

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

OCT 20 2017

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL IZELL SEALS, AKA Michael  
Izell Seals-Brown,

Plaintiff-Appellant,

v.

JEFFREY LLOPIS, Parole Agent; et al.,

Defendants-Appellees.

No. 15-17219

D.C. No. 5:13-cv-04824-PSG  
Northern District of California,  
San Jose

ORDER

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Seals's motions to recall the mandate (Docket Entry Nos. 41, 42, and 43) are granted. The mandate is recalled for the limited purpose of considering the petitions for rehearing and rehearing en banc.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Seals's petitions for panel rehearing and rehearing en banc (Docket Entry Nos. 41, 42, and 43) are denied. Seals's motion to file supplemental briefing (Docket Entry No. 44) is denied. The mandate shall reissue forthwith.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

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MICHAEL IZELL SEALS, AKA Michael  
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Plaintiff-Appellant,

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JEFFREY LLOPIS, Parole Agent; et al.,

Defendants-Appellees.

No. 15-17219

D.C. No. 5:13-cv-04824-PSG

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Paul S. Grewal, Magistrate Judge, Presiding\*\*

Submitted February 14, 2017\*\*\*

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Michael Izell Seals, aka Michael Izell Seals-Brown, a California state  
prisoner, appeals pro se from the district court's judgment in his 42 U.S.C. § 1983

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The parties consented to proceed before a magistrate judge. *See* 28  
U.S.C. § 636(c).

\*\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

action alleging constitutional violations arising from the imposition of certain parole conditions. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Decker v. Advantage Fund Ltd.*, 362 F.3d 593, 595-96 (9th Cir. 2004) (dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6)); *Edgerly v. City & County of San Francisco*, 599 F.3d 946, 960 (9th Cir. 2010) (summary judgment under Fed. R. Civ. P. 56), and we affirm.

The district court properly dismissed Seals' claims for monetary damages against defendants Llopis and McNunn because they are entitled to absolute immunity for the imposition of the challenged parole conditions and to qualified immunity related to their enforcement of those conditions. *See Thornton v. Brown*, 757 F.3d 834, 840 (9th Cir. 2014) (parole officers are entitled to absolute immunity against claims for damages arising from imposition of parole conditions, while qualified immunity applies to claims arising from enforcement); *see also Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known" (citation and internal quotation marks omitted)).

The district court properly granted summary judgment for defendants Mills and Waidelich because Seals failed to raise a genuine dispute of material fact as to whether these defendants imposed or enforced the challenged parole conditions.

*See Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (“[A] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made’” (citation omitted)).

The district court properly dismissed Seals’ claim for injunctive relief as moot because plaintiff is no longer on parole subject to the challenged conditions. *See Bernhardt v. County of Los Angeles*, 279 F.3d 862, 871 (9th Cir. 2002) (“An actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.”).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Llopis and McNunn’s motion to take judicial notice, filed on March 11, 2016, is granted.

Seals’s motion to file a supplemental brief, filed on February 6, 2017, is denied.

Seals’s request for injunctive relief, set forth in his reply brief and motion to file a supplemental brief, is denied.

**AFFIRMED.**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MICHAEL IZELL SEALS-BROWN,

Plaintiff,

v.

JEFFREY LLOPIS, et al.,

Defendants.

Case No. C 13-4824 PSG (PR)

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS; GRANTING  
DEFENDANTS' MOTIONS FOR  
JUDGMENT AS A MATTER OF  
LAW**

Michael Izell Seals-Brown, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The complaint alleged that Defendants' enforcement of parole conditions imposed on Seals-Brown after being convicted in 2001 of misdemeanor sexual battery violated his constitutional rights. Seals-Brown alleges that Defendants abused their authority by enforcing the parole conditions requiring that he register as a sex offender<sup>1</sup> and comply with residential restrictions.<sup>2</sup>

<sup>1</sup> See Cal. Penal Code § 290 ("California's Sex Offender Registration Act").

<sup>2</sup> See Cal. Penal Code § 3003.5(b). To the extent Seals-Brown is attempting to challenge the constitutionality of his arrest leading up to his 2001 convictions, the court previously determined that those claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because judgment in

Case No. C 13-4824 PSG (PR).

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS' MOTIONS FOR JUDGMENT AS A MATTER OF LAW**

1 Defendants Parole Agents Jeffrey Llopis and John McNunn<sup>3</sup> have moved to dismiss the  
2 complaint. Defendants Andrew Mills,<sup>4</sup> Chief of Police of the City of Eureka, and Ukiah Police  
3 Officer Noble Waidelich<sup>5</sup> have moved for judgment as a matter of law. Seals-Brown has filed an  
4 opposition,<sup>6</sup> and Defendants have filed a reply.<sup>7</sup> Seals-Brown has filed a motion for leave to file  
5 an amended complaint, as well as a motion for leave to file a supplemental brief pursuant to Fed.  
6 R. Civ. P. 15(d). The court construes both motions as a motion for leave to file a supplemental  
7 complaint. For the reasons stated below, Llopis and McNunn's motion to dismiss is GRANTED,  
8 Mills and Waidelich's motions for judgment as a matter of law are GRANTED, and Seals-  
9 Brown's motion for leave to file a supplemental complaint is DENIED.<sup>8</sup>

10 I.

11 Seals-Brown was convicted in 2001 of two counts of misdemeanor sexual battery.<sup>9</sup> After  
12 serving his sentence, in 2003, Seals-Brown was arrested and convicted for possession of cocaine  
13 and transportation of cocaine.<sup>10</sup> The arrest and convictions violated his parole status.<sup>11</sup> As a  
14

15  
16 favor of Seals-Brown would necessarily imply the invalidity of his conviction or sentence. *See*  
17 Dkt. No. 15 at 3.

