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WESTERN DISTRICT OF MICHIGAN
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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

2:16-cv-271

Janet T. Neff, US District Judge
Timothy P. Greeley, US Magistrate Judge

RONNIE BOONE,

Plaintiff,

Case No. (New)

v.

**DUNCAN MACLAREN, WARDEN, et al.
S. LEWIS (ACS) SUPERVISOR; SHAWN McMULLEN (ACS) DIRECTOR;
KATHY OLSEN (DEPUTY WARDEN KCF);
RICHARD D. RUSSELL (GRIEVANCE SECTION MANGER);
L. BERLINGER (GRIEVANCE COORDINATOR);
ARMARK CORRECTION SERVICES (FOOD SERVICE); AND
TRINITY SERVICE GROUP (FOOD SERVICE)**

Defendants.

_____ /

42 U.S.C. § 1983 COMPLAINT

BY: Ronnie Boone #501976
Plaintiff In Pro Se
Kinross Correctional Facility
4533 W. Industrial Park Dr.
Kincheloe, MI 49788

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

RONNIE BOONE, #501976

Plaintiff,

Case No. _____

v.

UNITED STATES DISTRICT JUDGE
HONORABLE
U.S. STATES MAGISTRATE JUDGE
HONORABLE

DUNCAN MACLAREN, WARDEN., *et al.*

S. LEWIS (ACS) SUPERVISOR; SHAWN McMULLEN (ACS) DIRECTOR;

KATHY OLSEN (DEPUTY WARDEN KCF);

RICHARD D. RUSSELL (GRIEVANCE SECTION MANGER);

L. BERLINGER (GRIEVANCE COORDINATOR);

ARMARK CORRECTION SERVICES (FOOD SERVICE); AND

TRINITY SERVICE GROUP (FOOD SERVICE)

Defendants.

_____ /

I. COMPLAINT

Ronnie Boone, In Pro Se, Plaintiff in the above captioned cause and for his complaint against the above named Defendants says as follows:

This is a 42 U.S.C. § 1983 action, filed by Ronnie Boone, a state prisoner, alleging violations of his constitutional rights and seeking injunctive relief, declaratory judgment, compensatory judgment, monetary damages, exemplary and/or punitive damages. The Plaintiff requests a trial by jury.

II. JURISDICTION & VENUE

This is a civil rights action being brought under 42 U.S.C. § 1983.

1. This Court has jurisdiction over Plaintiff's claims of violations of Federal Constitutional rights under 28 U.S.C. § 1331 and 1343(a) (3).

2. Venue is proper in this Court as Defendants Warden Duncan MacLaren, S. Lewis, Shawn McMullen, Kathy Olsen, Richard D. Russell, L. Berlinger, and Aramark Correction Services (ACS), are or were employed at Kinross Correctional Facility which is located in the Western District of Michigan , Northern Division. 28 U.S.C. § 1391.

3. Jurisdiction is further found herein under this Court's general concurrent and federal question jurisdiction where there exists a federal question of law herein. Plaintiff further invokes this Court's pendent jurisdiction for purposes of hearing these claim(s) herein which are State claims pendent to the Federal claims alleged herein. 28 U.S.C. § 1367.

III. DEMAND TRIAL BY JURY

4. Plaintiff demands a trial by jury pursuant to the Federal Rules of Civil Procedure, Rule 38 and the Seventh Amendment to the United States Constitution, concerning all issues raised herein, unless there can be a consent decree or agreement with the approval of Plaintiff prior to such trial.

IV. PARTIES

5. At all times relevant to this cause of action Plaintiff Ronnie Boone Inmate number 501976, was and still is an incarcerated individual residing within the Michigan Department of Corrections, with his principal place of residency being Kinross Correctional Facility, Kincheloe, Michigan, County of Chippewa. Furthermore, Plaintiff Boone is a Citizen

of the State of Michigan.

6. At the times relevant to this cause of action Defendant Warden Duncan MacLaren, was the warden at Kinross Correctional Facility here after referred to as KCF for the Michigan Department of Corrections here after referred to as MDOC. He was and still is a citizen of the State of Michigan, whose primary place of employment is with the MDOC, located at 4533 West Industrial Park Dr., Kincheloe, Michigan 49788. He was acting under the color of State and Federal law. He has the responsibility to ensure that Plaintiff's care and well-being are met within the law. He was the Warden at the time these unconstitutional violations occurred, and is the responsible official in charge of operations at KCF with the power to change or enforce operating procedures within the prison. Plaintiff asserts that the customs and procedures followed by the Defendant demonstrate a pattern of unconstitutional behavior.

7. At all times relevant to this cause of action Defendant S. Lewis was the food supervisor for Aramark Correctional Service, here after referred to as (ACS) at the Michigan State Penitentiary, and was acting under the color of State, and Federal law. She was legally responsible to oversee or supervise the food service/kitchen staff at KCF. She is now the supervisor for the new food service vendor Trinity Services Group here after referred to as (TSG). She is responsible to provide adequate food service to Plaintiff, ensure proper food service standards are adhered to, and ensure proper food standard are met in the administration of food to Plaintiff's health. Plaintiff asserts that the customs and procedures followed by this Defendant demonstrate a pattern of unconstitutional behavior.

8. At all times relevant to this cause of action Defendant Shawn McMullen was the

Director for ACS at the Michigan State Penitentiary and was acting under the color of State and Federal law. He was legally responsible for the overall operation of the food service at KCF and under contract with MDOC to provide food services to prisoners. He is now the director for the new food service vendor Trinity Services Group, here after referred to as (TSG). A pattern of unconstitutional behavior by municipal employees violating Plaintiff's rights was a "highly predictable" or "plainly obvious" consequence of the municipality's action or inaction.

9. At the times relevant to this cause of action Defendant Kathy Olsen was the Deputy Housing/Programs Warden for the KCF when the unconstitutional behavior occurred. She is now a Warden for Baraga Correctional Facility, here after referred to as (AMF) for the Michigan Department of Corrections, here after referred to as (MDOC). She was and still is a citizen of the State of Michigan, whose primary place of employment is with the MDOC, located at AMF 13924 Baraga Road, Baraga, Michigan 49908. She was acting under the color of State and Federal law. She had the responsibility to ensure that Plaintiff care and well-being are met within the law. She was the responsible official in charge of operations at KCF with the power to change or enforce operating procedures within the prison. Plaintiff asserts that the customs and procedures followed by the Defendant demonstrate a pattern of unconstitutional behavior.

10. At all times relevant to this cause of action Defendant Richard D. Russell was employed as a Grievance Section Manager in the Office of Legal Affairs at MDOC Director Office in Grandview Plaza, P.O. Box 30003, in Lansing, Michigan 48909. He was acting under the color of state and federal law. He has a direct responsibility to ensure that Plaintiff's care and well-being are met within the law. He is legally responsible by policy or statute and is the

individual who shall determine if the Step I and II are appropriately responded to at the facility level, and if not has direct authority to correct the unconstitutional behavior. Plaintiff asserts that the customs and procedures followed by the Defendant demonstrate a pattern of unconstitutional behavior.

11. At all times relevant to this cause of action Defendant L. Berlinger was employed as a Grievance Coordinator at KCF, acting under the color of state and federal law. He has a direct responsibility to ensure the safety and well-being of Plaintiff. He is legally responsible by policy or statute and is the individual who shall determine if the grievance should be rejected pursuant to policy and if so forward to the appropriate individual to resolve the grieved issue. If a grievance is rejected he has a duty to sign, date, and return with the grievance a reason stating rejection. He was acting under the color of State and Federal law. Plaintiff asserts that the customs and procedures followed by the Defendant demonstrate a pattern of unconstitutional behavior.

12. At all times relevant to this cause of action Defendant Aramark Correctional Service (ACS), a Philadelphia-based company was under contract to the People of the State of Michigan with the Michigan Department of Corrections (MDOC) to provide food service to inmates/prisoners within the Michigan State Penitentiaries, and was acting under the color of State, and Federal law. It was a pattern of unconstitutional behavior by municipal employees violating Plaintiff's rights and was a "highly predictable" or "plainly obvious" consequence of the municipality's action or inaction.

13. Plaintiff sues each and all of the above listed Defendants in their individual and

official capacities.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Plaintiff has presented the facts relating to this complaint at each stage of the institutional grievance process, MDOC Policy Directive (PD) 03.02.130 (3/5/07).

