAC ¶¶ 28, 45, 46) The FAC further alleges Aramark sells
14 the food prepared by the inmates to third parties at a profit. (FAC ¶38)

15 The FAC alleges Plaintiff were “required” to work without compensation
16 under threat by Sheriff’s Deputies of longer jail sentences and/or solitary
17 confinement, were not allowed to take time off when they were sick or injured
18 “sometimes caused by the unsafe conditions” in the kitchen. (FAC ¶34) It is also
19 alleged, that except for a brief period when male inmates “went on strike,” female
20 inmates were only scheduled to work at night on shorter shifts than their male
21 counterparts. (FAC ¶37)

22 The FAC further alleges that as a result of the contract between the County
23 and Aramark the County and the Sheriff knew or should have known that Aramark
24 was using inmate labor without compensation and thus the County and the Sheriff
25 knew they were providing uncompensated labor in violation of state and federal law.
26 (FAC ¶39)

27 Defendants the County and the Sheriff (“Defendants” or “Moving
28 Defendants”) hereby move to dismiss all claims for relief in the FAC for failure to

1 state a claim against Defendants for which relief may be granted.

2 **II. SUMMARY OF ARGUMENT**

3 1. Plaintiffs' first, third, fourth through seventh and ninth claims for relief
4 are based upon the legally unsupportable theory that, pursuant to
5 Proposition 139 and the California Labor Code, prisoners in the Santa Rita
6 County Jail are employees who are entitled to compensation for labor
7 performed at the jail for a private contractor, Aramark, under a contract
8 between Alameda County and Aramark.

9 However, neither proposition 139 nor the California Labor Code require
10 county jail inmates to be compensated for labor performed while incarcerated. The
11 overwhelming weight of authority holds just the opposite. Jail inmates are not
12 "employees" entitled to compensation for work performed while incarcerated.

13 Because Plaintiffs are not employees and are not entitled to compensation,
14 their claims they were forced to perform work for Defendants without pay in
15 violation of the thirteenth amendment's prohibition against involuntary servitude,
16 were denied equal protection of the law under the fourteenth amendment and
17 deprived of property rights without due process in violation of the fourteenth
18 amendment all fail.

19 For these same reasons, Plaintiffs' fifth, sixth and seventh claims for relief
20 for failure to pay wages, failure to pay minimum wages and failure to pay overtime
21 in violation of the California Labor Code all fail.

22 2. Plaintiffs' second claim for violation of the Trafficking Victims Protection
23 Act, 18 U.S.C. § 1589 (the "TVPA") fails to state a claim for which relief
24 may be granted because Government entities, and by extension, elected
25 officials, cannot be held liable for violations of the TVPA.

26 3. All claims by Plaintiffs Joseph Mebrahtu, Monica Mason and Luis Nunez-
27 Romero, except their claim under the Bane Act are barred due to the fact
28 the court granted Defendants' motions to dismiss these Plaintiffs' claims

1 without leave to amend when it ruled on Defendants' previous motions to
2 dismiss.

3 4. Newly named Plaintiff Scott Abbey's ("Abbey") claims fail because the
4 FAC fails to allege any facts entitling Abbey to any relief on any claim
5 against any Defendant.

6 For these reasons, and as set forth more fully below, the court should grant
7 this motion and dismiss all of the Claims asserted in Plaintiffs' complaint. In the
8 alternative, the Court should dismiss second and fifth through tenth claims for the
9 reasons stated herein.

10 **III. BASIC PLEADING STANDARDS**

11 **A. FRCP Rule 12(b)(6) Standards.**

12 A Rule 12(b)(6) motion is similar to the common law general demurrer—i.e.,
13 it tests the legal sufficiency of the claim or claims stated in the complaint. *Strom v.*
14 *United States* (9th Cir. 2011) 641 F3d 1051, 1067. Rule 12(b) provides that "a party
15 may assert the following defenses by motion: ... failure to state a claim upon which
16 relief can be granted." Fed. R. Civ. P. 12(b)(6). "The purpose of a Rule 12(b)(6)
17 motion is to test the legal sufficiency of the claim or claims stated in the complaint."

18 To survive a motion to dismiss, a complaint must contain sufficient factual
19 matter, accepted as true, to state a claim to relief that is plausible on its face."
20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009)
21 (internal quotation marks omitted.) The facially plausible standard "is a screening
22 mechanism designed to weed out cases that do not warrant either discovery or trial."
23 *Atieh v. Riordan* (1st Cir. 2013) 727 F3d 73, 76.

24 A claim can be dismissed under Rule 12(b)(6) "based on the lack of a
25 cognizable legal theory or the absence of sufficient facts alleged under a cognizable
26 legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.1990)
27 (citation omitted).

28 Generally, the court cannot consider material outside the complaint except for

1 facts susceptible to judicial notice. *Coto Settlement v. Eisenberg* (9th Cir. 2010) 593
2 F3d 1031, 1038. A matter that is properly the subject of judicial notice (see FRE
3 201) may be considered along with the complaint when deciding a motion to dismiss
4 for failure to state a claim. *Skilstaf, Inc. v. CVS Caremark Corp* (9th Cir. 2012) 669
5 F3d 1005, 1016. The court need not accept as true allegations that contradict facts
6 which may be judicially noticed by the court. *Von Saher v. Norton Simon Museum of*
7 *Art at Pasadena* (9th Cir. 2010) 592 F3d 954, 960.

8 ARGUMENT

9 IV. PLAINTIFFS' FIFTH, SIXTH AND SEVENTH CLAIMS FOR 10 RELIEF FAIL BECAUSE PLAINTIFFS ARE NOT EMPLOYEES 11 AND ARE NOT ENTITLED TO COMPENSATION FOR WORK 12 PERFORMED AT THE SANTA RITA JAIL

13 Plaintiffs are, or were, inmates in the Santa Rita jail and/or pre-trial detainees
14 (hereinafter collectively referred to as "inmates"). The Santa Rita jail is owned by
15 the County of Alameda ("the County") and operated by the Alameda County
16 Sheriff's office. Inmates work in the jail kitchen providing food preparation services
17 to Aramark Correctional Services, LLC ("Aramark") pursuant to a contract with the
18 County.

19 Plaintiffs allege they were forced to work in the jail kitchen without
20 compensation and under threat of punishment by Alameda Sheriff's deputies. As
21 result, Plaintiffs allege they were not paid wages owed, were not paid minimum
22 wages and were not paid overtime in violation of various provisions of the
23 California Labor Code.

24 Plaintiffs assert three claims (the Fifth through Seventh Claims) under the
25 California Labor Code against the Defendants: (1) failure to pay wages in violation
26 of Sections 201, 202, and 218; (2) failure to pay minimum wage in violation of
27 Section 1194; (3) failure to pay overtime premium wages in violation of Section
28 1194.

1 However, Plaintiffs’ claims under the Labor Code all fail because neither
2 Proposition 139, the California Penal Code nor the California Labor Code require
3 that inmates of County Jails be compensated for their labor. Further, the great weight
4 of authority in California and across the country holds that prisoners are not
5 employees and are not entitled to compensation for labor performed while
6 incarcerated.

7 **1. Plaintiffs Are Not Entitled To Compensation under Proposition 139**

8 Plaintiffs allege that they are entitled to wages pursuant to Proposition 139.
9 (*See* FAC. ¶¶ 18-19.) Plaintiffs misapprehend Proposition 139. Proposition 139
10 authorized public-private inmate labor programs in California and provides that
11 inmates in **state prisons** receive compensation for such labor. (Emphasis supplied)

12 However, Proposition 139 left it up to individual municipalities to decide
13 what compensation, if any, to provide for inmates held in county jails. Proposition
14 139 amended the California Constitution to add Article 14, Section 5, which
15 authorized state prisons and county jails to enter into contracts with private
16 companies to use inmate labor. *See* Prison Inmate Labor - Tax Credit - Initiative
17 Constitutional Amendment and Statute, 1990 Cal. Legis. Serv. Prop. 139 (West);
18 Declaration of Joel Glaser (“Glaser Decl.”) Exhibit A. With respect to the payment
19 of wages, however, Proposition 139 only amended Part 3, Title 1 of the Penal Code
20 relating to state prisons. *See* Cal. Penal Code §§ 2717.1-2717.9.

21 Specifically, Proposition 139 added a provision to Title 1 of the Penal Code
22 “establishing joint venture programs within state prisons to allow joint venture
23 employers to employ inmates confined in the state prison system for the purpose of
24 producing goods or services.” *See* Cal. Penal Code § 2717.2. Another provision
25 added to Title 1 addressed “the compensation of prisoners engaged in programs
26 pursuant to contract between the Department of Corrections and joint venture
27 employers...” *See* Cal. Penal Code § 2717.8. That provision, referenced in the FAC
28 (at ¶¶18, 19), thus applies only to state prisoners. *See Id.*

1 Proposition 139 added no corresponding provision for compensation to Title 4
2 of the Penal Code relating to county jails. Proposition 139 instead provided that
3 inmate work programs between county jails and private businesses are to be
4 governed by local ordinances. See Cal. Const. Art. 14, § 5(a) (providing that “county
5 jail programs” providing for the use of inmate labor “shall be operated and
6 implemented” pursuant to “local ordinances.”). It is clear that Proposition 139 was
7 never intended to apply to county jail inmates.

8 The FAC does not allege, nor are Defendants informed that, Alameda County
9 has adopted any ordinance or other provision in its administrative code requiring that
10 wages be paid to county jail inmates who perform work pursuant to contracts with
11 private companies.

12 Therefore, Plaintiffs are not entitled to compensation for the work alleged in
13 the FAC, and their wage-based claims fail at the threshold and must be dismissed as
14 a matter of law. See, *Mendaros v. JPMorgan Chase Bank, N.A.*, No. 14-cv-1260-
15 JST, 2014 WL 3373447, at *5 (N.D. Cal. July 9, 2014) (dismissing claim with
16 prejudice where “defect cannot be cured by amendment”).

17 **2. In Adopting the Provisions of the Penal Code Pertaining to**
18 **Payments to Inmates for Labor Performed While Incarcerated the**
19 **California Legislature Enacted A Comprehensive Statutory**
20 **Scheme That Supplants Any Common Law Right to Compensation**
21 **for County Jail Inmates.**

22 Rather than being subject to common law precepts pertaining to the right to
23 compensation, any right of the Plaintiffs to compensation is regulated by Article 14,
24 Section 5 of the California Constitution, the California Penal Code and local
25 ordinance. More specifically, as inmates of Santa Rita jail, Plaintiffs’ conditions of
26 confinement are governed by Title 4 of the California Penal Code regarding County
27 Jails. See Cal. Penal Code § 4000 *et seq.*

28 Article 14, Section 5 of the California Constitution permits county Sheriffs to

1 enter into contracts with for-profit organizations for the purpose of conducting
2 programs using inmate labor. *See* Cal. Const. Art. 14, § 5(a). Neither the California
3 Constitution nor Title 4 of the Penal Code provides any rights for inmates of county
4 jails to receive wages for work performed while incarcerated. *See* Cal. Penal Code
5 §§ 4000-4032.

6 The legislature specifically addressed the availability of compensation of
7 county jail inmates involved in work programs through the use of credits and
8 reductions in sentences in reward for satisfactorily performing labor as assigned by
9 the Sheriff. Cal. Penal Code § 4019(b) provides in relevant part that when a prisoner
10 is confined in or committed to a county jail:

11 “...for each four-day period in which a prisoner is confined in or
12 committed to a facility as specified in this section, one day shall be
13 deducted from the prisoner's period of confinement unless it appears
14 by the record that the prisoner has refused to satisfactorily perform
15 labor as assigned by the sheriff...”

16 If the legislature had intended to require that inmates of county jails be
17 otherwise compensated for their labor, it could have done so. Instead the legislature
18 chose to reward inmates for their labor through reductions in sentences.

19 The same reasoning applies to detainees awaiting immigration proceedings.
20 The Penal Code provides that “the sheriff shall receive, and keep in the county jail,
21 any prisoner committed thereto by process or order issued under the authority of the
22 United States...” *Penal Code § 4005(a)* Such prisoners would necessarily include
23 detainees awaiting immigration proceedings, such as Plaintiff Luis Nunez-Romero.
24 If the legislature had intended to compensate detainees awaiting immigration
25 proceedings for their labor, it could have done so.

26 The fact that the legislature, in enacting the Penal Code, chose not to require
27 that county jail inmates be paid wages for their labor mitigates against any claim the
28 Plaintiffs herein are entitled to wages for working in the jail’s kitchen under the

1 contract with Aramark.

2 Where there is a comprehensive statutory scheme regulating a Plaintiff's
3 claims, any common law remedies are supplanted. The Legislature has repeatedly
4 acted to supplement or replace common law remedies with statutory remedies.

5 For example, the primary remedy under California law for nonpayment of
6 wages to non-incarcerated individuals is the Labor Code, which contains a complex
7 scheme for compensation of workers, deterrence of abusive employer practices, and
8 enforcement of wage judgments. See, *Voris v Lambert* (2019) 7 Cal. 5th 1141, 1157.
9 However, as demonstrated at part 3, *infra*, the Labor Code does not apply to
10 incarcerated persons.

11 The California legislature enacted specific provisions of the Penal Code to
12 deal with the issue of payment to inmates performing labor while incarcerated.
13 Moreover, in response to, and in conjunction with, Proposition 139, the legislature
14 enacted a comprehensive statutory scheme that dictates whether inmates of state and
15 county jails must be paid for labor performed while incarcerated, the amount
16 inmates must be paid and the authority and procedures for providing for
17 compensation of county jail inmates.

18 In light of the comprehensive statutory scheme regulating the payment of
19 inmates for labor performed while incarcerated, common law authority regarding the
20 right to compensation by non-incarcerated workers, such as *Martinez v. Combs*, 49
21 Cal. 4th 35 (2010), is not relevant or controlling.

22 **3. Plaintiffs Are Not Entitled to Compensation under the Labor Code**

23 The Labor Code also does not create any right to compensation for inmates of
24 state prisons or county jails. While inmates may be protected by *workers'*
25 *compensation* under the Labor Code this is the *only* section of the Labor Code that
26 addresses inmates. See Cal. Lab. Code § 3370 *et seq.* In fact, the Labor Code
27 otherwise conflicts with provisions of the Penal Code, including provisions allowing
28 state prison inmates to be paid below minimum wage and provisions classifying paid

1 inmate work as a privilege, rather than a right. *See, e.g.*, Cal. Code Regs., tit. 15, §§
2 3040, 3041.2.

3 Neither the Labor Code nor the Penal Code attempts to reconcile these
4 conflicting standards, meaning that the Labor Code applies exclusively to non-
5 incarcerated persons, and the Penal Code applies exclusively to incarcerated persons,
6 except in the sole context of workers' compensation laws.

7 In sum, Plaintiffs are not entitled to compensation as a matter of law. This
8 conclusion extinguishes all of their claims under the Labor Code. Indeed, if prison
9 inmates had been entitled to wages under the Labor Code, there would have been no
10 need for Proposition 139 in the first place. And while Proposition 139 amended the
11 Penal Code to provide compensation for state prisoners working in public-private
12 programs, the issue of compensation for county prisoners was left to local
13 authorities.

14 Plaintiffs cite to no applicable Alameda County ordinance providing for
15 compensation to inmates of the Santa Rita jail because there is none. Thus, Plaintiffs
16 are no more entitled to payment for performing duties in the kitchen than they would
17 be for performing duties elsewhere at the Santa Rita jail. The Fifth, Sixth, and
18 Seventh Claims should therefore be dismissed with prejudice.

19 Finally, even if the court were to find the Plaintiffs are employees of the
20 County, which they are not, the seventh cause of action for unpaid overtime fails as
21 a matter of law. The regulations enacted under the Labor Code exempt employees of
22 the State or any political subdivision thereof, including any city, county, or special
23 district from the overtime requirements of the Labor Code. *See, 8 CCR § 11010.*

24 **4. The Great Weight of Authority is That Prisoners Are Not Employees**
25 **Entitled to Compensation**

26 In *Hale v Arizona*, 993 F.2d 1387 (9th Cir. 1993) the Ninth Circuit, in an *en*
27 *banc* decision, held that there is no employer-employee relationship between
28 prisoners in a state prison and the state under the FLSA. In holding that the FLSA

1 does not apply to inmates performing mandatory hard labor, the court concluded that
2 "the economic reality of the relationship between the worker and the entity for which
3 work was performed lies in the relationship between prison and prisoner. It is
4 penological, not pecuniary." *Id.* at 1395.

5 The Court in *Hale* was influenced by the fact that no other circuit has
6 construed the relationship between a prison and a prisoner who works on a program
7 structured by the prison as an employment relationship within the FLSA. Citing
8 *Vanskike; Alexander v. SARA, Inc.*, 559 F. Supp. 42 (M.D.La.) (Labor in
9 plasmapheresis program run by outside company belonged to institution), aff'd, 721
10 F.2d 149 (5th Cir. 1983); *Sims v. Parke Davis Co.*, 334 F. Supp. 774 (E.D.Mich.)
11 (work assignments up to prison), aff'd, 453 F.2d 1259 (6th Cir. 1971), cert. denied,
12 405 U.S. 978, 92 S.Ct. 1196, 31 L.Ed.2d 254 (1972); *Hudgins v. Hart*, 323 F.Supp.
13 898 (E.D.La. 1971) (prisoner worked at plasma treatment center pursuant to
14 sentence to hard labor); *Watson v. Graves*, 909 F.2d 1549 (5th Cir. 1990).

15 The Court in *Hale* noted this result follows because, as the Fifth Circuit put it
16 in *Watson, supra*, "the inmates' labor d[oes] indeed 'belong to the institution' and
17 c[an] be disposed of legitimately within the discretion of the correction facility or
18 agency." 909 F.2d at 1555. See, *Villarreal v. Woodman*, 113 F.3d 202, 204 (11th
19 Cir. 1997)(finding that pretrial detainees working under the direction of corrections
20 officers for the benefit of the correctional facility were not employees under the
21 FLSA).

22 As noted in *Hale*, in *Vanskike, supra*, the Seventh Circuit stated:

23 "Prisoners are essentially taken out of the national economy upon
24 incarceration. When they are assigned work within the prison for
25 purposes of training and rehabilitation, they have not contracted with
26 the government to become its employees. Rather, they are working as
27 part of their sentences of incarceration."

28 974 F.2d at 812; See, *Burleson v. California*, 83 F.3d 311, 313-315 (9th Cir. 1996)

1 (prison inmates are not employees entitled to minimum wage under FLSA.)

2 Similarly, the Fourth Circuit has held that detainees in prisons operated by the
3 Federal Bureau of Prisons (the "BOP") are not employees within the meaning of the
4 FLSA. In *Matherly v. Andrews* (2017) 859 F.3d 264, the Plaintiff, a detainee in a
5 state prison who was civilly committed under the Adam Walsh Child Protection and
6 Safety Act of 2006, 18 U.S.C.S. § 4248, brought an action for unpaid minimum
7 wages against the BOP based upon his employment in a prison work program that
8 only paid him 29 cents per hour.

9 The Court ruled the FLSA does not apply to inmates participating in prison
10 work programs. That decision is based on three considerations: (1) the inmates work
11 not to turn profits for their supposed employer, but rather as a means of
12 rehabilitation and job training; (2) there is no bargained-for exchange of labor for
13 mutual economic gain that occurs in a true employer-employee relationship; and (3)
14 the FLSA's purpose to allow for workers to maintain a standard of living necessary
15 for health, efficiency, and general well-being counseled against applying the FLSA
16 to inmates because while incarcerated they have no such needs since the prison
17 provides them with the food, shelter, and clothing that employees would have to
18 purchase in a true employment situation.

19 The same reasoning applies here. The Plaintiffs work not to turn profits for the
20 Jail and the Sheriff but rather as a means of rehabilitation and job training. There is
21 no bargained-for exchange of labor for mutual economic gain that occurs in a true
22 employer-employee relationship, and because the Jail provides them with the food,
23 shelter, and clothing that employees would have to purchase in a true employment
24 situation, there is no need to pay them minimum wage to maintain a standard of
25 living necessary for health, efficiency, and general well-being that the minimum
26 wage is intended to provide.

27 Similarly, a 2020 California case has also held that county jail inmates
28 involved in work programs are not employees for purposes of the California Fair

1 Employment and Housing Act, Government Code § 12900 et seq. (“FEHA.”) See,
2 *Talley v County of Fresno (Decided July 10, 2020)* --- Cal.Rptr.3d ----2020 WL
3 3888095.

4 Defendants have not found a single case which holds that county jail inmates
5 involved in jail work programs, whether public or in partnership with private
6 enterprise, are employees and/or are entitled to wages for labor performed. Because
7 there is no statute, ordinance or case that holds that the County of Alameda agreed to
8 be subjected to the California Labor Code wage and hour requirements, this Court
9 should respect the separation of powers and prior precedent and find that plaintiffs
10 are not entitled to wages under the Labor Code.

11 **V. PLAINTIFFS’ CLAIMS UNDER TVPA FAIL BECAUSE THE TVPA**
12 **IS NOT APPLICABLE TO PUBLIC ENTITIES**

13 “An individual who is a victim of a violation of the TVPA may bring a civil
14 action against the perpetrator (or whoever knowingly benefits, financially or by
15 receiving anything of value from participation in a venture which that person knew
16 or should have known has engaged in an act ...” that violates the TVPA. 18 U.S.C. §
17 1595.

18 Courts have squarely held that “neither the term ‘perpetrator’ nor the term
19 ‘whoever’ [under § 1595(a), authorizing a civil remedy for violations of § 1589]
20 extend to governmental entities under the TVPA.” *Nunag-Tanedo v. E. Baton Rouge*
21 *Parish Sch. Bd.*, No. SACV 10-1172-AG (MLGx), 2011 WL 13153190, at *12
22 (C.D. Cal. May 12, 2011) (“[N]either the term ‘perpetrator’ nor the term ‘whoever’
23 [under § 1595(a), authorizing a civil remedy for violations of § 1589] extend to
24 governmental entities under the TVPA, and therefore Defendant cannot be liable for
25 violations of the TVPA.”).

26 As noted, § 1595 allows liability against “whoever knowingly benefits” from
27 a TVPA violation. Under the Dictionary Act, “the words ‘person’ and ‘whoever’
28 include corporations, companies, associations, firms, partnerships, societies, and

1 joint stock companies, as well as individuals.” 1 U.S.C. § 1. Notably absent from
2 this list is any form of a governmental entity.

3 Regarding this conspicuous absence, the Supreme Court has held that
4 “[i]n common usage [the term person] does not include the sovereign,
5 and statutes employing it will ordinarily not be construed to do so.
6 Congress made express provision, R.S. s 1, 1 U.S.C. s 1, 1 U.S.C.A. s
7 1, for the term to extend to partnerships and corporations, and in s 13
8 of the Act itself for it to extend to associations. The absence of any
9 comparable provision extending the term to sovereign governments
10 implies that Congress did not desire the term to extend to them.”

11 *United States v. Mine Workers*, 330 U.S. 258, 275 (1947). (“*Mine Workers*”)

12 Shortly after *Mine Workers*, “Congress appeared to ratify this position when it
13 amended the Act by expanding the term ‘person’ to include numerous other legal
14 entities but declining to include sovereign entities as ‘persons.” *United States v. Bly*,
15 510 F.3d 453, 464–65 (2007) (Motz, J. Concurring) (citing Act of June 25, 1948, 80
16 Cong. ch. 645, sec. 6, 62 Stat. 859; *Ankenbrandt v. Richards*, 504 U.S. 689, 700–01
17 (1992) (presuming that, when Congress makes other substantive changes to a statute
18 but does not indicate an intent to change a prior construction, Congress has
19 adopted that interpretation).

20 Thus, “in common usage, the term ‘person’ [or whoever] does not include the
21 sovereign, and statutes employing the word are ordinarily construed to exclude it.”
22 *Int’l Primate Protection League v. Administrators of Tulane*, 500 U.S. 72, 82–83
23 (1991) (internal brackets omitted).

24 Given Congress's omission of governmental entities when defining “person”
25 and “whoever” in 1 U.S.C. § 1, and given Congress's addition of governmental
26 entities to its definition of “person” in other statutes, Congress has shown that
27 governmental entities are generally excluded from the definition of “persons” or
28 “whoever.” See 1 U.S.C. § 1. And since the TVPA extends civil liability to

1 “whoever knowingly benefits ...,” liability against a governmental entity is precluded
2 under the TVPA unless Congress has shown an intent to allow such liability.

3 But no such intent can be found in the TVPA. Most notably, Congress
4 provided no separate definitions for “person,” or “whoever” anywhere in the TVPA
5 that shows an extension of liability to governmental entities. Further, the statutes and
6 legislative history of the TVPA appear to lack any other persuasive evidence that
7 Congress intended to extend liability to governmental entities. Thus, the term
8 “whoever” in § 1595 does not include governmental entities.

9 Similarly, although “perpetrator” liability under § 1595 does allow civil
10 liability against entities, a review of the TVPA makes it clear that “perpetrator”
11 liability does not extend to governmental entities. Notably, the term “whoever” is
12 consistently used in TVPA statutes outside of § 1595 when explaining who may be
13 liable for TVPA violations. E.g., § 1589 (“Whoever knowingly provides or obtains
14 the labor or services of a person ...”); § 1590 (Whoever knowingly recruits, harbors,
15 transports, provides, or obtains ...”); § 1591 (similar). And as stated, “whoever” does
16 not include governmental entities under the TVPA.

17 Nothing in the TVPA shows that Congress used the term “perpetrator” in §
18 1595 to extend liability to governmental entities, especially when Congress could
19 have clearly stated its intent to do so. Thus, although § 1595 states that it allows
20 liability against a “perpetrator,” the various TVPA statutes confirm that liability for
21 violation of the TVPA still does not extend to governmental entities.

22 **VI. PLAINTIFFS’ FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF**
23 **FAIL BECAUSE THEY ARE BASED UPON THE UNTENABLE**
24 **CLAIM THAT PLAINTIFFS ARE ENTITLED TO COMPENSATION**
25 **FOR WORK PERFORMED AT THE JAIL**

26 1. Plaintiffs’ first claim for violation of 42 U.S.C. §1983 is based upon the
27 claim they were forced to perform work for defendants without pay. Regardless of
28 whether they are pre-trial detainees, have been convicted or are being detained on

1 immigration holds, Plaintiffs are not employees and have no right to compensation
2 for work performed in the Santa Rita Jail. This is so whether the work is performed
3 as part of Plaintiffs' usual housekeeping duties or in the jail's kitchen under the
4 contract with Aramark.

5 As inmates of Santa Rita jail, whether a pre-trial detainee or sentenced
6 convict, Plaintiffs' conditions of confinement are governed by Title 4 of the
7 California Penal Code regarding County Jails. *See* Cal. Penal Code § 4000 *et seq.*

8 Article 14, Section 5 of the California Constitution permits county Sheriffs to
9 enter into contracts with for-profit organizations for the purpose of conducting
10 programs using inmate labor. *See* Cal. Const. Art. 14, § 5(a). Neither the California
11 Constitution nor Title 4 of the Penal Code provides any rights for inmates of county
12 jails to receive wages for work performed while incarcerated. *See* Cal. Penal Code
13 §§ 4000-4032.

14 The legislature specifically addressed the availability of compensation of
15 county jail inmates involved in work programs through the use of credits and
16 reductions in sentences in reward for satisfactorily performing labor as assigned by
17 the Sheriff. Cal. Penal Code § 4019(b) provides in relevant part that when a prisoner
18 is confined in or committed to a county jail:

19 "...for each four-day period in which a prisoner is confined in or
20 committed to a facility as specified in this section, one day shall be
21 deducted from the prisoner's period of confinement unless it appears
22 by the record that the prisoner has refused to satisfactorily perform
23 labor as assigned by the sheriff..."

24 If the legislature had intended to require that inmates of county jails be
25 otherwise compensated for their labor, it could have done so. Instead the legislature
26 chose to reward inmates for their labor through reductions in sentences.

27 The same reasoning applies to detainees awaiting immigration proceedings.
28 The Penal Code provides that "the sheriff shall receive, and keep in the county jail,

1 any prisoner committed thereto by process or order issued under the authority of the
2 United States...” *Penal Code § 4005(a)* Such prisoners would necessarily include
3 detainees awaiting immigration proceedings, such as Plaintiff Luis Nunez-Romero.
4 If the legislature had intended to compensate detainees awaiting immigration
5 proceedings for their labor, it could have done so.

6 The fact that the legislature, in enacting both the Labor Code and the Penal
7 Code, chose not to require that county jail inmates be paid wages for their labor
8 mitigates against any claim the Plaintiffs herein are entitled to wages for working in
9 the jail’s kitchen under the contract with Aramark. Because the Plaintiffs are not
10 entitled to compensation for their labor, like convicted criminals, not protected by
11 the Thirteenth Amendment against involuntary servitude. See, See *Draper v. Rhay*,
12 315 F.2d 193, 197 (9th Cir.), cert. denied, 375 U.S. 915, 84 S.Ct. 214, 11 L.Ed.2d
13 153 (1963). As such, Defendants cannot be liable for violation of the Thirteenth
14 Amendment under 42 U.S.C. § 1983.

15 2. Plaintiffs’ third claim for violation of 42 U.S.C. §1983 is based upon
16 the claim Female plaintiffs and members of the putative subclass have been denied
17 the opportunity to earn compensation and out of cell time based solely on their sex.

18 Addressing the claim regarding the purported denial of out of cell time, the
19 FAC contains only the conclusory allegation that “[o]ut of cell time is crucial for the
20 physical and mental health of prisoners.” (FAC ¶82) However, the FAC does not
21 allege the denial of out of cell time caused any plaintiff any injury. Under 42 U.S.C.
22 § 1983 a plaintiff must suffer some cognizable injury due to the deprivation of some
23 constitutional right. Theoretical injury or the generic statement that out of cell time
24 is crucial for the physical and mental health of prisoners is wholly insufficient to
25 state a claim for injury under 42 U.S.C. § 1983.

26 The claims that Female plaintiffs and members of the putative subclass have
27 been denied compensation based upon sex also fails as a matter of law. Plaintiffs
28 specially allege that *no* inmates were compensated for work performed in the jail

1 kitchen. Therefore, the Female plaintiffs and members of the putative subclass were
2 treated exactly the same as the male inmates who also received no compensation.

3 The theoretical claim that Female plaintiffs and members of the putative
4 subclass were deprived of the opportunity to earn compensation they *should* have
5 been paid fails to state a plausible claim for relief. Under 42 U.S.C. § 1983 a
6 plaintiff must suffer some cognizable injury due to the deprivation of some
7 constitutional right. The alleged deprivation of the right to earn compensation that
8 was never paid alleges at best a theoretical or inchoate injury and fails to state a
9 claim under 42 U.S.C. § 1983.

10 Moreover, in order to state a claim for relief under 42 U.S.C. § 1983,
11 Plaintiffs must allege each defendant personally participated in the deprivation of his
12 or her constitutional rights. *Ashcroft v. Iqbal* (2009) 556 U.S. 662 at 673; *Colwell v.*
13 *Bannister* (9th Cir. 2014) 763 F.3d 1060, 1070. Liability may not be imposed on
14 supervisory personnel for the acts or omissions of their subordinates under a theory
15 of respondeat superior. *Jones v. Williams*, (9th Cir. 2002) 297 F.3d 930, 934 (“There
16 is no respondeat superior liability under section 1983.”) See, also *Williams v.*
17 *Navarro* (S.D. California, 2020) 2020 WL 619625.

18 No facts are alleged that suggest the Sherriff personally deprived any Plaintiff
19 of any out of cell time or personally deprived any Plaintiff of any right to earn
20 compensation. Additionally, liability may not be imposed against the County under a
21 theory of respondeat superior. Therefore, the claim for liability based upon the
22 purported deprivation of out of cell time or the right to earn compensation in the jail
23 kitchen fails as a matter of law.

24 3. Plaintiff’s fourth claim for violation of 42 U.S.C. §1983 is based upon
25 the claim Plaintiffs were entitled to wages for work performed in the jail kitchen.
26 From this premise the Plaintiffs reason they had a property right in the payment of
27 wages and the denial of their right to these wages without an opportunity to be heard
28 is a violation of their right to due process under the Fourteenth Amendment.

1 However, this claim fails as a matter of law. First of all, as demonstrated
2 above, Plaintiffs are not entitled to wages for work performed in the jail kitchen.
3 Secondly, even if Plaintiffs were entitled to wages for work performed in the jail
4 kitchen, which they are not, under California law unpaid wages do not constitute
5 property to which an individual holds an immediate right of possession. *Voris v*
6 *Lambert* (2019) 7 Cal. 5th 1141, 1154. (“*Voris*”)

7 In *Voris* the Plaintiff alleged the failure of his employer to pay him wages due
8 under the Labor Code constituted conversion. After an extensive analysis of the
9 scope and purpose of the Legislature’s enactment Labor Code and the historical
10 roots of the tort of conversion, the California Supreme Court held that an employee
11 has no property rights in unpaid wages.

12 In *Voris*, the Court distinguished its ruling in *Cortez v. Purolator Air*
13 *Filtration Products Co.* (2000) 23 Cal.4th 163 (“*Cortez*”) from the case at bar,
14 noting that *Cortez*’ holding that a Plaintiff has a property right in wrongfully
15 withheld wage applied only in the context of seeking a restitutionary remedy under
16 California’s Unfair Competition Law.¹ *Voris* at 154.

17 In addition, as with Plaintiffs’ other claims under 42 U.S.C. §1983, Plaintiffs
18 must show the Defendants personally participated in the deprivation of his or her
19 constitutional rights. Plaintiffs have alleged no facts showing the Sheriff personally
20 deprived them of any wages. Liability may not be imposed on supervisory personnel
21 for the acts or omissions of their subordinates under a theory of respondeat superior.
22 *Jones v. Williams*; *supra*, *Williams v. Navarro*, *supra*. Nor can the County be held
23 liable for a violation of 42 U.S.C. §1983 under a theory of respondeat superior. *Id*

24 Therefore, Plaintiffs’ claim for liability based upon the purported deprivation
25 of the right to due process fails as a matter of law.

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¹ Business & Professions Code § 17200, et seq.

