FILED
SAN MATEO COUNTY
SEP 21 2026
Clerk of the Superior Court
By DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

A.B.O. COMIX, KENNETH ROBERTS, ZACHARY GREENBERG, RUBEN GONZALEZ-MAGALLANES, DOMINGO AGUILAR, KEVIN PRASAD, MALTI PRASAD, and WUMI OLADIPO, Plaintiffs, v. COUNTY OF SAN MATEO and KENNETH BINDER, in his official capacity as Sheriff of San Mateo County, Defendants and Counterclaimants.	Case No. 23-CIV-01075 *Assigned for All Purposes to: Hon. Nicole S. Healy, Dept. 28* **JUDGMENT** Action Filed: March 9, 2023 Trial Date: April 26, 2027

On May 24, 2023, plaintiffs filed an Amended Complaint alleging that defendants' inmate mail policy violates plaintiffs' free speech rights under Article I, § 2 of the California Constitution (Count One) and is an unreasonable search and seizure contrary to Article I, § 13 of the California Constitution (Count Two).

On April 18, 2023, defendants removed this case to the U.S. District Court for the Northern District of California. By order filed on July 27, 2023, the case was remanded to the Superior Court for the County of San Mateo. While the case was pending before the federal court, on June 23, 2023, defendants filed an answer and counterclaims seeking declaratory relief that defendants' inmate mail policy does not violate the Fourth Amendment of the United States Constitution; is not an unreasonable search and seizure contrary to Article I, § 13 of the California Constitution; does not violate the First Amendment of the United States Constitution; and does not violate plaintiffs' free speech rights under Article I, § 2 of the California Constitution.

On January 31, 2024, the court granted defendants' Motion for Judgment on the Pleadings dismissing plaintiffs Zachary Greenberg, Kenneth Roberts, Ruben Gonzalez-Magallanes, Kevin Prasad, and Domingo Aguilar's free speech claim (Count One) with prejudice. A copy of that order is attached as Exhibit 1.

By order filed on May 21, 2024, the court granted defendants' Motion for Judgment on the Pleadings dismissing plaintiffs' unreasonable search and seizure claim (Count Two) with prejudice. A copy of this order is attached as Exhibit 2.

On February 4, 2026, defendants offered to dismiss their counterclaims to simplify the litigation. The parties agreed that defendants would dismiss their counterclaims, although a formal stipulation to this effect was not filed with the court.

On May 5, 2026, defendants filed a Motion for Sanctions seeking sanctions against plaintiffs' counsel. This motion is currently set for hearing on December 30, 2026.

On August 7, 2026, the court granted defendants' Motion for Summary Judgment dismissing plaintiffs Wumi Oladipo, Malti Prasad, and A.B.O. Comix's free speech claim (Count One) without leave to amend. A copy of this order is attached as Exhibit 3.

JUDGMENT IS THEREFORE ENTERED BY THE COURT AS FOLLOWS:

1. All relief sought by plaintiffs in their Amended Complaint is denied.

2. Count One of plaintiffs Zachary Greenberg, Kenneth Roberts, Ruben Gonzalez-Magallanes, Kevin Prasad, and Domingo Aguilar's Amended Complaint is dismissed with prejudice.

3. Count One of plaintiffs A.B.O. Comix, Wumi Oladipo, and Malti Prasad's Amended Complaint is dismissed without leave to amend.

4. Count Two of plaintiffs' Amended Complaint is dismissed with prejudice.

5. Defendants' Counterclaims are dismissed with prejudice.

6. Defendants County of San Mateo and Sheriff Kenneth Binder are the prevailing parties and may seek costs pursuant to California Rules of Court, Rule 3.1700(a)(1) and California Code of Civil Procedure, sections 1032 and 1033.5.

7. The parties shall bear their own attorneys' fees.

8. The court retains jurisdiction to award costs and rule on defendants' Motion for Sanctions.

IT IS SO ORDERED.

DATED: September 21, 2026

NICOLE S. HEALY
Judge of the Superior Court

EXHIBIT 1

SUPERIOR COURT OF SAN MATEO COUNTY

400 County Center
Redwood City, CA 94063

1050 Mission Road
South San Francisco, CA 94080

800 North Humboldt Street
San Mateo, CA 94401

www.sanmateo.courts.ca.gov

Minute Order

A.B.O. Comix, et al vs. County of San Mateo, et al	23-CIV-01075 01/31/2024 2:00 PM Motion Re: For Judgment on Pleadings **Hearing Result:** Held

Judicial Officer: Swope, V. Raymond
Courtroom Clerk: Rebecca Huerta

Location: Courtroom 8A
Courtroom Reporter: Geraldine Vandeveld

Parties Present

CARA GAGLIANO, JENNIFER JONES and SCOTT WILKENS appeared on behalf of plaintiffs.
CHAD DEVEAUX appeared on behalf of defendants.

Exhibits

Minutes

Journals

- At 2:07 p.m.-Court convenes.

Counsel presents argument.

At 3:21 p.m. - Court recesses for break.
At 3:47 p.m. - Court reconvenes. Above-noted counsel and parties present.

Argument presented by counsel. Matter submitted.

