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COUNTY OF SAN MATEO
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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.

Case No. 23-CIV-01075

Assigned for All Purposes to:
Hon. V. Raymond Swope, Dept. 23

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

Date: December 4, 2023
Time: 2:00 PM
Dept.: 23

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

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I. INTRODUCTION

The law governing this case is crystal clear. First, "a prisoner has no expectation of privacy with respect to [non-legal] letters posted by him." *People v. Garvey* (1979) 99 Cal.App.3d 320, 323. Thus, Plaintiffs' search-and-seizure claim is objectively frivolous. Second, *all* prisoner free-speech claims under California law are "governed by the high court's test in *Turner*." *Thompson v. Dep't of Corr.* (2001) 25 Cal.4th 117, 130. *Turner* is a "highly deferential" rational-basis test which upholds jail rules unless the *inmate proves* they are not "reasonably related to legitimate penological interests." *People v. Martinez* (2023) 15 Cal.5th 326, 348. And a policy of digitizing "all incoming inmate mail" and providing copies on "tablets" "more than satisfie[s]" *Turner*'s test. *Human Rights Def. Ctr. v. Bd. of Cnty. Com'rs* (D.N.H. 2023) __ F.Supp.3d __, 2023 WL 1473863, at *8 ("*HRDC*"). Providing copies on "kiosks" is also "an adequate substitute for … paper copies" of mail. *Honea*, 876 F.3d at 970, 976. Here, the County "digitiz[es] incoming mail" and provides copies "via tablets" *and* "kiosks."[1] Thus, Plaintiffs' speech claim fails too.

Seeking to avoid these two incontrovertible truths, Plaintiffs resort to deception. They misrepresent myriad cases to suggest California applies a made up "intermediate scrutiny" test to jail mail rules despite our high court's holding that the separation of powers requires *Turner*'s test and that U.S. Supreme Court dicta discussing smart phones overruled the rule that no expectation of privacy exists within prison walls. They also misstate the facts and holdings of the County's cases. And—in a baffling display of cognitive dissonance—they deny the threat fentanyl poses to inmates. These fabrications are unmasked in detail below. *See*, *infra*, at 8:7-9:10; 9:19-25; 10:19-11:2; 11:9-12:14; 13:15-21; 14:20-22; 15:1-7; 15:22-25. But in the end, Plaintiffs' sound and fury signifies nothing. They cannot obscure the fact that Hornbook constitutional law bars their claims.

II. ANALYSIS

A. Plaintiffs' Search-and-Seizure Claims Are Frivolous

A "person incarcerated in a jail" has "no justifiable expectation of privacy." *Loyd*, 27 Cal.4th at 1001. "California law permits law enforcement officers to monitor … [inmate]

[1] RJN, Ex. A ¶¶ 26, 32. Exhibit A, the Amended Complaint, is hereinafter referred to as "AC."

communications" *at any time for any reason or no reason at all*. *Id.* at 1003-04, 1010. This applies to mail. In *Garvey*, a prisoner "in jail awaiting trial" for battery "wrote to a friend" admitting he "kick[ed]" the victim. 99 Cal.App.3d at 322. "The jailer monitoring outgoing mail copied [the] letter" and provided it to the prosecutor. *Id.* This did not violate the prisoner's rights. *Id.* "Except where the communication is … addressed to an attorney, court, or public official, a prisoner has no expectation of privacy with respect to letters posted by him." *Id.* at 323. ***This is the law***.

