

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFFREY REICHERT and GARY MOYER,  
both individually and on behalf of all others  
similarly situated,  
Plaintiffs,

NO. 3:17-cv-05848-BHS

v.

HUMAN RIGHTS CENTER APPLICATION  
FOR CY PRES FUNDS

KEEFE COMMISSARY NETWORK, L.L.C.  
d/b/a ACCESS CORRECTIONS; RAPID  
INVESTMENTS, INC., d/b/a RAPID  
FINANCIAL SOLUTIONS, d/b/a ACCESS  
FREEDOM; and CACHE VALLEY BANK,  
Defendants.

NOW COMES The Human Rights Defense Center, a Washington state 501(c)(3) non-profit with its main office in Florida and the parent organization of *Prison Legal News*, by and through counsel Jesse Wing and MacDonald Hoague & Bayless, and applies for consideration of an award of the unclaimed funds remaining in this action for the purpose of fulfilling goals consistent with the silent class members’ legal claims, as ordered by the Court. Dkt. 236, ¶ 2.

In support of this Application, the Human Rights Defense Center (HRDC) submits the Declaration of Jesse Wing, to which are appended a letter from HRDC’s founder and executive Director Paul Wright detailing the organization’s relevant history, activities, and plan to use any *cy pres* award for much-needed advocacy and education nationwide to protect prisoners and their families from financial exploitation through unreasonable debit card fees and other unfair

1 schemes, and including multiple links to documentation supporting these activities and  
2 successes. Also included are seven letters from accomplished lawyers who have worked closely  
3 with HRDC, in some cases for decades, in strong support of an award to HRDC.

#### 4 I. Cy Pres Standards

5 “The *cy pres* doctrine allows a court to distribute unclaimed or non-distributable portions  
6 of a class action settlement fund to the ‘next best’ class of beneficiaries.” *Nachshin v. AOL,*  
7 *LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011). “*Cy pres* is shorthand for the old equitable doctrine  
8 ‘*cy près comme possible*’—French for ‘as near as possible.’” *Dennis v. Kellogg Co.*, 697 F.3d  
9 858, 865 (9th Cir. 2012). “[F]ederal courts now frequently apply it in the settlement of class  
10 actions ‘where the proof of individual claims would be burdensome or distribution of damages  
11 costly.’” *Id.*

12 Here, a *cy pres* award from unclaimed damages would be appropriate because it is  
13 estimated that about \$5,000,000 will remain even after the payment of fees, expenses, and the  
14 class members submitting claims will receive the maximum amount of their entitlement.

15 “[A] court may employ the *cy pres* doctrine to “put the unclaimed fund to its next best  
16 compensation use, e.g., for the aggregate, indirect, prospective benefit of the class.”” *Id.*  
17 (quoting *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007) (quoting 2  
18 Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* § 10:17 (4th ed. 2002))).  
19 However, “Not just any worthy recipient can qualify as an appropriate *cy pres* beneficiary....”  
20 *Dennis*, 697 F.3d at 865 (citation omitted). “When selection of *cy pres* beneficiaries is not  
21 tethered to the nature of the lawsuit and the interests of the silent class members, the selection  
22 process may answer to the whims and self interests of the parties, their counsel, or the court.”  
23 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011).

24 In *Nachshin*, 663 F.3d at 1040, the Ninth Circuit Court of Appeals reversed *cy pres*  
25 awards since they were not closely related to the issues litigated in the case and would not likely  
26 serve any of the intended beneficiaries:

1 Plaintiffs in this case brought claims against AOL for breach of electronic  
2 communications privacy, unjust enrichment, and breach of contract, among  
3 others, relating to AOL’s provision of commercial e-mail services. Yet none of  
4 the *cy pres* donations—\$25,000 each to the Legal Aid Foundation of Los Angeles,  
5 the Boys and Girls Clubs of Santa Monica and Los Angeles, and the Federal  
6 Judicial Center Foundation—have anything to do with the objectives of the  
7 underlying statutes on which Plaintiffs base their claims.

