

**In the Matter of:  
Prison Legal News v. Cox, et al.  
Case No. 3:00-cv-00373-HDM-WGC (Consolidated)  
(U.S. District Court, District of Nevada)**

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**SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE**

THIS SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE (hereinafter referred to as the “Agreement”) is made and entered into as of the date this Agreement is signed, by and among the NEVADA DEPARTMENT OF CORRECTIONS (“NDOC”), on behalf of itself and all of its officers, directors, employees, former-employees, agents, predecessors, divisions, correctional facilities, successors, administrators, and assigns, including, but not limited to Jackie Crawford, John Slansky, James Cox, E.K. McDaniel, and any other persons named in the original Complaint at the above case number or the new Complaint at 3:13-cv-00346-HDM-WGC who are or were NDOC employees (collectively referred to as “the NDOC”), and PRISON LEGAL NEWS (“PLN”), on behalf of itself and all of its officers, directors, employees, former-employees, agents, predecessors, divisions, correctional facilities, successors, administrators, and assigns.

**I. RECITALS**

A. At all times relevant hereto, Jackie Crawford, John Slansky, James Cox, E.K. McDaniel are or were NDOC employees;

B. At all times relevant hereto, PLN is a wholly owned publishing project of the Human Rights Defense Center, a 501(c)(3) nonprofit corporation with offices in Lake Worth, Florida. PLN publishes *Prison Legal News*, a monthly journal of corrections, news and analysis. PLN has thousands of subscribers in the United States and abroad, including prisoners, attorneys and judges.

C. This Agreement addresses and resolves certain disputes arising from and relating to allegations that the NDOC violated PLN's First and Fourteenth Amendment rights as it relates to the handling and delivery of its publications to NDOC incarcerated

inmates and the alleged lack of due process associated with the NDOCs failure to provide PLN notice and opportunity to be heard regarding refused or censored publications;

D. In reviewing the claims of the Complaint, the NDOC and all individually-named Defendants deny that the NDOC and its employees engaged in any culpable conduct. The NDOC's legal position was at all times, and remains, that PLN's rights were not violated; and

E. Without making any admission of liability on either part, the NDOC and PLN have reached a settlement ("Settlement") of their disputes and this litigation. This written Agreement memorializes the Settlement terms reached by and between the NDOC and PLN.

## **II. SCOPE OF AGREEMENT**

A. On September 18, 2000, the NDOC and PLN entered into a Stipulation and Judgment/Order under Case No. 3:00-cv-00373-HDM-WCG ("2000 Agreement"). Same acted as a consent decree and contained no language establishing an end date; thus, that consent decree exists in perpetuity as between the NDOC and PLN absent a court order terminating that consent decree.

B. Both parties agree that the terms of the 2000 Agreement reached in *Prison Legal News v. Crawford*, 3:00-cv-00373-HDM-WCG, will remain in force and effect in addition to the instant Settlement Agreement, except that: 1) the proper party is no longer the Nevada Department of Prisons but the Nevada Department of Corrections; 2) all references on pages three to five of the consent decree placing the obligation of rejection and review into the Warden's hands are superseded to the extent those same powers of review and rejection now lie with the Publications Review Committee; and 3) the appropriate appellate body for a relevant due process appeal

submitted by either a sender or inmate is no longer the Director of the Department, but is now an independent and unbiased party who did not sit on the Publication Review Committee (this will most likely be the Deputy Director or a designee).

C. While this Settlement Agreement will act as the catalyst for dismissal of all claims for relief asserted in Plaintiff's Second Amended Complaint (Dkt. No. 117) and any pending enforcement claims related to the 2000 Agreement, the parties anticipate an abeyance of the dismissal so that the Court may maintain jurisdiction for the purpose of enforcing the settlement, per the terms below. Though this dismissal will close out the above case number, in abeyance for the next ten (10) years and permanently thereafter upon motion, as described below, the parties agree that said dismissal will not terminate the 2000 Agreement, which remains operative in perpetuity, with the exceptions as outlined in Section II(B) below.

### **III. INJUNCTIVE TERMS**

Both parties agree to the following injunctive terms:

#### **APPROVED VENDORS**

Since the inception of this lawsuit, Defendants have amended NDOC regulations to exclude any policy whereby publishers and other vendors or distributors of publications such as books, magazines, pamphlets and other printed literature were placed on an approved list, and prisoners were only allowed to receive publications from vendors that were on the approved list(s).

