

1 LISA ELLS – 243657
CHRISTOPHER D, HU – 293052
2 ROSEN BIEN GALVAN & GRUNFELD LLP
50 Fremont Street, 19th Floor
3 San Francisco, California 94105-2235
Telephone: (415) 433-6830
4 Facsimile: (415) 433-7104

5 LANCE WEBER – Fla. Bar No. 104550*
SABARISH NEELAKANTA – Fla. Bar No. 26623*
6 HUMAN RIGHTS DEFENSE CENTER
P.O. Box 1151
7 Lake Worth, Florida 33460
Telephone: (561) 360-2523
8 Facsimile: (866) 735-7136
Email: lweber@humanrightsdefensecenter.org
9 sneelakanta@humanrightsdefensecenter.org

10 * *Pro Hac Vice* Applications To Be Filed

11 Attorneys for Plaintiff

12

13

UNITED STATES DISTRICT COURT

14

EASTERN DISTRICT OF CALIFORNIA

15

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

Case No.

17

Plaintiff,

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

18

v.

19

20 COUNTY OF TULARE; MIKE
BOUDREAUX, individually and in his
capacity as Sheriff–Coroner of the County
of Tulare; DOES 1-20, in their individual
and official capacities,

JURY TRIAL DEMANDED

22

Defendants.

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

Plaintiff, PRISON LEGAL NEWS (“PLN”), a project of the Human Rights Defense Center, brings this action against Defendants to enjoin them from censoring its monthly journal, *Prison Legal News*, mailed to prisoners at the Bob Wiley Detention Facility (“the Jail” herein). Defendants have adopted and implemented mail policies prohibiting delivery of mail from Plaintiff and other senders, failing to provide due process notice and an opportunity to challenge the censorship, and denying senders equal protection as required by the United States Constitution. Plaintiff alleges that Defendants’ actions violate its rights under the First and Fourteenth Amendments to the United States Constitution, and seeks injunctive and declaratory relief pursuant to 42 U.S.C. § 1983. Plaintiff also seeks damages in an amount to be proven at trial.

JURISDICTION AND VENUE

1. This action is brought pursuant to 28 U.S.C. § 1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983.

2. This action is brought pursuant to 28 U.S.C. § 1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Venue is proper under 28 U.S.C. § 1391(b). At least one Defendant resides within this judicial district, and the events giving rise to the claims asserted herein all occurred within this judicial district.

4. Plaintiff’s claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the Plaintiff by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and the laws of the United States.

5. This Court has jurisdiction over claims seeking declaratory and injunctive

1 relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of
2 Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

3 6. Plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. §
4 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in
5 actions brought pursuant to 42 U.S.C. § 1983.

6 7. Plaintiff is informed, believes, and based thereon alleges that the individual
7 Defendants acted as described herein with reckless disregard for Plaintiff's rights and/or
8 with the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel
9 and unjust hardship in conscious disregard of Plaintiff's rights with the intention of
10 causing Plaintiff injury and depriving it of its constitutional rights.

11 8. As a result of the foregoing, Plaintiff seeks compensatory and punitive
12 damages against the individual Defendants.

13 **PARTIES**

14 9. Plaintiff PRISON LEGAL NEWS is a project of the Human Rights Defense
15 Center, a Washington non-profit corporation. PLN publishes a 72-page monthly journal of
16 corrections news and analysis called *Prison Legal News*, and distributes books about the
17 criminal justice system and legal issues affecting prisoners to prisoners, lawyers, courts,
18 libraries, and the public throughout the country.

19 10. Defendant COUNTY OF TULARE is a municipal corporation formed under
20 the laws of the State of California.

21 11. Defendant MIKE BOUDREAUX is the Sheriff-Coroner of the County of
22 Tulare. Sheriff Boudreaux is employed by and is an agent of Tulare County and the Tulare
23 County Sheriff's Department. Defendant Boudreaux is responsible for the operations of
24 the Bob Wiley Detention Facility, and has ultimate responsibility for the promulgation and
25 enforcement of all Jail staff policies and procedures, and the training and supervision of
26 the jail staff who interpret and implement the county's mail policy for U.S. Mail delivered
27 to and from prisoners at the Jail. He is the policymaker of the jail's policy governing mail
28 for prisoners. He is sued in his individual and official capacities.

