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26 UNITED STATES DISTRICT COURT  
27 DISTRICT OF NEVADA

28 *PRISON LEGAL NEWS*, a project of the HUMAN RIGHTS  
DEFENSE CENTER, a Washington Nonprofit Corporation  
PAUL WRIGHT (current publisher of Prison Legal News),  
Plaintiffs,  
v.  
JACKIE CRAWFORD in her official capacity as the  
former director of NDOC, JOHN SLANSKY(*deceased*),  
in his official and individual capacities as former  
assistant director of NDOC, ROBERT BAYER, in his  
official and individual capacities as the former Director  
of NDOC, DOES I-XXV, Defendant RED AND  
WHITE CORPORATIONS I-X, and BLACK AND  
BLUE STATE and/or MUNICIPAL ENTITIES I-X,  
Defendants.

**PLAINTIFFS' MOTION FOR AN  
ORDER TO SHOW CAUSE WHY  
DEFENDANTS SHOULD NOT BE  
HELD IN CONTEMPT**

**CASE NO. 3:00-cv-00373-HDM-RAM**

1 Comes now Plaintiff by and through the undersigned attorneys, and hereby respectfully  
2 moves that this court enter an order to show cause why Defendants should not be held in contempt  
3 for their willful failure to comply with this court's judgment and order. This Motion is based on  
4 all pleadings and papers on file herein and the Memorandum of Points and Authorities attached  
5 hereto and any further argument and evidence as may be presented at a hearing.

6  
7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 On or about September 22, 2000, this Court ordered defendants to cease blanket  
10 censorship of inmate publications and to implement and maintain the attached articulated policy  
11 regarding prisoner access to publications. See the Declaration of Lance Weber attached hereto  
12 as **Exhibit A**, and the associated **Exhibit One**.

13 The Defendants' flagrant disregard for the Order compels Plaintiffs to respectfully  
14 request this Court issue an order requiring defendants to show cause why they should not be  
15 held in contempt for this willful failure.

16  
17 **II. PROCEDURAL HISTORY AND RELEVANT FACTS**

18 **A. PRISON LEGAL NEWS PUBLICATIONS**

19 Human Rights Defense Center (HRDC), a Washington nonprofit corporation, is a  
20 Federally recognized 501(c)(3) that owns and operates Prison Legal News (PLN). PLN  
21 publishes and distributes books and an eponymous monthly journal to prisoners throughout the  
22 country, as well as to other non-profits, attorneys, public defenders, journalists, academics,  
23 investment bankers, university and law school libraries, prison law libraries, prison rights  
24 activists, students, family members of prisoners and concerned private individuals. State-level  
25 government officials also subscribe to PLN, including attorneys general, prison wardens, and  
26 members of other prisoner-related agencies. PLN covers issues such as court access,  
27 disciplinary hearings, prison conditions, excessive force, mail censorship, jail litigation, visiting,  
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1 telephones, religious freedom, free speech, prison rape, abuse of women prisoners, retaliation,  
2 the Prison Legal Reform Act (PLRA), medical treatment, AIDS, the death penalty, and control  
3 units. PLN publications include: monthly law, the journal *Prison Legal News*; *Prison Legal*  
4 *News* informational brochures (Info Packs); *Prisoner's Self-Help Litigation Manual* (PSHLM);  
5 and *Protecting Your Health and Safety* (PYHS).

6 Beginning in approximately September of 1999, NDOC (known as the “Nevada  
7 Department of Prisons” at that time) and associated facilities refused to allow the delivery of  
8 any mail from Prison Legal News pursuant to a ban on “inmate publications” and “inmate  
9 correspondence.” See *NDOP policy AD 41-95*. (From this point forward, NDOC will be used  
10 to refer to both the current organization of the “Nevada Department of Corrections” and its  
11 predecessor in interest, the “Nevada Department of Prisons”). Given the core First Amendment  
12 issues raised by this policy, Prison Legal News undertook suit to alter NDOC practices. Upon  
13 information and belief, NDOC has continued this and similar unconstitutional restrictions to this  
14 day.

