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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
14

15 HUMAN RIGHTS DEFENSE CENTER,

16 Plaintiff,

17 v.

18 COUNTY OF NAPA; DINA JOSE,
Director of Corrections, individually and in
19 her official capacity; and JOHN AND
JANE DOES 1-10, Staff, individually and
20 in their official capacities,

21 Defendants.
22

Case No. 20-cv-01296-JCS

**STIPULATION AND [PROPOSED]
CONSENT DECREE**

Judge: Hon. Joseph C. Spero

23 The parties to this action, represented by counsel, stipulate to and request entry of a
24 consent decree by the Court as follows:

25 1. On February 20, 2020, Plaintiff Human Rights Defense Center (“Plaintiff” or
26 “HRDC”) filed suit in the above entitled matter seeking injunctive and declaratory relief,
27 damages, attorney’s fees and costs. Plaintiff’s complaint alleges unlawful and
28 unconstitutional policies, customs, and/or practices regarding the delivery of incoming

1 publications and correspondence to incarcerated persons at the County of Napa's
2 Detention Center (the "NCDC"), and the provision of inadequate notice and opportunity to
3 challenge the refusal to deliver incoming mail to incarcerated persons, in violation of
4 Plaintiff's free speech and due process rights. The Complaint alleges violations of the
5 First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C.
6 § 1983, as well as violations of the Article I, Section 2 and Article I, Section 7 of the
7 California Constitution, and of the Bane Act, California Civil Code § 52.1. Pursuant to
8 California Government Code § 910, Plaintiff had submitted a state tort claim to the County
9 of Napa on August 20, 2019, which included an invitation to negotiate resolution of these
10 issues. The claim was denied on September 9, 2019.

11 2. On February 21, 2020, Plaintiff filed a motion seeking to preliminary enjoin
12 Defendants County of Napa, *et al.*, from refusing to deliver publications and
13 correspondence mailed by Plaintiff to incarcerated persons at the NCDC and from failing
14 to provide due process to challenge the censorship decisions. The motion was noticed for
15 hearing on April 3, 2020, but after Defendants and Plaintiff stipulated to continuances to
16 resolve this matter, the hearing was reset for July 17, 2020. *See* Docket No. 27.

17 3. Plaintiff and Defendants (collectively, the "Parties"), in order to avoid the
18 expense, delay, uncertainty, and burden of litigation, and without admission of liability,
19 agree to the entry of this consent decree.

20 4. The Parties agree that this consent decree resolves all claims relief alleged in the
21 Plaintiff's Complaint. By this consent decree, together with the payment of damages to
22 HRDC in the amount of \$12,500, the Parties agree that all claims alleged by Plaintiff in the
23 above entitled action are fully and finally resolved with the exception of attorney's fees and
24 costs which will be submitted to the Court for adjudication of reasonable fees and costs once
25 this consent decree is approved and entered for work performed in this case. The Parties
26 agree that Plaintiff will execute a release of all claims alleged in Plaintiff's complaint, and
27 that the County of Napa will remit payment to Plaintiff as soon as reasonably possible after
28 the entry of this order. The Parties agree that, for the purposes of the adjudication of

1 Plaintiff's petition for reasonable attorney's fees and costs, Plaintiff is the prevailing party
2 under 42 U.S.C. § 1988. The Release shall be sent within sixty (60) days of the final order
3 by the court concerning the payment of Plaintiff's attorney's fees and costs. If payment is
4 not made within sixty (60) days, interest shall accrue pursuant to 28 U.S.C. § 1961 from the
5 date of entry of this order.

6 5. The Parties agree that providing incarcerated persons with reading material
7 promotes positive contact with the communities into which they will eventually be released
8 and is therefore consistent with the NCDC's public safety mission.

9 6. DEFINITIONS:

10 a. As used herein, PUBLISHER shall mean any publisher, commercial or
11 non-profit distributor of printed materials, or book store that does mail order business when
12 mailed directly from the publisher or distributor to a named incarcerated person.