15. Plaintiff has exhausted all available administrative remedies, and has filed numerous grievances in 2014 and 2015 concerning the Defendants' preparing and servicing food in unsanitary conditions that presented a serious health risk of physical harm. Further, the numerous grievances show their combined failure to correct the "ongoing" inappropriate food handling practices condition in an adequate manner, and for their acts of deliberate indifference toward Plaintiff's health and safety or "ongoing" medical problems. The Step I response simply explained a violation of Serve Safe Procedures of P.D. 04.07.100 "Offender Meals" is established. The refusal of or delayed consultation with Humane Treatment and Living Conditions for prisoner states: (All prisoners shall be provided wholesome and nutritionally adequate meals as set forth in P.D. 04.07.100(E) "Offender Meals." Meals shall be prepared and served in accordance with M.C.L. 333.12901 et seq., of the Michigan Public Health Code, and if not it is inappropriate treatment. Plaintiff appealed to second Step II. The Step II Response reiterated the Step I Response. Plaintiff appealed to Step III which reiterated the Step I and II Response.

VI. FACTUAL STATEMENT

16. The Plaintiff Ronnie Boone Inmate No.501976 has been incarcerated at the MDOC since 2004.

17. The Plaintiff has been diagnosed with chronic medical conditions, (i.e., peripheral nerve damage from a gunshot wound, causing bowel/digestive system disorder; head injury causing migraine headaches, and head tension disorder; gastroesophageal reflux disease, causing esophageal sphincter; contagious disease, causing liver/digestive system disorder; and behavioral and emotional disorder, causing depression, and borderline personality disorder), [See treatment Plain Review of 2015; [Appendix A: (Exhibit “AA”)].

18. The Plaintiff alleges that since ACS the Philadelphia based Corporation took over food service, under contract to the People of the State of Michigan, for the MDOC they have knowingly provided food to KCF prisoners that was nutritionally inadequately prepared, served under unsanitary condition including serving meals on contaminated food trays, spoiled food from previous meals, and inadequate supervision of employees, which resulted in improper food handling, preparation, and sterilization of equipment. As a result, the Plaintiff found himself violently ill and his ability to recover from his chronic illnesses is hindered. This posed an unreasonable risk of harm to plaintiff’s future health causing, panic attacks and profuse sweating, resulting in withdrawals from Plaintiff’s psychiatric medication. The Plaintiff’s medication has increased from 40 mg to 60 mg, (See Paragraphs 22-23, of this complaint). Aramark (ACS) has failed to adequately meet Plaintiff’s nutritional needs to maintain his health.

19. The Plaintiff alleges that “the Defendant’s knew of and disregarded an excessive risk, and that the particular conditions endanger his health and safety; when they were aware of the deliberate indifference to the fact that Plaintiff was not receiving adequate nutrition. An inference could be drawn that substantial risk of serious harm exists from all the complaints of

unsanitary/contaminated condition in the KCF kitchen.” There have been over ten (10) grievances filed by Plaintiff on food safety and sanitation assessments that identify violations in accordance with the Michigan Public Health Code.

20. The Plaintiff alleges that the presence of contamination in his or the prison’s food constitute a deprivation so extreme as to violate his Eight Amendment rights, because it was a continuing pattern and an ongoing violation by a municipal employee and subjected the Plaintiff to extreme deprivation and the MDOC Prison/Aramark Officials were “deliberately indifference” to the Plaintiff’s needs. The Plaintiff has clearly established rights to live in conditions that are not a threat to his physical health and safety. The Plaintiff is entitled to nutritionally adequate food that is prepared and served in such a manner that it does not constitute an immediate danger to the health of the inmate/prisoner who consumes it. The food does not meet the minimal standard of safety, it is routinely unsanitary and it presents an immediate threat to the Plaintiff’s health and safety.

21. The Plaintiff alleges that these practices hindered his ability to recover from his illnesses, (i.e., ^{HEPATITIS C,} mental, bowel, migraines, and disorder’s) and caused an immediate and substantial risk to his health, conditions that were intolerable even for a prisoner. Aramark has failed to rectify these deficiencies and ensure appropriate and sanitary food handling practices in accordance with MCL 333.12901 et., seq., of the Michigan Health Code, and the Defendant’s providing food to the Plaintiff that is unsanitary, presenting an immediate danger to the Plaintiff’s health.

22. On or about July 30, 2015, the Plaintiff went to Out Patient Mental Health

(OPMH) to see the social worker Ms. Debra A. LeBlanc (LMSW). Plaintiff informed Ms. LeBlanc of the problems that he was experiencing, relating to the (i.e., prison food/legal problems, mental/emotional injury, and depression), See MDOC Treatment Plain Review; (Exhibit AA). Also, Plaintiff informed Ms. LeBlanc that his medication (Prozac) was not working because of i.e., legal problems, loss of appetite from the food, severe stress and panic attacks, resulting from withdrawal of psychiatric medication causing physical and emotional stress or mental/mood disorder, and needing to have to increase Plaintiff's medication or Plaintiff being put back on (wellbutrin) along with (prozacs); (see copies of date sheets, [Appendix B (Exhibit BB and CC)]. Ms. LeBlanc informed the Plaintiff that he would be seeing or talking with the medical provider Dr. Robert T. McQueeney, MD., and to inform the doctor of Plaintiff's medical condition.

23. On or about October 06, 2015, Plaintiff went to Community Mental Health (CMH) and talked with Psychiatrist – Dr. McQueeney and informed the doctor of his medical condition (i.e., emotional stress and mental/mood disorder) (See Offender Daily Schedule, [Appendix C: (Exhibit DD)]. Dr. McQueeney increased the Plaintiff's medication (Prozac) from 40mg to 60mg, and stated that “he would have to talk to Mental Health Official's, so that Plaintiff can be put back on (wellbutrin) medication. Dr. McQueeney, asked the Plaintiff if he was losing weight due to the food situation. The Plaintiff informed the doctor that he was eating a lot of junk food from the prison commissary.

THE CLAIMS BROUGHT PURSUANT TO 42 U.S.C. § 1983 UNDER THIS SECTION ARE NOT SUBJECT TO THE MANDATORY EXHAUSTION REQUIREMENT ARTICULATED IN PARAGRAPHS 25-31 AND 32-48, OF THIS COMPLAINT. THE

PLAINTIFF HAS PROPERLY EXHAUSTED HIS ADMINISTRATIVE REMEDIES WITH RESPECT TO HIS ONGOING COMPLAINT REGARDING DEFENDANT'S DELIBERATE INDIFFERENCE IN VIOLATION OF THE EIGHTH AMENDMENT BY FAILING TO PROVIDE FOR PLAINTIFF'S HEALTH AND SAFETY FROM UNSANITARY/CONTAMINATED FOOD CONDITION ADDRESSED IN THE MANY GRIEVANCES FILED BY THE PLAINTIFF AND THE MDOC FAILING TO FOLLOW THEIR OWN PROCEDURES BY ADDRESSING THE GRIEVANCES IN A TIMELY MANNER.

24. The record reflects that the MDOC or Richard D. Russell of the Office of Legal Affairs did not respond to three (3) of the Plaintiff's grievances within a timely manner (120 calendar days), in accordance with Policy Directive 03.02.130(s). The total grievance process from the point of filing a Step I grievance to providing a Step III response shall generally be completed within 120 calendar days unless an extension has been approved in writing:

GRIEVANCE No.1., KCF-1406-0652-09z, filed on August 21, 2014, paragraphs 25-31, of this complaint; Step III response received on June 11, 2015, (303 calendar days);

GRIEVANCE No.2., KCF-1406-0694-28a, filed on August 15, 2014, paragraphs 32-41, of this complaint; Step III response received on June 11, 2015, (309 calendar days);

GRIEVANCE No.3., KCF-1408-0862-09z, filed on September 10, 2014, paragraphs 42-48, of this complaint; Step III response received on September 15, 2015, (360 calendar days).

Defendant Russell has provided no explanation as to why the Step III responses were late exceeding the 120 days set forth pursuant to P.D. 03.02.130(S), [Appendix D: (see Exhibit EE, Policy Directive)]. It is a material fact that the MDOC failed to respond in a timely manner. MDOC Policy Directive does not grant nor authorize the MDOC to address grievances at their

leisure or to indefinitely delay issuance of a Step III response. By failing to enact a coherent deadline for exhaustion of prisoner grievances, the MDOC has placed itself in the position of having to justify why they failed to issue the Step III responses within a 120 days. Because the MDOC has created an uncertainty with respect to exhaustion, the MDOC bears the burden of demonstrating why the responses were untimely under the framework set forth in sec.(S), (in a case arising in Tennessee, the Sixth Circuit states that “[f]ollowing the lead of the four other circuits that have considered this issue, they conclude that administrative remedies are exhausted when prison officials fail to timely respond to a properly filed grievance”). Accordingly, if the Defendant’s file any motion for summary judgment based on Plaintiff’s filing of this action prior to his receipt a Step III grievance responses, it should be **DENIED**.

