

PELICAN BAY STATE PRISON

5905 Lake Earl Drive
Crescent City, CA 95532

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT C-11



FEB 13 2014

██████████
Legal Assistant
MIM Distributors
P.O. Box 40799
San Francisco, CA 94140

Dear ██████████

████████████████████

This is in response to your two letters dated January 7, 2014, addressed to Greg Lewis, former Warden (A), Pelican Bay State Prison (PBSP). We have given them careful consideration, a thorough review, and appreciate the opportunity to respond and provide you with additional information. The two letters of concern are dated November 6, 2013, and September 9, 2013. Also noted are photocopies of an envelope returned to MIM Distributors with no disclosure of the contents, and a California Department of Corrections and Rehabilitation (CDCR) Form 1819, Notification of Disapproval – Mail/Packages/Publications.

Per our policy, the Department Operations Manual (DOM), Section 54010.4, Definitions of Classes of Mail,

First Class Mail,

The United States Postal Services (USPS) regulations define First Class Mail as all matter wholly or partly in writing or typewriting, all actual and personal correspondence, all bills and statements of account, and all matter sealed or otherwise closed against inspection. The maximum weight for a First Class letter is 13 ounces. All First Class Mail shall be delivered to the inmates as soon as possible, but not later than seven (7) calendar days from receipt of the mail from the Post Office.

Standard Mail,

USPS regulations define Standard Mail as mail used for advertising mail, catalogues, and newsletters of a non-personal nature that are not required to be mailed as First Class Mail. The maximum weight for Standard Mail is 16 ounces. Standard mail used to be referred to as Bulk Mail.

Periodicals,

USPS regulations define Periodicals as a class of mail consisting of magazines, newspapers, or other publications formed of printed sheets that are published at least four times a year at regular, specified intervals (frequency) from a known office of publication. Periodicals usually must have a list of subscribers and/or requesters, as appropriate.

Package Services,

USPS regulations define Package Services as Parcel Post, bound Printed Matter, Medial Mail, and Library Mail. With the exception of Parole Clothes and third party special purchase health care appliances, inmates shall not be allowed to receive Package Services directly from personal correspondents. Packages containing parole clothes or third party special purchase medical assistive devices must be clearly marked with either parole clothes or health care appliance on the outside of the package. Personal correspondents do not include the Courts, Law Firms, County, State and Federal Agencies, Publishers, Bookstores, Book Distributors, etc. All incoming packages, regardless of their contents or whom they are addressed to, shall be put through an x-ray machine to prevent the introduction of contraband into the institution. All packages received in the mailroom that are addressed to an inmate shall be processed through Receiving and Release where they will be searched, inventoried, and issued to the inmate. All appropriately addressed mail shall either be delivered to the inmate, or forwarded per the CCR Subsection 3133(f) and DOM Section 54010.25.

DOM, Section 54010.8, Inspection and Reading of Incoming and Outgoing Mail,

All non-confidential inmate mail, incoming or outgoing, is subject to being read in its entirety by designated staff. All non-confidential inmate mail that is returned to sender shall be opened and inspected before being returned to the inmate. The only weight limits that can be imposed for incoming mail are outlined in DOM Section 54010.4. All incoming mail shall be inspected for contraband prior to issuance. Mail shall only be disallowed if it violates CCR Sections 3006, 3135, any other applicable regulations, or DOM Sections 54010.13 and 54010.14. Institutions shall not require incoming books, magazines, or newspapers to have an institution pre-approved vendor approved label affixed to the packaging. Per CCR Subsection 3133(b)(4), a departmentally approved vendor is any publisher, book store, or book distributor that does mail order business. Books, periodicals, or other publications that are mailed from a religious organization bookstore shall be considered as coming from an authorized vendor.

DOM, Section 54010.8.1, Items Enclosed in Incoming First Class Mail,

In addition to the written word, such as letters, internet downloads, newspaper clippings, religious pamphlets or leaflets, or photocopies of written words, etc., First Class Mail can have the following items enclosed:

- *Photographs.*
- *Calendars.*
- *Blank greeting cards (No 3-dimensional attachments or stamps).*
- *Postage embossed envelopes, maximum of forty.*
- *Blank envelopes.*
- *Writing paper/tablets (white or yellow lined only – no cotton paper).*
- *Typing paper (no cotton paper).*
- *Legal paper; to include colored paper required by court (no cotton Paper).*
- *Children's drawings.*

- *Forty postage stamps (unless there is a rate change; then the intent is forty stamps at the old rate and forty stamps at the amount needed to equal the new rate). Personalized postage stamps will not be accepted.*

The weight limits for First Class Mail are outlined in DOM Section 54010.4. The size and quantity of items listed above is limited per DOM, Chapter 5, Article 43, Inmate Property. Inmates may receive photographs in First Class mail in accordance with the exception of the following: All photographs must comply with the CCR Section 3006, and DOM Section 54010.14. Amount and size shall not exceed allowances specified in DOM, Chapter 5, Article 43, Inmate Property. Photo albums (available through the canteen and the Vendor Package Program). Photographs with attached backing are not permitted. Photographs framed in such a manner that they cannot be adequately searched are not permitted. Polaroid photographs are not allowed. Negatives are not allowed. Slides are not allowed.

