1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 8 AT TACOMA 9 PRISON LEGAL NEWS, a project of the No. HUMAN RIGHTS DEFENSE CENTER. 10 **COMPLAINT** Plaintiff. 11 v. 12 LEWIS COUNTY: LEWIS COUNTY 13 SHERIFF'S OFFICE; STEVE MANSFIELD, individually and in his capacity as Lewis 14 County Sheriff; KEVIN HANSON, individually and in his capacity as Lewis County Jail Administrator; and JIM PEA, individually and 15 in his capacity as Lewis County Administrative 16 Lieutenant. 17 Defendants. 18 T. NATURE OF THE CASE 19 1.1 Plaintiff Prison Legal News brings this action to enjoin Defendants' censorship of 20 mail sent to and from prisoners held in custody at the Lewis County Jail without notice and an 21 22 opportunity to appeal, in violation of the First Amendment and of the Fourteenth Amendment's 23 Due Process Clause. Defendants have adopted and implemented written mail policies and practices that unconstitutionally: restrict correspondence to and from prisoners to postcards only; 24 prohibit delivery of book catalogs to prisoners; and do not afford adequate due process. In this 25 action, PLN seeks a preliminary and permanent injunction, damages, and a declaration that 26 27 Defendants' policies and conduct violate the Constitution. COMPLAINT - 1

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II. JURISDICTION AND VENUE

- 2.1 This action arises under the First and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343, 2201, and 2202.
- 2.2 Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(b)(2) because a substantial part of the events complained of occurred in this District, and because the Defendants reside in this District.

III. PARTIES

- 3.1 Plaintiff Prison Legal News (PLN) is a project of the Human Rights Defense Center (HRDC), a Washington Non-Profit Corporation. The core of HRDC's mission is public education, prisoner education, advocacy, and outreach in support of the rights of prisoners and in furtherance of basic human rights. PLN publishes and distributes a monthly journal of corrections news and analysis as well as books about the criminal justice system and legal issues affecting prisoners, to prisoners, lawyers, courts, libraries, and the public throughout the Country. PLN also maintains a website (www.prisonlegalnews.org) and operates an email list. Prisoners of all types, family and friends of prisoners, prisoner advocates, and other members of the general public are among the intended beneficiaries of PLN's activities.
- 3.2 Defendant Lewis County is a municipal corporation formed under the laws of the State of Washington.
- 3.3 Defendant Lewis County Sheriff's Office is a department of Lewis County and operates the Lewis County Jail located in Chehalis, Washington. The Jail has the capacity to house 356 prisoners. In 2012, it averaged 211 prisoners per day, 28% of whom were Contract Bed Inmates, meaning that Lewis County confined them for another government entity. In 2012, the Jail brought in close to \$1.3 million in revenue collected from confining contract inmates. In 2008, 5,110 prisoners were processed through the Lewis County Jail.
- 3.4 Defendant Steve Mansfield is the Sheriff of Lewis County. Sheriff Mansfield is employed by and is an agent of Lewis County and the Sheriff's Office. He is responsible for the

operations of the Sheriff's Office and the Lewis County Jail, and the training and supervision of the Jail staff who interprets and implements the Jail's mail policy for prisoners. He is the policymaker for the Jail policy governing mail for prisoners.

- 3.5 Defendant Kevin Hanson is a member of the Command Staff of the Lewis County Sheriff's Office, and is the Jail Administrator of the Lewis County Jail. He is employed by and is an agent of Lewis County and the Sheriff's Office. As Jail Administrator, he is responsible for the operations of the jail, the training and supervision of Jail Staff, and implementing and enforcing the Jail's mail policies and practices.
- 3.6 Defendant Jim Pea is the Administrative Lieutenant of the Lewis County Jail. As the Administrative Lieutenant, he is responsible for making the final decision regarding censorship of incoming and outgoing mail.
- 3.7 Each of the acts and omissions of the persons alleged herein were taken under color of state law and within the scope of their official duties as employees, officers, or agents of Lewis County and the Lewis County Sheriff's Office.