1 12. The true names and identities of Defendants DOES 1 through 10 are
2 presently unknown to PLN. Each of Defendants DOES 1 through 10 are or were
3 employed by and are or were agents of Defendants when some or all of the challenged
4 inmate mail policies and practices were adopted and/or implemented. Each of Defendants
5 DOES 1 through 10 were personally involved in the adoption and/or implementation of the
6 mail policies at the Jail, and/or were responsible for the hiring, screening, training,
7 retention, supervision, discipline, counseling, and/or control of Jail staff who interpret and
8 implement these mail policies. PLN will seek to amend this Complaint as soon as the true
9 names and identities of Defendants DOES 1 through 10 have been ascertained.

10 13. At all times material to this action, the actions of all Defendants as alleged
11 herein were taken under the authority and color of state law.

12 **FACTUAL ALLEGATIONS**

13 14. Prison Legal News (“PLN”) publishes *Prison Legal News: Dedicated to*
14 *Protecting Human Rights*, a monthly journal of corrections news and analysis regarding
15 prisoners’ rights, court rulings, management of prison and jail facilities and conditions of
16 confinement. PLN also distributes books about the criminal justice system and legal issues
17 affecting prisoners.

18 15. PLN has thousands of subscribers in the United States and abroad, including
19 prisoners, attorneys, journalists, public libraries, judges, and members of the general
20 public. PLN distributes its monthly publication to prisoners and law librarians in more
21 than 2,600 correctional facilities located across all fifty states, including the Federal
22 Bureau of Prisons and the California Department of Corrections & Rehabilitation.

23 16. PLN also distributes approximately fifty (50) different books about the
24 criminal justice system, legal reference books, and self-help books of interest to prisoners.
25 These books are designed to foster a better understanding of criminal justice policies and
26 to allow prisoners to educate themselves about related issues, such as legal research, how
27 to write a business letter, health care issues, and similar topics.

28 17. Plaintiff’s organizational purpose, as stated in its Articles of Incorporation, is

1 to disseminate legal information on issues affecting prisoners and their loved ones on the
2 outside and to educate prisoners and the public about the destructive nature of racism,
3 sexism, and the economic and social costs of prisons to society, among other purposes.

4 18. PLN engages in core protected speech and expressive conduct on matters of
5 public concern, such as the operation of prison facilities, prison conditions, prisoner health
6 and safety, and prisoners' rights. Plaintiff's monthly journal, as described above, contains
7 political speech and social commentary, which are at the core of First Amendment values
8 and are entitled to the highest protection afforded by the U.S. Constitution. For more than
9 25 years, the core of PLN's mission has been public education, advocacy and outreach on
10 behalf of, and for the purpose of assisting, prisoners who seek legal redress for
11 infringements of their constitutionally guaranteed and other basic human rights. PLN's
12 mission, if realized, has a salutary effect on public safety.

13 19. From September 2013 to present, PLN has sent at least three hundred and
14 thirty-six (336) issues of *Prison Legal News* to prisoners at the Jail. On information and
15 belief, each month the following number of individually addressed issues of *Prison Legal*
16 *News* were not delivered to intended recipients incarcerated at the Jail at the time it arrived
17 in the mail:

Item	Date Mailed	Number of Issues Censored
<i>Prison Legal News</i>	September 2013	11
<i>Prison Legal News</i>	October 2013	19
<i>Prison Legal News</i>	November 2013	11
<i>Prison Legal News</i>	December 2013	10
<i>Prison Legal News</i>	January 2014	12
<i>Prison Legal News</i>	February 2014	17
<i>Prison Legal News</i>	March 2014	4
<i>Prison Legal News</i>	April 2014	11
<i>Prison Legal News</i>	May 2014	8
<i>Prison Legal News</i>	June 2014	12
<i>Prison Legal News</i>	July 2014	6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Item	Date Mailed	Number of Issues Censored
<i>Prison Legal News</i>	August 2014	18
<i>Prison Legal News</i>	September 2014	8
<i>Prison Legal News</i>	October 2014	3
<i>Prison Legal News</i>	November 2014	6
<i>Prison Legal News</i>	December 2014	7
<i>Prison Legal News</i>	January 2015	12
<i>Prison Legal News</i>	February 2015	6
<i>Prison Legal News</i>	March 2015	13
<i>Prison Legal News</i>	April 2015	25
<i>Prison Legal News</i>	May 2015	25
<i>Prison Legal News</i>	June 2015	22
<i>Prison Legal News</i>	July 2015	20
<i>Prison Legal News</i>	August 2015	20
<i>Prison Legal News</i>	September 2015	20
<i>Prison Legal News</i>	October 2015	20

