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23-CIV-01075 A.B.O. COMIX, ET AL VS. COUNTY OF SAN MATEO, ET AL

A.B.O. COMIX	CARA GAGLIANO
COUNTY OF SAN MATEO	PATRICK M. RYAN

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

Defendants County of San Mateo and Kenneth Binders' (defendants, or the County) Motion for Summary Judgment, filed May 8, 2026, is **GRANTED**. (Code Civ. Proc., § 437c.)

Defendants' May 8, 2026 Request for Judicial Notice (RJN) is **GRANTED** as to Exhibits A & I (Evid. Code, § 452, subd. (d)), and **GRANTED** as to the fact identified in ¶ 3. (*Id*., § 452, subd. (g).) As to documents in the court's file, the court takes judicial notice of their contents and filing dates, but does not take judicial notice of the truth of statements therein.

Plaintiffs' July 9, 2026 RJN is **GRANTED**. (Evid. Code, § 452, subd. (b).)

Plaintiffs' July 9, 2026 Objections to Evidence are **OVERRULED**. These objections go to weight, not admissibility. The objections are also of questionable merit. As to Objection No. 1, which asserts a hearsay objection to Mr. Serrano's statement that "Released Plaintiffs do not currently live in the County of San Mateo," the released plaintiffs themselves have filed declarations stating that they reside in other counties. Indeed, none of them claims to reside in San Mateo County. Further, plaintiffs appear to be objecting to evidence that the former inmate plaintiffs are no longer incarcerated in the County's jails. Yet, at the same time, plaintiffs admit this fact. (See Opp., at p. 26 ["all the incarcerated Plaintiffs have been released."].) In any event, these facts appear to pertain to Code of Civil Procedure, section 526a, which is not a properly asserted claim, as explained below. These objections are accordingly immaterial to the disposition of the Motion. (Code Civ. Proc., § 437c, subd. (q).)

Defendants' July 17, 2026 RJN is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendants' July 17, 2026 Objections to Evidence are ruled upon as follows:

- Obj. Nos. 1-11; 13-16. **OVERRULED**. These objections go to weight, not admissibility.

- Obj. No. 12. **SUSTAINED**. An unverified pleading is not evidence.

A. Background

On March 9, 2023, eight plaintiffs filed this lawsuit challenging a procedure adopted in 2021 by which the County stopped delivering non-legal physical mail to persons incarcerated in the County's jails. Instead, using a product called MailGuard™ supplied by Smart

Communications, a private for-profit company based in Florida, inmate mail is scanned for review by County staff, the physical originals are destroyed, and digital copies are stored for a minimum of seven years. The digital copies are delivered to incarcerated people in defendants' custody electronically, on tablets and kiosks.

Five of the plaintiffs — Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes, Domingo Aguilar, and Kevin Prasad — were formerly incarcerated in jails within and run by San Mateo County. Each has been released since filing this lawsuit. Plaintiffs state that they experienced the County's mail policy directly during their former incarceration in one of defendants' jails. (Pltfs.' Compendium of Evidence [COE] iso Opp. to MSJ, exh. 15 [Declaration of Kenneth Roberts (Roberts Decl.], ¶ 3; exh. 16 [Declaration of Zachary Greenberg (Greenberg Decl.)], ¶ 4; exh. 17 [Declaration of Ruben Gonzalez-Magallanes (Gonzalez-Magallanes Decl.), ¶ 3]; exh. 18 [Declaration of Domingo Aguilar (Aguilar Decl.)], ¶ 3]; exh. 19 [Declaration of Kevin Prasad (K. Prasad Decl.)], ¶ 3.)

Malti Prasad and Wumi Oladipo were not incarcerated but communicated with plaintiffs Kevin Prasad and Zachary Greenberg, respectively, including by mail, while they were incarcerated in the County's jails. Plaintiff Malti Prasad wrote letters to her son, plaintiff Kevin Prasad, but asserts she stopped shortly after MailGuard™ was implemented because of her concerns about the policy. Similarly, plaintiff Wumi Oladipo wrote letters to her partner, plaintiff Zachary Greenberg, but also asserts she chose to stop sending mail because of her concerns about MailGuard™. (See Pltfs.' COE, exh. 3 [Declaration of Malti Prasad (M. Prasad Decl.)], ¶¶ 3-7, 12; exh. 4 [Declaration of Wumi Oladipo (Oladipo Decl.)], ¶¶ 6-7, 11.)

