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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

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

17 Plaintiff(s),

18 v.

19 COUNTY OF TULARE; MIKE
20 BOUDREAUX, individually and in his
21 capacity as Sheriff-Coroner of the County of
22 Tulare; DOES 1-20, in their individual and
23 official capacities,

24 Defendant(s).

Case No. 1:15-CV-01650-SAB

STIPULATION AND [PROPOSED]
CONSENT DECREE

Judge: Hon. John A. Mendez

25 The parties to this action, represented by counsel, stipulate to and request entry of a consent
26 decree by the court as follows:

- 27 1. On October 29, 2015, Plaintiff Prison Legal News, a Project of the Human
28 Rights Defense Center ("Plaintiff") filed suit in the above entitled matter seeking injunctive
and declaratory relief, money damages, attorney's fees and costs. Plaintiff's complaint
alleges an unlawful and unconstitutional custom, practice, or policy regarding the delivery
of incoming publications and correspondence to prisoners at the County of Tulare jails. The
complaint alleges violations of the First and Fourteenth Amendments to the United States
Constitution, pursuant to 42 U.S.C. § 1983.

1 2. Shortly after becoming aware of the Plaintiff's filed Complaint, Defendant
2 responded immediately by implementing a new mail policy in connection with delivery of
3 the publication.

4 3. On December 7, 2015, Defendants County of Tulare, et al., (collectively
5 "Defendants") filed an answer denying the allegations of the complaint and raising various
6 affirmative defenses.

7 4. On December 16, 2015, the Court granted Plaintiff's motion for preliminary
8 injunction in part, and denied in part.

9 5. Plaintiff and Defendants (collectively "Parties") agree that Defendants have
10 disputed, and continue to dispute and deny, liability. However, in order to avoid the expense,
11 delay, uncertainty, and burden of litigation the Parties agree to the entry of this consent
12 decree.

13 6. The Parties agree that this consent decree resolves all claims for injunctive
14 relief alleged in the Plaintiff's Complaint. By this consent decree, together with payment of
15 the sum of fifteen thousand dollars (\$15,000.00), the Parties agree that all equitable and
16 damages claims alleged by Plaintiff are fully and finally resolved. The Parties agree that
17 Plaintiff will execute a release of all claims, and that Defendant will remit payment to
18 Plaintiff, within 45 days of the entry of this consent decree by the Court. If payment is not
19 made within (60) days, interest shall accrue pursuant to 28 U.S.C. §1961 from the date of
20 entry of this order. The Parties agree that Plaintiff will submit a petition for attorneys' fees
21 and costs for work performed in this case to the Court, and nothing in this consent decree
22 affects or limits its right to do so. The parties agree that the court shall award Plaintiff such
23 fees and costs pursuant to 42 U.S.C. section 1988 as the prevailing party.

24 7. DEFINITIONS:

25 a. As used herein, STAPLES shall mean the type of light-duty small wire
26 fasteners commonly used to attach a few sheets of paper, and used by Plaintiff to bind
27 the sheets of its monthly publication.

28 b. As used herein, PUBLISHER shall mean any publisher, commercial or non-
profit distributor of printed materials, or book store that does mail order business.

1 8. The Parties agree that Defendants and their successors, officers, agents,
2 servants, and employees, and all others in active concert or participation with them, shall no
3 refuse to deliver publications, correspondence, or documents sent by any PUBLISHER to
4 prisoners at Defendants' jails on the ground that these publications, correspondence, or
5 documents contain STAPLES, provided that Defendants may comply by removing the
6 STAPLES.

7 9. The Parties agree that Defendants shall provide adequate written notice and an
8 administrative review process to the PUBLISHER of any refusal to deliver any publication,
9 correspondence, or document sent from a PUBLISHER to a prisoner at the Defendants' jails
10 The administrative review process shall include the PUBLISHER's right to have its appeal,
11 complaint, or inquiry considered and resolved by a decision maker other than the person who
12 originally refused to deliver the publication or mailing in question. Defendants agree to
13 provide a written response to all publication censorship appeals within 15 business days of
14 receiving the appeal.

15 10. The Parties agree that Defendants shall include an explanation of the terms of
16 the Sheriff's New Mail Policy in relation to delivery of publications and the administrative
17 review process for refused mailings in the Tulare County Jail Handbook for delivery to
18 prisoners and on its website.

19 11. Nothing in this Consent Decree is intended either to create any rights in or
20 grant any cause of action to any person not a party to this Consent Decree, or to release or
21 waive any claim, cause of action, demand, or defense in law or equity that any party to this
22 Consent Decree may have against any person(s) or entity not a party to this Consent Decree.

23 12. If Plaintiff identifies, in future, a violation of this order Plaintiff shall give
24 prompt notice to Defendants to cure said violation. The Parties shall meet and confer (either
25 telephonically or in person) at the earliest possible time in a good-faith effort to resolve the
26 claim before seeking relief from the Court. If the violation is not cured by this meet and
27 confer process between the Parties, Defendants shall be liable for the reasonable attorney's
28 fees and costs Plaintiff incurred in proving the violation.

1 13. The Court finds that this case concerns the First and Fourteenth Amendment
2 rights of a publisher and is therefore not a case concerning prison conditions as defined in the
3 Prison Litigation Reform Act of 1996. The Court further finds that the relief herein ordered
4 is narrowly drawn, extends no further than necessary to correct the harm alleged by Plaintiff
5 requiring injunctive relief, and is the least intrusive means necessary to correct that alleged
6 harm.

7 14. The Court retains jurisdiction of this matter for the purpose of enforcement of
8 its Order until terminated upon motion made by either party.

9 15. No person who has notice of this consent decree shall fail to comply with it,
10 nor shall any person subvert the injunction by any sham, indirection, or other artifice.

11
12 Dated: 7-1-16

MIKE BOUDREAUX
Tulare County Sheriff

13
14 By: Mike Boudreaux

15
16 Dated: 6/28/2016

HUMAN RIGHTS DEFENSE CENTER

17
18 By: Paul Wright
19 Paul Wright
20 Editor and Executive Director

21 APPROVED AS TO FORM AND CONTENT

22 Dated: 7/1/16

KATHLEEN BALES-LANGE
Tulare County Counsel

23
24 By: Kevin Stimmel
25 Kevin Stimmel
26 Deputy County Counsel
27 Attorney for Defendants County of Tulare
28 and Mike Boudreaux

1 APPROVED AS TO FORM AND CONTENT

2 Dated: 6/30/16

ROSEN BIEN GALVAN & GRUNFELD LLP

3 By: 

4 Lisa Ells

Attorney for Plaintiff Prison Legal News

6 IT IS SO ORDERED.

9 DATED: _____

John A. Mendez,
United States District Court Judge