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APR 12 2007

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

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9 **IN THE UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 PRISON LEGAL NEWS, a non-profit,
12 Washington charitable corporation,
13 Plaintiff,

14 v.

15 ARNOLD SCHWARZENEGGER, in his official)
16 capacity as Governor of the State of California and)
17 in his individual capacity; JAMES E. TILTON, in)
18 his official capacity as Secretary, California)
19 Department of Corrections and Rehabilitation)
20 (CDCR) and in his individual capacity;)
21 KINGSTON W. PRUNTY, JR., and STEVE)
22 KESSLER, in their official capacities as)
23 Undersecretaries of the CDCR and in their)
24 individual capacities; SCOTT KERNAN, in his)
25 official capacity as Chief Deputy Secretary,)
26 Division of Adult Operations (CDCR), and in his)
27 individual capacity; LEA ANN CHRONES, in her)
28 official capacity as Director of Adult Institutions)
(CDCR) and in her individual capacity, and;)
MARISELA MONTES, in her official capacity as)
the Chief Deputy Secretary, Division of Adult)
Programs (CDCR) and in her individual capacity,)

Defendants.

Case No.

07-02058 MEJ

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF UNDER
THE CIVIL RIGHTS ACT, 42 U.S.C.
§1983 AND DAMAGES**

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff, Prison Legal News (“PLN”) brings this civil rights action pursuant to 42
3 U.S.C. § 1983 (“Section 1983”) against Defendants to enjoin them from barring the receipt of the
4 publication “Prison Legal News” (“PLN”) and other PLN publications by CDCR prisoner
5 subscribers. Plaintiff alleges that Defendants’ actions violate its rights under the First and
6 Fourteenth Amendments to the United States Constitution, and seeks injunctive and declaratory
7 relief pursuant to 42 U.S.C. § 1983. Plaintiff also seeks damages to be proven at trial as to
8 violations of clearly established rights.

9 **JURISDICTION AND VENUE**

10 2. This lawsuit is brought pursuant to 42 U.S.C. Section 1983 against all Defendants for
11 actions under color of state law in violation of the First and Fourteenth Amendments to the United
12 States Constitution. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1983 and 28
13 U.S.C. §§ 1331, 1343(a)(3), in that this action is brought to redress deprivation, under color of law,
14 of rights secured by the Constitution of the United States. This Court has jurisdiction to grant
15 declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and is empowered to grant injunctive
16 relief pursuant to Fed. R. Civ. P. 65.

17 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a
18 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

19 **INTRADISTRICT ASSIGNMENT**

20 4. Pursuant to Civil L.R. 3-5, assignment to this division is proper because a substantial
21 part of the events or omissions giving rise to Plaintiff’s claims occurred in the counties served by
22 this division.

23 **THE PARTIES**

24 5. Plaintiff PRISON LEGAL NEWS (“PLN”) is a non-profit, charitable Washington
25 corporation under IRS Code § 501(c)(3) with its office in Seattle, Washington. PLN publishes
26 “Prison Legal News,” (“PLN”) a monthly journal of prison news, court decisions and other
27 developments affecting the civil and human rights of prisoners. PLN also distributes prisoner-
28 oriented books. PLN has approximately 5,000 subscribers in all fifty states and abroad.

1 Approximately eighty (80) percent of PLN subscribers are state and federal prisoners, including
2 many prisoners in the CDCR's custody. CDCR prisoners constitute approximately twenty (20)
3 percent of PLN's prisoner subscribers.

4 6. The Defendants listed below are sued in their official capacities for equitable relief
5 only as to each and every violation of federal rights included in this complaint. Defendants are
6 sued in their individual capacities for damages only with respect only to violations of federal rights
7 that have been clearly established. To the extent that federal rights have not been clearly
8 established, Defendants are sued in their official capacities only and for equitable relief only.

