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MIM Distributors

PO Box 40799
San Francisco, CA 94140

Warden (A) Connie Gipson
California State Prison - Corcoran
PO Box 8800
Corcoran, CA 93212-8309

January 24, 2012

RE: Censorship incidents occurred at California State Prison - Corcoran – exclusion of publication sent to Mr. [REDACTED]

Dear Warden Gipson,

I am writing this letter about what seems to be a censorship incident that recently occurred at CSP-Corcoran.

On November 18, 2011 MIM Distributors sent the above mentioned prisoner the publication *Under Lock & Key issue 23 (November/December 2011)*. We recently learned from the prisoner that he never received this publications. Nor did he receive any determination of your Department explaining whether and why the publication was censored. MIM Distributors didn't receive any notice of censorship determination either.

Your DOM states at sections 54010.16 and 54010.21.3 that respectively prisoners and publishers have to be notified of negative determinations and entitles both the sender and the recipient to appeal rejections of publications and letters.

As of now, it is impossible for us to understand why the letters and publications haven't been delivered to the inmate and whether or not the Administration has decided to censor them.

As you are certainly aware, the U.S. Supreme Court has clearly stated that both the sender and the prisoner have a right, under the First Amendment and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, to receive notice and an opportunity to be heard when prison administrators or staff prevent the sender's expressive materials from reaching their intended recipients (*Procunier v. Martinez*, 416 U.S.396, 94 S.Ct 1800, as reaffirmed on the point by *Turner V. Safley*, 482 U.S. 78 (1987) and *Thornburgh v. Abbott*, 490 U.S. 401 (1989) and *Montcalm Publ'g Corp. v. Beek*, 80 F.3d 105, 106 (4th Cir.), cert. denied, 519 U.S. 928 (1996)). In plain and striking contradiction with these principles, neither

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the prisoner, nor MIM Distributors were notified of the censorship decision or actually of any decisions that the Mailroom staff has made with regard to the publication sent to Mr. Barnett.

In refusing to provide notice and an opportunity to be heard to both the prisoner and the publisher (MIM Distributors), under local policies and/or practices, prison administrators and staff violated clearly established constitutional law and acted under color of state law for purposes of 42 U.S.C. § 1983.

In addition, the practice of holding publications and/or letters for an indefinite time without providing notice of any determination is certainly unconstitutional, as it does not satisfy the obligation that the prison administration has to provide both the sender and the recipient with a decision in a reasonable time and ultimately frustrates the right that both the sender and the prisoner have to appeal a negative determination.

With the present letter, MIM Distributors requests

- 1) to know whether or not a determination has been made over the mentioned letters and publications;
- 2) in case of a negative determination, to be notified of the reasons of the censorship decision and to be offered a chance to appeal the exclusion of its materials.

* We also request that adequate notice be provided to the prisoner. **NEVER DONE !!!**

We appreciate your assistance in this matter and look forward to your response.

Sincerely,

Bailey Clarke, Legal Assistant
MIM Distributors
PO Box 40799
San Francisco, CA 94140

CC: Affected parties

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