## 15 B. LITIGATION HISTORY

16 Plaintiffs, as represented by the American Civil Liberties Union of Nevada (“ACLUN”)  
17 first began litigating NDOC censorship practices in 2000. In *Prison Legal News v. Crawford et*  
18 *al.*, Case #: 3:00-cv-00373-HDM-RAM, Plaintiffs successfully obtained a judgment and order  
19 enjoining the NDOC from censoring Prison Legal News publications. See “Stipulation and  
20 Judgment/Order,” *Prison Legal News v. Crawford et al.*, CV-N-00-0373-HDM-RAM. (D. Nev.  
21 9/27/00) (hereafter “NDOC Consent Decree” and attached as **Exhibit One** to the Declaration of  
22 Lance Weber.)  
23

24 *PLN v. Crawford* grew out of NDOC’s unconstitutional policy of excluding *Prison*  
25 *Legal News*, and associated correspondence, from NDOC institutions as prohibited “inmate  
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1 publications.” *See Thornburgh v. Abbott*, 490 U.S. 401 (1989). Pursuant to Consent Decree,  
2 NDOC adopted the following policy regarding prisoner access to publications:

3  
4 Prisoners in the custody of the Nevada Department of Prisons (NDOP) shall be  
5 permitted to subscribe to the publications of their choice, and shall receive all issues of  
6 those publications without interference, except as provided below. Wardens may  
7 designate staff to screen and, where appropriate, approve incoming publications, but  
8 only a Warden may reject a publication. Wardens are authorized to reject a publication  
only if it is determined, after reasonable consideration, to be detrimental to the safety,  
security, good order, or discipline of the institution or if it might facilitate criminal  
activity.

9 NDOC Consent Decree at 3: 9-18. The Consent Decree binds the Director of the Nevada  
10 Prisons Department, as well as his or her “officers, agents, servants, employees, and successors  
11 in office” to “implement and maintain” this policy. *Id.* at 3: 4-7.

12  
13 Per the decree, “only a Warden may reject a publication.” *Id.* at 3:14. The Consent  
14 Decree also provides specific guidance to the Warden, as to the type of criteria that may support  
15 rejection of a publication. Exclusion may occur, where:

- 16  
17 1. Content depicts or describes procedures for the construction or use of weapons,  
18 ammunition, bombs or incendiary devices;  
19 2. Content depicts, encourages, or describes methods of escape from correctional  
20 facilities, or contains blueprints, drawings or similar descriptions of prison  
21 institutions;  
22 3. Content depicts or describes procedures for the brewing of alcoholic beverages, or  
23 the manufacture of drugs;  
24 4. Content is written in code;  
25 5. Content describes or encourages activities which may lead to the use of physical  
26 violence or group disruption;  
27 6. Content encourages or instructs in the commission of criminal activity;  
28 7. Content is sexually explicit material which by its nature or content poses a threat to  
the security, good order, or discipline of the institution, or facilitates criminal  
activity.

1 All publications mailed to NDOP prisoners shall be reviewed according to the same criteria.

2 There shall be no separate category of “inmate publications” or “inmate newsletters.” *Id.* at 3:  
3 20-28 and 4: 1-12.

4  
5 Finally, the Consent Decree mandates specific due process protections, where a  
6 publication is rejected. Both the inmate-subscriber and the publisher must receive written notice  
7 of the reasons for the rejection, as well as the opportunities for independent review.  
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9  
10 In the event a Warden rejects an issue of a publication, he or she must advise the  
11 subscribing inmate promptly in writing of the reasons for the rejection and send a copy  
12 of such rejection memorandum to the publisher. The rejection memorandum must refer  
13 to the specific article(s) or materials(s) considered objectionable. The rejection  
14 memorandum must also advise the publisher that he or she may obtain an independent  
15 review of the rejection by the Director of the Nevada Department of Prisons by  
16 requesting it within 20 days (plus 3 for mailing) of the date the rejection memorandum is  
17 mailed to the publisher. The subscribing inmate may grieve the rejection through the  
18 prison’s administrative grievance process.

