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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 11/8/2023
By /s/ Priscilla Tovar
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

CORRECTED DECLARATION OF CARA GAGLIANO IN SUPPORT OF PLAINTIFFS' SUR-REPLY TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Judge: Hon. V. Raymond Swope
Hearing: December 4, 2023
Time: 2:00 pm
Dept.: 23

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

I, Cara Gagliano, declare as follows:

1. I am an attorney licensed to practice in the State of California and am counsel of record for Plaintiffs in the above-captioned action. I have personal knowledge of the facts stated here, and if called upon to do so, could and would testify competently as follows:

2. Plaintiff Zachary Greenberg provided me with an Inmate Grievance Form that he signed and is dated October 20, 2022 ("October 20 grievance") that concerned the County's digitization of mail sent to its jails. A true and correct copy of that grievance is attached as Exhibit 1.

3. The October 20 grievance is marked as having been received by jail staff on October 20, 2022. Mr. Greenberg provided me his copy of the October 20 grievance in early 2023, before the original complaint in this case was filed. The document is stored in my law firm's office in San Francisco, California, where my co-counsel Aaron Mackey scanned it to create Exhibit 1.

4. To the best of my knowledge, the October 20 grievance Mr. Greenberg provided to me is a page of the County's Inmate Grievance Form, which uses carbon paper to create at least four copies of a handwritten grievance. Because Exhibit 1 was created using carbon paper, the text is difficult to read. Based on my review, the text of the October 20 grievance reads as follows (spelling as in the original):

> I have been denied personal mail addressed to me while incarcerated at Maple St. facility San Mateo County Jail from family, loved ones, and other personal correspondants for the past 18 months, in violation of my constitutional rights under the 8th Ammendment not to be subject to cruel and unusual punishment, and under the 14th Ammendment not to be deprived of property. About April 16, 2021, myself and other inmates were forced to accept personal [illegible] being sent to "Smart Jail Mail" and scanned, then shredded. Inmates were told via tablet and kiosk login that, "This facility will no longer act as a mail recieving agent for regular mail and not providing acknowledgement may result in this mail being returned to sender." Inmates are forced under this policy to accept letters from loved ones being sent to Florida, and then shredded, or face not having any access (digital only) to such mail/property sent via U.S. Postal Service. This is cruel and unusual punishment. The facility in the same time period, began rejecting all books from Amazon.com in vialation of PC 2601. I hereby withdraw consent of the policy and request to directly recieve all mail.

5. Defendants' reply brief in support of their Motion for Judgment on the Pleadings falsely states that Mr. Greenberg never filed a formal grievance concerning the County's mail policy. On October 18, 2023, I emailed Defendants' counsel informing them of the misrepresentation and attaching a scanned copy of Mr. Greenberg's October 20, 2022 grievance. I asked Defendants to file a notice of errata to correct the record before the Court as soon as possible and no later than October 20, 2023.

6. Defendants' counsel responded on October 19 and stated that Defendants were "investigating the authenticity" of the grievance and would "take appropriate steps when the investigation is complete based on the findings." Counsel provided no indication of what those steps were, when they would be completed, or whether Defendants would correct the record before the Court.

7. On October 27, 2023, I, along with my co-counsel Sara Haji, Jennifer Jones, and Alex Abdo, met with Defendants' counsel Chad DeVeaux via audioconference for a case management conference pursuant to Rule 3.724 of the California Rules of Court. During that meeting we asked for an update on Defendants' counsel's investigation.

8. Defendants' counsel responded that the County has not been able to confirm the authenticity of the grievance because the County does not have any record of it. At the same time, he also communicated that the County had not found any indications that the document was a forgery.

9. Defendants' counsel also stated that he intends to file a declaration from the County's custodian of records explaining the County's process for retaining grievances and asserting that the County does not have any record of the grievance we provided to them. When asked about timing, Defendants' counsel would say only that he intended to file the declaration "soon."

