

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

PRISON LEGAL NEWS, a project of the)
HUMAN RIGHTS DEFENSE CENTER,)
)
Plaintiff,) Case No. 11-cv-02497-WEB-KGG
)
v.)
)
BOARD OF COMMISSIONERS OF)
SHAWNEE COUNTY, KANSAS, and)
RICHARD C. KLINE, individually and)
in his official capacity as Director of the)
Shawnee County Department of)
Corrections,)
)
Defendants.)

STIPULATED JUDGMENT AND SETTLEMENT AGREEMENT

Plaintiff, Prison Legal News (PLN), and Defendants, the Board of Commissioners of Shawnee County, Kansas and Richard C. Kline, individually and in his official capacity as Director of the Shawnee County Department of Corrections (Defendants) stipulate to the following and agree this case will be dismissed on the following terms:

1. PLN publishes and distributes a monthly journal of corrections news and analysis (*Prison Legal News*), and offers and sells books about the criminal justice system and legal issues affecting prisoners, to prisoners, lawyers, courts, libraries, and the public throughout the Country. PLN engages in core protected speech and expressive conduct on matters of public concern. *See Prison Legal News v. Cook*, 238 F.3d 1145, 1149 (9th Cir. 2001).
2. Defendants are responsible for the operations of all detention facilities of the Shawnee County Department of Corrections (collectively "the Jail" hereafter), which house pretrial detainees and convicted prisoners. Specifically, Defendants are responsible for the incoming mail policy at the Jail.
3. In 2010 and afterwards, Prison Legal News mailed its monthly journal, a soft-cover book entitled *Protecting Your Health and Safety*, informational brochures about book offers and subscribing

to PLN, a one-page catalog of books that PLN offers, and subscription renewal forms in envelopes addressed personally to prisoners at the Jail. PLN also mailed regular monthly issues of its journal via standard rate U.S. Mail directly from its printer with the names of individual prisoner subscribers printed directly on the back cover of the journal.

4. The Jail censored the books and periodicals that PLN mailed to prisoners pursuant to a policy that provided in relevant part: "No packages, newspapers, magazines, books, or other personal property is to be mailed to the facility." The jail also censored subscription renewal letters from PLN mailed to prisoners.

5. Consistent with the policy of the Jail, Defendants did not provide adequate notice of the censorship to PLN nor did they provide PLN any opportunity to appeal the censorship decisions.

6. The First Amendment of the United States Constitution protects a publisher's right to correspond with prisoners through the mail. *Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989); *Prison Legal News v. Cook*, 238 F.3d 1145, 1149 (9th Cir. 2001); *Prison Legal News v. Lehman*, 397 F.3d 692, 699 (9th Cir. 2005). "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). To withstand First Amendment scrutiny, prison authorities ... must first identify the specific penological interests involved and then demonstrate both that those specific interests are the actual bases for their policies and that the policies are reasonably related to the furtherance of the identified interests. An evidentiary showing is required as to each point." *Walker v. Sumner*, 917 F.2d 382, 386 (9th Cir. 1990).

7. Plaintiff, PLN, brought claims in this cause of action against Defendants for violations of its rights under the 1st and 14th Amendments to the United States Constitution.

8. For and in consideration of the provisions of this agreement, PLN settles with and releases Defendants, their officers, agents, employees, and departments for any and all existing claims,

damages, and causes of action arising out of the claims described in case 11-CV-2497 WEB/KGG, which is the source of all settled claims; provided, however, that nothing in this settlement agreement and release shall be construed to prevent or limit PLN from moving in this Court to enforce the terms of this settlement.

9. Defendants agree to and have modified the Jail's mail policy. Defendants agree to be permanently enjoined from going back to enforcing the Jail's previous mail policy, unless otherwise ordered by a Court of competent jurisdiction. The parties agree that the policy may be amended from time to time to incorporate other provisions as necessary, but such amendments may not create more restrictions on the receipt of publications other than those set forth herein.

10. Defendants acknowledge that the journal, *Prison Legal News*, renewal notices for the journal, book fliers and order forms/catalogs, and similar types of mail are permitted types of mail into the Shawnee County Adult Detention Center ("Jail"), subject to the Jail's modified mail policy. Defendants agree that PLN has a First Amendment right to send its properly addressed journal, soft cover books, renewal notices for the journal, book fliers, and other order forms/catalogs, and similar types of mail to individual inmates in the Jail, subject to the Jail's modified mail policy.

11. Soft cover books distributed by PLN to individual inmates are permitted mail at the Jail, subject to the Jail's modified mail policy.

12. Nothing in this settlement agreement and release shall be construed to prevent or limit Defendants or their agents, employees, and departments from continuing to review, reject, process, and dispose of inmate mail for reasons of prohibited content. This reserves the Jail's authority to review content for reasons, such as security, safety, institutional discipline, and to monitor criminal activity.

13. PLN has a 14th Amendment right to due process of law when its mail is censored by prisons and jails. *Prison Legal News v. Werholtz*, 2007 WL 2875113 (D. Kan 2007). Accordingly, PLN is entitled to receive notice of every item sent by PLN to an inmate in the Jail that is found to be subject to

ensorship, pursuant to the modified jail policy. PLN publications addressed to inmates who are not incarcerated at the Jail at the time of PLN's mailing will be returned to PLN with a notation "return to sender, no longer at facility."

14. Defendants will pay PLN \$75,000 in damages, attorney fees, and costs within 30 days of entry of this stipulated judgment.

15. Nothing in this agreement will be construed to waive claims for incidents that have not yet occurred.

16. The parties to this stipulated judgment agree that the provisions herein fully and fairly accommodate the interests of the parties hereto regarding all claims asserted and remedies requested by PLN and that the Court should adopt and approve this agreement as a stipulated judgment, finding that this stipulated judgment is a full and final judgment between the parties with regards to all relief requested.

17. The parties agree that in the event PLN should feel the Defendants are not in compliance with any term of this agreement, it shall send a notice addressed to the Shawnee County Counselor as well as to the Director of the Shawnee County Department of Corrections advising each how it is not compliant with the terms of this agreement and giving the Defendants at least 30 days to come into compliance and/or reach an accord with PLN. No further notice shall be required before PLN takes appropriate legal action.

18. Notwithstanding the dismissal of this case, the Court shall retain jurisdiction over the case for purposes of enforcing this stipulated judgment.

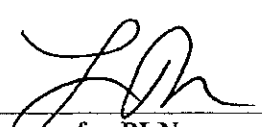
Prepared and approved by:



Representative of PLN
PAUL WRIGHT EXECUTIVE DIRECTOR
and

2/7/2012

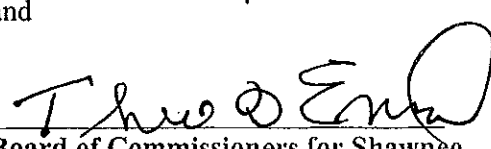
Date



Attorney for PLN
LANCE WEBER, Esq.
and

FEB 7, 2012


Date



Board of Commissioners for Shawnee
County, Kansas

FEBRUARY 9, 2012

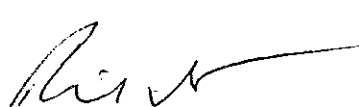
Date

and


Richard C. Kline

Feb 9, 2012

Date

and


Attorney for Board of Commissioners
of Shawnee County, Kansas and
Richard C. Kline

2/10/12

Date