9 7. Defendant ARNOLD SCHWARZENEGGER ("SCHWARZENEGGER") is the
10 Governor of the State of California, a position he has held since approximately November of 2003.
11 Defendant SCHWARZENEGGER has ultimate responsibility for the promulgation of CDCR
12 policies, procedures, and practices. As to all claims presented herein against him, Defendant
13 SCHWARZENEGGER is being sued in his individual capacity for damages associated with
14 clearly established federal rights, and in his official capacity for injunctive and declaratory relief.
15 At all relevant times, Defendant SCHWARZENEGGER has acted under color of state law.

16 8. Defendant JAMES E. TILTON ("TILTON") is the Secretary of the California
17 Department of Corrections and Rehabilitation ("CDCR"), a position he has held since
18 approximately September 2006. Defendant TILTON has ultimate responsibility for the
19 promulgation and implementation of CDCR policies, procedures, and practices and for the
20 management of the CDCR. As to all claims presented herein against him, Defendant TILTON is
21 being sued in his individual capacity for damages associated with clearly established federal rights,
22 and in his official capacity for injunctive and declaratory relief. At all relevant times, Defendant
23 TILTON has acted under color of state law.

24 9. Defendants KINGSTON W. PRUNTY, JR. ("PRUNTY") and STEVE KESSLER
25 ("KESSLER") are the Undersecretaries of the CDCR. Defendants PRUNTY and KESSLER are
26 responsible for the promulgation and implementation of policies, procedures, and practices at the
27 CDCR. As to all claims presented herein against them, Defendants PRUNTY and KESSLER are
28 being sued in their individual capacities for damages associated with clearly established federal

1 rights, and in their official capacities for injunctive and declaratory relief. At all relevant times,
2 Defendants PRUNTY and KESSLER have acted under color of state law.

3 10. Defendant SCOTT KERNAN ("KERNAN") is the Chief Deputy Secretary, Division
4 of Adult Operations of the CDCR. Defendant KERNAN is responsible for the promulgation and
5 implementation of policies, procedures, and practices at the CDCR. As to all claims presented
6 herein against him, Defendant KERNAN is being sued in his individual capacity for damages
7 associated with clearly established federal rights, and in his official capacity for injunctive and
8 declaratory relief. At all relevant times, Defendant KERNAN has acted under color of state law.

9 11. Defendant LEA ANN CHRONES ("CHRONES") is the Director of Adult
10 Institutions of the CDCR. Defendant CHRONES is responsible for the promulgation and
11 implementation of policies, procedures, and practices at the CDCR. As to all claims presented
12 herein against her, Defendant CHRONES is being sued in her individual capacity for damages
13 associated with clearly established federal rights, and in her official capacity for injunctive and
14 declaratory relief. At all relevant times, Defendant CHRONES has acted under color of state law.

15 12. Defendant MARISELA MONTES ("MONTES") is the Chief Deputy Secretary,
16 Division of Adult Programs of the CDCR. Defendant MONTES is responsible for the
17 promulgation and implementation of policies, procedures, and practices at the CDCR. As to all
18 claims presented herein against her, Defendant MONTES is being sued in her individual capacity
19 for damages associated with clearly established federal rights, and in her official capacity for
20 injunctive and declaratory relief. At all relevant times, Defendant MONTES has acted under color
21 of state law.

22 FACTS

23 13. Plaintiff publishes a monthly magazine, "Prison Legal News," and also distributes
24 books and other materials pertaining to the legal rights of prisoners and the conditions affecting
25 them. PLN is comprised of writings from legal scholars, attorneys, inmates and news wire
26 services. Each issue of PLN contains articles on recent court decisions, as well as practical advice
27 for prisoners on how to litigate and otherwise protect their legal rights. PLN includes regular
28 columns designed to assist prisoners who are not represented by counsel, including "Habeas Hints"

1 and “Pro Se Tips and Tactics.” PLN consists of speech on matters of public concern and is thus
2 entitled to the highest degree of protection under the First Amendment.

