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25 UNITED STATES DISTRICT COURT
26 DISTRICT OF NEVADA

27 *PRISON LEGAL NEWS*, a project of the
28 HUMAN RIGHTS DEFENSE CENTER, a
Washington Nonprofit Corporation,
Plaintiff,

v.

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

Case No.: 3:00-cv-00373-HDM-WGC

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DAMAGES
DEMAND FOR JURY TRIAL**

1 Plaintiff brings this action, pursuant to 42 U.S.C. § 1983, to enjoin the Nevada
2 Department of Corrections (NDOC), formerly Nevada Department of Prisons, from censoring
3 Plaintiff's written speech, including the journal *PRISON LEGAL NEWS* as well as books and
4 other correspondence mailed by Plaintiff to NDOC prisoners in the State of Nevada. NDOC's
5 censorship of PLN's speech violates: 1) the plain terms of a 2000 Consent Decree entered into
6 by the prison administration and Prison Legal News based on due process concerns; and 2) the
7 dictates of the First and Fourteenth Amendments to the United States Constitution. Plaintiff asks
8 that the Court declare the following policies and practices unconstitutional on their face and as
9 applied: 1) NDOC's ban on "return address labels" as embodied in 750.03(3)(D); 2) NDOC's
10 ban on publications not from "approved vendors or publishers" as embodied in AR 750.08(1), as
11 well as the December 17, 2013 iteration of AR 750.8(1) approving only "verified publishers and
12 vendors"; and 3) the requirement that all books be sent using First Class Mail as embodied in
13 Section 8 of AR 750.08. Pursuant 28 U.S.C. § 2201(a), Plaintiff also seeks declaratory and
14 permanent injunctive relief prohibiting NDOC from engaging in further unlawful censorship of
15 books, magazines and other correspondence from PRISON LEGAL NEWS, as well as damages.
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19 **JURISDICTION**

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21 1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, as well as the
22 First and Fourteenth Amendments of the United State Constitution. Jurisdiction is founded on
23 28 U.S.C. § 1331 and § 1343 and the aforementioned statutory and constitutional provisions.
24 The Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201 and FRCP 57.
25

26 **VENUE**

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

28 **PARTIES**

1 social costs of prison to society.” PLN publishes and distributes books and a monthly journal to
2 prisoners throughout the country, as well as to other non-profits, attorneys, public defenders,
3 journalists, academics, investment bankers, university and law school libraries, prison law
4 libraries, prison rights activists, students, family members of prisoners and concerned private
5 individuals.. PLN covers issues such as court access, disciplinary hearings, prison conditions,
6 excessive force, mail censorship, jail litigation, visiting, telephones, religious freedom, free
7 speech, prison rape, abuse of women prisoners, retaliation, the Prison Legal Reform Act (PLRA),
8 medical treatment, AIDS, the death penalty, and control units. PLN publications include: the
9 monthly law journal *Prison Legal News*; *Prison Legal News* informational brochures (Info
10 Packs); subscription renewal letters; fundraising letters; letters from the editor, and
11 approximately fifty (50) book titles including *Prisoners’ Self-Help Litigation Manual* (PSHLM);
12 and *Protecting Your Health and Safety* (PYHS).

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16 8. Beginning in approximately September of 1999, NDOC (known as the “Nevada
17 Department of Prisons” at that time) and associated facilities refused to allow the delivery of any
18 mail from Prison Legal News pursuant to a ban on “inmate publications” and “inmate
19 correspondence.” See *NDOP policy AD 41-95*. Given the core First Amendment issues raised
20 by this policy, Prison Legal News undertook suit to alter NDOC practices. Upon information
21 and belief, NDOC has continued this and similarly unconstitutional restrictions to this day.

