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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.

(***Exempt from Filing Fees pursuant to Government Code § 6103)***

Case No. 23-CIV-01075

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Hon. V. Raymond Swope, Dept. 23

DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEF RE: § 13 ANALYSIS

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I. INTRODUCTION

Plaintiffs have submitted 45 pages of briefing in opposition to the County's motion. These briefs are littered with misrepresentations regarding the health hazards (or supposed lack thereof) posed by Fentanyl and the jurisprudence governing inmate civil rights. But Plaintiffs saved their biggest prevarication for last. They represent that there is no "applicable exception to the warrant requirement" permitting the State to collect and aggregate "non-legal mail sent to its jails." Plaintiffs' Supp. Brief Re § 13 Analysis ("SB") at 6:15-17, 8:4-5. This is *not* true.

"It is settled law" that jailers may "read and copy non-privileged [inmate] mail" without restriction. *Crump v. Gomez* (N.D. Cal. April 27, 1995) 1995 WL 274359, at *2. Further, Plaintiffs' claim that this rule does not apply because of "how" data extracted from mail "is and can be used" is also frivolous. *See* SB at 7:18. Once a jail extracts information from an inmate that he or she has forfeited any "expectation of privacy" to as a consequence of "[l]awful incarceration," the "subsequent use of [that data] … does not create an independent search." *U.S. v. Robinette* (E.D. Cal. Jan. 18, 2013) 2013 WL 211112, *8-9. Thus, "later use" of "lawfully collected communications … is not a separate Fourth Amendment"—or Art. I, § 13[1]—"event" and does not subject the initial search to *any* additional scrutiny. *Muhtorov*, 20 F.4th at 605.

The Third Circuit recently applied these principles in dismissing an inmate's suit involving Smart Communications' services to another jail. *Robinson v. Pa. Dept. of Corr.* (3d Cir. 2021) 851 Fed.App'x 289, 291, 293. Like Plaintiffs, the inmate there claimed Smart's "scann[ing] and convert[ing]" of mail "into digital documents" was a "search and seizure violation" because it "allowed for interception, inspection, storage," and "destruction of mail." *Id.* But this claim was "without merit" because inmates have "no reasonable expectation of privacy to trigger" the Constitution's "search and seizure … protections" in the first place. *Id.* at 293. So too here.

II. ANALYSIS

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

"The California Constitution only prohibits 'unreasonable' [searches]. Reasonable searches

[1] Art. I, § 13 of the California Constitution is hereinafter referred to as "§ 13."

are permitted." *Pac. Lighting Leasing Co.*, 60 Cal.App.3d at 565. A "search is not unreasonable … if there is no reasonable expectation of privacy in the object which is searched." *Fick*, 107 Cal.App.3d at 895. This only exists when the asserted "expectation of privacy" is one "that society is willing to recognize as reasonable." *Magee*, 194 Cal.App.4th at 183. In judging whether this criteria is met, courts "begin with history" by "look[ing] to … the founding era to determine the norms" the Constitution "was meant to preserve." *Va. 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, who is regarded as one of history's greatest advocates for inmate rights, 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*, 1995 WL 274359, at *2. 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 <u>no</u> right of privacy in a detention facility***." *Von Villas*, 11 Cal.App.4th at 212 (emphasis added). Rather, "in the jail house the age-old truism still obtains: Walls have ears." *Ahmad A.*, 215 Cal.App.3d at 536. Seeking to avoid this hornbook law, 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. But "under the doctrine of stare decisis" 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. *Solorzano*, 153 Cal.App.4th at 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.* (emphasis added). 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).

As Judge Koh held, ***this rule*** "***applies equally to an inmate's incoming mail***." *Treglia*, 2012 WL 3731774, at *3 (citing *Hudson*, 468 U.S. at 527-28) (emphasis added). As Judge Patel held: "***It is settled law that prisoners have no legitimate expectation of privacy in their [nonprivileged] correspondence***." *Crump*, 1995 WL 274359, at *2 (emphasis added). Thus, jailers may "***read and copy non-privileged [inmate] mail***" ***without restriction***. *Id.* (emphasis added). 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 (emphasis added). 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." 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 Release 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.* They claimed that 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.