3 14. PLN has approximately 5,000 subscribers in all fifty states and abroad.
4 Approximately eighty (80) percent of PLN subscribers are state and federal prisoners, including
5 prisoners in the CDCR custody. CDCR prisoners constitute approximately twenty (20) percent of
6 PLN’s prisoner subscribers. The purpose of PLN, as stated in its Articles of Incorporation, Article
7 III, Part 6 is “to educate prisoners and the public about the destructive nature of racism, sexism,
8 and the economic and social costs of prisons to society.”

9 15. PLN contains content that is of particular interest to prisoners who are in disciplinary
10 segregation, including reports of court decisions on the rights of prisoners in disciplinary
11 proceedings. For example, the December 2004 issue of PLN included an article on Piggie v.
12 Cotton, 344 F.3d 674 (7th Cir. 2003), holding that a prisoner facing disciplinary proceedings is
13 entitled to disclosure of exculpatory evidence.

14 16. PLN consists of speech on matters of public concern, and is thus entitled to the
15 highest degree of protection under the First Amendment.

16 17. PLN currently has, and at all relevant times has had, numerous paid subscribers who
17 are prisoners in the custody of the CDCR. By paying for their subscriptions, these prisoners have
18 expressed their desire to receive Plaintiff’s legal journal.

19 18. Until approximately January of 2003, CDCR prisoners who subscribed to PLN or
20 ordered other publications from PLN received those publications without incident.

21 19. In approximately January 2003, Defendants began refusing delivery of PLN and
22 PLN’s publications to inmate subscribers in the custody of CDCR (hereinafter, the “censorship
23 policies”). CDCR institutions invoked censorship policies for a variety of reasons, all of which
24 violate PLN’s Constitutional rights. Several institutions refused to deliver PLN to inmate
25 subscribers because they lacked the appropriate labels or because PLN was not an “approved
26 vendor” of the institutions. Other institutions refused to deliver PLN because the recipients were
27 housed in Reception Centers or Administrative Segregation units. Other institutions refused to
28 deliver hardcover books distributed by PLN due to hardcover bans in individual institutions. Still

1 other institutions refused to allow gift or donated subscriptions to CDCR inmates or refused
2 publications that exceeded two pounds in weight. Other institutions designated books and
3 periodicals as "special purchases" meaning that inmates could order them only on a quarterly basis.
4 Other institutions destroyed standard mail sent by PLN to its subscribers when the mail was not
5 deliverable to the addressee rather than return that mail to PLN or to the Post Office.

6 20. Plaintiff is informed and believes, and thereon alleges, that at least twenty two (22)
7 CDCR institutions prohibit inmates from possessing, ordering, and/or receiving hardcover
8 publications, although there are obvious less restrictive means to achieve any legitimate
9 penological goal concerning prisoners' receipt or possession of hard cover books.

10 21. There is no limit to how long a CDCR prisoner may be confined in Administrative
11 Segregation ("Ad Seg"). Some CDCR prisoners are confined in Ad Seg for many months or even
12 years. Similarly, prisoners can be housed in reception centers ("RC's") for many months or even
13 years.

14 22. Since the censorship policies were implemented, PLN has received numerous
15 complaints from subscribers whose access to the subscriptions for which they have paid has been
16 blocked, or imminently will be blocked, pursuant to the censorship policies. Some CDCR
17 prisoners have expressed their intention not to subscribe or not to renew their current subscriptions
18 because of the censorship policies. Inmates also refuse to order other publications distributed by
19 PLN because they know that the prisons will ban them pursuant to censorship policies.

20 23. On November 18, 2003, the United States Court of Appeals for the Ninth Circuit
21 upheld the District Court's decision that a vendor label policy at Pelican Bay State Prison
22 ("PBSP") violated prisoners' First Amendment rights. Ashker v. California Department of
23 Corrections, et al. (9th Cir. 2003) 350 F.3d 917. The prison required that books and magazines
24 mailed to the prison have approved vendor labels affixed to them. Due to other protections in
25 place regarding contraband and security, the District Court and Ninth Circuit held that such a
26 policy was not rationally related to the prison's asserted interest in security and issued a permanent
27 injunction prohibiting state officials at PBSP from enforcing the policy. Plaintiff is informed and
28 believes, and thereon alleges, that at least three CDCR institutions still require that PLN books and

1 periodicals be mailed with approved vendor labels affixed to them.

