

SETTLEMENT AGREEMENT

This Agreement is entered into by parties Prison Legal News, Inc. (“PLN”) and Gene Johnson in his official capacity as Director for the Virginia Department of Virginia (“VDOC”) and is for the purpose of effecting settlement of the non-monetary relief claims in *Prison Legal News, Inc. v. Gene Johnson, et al.*, Civil Action No. 3:09cv00068 (W.D. Va. 2009)(J. Moon) (“the lawsuit”) as between PLN and VDOC. This Settlement Agreement resolves all injunctive relief and related non-monetary claims. PLN agrees that no individual defendant remains liable for any non-monetary relief claims. Nothing in this Agreement shall be construed to affect any liability that the defendants may have for damages in their individual capacity.

PLN and VDOC agree as follows:

- 1. VDOC has removed any references to all previously disapproved issues of PLN from its Disapproved Publications List. VDOC agrees not to revisit and disapprove any of those issues.
2. VDOC shall revise their publisher notice procedure as to PLN. VDOC will communicate to all state correctional facility Wardens/Superintendents that the Director and Deputy Director have reviewed PLN issues previously disapproved for receipt into VDOC facilities and determined that none of those issues contained material that violates agency publication policy. This communication shall further state that the Director and Deputy Director have concluded that PLN does not appear to be a publication that contains material that violates agency publication policy. This communication shall further instruct the Wardens/Superintendents to make sure that this information is shared with those facility persons responsible for review of incoming publications. This communication will also instruct that if there is a facility determination that a future issue of PLN contains material that appears to violate agency publications policy, that particular PLN issue is to be sent without undue delay directly to the Office of the Deputy Director, with an explanation as to what particular material is thought to violate agency publications policy.
3. Should the Deputy Director or his designee conclude that a future issue of PLN contains material that violates agency publications policy, the Deputy Director or his designee shall promptly send notice to PLN. That notice shall identify with specificity what article(s) and/or advertisement(s) violate agency publications policy, and specifically inform PLN of how that article or advertisement violates any of the publications criteria contained in VDOC Operating Procedure 803.2. The Deputy Director or his designee shall also inform PLN of its right to appeal the Deputy Director’s decision to the VDOC Director within 30 days of receipt by PLN of the notice. The Director shall render his decision on the appeal within 14 days and provide notice to PLN of the reason(s) for his decision.

4. VDOC will no longer require that all incoming publications can only be purchased with funds maintained in a prisoner's institutional account. VDOC instead will allow periodicals (including PLN) and books to be purchased by third parties for prisoners. VDOC may maintain its existing policy to the effect that incoming publications will only be allowed for receipt into state correctional facilities so long as the publication comes from an approved source. PLN is an approved source.

The VDOC specifically reserves the right to return to court to seek modification of this provision any time should its experience with this provision result in unforeseen consequences;

5. VDOC shall permit PLN to continue to send its "Information Packet" (which contains information about subscriptions and books offered by PLN) in envelopes addressed to individual prisoners. VDOC shall communicate to the Wardens/Superintendents of all state correctional facilities that the PLN "Information Packet" does not require prior approval;

6. VDOC agrees to coordinate with PLN concerning the individual PLN issues which have previously been disapproved for receipt into VDOC facilities. DOC and PLN will work together to identify those VDOC facilities where PLN subscribers are currently housed, and VDOC will place the past issues at those facilities. PLN will provide sufficient copies of those issues or electronic versions thereof to be printed at VDOC expense. PLN will advise each of its subscribers of the availability of the previously disapproved issues. Such issues of PLN as are identified in accordance with this provision of the Settlement Agreement will be maintained for inmates to access for a period of not fewer than six months after the individual facility receives such issue. VDOC accepts no responsibility for inmate removal, defacement, or destruction of any PLN issue and does not agree to replace any issues so removed, defaced or destroyed.