As a mechanism of injunctive relief to ensure that Defendants do not revert back to this type of policy and practice, Defendants agree that all incoming publications will be reviewed on a case-by-case basis for a determination of suitability within the parameters of institutional safety and security regardless of the identity of the publisher, vendor or other distributor. Defendants agree not to censor or withhold books based

solely on the presence or absence of a sender's name on a list of approved publishers, vendors or distributors. If NDOC maintains any such list or lists of approved publishers it shall be for purposes of reference only and shall not be used as the sole basis for censorship of any publication absent an independent inquiry into the legitimacy of the publisher. Defendants will agree that a copy of the list, if any exists, will be provided to a publisher, vendor or prisoner upon request. To this end, the Parties acknowledge that, in the event that there is any question as to the legitimacy of any particular publisher, vendor or other distributor of printed literature, the NDOC shall perform all appropriate research to determine whether any person or entity mailing publications to prisoners is an actual publisher, vendor or other distributor of printed publications. In the event that any publication is withheld from any prisoner on the grounds that the publisher or distributor is not an actual publisher, vendor, or distributor of printed publications, both the sender and the intended recipient of the publication shall get notice and an opportunity to be heard as more fully described below.

#### **POSTAL RATES**

Since the inception of this lawsuit, Defendants have amended NDOC regulations to exclude the requirement that all books be mailed to prisoners via First Class mail. As a mechanism of injunctive relief to ensure NDOC does not revert back to this policy or practice, Defendants agree that all incoming publications will be reviewed on a case by case basis for a determination of suitability within the parameters of institutional safety and security regardless of the postal rate used by the sender. Defendants agree that postal classification shall not be a basis for rejection of any mail sent to NDOC prisoners.

#### **ADDRESS LABELS AND STICKERS**

Since the inception of this lawsuit, Defendants have amended NDOC regulations to exclude a practice whereby incoming mail was censored because of the presence of an address label and/or a sticker on the outside of the envelope or packaging. As a mechanism of injunctive relief to ensure NDOC does not revert back to this policy, the Defendants agree that all incoming mail to a prisoner, regardless of the presence of address labels or stickers on the outside cover or other packaging, will be reviewed on a case by case basis for a determination of suitability within the parameters of institutional safety and security. The Parties acknowledge that alternatives exist in which envelopes and packaging may be discarded or address labels may be removed prior to the distribution of the mail to prisoners in order to avoid security risks. The Parties also acknowledge that there may come a time in the future when address labels, stickers, or the presence thereof may warrant exclusion, confiscation or investigation depending on whether new forms of contraband smuggling make use of address labels or adhesives. In that future event (with the acknowledgment that no mass need to scrutinize and remove address labels or stickers currently exists as of the date of this Agreement), the Defendants may instruct NDOC staff to examine each sticker or address label on a case by case basis to determine the presence of an adulterated or contraband label or sticker, and the presence of an adulterated or contraband label may warrant refusal to deliver the mail pending an investigation. Defendants agree that the mere presence of address labels or stickers alone shall not be a basis for censorship of incoming mail intended for NDOC prisoners.

#### **PRIOR APPROVAL OF BOOK ORDERS**

Since the inception of this lawsuit, Defendants have amended NDOC regulations, policies and practices to exclude a policy and practice whereby prisoners had to:

a) seek and obtain permission from NDOC staff persons as a condition precedent to

receiving any books in the mail, and, b) ensure that the book was delivered by the publisher to the institution within sixty (60) days of the date of approval. As a mechanism of injunctive relief to ensure NDOC does not revert back to this policy and practice, Defendants agree that prisoners will not have to request advance permission in order to have an incoming book and/or publication reviewed by mailroom staff and/or the Publication Review Committee for delivery to the prisoner. Defendants further agree that prisoners will not have to ensure that books and/or publications are delivered according to any particular type of time schedule in order to have an incoming book and/or publication reviewed by mailroom staff and/or the Publication Review Committee for delivery to the prisoner. This settlement term does not affect NDOC's ability to withhold and forward concerning materials to the Publication Review Committee nor does it affect the Publication Review Committee's ability to reject books and/or publications that present a safety and security concern or that violate other terms of NDOC Administrative Regulations (ARs).

In the event that any incoming book and/or publication is withheld from delivery to a prisoner and forwarded to the Publication Review Committee, the mailroom staff person who makes the initial censorship decision will provide to both the sender and the prisoner a written notice of the initial censorship decision and information about the opportunity to appeal the decision of either the mailroom staff person or the Publication Review Committee as more thoroughly described below.

