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27 UNITED STATES DISTRICT COURT
28 DISTRICT OF NEVADA

29 *PRISON LEGAL NEWS*, a project of the
30 HUMAN RIGHTS DEFENSE CENTER, a
31 Washington Nonprofit Corporation,
32 Plaintiff,

33 v.

34 JAMES GREG COX (in his official capacity) as
35 Director of Nevada Department of Corrections;
36 E.K. MCDANIEL (in his official capacity), as
37 Deputy Director of Operations at NDOC; and
38 DOES I-XXV,
39 Defendants.

Case No.: 3:13-cv-00346

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff brings this action, pursuant to 42 U.S.C. § 1983, to enjoin Nevada Department of Corrections (NDOC), formerly Nevada Department of Prisons, from censoring, in violation of the

1 First Amendment, the receipt of the journal *PRISON LEGAL NEWS* by NDOC prisoners in the State
2 of Nevada. Plaintiffs also bring this action to have NDOC’s ban on “return address labels” as
3 embodied in 750.03(3)(D); ban on publications not from “approved vendors or publishers” as
4 embodied in AR 750.08(1); and the requirement that all books be sent using First Class Mail as
5 embodied in Section 8 of AR 750.08 declared unconstitutional on their face and as applied. Plaintiff
6 also seeks declaratory and permanent injunctive relief pursuant 28 U.S.C. § 2201(a) prohibiting
7 NDOC from engaging in further unlawful censorship of books, magazines and other correspondence
8 from *PRISON LEGAL NEWS*, as well as damages.

8 **JURISDICTION**

9 1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, as well as the First
10 and Fourteenth Amendments of the United State Constitution. Jurisdiction is founded on 28 U.S.C.
11 § 1331 and § 1343 and the aforementioned statutory and constitutional provisions. The Court has
12 jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201 and FRCP 57.

13 **VENUE**

14 2. Venue lies properly in this Court pursuant to 28 U.S.C. § 1391(b).

15 **PARTIES**

16 3. Plaintiff *PRISON LEGAL NEWS* (“PLN”), is and at all times relevant hereto is a
17 wholly owned publishing project of the *HUMAN RIGHTS DEFENSE CENTER*, a 501(c)(3)
18 nonprofit corporation with offices in Lake Worth, Florida. PLN publishes *PRISON LEGAL NEWS*,
19 a monthly journal of corrections, news, and analysis. PLN has approximately 7,000 subscribers in
20 the United States and abroad, including prisoners, attorneys, and judges.

21 4. Defendant *JAMES GREG COX* is the Director of the Nevada Department of
22 Corrections (“NDOC”), a State agency that manages the correctional facilities within the State of
23 Nevada. He is ultimately responsible for the promulgation and enforcement of NDOC policies and
24 procedures. Mr. COX is sued in his official capacity for prospective injunctive relief.

25 5. Defendant *E.K. MCDANIEL* is the Deputy Director of Operations at NDOC.

26 6. Defendant *JACKIE CRAWFORD* is the former Director of NDOC. She is sued in
27 both her official and individual capacities.
28

1 7. Defendant ROBERT BAYER is the former Director of Nevada Department of
2 Corrections (at that time Nevada Department of Prisons). Mr. Bayer is sued in both his official and
3 individual capacities.

4 8. The true identities of Defendant DOES I-XXV, are currently unknown to Plaintiffs,
5 who therefore sue said Defendants by such fictitious names. Plaintiffs, based upon knowledge and
6 information, reasonably believe and therefore allege that each of the Defendants designated herein as
7 DOES I-XXV may be responsible in some manner for events and happenings herein referred to; that
8 Plaintiffs will ask leave to amend this Complaint to insert the true name(s) of said Defendant(s) when
9 the same have been ascertained by Plaintiffs together with appropriate factual allegations and to join
10 such Defendant(s) as and when they become known in this action in their true capacities.