GRIEVANCE No.1., KCF-1406-0652-09z, dated: 06/19/14, Uncooked Food

25. On or about June 19, 2014, Aramark served French fries for lunch and ran out of (French fries). Aramark tried to hurry up and prepare more food French fries, but the fries were uncooked/raw, and Aramark staff served the food. Plaintiff informed ACS food service steward (unknown) no name tag, about the raw/half cooked fries, and Plaintiff was told that the fries are cooked and being served.

26. On the same day Plaintiff took the tray of food, id., and showed it to Sergeant Johnson KFC. There were six (6) raw/half cooked fries. Sergeant Johnson agreed the fries were raw/half cooked, and said he will make a note of same.

27. On or about June 19, 2014, Plaintiff filed a Step I grievance, about being served uncooked food. [Appendix E (See, Grievance form KCF-1406-0652-09z, Exhibit NO.1)].

28. On or about June 26, 2014, the Step I grievance respondent S. Lewis ACS food supervisor did not even address the issues about the food being served uncooked.

29. On or about July 24, 2014, Plaintiff submitted a Step II Appeal to Warden, MacLaren Office at KCF and respondent Deputy Warden Kathy Olsen, stated: (the grievance was partially addressed, about the food not being cooked was not), and stated: (STAFF ARE GOING TO BE REMINDED TO COOK THE PRODUCT THOROUGHLY BEFORE SERVING TO THE PRISON POPULATION). Grievance is DENIED.

30. On or about August 21, 2014, the Plaintiff filed a Step III Grievance Appeal to the Director's Office, and stated: Aramark keeps running out of food or not preparing enough food, and then try to rush/hurry up to prepare more food, and the food will not be adequate to eat uncooked/raw, nor be adequate in quantity, and does not have nutritional value or any other respect.

31. On or about June 11, 2015, almost a year later (303 calendar days) the Office of Legal Affairs, Richard D. Russell, stated: (in his Step III response; you received at Step I and II reflect that your issues were in fact considered and appropriately responded to at the facility level).

GRIEVANCE No.2, KCF-1406-0694-28a, 06/21/14 - - UNCOOKED FOOD.

32. On or about June 21, 2014, Aramark served cheesy rotini casserole, and ran out of rotini. Aramark again tried to hurry up and prepare more food, but the food was uncooked/raw , and was served to the prison population.

33. On that same day the Plaintiff took the tray of food over to MDOC Sergeant Cryderman and showed her the uncooked/raw food. Sergeant Cryderman immediately went

over to the serving line and informed Aramark employees that the meal was inappropriate to be served. At that point the serving line was stopped for about 15 minutes and resumed after Aramark started serving peanut butter and jelly.

34. On or about June 21, 2014, the Plaintiff filed Step I grievance about being served uncooked/raw -food again. See documents attached to the complaint, [Appendix F (Grievance Form KCF-1406-0694-28a; (Exhibit “No.2”))] .

35. On or about June 30, 2014, Step I respondent Grievance Coordinator L. Beringer, rejected grievance (KCF-1406-0694-28a), stating: the issue is being addressed in grievance (KCF-1406-0652-09z).

36. On or about August 04, 2014, the Plaintiff filed Step II to Warden, MacLaren’s Office stating: [the issues in grievance (KCF-1406-0694-28a) was a dinner meal and dealing with uncooked/raw spaghetti noodles with sauce that was watered down, and in grievance (KCF-1406-0652-90z), it was a lunch meal, and dealing with uncooked/raw french fries, a completely different subject/meal, and on different days).] .

37. On or about August 12, 2014, Deputy Warden Kathy Olsen upheld Step I grievance and rejected Step II stating: in P.D. 03.02.130, that “a grievance shall be rejected by the Grievance Coordinator if it raised issues that are duplicate of a grievance already filed.”

38. In paragraphs 25-31, on June 19, 2014, the Plaintiff filed a grievance complaining about being served uncooked/raw food. In paragraph 29, on July 24, 2014, Deputy Warden Olsen addressed the issues by stating: “staff are going to be reminded to cook the product (food) thoroughly before serving to the prison population.”

39. In paragraphs 32 – 41, of this complaint two (2) days later on June 21, 2014, the Plaintiff filed another grievance about Aramark staff once again served uncooked/raw food to the prison population. This time MDOC Sergeant Cryderman stopped Aramark staff from serving that inappropriate meal.

40. On or about August 15, 2014, the Plaintiff filed a Step III Grievance to the Director's Office stating: Grievance Coordinator L. Berlinger in Step I, and Deputy Warden Olsen in Step II, are not addressing the issues raised by inmate Boone/Plaintiff and there are two (2) different meals that were served on different times and different days.

41. On or about June 11, 2015, almost a year later, (309 calendar days), the Office of Legal Affairs Richard D. Russell upheld Step I and II decision in Step III and TOOK NO MEASURE TO CORRECT THE VIOLATIONS. Even though grievance KCF-1406-0694-28a was rejected, the Plaintiff put MDOC/Aramark Officials on "NOTICE" that the meals are still being served uncooked/raw or in an unsanitary food practiced condition to the prison population, and that the violation was caused by a policy or custom of the Defendants.
GRIEVANCE No.3., KCF-1408-0862-09z, 08/03/14 - - CONTAMINATED FOOD

42. On or about August 03, 2014, Aramark served baked chicken legs and thighs for dinner. The Plaintiff was in the serving line in the kitchen and watched or observed prisoner Hooper (No.487213), go over behind the glass counter and stick his dirty open hand in the pan/tray of chicken that was on the serving line (twice) taking /grabbing two (2) pieces of chicken . Aramark employee (unknown) no name tag saw the incident, stopped serving food and went over to prisoner Hooper and took back the two (2) pieces of chicken he stole. The

Plaintiff asked Aramark employees what about the other pieces of chicken in the pan/tray that may have been touched by prisoner Hooper's hand. The whole pan/tray of chicken should have been taken off the serving line and thrown away or discarded because the remaining pieces of chicken were contaminated. Aramark food service steward, served the remaining pieces of chicken.

43. On or about August 05, 2014, the Plaintiff filed a Step I grievance at KCF on the unsanitary food condition. Copies of these documents are attached to this complaint, [Appendix G; See, Grievance Form, KCF-1408-0862-09z; (Exhibit "No.3").

44. On or about August 14, 2014, the Step I grievance respondent S. Lewis ACS food service supervisor stated: she spoke with staff about health and safety issues.

45. On or about August 15, 2014, the Plaintiff filed Step II grievance to Warden, MacLaren office, and stated: contaminated chicken is an immediate danger to the health and well-being of plaintiff/prisoners who consume the chicken and a violation of policy, procedure, and the constitution.

46. On or about October 06, 2014, respondent Warden, Duncan MacLaren stated: the Step I response is appropriate, "all prisoner's shall be provided wholesome and nutritionally adequate meals as set forth in P.D. 04.07.100 "Offender Meals". Meals shall be prepared and served in accordance with MCL 333.12901 et seq., of the Michigan Public Health Code. There appears to be no evidence to support that a violation of policy or procedure occurred.

Under the Public Health Service Food Code sec. 3-701.11(D), it states:

Food that is contaminated by FOOD EMPLOYEES, CONSUMERS, or other PERSONS through contact with their hand, bodily, discharges, such

as nasal or discharges, or other means shall be discarded.

Whereas, under the Food Code, the pay/tray of chicken was “contaminated” by the means of prisoner Hooper sticking his hand in the chicken, “SO A VIOLATION OF THE POLICY OR PROCEDURE DID OCCUR,” [Appendix H; See, Food Code 3-701.11(D); (Exhibit “LL”)].

47. On or about September 10, 2014, the Plaintiff filed Step III, and stated: “some of the prisoner’s here at (KCF) have an INFECTIOUS DISEASE,” i.e., HIV, AIDS, HEPATITIS, OR MRSA, a serious medical condition, a health and safety issue. This is a known fact because of the Plaintiff’s medical condition, as stated in paragraphs 17, 21, 22, and 23 of this complaint.