Seeking to avoid this truth, Plaintiffs cite a recent U.S. Supreme Court case speculating that advances in "digital technology" may one day require a reevaluation of certain aspects of search-and-seizure law. *See* Opp. at 15:25-27. But this dictum addressed "the modern cell phone." *Carpenter v. U.S.* (2018) 138 S. Ct. 2206, 2214, 2216. This reevaluation—if it happens—will expand protections in places where expectations of privacy are *already recognized*. For example, California law recognized long ago that (outside the prison context) individuals have "a reasonable expectation of privacy" in their "telephone records." *People v. McKunes* (1975) 51 Cal.App.3d 487, 492. *Carpenter* merely suggested this *existing* protection may be expanded. *Carpenter*, 138 S.Ct. at 2214, 2216. But it is settled that "a jail shares none of the attributes of privacy of a home, an automobile, an office"—or a "telephone." *People v. Califano* (1970) 5 Cal.App.3d 476, 481. In jails "official surveillance" is "the order of the day." *Loyd*, 27 Cal.4th at 1002. And "a prisoner has no expectation of privacy with respect to letters posted by him." *Garvey*, 99 Cal.App.3d at 323.

Plaintiffs also claim *U.S. v. Jones* (2012) 565 U.S. 400 shows the policy violates Article I, § 13 because it "involves a physical trespass." Opp. at 18:14-15. Not so. *Jones* incorporated the King's Bench's pre-revolution decision in *Entick v Carrington* (C.P. 1765) 95 Eng. Rep. 807 into Fourth Amendment law, holding that "installing a GPS [tracking] device" on a car requires a search warrant. 565 U.S. at 402, 404-05. *Entick* equated a "search" with a "common-law trespass." *Id.* Based on this, *Jones* held a "'search' within the meaning of the Fourth Amendment" occurs when "[t]he Government physically occupie[s] private property" to "obtain[] information." *Id.* This has no bearing here. Even if the physical touching and scanning of mail is a *search*, no constitutional rights are implicated. The Fourth Amendment and California Constitution do not bar *searches*. They "merely prohibit searches that are 'unreasonable.'" *Cal. v. Acevedo* (1991) 500

U.S. 565, 581. "Reasonable searches are permitted." *Greyhound Corp. v. Sup. Ct.* (1961) 56 Cal.2d 355, 394. A "search" clearly occurs every time jail staff "opens … mail prior to delivery to inmates." *Morgan v. New* (S.D. Ill. Jan. 13, 2021) 2021 WL 122957, at *1. If Plaintiffs were right, a warrant would be needed to open inmate mail. This is *not* so because searches of inmate mail—whether by opening it or trespassing on it—are *always* reasonable. *Loyd*, 27 Cal.4th at 1002.

Even if *Jones* applied to jail searches (it doesn't), Plaintiffs still lose. *Jones* is a "new rule that constitutes a clear break" from prior Fourth Amendment law. *U.S. v. Smith* (11th Cir. 2013) 741 F.3d 1211, 1221. It only changed the definition of a "'search' within the meaning of the Fourth Amendment." *Jones*, 565 U.S. at 405. It remains the law that Article I, § 13's "prohibition is against Unreasonable searches and seizures, not trespasses." *Cowing*, 60 Cal.App.3d at 763.

B. Plaintiffs' Speech Claim Is Frivolous

1. Section 2600 Applies to Claims Under California's Constitution

California codified inmate speech rights in Penal Code § 2600. *Cnty. of Nev.*, 236 Cal.App.4th at 1009 fn. 2. The law is "designed to conform California law to the decision in *Turner*." *Id.* Plaintiffs posit *Turner* does not apply because § 2600 does "not supplant … the independent protections of California's Constitution." Opp. at 12:5-7. Not so. Section 2600 embodies the sum total of *all* an inmate's "***statutory as well as constitutional rights***" under California law. *Qawi*, 32 Cal.4th at 21 (emphasis added); *accord e.g.*, *Thompson*, 25 Cal.4th at 129; *Snow*, 128 Cal.App.4th at 389, 390 fn. 3. Plaintiffs claim these cases did "not purport to impose limitations on … independent constitutional guarantees," but rather only involved suits brought under § 2600 itself. Opp. at 12:9-13. Not so. The *Thompson* inmate asserted "federal and state constitutional rights." *Thompson*, 25 Cal.4th at 121. Likewise, the inmate in *Snow* targeted a rule barring inmate mail showing "frontal nudity." 128 Cal.App.4th at 387, 394. He claimed it "violate[d] the federal and California Constitutions." *Id.* at 389. *Turner* applied because "the Legislature adopted the *Turner* rule when it amended [§ 2600]" in 1994. *Id.* at 389-90 & fn. 3.

