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Electronically
FILED
by Superior Court of California, County of San Mateo
ON
8/24/2023
By /s/ Hessen Ladcani
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 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

DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES

Action Filed: March 9, 2023
Trial Date: None Set

Defendants County of San Mateo (the "County") and Christina Corpus in her official capacity as Sheriff of San Mateo County (collectively "Defendants") hereby answer the Amended Complaint for Injunctive and Declaratory Relief for Violation of Article I, § 2 and § 13 of the California Constitution ("Amended Complaint" or "AC") filed by Plaintiffs A.B.O. Comix, Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes, Domingo Aguilar, Kevin Prasad, Malti Prasad, and Wumi Oladipo (collectively "Plaintiffs") as follows:

GENERAL DENIAL

Pursuant to the provisions of § 431.30 subdivision d of the Code of Civil Procedure, Defendants generally and specifically deny each and every allegation, matter, and purported cause of action set forth in Plaintiffs' Amended Complaint. Defendants deny that they are responsible or liable under theories or in the manner set forth in the Amended Complaint; and deny that Plaintiffs were damaged as a result of the alleged conduct of Defendants set forth in the Amended Complaint and each cause of action thereof.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses which they are informed and believe have, or are likely to have, evidentiary support after a reasonable opportunity for further investigation and discovery.

FIRST AFFIRMATIVE DEFENSE

(Lack of Standing as to Plaintiff A.B.O. Comix)

1. Plaintiff A.B.O. Comix lacks associational standing to bring its claims under Article I, § 2 of the California Constitution and Article I, § 13 of the California Constitution.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing as to Plaintiff Zachary Greenberg)

2. Plaintiff Zachary Greenberg lacks standing. The Amended Complaint pleads that "Plaintiff Zachary Greenberg is currently incarcerated at Folsom State Prison" and is no longer incarcerated in any of the County's jails. (AC ¶ 21.) But he "[i]s no longer under the physical control of [the County], and the challenged conduct no longer applie[s] to h[im]." (*See Giraldo v. Dep't of Corr. & Rehab*. (2008) 168 Cal.App.4th 231, 257.) As such, Plaintiff Zachary Greenberg lacks standing to pursue claims for injunctive relief.

THIRD AFFIRMATIVE DEFENSE

(Mootness as to Plaintiff Zachary Greenberg)

3. Plaintiff Zachary Greenberg's claims based on his past incarceration in the County's jails are moot. The Amended Complaint pleads that "Plaintiff Zachary Greenberg is currently incarcerated at Folsom State Prison" and is no longer incarcerated in any of the County's

jails. (AC ¶ 21.) But he "[i]s no longer under the physical control of [the County], and the challenged conduct no longer applie[s] to h[im]." (*See Giraldo, supra,* 168 Cal.App.4th at 257.) As such, any injunctive-relief claims Mr. Greenberg could have brought in the past based on his previous incarceration in the County's jails are now moot.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Standing as to Plaintiff Wumi Oladipo)

4. The Amended Complaint represents that "Wumi Oladipo . . . is the significant other of Zachary Greenberg." (AC ¶ 86.) Assuming arguendo that her relationship with Mr. Greenberg would have conferred standing to challenge the mail policy during Mr. Greenberg's incarceration in the County's jails, she no longer has standing because "Mr. Greenberg was transferred to state custody" and is now "incarcerated at Folsom State Prison." (AC ¶¶ 21, 86.) As such, Ms. Oladipo lacks standing to pursue claims for injunctive relief.

FIFTH AFFIRMATIVE DEFENSE

(Mootness as to Plaintiff Wumi Oladipo)

5. The Amended Complaint represents that "Wumi Oladipo . . . is the significant other of Zachary Greenberg." (AC ¶ 86.) Assuming arguendo that her relationship with Mr. Greenberg would have conferred standing to challenge the mail policy during Mr. Greenberg's incarceration in the County's jails, "Mr. Greenberg was transferred to state custody" and is now "incarcerated at Folsom State Prison." (AC ¶¶ 21, 86.) Thus, her claims are now moot because "the challenged conduct no longer applie[s] to [either of them]." (*See Giraldo, supra*, 168 Cal. App.4th at 257.) Any injunctive-relief claims Ms. Oladipo could have brought in the past based on her significant other's previous incarceration in the County's jails are moot.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

6. Plaintiffs have failed to exhaust their administrative remedies. To bring a claim under California law regarding the terms of confinement, prisoners "must exhaust available administrative remedies before filing a lawsuit." (*Parthemore v. Col* (2013) 221 Cal. App. 4th 1372, 1380.) In addition, "where remedy by appeal is available" under a grievance procedure, the

plaintiff likewise must exhaust all avenues of appeal under the procedure "before redress may be had in the courts." (*Blake v. PUC of City & Cnty. of San Francisco* (1953) 120 Cal. App. 2d 671, 673.) California law dictates that all jails "shall develop written policies and procedures whereby all incarcerated persons have the opportunity and ability to submit and appeal grievances relating to any conditions of confinement, including but not limited to: ... mail ... procedures...." (15 C.C.R. § 1073.) Pursuant to this law, the County has established a grievance procedure which enables "any inmate [to] file a grievance relating to conditions of confinement," including "mail use procedures." To initiate the procedure, an inmate must "complete[] [an] inmate grievance form" which must "be filed ... within 14 days of the complaint or issue." The procedure dictates that "[u]pon receiving a completed inmate grievance form, the supervisor shall ensure that the grievance is investigated and resolved or denied in a timely manner, as established by the Division Commander." It further provides: "Inmates may appeal the finding of a grievance to the Division Commander as the final level of appeal within five days of receiving the findings of the original grievance. The Division Commander will review the grievance and either confirm or deny it." Plaintiffs have failed to fully exhaust their administrative remedies under the County's grievance procedure.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel, Waiver)

7. The Amended Complaint is barred, in whole or in part, by the doctrines of estoppel and waiver.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

8. By virtue of Plaintiffs' behavior as partially described in the Answer to the allegations within the Amended Complaint, Plaintiffs are barred from receiving relief by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Privilege)

9. Defendants' actions were privileged under applicable statutes and case law.

RESERVATION OF FURTHER AFFIRMATIVE DEFENSES

Defendants lack sufficient information of all facts and evidence surrounding Plaintiffs' claims and therefore are unable to completely ascertain all affirmative defenses available to them at this time. Defendants hereby give notice that they intend to assert further affirmative defenses as may become available during discovery in this matter. Accordingly, Defendants reserve their right to amend this Answer and assert additional affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, having responded to Plaintiffs' Amended Complaint and stating their affirmative defenses, Defendants pray that:

1. The Amended Complaint of Plaintiffs be dismissed in its entirety with prejudice;

2. Judgment be entered against Plaintiffs and in favor of Defendants, and that Plaintiffs take nothing by their Amended Complaint;

3. The Court award Defendants their attorneys' fees, costs, and expenses;

4. Defendants shall have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

DATED: August 24, 2023

Respectfully submitted,

BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation

By: 

Chad E. DeVeaux
Attorneys for Defendants COUNTY OF SAN MATEO and CHRISTINA CORPUS

PROOF OF SERVICE

I, Maggie M. Lopez, hereby certify that on this 24th day of August, 2023, a copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES** was served via email, on the following:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mlopez@bzbm.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August 24, 2023, at San Francisco, California.



Maggie M. Lopez