

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PRISON LEGAL NEWS, a project of
the HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

THE GEO GROUP, INC., a Florida
Corporation;
KEITH BUTTS, individually and in his
official capacity as Superintendent, New
Castle Correctional Facility,

Defendants.

Case No.: 1:14-cv-1957

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER
THE CIVIL RIGHTS ACT 42
U.S.C. §1983 AND DAMAGES**

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff, PRISON LEGAL NEWS (“PLN” or “Plaintiff”), a project of the Human Rights Defense Center (“HRDC”), brings this action to enjoin Defendants’ censorship of its monthly journal, *Prison Legal News*, mailed to prisoners who are held in custody at the New Castle Correctional Facility, in violation of the First and Fourteenth Amendments of the United States Constitution. Defendants’ have adopted and implemented mail policies that unconstitutionally prohibit delivery of Plaintiff’s publication to prisoners in their custody and do not afford the sender of censored mail due process notice and an opportunity to challenge the censorship as required by the Constitution.

II. JURISDICTION AND VENUE

2. This action is brought pursuant to 28 U.S.C. § 1331 (federal question), as this

action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Venue is proper under 28 U.S.C. § 1391(b). On information and belief, at least one Defendant resides within this judicial district, and the events giving rise to the claims asserted herein all occurred within this judicial district.

4. Plaintiff's claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the Plaintiff by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and laws of the United States.

5. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

6. Plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

7. Plaintiff is informed, believes, and based thereon alleges that in engaging in the conduct alleged herein, Defendants acted with the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing Plaintiff injury and depriving it of its constitutional rights.

8. As a result of the forgoing, Plaintiff seeks exemplary and punitive damages against the individual Defendants.

III. PARTIES

9. Plaintiff, Prison Legal News (“PLN”), is a project of the Human Rights Defense Center (“HRDC”), a not-for-profit, Washington charitable corporation recognized under § 501(c)(3) of the Internal Revenue Code with principal offices in Lake Worth, Florida. PLN publishes *Prison Legal News*, a monthly journal of prison news and analysis.

10. Defendant, The GEO Group, Inc. (hereinafter “GEO”), is a Florida, for-profit corporation headquartered in Boca Raton, Florida. GEO provides correctional operation and management services to state and local governments around the world and to the Indiana Department of Correction.

11. At all times material to this action, GEO contracted with the Indiana Department of Correction (hereinafter “IDOC”) to operate and manage the New Castle Correctional Facility (hereinafter “New Castle”) in New Castle, Indiana. New Castle confines a number of prisoners who have been prohibited by Defendants from receiving Plaintiff’s publications.

12. Defendant Keith Butts is the Superintendent of New Castle. Defendant Butts has ultimate responsibility for the promulgation and enforcement of all New Castle staff policies and procedures and is responsible for the overall management of the prison.

13. At all times material to this action, the actions of all Defendants as alleged herein were taken under the authority and color of state law.

14. At all relevant times, all Defendants were acting within the course and scope of their employment as agents and/or employees of Defendant GEO.

IV. FACTUAL ALLEGATIONS

15. PLN publishes and distributes a soft-cover monthly journal titled *Prison Legal News: Dedicated to Protecting Human Rights* which contains news and analysis about prisons,

jails and other detention facilities, prisoners' rights, court rulings, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals.

16. PLN has thousands of subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and members of the general public. PLN distributes its monthly publication to prisoners and law librarians in approximately 2,400 correctional facilities located across all fifty states, including the Federal Bureau of Prisons and the Indiana Department of Corrections.

17. The purpose of PLN, as stated in HRDC's Articles of Incorporation, Article III, Part 6, is to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society.

18. PLN engages in core protected speech and expressive conduct on matters of public concern, such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoners' rights. Plaintiff's monthly journal, as described above, contains political speech and social commentary, which are entitled to the highest protection afforded by the U.S. Constitution.

19. For the past 24 years, the core of PLN's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. PLN's mission, if realized, has a salutary effect on public safety.

20. Since February 2014, PLN has sent at least ninety (90) issues of its monthly journal to subscribers at New Castle. On information and belief, the following issues were not

delivered to the following intended recipients:

February 2014

Christopher Adams
Paul Land

March 2014

Christopher Adams
Paul Land

April 2014

Christopher Adams
Larry Cameron

May 2014

Christopher Adams
Larry Cameron

June 2014

Christopher Adams
Larry Cameron

July 2014

Christopher Adams
Larry Cameron

August 2014

Christopher Adams
Larry Cameron
Donald R Jones
Michael Martin
Bryon McClain
Oswaldo Santos

September 2014

Christopher Adams
Larry Cameron
Gary Anderson
Robbie Bluck
Thomas Boyd
Michael Casteel
Rocky Lee Critser
Doug DeVore

Brian Gray
Ira Howard
Terrence Isaacs
Donald R Jones
Greg Lambert
John Lane-El
Michael Martin
Bryon McClain
Todd Petty
William E. Polk
Oswaldo Santos
Jarman Spurlock
Michael Tatlock
Charles Westerman
Jose Zuniga

October 2014

Christopher Adams
Larry Cameron
Gary Anderson
Robbie Bluck
Thomas Boyd
Michael Casteel
Rocky Lee Critser
Doug DeVore
Brian Gray
Ira Howard
Terrence Isaacs
Donald R Jones
Greg Lambert
John Lane-El
Michael Martin
Bryon McClain
Todd Petty
William E. Polk
Oswaldo Santos
Dylan Sinn
Jarman Spurlock
Michael Tatlock
Charles Westerman
Jose Zuniga

November 2014

Christopher Adams
Larry Cameron
Gary Anderson
Robbie Bluck
Thomas Boyd
Michael Casteel
David Corbin
Rocky Lee Critser
Doug DeVore
Brian Gray
Ira Howard
Terrence Isaacs
Donald R Jones
Greg Lambert
John Lane-El
Michael Martin
Bryon McClain
Todd Petty
William E. Polk
Oswaldo Santos
Dylan Sinn
Jarman Spurlock
Michael Tatlock
Charles Westerman
Jose Zuniga

21. The reason that Defendants have determined not to allow New Castle prisoners to receive *Prison Legal News* is that *Prison Legal News* contains advertisements from companies that provide pen-pal services to prisoners. The Indiana Department of Correction has a policy, applicable to New Castle, prohibiting prisoners from participating in pen-pal services.