11 9. Plaintiffs have been forced to incur reasonable attorney’s fees and costs in pursuit of
12 this action, including, but not necessarily limited to, those contemplated by 42 U.S.C. § 1988.

13 **FIRST CLAIM FOR RELIEF**

14 42 U.S.C. § 1983

15 Violation Of Publisher’s First and Fourteenth Amendment Rights

16 Plaintiffs hereby incorporate by reference all allegations contained in all numbered
17 paragraphs of this Complaint as if set forth fully here.

18 10. Plaintiff, PLN, is a wholly owned publisher project of HUMAN RIGHTS DEFENSE
19 CENTER, a 501(c)(3) non-profit corporation, originally organized under the laws of the State of
20 Washington in 1991. The purpose of the organization as stated in PLN’s Articles of Incorporation,
21 Article 3, Part 6 is: “to educate prisoners and the public about the destructive nature of racism,
22 sexism, and the economic and social costs of prison to society.”

23 11. In 2000, Plaintiff, as represented by the American Civil Liberties Union of Nevada
24 (“ACLUNV”), began litigating in order to correct unlawful NDOC censorship practices. In *Prison*
25 *Legal News v. Crawford et. al.*, Plaintiff successfully obtained a judgment and order enjoining
26 NDOC from censoring Prison Legal News publications. See “Stipulation and Judgment/Order,”
27 Case #: 3:00-CV-00373-HDM-RAM (D. Nev. 9/27/00) (Hereinafter “NDOC Consent Decree”).
28 Despite the NDOC Consent Decree, they continue to censor mail from Prison Legal News using
methods that are in violation of the decree and in violation of the United States Constitution. A
Show Cause Order concerning the refusal of the Defendants to adhere to the terms of this consent
decree is contemporaneously being filed

1 12. Beginning in 2010, Defendants, and each of them, and DOES I-XXV, have refused to
2 allow delivery of mail from PLN, including but not limited to, the publication *PRISON LEGAL*
3 *NEWS*, to one or more of the prisoners under the control of NDOC, under policies and practices
4 banning “address labels” and “envelope tape,” requiring publication be sent from “approved
5 vendors,” and/or requiring mail be sent using first-class postage. Various prisons and institutions
6 throughout the State of Nevada, including but not necessarily limited to, the Southern Desert
7 Correctional Center (SDCC), Ely State Prison (ESP), and Northern Nevada Correctional Center
8 (NNCC) have adopted these policies and practices. This censorship and refusal to allow delivery of
9 publications is occurring even though Defendants or persons who report to Defendants have
10 previously approved these subscriptions to *PRISON LEGAL NEWS*, which Defendants now refuse to
11 deliver.

12 13. Issues of *PRISON LEGAL NEWS* that have been confiscated and/or discarded rather
13 than delivered to their prisoner subscribers include political speech, which is entitled to the highest
14 protection under the Constitution of the United States.

15 14. Defendants’ refusal to allow delivery of *PRISON LEGAL NEWS* constitutes a
16 violation of Plaintiff’s First Amendment rights, as made applicable to the State of Nevada through
17 the Fourteenth Amendment of the United States Constitution.

18 15. *PRISON LEGAL NEWS* is protected political speech and violates no prison policies
19 nor regulations other than the alleged restrictions on “address labels” and “envelope tape,” “approved
20 vendor” requirements, and requirements that publications must be sent using first-class postage.
21 Defendants have refused to deliver or allow delivery of copies of *PRISON LEGAL NEWS* and books
22 from *PRISON LEGAL NEWS* to prisoners at NDOC facilities who had subscribed to this
23 publication and/or who had ordered books from PLN, on the grounds that these publications contain
24 “foreign substances such as stickers” and “return address labels,” pursuant AR 750.03(3)(7) and
25 750.03(3)(D), respectively. These “adulterated mail” provisions have been used to prohibit delivery
26 of mail from publishers such as PLN, who use printed return address and address labels for
27 correspondence with individual inmates. PLN also uses mailing labels for materials sent directly
28 from its office. Defendants’ refusal to deliver or allow delivery of publications from PLN to
29 prisoners based on the presence of “address labels” or “envelope tape” fails to meet the
30 reasonableness requirement for prison regulations impinging upon an inmate’s constitutional rights.