Having considered the submitted matter, the court rules as follows:

Tentative ruling is partially adopted.

Ms. Gagliano presents argument regarding Count 2.

The Court will continue the matter for further briefing as to Count 2.

Plaintiffs to submit supplemental brief by February 21, 2024 with page limit of 10 pages.

Defendant opposition to be filed by March 13, 2024 with page limit of 10 pages.

Reply brief to be filed by plaintiffs is due March 27, 2024 with page limit of 5 pages.*

Hearing continued to April 3, 2024 at 2:00 p.m.*

Tentative ruling shall be posted.

Defense counsel is requesting a stay of discovery until the Court has made a final ruling.

Plaintiffs counsel opposes the stay.

The Court will stay discovery on Count Two until a ruling has been made. As to Count One discovery may commence.

Mr. DeVeaux shall prepare formal order consistent with order herein.

At 5:05 p.m.-Court adjourned.

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*The Court's on it's own motion modified the order. Please see order filed on February 7, 2024.

Case Events

- Tentative ruling modified and becomes order:; MOTION FOR JUDGMENT ON PLEADINGS BY DEFENDANTS COUNTY OF SAN MATEO AND CHRISTINA CORPUS

Defendants' Moving Request for Judicial Notice is GRANTED as to all matters (Exhibits A through F.) Defendants' Reply Request for Judicial Notice is DENIED because none of the requested matter is material to the Court's evaluation of Defendants' motion.

I. ABO COMIX - STANDING

The motion is DENIED as to A.B.O. for lack of standing. The cases cited by County do not support this motion. In the case of Creed-21 v. City of Wildomar (2017) 18 Cal.App.5th 690, the complaint alleged that the plaintiff organization was "formed and operating under the laws of California." However, nothing in the opinion states that such allegations are required for a pleading. In the case of Made in the USA Found. v. GMC (D.D.C. Mar. 31, 2005) 2005 WL 3676030, the defendant moved to dismiss on ground that the plaintiff could not "prove" that it was a "properly formed organization with the corporate status and the members necessary to even attempt to claim associational standing." That issue, however, was not addressed in the opinion. The organizational pleading issue was unaddressed. Although a "collective" might lack associational standing, Defendant cites no authority for that position.

The case of Cal. Dental Ass'n, 222 Cal.App.3d at 61 does not hold that an association must plead that it was "organized" to "represent" its members. In that case, the allegation was made, but there was no issue about whether the allegation is required. The case of Urban Habitat Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, 1581 does not hold that standing requires proving or pleading that it has suffered "a drain on its resources from both a diversion of its resources and frustration of its mission which is sufficient to establish that it is an aggrieved party." The plaintiff made those allegations, but the opinion does not hold that the allegations are required. The case of San Diegans for Open Gov't v. Fonseca (2021) 64 Cal.App.5th 426, 434 does not hold that to plead associational standing, the plaintiff must plead the names of any members.

II. PLAINTIFFS GREENBERG AND OLADIPO'S CLAIMS ARE NOT MOOT

The motion as to Plaintiffs Greenberg and Oladipo on ground of mootness is DENIED.
It is undisputed that Plaintiff Greenberg is no longer in County's custody. The claims of Greenberg and Oladipo are not moot, however, since they contend that their mail remains in Defendant's possession in digital form. The Complaint seeks injunctive relief prohibiting County from "retaining digital copies of incoming physical mail without reasonable suspicion of wrongdoing." (AC at 30, Para. D.)

County's Reply argues that, since inmates have "no expectation of privacy with respect to letters," Greenberg and Oladipo have suffered no harm. (Reply at 16.) The issue of privacy pertains to search and seizure. In contrast, Greenberg and Oladipo allege that the retention of their correspondence is wrongful, not the searching of it. The Complaint seeks an injunction mandating that the digitized material be destroyed.

III. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

The motion on the ground that Plaintiffs have not exhausted their administrative remedies is DENIED. Pleading exhaustion of administrative remedies is not required when an administrative remedy is unavailable or inadequate. The Jail's Procedures Manual states that "Grievances will not be accepted if they are challenging the rules and policies themselves . . . ." (Corrections Procedures Manual Section 612.2 (Mov. RJN Ex. B.) The complaint alleges that "the policy of the sheriff's office is not to accept grievances 'if they are challenging the rules and policies themselves . . . .'" (AC Para. 82.)

Under a liberal reading of the Complaint in Plaintiffs' favor, as required for this motion, the allegation in paragraph 82 is sufficient to allege that "an administrative remedy is unavailable or inadequate." The case cited in County's Reply is inapplicable. In the Bockover case, the plaintiff interpreted the grievance procedure to be inadequate, and the Court found that her interpretation was incorrect. The Court concluded that "even if she is correct that the Manual is ambiguous," she must still file a grievance. (Bockover v. Perko (1994) 28 Cal.App.4th 479, 490.) Here, there is no ambiguity, and County does not contend that Plaintiffs have misconstrued the Jail's Policies. The Policy is clear: A prisoner may not file a grievance challenging the Jail's rules or policies, which is exactly what the complaint challenges. The Complaint sufficiently alleges that an administrative remedy is unavailable or inadequate.