18 <sup>3</sup> Llopis and McNunn have consented to magistrate judge jurisdiction. *See* Dkt. No. 29.

19 <sup>4</sup> Mills has consented to magistrate judge jurisdiction. *See* Dkt. No. 33.

20 <sup>5</sup> Waidelich has consented to magistrate judge jurisdiction. *See* Dkt. No. 34.

21 <sup>6</sup> Seals-Brown's motion for leave to file excess pages is GRANTED. *See* Dkt. No. 46.

22 <sup>7</sup> Seals-Brown has also filed several "progress reports," which appear to be supplemental  
23 oppositions. *See* Dkt. Nos. 59, 60, 61.

24 <sup>8</sup> Defendants Llopis and McNunn's request for judicial notice is GRANTED.

25 <sup>9</sup> *See* Dkt. No. 14 at 5.

26 <sup>10</sup> *See id.* at 9.

27 <sup>11</sup> *See id.*

28 Case No. C 13-4824 PSG (PR).  
ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS'  
MOTIONS FOR JUDGMENT AS A MATTER OF LAW

1 result of violating parole, Seals-Brown was sentenced to a term of 12 years in state prison.<sup>12</sup> He  
2 was given a new parole date of November 25, 2013.<sup>13</sup> Approximately 90 days prior to his  
3 release date, Seals-Brown was given notice of his upcoming parole conditions.<sup>14</sup> Part of those  
4 conditions included the requirement that Seals-Brown register as a sex offender for life,<sup>15</sup> based  
5 on his 2001 misdemeanor convictions, and that he comply with residential restrictions, pursuant  
6 to Jessica's Law,<sup>16</sup> which became effective in November 2006.<sup>17</sup>

7 Upon release, Seals-Brown was required to register as a transient and a sex offender with  
8 the Ukiah Police Department, and keep in regular contact with his parole agent Llopis. McNunn  
9 was Llopis' supervisor. Waidelich is an officer of the Ukiah Police Department who provided  
10 materials for Seals-Brown's registration as a sex offender. Mills is the City of Eureka's Chief of  
11 Police.

12 Seals-Brown alleges that all Defendants abused their authority by enforcing the  
13 registration and residential parole conditions based on his 2001 misdemeanor convictions for  
14 which he had already served his sentences prior to Jessica's Law going into effect.<sup>18</sup> He argues  
15 that enforcement of these conditions of his parole violates due process, equal protection, and  
16 cruel and unusual punishment. He requests "restitution," which the court construes as monetary  
17 damages. He also requests injunctive relief.

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21 <sup>12</sup> *See id.*

22 <sup>13</sup> *See id.*

23 <sup>14</sup> *See* Dkt. No. 39 at 6.

24 <sup>15</sup> *See* Cal. Penal Code § 290 ("California's Sex Offender Registration Act").

25 <sup>16</sup> *See* Cal. Penal Code § 3003.5(b).

26 <sup>17</sup> *See* Dkt. No. 14 at 9-10.

27 <sup>18</sup> *See id.* at 2, 11-13.

28 Case No. C 13-4824 PSG (PR).

1 **II.**

2 **A. Parole Agents' Motion to Dismiss**

3 **1. 12(b)(6) Motion to Dismiss**

4 Under Fed. R. Civ. P. 12(b)(6), "dismissal can be based on the lack of a cognizable legal  
5 theory or the absence of sufficient facts alleged under a cognizable legal theory."<sup>19</sup> If a plaintiff  
6 fails to proffer "enough facts to state a claim to relief that is plausible on its face," the complaint  
7 may be dismissed for failure to state a claim upon which relief may be granted.<sup>20</sup> A claim is  
8 facially plausible "when the pleaded factual content allows the court to draw the reasonable  
9 inference that the defendant is liable for the misconduct alleged."<sup>21</sup>

10 At this stage of the case, the court must accept all material allegations in the complaint as  
11 true and construe them in the light most favorable to the non-moving party.<sup>22</sup> The court's review  
12 is limited to the face of the complaint, materials incorporated into the complaint by reference,  
13 and matters of which the court may take judicial notice.<sup>23</sup> However, the court need not accept as  
14 true allegations that are conclusory, unwarranted deductions of fact, or unreasonable  
15 inferences.<sup>24</sup>

16 Llopis and McNunn first argue that they are immune from damages because they were  
17 performing "quasi-judicial" tasks. In addition, they claim that they are entitled to qualified  
18 immunity. Regarding Seals-Brown's request for injunctive relief, Llopis and McNunn argue that  
19 the claim is moot.

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21  
22 <sup>19</sup> *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

23 <sup>20</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

24 <sup>21</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

25 <sup>22</sup> *See Parks School of Business, Inc., v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

26 <sup>23</sup> *See Lee v. County of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

27 <sup>24</sup> *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

## 2. Absolute Immunity

State parole board officials have absolute quasi-judicial immunity when they act to grant, deny or revoke parole, because such actions are functionally comparable to those of judges.<sup>25</sup> However, their immunity for conduct arising from their duty to supervise parolees is qualified.<sup>26</sup> The determination of whether absolute immunity applies turns on “whether the official is ‘performing a duty functionally comparable to the one for which officials were rendered immune at common law.’”<sup>27</sup> Because a parole official would have absolute immunity for imposing an allegedly unconstitutional parole condition,<sup>28</sup> to the extent that Seals-Brown alleges that Llopis and McNunn violated his constitutional rights by imposing unconstitutional parole conditions upon him pursuant to California’s Sex Offender Registration Act or Jessica’s Law, they are absolutely immune from monetary damages.