22
23 9. In 2000, this Court ordered defendants to cease blanket censorship of inmate
24 publications and to implement and maintain the attached policy regarding prisoner access to
25 publications. See “Stipulation and Judgment/Order,” *Prison Legal News v. Crawford et al.*, CV-
26 N-00-0373-HDM-RAM. (D. Nev. 9/27/00) (hereafter “NDOC Consent Decree” and attached as
27 Exhibit One.) *Prison Legal News v. Crawford et al.*, Case #: 3:00-cv-00373-HDM-RAM. Thus,
28

1 Prison Legal News successfully obtained a judgment and order enjoining NDOC from censoring
2 Prison Legal News publications

3 10. *PLN v. Crawford* grew out of NDOC's unconstitutional policy of excluding
4 *Prison Legal News*, and associated correspondence, from NDOC institutions as prohibited
5 "inmate publications." *See Thornburgh v. Abbott*, 490 U.S. 401 (1989). Pursuant to the NDOC
6 Consent Decree, NDOC adopted the following policy regarding prisoner access to publications:
7

8 Prisoners in the custody of the Nevada Department of Prisons (NDOP) shall be permitted
9 to subscribe to the publications of their choice, and shall receive all issues of those
10 publications without interference, except as provided below. Wardens may designate staff
11 to screen and, where appropriate, approve incoming publications, but only a Warden may
12 reject a publication. Wardens are authorized to reject a publication only if it is
determined, after reasonable consideration, to be detrimental to the safety, security, good
order, or discipline of the institution or if it might facilitate criminal activity.

13 NDOC Consent Decree at 3: 9-18. The Consent Decree binds the Director of the Nevada Prisons
14 Department, as well as his or her "officers, agents, servants, employees, and successors in office"
15 to "implement and maintain" this policy. *Id.* at 3: 4-7.
16

17 11. Per the decree, "only a Warden may reject a publication." *Id.* at 3:14. The
18 Consent Decree also provides specific guidance to the Warden, as to the type of criteria that may
19 support rejection of a publication.
20

21 12. Finally, the Consent Decree mandates exact and detailed due process protections,
22 where a publication is rejected. Both the inmate-subscriber and the publisher must receive
23 written notice of the reasons for the rejection, as well as the opportunities for independent
24 review.
25

26 In the event a Warden rejects an issue of a publication, he or she must advise the
27 subscribing inmate promptly in writing of the reasons for the rejection and send a copy of
28 such rejection memorandum to the publisher. The rejection memorandum must refer to
the specific article(s) or materials(s) considered objectionable. The rejection
memorandum must also advise the publisher that he or she may obtain an independent

1 review of the rejection by the Director of the Nevada Department of Prisons by
2 requesting it within 20 days (plus 3 for mailing) of the date the rejection memorandum is
3 mailed to the publisher. The subscribing inmate may grieve the rejection through the
4 prison's administrative grievance process.

4 NDOC Consent Decree at 4: 15 – 25.

5 13. State institutions that sign onto Court enforced Consent Decrees are charged with
6 knowledge of those obligations. Naturally, administrative officials, such as Director Cox and
7 Deputy Director of Operations McDaniel at NDOC must track and pay deference to Court
8 Orders binding their behavior. Notably, Director Cox has a lengthy history with NDOC. As a
9 career correctionals officer, he joined NDOC as the Warden of Southern Desert Correctional
10 Center in 2003. He became Warden of High Desert State Prison on August 23, 2004. As the
11 current Director of NDOC, he has the ultimate responsibility for ensuring the legal operation of
12 NDOC facilities. In fact, NRS § 209.131(9) specifically establishes his statutory duty to ensure
13 the legal requirements surrounding inmate correspondence are well-known. Similarly,
14 Defendant E.K. McDaniels acted as the Warden of Ely State Prison, at the time of the entry of
15 the NDOC consent decree. Wardens are charged with understanding and implementing the legal
16 mandates and policies associated with managing their correctional centers, including their
17 correspondence obligations. NRS § 209.161.

