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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

CATALYST, a registered name of
NEW MOON PUBLISHING, INC., a
Utah corporation, PRISONER'S
LEGAL NEWS, a non-profit
Washington corporation, and
ERIC LEE PIPER,

Plaintiffs,
vs.

BOX ELDER COUNTY, a government
entity, D. LEON JENSEN,
Sheriff of Box Elder County,
Sgt. CURTIS HANSEN, Commander
Box Elder County Jail and JOHN
DOES I - X, Officers of the
Box Elder County Jail,

Defendants.

C O M P L A I N T

Case No.

1:98-CV-_____

Plaintiffs CATALYST, a registered name of New Moon Press,
Inc., ERIC LEE PIPER and PRISONER'S LEGAL NEWS, a Washington non-

profit corporation, by and through counsel, Brian M. Barnard and James L. Harris, Jr. complain, state, allege and claim as causes of action against defendants as follows:

I. Introduction

1. This 42 U.S.C. § 1983 ("§ 1983") action seeks equitable relief from defendants' practices and enforcement of an unconstitutional written and unwritten policies of the defendants which prevents plaintiffs CATALYST and PRISONER'S LEGAL NEWS ("PLN") from distributing and plaintiff ERIC LEE PIPER ("Piper") from receiving certain publications. That policy is referred to hereinafter as the "no publication policy." The "no publication policy is unlawful under the first (the "first amendment") and fourteenth (the "fourteenth amendment") amendments of the United States Constitution and Art. I, § 7 and § 15 of the Utah Constitution ("Art. I, § 7 & § 15"). Plaintiffs seek money damages and equitable relief from the "no publications policy" which restricts the plaintiffs' rights under the federal and state constitutional rights to free expression and deprives plaintiffs of property and liberty interests without due process.

II. Jurisdiction and Venue

2. This Court has jurisdiction over this action invoking federal statutory and constitutional rights pursuant to 28 U.S.C. § 1331, § 1343(a)(3), and § 1343(a)(4).

3. This Court has jurisdiction to grant declaratory relief in this action pursuant to 28 U.S.C. § 2201.

4. This Court has supplemental jurisdiction over plaintiffs' state constitutional claims pursuant to 28 U.S.C. § 1367(a). The plaintiffs' state claims are related to, based upon the same operative facts and form part of the same case and controversy as their federal constitutional claims.

5. Venue is proper in the Northern Division of the United States District Court for the District of Utah pursuant to 28 U.S.C. § 1391(b). All conduct complained of herein occurred or will occur in Box Elder County, Utah and the Northern Division. The Box Elder County Jail is located in Box Elder County, Utah and the Northern Division. The parties defendant to this action reside and/or have official duties in the Northern Division of the District of Utah. Box Elder County maintains its principal place of business in the Northern Division of Utah. The individual defendants are sued personally and as government agents.

6. The individual plaintiff has no adequate administrative remedies available to him through the Box Elder County Jail. Defendants' action have precluded the individual plaintiff from pursuing any administrative remedy. Defendants have failed and refused to deliver to Piper his editions of the *PLN* and *CATALYST*. Defendants have not given any notice to Piper of that refusal.

Because of defendants' refusal and/or failure to give Piper notice of their actions, defendants have prevented Piper from timely filing an administrative grievance.

7. The individual plaintiff has no adequate administrative remedies available to him through the Box Elder County Jail. There is no meaningful grievance process in the Box Elder County Jail. Plaintiff Piper has attempted, to no avail, to remedy his complaints through the administrative grievance system of the Box Elder County Jail.

III. Parties

8. **ERIC LEE PIPER** is an adult citizen and resident of Box Elder County, State of Utah. He is a sentenced prisoner incarcerated by the Utah Department of Corrections but currently housed at the Box Elder County Jail, Brigham City, Utah. He has been incarcerated under the jurisdiction of the UDOC for more than six (6) months. He has resided at the Box Elder County Jail for approximately three (3) months.

9. **PRISONER'S LEGAL NEWS ("PLN")** a non-profit Washington corporation has offices in Seattle, Washington and publishes and distributes nation-wide a monthly magazine known as *Prison Legal News* ("PLN").

10. **CATALYST** is a registered name of New Moon Press, Inc. a Utah corporation which has offices in Salt Lake City, Utah and publishes and distributes in Salt Lake and other counties a monthly magazine by that name. CATALYST mails monthly editions of its magazine to subscribers in Utah and in other states.