2. California's Constitution Gives Inmates *No* Independent Protections

Plaintiffs claim "*Turner* does not account for the broader free speech protections [of] the California Constitution." Opp. at 6:19-20. Again, not so. California's *Constitution* affords inmates

no independent civil rights. From its admission into the Union in "1850 through 1975," California law subjected inmates to the "doctrine of 'civil death.'" *People v. Ansell* (2001) 25 Cal.4th 868, 872 fn. 2. This "is the state of a person who, though possessing natural life, has lost all his civil rights." *In re Donnelly's Estate* (1899) 125 Cal. 417, 419. "The only remaining right or privilege" a prisoner could "forfeit [wa]s his physical life." *Ex parte Finley* (1905) 1 Cal.App. 198, 202. This was a distinctly state-law status. "There [was] no provision for civil death in the law of the United States." *Hayashi v. Lorenze* (1954) 42 Cal.2d 848, 852.

California's courts held "[t]here [was] no merit [to the] contention[]" that the State's civil death statute was "unconstitutional." *Snebold v. Justice Ct.* (1962) 201 Cal.App.2d 152, 153. The State's Constitution thus permits the Legislature to "suspend[] all [of an inmate's] civil rights." *Id.* In 1969, the *U.S.* Supreme Court struck down a Tennessee civil death law. *Johnson .v. Avery* (1969) 393 U.S. 483, 484, 490. This led to the realization that all state "civil death" laws violated "the First and Fourteenth Amendments." *Thompson v. Bond* (W.D. Mo. 1976) 421 F.Supp. 878, 881, 885-86. This motivated California's Legislature to ***statutorily*** bring state law in line with federal law. In 1975, it replaced § 2600's "civil death" law with "language allowing prisoners to be deprived" of "only such rights," as are "reasonably related to legitimate penological interests." *Ansell*, 25 Cal.4th at 872 fn. 2. And, in 1994, "in consideration of *Turner*," it further "amended [§ 2600]" to "conform California law to … *Turner*." *Cnty. of Nev.*. 236 Cal.App.4th at 1009 fn. 2.

Plaintiffs misrepresent *Payne v. Sup. Ct.* (1976) 17 Cal.3d 908, which they assert held inmate speech rights are "in no way affected by [§ 2600], once known as a 'civil death' statute." Opp. at 12:8-9. But *Payne* held the opposite. There, an inmate was subjected to a default judgment because the "civil death" law in effect at the time of the judgment said a "prisoner [could] be sued civilly" but prohibited the prisoner from "defend[ing] against that suit." *Payne*, 17 Cal.3d at 912-13. The Court vacated the judgment because the law violated the *federal* Constitution as "the [U.S.] Supreme Court [had] recognized" a *federal* " right of access to the courts for … prisoners." *Id.* at 914. The Court cited § 2600 to recognize that it *no longer* contradicted federal law because the Legislature had recently amended it to conform to federal standards. "At the time proceedings were initiated," § 2600 "suspend[ed] all civil liberties of a prisoner." *Id.* at 912-13. But while the

case was on appeal the Legislature "amend[ed] [§] 2600 to provide that a prisoner" may only "be deprived of … rights" as are reasonably related to legitimate penological interests. *Id.*

Both § 2600 and *Turner* bar civil death. But this protection arises from § 2600 and the *federal* Constitution alone. "There is no merit [to the] contention[]" that California's Constitution invalidates laws "suspend[ing] all [of an inmate's] civil rights." *Snebold*, 201 Cal.App.2d at 153.