1 **VI. THE FIRST AMENDED COMPLAINT FAILS TO STATE ANY**
2 **CLAIM FOR RELIEF ON BEHALF OF PLAINTIFFS JOSEPH**
3 **MEBRAHTU, MONICA MASON AND LUIS NUNEZ-ROMERO**
4 **BECAUSE THE COURT DISMISSED ALL CLAIMS BY THESE**
5 **PLAINTIFFS WITHOUT LEAVE TO AMEND**

6 In ruling on Defendants' previous motions to dismiss the court dismissed
7 "Plaintiffs Mebrahtu, Mason, and Nunez-Romero's Labor Code and Bane Act
8 claims against County Defendants." The Court stated "With the exception of the
9 Labor Code claim for failure to pay convicted Plaintiffs wages as well as Mebrahtu,
10 Mason, and Nunez-Romero's, all dismissals are with leave to amend." The clear
11 import of this language is that all claims by Mebrahtu, Mason, and Nunez-Romero
12 were dismissed without leave to amend.

13 Despite this ruling, Mebrahtu, Mason, and Nunez-Romero are all identified as
14 Plaintiffs throughout the FAC. Mebrahtu is identified as a Plaintiff at ¶¶ 1, 21, 29, 44
15 and 72. Mason is identified as a Plaintiff in the first through third claims of the FAC.
16 Nunez-Romero is identified as a Plaintiff at ¶¶ 1, 21, 29, 47 and 53 and is identified
17 as a Plaintiff in the first and second claims for relief. As the claims by these
18 Plaintiffs have been dismissed, the FAC fails to state a claim for relief on their
19 behalf.

20 **VII. THE FAC FAILS TO STATE ANY CLAIM BY NEWLY NAMED**
21 **PLAINTIFF SCOTT ABBEY FOR WHICH RELIEF MAY BE**
22 **GRANTED**

23 The FAC alleges newly named Plaintiff Scott Abbey ("Abbey") is or was
24 incarcerated at the Santa Rita Jail (FAC ¶ 21), that Abbey worked for Aramark in the
25 jail kitchen as a pre-trial detainee from approximately November 2018 to March
26 2019 (FAC ¶48) and that Abbey seeks to represent the subclass of all persons
27 incarcerated in Santa Rita Jail who perform or performed services for Aramark as
28 pretrial detainees (FAC ¶51)

1 After this the FAC is silent as to any facts pertaining to Abbey or to any claim
2 for relief asserted by Abbey against any Defendant. There are no facts alleged
3 anywhere in the FAC that would entitle Abbey to any relief. Therefore, the FAC
4 fails to state any claim for relief on behalf of Scott Abbey.

5 **VIII. CONCLUSION**

6 The California Constitution and the California Penal Code provide a
7 comprehensive statutory scheme governing the right of county jail inmates to paid
8 for labor performed while incarcerated. Except for workers compensation laws, the
9 provisions of the California Labor Code are inapplicable to incarcerated inmates.
10 The scheme applies to routine housekeeping chores as well as labor performed
11 pursuant to a contract between a municipality and a private for profit company
12 employing jail inmates.

13 Under this comprehensive statutory scheme inmates in county jails, regardless
14 of whether they are convicted criminals, pre-trial detainees or detainees who are
15 awaiting immigration proceedings are not entitled to be paid wages for their labor
16 unless there is a municipal ordinance that provides for such payment.

17 Contrary to the claims made in the FAC, Proposition 139 does not authorize,
18 or require, inmates in county jails to be paid wages. Nor does Proposition 139
19 authorize, or require, inmates in county jails be paid wages for labor performed
20 pursuant to a contract between a municipality and a private for profit company
21 employing jail inmates.

22 The great weight of authority in this country provides that inmates
23 incarcerated in city, county state and federal institutions are not employees, and in
24 the absence of a statute or regulation providing therefore, are not entitled to be paid
25 wages.

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For the foregoing reasons, the complaint should be dismissed as against the County of Alameda and Gregory J. Ahern, Sheriff, without leave to amend.

DATED: August 14, 2020

SKANE WILCOX LLP

By:  _____

Wendy L. Wilcox, Esq.
Joel P. Glaser, Esq.
Attorneys for Defendants the County of Alameda and Gregory J. Ahern, Sheriff

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CERTIFICATE OF SERVICE

I, Gonzalo Valverde, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1055 West 7th Street, Suite 1700, Los Angeles, CA 90017.

On August 14, 2020, the following document(s) is(are) being filed electronically and will be available for viewing and downloading from the Court’s CM/ECF system:

NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; MEMORANDUM OF POINTS AND AUTHORITIES

The Notice of Electronic Case Filing automatically generated by the system and sent to all parties entitled to service under the Federal Rules of Civil Procedure and the Local Rules of the Northern District of California who have consented to electronic service shall constitute service of the filed document to all such parties. Parties who have not consented to electronic service are entitled to receive a paper copy of any electronically filed pleading or other documents. Any such parties will be served by regular mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 14, 2020, at Los Angeles, California.

/s/ Gonzalo Valverde
Gonzalo Valverde

1 Wendy L. Wilcox, Esq. (SBN 193644)
 2 wwilcox@skanewilcox.com
 3 Joel P. Glaser, Esq. (SBN 194442)
 4 jglaser@skanewilcox.com
 5 SKANE WILCOX LLP
 6 1055 W. 7th Street, Suite 1700
 7 Los Angeles, CA 90017
 8 T: (213) 452-1200 / F: (213) 452-1201
 9 Attorneys for Defendants the County of Alameda
 10 and Gregory J. Ahern, Sheriff

11
 12 **UNITED STATES DISTRICT COURT**
 13
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 ARMIDA RUELAS; DE ANDRE
 16 EUGENE COX; BERT DAVIS;
 17 KATRISH JONES; JOSEPH
 18 MEBRAHTU; DAHRYL REYNOLDS;
 19 MONICA MASON; LUIS NUNEZ-
 20 ROMERO; and all others similarly
 21 situated,

22 Plaintiffs,

23 v.

24 COUNTY OF ALAMEDA; GREGORY
 25 J. AHERN, SHERIFF; ARAMARK
 26 CORRECTIONAL SERVICES, LLC,
 27 and DOES 1 through 10,

28 Defendants

Case No. Case No. 4:19-CV-07637 JST
 Hon. Jon S. Tigar, judge

**REQUEST FOR JUDICIAL NOTICE
 IN SUPPORT OF DEFENDANTS’
 MOTION TO DISMISS PLAINTIFFS’
 COMPLAINT FOR FAILURE TO
 STATE A CLAIM UPON WHICH
 RELIEF CAN BE GRANTED;
 DECLARATION OF JOEL GLASER**

FRE 201

Date: October 21, 2020

Time: 2:00 p.m.

Location: 1301 Clay Street,
 Oakland, CA 94612,
 Courtroom 6

29 Defendants the County of Alameda and Gregory J. Ahern, Sheriff (the
 30 “County Defendants”) requests that the Court, pursuant to Federal Rule of Evidence
 31 201, take judicial notice of Proposition 139, 1990 Cal. Legis. Serv. Prop. 139

1 (West), which California voters approved in the 1990 General Election. See Exhibit
2 A to the Declaration of Joel Glaser.

3 A court may take judicial notice of facts that are “not subject to reasonable
4 dispute” when they “can be accurately and readily determined from sources whose
5 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice
6 may be taken at any stage of a proceeding. Fed. R. Evid. 201(d).

7 Exhibit A, which reflects the text of Proposition 139, is subject to judicial
8 notice because Proposition 139 is a matter of public record from a reliable source
9 and is referenced in the Complaint (see Compl. ¶¶ 17-18). *See, e.g., Svenson v.*
10 *Google Inc.*, 65 F. Supp. 3d 717, 723 (N.D. Cal. 2014) (granting request for judicial
11 notice of a California budget proposition); *see also Rosen v. Uber Tech., Inc.*, 164 F.
12 Supp. 3d 1165, 1170–71 (N.D. Cal. 2016) (taking judicial notice of twenty-five
13 documents, “all of which are either referenced in the complaint” or publically
14 available); *Natural Res. Def. Council v. McCarthy*, Case No. 16-cv-02184-JST, 2016
15 WL 6520170, at *2 (N.D. Cal. Nov. 3, 2016) (taking judicial notice of various
16 documents because “they are matters of public record available on a governmental
17 agency website . . . , and they therefore are capable of ready and accurate
18 determination and are from a reliable source.”).

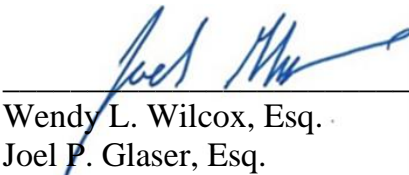
19 For the foregoing reasons, the County Defendants respectfully request that the
20 Court take judicial notice of Proposition 139.

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DATED: August 14, 2020

SKANE WILCOX LLP

By:



Wendy L. Wilcox, Esq.
Joel P. Glaser, Esq.
Attorneys for Defendants the County of
Alameda and Gregory J. Ahern, Sheriff

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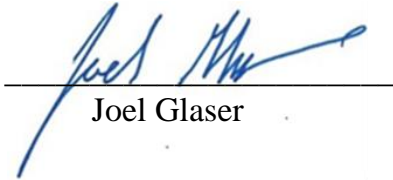
DECLARATION OF JOEL GLASER

I Joel Glaser Declare:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am a partner in the law firm of Covington & Burling LLP, counsel for Defendants the County of Alameda and Gregory J. Ahern, Sheriff (the “County Defendants”) If called upon to testify as to the facts set forth herein, I could and would testify competently thereto.

2. **Exhibit A** to this declaration is a true and correct copy of California Proposition 139, 1990 Cal. Legis. Serv. Prop. 139 (West).

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is executed this 13th day of August, 2020, in Los Angeles, California.



Joel Glaser

EXHIBIT A

1990 Cal. Legis. Serv. Prop. 139 (West)

CALIFORNIA LEGISLATIVE SERVICE 1989-90

1990 PROPOSITIONS

Additions are indicated by <<+ Text of addition +>>; Deletions
by <<- *** ->>. Changes in tables are made but not highlighted.

Vetoed provisions within tabular material are not displayed.

PROPOSITION 139

PRISON INMATE LABOR—TAX CREDIT—INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

[Approved by the electors November 6, 1990.]

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution. This initiative measure expressly amends the Constitution by repealing and adding sections thereto, and adds sections to the Government Code, the Penal Code, and the Revenue and Taxation Code.

PROPOSED LAW

PRISON INMATE LABOR INITIATIVE OF 1990

Section 1. This measure shall be known as the “Prison Inmate Labor Initiative of 1990.”

Section 2. The people of the State of California find and declare that inmates who are confined in state prison or county jails should work as hard as the taxpayers who provide for their upkeep, and that those inmates may be required to perform work and services in order to do all of the following:

- (a) Reimburse the State of California or counties for a portion of the costs associated with their incarceration.
- (b) Provide restitution and compensation to the victims of crime.
- (c) Encourage and maintain safety in prison and jail operations.
- (d) Support their families to the extent possible.
- (e) Learn skills which may be used upon their return to free society.
- (f) Assist in their own rehabilitation in order to become responsible law-abiding citizens upon their release from state prison or local jail.

CA CONST Art. 14, § 5 Repealed

Section 3. Section 5 of Article XIV of the State Constitution is repealed.

<<-* * *->>

CA CONST Art. 14, § 5

Section 4. Section 5 is added to Article XIV of the State Constitution to read:

<<+SECTION 5. (a) The Director of Corrections or any county Sheriff or other local government official charged with jail operations, may enter into contracts with public entities, nonprofit or for profit organizations, entities, or businesses for the purpose of conducting programs which use inmate labor. Such programs shall be operated and implemented pursuant to statutes enacted by or in accordance with the provisions of the Prison Inmate Labor Initiative of 1990, and by rules and regulations prescribed by the Director of Corrections and, for county jail programs, by local ordinances.+>>

<<+(b) No contract shall be executed with an employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on

January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990. Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.+>>

<<+(c) Nothing in this section shall be interpreted as creating a right of inmates to work.+>>

CA PENAL Prec. § 2717.1

Section 5. Article 1.5 is added to Chapter 5 of Title 1 of Part 3 of the Penal Code to read:

<<+Article 1.5.+>>

<<+Joint Venture Program+>>

CA PENAL § 2717.1

<<+2717.1. Definitions.+>>

<<+(a) For the purposes of this section, joint venture program means a contract entered into between the Director of Corrections and any public entity, nonprofit or for profit entity, organization, or business for the purpose of employing inmate labor.+>>

<<+(b) Joint venture employer means any public entity, nonprofit or for profit entity, organization, or business which contracts with the Director of Corrections for the purpose of employing inmate labor.+>>

CA PENAL § 2717.2

<<+2717.2. The Director of Corrections shall establish joint venture programs within state prison facilities to allow joint venture employers to employ inmates confined in the state prison system for the purpose of producing goods or services. While recognizing the constraints of operating within the prison system, such programs will be patterned after operations outside of prison so as to provide inmates with the skills and work habits necessary to become productive members of society upon their release from state prison.+>>

CA PENAL § 2717.3

<<+2717.3. The Director of Corrections shall prescribe by rules and regulations provisions governing the operation and implementation of joint venture programs, which shall be in furtherance of the findings and declarations in the Prison Inmate Labor Initiative of 1990.+>>

CA PENAL § 2717.4

<<+2717.4. There is hereby established within the Department of Corrections the Joint Venture Policy Advisory Board. The Joint Venture Policy Advisory Board shall consist of the Director of Corrections, who shall serve as chair, the Director of the Employment Development Department, and five members, to be appointed by the Governor, three of whom shall be public members, one of whom shall represent organized labor and one of whom shall represent industry. Five members shall constitute a quorum and a vote of the majority of the members in office shall be necessary for the transaction of the business of the board. Appointed members of the board shall be compensated at the rate of two hundred dollars (\$200) for each day while on official business of the board and shall be reimbursed for necessary expenses. The initial terms of the members appointed by the Governor shall be for one year (one member), two years (two members), three years (one member), and four years (one member), as determined by the Governor. After the initial term, all members shall serve for four years.+>>

<<+(b) The board shall advise the Director of Corrections of policies that further the purposes of the Prison Inmate Labor Initiative of 1990 to be considered in the implementation of joint venture programs.+>>

CA PENAL § 2717.5

<<+2717.5. In establishing joint venture contracts the Director of Corrections shall consider the impact on the working people of California and give priority consideration to inmate employment which will retain or reclaim jobs in California, support emerging California industries, or create jobs for a deficient labor market.+>>

CA PENAL § 2717.6

<<+2717.6. (a) No contract shall be executed with a joint venture employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990.+>>

<<+(b) Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same joint venture employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.+>>

<<+(c) The determination that a condition described in paragraph (b) above shall be made by the Director after notification by the union representing the workers on strike or subject to lockout. The limitation on work hours shall take effect 48 hours after receipt by the Director of written notice of the condition by the union.+>>

CA PENAL § 2717.7

<<+2717.7. Notwithstanding Section 2812 of the Penal Code or any other provision of law which restricts the sale of inmate-provided services or inmate-manufactured goods, services performed and articles manufactured by joint venture programs may be sold to the public.+>>

CA PENAL § 2717.8

<<+2717.8. The compensation of prisoners engaged in programs pursuant to contract between the Department of Corrections and joint venture employers for the purpose of conducting programs which use inmate labor shall be comparable to wages paid by the joint venture employer to non-inmate employees performing similar work for that employer. If the joint venture employer does not employ such non-inmate employees in similar work, compensation shall be comparable to wages paid for work of a similar nature in the locality in which the work is to be performed. Such wages shall be subject to deductions, as determined by the Director of Corrections, which shall not, in the aggregate, exceed 80 percent of gross wages and shall be limited to the following:+>>

<<+(1) Federal, state, and local taxes.+>>

<<+(2) Reasonable charges for room and board, which shall be remitted to the Director of Corrections.+>>

<<+(3) Any lawful restitution fine or contributions to any fund established by law to compensate the victims of crime of not more than 20 percent, but not less than 5 percent, of gross wages, which shall be remitted to the Director of Corrections for disbursement.+>>

<<+(4) Allocations for support of family pursuant to state statute, court order, or agreement by the prisoner.+>>

CA GOVT § 14672.16

Section 6. Section 14672.16 is added to the Government Code to read:

<<+14672.16. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections or the Department of the Youth Authority may let, in the best interest of the state, any real property located within the grounds of a facility of the Department of Corrections or the Department of the Youth Authority to a public or private entity for a period not to exceed 20 years for the purpose of conducting programs for the employment and training of prisoners or wards in institutions under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.+>>

<<+(b) The lease may provide for the renewing of the lease for additional successive 10-year terms, but those additional terms shall not exceed three in number. Any lease of state property entered into pursuant to this section may be at less than market value when the Director of General Services determines it will serve a statewide public purpose.+>>

CA REV & TAX § 17053.6

Section 7. Section 17053.6 is added to the Revenue and Taxation Code to read:

<<+17053.6. There shall be allowed as a credit against the “net tax” (as defined by Section 17039) an amount equal to 10 percent of the amount of wages paid to each prisoner who is employed in a joint venture program established pursuant to Article 1.5 of Chapter 5 of Title 1 of Part 3 of the Penal Code, through agreement with the Director of Corrections.+>>

CA REV & TAX § 23624

Section 8. Section 23624 is added to the Revenue and Taxation Code to read:

<<+23624. There shall be allowed as a credit against the “tax” (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each prisoner who is employed in a joint venture program established pursuant to Article 1.5 of Chapter 5 of Title 1 of Part 3 of the Penal Code, through agreement with the Director of Corrections.+>>

Section 9. If any provision of this measure or the application thereof to any person or circumstances is held invalid or unconstitutional, that invalidity shall not effect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Section 10. The statutory provisions contained in this measure may not be amended by the Legislature except to further its purposes by statute passed in each house by roll call vote entered in the journal, two thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

CA LEGIS Prop. 139 (1990)

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CERTIFICATE OF SERVICE

I, Gonzalo Valverde, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1055 West 7th Street, Suite 1700, Los Angeles, CA 90017.

On August 14, 2020, the following document(s) is (are) being filed electronically and will be available for viewing and downloading from the Court’s CM/ECF system:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; DECLARATION OF JOEL GLASER

The Notice of Electronic Case Filing automatically generated by the system and sent to all parties entitled to service under the Federal Rules of Civil Procedure and the Local Rules of the Northern District of California who have consented to electronic service shall constitute service of the filed document to all such parties. Parties who have not consented to electronic service are entitled to receive a paper copy of any electronically filed pleading or other documents. Any such parties will be served by regular mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 14, 2020, at Los Angeles, California.

/s/ Gonzalo Valverde
Gonzalo Valverde

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11 Attorneys for Plaintiffs
 12 ARMIDA RUELAS, DE'ANDRE EUGENE COX,
 13 BERT DAVIS, KATRISH JONES,
 14 JOSEPH MEBRAHTU, DAHRYL REYNOLDS,
 15 MONICA MASON, LUIS NUNEZ-ROMERO, and
 16 SCOTT ABBEY

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19	ARMIDA RUELAS; DE'ANDRE EUGENE	) Case No. 19-cv-07637-JST
20	COX; BERT DAVIS; KATRISH JONES;)
21	JOSEPH MEBRAHTU; DAHRYL	) FIRST AMENDED COMPLAINT
22	REYNOLDS; MONICA MASON; LUIS	) FOR DAMAGES AND
23	NUNEZ-ROMERO; SCOTT ABBEY and all	) DECLARATORY AND INJUNCTIVE
24	others similarly situated,	) RELIEF
25)
26	Plaintiffs,	) CLASS ACTION
27)
28	vs.	) Jury Trial Demanded
29)
30	COUNTY OF ALAMEDA; GREGORY J.)
31	AHERN, SHERIFF; ARAMARK)
32	CORRECTIONAL SERVICES, LLC; and)
33	DOES 1 through 10,)
34)
35	Defendants.)

36 Plaintiffs ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS,
 37 KATRISH JONES, JOSEPH MEBRAHTU, DAHRYL REYNOLDS, MONICA MASON,
 38 LUIS NUNEZ-ROMERO, and SCOTT ABBEY complain against COUNTY OF

1 ALAMEDA; GREGORY J. AHERN, SHERIFF, ALAMEDA COUNTY; ARAMARK
2 CORRECTIONAL SERVICES, LLC; and DOES 1 through 10 as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiffs ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS,
5 KATRISH JONES, JOSEPH MEBRAHTU, DAHRYL REYNOLDS, MONICA MASON
6 LUIS NUNEZ-ROMERO, **and SCOTT ABBEY were or** are pre-trial detainees,
7 detainees facing deportation, federal detainees, and post-conviction prisoners confined
8 in Santa Rita Jail in Alameda County. Pursuant to a contract between the COUNTY OF
9 ALAMEDA and ARAMARK CORRECTIONAL SERVICES, LLC ("ARAMARK"),
10 plaintiffs were or are currently employed by ARAMARK to perform industrial food
11 preparation services and cleaning. ARAMARK is a private, for-profit company that sells
12 food prepared by prisoners to third parties outside the COUNTY OF ALAMEDA.
13 Contrary to California law, plaintiffs are not paid for their work and are forced to work
14 for the profit of a private company under threat of punitive measures by their jailers.
15 Plaintiffs bring this complaint on their own behalf and on behalf of all incarcerated
16 employees of ARAMARK, past, present and future.

17 **JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §
19 1331 (claims arising under the U.S. Constitution) and § 1343(a)(3) (claims brought to
20 redress deprivations, under color of state authority, of rights, privileges, and
21 immunities secured by the U.S. Constitution), and 42 U.S.C. § 1983.

22 3. The state law claims in this action are so related to the claims in the action
23 within the original jurisdiction of this Court that they form part of the same case or
24 controversy under Article III of the United States Constitution. The Court's jurisdiction
25 over these claims is invoked under 28 U.S.C. § 1367.

26 4. Venue is proper in the United State District Court for the Northern
27 District of California pursuant to 28 U.S.C. § 1391(b)(1) because the defendants are
28 located in the Northern District of California and § 1391(b)(2) because all of the acts

1 and/or omissions complained of herein occurred within the Northern District of
2 California.

3 **PARTIES**

4 5. At all times relevant hereto, ARMIDA RUELAS was a prisoner at Santa
5 Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to perform
6 sanitation services in the industrial food preparation kitchen.

7 6. At all times relevant hereto, DE'ANDRE EUGENE COX was incarcerated
8 at Santa Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to
9 perform industrial food preparation services.

10 7. At all times relevant hereto, BERT DAVIS was incarcerated at Santa Rita
11 Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to perform
12 industrial food preparation services.

13 8. At all times relevant hereto, KATRISH JONES was incarcerated at Santa
14 Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to perform
15 sanitation services in the industrial food preparation kitchen.

16 9. At all times relevant hereto, JOSEPH MEBRAHTU was incarcerated at
17 Santa Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to
18 perform industrial food preparation services.

19 10. At all times relevant hereto, DAHRYL REYNOLDS was incarcerated at
20 Santa Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to
21 perform industrial food preparation services.

22 11. At all times relevant hereto, MONICA MASON was incarcerated at Santa
23 Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to perform
24 sanitation services in the industrial food preparation kitchen.

25 12. At all times relevant hereto, LUIS NUNEZ-ROMERO was incarcerated at
26 Santa Rita Jail in the COUNTY OF ALAMEDA, and was employed by ARAMARK to
27 perform sanitation services in the industrial food preparation kitchen.

28

1 19. Pursuant to this voter-approved law, jails that hire out prisoners may
2 make deductions for state and federal taxes, room and board, lawful restitution fines or
3 victim compensation, and family support, but must provide no less than 20 percent of
4 the wages directly to the prisoner. Prisoners may, in addition to receiving wages, be
5 eligible for credits that reduce the length of time they serve in jail, which reduces
6 incarceration costs.

7 20. Santa Rita Jail is Alameda County's jail. It houses persons who are
8 awaiting trial, persons who have been convicted of a crime and are awaiting sentencing,
9 persons in immigration detention, and persons who are convicted of crimes and serving
10 county jail sentences and, in some instances, state prison sentences.

11 21. Plaintiffs ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS,
12 KATRISH JONES, JOSEPH MEBRAHTU, DAHRYL REYNOLDS, MONICA MASON,
13 LUIS NUNEZ-ROMERO, and SCOTT ABBEY are or were at one time incarcerated in
14 Santa Rita Jail, which is operated by the Alameda County Sheriff's Department.

15 22. Alameda County contracted with ARAMARK CORRECTIONAL
16 SERVICES, LLC as early as July 1, 2015. The contract allows ARAMARK to employ
17 persons imprisoned in Santa Rita Jail without compensating them. As a result of the
18 contract, ARAMARK suffers or permits to work prisoners confined in Santa Rita Jail.

19 23. Prisoners prepare and package food in Santa Rita Jail's industrial kitchen
20 and clean and sanitize the kitchen after the conclusion of the day's food preparation.
21 When prisoner-employees are present in the kitchen, armed Sheriff's deputies are close
22 by to supervise prisoner-employees by threats of force and the withdrawal of privileges.
23 ARAMARK employees manage the kitchen operation and observe the Sheriff's deputies'
24 supervision of the prisoner-employees, including threats of force.

25 24. During the work day, armed COUNTY OF ALAMEDA Sheriff's deputies
26 supervise prisoners to ensure they do not break conduct rules. ARAMARK employees
27 and COUNTY OF ALAMEDA Sheriff's deputies both supervise prisoner-employees to
28 make sure they do not violate safety rules. ARAMARK employees supervise the quality

1 and amount of work that prisoners accomplish. ARAMARK employees also supervise
2 prisoner-employee conduct and report misconduct to the deputies for discipline.

3 25. ARAMARK establishes quotas for prisoners that dictate how much work
4 prisoners must complete before their shift ends. ARAMARK also determines from its
5 quotas how many prisoner-employees are required to work and how many shifts are
6 required.

7 26. If COUNTY OF ALAMEDA Sheriff's deputies are displeased with the
8 quality or quantity of the work performed or the conduct of a prisoner-employee, they
9 can remove their eligibility to work in the jail and subject them to disciplinary action. If
10 ARAMARK is displeased with a prisoner-employee, it can tell the COUNTY that the
11 prisoner-employee may not return to work for ARAMARK.

12 27. Defendants COUNTY OF ALAMEDA, SHERIFF AHERN, and ARAMARK
13 have arranged to divide the work day so that male prisoners are assigned to longer,
14 daytime shifts, and female prisoners are assigned to shorter, nighttime shifts. Women
15 prisoners are not provided the same opportunity to work and earn money as their
16 similarly situated male counterparts.

17 28. Defendants COUNTY OF ALAMEDA and SHERIFF AHERN determine
18 which prisoners are eligible to work and place them in worker housing units. Defendant
19 ARAMARK with guidance from COUNTY OF ALAMEDA on classification status,
20 assigns prisoner-employees to their specific tasks, such as working in the scullery,
21 working on the assembly lines, and sanitation. Defendant ARAMARK makes these
22 assignments and chooses team leaders based on ARAMARK employee's evaluations of
23 prisoner-employees' performance.

24 29. Plaintiffs ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS,
25 KATRISH JONES, JOSEPH MEBRAHTU, DAHRYL REYNOLDS, MONICA MASON,
26 and LUIS NUNEZ-ROMERO were employed by ARAMARK to perform services
27 pursuant to this contract. They worked with other prisoners in Santa Rita Jail under the
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1 supervision of ARAMARK employees and under guard of COUNTY OF ALAMEDA
2 Sheriff's Deputies.

3 30. No prisoner-employee is compensated for their work. Plaintiffs
4 performed and continue to perform work, including overtime, for no compensation.

5 31. Plaintiffs and other prisoner-employees of ARAMARK are coerced to
6 work. COUNTY OF ALAMEDA Sheriff's deputies threaten plaintiffs and other prisoner-
7 employees of ARAMARK that if they refuse to work, they will receive lengthier jail
8 sentences or be sent to solitary confinement, where they would be confined to a small
9 cell for 22 to 24 hours a day. COUNTY OF ALAMEDA Sheriff's deputies also threaten to
10 terminate prisoners' employment if they need to take a sick day or are injured.

11 32. Threats from Sheriff's deputies are sometimes made in the kitchen in the
12 presence of ARAMARK employees.

13 33. ARAMARK employees also coerce plaintiffs and other prisoner-
14 employees to work by threatening to report them to the Sheriff's deputies for
15 punishment if they attempt to leave work early due to illness or injury.

16 34. Such threats from COUNTY OF ALAMEDA Sheriff's deputies and
17 ARAMARK employees cause prisoners to work through illness and injury, sometimes
18 caused by the unsafe conditions in the industrial kitchen.

19 35. Although plaintiffs and other kitchen workers are not compensated for
20 their work, working in the kitchen means that plaintiffs can get out of their cells for
21 some portion of the day, which is beneficial to their physical and mental health, and
22 obtain additional food for their own enjoyment and nutrition.

23 36. Defendants deny plaintiffs wages without any process or hearing, either
24 prior to or following the denial, to determine why they should not receive their wages.

25 37. In late October 2019, male prisoner-employees of ARAMARK and other
26 prisoner workers in the jail staged a worker strike to advocate for improved conditions
27 at the jail, including more nutritious food, lower commissary prices, access to cleaning
28 supplies, and daily exercise and recreation time. In response, Sheriff's deputies forced

1 female prisoners to work all shifts in their place so that ARAMARK could meet their
2 quotas by threatening the women that women prisoners would not be provided meals
3 unless they worked. Plaintiffs ARMIDA RUELAS and MONICA MASON were forced to
4 work under this threat.

5 38. ARAMARK sells the food prepared by plaintiffs to third parties for a
6 profit. ARAMARK receives an economic windfall as a result of the uncompensated
7 labor of prisoners confined in Santa Rita Jail.

8 39. The contract between ARAMARK and the COUNTY OF ALAMEDA
9 permits prisoner labor to be used for the profit of a private company without
10 compensation to the workers. Therefore, defendants COUNTY OF ALAMEDA and
11 SHERIFF GREGORY J. AHERN know or should have known that they are providing
12 uncompensated labor in violation of state and federal law.

13 40. Plaintiff ARMIDA RUELAS worked for ARAMARK. She began working in
14 or around June of 2019 when she was a pre-trial detainee. She continued to work
15 following her conviction but prior to sentencing. Ms. RUELAS performed work in the
16 kitchen's scullery washing items used for meal preparation and service and preparing
17 meals. Her work hours vary but she has typically worked at night for four-hour shifts
18 Monday through Friday performing work such as meal preparation and sanitation.
19 During some days of the late October 2019 workers strike, she was forced to work long
20 day time hours. She was never paid any wages for the work she performed.

21 41. Plaintiff DE'ANDRE EUGENE COX worked for ARAMARK while he was
22 incarcerated, beginning his work for ARAMARK while a pre-trial detainee. He worked
23 in the jail's kitchen, and his hours and days worked varied. On occasions he worked in
24 excess of eight hours a day or 40 hours a week. He was never paid any wages for the
25 work he performed.

26 42. Plaintiff BERT DAVIS worked for ARAMARK from approximately
27 October 29, 2018 to March 2019. He was a pre-trial detainee for most, if not all of the
28 time he worked. He worked in the jail's kitchen, performing work such as meal

1 preparation, and his hours and days worked varied. On occasions, he worked in excess
2 of eight hours a day or 40 hours a week. He was never paid any wages for the work he
3 performed.

4 43. Plaintiff KATRISH JONES worked for ARAMARK while she was
5 incarcerated, as a pre-trial detainee. She worked in the jail's kitchen performing work
6 such as meal preparation and sanitation, and her hours and days worked varied. She
7 was never paid any wages for the work she performed.

8 44. Plaintiff JOSEPH MEBRAHTU worked for ARAMARK while he was
9 incarcerated, at times while he was a pre-trial detainee. He worked in the jail's kitchen
10 performing work such as sanitation, and his hours and days worked varied. On
11 occasions, he worked in excess of eight hours a day or 40 hours a week. He was never
12 paid any wages for the work he performed.

13 45. Plaintiff DAHRYL REYNOLDS worked for ARAMARK from
14 approximately June of 2019 to November 2019 as a pre-trial detainee. He worked in the
15 scullery and in meal preparation. His hours and days worked vary. On occasion, he
16 worked in excess of eight hours a day or 40 hours a week. He was never paid any wages
17 for the work he performed.

18 46. Plaintiff MONICA MASON worked for ARAMARK and has been
19 employed on and off from approximately May 2019 when she was a pre-trial detainee.
20 She continued to work following her conviction but prior to sentencing. Ms. MASON
21 performed work in the kitchen's scullery washing items used for food preparation and
22 service. Her work hours vary, but she typically worked at night for four-hour shifts
23 Monday through Friday and now works longer shifts on the weekends. During some
24 days of the October 2019 workers strike, she was forced to work long day time hours.
25 She was never paid any wages for the work she performed.

26 47. Plaintiff LUIS NUNEZ-ROMERO worked for ARAMARK. He was hired in
27 May of 2019, and he continued to work in the kitchen until the end of October 2019. He
28 was a detainee in immigration proceedings and has been for the duration of his

1 employment. Mr. NUNEZ-ROMERO worked in the kitchen's warehouse and performed
2 work such as food preparation. He worked six days a week for approximately eight to 12
3 hours a day. Previously, he worked seven days a week. He was never paid any wages for
4 the work he performed.

5 48. Plaintiff SCOTT ABBEY worked for ARAMARK. He worked in the kitchen
6 as a pre-trial detainee from approximately November 2018 to March 2019. Mr. ABBEY
7 worked on the special diet sandwich assembly line. He typically worked five days a
8 week. His hours varied. He was never paid any wages for the work he performed.

9 **CLASS ALLEGATIONS**

10 49. Plaintiffs bring this action on behalf of themselves and all others similarly
11 situated pursuant to Federal Rule of Civil Procedure 23(a) on the basis that there is a
12 well-defined community of interest in this litigation, the proposed class is easily
13 ascertainable, and the proposed class is quite numerous.

14 50. Plaintiffs seek to represent the following class: All individuals
15 incarcerated in Santa Rita Jail who were not duly convicted and sentenced who perform
16 or performed services for ARAMARK CORRECTIONAL SERVICES, LLC in their jail
17 kitchen facility any time during the period that began four years prior to the filing of the
18 original complaint in this action until the final disposition of this action.

