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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN MATEO**

20
21 A.B.O. Comix, Kenneth Roberts, Zachary
Greenberg, Ruben Gonzalez-Magallanes,
22 Domingo Aguilar, Kevin Prasad, Malti Prasad,
and Wumi Oladipo,

23 Plaintiffs,

24 v.

25
26 County of San Mateo and Christina Corpus, in her
official capacity as Sheriff of San Mateo County,

27 Defendants.
28

Electronically
FILED
3/9/2023
by Superior Court of California, County of San Mateo
ON
By /s/ Jennifer Torres
Deputy Clerk

Case No.: 23-CIV-01075

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF FOR
VIOLATION OF ARTICLE 1,
SECTIONS 2 AND 13 OF THE
CALIFORNIA CONSTITUTION, THE
FIRST AND FOURTH AMENDMENTS
TO THE UNITED STATES
CONSTITUTION, AND THE
RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT**

INTRODUCTION

1
2 1. This case challenges San Mateo County’s policy of digitizing and then destroying
3 mail sent to people in its jails—depriving them of physical letters, drawings, pictures, and
4 mementos—and of conducting suspicionless surveillance of that mail and the individuals who send
5 it. In 2021, San Mateo County banned people in its jails from receiving any physical mail other
6 than attorney communications. Under this new policy, the senders of mail must route their letters
7 to Smart Communications, a private for-profit company based in Florida, where the company scans
8 the mail, destroys it, and stores a digital copy for a minimum of seven years. Through this service,
9 called MailGuard, people in jail may access digital copies of their mail only if they agree to
10 MailGuard’s terms of use, and only through shared tablets and kiosks that must be used in public
11 spaces. Smart Communications stores the digital copies in a database that gives the County
12 unfettered access to every piece of mail received.¹

13 2. San Mateo County’s policy banning physical mail and subjecting digital copies to
14 long-term surveillance violates the expressive, associational, privacy, and religious rights of the
15 individuals in its jails, including those presumed innocent, and of the many individuals who send
16 mail to those incarcerated people. Banning physical mail deprives incarcerated people and their
17 communities of a uniquely expressive form of communication: Physical mail allows people to
18 express themselves in ways that may feel too personal or sensitive for other modes of
19 communication; it encourages deeper connection by giving correspondents the space to read and
20 reflect before responding; and it evokes stronger and more lasting emotional meaning than digital
21 correspondence. Under the County’s policy, incarcerated people often struggle to access even
22 digital copies of their mail. The policy also subjects both the senders and recipients of mail to
23 increased and unwarranted surveillance by San Mateo County and others. At the same time, the
24 policy serves no legitimate penological purpose but instead undermines the community and familial
25 ties necessary for successful reentry.

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¹ This complaint refers to both Defendants collectively as “San Mateo County” or “the County.”

1 3. Plaintiffs Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes,
2 Domingo Aguilar, and Kevin Prasad are among the approximately 1,000 individuals incarcerated
3 in San Mateo County for whom physical mail was once a lifeline, connecting them to loved ones,
4 educators, and religious advisors. They held letters and drawings that their loved ones also held,
5 and they frequently re-read mail in the privacy of their cells, when they awoke in the morning or
6 before falling asleep. Many in the County’s jails also relied on physical mail to take correspondence
7 courses, because the physical copies allowed them to annotate readings, fill out worksheets, and
8 send completed coursework back to their instructors.

9 4. Now, they have difficulty accessing even digital copies of their mail. Those who
10 agree to MailGuard’s terms of use can access their mail only on shared tablets and kiosks, only in
11 public spaces, and only during limited recreational time. They may have as little as thirty minutes
12 of recreational time each day, during which they engage in other activities as well, including
13 showering, exercising, and calling home. They cannot review correspondence in the privacy of
14 their cells; they cannot spend any significant amount of time reading and reflecting on the letters
15 they receive; and they cannot easily return to their correspondence. The tablets are also plagued by
16 technical problems that can prevent them from reading their mail at all.

17 5. Plaintiff A.B.O. Comix is one of the many organizations dedicated to supporting
18 and sustaining incarcerated people. It is a collective of artists that works to amplify the voices of
19 incarcerated LGBTQ people through artistic expression. A.B.O. Comix relies on mail to
20 communicate with incarcerated people about their artistic projects, to circulate newsletters with
21 interactive storytelling prompts, to connect people in prisons and jails with penpals, and to send
22 holiday cards as signs of love and support. These efforts have been hampered by restrictive mail
23 policies, including San Mateo County’s policy of destroying and digitizing mail.

24 6. Plaintiffs Malti Prasad and Wumi Oladipo have loved ones incarcerated in San
25 Mateo County’s jails. They have also been denied an important form of protected expression. They
26 used to send handwritten letters, photographs, birthday cards, and religious and educational
27 materials to their loved ones in jail. But the County put an end to this type of expression. Now, they
28 must send any mail to Smart Communications, which will destroy the mail after scanning it into a

1 digital facsimile drained of much of its sentiment. Both Ms. Prasad and Ms. Oladipo have made the
2 difficult decision to stop sending mail to their loved ones, and have been forced to rely on
3 alternatives that are less personal, less private, less easily accessible, and more costly.

4 7. The County’s digitization and long-term storage of correspondence through
5 MailGuard enables sophisticated and invasive surveillance of both incarcerated and
6 nonincarcerated people. Every piece of mail sent through MailGuard goes into a database that is
7 searchable through a dashboard Smart Communications maintains for San Mateo County. The
8 County has given access to this dashboard to all law enforcement officers in San Mateo County’s
9 corrections division, to investigators in its sheriff’s office and district attorney’s Office, and to
10 investigators in other municipalities in the County. These individuals can read and search mail
11 through the dashboard without the need for individualized suspicion of wrongdoing, and without
12 providing notice to either the sender or the recipient that their mail has been read or searched. On
13 information and belief, County officials can specify keywords of their choosing and receive alerts
14 any time a piece of mail contains one of those keywords. Finally, County officials can access the
15 additional sensitive information that Smart Communications collects from individuals who send
16 mail to the County’s jails and sign up for its mail tracking service. This surveillance has predictably
17 deterred many, including members of A.B.O. Comix, from writing as freely about sensitive topics,
18 and has deterred others, including Ms. Oladipo and Ms. Prasad, from sending mail into the County’s
19 jails at all.