48. On or about September 15, 2015, almost a year later (360 calendar days), a Step III grievance decision by Richard D. Russell, Manager Grievance Section, Office of Legal Affairs stated: as there is no additional information found that would provide a basis for overturning the previous decision, that decision is upheld and your Appeal is DENIED. **“THIS DECISION CANNOT BE APPEALED WITHIN THE DEPARTMENT.”**

BECAUSE THE ADMINISTRATIVE PROCESS WAS ONGOING ON THE DATE I PLAINTIFF FILED THESE ADDITIONAL GRIEVANCES CONCERNING THE SAME SUBJECT MATTER, FROM PARAGRAPHS 51 - 54, OF THIS COMPLAINT, ARE GRIEVANCES THAT HAS BEEN FILED ONLY TO STEP II, FROM AUGUST-NOVEMBER OF 2014. THESE GRIEVANCES ARE EVIDENCE DEMONSTRATING THAT MATERIAL ISSUES OF FACT EXIST, SHOWING A CONTINUING PATTERN OF RUNNING OUT OF FOOD AND SERVING UNCOOKED/RAW FOOD. PLAINTIFF HAS EXHAUSTED SUBSEQUENT GRIEVANCES ADDRESSING THE SAME SUBJECT-MATTER IN PARAGRAPHS 25-31 AND 32-41, OF THIS COMPLAINT.

49. In paragraphs 42-43, of this complaint, on August 03, 2014, are grievances concerning

the same subject-matter, i.e., MDOC/Aramark Officials' failure to accommodate the matters on contaminated food, and unsanitary food. The 08/03/14, grievance is considered fully exhausted, then Plaintiff's federal lawsuit should not be barred, notwithstanding his failure to exhaust subsequent grievances addressing the same subject-matter. Plaintiff has submitted these grievances as evidence demonstrating that the issues of fact exist.

50. In paragraphs 32-41, of this complaint, MDOC Official's addressed the subject-matter about a grievance shall be rejected if it raised issues that are duplicates of another grievance, and from the Step I-III the grievance was rejected on the grounds of MDOC Policy stating: "a grievance shall be rejected if it raised issues that are duplicates of a grievance already filed," showing issues of facts exist of staff corruption, policy or custom that resulted in the violation of plaintiff's constitutional rights, i.e., the right to nutritionally adequate food that is prepared and served in such a manner that it does not constitute an immediate danger to the health of those who consume it. In paragraph 29, of this complaint or on or about June 19, 2014, in grievance KCF-1406-0652-09z; Warden Olsen stated: "STAFF ARE GOING TO BE REMINDED TO COOK THE PRODUCT THOROUGHLY BEFORE SERVING IT TO THE PRISON POPULATION". In paragraph 32, of this complaint or on or about June 21, 2014, in grievance KCF-1406-0694-28a; two (2) days later Aramark Staff once again served uncooked/raw food to the prison population. On that day MDOC Sergeant Cryderman immediately went and stopped Aramark from serving that inappropriate meal, but MDOC Official's would not address the subject-matter, (i.e., being served uncooked/raw food again), and used MDOC Policy to reject the grievance. MDOC Officials' made or carried out a "policy" or "practice" that lead to the

violation of Plaintiff's rights. The State/Defendant's had a chance to address the other grievances on the merits, but they refused to do so, and failed to respond to the grievance in a timely manner, THEN THE DEFENDANT'S FORFEITED THEIR RIGHTS TO RAISE THE AFFIRMATIVE DEFENSE, (see, paragraph 41, of this complaint).

51. GRIEVANCE No.4., being served UNCOOKED FOOD. On or about August 31, 2014, Step I-II grievance were filed on Aramark regarding the MDOC Food Service for a nine month period, and still not preparing the appropriate number of meals for (KCF) prison population, because they kept running out of food on a regular basis, and the baked chicken not being properly cooked/undercooked/raw, and unfit to eat as to present a health risk or was not wholesome and nutritionally adequate meal. Copies of these documents are attached to this complaint, [Appendix I; See, Grievance Form, KCF-1409-0967-09z; (Exhibit: No.4)].

52. GRIEVANCE No.5. , being served UNCOOKED FOOD. On or about September 09, Sept I-II grievance filed against Aramark about running out of food sloppy Joe meat, and trying to hurry up and prepare more food, however, the food (meat) was red/uncooked/raw. Copies of the documents are attached to this complaint, [Appendix J; See Grievance KCF-1409-0995-09z; (Exhibit No.5)].

53. GRIEVANCE No.6., being served UNCOOKED FOOD. On or about September 28, 2014, Step I-II grievance was filed on Aramark for the "fiftieth" time about running out of food baked chicken, and trying to hurry up and prepare more food, however, the food was not properly cooked/undercooked/raw. Copies of the documents are attached to this complaint, [Appendix K; See, Grievance Form KCF-1409-1074-09z; (Exhibit No.6)].

54. GRIEVANCE No.7., being served UNCOOKED FOOD. On or about November 23, 2014, Step I-II grievance was filed on Aramark for the “sixth” time about running out of food baked chicken, and tried trying to hurry up and prepare more food, but the food was not properly cooked/undercooked/raw. Copies of the documents are attached to this complaint, [Appendix L; see, Grievance Form KCF-1411-01304-09z; (Exhibit No.7)].

PLAINTIFF HAS SUBMITTED THE FOLLOWING GRIEVANCES FORM NUMBER 8-10 AS EVIDENCE DEMONSTRATING MATERIAL ISSUES OF FACTS EXIST OF STAFF CORRUPTION, POLICY OR CUSTOM THAT HAS RESULTED IN THE VIOLATION OF PLAINTIFF’S CONSTITUTIONAL RIGHTS, AND SHOWING A CONTINUING PATTERN OF UNCONSTITUTIONAL BEHAVIOR OR ON-GOING VIOLATION BY MUNICIPAL EMPLOYEES OR THAT THE VIOLATION OF PLAINTIFF’S RIGHTS, WERE A “HIGHLY PREDICTABLE” AND “PLAINLY OBVIOUS” CONSEQUENCE OF THE MUNICIPALITY’S ACTIONS OR INACTION.

55. Plaintiff alleges that “Prison Officials precluded him from filing administrative requests or appeals, and that the procedures were unclear, creating special circumstances that justify or excuse the exhaustion requirement, and the [d]efendant’s are estopped from raising exhaustion as an affirmative defense.”

56. From paragraphs 58-91, of this complaint, are grievances that have been filed to Step I-III, and all were rejected as being untimely submitted.

57. The record reflected that the Defendants forfeited their rights to raise the affirmative defense stating the following:

- (1) Defendant’s failed to follow their own procedures regarding the grievances being filed in a timely matter, see, paragraph 24, of this complaint;
- (2) The Defendant’s actions precluded Plaintiff from using administrative grievance procedures, when KCF Business Office/Manager Kathy Dumback would not send/mail out

Plaintiff's grievances to the Director's/Central's Office in Lansing, Michigan because of "not sufficient funds" NSF, [Appendix ^M~~N~~], see, Disbursement Authorization Form; (Exhibit "FF").

MDOC Prisoner Mail Policy Directive 05.03.118(k), 09/14/09, provides as follows:

Funds for additional first class postage also shall be loaned to prisoners who lack sufficient funds to mail a grievance to another facility or to mail a Step III grievance to the Central Office, [Appendix N; See, "Prisoner Mail, "P.D. 05.03.118(k); Exhibit "GG".

(3) Plaintiff could not get all of Plaintiff's legal documents, affidavits and evidence in a timely manner, that were submitted with Plaintiff's Step III appeal, see, paragraph 69, of this complaint; and

(4) The subject-matters or grievances on (i.e., MDOC/Aramark Official's failed to deal with contaminated/unsanitary food), this issue has been fully exhausted, (see, paragraphs 25 -48, of this complaint). Whereas, from paragraph 51 – 54, of this complaint involves an ongoing controvert. Wherefore, Plaintiff alleges that this federal lawsuit should not be barred, notwithstanding Plaintiff's failure to exhaust subsequent grievances addressing the same subject-matter. ACCORDINGLY, IF THE DEFENDANTS FILE ANY MOTION FOR SUMMARY JUDGMENT, BASED ON PLAINTIFF'S FILING OF THIS ACTION PRIOR TO HIS RECEIPT OF STEP III GRIEVANCE RESPONSE, IT SHOULD BE DENIED.

GRIEVANCE No. 8., KCF-1412-1310-09z, 11/25/14, CONTAMINATED FOOD

58. On or about November 25, 2014, ACS served ultimate dessert (bread pudding) for lunch. On that day the Plaintiff and other prisoners saw or observed a prison kitchen worker who was serving the bread pudding pulling a plastic glove out of the food. Ms. Plount (ACS) steward

seen the incident or unsanitary food handling practices that presented a serious health risk from contamination, and then ~~“tried~~^{TRIED} to play it off and cover up the unsanitary act.” Ms. Plount said to the other line worker “O” do you need another glove for your hand?” When the line worker still had gloves on his hands. Plaintiff told Ms. Plount ACS that the pan of bread pudding needed to be discarded or thrown away. Ms. Plount (ACS) would not respond, and served the remaining contaminated bread pudding “ to the prisoners.”