However, a parole official does not have absolute immunity for enforcing a condition in an unconstitutionally arbitrary or discriminatory manner.<sup>29</sup> That is, Llopis and McNunn are not entitled to absolute immunity for their conduct while investigating parole violations, ordering the issuance of a parole hold, orchestrating a parolee’s arrest or recommending the initiation of parole revocation proceedings.<sup>30</sup> A parole official’s immunity, if any, for conduct arising from

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<sup>25</sup> See *Sellars v. Proconier*, 641 F.2d 1295, 1302-04 (9th Cir. 1981); see *Anderson v. Boyd*, 714 F.2d 906, 908-09 (9th Cir. 1983) (“Quasi-judicial immunity completely shields covered officials when they perform the functions which give rise to the need for absolute protection, even when the officials make egregious mistakes in carrying out these duties.”).

<sup>26</sup> See *id.*

<sup>27</sup> *Swift v. Christian*, 384 F.3d 1184, 1190 (9th Cir. 2004) (quoting *Miller v. Gammie*, 335 F.3d 889, 897 (9th Cir. 2003)).

<sup>28</sup> See *Thornton v. Brown*, 757 F.3d 834, 840 (9th Cir. 2014).

<sup>29</sup> See *id.*

<sup>30</sup> See *Swift*, 384 F.3d at 1191.

1 the duty to supervise parolees would be qualified immunity.<sup>31</sup>

## 2 **2. Qualified Immunity**

3 The defense of qualified immunity protects “government officials . . . from liability for  
4 civil damages insofar as their conduct does not violate clearly established statutory or  
5 constitutional rights of which a reasonable person would have known.”<sup>32</sup> The rule of qualified  
6 immunity protects “‘all but the plainly incompetent or those who knowingly violate the law;’”  
7 defendants can have a reasonable, but mistaken, belief about the facts or about what the law  
8 requires in any given situation.<sup>33</sup> A court considering a claim of qualified immunity must  
9 determine whether the plaintiff has alleged the deprivation of an actual constitutional right and  
10 whether such right was clearly established such that it would be clear to a reasonable officer that  
11 his conduct was unlawful in the situation he confronted.<sup>34</sup> The plaintiff in a Section 1983 suit  
12 “bears the burden of proving that the rights” he “claims were ‘clearly established’ at the time of  
13 the alleged violation.”<sup>35</sup>

14 In general, Seals-Brown does not cite to Supreme Court or Ninth Circuit case law to  
15 support his claim that Llopis and McNunn are not entitled to qualified immunity because their  
16 enforcement of California’s Sex Offender Registration Act and Jessica’s Law as parole  
17 conditions violated clearly established law. Seals-Brown has not identified, and the court cannot  
18 locate any Supreme Court or Ninth Circuit Court of Appeals case authority that clearly  
19 establishes that in 2013, enforcing residency restrictions or other restrictions required by  
20 Jessica’s Law or California’s Sex Offender Registration Act violated a parolee’s constitutional  
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22 <sup>31</sup> See *Thornton*, 757 F.3d at 840.

23 <sup>32</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

24 <sup>33</sup> *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341  
25 (1986)).

26 <sup>34</sup> See *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

27 <sup>35</sup> See *Moran v. Washington*, 147 F.3d 839, 844 (9th Cir. 1998) (citing *Davis v. Scherer*, 468  
28 U.S. 183, 197 (1984)).

1 rights.

2 First, Seals-Brown argues that the requirements of registration and other restrictions  
 3 based on California's Sex Offender Registration Act and Jessica's Law violated his right to due  
 4 process. In *Lambert v. California*,<sup>36</sup> the Supreme Court analyzed a local ordinance that made it  
 5 unlawful for a convicted felon to remain in the city for five days, or to enter the city more than  
 6 five times over a thirty-day period unless the felon registered with the chief of police. Lambert  
 7 challenged the ordinance based on due process grounds, alleging that she had no actual  
 8 knowledge of the registration requirement.<sup>37</sup> The Supreme Court held that the statute was  
 9 unconstitutional because without actual knowledge of the requirement to register, Lambert could  
 10 not be convicted of the failure to register without violating due process.<sup>38</sup> In contrast, Seals-  
 11 Brown admits that he was given notice that his parole conditions included compliance with  
 12 California's Sex Offender Registration Act and Jessica's Law approximately 90 days before his  
 13 scheduled parole release date in November 2013.<sup>39</sup> In light of *Lambert*, a reasonable official  
 14 could have believed that Llopis and McNunn's actions to enforce the registration requirements  
 15 after Seals-Brown had actual knowledge of the conditions did not violate due process.<sup>40</sup>

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17 <sup>36</sup> 355 U.S. 225, 226 (1957).

18 <sup>37</sup> *Id.* at 227.

19 <sup>38</sup> *Id.* at 229-30.

20 <sup>39</sup> See Dkt. No. 39 at 6.