20. In some instances, Defendants returned the issues of *Prison Legal News* to Plaintiff’s office via the Return To Sender (“RTS”) service of the United States Postal Service. Defendants marked the outside of the returned issues with an ink stamp that contained the words “RETURN TO SENDER” in large sized letters across the top. This stamp also contained six short explanations in smaller sized letters directly underneath, which read as follows:

- Unauthorized Mail
- Not in custody
- Unable to read name
- Need inmate I.D. #
- No Money Orders
- I/M with same name

21. None of the above noted reasons were checked or otherwise marked as the reason for the censorship.

22. Defendants did not provide Plaintiff with any notice of this censorship nor did they provide any opportunity to appeal the censorship decisions.

23. Plaintiff learned from some of PLN’s subscribers that jail staff claimed that

1 they were not delivering *Prison Legal News* due to the fact that it is bound with two wire
2 staples.

3 24. Despite censoring Plaintiff’s monthly journal purportedly because of staples,
4 Plaintiff is informed and believes that Defendants have allowed other publications
5 containing staples to be delivered to prisoners.

6 25. Specifically, Defendants allow a publication entitled “Our Daily Bread,”
7 which contains Christian content, but is also bound with staples, to be delivered to inmates
8 in the Jail. Defendants’ refusal to deliver *Prison Legal News*, a secular publication,
9 because it is bound with staples, while delivering a Christian publication bound with
10 staples to inmates in the Jail, violates the Establishment Clause of the First Amendment of
11 the United States Constitution. Additionally, by treating Plaintiff differently than other
12 similarly situated publishers and distributors, Defendants violate Plaintiffs’ right to equal
13 protection under the law.

14 26. On information and belief, Defendants have also refused to deliver secular
15 publications other than *Prison Legal News* on the basis that they were bound with staples.

16 27. Not only do Defendants allow delivery of Christian publications bound with
17 wire staples, on information and belief, Defendants themselves provide their detainees
18 with similar staples in several other ways in the common course of business within the Jail.

19 28. PLN will continue to mail copies of *Prison Legal News* to subscribers
20 imprisoned at the Jail.

21 29. The accommodation of the free speech, expression, equal protection and due
22 process rights of Plaintiff with respect to written speech protected by the Constitution will
23 not have any significant impact on the prison, its staff or prisoners.

24 30. Due to Defendants’ actions as described above, Plaintiff has suffered
25 damages, and will continue to suffer damages, including, but not limited to: the
26 suppression of Plaintiff’s speech; the impediment of Plaintiff’s ability to disseminate its
27 political message; frustration of Plaintiff’s non-profit organizational mission; the loss of
28 potential subscribers and customers; and the inability to recruit new subscribers and

1 supporters, among other damages.

2 31. Defendants' actions and inactions were and are motivated by ill motive and
3 intent, and were and are all committed under color of law with reckless indifference to
4 PLN's rights and/or with evil motive or an intent to vex Plaintiff.

5 32. Defendants, and other agents of the Jail, are responsible for or personally
6 participated in creating and implementing these unconstitutional policies, practices, and
7 customs, or for ratifying or adopting them. Further, Defendants are responsible for training
8 and supervising the staff persons whose conduct has injured and continues to injure PLN.

9 33. Defendants' unconstitutional policy, practices, and customs are ongoing,
10 continue to violate PLN's rights, and were and are the moving force behind the injuries
11 Plaintiff suffered as a direct result of the constitutional violations. As such, PLN has no
12 adequate remedy at law.

13 34. PLN is entitled to declaratory relief as well as injunctive relief prohibiting
14 Defendants from refusing to deliver publications and correspondence from plaintiff and
15 other senders without any legal justification, and prohibiting Defendants from censoring
16 mail without due process of law.