59. On or about November 27, 2014, Plaintiff filed a Step I grievance on Aramark about unsanitary food handling practices that presented a serious health risk. Copies of these documents are attached to this complaint, [Appendix O; (See, Grievance Form KCF-1412-1310-09z; (Exhibit “No.8”)).]

60. On or about November 27, 2014, Step I response by Shawn McMullen ACSD stated: (1) “Ms. Plount ACSS said at no time did she observe any food service worker removing a plastic glove from the food; (2) all meals are prepared in accordance with proper Serve Safe Procedures and Policy Directive 04.07.100 ‘Offender Meals’; and (3) even if he had observed the breach of protocol, Plaintiff still had the option of choosing an alternate fresh fruit choice in order to receive his proper nutritional allowance for that meal.”

61. On or about January 01, 2015, Plaintiff filed a Step II grievance to Warden MacLaren’s Office at KCF. The Step I grievance response stated: (1) “Plaintiff was not interviewed because of giving reason ‘No Show’ on the state form”; (2) “Ms. Plount ACSS said at no time did she observe any food service worker removing a plastic glove from the food.” PLAINTIFF HAD A SIGNED AFFIDAVITS FROM OTHER PRISONERS WHO SAW THE INCIDENT OR

SITUATION ABOUT THE GLOVE BEING FOUND IN THE BREAD PUDDING. Copies of the Affidavits are attached to this complaint, [Appendix P; See, Affidavit of Facts; Exhibits “A, B, C, and D”]; and (3) once a prisoner takes their food tray and set down, the prisoner does not have the option of choosing an alternate fruit if he finds something in his food.

62. Plaintiff alleges the plastic glove was found and cooked in the bread pudding, therefore, making it unsanitary and a health hazard. Ms. Plount’s ACSS acted with “deliberate indifference to Plaintiff’s health and safety,” and served the “contaminated food” bread pudding anyway. The bread pudding, should have been taken off the serving line. Aramark is not providing it’s staff with the leadership and training that is needs to do the job.

63. The preparation of the prison food is inadequate to meet the Plaintiff’s nutritional needs because it is nutritionally inadequate, as a result inadequate food preparation.

64. MDOC Policy Directive 03.02.130(P), (07/09/07), provides as follows:

The respondent shall interview the grievant/plaintiff, and the grievant/plaintiff shall have the opportunity to explain the grievance more completely at the interview to enable the Step I respondent to identify and gather any additional information needed to respond to the grievance, [Appendix N; (see, 03.02.130(P); (Exhibit “GG”)].

By putting “NO SHOW” on the grievance form, respondent Shawn McMullen ACSD, “FALSIFIED” the record/ legal documents. This deprived Plaintiff of the opportunity to defend himself and due process of law, i.e., the right to be heard, and the due process, under the civil rights statute, i.e., making it a criminal act: (1) willfully; (2) under color of law; and (3) to deprived a person of rights protected by the constitution or laws of the United States, i.e., 18 USCS § 242, i.e., fraud, falsifying the record. The causal link between Ms. Plount’s ACSS

actions and the deprivation of the Plaintiff's federally protected right, i.e., to live in conditions that are not a threat to our physical health and safety, and nutritionally adequate food that is prepared and served in such a manner that it does not constitute an immediate danger to the health of the inmates/prisoners who consume it.

65. The policies were not followed and no corrective action was taken when the violation occurred at KCF. By putting "NO SHOW," on the grievance they falsified the record, Warden MacLaren KCF should be held liable when he known of and disregarded, the risk to the Plaintiff's health and safety.

66. Plaintiff spoke with MDOC day shift officers that worked in A-unit at KCF, and they stated: "Aramark never called them to send plaintiff over to food service to be interviewed on the grievance," and "no inmate pass was written," nor was it logged in the "Officer's Log Book." The correctional officers signed an "AFFIDAVIT" stating that Aramark never called the officers, [Appendix Q; see, Affidavit of Facts; Exhibit "G and H"].

67. This issue was never addressed by Warden MacLaren KCF in the Step II Appeal. Plaintiff was never called to food services to be interviewed, and it was stated: in the Step II – Reason for Appeal. So, Plaintiff could not present any evidence to substantiate Plaintiff's claim, as stated in Step II response from Warden MacLaren.

68. On or about January 12, 2015, Plaintiff filed another grievance form with regards to Mr. McMullen ACSD stated on three (3) of the grievances filed by Plaintiff, that he called for Plaintiff, but Plaintiff never "SHOWED UP." The grievance was REJECTED and DENIED, on grounds that Plaintiff needs to Appeal the three (3) grievances that had been filed. Copies of the

documents are attached to this complaint, [Appendix R; See, Grievance Form KCF-1501-0066-28j; Exhibit “N”].

69. On or about August 27, 2015, Plaintiff filed Step III Reason to Appeal Grievance to the Director’s Office, and it contained the following: (Statement of Facts five (5) pages; AFFIDAVITS, ten (10) pages; and exhibits, twenty (20) pages), and stated: These grievances are being filed late do to special circumstance. Plaintiff was unable to obtain the information or Affidavits of Facts in a timely manner and did not get evidence until around July 06, 2015.

[Appendix P; See, Dates on Affidavits of Facts: Exhibits “A, B, C and D.”] Even if these grievances are rejected a tracking system shall include information on the subject matter of each grievance received, rejected grievances, and the basis for the rejection, see P.D. 03.02.130 FF.

Whereas, the Defendants have forfeited their rights to raise an Affirmative Defense when the prison officials failed to timely respond to a properly filed grievance in this complaint, see, Paragraphs 24, 25-31, 32-41 and 42-48, of this complaint.

70. On or about September 09, 2015, Aramark Correction Services ACS no longer works for the Michigan Department of Corrections MDOC, and the Trinity Service Group TSG replaced Aramark, id. [Appendix S; See, Copy of MDOC Special Announcement; Exhibit “HH.” The same employees that worked for ACS, are working for TSG. Mr. McMullen was the service director for ACS and he is now the service director for TSG, [Appendix T; (See, Exhibit “II”)]

71. On or about September 21, 2015, Plaintiff’s Step III Appeal was rejected as being untimely submitted, see, paragraph 55-57, of this complaint why untimely submitted. In

paragraph 42-49, of this complaint, filed around August 03, 2014, are concerning the same subject-matter, i.e., the MDOC/Aramark failure to accommodate the matters on contaminated food. Plaintiff submitted his grievances as evidence demonstrating that material issues of existing facts.

GRIEVANCE No.9, KCF-1412-1376-09z, 12/14/14,--UNSANITARY FOOD

72. On or about December 14, 2014, Aramark served taco for dinner. Plaintiff ate the taco meat, got sick, and experience i.e., severe stomach pain, nausea, vomiting, fever, headaches, and serious diarrhea. The next day on 12/15/14, while in the kitchen, Plaintiff spoke with Aramark Supervisor (Ms. Lewis) about the taco meat, and was told it was grounded up left over food items. It was Salisbury meat that was served four (4) days ago for lunch on 12/10/14.

Aramark's preparation of prison food is inadequate to maintain plaintiff's normal health, and the improperly handle food presented a risk to Plaintiff 's health. Aramark Officials acted with "deliberate indifference" to Plaintiff's health and safety," when they served spoiled left over food.

73. On or about December 17, 2014, Plaintiff filed Step I grievance about being served spoiled food meat and unsanitary food handling practices that present a serious health risk to inmates. Copies of these documents are attached to this complaint, [Appendix U]: See, Grievance Form KCF-1412-1376-09z; Exhibit "No.9." } .

74. On or about January 02, 2015, Plaintiff filed Step I response by Shawn McMullen ACSD stating in his summary: (1) all food is prepared according to proper food service protocol and Serve Safe procedures; (2) these protocols include procedures for food storage and reuse; (3)

over 1400 serving of taco meat was served during the meal in question and Plaintiff was the only inmate reporting these symptoms; and (4) furthermore, no inmates were seen in health care service with issues related to food borne illness.

75. On or about January 27, 2015, Plaintiff filed Step II grievance to Warden MacLaren Office at KCF, and stated: (1) Plaintiff does not have to wait to become seriously ill to challenge the safety and nutritional adequacy of a meal; (2) Plaintiff consumed the tainted food and became ill, and experienced, i.e., severe stomach pain, nauseous, vomiting, fever, headache, and diarrhea; (3) Plaintiff takes medication for worsen headaches pain, see, paragraph 17, of this complaint, and sense Plaintiff vomited, and had diarrhea the inadequate food came out of his body; (4) So, Plaintiff did not have to go to health care for treatment; and (5) the food served was prepared and served in unsanitary condition that presented a serious risk of physical harm, and provided inadequate nutrition.

