

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO**

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

Plaintiff,

v.

MANAGEMENT & TRAINING CORPORATION,  
a Utah Corporation;  
RICK MARTINEZ, individually and in his official  
capacity;  
DOES 1-10, individually and in their official capacities,

Defendants.

Case No.:

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

**JURY TRIAL DEMANDED**

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**I. INTRODUCTION**

1. Plaintiff, PRISON LEGAL NEWS (“PLN” or “Plaintiff”), a registered trade name of the HUMAN RIGHTS DEFENSE CENTER (“HRDC”), brings this action to enjoin Defendants’ censorship of books sent from Plaintiff and other publishers to prisoners at the Otero County Prison Facility (“Otero Prison”), in violation of the First and Fourteenth Amendments of the United States Constitution. Defendants have adopted and implemented mail policies prohibiting delivery of written speech from Plaintiff and other speakers, failing to provide due process notice of and an opportunity to challenge the censorship, and denying Plaintiff equal protection as required under the Constitution.

**II. JURISDICTION AND VENUE**

2. This action is brought pursuant to 42 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). 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. PLN'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 PLN by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and the 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 Rules 57 and 65 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

6. PLN'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. PLN is informed, believes, and based thereon alleges that the individual Defendants acted as described herein with the intent to injure, vex, annoy and harass PLN, and subjected PLN to cruel and unjust hardship in conscious disregard of PLN's rights with the intention of causing PLN injury and depriving it of its constitutional rights.

8. As a result of the foregoing, PLN seeks compensatory and punitive damages against the individual Defendants.

### **III. PARTIES**

9. PLN is a registered trade name of the Human Rights Defense Center, a not-for-profit, Washington charitable corporation recognized under § 501(c)(3) of the Internal Revenue Code with principal offices in Lake Worth, Florida. The purpose of PLN, as stated in HRDC's

Articles of Incorporation, is to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society. PLN accomplishes its mission through litigation, advocacy, and publication and/or distribution of books, magazines and other information concerning prisons and prisoner rights.

10. Defendant, Management and Training Corporation (“MTC”), is a Utah-based corporation. MTC provides correctional operation management services to state and local governments around the world and to the New Mexico Department of Corrections (“NMDOC”). At all times material to this action, MTC contracted with NMDOC to operate and manage the Otero Prison in Otero County, New Mexico. The Otero Prison confines a number of prisoners who have been prohibited receipt of PLN’s books.

11. Defendant, Rick Martinez, is the Warden of the Otero Prison. Defendant Martinez has ultimate responsibility for the promulgation and enforcement of all Otero Prison staff policies and procedures and is responsible for the overall management of the Otero Prison, to include processing of mail.

12. The true names and identities of Defendants DOES 1 through 10 are presently unknown to PLN. Each of Defendants DOES 1 through 10 are or were employed by and are or were agents of Defendants when some or all of the challenged inmate mail policies and practices were adopted and/or implemented. Each of Defendants DOES 1 through 10 were personally involved in the adoption and/or implementation of the mail policies at the Otero Prison, and/or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of Otero Prison staff who interpret and implement these mail policies. PLN will seek to amend this Complaint as soon as the true names and identities of Defendants DOES 1 through 10 have been ascertained.

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 times material to this action, all Defendants were acting within the course and scope of their employment as agents and/or employees of Defendant MTC.

#### IV. FACTUAL ALLEGATIONS

##### A. PLN's mission and outreach to the Otero Prison

15. For more than 25 years, the focus 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.

16. To accomplish its mission, PLN publishes and distributes books, magazines, and other information containing 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. For example, PLN publishes and distributes approximately fifty (50) different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. These books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics.

17. PLN has thousands of consumers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and members of the general public. PLN distributes its publications to prisoners and law librarians in more than 2,600 correctional

facilities located across all fifty states, including the Federal Bureau of Prisons and various facilities within the NMDOC.

18. Accordingly, 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. PLN's publications, as described above, contain political speech and social commentary, which are core First Amendment rights and are entitled to the highest protection afforded by the U.S. Constitution.

19. For years, PLN has sent its books to individual prisoners at the Otero Prison without censorship. However, on information and belief, in February 2015, the Otero Prison adopted a new policy and practice prohibiting receipt of PLN's books sent to individual prisoners at the facility. Specifically, since February 2015, PLN has sent the following books to prisoners held at the Otero Prison: 1) *The Habeas Citebook: Ineffective Assistance of Counsel* ("*Habeas Citebook*"), which describes the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel; 2) *Protecting Your Health and Safety* ("*PYHS*"), which describes the rights, protections and legal remedies available to prisoners concerning their incarceration; and 3) *Prisoners' Guerilla Handbook: A Guide to Correspondence Programs in the United States and Canada* ("*Prisoners' Handbook*"), which provides prisoners information on enrolling at accredited higher educational, vocational and training schools.

20. Defendants censored these books and did not deliver them to the intended prisoner-recipients at the Otero Prison. Some of these books were returned to PLN in their original packaging with an ink stamp on the outside stating that the contents were not allowed. Other books were returned to PLN with no ink stamp or other notation on the outside whatsoever, but

simply a return to sender label directing PLN to pay the cost of the return postage. The vast majority of the books sent to the prisoners, however, were never returned to PLN.