Finally, plaintiff A.B.O. Comix (ABO) is a nonprofit entity that works to amplify the voices of incarcerated LGBTQ people and supports them through pen pal relationships, newsletters, anthologies, and letters. (See *id*., exh. 2 [Declaration of Casper Cendre (Cendre Decl.)], ¶¶ 4-5, 11-12.) According to ABO, since MailGuard™ was implemented, ABO or its members have corresponded with two members incarcerated in defendants' jails, but no ABO members are currently incarcerated in the County's jails. (See Pltfs.' Sept. Stmt. iso Opp. to MSJ, UMF No. 23. [contending that ABO last sent mail to a person in the County's jails in March 2025].)

The two defendants are the County of San Mateo, which implemented the mail policy, and Sheriff Kenneth Binder. Sheriff Binder was appointed in November 2025; he is sued solely in his official capacity.

The case was removed to federal court and was remanded to this court on July 27, 2023. On May 24, 2023, while the case was pending in the district court, plaintiffs filed an amended complaint (FAC). (Following remand, plaintiff did not file the FAC in this court. However, the FAC is attached as Exhibit A to defendants' September 8, 2023 request for judicial notice in support of their motion for judgment on the pleadings.) The FAC asserts two causes of action alleging violations of Article I, Sections 2 and 13, respectively, of the California Constitution. Specifically, plaintiffs allege that defendants' policy of digitizing and then destroying all non-legal mail sent to people incarcerated in the County's jails violates plaintiffs' rights to expression

and association under Article I, Section 2 of the California Constitution (Count One); and their right to be free of unreasonable searches and seizures under Article I, Section 13 of the California Constitution (Count Two). (FAC, ¶¶ 1–12.) The FAC does not seek damages. Rather, it seeks injunctive and declaratory relief, including a mandatory injunction to compel the County to discontinue use of the MailGuard™ system. (FAC, Prayer.)

In September 2023, defendants filed a motion for judgment on the pleadings (MJOP). On January 31, 2024, the court partially granted and partially denied the MJOP. With respect to plaintiffs' claim that defendants' mail policy violated Article I, Section 2 of the California Constitution, the court concluded that defendants were not entitled to judgment on the fourth prong of the *Turner* test (see *Turner v. Safley* (1987) 482 U.S. 78), which asks whether a policy is an "exaggerated response" to a jail's concerns. (Minute Order dated January 31, 2024, at p. 4.)

In its minute order, the court granted defendants' MJOP as to the formerly incarcerated plaintiffs on Count One, that is the claim under Article 1, Section 2. No motion for reconsideration was filed, nor did those plaintiffs seek relief from the Court of Appeal. The court's January 31, 2024 Order is therefore final as to Count One with respect to the formerly incarcerated plaintiffs.

On May 21, 2024, the court granted defendants' MJOP as to Count Two, dismissing plaintiffs' unreasonable search and seizure claim with prejudice. (May 21, 2024 Order.) No motion for reconsideration was filed, and plaintiffs did not seek relief from the Court of Appeal. That order is also therefore final as to all of the plaintiffs.

As a result of the court's two rulings on the MJOP, the only issue now remaining before the court is whether defendants' mail policy violates Article I, Section 2 of the California Constitution because it fails under the fourth prong of the *Turner* test.

Defendants' present motion for summary judgment argues that plaintiffs lack standing (or stated another way, plaintiffs' sole remaining claim has become moot), because for at least several months now, no plaintiff has been incarcerated in the County's custody, and no mail is being sent to them, or will be sent to them.

B. Legal Standards

1. Summary Judgment

A motion for summary judgment shall be granted if the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant has met its burden of showing that a cause of action has no merit if the defendant shows that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Id*., § 437c, subd. (p)(2).) If a defendant meets this initial burden, the burden of production then shifts to the plaintiff to present evidence showing that a triable issue of one or more material facts exists as to that cause of action, or a defense thereto. (*Ibid*.)

"There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion, in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.)