76. Again in the Step I grievance, Plaintiff was not interviewed pursuant to P.D. 03.02.130Y. The Respondent Shawn McMullen ACSD “falsified” the record, and put “NO SHOW” on the grievance form. Plaintiff was informed by MDOC Officers that Aramark never called them to send Plaintiff over to food service, which was a violation of state policy. This was the “second time,” Mr. McMullen ACSD “falsified” the record, see, paragraphs 58-71 and 72-80 or see, [Appendix O; Grievance Forms KCF-1412-1310-09z; (Exhibit “No.8.”)] .

77. On or about February 12, 2015, Plaintiff received Step II response back from Warden MacLaren, stating: the first Step response is appropriate, and is supported, Step II remains the same. Grievance is DENIED. In Step II grievance Warden MacLaren didn't even address the

issues about not being interviewed by respondent Shawn McMullen ACSD in Step I, violating the MDOC policy's nor about the "falsifying" the records by putting "NO SHOW," on the grievance form, violating 18 USCS 242 § A, 1506, 2071, and 2073, when he never called (MDOC) Officers to send Plaintiff over to food service to be interviewed. THIS DIDN'T HAPPEN JUST ONCE, BUT ON FOUR (4) DIFFERENCE OCCASION/GRIEVANCES, see, paragraphs 58-71, 72-80, 81-82, and 83-91 of this complaint.

78. Plaintiff alleges that this is evidence of a violation the written policy, systematic failure to enforce the written policy, and the municipality exercising 'deliberate indifference' to the policy's violation. Whereas, a result of a policy of biased investigations and refusal to discipline staff members, and staff officials who refused or fail to follow the policy procedures, which leaves staff members free to commit constitutional violations knowing that they will not be held accountable.

79. On or around August 27, 2015, Plaintiff filed Step III Reason to Appeal to the Director's Office; and stated: (1) Plaintiff was denied the right and opportunity to explain the grievance more completely at an interview to enable the Step I Respondent to identify and gather additional information needed to respond to the grievance when Mr. McMullen ACSD, refused to interview Plaintiff; (2) eating the food (meat) that day Plaintiff had watery bowel movement, and diarrhea; and (3) Mr. McMullen ACSD "falsified" the record by putting "NO SHOW" on the grievance form response, and never called the Plaintiff's housing unit for Plaintiff to come over to food services). THIS MADE THE WHOLE GRIEVANCE PROCESS INVALID.

80. On or about September 21, 2015, Plaintiff's Sept III Appeal was rejected as being

untimely submitted, see, paragraph 69, of this complaint, why untimely submitted concerning the same subject matter? Furthermore, the Defendants forfeited their rights to raise an affirmative defense, when prison officials failed to timely respond to a properly filed grievances, see, paragraphs 55, 56 and 57, of this complaint.

GRIEVANCE No.10., KCF-1412-1401-09z, 12/22/14,--CONTAMINATED FOOD

81. On or about December 22, 2014, Aramark was served dessert (sugar cookies). Antonio Freeman (402493) filed a grievance of food contamination, i.e., he was eating a cookie and found plastic inside the cookie, in his grievance response: Respondent Shawn MacMullan ACSD responded to Freeman's grievance the same as he did ^{PLAINTIFF'S} my grievance and put "NO SHOW" on his grievance form. Respondent Shawn MacMullan ACSD claimed that he called three (3) times for prisoner Freeman to be interviewed, but Freeman did not "SHOW UP." [Appendix V; See, Grievance Form KCF-1412-1396-09z; Exhibit "No.12."}] MDOC Officials stated Aramark never called them to send Freeman over to food service to be interviewed, and they signed an "AFFIDAVIT OF FACTS" stating that it never happen, [See, AFFIDAVIT OF FACTS; (Exhibit "H")].

82. On or about December 26, 2014, Plaintiff filed Step I grievance about contamination in the food. Plaintiff stated: while he was eating his food he observed prisoner Freeman (402493) pulling a piece of plastic out of his cookie. This is the "second time" within a two (2) month period, see, paragraphs 81-91, for the month of November). Copies of these documents are attached to this complaint, [Appendix W; See, Grievance Form KCF-1412-1401-09z; (Exhibit "No.10")]

MDOC Policy under “Food Quality Assurance” states:

Preparation of food shall be closely monitored by qualified staff to ensure that meals are produced in accordance with public health requirements). Copies of these documents are attached to this complaint, [Appendix X; See, P.D. 04.07.102(G); Exhibit “JJ”].

In the “Public Health Requirement” or “Statutory References” id., it states:

(“Food Safety and Sanitation Assessment” means judging or assessing specific Food handling activities, events, conditions, or management systems in an effort to determine their potential effectiveness in controlling risks for foodborne illness and required compliance with this act, accompanied by a report of finding). Copies of these documents are attached to this complaint, [Appendix Y; see, MCLA 289.1107(1); Exhibit “KK”].

83. Plaintiff alleges that the preparation of the food is not being closely monitored by Aramark Staff and inadequate supervision of employees, has resulted in improper food handling practices, in accordance with “PUBLIC HEALTH REQUIREMENTS.”

84. Plaintiff alleges that as a result of Aramark’s Staff “deliberate indifference” to the danger or risk from foodborne illness by continuing to serve contaminated food, there is a chance of substantial risk to the Plaintiff’s health. The Defendants have disregarded an excessive risk to Plaintiff’s health and safety.

85. Plaintiff alleges that Aramark’s Staff is aware of the facts from which the inference could be drawn and that a substantial risk of serious harm exists from contaminated food /health risk from foodborne illnesses . In of violation of MCLA 289.1107 § (c) and (1), “Public Health Requirement,” and the P.D. 04.07.102(G), “Food Quality Assurance.” An inference could be drawn that substantial risk of serious harm exists from all the complaints of unsanitary/contaminated condition in the (KCF) kitchen.

86. On or about January 27, 2015, Plaintiff filed Step II Reason for Appeal to Warden MacLaren KCF stated: (1) Grievant /Plaintiff grievance has a difference grievance number on it, and does not pertain to the other offender who found debris in there food; (2) It is not a duplicate because its dealing with the “Food Quality Assurance,” and “Public Health Requirement; (3) This is the “second incident” within a two (2) month period I grievant/Plaintiff has observed plactic found cooked inside the prison food, see, paragraphs 58-71, of this complaint; (4) If all meals are prepared in accordance with proper Serve Safe procedure, like respondent McMullen ACSD said, Plaintiff/prisoners would not be finding “foreign objects” in the prison food; and (5) Once a prisoner receive a food tray and sat at a table the prisoner does not have the option of choosing something else when he finds “foreign objects” in the prison food: and

87. Also, Plaintiff stated in his Step II Reason for Appeal: (1) I grievant /plaintiff contents that respondent McMullen ACSD violated Plaintiff’s rights under 18 U.S.C.S. § 242, and under the P.D. 03.02.130(Y) when he acted willfully and under the color of law to commit fraud, by making a false report, and putting “NO SHOW” on the report. And by not giving Plaintiff an opportunity to explain the grievance more completely at an interview, and show the evidence; (2) On two (2) difference incident grievant/Plaintiff has witness, a breach of protocol; (3) Mr. McMullen ACSD knew or should have been aware of facts from which he could infer that a substantial risk existed to Plaintiff’s health which is intolerable, even for a prisoner ; (4) Mr. McMullen acted with “deliberate indifference” to grievant/Plaintiff’s health and safety,” when he refused to interview grievant/Plaintiff’s and put “NO SHOW” on the grievance response; and

(5) All MDOC day shift Officers were asked if ACS called them at any time to have Plaintiff sent over to the kitchen to be interviewed, and all of the officers stated “NO” and no inmate pass was ever written, and signed (see affidavit, supra).

88. On or about January 30, 2015, Step II respondent Deputy Warden, Kathy Olsen stated:

(1) (Grievant/Plaintiff alleges that he observed a “food service worker” remove a piece of plastic glove from the desert meal of sugar cookies on 12/22/14; (2) Grievant/Plaintiff indicates that Aramark employees are aware of this risk to inmate health, however the acts show deliberate indifference and reckless disregard; (3) The Step I respondent, S. McMullen (ACSD) indicates that the issue was investigated and staff present at the time of the alleged incident deny this occurred; (4) Mr. McMullen (ACSD) also notes that all meals are prepared with proper Serve Save Procedures and Grievant/Plaintiff had other meal choices; (5) This Step II respondent finds the Step I response appropriate; and (6) Based on the above finding[s], this grievance Appeal is DENIED).