21 <sup>40</sup> The California Supreme Court recently concluded that a blanket enforcement of sex offender  
 22 residency restrictions under Jessica's Law violated parolee's fundamental rights. See *In re*  
 23 *Taylor*, 60 Cal. 4th 1019 (2015). However, even if state case law could inform the court's  
 24 analysis as to whether the law was "clearly established," it would not assist Seals-Brown because  
 25 the qualified immunity analysis requires a determination of the contours of the clearly  
 26 established right *at the time of the challenged conduct* and an examination of whether a  
 27 reasonable official would have understood that the challenged conduct violated such right. See  
 28 *Henry A. v. Willden*, 678 F.3d 991, 999 (9th Cir. 2012) (emphasis added). Here, the challenged  
 conduct occurred in 2013. In 2013, the state of the law in the Ninth Circuit was that California's  
 Sex Offender Registration Act and Jessica's Law did not clearly violate due process. See *Maciel*  
*v. Cate*, 731 F.3d 928, 936-37 (9th Cir. 2013) (affirming the denial of a federal habeas petition  
 Case No. C 13-4824 PSG (PR)).

1 Next, Seals-Brown argues that the enforcement of registration and other restrictions  
 2 based on California's Sex Offender Registration Act and Jessica's Law violated his right to equal  
 3 protection based on his marital status and gender.<sup>41</sup> The Equal Protection Clause of the  
 4 Fourteenth Amendment "is essentially a direction that all persons similarly situated should be  
 5 treated alike."<sup>42</sup> Where a statute is challenged on equal protection grounds, "[t]he general rule is  
 6 that legislation is presumed to be valid and will be sustained if the classification drawn by the  
 7 statute is rationally related to a legitimate state interest."<sup>43</sup> A statutory sentencing scheme that  
 8 does not disadvantage a suspect class or infringe upon the exercise of a fundamental right is  
 9 subject only to rational basis scrutiny.<sup>44</sup> Seals-Brown does not provide any explanation or  
 10 factual support regarding how he was treated differently from other similarly situated parolees,  
 11 much less how he was treated differently based on his marital status or gender. Without any  
 12 such facts to support Seals-Brown's claim, the court must conclude that a reasonable official  
 13 could have believed that Llopis and McNunn's actions to enforce the registration requirements  
 14 did not violate his right to equal protection.<sup>45</sup>

15 Finally, Seals-Brown argues that the enforcement of registration and other restrictions  
 16 based on California's Sex Offender Registration Act and Jessica's Law violated his right against

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17  
 18 and concluding that reasonable jurists could disagree whether under clearly established Supreme  
 19 Court law, compliance with Jessica's Law were punitive, or violated due process); *Hatton v.*  
 20 *Bonner*, 356 F.3d 955, 967-68 (9th Cir. 2004) (affirming the denial of federal habeas relief and  
 21 concluding that the legislative intent behind California's Sex Offender Registration Act was  
 22 regulatory rather than punitive, and did not violate ex post facto or due process).

21 <sup>41</sup> See Dkt. No. 39 at 4.

22 <sup>42</sup> See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); see also *Fraley*  
 23 *v. Bureau of Prisons*, 1 F.3d 924, 926 (9th Cir. 1993) (per curiam).

24 <sup>43</sup> See *City of Cleburne, Tex.*, 473 U.S. at 440.

25 <sup>44</sup> See *Von Robinson v. Marshall*, 66 F.3d 249, 250-51 (9th Cir. 1995) (per curiam).

26 <sup>45</sup> Cf. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 682-83 (2009) (affirming the Circuit's grant of  
 27 qualified immunity because the complaint failed to "allow[] the court to draw the reasonable  
 28 inference that the defendant is liable for the misconduct alleged.").

1 cruel and unusual punishment. In its prohibition of cruel and unusual punishment, the Eighth  
 2 Amendment places restraints on prison officials, who may not, for example, use excessive force  
 3 against prisoners.<sup>46</sup> The Amendment also imposes duties on these officials, who must provide all  
 4 prisoners with the basic necessities of life such as food, clothing, shelter, sanitation, medical care  
 5 and personal safety.<sup>47</sup> The Ninth Circuit has held that California's Sex Offender Registration Act  
 6 is non-punitive.<sup>48</sup> Because sex offender registration statutes have "a legitimate nonpunitive  
 7 purpose of public safety, which is advanced by alerting the public to the risk of sex offenders in  
 8 their community,"<sup>49</sup> and are regulatory rather than punitive rules, it is not "punishment" for  
 9 purposes of the Eighth Amendment.<sup>50</sup> In light of the lack of clearly established law concluding  
 10 otherwise, a reasonable official could have believed that Llopis and McNunn's actions to enforce  
 11 the registration and residency requirements did not constitute cruel and unusual punishment.

12 In sum, Llopis and McNunn are entitled to qualified immunity for enforcing the parole  
 13 conditions.

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 15 <sup>46</sup> See *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

16 <sup>47</sup> See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

17 <sup>48</sup> See *Hatton v. Bonner*, 356 F.3d 955, 961-66 (9th Cir. 2004).

18 <sup>49</sup> *Smith v. Doe*, 538 U.S. 84, 97-102 (2003).

19  
 20 <sup>50</sup> See, e.g., *Honan v. Probation Dept. of Orange County*, Case No. 10-1774-JST, 2012 WL  
 21 1340134, \*7 (C.D. Cal. Feb. 13, 2012) (citing cases); see also *Maciel*, 731 F.3d at 936-37  
 22 (affirming the denial of a federal habeas petition and concluding that reasonable jurists could  
 23 disagree whether under clearly established Supreme Court law, compliance with Jessica's Law  
 24 were punitive, or violated due process); *Hatton*, 356 F.3d at 967-68 (9th Cir. 2004) (affirming  
 25 the denial of federal habeas relief and concluding that the legislative intent behind California's  
 26 Sex Offender Registration Act was regulatory rather than punitive, and did not violated ex post  
 27 facto or due process); *In re E.J.*, 47 Cal. 4th 1258, 1280 (2010) (suggesting that residency  
 28 requirements on a registered sex offender does not constitute punishment because it does not  
 "additional[ly] punish" for the sex offense conviction); *In re Alva*, 33 Cal. 4th 254, 268 (2004)  
 ("We now conclude that a requirement of mere registration by one convicted of a sex-related  
 crime, despite the inconvenience it imposes, cannot be considered a form of "punishment"  
 regulated by either federal or state constitutional proscriptions against cruel and/or unusual  
 punishment." ). But see *In re Taylor*, 60 Cal. 4th 1019 (2015).