3. Futilely Attempting to Avoid *Turner*, Plaintiffs Misrepresent the Law

Pursuant to § 2600, *Turner* governs all speech challenges to rules regulating prisoners' access to "material received by way of U.S. Mail." *Collins*, 86 Cal.App.4th at 1181, 1185; *accord Snow*, 128 Cal.App.4th at 387. Plaintiffs cite three cases, which they claim hold jail mail rules are subject to "intermediate scrutiny," not *Turner*. Opp. at 11:8-28. These cases said no such thing.

First, Plaintiffs cite *Prisoners Union v. Dep't of Corr.* (1982) 135 Cal.App.3d 930—decided four years before *Turner*. *Prisoners Union* merely held a jail's power to regulate for "legitimate penological objectives" did not permit it to ban non-inmates from handing out leaflets to other non-inmates "in a public parking lot" that was "outside prison walls." *Id.* at 932, 937. *Turner* only governs "those on the 'outside' who" *go behind* "prison walls … in person or through the written word." *Collins*, 86 Cal.App.4th at 1181-82. *Prisoners Union* made clear its holding had no application to rules governing outsiders' acts "within the prison walls." 135 Cal.App.3d at 938.

Second, Plaintiffs claim *Martinez*, 15 Cal.5th 326 suggested "intermediate scrutiny," not *Turner*, governs rules regulating outsiders' "business arrangements with [inmates]." Opp. at 11:24-12:1. Not so. *Martinez* addressed a rule barring bail bondsmen from contracting with "inmates to be notified when individuals have recently been arrested." 15 Cal.5th at 74. The court considered whether it should be assessed under "the intermediate scrutiny" test applied to ads and other "commercial speech" or *Turner*'s test. 15 Cal.5th at 345, 348. "[I]t [was] unclear whether *Turner*" applied because it "is based on the 'considerable deference' owed 'to the determinations of prison administrators,'" but the rule "was promulgated by the Insurance Commissioner" not a jail administrator. *Id.* at 349-50. Applying the constitutional avoidance canon,[2] *Martinez* held "it

[2] The avoidance canon counsels courts to "avoid the decision of [unnecessary] constitutional questions." *Clark v. Martinez* (2005) 543 U.S. 371, 381.

[wa]s unnecessary" to decide this question because the rule passed both tests. *Id.* at 350, 355-59.

Third, Plaintiffs claim *Cal. First Amend. Coal. v. Woodford* (9th Cir. 2002) 299 F.3d 868 suggested a more rigorous standard applies to rules governing outsiders' communications with prisoners. Opp. at 12:1-3. *Woodford* addressed a rule barring witnesses at executions from "observ[ing] the insertion of … intravenous lines." 299 F.3d at 871. Rather than rejecting *Turner*, the court *applied the test* to invalidate the rule. *Id.* at 879. The line Plaintiffs cite noted that "[t]he Supreme Court has never applied *Turner*" to a rule "centrally concerned with restricting the rights of outsiders." *Id.* at 878. *Turner* has only been applied to rules "centrally concerned with … prisoners" that *incidentally apply to* outsiders. *Id.* But it is clear that *Turner* and § 2600 govern rules targeting communications from "those on the 'outside' who seek to enter" jails "through the written word"—including by using the "mail." *Collins*, 86 Cal.App.4th at 1182, 1185.

Plaintiffs conjured their "intermediate scrutiny" argument out of whole cloth. In reality, the "separation of powers" mandates *Turner*'s deference because jail administration is "particularly within the province of the legislative and executive branches." *Jenkins*, 50 Cal.4th at 1175.

4. Plaintiffs' Pleaded Facts Show the Mail Policy Satisfies *Turner*

Plaintiffs claim *Turner* "is a fact-bound inquiry that generally cannot be satisfied at the pleading stage before jail administrators introduce competent evidence of their own." Opp. at 13:25-27. But a complaint may be dismissed on the pleadings when it "includes allegations" that "disclose [a] bar to recovery." *Rossi v. Sequoia Union Elem. Sch.* (2023) 94 Cal.App.5th 974, 985. For this reason "dismissal on the pleadings" is appropriate under the *Turner* test if the complaint identifies the asserted state interest and "a common sense connection exists between the prison regulation and … [that] interest." *Whitmire v. Ariz.* (9th Cir. 2002) 298 F.3d 1134, 1136.

