

## SETTLEMENT AGREEMENT

1. **PARTIES.** The parties to this *Settlement Agreement* (the “**Agreement**”) are

1.1 Human Rights Defense Center (“**HRDC**”), a not-for-profit charitable corporation recognized under section 501(c)(3) of the Internal Revenue Code with its principal offices in Lake Worth, Florida; and

1.2 The County of Los Angeles (the “**County**”), California.

Each of the foregoing may be individually referred to herein as a “**Party**”. All are collectively referred to herein as “**the Parties**”.

2. **RECITALS.** This *Agreement* is made with reference to the following facts:

2.1 HRDC is the publisher of *Prison Legal News* (“**PLN**”), a publication that contains information about the operation of prison facilities, prison conditions, prisoner health and safety, and prisoners’ rights, among other topics.

2.2 The County is a governmental municipality and, among other things, operates the Men’s Central Jail (“**MCJ**”) in Los Angeles, California.

2.3 HRDC contends that from August 2015 through at least June 2017, the County and certain Los Angeles Sheriff’s Department officials improperly withheld from certain inmates at MCJ *PLN* and other materials mailed by HRDC to those inmates, and then returned that mail to HRDC. HRDC also asserts that the County failed to provide HRDC with sufficient notice and an opportunity to be heard in connection with the withholding of that mail from those inmates.

2.4 HRDC is the plaintiff and the County and unnamed Sheriff’s Department officials (sued as Does 1 through 10) are the defendants in a lawsuit (the “**Lawsuit**”) captioned *Human Rights Defense Center v. County of Los Angeles, et al.*, Case No. 2:17-cv-04883-R-AS, filed on July 3, 2017 in the United States District Court for the Central District of California. Among the claims asserted by HRDC in the Lawsuit is a claim for violation of 42 U.S.C. § 1983.

2.5 The purpose of this *Agreement* is to resolve all differences and disputes between the Parties that existed on or prior to the effective date of this *Agreement*, including, but not limited to, all differences and disputes arising from the claims and defenses asserted by the Parties in the Lawsuit. This *Agreement* effects a settlement of claims, present and possible, that are denied and contested. By entering into this *Agreement*, it is agreed and understood that no Party is in any way admitting liability or wrongdoing of any sort.

3. **SETTLEMENT.** In consideration of the mutual promises of the Parties to this *Agreement* and the settlement contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties to this *Agreement* agree as follows:

3.1 **Payment To HRDC.** The County shall pay HRDC a total sum of two hundred and fifty-three thousand dollars (\$253,000.00) (the “**Settlement Payment**”) as follows. Within

60 calendar days following final approval by the Los Angeles County Board of Supervisors of this *Agreement*, the County shall tender to Rosen Bien Galvan & Grunfeld LLP, counsel for HRDC, a check in the amount of the Settlement Payment, payable to "Human Rights Defense Center." This Settlement Payment compensates HRDC for any and all claims asserted in the Lawsuit, including all claims for attorneys' fees, costs, and/or expenses incurred as a result of the Lawsuit and the dispute leading up to the Lawsuit. HRDC, and not the County, is responsible for any and all tax liability that might be incurred by HRDC as a result of receipt of the Settlement Payment.

### **3.2 Mutual General Releases.**

(A) Except as to such rights or claims as might be created by this *Agreement*, HRDC hereby releases, acquits and forever discharges the County and all present and former officials, commissioners, directors, officers, employees, deputies, agents, representatives, attorneys, servants, affiliates, departments, divisions, branches, and commissions of the County of and from any and all past, present, and future rights, actions, causes of actions, claims, allegations, demands, damages, costs, expenses, attorneys' fees (alleged or incurred), penalties, liens, and liabilities relating in any way to or arising out of the Lawsuit that existed on or prior to the effective date of this *Agreement*, including but not limited to, those specifically alleged by HRDC in the Lawsuit.

(B) Except as to such rights or claims as might be created by this *Agreement*, the County hereby releases, acquits and forever discharges HRDC and all present and former directors, officers, employees, agents, representatives, attorneys, and servants of and from any and all past, present, and future rights, actions, causes of actions, claims, allegations, demands, damages, costs, expenses, attorneys' fees (alleged or incurred), penalties, liens, and liabilities relating in any way to or arising out of the Lawsuit, that existed on or prior to the effective date of this *Agreement*.

