

IN THE MATTERS OF:

Prison Legal News v. Management & Training Corporation, et al.
Case No. 2:16-cv-01174, U.S. District Court, District Court of New Mexico,

and

Human Rights Defense Center v. Management & Training Corporation, et al.
Case No. 3:17-cv-1082, U.S. District Court, Northern District of Ohio

(collectively, the "Lawsuits")

SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE

THIS SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE (hereinafter referred to as the "Agreement") is made and entered into as of the date this Agreement is signed, by and among the Defendant Management & Training Corporation on behalf of itself and all of its officers, directors, employees, former employees, agents, predecessors, divisions, successors, administrators, and assigns, including but not limited to Rick Martinez (collectively referred to as ("MTC")), and Human Rights Defense Center ("HRDC"), on behalf of itself and all of its officers, directors, employees, former employees, agents, predecessors, divisions, successors, administrators, and assigns. MTC and HRDC collectively are "the Parties".

I. Recitals

A. At all times relevant hereto, Ricardo Martinez and Neil Turner are or were MTC employees.

B. At all times relevant hereto, Prison Legal News is or was a publishing project of the Human Rights Defense Center, a 501(c)(3) non-profit corporation with offices in Lake Worth, Florida. Prison Legal News publishes *Prison Legal News*, a monthly journal of corrections news and analysis, and HRDC publishes and distributes books to prisoners and practitioners concerning prison-related matters.

C. This Agreement addresses and resolves certain disputes arising from and relating to allegations that MTC violated HRDC's First and Fourteenth Amendment rights related to the handling or delivery of unsolicited paperback publications at prisons, including the Otero County Prison Facility ("OCPF") as well as the North Central Correctional Complex ("NCCC"), and the alleged lack of due process associated with MTC's policy of pre-approval.

D. The Parties agree that MTC denies any liability, including the allegations in the Lawsuits filed by HRDC as *Prison Legal News v. Management & Training Corporation, et al.*, Case No. 2:16-cv-01174, U.S. District Court, District of New Mexico, and *Human Rights Defense Center v. Management & Training Corporation, et al.*, Case No. 3:17-cv-1082, U.S. District Court, Northern District of Ohio. However, in order to avoid the expense, delay, uncertainty, and burden of litigation, the Parties have agreed to a settlement, including a settlement of the Lawsuits. This written Agreement memorializes the terms of the settlement reached by MTC and HRDC.

E. **No Admission of Liability; No Admissibility.** The Parties acknowledge that neither this Agreement nor any consideration exchanged hereunder shall be regarded as an admission of any fact, allegation, liability, or responsibility of any kind by either of the Parties for any purpose. This Agreement shall not be admissible in any proceeding, except as is necessary in a proceeding to enforce the terms of this Agreement or to establish or prove the defenses of payment, release, accord and satisfaction, waiver, or estoppel, or as otherwise required by court order, or as provided under Section IV herein.

II. Mailroom Policies

1. MTC agrees that it shall deliver, if consistent with MTC's legitimate penological interests and policies based thereon, as well as all applicable rules or regulations of the New Mexico Corrections Department ("NMCD"), the Ohio Department of Corrections, or other applicable state or federal agencies wherever MTC correction facilities may be located,

publications (*i.e.*, paperback books, magazines, and newspapers) sent by publishers, vendors, or distributors to prisoners housed at OCPF, NCCC, or other MTC correction facilities. As used herein, the term “deliver” shall mean the physical conveyance of the publication to the prisoner for his or her personal use while incarcerated at the facility, and during any subsequent transfer or release.

2. MTC agrees, if consistent with MTC’s legitimate penological interests and policies based thereon, as well as all applicable rules or regulations of the NMCD, the Ohio Department of Corrections, or other applicable state or federal agencies wherever MTC correction facilities may be located, that all incoming unsolicited publications (*i.e.*, paperback books, magazines, and newspapers) sent by publishers, vendors, or distributors to inmates will be reviewed on a case-by-case basis for a determination of suitability within the parameters of institutional safety and security, regardless of the identity of the publisher, vendor, or distributor. MTC agrees not to censor or withhold publications based solely on the presence or absence of a sender’s name on a list of approved publishers, vendors, or distributors, unless required to do so by, or as preempted by, state or federal rules, regulations, policies or procedures applicable to MTC’s operation of said correction facilities. Further, MTC agrees not to maintain or utilize approved vendor lists, or institute any pre-approval policy at MTC correction facilities unless required to do so by, or as preempted by, state or federal rules, regulations, policies or procedures applicable to MTC’s operation of said correction facilities.

