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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CRIME, JUSTICE & AMERICA, INC.,
a California Corporation; and
RAY HRDLICKA, an individual,

NO. CIV. 08-cv-00394 FCD EFB

Plaintiffs,

v.

MEMORANDUM & ORDER

JOHN MCGINNESS, in his official
capacity of Sheriff of the
County of Sacramento,
California,

Defendants.

_____ /

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This matter is before the court on defendant John McGinness' ("defendant" or "McGinness") motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiffs Crime, Justice & America, Inc. and Ray Hrdlicka ("Hrdilicka")

1 (collectively "plaintiffs") oppose the motion.¹ For the reasons
2 set forth below,² defendant's motion for summary judgment is
3 GRANTED.

4 **BACKGROUND**³

5 Plaintiffs filed this action, arising out of the policies of
6 the Sacramento County Jail in its distribution of plaintiffs'
7 magazine, *Crime, Justice & America* ("CJA"). (Compl., filed Feb
8 22, 2008.) Plaintiffs assert that defendant's policies violate
9 their Constitutional rights guaranteed by the First Amendment be
10 denying distribution of CJA whether directly mailed to inmates or
11 dropped off for bulk distribution. (Compl. ¶¶ 31-37.) Plaintiff
12 Crime, Justice & America, Inc. is a private company with the
13 primary business purpose of publishing and distributing the
14

15 ¹ Plaintiffs previously filed a motion to continue
16 defendant's motion for summary judgement pursuant to Rule 56(f)
17 and a motion to modify the scheduling order to reopen discovery
pursuant to Rule 16. The court granted the motion.

18 ² Because oral argument will not be of material
19 assistance, the court orders the matter submitted on the briefs.
E.D. Cal. L.R. 78-230(h).

20 ³ Unless otherwise noted the facts herein are undisputed.
21 (See Undisputed Material Facts in Support of Summ. J. ("DUF"),
filed Apr. 14, 2009; Undisputed Material Facts in Opp'n to Summ.
J. ("PUF"), filed July 10, 2009).

22 While plaintiffs filed their own statement of undisputed
23 facts, they failed to respond to defendant's statement. However,
24 the court will look to the underlying evidence to determine
whether there is an actual dispute of fact.

25 Moreover, the court notes that plaintiffs have failed to
26 comply with numerous local rules and court orders relating to a
27 filing of a Statement of Undisputed Facts rather than a Statement
of Disputed Facts, citation to the record in their Statement of
28 Undisputed Facts, and vastly exceeding the court's page
limitations without request or approval. However, in the
interest of justice, the court nevertheless considers all the
materials filed by plaintiffs.

1 quarterly periodical *CJA*. (Compl. ¶ 6.) Plaintiff Hrdlicka is
2 the sole owner and the publisher of *CJA*. (Compl. ¶ 7; PUF ¶ 1.)
3 Defendant McGinness is the Sheriff of the County of Sacramento at
4 all relevant times. (Compl. ¶ 8.)

5 The Sheriff is in charge of managing the Sacramento County
6 Jail (the "Jail"). (DUF ¶ 1.) On average, there are 2,340
7 inmates at the Jail per day. (DUF ¶ 2.) There are over seven
8 hundred pieces of incoming mail and six hundred pieces of
9 outgoing mail per day. (DUF ¶ 5.) In accordance with applicable
10 regulations, defendant implemented policies and procedures
11 relating to the receipt of mail for inmates in the jail. (DUF ¶
12 3.)

13 The mail at the Jail is processed during the night shift six
14 days a week by a total of sixty persons. (DUF ¶¶ 7, 13.)
15 Control room officers are responsible for opening and inspecting
16 the mail, and floor officers distribute the mail. (DUF ¶ 8.)
17 Commercial publications and personal mail are reviewed for
18 content and searched for contraband prior to distribution. (DUF
19 ¶ 9.) A total of twenty-four personnel hours is used per day on
20 mail related duties at the Jail. (DUF ¶ 12.)