### **DUE PROCESS**

Since the inception of this lawsuit, Defendants have amended NDOC Administrative Regulation 750.06 regarding the provision of notice and appeal (due process) to those affected by the censorship of their U.S. Mail.

To ensure that AR 750.06 is complied with across all institutions, NDOC will

instruct the Warden of each institution to review the institution's individual mailroom policies as they regard due process to senders of rejected publications, and the Wardens will ensure that each institution's Operational Procedures (OPs) adhere to both AR 750.06 and principles of due process.

To that end, Defendants agree to implement Institutional OPs to clarify that both senders and recipients of mail are entitled to receive timely, written notice and an opportunity to appeal censorship decisions whenever a piece of mail is withheld from the regular course of delivery to a prisoner. The NDOC agrees that any new or revised OPs regarding incoming mail will include: 1) a mechanism by which rejected, withheld or censored mail will be retained by the NDOC until all appeals of the initial censorship decision have been resolved or until after the deadline to file an appeal has expired if no appeal has been filed; 2) a process whereby notice of the censorship is given to both the sender and intended recipient of censored mail (this notice should make clear the reasons for the rejection; note the specific section or part of mail alleged to violate security, policy or rule; and should provide the name and address of the NDOC staff member to whom an appeal should be lodged); and 3) a means of ensuring that the appeal of censorship or refusal to deliver is unbiased, conducted by someone who did not participate in the initial censorship decision, and is based on a personal secondary inspection of the censored or rejected material.

Further, the Warden of each institution will: 1) draft into the institution's OP a mechanism for an audit of the institution's mail room that will be conducted two times per year with the goal of ensuring compliance with AR 750.06 and the corresponding OP; and 2) draft into the institution's OP a provision that, should any Warden, Associate Warden or caseworker in their capacities as grievance responders become aware of a grievance alleging that a sender of mail was not provided notice of rejection or notice of

right to appeal, the Warden or Associate Warden will investigate mail room compliance with the applicable Administrative Regulation and Operational Procedure outside of the biannual audit.

When the revised OP of each institution is submitted to the Deputy Director for approval, the Wardens will include a notice to the Deputy Director that changes to the OP were made in conjunction with this Agreement for tracking purposes. NDOC agrees to notify PLN when each institution's OP has been amended to conform to this Agreement. Both parties acknowledge the amendment of the OPs will be performed after the date that the Court orders a dismissal of PLN's pending claims.

Defendants also agree to implement a training program for mailroom staff regarding the handling and dissemination of inmate mail. To that end, a training manual will be created by the NDOC. Defendants agree that, before the training manual is put into use, it will provide a draft copy of the training manual to PLN for the purpose of soliciting input from PLN. Though the parties agree that Defendants need not accept all PLN suggestions for training manual language, the Defendants agree to evaluate PLN's suggestions in good faith, to obtain advice of their counsel regarding the propriety of PLN's proposed language and to implement PLN proposed terms to the extent they do not conflict with or impinge on institutional safety and security, or do not significantly strain the NDOC's legislatively approved fiscal budgets.

Both parties acknowledge that when the vendor and/or publisher receives a publication back noted as "returned to sender," and the prisoner is no longer incarcerated by NDOC, the above due process requirements will not apply.

Finally, the NDOC also agrees to further amend and clarify AR 750.06 at its first available opportunity to more clearly outline the due process required when publications are censored or withheld from a prisoner. PLN acknowledges that the process of



implementation of an AR requires approval of the Board of Prison Commissioners (the Board), which only meets quarterly, and that it could take up to six months to get a revised AR on the agenda depending on the volume of ARs up for approval. Accordingly, both parties acknowledge this part of the Agreement will not be carried out until after dismissal of the claims. However, the NDOC agrees to provide PLN notification of when a revised AR 750 is adopted by the Board.

#### **NDOC STAFF TRAINING**

NDOC agrees to implement a certified training program for the post of mailroom Corrections Officer, which will include topics on: 1) the correct handling of notices to prisoners and to senders when incoming mail is withheld per the amended AR 750.06; 2) the requirements of sending notice of rejection and notice of right to appeal to the sender of rejected mail per AR 750.06; 3) the requirement of saving and maintaining a repository for all notices sent to senders of rejected publications per AR 750.06; 4) the process for preserving censored or rejected mail for secondary review by NDOC staff not involved with the initial censorship decision; and 5) the history of litigation with Prison Legal News, including the 2000 consent decree and the terms of this Agreement. The training will culminate with the assigned officer needing to take and pass a quiz before he or she qualifies to be assigned to the mailroom.

