

The Honorable Edward F. Shea

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

13	SARAH BRADBURN, PEARL)	
14	CHERRINGTON, CHARLES)	
15	HEINLEN, and THE SECOND)	NO. CV-06-327-EFS
16	AMENDMENT FOUNDATION,)	
17	Plaintiffs,)	DEFENDANT NORTH CENTRAL
18	v.)	REGIONAL LIBRARY DISTRICT'S
19)	STATEMENT OF FACTS IN
20	NORTH CENTRAL REGIONAL)	SUPPORT OF MOTION FOR
21	LIBRARY DISTRICT,)	SUMMARY JUDGMENT
22	Defendant.)	
23)	

DEFENDANT NORTH CENTRAL
REGIONAL LIBRARY DISTRICT'S
STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 1
CV-06-327-EFS
#657989 v1 / 42703-001

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1 **A. The North Central Regional Library**

2 1. North Central Regional Library (“NCRL” or “District”) is an inter-county
3 rural library district and municipal corporation established in 1960. Declaration
4 of Dean Marney (“Marney Decl.”) at ¶ 3.

5
6
7 2. NCRL is organized and operated pursuant to RCW 27.12 et. seq. Id at ¶4.

8
9 3. NCRL provides public library services to over 220,000 people in the areas
10 of Chelan, Douglas, Ferry, Grant and Okanogan counties. Id at ¶5., **Ex. A.**

11
12 4. The District is funded by local property taxes, federal money, private
13 grants and endowments. Id. at ¶6.

14
15
16 5. Management and control of NCRL is vested in a board of trustees (“the
17 Board”) composed of two trustees from each of Chelan and Grant counties and
18 one trustee each from Douglas, Ferry, and Okanogan counties. Id. at ¶7.

19
20
21 6. The Board is responsible for issuing all policies for the District. Id. ¶8.

22
23 7. The Board appoints a Director, who manages the library and directs the
24 employees. The Director serves as the liaison between the Board and library

25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 2
CV-06-327-EFS
#657989 v1 / 42703-001

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1 staff. Id. at ¶9.

2
3 8. The current Director, Dean Marney, was appointed to the position in
4 1990, and has been employed by NCRL since 1977. Id. at ¶10.

5
6 9. NCRL maintains a collection over 675,000 books and other materials
7 which are available through twenty-eight (28) community libraries and NCRL's
8 web site. Id. at ¶ 11.

9
10
11 10. NCRL provides mail order service to rural patrons. NCRL's service in
12 this respect is one of the few remaining mail order services in the country. Id.
13 at ¶12.

14
15
16 11. NCRL's twenty-eight branches vary in size. The largest is the Wenatchee
17 branch which covers approximately 12,000 square feet of public area. Id. The
18 smallest is the Twisp branch which has approximately 701 square feet of public
19 space. Id. at ¶13.

20
21
22 12. The average size of an NCRL branch is approximately 2865 feet. Id.

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 3
CV-06-327-EFS
#657989 v1 / 42703-001

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1 13. There is a designated children’s area in every NCRL branch but only one
2 branch has a wall or other partition physically separating the children’s section
3 from the rest of the library. Id. at ¶14.
4

5
6 14. Twenty NCRL branches are staffed by one librarian. Id. at ¶15.
7

8 15. NCRL is committed to, and responsible for, working cooperatively with
9 public schools in its territory. In 14 of the 26 school districts in NCRL territory,
10 NCRL branch libraries actually serve as the de facto school library for school
11 age children. Id. at ¶16.
12

13
14 16. Internet access is provided in all NCRL branches. Id. at ¶17.
15

16 17. Fifty-seven (57%) of NCRL branches have only one or two public use
17 computers. Id. at ¶18.
18

19 18. Only three branches have more than four public use computers. Id.
20

21 19. In order to qualify for federal LSAT (“Library Services and Technology”)
22 and E-rate funds, NCRL is required to operate “a technology protection measure
23 with respect to any of its computers with Internet access that protects against
24

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 4
CV-06-327-EFS
#657989 v1 / 42703-001

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1 access through such computers to visual depictions that are obscene, child
2 pornography, or harmful to minors.” Id at ¶19, **Ex. B.**
3

4 20. The “E-Rate program” allows qualifying libraries to purchase internet
5 access at discounted rates. The Library Services and Technology Act (“LSTA”)
6 provides grants to states to support the telecommunications and computer
7 network initiatives of public libraries. Id. at ¶20.
8
9

10 21. CIPA defines the “technology protection measure” to include an internet
11 filtering device. Id. at ¶22.
12
13

14 22. CIPA gives librarians the option of disabling these filters if an adult
15 patron specifically requests they be turned off under specific circumstances, but
16 the statute does not require such requests be granted. Id. at ¶23, **Ex. B.**
17
18

19 23. Consistent with NCRL’s broad discretion to decide what material to
20 provide to its patrons in fulfillment of its mission, NCRL’s obligation to create a
21 safe environment for its patrons and employees, as well as NCRL’s duty to
22 comply with the Children’s Internet Protection Act, all Internet use on NCRL
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 5
CV-06-327-EFS
#657989 v1 / 42703-001

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1 library computers is filtered. NCRL will not disable the filter upon the request
2 of an adult patron. *Id.* at ¶24, **Ex. B**; *Id.* at ¶60.
3

4 **B. NCRL's Relevant Policies**
5

6 24. The mission of the North Central Regional Library is to promote reading
7 and lifelong learning. *Id.* at ¶25.
8

9 25. NCRL's Collection Development Policy states:
10

11 The North Central Regional Library District's Board of
12 Trustees recognizes that the library was created to
13 serve all of the people within the District's service
14 area, regardless of race, age, creed, or political
15 persuasions. The Board of Trustees further recognizes
16 that within the District's service area there are
17 individuals and groups with widely disparate and
18 diverse interests, cultural backgrounds, and needs. The
19 Board of Trustees, therefore, declares as a matter of
20 policy that:

21 1. The Collection Development Policy is based on
22 and reflects the District's mission, goals, and values as
23 stated in the current Strategic Plan.