Applying this rule, *Fields v. Paramo* dismissed an inmate's suit on the pleadings because his complaint showed "all four *Turner* factors favor[ed] [the] defendants." 2019 WL 4640502, at *6. He alleged a jail's rule denying him the right to be circumcised violated the First Amendment.[3] *Id.* at *2, *4. His complaint acknowledged the jail denied his request because its rules limited

[3] Inmate free exercise of religion claims, like free speech claims, are evaluated using the "four factors identified … in *Turner*." *Fields*, 2019 WL 4640502, at *4.

"health care services" to cases of "medical necessity." Supp. RJN, Ex. G at 8-9. Based on this, the court held the rules satisfied "all four *Turner* factors" because precedent held procedures "that are not medically necessary … have the potential to pose problems related to the alteration and/or removal of identifying characteristics that may be needed for identification purposes." *Fields*, 2019 WL 4640502, at *5 (citing *Vega v. Lantz* (D. Conn. Nov. 26, 2013) 2013 WL 6191855, at *6). As in *Fields*, the AC admits *why* the County enacted the policy: "the County's then-Sheriff … announced that the … policy [is] meant to prioritize ... safety" due to "concerns about fentanyl exposures." AC ¶ 9. Because "a common sense connection exists between the [mail policy] and … [that] interest," Plaintiffs' speech claim fails as a matter of law. *See Whitmire*, 298 F.3d at 1136.

a. The Mail Policy Furthers Legitimate Penological Objectives

Turner's first prong asks if "there is a rational relationship between the [policy] … and a legitimate penological interest." *Snow*, 128 Cal.App.4th at 391. Plaintiffs claim the County "has not shown that the mail policy is rationally related to any legitimate penological goals." Opp. at 13:1-2. But "[t]he burden is on the inmates"—*not jails*—"to show that the challenged [policy] is unreasonable under *Turner*." *Casey v. Lewis* (9th Cir. 1993) 4 F.3d 1516, 1520. Plaintiffs also claim the County "never publicly stated" the reason it enacted the policy, or that it was concerned that mail was a "source of fentanyl" intrusion." Opp. at 8:21-23. But the AC admits that in 2021, "the County's then-Sheriff … [publicly] announced [on Facebook] that the County's mail policy [is] meant to prioritize ... safety" due to "concerns about fentanyl exposures" and that its aim is to "keep everyone safe since there ha[ve] been some concerns regarding fentanyl exposures with the old mail system."[4] AC ¶¶ 9, 49. Thus, as in *Fields*, Plaintiffs put the policy's goal in the pleadings.

Reducing entry of "drugs into ... prison" is a "legitimate penological interest[]." *Espinoza*, 192 Cal.App.4th at 108. And "the significant deference granted to corrections officials" bars the weighing of evidence in judging whether a rational relationship exists. *HRDC*, 2023 WL 1473863, at *6. Only "a logical connection to" a "legitimate government interest" is needed to satisfy *Turner*. *Friend*, 923 F.2d at 127. It "makes logical sense" that "bann[ing] … inmate mail" will

[4] If the case proceeds further, the County reserves the right to introduce additional justifications for the mail policy besides the one acknowledged in the AC.

reduce "access to opioids." *HRDC*, 2023 WL 1473863, at *2, *7-8. Fentanyl enters jails "through paper that ha[s] been … treated with illicit substances." *Id.* at *1. Thus, this prong is easily met.

