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18 UNITED STATES DISTRICT COURT
19 DISTRICT OF OREGON

20 **PRISON LEGAL NEWS**, a Washington non-
21 profit organization,

22 Plaintiff,

23 v.

24 **DAVID SCHUMACHER**, individually and in
25 his official capacity as Rules/Compliance
26 Manager of the Oregon Department of
27 Corrections, **DAVID S. COOK**, individually
28 and in his official capacity as Director of the
Oregon Department of Corrections, **BEN DE
HAAN**, individually and in his official capacity
as Director of the Oregon Department of
Corrections, **RICH HOLDER**, individually and
in his official capacity as Mail Operations
Administrator of the Oregon Department of
Corrections, and **JACY DURAN**, individually
and in her official capacity as Mail Operations
Administrator of the Oregon Department of
Corrections,

Defendants.

Case No. _____

**FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT FOR
INJUNCTIVE RELIEF, DAMAGES,
PUNITIVE DAMAGES, AND
ATTORNEYS' FEES AND COSTS**

DEMAND FOR JURY TRIAL

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1
2 For its first amended and supplemental complaint, plaintiff Prison Legal News
3 (hereafter "plaintiff") alleges as follows:
4

5 **I.**

6 **INTRODUCTION AND NATURE OF THE CASE**

7 1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 and the First,
8 Fifth, and Fourteenth Amendments to the United States Constitution to secure the rights of
9 a non-profit organization to communicate freely with persons incarcerated within the State
10 of Oregon and under the jurisdiction of the Oregon Department of Corrections. Prison Legal
11 News was the plaintiff in *Prison Legal News v. Cook*, 238 F. 3d 1145 (9th Cir. 2001)
12 (hereafter "Ninth Circuit Decision"), in which the Court of Appeals for the Ninth Circuit
13 held that "tying the receipt of subscription non-profit newsletters to postal service rates
14 classifications is not rationally related to any legitimate penological interest put forth by the
15 Department." *Id.* at 1149-50. The Court of Appeals further held that plaintiff's subscription
16 mail must be afforded the same procedural due process protections as first class mail. *Id.* at
17 1152-53.
18

19 2. On remand, this Court entered a judgment in which defendants Cook and
20 Schumacher "are permanently enjoined from enforcing OAR 291-131-0025(8) (1998) or any
21 other rule that prohibits inmates at institutions under the management of the Oregon
22 Department of Corrections from receiving subscription non-profit organization mail mailed
23 at standard mail rates." Judgment on Remand at 1-2 (Cause No. 98-1344-MA, Aug. 7, 2001)
24 (hereafter "Injunction"). The Court further ordered that "upon rejection of any item of
25 subscription non-profit organization mail mailed at standard mail rates,
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1 defendants shall afford the sender and the intended recipient notice and opportunity to
2 contest the rejection.” *Id.* at 2.

3 3. Notwithstanding the Ninth Circuit Decision and the Injunction, defendants
4 continue to refuse to deliver plaintiff’s monthly magazine, *Prison Legal News*, and related
5 subscription mail to inmate recipients. Defendants’ conduct is in violation of the Ninth
6 Circuit Decision, the Injunction, and the requirements of Due Process in each of the
7 following respects:

9 a. Defendants have promulgated administrative rules which discriminate
10 between subscription non-profit mail and other mail based exclusively on the
11 Postal Service rate classification;

12 b. Defendants have promulgated administrative rules which do not provide
13 the sender of subscription non-profit mail that is rejected with notice of the
14 rejection or the opportunity for administrative review of that action;

15 c. Defendants have promulgated administrative rules which do not provide
16 the intended recipient of subscription non-profit mail that is rejected with
17 notice of the rejection or the opportunity for administrative review of that
18 action.

19 4. Defendants’ conduct represents an intentional and willful violation of the Ninth
20 Circuit Decision and the Injunction. It compels plaintiff to bring this action to enforce the
21 rights and benefits secured through the Ninth Circuit Decision and the Injunction.