21 14. In addition, written correspondence sent by Prison Legal News to NDOC
22 Directors establish specific notification of NDOC's failure to abide by the terms of the 2000
23 Consent Decree. Following the return and censorship of numerous PLN publications, Lance
24 Weber sent a letter to the Nevada Department of Corrections, and then Director Howard Skolnik,
25 concerning the emerging unlawful pattern of censorship. Declaration of Lance Weber at ¶ 7.
26 The letter, attached as Exhibit Two, was sent on June 15, 2011. NDOC never responded to this
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1 inquiry. *Id.* at ¶¶ 7-8. On May 14, 2013, Lance Weber reiterated a demand, in a letter addressed
2 to Director James Cox, that NDOC provide an immediate and satisfactory response to these
3 concerns. Cox provided no response to this letter either. *Id.* at ¶¶ 9-10. See also Exhibit Three.
4
5 Director Cox cannot claim he acted reasonably or in the belief that NDOC's behavior was
6 lawful.

7 15. Reasonable discovery will show that Defendant Cox, both during his tenure as a
8 Deputy Director and during his tenure as Director, personally attended monthly "AR Meetings"
9 wherein the Director of NDOC and the Deputy Directors met to review and approve
10 modifications to the NDOC administrative regulations, including review and modification of AR
11 750, one of the regulations at issue in this case.
12

13 16. Despite the NDOC Consent Decree, Defendants continue to censor mail from
14 Prison Legal News using methods that are in violation of the decree and in violation of the
15 United States Constitution.
16

17 17. Plaintiff has been forced to incur reasonable attorney's fees and costs in pursuit
18 of this action, including, but not necessarily limited to, those contemplated by 42 U.S.C. § 1988.
19

20 **FIRST CLAIM FOR RELIEF**

21 42 U.S.C. § 1983

22 **Violation Of Publisher's First and Fourteenth Amendment Rights**

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

25 18. Beginning in 2010, Defendants, and each of them, and DOES I-XXV, have
26 refused to allow delivery of mail from PLN, including but not limited to, the publication
27 *PRISON LEGAL NEWS*, letters from PLN and books distributed by PLN to one or more of the
28 prisoners under the control of NDOC, under policies and practices banning "address labels" and

1 “envelope tape,” requiring publication be sent from “approved vendors,” and/or requiring mail
2 be sent using first-class postage. Various prisons and institutions throughout the State of
3 Nevada, including but not necessarily limited to, the Southern Desert Correctional Center
4 (SDCC), Ely State Prison (ESP), and Northern Nevada Correctional Center (NNCC) have
5 adopted these policies and practices.
6

7 19. Issues of *PRISON LEGAL NEWS*, letters from PLN, and books distributed by
8 PLN have all been confiscated and/or discarded rather than delivered to the prisoners who were
9 intended to receive them. The speech at issue is political speech, which is entitled to the highest
10 protection under the Constitution of the United States.
11

12 20. Defendants’ refusal to allow delivery of written speech through the mail from
13 PLN constitutes a violation of Plaintiff’s First Amendment rights, as made applicable to the State
14 of Nevada through the Fourteenth Amendment of the United States Constitution.
15

16 21. The contents of *PRISON LEGAL NEWS*, PLN’s letters and the books that PLN
17 distributes are protected political speech and violate no prison policies nor regulations other than
18 the alleged restrictions on “address labels” and “envelope tape,” “approved vendor”
19 requirements, and requirements that publications must be sent using first-class postage.
20 Defendants have refused to deliver or allow delivery of copies of *PRISON LEGAL NEWS* and
21 letters and books from *PRISON LEGAL NEWS* to prisoners at NDOC facilities who had
22 subscribed to this publication and/or who had ordered books from PLN, on the grounds that these
23 publications contain “foreign substances such as stickers” and “return address labels,” pursuant
24 AR 750.03(3)(7) and 750.03(3)(D), respectively. These “adulterated mail” provisions have been
25 used to prohibit delivery of mail from publishers such as PLN, who use printed return address
26 and address labels for correspondence with individual inmates. PLN also uses mailing labels for
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1 materials sent directly from its office. Defendants' refusal to deliver or allow delivery of
2 publications from PLN to prisoners based on the presence of "address labels" or "envelope tape"
3 fails to meet the reasonableness requirement for prison regulations impinging upon an inmate's
4 constitutional rights.
5