IV. FACTUAL ALLEGATIONS

- 4.1 Prison Legal News publishes and distributes a soft-cover monthly journal, book catalogs, informational brochures, and book offers, and publishes and distributes paperback books, about the criminal justice system and legal issues affecting prisoners. PLN also distributes by mail legal opinions and other correspondence to prisoners incarcerated in various correctional facilities across the country.
- 4.2 Prison Legal News has thousands of subscribers in the United States and abroad, including prisoners in more than 2,000 federal, state, and local correctional facilities across the United States, attorneys, journalists, public libraries, judges, and other members of the public. PLN publications are distributed without incident to prisoners and law librarians in the vast majority of correctional facilities across the United States, including the most secure facilities of the Federal Bureau of Prisons, the Washington Department of Corrections and many other States, and other jails and detention facilities in Washington and across the nation.

4.3 Prison Legal News engages in core protected speech and expressive conduct on matters of public concern, such as operations of prison facilities, prison conditions, prisoner health and safety, and prisoners' rights.

A. <u>CENSORSHIP AND LACK OF DUE PROCESS</u>

Incoming Mail

4.4 Defendants have rejected Prison Legal News's book catalogs, book offers, informational brochures, subscription forms, and copies of court rulings mailed to prisoners held in custody at the Lewis County Jail. The mail items rejected by Defendants include, but are not limited to, the items identified below.

<u>Informational Brochures, Subscription Order Forms, Book Catalogs</u>

- 4.5 Prison Legal News sent informational brochures about PLN and subscription order forms, book catalogs, and book offers to prisoners at the Lewis County Jail.
- A.6 Prison Legal News Brochure and Subscription Order Form: Prison Legal News sent certain prisoners at the Lewis County Jail an informational brochure about its organization and publications. The double-sided single-page brochure includes: a description of the topics covered in PLN's monthly journal, subscription rates, special subscription offers, and an order form; a description of three books available for purchase or included with a subscription to *Prison Legal News—Protecting Your Health & Safety, With Liberty for Some: 500 Years of Imprisonment in America*, and *Prison Profiteers: Who Makes Money from Mass Incarceration*; and other information about PLN's bookstore.
- 4.7 **Book Catalog:** Prison Legal News sent certain prisoners at the Lewis County Jail its PLN Book List. The double-sided single-page book list includes a description of 33 books, dictionaries, and resource materials available for purchase. The books available for purchase include information about a variety of topics, including but not limited to: the basic rights of prisoners regarding health and safety; the American criminal justice system; self-representation in court; developing a successful re-entry plan upon release from prison; searching for a job; crime and poverty; the mental health crisis in U.S. prisons and jails; preparation for the GED

test; how to write letters to government agencies and officials; and how to support family members facing criminal charges.

- 4.8 **Book Offers**: Prison Legal News sent certain prisoners at the Lewis County Jail a double-sided single-page informational brochure about two books for sale: *The Habeas Citebook: Ineffective Assistance of Counsel*, a handbook containing case citations, pleadings, and forms designed to help a prisoner seek habeas corpus relief; and *Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada*, a handbook on high school, vocational, paralegal, undergraduate, and graduate courses available through correspondence study.
- 4.9 Collectively, the PLN Brochure, Book List, and Book Offer described above in Paragraphs 4.6 through 4.8 are referred to as "Informational Brochure Packs" below.
- 4.10 Prison Legal News sent all of the Informational Brochure Packs in white standard #10 envelopes via first-class mail.
- 4.11 Prison Legal News mailed Informational Brochure Packs addressed to each of the following prisoners at the Lewis County Jail on or about the following dates:

4.11.1	Prisoner Name Norman Jay Field Yahdriel Euteast Jones Jennifer Christine Lantau Steven Michael Ledoux Ashley Leanna Leonard Harvey Clem Maddux Jonathon Manual Margart Brandt Daniel McKenna Corey Ross Morgan Johnathan Adam O'Connor Rodney Dee Oleachea Kristy Ann Price-Alvarez Jerrell Scott Redmill Howard Eugene Ross Curtis James Rudolph Diaz Guadalupe Solis Michael Troy Taylor Eric Dale Waller Joshua Ryan O'Neil Whittler	Date Mailed to Prisoner October 8, 2013 September 13, 2013 September 13, 2013 September 13, 2013 October 8, 2013 October 8, 2013 September 13, 2013 September 13, 2013 September 17, 2013 October 11, 2013 October 11, 2013 October 11, 2013 October 11, 2013 September 17, 2013 September 17, 2013 September 17, 2013
	Joshua Ryan O'Neil Whittler Clifton Roy Young	September 17, 2013 October 11, 2013

