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12 Attorneys for Plaintiff
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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE EASTERN DISTRICT OF CALIFORNIA
17

18 PRISON LEGAL NEWS, a project of the
19 HUMAN RIGHTS DEFENSE CENTER,

20 Plaintiff,

21 v.

22 COUNTY OF SACRAMENTO; SCOTT R.
23 JONES, individually and in his capacity as
24 Sheriff of the County of Sacramento; DOES 1-
20, in their individual and official capacities,

25 Defendants.
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27
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Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF UNDER THE
CIVIL RIGHTS ACT, 42 U.S.C. §1983 AND
DAMAGES**

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 Plaintiff PRISON LEGAL NEWS (“PLN”), a project of the Human Rights Defense
3 Center, brings this action pursuant to 42 U.S.C. § 1983 (“Section 1983”) against Defendants to
4 enjoin them from censoring its monthly publication and correspondence mailed to prisoners held
5 in jail in Sacramento County. Defendants have adopted and implemented mail policies and
6 practices that unconstitutionally restrict Plaintiff’s correspondence with prisoners. Further,
7 Defendants’ policies and practices do not afford Plaintiff due process notice and an opportunity
8 to challenge the censorship or the equal protection of the laws, as required by the Constitution of
9 the United States and the California Constitution and law. Plaintiff alleges that Defendants’
10 actions violate its rights under the First and Fourteenth Amendments to the United States
11 Constitution, Article I, Section 2 and 7 of the California Constitution and the Unruh Act,
12 California Civil Code § 52.1, and seeks injunctive and declaratory relief pursuant to 42 U.S.C.
13 § 1983. Plaintiff also seeks damages to be proven at trial.

14 **JURISDICTION AND VENUE**

15 1. This action pursuant to 42 U.S.C. § 1983 arises under the First and Fourteenth
16 Amendments to the United States Constitution, and under California state law claims as alleged
17 herein. This Court has jurisdiction, including diversity jurisdiction, over this action under 28
18 U.S.C. §§ 1331, 1332, 1343, 2201, and 2202. The court has supplemental jurisdiction over
19 Plaintiff’s state claims pursuant to 28 U.S.C. § 1367.

20 2. Venue is proper in the Eastern District of California under 28 U.S.C. § 1391(b)(2)
21 because a substantial part of the events complained of occurred in this District, and because the
22 Defendants reside in this District.

23 **PARTIES**

24 3. Plaintiff PRISON LEGAL NEWS is a project of the Human Rights Defense
25 Center, a Washington non-profit corporation. PLN publishes and distributes a monthly journal
26 of corrections news and analysis, and offers and sells books about the criminal justice system and
27 legal issues affecting prisoners, to prisoners, lawyers, courts, libraries, and the public throughout
28 the country.

1 4. Defendant COUNTY OF SACRAMENTO is a municipal corporation formed
2 under the laws of the State of California.

3 5. Defendant SCOTT R. JONES is the Sheriff of the County of Sacramento. Sheriff
4 Jones is employed by and is an agent of Sacramento County and the Sacramento County
5 Sheriff's Department. He is responsible for the operations of the Sacramento County Main Jail
6 and the Rio Cosumnes Correctional Center, and the training and supervision of the jail staff who
7 interpret and implement the county's mail policy for prisoners. He is the policymaker for the jail
8 policy governing mail for prisoners. He is sued in his individual and official capacities.

9 6. Defendants DOES 1 through 20 are all employed by and are agents of Sacramento
10 County and the Sacramento County Sheriff's Department. They are sued in their individual and
11 official capacities.

12 **FACTUAL ALLEGATIONS**

13 7. Prison Legal News ("PLN") publishes and distributes *Prison Legal News*, a
14 monthly journal of corrections news and analysis regarding prisoners' rights, court rulings,
15 management of prison and jail facilities and conditions of confinement. PLN also offers and
16 sells books about the criminal justice system and legal issues affecting prisoners.