6 22. The blanket prohibition on "address labels" and "envelope tape" unreasonably
7 impinges on the rights of both PLN and those Nevada prisoners intended to receive its
8 publications. The "address labels" and "envelope tape" ban is not rationally related to a
9 legitimate and neutral government objective. Upon information and belief, Amazon.com orders
10 are permitted entry into NDOC facilities, and these ordered have address labels. This suggests
11 that NDOC is not acting consistently and neutrally. Since Amazon.com does not deliver
12 *PRISON LEGAL NEWS*, no viable alternatives are available for prisoners to receive *PRISON*
13 *LEGAL NEWS* when orders from PLN are prohibited. Accommodating the prisoners' rights
14 would have little to no impact on the guards or other prisoners, given packages from
15 Amazon.com containing labels are permitted. An easy alternative exists – prison personnel may
16 remove the stickers of labels before delivery of the publications to inmates.
17
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19 23. Additionally, NDOC's requirement under AR 750.08(1), stating that all books
20 "must come directly from approved vendors or publishers," without specifying which entities are
21 "approved," violates the First Amendment rights of both the inmates and the publishers.
22 According to mailroom reports, only one vendor, Amazon.com, has enjoyed an "approved"
23 status. A single source designated as the "approved vendor" is unconstitutional, since no
24 alternative means of obtaining reading material from publishers such as PLN exist. Such a
25 practice places a significant burden on publishers' and inmates' constitutional rights. In
26 particular, in the absence of criteria defining how one qualifies as an "approved" vendor,
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1 publishers are left with no articulable standards to follow. This amounts to a violation of clearly
2 established due process principles. Under this rubric, decision-makers could arbitrarily exclude
3 publications, such as PLN books, based on mere whim.
4

5 24. NDOC modified Administrative Regulation 750 on December 17, 2013, to state
6 “All inmates are allowed to order and receive, publications directly from *verified* publishers and
7 vendors.” (Emphasis added). A.R. 750.08(1). This language also fails to prevent violations of
8 the First Amendment rights of Plaintiff and other speakers and falls afoul of due process
9 mandates, in that it fails to give standards articulating the criteria for becoming “verified.”
10

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

21 26. Plaintiff is entitled to a declaration that all regulations and/or instructions,
22 administrative directives, institutional procedures, or policies on which Defendants base their
23 refusal to deliver or allow delivery of mail from PLN to prisoners, only because Defendants
24 characterize the publications or other mail as having “address labels” and/or “envelope tape,” the
25 publications are not delivered from the only “approved vendor,” and/or the publications are not
26 mailed using first-class postage, are unconstitutional. These policies and practices are
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1 unconstitutional as applied, in violation of the First Amendment and Fourteenth Amendment, by
2 and through 42 U.S.C. § 1983 and on their face. Plaintiff is entitled to a declaration that these
3 policies and practices are unconstitutional.
4

5 27. Plaintiff is entitled to an entry of an injunction prohibiting Defendants from
6 refusing to process and deliver, or allow delivery of, mail from PRISON LEGAL NEWS to
7 prisoners on the grounds that these publications have affixed “address labels” and/or “envelope
8 tape,” are not delivered from a sole approved vendor, and/or are not delivered using first-class
9 postage. Plaintiff is entitled to an injunction permanently enjoining enforcement of these
10 practices and policies.
11

12 28. As a proximate and direct result of Defendants’ actions, Plaintiff has suffered
13 damages in an amount to be more fully enumerated at trial.
14

15
16 **SECOND CLAIM FOR RELIEF**

17 **42 U.S.C. § 1983, Fourteenth Amendment Procedural Due Process Violations**

18 Plaintiff hereby incorporates by reference all allegations contained in all numbered
19 paragraphs of this Complaint as if set forth fully here.
20

21 29. Since approximately September 1999, and continuing despite the NDOC Consent
22 Decree issued in September 2000, Defendants have denied Plaintiff its right to due process under
23 the Fourteenth Amendment of the United States Constitution by failing to provide Plaintiff
24 notice and an opportunity to be heard when mail sent to Nevada prisoners, including but not
25 limited to, the journal of PRISON LEGAL NEWS, is censored.
26