**3.3 Release Of Unknown Claims.** In giving the mutual general releases in Paragraph 3.2, supra, which include claims that might be unknown or unsuspected at present, the Parties represent, warrant, and agree that they have been fully advised by their attorneys of the contents of Section 1542 of the CIVIL CODE of the State of California. The Parties expressly waive and relinquish all rights and benefits under that section and any similar statute or common law principle of similar effect of any state or territory of the United States with respect to the Released Claims. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

**3.4 Waiver.** The Parties acknowledge that they are aware that they or their attorneys might discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this *Agreement* and assume the risks associated therewith. It is the Parties' intention to settle and release fully, finally and forever, any and all

disputes, claims, causes of action and differences, known and unknown, suspected and unsuspected, that now exist, may exist, have existed, or hereafter might exist in the future against the County relating to the subject matter of the Lawsuit. Each Party hereby further acknowledges that it understands the significance and the consequences of such a general release of unknown claims and hereby assumes full responsibility for any injuries, damages, lawsuits or liabilities that it might incur, both now and hereafter, from the waiver of said unknown claims. Each Party acknowledges and represents that it has undertaken its own independent investigation of all of the facts relating to the matters being released herein and this *Agreement*, and in entering into this *Agreement* and granting the releases contained herein, is not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein. Each Party acknowledges that this waiver is an essential and material term of this *Agreement*.

**3.5 Settlement Of Equitable Claims.** As part of this *Agreement*, the Parties shall jointly file within ten (10) court days of the full execution of this *Agreement* by both Parties (1) a motion to dismiss the claims for damages remaining in the Lawsuit, (2) a motion to dismiss the pending Ninth Circuit appeal, and (3) consent to the continued jurisdiction of a Magistrate Judge for purposes of enforcing the *Settlement Of Equitable Claims* ("**Settlement**"). The *Settlement* is attached hereto as **Exhibit A** and shall be filed publicly with the motion to dismiss. The terms of the *Settlement* are incorporated as if fully set forth herein.

**3.6 Requirement Of Approval By County Authorities.** This *Agreement* shall not be binding on the Parties unless and until the Los Angeles County Claims Board and the Los Angeles County Board of Supervisors have formally approved this *Agreement* and such formal approval has been communicated to counsel for HRDC. HRDC's counsel shall provide the County with the appropriate tax identification number and completed IRS Form W-9 federal tax form prior to their receipt of the Settlement Payment. Any IRS Form 1099 and/or other tax reporting forms issued by the County shall be issued using the provided tax identification number.

**4. REPRESENTATIONS AND WARRANTIES.** Each Party to this *Agreement* acknowledges and agrees that the representations contained in this Paragraph 4 are essential and material to this *Agreement*.

**4.1** Each person signing this *Agreement* on behalf of an entity warrants and represents that she or he is competent and authorized to enter into this *Agreement* on behalf of the entity Party for which she or he purports to sign. Each Party that is an entity has all requisite corporate or governmental power and authority, and has taken all corporate action necessary, to execute and deliver this *Agreement* and to perform its obligations hereunder.

**4.2** Each Party to this *Agreement* represents, warrants, and agrees as follows:

(A) It has received legal advice from its attorneys with respect to the advisability of making the settlement provided for in this *Agreement*.

(B) It has read this *Agreement* and understands its contents.

(C) It is the sole owner and holder of the claims, demands, defenses, or causes of action covered by this *Agreement*, and it has not assigned, transferred, granted, conveyed or

otherwise disposed of, or purported to assign, transfer, or grant, convey or otherwise dispose of, any of such claims, demands, defenses, or causes of action.

## 5. MISCELLANEOUS.

5.1 Except for claims resulting from alleged breach of this *Agreement*, or any provision herein, each Party covenants and agrees not to file or prosecute any legal action or proceeding based on or arising out of any claim released herein. Nothing stated herein shall affect the rights of HRDC to seek enforcement and/or compliance with the *Settlement* pursuant to the terms of that *Settlement*, nor shall it affect the rights of HRDC to file a new legal action or proceeding based on alleged censorship or denial of due process by the County that occurs after the effective date of this *Agreement*.