89. Plaintiff alleges that nowhere in his Step I grievance does Grievant/Plaintiff alleges that he observed a “food service worker” remove a piece of plastic glove from the dessert meal of sugar cookies on 12/22/14, as stated in Step II grievance response from Deputy Warden, Olsen.

“Plaintiff stated in his Step I Grievance, that while Grievant/Plaintiff was eating Plaintiff observed Prisoner Freeman (402493) pulling a piece of plastic out of his cookie.” The grievances are not even being addressed correctly or appropriately by the Defendants.

90. On or about August 18, 2015, Plaintiff filed Step III Reason for Appeal to the Director’s Office. Whereas, stating in his Step II response: there in no evidence presented by

Grievant/Plaintiff to substantiate his claim: (1) Grievant/Plaintiff was denied the right or opportunity to explain the grievance more completely at the interview to enable the Step I respondent to identify and gather additional information needed to respond to the grievance. When Mr. McMullen ACSD, refused to interview Grievant/Plaintiff, and to allow Plaintiff to present evidence at the interview, since there was no interview, see, Photo copies of cook with plastic inside, [Appendix Z Exhibit "J-1", pgs. 1-4; (2) As stated in P.D. 03.02.130(Y)]: the respondent McMullen ACSD, shall interview the Grievant/Plaintiff, and the Grievant/Plaintiff shall have the opportunity to explain the grievance, [Appendix D, see, Policy Directory; Exhibit "EE," pgs. 4 of 7]; (3) Mr. McMullen ACSD put "No Show" in the grievance response, and never called the Grievant/Plaintiff to come to an interview; and (4) All MDOC day shift Officer's stated Aramark never called them, and they signed an [Appendix Q, "AFFIDAVIT," see, Affidavit of Facts, Exhibit "G and H."]

91. On or about January 05, 2015, Plaintiff was not interviewed for the "third time" by respondent McMullen ACSD on a Step I grievance per P.D. 03.02.130(Y). Because of Mr. McMullen "FALSIFYING" the record and put "No Show" on the grievance form. This was the third grievance filed by Plaintiff, as stated in this complaint. Also, in paragraph 81 of this complaint, prisoner Freeman filed a grievance on food contamination, and McMullen ACSD, "FALSIFIED" the record and put "No Show" on his grievance form.

92. On or about September 21, 2015, Plaintiff's Step III Appeal was rejected as being untimely submitted, see, paragraph 49, of this complaint concerning the same subject matter. Also, see paragraphs 32-41 of this complaint which was rejected, and it was stated that the issue

was being addressed in another grievance. This grievance is concerning the same subject-matter as in paragraphs 25-31 of this complaint, and it has been fully exhausted. The Defendants have forfeited their rights to raise an Affirmative Defense, see, paragraphs 24, 50, and 53, of this complaint.

GRIEVANCE No. 11., KCF-1506-0739-09c, 01/22/15 – UNSANITARY CONDITIONS

93. On or about January 22, 2015, Plaintiff filed a Step I grievance on contaminated food trays, and stated: (1) Aramark is in violation of several “FOOD CODE REGULATION,” and putting Grievant/Plaintiff’s health at risk; (2) The danger of an outbreak of contagious diseases is great as a result of the unsanitary condition in the kitchen at KCF; (3) Aramark is serving food under conditions which pose a substantial risk of serious harm to the Plaintiff’s health; (4) The trays that the prisoners food is being served on, is in violation of our “Eight Amendment,” the right to live in conditions that are not a threat to our physical health; (5) Plaintiff does not have to prove that serious food borne illness has already occurred, the risk is enough; (6) The trays creates a serious health hazard because they are not being properly cleaned, and the back of some of the food trays have a buildup of calcium/lime, soap scum/residue buildup. Which inhibits proper cleaning, and disinfecting therefore, contaminating the food. The trays are being stacked on top of each other, which spreads the contamination/bacteria being left to dry overnight. The trays must be dried before stacking. If not bacterial can and will form on the eating surface. The trays have breaks, cuts, open seams, cracks, chips, and the plastic is peeling/flaking which inhibits cleaning; and (7) Furthermore, some of the spoons, and forks are bent, chipped, bite marks, and flaking which is a HEALTH HAZARD because they do not have

a smooth surface which means that they cannot be properly cleaned. Whereas, stated under the FOOD CODE 4-201.11-Durability and Strength: Equipment and Utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use condition, and under the FOOD CODE 4-202.11-Cleanability: Food-Contact Surfaces shall be: (A) smooth; (B) free of break, open seams, cracks, chips, pit, and similar imperfections. RELIEF REQUESTED: All damage trays, spoons, and forks be thrown away, and replaced with new ones, to resolve the grievance/issues. Copies of these documents are attached to this complaint, [Appendix AA - see, Grievance Form KCF -1506-0739-09c; Exhibit “No.11”, and FOOD CODE-4-201.11, and 4-202.11;(Appendix H - Exhibit “LL,” pgs. 1-4)].

94. On or about June 30, 2015, respondent S. McMullen ACSD stated: “we will have our dish room team detail the trays, and the ones with cuts or scratches will be removed from service.”

95. On or about August 04, 2015, Plaintiff filed a Step I Reason for Appeal Grievance to Warden MacLaren KCF, stating: (1) Step I Grievance has not been solved ; (2) the back of some of the food trays still have a buildup of calcium/lime, and soap scum, which inhibits proper cleaning, and disinfecting; (3) Some of the trays still have, breaks, cuts open seams, cracks, chips, pits, on the top of them, and the plastic is peeling and flaking. Which inhibits the cleaning of the trays, and it is a health hazard as stated: in the (FOOD CODE REGULATION); and (4) RELIEF REQUESTED: All damage trays, spoons, and forks must be thrown away, and replaced with new ones.

96. On or about August 05, 2015, Plaintiff received Step II Appeal grievance response from

Warden MacLaren stating: in the Step II Appeal, Grievant/Plaintiff claims that some of the food trays still show signs of calcium/lime as well as soap scum. Grievant/Plaintiff reiterated his claim. **This Step II respondent “finds that efforts have been made to rectify this problem”**. Plaintiff concedes that an “EFFORT” has been made to rectify the problem. HOWEVER, THE PROBLEM HAS NOT BEEN SOLVED, PRISONERS AND PLAINTIFF ARE STILL EATING ON “CONTAMINATED FOOD TRAYS. The amendment imposes affirmative duties on prison officials to ensure that inmates receive (i.e., adequate food, clothing, shelter, and medical care). Prison officials must take reasonable measure to guarantee the health and safety of the inmates. Warden MacLaren also stated: Aramark Food Services no longer has the contract with the Michigan Department of Corrections and a new contractor has taken over. (a) Whereas, stated in paragraph 70, Aramark last day was to be on September 09, 2015, (see, Copy of MDOC Special Announcement, [Appendix S - Exhibit “HH”]; (3) Lastly, Warden MacLaren stated: (“Should these issues continue please contact any of the line supervisors of Trinity Food Services or this Office”), (see, Paragraphs 99- 100, because the issues are continuing); (4) Based on the above finding[s], this GRIEVANCE APPEAL IS RESOLVED.

97. On or about August _____, 2015, Plaintiff filed a Step III Appeal to the Director’s Office, stating: (1) As stated in the Step II response, “an effort has been made to rectify the problem with contaminated food trays, and utensils,” **THE PROBLEM HAS NOT BEEN SOLVED**); (2) Aramark Food Service is no longer under contract with MDOC, and the new contractor is Trinity Food Group, and they are using the same damage equipment, “trays and utensils that have breaks, cuts, open seams, cracks, chips, and pits on them, and the plastic is

peeling/flaking”; “And (3) The same employees that worked for Aramark are working for Trinity. “ They know of and disregard an excessive risk to the inmate/Grievant/Plaintiff’s health and safety, by continuing to use the unclean contaminated trays/utensils and damage equipment.

98. On or about August 19, 2015, Plaintiff received a Step III response back from Richard D. Russell, Office of Legal Affairs stating: the responses you received at Step I and II reflect that your issues were in fact considered and appropriately responded to at the facility level. As there is no additional information or basis found for relief at Step III, the Step II decision is upheld. Grievance Appeal is DENIED.

99. On or about September 05, 2015, Aramark/Trinity was serving cheese pizza and French fries for lunch. As stated in Step II Grievance Response from Warden MacLaren, on 08/05/15, in paragraphs 95, of this complaint, “should these issues (dirty food trays) continue please contact any of the line supervisors of TSG or this Office.” While waiting to be served Plaintiff, asked Ms. Lewis, Trinity Supervisor about the condition of the food trays and utensils. She said that all the damaged trays and utensils have been replaced with new ones. Plaintiff alleges that some of the damaged trays and utensils have ^{NOT} been replaced, and it is a health hazard [^] according to the FOOD CODE: Durability and Strength, 4-201.11; Cleanability, 4-202.11.