2. Standing and Mootness

"Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff." (*Mendoza v. JPMorgan Chase Bank, N.A*. (2016) 6 Cal.App.5th 802, 810.) "Without standing, there is no actual or justiciable controversy, and courts will not entertain such cases." (*CashCall, Inc. v. Superior Court* (2008) 159 Cal.App.4th 273, 286.) Lack of standing is a fatal jurisdictional defect that requires judgment against a plaintiff. (*Scott v. Thompson* (2010) 184 Cal.App.4th 1506, 1510.) "Generally, courts decide only actual controversies which will result in a judgment that offers relief to the parties." (*Larner v. Los Angeles Doctors Hospital Associates, LP* (2008) 168 Cal.App.4th 1291, 1296.)

Standing and "mootness" are closely related concepts. "For a lawsuit properly to be allowed to continue, standing must exist at all times until judgment is entered and not just on the date the complaint is filed." (*Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 916–917.) "Contentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding." (*Ibid*.) "A plaintiff may lose standing even where an actual controversy originally existed but, by the passage of time or a change in circumstances, ceased to exist." (*Ibid*.)

"Mootness has been described as 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'" (*Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1008, quoting *Arizonans for Official English v. Arizona* (1997) 520 U.S. 43, 68, fn. 22, citations omitted.) A party no longer has standing when the case becomes moot. "The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief. [citations] If events have made such relief impracticable, the controversy has become 'overripe' and is therefore moot." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 (*Wilson & Wilson*), citations omitted.) "When events render a case moot, the court, whether trial or appellate, should generally dismiss it." (*Ibid*.)

The mootness doctrine applies to claims by inmates whose claims become moot upon their release or transfer from custody. (*Giraldo v. Dep't of Corr. & Rehab*. (2008) 168 Cal.App.4th 231, 257 (*Giraldo*) [affirming dismissal of former inmate's claims for injunctive and declaratory relief on the ground that after plaintiff was paroled, those requests for relief became moot; "after plaintiff's parole she was no longer under the physical control of CDCR, and the challenged conduct no longer applied to her. Thus, any injunction or declaratory judgment would not impact her."].)

C. Judgment Should Have Been Entered Against the Formerly Incarcerated Plaintiffs as of May 2024

As noted above, on May 21, 2024, the court granted the MJOP with prejudice as to Count Two with respect to all of the plaintiffs. Count One, the sole remaining claim, alleges the following:

> COUNT ONE. Article I, Section 2 of the California Constitution …
>
> 89. Defendants' mail policy — which includes opening, examining, destroying, and digitizing physical mail and retaining mail and sender information for subsequent investigative use — violates Article I, Section 2 of the California Constitution because it eliminates an entire medium of communication, because it chills the expressive and associational activity of Plaintiffs and others, because it is not rationally related to any legitimate penological goals, and because it leaves no adequate alternatives to communication via physical mail.

This court previously found that the five former inmate plaintiffs "Have no Standing for Count 1," and that "*Count 1 fails to state a cause of action on behalf of incarcerated Plaintiffs*." (Jan. 31, 2024 Minute Order.) The January 31, 2024 Order stated, in part:

> COUNT 1 - FREE SPEECH CLAIM
>
> A. Incarcerated Plaintiffs Have no Standing for Count 1. The motion is GRANTED as to the Incarcerated Plaintiffs. Count 1 is based on County's practice of 'opening, examining, destroying, and digitizing physical mail.' (AC 89.) Plaintiffs allege that the practice violates Article I, Section 2 of the California Constitution because it 'eliminates an entire medium of communication, because it chills the expressive and associational activity of Plaintiffs and others, because it is not rationally related to any legitimate penological goals, and because it leaves no adequate alternatives to communication via physical mail.' (Id.) Article I, Section 2 provides that 'Every person may freely speak, write and publish his or her sentiments on all subjects ....' *Count 1 does not apply to the incarcerated Plaintiffs, because their rights of speaking, writing, and publishing are not affected by County's handling of mail that is written by others. Therefore, Count 1 fails to state a cause of action on behalf of incarcerated Plaintiffs*.

(Jan. 31, 2024 Minute Order, emphasis added.)

Because the court previously granted defendants' motion for judgment on the pleadings against the formerly incarcerated plaintiffs in January 2024 as to Count One, and against all plaintiffs as to Count Two in May 2024, judgment should have been entered against the formerly incarcerated plaintiffs in 2024. Accordingly, the court will now enter judgment against the formerly incarcerated plaintiffs as to both causes of action in the FAC.