#### **IV. MISCELLANEOUS PROVISIONS**

##### **FORCE MAJEURE**

The parties acknowledge that terms of this Agreement may be rendered inapplicable by future enactment of state statutes or decisions of state or federal courts (though such laws or decisions are not known to exist at this time). Further, the parties understand that provisions of this Agreement may be rendered temporarily impracticable or unavailable due to riots, strikes by either prisoners or employees,

extreme weather conditions, or acts of nature or Acts of God, whatever those may be (though no such conditions are known to exist at this time). Nonetheless, NDOC anticipates being able to perform under the terms of this Agreement in a manner that protects the constitutional rights of both recipients and senders of prisoner mail at NDOC institutions.

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### **JURISDICTION TO ENFORCE**

NDOC acknowledges that PLN will request that the federal District Judge or Magistrate Judge overseeing this case maintain jurisdiction over this case beyond its dismissal to hear any enforcement actions. NDOC will not oppose that request to the extent that, if the judge agrees, future jurisdiction for enforcement will be limited to (10) ten years. Should the Court agree to retain jurisdiction for ten (10) years following the dismissal of the claims, and in the event PLN believes enforcement of the Agreement is needed, PLN may move the Court to enforce the Agreement. PLN may also seek attorneys' fees and costs related to said motions and the monitoring required to prepare for said motions, as more fully outlined below. There will also be affirmative action needed by the NDOC to terminate this action, as outlined below. If the Court grants NDOC's Motion to Terminate as referenced below and ten (10) years have passed, PLN will have to seek relief under a new case number.

Accordingly, this case will be dismissed but with the dismissal held in abeyance, if the Court agrees. To effectuate this, both parties will execute a stipulation and order to dismiss with the provision of jurisdiction described herein identified.

To terminate this action, NDOC must make a motion seeking that relief. NDOC agrees that it may only make a Motion for Termination in this matter on or after the tenth anniversary of the execution of the Agreement seeking to formally dismiss the case and

remove the abeyance in accordance with the terms of the Agreement, but will do so no earlier than the tenth anniversary of the Agreement.

### **MONITORING AND FEES**

NDOC agrees that, to monitor compliance with this Agreement during the specified ten (10) year period, PLN may undertake the following monitoring activities:

- a. PLN may perform a case by case analysis of individual complaints;
- b. PLN may send out surveys to its subscribers two times per year; and
- c. PLN may do quarterly reviews of DOC Forms 3022 (or any form with a different title whose purpose is the same), and the mail monitoring logs (or their equivalent), specific to any PLN publications. These forms will be sent to PLN by the Warden of each of the 7 main NDOC institutions. NDOC will provide these forms to PLN on a quarterly basis, same to be redacted to exclude non-PLN entities.

Each of these monitoring activities may be conducted prior to seeking informal resolution. However, should any of these above monitoring activities reveal issues, PLN agrees to first contact the Attorney General's Office to resolve the matters informally. Should PLN feel it needs to perform monitoring activities in excess of those described above, it will first try to gain informal permission to do so via the Attorney General's Office, but may seek Court approval for excess monitoring activities if informal permission is denied.

PLN agrees that any money sought in monitoring fees and costs will be limited to PLN's monitoring of its own publications and access to its own materials.

PLN agrees that it will provide a report to the Attorney General's Office biannually on June 30th, starting on June 30, 2017, which will itemize all the monitoring charges accumulated for that period. Both parties agree that NDOC may challenge with the

Court any amount of fees charged and billed.

### **TIME FOR IMPLEMENTATION**

PLN agrees to give NDOC a 60-day period of time from the execution of this Agreement to implement the policies and terms of this Agreement before it seeks to begin enforcement, with the acknowledgement that it will take NDOC some time to make the necessary changes.

### **NOTICE TO INMATES OF THIS AGREEMENT**

PLN will send a one (1) page summary of the terms of this Agreement to NDOC and NDOC agrees to post the summary document in the NDOC housing units for a period of sixty (60) days. NDOC also agrees to maintain the full terms of this Agreement in its law libraries, available upon request to individual prisoners, for the duration of the Agreement.