2 24. At various times, PLN and others have contacted the CDCR or particular institutions
3 regarding the unlawful censorship policies. For example, on April 3, 2003, the Prison Law Office
4 wrote a letter to Edward Alameida, the Director of CDCR (then "CDC") at that time. The letter
5 documented the practice by two CDCR institutions of denying books to prisoners housed in Ad
6 Seg units and RC's. For example, California Institution for Men ("CIM") refused to forward a law
7 dictionary and legal research book ordered from PLN to an inmate housed in the reception center
8 segregation unit. CIM staff returned the book to PLN with a notice stating "books not allowed
9 where inmate is housed." Plaintiff is informed and believes, and thereon alleges, that at least
10 thirteen (13) CDCR institutions impermissibly prohibit inmates in Ad Seg and/or RC's from
11 possessing, ordering, and/or receiving books, magazines and other publications.

12 25. On March 19, 2004, PLN wrote to Jeanne Woodford, the Director of CDCR at that
13 time. PLN complained that CDCR institutions failed to deliver PLN to inmates housed in Ad Seg
14 and failed to deliver PLN publications because PLN failed to utilize special labels required by the
15 prisons. PLN received only a cursory response to those concerns from a Facility Captain at the
16 Institutions Division.

17 26. On March 8, 2005, PLN wrote a letter to California State Prison, Los Angeles
18 County ("LAC") attempting to get on the "approved vendor" list of that prison so that it could send
19 PLN publications to inmates housed at LAC. LAC never responded to that letter.

20 27. On September 19, 2005, counsel for PLN sent yet another demand letter to CDCR
21 personnel, including Defendants named in this complaint. That letter outlined the various
22 censorship policies at CDCR institutions and demanded that the violations cease.

23 28. Defendants have never provided Plaintiff PLN with notice that its journal or books
24 mailed to its subscribers in the CDCR have been withheld from those subscribers, nor any
25 opportunity to be heard. On information and belief, some issues of PLN that were sent to
26 subscribers in the CDCR have been forwarded to unknown destinations or destroyed by
27 Defendants without any notice to Plaintiff. CDCR institutions do not have uniform, or perhaps
28 any, procedures in place to notify publishers and distributors of the institutions' refusal to deliver

1 publication to prisoners, nor do they have sufficient, or perhaps any, procedures in place that would
2 allow publishers and distributors to appeal such refusals.

3 29. Defendants' vendor approval processes are arbitrary, ill-defined and haphazard.
4 Defendants have not promulgated a standardized means, mechanism or set of criteria for approving
5 book and magazine vendors at CDCR institutions. Many of the individual institutions appear to
6 have no vendor-approval processes at all while others implement unaccountable, discretionary
7 review without discernible guidelines. Where vendor approval procedures exist, there are no
8 uniform, or perhaps any procedures to notify or inform vendors of their requirements, no uniform,
9 or perhaps any procedures to notify or inform vendors of a timeframe within which a decision will
10 be made, and no uniform, or perhaps any procedures to notify or inform vendors how to appeal a
11 denial of approved vendor status. For instance, some CDCR institutions have apparently instituted
12 arbitrary approval processes that must go through prison chaplains with no apparent appeal
13 procedure. Despite many requests by the PLN regarding the vendor-approval processes in
14 individual institutions, Defendants have refused to provide Plaintiff with notice of the vendor-
15 approval processes and have failed to implement procedural safeguards regarding approved
16 vendors, including the opportunity to challenge denial of approved vendor status.

17 30. Plaintiff PLN has an interest, protected by the First and Fourteenth Amendments, in
18 communicating with CDCR prisoners who have subscribed to its journal. Plaintiff has been
19 harmed and continues to be harmed by Defendants' interference with that communication.
20 Plaintiff has also been harmed and continues to be harmed by the loss of revenue as CDCR
21 prisoners are deterred and prevented from subscribing to PLN.

22 31. Defendants continue to enforce the censorship policies as of the date of this
23 Complaint. Plaintiff PLN is suffering irreparable harm as a result of Defendants' ongoing
24 violations of its Constitutional rights, and therefore Plaintiff has no adequate remedy at law. These
25 violations are continuing and will continue until enjoined by this Court.
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1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 (For Violations of the First Amendment Under Color Of State Law; Section 1983)

4 32. Plaintiff realleges and incorporates herein by reference each of the allegations
5 contained in the preceding paragraphs of this Complaint.

6 33. The censorship policies violate Plaintiff's right to freedom of expression as
7 guaranteed by the First Amendment to the United States Constitution, made applicable to the states
8 by the Fourteenth Amendment to the United States Constitution.

9 34. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
10 First Amendment rights as set forth above, Plaintiff has suffered, and continues to suffer, lost
11 business income, lost business good will and emotional distress.

12 35. Defendants' actions and inactions are motivated by evil motive and intent and are
13 committed with reckless and callous indifference to Plaintiff's federally protected rights.

14 WHEREFORE, Plaintiff prays for: (a) judgment declaring that the acts, conduct and
15 omissions of Defendants violate the First Amendment to the United States Constitution; (b) an
16 order enjoining Defendants and their employees, agents, and any and all persons acting in concert
17 with them from further violation of Plaintiff's First Amendment rights; (c) damages against
18 Defendants subject to proof at trial; (d) an order awarding Plaintiff's reasonable attorney' fees,
19 litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

20 **SECOND CLAIM FOR RELIEF**

21 (For Violations of Fourteenth Amendment Due Process Clause Under Color Of State Law;
22 Section 1983)

23 36. Plaintiff realleges and incorporates herein by reference each of the allegations
24 contained in the preceding paragraphs of this Complaint.

25 37. By failing to give Plaintiff notice of the censorship of its publications, and an
26 opportunity to be heard with respect to that censorship, Defendants have deprived and continue to
27 deprive Plaintiff of liberty and property without due process of law, in violation of the Fourteenth
28 Amendment to the United States Constitution.

1 38. Defendants' actions and inactions are motivated by evil motive and intent and are
2 committed with reckless and callous indifference to Plaintiff's federally protected rights.

3 WHEREFORE, Plaintiff prays for: (a) judgment declaring that the acts, conduct and
4 omissions of Defendants violate the First Amendment and Fourteenth Amendment due process
5 clause; (b) an order enjoining Defendants and their employees, agents, and any and all persons
6 acting in concert with them from further violation of Plaintiff's First Amendment and Fourteenth
7 Amendment due process rights; (c) damages against Defendants subject to proof at trial; (d) an
8 order awarding Plaintiff's reasonable attorneys' fees, litigation expenses and costs pursuant to 42
9 U.S.C. § 1988 and any other applicable law.

10 **PRAYER FOR RELIEF**

11 The conduct previously alleged, unless and until enjoined by order of this Court, will cause
12 great and irreparable injury to Plaintiff. Further, a judicial declaration is necessary and appropriate
13 at this time so that all parties may know their respective rights and act accordingly.

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 1. A declaration that Defendants' actions, described herein, violate the First and
16 Fourteenth Amendments to the United States Constitution;
 - 17 2. An order enjoining all Defendants and their employees, agents, and any and all
18 persons acting in concert with them from further violation of Plaintiff's civil rights under the First
19 and Fourteenth Amendments to the United States Constitution;
 - 20 3. An order awarding actual damages in an amount to be proven at trial for violations of
21 federally protected rights that have been clearly established;
 - 22 4. An order awarding punitive damages in an amount to be proven at trial for violations
23 of federally protected rights that have been clearly established;
 - 24 5. An order awarding Plaintiff's reasonable attorneys' fees, litigation expenses and
25 costs pursuant to 42 U.S.C. § 1988 and any other applicable law;
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