1		4.11.2 Prisoner Name	Date Mailed to Prisoner
2		Damon Keith Burgess Roy Alan Dever	October 4, 2013 October 4, 2013
3		4.11.3 <u>Prisoner Name</u> Dominic Lee Combs	<u>Date Mailed to Prisoner</u> October 4, 2013
4 5		4.11.4 <u>Prisoner Name</u> Bonny Ray Jr. Anderson Zachery Bynum	Date Mailed to Prisoner October 4, 2013 October 4, 2013
6	The prisoners	• •	Lewis County Jail at the time that the Jail
7	received the Informational Brochure Packs addressed to each prisoner from PLN.		
8	4.12	Defendants rejected each Information	al Brochure Pack identified in paragraphs
9	4.11.1 to 4.11	.4 and did not deliver them to the priso	oner-addressees. Defendants returned each
10	item of mail t	o PLN unopened.	
11	4.13	By rejecting the Informational Broch	ure Packs, Defendants interfered with PLN's
12	protected free speech rights.		
13	4.14	By rejecting the Informational Broch	ure Packs, Defendants interfered with the
14	prisoner-addr	essees' protected free speech rights.	
15	4.15	For the Informational Brochure Pack	s listed above in Paragraph 4.11.1, the Jail
16	stamped the r	nail "RETURN TO SENDER This faci	lity accepts postcards only." The Jail did
17	not provide PLN any information about a right to appeal the censorship decision.		
18	4.16	For the Informational Brochure Pack	s listed above in Paragraph 4.11.2, the Jail
19	stamped the r	mail "Returned to Sender REASON CF	IECKED BELOW." The reason
20	"Unauthorize	d Mail" was circled or checked by the	Jail on both envelopes. The Jail did not
21	provide PLN	any information about a right to appeal	the censorship decision.
22	4.17	For the Informational Brochure Packs	s listed above in Paragraph 4.11.4, the Jail
23	stamped the r	nail "RETURN TO SENDER This faci	lity accepts postcards only" and "Returned
24	to Sender RE	ASON CHECKED BELOW." (Empha	sis added). No boxes were checked, but
25	"Unauthorized Mail" was circled by the Jail. The Jail did not provide PLN any information		
26	about a right	to appeal the censorship decision.	

- 4.18 Defendants failed to provide due process notice to PLN of the reason for rejecting PLN's Informational Brochure Pack by, among other inadequacies, failing to identify the specific mail policy they relied on, and stating different reasons for censoring identical mail. Defendants also failed to provide PLN with any notice of or opportunities to be heard to challenge the censorship decisions.
- 4.19 Defendants failed to provide due process notice to PLN of the reason for rejecting PLN's Informational Brochure Pack by, among other inadequacies, failing to explain the basis for their censorship decisions, failing to identify the specific mail policy they relied on, stating different reasons for censoring identical items of mail, and otherwise failing to give meaningful notice of the censorship. Defendants also failed to provide PLN with any notice of the procedure by which senders of censored mail might challenge the censorship decisions.
- 4.20 On information and belief, Defendants fail to provide due process notice and an opportunity to appeal to other senders of censored mail addressed to prisoners at the Lewis County Jail.
- 4.21 On information and belief, Defendants fail to provide any notice to the prisoner-addressees that the Jail censored PLN's mail. Defendants also fail to provide the prisoner-addressees with any notice of or opportunity to be heard to challenge the censorship decisions.
- 4.22 Prison Legal News intends to continue sending Informational Brochure Packs to prisoners at the Lewis County Jail.

Court Opinions

4.23 On October 15, 2013, Prison Legal News mailed copies of the Ninth Circuit Court of Appeals opinion in *Clement v. California Dept. of Corr.*, 364 F.3d 1148 (9th Cir. 2004), addressed to each of the following prisoners at the Lewis County Jail:

Prisoner Name
Brendon Laverne Amos
Bonny Ray Jr. Anderson
Brian Leon Austen
Terry Lee Bryan
Damon Keith Burgess
Zachery Howard Bynum