5.2 If any provision of this *Agreement* is held to be invalid or unenforceable, the remaining terms and conditions hereof shall not be affected thereby and shall remain in full force and effect.

5.3 Each Party has cooperated in the drafting and preparation of this *Agreement*. Therefore, in any construction to be made of the *Agreement*, the same shall not be construed against any Party.

5.4 This *Agreement* is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations, or other agreements between the Parties in connection with the subject matter hereof other than as set forth herein. This *Agreement* may be amended only by an agreement in writing signed by the Party sought to be bound.

5.5 **Notice And Cure In The Event Of A Claimed Breach.** In the event a Party discovers or believes that another Party is not in compliance with any of the terms of this *Agreement*, the Party making such discovery or having such belief shall notify the potentially breaching Party in writing of such breach or claimed breach, specifying the applicable provisions, and thereafter the potentially breaching Party shall have fifteen (15) calendar days from receipt of the notice within which to cure such breach or claimed breach, if such breach or claimed breach is curable, before any dispute resolution proceeding, as described in Paragraph 5.6, infra, can be initiated based on such breach or claimed breach. All notices, requests, consents, and other communications required or permitted pursuant to this *Agreement* shall be in writing and shall be (a) hand-delivered or mailed by registered or certified mail with postage prepaid, and (b) delivered by e-mail, as follows:

(A) If to HRDC, to:

Sabarish Neelakanta, General Counsel  
HUMAN RIGHTS DEFENSE CENTER  
P.O. Box 1151  
Lake Worth, Florida 33460  
Telephone: (561) 360-2523

Email: sneelakanta@hrdc-law.org

With a copy to:

Jeffrey L. Bornstein  
ROSEN BIEN GALVAN & GRUNFELD LLP  
50 Fremont Street, 19th Floor  
San Francisco, California 94105-2235  
Telephone: (415) 433-6830  
Facsimile: (415) 433-7104  
Email: jbornstein@rbgg.com

(B) If to the County, to:

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\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Kent R. Raygor, Esq.  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
1901 Avenue of the Stars, 16<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: (310) 228-3700  
Facsimile: (310) 228-3701  
E-mail: kraygor@sheppardmullin.com

**5.6 Dispute Resolution.** In the event a controversy or claim arises out of or relating to this *Agreement*, including the *Settlement*, the Parties shall work in good faith to resolve that dispute themselves. If the Parties are unable to resolve the dispute through negotiation, the Parties shall refer such dispute to mediation before an independent mediator jointly selected through JAMS. In the event of such mediation, the Parties shall split the mediator's fees equally. If the Parties are unable to resolve their dispute through mediation, either Party may initiate a lawsuit before a Court of appropriate subject matter jurisdiction in federal court in the Central District of California, or, if the dispute arises out of the *Settlement*, the Parties may seek enforcement of the *Settlement* by the Court. Once the Parties have conducted one mediation session, either Party may declare the mediation at an impasse and either initiate a lawsuit or seek Court enforcement of the *Settlement*, depending on the nature of the dispute. California law (without giving effect to California's choice or conflict of law principles) shall govern the enforceability of this *Agreement* and any controversy or claim arising out of or relating to this *Agreement*.

**5.7** This *Agreement* may be executed in separate counterparts, each of which shall be considered an original but all of which shall constitute one *Agreement*.

**5.8** No supplement, modification, waiver, or amendment with respect to this *Agreement* shall be binding unless executed in writing and signed by the Party against whom enforcement of such supplement, modification, waiver, or amendment is sought.

**5.9 Effective Date.** The effective date of this *Agreement* and the *Settlement* attached hereto as **Exhibit A** is the date on which this *Agreement* has been fully executed by both Parties, signed counterparts have been exchanged, and the Los Angeles County Board of Supervisors has approved the *Agreement*.

