



PC-ID-002-007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LOIS WITKE, et. al.,)	
)	Case No. 82-3978
Plaintiffs,)	
)	SECOND COMPLIANCE
v.)	AGREEMENT
)	
JAMES C. SPALDING, et. al.,)	
)	
Defendants.)	
)	
)	

COME NOW Plaintiffs, by and through their counsel, Ayesha Khan and Howard Belodoff, and Defendants, by and through their counsel, Stephanie A. Altig (hereinafter "Parties"), and hereby agree and stipulate as follows.

1. Scope of Amended Compliance Agreement

The Parties agree and stipulate that with four exceptions noted in section 4 below, Defendants are in compliance with the Compliance Agreement, the Stipulated Settlement Agreement and the Supplemental Stipulated Agreement, filed with the Court on August 2, 1995, November 20, 1984, and March 28, 1988, respectively, and any and all interim agreements filed in this case (hereinafter "prior Agreements").

2. Procedural History

The procedural history of this case, as set forth in section I of the Compliance Agreement, is hereby incorporated by reference in its entirety, with the following addition.

On December 19 and 20, 1995, Plaintiffs' counsel Howard Belodoff and Defendants' counsel Stephanie Altig jointly toured the Pocatello Women's Correctional Center (PWCC), with the express intent to identify areas in compliance and in non-compliance under the initial Compliance Agreement.

3. Areas in Compliance

Defendants are in compliance with the following provisions of the Compliance Agreement: Censorship; Passes and Furloughs; Non-Legal Telephone; Personal Hygiene Supplies; Personal Property; Discipline; Parole; Visitation; Non-Legal Mail; Medical, Dental, Psychiatric and Psychological Services; Physical Facilities; Initial Classification and Reclassification; and Staffing. Plaintiffs agree to cease monitoring these areas.

Defendants are also in substantial compliance with the following provisions of the Compliance Agreement: Grievance System; General Population Recreation; Vocational Training; Work Assignments; CCU Recreation; and Education. Plaintiffs' counsel agrees to cease monitoring these areas unless Defendants fail to remain in

substantial compliance.

Defendants are also in substantial compliance with the following provisions of the Compliance Agreement, with certain exceptions: Access to Counsel and Court (the exceptions of Book Collection and Inventory List and RDU access addressed in section 4 below); Commissary (with the single exception of smoking addressed in section 4 below); and Prison Industries (as soon as the telemarketing industry is established and operative). Plaintiffs' counsel will continue to monitor Defendants' compliance with these provisions, but without assessing fees or costs unless Defendant fail to remain in substantial compliance therewith.

4. Areas in Non-Compliance - Plaintiffs to Cease Monitoring Upon Ascertaining Compliance or After a Reasonable Amount of Time, Whichever is Earlier

a. Smoking -- By Resolution of the Board of Correction on November 3, 1995, all state prisons will become non-smoking effective on or before November 3, 1996. In addition, the following new male facilities will be tobacco-free upon opening: J-Block of the Idaho Correctional Institution Intensive Management Unit, scheduled to open in mid-January, 1996; Givens Hall at the Idaho Correctional Institution in Orofino, scheduled to open in February, 1996; and the Idaho Falls Community Work Center, scheduled to open in February or March, 1996.

Defendants' counsel will provide Plaintiffs' counsel written notice of the date that the non-smoking resolution becomes effective statewide. Plaintiffs' counsel

will cease monitoring immediately upon ascertaining that the non-smoking policy has been instituted system-wide, or after the passage of a reasonable amount of time, which ever is earlier.

b. Book Collection and Inventory List -- During the December 1995 compliance tour, counsel for Plaintiffs and Defendants agreed that the Pocatello Women's Correctional Center Law Library is still missing the following: (1) subscription to U.S. Supreme Court Reports, Lawyer's Edition, following volume 113; (2) subscription to Titles 18, 28 and 42 of the United States Code Annotated from 1995 forward; (3) latest edition of the Prisoner Self-Help Litigation Manual; (4) subscription to Pacific Reports, following volume 854; (5) Federal Practice and Procedure, volume 4 - end; and (6) latest edition of the Manual for Complex Litigation.

