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17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA
19 SACRAMENTO DIVISION

20 PRISON LEGAL NEWS, a project of the
HUMAN RIGHTS DEFENSE CENTER,

21 Plaintiff,

22 v.

23 COUNTY OF SACRAMENTO;
24 SCOTT R. JONES, individually and in his
capacity as Sheriff of the County of
25 Sacramento; DOES 1-20, in their
individual and official capacities,

26 Defendants.
27

Case No. 2:11-cv-00907-JAM-DAD

CONSENT DECREE

Judge: Hon. John A. Mendez

1 The parties to this action, represented by counsel, stipulate to and request entry of a
2 consent decree by the court as follows:

3 1. On April 5, 2011, Plaintiff Prison Legal News, a Project of the Human
4 Rights Defense Center (“PLN” or “Plaintiff”) filed suit in the above entitled matter seeking
5 injunctive and declaratory relief, damages, and attorney’s fees and costs. Plaintiff’s
6 complaint alleges an unlawful and unconstitutional custom, practice, or policy regarding
7 the delivery of incoming publications and correspondence to prisoners at the Sacramento
8 County jails. The complaint alleges violations of the First and Fourteenth Amendments to
9 the United States Constitution, pursuant to 42 U.S.C. § 1983, and seeks injunctive and
10 declaratory relief, money damages, attorney’s fees and legal costs.

11 2. On June 2, 2011, Defendants Sacramento County, *et al.*, (collectively
12 “Defendants”) filed an answer denying the allegations of the complaint and raising various
13 affirmative defenses.

14 3. The parties agree that Defendants have disputed, and continue to dispute and
15 deny, liability. However, in order to avoid the expense, delay, uncertainty, and burden of
16 litigation the parties agree to the entry of this consent decree.

17 4. Plaintiff publishes and distributes a monthly journal of corrections news and
18 analysis, and offers and sells books about the criminal justice system and legal issues
19 affecting prisoners, to prisoners, lawyers, courts, libraries, and the public throughout the
20 Country. PLN engages in protected speech and expressive conduct on matters of public
21 concern. *See Prison Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2005).

22 5. Defendants operate the Sacramento County Main Jail (“SCMJ”) and Rio
23 Cosumnes Correctional Center (“RCCC”), two facilities which house prisoners and
24 detainees.

25 6. Beginning in or around April 2009, Defendants refused to deliver
26 publications and correspondence sent by PLN to its subscribers, potential subscribers, and
27 readers at SCMJ and RCCC. The stated bases for these exclusions were that PLN’s
28 magazine is held together by staples, and that PLN uses standard mailing labels to address

1 its correspondence.

2 7. The Court on March 7, 2012 granted PLN's motion for preliminary
3 injunction. The March 7, 2012 findings were:

4 Defendants' policies and practices including refusing to deliver
5 PLN publications and mailings to prisoners because they
6 contained staples and/or a mailing label are not supported by a
7 legitimate penological interest and do not leave open
8 alternative means for PLN to exercise its First Amendment
9 rights. Furthermore, allowing PLN to be delivered to prisoners
10 in the Sacramento County's jails would have very limited
11 impact on guards and other inmates, and there are obvious,
12 easy alternatives to Defendants' bans on PLN's staples and
13 mailing labels. In short, Defendants' policies are an
14 exaggerated response to any security concerns posed by PLN.

15 Plaintiff has demonstrated that it will suffer irreparable harm in
16 the absence of preliminary injunctive relief and the balance of
17 hardships tips in Plaintiff's favor. The loss of First Amendment
18 freedoms, for even minimal periods of time, constitutes
19 irreparable injury. Here, Defendants have infringed on
20 Plaintiff's established rights to send publications to prisoners.
21 The grant of a preliminary injunction will not cause irreparable
22 harm to the Defendants. The balance of equities therefore tips
23 in Plaintiff's favor.

24 Finally, the preliminary injunction set forth below is in the
25 public interest. Defendants' policies operated as a de facto ban
26 on PLN publications. Protecting the constitutional rights of
27 PLN promotes the public interest.

28 8. The parties agree that this consent decree resolves all claims for injunctive
relief alleged in Plaintiff's complaint. By this consent decree, together with payment of
the sum of three hundred thousand dollars (\$300,000.00), the parties agree that all claims
alleged by Plaintiff are fully and finally resolved. The parties agree that Plaintiff will
execute a release of all claims, and that Defendant will remit payment to Plaintiff as soon
as reasonably possible after the entry of this order, but not later than sixty (60) days after
entry of the order. If payment is not made within sixty (60) days, interest shall accrue
pursuant to 28 U.S.C. §1961 from the date of entry of this order.