8 In rejecting the choice of these charities, the Ninth Circuit explained: “The parties should  
9 not have trouble selecting beneficiaries from any number of non-profit organizations that work to  
10 protect internet users from fraud, predation, and other forms of online malfeasance.” *Id.*

11 To achieve a tight fit for *cy pres* awards, the Ninth Circuit requires “that *cy pres*  
12 distribution must be guided by (1) the objectives of the underlying statute(s) and (2) the interests  
13 of the silent class members.” *Id.*

14 An award to the Human Rights Defense Center would achieve these goals.

#### 15 **A. Objectives of the Underlying Statute**

16 In this lawsuit, Plaintiffs sought relief under the Electronic Fund Transfer Act, 15 U.S.C.  
17 § 1693, *et seq.* A primary objective of EFTA is to protect consumers from being charged  
18 unauthorized fees. Its purpose, supported by Plaintiff’s other claims, is to prevent and remedy  
19 financial exploitation. In this case, that exploitation was of prisoners and their families, who had  
20 no choice in the matter. Accordingly, a *cy pres* award here should focus on fulfilling that  
21 purpose.

22 In *Dennis v. Kellogg Co.*, 697 F.3d 858, 866 (9th Cir. 2012), the Ninth Circuit rejected *cy*  
23 *pres* awards to charities for the poor because they did not further the goals of the underlying  
24 statute, California’s consumer protection act: “[A]ccording to the settlement, any charity to  
25 receive a portion of the *cy pres* distributions will be one that feeds the indigent. This noble goal,  
26 however, has ‘little or nothing to do with the purposes of the underlying lawsuit or the class of  
27 plaintiffs involved.’” The Ninth Circuit recognized that charities serving an important but broad  
goal are “divorced from the concerns embodied in consumer protection laws....”

1 In contrast to the charities proposed in *Dennis*, as discussed in this Application, the  
2 Human Rights Defense Center has long been active and dedicated to protecting and advancing  
3 the rights of prisoners and their families against financial exploitation—including from unfair  
4 debit fees—in essence, the members of the consumer class in this lawsuit. *See* Exhibit A to  
5 Declaration of Jesse Wing. Indeed, such advocacy is at the core of HRDC’s long-standing  
6 organizational mission of public education, prisoner education, advocacy, and outreach in  
7 support of the rights of prisoners and in furtherance of basic human rights nationwide. *Id.* at 1-2.  
8 And HRDC is a reliable and effective source of information for the silent class. Indeed, in this  
9 case, to notify members of the class settlement, among other methods, “the Court directed Kroll  
10 to.... (6) place ads in *Prison Legal News* and *Criminal Legal News*. Dkt. 236 at 2.

11 HRDC’s mission and advocacy to protect prisoners and their loved ones from financial  
12 exploitation are a close fit with the goals of the underlying statutes to protect consumers.

### 13 **B. Interests of the Silent Class**

14 The silent class members are former prisoners who were confined in federal, state, and  
15 local custody across the Country.

16 The collective identifiable goals of these members are that their funds not be taken  
17 against their will and then that they not be charged unfair fees to access their own money.

18 As explained below, an award of *cy pres* funds to HRDC would very closely align with  
19 and advance the goals of the silent class members.

### 20 **C. The Human Rights Defense Center**

21 The Human Rights Defense Center was founded in 1990 as Prisoners’ Legal News  
22 (PLN), by a Washington state prisoner.<sup>1</sup> At the time, it focused on publishing a monthly prisoner  
23 rights newsletter titled *Prison Legal News*. PLN has over 7,000 subscribers, including attorneys,  
24 journalists, public libraries, judges, and prisoners at about 2,200 federal, state, and local  
25 correctional facilities. *See* Exhibit A at 2. HRDC has twelve staff members, including an

26 <sup>1</sup> HRDC Executive Director Paul Wright co-founded the organization and edited its now widely  
27 successful news publication from his prison cell until he was released from custody in 2003.  
Exhibit A at 1.

1 Executive Director, Associate Director, and two attorneys on staff. The organization funds its  
2 activities through its annual budget of approximately \$2.2 million. *Id.* at 2.