24 2. Library materials shall be selected and retained
25 in the library on the basis of their value for the interest,
26 information, and enlightenment of all the people of the
27 community in conformance with the District's mission.
28 Some of the factors which will be considered in adding

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 6
CV-06-327-EFS
#657989 v1 / 42703-001

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1 to or removing materials from the library collection
2 shall include: present collection composition,
3 collection development objectives, interest, demand,
4 timeliness, audience, significance of subject, diversity
5 of viewpoint, effective expression, and limitation of
6 budget and facilities.

7 No library materials shall be excluded because of the
8 race, nationality, political, religious, or social views of
9 the author. Not all materials will be suitable for all
10 members of the community.

11 The District shall be responsive to public suggestion of
12 titles and subjects to be included in the library
13 collection. Gifts of materials may be accepted with the
14 understanding that the same standards of selection are
15 applied to gifts as to materials acquired by purchase,
16 and that any gifts may be discarded at the District's
17 discretion.

18 To ensure a vital collection of continuing value to the
19 community, materials that are not well used may be
20 withdrawn.

21 The Director is responsible to the Board of Trustees
22 for collection development. The Director may delegate
23 collection development activities to members of the
24 staff who are qualified by reason of education and
25 training.

26 3. The Board of Trustees believes that reading,
27 listening to, and viewing library materials are
28 individual, private matters. While individuals are free
to select or to reject materials for themselves, they

DEFENDANT NORTH CENTRAL
REGIONAL LIBRARY DISTRICT'S
STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 7
CV-06-327-EFS
#657989 v1 / 42703-001

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1 cannot restrict the freedom of others to read, view, or
2 inquire. The Board of Trustees recognizes that parents
3 have the primary responsibility to guide and direct the
4 reading and viewing of their own minor children.

5 The Board of Trustees recognizes the right of
6 individuals to question materials in the District
7 collection. A library customer questioning material in
8 the collection is encouraged to talk with designated
9 members of the staff concerning such material. To
10 formally state his or her opinion and receive a written
11 response, a customer may submit the form provided
12 for that purpose.

11 Marney Decl. at ¶26, Ex. C.

12 26. NCRL's Internet Public Use Policy states:

13
14 The mission of the North Central Regional Library is
15 to promote reading and lifelong learning. Internet
16 access is offered as one of many information resources
17 supporting that mission.

18 The Internet is currently an unregulated medium.
19 While the Internet offers access to materials that are
20 enriching to users of all ages, the Internet also enables
21 access to some materials that may be offensive,
22 disturbing, or illegal. There is no guarantee that
23 information obtained through the Internet is accurate
24 or that individuals are who they represent themselves
25 to be. The library district recognizes that it cannot
26 fully control the amount of material accessible through
27 the Internet but will take reasonable steps to apply to

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 8
CV-06-327-EFS
#657989 v1 / 42703-001

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1 the Internet the selection criteria stated in the
2 Collection Development Guidelines and Procedures.

3 All Internet access on NCRL library computers is
4 filtered.

5 The library district does not host customer e-mail
6 accounts or provide access to chat rooms.

7 The library district cannot guarantee privacy for
8 individuals using library public access computers to
9 search the Internet and computer screens may be
10 visible to people of all ages, backgrounds, and
11 sensibilities. Customers are requested to exercise
12 appropriate discretion in viewing materials or
13 submitting sensitive personal information. Minors, in
14 particular, are discouraged from sharing personal
15 information online.

16 Hacking and other unlawful online activities are
17 prohibited.

18 The District's director is responsible for establishing
19 procedures to carry out this policy.

20 Marney Decl. at ¶27, Ex. D.

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 9
CV-06-327-EFS
#657989 v1 / 42703-001

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1 **C. NCRL's Filtering Technology**

2 27. NCRL originally implemented internet filtering in December 2000.
3
4 Declaration of Barbara Walters ("Walters Decl.") at ¶3.

5
6 28. The original filter was referred to as "BESS." Id. at ¶4.

7
8 29. Washington State library statistics for 2005, indicate that 16 out of 47
9 library systems with filters reported they were using a version of BESS.
10 Id. at ¶5, Ex. A.

11
12 30. BESS was NCRL's operative filter at the time of the incidents giving rise
13 to the current litigation. Walters at ¶6.

14
15
16 31. During the time BESS was the operative filter, NCRL recalls only one
17 instance when a patron asked for the filter to be disabled. Marney Decl. at
18 ¶58.

19
20
21 32. The request to disable the BESS filter was made by Plaintiff Charles
22 Heinlen. Id.

