



Brian M. Barnard and James L. Harris, Jr. and the defendants MILLARD COUNTY, a government entity; ED PHILLIPS, Sheriff of Millard County; PENNY PROWS, Staff Member, Millard County Jail; MICHAEL WINGET, Staff Member, Millard County Jail; and, CAPT. DEKKER, Commander, Millard County Jail by and through counsel, in full settlement of this action stipulate and agree as follows:

1. This Court has jurisdiction over the parties and the subject matter to this action. The allegations in the complaint with regard to jurisdiction and venue are admitted as true.

2. PRISONER'S LEGAL NEWS (PLN) a non-profit Washington corporation has offices in Seattle, Washington and publishes and distributes nation-wide a monthly magazine known as *Prison Legal News* ("PLN").

3. MILLARD COUNTY is a governmental entity created under the statutes of the State of Utah and governing the geographical area known as Millard County, Utah. It is the employer of all other defendants. It is the owner and operator of the Millard County Jail.

4. ED PHILLIPS is the duly elected and serving Sheriff of Millard County. As such, on behalf of Millard County, he is ultimately responsible for supervising the Millard County Jail

and its staff and for formulating, adopting, implementing and enforcing all Millard County Jail rules and policies, including those regulating newspapers, magazines and other printed materials at the Millard County Jail. Sheriff Phillips is the policy maker for Millard County with regard to the operations of the Millard County Jail. He is an employee, officer and agent of Millard County. He is the supervisor of defendants Winget and Prows. He is the supervisor of JOHN DOES I - X.

5. **CAPT. DEKKER** is the Commander of the Millard County Jail. As such, on behalf of Millard County, he is responsible for supervising the Millard County Jail and its staff and for formulating, adopting, implementing and enforcing all Millard County Jail rules and policies, including those regulating newspapers, magazines and other printed materials at the Millard County Jail. He is an employee, officer and agent of Millard County. He is the immediate supervisor of defendants Winget and Prows. He is the immediate supervisor of JOHN DOES I - X.

6. **MICHAEL WINGET** and **PENNY PROWS** are officers and agents of the other defendants and/or Millard County. These defendants and each of them are involved in the receipt and processing of mail at the Millard County Jail sent by **PLN** to inmates of the

Millard County Jail. They enforce the "no publications policy" on a day-to-day basis at the Millard County Jail.

7. At all relevant times, defendants were, are and will be acting under color of state law, custom and usage, and were and are government actors.

8. For more than ten (10) years, plaintiff PLN has published a monthly magazine ("Prison Legal News" -- "PLN") which provides information with regard to issues affecting prisons, inmates, prison operations, related litigation, etc.

9. Plaintiff, PLN currently has subscribers who are inmates housed in the Millard County Jail.

10. Plaintiff, PLN has in the past had subscribers who were inmates housed in the Millard County Jail.

11. Defendants and/or their officers and agents in control of the Millard County Jail have enacted and are enforcing practices, rules and regulations governing distribution of and access to publications. Defendants and/or their officers and agents in control of the Millard County Jail have enacted and are enforcing certain unwritten practices governing distribution of and access to certain publications. As a result of said practices, and the unwritten and written policy of the defendants, inmates are denied certain publications. As a result of said practices and policies at the Millard County Jail,

plaintiff PLN has been denied the ability to deliver its publication, "PLN" to inmates in the Millard County Jail.

12. Defendants' Millard County Jail Policy 508, ¶ 2(f)(5), p. 2 provides:

Other reading materials that will not be allowed into the facility are:

\* \* \*

f. publications that encourage or provide instruction for the commission of criminal activity or that is contrary to the preservation of safety, law, and order.

13. Defendants' Policy 508, ¶ 3(a), p. 2 provides:

**Newspapers:**

a. Inmates may not subscribe to newspapers.

14. Defendants' Policy 508, ¶ 4, p. 2 provides:

**Magazines:** Magazines may be approved on a case by case basis depending on the length of time an inmate will be incarcerated at the jail and his housing classification.

15. Defendants' Policy 501, ¶ 13, p. 6 provides:

**Grieving the Mail System:** Inmates may grieve the mail system through the regular inmate grievance system. The public may grieve or appeal mail system actions to the Jail Commander verbally or in writing. Whenever possible, appeals and grievances will be heard within two working days of being received.