22 5. The Ninth Circuit Decision and the Injunction clearly establish that plaintiff’s
23 magazine is constitutionally protected mail, that censorship of constitutionally protected mail
24 based solely on postage classification is not rationally related to any penological objective,
25 and that administrative rules such as those described above violate the constitutional rights
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1 of both the sender and the intended recipient. Defendants therefore must be deemed to be
2 acting with malice or deliberate indifference to the rights of plaintiff, its inmate subscribers
3 and potential subscribers, and all similarly situated persons.

4 II.

5 JURISDICTION AND VENUE

6 6. Plaintiff's claims arise under the laws and Constitution of the United States,
7 specifically the United States Constitution, First, Fifth, and Fourteenth Amendments, and 42
8 U.S.C. § 1983. The case therefore presents a federal question which is within this Court's
9 jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question) and 1343(a) (civil rights).

10 7. Defendants Cook, de Haan, Schumacher, Duran and Holder work and reside
11 in the State of Oregon, within the District of Oregon. The actions and omissions of
12 defendants as alleged herein occurred within the District of Oregon. Venue in this Court is
13 proper.
14

15 III.

16 PARTIES

17 8. Plaintiff Prison Legal News is a non-profit organization (NPO) incorporated
18 under the laws of the state of Washington, with its principal place of business at Seattle,
19 Washington. Plaintiff is the publisher of the monthly magazine *Prison Legal News* and
20 distributor of various books. In the course of its business plaintiff corresponds with
21 prisoners regularly regarding plaintiff's magazine and other publications.
22

23 9. Defendant David S. Cook was the director of the Oregon Department of
24 Corrections. Defendant Cook is a resident of Oregon. Defendant Cook is sued in his
25 individual capacity and in his capacity as director of the Oregon Department of Corrections.
26 Defendant Ben de Haan is the new director of the Oregon Department of Corrections.
27

1 Defendant de Haan is a resident of Oregon. Defendant de Haan is sued in his individual
2 capacity and in his capacity as director of the Oregon Department of Corrections.

3 10. Defendant David Schumacher is Rules/Compliance Manager for the Oregon
4 Department of Corrections. Defendant Schumacher resides in Oregon.
5 Defendant Schumacher is sued in his individual capacity and in his capacity as
6 Rules/Compliance Manager.
7

8 11. Defendant Rich Holder was Mail Operations Administrator of the Oregon
9 Department of Corrections. Defendant Holder is a resident of Oregon. Defendant Holder
10 is sued in his individual capacity and in his capacity as Mail Operations Director of the
11 Oregon Department of Corrections. Defendant Jacy Duran is the new Mail Operations
12 Administrator of the Oregon Department of Corrections. Defendant Duran is a resident of
13 Oregon. Defendant Duran is sued in her individual capacity and in her capacity as Mail
14 Operations Director of the Oregon Department of Corrections.
15

16 IV.

17 ALLEGATIONS OF FACT

18 12. Plaintiff is the publisher of the monthly magazine *Prison Legal News* and
19 distributor of books and other materials pertaining to the legal rights of prisoners and
20 conditions affecting prisoners. Plaintiff has subscribers in prisons in all 50 states.
21 Subscribers to *Prison Legal News* also include attorneys, judges, journalists, academics, and
22 others who have an interest in the topics included in the magazine.

23 13. Plaintiff sends its magazine *Prison Legal News* to its subscribers by
24 Standard A non profit organization mail rates established by the United States Postal Service,
25 which Plaintiff is entitled to do as an NPO. Plaintiff uses Standard A non-profit organization
26 rates to mail its magazine *Prison Legal News* to its subscribers within Oregon prisons.
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1 Plaintiff uses mailing labels to send its magazine which include the inmate's name, prison
2 identification number, complete address, and the expiration date of the magazine
3 subscription.

4 14. Plaintiff uses and/or is entitled to use Standard A non-profit organization mail
5 rates to send subscription renewal notices, flyers identifying plaintiff's publications and how
6 they can be ordered, letters from the publisher, and reader surveys to its subscribers,
7 including its subscribers within Oregon prisons, in accordance with the United States Postal
8 Service regulations.
9

10 15. Plaintiff uses Fourth Class mail (book rate) to send books that it distributes to
11 persons who have placed orders for plaintiff's books, as plaintiff is entitled to do in
12 accordance with regulations of the United States Postal Service. Plaintiff sends its books to
13 inmates incarcerated in Oregon under the jurisdiction of defendants.