20 8. While officials are entitled to some deference in administering jails and prisons, the
21 Supreme Court has long emphasized that judicial review of speech-restrictive policies in these
22 settings is not toothless. Here, San Mateo County’s mail policy serves no legitimate penological
23 purpose. Although the County’s then-Sheriff, Carlos Bolanos, announced that the County’s mail
24 policy was meant to “prioritize . . . safety and security,” the County has never explained why it
25 initiated sweeping and long-lasting surveillance of both incarcerated and nonincarcerated people.
26 And it has not justified its decision to ban mail over concerns about “fentanyl exposures.” On
27 information and belief, mail is not a significant source of fentanyl or other drugs in San Mateo
28 County’s jails.

1 9. Rather than further the County's goals, the mail policy undermines the County's
2 penological interests in successful reentry. Numerous studies have confirmed that greater
3 community and familial connection throughout incarceration, including through letter-writing, is
4 associated with better post-incarceration adjustment. San Mateo County's mail policy, however,
5 impedes expression and association during incarceration, threatening the important penological
6 interests in, and sociological benefits of, correspondence by mail.

7 10. Finally, the County's mail policy also violates the religious rights of many of the
8 people in its jails. Religious and spiritual practices are central to the lives of many incarcerated
9 people, including Mr. Greenberg, Mr. Gonzalez-Magallanes, and Mr. Prasad. Mail was an
10 important source of religious material, especially because of the difficulty of accessing religious
11 guidance from jail services directly. Mail also allowed people to maintain individual spiritual
12 practices by studying, meditating on, and sharing printed prayers, images, and religious instruction
13 as they saw fit. The loss of physical religious correspondence has substantially burdened the
14 religious practices of Mr. Greenberg, Mr. Gonzalez-Magallanes, and Mr. Prasad.

15 11. Plaintiffs now seek declaratory and injunctive relief from San Mateo County's mail
16 policy. As described further below, San Mateo County's elimination of physical mail and use of
17 MailGuard violates the First Amendment to the U.S. Constitution and Article I, Section 2 of the
18 California Constitution by denying Plaintiffs and others the ability to use a uniquely expressive
19 medium of communication and by chilling their expressive and associational activity. The policy
20 also violates the Fourth Amendment to the U.S. Constitution and Article I, Section 13 of the
21 California Constitution because it involves the search and seizure of correspondence and other
22 information about the senders of mail for subsequent investigative use without any suspicion of
23 wrongdoing, in a manner that is unreasonable at its inception and in its scope and duration. Finally,
24 it also violates the Religious Land Use and Institutionalized Persons Act because it substantially
25 burdens the ability of Mr. Greenberg, Mr. Gonzalez-Magallanes, and Mr. Prasad to receive, study,
26 and share religious materials and is not the least restrictive means of achieving any compelling
27 interest of the County.

28

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction under California Code of Civil Procedure §§ 525, 526a,
3 and 1060.

4 13. Venue is proper in this Court pursuant to California Code of Civil Procedure
5 §§ 393(b), 394(a), and 395(a) because Defendants are located in San Mateo County and their
6 actions giving rise to Plaintiffs' claims occurred in San Mateo County.

7 **PARTIES**

8 14. Plaintiff A.B.O. Comix is a collective of artists that works to amplify the voices of
9 LGBTQ prisoners through artistic expression. It is based in Oakland, California. Its staff have sent
10 mail to at least one individual incarcerated in San Mateo County's jails, and have paid California
11 sales tax within the past year.

12 15. Plaintiff Kenneth Roberts is currently incarcerated in San Mateo County at Maple
13 Street Correctional Center, where he has been detained since September 2021. Mr. Roberts has paid
14 sales tax on items in the jail's commissary within the past year.

15 16. Plaintiff Zachary Greenberg is currently incarcerated at Maple Street Correctional
16 Center, where he has been detained since January 2021. Mr. Greenberg was previously incarcerated
17 at Maguire Correctional Facility, also in San Mateo County, from December 2020 to January 2021.
18 Mr. Greenberg has paid sales tax on items in the jail's commissary within the past year.

19 17. Plaintiff Ruben Gonzalez-Magallanes is currently incarcerated at Maple Street
20 Correctional Center, where he has been detained since August 2022. Mr. Gonzalez-Magallanes has
21 paid sales tax on items in the jail's commissary within the past year.

22 18. Plaintiff Domingo Aguilar is currently incarcerated at Maguire Correctional
23 Facility, where he has been detained since June 2022. Mr. Aguilar was previously incarcerated at
24 Maple Street Correctional Center from August 2019 to June 2022. Mr. Aguilar has paid sales tax
25 on items in the jail's commissary within the past year.

26 19. Plaintiff Kevin Prasad is currently incarcerated at Maple Street Correctional Center,
27 where he has been detained since April 2018. Mr. Prasad has paid sales tax on items in the jail's
28 commissary within the past year.

1 26. Many prisons and jails have historically subjected incoming physical mail to an
2 initial review before delivery to its recipient. The use of MailGuard, however, departs from this
3 practice in two important ways.

4 27. First, MailGuard involves the elimination of physical mail. Some facilities,
5 including those in San Mateo County, exempt privileged legal mail, but all other physical mail is
6 simply forbidden. As discussed below, the MailGuard service replaces physical mail with scans
7 that must be read on small tablets or kiosks that are in high demand and located in public spaces.