7. The VDOC agrees to post on existing bulletin boards of each state correctional facility for a period of one year a notice (1) that all previously disapproved issues of Prison Legal News have been removed from the Disapproved Publications List and are now approved for receipt into Virginia state correctional facilities; (2) that third parties may now order publications, including periodicals and books from publishers and vendors for prisoners, subject to the other provisions of OP 803.2; (3) advising that subscriptions or ordering information from Prison Legal News may be obtained by writing to Prison Legal News, Post Office Box 2420, West Brattleboro, VT 05303; and (4) that any problems with access to Prison Legal News may be addressed to Prison Legal News, Post Office Box 2420, West Brattleboro, VT 05303. Such notice will be published on facility bulletin boards (or like places for communication of information to the inmate population) so as to allow inmates a reasonable opportunity to access the information contained in the notice. VDOC accepts no responsibility for inmate removal, defacement or destruction of such notices, and does not agree to replace any notices inmates remove, deface or destroy; All inmates who do not have access to the referenced bulletin boards shall be provided with individual copies of the notices.

8. The parties agree to continue negotiations to attempt to resolve the issue of damages. The issue of damages is reserved for trial in the event that settlement is not reached.

9. The Court in which the lawsuit originated shall retain jurisdiction in order to enforce this Agreement and this shall be reflected in the Court's Order.

10. VDOC agrees for purposes of attorneys fees, that PLN is the prevailing party under 42 U.S.C. § 1988. VDOC agrees to pay to counsel for PLN reasonable fees, expenses and costs in attaining this Settlement Agreement. If the parties cannot agree on an appropriate sum to compensate for attorneys fees, expenses and costs as allowed under 42 U.S.C. § 1988, then this issue shall be submitted to the Court for final determination. The parties agree that any resolution of attorneys fees, expenses and costs will not be determined until all aspects of this lawsuit, including damages, is resolved. PLN agrees that no attorneys fees, expenses or costs incurred subsequent to the date of the execution of this Settlement Agreement will be apportioned to any claim for attorneys fees, expenses and costs associated with obtaining non-monetary relief, subject to the provision in paragraph 11;

11. In the event PLN believes VDOC, its officials or employees have not complied with any provision of this Settlement Agreement, PLN shall notify the VDOC Director personally of its concerns in this regard and allow the VDOC Director 45 days within which to investigate and if necessary come into compliance. No action for enforcement shall be initiated any sooner than 45 days after the VDOC Director has received notice under this provision. In such an action, PLN agrees not to seek attorney's fees, expenses or costs incurred that are not incidental to the initiation of the enforcement action and VDOC on behalf of itself and its agents and employees agrees not to defend any such request for attorney's fees, expenses or costs on the grounds of mootness or related defenses. PLN agrees that relief in an enforcement action will be limited to a judicial order directing VDOC to come into compliance with the terms of the Settlement Agreement.

If after three years, VDOC and PLN agree that PLN has experienced no difficulties with receiving notices of disapprovals or receipt into VDOC facilities, then the VDOC will continue to provide notice to PLN consistent with the method then in place for providing all other publishers notice. In order to allow the relief granted by this Agreement to be fully implemented, unless mutually agreed to by the parties, the parties agree not to seek to modify or terminate or otherwise challenge the Agreement for a period of three years, except pursuant to paragraph 4 of this Agreement, VDOC may be allowed to return to court (or otherwise revisit the issue with PLN) in the event of unforeseen consequences.

12. If this case settles on the remaining monetary issues, upon receipt of the executed Settlement Agreement and entry of the Dismissal Order of the lawsuit, this payment will be made in the ordinary course of Commonwealth of Virginia business.

13. This is the entire Agreement between PLN and Gene Johnson in his official capacity as Director for the Virginia Department of Virginia

14. PLN and VDOC voluntarily enter into this Settlement Agreement. No promises have been made by or to either PLN or VDOC, except as stated herein. The parties understand that upon resolution of the damages claim, attorneys fees, expenses and costs, this Settlement Agreement settles completely the claims set forth against Gene Johnson and the other defendants

in PLN's complaint as filed in the lawsuit. PLN and all defendants and VDOC do hereby release and forever discharge each other from any and all claims and demands set forth in the Complaint, except for any and all claims and demands relating to enforcement of this Settlement Agreement, as set out in Paragraph 11 above. The parties further understand that this Settlement resolves all claims that have arisen up to and including the date of the settlement and that PLN is not forfeiting its right to sue over issues not raised in the complaint and/or that occur after signing.

15. If an agreement as to all issues is reached, upon receipt of the executed Settlement Agreement, counsel for PLN and counsel for defendants shall jointly move for voluntary dismissal of the lawsuit.

ENTERED into the date set forth when executed below:

Plaintiff Prison legal News, Inc.:

By counsel

Date

All Defendants and VDOC:

By the Assistant Attorney General

Date