14 16. All of the communications and material described in paragraphs 12 through 15
15 above which are sent to persons incarcerated within Oregon are addressed to the recipient
16 individual by name, Oregon prison system identification number, and address. Plaintiff does
17 not send mass mailings to Oregon prisons addressed to "occupant" or the like.
18

19 17. The magazine, books, and other publications described in paragraphs 12 and
20 15 above are political speech and social commentary which are at the core of First
21 Amendment values and are entitled to the highest protection.

22 18. The renewal notices and flyers described in paragraph 14 above are speech
23 directly related to the political speech and social commentary contained in plaintiff's
24 magazines and publications, and therefore are entitled to the same highest level of protection
25 afforded to the magazine and publications themselves.
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1 19. The letter from the publisher described in paragraph 14 above is political
2 speech and social commentary which is at the core of First Amendment values and is entitled
3 to the highest protection.

4 20. The reader survey described in paragraph 14 above is personal communication
5 between plaintiff and its subscribers, intended, among other things, to identify plaintiff's
6 subscribers' interests in subjects that are or could be included in plaintiff's publications.
7 Such individual communications to identify political and social topics of interest to
8 plaintiff's subscribers is political communication entitled to the highest First Amendment
9 protection.
10

11 21. Notwithstanding to and contrary to the decisions of the Ninth Circuit Court of
12 Appeals and this Court, defendants have directed and/or caused mail room corrections
13 officers and other corrections officers in the Oregon Department of Corrections to refuse to
14 deliver *Prison Legal News* to Oregon inmate subscribers. The actions and failures to act of
15 defendants alleged in this paragraph are based on the Postal Service rates by which plaintiff
16 sends its magazine to its subscribers.
17

18 22. Defendants have caused and/or directed mail room corrections officers and
19 other corrections officers within the Oregon Department of Corrections to refuse to deliver
20 plaintiff's subscription renewal notices, letters from the publisher, reader surveys, and flyers
21 identifying plaintiff's publications and how they can be ordered to plaintiff's Oregon inmate
22 subscribers.

23 23. Defendants have directed and/or caused mail room corrections officers and
24 other corrections officers in the Oregon Department of Corrections to refuse to deliver letters
25 from the publisher, reader surveys, and flyers identifying plaintiff's publications and how
26 they can be ordered to plaintiff's subscribers within Oregon prisons, based on the Postal
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1 Service rate classification used by plaintiff to send these materials to its subscribers and/or
2 based on malice toward plaintiff on the part of these defendants due to the content of
3 plaintiff's publications relating to prison conditions and the rights of prisoners, and/or due
4 to plaintiff's successful litigation to vindicate its right to send its magazines to subscribers
5 by Standard A nonprofit organizational mail rates.

6
7 24. Defendants have directed and/or caused mail room corrections officers and
8 other officers of the Oregon Department of Corrections to refuse to deliver plaintiff's books
9 and other publications to inmates in Oregon prisons, because of the Postal Service rate
10 classification used by plaintiff to mail its books and other publications.

11 25. Defendants' actions and failures to act as alleged in Paragraphs 21 through 24
12 above are not rationally related to any legitimate penological interest.

13 26. Defendants' actions and failures to act as set forth in Paragraphs 21 through
14 24 above violate plaintiff's clearly established rights to send subscription mail to inmate
15 subscribers using Standard A postage classification, to communicate individually with its
16 subscribers regarding their subscriptions using Standard A postage classification or first class
17 mail, and to send plaintiff's books and other publications addressed individually to inmate
18 readers using Fourth Class Book Rate postage classification.

19
20 27. The actions and failures to act of defendants as described in Paragraphs 21
21 through 24 above are malicious, reckless, wanton, and/or deliberately indifferent to
22 plaintiff's rights.

23 28. Defendants have directed and/or caused mail room corrections officers and
24 other officers of the Oregon Department of Corrections to censor the mail identified in
25 Paragraphs 12 through 15 above without providing plaintiff notice of the refusal, purported
26 reasons for the censorship, and opportunity to contest the censorship of the mail.
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1 29. Plaintiff's right of due process to be notified and provided an opportunity to
2 contest the censorship of its subscription mail, mail related to its subscriptions, mail
3 addressed individually to inmates, and books and publications is clearly established.