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 10
CV-06-327-EFS
#657989 v1 / 42703-001

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1 33. In October 2006, BESS was replaced with a new filter system known as
2 the FortiGuard Web Filtering Service. Fortiguard is part of the suite of
3 products and services developed by Fortinet, Inc. (hereinafter
4 “FortiGuard”). Walters Decl. at ¶6.
5

6
7 34. The replacement of BESS by FortiGuard was part of a comprehensive IT
8 upgrade to the computer cataloguing system. Walters Decl. at ¶8.
9

10
11 **D. The FortiGuard Filter**

12 35. FortiGuard and Fortinet maintain a database of websites. Fortinet reports
13 that it includes more than 30 million sites, covering more than two billion
14 individual pages, or URLs (Universal Resource Locators). Declaration of Paul
15 Resnick (“Resnick Decl”) at ¶. Additional information on Fortiguard Web
16 Filtering Service is discussed in Declaration of Liam Chasteen.
17
18

19 36. FortiNet assigns each web page to one of 76 categories based on its
20 dominant content, or to none of those categories Some pages are additionally
21 assigned one of seven classes. Id. at ¶10.
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 11
CV-06-327-EFS
#657989 v1 / 42703-001

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1 37. When a web site contains pages having content with different dominant
2 categories, each page is separately categorized. Id. at ¶11.
3

4 38. The customer selects classes or categories to block or leave unblocked.
5 Id. at ¶12.
6

7 39. The Service is certified to comply with the Children's Internet Protection
8 Act. Id. at ¶13, **Ex. F**.

9
10 40. FortiNet provides a short description of the meaning of each category and
11 classification. FortiNet does not provide the details of its procedures.
12 Presumably, FortiNet uses a combination of automated algorithm and human
13 review. Id. at ¶14.
14

15 41. Anyone may immediately find out FortiNet's current classification of any
16 particular web site or page (URL) by entering the URL in a form on the FortiNet
17 web site (<http://www.fortiguardcenter.com/webfiltering/webfiltering2.html>). Id.
18 at ¶15.
19
20

21 42. Anyone may request that FortiNet review its classification of a particular
22 web site or page through the same area of the FortiNet web site. Id. at ¶16.
23
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 12
CV-06-327-EFS
#657989 v1 / 42703-001

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1 43. To understand how the Fortiguard affects the Internet activity of an
2 NCRL patron, it is helpful to consider the sequence of steps that occur behind
3 the scenes each time a patron tries to visit a web page. Id. at ¶17.

5 44. A visit may be initiated either by directly entering a URL into the toolbar,
6 by selecting a bookmarked favorite from a menu, or by following a link from
7 another page. Id. at ¶18.

9 45. Regardless of how a visit to a website is initiated, the same sequence of
10 events occurs in the background. Id. at ¶19.

12 46. To illustrate, assume an NCRL patron enters the URL
13 <http://www.yahoo.com.nfl> in the toolbar. Once the URL address is typed, the
14 patron's computer attempts to establish a connection to the IP address of the
15 destination host (or web server). It sends a message that it would like to "get"
16 whatever the server provides in response to this URL path, such as an HTML
17 document or an image file. Id. at ¶20.

19 47. Because the patron's computer accesses the Internet through the library's
20 "Fortigate" filtering firewall unit, the patron's computer may not receive the
21 same response had it been connected directly to the Internet. Id. at ¶21.

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 13
CV-06-327-EFS
#657989 v1 / 42703-001

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1 48. If <http://www.yahoo.com.nfl> has been requested recently, by this patron
2 or another in the same branch, the Fortigate unit may have a copy of
3 Fortiguard's rating of the URL or the server's response to that request. If it does
4 not, the Fortigate unit contacts the destination host (Yahoo) asking for the same
5 URL path the patron's computer requested and the Fortigate unit connects to a
6 Fortiguard Rating Server with the text of the requested URL. Id. at ¶ at 22.

7
8
9 49. The Fortiguard Rating Server, which is maintained by Fortiguard,
10 responds to the Fortigate unit with two pieces of information, a "category" and a
11 "classification." For example, <http://www.yahoo.com.nfl> is in the category
12 "sports" and its classification is "unclassified." Id. at ¶23.

13
14
15 50. Once the Fortigate unit receives the requested contents, it runs a policy
16 evaluator program that evaluates whether the URL is blocked or allowed under
17 the filtering profile in operation. Id. at ¶24.

18
19 51. The policy evaluator first examines whether the URL is one that is
20 specifically exempt or blocked according to the rules set by NCRL staff and
21 stored as part of the filtering profile. Id. at ¶25.
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 14
CV-06-327-EFS
#657989 v1 / 42703-001

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1 52. If there is no explicit rule, then the evaluator compares the category
2 returned (e.g. "sports") to the set of blocked classifications in the filtering
3 profile. If either the category or classification is blocked, then the policy
4 evaluator determines that the requests access should be blocked. Id. at ¶26.
5

6
7 53. If the Rating Server failed to return a category and classification, NCRL
8 has configured the policy evaluator to allow access to the URL. Id. at ¶27.
9

10 **E. NCRL's Current Filtering Profile**

11 54. The following categories are blocked under NCRL's current filtering
12 profile: (1) hacking; (2) proxy avoidance; (3) phishing; (4) malware; (5)
13 spyware; (6) gambling; (7) adult materials; (8) nudity/risque; (9) pornography;
14 (10) webchat; (11) instant messaging. The following classifications are also
15 blocked: image search, video search; and spam URL. Walters Decl. at ¶8.
16
17