Any unacceptable mail shall be immediately returned to sender with the envelope annotated, Unauthorized Mail, Return to Sender. Inmates shall be notified pursuant to CCR Section 3136.

DOM, Section 54010.14, Correspondence that is Offensive/Threatening/Contains Security Concerns,

Non-confidential correspondence may be disallowed if the text of such correspondence presents a danger or a threat of danger to any person or place. The authority to disallow such correspondence shall not be delegated below the level of Correctional/Facility Captain. Disagreement with the sender's or receiver's morals, values, attitudes, veracity, or choice of words shall not be cause for correctional staff to disallow mail. Correctional staff shall not challenge nor confront the sender or receiver with value judgments. Certain correspondence, including but not limited to the following, is disallowed, regardless of values or morals in order to ensure the safety and security of the institution/facility: Any mail of a character tending to incite murder, arson, a riot, or any form of violence or physical harm to any person or any ethnic, gender, racial, religious, or other group. Threatens blackmail or extortion. Contraband, or sending or receiving contraband. Concerns plans to escape or assist in an escape. Concerns plans to disrupt the order, or breach the security of any institution/facility. Concerns plans for activities which violate the law, these regulations, or local procedures. Contains coded messages. Describes the making of any weapon, explosive, poison, or destructive device. Contains illustrations, explanations, and/or descriptions of how to sabotage or disrupt computers, communications, or electronics. Contains maps depicting any area within a ten-mile radius of an institution/facility. Contains gambling or lottery information or paraphernalia. Contains obscene material in nature as described in Section 54010.14. Contains human or animal hair, substances, or fluids.

DOM, Section 54010.15, Obscene Material,

Inmates shall not possess or have under their control, obscene material and/or mail containing information concerning where, how, or from whom obscene material may be obtained.

Obscene material means catalogs, advertisements, brochures, and/or material taken as a whole, which to the average person applying contemporary statewide standards, appeals to the prurient interest. It is material which taken as a whole, depicts or describes sexual conduct, and when taken as a whole, lacks serious literary, artistic, political, or scientific value.

Additionally, material is considered obscene when it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it appeals to deviant sexual groups.

Material subject to the test of the above includes, but is not limited to:

Portrays sexually explicit materials, which are defined as materials that show frontal nudity including personal photographs, drawings, and magazines and pictorials that show frontal nudity.

Portrays, displays, describes, or represents penetration of the vagina or anus, or contact between the mouth and genitals.

Portrays, displays, describes, or represents bestiality, sadomasochism, or an excretory function, including urination, defecation, or semen.

Portrays, displays, describes, or represents the nudity of a minor or person who appears to be under 18 years old.

Portrays, displays, describes, or represents conduct that appears to be non-consensual behavior.

Portrays, displays, describes, or represents conduct that appears to be forceful, threatening, or violent.

Portrays, displays, describes, or represents conduct where one of the participants is a minor, or appears to be under 18 years old.

DOM, Section 54010.16, Notification to Inmates of Disapproval-Mail/Packages/Publications and Disposition of Undelivered Mail,

Disapproved material that is in clear violation of CCR Sections 3006, 3135, 3139, and 3135 or DOM Subsections 54010.11, 54010.13, 54010.14, and 54010.21 shall be referred to staff not below the level of Correctional/Facility Captain for determination and appropriate action. Disapproval of material that is not in clear violation of the above noted CCR and DOM sections shall be referred to the Warden, but not lower than the Chief Deputy Warden, for determination and appropriate action. The CDCR Form 1819, Notification of Disapproval-Mail/Packages/Publications, shall be utilized by each institution/facility when incoming or outgoing mail/packages/publications addressed to or being sent by an inmate are withheld or disallowed. Additionally, in accordance with CCR, Subsection 3134(i), the CDCR Form 1819 informs the inmate of the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom an appeal can be directed. When inmate mail is disapproved based on the criteria established in CCR Section 3006 and 3135, DOM Subsection 54010.8.1, or DOM Section 54010.13 and 54010.14, a copy of the CDCR Form 1819 and the supporting document(s) (e.g., a photocopy of representative pages) shall be retained by each institution/facility for a minimum of seven years for litigation purposes. After seven

years if the material is not needed it shall be destroyed. If a lawsuit has been filed as a result of mail being disapproved, the CDCR Form 1819 and the supporting document(s) will be retained for two years from the conclusion of the suit. It is noted that a publication can be a book, magazine, newspaper, or periodical.