1	Roy Alan Dever					
2	Norman Jay Field Ronald Joe Gleason					
3	Stephen Lavale Hardy Yahdriel Euteast Jones					
4	Jennifer Christine Lantau Steven Michael Ledoux					
5	Harvey Clem Maddux Jonathan Manual Margart					
6	Kristy Ann Price-Alvarez Howard Eugene Ross					
7	Jerrell Scott Redmill Guadalupe Solis-Diaz					
8	Joshua Ryan O'Neil Wittler					
9	4.24 Prison Legal News sent each of the Ninth Circuit opinions in white standard # 10					
0	envelopes via first-class mail. Defendants returned each item of mail to PLN unopened.					
11	4.25 Defendants rejected each Court Opinion identified in paragraph 4.23 and did not					
12	deliver them to the prisoner-addressees.					
13	4.26 By rejecting the Court Opinions, Defendants interfered with PLN's protected free					
14	speech rights.					
15	4.27 By rejecting the Court Opinions, Defendants interfered with the prisoner-					
16	addressees' protected free speech rights.					
17	4.28 For the Court Opinions listed above in Paragraph 4.23, the Jail stamped the mail					
18	"RETURN TO SENDER This facility accepts postcards only." The Jail did not provide PLN					
19	any information about its right to appeal the censorship decision.					
20	4.29 Defendants failed to provide due process notice to PLN of the reason for rejecting					
21	PLN's mail by, among other inadequacies, failing to identify the specific mail policy that					
22	Defendants relied on. Defendants also failed to provide PLN with any notice of or opportunities					
23	to be heard to challenge the censorship decisions.					
24	4.30 On information and belief, Defendants fail to provide due process notice and an					
25	opportunity to appeal to other senders of censored mail addressed to prisoners at the Lewis					
26	County Jail.					
27						

- 4.31 On information and belief, Defendants failed to provide any notice to the prisoner-addressees that the Jail censored PLN's mail. Defendants also failed to provide the prisoner-addressees with any notice of or opportunity to be heard to challenge the censorship decisions.
- 4.32 Prison Legal News intends to continue sending copies of Court Opinions to prisoners at the Lewis County Jail.
- 4.33 By banning incoming mail that is not in postcard form, Defendants have interfered with the free speech rights of other publishers and correspondents who have attempted to or want to correspond with prisoners at the Lewis County Jail.

Outgoing Mail

- 4.34 Lewis County Jail prisoners want to send letters and other correspondence to non-prisoners and entities outside the Jail.
- 4.35 On information and belief, prisoners incarcerated at Lewis County Jail want to send publication order forms and other non-postcard correspondence to Prison Legal News.
- 4.36 Since at least February 3, 2010, Defendants have banned prisoners from sending outgoing letters and other correspondence not in postcard form.
- 4.37 By banning outgoing mail not in postcard form, Defendants have deterred prisoners from exercising their free speech rights to communicate with family, friends, persons acting as their power of attorney, counselors, clergy, employers, prospective employers, financial institutions, public agencies, schools, and newspapers.
- 4.38 By banning outgoing mail not in postcard form, Defendants have interfered with the prisoners' protected free speech rights.
- 4.39 By banning outgoing mail that is not in postcard form, Defendants interfered with the intended or potential recipients' protected free speech rights, including PLN's rights.
- 4.40 On information and belief, when rejecting outgoing mail that is not in postcard form, Defendants failed to provide constitutionally adequate notice to the prisoner, and failed to

provide the prisoner with any notice of or opportunity to be heard to challenge the censorship decisions.

4.41 On information and belief, when rejecting outgoing mail that is not in postcard form, Defendants failed to provide constitutionally adequate notice to the intended recipient, and failed to provide the intended recipient with any notice of or opportunity to be heard to challenge the censorship decisions.

B. <u>JAIL POLICIES</u>

- 4.42 POL 05.07.050 is the Lewis County Jail policy that "applies to incoming and outgoing inmate mail." Exhibit A is a true copy of the Lewis County Jail Policy.
- 4.42.1 This policy states, in pertinent part, "Incoming and outgoing personal mail shall be postcard media only."
- 4.42.2 This policy requires notice for rejected incoming mail that contains "contraband" by referring to a Notice of Withheld Material but does not describe the contents of such Notice, provide an exemplar, or require notice of an opportunity to appeal the censorship decision.
- 4.42.3 Although this policy requires written notice to the sender and inmate when the Administrative Lieutenant authorizes restrictions of incoming or outgoing mail because he or she deems mail "a threat to the legitimate penological interest of the facility," the policy does not describe the contents of the notice, how it differs from the Notice of Withheld Material, and in what way a "threat" differs from "contraband." Among other deficiencies, the policy requires notice of a right to request a review but does not state it will be conducted by someone other than the person who made the censorship decision.
- 4.42.4 Other than the provisions described above, this policy does not provide for any due process notice or opportunity to be heard.
- 4.42.5 This policy mandates that Jail staff "impose disciplinary sanctions when inmates violate or attempt to violate the mail policy." This would include attempting to mail a letter from Jail or requesting receipt of a letter in Jail.