18 55. The above-referenced categories and classifications are defined by
19 Fortinet as follows:
20

- 21 • **Hacking** – sites that depict illicit activities surrounding the
- 22 unauthorized modification or access to programs, computers,
- 23 equipment and websites;
- 24 • **Proxy Avoidance** – sites that provide information or tools on how
- 25 to bypass Internet access controls and browse the Web
- 26 anonymously, includes anonymous proxy servers

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 15
CV-06-327-EFS
#657989 v1 / 42703-001

- 1 • **Phishing**- counterfeit web pages that duplicate legitimate business
- 2 web pages for the purpose of eliciting financial, personal or other
- 3 private information from the users
- 4 • **Malware** – sites that are infected with destructive or malicious
- 5 software, specifically designed to damage, disrupt, attack or
- 6 manipulate computer systems without the user’s consent, such as a
- 7 virus or Trojan horse.
- 8 • **Spyware** – sites that host software that is covertly downloaded to a
- 9 user’s machine to collect information and monitor user activity,
- 10 including spyware, adware, etc.
- 11 • **Gambling** – sites that cater to gambling activities such as betting,
- 12 lotteries, casinos, including gaming information, instruction and
- 13 statistics.
- 14 • **Adult Materials** – Mature content sites (18+ and over) that feature
- 15 or promote sexuality, strip clubs, sex shops, etc....excluding sex
- 16 education, content without the intent to sexually arouse.
- 17 • **Nudity/Risque** – Mature content sites (18+ and over) that depict
- 18 the human body in full or partial nudity without the intent to
- 19 sexually arouse.
- 20 • **Pornography** – Mature content websites (18+ or older) which
- 21 present or display sexual acts with the intent to sexually arouse and
- 22 excite.
- 23 • **Webchat** – sites that promote web chat services.
- 24 • **Instant Messaging** – sites that allow users to communicate in
- 25 “real-time” over the Internet.
- 26 • **Image Search** – sites providing search of images or photos or the
- 27 result of image or photo searches
- 28 • **Video Search** – sites providing search of video clips or the result of
- video searches.
- **Spam URL** – sites or web pages whose URLs are found in spam
- emails. These web pages often advertise sex sites, single clubs and
- other potentially nuisance or offensive materials.

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 16
CV-06-327-EFS
#657989 v1 / 42703-001

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1
2 Walters Decl. at ¶9, **Ex. C**.

3 56. NCRL will evaluate any request to unblock a site that falls within the
4 categories and/or classifications listed above. Marney Decl. at ¶28.
5

6 57. NCRL has implemented a process whereby if a site is blocked, a patron
7 can immediately send an email to NCRL administrators for the review. Id. at
8 ¶29.
9

10 58. NCRL Director, Dean Marney, or NCRL Director of Public Services, Dan
11 Howard, evaluates each request as they would any other collection decision.
12 They consider whether the requested content is consistent with the library's
13 mission. Id. at ¶30.
14
15

16 59. Of the 81 automated requests NCRL has received since October 2007, 65
17 have been evaluated within 24 hours. The remaining 16 requests were typically
18 made over a weekend or holiday. Accordingly, decisions could not be made on
19 the same day. Id. at ¶31.
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 17
CV-06-327-EFS
#657989 v1 / 42703-001

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1 **F. CIPA Compliance**

2 60. NCRL's current filtering profile is consistent with its mission to promote
3 reading and lifelong learning, as well as create a safe environment for its patrons
4 and staff. Marney Decl. at ¶32.

5
6 61. NCRL's current filtering profile also facilitates compliance with the
7 Children's' Internet Protection Act (CIPA). Id. at ¶33.

8
9 62. As set forth above, CIPA requires a library receiving federal LSTA and E-
10 Rate funds to employ a technology protection measure with respect to any of its
11 computers with Internet access that protects against access through such
12 computers to visual depictions that are obscene, child pornography, or harmful
13 to minors. Id. at ¶19, **Ex. B.**

14
15 63. CIPA defines the above terms to include depictions of sexual conduct,
16 pornography, lewd exhibitionism, nudity, sexual activity, or simulated sexual
17 activity that have no serious literary, artistic, political or scientific value to
18 minors. Id. at ¶21.

19
20 64. CIPA emphasizes that determinations regarding what matter is
21 appropriate for minors shall be made locally. Id. at ¶34, **Ex. B.**

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23
24
25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 18
CV-06-327-EFS
#657989 v1 / 42703-001

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1 65. CIPA authorizes libraries to disable the filter at an adult patrons request to
2 enable access for bona fide research or other lawful purpose. *Id.* at ¶35, **Ex. B.**
3

4 66. NCRL researched the feasibility of disabling the filter for adult patrons
5 but ultimately decided such a policy change would present technological
6 challenges and would be inconsistent with NCRL's mission in addition to
7 presenting other problems. *Marney Decl.* at ¶36.
8

9 67. Without having to purchase additional authentication software or
10 hardware, or purchasing a new filtering solution, NCRL would have to designate
11 one computer at each location for unfiltered access. *Id.* at ¶37.
12

13 68. Thirty-two percent (32%) of NCRL branches currently have only one
14 public use computer. *Id.* at ¶38.
15

16 69. Beyond the technological challenges, complete removal of the filter
17 would allow for the dissemination of unprotected speech, illegal materials, and
18 information that could dismantle NCRL's entire computer network. *Id.* at ¶39.
19