8 28. Second, the use of MailGuard subjects incoming mail and those who send it to
9 surveillance that is unprecedented in its scope and duration:

- 10 a. Smart Communications stores the mail sent through MailGuard for a minimum of
11 seven years, subjecting both the senders and recipients of mail to long-term
12 surveillance. In its contract with San Mateo County, for example, Smart
13 Communications agreed that it would store all digitized mail for seven years “from
14 the date of the inmate’s release from the County Facility.” In late 2018, Jon Logan,
15 the founder and CEO of Smart Communications, told a reporter for *Mother Jones*
16 that, in its first ten years of business, Smart Communications had never deleted any
17 records or any data from its database, adding that Smart Communications has
18 “hundreds of millions of data records stored for investigators at anytime.”
- 19 b. Smart Communications keeps the mail it scans in a searchable database. On
20 information and belief, Smart Communications allows law enforcement officers to
21 run unlimited keyword searches on the entire corpus of digitized mail or to set
22 keyword flags that will notify officers whenever a selected keyword is used in a new
23 piece of incoming mail. Because MailGuard is used on incoming mail, this
24 surveillance implicates not only the incarcerated recipients of mail, but also the
25 family members, friends, religious advisors, and others who send them mail.
- 26 c. Finally, on information and belief, this surveillance encompasses not just mail but a
27 great deal of other information as well. MailGuard gives prison and jail officials
28 access to sensitive and previously unavailable information about at least some

1 senders of mail, including their phone numbers, physical addresses, IP addresses,
2 email addresses, credit card and banking information, and GPS locations. Smart
3 Communications collects this information through a service that allows the senders
4 of mail to “track postal mail delivery,” but which Smart Communications has
5 advertised to prisons and jails as collecting “significant new intelligence into the
6 public sender of the postal mail, giving postal mail a digital fingerprint.”

7 29. It is no surprise, then, that Smart Communications markets MailGuard as “an
8 invaluable investigative/intelligence gathering tool” that provides a “massive increase in
9 investigative intelligence gained on both inmate and public users.” The very purpose of the service
10 is to give law enforcement officers, like those in San Mateo County, the ability to obtain and
11 examine unprecedented intelligence about incarcerated and nonincarcerated correspondents alike.

12 ***San Mateo County’s adoption of MailGuard***

13 30. Prior to April 2021, anyone wishing to communicate with people incarcerated in
14 San Mateo County’s jails could send mail directly to the facility. Corrections officers would inspect
15 the mail for the presence of drugs or other threats to facility security, often with the assistance of
16 trained drug-sniffing dogs and TruNarc, a Raman spectroscopy device that scans mail and packages
17 for the presence of narcotics. Once mail was approved, it was delivered directly to its recipient,
18 who could read (or re-read) the mail at any time and keep it with other personal belongings in their
19 cell.

20 31. In 2021, with no opportunity for public comment or feedback, San Mateo County
21 abruptly decided to eliminate physical mail within its facilities. On April 6, 2021, the sheriff’s
22 office issued a press release stating that, later that month, it would begin destroying and digitizing
23 incoming mail using Smart Communications’ services. After that announcement, the sheriff’s
24 office informed its corrections officers of the upcoming change and issued a request for proposals
25 relating to mail destruction and digitization services. In May 2021, *after* MailGuard had already
26 been in place for over a month at both Maguire Correctional Facility and Maple Street Correctional
27 Center, San Mateo County announced that it would award the contract to Smart Communications.
28

1 and to make it through particularly stressful moments. Tangible correspondence helps to build and
2 sustain the bridges that those behind bars often lean on for resilience, with their loved ones and
3 with their religious advisors and communities.

4 36. Physical mail is also necessary for incarcerated individuals to meaningfully
5 participate in religious, educational, occupational, or community-based learning. Many in jail turn
6 to outside clergy members for spiritual guidance, to correspondence courses for educational and
7 occupational training, and to community organizations for personal growth and emotional support.
8 These opportunities often involve writings and images best absorbed in physical form, so that
9 recipients can underline, take notes on, contemplate, and easily return to the material. Access to
10 educational material and community correspondence is especially important for those incarcerated
11 in San Mateo County, where in-person educational opportunities are very limited. Educational
12 services and programming were recently suspended for several months at Maple Street Correctional
13 Center, and Maguire Correctional Facility simply does not offer any educational services or
14 programming.

15 37. For similar reasons, being able to *send* physical mail is important for those who are
16 not incarcerated. And it is especially important to those who are unable to visit their loved ones
17 behind bars, whether because they live far away, are too frail to travel, or are younger than 18 and
18 therefore not permitted to visit their loved ones incarcerated in San Mateo County.

19 38. San Mateo County has shut down this uniquely important and expressive medium
20 of communication and replaced it with scanned mail, but scanned mail is no substitute. Scanned
21 mail does not carry the same expressive and emotional resonance as physical mail. Social science
22 research confirms this: Physical objects generally evoke stronger emotional responses than their
23 digital counterparts. Objects, especially those linked to loved ones, more easily become infused
24 with emotion, allowing recipients to derive comfort and other meaning from them. One study found
25 that while physical objects evoke feelings of awe, wonderment, and fascination, high-quality digital
26 scans of those objects do not. Even consumer research studies have shown that physical goods, in
27 contrast to digital ones, are associated with greater permanence, emotional connection, and value.
28

1 39. The specific manner in which San Mateo County has implemented mail digitization
2 has undermined still further the ability of those in the County’s jails to express themselves and to
3 associate with others through the mail.

4 a. First, San Mateo County does not allow incarcerated people to access mail except
5 through tablets or kiosks. The County does not print copies of scanned mail for
6 incarcerated people, and it does not provide printers to allow incarcerated people to
7 print their mail directly.

8 b. Second, the County does not provide those incarcerated with adequate time to read
9 and respond to scanned mail. Tablets can be accessed only during limited
10 recreational time, sometimes for no more than thirty minutes per day, and those
11 incarcerated must also use this limited time for showering, exercising, making phone
12 calls, and other activities. There are typically only ten tablets and four kiosks in a
13 recreational area, although the space may be used by over 50 people at once.
14 Because tablets are also used for other activities, including streaming videos,
15 managing commissary balances, and doing legal research, not everyone who needs
16 to use a tablet during recreational time can access one.

17 c. Third, private reading and reflection on the tablets is all but impossible. The tablets
18 are available only in shared recreational areas, forcing everyone to read their mail
19 in public spaces.

20 d. Fourth, the tablets themselves are plagued by technical problems. They frequently
21 freeze, break, or lose their charge.

22 e. Fifth, the tablets have small screens, making it difficult to read scanned mail. At
23 seven inches across, the screens are only slightly larger than a standard smartphone,
24 and the tablets do not allow users to enlarge or zoom in on text or images.

25 As a result, people incarcerated in San Mateo County experience significant difficulties in
26 attempting to access and read their scanned mail.

27 40. Nor are other forms of communication a substitute for the loss of physical mail.
28 Phone calls, for example, are more expensive than mail and are beset by technical difficulties that
result in calls being dropped or that leave participants with fewer than fifteen minutes to speak.
Phones are in shared spaces, often immediately adjacent to one another, leaving incarcerated people
like Mr. Roberts, Mr. Greenberg, Mr. Gonzalez-Magallanes, and Mr. Prasad without a private space

1 to speak. Video visitation and email messaging, which can be costly, are conducted through the
2 same tablets and kiosks provided by Smart Communications, and therefore individuals face the
3 same difficulties using them reliably and privately. Video visitation is particularly difficult to use
4 because calls often drop due to poor internet connectivity, and the facial-recognition feature that
5 isolates each user's face can cause the calls to freeze or drop if either user moves their face, tilts
6 their head at an unfamiliar angle, or even sneezes. On information and belief, the facial-recognition
7 feature malfunctions with greater frequency for individuals of color, including Ms. Oladipo. On
8 information and belief, all of these methods of communication are also recorded and retained for
9 years. Finally, in-person visits are permitted at Maple Street Correctional Center only for people
10 enrolled in jail programming; the availability of programming is limited, and many people have
11 gaps between participating in programs. Most who qualify for in-person visits are permitted only
12 one visit every 15 days. Maguire Correctional Facility allows more frequent visits, but at both
13 facilities San Mateo County has significantly shortened visitation hours since 2019 and does not
14 allow visitation from minors. These alternative channels of communication are logistically
15 challenging, expensive, and afford minimal privacy. And of course, none resembles or replaces the
16 intimacy and reliability that physical mail provides.

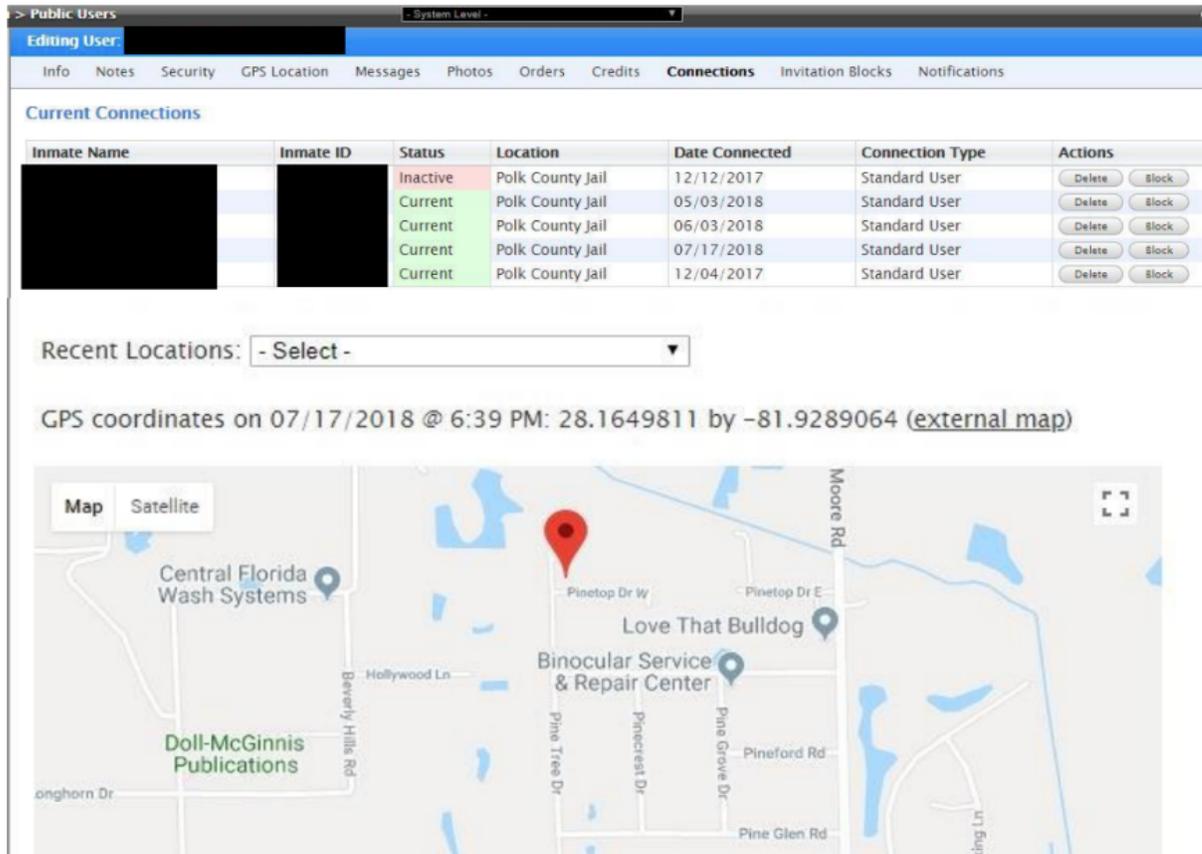
17 41. San Mateo County's elimination of physical mail has been devastating to the ability
18 of those in jail and their loved ones to communicate with one another. As explained further below,
19 all Plaintiffs have experienced the expressive harms associated with mail digitization.

20 **The surveillance of mail under the County's mail policy**

21 42. San Mateo County's mail policy subjects both senders and recipients of mail to long-
22 term and suspicionless surveillance, including for reasons unrelated to the safety of the County's
23 jails.

24 43. First, through MailGuard, San Mateo County has centralized and long-term access
25 to an extraordinary new breadth of information about incoming mail and those who send it. Through
26 a program provided by Smart Communications, called the SmartEcosystem Dashboard, San Mateo
27 County officials can access digital copies of each piece of incoming non-legal mail received since
28 MailGuard was adopted in 2021. The dashboard also provides access to information collected about

1 the senders of mail, including, on information and belief, information gathered through its mail
2 tracking service. Below is a screenshot used in Smart Communications' past marketing showing
3 the dashboard's section on the public senders of mail. On information and belief, the version of the
4 dashboard used by San Mateo County today is similar.²

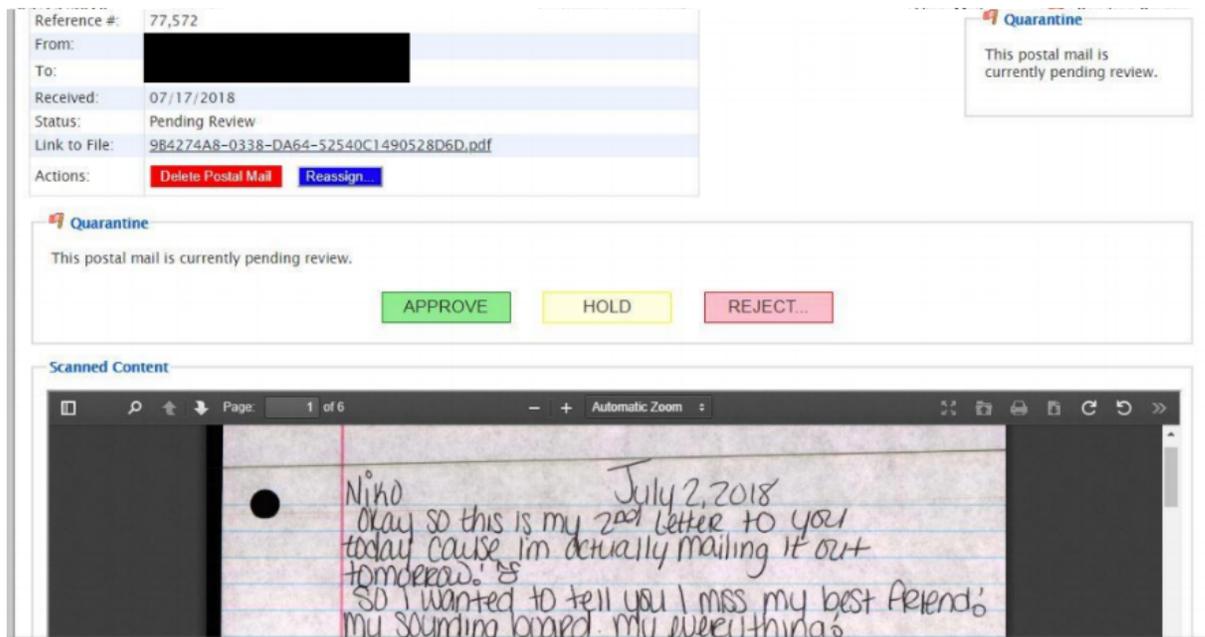


19 44. Second, San Mateo County permits law enforcement officers from across the
20 jurisdiction—including investigators in the sheriff's office, the district attorney's office, and in
21 other municipalities—to search this information at any time, for any reason or no reason at all. San
22 Mateo County does not, for example, require law enforcement officers to seek any sort of internal

23
24
25 ² Smart Communications did not redact inmate names and IDs from this screenshot, which was
26 featured in a marketing proposal it submitted to the Virginia Department of Corrections in 2018.
27 An unredacted copy of the proposal was disclosed and then made public in response to a Virginia
28 Freedom of Information Act request. To preserve the privacy of the correspondents, Plaintiffs
here have included the redacted version of the screenshot used in an article describing the
proposal. See Aaron Gordon, *Prison Mail Surveillance Keeps Tabs on Those on the Outside, Too*,
Vice (Mar. 24, 2021), <https://www.vice.com/en/article/wx8ven/prison-mail-surveillance-company-keeps-tabs-on-those-on-the-outside-too>.

1 approval or articulate any individualized suspicion of wrongdoing before conducting searches in
2 the SmartEcosystem Dashboard. The County’s Corrections Manual instructs corrections officers in
3 particular to “read [correspondence] as frequently as deemed necessary to maintain security or
4 monitor a particular problem.” On information and belief, County officials have used their authority
5 to search through the dashboard freely.

6 45. Third, San Mateo County’s adoption of MailGuard also exposes this private
7 information to Smart Communications, which, on information and belief, is free to use the
8 information however it pleases. San Mateo County’s contract with Smart Communications places
9 no limit on how the company can utilize the information it gathers from physical mail or by tracking
10 the public senders of it. For example, on information and belief, Smart Communications has
11 previously advertised MailGuard by using screenshots of an individual’s actual mail, without
12 regard for their privacy. In 2018, Smart Communications included the following screenshot of what
13 appears to be a private letter—without the redaction seen here—in a proposal it made to the Virginia
14 Department of Corrections.³



28 ³ As described in note 2, *supra*, the version provided to the Virginia Department of Corrections redacted neither the name of the sender nor of the recipient.

1 46. San Mateo County and Smart Communications have not provided either the senders
2 or recipients of mail with notice describing how they now store and search mail. Many family
3 members and senders of mail only learned about the adoption of MailGuard from their loved ones,
4 and otherwise had no way to know that sending a letter to someone incarcerated in San Mateo
5 County would result in extensive, long-lasting surveillance. When mail is sent directly to a San
6 Mateo County jail, the County either forwards the mail to Smart Communications or returns the
7 mail with instructions to send it to Florida, but does not inform the sender that doing so will subject
8 them to long-term surveillance by law enforcement officers and a private contractor. The mailing
9 instructions page on the County sheriff’s office website instructs people to send mail to Smart
10 Communications’ Florida mailing address, but it does not provide any information about its
11 destruction of mail and surveillance of the digital copies. A notice buried elsewhere on its website,
12 and, on information and belief, posted in the lobbies and some common areas of the jails, describes
13 a “new jail mail procedure” but fails to explain that the digital copies of mail are accessible to both
14 San Mateo County and Smart Communications for at least seven years after the recipient has been
15 released from incarceration. On information and belief, the notice provided to incarcerated
16 recipients through Smart Communications tablets similarly omits this crucial information.