IV. 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.

B. Non-incarcerated Plaintiffs (senders of mail)

The motion as to Count 1 is DENIED as to the Non-incarcerated Plaintiffs because not all the prongs of the Turner test are met.

"Regulations regarding the review of incoming mail are evaluated under the standards set forth in Turner v. Safely . . . that they must be reasonably related to a legitimate governmental interest . . . ." (Reynolds v. Rios (E.D. Cal. Feb. 10, 2011) No. 1:10-CV-00051, 2011 WL 617424, at *2.) Plaintiffs argue that the proper test is "Intermediate scrutiny," since free speech rights are at issue. Plaintiffs cite cases addressing free speech only generally, but do not cite any authority that applies specifically to incoming

mail to prisoners or otherwise contradicting Reynolds. In the absence of any such contrary authority, the Court concludes that the Turner test is appropriate.

The County's motion establishes only the first three prongs of the Turner test, but not the fourth.

1. Rational Connection. A valid rational connection exists between the County's policy of screening mail and the legitimate government interest in restricting access to opioids that can be sent by mail. (Human Rights Def. Center v. Bd. of Cnty. Com'rs (D.N.H. Feb. 2, 2023) 654 F.Supp.3d 85.) "Restricting inmate access to opioids" is a "legitimate penological interest" under Turner. (Id. at 99.) Plaintiffs' argument that there is no evidence that opioids by mail is an existing problem is inapposite. "To show a rational relationship between a regulation and a legitimate penological interest, prison officials need not prove that the banned material actually caused problems in the past, or that the materials are "likely" to cause problems in the future." (Mauro v. Arpaio (9th Cir. 1999) 188 F.3d 1054, 1060.) The only issue is whether the "defendants might reasonably have thought that the policy would advance its interests." (Id.)

2. Alternative Means of Exercising the Right. Plaintiffs claim the policy "leaves no adequate alternatives to communication via physical mail." (AC Para. 89.) To the contrary, County digitizes the incoming mail, which prisoners may access via tablets and kiosks. (Id. Para. 26, 32.)

3. Impact on Guards and Inmates; Allocation of Prison Resources. It is nearly a matter of judicial notice that exposure to Fentanyl is dangerous and sometimes lethal. An accommodation would increase the risk of fentanyl entering the jail and would require allocating more time, money, and personnel to detecting fentanyl. (HRDC, supra, 654 F. Supp. 3d at 100.)

4. Whether The Policy Is An "Exaggerated Response." County's motion does not satisfy this prong of the Turner test. The Complaint alleges that County already has mechanisms in place to address opioids-by-mail: "County has previously used drug-sniffing dogs and Raman spectroscopy devices to scan mail for the presence of drugs." (AC Para. 55.) County's motion does not address this allegation, but instead argues only that Fentanyl is a nationwide problem and that Jails are not required to wait until a problem in the jail manifests itself. (Mov. at 21-22; Reply at 15.) County does not address whether the allegation that its policy is an "exaggerated response."

Others
Comments:

Future Hearings and Vacated Hearings

Canceled: February 26, 2024 2:00 PM Motion for Leave
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Off Calendar
Swope, V. Raymond
Huerta, Rebecca
Courtroom 8A

March 04, 2024 2:00 PM Motion for Leave
Swope, V. Raymond

April 10, 2024 9:00 AM Case Management Conference
Mau, Michael L.
Courtroom H
Pena, Ruben

April 10, 2024 2:00 PM Motion Re: For Judgment on Pleadings
Swope, V. Raymond

Courtroom 8A

EXHIBIT 2

FILED
SAN MATEO COUNTY
MAY 21 2024
Clerk of the Superior Court
By
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

A.B.O. COMIX, KENNETH ROBERTS, ZACHARY GREENBERG, RUBEN GONZALEZ-MAGALLANES, DOMINGO AGUILAR, KEVIN PRASAD, MALTI PRASAD, and WUMI OLADIPO, Plaintiffs, v. COUNTY OF SAN MATEO and CHRISTINA CORPUS, in her official capacity as Sheriff of San Mateo County Defendants.	Case No. 23-CIV-01075 *Assigned for All Purposes to:* *Hon. V. Raymond Swope, Dept. 23* **ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS WITH REGARD TO COUNT TWO OF PLAINTIFFS' AMENDED COMPLAINT** Date: April 10. 2024 Time: 2:00 p.m. Action Filed: March 9, 2023 Trial Date: None Set

Defendants County of San Mateo's and Christina Corpus's (hereinafter collectively "Defendants" or "County") motion for judgment on the pleadings in this matter came on for hearing on April 10, 2024 at 2:00 p.m. before the Honorable V. Raymond Swope, pursuant to a continuance order on January 31, 2024. Cara Gagliano of the Electronic Frontier Foundation appeared for Plaintiffs A.B.O. Comix, Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes, Domingo Aguilar, Kevin Prasad, Malti Prasad, and Wumi Oladipo (collectively "Plaintiffs"). Chad DeVeaux of Bartko LLP appeared for Defendants County of San Mateo and Christina Corpus, in her official capacity as Sheriff of San Mateo County.