20 70. Complete removal of the filter would also allow patrons to obtain
21 pornography and other inappropriate material NCRL would not otherwise
22 provide to its patrons through other mediums or media. *Id.* at ¶40.
23
24

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 19
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 71. NCRL believes access to such materials would create an unacceptable risk
2 for children and could create a hostile atmosphere for families, children and staff
3 in the library, so it elected to continue its policy of providing filtered access to
4 the Internet at all public use computers. Id. at ¶41.
5

6
7 72. NCRL's decision to continue providing filtered internet access was
8 informed by the fact that many of its branches are located in facilities that are
9 not conducive segregating children and adults. Id. at 42.
10

11 73. NCRL's policy of providing filtered internet access also took into account
12 branch library staff levels. Id. at ¶43.
13

14 74. If an adult patron views child pornography or other inappropriate content,
15 NCRL has determined its employees could be unwelcomingly exposed to, and
16 put in the position of, having to confront patrons. Id. at ¶44.
17

18 75. Moreover, NCRL did not want to employ a procedure that involved
19 differing and possibly inconsistent views regarding the appropriateness of what
20 people were accessing on the Internet. Id. at ¶45.
21

22 76. NCRL administration considered potential options of implementing
23 commonly used privacy measures, such as privacy screens or recessed desks in
24
25

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 20
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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1 but rejected them due to concerns from employees who had previously worked
2 with such technology in other library districts, including Dan Howard. Marney
3 Decl. at ¶46.

4
5 77. Based on his personal experience at other library districts, Dan Howard,
6 NCRL's Director of Public Services, expressed his concern that the privacy
7 screens were ineffective. Declaration of Dan Howard (Howard Decl.) at ¶18.
8

9
10 78. Mr. Howard believes privacy screens do not effectively block computer
11 monitors from people who are walking behind or seated adjacent to computers.
12 Id. at ¶19.

13
14 79. Mr. Howard believes privacy screens also made it difficult for individuals
15 with disabilities to view the monitor. Id.

16
17 80. In Mr. Howard's experience, the privacy screens were often removed or
18 vandalized, and were relatively expensive to replace. Id. at ¶20.

19
20 81. Mr. Howard also recalled that requests to remove the privacy screens
21 were frequent, causing uncomfortable confrontations between patrons and staff.
22 Id. at ¶21.
23

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 21
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 82. With respect to recessed desks, Mr. Howard expressed concern about the
2 expense and effectiveness of the technology. Id. at ¶18.

3
4 83. In his experience, Mr. Howard did not find that the recessed configuration
5 prevented people passing by from viewing the screen. Id. at ¶22.

6
7 84. In addition, a recessed desk (currently) retails for approximately
8 \$1,000.00. Id. at ¶23.

9
10 85. NCRL has not considered hiring security guards for their branches to
11 ensure individuals were not looking at inappropriate content, as is done in some
12 of Washington's largest libraries, including Seattle Public Library and Spokane
13 Public Library. NCRL believes this measure would be too expensive and would
14 adversely change the environment at NCRL branches. Id. at ¶24.

15
16
17 **G. NCRL's Duty to Create a Safe Environment for Patrons and Staff**

18 86. As Director of Public Services, Dan Howard is responsible for the twenty-
19 eight branch libraries and the Mail Order Library. He also coordinates
20 collection development activities and administers grants. Howard Decl. at ¶3.

21
22 87. Mr. Howard's responsibilities with respect to the individual branches
23 includes management of personnel, including all branch librarians. Id. at ¶4.

24
25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 22
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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1 88. Mr. Howard expects NCRL branch librarians to monitor and respond to
2 complaints of inappropriate use of its public computers, particularly to the extent
3 patrons are able to obtain and display materials that are pornographic, obscene
4 or harmful to minors. Mr. Howard does not expect NCRL librarians to confront
5 patrons engaging in inappropriate behavior facilitated by unrestricted Internet
6 access. *Is.* at ¶6.

7
8
9
10 89. Since NCRL started offering Internet access at its branch locations, there
11 have been instances where patrons have obtained sexually explicit, child
12 pornographic or obscene images. These incidents were more prevalent before
13 NCRL decided to block the image search function. *Id.* at ¶6.

14
15 90. In instances where patrons have accessed sexually explicit, child
16 pornographic or obscene images, NCRL librarians and staff have expressed
17 feelings of discomfort, embarrassment and anxiety both in having to view the
18 materials and confronting the patrons. *Is.* at ¶8.

19
20
21 91. Sharron Reddick, NCRL's Omak Branch Librarian, recalls specific
22 incidents where patrons were able to obtain explicit, pornographic images prior
23 to NCRL's decision to block Google images. Ms. Reddick advised Mr. Howard
24

25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 23
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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1 she and her staff felt victimized and even a bit scared when they were subjected
2 to the material. She reported that she and her staff found the confrontation with
3 the patrons stressful and upsetting. Id. at ¶9.

5 92. Jennifer Thompson, NCRL's Okanogan Branch Substitute Librarian,
6 recalled a specific incident (in approximately March 2007), where a patron was
7 accessing pornography on the Internet. More specifically, he was displaying the
8 rear view of a woman's private parts in full screen. Ms. Thompson told Mr.
9 Howard she felt immediately sickened that someone would have the nerve to
10 view this material in a place where others could see, including young kids that
11 might be using the computer. Ms. Thompson reported that viewing the image
12 made her feel uncomfortable and angry and that she believed the display was a
13 form of harassment. Id. at ¶10.

