

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION

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

*Plaintiff/Counter Defendant,*

v.

JAMES “J.J.” JONES, Sheriff of Knox County,  
Tennessee, in his official and individual  
capacities; RODNEY BIVENS, Assistant Chief  
Deputy of the Knox County Sheriff’s Office, in  
his official and individual capacities; and  
KNOX COUNTY, TENNESSEE,

*Defendants/Counter-Plaintiffs.*

Case No.: 3:15-CV-452-TAV-CCS

Chief Judge Varlan  
Magistrate Judge Shirley

JURY DEMAND

**PLAINTIFF/COUNTER-DEFENDANT’S MOTION TO DISMISS DEFENDANTS’  
COUNTER-CLAIMS FOR DECLARATORY JUDGMENT**

NOW COMES Plaintiff/Counter-Defendant, PRISON LEGAL NEWS, a project of the not-for-profit Human Rights Defense Center (“PLN” or “Plaintiff”), by and through its attorneys, pursuant to Fed. R. Civ. P. 12(b)(6), and respectfully moves this Court for a dismissal of Defendants’ counter-claims.<sup>1</sup> In support of this motion, Plaintiff states as follows:

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<sup>1</sup> Defendants have pled the following two counterclaims: (1) A declaration “that their policies and procedures including Knox County’s Electronic Inmate Communications System satisfy the First Amendment rights of publishers to communicate with Knox County’s inmates;” and (2) A declaration that their policies and procedures including Knox County’s Electronic Inmate Communications System satisfy the Fourteenth Amendment due process rights of publishers to notice from Knox County of any decision to censor communications to inmates based upon content, and any right of administrative and judicial review. *See Defendants’ Answer and Counter-Claim for Declaratory Judgment*, Dkt. No. 25, p. 17 at ¶¶ 2-3.

## I. INTRODUCTION

The instant case seeks declaratory and injunctive relief (along with damages and attorneys' fees) based upon Defendants' unconstitutional censorship of Plaintiff's mail to prisoners at the Knox County Jail ("Jail") in violation of the First Amendment, and Defendants' failure to provide due process notice and an opportunity to appeal the censorship decisions, and denial of equal protection in violation of the Fourteenth Amendment. Defendants have counter-claimed seeking declaratory relief that their mail policies and procedures do not violate either the First or Fourteenth Amendment. Defendants seek no other affirmative relief, declaratory or otherwise, and introduce no independent issue or controversy other than those made in Plaintiff's Complaint.<sup>2</sup>

## II. MOTION TO DISMISS STANDARD

A Rule 12(b)(6) motion attacks the legal sufficiency of the complaint, and tests whether the party has pleaded cognizable claims. *See* FED. R. CIV. P. 12(b)(6); *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988). The Court, therefore, can dismiss a claim or controversy on the basis of a dispositive issue of law, if it is meritless, wastes judicial resources, or results in unnecessary discovery. *Nietzke v. Williams*, 490 U.S. 319, 326-27 (1989).

A complaint must provide "a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957), abrogated by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007); *see also* FED. R. CIV. P. 8(a). The Court must accept as true all factual allegations, and construe them in the light most favorable to the filing party. *Id.* Notably, a counter-claim must not "be directed at the allegations of the complaint" but instead must contain "an independent

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<sup>2</sup> Compare Plaintiff's Complaint for Declaratory and Injunctive Relief and for Damages, Dkt. No. 1, pp. 16-17 at ¶¶ 73-86.

claim for relief.” *Erickson v. Brock & Scott, PLLC*, 2009 U.S. Dist. LEXIS 114331, 2009 WL 4884424 (W.D. Tenn. 2009), quoting 27A FEDERAL PRACTICE LAWYER'S EDITION § 62:201; *see also* 5 MOORE’S FEDERAL PRACTICE § 41.09.

### III. ARGUMENT

Defendants seek nothing more than the reverse of the declaratory relief Plaintiff seeks. Such “mirror-image” counter-claims cannot stand, as they merely restate legal or factual issues already put before the Court in Plaintiff’s complaint. Defendants are merely asking the Court to declare that it has a valid defense to Plaintiff’s claims, which is not a proper basis for an independent claim for declaratory relief. Defendants have pled no independent controversy on the claims at issue, and the issues and legal theories at play in Defendants’ counter-claims are identical to those in Plaintiff’s complaint. Indeed, Defendants’ counter-claims will be rendered moot upon adjudication of Plaintiff’s complaint. Defendants’ counter-claims are redundant and superfluous, need not be entertained by this Court, and are due for dismissal.