3 Over the years, the organization expanded the scope of its activities to maintain four  
4 major websites, including [www.prisonlegalnews.org](http://www.prisonlegalnews.org), which receives an average of 650,000  
5 unique visitors every month. Exhibit A at 4. We also operate an email news listserv, distribute  
6 books of interest to prisoners, and publish self-help and educational reference books. For years,  
7 HRDC has received and responded to requests from prisoners and their correspondents seeking  
8 information and reporting misconduct and complaining of mistreatment. HRDC investigates  
9 complaints and advocates for improving prison conditions. And, faced with prison and jail  
10 censorship of its publications and denial of due process notice, HRDC has brought a number of  
11 successful court challenges that have changed the landscape of prisoner communication rights,  
12 advancing the First and Fourteenth Amendment rights of prisoners and their correspondents  
13 across the country. *See, e.g., Prison Legal News v. Ryan*, 39 F.4th 1121 (9th Cir. 2022); *Prison*  
14 *Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2005); *Prison Legal News v. Simmons, sub nom*  
15 *Jacklovich v. Simmons*, 393 F.3d 420 (10th Cir. 2004); *Prison Legal News v. Cook*, 238 F.3d  
16 1145 (9th Cir. 2001); *Human Rights Defense Center v. Baxter County*, Case No. 3:17-CV-03070  
17 (W.D. Ark.); *Human Rights Defense Center v. Ishee*, No. 5:21-cv-469FL (E.D. N.C.); *Human*  
18 *Rights Defense Center v. Carter*, Case No. 1:20-CV-02979\_JRD-MJD (S.D. Ind.); *Human*  
19 *Rights Defense Center v. Ballard*, case No 3:17-cv-00057-GFVT (E.D. Ky.); *Prison Legal News*  
20 *v. Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010); *Prison Legal News v. Gusman*, Case No. 2:11-  
21 CV-02277-JCZ-SS (E.D. La); and *Human Rights Defense Center v. Frakes*, No. 4:22-cv-03028  
22 (D. Neb.).

23 As a result of its growing advocacy role, PLN changed its name in 2009 to the Human  
24 Rights Defense Center to reflect the growing scope and breadth of its activities. *See* Exhibit A at  
25 1.

1 **1. HRDC Focus on Curtailing Financial Exploitation**

2 The following information about HRDC and its activities is drawn from Exhibit A to the  
3 Declaration of Jesse Wing.

4 **a. Journalism**

5 “A large percentage of the news coverage of prison and jail debit cards and their inherent  
6 injustices can be traced back to HRDC’s extensive investigative reporting. No other media  
7 publication has covered the issue in such depth and breadth as HRDC has for the past decade.”  
8 Exhibit A at 2. The accompanying letter detailing HRDC’s coverage includes links to 28 news  
9 articles about the harm caused by such cards and the need to reform them, across the country—  
10 from Washington and Oregon, through Arkansas, over to Ohio, and down to Georgia, among  
11 other states. *Id.*

12 These articles describe how the schemes work, the right not to be unfairly charged, the  
13 impediments to challenging such schemes, and the unsuccessful and successful efforts to do so.

14 **b. National Regulatory Efforts**

15 For nearly a decade, since 2015, “HRDC has regularly urged the Consumer Financial  
16 Protection Bureau (“CFPB”) to ban the use of prison and jail debit cards on the ground that they  
17 violate the Electronic Funds Transfer Act.” Exhibit A at 4. The organization has “filed extensive  
18 comments with the CFPB regarding the use of debit cards in the criminal justice system.” *Id.*  
19 HRDC has challenged debit card companies’ use of arbitration, presented to CFPB on misuse of  
20 debit fees in the criminal justice system, and held numerous meetings with CFPB staff about  
21 remediating the problem, which have “received extensive media coverage.” *Id.* at 5.

22 HRDC argued that “the CFPB should extend the ban on compulsory use beyond payroll  
23 and government benefit cards, present in the Prepaid Accounts Rule, Docket ID: CFPB-2014-  
24 0031, to include prepaid debit cards used for reimbursement of personal funds to prisoners upon  
25 their release.” [https://www.prisonlegalnews.org/news/publications/hrdc-comment-cfpb-re-  
26 release-debit-cards-march-2005/](https://www.prisonlegalnews.org/news/publications/hrdc-comment-cfpb-release-debit-cards-march-2005/), at 2. Bringing depth of knowledge to the situation, HRDC  
27 explained, “Under the proposed rule, prisoners who receive release debit cards would not enjoy

1 the same protections afforded users of certain other cards, such as government benefit debit cards  
2 and child support debit cards. This is all the more unjust and outrageous when one considers the  
3 fact that prisoners are a vulnerable population who, upon release, are often given no choice as to  
4 how they receive their money, are not advised of the terms of the release debit cards and are  
5 rarely if ever provided any option to opt out of release cards.” *Id.* at 3. Requesting remedial  
6 action, HRDC explained that “By eliminating the excessive and unnecessary fees associated with  
7 the growing trend of compulsory release debit cards, this addition to the rule will substantially  
8 improve the lives of the millions of people who leave prisons and jails in hopes of regaining a  
9 foothold to establish meaningful participation in their family life and communities. It will also  
10 reduce their financial exploitation by the banking institutions and detention facilities that have  
11 grown accustomed to seeing the poor people imprisoned in our criminal justice system as a  
12 means of profit, to be exploited and gouged, rather than as consumers and citizens whose  
13 financial well-being should be protected and encouraged as a means of ensuring safer, stronger  
14 communities.” *Id.* at 4.