DATED: \_\_\_\_\_, 2018      HUMAN RIGHTS DEFENSE CENTER

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

DATED: \_\_\_\_\_, 2018      COUNTY OF LOS ANGELES

By \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

## EXHIBIT A: *SETTLEMENT OF EQUITABLE CLAIMS*

### I. DURATION AND TEMPORAL LIMITATIONS OF *SETTLEMENT*

A. This *Settlement Of Equitable Claims* (the “*Settlement*”) between Human Rights Defense Center (“**HRDC**”) and the County of Los Angeles (the “**County**”) (hereinafter collectively referred to as “**the Parties**”) shall remain enforceable by the Court upon approval of the Court and until January 1, 2022. After that date, enforcement by the Court shall terminate upon the filing of a successful motion by the County demonstrating that further Court oversight is not warranted.

B. The County agrees to implement the terms of this *Settlement* within thirty (30) days of the date of the entry of an Order from the United States District Court for the Central District of California approving this *Settlement*.

C. The Parties agree that during the term of this *Settlement*, the County may adopt policies and procedures that are consistent with statutory or case law that becomes controlling after the signing of this *Settlement*. The County agrees to provide HRDC’s counsel with notice of such changes in policies and procedures 90 days before their intended effective date during the term of this *Settlement*.

D. Notwithstanding Sections (I)(B) and (C), *supra*, the Parties agree that any time limits for the County to complete certain matters as set forth in this *Settlement* may be extended upon mutual consent of the Parties and the Parties shall endeavor in good faith to agree upon a reasonable extension of the particular deadline in question.

### II. TERMS OF SETTLEMENT

A. The County represents and warrants that it does not presently have a policy in its jails pursuant to which it rejects periodicals that are not the “current issue”. The County agrees not to implement such a policy in the future, subject to Section I(C), *supra*.

B. The County represents and warrants that it does not presently have a policy pursuant to which it rejects magazines sent to inmates classified as “K-10” in its jails. The County agrees not to implement such policy in the future, unless such policy satisfies the test set forth in *Turner v. Safley*, 482 U.S. 78 (1987), and particularly that any such policy must have a valid, rational, connection to safety in the jail system, subject to Section I(C), *supra*.

C. The County represents and warrants that it has implemented an appeals process for withheld mail consistent with *Proconier v. Martinez*, 416 U.S. 396 (1974). The County agrees that it will maintain such a policy, subject to Section I(C), *supra*.

D. The County agrees to provide training to its personnel on the policies described in Sections (II)(A)-(C), *supra*.

E. The County agrees to post its most current mail policy on its website within thirty (30) days of the effective date of this *Settlement*.

F. The parties agree that this Settlement shall be submitted to the Court for entry of an order by the Court to retain jurisdiction for purposes of enforcement.

**III. DISPUTE RESOLUTION**

In the event a controversy or claim arises out of or relating to this *Settlement*, the Parties shall work in good faith to resolve that dispute themselves. As part of the dispute resolution process, the County agrees to provide HRDC with reasonable access to information related to any decision by the County to withhold mail sent by HRDC to inmates in the County's custody. If the Parties are unable to resolve the dispute through negotiation, the Parties shall refer such dispute to mediation before an independent mediator jointly selected through JAMS. In the event of such mediation, the Parties shall split the mediator's fees equally. If the Parties are unable to resolve their dispute through mediation, either Party may bring the matter to the Court for resolution. Once the Parties have conducted one mediation session, either Party may declare the mediation at an impasse and seek enforcement by the Court.

**IV. MISCELLANEOUS**


A. Nothing contained herein shall be deemed to be an admission by the Defendants of liability or of the truth of any of the allegations set forth in HRDC's Complaint, or that they have in any manner violated the rights of HRDC or any person.

B. This Settlement may be executed in counterparts or by facsimile and/or by attachment to an email.

C. This *Settlement* constitutes the entire agreement as to the equitable claims between the Parties and supersedes all prior understandings, whether oral or written, between the parties. The Parties have resolved all matters involving monetary payment (including the matters of damages, costs, and attorneys' fees) by separate agreement.

DATED: 25th January, 2018

HUMAN RIGHTS DEFENSE CENTER

By  Paul Wright  
Its executive director

DATED: \_\_\_\_\_, 2018

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Its \_\_\_\_\_