b. The Mail Policy Provides Alternative Means to Use the Mail

Turner's second prong asks if "there are alternative means of exercising the right." *Snow*, 128 Cal.App.4th at 392. The alternative "need not be ideal"—it "need only be available." *Overton*, 539 U.S. at 135. Plaintiffs claim "there are no adequate substitutes for physical mail." Opp. at 14:15. Not so. The County "digitiz[es] incoming mail" and provides copies "via tablets" and "kiosks." AC ¶¶ 26, 32. *Honea* held providing "kiosks" *alone* is "an adequate substitute for … paper copies." 876 F.3d at 970, 976. *HRDC* held making copies "available on ... tablet[s]" *alone* "more than satisfie[s] [*Turner*'s] second prong." 2023 WL 1473863, at *8. Plaintiffs claim *HRDC* and *Honea* only "involved claims regarding paperback books and periodicals, not personal mail." Opp. at 14:21-21. Again, not true. *Honea*'s policy "prohibit[ed] delivery of [all] unsolicited commercial mail to inmates," not just books and magazines. 876 F.3d at 969. And *HRDC*'s policy "ban[ned] all incoming inmate mail" of every description. 2023 WL 1473863, at *1. It banned "***all inmate personal mail from coming into the facility***." Supp. RJN Ex. H at 5 (emphasis added).

c. An Accommodation Would Endanger Inmates and Jail Staff

Turner's third prong asks if "accommodation … will have a significant negative impact on prison guards, other inmates," or "the allocation of prison resources." *Snow*, 128 Cal.App.4th at 393. Fentanyl "pose[s] a risk to the health, safety, and security of the Jail's prisoners and staff." *HRDC*, 2023 WL 1473863, at *1. Plaintiffs claim "incidental fentanyl exposure does not pose a health risk." AC ¶ 9. Not so. "[D]eath can result if just a small amount of [fentanyl] makes contact with a person's skin." *Joseph*, 978 F.3d at 1260. And accommodation will require "allocat[ing] more time, money, and personnel" to inspect for fentanyl. *HRDC*, 2023 WL 1473863, at *8. Further, visually "inspecting incoming mail" is ineffective because "methods for disguising narcotic-treated paper [have] grown increasingly sophisticated and visual inspection often fail[s]." *Id.* at *1. And the expensive drug-detection machines on the market "[can]not detect fentanyl." *Id.*

d. The Policy Is Not an Exaggerated Response

Turner's final factor asks if "the [policy] is an exaggerated response to [the jail's]

concerns." *Snow*, 128 Cal.App.4th at 393. Plaintiffs claim they satisfy this prong because the County has not yet proven "there is a fentanyl problem in the County's jails." Opp. at 15:16-17. But *Turner* empowers jails "to anticipate security problems and to adopt innovative solutions." *Thompson*, 25 Cal.4th at 134. Jail "officials are not required to prove" that "problems" exist—only that their concern that they could arise is "rational." *Collins*, 86 Cal.App.4th at 1185. Thus, *Turner* "does not require the Jail to prove prior instances of narcotics introduction" through the mail "before enacting a policy to prevent such an eventuality." *HRDC*, 2023 WL 1473863, at *8. Bay Area "jails are seeing an influx of opioid contraband." *City & Cnty. of S.F.*, 491 F.Supp.3d at 629. In 2019, California inmates suffered "the highest overdose mortality rate" of any incarcerated population in the U.S.[5] It was plainly rational and proper for the County "to anticipate security problems" fentanyl poses and "adopt innovative solutions." *See Thompson*, 25 Cal.4th at 134.

C. Plaintiffs' Claims Are Not Justiciable

1. Plaintiffs Failed to Exhaust Their Administrative Remedies

Prisoners "must exhaust available administrative remedies before filing a lawsuit." *Parthemore*, 221 Cal.App.4th at 1380. It is their "burden to plead … that they exhausted their administrative remedy." *Westinghouse*, 42 Cal.App.3d at 37. Plaintiffs admit the County has a "grievance policy." Opp. at 10:16-17. But they claim it was "unavailable." *Id.* at 10:13-16. Not so. In *Bockover*, the plaintiff also argued a grievance policy was "unavailable" since "her claim ar[ose] under" the "Americans with Disabilities Act," but the agency previously stated claims "arising under federal [law]" would not be accepted. 28 Cal.App.4th at 486, 489-91. The court dismissed, holding a "claimant must present the question to the [agency] so [it can] decide the issue in the first instance." *Id.* at 490-91. Plaintiffs also claim Mr. Greenberg filed "grievances protesting the mail policy" that "were never acknowledged." Opp. at 10:18-19. Not true. *None of his 28 grievances or one appeal challenged the policy*. *See* Supp. RJN, Exs. I-JJ (grievances) & Ex. KK (appeal). And *all* were "acknowledged" with a "Supervisor's response." *See id.*