13 b. As used herein, STAPLES shall mean the type of light-duty small wire
14 fastener staples commonly used to attach a few sheets of paper, as currently used by Plaintiff
15 to bind the sheets of its monthly publications.

16 c. As used herein, MAILING LABELS shall mean the type of adhesive
17 sticker used by Plaintiff to affix an address to an item of mail.

18 7. The Parties agree that Defendants and their successors, officers, agents,
19 servants, and employees, and all others in active concert or participation with them:

20 a. Shall not refuse to deliver books or other publications to named
21 incarcerated persons at the NCDC from any PUBLISHER, as defined above, that are
22 accepted for delivery by the United States Postal Service, with or without a subscription
23 from the PUBLISHER, provided that Defendants may refuse to deliver books or other
24 publications that pose a threat to the order, safety and security of the facility, so long as
25 they provide written notice of the specific basis for the rejection and an administrative
26 review process, as described in Paragraph 7(d), *infra*. Publications that may pose a threat
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1 to the safety and security of the facility are those depicting harmful or unlawful sexual
2 conduct; those describing weapons, explosives or drug manufacture; those describing or
3 encouraging activities that tend to incite violence or disruption, including racist materials;
4 those threatening the safety of any person inside the Jail; and those that are sexually
5 explicit and/or feature nudity.
6

7 b. Shall not refuse to deliver publications, correspondence, or documents sent by
8 any PUBLISHER to incarcerated persons at the NCDC on the ground that these publications,
9 correspondence, or documents contain STAPLES, provided that Defendants may comply by
10 removing the STAPLES. Defendants shall ensure that publications from which STAPLES
11 are removed are delivered to incarcerated persons in substantially the same condition as
12 received in the mail.

13 c. Shall not refuse to deliver publications, correspondence, or documents sent by
14 any PUBLISHER to incarcerated persons at the NCDC because of MAILING LABELS,
15 provided that Defendants may comply by removing the MAILING LABELS prior to
16 delivery to the incarcerated person at the NCDC.

17 d. Shall provide adequate written notice and an administrative review process to
18 any PUBLISHER of any refusal to deliver any publication, correspondence, or document
19 mailed by a PUBLISHER to a named incarcerated person at the NCDC. If a publication or
20 other mailing is disapproved for delivery by NCDC personnel, the PUBLISHER will be
21 notified within fifteen (15) business days of the specific reason for the disapproval. The
22 PUBLISHER shall have 15 business days from the date of disapproval to file a written
23 response and may do so by email. The incarcerated person to whom the publication or other
24 mailing is addressed shall also be notified that the NCDC refused to deliver a mailing to
25 them and the specific reason that the mailing was rejected for delivery. The NAPA County
26 Department of Corrections shall provide a written response to all such appeals within fifteen
27 (15) business days of receiving the appeal. The appeal shall be considered and resolved by
28 a decision-maker other than the person who originally refused to deliver the publication or

1 other mailing in question. The publication or correspondence that was disapproved or a
2 copy of the same shall be retained by the NCDC pending the completion of the above-
3 described administrative review process so that the rejected mailing will be available for
4 review by the NCDC supervisor responsible for considering and resolving the appeal.

5 8. Shall inform incarcerated persons of the terms of NCDC's new incoming mail
6 policy in relation to delivery of publications and correspondence and the administrative
7 review process for refused mailings in the NCDC Jail Rule book for delivery to
8 incarcerated persons and on its public website.

10 9. Nothing in this Consent Decree is intended to release or waive any claim,
11 cause of action, demand, or defense in law or equity that any party to this Consent Decree
12 may have against any person or entity not a party to this Consent Decree.

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

19 11. The Court retains jurisdiction over this matter for the purpose of enforcement
20 of its Order until terminated upon motion made by either party.

21 12. No person who has notice of this consent decree shall fail to comply with it,
22 nor shall any person subvert the consent decree by any sham, indirection, or other artifice.

23 IT IS SO STIPULATED.

24
25 DATED: June 8, 2020

By: /s/ Paul Wright

26 Paul Wright,
27 Editor and Executive Director of
28 Human Rights Defense Center