19 NDOC Consent Decree at 4: 15 – 25.

20 **C. ADOPTION OF ADMINISTRATIVE REGULATION 750**

21 Following its entry into the stipulated judgment represented by the Consent Decree,  
22 NDOC issued Administrative Regulation 750 (AR 750), *Inmate General Correspondence and*  
23 *Mail*. See **Exhibit B** to this motion. AR 750 contains several provisions that conflict with the  
24 mandates of the Consent Decree, as well as Constitutional First Amendment principles.  
25 Problematic rules include: (1) imposition of a preapproval requirement for books that is  
26 inconsistent with the Consent Decree; (2) enforcement of a publication approval process that  
27 exceeds the confines of the Consent Decree; and (3) the failure to provide notice to publishers  
28 when books are rejected.

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**D. CURRENT PRACTICES & RECENT VIOLATIONS**

Since this Court’s 2000 Order, Prison Legal News has received substantiated reports of statewide censorship and rejection of *Prison Legal News* publications, including the following materials sent to subscribers and inmate requesters:

- *Prison Legal News* informational brochures (Info Packs)
- *Prisoner’s Self Help Litigation Manual* (PSHLM)
- *Protecting Your Health and Safety* (PYHS)

Censorship has taken place on the grounds that Prison Legal News is “inmate or felon correspondence.” In addition, facilities throughout the state of Nevada have failed to deliver issues of *Prison Legal News*, or associated publications, without notice to the inmate-subscriber or to Prison Legal News, the publisher.

Below are a number of censored items by facility. While not an exhaustive list, the following summary demonstrates pervasive censorship taking place from 2011 to present. According to Lance Weber, in-house counsel for HRDC, numerous copies of PLN publications were returned from Nevada correctional facilities with various rejection notations. Declaration of Lance Weber at ¶ 7 (attached as **Exhibit A** to this motion).

**NDOC Statewide**

*PYHS Sent:* 43 PYHS copies sent by PLN in 2011  
*PYHS Returned:* 14 copies marked “Unauthorized Correspondence/Contents” and “Return to Sender”  
*Info Packs:* 48 copies censored and returned to PLN

**Ely State Prison**

*PYHS Sent:* 14 PYHS copies sent by PLN in 2011  
*PYHS Returned:* 4 copies marked “Unauthorized correspondence,” “No Approval,” and “Return to Sender” in 2011

1 *Info Packs Censored:* 41 copies marked “Unauthorized correspondence,”  
2 “Return to Sender,” “No labels,” and “RTS” from 2011 to present

3 **Lovelock State Prison**

4 *Info Packs Censored:* 4 copies marked “Return to Sender,” “No Label-  
5 Stickers,” and “No Labels Allowed” in 2011

6 **Northern Nevada Correctional Center**

7 *PYHS Sent:* 14 PYHS copies sent by PLN in 2011  
8 *PYHS Returned:* 9 copies marked “Unauthorized” and “RTS” in 2011

9 **Nevada Indian Springs, High Desert State Prison**

10 *PYHS Sent:* 9 PYHS copies sent by PLN in 2011  
11 *PYHS Returned:* 1 copy marked “Unauthorized” and “RTS” in 2011

12 **South Nevada Women’s Correctional Facility**

13 *Info Packs Censored:* 3 copies marked “Refused,” “No stickers,” and  
14 “Unauthorized Correspondence/Contents” in 2013

15 Declaration of Paul Wright at ¶¶ 8-15 (attached as **Exhibit C** to this motion)

16 Following the return and censorship of so many PLN publications, Lance Weber sent a  
17 letter to the Nevada Department of Corrections concerning the emerging unlawful pattern of  
18 censorship. Declaration of Lance Weber at ¶ 8. The letter, attached as **Exhibit Two** to the  
19 Declaration of Lance Weber, was sent on June 15, 2011, and, to date, HRDC has received no  
20 response to this inquiry. *Id.* at ¶¶ 7-8. On May 14, 2013, Lance Weber reiterated a demand,  
21 attached as **Exhibit Three** to the Declaration of Lance Weber, that NDOC provide an  
22 immediate and satisfactory response to these concerns to which there also has been no response.  
23 *Id.* at ¶¶ 9-10. There is nothing to suggest Defendants’ practice of unlawfully censoring PLN  
24 publications has ceased. In fact, the above-mentioned record shows the same patterns and  
25 practices on the part of Defendants throughout the course of this extended litigation. As a  
26 result, Plaintiffs respectfully request that this Court issue an order requiring Defendants show  
27 cause as to why they should not be held in contempt.  
28

1 **III. ARGUMENT**

2 **A. THIS COURT SHOULD HOLD DEFENDANTS IN CONTEMPT IF THEY**  
3 **DO NOT SHOW CAUSE FOR THEIR FAILURE TO COMPLY WITH THE**  
4 **COURT’S ORDER.**

5 It is axiomatic that an order issued by a court with jurisdiction over the subject matter  
6 and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.