[5] Noah Weiland, *California Battles Fentanyl with a New Tactic: Treating Addiction in Prison*, N.Y. Times (Aug. 9, 2023), https://www.nytimes.com/2023/08/09/us/politics/opioid-overdoses-prison-fentanyl-california.html?smid=nytcore-ios-share&referringSource=articleShare.

2. A.B.O. Failed to Establish Associational Standing

To establish associational standing, entities must "plead what they are"—"courts should not have to guess." *Kern v. Wal-Mart Stores, Inc.* (W.D.N.Y. 2011) 804 F.Supp.2d 119, 131. A.B.O. pleads only that it "is a collective of artists." AC ¶ 5. A "*collective*" is not a legal description. Thus, A.B.O. left the Court "to guess" *what it is*. A.B.O. also lacks standing because the AC does not show A.B.O.'s "members … have standing to sue in their own right." *United Farmers*, 32 Cal.App.5th at 488. To show this, most courts require the entity to "identify, by name, at least one member with standing."[6] *Equal Vote Am. Corp. v. Congress* (S.D.N.Y. 2019) 397 F.Supp.3d 503, 509. This is because the Court cannot "accept[] the organizations' self-descriptions of their membership" as it "has an independent obligation to assure that standing exists." *Summers*, 555 U.S. at 499. California courts have not decided whether this is required. But even under the minority rule, A.B.O. must be "relatively clear, rather than speculative" that its members are "adversely affected." *League of Women Voters v. Kelly* (N.D. Cal. Aug. 25, 2017) 2017 WL 3670786, at *7-8. Mere "speculat[ion] that [a] member [is] injured" is not enough. *Id.* A.B.O. alleges: (1) the mail policy "has deterred" inmates "from writing … freely" and (2) that it has "at least one member" in jail that "A.B.O's staff has corresponded"—suggesting A.B.O. staff wrote *to the member*. AC ¶¶ 8, 59. But this does not show that the member ever wrote back or mailed anyone else, much less that *the member*—rather than the "A.B.O. staff" who "corresponded" with the member—was "deterred from writing … freely." As such, the AC merely "speculat[es]" that a member was "injured." Thus, A.B.O. failed to establish standing.

3. Mr. Greenberg's, Ms. Oladipo's, and Mr. Roberts' Claims Are Moot

Mr. Greenberg's and Ms. Oladipo's claims are moot as he "[i]s no longer" in the jail and the policy "no longer applie[s]" to them. *Giraldo*, 168 Cal.App.4th at 257. Mr. Roberts' claim is also moot as he is no longer in the jail. Answer ¶ 4. They argue their claims "remain live" because they "exchanged [mail] that was digitized." Opp. at 10:7-10. Not so. Inmates have "no expectation of privacy with respect to letters." *Garvey*, 99 Cal.App.3d at 323. Thus, they suffered *no* harm.

[6] *E.g.*, C*hamber of Com. v. EPA* (D.C. Cir. 2011) 642 F.3d 192, 200-01; *Relig. Sisters v. Becerra* (8th Cir. 2022) 55 F.4th 583, 601-02; *Weiser v. Benson* (6th Cir. 2022) 48 F.4th 617, 624.

DATED: October 13, 2023

Respectfully submitted,

BARTKO ZANKEL BUNZEL & MILLER
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By: 

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PROOF OF SERVICE

I, Maggie M. Lopez, hereby certify that on this 13th day of October, 2023, a copy of the foregoing

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

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

Executed on October 13, 2023, at San Francisco, California.

Maggie M. Lopez