17 47. This unprecedented invasion of privacy in San Mateo County’s jails has predictably
18 chilled the use of mail, as similar mail digitization efforts have in other locations. For example,
19 when Tuolumne County, California implemented MailGuard, it recorded a decrease in mail sent to
20 people incarcerated in its jails—a fact Smart Communications used to advertise MailGuard to San
21 Mateo County. And in response to Pennsylvania’s adoption of MailGuard in 2018, multiple family
22 members explained to reporters that they subsequently stopped or altered their use of mail to
23 communicate with their loved ones in custody. As discussed further below, all Plaintiffs have
24 experienced this chilling effect and reduced or stopped their use of mail to communicate in the
25 wake of San Mateo County’s adoption of MailGuard.

26 **The lack of penological justification for the County’s mail policy**

27 48. San Mateo County has never adequately explained its decision to adopt this mail
28 policy, nor is there a legitimate government interest in retaining it. In the County’s initial press

1 release announcing the adoption of MailGuard, the County said only that it would “mak[e] some
2 changes to the way people receive mail” to “prioritize the safety and security of those in our
3 correctional facilities.” And in response to criticism of the decision on Facebook, the sheriff’s office
4 asserted that “our changes are to help keep everyone safe since there has been some concerns
5 regarding fentanyl exposures with the old mail system we were using.” But the County has said
6 virtually nothing else to explain the decision.

7 49. San Mateo County has never publicly suggested that fentanyl was a significant
8 problem within its facilities, that the presence of fentanyl was significantly increasing, or that any
9 data pointed to mail as a significant source of fentanyl. Indeed, although the sheriff’s office has not
10 provided information on fentanyl-related drug incidents, an outside study of fentanyl overdoses
11 around the United States revealed that, between 2013 and March 30, 2021, there were no publicly
12 reported fentanyl-related overdoses in either of the County’s jails.

13 50. Nor is there evidence that mail is a significant source of fentanyl or other drugs in
14 San Mateo County’s jails. Court records, federal investigations, and public statements instead show
15 that the primary channel through which drugs are introduced into jails and prisons is *staff*. For
16 example, the executive director of the Missouri Corrections Officers Association admitted in 2022
17 that staff were the main source of drugs in Missouri’s jails. Also in 2022, a New York City
18 Department of Corrections investigator testified in federal court that drugs and other contraband
19 can “usually” be traced to jail staff and officers. Finally, in a 2019 report on conditions in the
20 Alabama prison system, the U.S. Department of Justice described interviews with multiple officials
21 who confirmed that staff smuggling was the primary source of drugs, and it recommended
22 screening all staff for drugs in the future. In San Mateo County itself, staff smuggling also appears
23 to be a problem; multiple jail employees have pleaded no contest to charges that they smuggled
24 drugs into its jails.

25 51. In contrast, mail-related drug trafficking appears rare. In Florida state prisons, for
26 example, less than 2% of the contraband items confiscated over a two-year period were traced back
27 to mail, and only 0.35% of mail contained contraband. In Texas, the rate of mail with suspicious or
28

1 “uninspectable” substances—which would include drugs as well as stickers or fragrances—was
2 only 0.5% in 2019.

3 52. There is also little evidence that mail digitization reduces the prevalence of drug use
4 or drug overdoses in jails or prisons. Following statewide adoption of MailGuard in Pennsylvania,
5 the drug test positivity rate actually increased. Similarly, after Missouri contracted with a different
6 company to digitize and destroy incoming mail, the number of average overdoses in the state’s jails
7 and prisons increased from thirty-one to thirty-seven per month. And in New Mexico, after prisons
8 banned physical mail, the drug test positivity rate nearly doubled.

9 53. Any claims that San Mateo County may make to justify the elimination of physical
10 mail because of health effects on staff who handle drug-laced mail would be similarly unsupported.
11 There is no evidence that drug-laced mail poses a serious threat to prison staff who inspect it. As
12 the *New York Times* and others have reported, scientific literature has shown definitively that brief
13 contact with fentanyl—even without gloves or other common protective clothing—is insufficient
14 to cause a high, let alone an overdose. And in any event, the digitization of mail does not actually
15 eliminate the need to handle the mail; it simply shifts the responsibility for doing so to others
16 working at the behest of the County.

17 54. Nor has the County attempted to explain why other, less speech-restrictive and more
18 privacy-protective tools that could limit drug use in its facilities are insufficient. For example, the
19 County has previously used drug-sniffing dogs and Raman spectroscopy devices to scan mail for
20 the presence of drugs. And there are means of limiting drug use that extend beyond mail: Examples
21 from other correctional facilities indicate the adoption of better drug treatment programs and staff
22 security measures can reduce drug overdoses and drug test positivity rates.

23 55. Rather than serve San Mateo County’s penological interests, the County’s mail
24 policy harms them. Correspondence plays a crucial role in strengthening community and family
25 connections, improving post-release outcomes, and promoting better mental health. Regular
26 communication—including through mail—strengthens an incarcerated person’s community ties,
27 which predict better adjustment following incarceration. In the words of criminologist Joan
28 Petersilia, “every known study that has been able to directly examine the relationship between a

1 of communication that substitute for physical mail. As described further below, their privacy, their
2 relationships, and their expression have all been compromised by the County's use of MailGuard.

3 **A.B.O. Comix**

4 58. Plaintiff A.B.O. Comix is a collective of artists that works to amplify the voices of
5 incarcerated LGBTQ people through artistic expression. It collaborates closely with incarcerated
6 artists to promote mutual support and to keep incarcerated members connected to the outside
7 community. It has nearly 450 incarcerated members, including at least one member incarcerated in
8 Maple Street Correctional Center with whom A.B.O. Comix's staff has corresponded in the last
9 year.

10 59. Correspondence with incarcerated people is at the core of A.B.O. Comix's mission.
11 The collective relies on mail to communicate with incarcerated people about their artistic projects,
12 to circulate newsletters with interactive storytelling prompts, to connect people in prisons and jails
13 with penpals, and to send holiday cards as signs of love and support.