19 51. Plaintiffs ARMIDA RUELAS, MONICA MASON, BERT DAVIS, KATRISH
20 JONES, DAHRYL REYNOLDS , DE'ANDRE EUGENE COX JOSEPH MEBRATHU, and
21 SCOTT ABBEY seek to represent the following subclass: All persons incarcerated in
22 Santa Rita Jail who perform or performed services for ARAMARK CORRECTIONAL
23 SERVICES, LLC in their jail kitchen facility who worked as pretrial detainees, any time
24 during the period that began when ARAMARK began suffering or permitting pretrial
25 detainees to work until the final disposition of this action. This subclass will be known
26 as the Pretrial Detainee Subclass.

27 52. Plaintiffs ARMIDA RUELAS, KATRISH JONES, and MONICA MASON
28 seek to represent the following subclass: All women incarcerated in Santa Rita Jail who

1 perform services for ARAMARK CORRECTIONAL SERVICES, LLC in their jail kitchen
2 facility pursuant to a policy, procedure, and/or practice that assigns women prisoners
3 to shorter, nighttime shifts in the jail kitchen, any time during the period that began
4 when ARAMARK began suffering or permitting women prisoners to work until the final
5 disposition of this action. This subclass will be known as the Women Prisoner Subclass.

6 53. Plaintiff LUIS -NUNEZ-ROMERO seeks to represent the following
7 subclass: All detainees awaiting immigration proceedings incarcerated in Santa Rita
8 Jail who perform services for ARAMARK CORRECTIONAL SERVICES, LLC in their
9 jail kitchen facility any time during the period that began when ARAMARK began
10 suffering or permitting detainees awaiting immigration proceedings to work until the
11 final disposition of this action. This subclass will be known as the Immigration
12 Detainee Subclass.

13 54. On information and belief, the injury and loss of money to plaintiffs and
14 the putative class and subclasses are substantial, exceeding one million dollars and as
15 much as several million dollars. Plaintiffs and the putative class were regularly
16 subjected to the constitutional and statutory violations described in this Complaint. On
17 information and belief, the legal and factual issues are common to the class and affect
18 all class members.

19 55. Plaintiffs reserve the right to amend or modify the class and subclass
20 descriptions with greater specificity or further division into subclasses, as well as to
21 limit the class or subclasses to particular issues, as warranted.

22 **Numerosity**

23 56. The potential members of the class and of the subclasses as defined are so
24 numerous that joinder of all of them is impracticable. While the precise number of class
25 members has not been determined at this time, plaintiffs are informed and believe that
26 the class is comprised of more than 100 individuals.

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1 57. On information and belief, ARAMARK's employment records and
2 COUNTY OF ALAMEDA custody records will provide information as to the number
3 and location of all class members.

4 **Commonality and Predominance**

5 58. There are questions of law and fact that are common to the class and
6 subclasses and predominate over individualized questions. These common questions of
7 law and fact include, without limitation:

8 59. Whether COUNTY OF ALAMEDA and GREGORY J. AHERN force
9 detainees into involuntary servitude by forcing them to work for a private company
10 without compensation;

11 60. Whether COUNTY OF ALAMEDA and GREGORY J. AHERN fail to
12 provide equal protection to women incarcerated in Santa Rita Jail allowing them less
13 out of cell time to work than their male counter parts;

14 61.

15 62. Whether ARAMARK violated the California Labor Code by not
16 compensating plaintiffs and putative class members;

17 63. Whether ARAMARK violated the California Labor Code by not
18 compensating plaintiffs and putative class members at the minimum wage rate
19 established by law;

20 64. Whether ARAMARK violated the California Labor Code by not
21 compensating plaintiffs and putative class members for all "hours worked" in excess of
22 eight hours a day or 40 hours a week at premium overtime rates;

23 65. Whether ARAMARK violated §§17200, *et seq.* of the California Business
24 and Professions Code by the actions alleged in this complaint;

25 66. Whether the COUNTY OF ALAMEDA violated plaintiffs' and putative
26 class members' statutory rights through threats, coercion and intimidation;

27 67. Whether Sheriff GREGORY J. AHERN ratified the unlawful actions of
28 ARAMARK; and

EXHAUSTION

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2 73. Plaintiffs ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS,
3 KATRISH JONES, JOSEPH MEBRAHTU, and DAHRYL REYNOLDS each filed a
4 California Government Claim on his or her behalf and on behalf of others similarly
5 situated regarding the matters asserted herein with the COUNTY OF ALAMEDA
6 pursuant to California Government Code §§ 910, *et seq.* on August 8, 2019. The
7 COUNTY OF ALAMEDA denied their claims on August 19, 2019.

**FIRST CLAIM FOR RELIEF
INVOLUNTARY SERVITUDE IN VIOLATION OF THE THIRTEENTH
AMENDMENT**

(42 U.S.C. § 1983)

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11 (By ARMIDA RUELAS, MONICA MASON, and BERT DAVIS and the Pretrial Detainee
12 Subclass and LUIS NUNEZ-ROMERO and the Immigration Detainee Subclass Against
13 COUNTY OF ALAMEDA and GREGORY J. AHERN)

14 74. Plaintiffs incorporate by reference paragraphs 1 through 73 above as
15 though fully set forth herein.

16 75. By virtue of the foregoing, plaintiffs and the putative subclasses were
17 forced to perform work for defendants without pay. Plaintiffs and the putative
18 subclasses were and continue to be coerced to work without compensation under threat
19 of physical punishment and restraint.

20 76. The work plaintiffs performed was not a part of daily housekeeping duties
21 in the jail's personal and communal living areas. Rather, it was forced labor for the
22 profit of ARAMARK.

**SECOND CLAIM FOR RELIEF
VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION ACT**

(18 U.S.C. § 1589)

23
24 (By ARMIDA RUELAS, MONICA MASON, and BERT DAVIS and the Pretrial Detainee
25 Subclass and LUIS NUNEZ-ROMERO and the Immigration Detainee Subclass Against
26 All Defendants)

27 77. Plaintiffs incorporate by reference paragraphs 1 through 76 above as
28 though fully set forth herein.

78. By virtue of the foregoing, plaintiffs and the putative subclasses were
forced to perform work for defendants without pay. Plaintiffs and the putative

1 subclasses were and continue to be coerced to work without compensation under threat
2 of physical punishment and restraint.

3 79. The work plaintiffs performed was not a part of daily housekeeping duties
4 in the jail's personal and communal living areas. Rather, it was forced labor for the
5 profit of ARAMARK.

6 **THIRD CLAIM FOR RELIEF**
7 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
8 **FOURTEENTH AMENDMENT**

(42 U.S.C. § 1983)

9 (By ARMIDA RUELAS, KATRISH JONES, and MONICA MASON and the Women
10 Prisoner Subclass Against COUNTY OF ALAMEDA and GREGORY J. AHERN)

11 80. Plaintiffs incorporate by reference paragraphs 1 through 79 above as
12 though fully set forth herein.

13 81. By virtue of the foregoing, female plaintiffs and members of the putative
14 subclass are assigned to shifts typically lasting only four hours and occurring during
15 nighttime hours while male prisoners are assigned to shifts typically lasting eight hours
16 or more and occurring during daytime hours.

17 82. Out of cell time is crucial for the physical and mental health of prisoners.
18 Further, the more hours a prisoner works, the financial compensation that they are
19 entitled to under California law increases.

20 83. Female plaintiffs and members of the putative subclass have been denied
21 these benefits and opportunities to earn compensation based solely on their sex.

22 84. Defendants' policy and practice does not serve important governmental
23 objectives. Further, assigning women to work shorter, nighttime shifts while assigning
24 men to work longer, daytime shifts is not substantially related to the achievement of
25 important government objectives.

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**FOURTH CLAIM FOR RELIEF
FAILURE TO PROVIDE DUE PROCESS IN VIOLATION OF THE
FOURTEENTH AMENDMENT**

(42 U.S.C § 1983)

(By All Plaintiffs and the Class Against COUNTY OF ALAMEDA and GREGORY J. AHERN)

85. Plaintiffs incorporate by reference paragraphs 1 through 84 above as though fully set forth herein.

86. California, by statute, established the rights of all prisoners to receive compensation for work performed for the benefit of a for profit company.

87. In doing so, California established a property right in the payment of wages that cannot be denied without due process of law.

88. Due process of law requires a meaningful opportunity to be heard at the time the wages were due before denying prisoners wages.

89. Defendants routinely and deliberately deny plaintiffs and the putative class wages for their work.

90. Plaintiffs were provided no opportunity to be heard prior to the defendants' failure to pay wages and thus have been denied property without due process of law.

**FIFTH CLAIM FOR RELIEF
FAILURE TO PAY WAGES**

(Cal. Lab. Code §§ 201, 202, 218)

(By All Plaintiffs and the Class Against ARAMARK and by ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS, KATRISH JONES, and DAHRYL REYNOLDS against COUNTY OF ALAMEDA and SHERIFF GREGORY J. AHERN.)

91. Plaintiffs incorporate by reference paragraphs 1 through 90 above as though fully set forth herein.

92. By virtue of the foregoing, plaintiffs and the putative class performed work for defendants.

93. Defendants failed to pay plaintiffs and the putative class for their work and owe plaintiffs and the putative class wages pursuant to statutory and constitutional law.

///

**SIXTH CLAIM FOR RELIEF
FAILURE TO PAY MINIMUM WAGE**

(Cal. Lab. Code § 1194)

(By All Plaintiffs and the Class Against ARAMARK and by ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS, KATRISH JONES, and DAHRYL REYNOLDS against COUNTY OF ALAMEDA and SHERIFF GREGORY J. AHERN.)

94. Plaintiffs incorporate by reference paragraphs 1 through 93 above as though fully set forth herein.

95. By virtue of the foregoing, plaintiffs and the putative class performed work for defendants.

96. Plaintiffs and the putative class were paid less than the minimum wage by defendants for all hours worked.

**SEVENTH CLAIM FOR RELIEF
FAILURE TO PAY OVERTIME PREMIUM WAGES**

(Cal. Lab. Code § 1194)

(By All Plaintiffs and the Class Against ARAMARK and by ARMIDA RUELAS, DE'ANDRE EUGENE COX, BERT DAVIS, KATRISH JONES, and DAHRYL REYNOLDS against COUNTY OF ALAMEDA and SHERIFF GREGORY J. AHERN.)

97. Plaintiffs incorporate by reference paragraphs 1 through 96 above as though fully set forth herein.

98. Plaintiffs performed work for defendants.

99. Plaintiffs worked overtime hours.

100. Defendants knew or should have known that plaintiffs had worked overtime hours.

101. Plaintiffs were not paid for all of the overtime hours worked.

**EIGHTH CLAIM FOR RELIEF
UNFAIR COMPETITION**

(Cal. Bus. & Prof. Code § 17200 *et seq.*)

(By All Plaintiffs and the Class Against ARAMARK CORRECTIONAL SERVICES, INC.)

102. Plaintiffs incorporate by reference paragraphs 1 through 101 above as though fully set forth herein.

103. California Business and Professions Code §§ 17200, *et seq.* prohibit unfair competition, including any unlawful or unfair business act or practice.

1 104. Defendant ARAMARK engaged in an unlawful business practice when it
2 used uncompensated labor to produce a product for profit.

3 105. This business practice is forbidden by law and against public policy as it
4 gives Aramark an unfair advantage over similar business.

5 106. Defendant ARAMARK continues to exploit incarcerated employees to gain
6 market share, and plaintiffs are informed and believe that defendant ARAMARK will
7 continue such exploitation.

8 107. As a result of defendant ARAMARK’s unlawful business practice, plaintiffs
9 lost money in the form of wages that they were rightfully owed.

10 108. The failure to pay wages to incarcerated employees also constitutes an
11 unfair business practice because the harm to victims that results from this practice
12 outweighs its utility to the business, the practice offends public policy, and the practice
13 is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
14 consumers.

15 **NINTH CLAIM FOR RELIEF**
16 **VIOLATION OF CALIFORNIA BANE ACT**

(Cal. Civil Code § 52.1)

17 (By All Plaintiffs and the Class Against ARAMARK and by ARMIDA RUELAS,
18 DE’ANDRE EUGENE COX, BERT DAVIS, KATRISH JONES, and DAHRYL
REYNOLDS against COUNTY OF ALAMEDA and SHERIFF GREGORY J. AHERN.)

19 109. Plaintiffs incorporate by reference paragraphs 1 through 108 above as
20 though fully set forth herein.

21 110. By virtue of the foregoing, defendants and their agents and employees
22 interfered by threats, intimidation, and/or coercion with the rights of plaintiffs, secured
23 by the United States Constitution and the California Constitution.

24 **PUNITIVE DAMAGES**

25 111. By virtue of the foregoing, defendants ARAMARK and Does 1-3 acted with
26 malice and oppression and the intent to deprive and did deprive plaintiffs and the
27 putative class of their rights to be free from forced labor without compensation.

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DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury of all issues so triable in this case.

Dated: **July 10, 2020**

SIEGEL, YEE, BRUNNER & MEHTA

By /s/ Dan Siegel
Dan Siegel

Attorneys for Plaintiffs
ARMIDA RUELAS, DE'ANDRE EUGENE
COX, BERT DAVIS, KATRISH JONES,
JOSEPH MEBRAHTU, DAHYRL REYNOLDS,
MONICA MASON, LUIS NUNEZ-ROMERO,
and SCOTT ABBEY

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARMIDA RUELAS, et al.,

Plaintiffs,

v.

COUNTY OF ALAMEDA, et al.,

Defendants.

Case No. 19-cv-07637-JST

MOTIONS TO DISMISS

Re: ECF Nos. 13, 23

Before the Court are motions to dismiss filed by Defendants Alameda County and Sheriff Gregory J. Ahern (“County Defendants”), ECF No. 13, and by Defendant Aramark Correctional Services, LLC (“Aramark”), ECF No. 23. The Court will grant the motions in part and deny them in part.

I. BACKGROUND

A. Factual History¹

Plaintiffs Armida Ruelas, De’Andre Eugene Cox, Bert Davis, Katrish Jones, Joseph Mebrahtu, Dahryl Reynolds, Monica Mason, and Luis Nunez-Romero are or were “pre-trial detainees, detainees facing deportation, federal detainees, and post-conviction prisoners” confined in Alameda County’s Santa Rita Jail. ECF No. 1 (“Compl.”) ¶ 1. Plaintiffs are or were performing “industrial food preparation services and cleaning” for Aramark pursuant to a contract between Aramark and Alameda County. *Id.* “Aramark is a private, for-profit company that sells food prepared by prisoners to third parties” outside of Alameda County. *Id.* This contract was

¹ For the purposes of this motion to dismiss, the Court adopts the following factual allegations from Plaintiffs' complaint. *Smith v. City of Oakland*, No. 19-CV-05398-JST, ___ F.Supp.3d ___, 2020 WL 2517857, at *2 (N.D. Cal. Apr. 2, 2020)

1 made possible by California Proposition 139, which allows private companies to hire county jail
2 inmates. *Id.* ¶ 17. Alameda County contracted with Aramark “as early as July 1, 2015.” *Id.* ¶ 21.²

3 Plaintiffs allege that Aramark’s contract with Alameda County allows Aramark “to employ
4 persons imprisoned in Santa Rita Jail without compensating them.” *Id.* ¶ 21. Under the contract,
5 “prisoners prepare and package food” in Santa Rita’s kitchen “and clean and sanitize the kitchen”
6 after preparation has finished. *Id.* ¶ 22. Plaintiffs allege that “male prisoners are assigned to
7 longer, daytime shifts, and female prisoners are assigned to shorter, nighttime shifts.” *Id.* ¶ 23.
8 Plaintiffs also claim that they worked “under the supervision of Aramark employees and under
9 guard of County of Alameda Sheriff’s Deputies.” *Id.* ¶ 24. Plaintiffs allege that “Sheriff’s
10 deputies threaten plaintiffs and other prisoner-employees of Aramark” with “lengthier jail
11 sentences” or “solitary confinement” if they refuse to work or with termination if prisoners “need
12 to take a sick day or are injured.” *Id.* ¶ 26. As a result of these threats, Plaintiffs claim they
13 worked “through illness and injury,” sometimes caused by their unsafe working conditions. *Id.*
14 ¶ 27.

15 In late October 2019, male prisoner workers, including those working for Aramark, staged
16 a worker strike at Santa Rita Jail “to advocate for improved conditions at the jail[.]” *Id.* ¶ 30.
17 Plaintiffs allege that Sheriff’s deputies forced women prisoners, including Plaintiffs Ruelas and
18 Mason, to cover the men’s shifts “so that Aramark could meet their quotas[.]” *Id.* Deputies
19 allegedly threatened these women by telling them they would “not be provided meals unless they
20 worked.” *Id.*

21 **B. Procedural History**

22 Plaintiffs filed a complaint on November 20, 2019 on behalf of themselves and the
23 following class: “All individuals incarcerated in Santa Rita Jail who perform or performed
24 services for ARAMARK CORRECTIONAL SERVICES, LLC in their jail kitchen facility any
25 time during the period that began four years prior to the filing of the original complaint in this

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27
28 ² Plaintiffs have requested judicial notice of a declaration filed in a separate lawsuit that attaches a copy of a prior version of Aramark’s contract with Santa Rita Jail. ECF No. 29 at 2. Because the Court need not address that document in its analysis, it does not consider the request.

1 action until the final disposition of this action.” *Id.* ¶ 42. Plaintiffs additionally seek to certify
2 three subclasses: (1) a “Pretrial Detainee Subclass,” represented by Ruelas, Davis, and Mason and
3 comprising pre-trial detainees who perform or performed services for Aramark while incarcerated
4 at Santa Rita Jail, *id.* ¶ 43; (2) the “Women Prisoner Subclass,” represented by Ruelas, Jones, and
5 Mason and comprising women who perform or performed services for Aramark while incarcerated
6 at Santa Rita Jail, *id.* ¶ 44; and (3) the “Immigration Detainee Subclass,” represented by Nunez-
7 Romero and comprising all detainees awaiting immigration proceedings who perform or
8 performed services for Aramark while incarcerated at Santa Rita Jail, *id.* ¶ 45.

9 Plaintiffs bring ten claims. First, the pretrial and immigration detainee subclasses allege
10 that County Defendants violated the Thirteenth Amendment by forcing them to work without pay.
11 *Id.* ¶¶ 67-69. Second, the pretrial and immigration detainee subclasses allege that both County
12 Defendants and Aramark violated the federal Trafficking Victims Protection Act (“TVPA”) by
13 forcing them to work without pay “under threat of physical punishment and restraint.” *Id.* ¶¶ 70-
14 72. Third, the women prisoners subclass alleges that by assigning women inmates shorter shifts at
15 night and assigning male inmates longer shifts during the day, the County violated the Equal
16 Protection Clause of the Fourteenth Amendment. *Id.* ¶¶ 73-77. Fourth, all Plaintiffs allege that
17 County Defendants’ failure to provide a meaningful opportunity to be heard before denying
18 Plaintiffs wages was a violation of the Due Process Clause of the Fourteenth Amendment. *Id.*
19 ¶¶ 78-83.

20 Plaintiffs’ fifth through eighth causes of action are claims for violations of the California
21 Labor Code, brought by all Plaintiffs against all Defendants (except for the claim for failure to pay
22 equal wages under California Labor Code Section 1197.5, which is brought solely by the women
23 prisoner subclass). *Id.* ¶¶ 84-99. Plaintiffs bring their ninth claim exclusively against Aramark,
24 for violation of California’s Unfair Competition Law (“UCL”). *Id.* ¶¶ 100-06. Lastly, Plaintiffs
25 allege violations of California’s Bane Act by both County Defendants and Aramark. *Id.* ¶¶ 107-
26 08. Plaintiffs seek general and special damages, punitive damages, declaratory and injunctive
27 relief, and attorney’s fees and costs. *Id.* at 18.

28 County Defendants moved to dismiss Plaintiffs’ complaint on December 13, 2019. ECF

1 No. 13. Plaintiffs filed an opposition, ECF No. 14, and County Defendants filed a reply, ECF No.
2 16. This Court took County Defendants' motion under submission without a hearing. ECF No.
3 36. Aramark moved to dismiss the complaint on January 17, 2020. ECF No. 23. Plaintiffs filed
4 an opposition, ECF No. 28, and Aramark filed a reply, ECF No. 35. This Court held a hearing on
5 March 4, 2020.

6 **II. JURISDICTION**

7 As Plaintiffs make claims under 42 U.S.C. § 1983 and 18 U.S.C. § 1589, this Court has
8 subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction
9 over Plaintiffs' state law claims under 28 U.S.C. § 1367.

10 **III. LEGAL STANDARD**

11 A complaint must contain "a short and plain statement of the claim showing that the
12 pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and
13 the grounds upon which it rests." Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S.
14 544, 555 (2007) (citation omitted). "To survive a motion to dismiss, a complaint must contain
15 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has
16 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
17 reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Dismissal
18 under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or
19 sufficient facts to support a cognizable legal theory." *Mendondo v. Centinela Hosp. Med. Ctr.*,
20 521 F.3d 1097, 1104 (9th Cir. 2008). The Court must "accept all factual allegations in the
21 complaint as true and construe the pleadings in the light most favorable to the nonmoving party."
22 *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

24 **IV. DISCUSSION**

25 County Defendants argue that Plaintiffs' federal claims are barred because they failed to
26 exhaust their administrative remedies under the Prison Litigation Reform Act of 1995 ("PLRA").
27 ECF No. 13 at 2. They additionally argue that certain Plaintiffs' state claims are barred because
28 they failed to exhaust under the California Government Claims Act. *Id.* at 2-3. Lastly, County

1 Defendants argue that Plaintiffs have failed to state any claims under the California Labor Code or
2 the Bane Act. *Id.* Aramark argues that Plaintiffs have failed to state claims under the TVPA, the
3 California Labor Code, the UCL, or the Bane Act. ECF No. 23 at 8-9.

4 **A. Federal Claims**

5 **1. PLRA Exhaustion**

6 County Defendants argue that Plaintiffs' federal claims are barred because the complaint
7 "fails to allege Plaintiffs, or any of them, complied with any administrative remedies available to
8 them regarding the conditions at the Jail," as required by the PLRA. ECF No. 13 at 12.

9 The PLRA provides that "[n]o action shall be brought with respect to prison conditions
10 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or
11 other correctional facility until such administrative remedies as are available are exhausted." 42
12 U.S.C. § 1997e(a). "Exhaustion is a prerequisite to all prisoner suits about prison life, whether
13 they involve general circumstances or particular episodes, and whether they allege excessive force
14 or some other wrong." *Gaspard v. Hedgpeth*, No. 12-CV-1058-JST (PR), 2013 WL 1819335, at
15 *1 (N.D. Cal. Apr. 30, 2013) (citing *Porter v. Nussle*, 534 U.S. 516, 532 (2002)).

16 "Failure to exhaust under the PLRA is 'an affirmative defense the defendant must plead
17 and prove.'" *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (quoting *Jones v. Bock*, 549
18 U.S. 199, 204, 216 (2007)). "In the rare event that a failure to exhaust is clear on the face of the
19 complaint, a defendant may move for dismissal under Rule 12(b)(6)." *Id.* However, "a plaintiff is
20 not required to say anything about exhaustion in his complaint." *Id.* at 1169. County Defendants
21 argue that because Plaintiffs allege exhaustion under the California Government Claims Act but
22 not under the PLRA, their failure to exhaust under the latter is clear from the face of their
23 complaint. ECF No. 16 at 6. They cite no authority for this proposition or to counter *Albino*'s
24 holding that Plaintiffs are not required to plead exhaustion. Accordingly, their motion to dismiss
25 on this ground is denied.

26 **2. TVPA Claim**

27 The pretrial and immigration detainee subclasses bring a TVPA claim against both County
28 Defendants and Aramark, alleging that they "were forced to perform work for defendants without

1 pay” and “were and continue to be coerced to work without compensation under threat of physical
2 punishment and restraint.” Compl. ¶ 71.

3 Subsection (a) of the TVPA imposes liability on primary offenders, or “[w]hoever
4 knowingly provides or obtains the labor or services of a person” by one or a combination of the
5 following four means:

- 6 (1) by means of force, threats of force, physical restraint, or
7 threats of physical restraint to that person or another person;
8 (2) by means of serious harm or threats of serious harm to that
9 person or another person;
10 (3) by means of the abuse or threatened abuse of law or legal
11 process; or
12 (4) by means of any scheme, plan, or pattern intended to cause
13 the person to believe that, if that person did not perform such labor or
14 services, that person or another person would suffer serious harm or
15 physical restraint[.]

16 18 U.S.C. § 1589(a)(1)-(4). Subsection (b) imposes liability on venture offenders, or any entity
17 that “knowingly benefits, financially or by receiving anything of value, from participation in a
18 venture which has engaged in” conduct prohibited by Subsection (a) where that entity knew or
19 acted with “reckless disregard of the fact that the venture has engaged in” the prohibited conduct.

20 *Id.* § 1589(b). Section 1595(a) authorizes civil remedies for violations of Section 1589. *Id.* §
21 1595(a).

22 Plaintiffs argue that County Defendants are liable as primary offenders and that Aramark is
23 liable as both a primary and a venture offender. ECF No. 28 at 9-14. The County does not move
24 to dismiss Plaintiffs’ TVPA claim on 12(b)(6) grounds, but Aramark argues that neither it nor
25 County Defendants are liable under either subsection. ECF No. 23 at 12-14.

26 **a. Primary Offender Liability**

27 Aramark argues that it cannot be held liable as a primary offender because, while Plaintiffs
28 allege various threats and coercion by Sheriff’s deputies, they do not allege “that Aramark made
any threats or coerced Plaintiffs, nor could they plausibly allege such because Aramark has no role
in or responsibility for Plaintiffs’ conditions of imprisonment at Santa Rita.” ECF No. 23 at 12.
In response, Plaintiffs invoke Subsection (a)(4), which prohibits knowingly obtaining labor “by
means of any scheme, plan, or pattern intended to cause the person to believe that, if that person

1 did not perform such labor or services, that person or another person would suffer serious harm or
2 physical restraint.” ECF No. 28 at 10. Plaintiffs contend that Aramark’s contract with the County
3 constitutes a “scheme . . . that caused [P]laintiffs to believe they would suffer serious harm or
4 physical restraint in the form of solitary confinement or additional time in jail.” ECF No. 28 at 10.

5 Plaintiffs cite *Owino v. CoreCivic, Inc.*, No. 17-cv-1112 JLS (NLS), 2018 WL 2193644, at
6 *11 (S.D. Cal. May 14, 2018) for their Section 1589(a) argument. ECF No. 28 at 10. But in that
7 case, civil immigration detainees sued a private company that operated the detention center in
8 which they were housed, alleging that the company had coerced them into performing
9 uncompensated work by threatening solitary confinement if they did not comply. *Owino*, 2018
10 WL 2193644, at *11. Unlike in *Owino*, Aramark does not operate the Santa Rita Jail and
11 Plaintiffs do not allege that Aramark made the threats at issue. Plaintiffs cite no other authority
12 for the proposition that “entering into a contract to obtain uncompensated labor” from an entity
13 “who exert[s] physical control over plaintiffs is unlawful conduct under section 1589(a)(4).” ECF
14 No. 28 at 10. The other cases they cite, which the Court addresses below, involve Section 1589(b)
15 liability. Accordingly, Plaintiffs have failed to allege that Aramark is a primary offender under the
16 TVPA.

17 **b. Venture Offender Liability**

18 Plaintiffs next argue that Aramark is liable as a venture offender because it “knowingly
19 receives a financial benefit from its venture with Alameda County.” *Id.* Plaintiffs cite *Ricchio v.*
20 *McLean*, 853 F.3d 553, 556 (1st Cir. 2017), in which the plaintiff alleged a Section 1589(b)
21 violation by claiming that motel owner defendants had (1) established a “venture” with a man who
22 held her captive in his motel room, and (2) “knowingly benefited, that is, ‘receiv[ed something] of
23 value,’ § 1589(b), through renting space in which [the man] obtained, among other things, forced
24 sexual labor or services from [plaintiff].” ECF No. 28 at 10. The *Ricchio* court held that, by
25 alleging that the motel owners had refused the plaintiff’s pleas for help, had seen her captor
26 physically abuse her, and had watched her physical condition deteriorate, the plaintiff had alleged
27 that they “acted, at the least, in reckless disregard of the fact that the venture included such
28 conduct on [the captor’s] part.” 853 F.3d at 556.

1 Plaintiffs also cite *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923, 952-53 (N.D. Cal. 2019),
2 in which Tesla and Eisenmann were held liable for a subcontractor’s use of coerced immigrant
3 labor in constructing a new Tesla facility. The *Lesnik* court held that plaintiffs had alleged that
4 Tesla and Eisenmann had “benefited ‘financially’ or by ‘receiving anything of value’” from the
5 subcontractor’s labor practices by alleging that those practices “were committed to fulfill a
6 contract signed with Tesla and Eisenmann.” *Id.* at 953. The court also held that the plaintiffs had
7 alleged “that Eisenmann ‘knew or should have known’” about these practices by alleging that
8 Eisenmann had submitted false letters for the workers’ visas and occasionally supervised their
9 work. *Id.* Likewise, the plaintiffs had adequately alleged Tesla’s knowledge by alleging that
10 Tesla knew the workers were performing work prohibited by their visas and without the required
11 licenses and that Tesla kept records of the employees’ excessive work hours and job hazards. *Id.*

12 As in *Lesnik*, Plaintiffs have sufficiently alleged that Aramark financially benefits from a
13 venture with the County via Aramark’s contract with the County. Compl. ¶ 21. In order to state a
14 claim for venture liability on Aramark’s part, however, the Plaintiffs must also have stated a claim
15 of primary liability by the County. See *Bistline v. Parker*, 918 F.3d 849, 871 (10th Cir. 2019)
16 (“We will first address whether plaintiffs have pled facts sufficient to support a claim against a
17 primary offender, because this is a necessary element for venture liability.”). Aramark argues that
18 “Plaintiffs have not stated, and cannot state, a cognizable claim that the County and Sheriff
19 violated § 1589(a), because it is well-settled under California law that ‘[i]nmates may be required
20 to work in accordance with prison rules.” ECF No. 23 at 13 (quoting *Hunter v. Odom*, No. 19-cv-
21 00847-JST, 2019 WL 1560458, at *2 (N.D. Cal. Apr. 10, 2019)).³ The Court need not address this
22 argument, however, because Plaintiffs have failed to allege the knowledge or “reckless disregard”
23 required to state a venture liability claim. See 18 U.S.C. §§ 1589(b), 1595(a).

24 Plaintiffs allege that they performed work “under the supervision of Aramark employees
25 and under guard of County of Alameda Sheriff’s Deputies.” Compl. ¶ 24. However, unlike in

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27 ³ While the Court does not address Aramark’s argument regarding the County’s primary liability
28 under the TVPA, it notes that *Hunter* involved “[p]risoners who are duly tried, convicted and
sentenced for the commission of a crime,” 2019 WL 1560458, at *2, not pretrial and immigration
detainees like those who bring the TVPA claim in this case.

1 *Ricchio* and *Lesnik*, Plaintiffs do not allege that Aramark observed the threats by Sheriff's
2 deputies, or that the company kept any records that would reflect these threats. *Id.* ¶ 26. Plaintiffs
3 ask the Court to “infer from these allegations that . . . Aramark witnesses these coercive tactics
4 employed by the Deputies while they supervise plaintiffs during shifts or is otherwise aware of
5 these tactics based on their need to fulfill quotas regardless of plaintiffs’ unwilling participation.”
6 ECF No. 28 at 11. Such an inference, however, would be too speculative based on the alleged
7 facts. *See In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted)
8 (“Nor is the court required to accept as true allegations that are merely conclusory, unwarranted
9 deductions of fact, or unreasonable inferences.”). Accordingly, the Court dismisses Plaintiffs’
10 TVPA claim against Aramark with leave to amend.

11 **B. State Law Claims**

12 County Defendants contend that certain Plaintiffs’ California Labor Code and Bane Act
13 claims are barred because they did not exhaust their administrative remedies prior to filing suit.
14 ECF No. 13 at 9-10. In the alternative, County Defendants argue that Plaintiffs have not stated
15 Labor Code claims because County Defendants “are not required to pay the Plaintiffs’ wages and
16 cannot be held liable for failure to do so or for restitution of wages not paid.” *Id.* at 9.

17 Aramark likewise argues that Plaintiffs’ Labor Code claims fail because “[u]nder
18 California law, inmates are not employees, and services they perform in jail are governed by the
19 Penal Code, not the Labor Code,” and the Penal Code does not require compensation of inmates in
20 county jails. ECF No. 23 at 8. Even if Plaintiffs were governed by the Labor Code, Aramark
21 argues, they have not pleaded an employment relationship with Aramark. *Id.* at 8-9. Aramark
22 further argues that female Plaintiffs have failed to state a claim of unequal pay and that Plaintiffs’
23 UCL and Bane Act claims also fail. *Id.* at 9.

24 **1. California Government Claims Act Exhaustion**

25 County Defendants move to dismiss Plaintiffs Mebrahtu, Reynolds, Mason, and Nunez-
26 Romero’s Labor Code and Bane Act claims for failure to comply with the presentation
27 requirements of the California Government Claims Act. ECF No. 13 at 18-20. The Government
28 Claims Act requires claimants to file a written claim relating to “a cause of action for death or for

1 injury to person or to personal property or growing crops” within six months of accrual, and any
2 other claim within one year of accrual. Cal. Gov. Code § 911.2(a). “[T]he date of accrual of a
3 cause of action to which a claim relates is the date upon which the cause of action would be
4 deemed to have accrued within the meaning of the statute of limitations which would be
5 applicable thereto if there were no requirement that a claim be presented” *Id.* § 901. Section
6 910 outlines the requirements of a claim, including that the claimant identify the “date, place and
7 other circumstances of the occurrence or transaction which gave rise to the claim asserted.” Cal.
8 Gov. Code § 910(c). A public entity presented with a sufficient claim “must act within 45 days or
9 the claim is deemed to have been denied.” *Phillips v. Desert Hosp. Dist.*, 49 Cal. 3d 699, 707
10 (1989) (citing Cal. Gov. Code § 912.4). “Once a claim is denied or deemed to have been denied,
11 the claimant may then proceed to file a lawsuit.” *Id.*

12 The Government Claims Act applies to actions brought for “money or damages.” Cal.
13 Gov. Code § 950.2; *see also City of Los Angeles v. Super. Ct.*, 168 Cal. App. 4th 422, 430 (Cal.
14 Ct. App. 2008)). In these cases, “failure to file a claim is fatal to the action.” *City of San Jose v.*
15 *Super. Ct.*, 12 Cal. 3d 447, 454 (1974). “The policy underlying the claims presentation
16 requirements is to afford prompt notice to public entities. This permits early investigation and
17 evaluation of the claim and informed fiscal planning in light of prospective liabilities.” *Sparks v.*
18 *Kern Cty. Bd. of Supervisors*, 173 Cal. App. 4th 794, 798 (Cal. Ct. App. 2009). However, “[t]he
19 act should not be applied to snare the unwary where its purpose has been satisfied.” *City of S.*
20 *Lake Tahoe Retirees Ass’n v. City of S. Lake Tahoe*, No. 215-cv-02502-KJM (CKD), 2016 WL
21 4001120, at *5 (E.D. Cal. July 26, 2016) (citing *Elias v. San Bernardino Cty. Flood Control Dist.*,
22 68 Cal. App. 3d 70, 74 (Cal. Ct. App. 1977)). For this reason, “a claim need not strictly comply
23 with § 910 in order to be considered a claim.” *Santos v. Merritt College*, No. 07-cv-5227-EMC,
24 2008 WL 4570708, at *3 (N.D. Cal. Oct. 14, 2008). Rather, substantial compliance is sufficient.
25 *Id.*

26 “Because ‘the purpose of [the Government Claims Act] is to provide the public entity
27 sufficient information to enable it to adequately investigate claims and to settle them, if
28 appropriate, without the expense of litigation,’ *City of San Jose v. Superior Court*, 12 Cal. 3d 447,

1 455 (1974), ‘a claim need not contain the detail and specificity required of a pleading, but need
2 only fairly describe what [the] entity is alleged to have done,’ *Connelly v. Cnty. of Fresno*, 146
3 Cal. App. 4th 29, 38 (Ct. App. 2006).” *Flock v. County of Alameda*, No. 12-CV-01003 NC, 2012
4 WL 4051120, at *4 (N.D. Cal. Sept. 13, 2012). “It is well-recognized that courts should construe
5 the Government Claims Act liberally in favor of plaintiffs so as not to harshly deny relief to
6 injured parties.” *Newman v. San Joaquin Delta Cmty. Coll. Dist.*, No. CIV. 2:09-3441 WBS K,
7 2010 WL 3633737, at *5 (E.D. Cal. Sept. 14, 2010) (citing *Munoz v. California*, 33 Cal. App. 4th
8 1767, 1778 (Cal. Ct. App. 1995)).

9 Plaintiffs first argue that Mebrahtu, Reynolds, Mason, and Nunez-Romero are exempt
10 from the presentation requirements because they are considered “public employees.” ECF No. 14
11 at 11 (citing Cal. Gov. Code § 905(c), which exempts “[c]laims by public employees for fees,
12 salaries, wages, mileage, or other expenses and allowances”). However, Plaintiffs cite no
13 authority for the assertion that inmate-employees are “public employees,” which the California
14 Government Code defines as “any person employed by any public agency,” except those elected
15 or appointed to office. Cal. Gov. Code § 3501(d). Given that the issue at the center of this lawsuit
16 is whether Plaintiffs’ are, in fact, employees, the Court concludes that they may not skirt the
17 Claims Act requirements by invoking this exception.

18 The Court will now address County Defendants’ arguments as to particular claimants.

19 **a. Mebrahtu and Reynolds**

20 Plaintiffs Ruelas, Cox, Davis, Jones, Mebrahtu, and Reynolds submitted a claim to the
21 County on August 12, 2019 on behalf of themselves and “all others similarly situated.”⁴ ECF No.
22 15-2 at 6.⁵ In this claim, Mebrahtu alleges that he “is formerly incarcerated in Santa Rita Jail and
23

24 ⁴ The claim was mailed on August 8, 2019 and received on August 12, 2019. ECF No. 15-2 at 5,
25 9. The parties do not address which date constitutes the date the claim was “presented” to the
26 County pursuant to Section 911.2. Without deciding the issue, the Court uses August 12, 2019 for
27 the purpose of this order.

28 ⁵ Plaintiffs filed an unopposed request for judicial notice of this claim and the County’s response
to it. ECF No. 15. Because Defendants do not question the authenticity of the claim and it is
incorporated into the complaint by reference, *see* Compl. ¶ 65, the Court grants this request. *See*
Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v.*
County of Santa Clara, 307 F.3d 1119 (9th Cir. 2002); *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th

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United States District Court
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1 worked as an incarcerated Aramark employee in the jail kitchen for approximately eleven months
2 between 2014 and 2018” and that he “never received any monetary compensation for his labor.”
3 *Id.* at 7. Reynolds alleges that he “is formerly incarcerated in Santa Rita Jail and worked as an
4 incarcerated Aramark employee in the jail kitchen for approximately one year,” also without
5 monetary compensation, and that he “sustained cumulative injuries to his legs and lumbar region”
6 as a result of “the demanding working conditions.” *Id.* The County responded to the class claim
7 on August 19, 2019, rejecting “causes of action occurring between February 12, 2019 to August
8 12, 2019” and returning the claim as untimely insofar as it related to causes of action occurring
9 prior to February 12, 2019. *Id.* at 2. The County did not identify any other issues with the claim.
10 *Id.*

11 County Defendants argue that Mebrahtu’s claim is time-barred and that Reynolds’s claim
12 fails to state the required “date of the accident.” ECF No. 13 at 18-19. Plaintiffs respond that any
13 defects in Mebrahtu and Reynolds’s claims are cured by the fact that Ruelas, Cox, Davis, and
14 Jones presented a compliant class claim.⁶ ECF No. 14 at 12-13. Plaintiffs are correct that putative
15 class members need not file individual claims to satisfy the Government Claims Act, *City of San*
16 *Jose*, 12 Cal. 3d at 457, and Defendants concede as much, ECF No. 16 at 11. However, they
17 argue that a class claim cannot revive claims made by class representatives that are “time barred”
18 or “otherwise defective.” *Id.* at 11-12.

19 To assess substantial compliance, the Court first looks to whether there is “*some*
20 compliance with *all* of the statutory requirements,” and next to whether this compliance is
21 “sufficient to constitute *substantial* compliance[.]” *City of San Jose*, 12 Cal. 3d at 456-57
22 (emphasis in original). A class claim “must provide the name, address, and other specified
23 information concerning the *representative* plaintiff and then sufficient information to identify and
24 make ascertainable the class itself.” *Id.* at 457 (emphasis in original). It appears likely that neither
25 Mebrahtu’s nor Reynolds’s portion of the class claim states the “date . . . of the occurrence or

26 _____
27 Cir. 2005).

28 ⁶ Defendants do not dispute the sufficiency of Ruelas, Cox, Davis, and Jones’s claims. ECF No. 16 at 11.

1 transaction which gave rise to the claim asserted” with sufficient precision to serve as
 2 representative plaintiffs. Cal. Gov. Code § 910(c); *see Martinez v. County of Sonoma*, No. 15-cv-
 3 01953-JST, 2016 WL 39753, at *4 (N.D. Cal. Jan. 4, 2016) (substantial compliance where class
 4 claim provided a “narrowly-defined timeframe” of four months and alleged that named
 5 representative’s injuries “occurred ‘during those periods,’ ‘daily,’ and ‘regularly’”). However,
 6 because the County did not object to the sufficiency of Mebrahtu or Reynolds’s claims in its
 7 response to the class claim, the County Defendants have waived this defense. Cal. Gov’t Code §
 8 910.8 (“If . . . a claim as presented fails to comply substantially with the requirements of Sections
 9 910 and 910.2, . . . the board . . . may, at any time within 20 days after the claim is presented, give
 10 written notice of its insufficiency, stating with particularity the defects or omissions therein.”); *id.*
 11 § 911 (“Any defense as to the sufficiency of the claim based upon a defect or omission in the
 12 claim as presented is waived by failure to give notice of insufficiency with respect to the defect or
 13 omission as provided in Section 910.8. . . .”); *see also Green v. State Ctr. Cmty. Coll. Dist.*, 34
 14 Cal. App. 4th 1348, 1354 (Cal. Ct. App. 1995) (“If the public entity fails to send this notice, it
 15 *waives* any defenses as to the sufficiency of the claim based upon a defect or omission.”)
 16 (emphasis in original).

17 The Court agrees with Defendants, however, that Mebrahtu cannot serve as a class
 18 representative because he has not sufficiently alleged that he suffered an injury within one year of
 19 filing the class claim. *See* Cal. Gov. Code § 911.2(a). Accordingly, the Court dismisses
 20 Mebrahtu’s Labor Code and Bane Act claims against County Defendants with leave to amend.⁷

21 **b. Mason and Nunez-Romero**

22 County Defendants argue that Mason and Nunez-Romero’s state claims are also barred
 23 because Plaintiffs filed this lawsuit before the County responded to Mason and Nunez-Romero’s
 24 government claim. ECF No. 13 at 19-20. In the complaint, Mason and Nunez-Romero allege that
 25

26 ⁷ Apart from their argument that they fall under the Government Claims Act’s exception for public
 27 employees, Plaintiffs do not dispute that their Labor Code and Bane Act claims are brought for
 28 “money or damages.” Cal. Gov. Code § 950.2; *see also City of Los Angeles v. Super. Ct.*, 168 Cal.
 App. 4th 422, 430 (Cal. Ct. App. 2008)). Accordingly, the claim presentation requirement applies
 to these claims.

1 they “filed a California Government Claim on their behalf and on behalf of others similarly
2 situated regarding the matters asserted herein . . . on November 8, 2019.” Compl. ¶ 66. Pursuant
3 to Section 912.4, the County had 45 days to respond to that claim. Cal. Gov. Code § 912.4.
4 Plaintiffs filed the instant complaint on November 20, 2019, just twelve days later, and do not
5 allege that the County rejected Mason and Nunez-Romero’s claim, as required by the Government
6 Claims Act, *see id.* § 945.4.

7 Plaintiffs argue that this defect is not fatal to Mason and Nunez-Romero’s claims, citing
8 cases in which “courts have refused to dismiss [prematurely filed complaints] because by
9 submitting the timely claim, ‘plaintiffs had substantially complied with the claim presentation
10 requirement.’” ECF No. 14 at 15 (quoting *California v. Super. Ct.*, 32 Cal. 4th 1234, 1244 (2004)
11 (listing cases)). But the cases listed in *Superior Court* hinge on the fact that plaintiffs had
12 “satisfied the purpose behind the [claim presentation] requirement – to give the entity the
13 opportunity to investigate and settle the claim before suit was brought.” 32 Cal. 4th at 1244; *see*,
14 *e.g.*, *Cory v. City of Huntington Beach*, 43 Cal. App. 3d 131, 136 (Cal. Ct. App. 1974) (“[T]he city
15 could not have been prejudiced by the premature filing of the action since the complaint was not
16 served until the time period had run.”); *Taylor v. City of Los Angeles*, 180 Cal. App. 2d 255, 263
17 (Cal. Ct. App. 1960) (“In the present case, the complaint was not filed too late but, rather, several
18 days before the rejection of the claim. At the time the answer of the city was filed, the city had
19 received every benefit which a provision for rejection prior to suit is intended to serve.”).

20 Plaintiffs cite no cases holding that a complaint filed twelve or fewer days after a
21 government claim was filed substantially complied with the claim presentation requirement.
22 Because such a window cannot reasonably be seen as giving the County “the opportunity to
23 investigate and settle the claim before suit was brought,” *Super. Ct.*, 32 Cal. 4th at 1244, the Court
24 dismisses Mason and Nunez-Romero’s Labor Code and Bane Act claims against County
25 Defendants for failure to comply with the Government Claims Act. While they may not serve as
26 named Plaintiffs, the Court notes that they may participate in the suit as putative class members,
27 presuming they are similarly situated to other named Plaintiffs.
28

1 **2. Labor Code Claims**

2 Plaintiffs make four California Labor Code claims: (1) failure to pay wages, Cal. Labor
3 Code §§ 201, 202, 218; (2) failure to pay minimum wage, *id.* § 1194; (3) failure to pay overtime
4 wages, *id.*; and (4) failure to pay equal wages in violation of the California Equal Pay Act, *id.* §
5 1197.5. Compl. ¶¶ 84-99. Plaintiffs argue that they are entitled to wages under California
6 Proposition 139, which allowed for-profit entities to contract with state prisons and county jails for
7 the purpose of using inmate labor. ECF No. 24-2 at 2⁸; ECF No. 28 at 14. Plaintiffs also argue
8 that they are entitled to the protections of the Labor Code because they have alleged an
9 employment relationship between themselves, Aramark, and the County. ECF No. 14 at 8; ECF
10 No. 28 at 17.

11 Aramark moves to dismiss Plaintiffs' Labor Code claims on the ground that, because
12 Plaintiffs are county jail inmates rather than state prisoners, Proposition 139 does not entitle them
13 to compensation for their work.⁹ ECF No. 23 at 15. Alternatively, Aramark argues that Plaintiffs
14 have not alleged an employment relationship with Aramark. ECF No. 23 at 16. County
15 Defendants move to dismiss Plaintiffs' Labor Code claims against them on the grounds that, even
16 if Proposition 139 does require compensation of Plaintiffs, it is Aramark, not the County, that is
17 required to provide that compensation. ECF No. 13 at 12.

18 **a. Proposition 139**

19 In authorizing joint employment ventures with for-profit entities, Proposition 139 amended
20 the California Constitution to provide that “[s]uch programs shall be operated and implemented
21 pursuant to statutes enacted by or in accordance with the provisions of the Prison Inmate Labor
22 Initiative of 1990, and by rules and regulations prescribed by the Director of Corrections and, for
23 county jail programs, by local ordinances.” ECF No. 24-2 at 2; Cal. Const. Art. 14 § 5.

24
25 _____
26 ⁸ Aramark has filed an unopposed request for judicial notice of Proposition 139, which the Court
27 grants. ECF No. 24 at 2; *see Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6
28 (9th Cir. 2006) (courts “may take judicial notice of court filings and other matters of public
record”).

⁹ Aramark also moves to dismiss Plaintiffs' Equal Pay Act claim on the ground that Plaintiffs do
not allege unequal pay. ECF No. 23 at 21. Plaintiffs concede this argument in their opposition.
ECF No. 28 at 8. The Court thus dismisses this claim with leave to amend.

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1 Proposition 139 also amended California Penal Code Sections 2717 *et seq.*, which apply solely to
2 state prisons. ECF No. 24-2 at 3-4. One of these amendments provides that “[t]he compensation
3 of prisoners engaged in programs pursuant to contract between the Department of Corrections and
4 joint venture employers for the purpose of conducting programs which use inmate labor shall be
5 comparable to wages paid by the joint venture employer to non-inmate employees performing
6 similar work for that employer.” *Id.* at 4; Cal. Penal Code § 2717.8.

7 While Plaintiffs concede that Proposition 139 did not similarly modify the Penal Code
8 sections applying to county jails, they argue that the Section 2717.8 language is “instructive”
9 when it comes to joint employment ventures with county jails. ECF No. 28 at 15-16. Plaintiffs
10 contend that “[w]ithout explicit language to that effect, it cannot be argued that prisoners in jail are
11 excluded from being jointly employed by the county and a private employer and permitted
12 wages.” *Id.* at 16. In support of this assertion, Plaintiffs cite Proposition 139’s purpose section,
13 which focuses on the need to reimburse the state “or counties” for the costs of incarceration as
14 well as to allow prisoners to support their families and assist in their own rehabilitation. ECF No.
15 24-2 at 2. Plaintiffs argue that because counties were “explicitly included” in Proposition 139’s
16 authorization of joint employment ventures, prisoners in county jails “must be permitted wages.”
17 ECF No. 28 at 16.

18 But the one does not follow the other. In passing Proposition 139, California voters chose
19 to amend the state prison section of the Penal Code to mandate compensation for prisoners but *not*
20 to amend the corresponding Penal Code section for county jails. Instead, they left the question of
21 compensation for joint employment ventures in county jails up to municipalities. *See also* Voter
22 Information Guide for 1990, General, ECF No. 29-3 at 67 (“[Proposition 139] allows contracting
23 for the use of local jail inmate labor and provides that such contracts be governed by local
24 ordinances. However, the measure does not specify the content of the local ordinances.”).¹⁰
25 Plaintiffs point to no local ordinance entitling them to compensation, and the Court has found

26
27 ¹⁰ The Court grants Plaintiffs’ unopposed request for judicial notice of the 1990 voter guide. *See*
28 ECF No. 29; *Reyn’s Pasta Bella, LLC*, 442 F.3d at 746 n.6; *Chamness v. Bowen*, No. CV 11-
01479 ODW (FFMx), 2011 WL 13128410, at *5 (C.D. Cal. Mar. 30, 2011) (granting judicial
notice of official voter guides).

1 none. Filling in this gap with the equivalent of Section 2717.8 for county jails, as Plaintiffs ask
 2 the Court to do, would fly in the face of the statutory maxim that “a matter not covered is to be
 3 treated as not covered.” Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of*
 4 *Legal Texts* 93-100 (2012) (cited in *Shea v. Kerry*, 961 F. Supp. 2d 17, 29 n.3 (D.D.C. 2013))
 5 (explaining canon of construction that “[n]othing is to be added to what the text states or
 6 reasonably implies (casus omissus pro omissis habendus est)”).¹¹

7 **b. Employment Relationship**

8 Plaintiffs argue that, even if Proposition 139 does not establish their right to compensation,
 9 they are entitled to the protections of the Labor Code because they have alleged an employment
 10 relationship with Aramark and the County. ECF No. 28 at 17. But this skips over the question of
 11 whether Plaintiffs have a right to compensation underlying their claims for unpaid wages, and, if
 12 so, whether the Labor Code provides county jail inmates a means of recovering these wages.

13 Before addressing these questions, the Court distinguishes between two subsets of
 14 Plaintiffs: those who have been convicted of crimes and those who have not. The Court evaluates
 15 the claims separately for each group.

16 **i. Convicted Plaintiffs**

17 It is well established that, absent a specific statutory provision, prisoners who have been
 18 “duly convicted” of crimes “do not have a legal entitlement to payment for their work.” *Serra v.*
 19 *Lappin*, 600 F.3d 1191, 1196 (9th Cir. 2010) (citation omitted). This is because “the Thirteenth
 20 Amendment, a general prohibition against involuntary servitude, . . . expressly excepts from that
 21 general prohibition forced labor ‘as a punishment for crime whereof the party shall have been duly
 22 convicted.’” *Id.* (quoting U.S. Const. amend., XIII §1).¹² Where state statutes do create such an
 23

24 ¹¹ As Judge Katzmman notes in his useful treatise on statutory construction, “canons have their
 25 limits as guides to adjudication.” Robert Katzmman, *Judging Statutes* 51 (2014). The legislative
 26 history of a statute, for example, is often a better guide to the meaning of that statute than a canon
 27 of construction. *Id.* at 50-54. In this instance, however, the Court finds no conflict between the
 28

¹² The Court uses the term “convicted” to encompass all Plaintiffs for whom incarceration at Santa
 Rita jail, and the ensuring work in its kitchen, was “imposed as legal punishment for a crime.” See
United States v. Kozminski, 487 U.S. 931, 943 (1988).

1 entitlement, “courts have consistently held that such statutes granting inmates a protected property
2 interest in their wages may also limit and define the contours of such interest.” *Ward v. Ryan*, 623
3 F.3d 807, 811 (9th Cir. 2010) (collecting cases). California requires that inmates in state prisons
4 be paid for their work and mandates that “in no event shall that compensation exceed one-half the
5 minimum wage provided in Section 1182 of the Labor Code, except as otherwise provided in [the
6 Penal Code].” Cal. Penal Code § 2811; *see Davis v. Villagrana*, No. 1:09-cv-01897-AWI-SMS
7 PC, 2011 WL 318328, at *3 (E.D. Cal. Feb. 1, 2011) (rejecting due process claim for wages
8 higher than those dictated by the Penal Code).

9 When it comes to county jails, however, the Penal Code, like the state constitutional
10 provision amended by Proposition 139, delegates the issue to municipalities. *See* Cal. Penal Code
11 § 4017 (stating that “[a]ll persons confined in the county jail . . . under a final judgment of
12 imprisonment rendered in a criminal action or proceeding [or] . . . as a condition of probation after
13 suspension of imposition of a sentence or suspension of execution of sentence may be required by
14 an order of the board of supervisors or city council to perform labor on the public works or
15 ways”); *id.* § 4019.3 (“The board of supervisors may provide that each prisoner confined in or
16 committed to a county jail shall be credited with a sum not to exceed two dollars (\$2) for each
17 eight hours of work done by him in such county jail.”). Because Plaintiffs point to no local
18 ordinance entitling them to compensation for their work, they have not demonstrated a “legal
19 entitlement” to such compensation. *Serra*, 600 F.3d at 1196.

20 Even if they had, the Labor Code does not give Plaintiffs who have been convicted of
21 crimes a means of recovering such compensation. Plaintiffs argue that “[n]othing in the language
22 of the California Constitution or the sections of the Penal Code dealing with jails denies prisoners
23 in county jails the protections of the California Labor Code” and that, “absent statutory language
24 to the contrary, prisoners in county jail are not categorically excluded from being employees under
25 the labor code.” ECF No. 28 at 15. In support, Plaintiffs cite cases applying the Labor Code’s
26 worker’s compensation provisions to a worker performing court-mandated community service, *see*
27 *Arriaga v. County of Alameda*, 9 Cal. 4th 1055, 1059 (1995), and to a county jail inmate who had
28 volunteered to work in exchange for a shorter sentence, *Pruitt v. Workmen’s Comp. Appeals Bd.*,

1 *Nevada Cty.*, 261 Cal. App. 2d 546, 552 (Cal. Ct. App. 1968). *Id.* Both cases, however, focus on
2 the constitutional and legislative mandate that worker’s compensation be liberally construed.
3 *Arriaga*, 9 Cal. 4th at 1065; *Pruitt*, 261 Cal. App. 2d at 553. Moreover, the Labor Code
4 specifically provides that “[e]ach inmate of a state penal or correctional institution” is entitled to
5 worker’s compensation – which is not at issue in this case. Cal. Labor Code § 3370(a).

6 Other than the worker’s compensation provisions, the Court has identified just one other
7 section of the Labor Code that explicitly references prisoners or inmates. *See* Cal. Labor Code
8 § 6304.2 (classifying “any state prisoner engaged in correctional industry” an “employee” for the
9 purposes of the occupational health and safety provisions of the Labor Code). The Penal Code,
10 meanwhile, presumes that the Labor Code does *not* apply to duly convicted prisoners unless
11 specifically indicated. As discussed above, the Penal Code caps compensation for state prisoners
12 at “one-half the minimum wage provided in Section 1182 of the Labor Code, except as otherwise
13 provided in [the Penal Code].” Cal. Penal Code § 2811. This and other provisions of the Penal
14 Code, *see, e.g., id.* § 2700 (empowering Department of Corrections to require able-bodied
15 prisoners to work as many hours “as shall be prescribed by the rules and regulations of the
16 Director of Corrections”), are flatly inconsistent with the Labor Code. *See Owino*, 2018 WL
17 2193644, at *21 (holding that Section 2811 of the California Penal Code “expressly exempts [state
18 prison] inmates from the Labor Code’s minimum wage requirements”). So while it may be true,
19 as Plaintiffs contend, that county jail inmates “are not categorically excluded from being
20 employees under the labor code,” ECF No. 28 at 15, neither can the Court conclude that they are
21 *included* in the Labor Code unless the Penal Code says so. Because Plaintiffs point to no portion
22 of the Penal Code indicating that Sections 201, 202, 218, or 1194 of the Labor Code apply to
23 convicted inmates, the Court concludes that these inmates cannot invoke these sections to recover
24 wages.

25 For this reason, the Court dismisses the convicted Plaintiffs’ Labor Code claims. Because
26 amendment would be futile, dismissal is without leave to amend. *See Salameh v. Tarsadia Hotel*,
27 726 F.3d 1124, 1133 (9th Cir. 2013).

28

ii. Non-Convicted Plaintiffs

1 Plaintiffs who have not been convicted of crimes are protected by the Thirteenth
 2 Amendment’s prohibition against involuntary servitude. *See McGarry v. Pallito*, 687 F.3d 505,
 3 511 (2d Cir. 2012). “[A]lthough a state may subject a pretrial detainee to restrictions and
 4 conditions of the detention facility, such conditions may not violate the Constitution.” *Id.* Forcing
 5 someone to work “by the use or threat of physical restraint or physical injury, or by the use or
 6 threat of coercion through law or the legal process[,]” violates the Thirteenth Amendment.
 7 *Kozminski*, 487 U.S. at 952; *see also McGarry*, 687 F.3d at 511. Defendants make no arguments
 8 as to why, despite this constitutional prohibition, pretrial detainees are not entitled to wages or
 9 Labor Code protections. The Court thus denies the motions to dismiss the claim for failure to pay
 10 wages insofar as that claim is made by non-convicted Plaintiffs.¹³

11 As for these Plaintiffs’ Section 1194 claims for failure to pay minimum wage or overtime,
 12 the Court must also evaluate whether they meet the employee test laid out in *Martinez v. Combs*,
 13 49 Cal. 4th 35, 49 (2010). *Martinez* held that the Industrial Welfare Commission’s (“IWC”) wage
 14 orders define an “employer” subject to liability under Section 1194 as a person who “directly or
 15 indirectly, or through an agent or any other person, employs or exercises control over the wages,
 16 hours, or working conditions of any person.” 49 Cal. 4th at 52, 71, 109 (quoting Wage Order No.
 17 14) (emphasis omitted). Pursuant to the IWC, “employ” is defined to mean “to engage, suffer, or
 18 permit to work.” *Id.* at 57 (quoting Wage Order No. 14). “To employ, then, under the IWC’s
 19 definition, has three alternative definitions. It means: (a) to exercise control over the wages, hours
 20 or working conditions, *or* (b) to suffer or permit to work, *or* (c) to engage, thereby creating a
 21 common law employment relationship.” *Id.* at 64. “Any of the three is sufficient to create an
 22 employment relationship.” *Ochoa v. McDonald’s Corp.*, 133 F. Supp. 3d 1228, 1233 (N.D. Cal.
 23 2015). “While [the] plaintiff is not required to conclusively establish that defendants [a]re her
 24

25 _____
 26 ¹³ In addition to the pretrial detainee subclass, this category also includes members of the
 27 immigration detainee subclass who have not been convicted of crimes. *See Owino*, 2018 WL
 28 2193644, at *21-22 (holding that civil immigration detainees were employees for the purposes of
 the California Labor Code because they had not been convicted of a crime, they met the employee
 test laid out in *Martinez v. Combs*, 49 Cal. 4th 35, 49 (2010), and “Defendant has not
 demonstrated that the Labor Code, or any case law, specifically exempts alien detainees from the
 Labor Code”).

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1 joint employers at the pleading stage, [the] plaintiff must at least allege some facts in support of
2 this legal conclusion.” *Johnson v. Serenity Transp., Inc.*, 141 F. Supp. 3d 974, 988 (N.D. Cal.
3 2015) (quoting *Hibbs-Rines v. Seagate Techs., LLC*, No. 08-cv-05430-SI, 2009 WL 513496, at *5
4 (N.D. Cal. Mar. 2, 2009)).

5 Under the first *Martinez* prong, “control over ‘any one of the three aspects – wages, hours,
6 or working conditions – is sufficient to impute employer liability under California wage and hour
7 law.’” *Haralson v. United Airlines, Inc.*, 224 F. Supp. 3d 928, 939 (N.D. Cal. 2016) (quoting
8 *Torres v. Air to Ground Servs., Inc.*, 300 F.R.D. 386, 395 (C.D. Cal. 2014)). “Supervision of the
9 work, in the specific sense of exercising control over how services are performed, is properly
10 viewed as one of the ‘working conditions’ mentioned in the wage order.” *Martinez*, 49 Cal. 4th at
11 76. However, a “single conclusory allegation . . . that [the plaintiff] was supervised and/or
12 managed by [defendant] employees” is not sufficient to support an inference of control. *Haralson*,
13 224 F. Supp. 3d at 939-40.

14 Plaintiffs allege that they worked “under the supervision of ARAMARK employees and
15 under guard of COUNTY OF ALAMEDA Sheriff’s Deputies.” Compl. ¶ 24. Standing alone, this
16 conclusory allegation does not support an inference of control by Aramark. *Haralson*, 224 F.
17 Supp. 3d at 939-40. Plaintiffs’ further allegation that “Defendants divide the work day so that
18 male prisoners are assigned to longer, daytime shifts, and female prisoners are assigned to shorter,
19 nighttime shifts,” Compl. ¶ 23, provides more support for this inference but constitutes improper
20 group pleading. *See, e.g., Boyer v. Becerra*, No. 17-cv-06063-YGR, 2018 WL 2041995, at *7
21 (N.D. Cal. Apr. 30, 2018) (citation, internal quotation marks, and alterations omitted) (“Courts
22 consistently conclude that a complaint which lump[s] together multiple defendants in one broad
23 allegation fails to satisfy the notice requirement of Rule 8(a)(2).”); *Fagbohunge v. Caltrans*, No.
24 13-cv-03801-WHO, 2014 WL 644008, at *3 n.4 (N.D. Cal. Feb. 19, 2014) (“The general
25 allegation regarding ‘defendants’ is also insufficient on its face because it does not identify which
26 specific defendants . . .”). Plaintiffs also allege that Aramark sets “quotas,” Compl. ¶ 30, but do
27 not explain for what or how these quotas demonstrate Aramark’s control over Plaintiffs’ working
28 conditions. Rather, the complaint references these quotas in describing how the Sheriff’s deputies

1 forced female prisoners to work in place of male prisoners who were on strike. *Id.* Taken
2 together, these allegations do not sufficiently allege that Aramark exercised control over Plaintiffs’
3 wages, hours, or working conditions. While Plaintiffs make more specific allegations about
4 County Defendants, these allegations go to the ways in which these Defendants allegedly forced
5 Plaintiffs to work – not the control they had over this work. Accordingly, Plaintiffs have not
6 alleged control by County Defendants, either.

7 Under *Martinez*’s second prong – to suffer or permit to work – “the basis of liability is the
8 defendant’s knowledge of and *failure to prevent* the work from occurring.” 49 Cal. 4th at 70. In
9 *Martinez*, defendants did not have the power to prevent the plaintiffs from working because a third
10 party “had the exclusive power to hire and fire [the] workers, to set their wages and hours, and to
11 tell them when and where to report to work.” *Id.*

12 Aramark argues that Plaintiffs have not alleged “that Aramark assigned Plaintiffs to
13 kitchen duty – or could have prevented that assignment.” ECF No. 23 at 18 (citing allegations that
14 Sheriff’s deputies coerced Plaintiffs to work, Compl. ¶¶ 26, 27, 30). Aramark also quotes
15 Plaintiffs’ opposition to County Defendants’ motion to dismiss, in which they argue that
16 “[County] Defendants . . . make plaintiffs and the putative class’s labor possible by selecting
17 prisoners to work, setting their schedules, and imposing discipline on workers at their discretion.”
18 *Id.* (quoting ECF No. 14 at 6). Plaintiffs counter that “the defendants share responsibility for a
19 number of aspects of the scheme that makes plaintiffs’ labor possible.” *Id.* at 18-19 (citing Compl.
20 ¶¶ 22, 23, 29). Yet the portions of the complaint they cite for this joint responsibility improperly
21 lump Defendants together, as discussed above, giving the Court no basis to infer Aramark’s
22 individual responsibility. *See Boyer*, 2018 WL 2041995, at *7. Plaintiffs also argue that the
23 allegation of a contract between Aramark and the County to provide unpaid labor is sufficient to
24 demonstrate that Aramark has “ultimate control over [P]laintiffs’ work and therefore suffer[s] or
25 permit[s] plaintiffs to work.” ECF No. 28 at 18. Plaintiffs cite no authority for this proposition,
26 however, which cuts against the *Martinez* court’s rejection of the argument that the facts that
27 defendants knew plaintiffs were working and benefitted from their work were sufficient to meet
28 this prong. *See* 49 Cal. 4th at 69-70. Plaintiffs have thus not alleged that they were employees of

1 Aramark via the second *Martinez* prong.

2 Plaintiffs have, however, sufficiently alleged that County Defendants suffered or permitted
3 them to work. Because Plaintiffs were or are inmates confined in Santa Rita Jail, every aspect of
4 their lives was or is controlled by the County, the Sheriff, and their agents. Plaintiffs allege that
5 Sheriff's deputies both force them to work and "threaten to terminate prisoners' employment if
6 they need to take a sick day or are injured." Compl. ¶ 26. This is sufficient to allege that the
7 County Defendants suffer or permit the Plaintiffs to work. The non-convicted Plaintiffs have thus
8 sufficiently alleged that they were employed by County Defendants for the purposes of Section
9 1194 and have stated claims against those defendants for failure to pay minimum wage and
10 overtime.

11 Under the third *Martinez* prong, Plaintiffs can qualify as employees if they allege "a
12 common law employment relationship." *Ochoa*, 133 F. Supp. 3d at 1235 (citing *Martinez*, 49 Cal.
13 4th at 64). According to California common law, the "principal test of an employment
14 relationship is whether the person to whom service is rendered has the right to control the manner
15 and means of accomplishing the result desired." *S.G. Borello & Sons, Inc. v. Dep't of Indus.*
16 *Relations*, 48 Cal. 3d 341, 350 (1989) (citation omitted); *see also Ayala v. Antelope Valley*
17 *Newspapers, Inc.*, 59 Cal. 4th 522 (2014) (quoting *Borello*, 48 Cal. 3d at 357) ("What matters is
18 whether the hirer 'retains all necessary control' over its operations."). As explained above,
19 Plaintiffs have made no allegations about Aramark's control over their work other than the
20 conclusory allegation that they were supervised by Aramark employees. This allegation is
21 insufficient to support an inference of a common law employment relationship.

22 Because Plaintiffs have failed to allege that they were employees of Aramark under any of
23 the *Martinez* prongs, they have not stated Section 1194 claims for failure to pay minimum wage or
24 overtime. Accordingly, the Court dismisses these claims as to Aramark with leave to amend.