7 *U.S. v. United Mine Workers of America*, 330 U.S. 258, 293 (1947).

8 Congress has determined that the power to hold a party in contempt is a  
9 discretionary power vested in the court whose order has been violated. “A court  
10 of the United States shall have power to punish by fine or imprisonment, at its  
11 discretion, such contempt of its authority ... as ... disobedience or resistance to its  
12 lawful writ, process, order, rule, decree, or command.” 18 U.S.C. § 401 (1982).

13 *In re Crystal Palace Gambling Hall, Inc.* 817 F.2d 1361, 1364 (9th Cir. 1987).

14 “One of the overarching goals of a court's contempt power is to ensure that litigants do  
15 not anoint themselves with the power to adjudge the validity of orders to which they are  
16 subject,” and that in the absence of such power, “what the Constitution now fittingly calls the  
17 ‘judicial power of the United States’ would be a mere mockery.” *Chicago Truck Drivers v.*  
18 *Brotherhood Labor Leasing*, 207 F.3d 500, 504 (8th Cir. 2000) (citing *United Mine Workers*,  
19 330 U.S. at 290, n. 56). A court has wide latitude in determining whether there has been  
20 contemptuous defiance of its order. *Neebars, Inc. v. Long Bar Grinding, Inc.*, 438 F.2d 47, 48  
21 (9th Cir.1971); *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir. 1984).

22  
23 If Defendants do not comply with this Court’s order, then this Court can and should hold  
24 them in contempt for their failure to do so.

25  
26 That the power to punish for contempt is inherent in all courts,  
27 has been many times decided and may be regarded as settled law.  
28 It is essential to the administration of justice. The courts of the  
United States, when called into existence and vested with

1 jurisdiction over any subject, at once became possessed of the  
2 power.

3 *Michaelson v. U. S. ex rel. Chicago, St. P., M. & O. Ry. Co.*, 266 U.S 42, 65-66 (1924). "There  
4 can be no question that courts have inherent power to enforce compliance with their lawful  
5 orders through civil contempt." *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *California*  
6 *Dept. of Social Service v. Leavitt*, 523 F.3d 1025, 1033 (9th Cir. 2008). This power to punish  
7 for contempt can be used to punish for failure to follow court orders, even if the court has  
8 largely ended its involvement in a case. *See Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S.  
9 787, 788 (1987) ("the underlying basis for the contempt power is the need to address  
10 disobedience to court orders regardless of whether such disobedience interferes with the  
11 conduct of trial").

12 Civil contempt may be employed either to coerce the defendant into compliance  
13 with a court order or to compensate the complainant for losses sustained, or both.  
14 *United Mine Workers*, 330 U.S. at 303-04, 67 S.Ct. 677. Either incarceration or a  
15 fine may accomplish the purpose of coercion, while, "[w]here compensation is  
16 intended, a fine is imposed, payable to complainant." *Id.* at 304, 67 S.Ct. 677;  
17 see also *United States v. Onan*, 190 F.2d 1 (8th Cir.) (holding that a court has the  
18 power to impose a fine for civil contempt), cert. denied, 342 U.S. 869, 72 S.Ct.  
19 112, 96 L.Ed. 654 (1951).

20 *Chicago Truck Drivers*, 207 F.3d at 505. Civil contempt is appropriate when a party fails to  
21 comply with a court order that is both specific and definite. *Balla v. Idaho State Board of*  
22 *Corrections*, 869 F.2d 461, 465 (9th Cir. 1989). The disobedience in question need not even be  
23 willful. *In re Crystal Palace Gambling Hall*, 817 F.2d at 1365.