At the previous hearing on January 31, 2024, this Court continued Defendants' motion to April 10, 2024, for the parties to address Count Two of Plaintiffs' Amended Complaint, asserting claims for unreasonable search and seizure under Article I, § 13 of the California Constitution. The Court also instructed the Parties to provide supplemental briefing addressing how Plaintiffs' Section 13 claim should be analyzed, including whether Plaintiffs have alleged a search or seizure triggering Section 13's protections. The Court, having reviewed and considered the papers, and having considered the arguments of counsel, and GOOD CAUSE APPEARING, HEREBY ORDERS that the Motion for Judgment on the Pleadings as to Count 2 of Plaintiffs' Amended Complaint is GRANTED WITHOUT LEAVE TO AMEND.

I. Plaintiffs' Search-and Seizure Claim Fails as a Matter of Law

Plaintiffs' suit targets the County's policy of digitizing inmate mail and providing copies on tablets and kiosks (the "mail policy") using Smart Communication's ("Smart") services. The County implemented this policy, inter alia, to prevent exposure to fentanyl and other drugs, which are easily introduced into jails by mail "through paper that ha[s] been soaked, sprayed or otherwise treated with illicit substances before being mailed to prisoners." (See *Human Rights Def. Center v. Bd. of County. Commissioners* (D.N.H. 2023) 654 F.Supp.3d 85, 92.)

Count 2 of Plaintiffs' Amended Complaint ("AC") alleges that the mail policy "constitutes an unreasonable search and seizure of correspondence and other information in which Plaintiffs and others maintain a reasonable expectation of privacy" in violation of Article I, § 13 of the California Constitution ("§ 13"). AC ¶¶ 48, 90. In defense of this claim, Plaintiffs assert that here is no "applicable exception to the warrant requirement" permitting the State to collect and electronically aggregate "non-legal mail sent to its jails." (Plaintiffs' Supp. Brief Re § 13 Analysis ("SB") at 6:15-17, 8:4-5.)

a. No Legitimate Expectation of Privacy Exists in Correspondence with Inmates

Section 13 is California's "counterpart to the Fourth Amendment." (*People v. Sabo* (1986)

185 Cal.App.3d 845, 448 fn.1.) This provision "only prohibits 'unreasonable' [searches]. Reasonable searches are permitted." (*Pac. Lighting Leasing Co. v. Sup. Ct.* (1976) 60 Cal.App.3d 52, 565.) A "search is not unreasonable ... if there is no reasonable expectation of privacy in the object which is searched." (*People v. Fick* (1980) 107 Cal.App.3d 892, 895 (citing *Katz v. U.S.* (1967) 389 U.S. 347, 350-53).) This only exists when the asserted "expectation of privacy" is one "that society is willing to recognize as reasonable." (*People v. Magee,* (2011) 194 Cal.App.4th 178, 183.) In judging whether this criterion is met, courts "begin with history" by "look[ing] to . . . the founding era to determine the norms" the Constitution "was meant to preserve." (*Virginia. v. Moore* (2008) 553 U.S. 164, 168.)

In the founding era, jails often took inspiration from Jeremy Bentham's "Panopticon"—a circular design with a tower at the center allowing guards to continuously "inspect each of the concentrically arrayed cells." (George Fisher, The Birth of the Prison Retold, 104 Yale L.J. 1235, 1262 fn. 133 (1995).) Bentham claimed "the most important point" of this design was to preserve security by making inmates "always feel themselves as if under inspection." (*Washington v. Meachum* (Conn. 1996) 680 A.2d 262, 277 fn. 18 (quoting Jeremy Bentham, Panopticon 24 (1791)).) It is thus unsurprising that "[i]n a line of cases beginning with *Stroud* [v. *U.S.* (1919) 251 U.S. 15]," which affirmed the conviction of the famous Bird Man of Alcatraz, our "courts have deferred to [jailers] in finding that legitimate penological interests justify the examination of . . . jail mail." (*U.S. v. Mohsen* (N.D. Cal. Dec. 22, 2005) 2005 WL 8160182, at *1.) It is "settled that prisoners have no legitimate expectation of privacy in their correspondence." (*Crump v. Gomez* (N.D. Cal. Apr. 27, 1995) 1995 WL 274359, at *2 (citing *Murphy v. Morris* (8th Cir. 1988) 849 F.2d 1101, 1104-05).) As such, jails may "read and copy non-privileged mail" because the "interest . . . in monitoring nonprivileged correspondence justifies minor burdens placed on freedom to communicate with friends and relatives." (*Calihan v. Adams* (E.D. Cal. Jan. 26, 2011) 2011 WL 284467, at *4.)