3.. With regard to the lawsuit against MTC and its operation of the OCPF facility, MTC agrees that it will comply with New Mexico Corrections Department CD-151201(K)(2) and any amendments thereto.

4. MTC agrees that whenever OCPF, NCCC, or another MTC corrections facility that houses inmates, refuses to deliver any publication sent to an inmate, MTC shall provide notice of

the non-delivery to the inmate and sender, provide an opportunity to appeal the censorship, and have the censored item reviewed by a party who was not involved with the original censorship decision unless requirements of applicable state or federal rules or regulations provide otherwise and/or unless provided otherwise by the state or federal rules, regulations, policies or procedures to which MTC has consented for purposes of operating said correction facilities. Further, any refused publication will be retained by MTC during the pendency of any appeal process unless applicable state or federal rules or regulations provide otherwise and/or unless provided otherwise by the state or federal rules, regulations, policies or procedures to which MTC has contracted with for purposes of operating said correction facilities.

5. The Parties agree that MTC, its agents, assigns, employees, deputies and successors, will establish, implement and enforce policies and procedures to effectuate the terms of this Agreement.

6. It is further agreed that within thirty (30) days of the date of entry of orders of dismissal of the Lawsuits, MTC will notify MTC staff who are responsible for any part of the receipt, collection, and delivery of U.S. Mail to prisoners housed at MTC correction facilities of this Agreement and its relevant terms.

7. MTC shall ensure that any written materials concerning their jail mail policy are amended and conformed to reflect this Agreement, unless requirements of applicable state or federal rules or regulations provide otherwise and/or unless provided otherwise by the state or federal rules, regulations, policies or procedures to which MTC has consented for purposes of operating said correction facilities.

8. The Parties agree that MTC shall, within a reasonable time after the notice provided for in paragraph 6, conduct appropriate training with MTC corrections facilities' staff responsible for receipt, collection, and delivery of publications to prisoners housed at MTC correction facilities

regarding the terms of this Agreement, and the best practices for successful compliance herewith.

III. Monetary Agreement and Dismissal

9. In exchange for HRDC's release, and dismissal of the Lawsuits with prejudice, the Parties hereby agree to the following terms:

(a) HRDC, on its own behalf and on behalf of its officers, directors, employees, agents, administrators, projects, subsidiaries, divisions, affiliates, successors, and assigns, including Prison Legal News and Paul Wright ("the Releasers") hereby fully and forever unconditionally release and discharge MTC, its officers, directors, employees, agents, administrators, projects, subsidiaries, divisions, affiliates, successors, and anyone for whom MTC has an obligation of indemnification, including Ricardo Martinez and Neil Turner ("the Releasees") from any and all charges, claims and causes of action that Releasers have, or may have had, or may hereafter claim to have had against Releasees or any of them whether known or unknown, asserted or unasserted, arising from or in any way related to the handling or delivery of paperback publications at correctional facilities prior to the date of this Agreement. It is understood that this general release is intended to be comprehensive and global, and that Releasers, upon execution hereof, shall not have the right or ability to assert any claims whatsoever against Releasees related to or arising out of any conduct or action prior to execution hereof concerning the claims in the Lawsuits. Releasers waive and relinquish as to matters and things released herein any rights and benefits arising from the laws or statutes of any jurisdiction which limit the validity of a general release foregoing claims neither known nor supposed to exist at the time the release is executed, even if knowledge of the unknown claim would materially affect the decision to execute such a general release. This release does not apply to actions occurring after the execution of this agreement.

(b) MTC agrees to pay HRDC a total of \$150,000.00 in full and final settlement of all claims, including claims for damages, attorneys' fees, and costs of the Lawsuits. The check shall

be made payable to Human Rights Defense Center. HRDC may determine the allocation of this money between damages, and attorneys' fees and costs within its own discretion. MTC will send payment to the Human Rights Defense Center at P.O. Box 1151, Lake Worth, FL 33460, within 30 days of the dismissal with prejudice of the Lawsuits. Neither HRDC nor its attorneys, nor any person or entity claiming through either, shall receive any further payment of any kind in settlement of these matters or under this Agreement, it being expressly understood that this sum is inclusive of all fees, costs and other expenses.

