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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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. 3:23-cv-1865-JSC

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS

Date: September 7, 2023
Time: 10:00 A.M.
Courtroom: 8
Judge: Hon. Jacqueline Scott Corley

Trial Date: TBD

Pursuant to Federal Rule of Evidence 201, Defendants the County of San Mateo and Christina Corpus, in her official capacity as Sheriff of San Mateo County (collectively "Defendants") hereby respectfully request that the Court take judicial notice of the materials described below and attached hereto in its consideration of the moving Defendants' Motion for Judgment on the Pleadings filed herewith.

The Court may properly take notice of "a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). In ruling on a motion for judgment on the pleadings, courts may consider documents attached to the complaint, documents incorporated by reference into the complaint, or matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). Accordingly, Defendants request the Court take judicial notice of the following:

1. Policy 612 "Inmate Grievances" of the San Mateo County Sheriff's Office Corrections Procedures Manual. It is settled that jail grievance policies are judicially noticeable materials. *E.g.*, *Brown v. Valoff*, 422 F.3d 926, 931 n.7, n.9 (9th Cir. 2005) (taking judicial notice of prison's Department Operations Manual and California Department of Correction Administrative Bulletin); *Rosenberg v. Cornell Corp.*, No. 07-cv-4690-PJH, 2009 WL 5069141, at *6 (N.D. Cal. Dec. 17, 2009) (taking judicial notice of facility's grievance procedures that are consistent with the Bureau of Prison's regulations). Thus, the Court must take judicial notice of the San Mateo County Sheriff's Office's Inmate Grievance Procedure as that document is "not subject to reasonable dispute" and "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Mangiaracina v. Penzone*, 849 F.3d 1191, 1193 n.1 (9th Cir. 2017) (quoting Fed. R. Evid. 201(b)(2)). A true and correct copy of Policy 612 "Inmate Grievances" of the San Mateo County Sheriff's Office Corrections Procedures Manual is attached hereto as **Exhibit A**.

2. The results of records searches from the California Secretary of State website including: (1) "A.B.O. Comix" and (2) "ABO Comix." It is likewise settled that record searches using the California Secretary of State's website are judicially noticeable. *E.g.*, *L'Garde, Inc. v.*

Raytheon Space & Airborne Sys., 805 F.Supp.2d 932, 937 (C.D. Cal. 2011) (finding it appropriate to take judicial notice of results of records searches on the California Secretary of State's corporate search website); *see also Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (taking judicial notice of information on a government-administered website whose accuracy was undisputed); *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015) ("Under Rule 201, the court can take judicial notice of '[p]ublic records and government documents available from reliable sources on the Internet,' such as websites run by governmental agencies." (citation omitted and alteration in original)). Here, Defendants' counsel performed searches on the California Secretary of State's website, at https://bizfileonline.sos.ca.gov/search/business, without date restrictions in an attempt to determine if the Secretary of State had any record of any corporation, limited liability company, or limited partnership of record named "A.B.O. Comix" or "ABO Comix" that is authorized do to business in the State of California. These searches revealed that the Secretary of State has no record of A.B.O. Comix or "ABO Comix."

A true and correct copy of the search revealing the California Secretary of State has no record of "A.B.O. Comix" is attached hereto as **Exhibit B**. A true and correct copy of the search revealing the California Secretary of State has no record of "ABO Comix" is attached hereto as **Exhibit C**.

DATED: June 23, 2023

Respectfully submitted,

BARTKO ZANKEL BUNZEL & MILLER

By: _____

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EXHIBIT A

Inmate Grievances

612.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process by which inmates may file grievances and receive a formal review regarding the conditions of their confinement.

612.2 POLICY

It is the policy of this office that any inmate may file a grievance relating to conditions of confinement, which includes release date, housing, medical care, food services, hygiene and sanitation needs, recreation opportunities, classification actions, disciplinary actions, program participation, telephone and mail use procedures, visiting procedures and allegations of sexual abuse (15 CCR 1073).

Grievances will not be accepted if they are challenging the rules and policies themselves, state or local laws, court decisions and probation/parole actions.

Retaliation for use of the grievance system is prohibited.

612.3 INMATE GRIEVANCE PROCEDURES

Staff shall attempt to informally resolve all grievances at the lowest level. All attempts to resolve a grievance shall be documented in the inmate's file. If there is no resolution at this level, the inmate may request a grievance form.

The inmate should be advised to complete the form and return it to any staff member. A grievance should be filed by an inmate within 14 days of the complaint or issue.

Inmates cannot file a grievance on behalf of another inmate but an inmate may assist another inmate in the preparation of a grievance. Custody staff may take reasonable steps to assist the inmate in the preparation of a grievance if requested.

Upon receiving a completed inmate grievance form, the staff member shall acknowledge receipt of the grievance by signing the form and giving a copy to the inmate. The staff member receiving the form shall gather all associated paperwork and reports and immediately forward it to a supervisor.

612.3.1 EXCEPTION TO INITIAL GRIEVANCE FILING

Inmates may request to submit the grievance directly to a supervisor or mail it directly to the Division Commander if they reasonably believe the issues to be grieved are sensitive or that their safety would be in jeopardy if the contents of the grievance were to become known to other inmates.

Inmates with limited access to mail privileges, who are in segregation units or are indigent may deposit their grievances in the locked grievance box within their housing unit or place their grievance in a sealed envelope labeled "Grievance" and deposit it in the regular mail boxes. These envelopes will be delivered directly to the Division Commander and not forwarded to the United States Postal Service.

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612.3.2 TIMELY RESOLUTION OF GRIEVANCES

Upon 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. The supervisor shall assign the investigation of the grievance to the manager in charge of the department the inmate is grieving.

Grievances related to medical care should be investigated by the medical staff or the authorized designee. The findings of that investigation, along with any recommendations, shall be forwarded to the sergeant. Any appeals of the findings of the medical staff shall be forward to the Division Commander as the final level of appeal.

Grievances about food-related matters should be investigated by the food services manager. The findings of that investigation, along with any recommendations, shall be forwarded to the sergeant. Any appeals shall be forwarded to the Division Commander as the final level of appeal.

Other grievances relating to programs or other services provided by the Office shall be investigated by the custody staff with the assistance of the supervising employee in charge of those services. Findings relating to the investigation will be forwarded to the sergeant. Any appeals shall be forwarded to the Division Commander as the final level of appeal.

612.3.3 APPEALS TO GRIEVANCE FINDINGS

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. If the Division Commander confirms the grievance, he/she will initiate corrective actions. In either case, the inmate shall receive a written response to the appeal.

Appeals related to sexual abuse allegations shall be confirmed or denied by the Division Commander within 10 calendar days.

612.3.4 RECORDING GRIEVANCES

The Division Commander should maintain a grievance log in a central location accessible to all supervisors. The supervisor who originally receives a grievance shall record the grievance, along with its finding, on the grievance log. Periodic reviews of the log should be made by the Division Commander or the authorized designee to ensure that grievances are being handled properly and in a timely manner. A copy of each grievance should be filed in the inmate's official record and maintained throughout the inmate's period of incarceration.

The original grievance should be retained in a file maintained by the Division Commander or the authorized designee, and shall be retained in accordance with established records retention schedules.

612.3.5 FRIVOLOUS GRIEVANCES

Inmates shall use the grievance process only for legitimate problems or complaints. If there is concern that an inmate is abusing the grievance process, he/she shall be informed that continued behavior may result in disciplinary action.

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612.4 GRIEVANCE AUDITS

The Division Commander should perform an annual audit of all inmate grievances and complaints filed the previous calendar year. The Division Commander should forward a memorandum to the Sheriff detailing the findings, including recommendations regarding any changes to policy or procedures or any additional training that might be warranted to reduce future complaints. Specific identifying information regarding dates, times or individuals named in the complaints is not part of this process and should not be included in the memorandum.

The Sheriff should evaluate the recommendations and ensure appropriate action is taken.

Any training issues identified as a result of this audit should be forwarded to the Training Manager, who will be responsible for ensuring all necessary and required training is scheduled and completed.

612.5 TRAINING

The Training Manager shall ensure that all custody staff receive initial and periodic training regarding all aspects of this policy. All training delivered should include testing to document that the employee understands the subject matter.

612.6 ADDITIONAL PROVISIONS FOR GRIEVANCES RELATED TO SEXUAL ABUSE

The following apply to grievances that relate to sexual abuse allegations (28 CFR 115.52; 15 CCR 1029):

(a) Inmates may submit a grievance regarding an allegation of sexual abuse at any time.

(b) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, are permitted to assist inmates in filing such grievances and to file such grievances on behalf of inmates if the inmate agrees to have the grievance filed on his/her behalf. Staff members who receive a grievance filed by a third party on behalf of an inmate shall inquire whether the inmate wishes to have the grievance processed and shall document the inmate's decision.

(c) Grievances may be submitted to any staff member and need not be submitted to the member who is the subject of the complaint

(d) Staff receiving a grievance shall forward the grievance to a supervisor. Grievances shall not be forwarded to any supervisor who is the subject of the complaint. The supervisor receiving the grievance shall refer the grievance to the Watch Commander for investigation. Inmates and staff are not required to attempt to informally resolve grievances related to sexual abuse.

(e) The Watch Commander shall ensure that grievances related to sexual abuse are investigated and resolved within 90 days of the initial filing. The Watch Commander may grant an extension of up to 70 days if reasonable to make an appropriate decision. If an extension is granted, the inmate shall be notified in writing and provided a date by which a decision will be made.

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(f) At any level of the process, including the appeal, if the inmate does not receive a response within the allotted time, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(g) Inmates may be disciplined for filing a false grievance related to alleged sexual abuse only when it is determined that the inmate filed the grievance in bad faith.

612.6.1 EMERGENCY GRIEVANCES RELATED TO SEXUAL ABUSE

Any inmate who believes he/she or any other inmate is in substantial risk of imminent sexual abuse may file an emergency grievance with any supervisor. The supervisor shall determine whether immediate action is reasonably necessary to protect the inmate and shall provide an initial response within 48 hours.

The supervisor shall refer the grievance to the Watch Commander, who will investigate and issue a final decision within five calendar days.

The initial response and final decision shall be documented and shall include a determination whether the inmate is in substantial risk of imminent sexual abuse and identify actions taken in response to the emergency grievance (28 CFR 115.52).

612.7 ACCESS TO THE GRIEVANCE SYSTEM

All inmates shall be provided with a grievance process for resolving complaints arising from facility matters with at least one level of appeal.

Inmates will receive information concerning the grievance procedure during the orientation process. Information will also be contained in the inmate handbook. Information regarding the grievance process will be provided to inmates in the language they understand.

The information will include (15 CCR 1073(a) and (b)):

(a) A grievance form or instructions for registering a grievance.

(b) Instructions for the resolution of the grievance at the lowest appropriate staff level.

(c) The appeal process to the next level of review.

(d) Written reasons for denial of a grievance at each level of review.

(e) A provision of required timeframes for responses.

(f) A provision for resolving questions of jurisdiction within the facility.

(g) Consequences for abusing the grievance system.

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EXHIBIT B

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Business Search

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*Currently, information for Limited Liability Partnerships (e.g. law firms, architecture firms, engineering firms, public accountancy firms, and land survey firms), General Partnerships, and other entity types are **not contained** in the California Business Search. If you wish to obtain information about LLPs and GPs, submit a Business Entities Order paper form to request copies of filings for these entity types. Note: This search is not intended to serve as a name reservation search. To reserve an entity name, select Forms on the left panel and select Entity Name Reservation ? Corporation, LLC, LP.*

Basic Search

*A Basic search can be performed using an entity name or entity number. When conducting a search by an entity number, where applicable, **remove "C"** from the entity number. Note, **a basic search** will search **only ACTIVE entities** (Corporations, Limited Liability Companies, Limited Partnerships, Cooperatives, Name Reservations, Foreign Name Reservations, Unincorporated Common Interest Developments, and Out of State Associations). The basic search performs a contains ?keyword? search. The Advanced search allows for a ?starts with? filter. To search entities that have a status other than active or to refine search criteria, use the **Advanced** search feature.*

Advanced Search

An Advanced search is required when searching for publicly traded disclosure information or a status other than active.

An Advanced search allows for searching by specific entity types (e.g., Nonprofit Mutual Benefit Corporation) or by entity groups (e.g., All Corporations) as well as searching by ?begins with? specific search criteria.

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Home

Search

Forms

Help

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A.B.O. Comix

Advanced

No results were found for "A.B.O. Comix"

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Home

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Forms

Help

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