18 93. Lucile Ames, NCRL's Okanogan Branch Librarian, reports having seen
19 inappropriate pornographic materials both on the computers and at the printers.
20 Ms. Ames told Mr. Howard she felt offended and uncomfortable when she
21 forced to view the material. Id. at ¶11.

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 24
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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1 94. Gailene Hooper, NCRL's Republic Branch Librarian, reported receiving
2 multiple complaints from patrons about a man who, on more than one occasion,
3 was able to access pornography. Ms. Hooper felt uncomfortable dealing with
4 the patron and discussing the patrons' complaints with him. Ms. Hooper said
5 she has felt threatened when she is in the library alone and a patron has managed
6 to access an inappropriate site. *Id.* at ¶12.
7

8
9
10 95. Claire Kirkpatrick, NCRL's Grand Coulee librarian, reported a situation
11 occurring before the Fortiguard filter was installed, when a man loaded
12 pornographic photos to a public use computer. These photos were seen by a 13-
13 year old female student who was using the computer after the adult patron had
14 left. Ms. Kirkpatrick reported that she felt accosted and did not expect to be
15 exposed to this type of material at work. *Id.* at ¶13.
16
17

18 96. Michelle Orosco, NCRL's Bridgeport Branch Librarian, reported a
19 situation on December 28, 2007 when a male patron was using the Internet and
20 printing pornographic images on the public printers. Michelle said the pictures
21 were sexual and extremely graphic. Ms. Orosco said she was offended when
22 she was forced to view them. *Id.* at ¶14.
23
24
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 25
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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1 97. Carla Loreto, a former branch librarian at NCRL's Wenatchee branch,
2 reported a situation where she was helping a school age child do research on the
3 public computers. Ms. Loreto suggested the child search Google images, prior
4 to the category being blocked by NCRL administration. When Ms. Loreto typed
5 in the subject, she received a sexually explicit photo of a naked man. Ms.
6 Loreto felt embarrassed, confused and nervous, particularly given that the child
7 had viewed the material. Id. at ¶15.

8
9
10
11 98. Katy Sessions is the Wenatchee Library Supervisor. Ms. Sessions has
12 reported seeing pornography on the public intent computers to include
13 photographic depictions of sex and oral sex, as well as animated and cartoon
14 depictions of sex acts. Most of the pornography Ms. Session's encountered was
15 shortly after NCRL began offering the Internet (1998-2004). She reports that in
16 the last year there have been fewer instances, particularly since the
17 implementation of the Fortiguard filter. However, during the 1998-2004 period,
18 Ms. Sessions was taking anti-anxiety medication to cope with uncomfortable
19 confrontations with patrons regarding the Internet. Id. at ¶16.
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 26
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 99. NCRL is concerned incidents, such as those described in Paragraphs 91-
2 98 above, could expose NCRL to liability for facilitating a hostile work
3 environment. Id. at ¶17.
4

5 **H. Effectiveness of the Fortiguard Filter**
6

7 100. NCRL retained Professor Paul Resnick, to conduct a study to determine
8 whether the NCRL filter blocks more content than they intend to block with its
9 current filtering profile. Resnick Decl. at ¶5.
10

11 101. Mr. Resnick is a Professor at the University of Michigan School of
12 Information. Id. at ¶2., **Ex. A.**
13

14 102. In 2002, Mr. Resnick conducted an assessment of the error rates on
15 health-related websites of several commercial Internet filters. That study was
16 published in JAMA (Journal of the American Medical Association), the flagship
17 peer reviewed journal of the American Medical Association. Id. at ¶3, **Ex. B.**
18

19 103. A subsequent paper abstracting what Mr. Resnick had learned about the
20 methods for conducting tests of filtering software was published in the
21 Communications of the ACM, the flagship publication distributed to all
22 members of the Association for Computing Machinery. Id. at ¶4., **Ex. C.**
23
24

25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 27

CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 104. To estimate the amount of over blocking (blocking of sites that should be
2 allowed under the library's policy), Mr. Resnick conducted a test based on the
3 URLs actually visited at NCRL branch libraries during the week of August 23-
4 29, 2007. Id. at ¶29.

5
6
7 105. Mr. Resnick believed conducting the test based on URLs actually visited
8 was more meaningful than testing a random sample from the universe of all
9 domain names, for several reasons. First, it allows for estimation of the overall
10 impact on patron browsing, because it provides an estimate of how frequently
11 blocks occur, in addition to assessing whether those blocks were in error.
12
13 Second, patrons tend to visit more popular sites than a random sample of sites
14 would include, and Mr. Resnick expected that FortiNet would make fewer
15 classification errors on more popular sites. Id. at ¶30.

16
17
18 106. The complete test set consisted of 2380 distinct URLs, 2180 that would be
19 blocked under NCRL's current filtering policy. The test set included all 289
20 URLs for complete web pages that were blocked during the week; the other
21 URLs were for images, movies, or other elements that a web browser would
22 display as part of a web page that it had already displayed. Id. at ¶31.
23
24

25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 28
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 107. In order to assess the reliability of the test, two individuals – referred to as
2 “raters” - evaluated the items on the blocked pages. These raters did not talk to
3 one another at all about each others’ ratings. They also had no idea how the
4 Internet filter had categorized the web pages, in order to keep them from being
5 biased. Furthermore, some non-blocked sites were included so the raters did not
6 assume that a site should fit into one of the “blocked” categories. Id. at ¶32.