**Defendants’ counter-claims merely restate the controversies set forth in Plaintiff’s complaint, serve no useful purpose, and will be rendered moot upon adjudication of Plaintiff’s complaint.**

Redundant or duplicative counterclaims should be dismissed. *See Richmond v. Centurion Exteriors, Inc. v. Centurion Exteriors, Inc.*, 2010 U.S. Dist. LEXIS 107054 \* 5-6 (M.D. Tenn. 2010) (dismissing redundant counter-claim because factual and legal issues are identical to those in complaint, and the counter-claim will be rendered moot upon adjudication of the complaint); *Emma, Inc. v. Microstrategy, Inc.*, 2012 U.S. Dist. LEXIS 3560 at \* 4 (M.D. Tenn. 2012) (same); *Erickson v. Brock & Scott, PLLC*, 2009 U.S. Dist. LEXIS 114331 at \* 13-14 (W.D. Tenn. 2009) (same); *Pettrey v. Enter. Title Agency, Inc.*, 2006 U.S. Dist. LEXIS 83957, 2006 WL 3342633 at \*3 (N.D. Ohio 2006) (citing *Aldens, Inc. v. Israel Packel*, 524 F.2d 38, 51-52 (3d Cir.1975))

(same). Such “mirror-image” counter-claims have primarily been allowed to proceed in limited circumstances such as patent infringement suits, or suits “seek[ing] declaratory judgments for issues beyond the scope of plaintiff’s complaint.” *Erickson*, 2009 U.S. Dist. LEXIS 114331 at \* 6-12 (reviewing district court opinions on redundant counterclaims). Accordingly, when deciding whether to dismiss a redundant counterclaim seeking a declaratory judgment, courts consider whether the relief sought by Defendants serves “any useful purpose.” *Id.* at 8 (citing Wright, Miller & Kane, 6 FEDERAL PRACTICE & PROCEDURE 2d. § 1406). A counter-claim that will be rendered moot upon adjudication of Plaintiff’s complaint serves no useful purpose. *Id.* at \* 11-12.

Defendants’ counter-claims raise no new factual and legal issues other than those stated in Plaintiff’s complaint. Defendants further lack Article III standing to sue, because there is no “case or controversy” set forth by Defendants in their counter-claims that would not otherwise be rendered moot upon adjudication of Plaintiff’s complaint. *See Richmond*, 2010 U.S. Dist. LEXIS 107054 at \*5-6 (“Defendants have not identified any case or controversy that would remain for adjudication so that Defendants would have standing to proceed and the Court would possess jurisdiction to render a proper decision, and not an advisory opinion”) (citing *Fieger v. Michigan Supreme Court*, 553 F.3d 955, 961 (6th Cir. 2009)) (holding Article III and Declaratory Judgment Act allow district court to enter declaratory relief only in case of actual controversy where plaintiff has standing). Defendants’ counter-claims cannot form the basis of a separate suit in equity, and posit no case or controversy requiring declaratory judgment separate and distinct from Plaintiff’s well-pled censorship and due process claims. Defendants’ counter-claims are redundant and superfluous, and should be dismissed. *See, e.g., Richmond v. Centurion Exteriors, Inc.*, No. 3:10-cv-734, 2010 WL 3940592, \*2 (M.D. Tenn. Oct. 6, 2010) (concluding that “Defendants’ counterclaim raises factual and legal issues identical to those stated in the complaint, and the

counterclaim will be rendered moot upon adjudication of the complaint,” noting the lack of an Article III case or controversy, and dismissing counterclaims under “mirror image” doctrine pursuant to Rule 12(b)(6)); *Emma, Inc. v. Microstrategy, Inc.*, No. 3:11-cv-926, 2012 WL 90405 (M.D. Tenn. Jan. 11, 2012); *Malibu Media, LLC v. Doe*, No. 2:14-cv-821, 2015 WL 471010 (S.D. Ohio Feb. 4, 2015).

WHEREFORE, Plaintiff respectfully requests that this Court dismiss Defendants’ counterclaims because they are redundant, serve no useful purpose and will be rendered moot upon adjudication of Plaintiff’s complaint.

Dated: January 8, 2016

Respectfully submitted,

s/Tricia Herzfeld  
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CERTIFICATE OF SERVICE

I, Tricia Herzfeld, one of Plaintiff's attorneys, certify that I caused a copy of the foregoing document to be served by operation of the Court's Case Management/Electronic Case Files (CM/ECF) system upon the following attorney(s) on January 8, 2016:

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