1	4.43 The Lewis County Sheriff Website states: "ALL INCOMING MAIL, WITH		
2	THE EXCEPTION OF LEGAL MAIL, WILL NEED TO BE ON A POSTCARD." Exhibit B is		
3	a true copy of a printout of the Lewis County Sheriff's Website stating this policy.		
4	V. CLAIM ALLEGATIONS		
5	COUNT 1		
6	FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION		
7	5.1 Plaintiff realleges and incorporates by reference the preceding paragraphs.		
8	5.2 The acts described above constitute violations of Plaintiff's rights, the rights of		
9	other correspondents who have attempted to or want to correspond with prisoners at the Lewis		
10	County Jail, and the rights of prisoners confined at the Lewis County Jail, under the First		
11	Amendment to the United States Constitution through 42 U.S.C. § 1983.		
12	5.3 The acts described above have caused damages to Plaintiff, and will continue to		
13	cause damage.		
14	5.4 Plaintiff seeks declaratory and injunctive relief against all Defendants in their		
15	official capacities. Plaintiff seeks compensatory and nominal damages against all governmental		
16	entities and against all individual Defendants in their individual capacities. Plaintiff seeks		
17	punitive damages solely against the individual Defendants in their individual capacities.		
18	COUNT 2		
19	DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT		
20	TO THE UNITED STATES CONSTITUTION		
21	5.5 Plaintiff realleges and incorporates by reference the preceding paragraphs.		
22	5.6 The acts described above constitute violations of Plaintiff's rights, the rights of		
23	other correspondents who have attempted to or want to correspond with prisoners at the Lewis		
24	County Jail, and the rights of prisoners confined at the Lewis County Jail, under the Fourteenth		
25	Amendment to the United States Constitution through 42 U.S.C. § 1983.		
26	5.7 The acts described above have caused damages to Plaintiff, and will continue to		
27	cause damage.		
	COMPLAINT - 11		

5.8 Plaintiff seeks declaratory and injunctive relief against all Defendants in their official capacities. Plaintiff seeks compensatory and nominal damages against all governmental entities and against all individual Defendants in their individual capacities. Plaintiff seeks punitive damages solely against the individual Defendants in their individual capacities.

VI. INJUNCTION ALLEGATIONS

- 6.1 Plaintiff, and others, will continue to attempt to correspond with prisoners confined by Defendants in the Lewis County Jail. Defendants' unconstitutional policy, practices, and customs are ongoing and continue to violate Plaintiff's constitutional rights and the rights of other correspondents and prisoners. There is no adequate remedy at law for these violations.
- 6.2 Plaintiff is entitled to injunctive relief prohibiting Defendants from: (1) refusing to deliver or allow delivery of informational brochures, subscription forms, book catalogs, book offers, court opinions, and any other correspondence from Prison Legal News and from other correspondents; (2) censoring or rejecting mail on the ground that it is not in the form of a postcard; (3) censoring or rejecting catalogs; and (4) censoring or rejecting mail without affording due process of law.

VII. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests relief as follows:

- 7.1 A preliminary injunction and a permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief;
- 7.2 A declaration that Defendants' policies, practices, and customs violate the Constitution;
- 7.3 An award of nominal, compensatory, and punitive damages for each violation of its First Amendment rights to free speech and expression in an amount to be proved at trial;
- 7.4 An award of nominal, compensatory, and punitive damages for each violation of its Fourteenth Amendment rights to due process in an amount to be proved at trial;
 - 7.5 A trial by jury on damages;

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1		7.6	Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988, and under		
2	other applicable law;				
3		7.7	Pre-judgment and post-judgment interest;		
4		7.8	The right to conform the pleadings to the proof and evidence presented at trial;		
5	and				
6		7.9	Such other relief as the Court deems just and equitable.		
7			DATED this 11th day of April, 2014.		
8			MacDONALD HOAGUE & BAYLESS		
9					
10			By: <u>s/ Jesse Wing</u> Jesse Wing, WSBA # 27751		
11			Katherine C. Chamberlain, WSBA # 40014		
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