7
8
9
10 108. Once all the rating were complete by the two raters, Dr. Derek Hansen, a
11 colleague of Paul Resnick, independently rated all of the webpages where there
12 was a disagreement between the first two raters or where one of the raters had
13 “flagged” the site as difficult to rate. Id. at ¶33.

14
15 109. Dr. Hansen was not able to see the other rate’s classifications so that his
16 rating would be truly independent. Similarly, Fortinet classifications were not
17 provided to Dr. Hansen, so not to bias him. Id. at ¶34.

18
19
20 110. In the one week period examined by Mr. Resnick, across all NCRL
21 branches, only 20 pages were incorrectly blocked amount more than 60,000
22 page requests. Id. at ¶35.

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 29
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 111. The study revealed that less than 1/3000 (1/30th of 1%) of patron request
2 for webpages resulting in incorrect blocks. Id. at ¶36.
3

4 112. In reviewing the particular web-pages and full-size images that were
5 blocked in error, Mr. Resnick did not detect any pattern that would suggest the
6 errorw were anything but random. Mr. Resnick did not find any reason to
7 believe particular categories were being blocked, other than those NCRL
8 explicitly chose to block. Id. at ¶37.
9

10
11 113. Although Fortiguard was not the operative filter at the time Plaintiffs were
12 attempting to access information through NCRL computers, none of the
13 Plaintiffs contacted NCRL administration with their concerns that particular
14 sites or categories of information were being improperly blocked by the
15 operative filter prior to filing suit. One only Plaintiff contacted NCRL with
16 concerns, and he asked that the filter be completely removed. Walters Decl. at
17 ¶6; Marney Decl. at ¶47-58.
18
19
20

21 I. The Plaintiffs

22 114. Plaintiff Second Amendment Foundation (“SAF”) is a not-for-profit
23 educational, research, publishing and legal action group focusing on the
24

25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 30
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
KARR TUTTLE CAMPBELL
A Professional Service Corporation
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 constitutional right to own and possess firearms. See Ct. Rec 1.

2
3 115. SAF is headquartered in Bellevue, Washington. SAF maintains one of its
4 publications, "Women & Guns," (www.womenandguns.com) is blocked by
5 NCRL's Internet Filters. Id.

6
7 116. SAF's spokesman testified he had no personal knowledge whether the
8 web site was actually blocked, but that an SAF member (or members) reported
9 that the site was unavailable on NCRL computers. Adams Decl. at **Ex. A**.

10
11 117. SAF did not speak to NCRL staff or administrators about its concerns
12 prior to filing suit. Marney Decl. at ¶47.

13
14 118. NCRL did not have an opportunity to investigate or potentially remedy
15 the concerns. Id. at ¶48.

16
17 119. At this time, Women & Guns' website is available to NCRL patrons
18 through the public use computers. Id. at ¶49.

19
20 120. Plaintiff Sarah Bradburn is a resident of Republic, Washington. See Ct.
21 Rec 1.

22 121. Bradburn is a patron of the Republic branch of the NCRL system. Id.

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 31
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
KARR TUTTLE CAMPBELL
A Professional Service Corporation
1201 Third Avenue, Suite 2900, Seattle, Washington 98101-3028
Telephone (206) 223-1313, Facsimile (206) 682-7100

1 122. Ms. Bradburn maintains she was unable to access information relating to
2 youth tobacco usage as the information was blocked by NCRL's filter. Id.

3
4 123. Ms. Bradburn cannot articulate the specific sites she was attempting to
5 access, nor can she identify the information was blocked as a result of the filter,
6
7 as opposed to some other technical difficulty. Adams Decl at **Ex. B**.

8 124. Ms. Bradburn did not speak to NCRL staff or administrators about her
9 concern prior to filing suit. Marney Decl. at ¶50.

10
11 125. NCRL did not have an opportunity to investigate or potentially remedy
12 Bradburn's concerns. Id. at ¶51.

13
14 126. NCRL was utilizing the BESS filter at the time Ms. Bradburn was
15 conducting her research, so it is not clear whether the sites she was attempting to
16 access would be blocked by NCRL's current filtering profile or the Fortiguard
17 filter. Id. at ¶52.

18
19
20 127. Plaintiff Pearl Cherrington is a resident of Twisp, Washington. Adams
21 Decl, See Ct. Rec 1.

22 128. Ms. Cherrington is a patron of the Twisp branch of NCRL. Id.

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 32
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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A Professional Service Corporation
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 129. Ms. Cherrington alleges she attempted to use computers maintained by
2 NCRL to conduct research and obtain information regarding art and health
3 topics, but that her attempts were restricted by the NCRL filter. *Id.*

4
5 130. Ms. Cherrington cannot articulate the specific sites she was attempting to
6 access, nor can she identify the information was blocked as the result of the
7 filter, as opposed to a technical difficulty. *Adams Decl. at Ex. C.*

8
9
10 131. In discovery responses, Ms. Cherrington claims she also attempted to
11 access the website YouTube.com. *Id. at Ex. D.*

12 132. YouTube.com is not currently blocked under NCRL's filtering profile.
13
14 *Marney Decl. at ¶56.*

15 133. Ms. Cherrington did not speak to any NCRL staff or administrator about
16 her Internet access concerns prior to filing suit. *Id. at ¶53.*

17
18 134. NCRL did not have an opportunity to investigate or potentially remedy
19 Mc. Cherrington's concerns. *Id. at ¶54.*

20
21 135. NCRL was utilizing the BESS filter at the time Ms. Cherrington was
22 conducting her research, so it is not clear whether the sites she was attempting to
23

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25
26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 33
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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A Professional Service Corporation
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 access would be blocked by NCRL's current filtering profile or the Fortiguard
2 filter. Id. at ¶55.