Case No. C 13-4824 PSG (PR).

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS'  
 MOTIONS FOR JUDGMENT AS A MATTER OF LAW

1           **3. Mootness**

2           With regard to Seals-Brown's claim for injunctive relief, Llopis and McNunn argue that  
3 the claim is moot. They assert that since July 2014, Seals-Brown has been incarcerated after he  
4 was arrested for drug charges.<sup>51</sup> Seals-Brown has presumably since been convicted as court  
5 records show that he filed a notice of appeal from his criminal judgment on July 2, 2015,<sup>52</sup> and  
6 was transferred from Mendocino County Jail to San Quentin State Prison on June 25, 2015.<sup>53</sup>

7           The jurisdiction of federal courts depends on the existence of a "case or controversy"  
8 under Article III of the Constitution.<sup>54</sup> A claim is considered moot if it has lost its character as a  
9 present, live controversy, and if no effective relief can be granted due to subsequent  
10 developments.<sup>55</sup> Where injunctive relief is involved, questions of mootness are determined in  
11 light of the present circumstances.<sup>56</sup> However, an exception to the mootness doctrine exists  
12 where a claim is "capable of repetition yet evading review."<sup>57</sup> This exception is limited to  
13 extraordinary circumstances where two elements combine: (1) the challenged action is of limited  
14 duration, too short to be fully litigated prior to its cessation or expiration, and (2) there is a  
15 reasonable expectation that the same complaining party will be subjected to the same action  
16

17 \_\_\_\_\_  
18 <sup>51</sup> See Dkt. No. 28, Exs. B-E.

19 <sup>52</sup> California Appellate Courts Case Information System,  
20 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=2113543&doc\\_no=A145580](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2113543&doc_no=A145580) (last visited August 13, 2015).

21 <sup>53</sup> See Dkt. No. 62.

22 <sup>54</sup> *PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996).

23 <sup>55</sup> *See Flast v. Cohen*, 392 U.S. 83, 95 (1968).

24 <sup>56</sup> *See Mitchell v. Dupnik*, 75 F.3d 517, 528 (9th Cir. 1996). There are two other exceptions that  
25 can apply to mootness: when there is a voluntary cessation of conduct, or where the claimant  
26 would still suffer collateral legal consequences. *See PUC v. FERC*, 100 F.3d at 1460. Seals-  
27 Brown does not argue, and it does not appear, that either of these exceptions applies to this case.

28 <sup>57</sup> *Native Village of Noatak v. Blatchford*, 38 F.3d 1505, 1509 (9th Cir. 1994).

Case No. C 13-4824 PSG (PR).

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS'  
MOTIONS FOR JUDGMENT AS A MATTER OF LAW

1 again.<sup>58</sup>

2       Seals-Brown argues that the claim is not moot because, once he is released from prison,  
3 the sex offender registration and residency restrictions will be re-imposed upon his release  
4 because they are lifetime requirements. Even assuming that Seals-Brown will be subjected to  
5 these same restrictions, the Ninth Circuit has explained that “for a controversy to be too short to  
6 be fully litigated prior to cessation or expiration, it must be of inherently limited duration.”<sup>59</sup>  
7 This is because the “exception [to mootness] is concerned not with particular lawsuits, but with  
8 classes of cases that, absent an exception, would always evade judicial review.”<sup>60</sup> The limited  
9 duration of these kinds of controversies is clear at the beginning of the challenged action.<sup>61</sup> In  
10 such cases, it is “not reasonably foreseeable that plaintiff can obtain full review before [his] case  
11 becomes moot.”<sup>62</sup> This exception is used sparingly, and controversies lacking the inherent  
12 limited duration quality do not qualify for use of this exception because “even if a particular  
13 controversy evades review, there is no risk that future repetitions of the controversy will  
14 necessarily evade review as well.”<sup>63</sup>

15       Although Seals-Brown’s argument that he will be subject to these parole conditions again  
16 if and when he is released from prison carries some weight, he does not argue, and the court  
17 cannot conclude, that this controversy is of the type that is of an inherently limited duration.<sup>64</sup>

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19 <sup>58</sup> See *Porter v. Jones*, 319 F.3d 483, 489-90 (9th Cir. 2003).

20 <sup>59</sup> *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 836 (9th Cir. 2014) (internal  
21 quotation marks omitted).

22 <sup>60</sup> *Id.*

23 <sup>61</sup> See *id.*

24 <sup>62</sup> *Doe No. 1 v. Reed*, 697 F.3d 1235, 1240 (9th Cir. 2012).

25 <sup>63</sup> *Protectmarriage.com-Yes on 8*, 752 F.3d at 837.

26 <sup>64</sup> See, e.g., *Federal Election Com’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007)  
27 (finding that defendant “had no way of knowing well in advance that it would want to run ads on  
28 judicial filibusters” shortly before the election when such ads were prohibited under challenged  
Case No. C 13-4824 PSG (PR).

