

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**PRISON LEGAL NEWS**, a project of  
the Human Rights Defense Center,  
Plaintiff,

v

Case No. 2:11-CV-13460-DPH-MAR  
Hon. Denise Page Hood

**LIVINGSTON COUNTY SHERIFF  
BOB BEZOTTE**, individually and  
officially, **LIEUTENANT THOMAS  
CREMONTE**, individually and officially, and  
**LIVINGSTON COUNTY**,  
Defendants.

---

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

Plaintiff, by its attorneys, Daniel E. Manville, Thomas M. Loeb, Lance T. Weber and Brian J. Prain, complains against the above-named Defendants and in support states as follows:

Preliminary Statement

1. This is an action brought by plaintiff Prison Legal News, a project of the Human Rights Defense Center, for damages caused by Defendants' censorship of its mail and restrictions on its access to prisoners at the Livingston County Jail.
2. Defendants have adopted and implemented written and unwritten mail policies and practices that unconstitutionally restrict correspondence to prisoners via

postcards only, that prohibit delivery to prisoners of books, magazines and any other publications that have not been printed on postcards, and fail to provide notice to PLN when its items were rejected.

3. Defendants' written and unwritten policies and practices do not provide constitutionally adequate due process protections to senders of mail, such as notice of the government's decision to censor mail and an opportunity to challenge the censorship.
4. Defendants have interfered with Plaintiff's right of access to prisoners by refusing to allow counsel for Plaintiff to send legal mail to or otherwise communicate with prisoners in Defendants' custody.<sup>1</sup>
5. Plaintiff's First Amendment rights to Freedom of Speech, Freedom of the Press and Freedom of Association and its right to Due Process of Law have been violated by Defendants' actions. Plaintiff seeks a declaration that the Defendants' mail policy of postcards only violates the First and Fourteenth Amendments of the United States Constitution. In addition, Plaintiff asserts that Defendants violated the Takings Clause under the Fifth Amendment and improperly exercised control over and converted for their own use, property that was entrusted to Defendants for delivery to specific prisoners.

---

<sup>1</sup> This Court issued an order finding that Plaintiff PLN does not have a constitutional right to send legal mail to detainees (D/E 64). PLN filed a motion for rehearing (D/E 68) and it is still pending. Plaintiff is filing a motion to file supplemental authorities

### Jurisdiction and Venue

6. This court has jurisdiction over these claims pursuant to 28 U.S.C. §1331.
7. Venue is properly laid in this court pursuant to 28 U.S.C. §1391(b) as the Defendants reside in and the claim arose in the Eastern District of Michigan.

### Plaintiff and Defendants

8. That at all times relevant to this complaint, Plaintiff Prison Legal News (PLN) is a project of the Human Rights Defense Center (HRDC), a Washington non-profit corporation.
9. For the past 21 years, the core of plaintiff's mission has been public education, advocacy and outreach in support of the rights of prisoners and in furtherance of basic human rights. Plaintiff maintains a website, operates an email list, publishes and distributes books about the criminal justice system and legal issues affecting prisoners, and publishes and distributes a monthly journal of corrections news and analysis, *Prison Legal News*, to prisoners, lawyers, courts, libraries, and the public throughout the country. Prisoners, their family, friends and advocates are among the intended beneficiaries of PLN's activities.
10. Defendant Livingston County is an organized municipal corporation existing under the laws of the State of Michigan.

---

in support of D/E 68.

11. Defendant Bob Bezotte is currently the Sheriff of Livingston County and is sued in his individual and official capacities. At all times relevant, he has acted under color of state law.
12. As Sheriff, he is responsible for the operations of the Livingston County Jail. Specifically, he is the policy maker for the Livingston County Jail with respect to its mail policy and its policy of refusing attorneys employed by Plaintiff to communicate with prisoners in Defendants' custody.
13. Defendant Thomas Cremonte was at all time relevant a Lieutenant with the office of the Sheriff of Livingston County and is sued in his individual and official capacities. At all times relevant hereto, he acted under color of state law. He is responsible for the overall operations of the Livingston County jail, management and supervision of the staff, and the implementation and oversight of its written and unwritten jail policy governing mail for prisoners.

#### Facts

14. PLN engages in core protected speech and expressive conduct on matters of public concern.
15. PLN publishes and distributes *Prison Legal News*, a monthly journal of corrections news and analysis about prisoner rights, court rulings, management of prison facilities and prison conditions. PLN publishes and distributes dozens

of books about the criminal justice system and legal issues affecting prisoners and pre-trial detainees.