### **V. MONETARY AGREEMENT AND DISMISSAL**

In exchange for PLN's release and dismissal of all pending legal claims against the NDOC and all named Defendants, held in abeyance per the terms above, the NDOC and PLN hereby agree to finally settle all claims, disputes, and controversies, arising from and relating to all disputes and litigation, pursuant to the following terms:

1. The NDOC agrees to pay PLN a total of \$475,000 (four-hundred, seventy-five thousand dollars). This total sum combines damages and attorney fees and costs. PLN may determine the allocation of this money between damages and attorney fees and costs at its own discretion. The NDOC (via the State Tort Fund) will direct payment to PLN's local counsel, Allen Lichtenstein. PLN must satisfy any retainer agreements or payment arrangements with HRDC, hired counsel and local counsel, and NDOC will not be responsible if attorney fees arrangements are not satisfied between PLN and its attorneys. PLN acknowledges that payment of this monetary sum is

contingent on the approval of the State of Nevada Board of Examiners.

2. In consideration of the above terms agreed to by NDOC, PLN agrees to dismiss the instant case, though as described above, the 2000 Agreement reached originally in the instant case will survive in perpetuity. Said dismissal will be with prejudice in the United State District Court, though said dismissal may be held in abeyance for ten (10) years at the discretion of the Court for the purpose of entertaining enforcement actions per the terms described above. To that end, PLN agrees to execute the contemporaneously submitted Stipulation and Order to Dismiss and return same to NDOC for filing. Once filed, the NDOC will instruct all payments to be made in accordance with the Agreement and will implement all terms of injunctive relief as outlined herein. Though the case will be dismissed in abeyance, the parties agree that, should the District Court or Magistrate Judge elect to retain jurisdiction for enforcement actions for a period of ten (10) years as outlined above, PLN may seek enforcement of the Agreement via the procedural mechanism required by the presiding Judge, and further agree that the 2000 Agreement reached in the instant case will survive the dismissal and may be used as a basis for future enforcement actions.

## **VI. CONTINGENCIES**

The above agreement is structured to give the Court proper deference in deciding whether to retain jurisdiction. However, PLN reserves the right, in the event the Court declines to retain jurisdiction for ten (10) years for the purpose of deciding enforcement actions, to withdraw from this Agreement without penalty. To verify that the Court will retain jurisdiction prior to the filing of the Stipulation to Dismiss, Defendants agree to place on calendar a Request for Hearing. During this hearing, the parties will ascertain the intentions of the Court regarding its intent to accept or decline

continued jurisdiction per the terms of this Agreement.

This Agreement is also contingent upon the NDOC receiving from PLN summaries of attorney billing records to justify its attorneys' fees within two (2) weeks of the execution of this Agreement.

As noted above, the Agreement is also contingent on the approval of the Board of Examiners.

#### **VII. COMPROMISE AND NO LIABILITY**

The parties agree that this Agreement is a complete compromise of matters involving disputed issues of law and fact relating to all the above-described disputes and the litigation, and they assume the risk that the facts or law may be otherwise than they believe. The parties understand and agree that this Settlement is a compromise of all disputed claims to date. The parties understand and agree that the consideration given by the NDOC in exchange for the release of all claims asserted by PLN, as set forth herein, is not to be construed and shall never at any time for any purpose be considered an admission of liability on the part of any party, by whom liability is expressly denied.

#### **VIII. BINDING EFFECT UPON SUCCESSORS IN INTEREST**

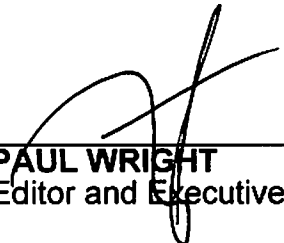
This Agreement shall be binding upon and inure to the benefit of the NDOC and PLN, and their respective successors and assigns.

#### **IX. COMPLETENESS OF DOCUMENT**

This Agreement contains the entire understanding between the parties with respect to the matters set forth herein, and there are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the

parties hereto relating to the subject matter of this Agreement which are not fully

parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.


  
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**PAUL WRIGHT**  
Editor and Executive Director of HRDC

DATED: 11/18/2015

**APPROVED AS TO FORM AND CONTENT**

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**ANDREA BARRACLOUGH**  
Chief Deputy Attorney General  
*Attorney for Defendants*

**APPROVED AS TO FORM AND CONTENT**

  
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**LANCE WEBER**  
General Counsel, Human Rights Defense Center  
*Attorney for Plaintiff*

**THE NEVADA DEPARTMENT OF CORRECTIONS**

By:

\_\_\_\_\_  
**E.K. MCDANIEL**  
Interim Director

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: 11-18-2015