31 16. The blanket prohibition on “address labels” and “envelope tape” unreasonably
32 impinges on the rights of both PLN and those Nevada prisoners intended to receive its publications.

1 The “address labels” and “envelope tape” ban is not rationally related to a legitimate and neutral
2 government objective. Upon information and belief, Amazon.com orders are permitted entry into
3 NDOC facilities, and these ordered have address labels. This suggests that NDOC is not acting
4 consistently and neutrally. Since Amazon.com does not deliver *PRISON LEGAL NEWS*, no viable
5 alternatives are available for prisoners to receive *PRISON LEGAL NEWS* when orders from PLN
6 publishers are prohibited. Accommodating the prisoners’ rights would have little to no impact on the
7 guards or other prisoners, given packages from Amazon.com containing labels are permitted. An
8 easy alternative exists – prison personnel may remove the stickers of labels before delivery the
9 publications to inmates.

10 17. Additionally, NDOC’s requirement under AR 750.08(1), stating that all books “must
11 come directly from approved vendors or publishers,” without specifying which entities are
12 “approved,” violates the First Amendment rights of both the inmates and the publishers. According
13 to mailroom reports, only one vendor, Amazon.com, has enjoyed an “approved” status. A single
14 source designated as the “approved vendor” is unconstitutional, since there exist no alternative means
15 of obtaining reading material from publishers such as PLN. Such a practice places a significant
16 burden on publishers’ and inmates’ constitutional rights.

17 18. Furthermore, Section 8 of AR 750.08, which states, “All books must be sent First
18 Class Mail,” violates the First Amendment rights of both inmates and publishers. PLN conducts its
19 activity as a non-profit organization, and therefore qualifies for the use of Standard A “non-profit
20 organization rates” to circulate its periodical publication. These postage rates are substantially lower
21 cost than first class mail. PLN also mails books to prisoners using the United States Postal Service’s
22 Media Mail rates, a special rate available for books and educational materials, that is substantially
23 lower than the rates charged for First Class Mail. Rejecting core-protected speech solely due to postal
24 service rate classifications is unconstitutional and unrelated to any legitimate penological interests.

25 19. Plaintiff is entitled to a declaration that all regulations and/or instructions,
26 administrative directives, institutional procedures, or policies on which Defendants base their refusal
27 to deliver or allow delivery of mail from PLN to prisoners, only because Defendants characterize the
28 publications or other mail as having “address labels” and/or “envelope tape,” the publications are not
delivered from the only “approved vendor,” and/or the publications are not mailed using first-class
postage, are unconstitutional. These policies and practices are unconstitutional as applied, in
violation of the First Amendment and Fourteenth Amendment, by and through 42 U.S.C. § 1983 and

1 on their face. Plaintiffs are entitled to a declaration that these policies and practices are
2 unconstitutional.

3 20. Plaintiffs are entitled to an entry of an injunction prohibiting Defendants from
4 refusing to process and deliver, or allow delivery of, mail from PRISON LEGAL NEWS to prisoners
5 on the grounds that these publications have affixed “address labels” and/or “envelope tape,” are not
6 delivered from a sole approved vendor, and/or are not delivered using first-class postage. Plaintiffs
7 are entitled to an injunction permanently enjoining enforcement of these practices and policies.

8 21. As a proximate and direct result of Defendants’ actions, Plaintiff have suffered
9 damages in an amount to be more fully enumerated at trial.

10 **SECOND CLAIM FOR RELIEF**

11 42 U.S.C. § 1983, Fourteenth Amendment Procedural Due Process Violations

12 Plaintiff hereby incorporates by reference all allegations contained in all numbered
13 paragraphs of this Complaint as if set forth fully here.