21 The mail policy currently in place at the Jail prohibits the
22 distribution of unsolicited commercial mail. (DUF ¶ 15.) The
23 policy does not take into account the content of any unsolicited
24 publications, nor the postage rate under which unsolicited
25 publications are sent. (DUF ¶ 16.) The Jail will not accept
26 publications for distribution received on a "drop-off" basis or
27 delivery that constitutes "bulk delivery." (DUF ¶ 17.) The Jail
28 considers "bulk mail" to be any mail, regardless of volume not

1 individually addressed and not individually posted with U.S.
2 Postage. (PUF ¶ 81.) Defendant contends that the primary
3 purpose of the refusal to accept and distribute unsolicited
4 commercial mail is to allow the Sheriff to control the volume of
5 mail that enters the Jail, which allows for control over the
6 amount of time and resources used to categorize, effectively
7 search, and distribute incoming mail. (DUF ¶ 18; see PUF ¶ 54
8 ("Sacramento County Jail denies distribution of bulk mail for two
9 reasons: (1) the precedential value of potentially having to
10 accept other deliveries of bulk mail; and (2) the potential
11 negative effect on the work load for the Jail staff."))

12 Further, inmates are only allowed to keep a limited amount
13 of written materials in their cells and are not permitted to
14 leave any materials in the common areas of the jail. (DUF ¶ 23.)
15 Moreover, the Sheriff is required to maintain the Jail in a neat,
16 orderly manner, and all places not open to continuous observation
17 must be kept free from combustible litter and rubbish at all
18 times. (DUF ¶ 22.) The purported purpose of these rules and
19 requirements are to: (1) limit inmates' ability to secret
20 contraband; (2) limit the amount of materials that inmates can
21 use to plug toilets and flood their cells and pods; (3) limit
22 inmates' ability to place items over the lights and windows in
23 their cells, allowing staff to perform mandated hourly welfare
24 checks more efficiently; and (4) enhance inmate safety by
25 providing fewer avenues in which they can communicate
26 inappropriate and violent messages and instructions to each
27 other. (DUF ¶ 24.) Even with the various rules already in
28 place, inmates routinely attempt to hide contraband, start fires,

1 flood their cells, and cover their lights and windows. (DUF ¶
2 26.) Further, Jail staff spend a significant amount of time
3 searching for contraband and attempting to prevent disruptive and
4 dangerous incidents. (DUF ¶ 27.)

5 The Jail has multiple common areas, also known as Day Rooms,
6 which contain telephones, televisions, and bulletin boards with
7 advertising. (DUF ¶ 28.) There are no materials which are made
8 available to inmates by placing copies in any of the day rooms;
9 this prevents inmates from exchanging messages with each other
10 and limits fire and other safety hazards. (DUF ¶ 34.) Defendant
11 asserts that if the Jail were to place bulk copies of *CJA* in the
12 common areas, additional staff and resources would be required to
13 monitor the copies of the publication, remove and replace the
14 publication on a daily basis, and clean up an trash or excess
15 created by the placement of the publication. (DUF ¶ 35.)

16 Inmates at the Jail are provided with access to a law
17 library and a general circulation library. (DUF ¶ 36.) Inmates
18 can also receive magazines that they subscribe to, if nothing
19 precludes delivery of the particular magazine on the basis of
20 subject matter (e.g., pornography). (DUF ¶ 40.)

21 *CJA* is currently distributed in correctional facilities in
22 more than sixty counties throughout thirteen states. (PUF ¶ 16.)
23 It is generally distributed to inmates of correctional facilities
24 in one of two manners: (1) direct mailings to inmates; or (2)
25 general distribution. (PUF ¶ 18.) In the case of direct
26 mailing, *CJA* is sent, individually addressed, through the U.S.
27 Mail to inmates at a correctional facility at a ratio of
28 approximately one issue for every ten inmates. (PUF ¶ 19.) In

1 the case of general distribution, plaintiffs drop off a weekly
2 distribution of *CJA* at a ratio of approximately one issue for
3 every ten inmates, and the jail staff leaves a small stack of
4 magazines in common areas. (PUF ¶ 26.)