(c) HRDC agrees to dismiss the Lawsuits with prejudice subject to the reservation of jurisdiction provisions as provided in Section IV herein. HRDC agrees it will not issue any press releases concerning the settlements of the Lawsuits.

IV. Reservation of Jurisdiction

10. The federal court shall retain jurisdiction over this Agreement herein and incorporated by reference in the Stipulated Order of Dismissal filed in this matter. This Agreement shall not be filed in the Lawsuits or in any other proceedings except as necessary to pursue enforcement. Jurisdiction over the claims and for enforcement of the provisions herein will be consistent with *Kokkonen v. Guardian Life Insurance of America*, 511 U.S. 375, 114 S.Ct. 1673 (1994).

11. In the event of a breach of any of the provisions of this Agreement, the Parties reserve the right to pursue an enforcement claim for alleged breach in the District for New Mexico. Nothing herein shall prevent HRDC from filing a new lawsuit in another jurisdiction for future conduct that it alleges constitutes a Constitutional violation separate from the terms of this Agreement. HRDC further agrees that it will not initiate any subsequent lawsuits against any MTC corrections facility regarding any claims similar to those at issue in the Lawsuits for a time period of sixty (60) days after execution of this Agreement. This includes any such claims arising on or before the expiration of sixty (60) days after the full execution of this Agreement so as to permit MTC time to train its

personnel regarding the terms of this Agreement.

V. Miscellaneous Provisions

12. **Return of Confidential Material.** As soon as is practicable after execution of this Agreement, HRDC shall return or send notification of destruction to MTC's counsel, Keleher & McLeod, P.A., all materials produced by MTC in the Lawsuits, whether in discovery or otherwise, that MTC has designated as confidential. Neither HRDC nor anyone acting on its behalf, including but not limited to its counsel in the Lawsuit, shall retain a copy of such materials.

13. **Liens.** HRDC acknowledges that it is its sole responsibility to pay any and all liens and subrogation interests, including attorney's fees and costs, if applicable, which may be made against the amount paid as consideration by MTC for this settlement. HRDC represents and warrants to MTC that no liens or subrogation interests have been filed or claimed by any insurer, any healthcare provider or payor, including but not limited to Medicare and Medicaid, any attorney, or by any other person or entity. HRDC further represents and warrants that if there are any such liens or subrogation interests claimed or in effect, even if unknown to HRDC, or if any such liens or subrogation interests arise following the entry of this Agreement, HRDC will pay for the defense, including attorney's fees, costs, and any other expenses, and without right of subrogation, of any claim, charge, or suit commenced by any person or entity based on any claimed lien or subrogation interest, and indemnify and hold harmless Releasees from the expenses incurred by Releasees from such claim.

14. MTC and HRDC acknowledge and agree that they have been represented by legal counsel with respect to the matters that are the subject of this Agreement and that they have entered into this Agreement freely and voluntarily.

15. The Parties agree that facsimile or PDF signatures are deemed to be originals and that this Agreement may be executed in counterparts. Upon signature of the Parties, this Agreement

shall be deemed executed, final, and binding.

16. This Agreement sets forth the entire understanding between the Parties with respect to the subject matter contained herein, and there are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement supersedes all prior negotiations, representations, statements, or promises between the Parties, whether written or oral, as to these matters.

17. This Agreement shall be binding upon and inure to the benefit of MTC and HRDC, and their respective successors and assigns.

18. The obligations imposed by this Agreement are severable. If for any reason a part of this Agreement is invalid or unenforceable, that determination shall not affect the remainder of this Agreement.

19. This Agreement and any of its provisions may be amended, modified, or terminated only by written agreement signed by HRDC and MTC.

Dated this 24th day of JULY, 2017.

Stipulated and Agreed to:

HUMAN RIGHTS DEFENSE CENTER

By: 

Its: Paul Wright

Date: 7/24/17
Executive Director

MANAGEMENT & TRAINING

CORPORATION

By: _____

Its: _____

Date: _____



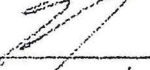
Semin Vice President MTC

7/20/17

[PLAINTIFF'S ATTORNEY(S)] Approved as to form only

By: _____

Date: _____


 SAGARISH NEE LAKSHMI

7/24/17

[DEFENDANTS' ATTORNEY(S)] Approved as to form only

By: _____

Date: _____


7/27/17