24 The Court, in determining the amount and duration of a coercive fine, must "consider the  
25 character and magnitude of the harm threatened by continued contumacy, and the probable  
26 effectiveness of any suggested sanction in bringing about the result desired." *Whittaker Corp v.*  
27 *Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992) (quoting *United Mine Workers*, 330 U.S. at  
28

1 304); *see also General Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir.1986);  
 2 *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148 (9th Cir.1983). A finding of civil contempt is  
 3 remedial and can result in the award of compensation as well as attorney’s fees. *Reno Air*  
 4 *Racing Association, Inc. v. McCord*, 452 F.3d 1126 (9th Cir. 2006):

5  
 6 Where the purpose of contempt is “remedial, i.e. to compensate for the costs of  
 7 the contemptuous conduct or to coerce future compliance with the court’s order,  
 8 the contempt order is civil.” *Portland Feminist Women’s Health Ctr. v.*  
 9 *Advocates for Life, Inc.*, 877 F.2d 787, 790 (9th Cir.1989). In awarding Reno Air  
 10 reasonable attorneys’ fees and costs associated with the TRO and the contempt  
 11 motion, the district court noted that such sanctions were “appropriate to  
 12 compensate the plaintiff for any losses sustained....” Thus, the purpose was  
 13 remedial, and the district court properly denominated the contempt as “civil.” *Id.*  
 14 (explaining that where the sanction for contempt was liability for costs  
 15 associated with the contempt motion, including reasonable attorneys’ fees, the  
 16 sanction was “remedial,” and contempt was properly characterized as civil).

17 452 F.3d at 1130 n. 5.

18 Here, despite a clear Order by this Court, Defendants still cling to their discredited  
 19 position that they may freely engage in the illegitimate censorship of PLN publications without  
 20 notice, and trump both the Court’s authority and that of the United States Constitution. Thus,  
 21 their behavior constitutes a willful defiance of this Court in keeping with an attitude in which  
 22 they assume they can, to use the language from *Chicago Truck Drivers, supra*, “anoint  
 23 themselves with the power to adjudge the validity of orders to which they are subject.” 207  
 24 F.3d at 504. Thus, a finding of civil contempt is appropriate.

25  
 26 **B. THE CONSENT DECREE, COUPLED WITH FIRST AMENDMENT  
 27 PROTECTIONS, MANDATE THAT NDOC CEASE THE FOLLOWING PRACTICES  
 28 AND VOID ASSOCIATED REGULATIONS.**

29 The First Amendment states that “Congress shall make no law...abridging the freedom  
 30 of speech, ... or the right of people peaceably to assemble... .” *Berger v. City of Seattle*, 569  
 31 F.3d 1029, 1036, n. 2 (9th Cir. 2009) (*citing* U.S. Const. Amend. I). As the U.S. Supreme

1 Court has emphasized, “there is no question that publishers who wish to communicate with  
2 those who, through subscription, willingly seek their point of view have a legitimate First  
3 Amendment interest in access to prisoners.” *Thornburgh v. Abbott*, 490 U.S. at 408. We will  
4 examine NDOC’s problematic practices and rules in turn:

5  
6 **i. Censorship of Correspondence with PLN as an “Inmate”  
7 Publication.**

8 Correspondence from Ely State Prison, dating from March and April of 2012, indicates  
9 that of PLN’s monthly journal issues are being censored on the grounds that it is a publication  
10 written by felons or ex-felons. This squarely contradicts the terms of the NDOC Consent  
11 Decree at 4:9-11, which states “All publications mailed to NDOP prisoners shall be reviewed  
12 according to the same criteria. There shall be no separate category of ‘inmate publications’ or  
13 ‘inmate newsletters.’” This was the very issue litigated in 2000 and any such policy or practice  
14 amounts to a clear violation of the Consent Decree. *See* “Stipulation and Judgment/Order,”  
15 *Prison Legal News v. Crawford et al*, CV-N-00-0373-HDM-RAM. (D.Nev.); Declaration of  
16 Lance Weber at ¶ 5.  
17  
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19 **ii. Preapproval Requirement for Books Violates Consent Decree**

20 AR 750.08(2) states “A Book Request, Form DOC-3037 must be filled out listing the  
21 title(s) and author(s) of the book(s). This request form must be approved by the Publication  
22 Review Committee before ordering the book(s).” AR 750.08(2)’s mandate that inmates receive  
23 preapproval for all books sent to NDOC facilities, and the further restraint provided by AR  
24 750.08(9), where such approval expires after 60 days, create significant obstacles to the  
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1 enforcement of the terms of the Consent Decree. The Consent Decree vests the Warden,  
2 solely, with the authority to reject a publication. NDOC Consent Decree at 3:13-18.

