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

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|--|---|---------------------------------|
| JOHN MORRIS KINTER, | : | <u>C O M P L A I N T</u> |
| Plaintiff, | : | |
| vs. | : | Case No. |
| G. LYNN NELSON, Cache County Sheriff; | : | |
| CAPT. KIM CHESIRE, Commander, Cache County Jail; | : | |
| LT. BRIAN LOCKE, Correctional Officer, Cache County Jail; | : | |
| CACHE COUNTY, a body corporate and politic and a government sub-division of the State of Utah | : | |
| and, JOHN DOES I - V and JANE DOES I - V, Officers, Cache County Jail, | : | |
| Defendants. | : | |

JOHN MORRIS KINTER, by and through counsel, Margaret D. Plane, Brian M. Barnard and James L. Harris, Jr. complains,

states, alleges and claims as causes of action against defendants as follows:

I. Introduction

1. This 42 U.S.C. § 1983 action seeks equitable relief from enforcement of unconstitutional written policies of defendants, which prevents plaintiff from receiving and owning paper back books. Plaintiff seeks damages as well as legal and equitable relief from the policy which violated, restricted and restricts plaintiff's rights under the federal and state constitutions to free expression, due process and the right to own personal property.

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 plaintiff's state constitutional claims pursuant to 28 U.S.C. § 1367(a). Plaintiff's state claims are related to, based upon the

same operative facts and form part of the same case and controversy as his 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 Cache County, Utah and the Northern Division of this Court. The Cache County Jail is located at Logan in Cache 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.

6. Defendants have taken ownership from plaintiff of a book mailed to him at the Cache County Jail, confiscating the book upon its arrival at the Jail.

III. Parties

7. JOHN MORRIS KINTER is a pre-trial detainee held at the Cache County Jail, Logan, Utah. He is an adult normally a resident of California.

8. CACHE COUNTY is body corporate and politic, a government entity and a subdivision of the State of Utah. It governs the geographical area of the State of Utah known as Cache County. It is the owner and operator of the Cache County Jail. All individual defendants are agents and employees of Cache County.

9. G. LYNN NELSON is the duly elected and serving Sheriff of Cache County, Utah. As such he is ultimately responsible for supervising the Cache County Jail, and for formulating, adopting, implementing and enforcing all Cache County rules and policies in the Cache County Jail, including those regulating books and other printed materials at the Cache County Jail. He is an agent and employee of Cache County. He is the policy setter for Cache County with regard to the operations of the Cache County Jail. He is the supervisor of all other individual defendants in this action. According to the policies of Cache County, "It is the responsibility of the Sheriff and his [jail] employees to provide services [to inmates] to fulfill the requirements of the United States Constitution, Utah State Statute and decisions of all courts of jurisdiction."

10. CAPT. KIM CHESIRE is the duly appointed and serving Jail Commander of the Cache County Jail, Logan, Utah. He is in charge of the day-to-day operations of Cache County Jail. As such he is responsible for supervising the Cache County Jail, and for formulating, adopting, implementing and enforcing all Cache County rules and policies in the Cache County Jail, including those regulating books and other printed materials at the Cache County Jail. He is an agent and employee of Cache County. He is supervised by defendant G. LYNN NELSON, Sheriff of Cache County.

He is the supervisor of the defendants LOCKE and DOES.

11. LT. BRIAN LOCKE is a duly appointed and serving correctional officer of the Cache County Jail, Logan, Utah. He is involved in the day-to-day operations of Cache County Jail. As such he is responsible for implementing and enforcing all Cache County rules and policies in the Cache County Jail, including those regulating books and other printed materials at the Cache County Jail. He is an agent and employee of Cache County. He is supervised by defendants Sheriff NELSON and Jail Commander CHESIRE. He is the supervisor of the defendant DOES.

12. JOHN DOES I - V and JANE DOES I - V are officers and agents of the Cache County Jail. Their full true and correct names are unknown to plaintiff at this time. When plaintiff discovers the full, true and correct names of these defendants, plaintiff will amend his complaint in this action. These defendants and each of them are involved in the receipt and processing of mail (including books) at the Cache County Jail sent to and to be received by inmates of the Cache County Jail. They enforce said mail and book policies on a day-to-day basis at the Cache County Jail.

13. 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.

IV. Facts

14. On or about January 29, 2005, a paper back book, "*Dictionary of the Law*," was received by defendants at the Cache County Jail addressed to plaintiff. The book had been ordered for plaintiff at a cost of \$17.95. The book was paid for; the book was shipped through the United States Postal Service by the book seller.

15. Upon arrival at the Jail, using indelible ink, defendants immediately marked or stamped the exterior of the book with the initials "**C C J**" for Cache County Jail.

16. Defendants then delivered the book to plaintiff subsequently informing him that the book was no longer his property; that the book now belonged to Cache County and/or the Cache County Jail; and, that when plaintiff was released or transferred from the Jail, the book would remain in the Jail as property of the County and/or Jail.

