

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LONG TIMERS GROUP, INC., a Maine)
Corporation, with its principal place of)
business in the Town of Warren, County of)
Knox, and State of Maine, individually)
and behalf of all others similarly situated;)

NADIM HAQUE, an inmate at the Maine)
State Prison, in the Town of Warren, County)
of Knox and State of Maine, individually)
and on behalf of all others similarly situated,)
and)

TYSON ANDREWS, an inmate at the)
Maine State Prison, in the Town of Warren,)
County of Knox and State of Maine,)
individually and on behalf of all others)
and behalf of all others similarly situated,)

Plaintiffs,)

v.)

Civil Docket No. 08-_____

MARTIN MAGNUSSON, in his capacity)
as the Commissioner of the Maine)
Department of Corrections, in the City of)
Augusta, County of Kennebec and State of)
Maine;)

JEFFREY MERRILL, in his capacity as)
Warden of the Maine State Prison, in the)
Town of Warren, County of Knox and State)
Maine;)

ALBERT BARLOW, in his capacity as)
Deputy Warden of the Maine State Prison,)
in the Town of Warren, County of Knox and)
State of Maine;)

ROBERT COSTIGAN, in his capacity as)
 the Grievance Review Officer and Prison)
 Administrative Coordinator at the Maine)
 State Prison and the Bolduc Correctional)
 Facility, in the Town of Warren, County of)
 Knox, and State of Maine;)
)
 RAYMOND FELT, in his capacity as the)
 Grievance Review Officer at the Bolduc)
 Correctional Facility, in the Town of Warren,)
 County of Knox, and State of Maine; and)
)
 JOHN DOES 1-10 and JANE DOES 1-10,)
 in their capacities as Mail Room Clerks and)
 Supervisors, Media Review Officers and)
 Property Officers at the Maine State Prison)
 and the Bolduc Correctional Facility, in the)
 Town of Warren, County of Knox, and State)
 of Maine,)
 Defendants.)

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The above-named Plaintiffs, LONG TIMERS GROUP, INC. (“LTG”), NADIM HAQUE and TYSON ANDREWS, individually and on behalf of all other inmates similarly situated, by and through counsel, as and for a Class Action Complaint for Declaratory and Injunctive Relief against the above-named Defendants, MARTIN MAGNUSSON, in his capacity as Commissioner of said Maine Department of Corrections; JEFFREY MERRILL, in his capacity as the Warden of the Maine State Prison; ALBERT BARLOW, in his capacity as the Deputy Warden of the Maine State Prison; ROBERT COSTIGAN, in his capacity as the Grievance Review Officer and Prison Administrative Coordinator at the Maine State Prison and the Bolduc Correctional Facility; RAYMOND FELT, in his capacity as the Grievance Review Officer at the Bolduc Correctional Facility; and JOHN DOES 1-10 and JANE DOES 1-10, in their capacities

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as Mail Room Clerks and Supervisors, Media Review Officers and Property Officers at the Maine State Prison and the Bolduc Correctional Facility, hereby allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs allege that the Defendants have been and are violating the First and Fourteenth Amendment constitutional rights of all inmates at the Maine State Prison (“MSP”) and Bolduc Correctional Facility (“BCF”) and Mr. Haque alleges a further claim under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), through the enactment and implementation of Prisoner Mail Policy 21.2, adopted by Defendant MARTIN MAGNUSSON on or about August 4, 2003, by authorizing and allowing the withholding, opening, return and/or destruction of incoming mail addressed to inmates at the MSP and the BCF. Plaintiffs seek both declaratory and injunctive relief, for themselves and for all other individuals similarly situated, to stop these ongoing violations of Federal law. Plaintiffs bring this civil rights action pursuant to 42 U.S.C. §§ 1983, 1997e and 2000cc, *et seq.*, and Rule 23, Fed.R.Civ.Pro.

PARTIES

2. The Plaintiff, LTG, is a Maine corporation, with its principal place of business located at the MSP, 807 Cushing Road, in Warren, Maine. LTG is a non-profit organization dedicated to advocating for the rights of inmates in the MSP system. LTG currently has approximately 50 members, some of whom reside at the MSP and some at the BCF, which is located at 516 Cushing Road, in Warren, Maine. LTG brings this action on behalf of itself, its adversely-affected members, and on behalf of all other inmates similarly situated.