If this clear precedent left any doubt regarding the fate of Plaintiffs' bogus claims, the Third Circuit's recent ruling in *Robinson* definitively disposes of that doubt. There, an inmate alleged Smart's "scann[ing] and convert[ing]" of mail "into digital documents" constituted a "search and seizure violation." 851 Fed.App'x 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. So too here.

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. Not so. In *truth*, once a jail extracts information from an inmate that he or she has forfeited any "expectation of privacy" to 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***." *Robinette*, 2013 WL 211112, at *8-9 (emphasis added). Cases upholding this proposition are legion.[2]

[2] *E.g.*, *Muhtorov*, 20 F.4th at 605 ("later use" of "lawfully collected communications … is not a

Robinette is instructive. Robinette, a prisoner awaiting trial in California, 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. But, 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."[3] *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). Mirroring Plaintiffs' arguments here, he argued that the DNA-collection policy was verboten because after an 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

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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).

[3] As Judge Breyer held, warrantless DNA extractions are reasonable because an inmate has "a diminished expectation of privacy in his own identity" based on the "[p]robable cause" shown to justify his arrest and detention. *Haskell v. Brown* (N.D. Cal. 2009) 677 F.Supp.2d 1187, 1197.

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).

But 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 (emphasis added). 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 (emphasis added). This *is* the law.

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 dooms 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. So too here.

C. Plaintiffs' Trespass Theory Is Frivolous.

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's "prohibition is against Unreasonable searches and seizures, not trespasses." *Cowing*, 60 Cal.App.3d at 763. *Jones* is a "new rule that constitutes a clear break" from prior law. *Smith*, 741 F.3d at 1221. It only changed the definition of a "'search' within the meaning of the Fourth Amendment." *Jones*, 565 U.S. at 405. No court has revived the trespass theory under § 13. Indeed, § 13 is narrower than the Fourth Amendment in that it does not even include an exclusionary rule. It "forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search" unless exclusion is required by the Fourth Amendment. *Camacho*, 23 Cal.4th at 830. But even if *Jones* applied to § 13, Plaintiffs' argument still fails for two independent reasons.

1. A Jail Is Not a Constitutionally Protected Area Under the *Jones* Test.

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 represent that *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. Not true. In *truth*, 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. *Doyon*, 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.* Likewise, "airport screens of … luggage"—which also involve trespasses to chattels—are legal because airport screening areas are not constitutionally protected areas. *Verdun*, 51 F.4th at 1039. Indeed, the reason the Warren Court abandoned the trespass theory in favor *Katz*'s "expectation of privacy" test is that the *Jones* rule is "single-mindedly focused" on whether searches occurred in designated, pre-approved "areas" and

ignores the fact that the Constitution "'protects people not places.'" *U.S. v. Brock* (9th Cir. 1982) 667 F.2d 1311, 1325 (Fletcher, J., concurring) (quoting *Katz*, 398 U.S. at 351-52).

Jones involved an intrusion on a car. "An automobile" *is* "a constitutionally protected area." *Lanza*, 370 U.S. at 142-43. But a "jail" 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.* A "jail" is like "an open field." *Paul*, 614 F.2d at 119 (Phillips, J., concurring). 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*** …."[4] *Lanza*, 370 U.S. at 143 (emphasis added). This *is* the law.

2. 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 policy—which Plaintiffs purportedly seek to restore—required officers to open mail and inspect it "for the presence of drugs or other threats." AC ¶ 31. As Judge Tigar recognized, a common law "trespass" occurs whenever one makes "physical contact with [another's] chattel." *Bui-Ford*, 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 was a "constitutionally protected area," inmate mail could *never* be inspected. This is clearly *not* the law.

III. CONCLUSION

The Court should strike Plaintiffs' search-and-seizure claim without leave to amend.

DATED: March 13, 2024

Respectfully submitted,

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By: _____

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[4] Plaintiffs also claim the "destruction of [inmate] mail" is a trespassory seizure because it results in the dispossession of property. *See* SB at 8:8-17. This is wrong for two reasons. First, as explained herein and in Part II-C-2, *infra*, *Jones*'s theory does *not* apply in jails. Second, as the Court noted during the January 31 hearing, Plaintiffs' mail is *not* destroyed. It is provided in digital form. Thus, Plaintiffs' seizure argument is also frivolous.

PROOF OF SERVICE

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

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Caroline Pfahl

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Case No. 23-CIV-01075

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