17 8. PLN engages in protected speech and expressive conduct on matters of public
18 concern.

19 9. PLN has thousands of subscribers in the United States and abroad, including
20 prisoners, attorneys, journalists, public libraries, judges, and other members of the public.

21 10. Since at least April 2010 and continuing to the present day, Defendants have been
22 censoring PLN publications being sent to prisoners held in custody in the Sacramento County
23 Main Jail ("Jail") by refusing to deliver said items to the prisoners, and in some instances by
24 returning items to PLN's offices via the Return To Sender ("RTS") service of the United States
25 Postal Service.

26 11. In addition to censoring delivery of PLN's monthly publication, Defendants have
27 also censored PLN's "Informational Brochure Pack," which included the three items described
28

1 below: (1) The *Prison Legal News* brochure and Subscription Order Form; (2) The 2010 PLN
2 Book List; and (3) The Educational Courses Brochure.

3 (a) **Prison Legal News Brochure and Subscription Order Form:** This
4 brochure and order form included: a description of the topics covered in PLN's monthly
5 magazine; subscription rates, special subscription offers, a subscription order form; a description
6 of three books available for purchase or included with a subscription to *Prison Legal News*—
7 *Protecting Your Health & Safety, With Liberty for Some: 500 Years of Imprisonment in America,*
8 and *Prison Profiteers: Who Makes Money from Mass Incarceration*; and other information about
9 PLN's bookstore.

10 (b) **2010 PLN Book List:** The book list includes a description of 42 books,
11 dictionaries, and resource materials available for purchase. The books available for purchase
12 include information about a variety of topics, including: the basic rights of prisoners regarding
13 health and safety; the American criminal justice system; finding the right lawyer; DNA testing;
14 issues related to imprisoned women; self-representation in court; developing a successful re-
15 entry plan upon release from prison; searching for a job; crime and poverty; and the mental
16 health crisis in U.S. prisons and jails.

17 (c) **Educational Courses Brochure:** The educational courses brochure
18 includes detailed information about and an order form for a book on high school, vocational,
19 paralegal, undergraduate, and graduate courses available through correspondence study, as well
20 as detailed information about and an order form for a book on ineffective assistance of counsel
21 and habeas corpus litigation.

22 12. In some instances, Defendants have censored Plaintiff's publications by drawing a
23 black line through the addressee information on the mailings and by marking the outside of
24 various items with an RTS ink stamp that contained the words "RETURN TO SENDER" and
25 "CONTRABAND" in large sized letters across the top. This stamp also contained eight short
26 explanations in smaller sized letters underneath those words which read as follows:

- | | |
|---|---|
| <input type="checkbox"/> No Staples | <input type="checkbox"/> No Stamps/Stationary |
| <input type="checkbox"/> No Stickers/Labels | <input type="checkbox"/> No Pornography |
| <input type="checkbox"/> No Hardcover Books | <input type="checkbox"/> Not From Publisher |
| <input type="checkbox"/> No X-Ref/Location | <input type="checkbox"/> Other |

In censoring Plaintiff's publications, Defendants generally placed marks next to either or both of the "No Staples" or "No Stickers/Labels" boxes on the RTS stamp.

13. In other instances where items were sent back to Plaintiff, Defendants did not use the RTS stamp but instead drew lines through the addressee information and wrote "RTS" and "No Staples."

14. As described below, Defendants have censored materials from PLN on at least 180 occasions from April 2010 to the present.

15. Specifically, in April 2010, Defendants censored PLN's monthly publication, *Prison Legal News*, and frustrated PLN's attempt to deliver the April 2010 issue to a prisoner at the Jail.

16. In May 2010, Defendants censored PLN's monthly publication, *Prison Legal News*, and frustrated PLN's attempt to deliver a sample issue via First Class Mail to three prisoners at the Jail.