1 Even if Seals-Brown will be subject to the same challenged parole conditions upon his eventual  
 2 release from prison, there is no evidence that any potential controversy will necessarily evade  
 3 review.

4 **B. Mills' Motion for Judgment as a Matter of Law**

5 Pursuant to Fed. R. Civ. P. 56(a), summary judgment is appropriate when "there is no  
 6 genuine issue as to any material fact and the moving party is entitled to judgment as a matter of  
 7 law." Material facts are those that may affect the outcome of the case.<sup>65</sup> A dispute as to a  
 8 material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for  
 9 the non-moving party.<sup>66</sup> All evidence must be viewed in the light most favorable to the  
 10 non-moving party. The district court may not resolve disputed issues of material fact by  
 11 crediting one party's version of events and ignoring another.<sup>67</sup> Initially, the moving party bears  
 12 the burden to show that no genuine issue of material fact exists.<sup>68</sup> If this burden is met, the  
 13 burden shifts to the non-moving party.<sup>69</sup>

14 Mills moves for judgment as a matter of law on the basis that he was not employed by the  
 15 City of Eureka or the Eureka Police Department until November 2013, and otherwise had  
 16 nothing to do with the conditions of parole imposed upon Seals-Brown. Seals-Brown mainly  
 17

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18 law); *Roe v. Wade*, 410 U.S. 113, 125 (1973) (concluding that pregnancy is a classic example  
 19 sufficient to satisfy this exception to mootness); *Carroll v. President and Comm'rs of Princess*  
 20 *Anne*, 393 U.S. 175, 179 (1968) (concluding that a challenge to a 10-day restraining order was  
 21 capable of repetition but evaded review because any litigation would never be completed within  
 the 10-day restraint).

22 <sup>65</sup> See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that  
 23 may affect the outcome of the suit under governing law will properly preclude the entry of  
 summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.").

24 <sup>66</sup> See *id.*

25 <sup>67</sup> See *Wall v. County of Orange*, 364 F.3d 1107, 1111 (9th Cir. 2004).

26 <sup>68</sup> See *Celotex Corp. v. Caltrett*, 477 U.S. 317, 323-24 (1986).

27 <sup>69</sup> See Fed. R. Civ. P. 56(e).

28 Case No. C 13-4824 PSG (PR).

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS'  
 MOTIONS FOR JUDGMENT AS A MATTER OF LAW

1 argues that Mills was the supervisor of the officer who violated police practice by “framing”  
 2 Seals-Brown in the 2001 charges by using Seals-Brown’s friends.<sup>70</sup> However, after receiving  
 3 Mills’ motion for judgment as a matter of law, Seals-Brown does not dispute that Mills was not  
 4 working for the Eureka Police Department in 2001; rather, he newly alleges that Mills  
 5 unlawfully “enforced” the parole conditions and restrictions against him when he traveled to  
 6 Eureka County for one week after being released on parole.<sup>71</sup>

7       Seals-Brown does not assert, however, that Mills imposed the parole conditions on him.<sup>72</sup>  
 8 Nor is there any evidence to support the conclusory statement that Mills “enforced” the parole  
 9 conditions upon Seals-Brown for the one-week Seals-Brown was in Eureka. In fact, the  
 10 evidence is undisputed that Mills has never had any contact with Seals-Brown.<sup>73</sup> Seals-Brown  
 11 merely alleges that in 2013, he was given a “paper card pass” to show law enforcement in  
 12 Eureka as proof that he was permitted to travel and visit his mother in Eureka for a one week  
 13 period.<sup>74</sup> Llopis and McNunn told Seals-Brown that they would notify the Eureka Police  
 14 Department to let them know that Seals-Brown would be in their area for that one-week period.<sup>75</sup>  
 15 Seals-Brown newly claims that because Mills was the Chief of Police in November 2013, Mills  
 16 violated Seals-Brown’s rights when Seals-Brown traveled to Eureka during that week while

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 20 <sup>70</sup> See Dkt. No. 14 at 16-17.

21 <sup>71</sup> See Dkt. No. 59 at 6.

22 <sup>72</sup> Seals-Brown’s allegations against Mills in his second amended complaint center on the claim  
 23 that Mills “supervised” Eureka Police Officers who “framed” Seals-Brown, which led to his  
 24 2001 sexual battery convictions. In the court’s order of service, the court previously dismissed  
 this claim because it challenged the constitutionality of his arrest leading up to his 2001  
 convictions, which was barred by *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994).

25 <sup>73</sup> See Dkt. No. 32-1 ¶ 5.

26 <sup>74</sup> See Dkt. No. 59 at 5.

27 <sup>75</sup> See *id.*

28 Case No. C 13-4824 PSG (PR).

1 under the challenged parole conditions.<sup>76</sup>

2 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the  
3 plaintiff can show that the defendant's actions both actually and proximately caused the  
4 deprivation of a federally protected right.<sup>77</sup> A person deprives another of a constitutional right  
5 within the meaning of Section 1983 if he does an affirmative act, participates in another's  
6 affirmative act or omits to perform an act which he is legally required to do, that causes the  
7 deprivation of which the plaintiff complains.<sup>78</sup> To defeat summary judgment, sweeping  
8 conclusory allegations will not suffice; the plaintiff must instead "set forth specific facts as to  
9 each individual defendant's" actions which violated his or her rights.<sup>79</sup>

10 Seals-Brown fails to show that Mills caused any injury by "enforcing" the parole  
11 conditions for the week Seals-Brown was in Eureka, or otherwise affirmatively acted in a way  
12 such as to violate his constitutional rights. There is no evidence to support the conclusory  
13 statement that Mills did any affirmative act to "enforce" the parole conditions upon Seals-  
14 Brown. Seals-Brown alleges only that Mills was in charge of enforcing the conditions should  
15 Seals-Brown fail to comply for the one-week he was in Eureka. But there is no evidence that  
16 Seals-Brown failed to comply with the conditions, or that Mills otherwise enforced the  
17 conditions imposed. Accordingly, there is an absence of evidence that Mills violated Seals-  
18 Brown's right to due process, equal protection, or right against cruel and unusual punishment.