17. Defendants and their policies prohibit inmates in the Cache County Jail from receiving and owning paper back books. The pertinent rule is CJ 13/03.03(f) ("All books sent to the CCJ for individual inmates will become the property of the CCJ when the use of the books is completed or when the inmate is released from the custody of the CCJ or moved to another facility.")

18. The plaintiff desires to receive more paper back books,

especially those with law related content, while he is held in the Cache County Jail. However, he is reluctant to secure or purchase books from the outside or request that family or friends purchase books for him because those books will be confiscated by defendants.

19. The policy, developed and enacted by defendants and enforced by them, deprives plaintiff of his constitutional rights of free expression and due process rights and constitutes an unlawful taking.

20. The plaintiff filed a grievance with defendants and the Cache County Jail protesting the confiscation of his book. The grievance and the relief sought therein was denied. Plaintiff has exhausted the administrative remedies available to him in the Cache County Jail. In the grievance process, defendants on January 29, 2005 wrote: "Per Cache Co. Jail inmate handbook, the book does now belong to the jail library. You may use it while you are here but the book must stay."

V. Causes of Action

21. Defendants' policy banning inmate ordering, receipt and ownership of books by inmates such as plaintiff violates the free expression rights of the plaintiff protected by the First

Amendment of the United States Constitution and Art. I, § 15 of the Utah Constitution.

22. Defendants' policy has deprived plaintiff of property as an unlawful taking without compensation through defendants' confiscation of the book. Ut. Const. Art. I, § 22 ("Private property shall not be taken . . . for public use without just compensation."); United States Const. Amend. V ("nor shall private property be taken for public use, without just compensation").

23. Defendants' policy violates the due process protections afforded the plaintiff by the Fifth and Fourteenth Amendments of the United States Constitution and Art. I, § 7 of the Utah Constitution.

24. Plaintiff has suffered, is suffering and will continue to suffer harm as a result of enforcement of defendants' policy. Plaintiff is entitled to and should be awarded damages for that harm. The amount of special and general damages should be determined at trial, but should be at least nominal (\$1.00) plus \$17.95.

25. The right of plaintiff to receive paper back books as a pre-trial detainee in a county jail has been established for more than twenty (20+) years. Defendants' action and policy as set forth above are in clear, direct and wilful violation of the

rights of the plaintiff and of inmates in the Cache County Jail. The policy and defendants' conduct justifies the imposition of punitive damages against all defendants (except Cache County). The amount of punitive damages should be determined at trial, but should be at least nominal (\$1.00).

VI. Immediate Equitable Relief

26. Plaintiff is fearful he will continue to suffer harm as a result of enforcement of defendants' policy and the confiscation of books ordered and received while in the jail.

27. Unless a temporary restraining order and a preliminary injunction are issued, plaintiff will continue to suffer immediate and irreparable harm and a deprivation of his First Amendment and due process rights as well as a violation of the rights secured by the Utah Constitution, Art. I, § 7 & § 15. Plaintiff is presumptively suffering irreparable injury. Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); ULBA v. Leavitt, 256 F.3d 1061, 1076 (10th Cir. 2001).

28. Plaintiff is entitled to a temporary restraining order, a preliminary injunction, a permanent injunction and declaratory relief from defendants' policy.

VII. Court Costs and Attorney Fees

29. The plaintiff has incurred and will incur court costs and attorney fees in the pursuit of this matter.

30. Pursuant to 42 U.S.C. § 1983 and § 1988, plaintiff is entitled to reimbursement for any such costs and fees.

VIII. Demand for Relief

WHEREFORE, the plaintiff demands the following relief:

1. A determination and declaratory judgment that the challenged policy violates the United States and the Utah Constitutions;
2. A preliminary injunction during the pendency of this action enjoining defendants from enforcing the challenged policy;
3. A permanent and final order enjoining defendants henceforth from enforcing the challenged policy;
4. Special, general and punitive damages as to be determined by the Court, but at least nominal in amount plus \$17.95; plaintiff seeks no punitive damages against Cache County and no money damages under the Utah Constitution;
5. An award of attorneys fees and court costs under 42 U.S.C. § 1988; and,

6. For such other and further equitable and monetary relief as the court deems just and proper.

DATED this 15TH day of FEBRUARY 2005.

AMERICAN CIVIL LIBERTIES
UNION OF UTAH FOUNDATION

UTAH LEGAL CLINIC
Attorneys for PLAINTIFF

by _____
BRIAN M. BARNARD

CERTIFICATE OF MAILING

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

N. GEORGE DAINES
CACHE COUNTY ATTORNEY
Attorney for Defendants
11 West 100 North
Logan, Utah 84321

G. LYNN NELSON
Cache County Sheriff
Cache County Sheriff's Office
1225 W. Valley View
Logan, Utah 84323

FRANK D. MYLAR
MYLAR LAW
Attorney for Defendants
6925 Union Park Center # 600
Midvale, Utah 84047

on the 15th day of FEBRUARY 2005, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for PLAINTIFF

by _____
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.