3
4 136. Plaintiff Charles Heinlen is a resident of Okanogan, Washington. Adams
5 Decl., See Ct. Rec 1.

6
7 137. Mr. Heinlen is a patron of the Omak, Okanogan and Wenatchee branches
8 of the NCRL. Id.

9
10 138. Mr. Heinlen maintains he attempted to conduct research and obtain
11 information related to firearms which was restricted by NCRL's Internet Filters.
12 He claims he was also denied to various dating sites, Soldier of Fortune
13 Magazine and the Web log ("blog") he maintains at www.myspace.com, as well
14 as photos embedded in commercial emails sent to his Hotmail and Yahoo email
15 accounts. Id.
16

17
18 139. Mr. Heinlen is the only Plaintiff who spoke to NCRL staff and
19 administrators prior to filing suit. However, Mr. Heinlen simply demanded the
20 filter be removed and did not request specific sites be unblocked. Marney Decl.
21 at ¶57.
22
23
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 34
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 140. Pursuant to its Internet Public Use Policy, NCRL's refuses to completely
2 disable the filter. Id. at ¶ 60.

3
4 141. Mr. Heinlen believes he should have access to pornography, content
5 directed toward illegal activity, and constitutionally-unprotected speech through
6 NCRL computers. Adams Decl. at **Ex. E**.

7
8 **J. Procedural History**

9 142. On or around November 20, 2006, Plaintiffs filed a Complaint for
10 Declaratory and Injunctive Relief against NCRL in federal court in
11 Washington's Eastern District. Collectively, Plaintiffs seek remedies under 28
12 USC §§2201 and 2202, 42 USC §§1983 and 1988 and Federal Rule of Civil
13 Procedure 65. See Ct. Rec. 1.

14
15 143. In their Prayer for Relief, Plaintiffs ask the Court to declare that NCRL's
16 policy of refusing to disable its Internet filters upon the request of adult who
17 wish to conduct bona fide research or to access the Web for other lawful
18 purposes violates the First Amendment of the United States Constitution and
19 Article I, Section 5 of the Washington State Constitution. Id.
20
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 35
CV-06-327-EFS
#657989 v1 / 42703-001

Law Offices
KARR TUTTLE CAMPBELL
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Telephone (206) 223-1313, Facsimile (206) 682-7100

1 144. Plaintiffs seek an order directing the NCRL and its officers, agents,
2 servants and employees to disable the filters upon request of adults who wish to
3 use the Internet for these reasons. Id.

5 145. On or around December 26, 2006, NCRL answered Plaintiffs' Complaint.
6 See Ct. Rec 5.

8 146. In its answer, NCRL denied that a case or controversy existed on the
9 grounds that: (1) a new filter has been installed and (2) there was no evidence
10 that Plaintiffs' could not now access the sites which they alleged were
11 previously blocked. Id.

14 147. In its answer, NCRL stated Article 1, Section 5 of the Washington
15 Constitution does not require NCRL to completely disable its Internet filter at an
16 adult patrons request. Id.

18 148. In its Answer, NCRL stated the First Amendment of the United States
19 Constitution does not require NCRL to completely disable its Internet filter at an
20 adult patrons request. Id.

22 **K. Additional Documents Referenced in Moving Papers**

24 149. In 2003, 12 librarians brought hostile work claims against the Minnesota

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT - 36

CV-06-327-EFS
#657989 v1 / 42703-001

1 Public Library due to the proliferation of pornography and other sexually-
2 explicit material accessed by patrons on library computers. The case was
3 discussed in a August 16, 2003 article from Brainerddispatch.com, "Librarians
4 Settle Internet Porn Case," obtained on-line January 30, 2008. Adams Decl. **Ex.**

5
6 **G.**

7
8 150. Recent reports from Dallas, Texas disclosed that library patrons accessed
9 5,200 web pages containing pornographic material in a 45 minute period on a
10 single day. This study was discussed in a January 15, 2008 article from The
11 Dallas Morning News, "On Dallas Library Computers, Porn is a Regular Sight,"
12 obtained on-line January 22, 2008. Adams Decl., **Ex. F.**

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY

JUDGMENT - 37

CV-06-327-EFS

#657989 v1 / 42703-001

Law Offices

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DATED this 4th day of February, 2008.

KARR TUTTLE CAMPBELL

By: /s/ Thomas D. Adams

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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

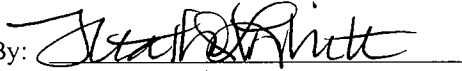
Duncan Manville
1629 2nd Ave. W
Seattle, WA 98119

Aaron Caplan
ACLU of Washington
705 Second Ave., Ste. 300
Seattle, WA 98103

Notice has been delivered by U.S. Mail to:

Catherine Crump
American Civil Liberties Union Foundation
125 Broad Street, 17th Floor
New York, NY 10004

KARR TUTTLE CAMPBELL

By: 
Heather L. White
hwhite@karrtuttle.com

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