4 30. Defendants' violation of plaintiff's due process to notice and the opportunity
5 to contest mail censorship is malicious, reckless, wanton, and/or deliberately indifferent to
6 plaintiff's rights.

7 31. On July 11, 2001, defendants adopted temporary rules for delivery of mail to
8 inmates, including plaintiff's mail sent by Standard A and Fourth Class Book Rate postage
9 classifications. On December 17, 2001, defendants adopted final rule amendments
10 governing inmate mail including plaintiff's mail to inmates sent by Standard A and Fourth
11 Class Book Rate postage classifications, which rule amendments were codified within OAR
12 291-131-0005 through 291-131-0050 (copy attached as Exhibit 1 and hereby incorporated
13 by reference). Defendants' temporary and final rules were inconsistent with and contrary to
14 the decision of the Ninth Circuit Court of Appeals and this Court in *Prison Legal News v.*
15 *Cook*, insofar as the rules continued to provide for and allow censorship of properly
16 addressed subscription mail, purported to require information in addition to an inmate's
17 name, prison identification number, and address to allow the delivery of subscription mail,
18 purported to establish different requirements for delivery of subscription mail, books and
19 publications, and individually addressed mail solely because of the postage classification of
20 the mail, and failed to provide for notice and the opportunity to contest censorship of such
21 mail to plaintiff and other NPO mailers who use Standard A and Fourth Class Book Rate to
22 mail their magazines, subscription mail, books, publications, and other individually
23 addressed mail. The rules which were contrary to the decisions of the Ninth Circuit Court
24 of Appeals and this Court include OAR 291-131-0025(6), OAR 291-131-0025(8), OAR
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1 291-131-0037(6), OAR 291-131-0050(1), and OAR 291-131-0010(26), together with any
2 other rule and/or interpretation and/or application of the rules which had or have the effect
3 of tying the receipt of subscription non-profit mail to Postal Service rates classifications,
4 failing to provide notice and opportunity to contest the censorship of delivery of individually
5 addressed mail from plaintiff and other NPOs, and/or purporting to impose different and
6 additional requirements on the mail of plaintiff and other NPOs on the basis of the Postal
7 Service rate classifications by which individually addressed NPO mail is sent, and/or
8 purported to prohibit plaintiff from communicating with its subscribers by sending to its
9 subscribers the materials described in paragraph 14
10

11 32. On March 25, 2002, defendant adopted new "temporary rules" regarding
12 inmate mail policies. A copy of these "temporary rules" is attached as Exhibit 2 and
13 incorporated by this reference. The March 25, 2002 "temporary rules" purport to "permit
14 inmates to receive mail without regard to the postal rate at which it is mailed," according to
15 the Statement of Need and Justification for Temporary Rule issued by defendant Cook on
16 March 25, 2002. Notwithstanding and contrary to defendant Cook's statement, defendants
17 have continued to differentiate between first class mail and mail sent by nonprofit
18 organizations using Standard A mail rates.
19

20 33. To the extent that defendants' rules purport to prohibit plaintiff and other
21 NPOs from sending subscription magazines which have not been paid for, the rules have no
22 legitimate penological purpose and violate plaintiff's First Amendment rights.

23 34. To the extent that OAR 291-131-0025(6) prohibited and continues to prohibit
24 plaintiff and other publishers from sending materials such as subscription renewal notices
25 and publication order forms which are intended primarily to inform the recipient of political
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1 magazines and publications offered for sale, the rule has no legitimate penological purpose
2 and violates plaintiff's First Amendment rights.