California courts thus recognize "there is no right of privacy in a detention facility." (*People v. Von Villas* (1992) 11 Cal.App.4th 175, 212.) Rather, "in the jail house the age-old truism still obtains: Walls have ears." (*Ahmad A. v. Sup. Ct.* (1989) 215 Cal.App.3d 528 (quoting

Miguel de Cervantes, Don Quixote, pt. II [1615], ch. 48).) Seeking to avoid this rule, Plaintiffs posit that anytime a search is made without a warrant, the Court must conduct a case-specific evaluation concerning whether "a reasonable expectation of privacy" was violated. SB at 4:13-14. "[U]nder the doctrine of stare decisis," however, precedent holding that warrantless searches of particular places or objects do "not intrude on any expectation of privacy society is prepared to recognize as legitimate" are binding in future cases. *People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1032. For example, it is settled that warrantless "airport screens of . . . luggage" are "reasonable." (*Verdun v. City of San Diego* (9th Cir. 2022) 51 F.4th 1033, 1039.) Thus, an offended passenger may not ask a court to judge on a case-by-case basis whether the search of his luggage was unreasonable. (*See id.*)

"Determining whether an expectation of privacy is 'legitimate'" under "[§] 13" "entails a balancing of interests." (*Sacramento Cnty. Deputy Sheriffs' Ass'n v. Cnty. of Sacramento* (1996) 51 Cal.App.4th 1468, 1480 ("SCDSA").) Searches in jail settings implicate "two interests"—"the interest of society in the security of its [jails] and the [inmates'] interest in privacy . . . ." (*Id.*) California courts "*strike the balance in favor of institutional security, which ... is central to all other corrections goals.*" (*Id.* (emphasis added).) It is clear that "society would insist that [a] prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security." (*Id.*) Thus, an expectation of privacy in a jail "is fundamentally incompatible with the close and continual surveillance of inmates . . . required to ensure institutional security." (*Id.* (quoting *Hudson v. Palmer* (1984) 468 U.S. 517, 527-28).)

This rule "applies equally to an inmate's incoming mail." (*Treglia v. Cate* (N.D. Cal. Aug. 28, 2012) 2012 WL 3731774, at *3 (citing Hudson, 468 U.S. at 527-28).) Thus, jailers may "read and copy non-privileged [inmate] mail" without restriction. (*Crump*, 1995 WL 274359, at *2.) California law thus applies a bright-line rule to inmate search-and-seizure claims: persons "incarcerated in a jail or prison possess[] no justifiable expectation of privacy" in their communications or in their cells. (*People v. Loyd* (2002) 27 Cal.4th 997, 1001.) And these same rules apply to "those on the 'outside' who seek to enter [the jail] environment, in person or through the written word." (*In re Collins* (2001) 86 Cal.App.4th 1176, 1182, 1185.)

In *Loyd*, our Supreme Court adopted *Lanza v. N.Y.* (1962) 370 U.S. 139 into our State's law. (*Loyd*, 27 Cal.4th at 1002.) *Loyd* and *Lanza* establish that non-incarcerated persons also do not enjoy any legitimate expectation of privacy when they communicate with inmates. In *Lanza*, the non-incarcerated petitioner's (*Lanza*'s) communications with his brother who "was confined to a New York jail" were secretly "recorded." (*Lanza*, 370 U.S. at 140-41.) Lanza was later "summoned to testify" regarding those communications and he was jailed for "refus[ing] to answer these questions." (*Id.*) Lanza argued the jail's recording constituted "an unreasonable search or seizure." (*Id.* at 142.) The High Court rejected this claim, holding in jails "official surveillance has traditionally been the order of the day" and, as such, a jail is definitively not "a place where [one] can claim constitutional immunity from search or seizure . . . ." (*Id.* at 143.) Thus, those on the outside enjoy no expectation of privacy with regard to mail they send to inmates.

Even law enforcement officers enjoy no expectation of privacy "within the confines of the [jail]." (*SCDSA*, 51 Cal.App.4th at 1481.) In *SCDSA*, "a concealed . . . surveillance camera" was installed in "the Release Office of [a] county jail." (*Id.* at 1472.) The office "was not generally accessible to inmates," but occasionally "inmates entered the room on supervised cleaning detail." (*Id.*) Two deputies sued the jail after they discovered the camera "sticking out of a vent." (*Id.*) They argued that the jail's secret recording was a "search and seizure in violation of . . . [§] 13." (*Id.*) The deputies claimed they had a "reasonable expectation of privacy" in the office because each had disrobed there to "adjust bandages" and "tuck in" shirts. (*Id.* at 1474-75.) They argued the jail's surveillance "raise[d] the spectre of the Orwellian state." (*Id.*at 1483.)

The court noted that case law "reveals a long history of judicial recognizing" that communications with inmates enjoy "no justifiable expectation of privacy." (*Id.* at 1480.) While these "cases focused on inmates or visitors," the court held "the same principle applies to deputy sheriffs who accept employment in that setting." (*Id.* at 1478.) This is because judging whether people in a "particular setting" enjoy a "reasonable expectation of privacy . . . requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." (*Id.* at 1477, 1479.) This requires balancing "the scope of the particular intrusion, the manner in

which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id.*

Balancing these criteria, the court held the deputies' claim that they had a right of privacy "within the confines of [a jail]" is "fundamentally incompatible with the close and continual surveillance . . . required to ensure institutional security." (*Id.* at 1480-81.) Jails "are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial criminal, and often violent conduct." (*Id.*) Jailers "must be ever alert to attempts to introduce drugs and other

contraband into the premises." (*Id.*) Thus, "society is [not] prepared to accept" the deputies' "expectation of privacy as reasonable." (*Id.*) The court found the jail's surveillance was analogous to Lanza's recording of communications "between an inmate and his brother." (*Id.* at 1478.) It further held that the fact that plaintiffs were "not inmates but deputy sheriffs" and the Release Office was "not generally used by inmates" did "not insulate [them] from the institutional security needs of the jail." (*Id.* at 1841, 1483.) Because it was "a room to which inmates [occasionally] ha[d] access" it was one "in which jail security concerns are appropriate." (*Id.* at 1482.)