14 22. Since approximately September 1999, and continuing despite the NDOC Consent
15 Decree issued in September 2000, Defendants have denied Plaintiff its right to due process under the
16 Fourteenth Amendment of the United States Constitution by failing to provide Plaintiff notice and an
17 opportunity to be heard when mail sent to Nevada prisoners, including but not limited to, the journal
18 of PRISON LEGAL NEWS, is censored.

19 23. Defendants’ actions, as described above, also constitute a violation of Plaintiff’s civil
20 rights under 42 U.S.C. § 1983.

21 24. The Plaintiff is entitled to a declaration that Defendants have violated the Fourteenth
22 Amendment to the United States Constitution and 42 U.S.C. § 1983 by refusing to notify PLN when
23 books and publications it has mailed to prisoners have been confiscated and/or discarded rather than
24 delivered to the subscribing prisoners.

25 25. The Plaintiff is also entitled to an injunction prohibiting Defendants from enacting
26 and enforcing policies, procedures, administrative directives, etc., to confiscate and/or discard
27 publications without notification to the publisher that such publications have been confiscated and/or
28 discarded rather than delivered.

29 26. As a proximate and direct result of the Defendants’ actions, Plaintiff has suffered
30 damages in an amount to be more fully enumerated at trial.

REMEDIES REQUESTED

Declaratory Relief

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as is set forth fully here.

27. Plaintiff requests a declaratory judgment establishing that the policies and procedures of censorship which result in Defendants not delivering or refusing to allow delivery to prisoners of *PRISON LEGAL NEWS* and other mail from PLN are in violation of Plaintiff’s First and Fourteenth Amendment rights under the Constitution of the United States. Plaintiff requests a declaration that Defendants’ ban on “address labels” and “envelope tape,” publications not from a sole “approved vendor,” and publications not sent using first-class postage are unconstitutional on their face and as applied, all in violation of Plaintiff’s rights under the First and Fourteenth Amendments.

Injunctive Relief

Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

28. Plaintiff respectfully requests that this Court issue a permanent injunction enjoining Defendants, and each of them, from interfering with or refusing the delivery of PLN publications and other mail or subscription information from PLN within the NDOC system, anywhere within the State of Nevada. Plaintiff asks this Court to issue a permanent injunction enjoining defendants from enforcing the “no labels,” “no tape” and “no sticker” requirements, the “approved vendor” requirement, and the requirement that publications be mailed using first-class postage.

Punitive Damages

29. Plaintiff hereby incorporates by reference all allegations contained in all numbered paragraphs of this Complaint as if set forth fully here.

30. Plaintiff alleges that the individual Defendants acted with deliberate indifference to or reckless disregard for Plaintiff’s clearly established constitutional rights, and have violated Plaintiff’s clearly established constitutional rights, and these actions taken by the individual Defendants were the direct and proximate cause of the damages suffered by Plaintiffs, and therefore, punitive damages should be awarded to punish Defendants for their misconduct, and to deter similar misconduct by similarly situated defendants in the future. The amount of these punitive damages should be determined at trial.

PRAYER

WHEREFORE, Plaintiffs pray judgment against the Defendants, and each of them, as follows:

1. For an order to show cause for Defendants’ willful failure to comply with this Court’s prior order and judgments;
2. For a contempt citation for Defendants’ willful failure to comply with this Court’s prior order and judgments;
3. For such other sanctions, as the Court deems proper, and in an amount the Court deems reasonable;
4. For declaratory and injunctive relief, invalidating the provisions of A.R. 750 which fall afoul of the Consent Decree and the demands of the First Amendment;
5. For attorney’s fees and costs of suit necessarily incurred herein;
6. For such other and further relief as this Court may deem just and appropriate in the premises.

DATED: This 27th day of June 2013.

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