17. In May 2010, Defendants censored PLN's monthly publication, *Prison Legal News*, and frustrated PLN's attempt to deliver the May 2010 issue to four prisoners at the Jail.

18. In June, July, August, September and October 2010 Defendants censored PLN's monthly publication, *Prison Legal News*, and frustrated PLN's attempt to deliver the corresponding monthly issues to five prisoners at the Jail.

19. In October 2010, Defendants censored PLN's monthly publication, *Prison Legal News*, and frustrated PLN's attempt to deliver a sample issue via First Class Mail to a prisoner at the Jail.

20. In November 2010, Defendants censored PLN's monthly publication, *Prison Legal News*, and frustrated PLN's attempt to deliver the November 2010 issue to seven prisoners at the Jail.

1 21. In December 2010, Defendants censored PLN's monthly publication, *Prison Legal*
2 *News*, and frustrated PLN's attempt to deliver a sample issue via First Class Mail to seventeen
3 prisoners at the Jail.

4 22. In December 2010, Defendants censored PLN's monthly publication, *Prison Legal*
5 *News*, and frustrated PLN's attempt to deliver the December 2010 issue to seven prisoners at the
6 Jail.

7 23. In December 2010, Defendants censored PLN's Informational Brochure Pack and
8 frustrated PLN's attempt to deliver it by First Class Mail to six prisoners at the Jail.

9 24. In December 2010, Defendants censored PLN's Informational Brochure Pack that
10 also contained a fundraising letter requesting donations and frustrated PLN's attempt to deliver
11 them by First Class Mail to two prisoners at the Jail.

12 25. In January 2011, Defendants censored PLN's monthly publication *Prison Legal*
13 *News*, and frustrated PLN's attempt to deliver a sample issue via First Class Mail to fourteen
14 prisoners at the Jail.

15 26. In January 2011, Defendants censored PLN's monthly publication, *Prison Legal*
16 *News*, and frustrated PLN's attempt to deliver the January 2011 issue to twenty-four prisoners at
17 the Jail.

18 27. In February 2011, Defendants censored PLN's monthly publication, *Prison Legal*
19 *News*, and frustrated PLN's attempt to deliver a sample issue via First Class Mail to six prisoners
20 at the Jail

21 28. In February 2011, Defendants censored PLN's monthly publication, *Prison Legal*
22 *News*, and frustrated PLN's attempt to deliver the February 2011 issue to thirty-eight prisoners at
23 the Jail.

24 29. In February 2011, Defendants censored PLN's Informational Brochure Pack and
25 frustrated PLN's attempt to deliver it by First Class Mail to twelve prisoners at the Jail.

26 30. In March 2011, Defendants censored PLN's monthly publication, *Prison Legal*
27 *News*, and frustrated PLN's attempt to deliver a sample issue via First Class Mail to one prisoner
28 at the Jail.

1 31. In March 2011, Defendants censored PLN's monthly publication, *Prison Legal*
2 *News*, and frustrated PLN's attempt to deliver the March 2011 issue to thirty-three prisoners at
3 the Jail.

4 32. In March 2011, Defendants censored PLN's Informational Brochure Pack and
5 frustrated PLN's attempt to deliver it by First Class Mail to one prisoner at the Jail.

6 33. Defendants did not provide Plaintiff with any opportunity to appeal the censorship
7 decisions in any of the aforementioned instances.

8 34. Defendants' conduct prohibiting Prison Legal News from mailing its publications,
9 informational brochures, and books to prisoners confined at the Jail violates the First
10 Amendment by censoring these expressive activities and has a chilling effect on future speech
11 and expression directed at prisoners confined there.

12 35. Defendants' policy governing incoming mail does not provide due process notice
13 or an opportunity for the sender to appeal the Jail's censorship decisions, and Defendants'
14 practice likewise does not provide due process notice or an opportunity for the intended recipient
15 to appeal the Jail's censorship decisions.