5 Sometime in September 2003, plaintiffs inquired with the
6 Sheriff whether he would be amenable to allow inmates at the Jail
7 to receive *CJA*. (DUF ¶ 41.) On September 30, 2003, plaintiffs
8 were informed by Sheriff Lou Blanas, Sacramento County Sheriff at
9 the time, via Sergeant Scott Jones ("Jones"), that so long as the
10 material and content of the magazine did not fall within
11 prohibited guidelines for inmate mail, they were free to mail the
12 publication to any inmates within the jail facilities. (DUF ¶
13 42.) Jones also informed plaintiffs that a list of each inmate
14 housed at the Jail, along with their identifying criteria for
15 receiving mail, was made available to the public on a daily basis
16 in the lobby. (DUF ¶ 43.) However, Jones told Hrdlicka that the
17 Jail would not facilitate the publication's delivery to inmates
18 on a "drop-off" basis. (DUF ¶ 44; PUF ¶ 35.)

19 On January 6, 2004, Jones again wrote plaintiffs and
20 informed them that the Jail would not accept the publication
21 delivered *en masse*, but that plaintiffs could mail the magazine
22 to individual inmates. (DUF ¶ 45.) Over the next few months,
23 plaintiffs requested a weekly electronic copy of the list of
24 inmate names and housing information or, in the alternative, a
25 paper-based copy. (DUF ¶¶ 46-48.) On May 21, 2004, Jones
26 reiterated that a printed list of inmates and relevant
27 information was available in the lobby of the Jail, but that he
28 was not required to send or mail a copy of the list to plaintiffs

1 and would not undertake such a duty. (DUF ¶ 49.) On April 5,
2 2005, Jones responded to another request for electronic records,
3 informing plaintiffs that the information sought did not exist in
4 electronic format that could be provided, but that a printed list
5 was available in the lobby. (DUF ¶ 50.) At some point prior to
6 January 2007, the technology at the Jail was upgraded and an
7 electronic list became available. (DUF ¶ 57.) After this time,
8 an electronic copy of the information was provided to plaintiffs.
9 (DUF ¶ 57.)

10 Plaintiffs were notified on multiple occasions that *CJA*
11 could be mailed directly to inmates without objections. (DUF ¶
12 55.) In approximately December 2004, plaintiffs began sending
13 copies of *CJA* to inmates at the Jail through bulk-mail. (PUF ¶¶
14 43-45.) Plaintiffs contend that the copies were paid for
15 individually and were addressed to an individual inmate; however,
16 postage was paid at the bulk rate of 14.7 cents per magazine as
17 opposed to individually stamped copies that would have cost \$1.21
18 per magazine. (PUF ¶ 45.) Plaintiffs sent hundreds of copies of
19 their publication to the Jail on this bulk-mail basis. (DUF ¶
20 51.) In May 2005, *CJA* was denied further distribution in the
21 Jail through bulk-mail because of the perceived extra burden on
22 the jail staff. (PUF ¶ 77.) Plaintiffs also concede that the
23 distribution of *CJA* in the Jail is a concern because of the
24 introduction of written materials into the Jail over which
25 inmates do not have ownership. (PUF ¶ 86.)

26 STANDARD

27 The Federal Rules of Civil Procedure provide for summary
28 judgment where "the pleadings, the discovery and disclosure

1 materials on file, and any affidavits show that there is no
2 genuine issue as to any material fact and that the movant is
3 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c);
4 see California v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998).
5 The evidence must be viewed in the light most favorable to the
6 nonmoving party. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th
7 Cir. 2000) (en banc).

8 The moving party bears the initial burden of demonstrating
9 the absence of a genuine issue of fact. See Celotex Corp. v.
10 Catrett, 477 U.S. 317, 325 (1986). If the moving party fails to
11 meet this burden, "the nonmoving party has no obligation to
12 produce anything, even if the nonmoving party would have the
13 ultimate burden of persuasion at trial." Nissan Fire & Marine
14 Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000).
15 However, if the nonmoving party has the burden of proof at trial,
16 the moving party only needs to show "that there is an absence of
17 evidence to support the nonmoving party's case." Celotex Corp.,
18 477 U.S. at 325.

19 Once the moving party has met its burden of proof, the
20 nonmoving party must produce evidence on which a reasonable trier
21 of fact could find in its favor viewing the record as a whole in
22 light of the evidentiary burden the law places on that party.
23 See Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th
24 Cir. 1995). The nonmoving party cannot simply rest on its
25 allegations without any significant probative evidence tending to
26 support the complaint. See Nissan Fire & Marine, 210 F.3d at
27 1107. Instead, through admissible evidence the nonmoving party
28

1 "must set forth specific facts showing that there is a genuine
2 issue for trial." Fed. R. Civ. P. 56(e).