14 60. Mail digitization and destruction policies, including San Mateo County's, have
15 undermined A.B.O. Comix's expression and association with its incarcerated members. Many of
16 the materials the collective wishes to send to its incarcerated members simply cannot be replicated
17 via scanned mail. For example, its quarterly newsletter includes storytelling prompts meant to help
18 incarcerated members think creatively and grow as artists and writers. The prohibition on physical
19 mail makes it impossible for newsletter recipients to fill out or annotate these prompts directly, and
20 because San Mateo County allows only limited access to tablets, creating art using the storytelling
21 prompts is impractical for people in the County's jails. Many of the collective's nonincarcerated
22 members also create intricate, hand-crafted messages and hand-drawn pictures for their
23 incarcerated penpals, and they do not believe that scanned copies can ever substitute for these
24 messages. The destruction of their original letters is demoralizing for A.B.O. Comix's staff and
25 nonincarcerated members.

26 61. Mail digitization and destruction policies, including San Mateo County's, have also
27 deterred members of the collective from expressing themselves as openly. A.B.O. Comix's staff
28 and nonincarcerated members now hesitate to write as freely, especially about political or LGBTQ

1 issues. While A.B.O. Comix is a collective aimed at supporting incarcerated members of the
2 LGBTQ community, not all of its members may identify as queer within jailhouse walls. Knowing
3 their letters will be read in public spaces and retained for years by jail officials and private
4 companies, nonincarcerated members now write less freely about LGBTQ issues out of fear for
5 retaliation against incarcerated penpals.

6 **Kenneth Roberts**

7 62. Plaintiff Kenneth Roberts has been incarcerated at Maple Street Correctional Center
8 since September 2021. Mr. Roberts is one of 24 people currently enrolled in the CHOICES
9 Program, an application-only substance use intervention program that has a waiting list of
10 approximately 200 people. Mr. Roberts is also a devoted father and the son of loving parents. He
11 spends a significant amount of his time counseling and supporting others incarcerated in the jail,
12 and has even become a de facto barber for some of the men incarcerated with him.

13 63. Although Mr. Roberts feels compelled to use MailGuard to keep in touch with his
14 family, the invasiveness of the County's mail policy has inhibited his expression and association
15 with others. He is acutely aware that his mail can be read at any time, for any purpose, over many
16 years by San Mateo County or by Smart Communications. He also knows that other people in his
17 pod can see his mail when he views it on a tablet in the recreational room. He receives far less mail
18 now than he did during previous periods of incarceration at facilities that did not rely on MailGuard,
19 in part because his family members want to avoid the long-term retention of their intimate
20 communications.

21 64. San Mateo County's prohibition on physical mail substantially restricts Mr.
22 Roberts's ability to communicate. In his view, scanning mail destroys its sentiment. He is especially
23 distressed that he can no longer hold the drawings his four-year-old daughter still occasionally
24 creates for him, that he cannot trace her designs and feel the texture of her colored pencil on the
25 paper, and that her original artwork is being destroyed by Smart Communications. Equally upset
26 by the destruction of her artwork, Mr. Roberts's daughter's mother has stopped encouraging her to
27 make and send him picutres. Mr. Roberts also finds it difficult to read and respond thoughtfully to
28

1 Knowing that letters addressed to him are accessible to both the County and a private company, he
2 now communicates much less frequently with his mother and his imam.

3 73. The County's prohibition on physical mail substantially restricts Mr. Gonzalez-
4 Magallanes's ability to communicate. He especially cherished the ability to smell the scent of his
5 mother's perfume on the physical letters she used to send him. He does not believe scanned mail is
6 a substitute for the original letters and cards he once received.

7 74. The County's mail policy has also substantially burdened Mr. Gonzalez-
8 Magallanes's religious practice. He once relied on written materials, like letters or pamphlets, to
9 study the teachings of Islam and maintain his religious practice. During prior periods of
10 incarceration, he could meet with imams in person and attend group worship. Because these options
11 are not available in San Mateo County, physical texts and teachings are even more central to his
12 ability to practice Islam. He also relied on written materials to share his beliefs with other people
13 in Maple Street Correctional Center. His faith teaches that he may not withhold knowledge from
14 those who seek to learn, but that it is a sin to misconstrue the teachings of Islam. He believes that
15 putting his imam's teachings into his own words would violate this precept. The County's ban on
16 physical mail has meant that Mr. Gonzalez-Magallanes can no longer fulfill his mandate to study
17 and share knowledge of Islam.

18 **Domingo Aguilar**

19 75. Plaintiff Domingo Aguilar is in civil detention at Maguire Correctional Facility,
20 where he has been since approximately June 2022. Before that, he was incarcerated at Maple Street
21 Correctional Center from August 2019 to June 2022. Mr. Aguilar is a loving son whose elderly
22 mother lives in Arizona near the U.S.-Mexico border.

23 76. The invasiveness of MailGuard has inhibited Mr. Aguilar's expression and
24 association with others. As soon as San Mateo County adopted the mail policy, he became
25 concerned about his privacy and the privacy of his loved ones. He refused to consent to receive
26 mail through MailGuard and immediately advised his family to stop sending him mail.

27 77. The loss of physical mail has affected Mr. Aguilar deeply. Prior to the new policy,
28 he relied on mail to stay in touch with his mother, who is elderly and lives far from San Mateo. He

1 still keeps several pieces of mail he received before the adoption of MailGuard, including a letter
2 from his father and birthday cards, and re-reads them again and again, often doing so at night to
3 comfort himself and reduce stress. The loss of physical mail deprives Mr. Aguilar of this singular
4 comfort, and he is especially distraught that his mother cannot mail him physical photos of his
5 granddaughter, who was born in June 2022. Mr. Aguilar does not believe that other methods of
6 communication can ever substitute for the connection and expression he achieved through physical
7 correspondence.

8 **Kevin Prasad**

9 78. Plaintiff Kevin Prasad has been incarcerated at Maple Street Correctional Center
10 since April 2018. Mr. Prasad spends his time practicing the Hindu religion; connecting with his
11 mother, sister, father, and uncle; and helping other incarcerated individuals advocate for themselves
12 and conduct legal research.