3 35. To the extent that OAR 291-131-0025(7) of the "temporary rules" adopted on
4 March 25, 2002 continues to deny plaintiff and the recipients of its mail notice and
5 administrative review of refused mail, the rule has no legitimate penological purpose and
6 violates plaintiff's First Amendment rights and plaintiff's rights to due process of law. For
7 the same reasons, the rule violates the rights of the intended recipients of plaintiff's mail.
8

9 36. Defendants have implemented OAR 291-131-0025(6) differently with respect
10 to plaintiff's mail than with respect to mail sent by others. In particular, defendant Holder
11 has informed inmates that "catalogs" and other mail supposedly subject to this rule can be
12 received if sent by first class mail and less than a specified thickness. Defendants have
13 caused plaintiff's subscription renewal notices, flyers identifying plaintiff's publications and
14 how they can be ordered, and similar mail to be refused, even when sent by first class mail
15 and in less than the thickness arbitrarily and without authority of rule specified by defendant
16 Holder in communication with other inmates.
17

18 37. Defendants' administration and enforcement of OAR 291-131-0025(6) is
19 arbitrary and invidious, and has singled plaintiff out for adverse treatment and denial of its
20 First Amendment rights and rights to due process of law. In the absence of any valid reason
21 for discriminating against plaintiff's mail, defendants' conduct evidences malice, spite, and
22 reckless indifference to the federally protected rights of plaintiffs including plaintiff's right
23 exercised previously to petition the courts to redress such violations.

24 38. The rights of plaintiff and other NPO publishers and mailers which are violated
25 by the rules identified in Paragraph 31, 32, 34, and 35 above are clearly established.
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1 mail policies in this Court and prevailed.

2 **VIII.**

3 **PRAYER FOR RELIEF**

4 Plaintiff Prison Legal News requests the following relief:

5 1. A declaration that defendants' actions and failures to act have violated plaintiff's right
6 to communicate with prison subscribers and readers secured by the First Amendment and by 42
7 U.S.C. § 1983;

8 2. A declaration that defendants' actions and failures to act as alleged herein have
9 violated plaintiff's right of due process of law secured by the Fifth and Fourteenth Amendments and
10 by 42 U.S.C. § 1983;

11 3. A declaration that the rules adopted by defendants on December 17, 2001, including
12 OAR 291-131-0010(26), OAR 291-131-0025(6), OAR 291-131-0025(8), OAR 291-131-0037(6), and
13 OAR 291-131-0050(1), violated plaintiff's rights of free speech, communication, association, and
14 due process, were unconstitutional on their face and as applied to plaintiff and its subscribers, and
15 were invalid;

16 4. A declaration that the "temporary rules" adopted by defendants on March 25, 2002,
17 including OAR 291-131-0025(6) and OAR 291-131-0025(7), together with any interpretation,
18 implementation, and enforcement of these or any other inmate mail rules which causes plaintiff to
19 be denied its rights to communicate with its subscribers as alleged in this complaint, violate
20 plaintiff's rights of free speech, communication, association, and due process, are unconstitutional
21 on their face and as applied to plaintiff and its subscribers, and are invalid;

22 5. An injunction, including temporary injunctive relief, ordering defendants to deliver
23 plaintiff's magazines to the addressees regardless of the mail classification;

24 6. An injunction, including temporary injunctive relief, ordering defendants to deliver
25 plaintiff's books and publications to the addressees regardless of the mail classification;

1 7. An injunction, including temporary injunctive relief, ordering defendants to deliver
2 plaintiff's subscription renewal notices, flyers, book order forms, and letters from the publisher to
3 the addressees regardless of the mail classification, and to provide plaintiff and inmate addressees
4 notice and administrative review of all refusals to deliver such mail;

5 8. A permanent injunction prohibiting defendants from applying
6 OAR 291-131-0025(6), OAR 291-131-0025(7), or any other rule previously enacted or enacted
7 hereafter, to restrict or prohibit delivery of plaintiff's magazines, books, publications, subscription
8 renewal notices, flyers, book order forms, or publisher's letters to their addressees, and prohibiting
9 defendants from applying these rules to deny plaintiff and its subscribers notice and administrative
10 review of all refusals to deliver plaintiff's mail;

11 9. An award of plaintiff's damages;

12 10. An award of punitive damages;

13 11. An award of plaintiff's attorneys' fees and costs pursuant to 42 U.S.C.

14 § 1988; and,

15 12. Such further relief as the Court deems just and equitable.

16 13. Plaintiff demands a jury trial.

17 Dated this ___ day of June, 2002.

18 Respectfully submitted,

19 RANSOM BLACKMAN LLP

20
21
22 By: _____

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