100. On that same day when the Plaintiff received his tray of food, the tray was not properly cleaned and had food from the previous meal on it. Plaintiff took the tray of food over to Officer Berry MDOC, and showed him the food and dirty tray. Plaintiff was told to get another tray of food. See, paragraphs 99-100 of this complaint, was sent to Warden MacLaren KCF, and he never address the issues.

101. As stated in paragraph 97, of this complaint, the same employee's that worked for Aramark are working for Trinity and still serving "nutritionally inadequate food that is prepared and served under conditions which present an immediate danger to the health and well-being of the Plaintiff."

102. Plaintiff alleges that Defendants cannot claim they did not know about the unsanitary food conditions. As a result of the many grievance, it has been brought up at the Warden's Forum. See, Food Service Committee Meeting on: January 2014, [Appendix AB - (Exhibit "MM")]; June 2015, [Appendix AC - (Exhibit "NN")]; and Food Service Committee Meeting Agenda on: June 2014, [Appendix AD - (Exhibit "I")]. Nevertheless, disregarded the possibility of the substantial risk of serious harm to Plaintiff by failing to have adequate food safety and sanitation assessments, in violation of the **Michigan Public Health Code**.

103. Plaintiff also, alleges in his Step III Reason for Appeal Grievance that was addressed at the Warden's Forum Meeting (KCF) on February 2015; [Appendix EE - (Exhibit "E")], and the (KCF) – Food Service Committing Meeting Agenda on June of 2014; [Appendix AD - (Exhibit "I")], that Aramark Staff is creating an environment that is inhumane, hostile, and disruptive to the good order of this institution, [Appendix O - see, Grievance KCF-1412-1310-09z; (Exhibit "No.8")].

104. Whereas, Plaintiff alleges that no action was taken by Warden MacLaren KCF, and McMullen ACSD on the matter about Aramark Staff creating an environment that is inhumane, hostile, and the end result, on or about June 13, 2015, four (4) months after the February meeting "A HOSTILE INCIDENT OCCURRED, TWO (2) WOMEN IN FOOD SERVICES

WERE HURT AND HOSPITALIZED,” as stated in the following:

ON OR ABOUT 06/13/15, ARAMARK EMPLOYEE (MS. PEA) WAS CONTINUOUSLY TALKING DISRESPECTFULLY TO PRISONER (ROBERTSON 185259), CREATING TENSION, AND HE ATTACKED/ASSAULTED HER IN THE KITCHEN (KCF). MDOC OFFICER (MS. NIGHT) TRIED TO STOP PRISONER (ROBERTSON), AND SHE WAS ATTACKED/ASSAULTED. THE TWO WOMEN WERE TAKEN TO THE HOSPITAL FOR TREATMENT, AND PRISONER (ROBERTSON) WAS TAKEN TO SEGREGATION AND SENT TO ANOTHER FACILITY, (ASAP).

All prisoners at KCF were put on lock-down and confined to their cells and all meals were sent to the prisoners cells. It is this type situation that creates a “hostile environment.”

105. Plaintiff alleges that the Defendants have no plain or remedy to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured, by the conduct of the Defendants unless this Court grants the declaratory and injunctive relief which Plaintiff seeks.

VII. CAUSES OF ACTION

Count 1

Plaintiff is being subject to cruel and unusual punishment in violation of the Eight Amendment to the Constitution of the United States.

106. Plaintiff incorporates paragraphs 16 through 105 as though they were stated fully herein.

107. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff’s Eight Amendment right to be free from cruel and unusual punishment by “serving unsanitary, nutritionally inadequate meals, and contaminated food.”

108. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark,

violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment by being deliberate indifference to his clearly establish rights," i.e., prisoners are to be served "nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well-being of the inmates who consume it." And the "right to live in conditions that are not a threat to our physical health and safety," causing pain, suffering, physical injury, and emotional distress.

109. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment by, depriving Plaintiff of reasonable food that meets the minimal standard of safety and failing to provide Plaintiff with nutritionally adequate food. As a result, the Plaintiff finds himself unable to recovery from his medical condition and specific illnesses.

110. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment by serving and preparing food in an unsanitary enviornment that presents a serious risk to the Plaintiff's and ^{PRISONER'S} ~~Defendant's~~ health and safety. The Defendants knew of and disregarded the risk to Plaintiff's health and safety, by serving food in unsanitary conditions, causing pain, physical injury, and emotional distress.

111. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment when, they were aware of the serious harm that exist from the unsanitary food, and foreign objects being found in the food. As a result of the many grievances that have been filed by inmates,

and it being brought up in the Warden's Forum Meetings. [See, Food Service Committee Meeting Agenda, 09/28/15, (Exhibit "II")] The Defendants have totally disregarded the possibility of the substantial risk of serious harm to Plaintiff's health and safety.

112. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment by, Failing to rectify deficiencies and failing to ensure appropriate food handling practices and providing unsanitary food. The food presents an immediate risk to Plaintiff's health and safety, causing pain, suffering, physical injury, and emotional distress.

113. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment by, failing to handle grievances properly and failing to develop policies to ensure compliance with current (MDOC) Policies of ensuring prisoners/Plaintiff's health and safety, and humane treatment. When Defendants were aware of the contaminated food and failed to take corrective action, causing pain, undue suffering, physical injury and emotional distress.

114. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Eight Amendment right to be free from cruel and unusual punishment, when the supervisor and director failed to appropriately discharge there supervisory duties. This failure resulted in a denial and deprivation of Plaintiff's rights, rights secured by the federal constitution and the law, causing pain, undue suffering, physical injury, and emotional distress.

COUNT II

Plaintiff was denied his Fourteenth Amendment Right to due process of law, *U.S. CONST.*

amend XIV.

115. Plaintiff incorporates paragraphs 16 through 115 as though they were stated fully herein.

116. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Fourteenth Amendment right to due process of law by, falsifying the records and defrauding (MDOC) by the submission of fraudulent information/facts as part of a response to Plaintiff's claims. It is a crime to make false entries and tamper with public records with the intent to deceive, injury, conceal wrongdoing, cause^{ing} pain, undue suffering, physical injury and emotional distress.

117. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Fourteenth Amendment right to due process of law by, acting willfully and under the color of the law to deprive a person of rights protected by the Constitution and Laws of the United States, causing pain, undue suffering, physical injury, and emotional distress.

118. Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark, violated Plaintiff's Fourteenth Amendment right to due process of law by, the right to be heard. The failure to do so deprived Plaintiff of the opportunity to defend himself and denied Plaintiff due process by post-deprivation. The (MDOC's) remedies were inadequate to remedy Plaintiff's loss, causing pain, undue suffering, physical injury, and emotional distress.

VII

RELIEF REQUESTED

WHEREFORE, Plaintiff- respectfully prays this Court GRANT the following:

A. Declare that the acts and omissions described herein violated Plaintiff's rights under the

constitution and laws of the United States.

B. Award compensatory damages in the following amounts:

1. \$100,000.00 to Plaintiff jointly and severally against Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark for the physical and emotional injuries sustained as a result of the violation of Plaintiff's clearly establish rights, (i.e., to live in conditions that are not a threat to Plaintiff's physical health and safety.
2. \$10,000.00 to Plaintiff jointly and severally against Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark for punishing the Plaintiff, including deprivation of liberty and amenity, and emotional injuries resulting from the denial of Plaintiff's due process by not allowing the Plaintiff the opportunity to defend himself; and
3. \$50,000.00 to Plaintiff jointly and severally against Defendants MacLaren, Lewis, McMullen, Olsen, Russell, Berlinger, and Aramark for the physical and emotional injuries resulting from their failure to adequately prepare nutritionally adequate food, serving food inadequate amounts of food, serving food in unsanitary conditions, inadequate supervision of employees which resulting in improper handling of food.

C. Award nominal damages.

D. Award Plaintiff punitive damages in the following amounts:

1. \$20,000.00 each against Defendants MacLaren, Lewis, McMullen, Olsen, Russell and Berlinger;

- 2. \$50,000.00 against Defendant Aramark.
- E. Order Defendants to pay reasonable attorney fees and costs; and
- F. Grant other just and equitable relief that this Honorable Court deems necessary.

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and as to those, I believe them to be true. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 30, 2016

Respectfully submitted,

/s/ Ronnie Boone

Ronnie Boone #501976

In Pro Se

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