21. Further, Defendants failed to provide PLN any notice or opportunity to appeal these censorship decisions.

**B. Defendants' Unconstitutional Mail Policies and Practices**

22. On information and belief, Defendants' mail policy and practice bans books sent by PLN and other senders to prisoners at the Otero Prison because the books: (1) have not been pre-approved by Defendants; (2) the sender is not on an approved vendor list; and/or (3) were not purchased through the Otero Prison business office.

23. As a direct and proximate cause of this policy and practice, Defendants specifically exclude some publishers and vendors, like PLN, from sending their books to prisoners at the Otero Prison, while allowing other publishers and vendors access to these same prisoners. On information and belief, Defendants' approved vendor list is limited to a few select vendors and therefore does not allow prisoners to obtain publications from vendors that distribute books or other publications that are not available from the select group of approved vendors.

24. Defendants do not as a policy or practice provide senders of censored mail notice and an opportunity to appeal the denial of the mail to the intended prisoner.

25. Defendants' mail policy and practices violates PLN's First Amendment right to free speech, and its Fourteenth Amendment rights to due process of law and equal protection.

26. Said mail policies and practices are the moving force behind the constitutional violations at issue herein.

27. The accommodation of the free speech, expression, equal protection and due process rights of PLN with respect to written speech protected by the Constitution will not have any

significant impact on the prison, its staff or prisoners.

28. Due to Defendants' actions as described above, PLN has suffered damages, and will continue to suffer damages, including, but not limited to: the suppression of PLN's speech; the impediment of PLN's ability to disseminate its political message; frustration of PLN's non-profit organizational mission; the loss of potential subscribers and customers; and the inability to recruit new subscribers and supporters, among other damages.

29. Defendants' actions and inactions were and are motivated by ill motive and intent, and were and are all committed under color of law with reckless indifference to PLN's rights.

30. Defendants, and other agents of the Otero Prison, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure PLN.

31. Defendants' unconstitutional policy, practices, and customs are ongoing, continue to violate PLN's rights, and were and are the moving force behind the injuries PLN suffered as a direct result of the constitutional violations. As such, PLN has no adequate remedy at law.

32. PLN is entitled to declaratory relief as well as injunctive relief prohibiting Defendants from refusing to deliver publications and correspondence from PLN and other senders without any legal justification, and prohibiting Defendants from censoring mail without due process of law.

## V. CLAIMS

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

33. PLN realleges and incorporates the allegations of Paragraphs 1 through 32 of the Complaint as if fully set forth herein.

34. The acts described above constitute violations of PLN's rights, the rights of other publishers who have attempted to or intend to communicate with prisoners at the Otero Prison, and the rights of the prisoners confined at the Otero Prison, under the First Amendment to the United States Constitution.

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

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

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

38. Defendants' acts described above have caused damages to PLN, and if not enjoined, will continue to cause damage to PLN.

39. PLN seeks declaratory and injunctive relief, and nominal, compensatory and punitive damages against all Defendants. PLN seeks punitive damages against the individual Defendants in their individual capacities.

**Count II – 42 U.S.C. § 1983**  
***Violation of Fourteenth Amendment (Due Process)***

40. PLN realleges and incorporates the allegations of Paragraphs 1 through 39 of the Complaint as if fully set forth herein.

41. The acts described above constitute violations of PLN's rights and the rights of other publishers who have attempted to or who intend to communicate with prisoners at the Otero Prison under the Fourteenth Amendment to the United States Constitution.

42. Because PLN and others outside the Otero Prison have a liberty interest in communicating with prisoners, PLN and other senders have a right under the Due Process Clause of the Fourteenth Amendment to receive notice of and an opportunity to appeal Defendants' decisions to censor their written speech.

43. Defendants' policy and practice fail to provide PLN and other senders with adequate notice and an opportunity to be heard.

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

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

46. Defendants' acts described above have caused damages to PLN, and if not enjoined, will continue to cause damage to PLN.

47. PLN seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. PLN seeks punitive damages against the individual Defendants in their individual capacities.

**Count III – 42 U.S.C. § 1983**  
***Violation of the Fourteenth Amendment (Equal Protection)***

48. PLN realleges and incorporates the allegations of Paragraphs 1 through 47 of the Complaint as if fully set forth herein.

49. By permitting some publications to be delivered to prisoners at the Otero Prison, while specifically excluding publications sent by PLN and other senders, Defendants violate PLN's equal protection rights as guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

50. PLN is suffering ongoing and irreparable harm as a direct result of Defendants' discriminatory treatment, and the harm will continue unless the conduct is enjoined by this Court.

51. Defendants' conduct was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to PLN's rights.

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

53. Defendants' acts described above have caused damages to PLN, and if not enjoined, will continue to cause damage to PLN.

54. PLN seeks declaratory and injunctive relief, and nominal and compensatory damages against all Defendants. PLN seeks punitive damages against the individual Defendants in their individual capacities.

## **VI. REQUEST FOR RELIEF**

WHEREFORE, the Plaintiff respectfully requests relief as follows:

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

56. Nominal damages for each violation of PLN's rights by the Defendants.

57. A preliminary and permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief.

58. Compensatory damages in an amount to be proved at trial.

59. Punitive damages against the individual Defendants in an amount to be proved at trial.

60. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988, and under other applicable law.

61. Any other such relief that this Court deems just and equitable.

#### **VII. 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.

Respectfully Submitted,

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*\*Pro Hac Vice* applications to be filed