11. **D. LEON JENSEN** is the duly elected and serving Sheriff of Box Elder Jail. As such he is ultimately responsible for supervising the Box Elder County Jail and its staff and for formulating, adopting, implementing and enforcing all Box Elder County Jail rules and policies, including those regulating newspapers, magazines and other printed materials at the Box Elder County Jail. Sheriff JENSEN is the policy maker for Box Elder County with regard to the operations of the Box Elder County Jail. He is an employee, officer and/or agent of Box Elder County. He is the immediate supervisor of defendant SGT. CURTIS HANSEN. He is the supervisor of JOHN DOES I - X.

12. **SGT. CURTIS HANSEN** is the duly appointed and serving Commander of Box Elder Jail. As such he is ultimately responsible for supervising the Box Elder County Jail and its staff and for formulating, adopting, implementing and enforcing all Box Elder County Jail rules and policies, including those regulating newspapers, magazines and other printed materials at the Box Elder County Jail. He is an employee, officer or agent of Box

Elder County. He is the immediate supervisor of JOHN DOES I - X, defendants herein.

13. JOHN DOES I - X are officers and agents of the other defendants. Their full true and correct names are unknown to plaintiff at this time. When plaintiffs discover the full, true and correct names of these defendants, plaintiffs will amend their complaint in this action. These defendants and each of them are involved in the receipt and processing of mail at the Box Elder County Jail sent by PLN and CATALYST and to be received by Piper and other inmates of the Box Elder County Jail. They enforce the "no publications policy" on a day-to-day basis at the Box Elder County Jail.

IV. Facts

14. At all relevant times, defendants were, are and will be acting under color of state law, custom and usage, and were and are state actors.

15. Defendants and/or their officers and agents in control of the Box Elder County Jail have enacted and are enforcing practices, rules and regulations governing distribution of and access to certain publications. Defendants and/or their officers and agents in control of the Box Elder County Jail have enacted and are enforcing certain unwritten practices governing distri-

bution of and access to certain publications. As a result of said practices, and the unwritten and written policy of the defendants, plaintiff Piper and other inmates are denied certain publications. As a result of that practice and policy at the Box Elder County Jail, plaintiffs CATALYST and PLN are denied the ability to deliver their publications to inmates such as plaintiff Piper.

16. The defendants' "no publications policy" prohibits the plaintiff Piper and other inmates from ordering, receiving, possessing or reading any written or printed materials other than those items that are currently in the jail library of the Box Elder Jail.

17. The defendants' "no publications policy" prohibits the plaintiff Piper and other inmates from receiving any written or printed materials (magazines, newspapers, including the "PLN" and CATALYST) though the mail delivered by the United States Postal Service ("USPS").

18. The defendants' "no publications policy" and practice prohibits the plaintiff Piper and other inmates from having in their possession any written or printed reading materials other than those found in the library of the Box Elder County Jail.

19. The defendants' "no publications policy" prohibits the plaintiffs CATALYST and PLN from sending to Piper and other

inmates their written or printed materials (magazines, newspapers, including CATALYST and the "PLN") though the USPS.

20. Defendants' "no publications policy" bans from the Box Elder County Jail reading materials in the nature of a paid-for subscription.

21. There is no legitimate basis for defendants' total blanket ban on all publication, magazines, books, materials, etc. sent though the USPS.

22. The "no publications policy," developed and enacted by defendants and enforced by them, deprives plaintiffs of their constitutional rights of free expression and due process rights.

23. The "no publications policy" developed by defendants and enforced by them is not reasonably related to any legitimate penological interests.

24. No valid rational connection exists between defendants' "no publications policy" and any legitimate state interests which the policy is intended to protect.

25. Defendants' "no publications policy" leaves Box Elder County Jail inmates and plaintiffs with no alternative means of exercising free expression rights by receipt, possession and enjoyment of legal reading and other materials through the mail.

26. Accommodation of the free expression and due process rights of the plaintiffs and Box Elder County Jail inmates with

respect to first amendment protected materials will not have significant impact at the Box Elder County Jail.

27. Readily available alternatives exist to defendants' current "no publications policy" which, at a *de minimis* cost, could easily meet any legitimate or significant interests of defendants without sacrificing the plaintiffs' free expression and due process rights.