16 36. Some of the books that Plaintiff distributes are hardcover books. The Jail's policy
17 prohibiting the delivery of hardcover books, reflected in the RTS stamp described above, also
18 violates Plaintiff's First Amendment rights.

19 37. Despite censoring Plaintiff's publications because of staples, stickers, and/or labels,
20 Plaintiff is informed and believes that Defendants have allowed other publications containing
21 staples, stickers and/or labels to be delivered to prisoners. By treating Plaintiff different than
22 other similarly situated publishers and distributors, Defendants violate Plaintiff's right to equal
23 protection under the law.

24 38. Prison Legal News publishes and distributes content concerning the rights of
25 prisoners and their conditions of confinement. As a result, Plaintiff is informed and believes that
26 Jail staff have retaliated against PLN by refusing to deliver PLN materials to prisoners held at the
27 Jail.

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1 39. Defendants' actions have violated, continue to violate, and are reasonably expected
2 to violate in the future Plaintiff's constitutional rights, and have caused Plaintiff financial harm in
3 the form of lost subscriptions, lost opportunities for purchases and sales of its publications, and
4 lost opportunities for book sales.

5 40. Defendants' actions and inactions are motivated by evil motive and intent and are
6 committed with reckless and callous indifference to Plaintiff's rights.

7 41. Defendants JONES, DOES 1-20 and other agents of the County of Sacramento are
8 responsible for or personally participated in creating and implementing these unconstitutional
9 policies, practices, and customs and for training and supervising the mail staff whose conduct has
10 injured and continues to injure the Plaintiff, or ratified or adopted them.

11 42. Defendants' unconstitutional policy, practices, and customs are ongoing and
12 continue to violate Plaintiff's rights, and as such Plaintiff has no adequate remedy at law.

13 43. Plaintiff is entitled to injunctive relief prohibiting Defendants from refusing to
14 deliver or refusing to allow delivery of publications, books, informational brochures and
15 catalogs, and other correspondence from Prison Legal News, and prohibiting Defendants from
16 censoring mail without due process of law.

17 44. Plaintiff submitted a state tort claim to Defendant COUNTY OF SACRAMENTO
18 on or about April 5, 2011. Plaintiff has not yet received a response to its tort claims filing.

19 **CLAIMS FOR RELIEF**

20 **FIRST CLAIM FOR RELIEF**
21 **(For Violations of the First Amendment Under Color Of State**
Law – Free Speech; Section 1983)

22 45. Plaintiff realleges and incorporates by reference the preceding paragraphs.

23 46. The acts described above constitute violations of Plaintiff's rights under the First
24 Amendment to the United States Constitution through 42 U.S.C. § 1983, and have caused
25 damages to Plaintiff, and will continue to cause damage.

26 47. Plaintiff seeks declaratory and injunctive relief and nominal and compensatory
27 damages against all Defendants. Plaintiff also seeks punitive damages solely against the
28 individual Defendants.

1 57. By prohibiting the delivery of Plaintiff's publications but allowing the delivery of
2 the publications of others who are similarly situated, Defendants have deprived and continue to
3 deprive Plaintiff of equal protection under the laws, in violation of the Fourteenth Amendment to
4 the United States Constitution through 42 U.S.C. § 1983.

5 58. Plaintiff seeks declaratory and injunctive relief and nominal and compensatory
6 damages against all Defendants. Plaintiff also seeks punitive damages solely against the
7 individual Defendants.

8
9 **FIFTH CLAIM FOR RELIEF**
(For Violation of California Civil Code Section 52.1)

10 59. Plaintiff realleges and incorporates by reference the preceding paragraphs.

11 60. The acts described above constitute violations of Plaintiff's rights under California
12 Civil Code Section 52.1, and have caused actual damages to Plaintiff within the meaning of
13 California Civil Code Section 52.