The Third Circuit's ruling in *Robinson v. Pa. Dept. of Corr.* (3d Cir. 2021) 851 Fed.App'x 289 confirms that these settled rules bar Plaintiffs' search and seizure claim. There, an inmate alleged Smart's "scann[ing] and convert[ing]" of mail "into digital documents" constituted a "search and seizure violation." (*Id.* at 291.) This claim was "without merit" because inmates have "no reasonable expectation of privacy to trigger" any "search and seizure . . . protections." (*Id.* At 293.) The court further dismissed this claim without leave to amend because the law on the subject is so clear that "amendment . . . would be futile." (*Id.* at 292-93.)

b. **The Constitution Does Not Limit the Use of Lawfully Obtained Information**

Tacitly recognizing that they, in fact, do not have any legitimate expectation of privacy in their non-legal mail, Plaintiffs posit that the mail policy is unconstitutional because of "how" the data extracted from mail "is and can be used." (SB at 7:18.) Specifically, they claim using "software to aggregate" inmate mail and allow police "to search that data" is unlawful. (*Id.* at

7:14-17.) This argument is without merit. Once a jail extracts information from an inmate that to which he or she has forfeited any "expectation of privacy" as a consequence of "[l]awful incarceration," the State's *"subsequent use of [that data] ... does not create an independent search" and "[t]here is no additional invasion of ... privacy interest" for "subsequent use ... of evidence constitutionally obtained."* (*U.S. v. Robinette* (E.D. Cal. Jan. 18, 2013) 2013 WL 211112, at *8-9 (emphasis added).) Cases upholding this proposition are legion.[1]

Robinette is instructive. Robinette, a prisoner awaiting trial, argued the "forced taking of [his] DNA" without "a warrant" was an "unreasonable search and seizure." (2013 WL 211112, at *1, *4.) The extraction was mandated by a law requiring that DNA be collected from anyone arrested for "a crime of violence." (*Id.*) The court noted that "[t]here is no question" that DNA collection is a "search." (*Id.* at *2.) However, as explained above, the Constitution "does not proscribe all searches and seizures"—"only those that are unreasonable." (*Id.* at *7.) And inmates forfeit any "expectation of privacy" in their DNA because "the institutional needs and objectives of [jails] necessarily require, as a practical matter, the curtailment of certain rights." (*Id.* at *8.) In particular, "identification" of inmates is "a matter of legitimate state interest" and DNA is "an identifying marker unique to the individual from whom the information is derived." (*Id.* at *9.)

When confronted with the fact that his incarceration stripped him of any legitimate expectation of privacy in his DNA, Robinette argued the policy still was an unreasonable search and seizure because the Government's "subsequent use" of his DNA was "unreasonable." (*Id.* at *8 (emphasis added).) He argued that the DNA-collection policy was verboten because after an

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[1] *E.g., U.S. v. Muhtorov* (10th Cir. 2021) 20 F.4th 558, 605 ("later use" of "lawfully collected communications ... is not a separate Fourth Amendment event" and does not subject initial search to further scrutiny); *Johnson v. Quander* (D.C. Cir. 2006) 440 F.3d 489, 499 (when Government collects data in a manner that complies with the Fourth Amendment, its "storage and use of it does not give rise to an independent Fourth Amendment claim."); *Kunstler v. CIA* (S.D.N.Y. Dec. 19, 2023) 2023 WL 8776339, at *7-8 (same); *Montgomery v. Lumpkin* (N.D. Tex. May 15, 2021) 2021 WL 1947558, at *4 (same); *Emerson v. Kelly* (N.D. Ohio June 30, 2015) 2015 WL 3968250, at *9 (same); *Crabbs v. Scott* (S.D. Ohio Nov. 20, 2013) 2013 WL 12498338, at *2 (same); *People v. Roberts* (2021) 68 Cal.App.5th 64, 103-04 (same); *People v. Buza* (2018) 4 Cal.5th 658, 673 (same); *People v. Baylor* (2002) 97 Cal.App.4th 504, 508 (same); *Wilson v. State* (Md. App. 2000) 752 A.2d 1250, 1271-72 (same); *People v. King* (N.Y. App. Div. 1997) 232 A.D.2d 111, 117 (same).

inmate's DNA is collected it is uploaded into the CODIS "database and profiled." *Id.* at *7. CODIS is "a centralized repository for [inmate DNA]," which enables police around the country "to exchange and compare DNA profiles." (*Id.* at *1, *1 fn. 1.) It is maintained by "private contracting laborator[ies]" who retain access to all the uploaded data "in perpetuity." (*Crabbs,* 2013 WL 12498338, at *2.) The database—which "contains over ten million DNA profiles"—enables police to perform unparalleled searches of the genetic profiles of inmates and their family members. (*Robinette*, 2013 WL 211112, at *1 fn. 1.) *Robinette* claimed this use rendered the initial search of his DNA unreasonable because once in the database, his intimate genetic data "*is subject to repeated law enforcement searches*." (*Id.* at *7 (emphasis added).)