15 “These efforts paid off when, in 2021, the CFPB sued prison and jail debit card company  
16 JPay, LLC, and fined it \$6 million for exploiting prisoners and arrestees with debit card fees.” *Id.*  
17 “HRDC has also worked with members of Congress, requesting legislative reform of prison and  
18 jail debit cards. To date, some 20 U.S. Senators, including Senators Booker, Warren, Leahy,  
19 Sanders, and others, have been receptive to HRDC’s efforts so have urged the CFPB to take  
20 action.” *Id.*

### 21 c. Nationwide Litigation

22 In addition to its work supporting this case, HRDC has actively supported litigation  
23 challenging financial exploitation of prisoners and their families through debit cards fees. *Id.* at  
24 5. For example, one such case “recently settled for \$11.6 million.” *Id.* (citing *Brown v. NUMI*,  
25 No. 3:2015cv-1370 (D. Or.)). Another is pending. *Id.* (citing *Cain v. Jpay*, Case No. 2:21-cv-  
26 07401 (C.D. Cal.)).  
27

1 **2. HRDC's Work to Curtail Other Types of Financial Exploitation of Prisoners and Their**  
2 **Families**

3 Misuse of debit fees was not the first issue of financial exploitation issue of prisoners that  
4 HRDC has worked extensively to halt. Exhibit A at 6. Since 1992, soon after  
5 telecommunications companies began paying commissions to detention facilities in exchange for  
6 lucrative monopoly contracts, HRDC began reporting on the issue and advocating for fair  
7 telephone rates for consumers who receive calls from prisoners. *Id.* Over the years, PLN has  
8 published hundreds of articles on this topic, nationally. *Id.*

9 HRDC spent countless hours researching the telephone industry, including obtaining  
10 records through public records act requests, compiling relevant data, and analyzing it for use.  
11 HRDC has collected statewide contracts for prisoner calling services, telephone rate information,  
12 and data on commissions. *See id.* PLN has published several groundbreaking reports on prison  
13 telephone rates and commission payments by the prison systems of all fifty states and the Federal  
14 Bureau of Prisons, based on its collected data. *Id.* at 6. This was the first such compilation ever  
15 done nationally on prison phone systems, and HRDC made the data publicly available. *Id.*

16 HRDC created and operates a website, [www.prisonphonejustice.org](http://www.prisonphonejustice.org), that maintains and  
17 makes available the data on phone contracts, rates, commission information, court rulings, and  
18 legislative actions related to the prison phone systems of all 50 states. *Id.* at 7. Educating and  
19 galvanizing public support for curbing excessive prison telephone rates and fees, HRDC has  
20 given expert testimony, written comments, spoken on radio shows, been quoted in newspaper  
21 articles, presented at conferences, appeared at other speaking engagements, coordinated multiple  
22 broad-based conference calls, and webinars. *See id.* at 7. Its monthly publication *Prison Legal*  
23 *News* likewise keeps prisoners and their families up-to-date on prison telephone-related news and  
24 developments, but has lacked the resources to maintain up-to-date its website dedicated to these  
25 issues, <https://www.prisonphonejustice.org/>, which is the largest repository of prison phone-  
26 related information in existence. *Id.* at 6.  
27



1 HRDC co-founded and jointly leads the Campaign for Prison Phone Justice with two  
2 other organizations, and is a coalition of over 150 religious, legal, prisoner advocacy, racial  
3 justice, media justice, immigration, and prison policy organizations. *Id.* Thousands of prisoners  
4 and their families have joined in advocacy actions through the Campaign’s website and other  
5 organizing tools. *Id.* at 6. The Campaign’s goal is to end excessive rates to consumers who  
6 receive and pay for telephone calls from prisoners, *Id.*

7 The Campaign and HRDC maintain a website ([www.phonejustice.org](http://www.phonejustice.org)) that serves as the  
8 centerpiece of the national campaign to urge the FCC to act on capping the cost of interstate  
9 prison and jail telephone calls. *Id.* The website allows family members to tell their stories and  
10 documents the growth and strength of the campaign. *Id.*