16. Defendants' policies contain no guidelines or criteria with regard to Policy 508, ¶ 4, p. 2 which purports to allow magazines to "be approved on a case by case basis."

17. Defendants' "no publications policy" prohibits inmates from ordering, receiving, possessing or reading most written or printed materials (books, newspapers and magazines, including the "PLN").

18. Defendants' "no publications policy" bans "PLN" from the Millard County Jail.

19. The "no publications policy," developed and enacted by defendants and enforced by them, deprives plaintiff of its constitutional rights of free expression and due process.

20. There is no legitimate basis for defendants' total ban on all magazines, newspapers, etc. in the Millard County Jail.

21. The "no publications policy" is not reasonably related to any legitimate penological interests.

22. No valid rational connection exists between defendants' "no publications policy" and any legitimate state interests which the policy is intended to protect.

23. Defendants' "no publications policy" leaves Millard County Jail inmates with no alternative means of exercising free expression rights by receipt, possession and enjoyment of legal reading and other materials through the mail.

24. Defendants' "no publications policy" leaves plaintiff with no alternative means of exercising free expression rights in sending "PLN" to Millard County Jail inmates.

25. Accommodation of the free expression and due process rights of the plaintiff and Millard County Jail inmates will not have significant impact at the Millard County Jail.

26. Readily available alternatives exist to defendants' current "no publications policy" which, at a *de minimis* cost, could easily meet any legitimate or significant interests of defendants without sacrificing the plaintiff's free expression and due process rights.

27. During 2001, editions of "PLN" mailed to subscribing inmates in the Millard County Jail have not been delivered to the inmates. Those editions have been placed by defendants into the inmates' property storage.

28. During 2001, when editions of "PLN" mailed to subscribing inmates in the Millard County Jail have not been delivered to the inmates, defendants have informed the inmates of the denial of the material.

29. During 2001, when editions of "PLN" mailed to subscribe inmates in the Millard County Jail have not been delivered to the inmates, defendants denied "PLN" because it as "contraband" and/or "a threat to security."

30. The rejection of editions of "PLN" was made by WINGET, PROWS and/or JOHN DOE I - X acting on behalf of the other defendants and following the practices and policies of the other defendants.

31. PLN has never received any notice from defendants with regard to defendants' recent refusal to deliver editions of "PLN". PLN has never been informed of any appeal or rights that it may have to challenge the rejections by defendants.

32. Defendants' "no publications policy" violates the free expression rights of the plaintiff protected by the First Amendment and Art. I, § 15 of the Utah Constitution.

33. Defendants' actions and policy have deprived plaintiff of property without due process through defendants' summary rejection of "PLN".

34. Defendants' actions and policy have deprived plaintiff of a liberty interest without due process by not giving notice and by not allowing plaintiff to challenge defendants' summary rejection.

35. Defendants' actions and "no publications policy" violates the due process protections afforded the plaintiff by the Fourteenth Amendment and Art. I, § 7 of the Utah Constitution.

36. Plaintiff has suffered as a result of enforcement of defendants' "no publications policy."



37. Plaintiff PLN waives any damages for any mis-conduct of defendants that occurred prior to the filing of this action.

38. Plaintiff is entitled to a permanent injunction and declaratory relief against enforcement of defendants' current "no publications policy."

39. Plaintiff PLN has incurred court costs and attorney fees in the pursuit of this matter.

40. Pursuant to 42 U.S.C. § 1983 and § 1988, plaintiff is entitled to reimbursement for costs and fees incurred.

41. Defendants shall pay to plaintiffs for the use and benefit of plaintiffs' counsel the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) as and for said court costs and attorney fees.

42. Defendants shall draft, implement and promulgate new rules and regulations with regard to inmate receipt of newspapers, magazines and books. Defendants shall do so within fourteen (14) days of the execution of this agreement. Those news rules shall fully comply with the United States and Utah Constitutions.

43. Defendants shall immediately deliver to Millard County Jail inmates the editions of "PLN" that have been put into the inmates' property as "contraband" and/or as "a threat to security."

44. Upon full compliance with the terms of this agreement, an order dismissing this action with prejudice may be entered by the Court.

DATED this \_\_\_\_\_ day of SEPTEMBER 2001.

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by \_\_\_\_\_  
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