17 **CLAIMS FOR RELIEF**

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

21 35. Plaintiff realleges and incorporates by reference the preceding paragraphs.

22 36. The acts described above constitute violations of Plaintiff's rights under the
23 First Amendment to the United States Constitution and have caused damages to Plaintiff,
24 and will continue to cause damage.

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

1 **SECOND CLAIM FOR RELIEF**
2 **((For Violations of the Due Process Clause of the Fourteenth Amendment Under**
3 **Color Of State Law; Section 1983))**

3 38. Plaintiff realleges and incorporates by reference the preceding paragraphs.

4 39. By failing to give Plaintiff sufficient notice of the censorship of its
5 publications, and an opportunity to be heard with respect to that censorship, Defendants
6 have deprived and continue to deprive Plaintiff of liberty and property without due process
7 of law, in violation of the Fourteenth Amendment to the United States Constitution
8 through 42 U.S.C. § 1983.

9 40. The acts described above have caused damage to Plaintiff, and will continue
10 to cause damage.

11 41. Plaintiff seeks declaratory and injunctive relief and nominal and
12 compensatory damages against all Defendants. Plaintiff also seeks punitive damages
13 solely against the individual Defendants.

14 **THIRD CLAIM FOR RELIEF**
15 **(For Violations of the Equal Protection Clause of the Fourteenth Amendment Under**
16 **Color Of State Law; Section 1983)**

16 42. Plaintiff realleges and incorporates by reference the preceding paragraphs.

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

21 44. Plaintiff seeks declaratory and injunctive relief and nominal and
22 compensatory damages against all Defendants. Plaintiff also seeks punitive damages
23 solely against the individual Defendants.

24 **FOURTH CLAIM FOR RELIEF**
25 **(For Violations of the Establishment Clause of the First Amendment Under Color of**
26 **State Law; Section 1983)**

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

27 46. By prohibiting the delivery of Plaintiff's publications because they are bound
28 with staples, but allowing the delivery of a Christian publication bound with staples,

1 Defendants have violated Plaintiff's rights under the Establishment Clause of the First
2 Amendment to the United States Constitution and the Fourteenth Amendment to the
3 United States Constitution through 42 U.S.C. § 1983.

4 47. Defendants' practices unconstitutionally favor religion over non-religion,
5 and specifically Christian content over secular content, and therefore have the primary
6 purpose and effect of promoting religion and Christianity.

7 48. Defendants' practices also improperly endorse religion, specifically
8 Christianity.

9 49. Plaintiff seeks declaratory and injunctive relief and nominal and
10 compensatory damages against all Defendants. Plaintiff also seeks punitive damages
11 solely against the individual Defendants.

12 **PRAYER FOR RELIEF**

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

17 WHEREFORE, Plaintiff requests relief as follows:

18 1. A declaration that Defendants' policies, practices, and customs excluding
19 certain publications on the grounds that they are bound with staples and of failing to
20 provide due process to senders of censored mail violate the First and Fourteenth
21 Amendments to the United States Constitution.

22 2. An order enjoining all Defendants and their employees, agents, and any and
23 all persons acting in concert with them who have actual knowledge of this order from
24 further violation of Plaintiff's civil rights under the First and Fourteenth Amendments to
25 the United States Constitution.

26 3. Nominal damages for each violation by the Defendants against the Plaintiff's
27 rights.

28 4. Compensatory damages in an amount to be proven at trial.

1 5. Punitive damages against the individual defendants in an amount to be
2 proven at trial.

3 6. Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988, and
4 under other applicable law.

5 7. Prejudgment and post judgment interest.

6 8. Such other relief as the Court deems just and equitable.

7
8 DATED: October 29, 2015

Respectfully submitted,

9 ROSEN BIEN GALVAN & GRUNFELD LLP

10 By: /s/ Lisa Ells

11 Lisa Ells

12 Attorneys for Plaintiff

13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial.

16
17 DATED: October 29, 2015

Respectfully submitted,

18 ROSEN BIEN GALVAN & GRUNFELD LLP

19 By: /s/ Lisa Ells

20 Lisa Ells

21 Attorneys for Plaintiff