3 **ANALYSIS**

4 Through this action, plaintiffs contend that they have a
5 First Amendment right to distribute *CJA* in the Sacramento County
6 Jail because defendant does not have any legitimate penological
7 interests that are served by the current mail procedures relating
8 to the distribution of magazines. Defendant moves for summary
9 judgment on the basis that his refusal to distribute *CJA* in the
10 manner advanced by plaintiffs is rationally related to the jails'
11 legitimate penological interest.⁴

12 "In a prison context, an inmate does not retain those First
13 Amendment rights that are 'inconsistent with his status as a
14 prisoner or with the legitimate penological objectives of the
15 corrections system.'" Jones v. N.C. Prisoners' Labor Union, Inc.,
16 433 U.S. 119, 129 (1977) (quoting Pell v. Procunier, 417 U.S.
17 817, 822 (1974)). Specifically, "there is no question that
18 publishers who wish to communicate with those who, through
19 subscription, willingly seek their point of view have a
20 legitimate First Amendment interest in access to prisoners."
21 Thornburgh v. Abbott, 490 U.S. 401, 408 (1989). However, this
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23 ⁴ Defendant also asserts that plaintiffs have no First
24 Amendment right to distribute their unsolicited publication to
25 inmates. Assuming *arguendo* that plaintiffs have such a right, as
26 set forth *infra*, defendant's policies are constitutional pursuant
27 to Turner v. Safley, 482 U.S. 78, 89-90 (1987). As such, the
28 court does not reach this issue. See United States v. Kaluna,
192 F.3d 1188, 1197 (9th Cir. 1999) (quoting Jean v. Nelson, 472
U.S. 846, 854 (1985) ("[A] fundamental rule of judicial
restraint" is that "courts are 'not to decide questions of a
constitutional nature unless absolutely necessary to a decision
of the case.'")).

1 right "is subject to substantial limitations and restrictions in
2 order to allow prison officials to achieve legitimate
3 correctional goals and maintain institutional security." Prison
4 Legal News v. Lehman, 397 F.3d 692, 699 (9th Cir. 2005). Indeed,
5 the Supreme Court has "repeatedly recognized the need for major
6 restrictions on a prisoner's rights" in balancing the
7 institutional needs and objectives of prisons and rights
8 generally afforded by the Constitution. Id.

9 In Turner v. Safley, the Supreme Court laid out a four-
10 factor test to determine whether a prison regulation that
11 impinges upon First Amendment rights is "reasonably related to
12 legitimate penological interests":

13 (1) whether the regulation is rationally related to a
14 legitimate and neutral government objective; (2)
15 whether there are alternative avenues that remain open
16 to the inmates to exercise the right; (3) the impact
17 that accommodating the asserted right will have on
other guards and prisoners, and on the allocation of
prison resources; and (4) whether the existence of easy
and obvious alternatives indicates that the regulation
is an exaggerated response by prison officials.

18 Prison Legal News, 397 F.3d at 699 (quotations and citations
19 omitted); see Turner, 482 U.S. 78, 89 (1987). The Court noted
20 that "such a standard is necessary if 'prison administrators . .
21 . , and not the courts, [are] to make the difficult judgments
22 concerning institutional operations.'" Turner, 482 U.S. at 89
23 (quoting Jones, 433 U.S. at 128).

24 **A. Rational Relationship to Legitimate Penological Interest**

25 In analyzing the first Turner factor, the court must
26 determine whether there is a "'valid, rational connection'
27 between the prison regulation and the legitimate governmental
28 interest put forward to justify it." Id. (quoting Block v.

1 Rutherford, 468 U.S. 576, 586 (1984)). "[A] regulation cannot be
2 sustained where the logical connection between the regulation and
3 the asserted goal is so remote as to render the policy arbitrary
4 or irrational." Id. at 89-90. Further, the governmental
5 objective must be legitimate and neutral and must operate
6 neutrally with regard to the content of the expression. Id. at
7 90.