Nevertheless, the court held that how Robinette's DNA is and can be "used in CODIS" is irrelevant because he had no reasonable "expectation of privacy" in the data collected in the initial search. (*Id.* at *8-9.) And "once [a] search is completed in a constitutional manner, the subsequent use of the [information] collected does not create an independent search" and "[t]here is no additional invasion of the owner's privacy interest" for use of such "constitutionally obtained" data. (*Id.* at *9.) Rather, once one's personal information "has been obtained lawfully, he can no longer assert either privacy claims or unreasonable search and seizure arguments with respect to the use of that [information]." (*King*, 232 A.D.2d at 117.) Thus, the Government's "later use" of "lawfully collected communications . . . is not a separate Fourth Amendment [or § 13] event" which triggers any additional scrutiny. (*Muhotorov,* 20 F.4th at 605.) This is because "[o]nce the act of taking [data or] property is complete, the [search and] seizure has ended and the Fourth Amendment"—and § 13—"no longer applies." (*Fox v. Van Oosterum* (6th Cir. 1999) 176 F.3d 342, 350.) And this remains true no matter how long the Government retains the data or how it uses it. (*Id.*) Subsequent "analysis of [seized data] does not involve any further search" and cannot give rise to any "privacy claims." (*Emerson,* 2015 WL 3968250, at *9.) If this were not so, "any subsequent use of constitutionally obtained [data] would thereafter be subject to an independent constitutional scrutiny" and "law enforcement investigative efforts would come to a stand-still." (*Robinette,* 2013 WL 211112, at *9.) Thus, when the Government collects data in a manner that does not intrude on a reasonable expectation of privacy that data may "be maintained and used by

law enforcement" in any manner it chooses "without further constitutional restriction." (*Montgomery*, 2021 WL 1947558, at *4.)

The court in *Kunstler* recently applied these principles. There lawyers and journalists who "visited [Wikileaks founder] Julian Assange at the Ecuadorian Embassy" claimed the CIA used "unlawful surveillance techniques" that violated their "right to be free from unreasonable searches and seizures." (2023 WL 8776339 at *1-2.) They alleged the CIA contracted with UC Global, an international security firm, to "implement[] an extensive surveillance program" targeting the Embassy. (*Id.* at *2.) They claimed UC Global "surreptitiously copied and took images of the passports, including pages with stamps and visas," and of the phones and computers "of all [Embassy] visitors." (*Id.* at *2, *8.) This information was then uploaded into a sophisticated "database" that aggregated the data and provided "external access to the CIA." (*Id.* at *2, *5.)

The court held that the searches were reasonable because the plaintiffs had "no legitimate expectation of privacy" in "their passports or the appearance of their devices." (*Id.* at *7-8.) Any such privacy interest was forfeited because security concerns mandate that passports and devices must be presented to "security personnel at the Embassy." (*Id.*) Thus, individuals willingly surrender any "legitimate expectation of privacy" in such information when they visit an embassy because, to gain entry, they must "voluntarily turn[] over" that data to staff so they can fulfill their job of "keeping the Embassy secure." (*Id.*) Accordingly, the Government may "obtain such information ... without triggering" any search and seizure protections. (*Id.*)

Moreover, UC Global's aggregation of this data in a searchable database did not render the program verboten. (*Id.* at *2, *5.) When one "voluntarily" reveals otherwise private information by entering a place where security concerns demand a diminished "expectation of privacy"—like an embassy or a jail—the Government may use that data in any way it wishes. (*Id.* at *7.) This "remains true even if the information is revealed on the assumption that it will be used only for a limited purpose." (*Id.*) Likewise, anyone who corresponds with an inmate "voluntarily turns over" the contents of his or her letters to jail officials. (See *id.*) And such officials are free to use that data however they choose "without triggering" any search and seizure protections. (See *id.*)

The Third Circuit's ruling in Robinson confirms that this rule bars Plaintiffs' claims. It

held that the fact that Smart's technology enables jailers to permanently "stor[e]" mail sent to inmates and to conduct repeated invasive "inspection[s]" of that mail does not offend any of the Constitution's "search and seizure . . . protections." (851 Fed.App'x at 293.)

c. Plaintiffs' Trespass Theory Is Incorrect

Plaintiffs claim the mail policy is a "trespassory search" because it involves a "trespass to chattels." (SB at 5:1-2, 8:8.) This fails at the outset because our courts held long ago that § 13 does not embrace the trespass theory. Section 13's "prohibition [] is against Unreasonable searches and seizures, not trespasses." (*Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 763.) *Jones* only changed the definition of a "'search' within the meaning of the Fourth Amendment." (*U.S. v. Jones* (2012) 565 U.S. 400, 405.) No court has revived the trespass theory under § 13. Even if the trespass theory could apply to § 13 claims, Plaintiffs' argument would still fail for two independent reasons.