14 61. As a proximate result of the conduct of Defendants, Plaintiff is also entitled to an
15 award of exemplary damages, civil penalties, and attorneys' fees, as provided by California Civil
16 Code Section 52.

17
18 **SIXTH CLAIM FOR RELIEF**
(For Violation of Article I, Section 2 of California Constitution)

19 62. Plaintiff realleges and incorporates by reference the preceding paragraphs.

20 63. The acts described above constitute violations of Plaintiff's speech rights under
21 Article I, Section 2 of the California Constitution and have caused damage to Plaintiff, and will
22 continue to cause damage.

23 64. As a result of the conduct of Defendants, Plaintiff seeks declaratory and injunctive
24 relief against all Defendants.

25
26 **SEVENTH CLAIM FOR RELIEF**
(For Violation of Article I, Section 7 of California Constitution –
Due Process)

27 65. Plaintiff realleges and incorporates by reference the preceding paragraphs.
28

1 66. By failing to give Plaintiff sufficient notice of the censorship of its publications,
2 and an opportunity to be heard with respect to that censorship, Defendants have deprived and
3 continue to deprive Plaintiff of liberty and property without due process of law, in violation of
4 the Article I, Section 7 of the California Constitution, and have caused damage to Plaintiff, and
5 will continue to cause damage.

6 67. As a result of the conduct of Defendants, Plaintiff seeks declaratory and injunctive
7 relief against all Defendants.

8 **EIGHTH CLAIM FOR RELIEF**
9 **(For Violation of Article I, Section 7 of California Constitution –**
10 **Equal Protection)**

11 68. Plaintiff realleges and incorporates by reference the preceding paragraphs.

12 69. By prohibiting the delivery of Plaintiff's publications but allowing the delivery of
13 the publications of others who are similarly situated, Defendants have deprived and continue to
14 deprive Plaintiff of equal protection under the laws under Article I, Section 7 of the California
15 Constitution and have caused damage to Plaintiff, and will continue to cause damage.

16 70. As a result of the conduct of Defendants, Plaintiff seeks declaratory and injunctive
17 relief against all Defendants.

18 **PRAYER FOR RELIEF**

19 The conduct previously alleged, unless and until enjoined by order of this Court, will
20 cause great and irreparable injury to Plaintiff. Further, a judicial declaration is necessary and
21 appropriate at this time so that all parties may know their respective rights and act accordingly.

22 WHEREFORE, Plaintiff requests relief as follows:

23 1. A declaration that Defendants' policies, practices, and customs violate the First and
24 Fourteenth Amendments to the United States Constitution, Article 1, Sections 2 and 7 of the
25 California Constitution, and California Civil Code Section 52.1.

26 2. An order enjoining all Defendants and their employees, agents, and any and all
27 persons acting in concert with them from further violation of Plaintiff's civil rights under the
28 First and Fourteenth Amendments to the United States Constitution, Article 1, Sections 2 and 7
of the California Constitution, and California Civil Code Section 52.1.

- 1 3. Nominal damages for each violation by the Defendants against the Plaintiff's
- 2 rights.
- 3 4. Compensatory damages in an amount to be proven at trial.
- 4 5. Punitive damages against the individual defendants in an amount to be proven at
- 5 trial.
- 6 6. Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988, and under
- 7 other applicable law, including but not limited to California Civil Code § 52 and California Code
- 8 of Civil Procedure § 1021.5.
- 9 7. Prejudgment and post judgment interest.
- 10 8. Such other relief as the Court deems just and equitable.

11
12 Dated: April 5, 2011

Respectfully submitted,

ROSEN, BIEN & GALVAN, LLP

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15 By: /s/ Ernest Galvan

ERNEST GALVAN

Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: April 5, 2011

Respectfully submitted,

ROSEN, BIEN & GALVAN, LLP

By: /s/ Ernest Galvan

ERNEST GALVAN

Attorneys for Plaintiff