16. PLN has over 7,000 subscribers throughout the United States and abroad, including prisoners, pre-trial detainees, attorneys, journalists, public libraries, judges, and other members of the public.
17. Defendants have written, instituted and implemented the following mail policy at the Livingston County Jail:

MAIL - Inmates are permitted to write to any person outside of our Jail facility. Incoming Inmate correspondence must be addressed as follows:

*Inmate Name, Resident  
Livingston County Jail  
150 S. Highlander Way  
Howell, MI 48843*

- Incoming mail must reflect sender's name and address.
  - Correspondence from attorneys, as well as court and public officials may be opened in the presence of an inmate.
  - Mail must be sent via US Postal Service.
  - Items NOT allowed: postage stamps, envelopes, blank stationary, jewelry, food, books, magazines, sexually explicit pictures, cash, personal or company check.
  - All mail, except bona-fide legal mail, will be by standard post cards. This is both incoming and outgoing mail.
  - Incoming mail deemed inappropriate may be placed in the inmate's property locker.
18. Pursuant to this policy Defendants have improperly and illegally censored Plaintiff's publications, books, brochures and other correspondence sent to

inmates at the Livingston County Jail, including legal mail.

19. In January, April and June 2011, in March and July 2012, and in February and October 2013 PLN sent a sample copy of *Prison Legal News* in a manila envelope via First Class mail, a new copy of the soft back book *Protecting Your Health and Safety* via Media Mail, and three (3) single-page, double-sided informational brochures in a standard #10 sized envelope via First Class Mail to individual prisoners at the Livingston County Jail. Over the course of those three years, PLN sent the aforementioned items to a total of approximately eighty-eight (88) prisoners incarcerated at the jail. All items were addressed to specific, individual inmates and bore a return address of:

Prison Legal News  
PO Box 2420  
W. Brattleboro, VT 05303

20. Beginning in February 2011 and monthly thereafter, continuing to the present PLN has sent current issues of *Prison Legal News* directly from its printer addressed individually to certain select individual prisoners in Defendants' custody.
21. In September 2011, PLN's editor Paul Wright sent individually addressed postcards to 37 prisoners at the jail who were intended recipients of mail previously sent to them at the jail.

22. In October 2011, October 2012 and September 2013 PLN sent its annual fundraiser letter to subscribers incarcerated at the jail. Over the course of those three years, PLN sent a total of 57 fundraising letters to incarcerated subscribers at the jail.
23. Additionally, PLN sent approximately 67 subscription renewal letters specifically addressed to individual prisoners incarcerated at the jail over the course of time from July 2011 to the present.
24. Although this mail was being sent to certain inmates at the Livingston County Jail via the U.S. Postal Service, no response was received from any prisoner.
25. PLN continues, and will continue in the future, to mail its monthly magazine, *Prison Legal News*, its books, its informational brochures, its fundraising letters, sample copies of its monthly magazine, its subscription renewal letters, postcards and other mail to prisoners at the Livingston County jail.
26. All mail from PLN was censored by Defendants instead of being delivered to the prisoner addressees.
27. In-house counsel for HRDC wrote letters on PLN's behalf conspicuously marked "Legal Mail" addressed to prisoners who were the intended recipients of PLN's mail but no response was received from any prisoner. All legal mail sent from counsel on PLN's behalf was censored by Defendants.

28. Outside counsel for PLN attempted to communicate with certain prisoners in Defendants' custody by visiting them at the Jail during regular business hours and Defendants refused to allow PLN's counsel to speak with inmates in their custody.
29. Defendants provided PLN no notice of their intent to censor PLN's mail nor did Defendants provide to PLN an opportunity to appeal their censorship decisions.
30. Defendants took custody of certain copies of *Prison Legal News* and *Protecting Your Health and Safety* which had been mailed by Plaintiff to certain specific prisoners at the Livingston County Jail - and without notice, permission, or consent of Plaintiff, Defendants placed copies of these items in the jail's library. Defendants did not compensate Plaintiff for the use and benefit of its property. Cremonte Depo, Pg. 38, ¶3-20; Pg. 40, ¶3-16.
31. Defendants further confiscated all other PLN Mail and kept it within the administrative office at Livingston County Jail, or turned it over to its legal counsel. Again, this action was taken without notice, permission or consent of Plaintiff. Cremonte Depo, Pg. 48, ¶¶1-5, 16-23.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF (Violations of the First Amendment and Fourteenth Amendments Under Color of State Law – Section 1983**

32. Plaintiff realleges and incorporates by reference the preceding paragraphs.
33. Defendants' written and unwritten practice, policy or custom, as set forth more fully above with respect to its mail policies, was the moving force that deprived Plaintiff of its rights, privileges, or immunities secured under the Constitution and laws of the United States and 42 U.S.C. §1983 including:
  - a. Plaintiff's right to freedom of the press, as protected by the First Amendment of the United States Constitution;
  - b. Plaintiff's right to freedom of speech, as protected by the First Amendment of the United States Constitution;
  - c. Plaintiff's right to freedom of association, as protected by the First Amendment of the United States Constitution;
  - d. Plaintiff's right to be free of government censorship, as protected by the First Amendment of the United States Constitution;
  - e. Plaintiff's right to due process of law, as protected by the Fourteenth Amendment of the United States Constitution.