3. The Plaintiff, Nadim Haque, is an inmate at the MSP in Warren, Maine. He is an

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Indian citizen and a practicing member of the Muslim faith. Mr. Haque brings this action individually and on behalf of all other inmates similarly situated.

4. The Plaintiff, Tyson Andrews, is an inmate at the MSP in Warren, Maine. Mr. Andrews brings this action individually and on behalf of all other inmates similarly situated.

5. The Defendant, Martin Magnusson, in his capacity as the Commissioner of the Maine Department of Corrections (“MDOC”), is responsible, *inter alia*, for all actions of MDOC, including promulgation and implementation of rules, regulations and policies involving prisoner communications, including the receipt of mail. In that capacity, Defendant Magnusson is responsible, both directly and indirectly, for the hiring and training of all MDOC employees. In that capacity, Defendant Magnusson is responsible, either directly or through persons acting under his authority, for third level review of all inmate grievances, which represent the final level of administrative review.

6. The Defendant, Jeffery Merrill, in his capacity as the Warden of MSP, is responsible, *inter alia*, for all actions of MSP, including implementation of rules, regulations and policies involving prisoner communications, including the receipt of mail. In that capacity, Defendant Merrill is responsible, either directly or through persons acting under his authority, for second level review of all inmate grievances at MSP.

7. The Defendant, Albert Barlow, in his capacity as the Deputy Warden of MSP, is responsible, *inter alia*, for all actions of BCF, including implementation of rules, regulations and policies involving prisoner communications, including the receipt of mail. In that capacity, Defendant Barlow is responsible, either directly or through persons acting under his authority, for second level review of all inmate grievances at BCF.

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8. The Defendant, Robert Costigan, in his capacity as the Grievance Review Officer and Prison Administrative Coordinator at MSP and BCF, is responsible, either directly or through persons acting under his authority, for first level review of all inmate grievances.

9. The Defendant, Raymond Felt, in his capacity as the Grievance Review Officer at BCF, is responsible, either directly or through persons acting under his authority, for first level review of all inmate grievances.

10. John Does 1-10, and Jane Does 1-10, in their capacity as Mail Room Clerks and Supervisors, Media Review Officers and Property Officers at MSP and BCF, are initially responsible for implementation of Prisoner Mail Policy 21.2 .

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (civil actions arising under U.S. Const.); § 1343 (civil rights actions); § 2201 (declaratory relief); § 2202 (injunctive relief); 42 U.S.C. § 1983 (civil rights actions); § 1997e (PLRA Action); and § 2000cc, *et seq.* (RLUIPA action).

12. Venue is proper in this judicial district pursuant to 42 U.S.C. §§ 1983 and 2000cc, *et seq.*, because the alleged civil rights and religious violations are occurring in this district, and pursuant to 28 U.S.C. § 1391(b), as the MDOC, the MSP and the BCF are located in this district and the events giving rise to LTG's, Mr. Haque's and Mr. Andrews' claims occur in this district.

STATUTORY BACKGROUND: 42 U.S.C. §§ 1983 and 2000cc, et seq.

13. The civil rights action under 42 U.S.C. § 1983 is designed to provide a means of redress for “the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” of the United States or any State.

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14. The Religious Land Use and Institutionalized Persons Act of 2000 under 42 U.S.C. 2000cc, *et seq.*, is designed to preclude a State or local government from imposing a substantial burden on the religious exercise of a person residing in or confined to an institution unless the government can show that the burden furthers a compelling governmental interest and does so by the least restrictive means. 42 U.S.C. § 2000cc-1(a)(1)-(2).

15. As this is a “civil proceeding arising under Federal law with respect to . . . the effects of actions by government officials on the lives of persons confined in prison,” it is a prison conditions case for purposes of the Prison Litigation Reform Act. 18 U.S.C. § 3626(g)(2).

REQUEST FOR CLASS ACTION CERTIFICATION

16. Plaintiffs bring this action on behalf of themselves and on behalf of all other individuals similarly situated and, as such, seek class action certification pursuant to Rule 23, Fed.R.Civ.Pro. The class that they seek to represent is the adult inmate population at MDOC.

17. Plaintiffs have contemporaneously with the filing of this Complaint filed a Motion for Class Action Certification pursuant to Fed.R.Civ.P. 23(a).

18. Fed.R.Civ.P. 23 (a) requires four condition precedents to class certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of the named parties to represent the class.