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

1 31. The Plaintiff is entitled to a declaration that Defendants have violated the
2 Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by refusing to
3 notify PLN when books and publications it has mailed to prisoners have been confiscated and/or
4 discarded rather than delivered to the prisoners who were intended to receive them.
5

6 32. The Plaintiff is also entitled to an injunction prohibiting Defendants from enacting
7 and enforcing policies, procedures, administrative directives, etc., to confiscate and/or discard
8 publications without notification to the publisher that such publications have been confiscated
9 and/or discarded rather than delivered.
10

11 33. As a proximate and direct result of the Defendants' actions, Plaintiff has suffered
12 damages in an amount to be more fully enumerated at trial.
13

REMEDIES REQUESTED

Declaratory Relief

14
15 Plaintiff hereby incorporates by reference all allegations contained in all
16 numbered paragraphs of this Complaint as is set forth fully here.
17

18 34. Plaintiff requests a declaratory judgment establishing that the policies and
19 procedures of censorship which result in Defendants not delivering or refusing to allow delivery
20 to prisoners of *PRISON LEGAL NEWS* and other mail from PLN are in violation of Plaintiff's
21 First and Fourteenth Amendment rights under the Constitution of the United States. Plaintiff
22 requests a declaration that Defendants' ban on "address labels" and "envelope tape," publications
23 not from an "approved vendor," "verified publishers and vendors" and publications not sent
24 using first-class postage are unconstitutional on their face and as applied, all in violation of
25 Plaintiff's rights under the First and Fourteenth Amendments.
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Injunctive Relief

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

3 35. Plaintiff respectfully requests that this Court issue a permanent injunction
4 enjoining Defendants, and each of them, from interfering with or refusing the delivery of PLN
5 publications and other mail or subscription information from PLN within the NDOC system,
6 anywhere within the State of Nevada, absent a legitimate penological interest supporting such
7 censorship. Plaintiff asks this Court to issue a permanent injunction enjoining defendants from
8 enforcing the “no labels,” “no tape” and “no sticker” requirements, the “approved vendor”
9 requirement, the “verified publishers and vendors” requirement, and the requirement that
10 publications be mailed using first-class postage.
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13 Punitive Damages

14 36. Plaintiff hereby incorporates by reference all allegations contained in all
15 numbered paragraphs of this Compliant as if set forth fully here.
16

17 37. Plaintiff alleges that the individual Defendants acted with deliberate indifference
18 to or reckless disregard for Plaintiff’s clearly established constitutional rights, and have violated
19 Plaintiff’s clearly established constitutional rights, and these actions taken by the individual
20 Defendants were the direct and proximate cause of the damages suffered by Plaintiff, and
21 therefore, punitive damages should be awarded to punish Defendants for their misconduct, and to
22 deter similar misconduct by similarly situated defendants in the future. The amount of these
23 punitive damages should be determined at trial.
24

25 PRAYER

26 WHEREFORE, Plaintiff prays for a trial by jury on all issues so triable, and for judgment
27 against the Defendants, and each of them, as follows:
28

1. For general damages in an amount to be more precisely determined at trial;
2. For special damages in an amount to be more precisely determined at trial;
3. For punitive damages in an amount to be more precisely determined at trial;
4. For a preliminary and permanent injunction as described herein;
5. For declaratory relief as specifically requested herein;
6. For attorney's fees and costs of suit necessarily incurred herein;
7. For leave to amend this Complaint should additional facts become known to

Plaintiff; and

8. For such other and further relief as this Court may deem just and appropriate in the premises.

DATED: This 30th day of September 2014.

Respectfully submitted by:

/s/ Allen Lichtenstein
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CERTIFICATE OF SERVICE

I hereby certify that I served all parties via the Court's electronic filing and service system on this 30th day of September 2014.

/s/ Allen Lichtenstein

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