3 It is well settled that the First Amendment protects the flow of information to prisoners  
4 and any limitation must reasonably relate to a legitimate penological interest. *Crofton v. Roe*,  
5 170 F.3d 957, 959 (9th Cir. 1999) (citing *Turner v. Safley*, 482 U.S. 78, 89-90 (1987), and  
6 *Thornburgh*, 490 U.S. at 407-08). In *Ashker v. California Department of Corrections*, 350 F.3d  
7 917 (9<sup>th</sup> Cir. 2003), the Ninth Circuit held that a policy that required books and magazines to be  
8 shipped in packages that had an “approved vendor label” affixed to the package was not  
9 rationally related to the California Department of Correction’s legitimate interests in preventing  
10 the introduction of contraband. The Court emphasized that the policy unnecessarily burdened  
11 the prisoners’ First Amendment rights by cutting off the receipt of books. 350 F.3d at 924.

14 Thus, a preapproval requirement for books amounts to an unreasonable burden on the  
15 First Amendment rights of publishers and prisoners alike. *Id.* In addition, it is not rationally  
16 related to a legitimate penological interest. Notably, Section 4.A. of A.R. 750.08 establishes for  
17 a second round of review upon a book’s receipt. “Upon receipt all books will be subject to  
18 review for content by the Publication Review Committee.”

21 **iii. Publication Approval Process Violates Consent Decree**

22 The publication approval process embodied in AR 750 breaches the terms of the  
23 Consent Decree. AR 750.08(4)(A) requires that all books must be prepaid and:

- 25 A. “Upon receipt all books will be subject to review for content by the  
26 Publication Review Committee.”
- 27 B. All books identified as not complying with procedures will not be issued  
28 and the inmate will receive a notification of unauthorized property.

- 1 C. All books in compliance may be moved to the property room for
- 2 disbursement, and the invoice placed into the inmate's property file.
- 3 D. If disapproved, inmate will have 30 days to send out or dispose of the book
- 4 per the Department's Administrative Regulation 711.
- 5 E. Inmate may appeal the disapproval through the grievance process. Items
- 6 will be held pending the decision/outcome of the grievance process.

7 Pursuant to the Consent Decree, "[w]ardens are authorized to reject a publication only if it is  
8 determined, after reasonable consideration, to be detrimental to the safety, security, good order  
9 or discipline of the institution or if it might facilitate criminal activity." Consent Decree 3: 14-  
10 17. The decree then sets forth a list of criteria supporting rejection of a publication. Consent  
11 Decree 3: 18-19. AR 750 does not articulate the standards by which the Publication Review  
12 Committee will approve of books; nor does it conform to the Warden-driven process anticipated  
13 by the Consent Decree.

14  
15 Finally, AR 750 does not include any provision for notification to publishers of  
16 books rejected at the preapproval stage or after arrival at NDOC facilities. Nor are publishers  
17 permitted to appeal such a rejection. This will be discussed in further detail below.

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19  
20 **iv. Failure to Provide Due Process & Notice to Publisher**

21 The failure of AR 750.08 to provide for notification to publishers when books have been  
22 rejected at the preapproval stage or when books are rejected from NDOC facilities amounts to a  
23 substantial violation of the terms of the Consent Decree and Due Process requirements. AR  
24 750.08 states that "All books identified as not complying with procedures will not be issued and  
25 the inmate will receive a notification of unauthorized property." AR 750.08 neglects to provide  
26 for any explanation of the reasons for the rejection, or for any notification to the publisher or  
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1 vendor of the book. In addition, the regulation fails to establish any mechanism for a publisher  
2 to appeal a rejection decision.