PRISON LEGAL NEWS

28. PLN publishes and distributes a monthly magazines (currently approximately 24 pages in length) which contains news articles and other materials of interest to inmates and correctional officials with regard to litigation affecting inmates. Litigation trends, recent court rulings and decisions, and other issues of interest to inmates and correctional officers are presented in monthly editions of *PLN*. *PLN* has been distributing its magazine for more than nine (9) years. The contents of *PLN* are beneficial to inmates and provide information as to inmates' legal rights and pending litigation.

29. Monthly editions of *PLN* are mailed by a bulk-rate mailer on behalf of PLN using the "Non-Profit Organization" mail rate through the USPS. They are mailed to persons, including inmates, throughout the United States and in Utah.

30. In early 1998, a paid subscription was entered for Piper to receive monthly editions of *PLN* from plaintiff, *PLN*. Effective October 1, 1998, those monthly editions were to be mailed to Piper at the Box Elder County Jail, P.O. Box 888, Brigham City, Utah 84302-0888.

31. On or about October 1, 1998 an edition of *PLN* (October 1998 Edition) was mailed by *PLN* and addressed to Piper at the Box Elder County Jail.

32. The October 1998 Edition of *PLN* was not received by Piper at the Box Elder County Jail.

CATALYST

33. *CATALYST* publishes and distributes a monthly magazine (currently approximately 56 pages in length) which contains news articles and other materials of interest to the general public addressing current issues including community, environment, arts and health. *CATALYST* has been distributing its magazine for more than ten (10) years.

34. Monthly editions of *CATALYST* are mailed to subscribers by a bulk-rate mailer on behalf of *CATALYST* through the USPS. They are mailed to persons, including inmates, throughout the United States and in Utah.

35. In 1998, a paid subscription was entered for Piper to receive monthly editions of CATALYST from plaintiff, CATALYST. Effective October 1, 1998, those monthly editions were to be mailed to Piper at the Box Elder County Jail, P.O. Box 888, Brigham City, Utah.

36. On or about October 1, 1998 an edition of CATALYST (October 1998 Edition) was mailed by CATALYST and addressed to Piper at the Box Elder County Jail.

37. The October 1998 Edition of CATALYST was not received by Piper at the Box Elder County Jail.

RECEIPT BY JAIL

38. The October 1998 editions of *PLN* and CATALYST were received by the staff at the Box Elder County Jail in early October, 1998 and was placed in Piper's property (to which he does not have access) held at the Box Elder County Jail.

39. The actual rejection of Piper's editions of CATALYST and *PLN* was made by JOHN DOE I - X acting on behalf of the other defendants and following the practices and policies of the other defendants.

40. Neither CATALYST nor *PLN* has received any information from defendants with regard to their refusal to deliver the October edition of *PLN* and CATALYST to Piper. Neither CATALYST

nor PLN has been informed of any appeal or rights that they may have to challenge the rejections and actions by defendants.

41. Defendants provided no notice to Piper that his October editions of CATALYST and PLN were refused.

V. Causes of Action

42. Defendants' "no publications policy" violates the free expression rights of the plaintiffs protected by the first amendment and Art. I, § 15 of the Utah Constitution.

43. Defendants' actions and policy have deprived Piper of the use of his property without due process through defendants' summary rejection of his subscription.

44. Defendants' actions and policy have deprived plaintiffs of a liberty interest without due process by not giving notice and by not allowing plaintiffs to challenge defendants' summary rejection of Piper's subscriptions.

45. Defendants' actions and "no publications policy" violates the due process protections afforded the plaintiffs by the fourteenth amendment and Art. I, § 7 of the Utah Constitution.

46. Plaintiffs have suffered, are suffering and will continue to suffer harm as a result of defendants' enforcement of defendants' "no publications policy."

VI. Damages

47. Plaintiff Piper is entitled to damages of at least one dollar (\$1.00) per day for each day he was subject to defendants' "no publications policy."

48. Plaintiff Piper is entitled to damages of at least one dollar (\$1.00) per day for each day he was without copies of his editions of *PLN* and *CATALYST* because of defendants' "no publications policy."

49. Plaintiff *PLN* is entitled to damages, in an amount to be determined at trial, (at least five hundred dollars (\$500.00)) because of the harm to its constitutionally protected rights.