25 3. UCL Claim

26 Aramark also moves to dismiss Plaintiffs' UCL claim on the ground that Plaintiffs have
27 not stated any claim under other laws or statutes that could tether a UCL claim. ECF No. 23 at 21-
28 22; *see Willner v. Manpower Inc.*, 35 F. Supp. 3d 1116, 1132 (N.D. Cal. 2014) ("An act is

1 unlawful under the UCL if it violates another law.”); *Langan v. United Servs. Auto. Ass’n*, 69 F.
2 Supp. 3d 965, 983 (N.D. Cal. 2014) (conduct may be found “unfair” if it is “tethered to [a] specific
3 constitutional, statutory, or regulatory provision”). As discussed above, however, Plaintiffs have
4 stated a Labor Code claim against Aramark for failure to pay non-convicted Plaintiffs wages.
5 Because “virtually any state, federal or local law can serve as the predicate for an action under [the
6 UCL],” *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012), the Court
7 concludes that Plaintiffs have stated a UCL claim and denies Aramark’s motion to dismiss this
8 claim.

9 4. Bane Act Claim

10 Lastly, both Aramark and County Defendants move to dismiss Plaintiffs’ Bane Act claim.
11 ECF No. 13 at 20; ECF No. 23 at 22. The County Defendants argue only that Plaintiffs have
12 failed to exhaust under the California Government Claims Act. ECF No. 13 at 20-22. The Court
13 has already addressed these arguments above. *See infra* IV.B.1 (dismissing Labor Code and Bane
14 Act claims by Mebrahtu, Mason, and Nunez-Romero for failure to exhaust). County Defendants
15 additionally argue that the class claim Ruelas, Cox, Davis, Jones, Mebrahtu, and Reynolds
16 submitted to the County on August 12, 2019 did not put the County on notice of a potential Bane
17 Act Claim. ECF No. 16 at 15-16. But the 2019 claim stated that the claimants “fear punishment
18 and reprisals, including placement in solitary confinement, if they refuse to work” and put the
19 County on notice that Plaintiffs sought recovery “on the basis of all applicable legal theories.”
20 ECF No. 15-2 at 7.

21 County Defendants cite no authority for the proposition that the language in Plaintiffs’
22 claim was insufficient to satisfy the Government Claims Act, and the Court concludes that the
23 claim satisfied the exhaustion requirement.¹⁴ The Court thus denies County Defendants’ motion
24 to dismiss Plaintiffs’ Bane Act claim.

25 Next, Aramark argues that Plaintiffs have not alleged either of the required elements for a
26

27 ¹⁴ In their reply brief, County Defendants also argue that Plaintiffs have alleged insufficient facts
28 to support their Bane Act Claim. ECF No. 16 at 17. The Court disregards this argument as it was
made for the first time on reply. *See Rodman v. Safeway Inc.*, 125 F. Supp. 3d 922, 930 n.6 (N.D.
Cal. 2015).

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United States District Court
Northern District of California

1 Bane Act claim against Aramark. ECF No. 23 at 22-23. The necessary elements for a Bane Act
 2 claim are “(1) intentional interference or attempted interference with a state or federal
 3 constitutional or legal right, and (2) the interference or attempted interference was by threats,
 4 intimidation or coercion.” *Lawrence v. City and County of San Francisco*, 258 F. Supp. 3d 977,
 5 994-95 (N.D. Cal. 2017) (citing *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 67 (Cal. Ct.
 6 App. 2015)); *see also* Cal. Civ. Code § 52.1(b)-(c). The right at issue must be constitutional or
 7 statutory. *Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 843 (2004).

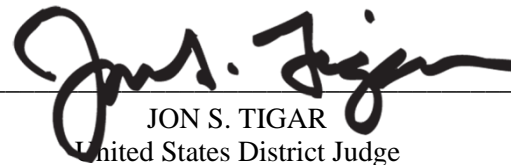
8 Plaintiffs have met the first element by alleging that Aramark intentionally interfered with
 9 the non-convicted Plaintiffs’ right to wages under the California Labor Code. As discussed above,
 10 however, Plaintiffs’ only allegations of force or coercion are by Sheriff’s deputies, not Aramark.
 11 *See* Compl. ¶¶ 26, 27, 30. Plaintiffs have thus failed to allege the second element of this claim
 12 against Aramark. Accordingly, the Court dismisses this claim with leave to amend.

13 CONCLUSION

14 For the foregoing reasons, the Court dismisses Plaintiffs’ (1) TVPA claim against
 15 Aramark; (2) Labor Code claim for failure to pay wages, but only as it pertains to convicted
 16 Plaintiffs; (3) Labor Code claims against County Defendants for failure to pay minimum wage and
 17 overtime, but only as they pertain to convicted Plaintiffs; (4) Labor Code claims against Aramark
 18 for failure to pay minimum wage and overtime; (5) Equal Pay Act claim; (6) Bane Act claim, but
 19 only against Aramark; and (7) Plaintiffs Mebrahtu, Mason, and Nunez-Romero’s Labor Code and
 20 Bane Act claims against County Defendants. With the exception of the Labor Code claim for
 21 failure to pay convicted Plaintiffs wages as well as Mebrahtu, Mason, and Nunez-Romero’s
 22 claims, all dismissals are with leave to amend.

23 **IT IS SO ORDERED.**

24 Dated: June 26, 2020

25 
 26 JON S. TIGAR
 27 United States District Judge
 28

CASE No. 21-16528

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS;
KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL REYNOLDS;
MONICA MASON; LOUIS NUNEZ-ROMERO; SCOTT ABBEY,
AND ALL OTHERS SIMILARLY SITUATED

Plaintiffs and Appellees,

v.

COUNTY OF ALAMEDA; SHERIFF GREGORY J. AHERN; ARAMARK
CORRECTIONAL SERVICES, LLC

Defendants and Appellants.

Appeal From The United States District Court,
Northern District of California, Case No. 4:19-cv-07637-JST,
Hon. Jon S. Tigar

EXCERPTS OF RECORD – VOLUME 3 OF 3

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PAGES 1 - 34

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JON S. TIGAR, JUDGE

ARMIDA RUELAS, ET AL.,)	
)	
PLAINTIFFS,	)	NO. C-19-7637 JST
)	
VS.	)	WEDNESDAY, MARCH 4, 2020
)	
COUNTY OF ALAMEDA, ET AL.,	)	OAKLAND, CALIFORNIA
)	
)	MOTION TO DISMISS
)	
DEFENDANTS.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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WEDNESDAY, MARCH 4, 2020

3:01 P.M.

P R O C E E D I N G S

000

THE CLERK: YOUR HONOR, NOW CALLING CIVIL MATTER
19-7637 ARMIDA RUELAS, ET AL. V. COUNTY OF ALAMEDA, ET AL.

IF THE PARTIES -- COUNSEL COULD PLEASE COME FORWARD AND
STATE THEIR APPEARANCES FOR THE RECORD.

MR. BOSSET: ERIC BOSSET FOR DEFENDANT ARAMARK
CORRECTIONAL SERVICES, YOUR HONOR.

MS. JOHNS: GOOD AFTERNOON, YOUR HONOR. EMILY ROSE
JOHNS ON BEHALF OF THE PLAINTIFFS IN THIS MATTER.

MR. LANNIN: GOOD AFTERNOON, YOUR HONOR. CORTLIN
LANNIN FROM COVINGTON & BURLING ALSO ON BEHALF OF ARAMARK.

MR. CHAPUT: GOOD AFTERNOON, YOUR HONOR. ISAAC
CHAPUT FROM COVINGTON & BURLING FOR ARAMARK.

THE COURT: VERY GOOD. WELCOME.

THERE ARE TWO MOTIONS TO DISMISS FILED IN THIS CASE. WE
TOOK ONE UNDER SUBMISSION WITHOUT A HEARING AND WE LEFT THE
OTHER ONE ON CALENDAR. AND WE LEFT ON CALENDAR IS ARAMARK'S
MOTION SO THAT'S WHAT WE ARE HERE TO DISCUSS TODAY.

BOY, THERE'S SO MANY DIFFERENT ISSUES IN THIS CASE AND I'M
GOING TO GIVE YOU EACH A LOOSE 20 MINUTES TO ARGUE IT. THAT'S
JUST A FUNCTION OF HOW MUCH TIME I HAVE AND HOW MUCH CAPACITY
I HAVE TO SIT UP HERE AND LISTEN TO ARGUMENT.

THE CASE COULD BENEFIT FROM MORE ARGUMENT THAN THAT, BUT I

1 SAY A LOOSE 20 BECAUSE IF I START ASKING A LOT OF QUESTIONS
2 AND INTERRUPTING YOU, AND FEEL I HAVE USED UP AN UNFAIR AMOUNT
3 OF YOUR TIME, I WILL JUST ADD FIVE MINUTES TO HEAR WHAT YOU
4 CAME TO SAY.

5 MY SUGGESTION TO YOU -- I THINK -- I THINK THIS IS SORT OF
6 EACH SIDE WINS-SOME-AND-LOSES-SOME ARGUMENT. I THINK THE
7 DEFENDANTS HAVE THE BETTER OF WHAT EXACTLY DID PROP. 139 DO.

8 I WON'T GO THROUGH ALL THE OTHER ARGUMENTS. IF I HAD
9 PREPARED BETTER, I WOULD HAVE DONE THAT. I WOULD HAVE HAD A
10 LITTLE SKELETAL OUTLINE OF MY TENTATIVE AS TO EACH OF THE
11 ISSUES. I DON'T HAVE THAT.

12 I WILL SUGGEST TO YOU THAT YOU TRY TO THINK OF WHAT YOUR
13 BEST ARGUMENT IS AND WHAT YOUR WORST ONE IS, AND MAKE AS MANY
14 AS YOU CAN IN EACH OF THOSE CATEGORIES WITHIN THE TIME THAT
15 YOU HAVE BEEN ALLOTTED. SOMETIMES PEOPLE SPEND MOST OF THEIR
16 TIME FOCUSING ON THEIR WINNING ARGUMENTS, AND THEN THEY DON'T
17 ADDRESS THEIR WEAK SPOTS.

18 ANYWAY, MR. BOSSET, EITHER YOU OR SOMEONE FROM YOUR SIDE
19 CAN GO FIRST.

20 **MR. BOSSET:** THANK YOU, YOUR HONOR.

21 IF THE COURT PERMITS, WHAT I WOULD LIKE TO DO IS ADDRESS
22 THE ISSUES IN THE ORDER OF THE LABOR CODE CLAIMS, THE TVPA
23 CLAIM, AND THE REMAINING DERIVATIVE STATE LAW CLAIMS.

24 **THE COURT:** YES.

25 **MR. BOSSET:** SO THE COMPLAINT ALLEGES, YOUR HONOR,

1 ONLY THREE SPECIFIC FACTS RELATING TO ARAMARK.

2 FIRST IS THAT THE COUNTY OF ALAMEDA HAS ENTERED INTO A
3 CONTRACT WITH ARAMARK TO PROVIDE FOOD SERVICES AT THE SANTA
4 RITA JAIL. THE SECOND IS THAT THE CONTRACT PROVIDES FOR THE
5 USE OF INMATE LIAISON AT THE JAIL KITCHEN. AND THE THIRD IS
6 THAT ARAMARK HAS NOT PAID WAGES TO THE INMATES.

7 IT IS UNDISPUTED, YOUR HONOR, THAT THE INMATE LABOR
8 PROGRAM OF THE SORT AT ISSUE HERE IS EXPRESSLY AUTHORIZED BY
9 THE CALIFORNIA CONSTITUTION AS AMENDED BY THE PRISON INMATE
10 LABOR INITIATIVE OF 1990, WHICH IS ALSO KNOWN AS PROPOSITION
11 139. AND AS WE HAVE INDICATED IN OUR BRIEFS, YOUR HONOR,
12 PROPOSITION 139 DOES NOT PROVIDE FOR THE PAYMENT OF WAGES TO
13 INMATES OF A COUNTY JAIL, WHICH IS WHAT THE PLAINTIFFS ARE.

14 INSTEAD, PROPOSITION 139, AS CODIFIED IN THE CONSTITUTION,
15 RESERVED THAT QUESTION FOR RESOLUTION BY LOCAL GOVERNMENT
16 DETERMINATION. AND THE PLAINTIFFS HAVE NOT IDENTIFIED ANY
17 LOCAL ORDINANCE BY ALAMEDA COUNTY THAT AUTHORIZES THE PAYMENT
18 OF WAGES TO THEM IN THIS INSTANCE.

19 IN ADDITION, YOUR HONOR, THE PLAINTIFFS IN PARAGRAPH 21 OF
20 THE COMPLAINT HAVE CONCEDED THAT THE ARAMARK CONTRACT ITSELF
21 ALSO DOES NOT AUTHORIZE THE PAYMENT OF WAGES TO THE PLAINTIFFS
22 FOR THE WORK IN THE SANTA RITA KITCHEN.

23 AND, THIRD, YOUR HONOR, ARTICLE 4 OF THE PENAL CODE, WHICH
24 ALSO APPLIES TO COUNTY JAILS, HAS NO PROVISION THAT AUTHORIZES
25 THE PAYMENT OF WAGES TO COUNTY JAIL INMATES.

1 SO, YOUR HONOR, BOTH UNDER CONTRACT AND ON THE LAW, THE
2 PLAINTIFFS ARE NOT ENTITLED TO ANY COMPENSATION FOR THE WORK
3 THAT THEY PERFORMED WHILE INCARCERATED AT THE SANTA RITA JAIL.
4 THEY CANNOT CIRCUMVENT THAT RESULT, YOUR HONOR, BY CLAIMING
5 WAGES AND OVERTIME UNDER THE GENERALIZED PROVISIONS OF THE
6 LABOR CODE.

7 THE CALIFORNIA LEGISLATURE, WHEN IT HAS WANTED TO INCLUDE
8 INMATES IN THE PROVISIONS OF THE LABOR CODE, KNOWS HOW TO DO
9 IT. IT HAS EXPRESSLY LEGISLATED THAT RESULT, SUCH AS IN THE
10 EXAMPLE OF EXTENDING WORKERS COMPENSATION BENEFITS TO INMATES
11 EXPRESSLY IN SECTION 3370 OF THE LABOR CODE.

12 THERE IS NO PROVISION, NO LANGUAGE, YOUR HONOR, IN THE
13 GENERALIZED WAGE PROVISIONS OF THE LABOR CODE EXTENDING THEIR
14 REQUIREMENTS TO INMATES. AND WE ARE NOT AWARE, AND PLAINTIFFS
15 HAVE NOT CITED A SINGLE STATE APPELLATE COURT CASE THAT HAS
16 HELD THAT INMATES ARE GOVERNED BY THE GENERALIZED WAGE
17 PROVISIONS OF THE LABOR CODE, A CODE THAT HAS BEEN ON THE
18 BOOKS FOR OVER 100 YEARS.

19 SO WE RESPECTFULLY SUBMIT, YOUR HONOR, THAT THIS COURT,
20 SITTING IN DIVERSITY, SHOULD NOT ITSELF REACH SUCH A
21 CONCLUSION WHICH COULD HAVE SIGNIFICANT AFFECT ON EVERY COUNTY
22 IN THE STATE IN THE ABSENCE OF ANY SUCH STATE AUTHORITY,
23 ESPECIALLY WHEN, AS WE HAVE DESCRIBED, THE RELEVANT REGIMES
24 UNDER WHICH INMATES ARE SUBJECT ALL UNIFORMLY PRECLUDE THE
25 PAYMENT OF WAGES.

1 SO FOR THOSE REASONS, YOUR HONOR, WE THINK THAT AS A
2 MATTER OF LAW, THE LABOR CODE CLAIMS SHOULD BE DENIED.

3 IN ADDITION, YOUR HONOR, IF THE COURT WERE TO FIND
4 NONETHELESS THAT THE LABOR CODE PROVISIONS, THE GENERALIZED
5 WAGE PROVISIONS APPLIED TO INMATES, WE WOULD STILL ARGUE THAT
6 THE COMPLAINT SHOULD BE DISMISSED ON THE PLEADINGS BECAUSE THE
7 COMPLAINT HAS NOT ALLEGED THE FACTUAL CONTENT THAT WOULD
8 ENABLE THIS COURT TO INFER REASONABLY THAT ARAMARK IS THE
9 EMPLOYER UNDER THE *MARTINEZ* TEST ANYWAY.

10 WE DON'T THINK AS A MATTER OF LAW INMATES CAN BRING WAGE
11 CLAIMS UNDER THE LABOR CODE. BUT IF THE COURT WERE TO
12 CONCLUDE OTHERWISE, WE STILL DON'T THINK ON THE ALLEGATIONS OF
13 THIS COMPLAINT THAT THE CLAIM SHOULD SURVIVE BECAUSE ALL THEY
14 HAVE DONE --

15 **THE COURT:** ONE ASPECT OF THE *MARTINEZ* TEST FOCUSES
16 ON -- WELL, I'M GOING TO PARAPHRASE THIS -- FOCUSES ON CONTROL
17 OVER WORKING CONDITIONS, CORRECT?

18 **MR. BOSSET:** YES, CONTROL OVER WORKING CONDITIONS AND
19 OTHER ASPECTS OF THE RELATIONSHIP. CORRECT.

20 **THE COURT:** YOU AND I CAN PROBABLY AGREE THAT IF I AM
21 AN INMATE AT SANTA RITA COUNTY JAIL, I DO NOT HAVE CONTROL
22 OVER MY WORKING CONDITIONS, CORRECT?

23 **MR. BOSSET:** YES.

24 **THE COURT:** AND I TAKE YOUR ARGUMENT TO BE ARAMARK
25 DOES NOT HAVE CONTROL OVER WORKING CONDITIONS, RIGHT?

1 **MR. BOSSET:** EXACTLY, YOUR HONOR. PLAINTIFF CONCEDED
2 THAT.

3 **THE COURT:** AND WE CAN AGREE THAT -- NEVER MIND.

4 **MR. BOSSET:** WE DO AGREE ON THOSE POINTS, YOUR HONOR,
5 AND INDEED --

6 **THE COURT:** SOMEONE HAS TO CONTROL THEIR WORKING
7 CONDITIONS, BUT I GATHER... WELL, ANYWAY, WHOEVER IT IS, IT IS
8 NOT ARAMARK.

9 **MR. BOSSET:** THAT'S RIGHT.

10 **THE COURT:** WE'LL LEAVE IT THERE.

11 **MR. BOSSET:** THAT'S RIGHT, YOUR HONOR.

12 AND I THINK BOTH THE COMPLAINT AND THE BRIEFING FROM THE
13 PLAINTIFFS TO WHICH WE CITED INDICATE THAT AT LEAST IN THE
14 PLAINTIFFS' VIEW THEY ARE CONTROLLED IN ALL ASPECTS BY THE
15 COUNTY AND IN PARTICULAR BY THE SHERIFF'S DEPUTIES BECAUSE
16 THAT'S WHAT THEY ALLEGE IN THEIR COMPLAINT. THAT'S WHAT THEY
17 SAY IN THEIR BRIEFING AS WELL.

18 BUT FROM OUR PERSPECTIVE, THE MAIN POINT, YOUR HONOR, IS
19 IT'S NOT ARAMARK. SO WE THINK FOR THOSE REASONS THAT THE
20 LABOR CODE CLAIM SHOULD BE DENIED BOTH AS A MATTER OF LAW AND
21 ALSO ON THE PLEADINGS ITSELF, YOUR HONOR.

22 AND UNLESS THE COURT HAS ANY FURTHER QUESTIONS ON THE
23 LABOR CODE, I'LL TURN TO THE TVPA.

24 **THE COURT:** SURE.

25 **MR. BOSSET:** SO COUNT TWO OF THE COMPLAINT ALLEGES

1 THAT ARAMARK HAS VIOLATED SECTION 1589 OF THE TVPA STATUTE, A
2 FEDERAL STATUTE WHICH PROHIBITS FORCED LABOR OBTAINED THROUGH
3 THREAT OF SERIOUS HARM OR OTHER COERCION.

4 YOUR HONOR, WE SUBMIT THAT THAT CLAIM IS ALSO EQUALLY
5 UNTENABLE BOTH AS A MATTER OF LAW AND ALSO ON THE PLEADINGS OF
6 THIS COMPLAINT FOR THREE INDEPENDENT REASONS.

7 FIRST, YOUR HONOR, AGAIN, IT IS UNDISPUTED THAT THE
8 CALIFORNIA CONSTITUTION AUTHORIZES THE INMATE LABOR PROGRAM AT
9 ISSUE IN THIS CASE INVOLVING COUNTY JAILS. AND PROPOSITION
10 139 SECTION 2 OF THAT INITIATIVE, WHICH THE COURT MAY TAKE
11 JUDICIAL NOTICE OF AND WE SUBMITTED THAT FOR JUDICIAL NOTICE,
12 EXPRESSLY FOUND AND DECLARED, QUOTE, "INMATES MAY BE REQUIRED
13 TO PERFORM WORK AND SERVICE", CLOSE QUOTE, TO ACHIEVE
14 GOVERNMENTAL INTERESTS THAT WERE IDENTIFIED IN SECTION 2 OF
15 PROPOSITION 139, INCLUDING, FOR EXAMPLE, DEFRAYING
16 INCARCERATION COSTS OF INMATES AT COUNTY JAILS THAT OTHERWISE
17 WOULD BE BORNE BY TAXPAYERS.

18 NEITHER PROPOSITION 139 NOR THE CONSTITUTIONAL PROVISION
19 THAT EMBODIES IT DIFFERENTIATES AMONG THE TYPES OF INMATES WHO
20 CAN BE REQUIRED TO PERFORM WORK AND SERVICES UNDER THE TERMS
21 OF THAT CONSTITUTIONAL PROVISION. AND SO THEY CAN BE PRETRIAL
22 DETAINEES WHO ARE PROPERLY INCARCERATED AND COMMITTED FOR
23 INCARCERATION PENDING BAIL OR FOR OTHER REASONS OR THEY MAY BE
24 SENTENCED PERSONS, BUT NOTHING IN THE FACE OF THE STATUTE
25 PRECLUDES THE REQUIREMENT THAT INMATES AT A COUNTY JAIL

1 PERFORM WORK, INCLUDING PRETRIAL DETAINEES, WHICH IS THE
2 RELEVANT SUBCLASS FOR PURPOSES OF THE TVPA CLAIM IN THIS
3 LAWSUIT.

4 SO IT'S, THEREFORE, LAWFUL FOR THE COUNTY AND THE
5 SHERIFF'S DEPARTMENT TO REQUIRE JAIL INMATES AT SANTA RITA TO
6 PERFORM WORK. AND AS A RESULT, THEY DON'T HAVE A CLAIM THAT
7 THEY CAN RAISE FOR A FORCED LABOR UNDER THE TVPA STATUTE WE
8 RESPECTFULLY SUBMIT.

9 IN ADDITION, THERE'S A SECOND REASON, YOUR HONOR, WHY WE
10 BELIEVE THAT NO CLAIM AS A MATTER OF LAW COULD BE ADVANCED IN
11 THIS CASE, AND THAT'S BECAUSE THE ALLEGATIONS ARE THAT COUNTY
12 DEFENDANTS ARE THE OFFENDERS IN THIS INSTANCE. THEY HAVE
13 ENGAGED IN THE ALLEGED THREATS AS DESCRIBED IN THE COMPLAINT,
14 AND THAT ARAMARK HAS SOME SORT OF DERIVATIVE TYPE OF
15 LIABILITY, WHETHER IT'S AS PART OF A SCHEME OR AS PART OF A
16 VENTURE, BUT THE COUNTY DEFENDANTS AS GOVERNMENTAL ENTITIES,
17 WE SUBMIT, ARE NOT SUBJECT TO THE TVPA FOR AT LEAST TWO
18 REASONS.

19 THE FIRST IS, AS A MATTER OF STATUTORY INTERPRETATION, THE
20 TERM, QUOTE, "WHOEVER", CLOSE QUOTE, WHICH IS THE TERM USED IN
21 1589 TO IDENTIFY WHAT PARTY CAN BE HELD LIABLE UNDER THE TVPA
22 IS NOT DEFINED IN THE FEDERAL DICTIONARY ACT TO INCLUDE
23 GOVERNMENTAL ENTITIES. AND, INDEED, THE CENTRAL DISTRICT OF
24 CALIFORNIA IN THE *NUNAG-TANEDO* CASE THAT WE CITED IN OUR
25 MOVING PAPER HELD THAT GOVERNMENTAL DEFENDANT IN THAT CASE

1 COULD NOT BE HELD LIABLE OR HAVE OTHERWISE VIOLATED THE TVPA
2 FOR THAT VERY REASON.

3 **THE COURT:** I WANT TO FOLLOW UP ON SOMETHING THAT
4 REALLY IS A COUNTY ISSUE BUT YOU MAKE THIS ARGUMENT IN YOUR
5 MOTION, AND SO IT FEELS LIKE FAIR GAME.

6 I GET THE NOTION, HEY, ARAMARK DIDN'T DO THREATS OR
7 COERCION AND THEY HAVEN'T SUFFICIENTLY LINKED US TO ANY
8 THREATS OR COERCION. WHAT I WANT TO ASK ABOUT IS THE ARGUMENT
9 YOU MADE IMMEDIATELY BEFORE THAT WHICH IS, THERE HAS TO BE
10 SOME VIOLATION ON THE PART OF THE COUNTY. IF THERE'S NOT,
11 THEN WE ARE NOT LIABLE.

12 AND IN YOUR BRIEF YOU SAY CALIFORNIA INMATES ARE UNDER A
13 LEGAL COMPULSION TO WORK. AND YOU CITE *BURLESON* AND *HUNTER*.
14 AND MY QUESTION IS, DO THOSE CASES INVOLVE PLAINTIFFS WHO ARE
15 NOT SERVING A SENTENCE OF CONVICTION? BECAUSE YOU HAVE A
16 COUNTY JAIL POPULATION THAT IS COMPRISED OF TWO DIFFERENT
17 CATEGORY -- AT LEAST TWO DIFFERENT CATEGORIES OF PERSON.

18 ONE CATEGORY OF PERSON IS SERVING A SENTENCE THAT WAS
19 EITHER IMPOSED AS A CONDITION OF A FELONY PROBATION, SO AS A
20 SENTENCING JUDGE I MIGHT SAY TO SOMEBODY, I AM PLACING YOU ON
21 PROBATION FOR FIVE YEARS, AND AS A CONDITION OF THE PROBATION,
22 YOU WILL DO THE FOLLOWING THREE THINGS, AND THE THIRD ONE IS,
23 SERVE EIGHT MONTHS IN THE COUNTY JAIL.

24 OR THEY ARE SERVING A MISDEMEANOR SENTENCE AFTER HAVING
25 BEEN CONVICTED OF A MISDEMEANOR.

1 THERE'S ALSO A CATEGORY OF PERSON WHO'S SIMPLY AWAITING
2 TRIAL ON EITHER A FELONY OR A MISDEMEANOR, AND THEY MAY HAVE
3 BEEN CONVICTED OF SOMETHING AT SOME OTHER TIME, BUT THE REASON
4 THEY ARE IN CUSTODY IS BECAUSE THEY DIDN'T MAKE BAIL. SO
5 THAT'S THE TABLE SETTING FOR THE QUESTION.

6 THE QUESTION IS -- AND YOU MAY NOT HAVE THOUGHT ABOUT
7 IT -- DO *BURLESON* AND *HUNTER* AND THOSE CASES ABOUT CALIFORNIA
8 INMATES BEING UNDER A LEGAL COMPULSION TO WORK, DOES THAT
9 CHANGE AT ALL WHEN THE PERSON IS IN CUSTODY OF THE COUNTY JUST
10 BECAUSE THEY COULDN'T MAKE BAIL AND THEY ARE NOT SERVING A
11 CUSTODIAL SENTENCE?

12 **MR. BOSSET:** WE DON'T BELIEVE SO, YOUR HONOR, BECAUSE
13 REALLY IT GOES BACK TO THE CALIFORNIA CONSTITUTIONAL PROVISION
14 THAT EMBODIES PROPOSITION 139. BECAUSE THAT'S THE GOVERNING
15 PROVISION HERE WHICH AUTHORIZES INMATE LABOR PROGRAMS OF THIS
16 SORT AT THE COUNTY JAIL LEVEL. AND THE LANGUAGE OF THAT
17 CONSTITUTIONAL PROVISION DOESN'T DISTINGUISH BETWEEN THE TYPES
18 OF INMATES THAT YOU'VE DESCRIBED.

19 **THE COURT:** OKAY.

20 **MR. BOSSET:** ALL OF THEM CAN BE REQUIRED TO PERFORM
21 WORK OR SERVICES. THAT'S IN THE LANGUAGE, THE FINDINGS OF
22 FACT, IF YOU WILL, THE DECLARATION IN SECTION 2 OF PROPOSITION
23 139 THAT WAS PRESENTED TO VOTERS AND APPROVED BY VOTERS.

24 SO WE THINK THAT'S ACTUALLY -- *BURLESON*, YOU ARE RIGHT,
25 YOUR HONOR, INVOLVES STATE PRISONERS AND THEIR CATEGORIES OF

1 PRISONERS AT ISSUE THERE MAY OR MAY NOT HAVE INCLUDED THE
2 ARRAY OF INMATES THAT A COUNTY JAIL HAS, INCLUDING THE TYPES
3 OF CATEGORIES YOU'VE DESCRIBED, BUT PROPOSITION 139 BY ITS
4 TERMS APPLIES TO COUNTY JAIL INMATES.

5 **THE COURT:** YES.

6 **MR. BOSSET:** AND INMATES AREN'T DISTINGUISHED IN ANY
7 WAY ACCORDING TO THEIR CATEGORY.

8 **THE COURT:** IT'S JUST AN INTERESTING FACT, THAT
9 PERSONS WHO MAY BE INNOCENT OF ANY CRIME WOULD BE SUBJECT TO
10 THE SAME WORK REQUIREMENTS. THAT'S ALL.

11 **MR. BOSSET:** SO THERE ARE AN ARRAY OF INTERESTS THAT
12 ARE SPECIFIED IN PROPOSITION 139 IN SUPPORT OF PASSAGE, AND
13 SOME OF THEM ARE PENOLOGICAL, SOME OF THEM ARE PUNITIVE, IF
14 YOU WILL, BUT NOT ALL OF THEM. SOME OF THEM, LIKE DEFRAYING
15 TAXPAYER COSTS, DEFRAYING INCARCERATION COST THAT OTHERWISE
16 WOULD BE BORNE BY TAXPAYERS REALLY ARE LEGITIMATE ECONOMIC
17 INTERESTS THAT ARE NOT DEPENDENT ON THE STATUS OF THE INMATE,
18 WHETHER OR NOT SHE HAS BEEN CONVICTED, BUT RATHER ARE
19 LEGITIMATE GOVERNMENT INTERESTS THAT ARE APPROPRIATE TO
20 ADVANCE. AND IN ONE CASE THAT WE DID NOT CITE IN OUR PAPER
21 BUT I WILL IDENTIFY NOW FOR THE COURT, *BELL V. WOLFISH*, 441
22 U.S. 520, THE SUPREME COURT HELD THAT PRISON --

23 **THE COURT:** WHAT YEAR?

24 **MR. BOSSET:** '79. JUSTICE REHNQUIST WROTE THE
25 OPINION.

1 THE SUPREME COURT HELD THAT PRISON AUTHORITIES MAY IMPOSE
2 CONDITIONS ON PRETRIAL DETAINMENT THAT ARE REASONABLY RELATED
3 TO LEGITIMATE GOVERNMENT INTERESTS.

4 **THE COURT:** YES, I AM FAMILIAR WITH THAT PRINCIPLE.

5 **MR. BOSSET:** RIGHT. AND WE THINK THAT THAT'S EXACTLY
6 WHAT PROPOSITION 139 DOES BY MANDATING OR AT LEAST
7 REQUIRING -- MANDATING THAT COUNTY JAIL INMATES, REGARDLESS OF
8 THEIR STATUS, PERFORM SOME WORK OR SERVICES FOR THE LEGITIMATE
9 GOVERNMENT INTEREST FOR DEFRAYING THE COST OF INCARCERATION.

10 THERE MAY BE ADDITIONAL PENOLOGICAL INTERESTS THAT COME
11 INTO PLAY WITH REGARD TO THAT SUBCATEGORY OF INMATES WHO ALSO
12 HAVE BEEN SENTENCED, BUT THAT DOESN'T MEAN THAT INMATES WHO
13 HAVEN'T BEEN SENTENCED CAN'T ALSO BE REQUIRED TO WORK BECAUSE
14 OF THE OTHER LEGITIMATE INTERESTS WHICH HAVE NOTHING TO DO
15 WITH WHETHER OR NOT THEY HAVE BEEN CONVICTED.

16 SO FOR THAT REASON, YOUR HONOR, WE THINK THAT AS A MATTER
17 OF LAW THESE PARTICULAR INMATES CAN'T MOUNT A TVPA CLAIM.
18 THEY CAN'T DO IT, AS I WAS SAYING WITH REGARD TO THE COUNTY
19 GOVERNMENT, BECAUSE THE GOVERNMENT IS NOT SUBJECT TO TVPA
20 LIABILITY UNDER THE TERMS OF THE 1589 ITSELF.

21 IN ADDITION, THE GOVERNMENT CAN TAKE ADVANTAGE OF THE
22 CIVIC DUTY EXCEPTION, WHICH DOES APPLY TO 1589 ACCORDING TO
23 ONE OF THE CASES CITED BY PLAINTIFFS' COUNSEL, *OWINO VERSUS*
24 *CORECIVIC*, AND THAT PRINCIPLE ALLOWS COURTS TO REQUIRE
25 CITIZENS, NOT JUST INCARCERATED PERSONS, BUT CITIZENS TO

1 PERFORM CERTAIN CIVIC DUTIES WHICH IN THE PAST HAVE BEEN
2 INTERPRETED TO INCLUDE WORK.

3 SO IF THE COUNTY, AS WE SUBMIT, CAN'T BE HELD LIABLE UNDER
4 THE TVPA, IT FOLLOWS THAT THERE CAN'T BE AN UNLAWFUL SCHEME OR
5 AN UNLAWFUL VENTURE BETWEEN THEM AND ARAMARK. SO THAT'S WHY
6 WE FEEL AS A MATTER OF LAW THERE IS NO TVPA CLAIM THAT COULD
7 BE PLED EVEN IF THEY HAD LEAVE TO AMEND BECAUSE OF THOSE
8 THRESHOLD ISSUES.