3 Pursuant to the terms of the Consent Decree, “in the event a Warden rejects... a  
4 publication, he or she must advise the inmate promptly in writing of the reasons for the rejection  
5 and send a copy of such rejection memorandum to the publishers.” See **Exhibit “B”**. AR  
6 750.08 makes no provision for the delivery of an articulated rejection memorandum to the  
7 publisher. In practice, PLN has found that where books are rejected, PLN merely receives a  
8 “Return to Sender” (RTS) package. Declaration of Paul Wright at ¶ 15. Even this, however,  
9 does not take place consistently. *Id.*

10  
11 AR 750.08 also violates Constitutional mandates. The Fourteenth Amendment to the  
12 U.S. Constitution ensures due process protections attach to prison mailings. *Procunier v.*  
13 *Martinez*, 416 U.S. 396, 417 (1974) (holding that the “decision to censor or withhold delivery of  
14 a particular letter must be accompanied by minimum procedural safeguards”), *overruled on*  
15 *other grounds by Thornburgh v. Abbott*, 490 U.S. at 413-14. NDOC’s failure to provide notice  
16 and administrative review of the rejected mailings deprives publishers of the due process  
17 safeguards required by *Procunier*. As held by the U.S. Supreme Court, due process mandates:  
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20 That an inmate be notified of the rejection of a letter written by or addressed to him, that  
21 the author of the letter be given a reasonable opportunity to protest that decision, and  
22 that complaints be referred to a prison official other than the person who originally  
disapproved the correspondence.

23 416 U.S. at 418-19. This means that prison officials must provide notice of their decision not to  
24 deliver a mailing to publishers. *Procunier*, 416 U.S. at 417-419; *Prison Legal News v. Cook*,  
25 238 F.3d 1145, 1152-53 (9th Cir. 2001). . See also *Jacklovich v. Simmons*, 392 F.3d 420, 433  
26 (10<sup>th</sup> Cir. 2004) (characterizing *Cook* as recognizing “that both inmates and publishers have a  
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1 right to procedural due process when publications are protected.”) Prison officials must also  
2 establish a mechanism for the protest of a rejection decision. *Procunier*, 416 U.S. at 417-419.  
3 Thus far, PLN has not had the opportunity to appeal any of the rejected mailings to a NDOC  
4 official. Nor has it received a rejection memorandum in relation to any of the associated  
5 mailings. Declaration of Paul Wright at ¶ 16.  
6

7 As the preceding discussion illustrates, Defendants have abused First Amendment rights  
8 knowingly on numerous occasions, demonstrating disregard for this court’s order. Each type of  
9 expression listed above is protected under the First Amendment. NDOC’s current practices and  
10 AR 750 provisions are prohibited by the Consent Decree and by existing precedent.  
11

#### 12 **IV. CONCLUSION**

13 For the foregoing reasons, Plaintiff requests that this Court enter an order directing  
14 Defendants to show cause why they should not be held in contempt for their willful failure to  
15 comply with this Court’s prior order and judgment. Please also find attached as **Exhibit D**, our  
16 associated complaint in *Prison Legal News v. Cox et al.*, which addresses additional concerns  
17 raised by NDOC mailing policies and practices.  
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**V. PRAYER**

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2 WHEREFORE, Plaintiffs pray judgment against the Defendants, and each of them, as  
3 follows:

4 1. For an order to show cause for Defendants' willful failure to comply with this  
5 Court's prior order and judgments;

6 2. For a contempt citation for Defendants' willful failure to comply with this Court's  
7 prior order and judgments;

8 3. For such other sanctions, as the Court deems proper, and in an amount the Court  
9 deems reasonable;

10 4. For declaratory and injunctive relief, invalidating the provisions of A.R. 750  
11 which fall afoul of the Consent Decree and the demands of the First Amendment;

12 5. For attorney's fees and costs of suit necessarily incurred herein;

13 6. For such other and further relief as this Court may deem just and appropriate in  
14 the premises.

15  
16 DATED: This 28<sup>th</sup> day of June 2013.

17  
18 Respectfully Submitted,

19 /s/ Staci Pratt

20 Staci Pratt  
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25 ACLU of Nevada  
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