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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

MOTION FOR JUDGMENT ON PLEADINGS BY DEFENDANTS COUNTY OF SAN MATEO AND CHRISTINA CORPUS
TENTATIVE RULING:

The motion for judgment on the pleadings, filed by Defendant County of San Mateo and Christina Corpus, is GRANTED IN PART, AND DENIED IN PART, as set forth below.

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."

V. COUNT 2 – SEARCH AND SEIZURE CLAIM

The motion is GRANTED as to Count 2.

A. Incarcerated Plaintiffs

Incarcerated persons have no reasonable expectation of privacy. (People v. Loyd (2002) 27 Cal.4th 997, 1002.) Plaintiffs do not dispute this rule of law but argue that technological advances mean that this rule should no longer apply. A trial court, however, has no power to make changes in the law or to diverge from settled law.