13 79. The invasiveness of MailGuard has inhibited Mr. Prasad's expression and
14 association with others. Knowing that he must now access mail in public spaces and that mail will
15 be subject to long-term surveillance by San Mateo County and Smart Communications, he has
16 instructed his family members to stop sending him mail. He has received only two pieces of mail
17 through MailGuard. Those items were already available in Mr. Prasad's MailGuard account when
18 he first signed on and accepted its terms of use—indicating that the mail had been scanned and
19 uploaded before Smart Communications had his consent to do so. Mr. Prasad subsequently wrote
20 to Smart Communications and stated that he withdrew his consent to the MailGuard terms of use,
21 but he did not receive a response.

22 80. Mr. Prasad believes that San Mateo County's prohibition on physical mail
23 substantially restricts his ability to communicate. He misses receiving multiple letters per month
24 from his family members. He views physical mail as uniquely expressive and deeply values the
25 physical letters he has from before the mail ban. He is especially disturbed that, under the policy,
26 he is no longer able to touch the letters his family members touched and smell the familiar scents
27 that lingered on mail sent by his mother and uncle. The loss of mail is particularly challenging
28 because he lacks meaningful alternatives; for example, his older relatives struggle with video

1 feelings, and used the letters to teach him her native language, Fiji Hindi. These letters helped her
2 to maintain a deep expressive and emotional connection with her son. The inability to send her son
3 letters has deeply distressed Ms. Prasad. Although Ms. Prasad drives four hours every Sunday to
4 see her son, sometimes only through a video monitor, and occasionally speaks to him by phone,
5 these methods of communication are no substitute for the ease and intimacy of correspondence.
6 The County's mail policy has substantially damaged her ability to express herself and to connect
7 with her son.

8 **Wumi Oladipo**

9 85. Plaintiff Wumi Oladipo, who resides in Alameda County, is the significant other of
10 Zachary Greenberg. Ms. Oladipo works as a clinical researcher at a biotechnology company and is
11 studying to go to medical school.

12 86. The invasiveness of MailGuard has inhibited Ms. Oladipo's expression and
13 association with others. She initially continued to send mail to Mr. Greenberg after the County
14 implemented MailGuard, but she was unaware of the mail policy until Mr. Greenberg called her
15 because he was upset about its adoption. Ms. Oladipo became uncomfortable using MailGuard
16 because of concerns about the County's surveillance of her letters and photographs, as well as the
17 lack of clear limits on their use and storage by Smart Communications. In February 2022, she made
18 the difficult decision to stop sending physical mail to Mr. Greenberg altogether.

19 87. The inability to send Mr. Greenberg physical letters has profoundly affected Ms.
20 Oladipo's expression and communication. Letters were integral to Ms. Oladipo's ability to sustain
21 a romantic relationship with Mr. Greenberg when he became incarcerated. Both keep a collection
22 of the physical correspondence that they sent to each other. Before the mail ban, they played games
23 like crosswords and tic tac toe via mail, and Ms. Oladipo sometimes sprayed her perfume on or
24 kissed the letters she sent to Mr. Greenberg. Now that Ms. Oladipo cannot rely on mail for these
25 purposes, she has found it much more challenging to support and meaningfully communicate with
26 Mr. Greenberg. As a dark-skinned Black woman, Ms. Oladipo has particular difficulty with Smart
27 Communications' video visitation software. The software's facial recognition technology often
28 does not recognize Ms. Oladipo's face, which makes it frustrating—and often impossible—to

1 conduct video calls. And although she and Mr. Greenberg speak on the phone, these brief
2 conversations are more logistical in nature and do not create the same feeling of intimacy that their
3 letters once did. Without mail, Ms. Oladipo struggles to maintain her connection to Mr. Greenberg.

4 **CAUSES OF ACTION**

5 **COUNT ONE**

6 ***First Amendment to the U.S. Constitution (42 U.S.C. § 1983)***

7 ***On behalf of all Plaintiffs against all Defendants***

8 88. Defendants’ mail policy—which includes opening, examining, destroying, and
9 digitizing physical mail and retaining mail and sender information for subsequent investigative
10 use—violates the First Amendment because it eliminates an entire medium of communication,
11 because it chills the expressive and associational activity of Plaintiffs and others, because it is not
12 rationally related to any legitimate penological goals, and because it leaves no adequate alternatives
13 to communication via physical mail.

14 89. In carrying out this policy, Defendants act under color of state law to operate a
15 program that violates the First Amendment.

16 **COUNT TWO**

17 ***Article 1, Section 2 of the California Constitution***

18 ***On behalf of all Plaintiffs against all Defendants***

19 90. For the same reasons, Defendants’ mail policy violates Article I, Section 2 of the
20 California Constitution.

21 **COUNT THREE**

22 ***Fourth Amendment to the U.S. Constitution (42 U.S.C. § 1983)***

23 ***On behalf of all Plaintiffs against all Defendants***

24 91. Defendants’ mail policy violates the Fourth Amendment because it constitutes an
25 unreasonable search and seizure of correspondence and other information in which Plaintiffs and
26 others maintain a reasonable expectation of privacy and a possessory interest, and because the
27 policy is not rationally related to any legitimate penological goal.

1 Magallanes, and Kevin Prasad, Defendants' mail policy violates the Religious Land
2 Use and Institutionalized Persons Act.

3 D. Enjoin Defendants and their agents from digitizing and subsequently destroying
4 incoming physical mail.

5 E. Enjoin Defendants and their agents from denying incarcerated people access to
6 physical copies of their mail.

7 F. Enjoin Defendants and their agents from retaining digital copies of incoming
8 physical mail without reasonable suspicion of wrongdoing.

9 G. Order Defendants to provide to those incarcerated in San Mateo County's jails a
10 physical copy of all mail addressed to them that was digitized through MailGuard,
11 and to subsequently expunge all copies of such mail collected through MailGuard.

12 H. Enjoin Defendants from continuing to read, search, or otherwise use the scanned
13 mail and other information collected through MailGuard.

14 I. Award Plaintiffs reasonable costs and attorneys' fees incurred in this action.

15 J. Grant such other and further relief as the Court may deem just and proper.

16 Dated: March 9, 2023

Respectfully Submitted,

17 



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19 forthcoming)

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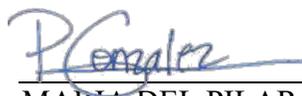
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