19 **C. Waidelich's Motion for Judgment as a Matter of Law**

20 Waidelich moves for judgment as a matter of law on the basis that the only involvement

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22 <sup>76</sup> *See id.*

23 <sup>77</sup> *See Lemire v. Cal. Dept. of Corrections & Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir.  
24 2013); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).

25 <sup>78</sup> *See Leer*, 844 F.2d at 633. The element of causation requires a showing that the injury is  
26 "fairly traceable to the challenged action of the defendant, and not the result of the independent  
27 action of some third party not before the court." *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th  
28 Cir. 2014) (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)).

<sup>79</sup> *Leer*, 844 F.2d at 634.

1 he had with Seals-Brown regarding parole conditions was to provide materials for Seals-Brown's  
2 registration as a sex offender.<sup>80</sup> Outside of requiring registration pursuant to a Superior Court  
3 order, Waidelich also is responsible for enforcing state law if Seals-Brown failed to register or  
4 otherwise comply with his parole conditions.<sup>81</sup> Waidelich was not responsible for imposing the  
5 parole conditions upon Seals-Brown.<sup>82</sup>

6 Seals-Brown argues that Waidelich was enforcing registration for the Ukiah Police  
7 Department.<sup>83</sup> As with Mills, Seals-Brown does not allege that Waidelich imposed the parole  
8 conditions on him. Nor is there any evidence to support the conclusory statement that Waidelich  
9 did any affirmative act to "enforce" the parole conditions upon Seals-Brown. Seals-Brown  
10 alleges that Waidelich was in charge of enforcing the conditions should Seals-Brown fail to  
11 comply. But once again, there is no evidence that Seals-Brown failed to comply with the  
12 conditions, or that Waidelich otherwise enforced any of challenged conditions.<sup>84</sup>

13 As with Mills, Seals-Brown fails to show that Waidelich caused any injury by being  
14 responsible for enforcing the parole conditions imposed upon Seals-Brown, or otherwise  
15 affirmatively acted in a way such as to violate his constitutional rights. There is simply no  
16 evidence that Waidelich violated Seals-Brown's right to due process, equal protection, or right  
17

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18 <sup>80</sup> See Dkt. No. 36 ¶ 2.

19 <sup>81</sup> See *id.* ¶¶ 3-4.

20 <sup>82</sup> See *id.* ¶ 3.

21 <sup>83</sup> See Dkt. No. 14 at 12-13.

22 <sup>84</sup> Seals-Brown's opposition is fraught with new allegations against Waidelich. See Dkt. No. 39  
23 at 36, 38. Seals-Brown also filed a "notice" pleading alleging other new factual allegations  
24 against Waidelich. See Dkt. No. 47. He alleges that Waidelich committed perjury in a 2008 case  
25 against Seals-Brown for indecent exposure. He also alleges that in 2003, when Seals-Brown was  
26 being held at a Lake County institution, Waidelich was employed as a correctional officer there.  
27 Seals-Brown further asserts that in 2004, he had filed a federal civil rights complaint against  
28 Waidelich. However, none of these allegations add any value to Seals-Brown's underlying  
second amended complaint, which challenges the imposition and enforcement of his parole  
conditions commencing upon his release from prison in November 2013.

Case No. C 13-4824 PSG (PR).

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS'  
MOTIONS FOR JUDGMENT AS A MATTER OF LAW

1 against cruel and unusual punishment.

2 **III.**

3 The dispositive motions were fully briefed and submitted to the court on February 23,  
4 2015 – the date Defendants filed their replies. On January 29, 2015, Seals-Brown filed a motion  
5 for leave to file an amended complaint, and on March 2, 2015, Seals-Brown filed a motion for  
6 leave to file a supplemental brief pursuant to Fed. R. Civ. P. 15(d). The court construes both  
7 motions as a motion for leave to file a supplemental complaint.

8 The court may permit a party to serve a supplemental pleading “setting out any  
9 transaction, occurrence, or event that happened after the date of the pleading to be  
10 supplemented.”<sup>85</sup> The power to grant supplemental pleadings is discretionary and upon such  
11 terms as are “just.”<sup>86</sup> District courts have broad discretion under Fed. R. Civ. P. 15(d) in  
12 determining whether to permit a supplemental complaint.<sup>87</sup> The factors to consider include: (1)  
13 judicial efficiency; (2) the supplemental complaint “should have some relation to the claim set  
14 forth in the original [or operative] pleading”; and (3) potential prejudice to the defendant.<sup>88</sup>

15 Here, Seals-Brown wishes to add claims of racial discrimination and discriminatory  
16 prosecution to his second amended complaint. He filed his second amended complaint on March  
17 10, 2014. In his motion to supplement, he alleges that in July 2014, McNunn and Llopis  
18 demonstrated racial discrimination against him when they gave their opinion in Seals-Brown’s  
19 bail reviewing hearing in the Superior Court of Mendocino County.<sup>89</sup> Specifically, McNunn and  
20 Llopis informed the Superior Court that if Seals-Brown were released on his own recognizance,

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23 <sup>85</sup> Fed. R. Civ. P. 15(d).