**SECOND CLAIM FOR RELIEF  
(Conversion)**

34. Plaintiff realleges and incorporates herein by reference the preceding paragraphs.

35. Defendants, without right or permission from Plaintiff improperly exercised dominion or control over and converted for their own use the personality (*i.e.*, PLN magazine and other publications) of the Plaintiff.
36. Plaintiff entrusted to Defendants said personality for a specific purpose – delivery to prisoners at the Livingston County Jail.
37. The manner in which Defendants exercised such dominion or control was both inconsistent with, and seriously interfered with, Plaintiff’s rights as a property owner to enjoy and/or control its personality.
38. As a direct and proximate result of one or more of Defendants’ acts of conversion and the injuries resulting from those acts, Plaintiff lost the intrinsic value of their property and suffered economic and non-economic damages.
39. The Plaintiffs are further entitled to the immediate return of the personality at issue.

**THIRD CLAIM FOR RELIEF  
(Takings Clause of 5<sup>th</sup> Amendment)**

40. Plaintiffs reallege and incorporate herein by reference the preceding paragraphs.
41. Defendants violated the 5<sup>th</sup> Amendment Due Process requirements and prohibition  
  
on takings without just compensation.

42. Plaintiff creates, publishes, and distributes *Prison Legal News*, *Protecting Your Health and Safety* and other publications (“PLN Publications” herein) that are distributed to Defendants for delivery to prisoners in their custody through U.S. Mail.
43. PLN Publications constitute the private and personal property of the Plaintiff and as such are afforded full property rights.
44. Plaintiff intended these PLN Publications to be received by prisoners housed within the Livingston County jail and not taken, maintained or otherwise withheld by Defendants.
45. Defendants without knowledge or consent of the Plaintiff and without notice to Plaintiff, took PLN Publications and converted them into the property of the Defendants.
46. Defendants maintained dominion and control over Plaintiff’s property without knowledge of, consent of, or notice to the Plaintiff.
47. Defendants have used and continue to use the property for their own benefit without consent and/or just compensation to the Plaintiff.
48. Plaintiff is therefore entitled to just compensation for the Defendants unlawful taking of Plaintiff’s property.

**PRAYER FOR RELIEF**

**THEREFORE**, for all above reasons, Plaintiff requests that this Court declare that Defendants' policies, practices, and customs violate the Constitution as set forth more fully throughout this Complaint, and that it improperly exercised dominion or control over and converted for their own use Plaintiff's property; grant to plaintiff a preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution; award plaintiff compensatory damages in whatever amount the jury may determine; award plaintiff nominal damages in whatever amount the jury may determine; award plaintiff punitive damages against Defendant Bob Bezotte and Thomas Cremonte, individually, in whatever amount the jury may determine; award costs and actual attorney fees pursuant to 42 U.S.C. §1988; award plaintiff pre-judgment and post-judgment interest; and grant such other relief as the Court may deem just and equitable.

**PLAINTIFF DEMANDS A JURY TRIAL.**

Respectfully submitted,

s/ Daniel E. Manville (P39731)  
Co-counsel for Plaintiff  
Director, Civil Rights Clinic  
Michigan State University College of Law  
610 Abbot Road  
East Lansing, MI 48823  
(517) 336-8088  
[daniel.manville@law.msu.edu](mailto:daniel.manville@law.msu.edu)

s/ Thomas M. Loeb (P25913)

Co-counsel for Plaintiff  
32000 Northwestern Hwy, Ste 170  
Farmington Hills, MI 48334-1507  
(248) 851-2020  
[tmloeb1@mich.com](mailto:tmloeb1@mich.com)

s/ Lance Weber  
Co-counsel for Plaintiff  
Human Rights Defense Center  
PO Box 1151  
Lake Worth, FL 33460  
(561) 360-2523  
[lweber@humanrightsdefensecenter.org](mailto:lweber@humanrightsdefensecenter.org)

s/ Brian J. Prain (P73944)  
Co-counsel for Plaintiff  
The Law Office of Brian J. Prain, PLLC  
28475 Greenfield Rd Ste 121  
Southfield, MI 48076  
(248) 763-0641  
[brian@prainlaw.com](mailto:brian@prainlaw.com)

The second amended complaint is being served on Defendants' counsel by ECF on April 4, 2016.

---

s/ Daniel E. Manville