DOM, Section 54010.21.3, Notification to Publisher for Disapproval of Publication,

When incoming books, magazines, or publications to an inmate are withheld or disallowed, a letter shall be sent to the publisher explaining why the item was denied. A book, magazine, or publication denied to the entire population based on a violation of departmental regulations or policy, shall only require one letter per institution to be sent to the publisher. At a minimum, the letter must include the reason why the book, magazine, or publication was denied, the names and CDCR numbers for all inmates affected, the applicable CCR section that is in violation, and the fact that the Publisher has the right to appeal this issue in accordance with CCR Section 3137(c) and DOM Section 54010.27. The letter must be sent within 15 calendar days of the determination to censor the book, magazine, or publication.

When a book, magazine, or publication is withheld based on the criteria established in CCR Sections 3006 or 3135 and DOM Sections 54010.13 and 54010.14, a copy of the Letter of Notification to the Publisher and the supporting document(s) (e.g., a photocopy of representative pages) shall be retained by each institution/facility for a minimum of seven years for litigation purposes. After seven years if the material is not needed for a lawsuit or any other purpose, the material shall be destroyed. If a lawsuit has been filed, as a result of a publication being disapproved, the CDCR Form 1819 and the supporting document(s) will be retained for two years from the conclusion of the lawsuit. The letter of Notification to Publisher for Disapproval of Publication shall be done in conjunction with the process outlined in DOM Section 54010.15 for notification to the inmate.

In your first letter dated January 7, 2014, regarding the letter from [REDACTED] dated November 6, 2013, indicates the letter was returned without notification and unopened. The letter should have been opened and reviewed by staff prior to the inmate's determination of disposition. When the inmate indicates the letter is to be returned to sender, staff will accommodate this action after the inmate covers the additional expense. PBSP staff should not have returned this letter unless the inmate indicated this and thus paid for the additional expense. It is now on the inmate to follow up on and provide notifications for all First Class and Standard mail disapprovals.

The notification process referred to in the DOM, Section 54010.21.3, is only provided to the disapprovals of publications. If the November 6, 2013, letter was returned unopened and the contents were not a letter, rather a publication, this was done so in error. The letter should have been opened and reviewed by staff. If the contents discovered was determined to be a publication as outlined in the DOM, Section 54010.4, Periodicals, *USPS regulations define Periodicals as a class of mail consisting of magazines, newspapers, or other publications formed of printed sheets that are published at least four times a year at regular, specified intervals (frequency) from a known office of publication. Periodicals usually must have a list of subscribers and/or requesters, as appropriate.* The policy outlined in the DOM, Section 54010.21.3, should have been followed.

In your second letter dated January 7, 2014, regarding the letter from [REDACTED] dated September 9, 2013, indicates the letter was censored without notifying the sender, MIM Distributors, or the inmate. Additionally, you are requesting to know whether or not a determination has been made regarding the mentioned letters and adequate notice was provided to [REDACTED]. Attached is a copy of the CDCR Form 1819, received by [REDACTED] on September 12, 2013.

As stated above, this disapproval process also appears to be in accordance with First Class and Standard mail. The copy of the CDCR Form 1819 you included was marked, "Appeals Office," and dated September 30, 2013. This form, along with the signed receipt, indicates [REDACTED] was provided with the appropriate notice. In response, [REDACTED] has filed an appeal against this action. We are not allowed to disclose the outcome of [REDACTED] appeal without his specific consent to do so.

The included CDCR Form 1819 indicates the incoming mail was four pages containing, "... disturbing or offensive correspondence, Plans to Disrupt the order or Breach the Security of any Facility." As stated in the California Code of Regulations, Title 15, Section 3006, Contraband (Content of the letter was not included).

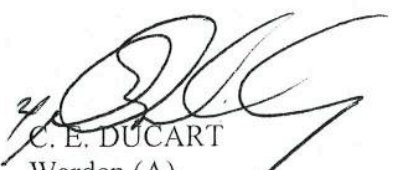
As indicated within your letters, [REDACTED] has been provided the proper disapproved notifications. The September 9, 2013, letter disapproval notification notice was signed for by [REDACTED] on September 12, 2013. The November 6, 2013, letter should have been returned to you at [REDACTED] expense.

Perhaps you can assist us in the decision of whether or not MIM Distributors is a publisher? We have checked through the California Franchise Tax Board and the California Better Business Bureau, neither search provided assistance with this clarification. Additionally, your reference was to the letters mailed to [REDACTED] and not a publication. The two occurrences noted were responded to by our staff as letters and not as a publication.

I hope the information provided was helpful. Although the letter you claimed was returned, unopened, I assure you it is not within our policy or practice to do so, and should not have been returned without proper review.

Should you have any questions, please contact T. E. Puget, Correctional Administrator (A), Security Housing Unit, at (707) 465-1000, extension 6687.

Sincerely,


C. E. DUCART
Warden (A)

cc: Correctional Administrator, Security Housing Unit
Captain, Facility C
CCII
Central File
Inmate Villarreal