8 It is undisputed that the Jail denies distribution of bulk
9 mail for two primary reasons: (1) the precedential value of
10 potentially having to accept other deliveries of bulk mail; and
11 (2) the potential negative effect on the work load for the Jail
12 staff. Moreover, defendant contends that its current policies
13 regarding bulk mail and general distribution of publications
14 serves to (1) limit inmates' ability to secret contraband; (2)
15 limit the amount of materials that inmates can use to plug
16 toilets and flood their cells and pods; (3) limit inmates'
17 ability to place items over the lights and windows in their
18 cells, allowing staff to perform mandated hourly welfare checks
19 more efficiently; and (4) enhance inmate safety by providing
20 fewer avenues in which they can communicate inappropriate and
21 violent messages and instructions to each other.⁵

22 Plaintiffs concede that defendant has an interest in
23 maintaining mail quality control, ensuring jail security, and
24

25 ⁵ Defendant also contends that its regulations ensure
26 compliance with California law relating to prohibitions on
27 attorneys' and bail licensees' solicitation of business within
28 correctional or penal facilities. Because defendant's other
asserted interests are related and, as set forth *infra*,
dispositive, the court does not reach the merits of this
contention.

1 allocating jail resources. However, plaintiffs argue that the
2 regulations at issue are not rationally related to those
3 legitimate interests.

4 The court disagrees. Defendant has presented evidence that
5 there are over seven hundred pieces of incoming mail per day at
6 the Jail. This requires a total of sixty people to process the
7 mail and a total of twenty-four personnel hours per day. Under
8 plaintiffs' calculation, distribution through bulk mail would
9 increase incoming mail by at least two hundred fifty pieces per
10 week.⁶ Defendant presents evidence that this increase in
11 unsolicited bulk mail would cause additional administration,
12 staffing, and security issues for the jail. (Decl. of Capt.
13 Scott Jones in Supp. of Mot. for Summ. J. ("Jones Decl."), filed
14 Apr. 14, 2009, ¶ 50.) Moreover, plaintiffs concede that
15 distribution of CJA is a concern because it introduces written
16 materials for which inmates do not have an ownership interest.
17 Plaintiff also concedes that magazines are associated with the
18 creation of a weapon. (PUF ¶¶ 86, 88.)

19 Accordingly, the court finds that the undisputed facts
20 demonstrate that defendant's regulation concerning bulk mail and
21 drop-off distribution is logically connected to and advances the
22 proffered legitimate penological concerns. Specifically,
23 defendant's refusal to accept and distribute unsolicited bulk
24 mail enables the Jail to conserve prison resources by limiting
25 the amount of incoming mail that correctional staff must process.

27 ⁶ This calculation does not include any increase from
28 other publications from different sources that may occur if
defendant's policy is changed to allow this sort of distribution.

1 Further, by limiting the amount of unsolicited mail, defendant is
2 ensuring that there are less written materials that inmates may
3 easily use or dispose of in ways that are disruptive to the staff
4 or other inmates. Finally, the regulation limits the materials
5 out of which inmates may fashion weapons.

6 The court also finds that defendant's regulation is neutral
7 in its application. It is undisputed that the current policy
8 does not take into account the content of any unsolicited
9 publications. (DUF ¶ 16.)

10 Plaintiffs argue that the Ninth Circuit's decision in Prison
11 Legal News v. Lehman, 397 F.3d 692 (9th Cir. 2005), relating to
12 the constitutionality of regulations relating to the receipt of
13 publications sent via bulk mail, supports their argument that the
14 regulations at issue are not rationally related to legitimate
15 interests and thus, unconstitutional. However, the facts before
16 the court in Lehman are distinguishable from the facts before the
17 court in this case. In Lehman, the plaintiffs challenged the
18 defendant Washington Department of Corrections' regulation
19 prohibiting the receipt of non-subscription bulk mail and
20 catalogs by inmates. Id. at 696. In finding that the regulation
21 was not rationally related to a legitimate penological interest,
22 the Lehman court emphasized that, in the case before it, every
23 piece of mail sent by the plaintiffs was a result of a request by
24 the recipient. Id. at 700-01 ("[I]t is the request on the part
25 of the receiver and compliance on the part of the sender, and not
26 the payment of money, that is relevant to the First Amendment
27 analysis."). As such, "the sender's interest in communicating
28 the ideas in the publication correspond[ed] to the recipient's

1 interest in reading what the sender has to say." Id. at 701
2 (internal quotations and citations omitted). Conversely, in this
3 case, plaintiffs do not seek to send *CJA* to inmates who have
4 previously requested to receive the publication. Indeed,
5 plaintiffs have failed to disclose the name of any inmate in the
6 Sacramento County Jail who has requested a copy of *CJA*. (DUF ¶
7 58.) Thus, the convergence of the publisher's interest in
8 sending and the inmate's express desire to receive, the existence
9 of which the Ninth Circuit held was both "important" and
10 "relevant" in this inquiry, is notably absent here. See Lehman,
11 397 F.3d at 700-01.