50. Plaintiff *CATALYST* is entitled to damages, in an amount to be determined at trial, (at least (\$500.00) five hundred dollars) because of the harm to its constitutionally protected rights.

VII. Immediate Equitable Relief

51. Unless a temporary restraining order and a preliminary injunction are issued, plaintiffs will continue to suffer immediate and irreparable harm and a deprivation of their first amendment and due process rights as well as a violation of the rights secured by the Utah Constitution, Art. I, § 7 & § 15. Irreparable injury "is presumed to exist whenever First Amendment con-

stitutional rights are infringed." Albright v. Board of Education, 764 F.Supp. 687, 682 (D. Utah, 1987).

52. Plaintiffs are entitled to a prospective temporary restraining order, a preliminary injunction, a permanent injunction and declaratory relief from defendants' "no publications policy."

53. Plaintiff Piper is entitled to a prospective temporary restraining order, a preliminary injunction, a permanent injunction directing defendants to immediately allow him access to and possession of the October editions of CATALYST and PLN.

54. Certain JOHN DOES have become aware that plaintiff Piper was communicating with legal counsel with regard to defendants' challenged policies and practices and the filing of this action asserting his constitutional rights. Those JOHN DOES have acted against Piper in a retaliatory manner subjecting him to treatment not afforded other inmates, reading his legal mail, searching his cell for no reason while not searching other inmates' cells, etc.

55. Plaintiff Piper is fearful that defendants, their officers and agents will continue to retaliate as a result of his filing of this action asserting his constitutional rights.

56. Plaintiff requests and is entitled to an immediate temporary restraining order, a preliminary injunction and a permanent injunction against defendants, their officers and

agents from retaliating (or continuing to retaliate) against plaintiff Piper as a result of the filing of this action, and from them treating him in any way differently from any other inmate because of the filing and pursuit of this action.

VIII. Court Costs and Attorney Fees

57. The plaintiffs have incurred and/or will incur court costs and attorney fees in the pursuit of this matter.

58. Pursuant to 42 U.S.C. § 1983 and § 1988, plaintiffs are entitled to reimbursement for any such costs and fees incurred or to be incurred.

IX. Demand for Relief

WHEREFORE, plaintiffs demand the following relief:

1. A determination and declaratory judgment that the defendants' "no publications policy" violates the United States and the Utah Constitutions;

2. A temporary restraining order and a preliminary injunction during the pendency of this action enjoining defendants from continuing to enforce their "no publications policy" at Box Elder County Jail;

3. A temporary restraining order and a preliminary injunction during the pendency of this action enjoining defendants from retaliating or continuing to retaliate against plaintiff Piper as

a result of his questioning of the "no publications policy" at Box Elder County Jail and his filing and pursuit of this lawsuit;

4. A permanent and final order enjoining defendants henceforth from enforcing their "no publications policy" at the Box Elder County Jail;

5. Damages of at least one dollar (\$1.00) per day (or as determined by the Court) for each day plaintiff Piper was subjected to defendants' "no publications policy";

6. Damages of at least one dollar (\$1.00) per day (or as determined by the Court) for each day plaintiff Piper has been deprived of access to his editions of CATALYST and PLN pursuant to defendants' "no publications policy";

7. An immediate order that defendants are to deliver to Piper his October and November editions of PLN and CATALYST;

8. Damages to PLN in an amount to be determined at trial but the sum of at least five hundred dollars (\$500.00);

9. Damages to CATALYST in an amount to be determined at trial but the sum of at least five hundred dollars (\$500.00);

10. An award of plaintiffs' attorneys fees under 42 U.S.C. § 1988;

11. An award of plaintiffs' court costs; and,

12. For such other and further equitable and monetary

relief as the court deems just and proper.

DATED this 6TH day of NOVEMBER, 1998.

UTAH LEGAL CLINIC
Attorneys for PLAINTIFFS

by 

BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing COMPLAINT to:

JON J. BUNDERSON
Box Elder County Attorney
Attorneys for Defendants
45 NORTH 100 EAST STREET
Brigham City, Utah 84302

on the 6th day of NOVEMBER, 1998, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for PLAINTIFFS

by 

BRIAN M. BARNARD
JAMES L. HARRIS, Jr.