19. Plaintiffs are all inmates within the MDOC.

20. The adult prison population at all MDOC facilities approximates 2,219 inmates (male and female) as of August 25, 2008. That class is so numerous that joinder of all members is impracticable.

21. All adult inmates within the MDOC are subject to the provisions of Prisoner Mail

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Policy 21.2, which policy was adopted by Defendant Magnusson on or about August 4, 2003.

22. Plaintiffs are representative of all inmates subject to Prisoner Mail Policy 21.2 who would otherwise be eligible to join this lawsuit.

23. Plaintiffs can fairly and adequately represent and protect the interests of the class.

24. Plaintiffs have either completely exhausted their administrative remedies with respect to Prisoner Mail Policy 21.2 or have been thwarted by the Defendants in their efforts to so do.

STATEMENT OF FACTS

25. On August 4, 2003, Defendant Magnusson approved, adopted and implemented Prisoner Mail Policy 21.2 (as revised June 21, 2004)(Attached hereto as Exhibit A), which policy states, in part:

Each facility shall maintain practices to inspect, read, and restrict prisoner mail as necessary to prevent the introduction of contraband, ensure the safety of prisoners, staff, and others, ensure security, maintain orderly management of the facility, enforce facility rules, and prevent criminal activity.

Defendant Magnusson adopted Prisoner Mail Policy 21.2 pursuant to the authority contained in Title 34-A M.R.S.A. § 1403 (Powers of the Commissioner). The Policy is applicable to all MDOC Adult Facilities, which includes MSP and BCF.

26. Prisoner Mail Policy 21.2 provides, generally, that subject to exceptions contained in the Policy, “a prisoner shall be allowed to send mail to and receive mail from anyone the prisoner wishes . . .” Procedure A.1 (Prisoner Mail, General).

27. Prisoner Mail Policy 21.2 provides, *inter alia*, that the Chief Administrative Officer, or designee, may read general correspondence, incoming and outgoing, only “when

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there is a reasonable suspicion that the correspondence contains information related to criminal activity, violation of the facilities rules, or a risk to the safety of persons, security, or orderly management of the facility.” Procedure A.9. The term “reasonable suspicion” is used throughout Prisoner Mail Policy 21.2 as a triggering event which allows for the withholding, retention and/or destruction of incoming and outgoing inmate mail. Nowhere in Prisoner Mail Policy 21.2 are the words “reasonable suspicion” defined or explained.

28. Prisoner Mail Policy 21.2 provides, *inter alia*, that “[o]nly the Chief Administrative Officer, or designee, may read correspondence sent to or received by a prisoner.” Procedure A.10. Nowhere in Prisoner Mail Policy 21.2 is the word “designee” defined. Nor has the MDOC identified the “designee” or list of “designees” to the Plaintiffs.

29. Prisoner Mail Policy 21.2 provides, *inter alia*, “[i]f contraband is found in incoming mail that has no substantial monetary value (e.g., contraband greeting cards, writing materials, stickers, food items, paper clips, etc.), mail or other designated staff shall immediately dispose of the item(s)”. Procedure A.12. Nowhere in Prisoner Mail Policy 21.2 are the words “substantial monetary value” defined. Moreover, the Policy fails to define incoming mail that may have a “personal” or “inherent” value to Plaintiffs, but no substantial monetary value.

30. Prisoner Mail Policy 21.2 provides, *inter alia*, that “[a]ll incoming general mail, except for postcards, must have a verifiable name and a verifiable return address . . .”, and that “[a]ny incoming general mail without a verifiable return address (with or without a name) may be opened or may be immediately disposed of without being opened”. Procedure C.2, C.5. Nowhere in Prisoner Mail Policy 21.2 are the words “verifiable name” or “verifiable address” defined or explained.

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31. Prisoner Mail Policy 21.2 provides, *inter alia*, that “mail or other designated staff shall open and inspect all incoming general correspondence envelopes to check for checks, money orders, or contraband.” Procedure C.1 (Incoming General Correspondence). Nowhere in Prisoner Mail Policy 21.2 is the word “contraband” defined or explained.

32. In general, Prisoner Mail Policy 21.2 provides for the the withholding, opening, return and/or destruction of incoming general mail addressed to inmates at the MSP and the BCF. Procedure A.12, 13, 17, 18, 20; C.1, 2, 3, 4, 5; E.1, 3, 4; F.1, 2. Moreover, the Policy allows for subject matter limitations on Internet materials, computer-generated materials and photocopied materials in violation of Plaintiffs’ First Amendment rights.