12 Furthermore, two other district courts confronted with
13 nearly identical issues are in accordance with the court's
14 conclusion. In both Hrdlicka v. Cogbill, No. C 04-3020, 2006 WL
15 2560790 (N.D. Cal. Sept. 1, 2006), and Crime, Justice & America,
16 Inc. v. Reniff, No. 2:08-cv-343, 2009 WL 735184 (E.D. Cal. Mar.
17 18, 2009), plaintiffs Hrdlicka and Crime, Justice & America, Inc.
18 brought suit challenging nearly identical regulations regarding
19 distribution of unsolicited publications at jails in Sonoma
20 County and at the Butte County Jail. The defendants in Hrdlicka
21 and Reniff proffered penological interests identical to those
22 proffered by defendant in this case. After reviewing the
23 submissions of the parties and the relevant case law, the
24 district courts concluded that the challenged prohibitions
25 relating to unsolicited publications were rationally related to
26 and advanced legitimate penological interests. Further, both
27 courts also concluded that the Ninth Circuit's holding in Lehman

1 was inapplicable because no request for the publication had been
2 made to plaintiffs.

3 Therefore, the court concludes that the first Turner factor
4 weighs in favor of defendant.

5 **B. Alternative Means of Exercising the Right**

6 In analyzing the second Turner factor, the court must
7 examine whether "'other avenues' remain available for the
8 exercise of the asserted rights." Turner, 482 U.S. at 90
9 (quoting Jones, 433 U.S. at 131). Where such alternative means
10 are available, "courts should be particularly conscious of the
11 'measure of judicial deference owed to corrections officials . .
12 . in gauging the validity of the regulation.'" Id. (quoting Pell
13 v. Procunier, 417 U.S. 817, 827 (1974)).

14 Defendant contends that inmates have always had the ability
15 to request and receive *CJA*. Defendant also presents evidence
16 that plaintiffs have been informed multiple times that *CJA* could
17 be mailed directly to inmates without objection. Thus, defendant
18 argues that other avenues remain available for inmates to receive
19 plaintiffs' publication.

20 The court agrees. Defendant presents evidence that he has
21 never refused to distribute *CJA* to an inmate that has requested
22 it. (DUF ¶ 59.) While complying with defendant's regulation may
23 reduce the circulation rate of *CJA*, a subscription or request
24 based system would effectively allow plaintiffs to exercise their
25 First Amendment right to communicate with inmates at the
26 Sacramento County Jail. See Jones, 433 U.S. at 130-31 (holding
27 that the loss of cost advantage in bulk mailing did not
28 fundamentally implicate free speech values and thus, the

1 regulations imposed were reasonable); Hrdlicka, 2006 WL 2560790,
2 at *14 (noting that traditional advertising techniques and
3 relying on word-of-mouth to promote inmate subscribers to whom
4 plaintiffs may directly mail issues of *CJA* was a sufficient
5 alternative means of exercising their First Amendment right).⁷

6 Therefore, the court concludes that the second Turner factor
7 weighs in favor of defendant.

8 **C. Impact on the Allocation of Prison Resources**

9 In analyzing the third Turner factor, the court must examine
10 the impact that accommodation of the asserted constitutional
11 right would have on guards and other inmates as well as on the
12 allocation of prison resources generally. Turner, 482 U.S. at
13 90. The Supreme Court has acknowledged that in the context of a
14 correctional institution, "few changes will have no ramifications
15 on the liberty of others or on the use of the prison's limited
16 resources for preserving institutional order." Id. Where such
17 ramifications will have a significant effect on fellow inmates or
18 prison staff, "courts should be particularly deferential to the
19 informed discretion of corrections officials." Id.