D. The FAC Does Not Allege that Plaintiffs Have Standing as Taxpayers Under Code of Civil Procedure, Section 526a

In opposing the MSJ, plaintiffs invoke Code of Civil Procedure, section 526a, which states, in part:

> (a) An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax that funds the defendant local agency …

As an initial matter, "standing is jurisdictional and "must exist at all times until judgment is entered and not just on the date the complaint is filed." (*Taking Offense v. State of California* (2025) 18 Cal.5th 891 920 (*Taking Offense*), citation omitted; see also *id*., at pp. 911-919 [discussing the history of taxpayer standing law, which developed to permit taxpayers to enjoin local agencies from wasteful expenditures of public funds].) "The primary purpose of [Section 526a], originally enacted in 1909, is to 'enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement.'" (*Taking Offense*, *supra*, 18 Cal.5th 891.) "[S]ection 526a permits a taxpayer to bring an action to restrain or prevent an illegal expenditure of public money." (*San Diegans for Open Gov't v. Fonseca* (2021) 64 Cal.App.5th 426, 435.) The FAC does not purport to serve such a purpose. Rather, it asserts claims for alleged violations of the plaintiffs' constitutional rights — to free expression and association and to be free from illegal search and seizure — rights that are personal to the plaintiffs and, in the case of ABO, its members.

On summary judgment, the court only addresses the claims that are actually pled. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal. App.3d 367, 381 (*FPI Development*).) Here, plaintiffs have not pled Count One in their alleged capacity as taxpayers seeking to enjoin purportedly unlawful expenditures of agency funds. Rather, the jurisdictional allegations of the FAC make a single reference to Section 526a (FAC, ¶ 14), and the FAC alleges that the formerly incarcerated plaintiffs paid sales taxes. (*Id*., ¶¶ 15-19.) Those allegations are not sufficient to transform the sole remaining claim (Count One) into a taxpayer suit. Rather, the sole remaining cause of action (Count One) is a *constitutional* claim under Article I, Section 2 of the California Constitution. Count One alleges that the County's use of the MailGuard™ system for processing incoming inmate mail impinges on plaintiffs' personal rights (as recipients and as senders of mail to the jail) of free speech and expression under Article I, Section 2 of the California Constitution. It is not a taxpayer action seeking to enjoin the alleged "illegal expenditure of, waste of, or injury to, the estate, funds, or other property of" the County.

Accordingly, even assuming that any of the plaintiffs satisfied the statutory requirements of Section 526a (by paying taxes, residing in San Mateo County, or otherwise), that fact would

not answer the question presented by this MSJ — which is, do plaintiffs have standing to assert the cause of action that is *actually pleaded*? They do not, because their sole claim is now moot.

E. The Remaining Plaintiffs' Claims are Moot

1. The Two "Sender Plaintiffs" Lack Standing Because their Remaining Claim is Moot

The two "sender plaintiffs," Malti Prasad and Wumi Odalipo, were not incarcerated in the County's jails, but had loved ones who were incarcerated, and they sent correspondence to the jail after the County's implementation of the MailGuard™ system. It is undisputed that their loved ones are no longer in the County's custody and these two plaintiffs do not contend that they are presently communicating with anyone incarcerated in the San Mateo County jails. Indeed, they have not done so for years. (UMF Nos. 7-9, 13-15, 17-18). Neither claims to know any current County inmate, and neither claims to have any reason to send correspondence to any County inmate in the future.

Because Ms. Prasad's and Ms. Oladipo are not presently affected by the County's inmate mail policy and have no reasonable expectation that they will be so affected in the future, their sole remaining Count One claim is moot, and the injunctive and declaratory relief they sought is no longer available to them. "A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life "because of events occurring after the judicial process was initiated.'" (*Wilson & Wilson*, *supra*, 191 Cal.App.4th at p. 1574, quoting *Younger v. Superior Court* (1978) 21 Cal.3d 102, 120.) "Because "'the duty of ... every ... judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or ... to declare principles or rules of law which cannot affect the matter in issue in the case before it[,][i]t necessarily follows that when ... an event occurs which renders it impossible for [the] court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to formal judgment....'" (*Ibid*., quoting *Consolidated Vultee Aircraft Corp. v. United Automobile Aircraft & Ag. Implement Workers of America, Local 904* (1946) 27 Cal.2d 859, 863, further citations omitted.)

Malti Prasad and Wumi Oladipo also argue that the County still retains digital copies of their prior letters, which they argue makes them uncomfortable and has a chilling effect on any desire they might otherwise have to send letters to inmates. Thus, they argue their Count One claim is not moot, because their FAC seeks to "Enjoin Defendants and their agents from retaining digital copies of incoming physical mail without reasonable suspicion of wrongdoing." (FAC, Prayer.) This argument is misplaced.

This argument appears to be largely, if not entirely, a privacy argument under Count Two, which the court has dismissed. The court previously ruled that the County can maintain inmate mail without restriction without violating Article I, Section 13 of the California Constitution. (May 21, 2024 Order.)

Further, the County's continued retention of electronic copies of plaintiffs' previously sent mail cannot "chill" their prior speech. And, because neither of the two Sender Plaintiffs has asserted that they plan to send correspondence to any County inmate in the future, they have not shown any ongoing chilling effect, regardless of whether the MailGuard™ system continues in place.

2. A.B.O. Comix's Sole Remaining Claim Is Moot

ABO's Director and co-founder, Casper Cendre, states that ABO regularly communicates with incarcerated ABO members. (Cendre Decl. ¶¶ 1-14.) According to Mr. Cendre, two of ABO's members (whom he describes as "Member 1" and "Member 2") have spent time in the County's custody, and he states that ABO communicated with them during their incarceration. (*Id*., ¶¶ 15-17.) Mr. Cendre states that he and another (unidentified) ABO member "responded to" Member 1 at some point during Member 1's incarceration. (*Id*., ¶ 16.) Mr. Cendre also states that he "believes" other communications were also sent to Member 1 and Member 2. (*Id*., ¶ 17.) It is undisputed that ABO does not currently have any member in the County's custody (UMF 21), notwithstanding that Mr. Cendre states that other ABO members "will likely be incarcerated in Defendants' jails in the future." (*Id*., ¶ 19.)

For an association to have standing it must prove that: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (*Ass'n for LA Deputy Sheriffs v. Macias* (2021) 63 Cal.App.5th 1007, 1019.) ABO has not met this burden because it has no members in the County's custody, and has not sent mail to any member in the County's custody since at least March 2025. (UMF 21-23 [the parties dispute whether the last purported communication occurred in July 2024 or March 2025]. Because the evidence shows that no ABO members are currently in custody or communicating with persons in the County's jails, none has standing to seek the requested declaratory or injunctive relief relating to the County's MailGuard™ system. (*Giraldo, supra*, 168 Cal.App.4th at p. 257.) Therefore, ABO lacks associational standing.

F. Plaintiffs' Other Arguments Regarding Exceptions to Mootness are Not Persuasive

1. Plaintiffs Have Not Shown that this Controversy Is Likely to Recur Between These Same Parties

The parties' briefing cites several cases involving *discretionary* exceptions to the mootness doctrine, most of which involve either mandamus proceedings (which this is not), or cases where a plaintiffs' claims have become moot during an appeal (also, not the situation here). Assuming that this court has discretionary authority to invoke these exceptions to the mootness doctrine, the court notes that they apply in different scenarios. One of the referenced exceptions applies where the same controversy is likely to recur *between the same parties*, and the other applies where the case involves an issue of broad public interest that is likely to impact non-

parties, even though it may not recur between these parties. (*See, generally, City of Los Angeles v. City of Los Angeles Employee Relations Bd.* (2016) 7 Cal.App.5th 150, 157.)

With respect to the mootness exception applicable to controversies that are likely to recur *between the same parties*, this exception could only conceivably apply to ABO. The former inmate plaintiffs have long since left the County's detention facilities and the Sender Plaintiffs are not communicating with and do not expect to communicate with any one else in the County's custody. Thus, the likeliness of the same controversy recurring between the County and the individual plaintiffs appears remote and speculative.

As to ABO, according to its Director (Mr. Cendre), ABO has existed for eleven (11) years, and during that time, only two of its members have spent time in this County's custody. (Cendre Decl. ¶¶ 1, 15-17.) In his declaration Mr. Cendre states that he "directly responded" to Member 1 on one occasion, and that another unidentified ABO member "responded" to Member 1 on one occasion. (*Ibid*.) Mr. Cendre also states that he "believes" other communications were sent to "Member 1" and "Member 2." (*Ibid*.)

Based on the evidence presented, this discretionary exception to the mootness doctrine does not apply. ABO's "capable of repetition" argument is not compelling. ABO is not currently in contact with any person in the County's custody. Nor has it communicated with anyone in the County's jails within at least the past year. Viewed collectively, the evidence suggests that ABO's members are infrequently incarcerated in the County's jails. Moreover, ABO has not offered any evidence that it is reasonably likely that one of its members will be incarcerated in San Mateo County in the future. Accordingly, the court declines to find that this exception applies.

2. The Court Declines to Invoke a "Public Interest" Exception to the Mootness Doctrine

Plaintiffs argue, in the alternative, that even if the court is not convinced that the same dispute is likely to recur between these same parties, the court should nonetheless invoke a separate exception to the mootness doctrine, applicable where the case presents an issue of broad public interest that is likely to recur with other persons who are *not parties to this case*. (Opp., at p. 25.)

As an initial matter, the County responds that this "public interest" exception can apply only in certain mandamus proceedings." (Reply, at p. 12.) (See, e.g., *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 873 ["This standing doctrine, however, has been judicially recognized only in certain mandamus proceedings."].) The County may be conflating two different doctrines — one that applies at the outset of a lawsuit to confer standing, and a separate "public interest" mootness doctrine that can be applied where, although a plaintiff initially had standing at the case's outset, a plaintiff's claim(s) becomes moot in the course of a lawsuit. This case involves the latter scenario. The County's cited cases all appear to involve standing at the outset of a case.

However, even assuming this court has discretionary authority to adjudicate this case and issue plaintiffs' requested declaratory and injunctive relief even though plaintiffs' claims have become moot, the court declines to do so given the absence of a continuing controversy affecting the named plaintiffs. There is no dispute that the MailGuard™ policy remains in effect and impacts currently incarcerated individuals and those who send letters to inmates. Those persons remain free to challenge the MailGuard™ policy.

G. Leave to Amend is Denied

Plaintiffs correctly note that California courts generally exercise a liberal policy favoring amendments, but that policy is not without limits. The court also considers unreasonable delay, prejudice, and the fact that any amendments would impose materially different theories after discovery has closed and after the County has moved for summary judgment.

As noted above, summary judgment is defined by the pleadings. Evidence submitted in opposition must address the claims and theories that are actually pled, and a plaintiff ordinarily cannot defeat summary judgment with a new un-pleaded theory. (*FPI Development*, *supra*, 231 Cal.App.3d at p. 381 ["The burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability as alleged in the complaint.]; *Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541 [the pleadings define the issues to which a summary judgment motion must be directed].)

Plaintiffs have been aware of Section 526a at least since they filed the FAC in 2023 and alleged that the individual plaintiffs paid sales tax. (FAC, ¶¶ 14-19.) Yet they chose to plead only two constitutional claims under Article I, Sections 2 and 13 of the California Constitution. They did not allege that the County's funds were being illegally spent, and did not frame their requested relief as a taxpayer action. That makes the delay very difficult to explain.

Allowing amendment at this stage would also cause undeniable prejudice. The County has litigated this case for more than three years based upon the constitutional claims actually pled. Discovery has closed. The County eliminated Count Two by way of a successful motion for judgment on the pleadings, and then prepared and filed this MSJ directed to the sole remaining constitutional claim. If amendment were allowed, fairness might require reopening discovery concerning new issues, such as taxpayer standing. That would not just constitute an inconvenience, it would be meaningful and unfair prejudice. Accordingly, leave to amend is denied.

For the foregoing reasons, defendants' MSJ is **GRANTED**. (Code Civ. Proc. § 437c.)

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, defendants' counsel shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312 and Local Rule 3.403(b)(iv), and provide written notice of the ruling to all parties who have appeared in this action. The order should be e-filed only, do not email or mail a hard copy to the court.