10. My co-counsel Alex Abdo explained that such a declaration would be inadequate to address the material misrepresentation in Defendants' reply brief in support of their pending motion for judgment on the pleadings and requested that Defendants' counsel correct the misstatement, but Defendants' counsel would not agree to do so.

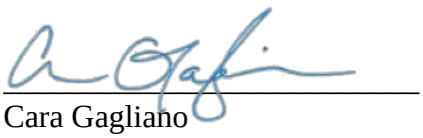
11. On October 30, 2023, I emailed Defendants' counsel to confirm his representation that Defendants do not intend to withdraw their argument that Mr. Greenberg failed to grieve the mail policy, and asked whether Defendants would oppose Plaintiffs' motion for leave to file a sur-reply responding to Defendants' new argument and evidence.

12. Defendants' counsel responded that same day, reiterating their intent to file a custodian of records declaration explaining that they investigated the grievance we provided to them; that the County has no record of it ever being filed; and that Defendants can neither confirm the authenticity of the grievance nor conclude that it is forged. Defendants' counsel also explained his plans to file his own declaration explaining how he received the grievance from me and shared it with Defendants for analysis. Defendants' counsel stated that they would not oppose Plaintiffs' motion for leave to file a sur-reply.

13. On October 31, 2023, I replied to Defendants' counsel's email to clarify whether he planned to inform the Court that Defendants no longer assert that Mr. Greenberg failed to file a grievance challenging the mail policy as a basis for their motion for judgement on the pleadings. I informed Defendants' counsel that if Defendants agreed to withdraw the argument in their reply brief and amend their Supplemental Request for Judicial Notice to omit Mr. Greenberg's unrelated grievances, we could likely avoid filing a sur-reply and an opposition to the Supplemental Request for Judicial Notice.

14. Later that day, Defendants' counsel responded that he would not agree to amend Defendants' reply brief. He did not respond to my request that he amend Defendants' Supplemental Request for Judicial Notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed this 7th day of November, 2023, at Brooklyn, New York



Cara Gagliano

Exhibit 1

San Mateo County Jail Facilities
Inmate Grievance Form

Routing: Staff Only
- [x] Administration
- [ ] Other
- [ ] Classification
- [ ] Medical
- [ ] Food Service

Received: Staff Only
Date 10/20/22
Time 02
Facility MSRC
Deputy KRUMSING

To: (Shift Sergeant) ~~Loobat (or other duty Commander)~~ Cathright **Date** 10/20/22

From: (Inmate's Name) Zachary Greenberg **Id#** 1234307 **Cell** 1M3

Grievance (Please be specific: time, date, etc.) I have been denied personal Mail addressed to me while incarcerated at Maple St. facility San Mateo County Jail from family, loved ones and other personal correspondents for the past 18 Months in violation of my Constitutional Rights Under 8th Amendment not to be subject to cruel and unusual Punishment, and under the 14th Amendment not to be deprived of property. As of April 6, 2022 myself and other inmates were forced to accept personal mail being sent to "Smart Jail Mail" and Scanned, then Shredded. Inmates were told via tablet and Kiosk login screen "This facility will no longer act as a mail receiving agent for regular Mail and not providing acknowledgement may result in this mail being returned to Sender". Inmates were forced under this policy to accept letters from loved ones being sent to Florida, and then Shredded, or face not having any access (digital only) to such mail/property sent via U.S. Postal Service. This is cruel and unusual punishment. The facility in the same time period began rejecting all books from Amazon in violation of PC 2601. I hereby withdraw consent to this Policy and request to directly receive all Mail. **Inmate's Signature:** [signature]

Note: Upon signing this form take GOLD copy. It contains the grievance procedures.

Supervisor's response:

Signature: **Date:**

White: *Administration* Yellow: *Response to Inmate* Pink: *Staff* Gold: *To Inmate*

Revised 6/15/17