(i) A Jail Is Not a Constitutionally Protected Area

A "trespass" only qualifies as a search or seizure when there is an intrusion into "a 'constitutionally protected area.'" (SB at 4:25-26 (quoting *Jones*, 565 U.S. at 404-05).) Plaintiffs claim *Jones* held "[c]onstitutionally protected area' simply means any of the four areas enumerated in [§] 13: 'persons, houses, places, and effects.'" (SB at 5:4-5.) This is not so. A trespass on one's "person," "papers," or "effects" only triggers constitutional protection if they were located in a "constitutionally protected area." (*Lanza*, 370 U.S. at 143.) For example, in *Hester v. U.S.* (1924) 265 U.S. 57, the defendants hid bottles of moonshine in an "open field." (*Id.* at 58.) After officers, possessing "no warrant," searched and seized these "effects," the defendants argued the officers "trespass[ed]" on their land and chattels. Id. This failed because searches in "open fields" are permissible even if a "trespass . . . led to the gathering of [the] evidence" because Government agents "physically intruded" on the land or chattels of the owner. (*U.S. v. Doyon* (D. Me. May 29, 2013) 2013 WL 2368821, at *4 fn. 1.) This is because the "theory of *Jones*" only applies to "trespasses in constitutionally protected areas." (*Id.*) And "open fields remain unprotected" by *Jones* "because they are not a constitutionally protected area." (*Id.*)

Jones involved an intrusion on a car. "An automobile" is "a constitutionally protected area." (*Lanza*, 370 U.S. at 142-43.) A "jail," however, is not "a constitutionally protected area." (*Id.*) "[A] jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In [jail], official surveillance has traditionally been the order of the day." *Id.* Thus, under the law revived by Jones, a jail is not "a place where [one] can claim constitutional immunity from search or seizure of his person, his papers, or his effects . . . ." (*Id.* at 143.)

(ii) Plaintiffs' Trespass Theory Would Ban All Searches of Inmate Mail

Plaintiffs' claim that the mail policy involves a "trespass to chattels" proves too much. (See SB at 8:8.) The prior mail policy required officers to open inmate mail and inspect it "for the presence of drugs or other threats to facility security." However, a common law "trespass" occurs whenever one makes "physical contact with [another's] chattel." (*Bui-Ford v. Tesla, Inc.* (N.D. Cal. Feb. 20, 2024) 2024 WL 694485, at *8.) As such, any policy that allows jails to inspect inmate mail would, by definition, require a "trespass to chattels." Thus, if a jail qualified as a "constitutionally protected area," inmate mail could never be constitutionally inspected. This proposition offered by Plaintiffs is inconsistent with settled law.

II. Conclusion

For the reasons set forth hereinabove, the Motion for Judgment on the Pleadings as to Count 2 of Plaintiffs' Amended Complaint is GRANTED without leave to amend.

IT IS SO ORDERED.

DATED: May 21, 2024

HON. V. RAYMOND SWOPE
JUDGE OF THE SUPERIOR COURT

EXHIBIT 3

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COUNTY OF SAN MATEO and
KENNETH BINDER

Electronically
FILED
By Superior Court of California, County of San Mateo
ON 08/12/2026
By /s/ Singh, Padmani
Deputy Clerk

Electronically
RECEIVED
7/31/2026
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

A.B.O. COMIX, KENNETH ROBERTS, ZACHARY GREENBERG, RUBEN GONZALEZ-MAGALLANES, DOMINGO AGUILAR, KEVIN PRASAD, MALTI PRASAD, and WUMI OLADIPO,

Plaintiffs,

v.

COUNTY OF SAN MATEO and KENNETH BINDER, in his official capacity as Sheriff of San Mateo County

Defendants.

Case No. 23-CIV-01075

Assigned for All Purposes to:
Hon. Nicole S. Healy, Dept. 28

~~[PROPOSED~~ ORDER] GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Hearing Date: July 29, 2026
Time: 2:00 P.M.
Department: 28

Action Filed: March 9, 2023
Trial Date: April 26, 2027

Defendants County of San Mateo and Sheriff Kenneth Binder's Motion for Summary Judgment came on for hearing on July 29, 2026.

Plaintiffs contested the Court's tentative ruling. After hearing argument, the Court adopted its tentative ruling as its final order granting Defendants' Motion for Summary Judgment. A copy of the Court's tentative ruling that was adopted by the Court as its final order is attached as Exhibit A.

Plaintiffs have approved the form of this Order.

IT IS SO ORDERED

DATED: _____, 2026

Electronically
SIGNED
By /s/ Healy, Nicole
08/07/2026

HON. NICOLE S. HEALY

EXHIBIT A

2:00 PM - Line 3

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.

PROOF OF SERVICE

A.B.O. COMIX, et al. v. County of San Mateo, et al.
Case No. 23-CIV-01075

At the time of service, I was over 18 years of age and not a party to this action. My business address is 1100 Sansome Street, San Francisco, CA 94111.

On July 31, 2026, I served true copies of the following document(s) described as **[PROPOSED ORDER] GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

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

Executed on July 31, 2026, at San Francisco, California.

Hannah O'Malley

Hannah O Malley

SERVICE LIST
A.B.O. COMIX, et al. v. County of San Mateo, et al.
Case No. 23-CIV-01075

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