1 9. The parties agree that the Plaintiff shall not be entitled to any attorney's fees
2 and costs for monitoring compliance with this consent decree.

3 10. The parties agree that this consent decree shall only be applicable to: (a) the
4 delivery of Plaintiff's publications, and/or publications from other known publishers and
5 the removal of staples from those publications; and (b) the delivery of documents or
6 correspondence from Prison Legal News and/or other known publishers that contain
7 mailing labels.

8 11. The parties agree that providing prisoners with access to reading materials
9 promotes positive contact with the communities into which prisoners will eventually be
10 released and is therefore consistent with the Defendants' public safety mission.

11 12. DEFINITIONS:

12 a. As used herein, STAPLES shall mean the type of light-duty small wire
13 fasteners commonly used to attach a few sheets of paper, and used by PLN to bind the
14 sheets of its monthly publication.

15 b. As used herein, MAILING LABELS shall mean the type of self-adhesive
16 sticker used by PLN to affix an address to an item of printed matter.

17 c. As used herein, PUBLISHER shall mean any publisher or book store that
18 does mail order business.

19 13. The parties agree that Defendants and their successors, officers, agents,
20 servants, and employees, and all others in active concert or participation with them, shall
21 not refuse to deliver publications, correspondence, or documents sent by any PUBLISHER
22 to prisoners at the county's jails on the ground that these publications, correspondence, or
23 documents contain STAPLES, PROVIDED that Defendants may comply by removing the
24 STAPLES.

25 14. The parties agree that Defendants shall not refuse to deliver publications,
26 correspondence, or documents sent to prisoners from any PUBLISHER because of
27 MAILING LABELS, PROVIDED that Defendants may comply by removing the
28 MAILING LABELS.

1 15. The parties agree that Defendants shall provide adequate written notice and
2 an administrative review process to the PUBLISHER of any refusal to deliver any
3 publication, correspondence, or document sent from a PUBLISHER to a prisoner at the
4 County's jails. The administrative review process shall include the PUBLISHER's right to
5 have its appeal, complaint, or inquiry considered and resolved by a decisionmaker other
6 than the person who originally refused to deliver the publication or mailing in question.

7 16. Defendants also agree to purchase four (4) five-year subscriptions to PLN's
8 monthly journal for each Sacramento County jail library, and to retain and maintain those
9 six copies in each County Facility's libraries, for use by prisoners. Defendants shall order
10 and pay for the subscriptions within ten (10) calendar days of the entry of this Order.

11 17. If Plaintiff proves, in future, any violation of this order, Defendants shall be
12 liable for the reasonable attorney's fees and costs PLN incurs in proving the violation.
13 Defendants shall have the opportunity to demonstrate that any violation is isolated,
14 accidental, and/or not foreseeable in light of Defendants' history of substantial compliance
15 and efforts to train and inform staff on mail and publication policies to mitigate relief
16 ordered for any violation, including fees and costs.

17 18. The Court finds that this case concerns the First and Fourteenth Amendment
18 rights of a publisher and is therefore not a case concerning prison conditions as defined in
19 the Prison Litigation Reform Act of 1996. The Court further finds that the relief herein
20 ordered is narrowly drawn, extends no further than necessary to correct the harm to PLN
21 requiring injunctive relief, and is the least intrusive means necessary to correct that harm.

22 19. The Court retains jurisdiction of this matter for the purpose of enforcement
23 of its Order until terminated upon motion made by either party.

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1 20. No person who has notice of this consent decree shall fail to comply with it,
2 nor shall any person subvert the injunction by any sham, indirection, or other artifice.

3 IT IS SO STIPULATED.

4
5 DATED: _____, 2012 ROSEN BIEN GALVAN & GRUNFELD LLP

6
7 By: _____
8 Ernest Galvan

9 Attorneys for Plaintiff Prison Legal News
10 a project of the HUMAN RIGHTS DEFENSE
11 CENTER

12 DATED: _____, 2012 LONGYEAR, O'DEA & LAVRA, LLP

13
14 By: _____
15 John A. Lavra

16 Attorneys for Defendants County of Sacramento,
17 Scott R. Jones

18 IT IS SO ORDERED.

19
20 DATED: July 16, 2012

21
22 /s/ John A. Mendez _____
23 John A. Mendez,
24 United States District Court Judge