22. GEO's policy is explained in the attached memo (Exhibit 1) that was sent to the population of New Castle by defendant Butts' Executive Assistant.

23. Defendants' policy has no rational basis as many publications that prisoners are allowed to receive contain advertisements promoting the sale of items and/or services that the prisoners cannot access.

24. PLN will continue to mail copies of *Prison Legal News* to subscribers imprisoned at New Castle.

25. There is no legitimate penological reason for censorship of PLN's monthly journal.

26. Defendants did not provide PLN, and still has not provided PLN, with any notice of the rejection of the publications or with any opportunity to appeal their decisions to censor PLN's mail to prisoners in their custody.

27. The accommodation of PLN's rights with respect to written speech protected by the Constitution, and the provision of due process of law, will not have any significant impact on the prison, its staff or prisoners.

28. Due to Defendants' actions as described above, Plaintiff has suffered damages, and will continue to suffer damages, including, but not limited to: the violation of the Plaintiff's constitutional rights; the impediment of Plaintiff's ability to disseminate its political message; frustration of Plaintiff's non-profit organizational mission; diversion of resources; loss of potential subscribers and customers; the inability to recruit new subscribers and supporters; damage to its reputation; and the costs of printing, handling, mailing, and staff time.

IV. CLAIMS

Count I – 42 U.S.C. § 1983 *Violation of the First Amendment*

29. Each paragraph of this Complaint is incorporated as if restated fully herein.

30. The acts described above constitute violations of Plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at New

Castle, and the rights of prisoners confined at New Castle, under the First Amendment to the United States Constitution.

31. Plaintiff has a constitutionally protected liberty interest in communicating with incarcerated individuals, a right clearly established under existing case law.

32. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

33. Plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were the moving force of the violations.

34. The acts described above have caused damages to Plaintiff, and if not enjoined, will continue to cause damage to Plaintiff.

35. Plaintiff seeks declaratory and injunctive relief, and nominal, compensatory and punitive damages against all Defendants.

Count II – 42 U.S.C. § 1983
Violation of the Fourteenth Amendment

36. Each paragraph of this Complaint is incorporated as if restated fully herein.

37. The acts described above constitute violations of Plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at New Castle, and the rights of prisoners confined at New Castle, under the Fourteenth Amendment to the United States Constitution.

38. Because Plaintiff has a liberty interest in communicating with prisoners, PLN has a right under the Due Process Clause of the Fourteenth Amendment to receive notice of and an

opportunity to appeal Defendants' decisions to censor PLN's written speech.

39. Defendants' policy and practice fail to provide Plaintiff and other senders with notice and an opportunity to be heard.

40. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

41. Plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were the moving force of the violation.

42. The acts described above have caused damages to Plaintiff, and if not enjoined, will continue to cause damage to Plaintiff.

43. Plaintiff seeks declaratory and injunctive relief, and nominal, compensatory, and punitive damages against all Defendants.

Injunctive Allegations

44. Defendants' unconstitutional policies and practices are ongoing and continue to violate Plaintiff's constitutional rights and the rights of other correspondents and prisoners. As such, there is no adequate remedy at law.

45. Plaintiff is entitled to injunctive relief prohibiting Defendants from refusing to deliver PLN's monthly journal. Plaintiff is also entitled to injunctive relief prohibiting Defendants from censoring mail without due process of law.

V. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests relief as follows:

46. A declaration that Defendants' policies and practices violate the Constitution.

47. Nominal damages for each violation of Plaintiff's rights by the Defendants.
48. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.
49. Compensatory damages in an amount to be proved at trial.
50. Punitive damages against the Defendants in an amount to be proved at trial.
51. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988, and under other applicable law.
52. Any other such relief that this Court deems just and equitable.

s/ Kenneth J. Falk

No. 6777-49

s/ Gavin M. Rose

No. 26565-53

s/ Kelly R. Eskew

No. 22953-49

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Matthew Topic

Motion for Admission Pro Hac Vice to Be Filed

Arthur Loevy

Motion for Admission Pro Hac Vice to Be Filed

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Motion for Admission Pro Hac Vice to Be Filed

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Motion for Admission Pro Hac Vice to Be Filed
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Attorneys for Plaintiff

JURY DEMAND

Plaintiff, Prison Legal News, by and through its attorneys, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

s/ Kenneth Falk

Kenneth Falk
Attorney at Law

MEMO



To: Offender Population

From: Mike Smith, Executive Assistant

Date: 11/4/2014

Re: Prison Legal News

It has been brought to our attention that there are concerns about the content contained in the publication "Prison Legal News". The facility as well as IDOC have reviewed this publication. NCCF 12.001 Mail, Telephone and Visiting Policy as well as IDOC Policy advises that offenders are prohibited from receiving correspondence or materials from persons or groups marketing/advertising services for or from subscribing to advertising services. As Prison Legal News supports pen-pal service advertisements which is prohibited the decision has been made that this publication will not be allowed.

Due to the pen-pal advertising and other materials contained within the publication it will no longer be permitted in this facility. If you have previous publications of Prison Legal News we encourage you to send them home if you wish to keep them or they will be considered contraband and could be confiscated.