33. Prisoner Mail Policy 21.2 provides, *inter alia*, that “[o]nly magazines, newspapers or books sent from publishers or commercial distributors may be received by prisoners.” Procedure E.1. This Policy unconstitutionally prohibits Plaintiffs from receiving magazines, newspapers and/or books from individuals or organizations (for profit and non-profit) who publish on the Internet. Moreover, the policy, by allowing only magazines, newspapers and/or books from publishers and commercial distributors, unconstitutionally prohibits Plaintiffs from receiving these items from non-profit organizations. In addition, the Policy unconstitutionally allows for the immediate destruction of these materials without Due Process of law.

34. Prisoner Mail Policy 21.2 provides, *inter alia*, that “[a]ny incoming general mail without a verifiable address (with or without a name) may be opened or may be immediately disposed of without being opened.” Procedure C.5. Nowhere in Prisoner Mail Policy 21.2 are the words “verifiable return address” defined.

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35. Since the implementation of Prisoner Mail Policy 21.2, Plaintiffs have routinely had their mail improperly withheld, confiscated, and/or destroyed by employees of MSP and BCF. Moreover, in those instances where Plaintiffs have been afforded notice that their mail has been destroyed, that destruction has already occurred and Plaintiffs are given no notice and opportunity to be heard before that action is taken.

36. In addition, upon information and belief, incoming mail is not delivered to the Plaintiffs within the time frames set forth in Prisoner Mail Policy 21.2. Procedure A.20

37. Among the items of mail that have been withheld, confiscated and/or destroyed by Defendants are religious books and calendars, informational guides, prepaid magazine subscriptions, articles from newspapers and magazines, computer-generated information, photocopied information, material of a “mature content” nature and photographs from family members or friends.

38. For example, Plaintiff Haque has had withheld and/or confiscated Islamic Calendars (on three or more occasions); catalogues on books of Islam (at least two times); photocopies of pages from a book on commentaries on the Holy Qur’an; newspaper clippings, articles from magazines and computer-generated printouts of newspaper and magazine articles of general interest; an issue of *Prison Legal News*, a monthly news magazine dealing with issues related to prisons and prisoners; newsletters from the Coalition for Prisoners’ Rights, a non-profit organization dedicated to prison law and prisoner issues; and newsletters and cards from Maine Books to Prisoners, a non-profit organization that distributes free books and newsletters to inmates in Maine. In each instance, Plaintiff Haque exhausted, unsuccessfully, his administrative remedies.

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39. As another example, on or about March 23, 2007, Christopher Carr, an inmate at MSP and a member of the LTG, donated \$35.00 to the EarthWatch Institute, a national environmental organization dedicated to finding and supporting sustainable development worldwide. As a new member, Mr. Carr was entitled to receive copies of the organization's magazine, the *Earthwatch Journal*; its monthly newsletter, *The Expeditioner*; and a copy of the *Expedition Guide*, which provides members with information on over 130 projects with which EarthWatch is currently involved. Mr. Carr tried three times, unsuccessfully, to receive his copy of the *Expedition Guide*. He solicited the help of both the Inmate Advocate and his Case Worker, to no avail. Mr. Carr also attempted to exhaust, unsuccessfully, his administrative remedies, but on four separate occasions, MDOC employees, including Defendant Costigan, refused to sign his grievance which is a condition precedent to bringing an administrative grievance to the MDOC. Furthermore, MDOC Mail Room staff failed to provide the copy of *Expedition Guide* they denied to Mr. Carr to the Media Review Board for evaluation.

40. Upon information and belief, most, if not all, of the other members of the LTG have at one time or another had incoming mail of one type or another withheld, confiscated or destroyed by the Defendants, or persons working under their direction and control.

41. In February 2008, Plaintiff Andrews was advised that a letter from his four year old daughter that had been "taped" was not allowed. When Plaintiff Andrews made inquiry to the Mail Room at MSP about the letter, he was advised that "the letter had been returned to the sender because it appeared to be from a child. It looked like scribbles and was totally covered in tape. According to policy, it should have been disposed of. Instead I returned it to the sender so that they would know it was not allowed the next time." When Plaintiff Andrews grieved the

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non-delivery of his daughter's letter, he was advised by Defendant Costigan, the Grievance Review Officer, in denying the grievance, that "Staff could not appropriately inspect the letter and the tape could have contained other substances." A Level Two Grievance to Defendant Merrill, and a Level Three Grievance to Defendant Magnusson, concurred with Defendant Costigan's First Level Grievance denial. Plaintiff Andrews has exhausted, unsuccessfully, his administrative remedies.

42. Related to Prisoner Mail Policy 21.2 is the MDOC's Prisoner Allowable Property Policy 10.1, relating to materials (*e.g.*, magazines, compact disks ("CDs"), video games) that may contain "mature" content, defined as "content suitable for persons ages 17 and older." (Attached hereto as Exhibit B). Upon information and belief, the MDOC uses rating systems created by the music and video game industries, such as the Entertainment Software Ratings Board, to prohibit music CDs and video games containing a rating higher than "Teen" or "T". Any such items with a rating of "Mature" or "M", or higher, are prohibited. Prisoner Allowable Property Policy 10.1, Procedure A.2 and Attachment A, thereto. This Policy is arbitrary and capricious, denies Plaintiffs Due Process and Equal Protection as it is applied by the MDOC, and is otherwise unconstitutional.

43. In denying Plaintiffs' administrative grievances, the Defendants, or their employees, have consistently maintained that they do not have the resources to inspect every piece of mail that comes into either MSP or BCF to determine whether it meets the provisions of Prisoner Mail Policy 21.2 or Prisoner Allowable Property Policy 10.1. Accordingly, the Defendants, or their employees, in violation of the Plaintiffs' Due Process rights, Equal Protection rights, First and Fourteenth Amendment rights under the United States Constitution,

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civil rights under 42 U.S.C. § 1983 and Plaintiff Haque's additional rights under 42 U.S.C. § 2000cc, *et seq.*, unilaterally decide and determine what inmate mail gets withheld, confiscated and/or destroyed.

CLAIM FOR RELIEF

44. Each and every allegation set forth in this Complaint is incorporated herein by reference.

45. The Defendants' promulgation and implementation of Prisoner Mail Policy 21.2 is in direct violation of Plaintiffs' First and Fourteenth Amendment rights and constitutes a violation of their civil rights under 42 U.S.C. § 1983.

46. The Plaintiffs are injured by the Defendants' ongoing violations of the Civil Rights Act, 42 U.S.C. § 1983.

47. Plaintiff Haque is further injured by the Defendants' ongoing violations of RLUIPA, 42 U.S.C. § 2000cc, *et seq.*

48. The Plaintiffs are further injured by Prisoner Mail Policy 21.2 because it denies them Due Process of law in that the Policy does not provide Plaintiffs with notice and opportunity to be heard before the destruction of property occurs.

49. The Plaintiffs are further injured by Prisoner Mail Policy 21.2 because it denies them Equal Protection under the law by prohibiting Plaintiffs from receiving mail where such prohibition serves no legitimate penalogical purpose.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court enter judgment providing the following relief:

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(1) A preliminary injunction enjoining the Defendants from continuing to violate the Plaintiffs' civil rights under 42 U.S.C. § 1983 and Plaintiff Haque's additional rights under 42 U.S.C. § 2000cc, *et seq.*, by promulgating, implementing and authorizing Prisoner Mail Policy 21.2 and Prisoner Allowable Property Policy 10.1(A.2) and Attachment A, thereto;

(2) A declaratory judgment that the Defendants are violating Plaintiffs' civil rights under 42 U.S.C. § 1983 and Plaintiff Haque's additional rights under 42 U.S.C. § 2000cc, *et seq.*, by promulgating, implementing and authorizing Prisoner Mail Policy 21.2 and Prisoner Allowable Property Policy 10.1(A.2) and Attachment A, thereto;

(3) An order permanently enjoining the Defendants from continuing to violate the Plaintiffs' civil rights under 42 U.S.C. § 1983 and Plaintiff Haque's additional rights under 42 U.S.C. § 2000cc, *et seq.*, by promulgating, implementing and authorizing Prisoner Mail Policy 21.2 and Prisoner Allowable Property Policy 10.1(A.2) and Attachment A, thereto;

(4) An order awarding the Plaintiffs its reasonable fees, costs, expenses and disbursements, including attorneys' fees, associated with this litigation, pursuant to 42 U.S.C. §§ 1988, 1997(e); and

(5) An order providing such other relief as the Court deems just and proper.

Dated at Portland, Maine, this 15th day of September, 2008.

/s/Bruce M. Merrill
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