Defendants' counsel will provide Plaintiffs' counsel written notice of the date on which these materials become available for inmate use. Plaintiffs' counsel will cease monitoring immediately upon ascertaining that these materials are available for use by PWCC inmates, or after the passage of a reasonable amount of time, which ever is earlier.

c. RDU Access to Court -- Inmates Housed in RDU

RDU inmates will be permitted reasonable physical access to the Pocatello

Women's Correctional Center Law Library pursuant to the Idaho Department of Correction's Division of Prisons Directive "Access to Courts." The Directive provides that RDU inmates shall have physical access to the law library if: 1) they have a court ordered deadline; 2) they face parole revocation proceedings; or 3) they have another "legitimate need."

For purposes of this Agreement, a RDU inmate has another "legitimate need" if she wants to file or pursue one of the following actions and is not represented by counsel in that action: 1) a criminal appeal; 2) a Rule 35 motion; 3) a Uniform Post Conviction Procedure Act proceeding; 4) a state habeas corpus petition; 5) a federal civil rights complaint; or 6) a federal habeas corpus petition.

Plaintiffs' counsel will cease monitoring this issue immediately upon ascertaining that RDU inmates are permitted physical access to the law library for the reasons set forth above, or after the passage of a reasonable amount of time, which ever is earlier.

d. *Prison Industries* -- Defendants plan to have a telemarketing industry established and operative at the Pocatello Women's Correctional Center by the end of January 1996.

Defendants' counsel will provide Plaintiffs' counsel written notice of the date the telemarketing industry is established and operative. Plaintiffs' counsel will

cease monitoring this issue immediately upon ascertaining that the telemarketing industry is established and operative, or after the passage of a reasonable amount of time, which ever is earlier.

5. "Good Faith" Compliance Tour

The Parties agree that with the four exceptions noted in section 4 of this Second Compliance Agreement, Defendants are fully in compliance with the prior Agreements. However, the Parties agree that during the summer of 1996, counsel for both parties will take a "good faith" compliance tour of the Pocatello Women's Correctional Center, for the sole purpose of ascertaining Defendants' commitment to ongoing and future substantial compliance with the prior agreements in this case.

If Defendants fail to remain in substantial compliance with the prior agreements in this case prior to or during that tour, the Parties will work together in good faith to resolve the non-compliance informally, without Court intervention, as quickly as possible. If Defendants fail to remain in substantial compliance, Plaintiffs may obtain reasonable costs and attorney fees incurred in conjunction with seeking to remedy the substantial non-compliance.

If at the time of the summer 1996 "good faith" compliance tour, Defendants are found to be in substantial compliance with the prior agreements in this case,

the Parties hereby agree to stipulate to final dismissal of this case in its entirety, and ask the Court to enter an order accordingly.

6. Attorney Fees to Howard Belodoff

In consideration for the agreements set forth in paragraphs 1 - 5 of this Amended Compliance Agreement, Defendants agree to pay attorney fees and costs currently owed to Howard Belodoff in the total amount of \$22,460.19, on or before December 29, 1995.

7. Final Attorney Fees

Defendants agree to pay Plaintiffs' reasonable attorney fees and costs at the rate set forth in the Stipulation for Award of Attorney Fees, dated January 11, 1993,¹ accumulated for the "good faith" compliance tour during the summer of 1996, within 30 days after the Court enters its final order of dismissal of this case or within 6 months of the tour, whichever is sooner. In addition, Defendants agree to pay to the National Prison Project reasonable attorney fees and costs in the amount of \$11,500.00 accumulated from April 1, 1995, to January 2, 1996, within 30 days after the Court enters its final order of dismissal of this case or by August 1, 1996, whichever is sooner

¹ The rate applicable to Plaintiffs' attorney from the National Prison Project shall be that set forth for Alexa Freeman.

The foregoing Second Compliance Agreement is agreed to by the following attorneys of the Parties to this lawsuit:

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Dated 12/29/95

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Dated 1-16-96

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Dated 12-29-95