9 HAVING SAID THAT, YOUR HONOR, WE ALSO HAVE ARGUED THAT
10 THEY CERTAINLY HAVEN'T PLED A TVPA CLAIM AGAINST ARAMARK IN
11 THIS MATTER. ALL THEY PLED IS THAT WE BENEFITED. WE
12 BENEFITED FROM A CONTRACT THAT THE CALIFORNIA CONSTITUTION
13 ALLOWS. AND THEY HAVEN'T PLED THAT WE PARTICIPATED IN THE
14 ALLEGED THREATS THAT HAVE BEEN ATTRIBUTED TO THE SHERIFF'S
15 DEPUTIES, THEY HAVEN'T PLED THAT WE KNEW OF THOSE ALLEGED
16 THREATS, THAT WE OBSERVED THEM, THAT WE HEARD ABOUT THEM.
17 THEY HAVEN'T PLED THAT WE INTENDED THE PLAINTIFFS TO BELIEVE
18 THAT THEY WOULD BE SUBJECT TO THOSE THREATS IF THEY REFUSED TO
19 WORK. THAT'S A SPECIFIC REQUIREMENT OF THE SO-CALLED SCHEME
20 LIABILITY THAT THEY RAISED IN THEIR REPLY BRIEF.

21 NONE OF THOSE THINGS ARE PLED. SO EVEN IF THE COURT WERE
22 TO FIND THAT A TVPA CLAIM WERE VIABLE POTENTIALLY, CERTAINLY
23 NONE HAS BEEN PLED AGAINST ARAMARK IN THIS PARTICULAR
24 INSTANCE. SO WE THINK THAT THAT CLAIM ALSO SHOULD BE
25 DISMISSED.

1 WE ALSO THINK AS A LABOR CODE CLAIM, IT FAILS BOTH AS A
2 MATTER OF LAW AND IT CERTAINLY FAILS IN THE ALTERNATIVE IN THE
3 PLEADINGS AS WELL.

4 BECAUSE THOSE TWO CLAIMS FAIL, YOUR HONOR, WE THINK --

5 **THE COURT:** YOU HAVE ABOUT TWO MINUTES LEFT. YOU CAN
6 SAVE IT FOR REPLY IF YOU WANT IT, OR KEEP GOING.

7 **MR. BOSSET:** I WILL SAVE IT FOR REPLY.

8 **THE COURT:** VERY GOOD.

9 **MR. BOSSET:** THANK YOU.

10 **THE COURT:** MS. JOHNS.

11 **MS. JOHNS:** THANK YOU, YOUR HONOR. I WILL, IN TURN,
12 ADDRESS THE LABOR CLAIMS FIRST.

13 TO LOOK AT THE -- I WANT TO DRAW THE COURT'S ATTENTION TO
14 THE VOTERS GUIDE WHICH INCLUDED INFORMATION ABOUT THE PURPOSE
15 OF PROPOSITION 139 WHEN IT WAS BEING PROPOSED TO THE
16 CALIFORNIANS. AND THAT WAS INCLUDED AS EXHIBIT 2 IN MY
17 DECLARATION REGARDING THE REQUEST FOR JUDICIAL NOTICE, REQUEST
18 THE COURT TAKE JUDICIAL NOTICE OF THIS DOCUMENT.

19 IT EXPRESSLY DESCRIBES THE PURPOSE OF THESE PROGRAMS
20 FOR -- AND PROGRAMS MEANING THESE WORK PROGRAMS, BUT THEY ARE
21 INTENDED TO REDUCE INMATE IDLENESS, MINIMIZE THE COST OF
22 IMPRISONMENT, PROVIDE INCENTIVES FOR GOOD BEHAVIOR, PROVIDE
23 JOB TRAINING THAT -- WITH CONTRACTS FOR LOCAL JAIL LABOR, THAT
24 THESE MEASURES MUST ALLOW FOR THE CONTRACTING FOR THE USE OF
25 JAIL INMATE LABOR AND PROVIDE THAT SUCH CONTRACTS BE GOVERNED

1 BY LOCAL ORDINANCES.

2 AND IN THIS CASE ARAMARK SAYS, BECAUSE ALAMEDA COUNTY
3 CREATED A CONTRACT WITHOUT ENGAGING IN THESE LOCAL ORDINANCES
4 TO DEFINE HOW THE CONTRACT MIGHT BE RUN PURSUANT TO
5 PROPOSITION 139 AND NOW THE CALIFORNIA CONSTITUTIONAL
6 AMENDMENT, THAT IT IS NOT REQUIRED TO COMPLY WITH THINGS LIKE
7 THE CALIFORNIA LABOR CODE OR ANY OTHER PROVISION THAT MIGHT
8 CALL FOR, YOU KNOW, HOW A PRISONER MIGHT BE PAID.

9 WHAT IS RELEVANT HERE IS THAT THERE IS NO EXPRESS
10 EXCLUSION OF PRISONERS FROM THE CALIFORNIA LABOR CODE. AND
11 WITHOUT A LOCAL ORDINANCE OR SOME OTHER LAW TO CRIB A
12 PRISONER'S RIGHT AND A PRETRIAL DETAINEE'S RIGHT, AND I WILL
13 TALK ABOUT THE DISTINCTION FOR PURPOSES OF THE TVPA AS WELL AS
14 FOR SOME OF THE OTHER PURPOSES IN THIS CASE, BUT WITHOUT
15 EXPLICIT LANGUAGE EXCLUDING THEM, CALIFORNIA HAS SAID AND YOU
16 CAN SEE IN SOME OF THE IMMIGRATION DETENTION CASES THAT WE
17 CITED, *NOVOA* AND *OWINO*, THAT THE -- YOU HAVE TO LOOK TO THE
18 WAGE ORDERS TO FIND OUT WHETHER OR NOT A PERSON IS AN
19 EMPLOYER, AN ENTITY IS AN EMPLOYER. AND THAT CAN BE AN
20 EMPLOYER OF AN INCARCERATED PERSON. WHETHER THAT BE AN
21 IMMIGRATION DETAINEE, A PRETRIAL DETAINEE, OR A SENTENCED
22 PRISONER IN THE CASE OF SOME OF OUR PLAINTIFFS.

23 THEY WORKED BOTH -- MANY OF THEM WORKED PRETRIAL AND POST
24 CONVICTION.

25 THERE IS NO EXPRESS EXCLUSION FOR PRISONERS IN THE WAY --

1 THAT THEY ARE EXCLUDED FROM THE WAGE ORDER AND THEY'RE
2 EXCLUDED FROM THE LABOR CODE. IN FACT, WE DISCUSSED THIS IN A
3 LITTLE BIT MORE DEPTH IN THE OPPOSITION TO THE MOTION THAT THE
4 COUNTY BROUGHT THAT WE ARE NOT DISCUSSING TODAY, BUT THE WAGE
5 ORDERS WOULD APPLY HERE UNLESS THERE WAS SOME STATUTE -- YOU
6 KNOW, STATUTE THAT COULD OVERRIDE THAT OR A LOCAL ORDINANCE
7 THAT DEFINED A DIFFERENT WAY THAT THESE PRISONERS MIGHT BE
8 PAID.

9 EVEN, YOU KNOW, CERTAINLY EVEN THEN, THAT LOCAL ORDINANCE
10 IF IT DIDN'T SUPPLY PRISONERS WITH AT LEAST MINIMUM WAGE MIGHT
11 BE, YOU KNOW, IN VIOLATION OF THE LABOR CODE.

12 WHEN YOU LOOK AT THE OTHER STATUTES THAT PROPOSITION 139
13 AMENDED, THE PENAL CODE STATUTES APPLYING TO STATE PRISONERS,
14 IT IS CLEAR THAT IN ADDITION TO JUST CONTEMPLATING MINIMUM
15 WAGE BEING PAID TO PRISONERS, THERE -- IT DOESN'T EXPRESSLY
16 SAY MINIMUM WAGE SEEDS TO BE PAID, IT SAYS COMPARABLE WAGE TO
17 WHAT AN INDIVIDUAL --

18 **THE COURT:** IN THE FREE WORLD.

19 **MS. JOHNS:** EXACTLY.

20 AND SO THERE IS A -- I THINK THAT JUST SPEAKS TO THE IDEA
21 THAT, OF COURSE, PRISONERS ARE TO BE PAID MINIMUM WAGE, AND
22 EVEN WITH PROPOSITION 139, ARE TO BE PAID COMPARABLE WAGES IN
23 THE STATE PRISON CONTEXT. AND ONE COULD ARGUE A LOCAL
24 ORDINANCE THAT REQUIRED ANYTHING LESS THAN MINIMUM WAGE, LET
25 ALONE COMPARABLE WAGE, WOULD BE A VIOLATION OF THE LABOR CODE

1 AND CERTAINLY NOT COMPORT WITH WHAT THE VOTERS REQUIRED IN
2 PROPOSITION 139.

3 ARAMARK DOESN'T PAY THE COUNTY ANY MONEY TO OFFSET, AT
4 LEAST ACCORDING TO THEIR CONTRACT FROM WHAT I -- YOU KNOW, THE
5 PARTS THAT I'VE FOCUSED ON, THE PARTS I'VE SEEN, AND THE
6 CONTRACT I PROVIDED THE COURT IS NOT THE CURRENT CONTRACT, IT
7 IS ONE THAT EXPIRED IN 2018 BUT WE BELIEVE THAT IT IS A
8 SIMILAR CONTRACT TO WHAT WOULD BE IN OPERATION NOW AND
9 CERTAINLY WOULD COVER THE STATUTORY PERIOD OF THE WAGE CLAIMS
10 AT LEAST, YOU KNOW, 2018, 2017, AND 2016.

11 THE CONTRACT ITSELF CONTEMPLATES THE COUNTY PAYING ARAMARK
12 FOR FOOD. THAT IS -- THAT THE PRISONERS -- THESE MEALS
13 PRISONERS CREATE AND ARE DISTRIBUTED, NOT ONLY WITHIN ALAMEDA
14 COUNTY, BUT TO OTHER COUNTY JAILS IN DIFFERENT COUNTIES ACROSS
15 CALIFORNIA.

16 THERE IS NO OFFSET UNLESS ARAMARK IN TURN PAYS WAGES TO
17 PRISONERS THAT GET DEDUCTED IN ORDER TO PAY FOR ROOM AND BOARD
18 AND PAY FOR RESTITUTION AND THEN STILL GIVE THEM MONEY TO
19 ACCOMPLISH OTHER PARTS OF PROPOSITION 139, SUCH AS SUPPORTING
20 THEIR FAMILIES. IF ARAMARK IS NOT PAYING WAGES, AND WE'RE
21 PAYING, YOU KNOW, THE COUNTY TO HAVE THEM PAY SOME PORTION --

22 **THE COURT:** DOESN'T THE VOTER INFORMATION GUIDE
23 ITSELF MAKE IT PLAIN THAT STATE PRISON INMATES ARE TO BE
24 TREATED ONE WAY AND ARE TO BENEFIT FROM THE PROVISIONS OF
25 PROPOSITION 139 AND WHAT IS TO HAPPEN WITH COUNTY JAIL INMATES

1 IS A MATTER FOR LOCAL ORDINANCES?

2 **MS. JOHNS:** YES, I DO BELIEVE THAT THAT IS THE CASE.

3 DOES THAT MEAN, THOUGH, THAT LOCAL ORDINANCES COULD
4 CONTRAVENE THE STATE LABOR CODE IF AND WHEN ALAMEDA COUNTY
5 DECIDED TO CREATE A LOCAL ORDINANCE TO GOVERN THESE CONTRACTS.

6 **THE COURT:** HAS ALAMEDA COUNTY DONE THAT?

7 **MS. JOHNS:** AS FAR AS WE KNOW THEY HAVE NOT.

8 **THE COURT:** HERE'S -- I MIGHT BE MISSING SOMETHING.
9 I WANT TO MAKE SURE I'M FOLLOWING THE ARGUMENT.

10 SO THE ARGUMENT IS, PROPOSITION 139 REQUIRES THAT WAGES
11 THAT ARE PAID TO INMATE LABORERS HAVE TO BE COMPARABLE TO THE
12 WAGES PAID FOR PERSONS PERFORMING THE SAME KIND OF WORK
13 OUTSIDE OF THE PRISONS. SO IF WE WERE AT A STATE PRISON, IF
14 WE WERE AT SALINAS VALLEY STATE PRISON AND THE PRISONERS WERE
15 MAKING PENCIL CUPS FOR A PRIVATE COMPANY, THAT COMPANY WOULD
16 HAVE TO PAY THEM THE SAME THING THAT THEY PAY WORKERS WHO MAKE
17 THOSE CUPS WHO ARE NOT STATE PRISONERS.

18 **MS. JOHNS:** YES. THOSE WAGES WOULD BE REDUCED BY
19 THE -- UP TO 80 PERCENT FOR PAYMENT --

20 **THE COURT:** EXACTLY.

21 **MS. JOHNS:** -- CERTAIN ISSUES.

22 **THE COURT:** THE ARGUMENT I THINK YOU MADE WAS, SO
23 THERE'S -- SO THERE'S THIS REQUIREMENT THEY BE COMPARABLE.
24 AND THAT TELLS US THAT IF THEY DON'T HAVE TO BE COMPARABLE,
25 THEY AT LEAST HAVE TO EARN A MINIMUM WAGE UNDER THE LABOR

1 CODE, RIGHT?

2 **MS. JOHNS:** YES.

3 **THE COURT:** AND THAT THEY HAVE TO EARN AT LEAST
4 MINIMUM WAGE UNDER THE LABOR CODE WOULD APPLY TO COUNTY JAIL
5 INMATES.

6 **MS. JOHNS:** YES.

7 **THE COURT:** BUT THE PROBLEM THAT I AM HAVING IS THAT
8 IN ORDER TO MAKE THAT LOGICAL LEAP, I WOULD HAVE TO CONCLUDE
9 THAT THE VOTERS INTENDED PROPOSITION 139 TO APPLY IN SOME WAY
10 TO COUNTY JAIL INMATES. AND I AM LOOKING -- I BROUGHT THE
11 GUIDE OUT. I'M LOOKING AT THE LANGUAGE THAT SAYS THE MEASURE
12 ALLOWS CONTRACTING FOR THE USE OF LOCAL JAIL INMATE LABOR AND
13 PROVIDES THAT SUCH CONTRACTS BE GOVERNED BY LOCAL ORDINANCES,
14 HOWEVER, THE MEASURE DOES NOT SPECIFY THE CONTENT OF THE LOCAL
15 ORDINANCES.

16 IN OTHER WORDS, WE ARE PUNTING THAT QUESTION TO THE
17 COUNTIES, RIGHT?

18 **MS. JOHNS:** YES. I AGREE.

19 HOWEVER, IF ALAMEDA COUNTY -- I JUST WANT TO MAKE SURE THE
20 COURT IS AWARE THAT PRIOR TO PROPOSITION 139, PRIOR TO THIS
21 CONSTITUTIONAL AMENDMENT, THESE KINDS OF CONTRACTS THAT
22 ARAMARK AND ALAMEDA COUNTY HAVE, WERE NOT PERMITTED. THEY
23 WERE EXCLUSIVE -- EXPLICITLY EXCLUDED BY THE PREVIOUS LANGUAGE
24 OF ARTICLE 14 SECTION 5 OF THE CALIFORNIA CONSTITUTION.

25 AND IF THE COURT WOULD LIKE TO SEE THAT ON PAGE G-90 OF

1 THE VOTER GUIDE, I THINK -- SORRY, THAT'S NOT HELPFUL. PAGE
2 136 OF THE VOTER GUIDE --

3 **THE COURT:** YOU HAVE TO GIVE ME ONE SECOND. I HAVE
4 ADOBE --

5 **MS. JOHNS:** I'M SORRY.

6 **THE COURT:** -- MAKING ALL THE TEXT IN YOUR ATTACHMENT
7 RECOGNIZABLE, AND IT'S NOT QUITE DONE.

8 GIVE ME THE PAGE NUMBER AGAIN.

9 **MS. JOHNS:** INTERNAL PAGE NUMBER IS PAGE 136, BUT THE
10 DOCKET PAGE NUMBER IS 138 OF 145.

11 (PAUSE IN THE PROCEEDINGS.)

12 **THE COURT:** THIS IS EXHIBIT 2 TO YOUR DECLARATION,
13 CORRECT?

14 **MS. JOHNS:** THAT'S CORRECT.

15 **THE COURT:** SO I AM ON ECF PAGE 138, WHICH IS QUITE A
16 LOT OF THINGS ON THERE.

17 **MS. JOHNS:** YES. SO IT SAYS --

18 **THE COURT:** THIS IS THE FORMER SECTION 3.

19 **MS. JOHNS:** YES.

20 **THE COURT:** RIGHT?

21 **MS. JOHNS:** SO IT SAYS, YEAH:

22 "THE LABOR OF CONVICTS SHALL NOT BE LET OUT BY
23 CONTRACT TO ANY PERSON, COPARTNERSHIP, COMPANY, OR
24 CORPORATION, AND THE LEGISLATURE SHALL, BY LAW,
25 PROVIDE FOR THE WORKING OF CONVICTS FOR THE BENEFIT

1 OF THE STATE."

2 **THE COURT:** SO PLAYING DEVIL'S ADVOCATE FOR A MOMENT,
3 WHY ISN'T THIS THE MOST REASONABLE READING OF THE CHAIN OF
4 EVENTS?

5 LET'S ASSUME THAT SECTION 3 WOULD PROHIBIT EXACTLY THE
6 KIND OF CONTRACT THAT'S AT ISSUE HERE IN A COUNTY JAIL --
7 THAT'S THE WAY TO READ IT -- BETWEEN ARAMARK AND THESE JAIL
8 INMATES. SECTION 3 IS ELIMINATED. SO WHATEVER PROTECTION
9 FORMERLY WAS CONFERRED BY SECTION 3 IS NO LONGER AVAILABLE.

10 SECTION 3 IS REPLACED WITH THIS NEW LANGUAGE AND IN AN
11 ACCOMPANYING STATUTORY FRAMEWORK THAT ALLOWS FOR AND REGULATES
12 LABOR IN THE STATE PRISONS.

13 **MS. JOHNS:** AND COUNTY JAILS.

14 **THE COURT:** OKAY. WHERE DOES IT SAY COUNTY JAILS IN
15 THERE? REMEMBER, THE OLD SECTION 3 IS GONE.

16 **MS. JOHNS:** YES.

17 **THE COURT:** IT'S IN THE WIND.

18 **MS. JOHNS:** THE LANGUAGE OF THE CALIFORNIA
19 CONSTITUTION'S ARTICLE 14, SECTION 5 EXPLICITLY NOW SAYS THAT
20 THE DIRECTOR OF CORRECTIONS OR ANY COUNTY SHERIFF OR LOCAL --
21 OTHER LOCAL GOVERNMENT OFFICIAL CHARGED WITH JAIL OPERATIONS
22 MAY ENTER INTO CONTRACTS WITH PUBLIC ENTITIES, NONPROFIT, AND
23 FOR -- OR FOR-PROFIT ORGANIZATIONS, ENTITIES, OR BUSINESSES
24 FOR THE PURPOSE OF CONDUCTING PROGRAMS WHICH USE INMATE LABOR.
25 THIS WAS ADDED AS A PART OF PROPOSITION 139.

1 **THE COURT:** RIGHT.

2 **MS. JOHNS:** AND IT EXPLICITLY SAYS ANY COUNTY SHERIFF
3 OR OTHER LOCAL GOVERNMENT ENTITIES MAY NOW ENTER INTO THESE
4 CONTRACTS, SO THEY WERE PREVIOUSLY PROHIBITED FROM ENTERING
5 INTO.

6 **THE COURT:** RIGHT.

7 **MS. JOHNS:** IT DOES EXPLICITLY SAY THAT THESE
8 CONTRACTS SHOULD BE GOVERNED BY LOCAL ORDINANCE. HOWEVER, IF
9 THE COUNTY IS NOT GOVERNING BY LOCAL ORDINANCE, THAT DOES NOT
10 MEAN THAT THEY HAVE NOT ENTERED INTO THIS CONTRACT WHICH MAY
11 VIOLATE THE LABOR CODE.

12 IT MEANS THAT THEY ARE -- I BELIEVE IT MEANS THEY ARE
13 OPERATING THIS CONTRACT IN VIOLATION OF THE EXPRESS TERMS OF
14 THE CONSTITUTIONAL AMENDMENT THAT ALLOWS THE CONTRACTS. IT IS
15 MANDATORY --

16 **THE COURT:** I NEED YOU TO SLOW DOWN A LITTLE BIT --

17 **MS. JOHNS:** SORRY.

18 **THE COURT:** I CAN FOLLOW YOU, BUT DIANE SKILLMAN IS A
19 GENIUS OF A COURT REPORTER I AM SURE CANNOT TYPE THAT FAST.

20 **MS. JOHNS:** SHE CAN JOIN THE CLUB OF COURT REPORTERS
21 WHO --

22 **THE COURT:** WELL, LET'S NOT DO THAT. I WILL JUST
23 TELL YOU, GENERALLY WHEN THE JUDGE SAYS THAT, JUST SAY THANK
24 YOU. AND DON'T SAY YOU ALWAYS TALK TOO FAST. REALLY.

25 OKAY. SO I ACTUALLY I THINK I GET YOUR ARGUMENT A LITTLE

1 BETTER NOW THAN I DID BEFORE I TOOK THE BENCH. THIS LAST
2 SENTENCE OF THE NEW SECTION 5 SAYS HERE'S HOW WE ARE GOING TO
3 REGULATE THESE CONTRACTS IF THEY ARE STATE PRISON INMATES.
4 IT'S GOING TO BE THIS THING THAT WE IDENTIFY.

5 IF IT'S COUNTY JAIL INMATES, IT'S GOING TO BE SUBJECT TO
6 LOCAL ORDINANCE, YOUR ARGUMENT WOULD BE, I SEE. SO IF THERE'S
7 NO LOCAL ORDINANCE, THEN IT'S REGULATED BY NOTHING; HOW CAN
8 THAT POSSIBLY BE?

9 **MS. JOHNS:** PRECISELY.

10 **THE COURT:** RIGHT?

11 **MS. JOHNS:** PRECISELY.

12 **THE COURT:** INTERESTING.

13 **MS. JOHNS:** SO WHERE PRISONERS ARE NOT EXPLICITLY
14 EXEMPTED FROM THE LABOR CODE, WE ARGUE THAT WITHOUT ANY OTHER
15 AUTHORITY TO CITE TO AND WITH THE EXPRESS DESIRE OF THE VOTERS
16 BEING THAT THERE'S, AS ARAMARK SAYS, THAT THERE'S SOME OFFSET
17 TO THE COST OF INCARCERATING INDIVIDUALS, AND IN ADDITION TO
18 JUST BENEFITING THE COUNTY, THERE'S THE -- BENEFITING THE
19 TAXPAYERS, THERE'S AN IDEA THAT PEOPLE BE PERMITTED TO SUPPORT
20 THEIR FAMILIES TO THE EXTENT POSSIBLE. RIGHT?

21 THERE HAS TO BE SOME VERY CLEAR CONTEMPLATION THAT PEOPLE
22 ARE BEING PAID SO THAT THEY CAN PAY THE COUNTY BACK FOR THEIR
23 ROOM AND BOARD, SO THAT THEY CAN PROVIDE, YOU KNOW, THERE'S
24 RESTITUTION PAYMENTS AND COMPENSATION TO VICTIMS.

25 IF THERE'S NO MONEY COMING IN FROM THE PRIVATE ENTITY WITH

1 WHOM THE COUNTY IS CONTRACTING TO THESE INDIVIDUAL PRISONERS
2 IN THE FORM OF WAGES, THEN THERE'S NO WAY THAT PRISONERS ARE
3 THEN OFFSETTING THE COST OF THEIR INCARCERATION. THERE'S NO
4 WAY THAT THEY ARE PAYING VICTIM RESTITUTION, AND THERE'S NO
5 WAY --

6 **THE COURT:** THE ECONOMIST IN ME -- THIS IS A PRETTY
7 GOOD ARGUMENT, BUT THE ECONOMIST IN ME TELLS ME THEY ARE
8 DEFINITELY OFFSETTING THE COST OF THEIR INCARCERATION BECAUSE
9 THE COUNTY IS ABLE TO ENTER INTO A CONTRACT WITH ARAMARK.
10 ARAMARK IS GOING TO BE ABLE TO CHARGE THEM MUCH LESS THAN
11 SOMEONE THAT WOULD HAVE TO PAY WAGES WOULD HAVE TO CHARGE AND
12 STILL MAKE A PROFIT. AND SO THEY WILL MAKE THEIR MONEY AND
13 THE COUNTY IS PAYING LESS.

14 I'M NOT SAYING THAT'S A GOOD THING OR A BAD THING. I'M
15 JUST SAYING AS FAR AS REDUCING THE COST OF INCARCERATION PART
16 GOES, I THINK ARAMARK PROBABLY WINS THAT POINT.

17 **MS. JOHNS:** PERHAPS THEY HAVE THAT ONE BENEFIT. BUT
18 CERTAINLY WHEN YOU LOOK AT ALL OF THE ADDITIONAL BENEFITS THAT
19 THIS WAS SUPPOSED TO PROVIDE BOTH TAXPAYERS AND INDIVIDUALS
20 WHO ARE INCARCERATED, SIMPLY OFFERING A CONTRACT THAT IS LOWER
21 THAN MARKET RATE TO SANTA RITA FOR THESE -- PURCHASING THESE
22 MEALS DOES NOT MEET ALL OF THOSE.

23 **THE COURT:** OKAY. SO HERE'S -- I'M GOING TO
24 SUMMARIZE YOUR ARGUMENT IN ONE SENTENCE. YOU TELL ME IF I'M
25 RIGHT AND THEN WE'LL PROCEED FROM THERE.

1 YOUR ARGUMENT IS, JUDGE, IF THERE ARE NO WAGES, THEN THE
2 PURPOSES OF PROPOSITION 139 AS CLEARLY EXPRESSED BY THE VOTERS
3 ARE COMPLETELY FRUSTRATED AND, THEREFORE, THAT IS NOT A
4 REASONABLE INTERPRETATION OF THIS CONSTITUTIONAL AMENDMENT AND
5 THESE STATUTES.

6 **MS. JOHNS:** AND THAT THE LABOR CODE, WITHOUT ANY --
7 MUST APPLY UNLESS THERE IS SOME EXPRESS EXCEPTION.

8 **THE COURT:** THAT'S A FURTHER STEP OF THE ANALYSIS.
9 BUT --

10 **MS. JOHNS:** YES.

11 **THE COURT:** -- BUT AS FAR AS IT GOES, IS WHAT I SAID
12 A CORRECT STATEMENT OF YOUR FEELINGS ABOUT THIS, YOUR POSITION
13 ABOUT THIS? I SHOULDN'T SAY FEELING.

14 **MS. JOHNS:** THAT IS CORRECT.

15 **THE COURT:** SO WHAT IS THE BEST CASE YOU HAVE FOR
16 THAT POINT?

17 **MS. JOHNS:** SO THE CASE -- IT DEALS WITH INDIVIDUALS
18 WHO ARE IN IMMIGRATION DETENTION, BUT IT'S *NOVOA*, I MAY NOT BE
19 PRONOUNCING THAT RIGHT, BUT I WILL SPELL IT. N-O-V-O-A *VERSUS*
20 *GEO GROUP*.

21 **THE COURT:** DOES THAT CASE HAVE ANYTHING TO DO WITH
22 THE VOTER INTENT?

23 **MS. JOHNS:** IT DOES NOT.

24 **THE COURT:** BECAUSE YOU ARE PLACING AN AWFUL LOT OF
25 WEIGHT ON VOTER INTENT. THAT HAS A LOT OF APPEAL, THAT

1 ARGUMENT. IS THERE A CASE THAT BACKS YOU UP?

2 **MS. JOHNS:** I DO NOT HAVE A CASE AT MY FINGERTIPS
3 THAT WOULD TALK ABOUT VOTER INTENT TO SUPPORT THIS ARGUMENT,
4 YOUR HONOR.

5 **THE COURT:** YOUR ARGUMENT IS, SOMEBODY VOTES FOR THIS
6 AND THEN A YEAR LATER THEY FIND OUT PEOPLE ARE WORKING FOR
7 FREE FOR ARAMARK IN THE COUNTY JAIL. THEY SAY WAIT A SECOND,
8 THAT'S NOT WHAT I VOTED FOR.

9 THAT'S A PRETTY GOOD ARGUMENT, BUT I WONDER IF THERE'S A
10 CASE.

11 **MS. JOHNS:** LET ME DIRECT YOUR ATTENTION TO A CASE
12 THAT WE DISCUSSED AGAIN IN THE OPPOSITION TO THE COUNTY'S
13 MOTION, BUT IT IS CALLED *VASQUEZ V-A-S-Q-U-E-Z VERSUS STATE OF*
14 *CALIFORNIA*. IT'S 105 CAL. APP. 4TH 849, AND IT'S FROM 2003.

15 IT DEALS WITH A STATE PROGRAM, A PROGRAM IN STATE PRISON,
16 BUT IT CERTAINLY -- THAT CASE DISCUSSES THE BIT -- THE
17 INTENTION OF PROPOSITION 139 AND SAYS THAT THIS WAS AN
18 INSTANCE, I BELIEVE, WHERE THE ENTITY THAT THE STATE WAS
19 CONTRACTING WITH, THE PRIVATE ENTITY WAS NOT PAYING FOR
20 TRAINING. AND THE COUNTY -- EXCUSE ME, THE COURT SAID THAT
21 THEY MUST PAY FOR TRAINING. AND THAT THE -- AND THAT THE
22 STATE HAS SOME LIABILITY THERE BECAUSE THEY CAN'T, YOU KNOW,
23 THEY CAN'T SIT IDLY BY WHILE THE PRIVATE COMPANY VIOLATES
24 PROPOSITION 139.

25 BUT IN THAT CASE IT DISCUSSES THE VOTER INTENT BEHIND

1 PROPOSITION 139 TO SOME EXTENT. AND AS A -- IT WAS BROUGHT AS
2 A TAXPAYER LAWSUIT SO THAT TAXPAYERS COULD IMPOSE THE BENEFITS
3 THAT PROPOSITION 139 PROVIDED --

4 **THE COURT:** MS. JOHNS, YOU HAVE ABOUT TWO MINUTES
5 LEFT.

6 **MS. JOHNS:** THANK YOU.

7 CAN I ADDRESS BRIEFLY THE TVPA ARGUMENT?

8 **THE COURT:** SURE.

9 **MS. JOHNS:** I WANT TO JUST SAY PRETRIAL DETAINEES
10 CANNOT BE COMPELLED TO PARTICIPATE IN HARD LABOR ESPECIALLY
11 FOR THE BENEFIT OF A PRIVATE COMPANY BUT EVEN FOR THE BENEFIT
12 OF THE STATE.

13 AND THERE WERE CASES IN OUR -- ONE CASE IN PARTICULAR OUT
14 OF THE SECOND CIRCUIT THAT DEALT WITH A SIMILAR CASE WHERE AN
15 INDIVIDUAL WAS PRETRIAL AND THEY WERE BEING FORCED UNDER
16 THREAT OF, I BELIEVE IT WAS OF SOLITARY CONFINEMENT, BUT THEY
17 WERE BEING FORCED IN SOME MANNER TO PARTICIPATE IN LAUNDRY
18 SERVICES.

19 IF YOU WILL INDULGE ME ONE SECOND. THAT CASE IS *MCGARRY,*
20 *M-C-G-A-R-R-Y VERSUS PALLITO,* P-A-L-L-I-T-O. AND IT'S 687
21 F. 3D 505, SECOND CIRCUIT FROM 2012.

22 ALSO THAT CASE, IN ADDITION TO SAYING THAT PRETRIAL
23 DETAINEES CANNOT BE FORCED TO HARD LABOR, THAT THAT'S A
24 VIOLATION OF THE THIRTEENTH AMENDMENT AND CERTAINLY THE TVPA
25 COULDN'T FORCE PRISONERS TO WORK WHO ARE PRETRIAL IN VIOLATION

1 OF THE THIRTEENTH AMENDMENT EITHER, THAT TVPA WOULDN'T ALLOW
2 FOR THAT.

3 BUT IN ADDITION, IT ADDRESSES THE CIVIC DUTY EXCEPTION.
4 THE CIVIC DUTY EXCEPTION, OF COURSE, SAYS THAT A PERSON CAN BE
5 COMPELLED WITHOUT VIOLATING THE THIRTEENTH AMENDMENT TO THINGS
6 LIKE MILITARY SERVICE OR JURY SERVICE.

7 AND IN THE CONTEXT OF MORE, YOU KNOW, SMALLER SERVICES
8 WITHIN THE JAIL, THAT THEY CAN BE FORCED TO DO PERSONAL
9 HOUSEKEEPING. HOWEVER, ONCE THEY -- THEIR WORK BECOMES IN
10 SERVICE TO ANOTHER RATHER THAN IN SERVICE TO THE STATE OR, YOU
11 KNOW, THEIR OWN -- TIDYING UP THEIR OWN SPACE FOR THEIR OWN
12 BENEFIT, IT BECOMES COMPELLED LABOR THAT WOULD RUN AFOUL OF
13 THE THIRTEENTH AMENDMENT AND CERTAINLY COULD NOT BE SOMETHING
14 THAT THE TVPA WOULD PERMIT.

15 IT IS SIMPLY BECAUSE THERE WAS NO DISTINCTION CREATED
16 WITHIN PROPOSITION 139 DOES NOT MEAN THAT PROPOSITION 139
17 COULD ALLOW THE STATE OF CALIFORNIA OR LOCAL JAILS TO COMPEL
18 TO HARD LABOR PERSONS WHO WOULD NOT OTHERWISE BE PERMITTED TO
19 BE COMPELLED TO HARD LABOR UNDER THE THIRTEENTH AMENDMENT. SO
20 THERE IS A DISTINCTION.

21 AND THE CIVIC DUTY EXCEPTION DOES NOT APPLY HERE WHERE
22 THIS WORK IS HARD FOR THE PROFIT OF ANOTHER -- FOR THE PROFIT
23 OF A PRIVATE ENTITY, FOR THE PROFIT OF -- FOR THE BENEFIT OF
24 OTHERS, NOT SIMPLY THEMSELVES OR EVEN THE JAIL, SOLELY THE
25 JAIL THAT THEY ARE WORKING IN.

1 **THE COURT:** GOOD. IT'S POSSIBLE THAT I'LL CONCLUDE
2 THAT THE COMPLAINT DOES NOT ADEQUATELY ALLEGE COERCION OR
3 THREAT, AND IF THAT IS WHERE I WIND UP ON TVPA, I WILL GIVE
4 YOU LEAVE TO AMEND.