24 <sup>86</sup> *Id.*

25 <sup>87</sup> *See Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988).

26 <sup>88</sup> *See id.* at 474-75.

27 <sup>89</sup> *See* Dkt. No. 53 at 4; Dkt. No. 28, Ex. C.

28 Case No. C 13-4824 PSG (PR).

1 he would be a threat to the public.<sup>90</sup> Seals-Brown believes they had this opinion because  
 2 Mendocino County is mostly a Caucasian-populated area, and Seals-Brown is black.<sup>91</sup> Seals-  
 3 Brown alleges that their actions constituted racial discrimination and discriminatory prosecution  
 4 against him.<sup>92</sup>

5 While leave to permit supplemental pleading is favored, it cannot be used to introduce a  
 6 separate, distinct and new cause of action.<sup>93</sup> Matters newly alleged in a supplemental complaint  
 7 must have some relation to the claim(s) set forth in the original pleading.<sup>94</sup> Leave to file a  
 8 supplemental complaint therefore may not be granted where the supplemental complaint  
 9 involves a new and distinct cause of action that should be the subject of a separate suit.<sup>95</sup> Seals-  
 10 Brown's allegations regarding an unrelated 2014 bail reviewing hearing should be the subject of  
 11 a separate suit. In addition, permitting a supplemental complaint would not promote judicial  
 12 efficiency, and Defendants have established that they would be prejudiced by the addition of  
 13 these claims because they would be forced to pay extra litigation costs when the case has been  
 14 pending for more than a year.

15 Seals-Brown also alleges that Waidelich committed perjury against him in Seals-Brown's  
 16 2007 trial for indecent exposure, which subjected Seals-Brown to racial discrimination and  
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 18

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 20 <sup>90</sup> See Dkt. No. 53 at 4.

21 <sup>91</sup> See *id.*

22 <sup>92</sup> See *id.* at 4-6.

23 <sup>93</sup> See *Planned Parenthood of So. Arizona v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997).

24 <sup>94</sup> See *Keith*, 858 F.2d at 474.

25 <sup>95</sup> See *Neely*, 130 F.3d at 402 (abuse of discretion to allow plaintiffs to supplement complaint  
 26 after final judgment to attack newly amended statute); *cf. Griffin v. County Sch. Bd. of Prince*  
 27 *Edward County*, 377 U.S. 218, 226 (1964) (supplemental pleading proper where new  
 transactions not new cause of action, but merely part of "same old cause of action" originally  
 raised).

28 Case No. C 13-4824 PSG (PR).

1 discriminatory prosecution.<sup>96</sup> However, “[t]he purpose of Rule 15(d) is to promote as complete  
2 an adjudication of the dispute between the parties as possible by allowing the addition of claims  
3 which arise after the initial pleadings are filed.”<sup>97</sup> Waidelich’s alleged perjury not only occurred  
4 prior to Seals-Brown’s filing of his second amended complaint,<sup>98</sup> but involves a separate  
5 criminal proceeding, and lacks any logical connection to the imposition of 2013 Seals-Brown’s  
6 parole conditions, based on his 2001 misdemeanor sexual battery convictions. Again, the  
7 alleged perjury claim from an unrelated criminal proceeding should be the subject of a separate  
8 lawsuit. In addition, permitting a supplemental complaint would not promote judicial efficiency,  
9 and Defendants have established that they would be prejudiced by the addition of these claims  
10 because they would be forced to pay extra litigation costs when the case has been pending for  
11 more than a year.

12 Finally, Seals-Brown alleges that Mills is liable for racial discrimination and  
13 discriminatory prosecution because he and the Eureka Police Department planted DNA evidence  
14 against Seals-Brown in relation to Seals-Brown’s 2001 misdemeanor convictions for sexual  
15 battery.<sup>99</sup> The record already shows undisputed evidence that Mills did not work for the Eureka  
16 Police Department in 2001. Further, Seals-Brown again tries to challenge the constitutionality of  
17 his 2001 convictions, which is barred by *Heck v. Humphrey*<sup>100</sup> because judgment in favor of  
18 Seals-Brown would necessarily imply the invalidity of his conviction or sentence. Moreover,  
19 these events are not a “transaction, occurrence, or event that happened after the date of the  
20  
21

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22 <sup>96</sup> See Dkt. No. 53 at 6.

23 <sup>97</sup> *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 668 F.2d 1014, 1057 (9th  
24 Cir. 1981).

25 <sup>98</sup> see Fed. R. Civ. P. 15(d).

26 <sup>99</sup> See Dkt. No. 53 at 6-7.

27 <sup>100</sup> 512 U.S. 477, 486-487 (1994).

28 Case No. C 13-4824 PSG (PR).

pleading to be supplemented.”<sup>101</sup>

IV.

Llopis and McNunn’s motion to dismiss is GRANTED. Mills and Waidelich’s motions for summary judgment are GRANTED. All other relief requested is DENIED. The Clerk shall terminate all pending motions and close the case.

IT IS SO ORDERED.

DATED: 9/24/2015

  
PAUL S. GREWAL  
United States Magistrate Judge

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<sup>101</sup> See Fed. R. Civ. P. 15(d).

Case No. C 13-4824 PSG (PR).

ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS; GRANTING DEFENDANTS’  
MOTIONS FOR JUDGMENT AS A MATTER OF LAW

**Additional material  
from this filing is  
available in the  
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