11 HRDC’s Prison Phone Justice work led to the FCC enacting significant reforms and  
12 restrictions on the prison telecom industry preventing it from charging ancillary fees that it had  
13 long used to gouge consumers. *Id.* at 6. Although the prison telecom industry sued to reverse  
14 these gains, the United States Court of Appeals for the D.C. Circuit vacated only a portion:  
15 [https://www.cadc.uscourts.gov/internet/opinions.nsf/C62A026B396DD4C78525813E004F3BC5](https://www.cadc.uscourts.gov/internet/opinions.nsf/C62A026B396DD4C78525813E004F3BC5/$file/15-1461-1679364.pdf)  
16 [/file/15-1461-1679364.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/C62A026B396DD4C78525813E004F3BC5/$file/15-1461-1679364.pdf). *Id.* at 7. HRDC had intervened to advocate for prisoners and their  
17 families, represented by the Communications and Technology Law Clinic at Georgetown Law’s  
18 Institute for Public Representation. *Id.*

19 HRDC’s efforts resulted in filing the lawsuit *Judd v. AT&T* in 2000 in King County  
20 Superior Court challenging the non-disclosure of the rates charged to people accepting collect  
21 calls from Washington state prisoners on behalf of a large class of plaintiffs. *Id.* at 6. After more  
22 than a decade of litigation, the litigation resulted in a settlement of \$45 million for prisoners and  
23 their families. *Id.*

24 HRDC has continued its courtroom advocacy against financial exploitation of prisoners  
25 and their families. “In 2020, HRDC sued Global Tel Link and Securus Technologies, alleging  
26 that the two companies had entered into a conspiracy to defraud consumers, charging \$9.95 and  
27 \$14.95 for a single phone call. In 2023, the United States Court of Appeals for the Fourth Circuit

1 upheld the RICO claims, remanding the case for further proceedings, where it is pending before  
2 the District Court: <https://caselaw.findlaw.com/court/us-4th-circuit/2202034.html>.” Exhibit 1 at  
3 7.

## 4 **2. Proposal**

5 The Human Rights Defense Center seeks a *cy pres* award of 50% of the remaining funds  
6 to shoulder the difficult and expensive, but achievable, task of ending unfair debit card fees and  
7 tackling other unfair exploitation of prisoners and their families.

8 As outlined in Exhibit A at 7-8, HRDC would use the funds to advance its ongoing  
9 advocacy to eradicate unfair debit fees and protect prisoners and their families from other  
10 exploitation. This includes urging adoption of free phone calls for prisoners across the country,  
11 which is gaining momentum nationally, ending excessive fees charged to prisoners’ families and  
12 loved ones for money transfers—previously a free, government-provided service that has largely  
13 been monetized at the expense of prisoners’ families. Additionally, HRDC would use an infusion  
14 of resources to address “Urgent areas of exploitation that require advocacy to end them as soon  
15 as possible include challenging mandatory paid video calling, the digitization of prisoner mail,  
16 and charging for e-messaging and texting.” *Id.*

17 As illustrated by the length of time it took to conclude this hard-fought litigation and the  
18 hurdles that the class had to overcome, these efforts to protect the silent class members’ interests  
19 against financial exploitation will not be easy, quick, or inexpensive. The requested *cy pres*  
20 award would make a huge difference in HRDC’s ability to achieve meaningful results for the  
21 silent class.

22 This would be only the second *cy pres* award to HRDC, which applied for and was  
23 awarded funds eleven years ago, in 2013.

## 24 **3. Letters in Support of Application**

25 HRDC’s application is supported by letters from nine lawyers who are knowledgeable  
26 about the adverse impact of excessive fees charged; the challenges of curbing these abuses; and  
27 HRDC’s dedication, perseverance, reliability, ability, expertise, and record of advancing the

1 rights of prisoners and those who communicate with prisoners. These important letters are  
2 submitted as Exhibits B through J to Declaration of Jesse Wing.

3 **II. Conclusion**

4 WHEREFORE, as shown, the Human Rights Defense Center is uniquely situated to  
5 effectuate the goals and interests of the silent class members here. HRDC respectfully asks that  
6 the Court please grant a *cy pres* award of one-half of the residual funds from this litigation to  
7 support its long-standing and effective work on prisoner rights, specifically to support its  
8 proposal to halt financial exploitation of prisoners and their loved ones, nationwide.

9  
10 DATED this 14th day of June, 2024.

11 MacDONALD HOAGUE & BAYLESS

12  
13 By: /s/ Jesse Wing  
14 Jesse Wing, WSBA # 27751  
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16 Attorneys for Human Rights Defense Center  
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