5 DO YOU WANT TO ADDRESS THAT PART AT ALL?

6 **MS. JOHNS:** WELL, I THINK THAT -- NOT TO ANY GREATER
7 EXTENT THAN WE DID IN OUR BRIEFING. I THINK WE WERE VERY
8 SPARSE WITH OUR ALLEGATIONS. I LAID OUT HOW OUR ALLEGATIONS
9 DO SUPPORT THE COURT ALLOWING US TO PROCEED, BUT CERTAINLY WE
10 WOULD APPRECIATE LEAVE TO AMEND IF THE COURT FINDS WE HAVE NOT
11 SUFFICIENTLY ALLEGED --

12 **THE COURT:** GOOD. OKAY. THANKS, MS. JOHNS.

13 **MS. JOHNS:** THANK YOU.

14 **THE COURT:** MR. BOSSET, A MINUTE OR TWO?

15 **MR. BOSSET:** THANK YOU, YOUR HONOR.

16 SO I'LL START WITH THE COURT'S SUMMATION OF THE
17 PLAINTIFFS' LABOR CODE ARGUMENT. AS I TOOK THE NOTES, THE
18 SUMMATION WAS IF NO WAGES, THE PURPOSE OF PROPOSITION 139
19 WOULD BE FRUSTRATED.

20 I THINK ACTUALLY THE COURT HAD ANSWERED THAT PROPOSITION
21 WITH ITS EARLIER COMMENT THAT, IN FACT, YOU DON'T NEED TO PAY
22 INMATES DIRECTLY WAGES IN ORDER TO SATISFY THE PURPOSES OF
23 PROPOSITION 139 BECAUSE THE COUNTY, IF IT'S ABLE TO PROVIDE
24 INMATE LABOR WITHOUT COMPENSATION, CAN NEGOTIATE A LOWER PRICE
25 CONTRACT FROM ITS FOOD SERVICES PROVIDER, WHETHER IT BE

1 ARAMARK OR ANYBODY ELSE SO THAT THE COST SAVINGS WOULD BE
2 CAPTURED IN THAT WAY AND WOULD, IN FACT, SATISFY THE VOTERS
3 DESIRE TO DEFRAY INCARCERATION COSTS THROUGH SOME WAY OTHER
4 THAN TAXES.

5 **THE COURT:** I THINK THE QUESTION OF -- THIS IS AN
6 EXTEMPORANEOUS COMMENT. IT'S NOT MEANT TO REFLECT ANY
7 ANALYSIS OF THESE MOTIONS, BUT JUST IN GENERAL, I THINK I ONLY
8 REACH THE QUESTION OF WHAT IS THE INTENT OF THE VOTERS IF THE
9 STATUTE ITSELF IS NOT CLEAR IN SOME WAY. AND -- BUT MS. JOHNS
10 IS AN ABLE LAWYER AND I THOUGHT SHE PROBABLY HAD SOME
11 INTERESTING THINGS TO SAY ON THE SUBJECT. SO -- AND I DO
12 THINK THAT THEME UNDERLIES SOME OF THEIR OPPOSITION.

13 ANYWAY, I DON'T HAVE MUCH MORE TO SAY ON THAT.

14 **MR. BOSSET:** UNDERSTAND, YOUR HONOR. THE OTHER POINT
15 THAT MS. JOHNS MADE, THE ADDITIONAL LEAP THAT IF 139 PURPOSE
16 IS FRUSTRATED IN THE WAY THAT SHE HAS DESCRIBED, THE LABOR
17 CODE HAS TO STEP IN AND FILL THE GAP. THERE'S ACTUALLY NO
18 APPELLATE DECISION EVER THAT HAS APPLIED THE WAGE PROVISIONS
19 OF THE LABOR CODE TO INMATES.

20 AND SO THIS IS NOT THE FIRST CASE FOR THAT TO HAPPEN
21 SITTING IN DIVERSITY IN THE ABSENCE OF ANY SUCH AUTHORITY.

22 NOVOA AND OWINO, THE TWO CASES CITED AS MS. JOHNS
23 ACKNOWLEDGED INVOLVED FEDERAL IMMIGRATION DETENTION
24 FACILITIES. THEY DON'T INVOLVE COUNTY JAIL INMATES AT ALL,
25 THEY DON'T INVOLVE INMATES SUBJECT TO PROP 139 OR ARTICLE 4 OF

1 THE PENAL CODE. THAT SIMPLY DOESN'T COME UP IN EITHER OF
2 THOSE CASES. THOSE CASES REALLY ARE NOT GERMANE TO THE
3 COURT'S DECISION.

4 MS. JOHNS ALSO RAISED THE *VASQUEZ* CASE. THAT CASE
5 ACTUALLY IS NOT CITED IN HER OPPOSITION BRIEF. SO IF THE
6 COURT IS INTERESTED IN A RESPONSE --

7 **THE COURT:** IT IS CITED IN A DIFFERENT OPPOSITION
8 BRIEF.

9 **MR. BOSSET:** PARDON ME?

10 **THE COURT:** IT IS CITED IN A DIFFERENT OPPOSITION
11 BRIEF.

12 **MR. BOSSET:** OKAY.

13 **THE COURT:** THAT'S WHERE -- YES. I BELIEVE SHE CITES
14 IT IN OPPOSITION TO THE COUNTY'S MOTION.

15 **MR. BOSSET:** I SEE. WELL, IF THE COURT IS INTERESTED
16 IN A RESPONSE FROM ARAMARK ON THAT MATTER, WE WILL BE HAPPY TO
17 SUBMIT A SUPPLEMENTAL LETTER --

18 **THE COURT:** I'LL SIMPLY MAKE A NOTE TO MYSELF. IF I
19 INVITE FURTHER BRIEFING NOW, IT WILL SIMPLY DELAY RESOLUTION
20 OF THE MOTION. IT MAY NOT TURN OUT TO BE NECESSARY.

21 I THINK I DO WANT TO LOOK AT *VASQUEZ*. IF, AFTER HAVING
22 READ IT, IT APPEARS TO ME I AM GOING TO RELY ON IT, I WILL
23 MAKE A NOTE TO GIVE YOU AN OPPORTUNITY TO SAY SOMETHING ABOUT
24 IT BRIEFLY IN WRITING.

25 **MR. BOSSET:** THANK YOU, YOUR HONOR. AND THE LAST

1 CASE THAT MS. JOHNS DID REFER TO IS A SECOND CIRCUIT DECISION.
2 I BELIEVE IT'S CALLED *MCGARRY*.

3 **THE COURT:** *MCGARRY*, M-C-G-A-R-R-Y.

4 **MR. BOSSET:** RIGHT.

5 **THE COURT:** 2012 SECOND CIRCUIT.

6 **MR. BOSSET:** THAT'S NOT A TVPA CASE, YOUR HONOR.

7 MS. JOHNS DID ACKNOWLEDGE THAT'S A THIRTEENTH AMENDMENT CASE.
8 THERE IS NO THIRTEENTH AMENDMENT CLAIM AGAINST ARAMARK IN THIS
9 COMPLAINT. THERE IS A CLAIM AGAINST THE COUNTY, A
10 CONSTITUTIONAL CLAIM. WE ARE NOT HERE TO ADDRESS THAT CLAIM
11 AND WE DON'T THINK THAT THAT CASE IS REALLY ON POINT HERE
12 BECAUSE THE LANGUAGE OF THE TVPA, AS WE HAVE DESCRIBED,
13 DOESN'T INCLUDE GOVERNMENTAL ENTITIES AB INITIO.

14 SO WHETHER OR NOT THERE'S A THIRTEENTH AMENDMENT CLAIM
15 AGAINST THE COUNTY, I'M NOT HERE TO SAY. IT'S NOT AGAINST MY
16 CLIENT, BUT WE DON'T BELIEVE IT WOULD BE A THIRTEENTH
17 AMENDMENT -- TVPA CLAIM FOR THE REASONS THAT WE NOTED.

18 THAT'S ALL WE HAVE, YOUR HONOR.

19 **THE COURT:** THANK YOU.

20 **MR. BOSSET:** THANKS.

21 **THE COURT:** VERY INTERESTING CASE.

22 **MR. BOSSET:** THANK YOU.

23 **THE COURT:** THANK YOU FOR YOUR ARGUMENTS. I WILL
24 TAKE THE MOTION UNDER SUBMISSION.

25 **MS. JOHNS:** THANK YOU, YOUR HONOR.

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MR. BOSSET: THANK YOU.

THE CLERK: COURT IS IN RECESS.

(PROCEEDINGS CONCLUDED AT 3:48 P.M.)

CERTIFICATE OF REPORTER

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

MONDAY, MARCH 16, 2020

1 DAN SIEGEL, SBN 056400
 ANNE BUTTERFIELD WEILLS, SBN 139845
 2 EMILYROSE JOHNS, SBN 294319
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 8 Attorneys for Plaintiffs
 ARMIDA RUELAS, DE'ANDRE EUGENE COX,
 9 BERT DAVIS, KATRISH JONES,
 JOSEPH MEBRAHTU, DAHRYL REYNOLDS,
 10 MONICA MASON, and LUIS NUNEZ-ROMERO

11
 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

<p>14 ARMIDA RUELAS; DE'ANDRE EUGENE) COX; BERT DAVIS; KATRISH JONES;) 15 JOSEPH MEBRAHTU; DAHRYL) REYNOLDS; MONICA MASON; LUIS) 16 NUNEZ-ROMERO; and all others similarly) 17 situated,) 18 Plaintiffs,) 19 vs.) 20) COUNTY OF ALAMEDA; GREGORY J.) 21 AHERN, SHERIFF; ARAMARK) 22 CORRECTIONAL SERVICES, LLC; and) DOES 1 through 10,) 23 Defendants.) 24)</p>	<p>Case No. 4:19-cv-07637-JST PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT ARAMARK'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT Hearing: March 4, 2020 Time: 2 p.m. Courtroom: Oakland Courthouse, Courtroom 6 – 2nd Floor 1301 Clay Street, Oakland, CA 94612 Hon. Jon S. Tigar</p>
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 28
Ruelas v. County of Alameda, No. 4:19-cv-07637-JST
 Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Opposition to County's
 and Sheriff's Motion to Dismiss

Case 4:19-cv-07637-JST Document 29 Filed 01/31/20 Page 2 of 2

1 Pursuant to Federal Rule of Evidence 201, plaintiffs seek judicial notice of the
2 Declaration of Riddic Bowers, a lieutenant employed by the Alameda County Sheriff's
3 Office, and the declaration's exhibits, filed in *Mohr v. Alameda County Sheriff's*
4 *Department*, no. 3:18-cv-00050-JD, currently pending before the Honorable James
5 Donato in the Northern District of California, which is attached as Exhibit 1 to the
6 Declaration of EmilyRose Johns, filed concurrently with this request.
7 Additionally, plaintiffs seek judicial notice of the 1990 Voters Guide for the General
8 Election attached as Exhibit 2 to the Declaration of EmilyRose Johns, filed concurrently
9 with this request.

10 The Ninth Circuit routinely takes judicial notice of court filings and other
11 matters of public record. *Reynolds v. ISA, Inc.*, 442 F.3d 741, 746
12 n.6 (9th Cir. 2006). *See also Mahoney v. Sessions*, 871 F.3d 873, 877 n.2 (9th Cir. 2017);
13 *Green v. Republic of Iraq*, 694 F.3d 1122, 1137 n. 8 (9th Cir. 2012); *Ward v.*
14 *Alameda County Air Port Auth. v. City of Oakland*, 136 F.3d 1360, 1364 (9th Cir.
15 1998). Courts may take judicial notice of voter guides, which are also public records.
16 *Chamness v. Bowen*, No. CV1101479ODWFFMX, 2011 WL 13128410, at 5 (C.D. Cal.
17 Mar. 30, 2011).

18

19 Dated: January 31, 2020

20

SIEGEL, YEE, BRUNNER & MEHTA

21

22

By /s/EmilyRose Johns
EmilyRose Johns

23

24

Attorneys for Plaintiffs
ARMIDA RUELAS, DE'ANDRE EUGENE
COX, BERT DAVIS, KATRISH JONES,
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 13 BERT DAVIS, KATRISH JONES,
 14 JOSEPH MEBRAHTU, DAHRYL REYNOLDS,
 15 MONICA MASON, and LUIS NUNEZ-ROMERO

16 **UNITED STATES DISTRICT COURT**
 17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18	ARMIDA RUELAS; DE'ANDRE EUGENE	) Case No. 4:19-cv-07637-JST
19	COX; BERT DAVIS; KATRISH JONES;)
20	JOSEPH MEBRAHTU; DAHRYL	) DECLARATION OF EMIL ROSE
21	REYNOLDS; MONICA MASON; LUIS	) JOHNS IN SUPPORT OF
22	NUNEZ-ROMERO; and all others similarly	) PLAINTIFFS' REQUEST FOR
23	situated,	) JUDICIAL NOTICE
24)
25	Plaintiffs,	) Hearing: March 4, 2020
26		) Time: 2 p.m.
27	vs.	) Courtroom: Oakland Courthouse,
28		) Courtroom 6 – 2nd Floor
29	COUNTY OF ALAMEDA; GREGORY J.	) 1301 Clay Street, Oakland, CA 94612
30	AHERN, SHERIFF; ARAMARK)
31	CORRECTIONAL SERVICES, LLC; and) Hon. Jon S. Tigar
32	DOES 1 through 10,)
33)
34	Defendants.)

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I, EMILYROSE JOHNS, declare as follows:

1. I am an attorney licensed to practice in the State of California and a senior associate in the law firm Siegel, Yee, Brunner & Mehta, the attorneys for the plaintiffs in this case.

2. This declaration is based upon my personal knowledge, and I am competent to testify with respect to the matters stated herein.

3. Attached hereto as Exhibit 1 is a true copy of the Declaration of Riddick Bowers with Exhibit W, filed in *Mohr v. Alameda County Sheriff's Department*, no. 3:18-cv-00050-JD, currently pending before the Honorable James Donato in the Northern District of California.

4. Attached hereto as Exhibit 2 is a true copy of the Voter Information Guide for 1990, General Election, available through the UC Hastings Scholarship Repository, at [http://www.uc Hastings.edu/scholarship](#) 2016

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Executed on January 31, 2020, at Oakland, California.

/s/ EmilyRose Johns
EmilyRose Johns

Exhibit 1

1 GREGORY B. THOMAS, ESQ. (SBN 239870)
 2 TEMITAYO O. PETERS, ESQ. (SBN 309913)
 3 BOORNAZIAN, JENSEN & GARTHE
 4 A Professional Corporation
 5 555 12th Street, Suite 1800
 6 Oakland, CA 94607
 7 Telephone: (510) 834-4350
 8 Facsimile: (510) 839-1897
 9 gthomas@bjg.com
 10 opeters@bjg.com

11 Attorneys for Defendants COUNTY OF ALAMEDA
 12 GREGORY J. AHERN, BRETT M. KETELES, TOM MADIGAN,
 13 D. SKOLDQVIST, LT. HATTAWAY, SGT. CALEGARI,
 14 DEPUTY DIVINE (512), DEPUTY DEBRA FARMANIAN,
 15 DEPUTY WEATHERBEE (238), DEPUTY TANIA POPE,
 16 DEPUTY WINSTEAD, and DEPUTY CAINE

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19		)	Case No. 3:18-cv-00050-JD
20)	
21	JACLYN MOHRBACHER, et al.,	)	DECLARATION OF RIDDIC BOWERS
22		)	IN SUPPORT OF ALAMEDA COUNTY
23	Plaintiffs,	)	DEFENDANTS' OPPOSITION TO
24	v.	)	PLAINTIFFS' MOTION FOR
25		)	PRELIMINARY INJUNCTION
26	ALAMEDA COUNTY SHERIFF'S OFFICE, et	)	DATE:
27	al.,	)	TIME:
28		)	JUDGE: Hon. James Donato
29	Defendants.	)	COURTROOM: 11, 9th Floor
30		)	450 Golden Gate Avenue
31		)	San Francisco, CA 94102
32)	
33		)	Complaint filed January 4, 2018

34 I, Riddic Bowers, declare:

35 1. I am currently a lieutenant employed by the Alameda County Sheriff's Office.
 36 Unless specifically stated to be made upon information and belief, I possess personal knowledge of
 37 the matters set forth herein, and if called upon as a witness in this matter, I could and would
 38 competently testify thereto.

39 2. I began working for the Alameda County Sheriff's Office in 1989 as a sheriff's
 40 technician. After I became a sworn deputy sheriff, I worked as a patrol officer, in various
 41 capacities at Santa Rita Jail, for the coroner's office, and for the contract police services. I was

Case 3:18-cv-00050-JD Document 26-2 Filed 03/08/20 Page 23 of 73

1 promoted to Sergeant in 2004 and to lieutenant in 2009. I began my current position as the
2 contracts litigation lieutenant at Santa Rita Jail in December 2017.

3 3. In accordance with my duties as Santa Rita Jail's contracts litigation lieutenant, I
4 am responsible for reviewing and maintaining all of Santa Rita Jail's vendor contracts and related
5 reports.

6 4. Santa Rita Jail does not employ any medical professionals. As a result, the County
7 of Alameda hires an independent contractor to provide comprehensive healthcare services to
8 inmates of the County of Alameda's Santa Rita Jail.

9 5. Attached as **Exhibit T** is a true and correct copy of the Standard Services
10 Agreement the County of Alameda entered into with California Forensic Medical Group
11 ("CFMG"). The Standard Services agreement with CFMG is for the time period of July 1, 2016
12 through July 31, 2019. I am intimately familiar with this contract as a result of my general duties
13 as Santa Rita Jail's contracts litigation lieutenant. A copy of this contract is stored at Santa Rita
14 Jail in the course of regularly conducted business.

15 7. In accordance with the County of Alameda-CFMG contract, CFMG has full
16 responsibility for providing comprehensive healthcare services to Santa Rita Jail's inmates.

17 8. Prior to the implementation of the County of Alameda-CFMG contract,
18 independent contractor Corizon Health Services ("Corizon") was responsible for providing
19 comprehensive healthcare services to Santa Rita Jail's inmates. CFMG officially became Santa
20 Rita Jail's sole healthcare provider on October 1, 2016.

21 9. The Alameda County Public Health Department conducts a biannual Environmental
22 Health Evaluation inspection report of Santa Rita Jail. This report is broken down into three
23 subdivisions "Environmental Health," "Nutritional Health," and "Medical/Mental Health." Any
24 noted deficiencies are accompanied by recommended corrective actions.

25 10. Attached as **Exhibit U** is a true and correct copy of Santa Rita Jail's 2016-2017
26 Environmental Health Evaluation inspection report. I am intimately familiar with this report as a
27 result of my general duties as Santa Rita Jail's contracts litigation lieutenant. A copy of this report
28 is stored at Santa Rita Jail in the course of regularly conducted business.

Case 3:18-cv-00050-JD Document 26-2 Filed 03/08/20 Page 4 of 73

1 ///

2 11. Based on the 2016-2017 Environmental Health Evaluation inspection report, I am
3 unaware of any reason to believe that Santa Rita Jail is not compliant with its 15 CCR 1000, et sq.
4 obligations regarding its oversight of inmate “Medical/Mental Health.” Any deficiencies noted in
5 the report, if any, have been addressed as indicated in a memorandum that I drafted entitled “Santa
6 Rita Jail 2017 Jail Health Inspection Corrective Action Report” (“Memorandum”), dated February
7 7, 2018. Attached as **Exhibit V** is a true and correct copy of said Memorandum.

8 12. Santa Rita Jail does not employ a registered dietitian or a nutritional expert. Instead,
9 the County of Alameda hires Aramark Correctional Services, LLC (“Aramark”), an independent
10 contractor, to provide food services to inmates at Santa Rita Jail.

11 13. Attached as **Exhibit W** is a true and correct copy of the Standard Services
12 Agreement the County of Alameda entered into with Aramark on June 2, 2015. I am intimately
13 familiar with this contract as a result of my general duties as Santa Rita Jail’s contracts litigation
14 lieutenant. A copy of this contract is stored at Santa Rita Jail in the course of regularly conducted
15 business.

16 14. In accordance with this contract, Aramark is fully responsible for conducting Santa
17 Rita Jail’s food service program, which includes ensuring that levels of sanitation meet food
18 standards required by the American Correctional Association, local regulations, and all food
19 safety, sanitation, and public health codes, rules, and regulations governing food service and
20 preparation.

21 15. Based on the 2016-2017 Environmental Health Evaluation inspection report, I am
22 unaware of any reason to believe that Santa Rita Jail is not compliant with its 15 CCR Section
23 1000, et seq. obligations regarding its oversight of inmate “Nutritional Health.” Any deficiencies
24 noted in the report, if any, have been addressed as indicated by my Memorandum attached as
25 **Exhibit V**.

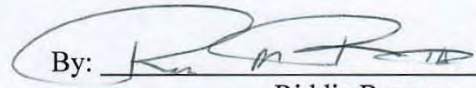
26 16. For example, in accordance with my duties as the contract lieutenant, I received and
27 reviewed documentation from Aramark indicating that all inmate diet plans and menus, including
28 diet plans for pregnant and postpartum female inmates, have been reviewed and approved by a

1 registered dietitian. Attached as **Exhibit X** is a true and correct copy of said documentation.

2 17. Regarding feminine hygiene, prior to beginning my current role at Santa Rita Jail in
3 December 2017, I was the lieutenant in charge of projects, supply, transport, and kitchen. In this
4 role, I supervised all purchasing and warehouse operations, including the purchase of sanitary
5 napkins to assist with feminine hygiene. In accordance with my duties I know that Santa Rita Jail
6 spent \$11,882.94 in 2017 on sanitary napkins.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed at DUBLIN, California on February 20 2018.

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11 By: 
12 Riddic Bowers

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~~Case 3:19-cv-00657-JST Document 369-2 Filed 03/03/20 Page 56 of 129~~

EXHIBIT W

110-23

Master Contract No. 901240
Procurement Contract No. 11293

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the County department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: Aramark Correctional Services, LLC DEPT #: 290541

TITLE/SERVICE: Food Services Delivery

DEPT. CONTACT: Reynaldo Bondoc PHONE: 510-208-9767

I. INFORMATION ABOUT THE CONTRACTOR YES NO

1. Is the contractor a corporation or partnership? (X) ()

2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? (X) ()

3. If the answer to BOTH questions is YES, provide the employer ID number here: 23-2573585
No other questions need to be answered. Withholding is not required.

4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____
No other questions need to be answered. Withholding is not required.

5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES YES NO

1. Does the County have the right to control the way in which the work will be done, i.e., will the County be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()

2. Is the contractor restricted from performing similar services for other businesses while he is working for the County? () ()

3. Will the contractor be working for more than 50% of the time for the County (50% = 20 hrs/wk; 80 hrs/mo)? () ()

4. Is the relationship between the County and the contractor intended to be ongoing? () ()

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110-23

Master Contract No. 901240
Procurement Contract No. 11293

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES** **NO**

- 1. Is the contractor being hired for a period of time rather than for a specific project? () ()
- 2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS **YES** **NO**


- 1. Will the agreement be with an individual who does not have an outside practice? () ()
- 2. Will the contractor work more than an average of ten hours per week?
IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3.

- 3. Will the County provide more than 20% of the contractor's income? () ()
- 4. If the answer to either question 2, or if required, question 3 is NO, the entire answer is NO.

A "YES" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.



Contractor Signature

Mark R. Adams, Vice President Finance

Printed Name

6-2-15

Date



Agency/Department Head/Designee Signature

John Olam

Printed Name

7/29/15

Date

Master Contract No. 901240
Procurement Contract No. 11293

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2015, is by and between the **County of Alameda**, hereinafter referred to as the "County", and **Aramark Correctional Services, LLC.**, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain food services which are more fully described in Exhibit A hereto ("Services"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Food Services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit A-1 Specific Requirements
- Exhibit A-2 Deliverables/Reports
- Exhibit A-3 Subcontractors
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements
- Exhibit F The Iran Contracting Act (ICA) of 2010
- Exhibit G Micros POS System

The term of this Agreement shall be from July 1, 2015 through June 30, 2018.

The compensation payable to Contractor hereunder shall not exceed nineteen million, ninety seven thousand, and one hundred forty eight dollars (\$19,097,148) for the term of this Agreement.

Case 3:19-cv-00650-JST Document 82-2 Filed 03/11/20 Page 60 of 129

Master Contract No. 901240
Procurement Contract No. 11293

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

ARAMARK CORRECTIONAL SERVICES, LLC.

By:  _____
Signature

By:  _____
Signature

Name: John Glann
(Printed)

Name: Mark R. Adams
(Printed)

Title: Purchasing Agent

Title: Vice President Finance

Date: 7/29/15

Date: 6-2-15

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

Master Contract No. 901240
Procurement Contract No. 11293

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of

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Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar

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character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

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7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

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Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County’s rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor’s services as set forth in Exhibit “A” of this Agreement have been fully performed or paid for.

In Contractor’s contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor’s Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit “A”, and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County’s rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the

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performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

- 13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Alameda County Sheriff's Office
1401 Lakeside Dr., 12th Floor
Oakland, CA 94612
Attn: Reynaldo Bondoc

To Contractor: Aramark Correctional Services, LLC.
1101 Market Street
Philadelphia, PA 19107
Attn: Karen Russell

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective

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as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam-era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam-era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam-era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority-owned and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

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16. DRUG-FREE WORKPLACE: Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. AUDITS: ACCESS TO RECORDS: The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. DOCUMENTS AND MATERIALS: Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3)

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years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. TERMINATION: The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its food services delivery shall not exceed \$19,097,148 in payments for services provided hereunder prior to the effective date of said suspension, termination, or abandonment.
21. SMALL LOCAL AND EMERGING BUSINESS PARTICIPATION: Contractor shall subcontract with the SLEB subcontractors identified in Exhibit A-3 designated small local and emerging business entities-for services to be provided under this Agreement for a total of twenty percent (20%) of the contract value of this Agreement in accordance with County's Small and Emerging Local Business provision, which includes but is not limited to:
 - a. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
 - b. As is applicable, Contractor shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this contract.
 - c. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).

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- d. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System. Contractor and Contractor's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the Elation web-based compliance system as described in Exhibit E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation compliance system. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

County will be under no obligation to pay contractor for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor-Controller's Office of Contract Compliance (OCC) via e-mail at ACSLEBcompliance@acgov.org.

22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and

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includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including,

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without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.

- d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor

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Products: or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.

- c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
- 34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
- 35. EXTENSION: This agreement may be extended for an additional two years by mutual agreement of the County and the Contractor.
- 36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

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ADDITIONAL PROVISIONS

I. Additional Terms

37. **Prohibition on Contraband:** Contractor will do its best to ensure that no contraband and/or other prohibited items make its way into the county jails through the delivery and/or preparation of food by Contractor. If not already in place, Contractor shall develop a plan and policy to address how it can limit the addition and/or placement of contraband and/or other prohibited items into its products within sixty (60) days after this Agreement becomes effective. This policy shall be presented to ACSO as soon as it is drafted. Should ACSO discover that any contraband or other prohibited items has entered the county jails through Contractor services, it shall be considered a material breach and ACSO will have the right to terminate this Agreement without notice. Moreover, Contractor agrees to fully indemnify and defend the County and ACSO for any incidents where such contraband or other prohibited items can be traced to Contractor.
38. **Compliance with Law:** Contractor shall, at its sole expense, conduct and cause to be conducted all activities in the jails and on any Alameda County property in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, whether presently in effect or subsequently adopted, and whether or not in the contemplation of the Parties. Contractor shall, at its sole expense, procure and maintain in force at all times during the contract any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Nothing herein shall limit in any way Contractor's obligation to obtain any required regulatory approvals from County departments, boards or commissions or other governmental regulatory authorities or limit in any way County's exercise of its police powers, including approval of all individuals who may enter any of the County jails.
39. **Safety:** Contractor agrees to conduct its activities at all times in a safe and prudent manner with full regard to the jail policy and safety and the public safety and to observe all applicable rules, regulations, policies and requests of the County, ACSO, and other government agencies responsible for public safety.
40. **Security:** Contractor acknowledges that pursuant to entering the Agreement with the County and performing services, Contractor may be exposed to and may review, see, or observe security procedures, information, data, and/or records that constitute secure, safety, valuable, confidential and proprietary information, know-how, jail procedures, and trade secrets, belonging to County and ACSO, or their agents, entities, or affiliates and/or third parties (hereinafter referred to as "Confidential Information") In consideration of being made privy to such Confidential Information, Contractor hereby agrees to hold the same in strict confidence, and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of the Confidential Information. Contractor

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understands that disclosure of any such information, or failure to follow ACSO procedures could result in extreme harm including possibly great bodily harm or death of inmates, County staff, the public and Contractor.

- 41. **Regulatory Changes:** Should a change in Federal, State, and/or County laws or regulations affect the terms of this Agreement, the Parties agree to modify and/or adjust this Agreement to reflect those changes.

II. Revisions to General Terms and Conditions:

- 1. The following is added to Provision 6, CONFORMITY WITH LAW AND SAFETY:

- d. Contractor shall adopt and comply with the Prison Rape Elimination Act (PREA) standards, and make information available to Alameda County, as required under 28 CFR § 115.12, to demonstrate its PREA compliance. 28 CFR §115.401 requires Contractor to engage in receive a PREA audit at least once during each three-year audit cycle beginning period starting on August 20, 2013. Contractor will make available to Alameda County Sheriff's Office Contract Monitor Contractor the auditor's final report after completion of an audit. Until the first audit report becomes available, Contractor shall demonstrate PREA compliance to Alameda County by furnishing a copy of its PREA policy to Alameda County Sheriff's Office Contract Monitor Contractor

- 2. Paragraph 20, TERMINATION, is amended by adding the following sentence:

County shall provide Contractor sixty (60) days' prior notice of termination pursuant to this section.

County Counsel Signature:  _____

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Master Contract No. 901240
Procurement Contract No. 11293**EXHIBIT A****DEFINITION OF SERVICES**

Contractor shall provide food services with the Specific Requirements.

Deliverables/Reports set on this Exhibit A, Exhibit A-1, and Exhibit A-2.

- a. This Exhibit A has been drafted to include the requirements contained in the Request for Proposal (RFP) No. 901240, including any addenda, the proposal response of Contractor (Response), and additional services that the County obtained through negotiations, if any. In the event of any conflict (direct or indirect) among any of the exhibits, the RFP and the Response, the more stringent requirements providing the County with the broader scope of services shall have precedence, such that this Exhibit A including all attachments, the scope of work described in the RFP and the scope of work described in Contractor's proposal shall be performed to the greatest extent feasible. This incorporation specifically excludes the liquidated damages provision, contained in Section R, beginning on page 39 and the Exhibit E.
 - b. The RFP and Response may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.
2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

Key Personnel	Title
Karen Russell	Director of Business Development
Eric Johnson	Regional President
Lori McConnell	Resident District Manager
Kristen J. Scott	Food Service Director, Operations
Brian Savannah	Food Service Director, Cook Chill Production
Cynthia Irizarry	Director of Nutritional and Operational Support
Kelly Merrick	Regional Finance Director
Ari Phillips	Human Resources Director
Joseph LeBlanc	SLEB Subcontractor (J. LeBlanc Dairy)
Anton Haddad	SLEB Subcontractor (Atlantis Food Services Corp.)

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

3. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

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Master Contract No. 901240
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1. Contractor's Responsibilities

a. General Requirements:

The Contractor shall have full responsibility for the operation of the Alameda County Sheriff's Office (ACSO) food service program. The work detailed shall proceed with promptness and diligence and shall be executed in accordance with the highest professional workmanship standards in the field and to the satisfaction of the County of Alameda. Further, all work, materials, and services not expressly called for, but may be necessary for the complete and proper performance of the work, shall be performed or furnished by the Contractor.

Contractor shall be responsible for ensuring levels of sanitation meet the food standards required by ACA standards, local regulations, and Hazardous Critical Control Points (HACCP). The contractor shall adhere to all Food Safety and Sanitation Codes and Rules and Regulations as detailed by the County of Alameda's Public Health Regulations Governing Food Service/Preparation.

b. The Contractor shall be responsible for:

- (1) The purchase, maintenance and control of food and supplies, and the provision of meals that are to be delivered to areas specified for inmates and staff at all ACSO facilities, satellite facilities, and off-site facilities in accordance with the menu requirements, meal service requirements, quality requirements, and sanitation requirements established in this Specific Requirements and the Contract;
- (2) The provision, supervision, and training of all contractor staff required to provide food delivery service operations to ACSO;
- (3) The planning, scheduling, supervision, and training of all inmate food service workers;
- (4) All contractor's employees shall be required to attend a civilian training course provided by ACSO and will be certified on up-to-date expectations, security policies, sexual harassment training, etc. Documentation will be kept by contractor to memorialize attendance to such training;
- (5) The effective use of any County Jail Facility ("Jail") "cook-chill" production facility to ensure that it is utilized to its fullest capacity;

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- (6) The safe, careful, and sanitary operation of all ACSO kitchen facilities and equipment to ensure the highest levels of sanitation and maintenance are consistent with the ACSO's policies and procedures, the laws of the United States, the laws of the State of California, and the ordinances and regulations of Alameda County;
- (7) Contractor shall utilize re-usable trays in serving plated inmate meals, except for agreed upon inmate populations. Contractor shall take necessary actions to ensure trays remain in service for their lifetime by implementing inventory control measures, and ensuring proper sanitation and cleaning procedures;
- (8) Contractor shall utilize re-usable cutlery (sporks) for inmate meals as directed by the ACSO staff. Contractor shall not distribute disposable cutlery in meals delivered to housing units using re-usable cutlery;
- (9) Staying abreast of changes to all laws and regulations governing the service of inmate food services;
- (10) The compliance of all employees and inmate workers under contractor's direction, according to the policies and procedures established by ACSO; particularly those involving security operations;
- (11) The development and implementation of a continuous quality improvement program designed to immediately identify and correct any deficiencies within the contractor's food services operation; and
- (12) The development of a successful working relationship with ACSO management and staff through the continuous provision of a high quality food service program.

2. Operational Requirements

- a. Cook-Chill Production Requirements: Alameda County uses an advanced "cook-chill" production system in the food service production center that also includes a "blast-chill" component. The contractor shall be responsible for the effective use of the Alameda County "cook-chill" production facility to ensure that it is utilized to fullest capacity consistent with the County's needs while preserving the County's investment in the facility
- b. Environmental Initiatives: Contractor shall ensure recyclable and compostable items generated in kitchen and onsite office operations are separated appropriately by inmate and Contractor staff and disposed of in appropriate hauler provided collection containers. At minimum, the following materials shall be sorted, managed and disposed of to ensure recycling:

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- (1) Corrugated cardboard;
 - (2) #10 tin cans;
 - (3) Other packaging materials acceptable in hauler provided recycling program; and
 - (4) Office paper, paperboard, newspaper and other paper products acceptable in hauler provided recycling program.
- c. Food Labeling:
- (1) The contractor shall possess or develop a system, including a time coding system, where applicable, that will prevent foods from being served that do not meet the minimum quality standards.
 - (2) "Cook-chill" items maintained in the Food Bank Inventory shall indicate the item name, date of production, batch number, and the date of expiration for each batch of food prepared and placed into the tumbler chiller for cooling. The final bag leaving the preparation area shall be marked with the batch number as well as notation of final bag.
- d. Temperatures: "Cook-chill" refrigerated foods will be maintained at a temperature between 28.5°F and 31°F.
- e. Use of Standardized Recipes:
- (1) The contractor will possess, or will develop, test, and use standard recipes. Quality, consistency, portion control, and cost control will be maintained by the use of these and other means.
 - (2) All recipes will be developed with Hazardous Critical Control Points (HACCP) criteria identified. The recipe will include identified potential hazards to each food item, the identity of the critical control points and will indicate the method of control.
- f. Purchasing:
- (1) Contractor shall meet minimum purchasing specifications or the County of Alameda's specifications, whichever is higher, to be used in the purchase of all food products, small wares, utensils, and disposable service ware, which will include spoons (sporks).

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- (2) ACSO shall approve, in writing, any changes from the stated specifications. Proposed exceptions must be clearly detailed by the contractor and submitted in writing for review.
- (3) The minimum grade specifications are to be as follows for inmate meals: (a)
 - Beef – U.S.D.A. Select or better;
 - (b) Pork – U.S.D.A. Select or better; (c) Lamb – U.S.D.A. Select or better;
 - (d) Processed Meat From U.S.D.A. government inspected plants; (e) Poultry – U.S.D.A. Grade B or better;
 - (f) Dairy – Eggs U.S.D.A. or State Graded A;
 - (g) Fish and Seafood – Fresh or frozen, must be packed under continuous inspection of U.S. Department of Commerce;
 - (h) Canned Fruits or Vegetables – U.S.D.A. Grade B or better or Fancy; and
 - (i) Frozen Fruits and Vegetables – U.S.D.A. Grade 6 or better.
- (4) Staff meals will utilize USDA Choice meats, as well as Grade "A" fruits and vegetables.

g. Menu:

- (1) During the term of the Agreement, the Contractor shall suggest changes to the menu. Changes in the menu should consider improved nutritional value, variety, choice, contrast, visual appeal, customer preference, contemporary food standards, and seasonal variations.
- (2) Although equipped for "cook-chill" production, Contractor is free to include "pre-cook" or other cook systems if the ACSO facilities are equipped for such production and upon approval by ACSO.
- (3) In no case will alcoholic beverages be used, consumed, or kept on the premises.
- (4) All changes in the menu must have prior written approval by the Contractor's dietitian, ACSO Contracts Captain/Lieutenant, and ACSO Inmate Medical Services Provider.

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- (5) The menu cycle used at ACSO is a four-week cycle menu. The menu must include two (2) hot meals (breakfast and dinner) and a cold meal for lunch. The Contractor shall provide proposed four-week menus.
- (6) All meals shall be served on a three (3)-compartment plastic/polymer tray suitable for use with the "cook-chill" food preparation and distribution process, and whose approval for use is reserved for the Contracts Unit of ACSO. The current tray being utilized by ACSO is 6.25" x 8.5" x 1.5" in depth.
- h. Nutritional Value and Quality:
- (1) The Contractor shall provide well-balanced meals meeting the nutritional guidelines set forth in Title 15 Minimum Jail Standards and any applicable California and County laws.
- (2) Nutritional Analysis – All menus shall be reviewed and certified as to nutritional adequacy and compliance with specifications by a Registered Dietitian (Certified by the Commission on Dietetic Registration) provided by the proposer.
- (3) The Contractor shall provide a nutrient analysis, recipe, ready-to-eat weight for each serving size portion, and recipes for every menu item. All recipes must be appropriate for the size of the population and all recipes must be submitted to ACSO upon request.
- i. Regular Menu – Inmate Meals:
- (1) Hot/Cold Breakfast – The contractor will prepare breakfast items utilizing "cook-chill" production. The Contractor shall prepare and ship breakfast meals each day at the time designated. Food items will be prepared and served with a hot and cold tray. Meals shall be prepared and shipped to appropriate locations within ACSO facilities prior to the morning court schedule to ensure all inmates receive their meal before leaving the ACSO facilities. All breakfast meals will be served and prepared utilizing Title 15 guidelines and keeping in mind maximum allowable timeframes between served meals.
- (2) Cold Lunch – The Contractor shall prepare and ship lunch meals each day at the time designated, seven (7) days a week. All lunch meals will be prepared as a bag lunch to ensure portability and opportunity for consumption by court-attending inmates. All lunch meals will be served and prepared utilizing Title 15 guidelines and keeping in mind maximum allowable timeframes between served meals.

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- (3) Hot Dinner Meals – The contractor shall prepare and ship dinner meals each day at the time designated. All dinner meals will be served with a hot and cold tray. All dinner meals will be served and prepared utilizing Title 15 guidelines and keeping in mind maximum allowable timeframes between served meals.
- (4) Intake, Transfer, and Release Meals:
- (a) The Contractor shall be required to prepare cold lunch meals for both male and female inmates. These meals will be primarily served to inmates awaiting processing in intake, transfer and release, work details, and outside trips.
- (b) The Contractor shall vary the type of meat and other similar items in the sandwiches to avoid repetition.
- (5) Court Meals: The Contractor shall prepare and deliver court meals to the housing units of each facility. Each court meal must be bagged.
- (6) Medical Diet Menus: (a)

General

- The Contractor shall provide medical diet meals such as, but not limited to, allergy, diabetic, low salt, low fat, dental soft, dental liquid, pregnancy, renal, vegetarian, and special meals in accordance with ACSO procedures and as ordered by medical staff. Medical staff will continue to record special diet orders that are satisfied by the Universal Menu.
 - Medical diets shall be served during normal hours in the manner specified by the physician. Arrangements shall be made to provide meals beyond the scheduled meal hours when so ordered by the physician.
 - The Contractor shall prepare written four-week cycle menus for each approved medical diet. All menus will include portion sizes. The contractor shall consult with its own dietitian and Food Services Coordinator to ensure that the requirements of each diet type are met.
- (b) Medical Diet Notification: Medical diets are determined by the medical provider. Contractor shall be responsible for obtaining medical diet notifications via the medical provider.

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- (c) Medical Diet Menu Requirements. The written medical diet menu shall:
- Identify all food items to be served to meet diet requirements.
 - Reflect portion sizes consistent with diabetic exchanges and/or food manipulation (i.e. Puree) as required to meet the diet requirements.
 - Be acceptable to ACSO as evidenced by periodic meal inspection reports.
 - Medical Diet Recipes – The contractor shall develop standardized recipes to ensure consistency of medical diet menu items and will be formulated.
- (7) Menu Changes and Substitutions:
- (a) The Contractor shall make all menu changes requested by the Commanding Officer of the facility (or her/his designee(s)) as long as the change does not increase the price per meal to ACSO and meets all menu requirements.
- (b) To plan for such changes, the Contractor shall utilize the four-week menu cycle. Changes shall be submitted for review and approval by the Contract Administrator four (4) weeks prior to the effective date of the next menu cycle.
- (c) Except in an emergency, the Contractor shall not change, by deletion or substitution, items on any menu that have been approved by the ACSO Contract Manager without prior written approval.
- (d) In a situation requiring a menu substitution, the Contractor shall notify the ACSO Contract Manager 24 hours in advance. Once approved, notice shall also be forwarded to each facility.
- (e) The Contractor shall prepare a written report and forward it to the Contract Administrator within 24 hours of the occurrence of a menu substitution. The report will document the reason for the substitution, the number of substitute meals served, the menu of the substitute meals served, the location of substitute meals served and steps the Contractor will take to prevent future substitutions.
- (f) In the event of an emergency change, the Contractor shall make

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best efforts to meet the nutritional content for that meal. (8)

Holiday and Special Meals Menus:

- (a) The Contractor shall provide special meals related to specific holidays and themes.
- (b) At a minimum, special meal programs shall be required for the following Holidays:
 - New Year’s Day;
 - Ramadan – observed for practicing inmates;
 - Easter Sunday;
 - Thanksgiving Day; and
 - Christmas Day
- (c) Religious Menus – The Contractor shall provide menus at all meals that comply with the religious requirements of the inmates and approved by the ACSO Detentions and Corrections Commander, Detentions and Corrections Captain ACSO’s Contract Administrator, and Inmate Services Chaplain. Contractor must initiate diet service within no more than 24 hours of notification. Examples of religious menus include, but are not limited to, Kosher, Halal, and Ovo-Vegetarian. Contractor shall keep up-to-date with current law and adjust its menus according to controlling state and federal law, including case law.

(9) Staff Menus:

- (a) The health and well-being of sworn and non-sworn staff is a very high priority for ACSO. Contractor shall provide tasty, appetizing, wholesome quality meals to the staff at any County run Jail Facility. Officer’s Dining Rooms will be open to staff 24-7. Beverage and Coffee service will be available 24 hours per day. Inmate labor will not be used in the production or service of these meals. Additionally, there will be defined locations in the jail and administration where the Contractor shall be responsible for stocking coffee and condiments.

Meal times for the Santa Rita Jail are:

Graveyard: 0001-0500
Day: 0900-1600
Swing: 1630-2100

Meal Times for the Glenn E. Dyer Detention Facility are:

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Day: 0900-1400
Swing: 1630-2100

Meals served to any Jail Facility staff in the staff dining room shall be displayed in an appealing manner. The following specifications shall apply except where there is a lack of appropriate equipment.

- (b) The Contractor shall provide a separate four-week menu plan for the staff dining room.
- The Contractor shall provide MICROS POS system for staff to pay for their meals;
 - The Contractor shall provide a Healthy Menu, utilizing a nationally recognized food distributor such as Sysco Food Services;
 - Contractor shall not utilize inmate menu items for staff;
 - Contractor shall use a standard recipes based on a business services model;
 - Contractor shall provide tableside condiments such as hot sauce, salt and pepper, soy sauce, and specialty items as required by the menu are mandatory;
 - Contractor shall provide a self-service salad bar is required for each meal period. The salad bar shall contain a minimum of three (3) dressings, a variety of 12 or more toppings to include vegetables, yogurt, cottage cheese, a lean protein source (i.e. tuna fish, cubed boneless/skinless chicken, etc.), and shredded cheese. Salad mix must have a variety of green leafy lettuces. A minimum of three (3) fruits (at least one (1) must be fresh) shall be offered. Salad bar must include yogurt mixing items (i.e. granola, nuts, raisins, etc.);
 - Contractor shall provide a deli station for each meal period. A variety of whole muscle lunch meats such as turkey, roast beef, and ham shall be available at each meal service. A minimum of three (3) cheeses shall be offered. These shall be natural cheeses such as Swiss, Monterey jack, and cheddar;

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- Soft Serve ice cream and/or frozen yogurt shall be offered for each meal period;
- A daily entrée shall be offered for each meal. This can be the same entree for the lunch and dinner meal. A breakfast menu shall be offered for the graveyard shift;
- The beverage station shall include a variety of milk, juices, and sodas;
- The coffee station shall include all condiments to include dairy and non-dairy creamers, to-go cups, and lids. Cups shall be paper-based. Styrofoam cups are not acceptable;
- Re-useable plates, bowls, and glasses shall be used in the staff dining. Replacement of these items shall be the responsibility of the contractor. Disposables shall be provided for staff members who are unable to take their meal breaks in the staff dining room. Disposable silverware is acceptable, but must be heavy weight;
- Meals shall be billed at a separate cost from the inmate meal; and
- Contractor MICROS POS system shall be used to maintain a log of meals served. Log shall include the name of staff or contractor who has purchased the meal. No cash is to be exchanged.

j. Special Catering:

- (1) In the event that food and/or beverages for meetings, luncheons, dinners, inmate related functions are requested, they shall be provided at cost.
- (2) Separate records of direct expenses will be maintained. Cost estimates or maximum costs shall be provided prior to the commencement of such functions. Outside labor may be brought in for such functions, as required and as approved by ACSO. k.

Meal Service:

- (1) Responsibilities

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- (a) The contractor shall provide all specified meal service for inmates, staff and guests regardless of holidays, weather conditions, work stoppages, lack of availability of inmate staff or any other adverse or emergency conditions that shall occur.
 - (b) If, for any reason, the contractor fails to provide food service, the ACSO shall obtain the required meal(s) from the most expedient source, and the contractor shall be responsible for any and all charges, including consequential expenses incurred by ACSO for food service. Charges will be deducted from outstanding invoices and additional damages may be imposed.
- (2) **Set Up:** Consistent with the food service delivery system in each facility the contractor shall be responsible to ensure that all meals are in place and ready to serve at the hours specified in that facility
- (3) **Transportation:** All transportation from any Jail of prepared food, whether trayed or bulk to facilities, is the responsibility of the Contractor. Consistent with the food service delivery system in each facility, contractor shall be responsible for transporting all food to the dining areas, rethermalization areas, serving areas, and for returning all trays, utensils, and equipment to the food preparation or washing areas, as appropriate. Contractor is responsible for maintaining logs and inventory of all trays which have been delivered, as well as picked up from each facility.
- (4) **Inmate Feeding**
 - (a) **Time** – Consistent with the food service delivery system in each facility, contractor shall be responsible for serving during hours as required by the Title 15, ACSO, and American Correctional Association (ACA) guidelines.
 - (b) **Locations** – Inmates are to be fed at the designated locations. ACSO reserves the right to amend these locations, which may include the designation of additional locations, as may be required for the overall operation of the ACSO, at no additional cost.
- (5) **Medical Diets**
 - (a) The Contractor shall clearly delineate medical diet meals for inmates.
 - (b) Meals shall be marked with clear and obvious markings so that the person taking the meal shall know that his/her dietary needs are being fulfilled.

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- (6) Religious Diets: The Contractor shall clearly delineate religious diet meals for inmates. Meals shall be marked with clear and obvious markings so that the person taking the meal shall know that his/her dietary needs are being fulfilled.
- (7) Appearance
 - (a) Food shall be served in such a fashion as to be appealing to the inmate and staff. It shall be served in sufficient quantity and at the appropriate temperature as to make the food offered acceptable. All equipment and utensils used in the service of meals shall be clean and free of defects that will render the food unappealing.
 - (b) The Contractor shall ensure that all foods and beverages are presented and prepared in a sanitary manner.
 - (c) The general cleanliness of the serving areas shall be the contractor's responsibility. Contractor shall be responsible for expeditiously reporting facility sanitation and maintenance issues in serving areas.
 - (d) A National Sanitation Foundation (NSF) approved ounce scale shall be provided at all food preparation serving areas to ensure portion controls.
 - (e) The Contractor shall possess or develop a system to prevent foods or beverages from deteriorating while holding. Such a system shall ensure that food quality (taste, appearance, texture, temperature) does not deviate from the minimum quality standards.
 - (f) Thermometers shall be used on service lines to ensure all foods/beverages are being held at proper temperatures. Thermometers used must be consistent in all facilities. Thermometers must be NSF and HACCP approved. The type of thermometers must be comparable to a Fluke FoodPro infrared thermometer.
 - (g) The use of instruments that indicate temperature will be subject to the inspection and approval of the County of Alameda.
- 3. Staff Requirements: Contractor shall also provide adequate, competent support staff that shall be able to service the County during normal working hours, Monday through Friday. Such representative(s) shall be knowledgeable about the contract, products offered and able to identify and resolve quickly any issues including, but not limited to, order and invoicing problems.
 - a. Account Manager

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- (1) Responsibilities: Contractor shall provide overall planning, direction and operation for the successful food service operation at the Alameda County Sheriff's facilities with particular attention to the issues of food service quality control, sanitation, and inmate vocational training.
- (2) Experience: Contractor's account manager shall have a minimum of five (5) years of managing a large scale food service operation in an institutional, commercial, industrial, or similar organization, with at least two (2) years in a major correctional facility or equivalent.

b. Cook-Chill Production Supervisor

- (1) Responsibilities: Contractor shall direct the product planning and oversee the quality control operations of the "cook-chill" production facility at the Santa Rita location. This employee should be dedicated to the "cook-chill" area only.
- (2) Experience: Contractor's Cook-Chill Production Supervisor shall have a minimum of two (2) years supervisory experience in correctional Cook/Chill techniques and applications.

4. ACA Compliance:

Contractor's quality assurance process shall be based on ACA standards and ensure compliance at every meal, every day. Compliance reviews shall be completed by Resident District Manager, Lori McConnell, on a monthly basis to be used as a continuous self-evaluation of contractor's performance. ACA Compliance operations shall be inspected by Contractor's Regional Team Members, Nutrition and Operation Support Services, Finance Officers and Operation Support Directors. Contractor shall also collect data from audits conducted by health inspectors and accreditation audits performed by the ACA and American Jail Association (AJA).

Contractors food safety Quality Assurance Review (QAR) standardization process shall be utilized to ensure perform at the highest levels of safety across all food service portfolios. QAR shall consist of site visits by objective third-party consultant EcoSure5,

(a leading food safety, and operational firm) which will evaluate the level of quality at the venue, and provide corrective action plans where necessary.

Failure to comply with and achieve ACA standards will result in a \$50,000 penalty and potential breach of contract.

5. Inmate Training Programs:

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Contractor training programs shall culminate in meaningful certification which shall be clearly delineated. Contractor shall manage the IN2WORK (I2W) Program, in conjunction with the ROP Culinary Program currently in place at the Santa Rita Jail. I2W shall be a comprehensive curriculum entailing both classroom and on-the-job components. Selected offender workers shall learn foundational food and retail skills. Each working offender shall be given their own workbook, structured pre-work, quizzes, and test on food service operations and shall be issued certifications upon their successful completion of vocational training.

Additionally, Contractor shall implement its FreshFavorites program. This program shall be used as a tool to reward appropriate behavior. FreshFavorites shall offer popular takeout-style foods to working offenders. FreshFavorites shall be paid for by offenders thus generating additional revenue for the facility. FreshFavorites shall be a key component on I2W as participation shall allow offenders the knowledge of how to prepare and serve take-out food as they would in a retail food environment. FreshFavorites shall be made fresh onsite and can be offered on a daily or weekly basis as determined by ACSO.

6. Community Outreach Initiative:

Contractor shall support inmates returning to the community. As the vast majority of inmates from County run jails return to local residences, there is a substantial need for re-entry programs that can assist these individuals in becoming positive and contributing members of the community. Contractor's support shall include programs that support this goal.

Contractor shall support reentry efforts through partnerships with one or more community agencies and the private sector to offer inmate training programs which provide employability skills and assist in job placement in the community. Contractor's efforts shall be done with the goal to help released inmates transition to gainful employment, family stability, and community engagement. In addition, Contractor will make reasonable efforts to employ, within its organization but outside the corrections setting, successful participants of reentry programs. Contractor may also provide support through grants to programs helping released inmates transition to gainful employment, family stability, and community engagement.

Contractor shall provide an annual written report on the efforts and results of meeting these community outreach initiatives.

7. Performance:

An assessment shall be imposed/assessed to Contractor in each of the following categories. The Alameda County Sheriff Office, or its designee, shall notify Contractor of any occurrence and the proposed assessment. Contractor shall have five days to respond before a final determination is made related to the assessment. After consideration of the

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response and factual situation, an assessment may be made by the County against Contractor and the full amount of the assessment shall be reflected as credit to the County in next invoice. If any credit exceeds the amount of the invoice Contractor shall submit a check for the credit balance to County with the invoice. The notice and reply period is for assessments only, it does not excuse or extend the time required under any term of this Agreement, include preapproval requirements or correction of deficiencies. This is not a liquidated damages provision and any assessment does not excuse Contractor from their obligations under this Agreement or any breach.

Type of Incident	Assessment Amounts
Late Meal Service	\$5,000 per occurrence
Improper Meal Substitutions	\$5,000 per occurrence
Inadequate Staff/Inmate Ratio	\$5,000 per occurrence
Sanitation Deficiencies	\$5,000 per occurrence
Equipment Damage	\$5,000 per occurrence
Security Breach	\$5,000 per occurrence
Failing to meet American Correctional Association Standards (ACA)	\$50,000 per occurrence
Failing to meet Alameda County Health Regulations	\$5,000 per occurrence
Failing to meet California Minimum Jail Standards Title 15	\$5,000 per occurrence

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EXHIBIT A-2

DELIVERABLES/REPORTS

1. Contractor shall maintain at each facility the following records, reports, and deliverables which shall be made available for monthly review by ACSO, or as specified:
 - a. A current staffing chart and work schedule for all employees, which conforms to the provisions of this agreement. Contractor shall provide written notice one (1) week in advance to the appropriate facility administrator and the contract administrator of any scheduled absence by the Contractor's General Manager, which may be required for corporate training or other matters;
 - b. A complete job description for all the positions and inmate assignments utilized at the facility;
 - c. Any vacancies due to extended illness or termination will be filled within 30 days;
 - d. Daily records of meals served for each location and for any additional satellite facilities contracts by Contractor, according to established meal count procedures and County supplied inmate labor;
 - e. Daily and/or weekly summary records documenting all applicable contractor and food service industry standard quality assurance procedures, to include the testing of temperatures in the refrigeration, cooking and serving areas, and any other records necessary to meet health care standards, inspections, or inquiries, In addition, all records (recipes, production sheets, etc.) necessary to document the minimum portion standards and nutritional adequacy of each meal served;
 - f. Nutritional analysis and recipes and portion sizes of menus;
 - g. Maintain for 72 hours a frozen sample meal of each meal trayed at the "cook-chill" Production Kitchen;
 - h. A sample meal of each served meal will be kept refrigerated for a period of three days at all facilities;
 - i. All HAACP, Cook/Chill charts, records, and perpetual cooked product inventories will be kept for a period of one year at the Cook/Chill Production Kitchen;
 - j. The required ACA documentation in order to comply with ACA standards for accreditation; and

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Master Contract No. 901240
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- k. Contractor shall provide meal counts for satellite facilities and other appropriate documentation to ACSO including but not limited to satellite facilities billing invoices in order to record the number of meals provided to each facility.
2. Contractor shall maintain and make available to ACSO the following required communication and reports for each ACSO facility:
 - a. Weekly reports of meals served;
 - b. Daily records of testing of meal temperatures as provided in item;
 - c. Records of nutritional analysis, recipes, and portion sizes;
 - d. A quarterly financial statement in accordance with industry standards, which shows all contractor income, expenses and profit or loss, related to this contract. This information will be treated by ACSO as confidential and will be made available only to ACSO, the ACSO Contract Administrator, the County Administrator, and/or the County Board of Supervisors;
 - e. Meal cart distribution sheets for meal carts leaving the kitchen, which shall be signed by contractor supervisors after verification of the number of meals prepared and loaded onto the meal carts. ACSO will sign for the designation dispatching of the food service carts. Jails will have random audits by the contract monitor or ACSO kitchen staff to validate meal counts;
 - f. Federal/State/local required forms relating to food services;
 - g. Analysis of nutrients showing Recommended Daily Allowance for this type of age group; and
 - h. Monthly status report on maintenance of capital equipment to include damaged equipment and equipment in need of repair or preventative maintenance.
3. Contractor shall have monthly scheduled meetings with the ACSO to discuss Contractor performance and other items of mutual interest to this Agreement.
4. Contractor shall have a two-way communication system in place during meal preparation and delivery hours to insure communication between the office personnel and the staff on the main kitchen floor.
5. Sustainable Food Service
 - a. Contractor shall follow a Sustainable Food Service Action Plan (the "Plan"). Contractor shall meet with the County GSA Sustainability Team regarding the Plan prior to July 1, 2015. Contractor shall finalize and implement an approved Plan by September 1, 2015

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- b. Contractor shall meet with County on a regular basis to review and update the Plan, including revisions to incorporate additional efforts for continuous improvement.
- c. Contractor shall provide regular reports that demonstrate how it reduces the environmental impact of food service delivery and operations associated with this Agreement.
- d. At a minimum, the Plan and reports shall identify efforts Contractor takes to minimize the generation of waste, divert waste that is generated from landfill, and strategies to minimize the life cycle environmental and social impacts associated with the provision of food. Examples of efforts the Contractor shall address include, but are not limited to:
 - (1) Packaging waste minimization;
 - (2) Food waste minimization;
 - (3) Other waste minimization actions;
 - (4) Surplus food diversion (e.g. for human or animal consumption);
 - (5) Recycling and composting implementation plan, including staff and inmate worker training, infrastructure (i.e. collection bins), and integration into work duty;
 - (6) Food sourcing strategies to minimize lifecycle greenhouse gas emissions intensity of food, such as locally grown foods, moving toward protein sources with lower emissions profiles and toward foods produced with no or low chemical inputs (e.g. fertilizers and pesticides);
 - (7) Food sourcing strategies that assure no human rights abuses though out the supply chain;
 - (8) Operational practices that conserve energy and water; and
 - (9) Additional operational or corporate practices that result in an improved environmental and social impact footprint of the food service delivery and operation for which the contractor is contracted to provided.
- e. The Contractor shall develop and track metrics that measure and evaluate achievement in meeting the goals of the plan. Metrics shall be collected on an ongoing basis, and shall be reported quarterly to ACSO and GSA.

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- f. Contractor shall update the Sustainable Food Service Action Plan annually in consultation with ACSO and GSA. The annual update to the plan shall incorporate a summary of the metrics from previous contract year(s), a summary of the environmental and social footprint improvements achieved, and seek to identify opportunities for continuous improvement in addressing the environmental and social impacts of the food service operation.
- g. To support sustainability goals, Contractor shall incorporate composting into their food services program. This will include, an investment of approximately \$100,000 to install composting equipment at the Santa Rita Jail kitchen facilities. The installation of this equipment is part of the services being provided under this Agreement and shall become the property of County at termination of the Agreement. However, Contractor shall remove the equipment if requested by County prior to the termination of the Contract.

Master Contract No. 901240
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EXHIBIT A-3

SUBCONTRACTORS

Pursuant to the terms of this Agreement, Contractor shall use the following subcontractors:

- Atlantis Food Services, Corp.
30470 Whipple Road, Union City, CA
Principal: Anton Haddad
In an amount equal to fifteen percent (15%)
- J. Leblanc Dairy
4073 Oak Hill Road, Oakland, CA
Principal: Joseph C. LeBlanc
In an amount equal to five percent (5%)

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Master Contract No. 901240
Procurement Contract No. 11293**EXHIBIT B****PAYMENT TERMS**

- County will use reasonable efforts to make payment to Contractor upon successful completion and acceptance of the following services within thirty (30) days upon receipt and approval of invoice.

- Costs

Description	Unit of Measure	Year 1	Year 2	Year 3
		Unit Cost	Unit Cost	Unit Cost
SRJ-Inmate Meals	Each	\$ 1.349	\$ 1.383	\$ 1.417
SRJ-Court Meals	Each	\$ 1.349	\$ 1.383	\$ 1.417
SRJ-Staff Meals	Each	\$ 4.700	\$ 4.818	\$ 4.938
GEDDF-Inmate	Each	\$ 1.349	\$	\$
GEDDF-Staff Meals	Each	\$ 4.700	\$	\$

SLIDING SCALE

Population Scale		Price/Meal
2000	2199	\$ 1.764
2200	2399	\$ 1.676
2400	2599	\$ 1.602
2600	2799	\$ 1.562
2800	2999	\$ 1.508
3000	3199	\$ 1.460
3200	3399	\$ 1.418
3400	3599	\$ 1.382
3600	3799	\$ 1.349
3800	3999	\$ 1.323
4000	4199	\$ 1.300

- Invoices will be reviewed for approval by the Alameda County Sheriff Agency.
- Total payment under the terms of this Agreement will not exceed the total amount of \$17,520,319. This cost includes all taxes and all other charges.
- Upon award of this Agreement by County, County and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.

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EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability, Products and Completed Operations, Contractual Liability, Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	<p><u>Endorsements and Conditions</u></p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". 7. CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision. 	

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/15/2015

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THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis of Pennsylvania, Inc. c/o 26 Century Blvd. P. O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME: PHONE: 877-945-7378 FAX: 888-467-2378 (A/C. NO. EXT): E-MAIL: certificates@willis.com ADDRESS: INSURER(S) AFFORDING COVERAGE: NAIC # INSURER A: ACE American Insurance Company 22667-003 INSURER B: Indemnity Insurance Company of North Amer 43575-001 INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Aramark Correctional Services, LLC Aramark Services, Inc. Its Divisions & Subsidiaries Aramark Tower, 1101 Market Street, 30th Floor Philadelphia, PA 19107	

COVERAGES CERTIFICATE NUMBER: 23163276 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY	Y		HDOG27335457	10/1/2014	10/1/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ Included MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ None PRODUCTS - COM/OP AGG \$ None
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						
	<input checked="" type="checkbox"/> Liquor Law Liability						
	<input checked="" type="checkbox"/> Vendors Liability						
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	POLICY	PRO-JECT	LOC				
	OTHER						
A	AUTOMOBILE LIABILITY			ISAH08827011	10/1/2014	10/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> ANY AUTO						
	ALL OWNED AUTOS	SCHEDULED AUTOS					
	HIRED AUTOS	NON-OWNED AUTOS					
	<input checked="" type="checkbox"/> Self-Insured for	<input checked="" type="checkbox"/> Auto Physical Damage					
	UMBRELLA LIAB	OCCUR					EACH OCCURRENCE \$
	EXCESS LIAB	CLAIMS-MADE					AGGREGATE \$
	DED	RETENTIONS					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			AOS WLRC48013570	10/1/2014	10/1/2015	<input checked="" type="checkbox"/> PER STATUTE - OTH-ER
A	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED?	Y/N	N/A	CA & MA WLRC48013569	10/1/2014	10/1/2015	E.L. EACH ACCIDENT \$ 1,000,000
A	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WI SCFC48013582	10/1/2014	10/1/2015	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
ARAMARK's General Liability and Auto Liability policies are noncancellable. Workers' Compensation notices of cancellation are in accordance with each state law. Products/Completed Operations and Contractual Liability are included under General Liability.
 County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives are included as Additional Insureds per policy terms & conditions.

CERTIFICATE HOLDER County of Alameda 1401 Lakeside Dr. 12th Floor Oakland, CA 94612	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

Coll: 4690070 Tpl: 1858331 Cert: 23163276 © 1988-2014 ACORD CORPORATION. All rights reserved.

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Named Insured: Aramark Correctional Services, LLC
Insuring Company: ACE American Insurance Company
Policy Number: HDOG27335457
Policy Effective: 10/1/2014

Endorsement No. 88

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided in the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Schedule

Name of Person or Organization

- 1) Any person, organization or entity for whose protection and benefit the Named Insured has or shall have, by contract or agreement, agreed to procure liability insurance; or
- 2) Any person, organization or entity designated as an additional insured by a Certificate of Insurance.

WHO IS AN INSURED (Section II) is amended to include as an insured the person, organization or entity shown in the Schedule above, but only with respect to liability arising out of the Named Insured's operations or work performed by the Named Insured or others acting on the Named Insured's behalf, or premises owned, managed or controlled by or rented to the Named Insured.

With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Additionally, the coverage provided to the additional insured shall not exceed, and is limited by, the scope of coverage that the Named Insured has agreed by contract or agreement to procure for the Additional Insured.

This endorsement is issued by the Company designated in the Declarations.

All other provisions of the policy remain unchanged.



Authorized Agent

MS1185/1212

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EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Aramark Correctional Services, LLC

PRINCIPAL: Mark R. Adams TITLE: Vice President Finance

SIGNATURE:  DATE: 6-2-15

Master Contract No. 901240
Procurement Contract No. 11293

EXHIBIT E

COUNTY OF ALAMEDA CONTRACT COMPLIANCE REPORTING REQUIREMENTS

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at <http://www.elationsys.com/elationsys/ContactUs.aspx> or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

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EXHIBIT F

**COUNTY OF ALAMEDA
THE IRAN CONTRACTING ACT (ICA) OF 2010
For Procurements of \$1,000,000 or more**

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who “engages in investment activities in Iran” is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

NAME: Aramark Correctional Services, LLC

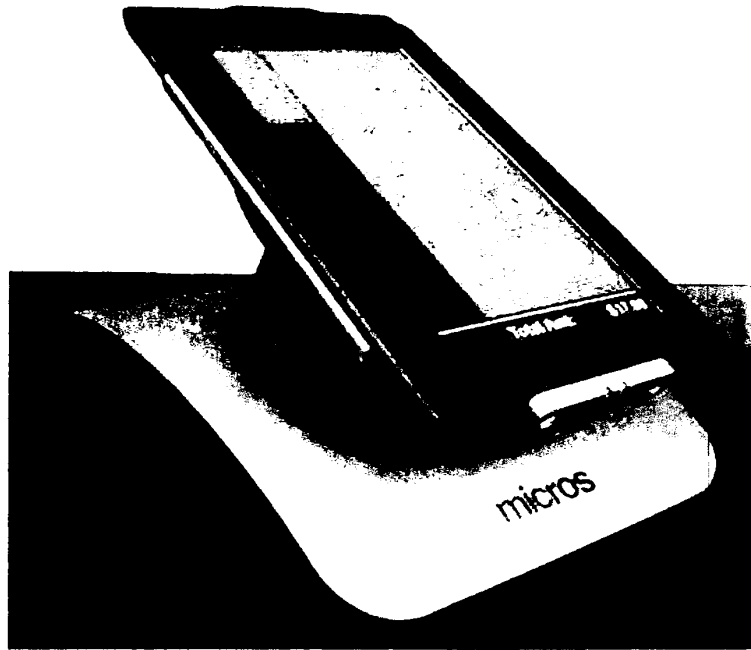
PRINCIPAL: Mark R. Adams TITLE: Vice President Finance

SIGNATURE:  DATE: 6-2-15

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EXHIBIT G
MICROS POS SYSTEM



PDF Attached Hereto

mWorkstation – Product Overview



MICROS mTablet and mStation



The mTablet and mStation are currently supported by the following MICROS applications:

Application	Version Supporting mTablet/mStation
Simphony 1	V1.6 MR4
RES	5.2

mWorkstation – Product Overview



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