20 As mentioned above, defendants present evidence that the
21 increase in mail created by plaintiffs' proposed distribution of
22 an unsolicited publication would likewise increase
23 administration, staffing, and security issues within the Jail.
24 Defendant asserts that to accept publications or magazines from
25 one publisher would set an unworkable precedent, obligating the

26
27 ⁷ While plaintiffs argue that defendant would be unable
28 to distinguish between solicited and unsolicited copies, this
argument is irrelevant to the determination of whether a ready
alternative exists. See Reniff, 2009 WL 735184, at *2.

1 Jail to accept any other publications that appeared on the
2 doorstep. (DUF ¶ 17); see Reniff, 2009 WL 735184, at *3 (holding
3 that the third Turner factor weighed in favor of defendants where
4 distribution of CJA would set a precedent regarding the
5 distribution of other unsolicited newsletters or publications).
6 In addition to the increased administrative burden in allocating
7 staff to sort through the additional mail, defendants also
8 present evidence that placing greater burdens on the mail
9 processing staff increases the likelihood that error will occur
10 and contraband will be missed; this would affect the safety and
11 security of the Jail as a whole. (DUF ¶ 21); cf. Prison Legal
12 New v. Cook, 238 F.3d 1145, 1151 (holding that 15 to 30 pieces of
13 mail derived from personal subscriptions to a particular
14 publication in addition to the 5000 to 8000 pieces of first class
15 mail processed daily was minimal, particularly where there was
16 evidence that the Department was able to process improperly
17 addressed bulk mail sent by the state).

18 Therefore, in light of the undisputed evidence, the court
19 concludes that the third Turner factor weighs in favor of
20 defendant.

21 **D. Easy or Obvious Alternatives**

22 Finally, in analyzing the fourth Turner factor, the court
23 must examine whether there are ready alternatives to the
24 regulation at issue. Turner, 482 U.S. at 90. “[T]he existence
25 of obvious, easy alternatives may be evidence that the regulation
26 is not reasonable, but is an ‘exaggerated response’ to prison
27 concerns.” Id. However, the Supreme Court has made clear that
28

1 this factor does not impose a "least restrictive alternative
2 test."

3 Plaintiffs argue that defendant's regulations are an
4 exaggerated response because other alternatives allay some of the
5 concerns and interests proffered by defendant. Specifically,
6 plaintiffs point to defendant's regulations limiting the amount
7 of possessions inmates may have in their cells. (See PUF ¶ 74.)
8 Plaintiffs also assert that defendants could prohibit or limit an
9 inmates' ability to leave any written materials in common areas.

10 The court finds plaintiffs' arguments unpersuasive.
11 Plaintiffs' asserted alternatives fail to take into account the
12 administrative burdens imposed upon the Jail and its staff due to
13 an increase in unsolicited mail. Indeed, their proposed new
14 prohibition would likely require more staffing in order to ensure
15 that inmates did not leave unsolicited publications in common
16 areas. Furthermore, plaintiffs fail to address the jail safety
17 issues raised by defendant, such as the potential increase in
18 contraband due to inadequate screening or an inmate's ability to
19 fashion weapons or otherwise improperly use materials over which
20 they have no ownership or personal interest.

21 Therefore, the court concludes that the fourth Turner factor
22 weighs in favor of defendant.

23 CONCLUSION

24 In sum, the court holds that defendant's regulations
25 regarding the mail policy as it applies to unsolicited
26 publications such as CJA are reasonably related to legitimate
27 penological interests. There are valid, rational connections
28 between the policies in place and defendant's interests in

1 maintaining mail quality control, ensuring jail security, and
2 allocating jail resources. There are also ready alternatives for
3 plaintiffs to exercise their First Amendment right; defendant's
4 regulations allow for the distribution of CJA to inmates when it
5 is properly addressed and mailed to those who voluntarily request
6 it. Further, accommodating plaintiffs' request would impact the
7 allocation prison resources through the increased burden on staff
8 as well as the potential increase in safety issues. Finally,
9 there is no readily apparent alternative to the current
10 regulations that bear in mind the legitimate penological
11 interests proffered by defendant. Accordingly, the court
12 concludes that defendant's challenged regulations are permissible
13 under Turner.

14 For the foregoing reasons, defendant's motion for summary
15 judgment is GRANTED. The Clerk of Court is directed to close
16 this case.

17 IT IS SO ORDERED.

18 DATED: August 3, 2009



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE