

FILED
Superior Court Of California,
Sacramento

Dennis Jones, Executive
Officer

12/18/2007

tcalastra

By _____, Deputy

Case Number:

34-2007-0885573-CU-PT-GDS

1 ROSEN, BIEN & GALVAN, LLP
2 Sanford Jay Rosen, Bar No. 62566
3 Amy Whelan, Bar No. 215675
4 Lori Rifkin, Bar No. 244081
5 Kenneth M. Walczak, Bar No. 247389
6 315 Montgomery Street, 10th Floor
7 San Francisco, CA 94104
8 Telephone: (415) 433-6830
9 Facsimile: (415) 433-7104

Attorneys for Plaintiff

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE CITY AND COUNTY OF SACRAMENTO

13 PRISON LEGAL NEWS,

14 Plaintiff,

15 vs.

16 JAMES TILTON, Secretary, California
17 Department of Corrections and Rehabilitation,

18 Defendant.

Case No.: _____

**VERIFIED PETITION FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

California Public Records Act,
Government Code §§ 6250, *et seq.*

Judge:
Department:

BY FAX

1 For its petition pursuant to the California Public Records Act (Gov. Code, §§ 6250 *et seq.*),
2 plaintiff hereby alleges:

3 **PARTIES**

4 1. Plaintiff PRISON LEGAL NEWS (“PLN”) is a non-profit organization, responsible
5 for the publication of a serious legal and political journal that reports on news and litigation involving
6 detention facilities. It is a “person” and a “member of the public” within the meaning of Government
7 Code §§ 6252(c) and 6259(a).

8 2. Defendant JAMES TILTON is the Secretary of the California Department of
9 Corrections and Rehabilitation (“CDCR”). Defendant Tilton is sued in his official capacity.

10 3. CDCR is a "state agency" within the meaning of the California Public Records Act
11 Government Code § 6252(a).

12 **JURISDICTION AND VENUE**

13 4. Venue is appropriate in this Court, because plaintiff may “institute proceedings for
14 injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his
15 or her right to inspect or to receive a copy of any public record or class of public records.”
16 Government Code § 6258.

17 **FACTS**

18 5. PLN publishes a monthly magazine, “Prison Legal News,” and also distributes books
19 and other materials pertaining to the legal rights of prisoners and the conditions affecting them. PLN is
20 comprised of writings from legal scholars, attorneys, inmates and news wire services. PLN has
21 approximately 7,000 subscribers in the United States and abroad, including subscribers in prisons in all
22 50 states. Approximately eighty (80) percent of PLN subscribers are state and federal prisoners,
23 including prisoners in the CDCR custody. CDCR prisoners constitute approximately twenty (20)
24 percent of PLN’s prisoner subscribers. The purpose of PLN, as stated in its Articles of Incorporation,
25 Article III, Part 6 is “to educate prisoners and the public about the destructive nature of racism, sexism,
26 and the economic and social costs of prisons to society.”

27 6. On November 9, 2007, plaintiff, through its attorneys, sent a Public Records Act request
28 pursuant to California Government Code §§ 6250, *et seq.*, to Defendant Tilton. The letter, attached

1 hereto as **Exhibit A**, included two requests for specific documents relating to tort, overdetention, and
2 civil rights claims filed against CDCR. The documents requested are "public records" within the
3 meaning of Government Code § 6252(e). The request stated that the Public Records Act required a
4 response within 10 days of the request.

5 7. Plaintiff did not receive a response within the ten days required by the Public Records
6 Act, California Government Code §§ 6256 and 6256.2.

7 8. To date, Plaintiff has received no response of any kind to its November 9, 2007 request.

8 **FIRST CLAIM FOR RELIEF (California Public Records Act)**

9 9. Plaintiff re-alleges and incorporates herein by reference each and every allegation of
10 paragraphs 1 through 9.

11 10. The requested documents and information consist of "public records" within the
12 meaning of Government Code § 6252(e), and such records are within the possession, custody or
13 control of the defendant.

14 11. The documents and information requested are not exempt from public disclosure.

15 12. Plaintiff has the right to inspect and obtain copies of the information and documents
16 requested. Gov. Code §§ 6253(a) and (b).

17 13. "Public records are open to inspection at all times during the office hours of the state or
18 local agency and every person has a right to inspect any public record," except those within the Act's
19 specifically enumerated exceptions. Gov. Code § 6253(a).

20 14. Upon receipt of a Public Records Act Request, an official such as defendant Tilton
21 "shall, within 10 days from receipt of the request, determine whether the request, in whole or in part,
22 seeks copies of disclosable public records in the possession of the agency and shall promptly notify the
23 person making the request of the determination and the reasons therefor." Gov. Code § 6253(c).

24 15. Defendant was obligated "upon a request for a copy of records that reasonably describes
25 an identifiable record or records, [to] make the records promptly available to any person" Gov.
26 Code § 6253(b).

1 16. Defendant has failed to comply with Government Code § 6253(c). Defendant did not
2 make any determination within 10 days, and did not promptly notify plaintiff or its attorneys of such a
3 determination and the reasons therefor.

4 17. Defendant has failed to make the records "promptly available" as required by
5 Government Code § 6253(b).

6 18. The records requested, as set forth in **Exhibit A**, are being withheld from plaintiff by
7 defendant in violation of the California Public Records Act, Government Code §§ 6250, *et seq.*

8 **PRAYER FOR RELIEF**

9 Wherefore plaintiff respectfully prays, pursuant to Government Code § 6259:

10 1. For an order requiring defendant to disclose the records requested, or an order to show
11 cause why he should not be required to do so.

12 2. For a declaratory judgment declaring that the requested records are public records
13 within the meaning of the provisions of the California Public Records Act, and are not exempt from
14 public disclosure.

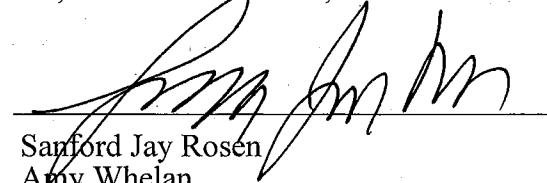
15 3. For an injunction requiring defendant immediately to permit the inspection and to
16 provide electronic copies of the requested records and documents to the plaintiff, with costs of
17 production to be borne by defendant.

18 4. For an order awarding plaintiff its costs of suit and reasonable attorneys' fees pursuant
19 to Government Code § 6259 (d) and Code of Civil Procedure § 1021.5.

20 5. For such further relief as this court deems proper.

21 Dated: December 18, 2007

ROSEN, BIEN & GALVAN, LLP

22 By: 

23 Sanford Jay Rosen
24 Amy Whelan
25 Lori Rifkin
26 Kenneth M. Walczak

Attorneys for Prison Legal News

ATTORNEY VERIFICATION

I, SANFORD JAY ROSEN, declare that:

1. I am the attorney of record for plaintiff;
2. The plaintiff is absent from the county (San Francisco) where I have my office;
3. I have read the foregoing VERIFIED PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF, and know the contents thereof;
4. I am informed and believe, and thereupon allege, that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 18th day of December 2007, in San Francisco, California.

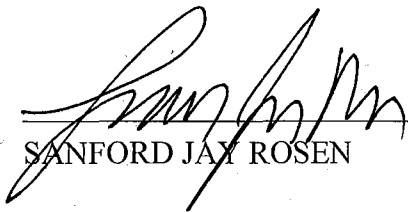

SANFORD JAY ROSEN

Exhibit A

SANFORD JAY ROSEN¹
MICHAEL W. BIEN
ERNEST GALVAN

JANE KAHN²

ROSEN, BIEN & GALVAN, LLP

ATTORNEYS AT LAW
315 MONTGOMERY STREET, TENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 433-6830
FAX: (415) 433-7104
EMAIL: rbg@rbg-law.com

HOLLY BALDWIN
LISA ELLS
GAY C. GRUNFELD
SHIRLEY HUEY³
MEGHAN LANG
SARAH LAUBACH
ANNE MANIA
NURA MAZNAVI
MARIA MORRIS⁴
THOMAS NOLAN
LORI RIFKIN⁵
LOREN STEWART
KENNETH WALCZAK⁶
AMY WHELAN
SARAH OLSON ZIMMERMAN⁶

November 9, 2007

VIA U.S. MAIL

James Tilton, Secretary
California Department of Corrections and Rehabilitation
1515 S Street, Suite 502
Sacramento, CA 94283

Re: California Public Records Act Request, Cal. Gov't Code §§ 6250, *et seq.*
Our File No. 979-5

Dear Secretary Tilton:

This is a request on behalf of our client, Prison Legal News ("PLN"), pursuant to the California Public Records Act (California Government Code §§ 6250, *et seq.*) for copies of public records in the possession of the California Department of Corrections and Rehabilitation ("CDCR").

Our request encompasses all the documents within the definition of the term "writing" as used in Cal. Gov't Code § 6252(g), including but not limited to all the specific documents listed below.

Specifically, we request:

1. All documents relating to the payment of tort, overdetention, and civil rights claims to claimants including, but not limited to, employees, visitors, contractors, and prisoners, and/or their attorneys, pursuant to judgments and/or settlements by CDCR (on behalf of itself and all of the branches, divisions, units, offices, and institutions under its control, or their agents), during the time period from January 1, 2002 to present. Such documents include but are not limited to:
 - a. documents stating or pertaining to the legal claim that forms the basis for each judgment and/or settlement;
 - b. for each judgment and/or settlement, the most recent complaint detailing the legal demand;
 - c. for each judgment and/or settlement, any case management order detailing the legal demand;

¹MEMBER OF THE CONNECTICUT AND THE CALIFORNIA BAR
²OF COUNSEL

³MEMBER OF THE WASHINGTON, D.C. AND THE CALIFORNIA BAR

⁴MEMBER OF THE NEW YORK AND THE CALIFORNIA BAR

⁵MEMBER OF THE CONNECTICUT, NEW YORK AND THE CALIFORNIA BAR

⁶MEMBER OF THE ILLINOIS AND THE CALIFORNIA BAR

James Tilton, Secretary, CDCR
Public Records Act Request
November 9, 2007
Page 2

- d. all settlement agreements, and documents related to disbursement;
 - e. any record of the imposition of sanctions by a court, and payment thereof;
 - f. if payment was made pursuant to a judgment, the jury verdict and/or findings of fact and conclusions of law forming the basis for the judgment; and
 - g. any and all records of payment to plaintiffs, counsel, court officers, experts, Receivers, and/or Special Masters.
2. All documents relating to the costs CDCR has incurred on behalf of itself and all of the branches, divisions, units, offices, and institutions under its control, or their agents, in defense against tort and overdetention claims by claimants or litigants other than CDCR employees during the time period from January 1, 2002 to present.

The California Public Records Act requires determination of whether these records may be disclosed, and specific reasons why any material requested, or portions thereof, are exempt from disclosure, within ten days from receipt of this request. It also requires that CDCR promptly notify us of this determination, and of the estimated date and time when the records will be produced. In accordance with Cal. Gov't Code § 6253(c), we expect your response no later than November 20, 2007.

PLN is a 501[c](3) non-profit organization, responsible for the publication of a serious legal and political journal that reports on news and litigation involving detention facilities. We request production of these documents in electronic format whenever available, pursuant to Cal. Gov't Code § 6253.9. Wherever copying costs must be incurred, we request a waiver of these costs pursuant to the discretion conferred by Cal. Gov't Code § 6253.1. *See North County Parents Org. v. Dept. of Education*, 23 Cal.App.4th 144, 148 (1994) (ability to reduce fees inherent in power to "allow greater access to records"); *cf. Prison Legal News v. Lappin*, 436 F.Supp.2d 17 (D. D.C.) 2006) (granting fee waiver for records request under Freedom of Information Act).

If you have any questions regarding this request, please feel free to contact me at 415-433-6830. Thank you in advance for your cooperation.

Sincerely yours,

ROSEN, BIEN & GALVAN, LLP



By: Kenneth Walczak

cc: Paul Wright (via e-mail)