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16 * *Pro Hac Vice* Application to be filed

17 Attorneys for Plaintiff

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ARIZONA

20 PRISON LEGAL NEWS, a project of the Human
21 Rights Defense Center, a Washington non-profit
22 charitable corporation,

23 Plaintiff,

24 v.

25 CORRECTIONS CORPORATION OF
26 AMERICA, a Maryland corporation; DAREN
27 SWENSON, CCA Regional Director of
Operations; TODD THOMAS, Warden, Saguro
28 Correctional Center; BEN GRIEGO, Assistant
Warden, Saguro Correctional Center; MARCO
LOPEZ, Chief of Security, Saguro Correctional
Center; and DOES 1-100, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES FOR VIOLATIONS OF THE
UNITED STATES AND ARIZONA
CONSTITUTIONS; SUMMONS**

JURY TRIAL DEMAND

1 **INTRODUCTION**

2 1. Plaintiff PRISON LEGAL NEWS brings this civil rights action against Defendants
3 pursuant to 42 U.S.C. § 1983 (“Section 1983”) and the Arizona Constitution to enjoin
4 Defendants from barring prisoners from receiving books and publications sent to them by
5 Plaintiff, and for damages. Plaintiff alleges that Defendants’ actions violate its rights under the
6 First and Fourteenth Amendments to the United States Constitution as well as the Arizona
7 Constitution, and seeks damages to be proven at trial, and injunctive and declaratory relief.

8 **JURISDICTION AND VENUE**

9 2. This lawsuit is brought pursuant to 42 U.S.C. Section 1983 against all Defendants
10 for actions under color of state law in violation of the First and Fourteenth Amendments to the
11 United States Constitution, and pursuant to Sections 4, 6, and 13 of Article 2 of the Arizona
12 Constitution. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)
13 to redress deprivation, under color of law, of rights secured by the Constitution of the United
14 States. The Court may exercise supplemental jurisdiction over Plaintiff’s state law claims
15 pursuant to 28 U.S.C. § 1367. This Court is authorized to grant declaratory relief pursuant to 28
16 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57, and is further empowered to grant injunctive
17 relief pursuant to Fed. R. Civ. P. 65.

18 3. This Court also has diversity jurisdiction under 28 U.S.C. § 1332, in that this action
19 involves citizens of different states and involves an amount in controversy of more than \$75,000.

20 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a
21 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this
22 district.

23 **THE PARTIES**

24 5. Plaintiff PRISON LEGAL NEWS (“PLN”) is a project of the Human Rights
25 Defense Center, a non-profit, charitable Washington state corporation that is tax-exempt under
26 IRS Code § 501(c)(3) with its office in Seattle, Washington. Plaintiff publishes a monthly
27 journal titled *Prison Legal News*, and also publishes, sells, and distributes books on a variety of
28 criminal justice, human rights, and self-help issues. PLN has approximately 7,000 subscribers in

1 all fifty states and abroad. Approximately eighty (80) percent of PLN subscribers are state and
2 federal prisoners.

3 6. Defendant CORRECTIONS CORPORATION OF AMERICA (“CCA”) is a
4 Maryland corporation with its corporate headquarters in Nashville, Tennessee.

5 7. Defendant CCA, at all pertinent times mentioned herein, was a company doing
6 business in the state and District of Arizona and performing the traditionally and uniquely state
7 governmental function of operating the Saguaro Correctional Center (“Saguaro”), a prison,
8 through contractual relationships with the State of Hawaii and the State of Washington.

9 8. Defendant DAREN SWENSON is the Managing Director of Division VII for
10 CCA. In that role, Mr. Swenson is responsible for overseeing the operations at CCA’s six
11 Arizona facilities. Mr. Swenson has been in that role since February 2008. Mr. Swenson was
12 also the Warden of the Saguaro Correctional Center from January 2007 to January 2008.

13 9. Defendant TODD THOMAS, at all pertinent times mentioned herein, was an
14 employee of CCA and the Warden of the Saguaro Correctional Center.

15 10. Defendant BEN GRIEGO, at all pertinent times mentioned herein, was an
16 employee of CCA and the Assistant Warden of the Saguaro Correctional Center.

17 11. Defendant MARCO LOPEZ, at all pertinent times mentioned herein, was an
18 employee of CCA and the Chief of Security at the Saguaro Correctional Center.

19 12. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
20 DOES 1 through 100, and therefore sues said Defendants by such fictitious names. Plaintiff is
21 informed and believes and therefore alleges on information and belief, that each of them is
22 responsible in some manner for the injuries and damages alleged herein. Plaintiff therefore sues
23 DOES 1 through 100, by such fictitious names and will seek leave to amend this complaint to
24 add their true names and capacities when the same have been ascertained.

25 13. At all relevant times, all Defendants were acting under color of state law, pursuant
26 to their authority as officials, agents, contractors or employees of state governmental agencies.

27 14. At all relevant times, Defendants SWENSON, THOMAS, GRIEGO and LOPEZ
28 were acting within the scope of their employment as agents and employees of CCA.

1 22. Plaintiff is informed and believes that Warden Thomas, Assistant Warden Griego
2 and Chief of Security Lopez all participated directly in implementing mail policies and practices.
3 On occasion, all three have signed paperwork denying challenges to mail policies or practices.

4 23. Plaintiff has received numerous complaints from prisoners whose receipt of books
5 from Plaintiff has been blocked, or imminently will be blocked, pursuant to Saguario's censorship
6 policies. In 2008 and 2009, at least six Saguario prisoners were prohibited from receiving books
7 sent to them by Plaintiff.

8 24. On February 6, 2009, Plaintiff mailed a letter and a book to Saguario prisoner
9 Damien Serrano through the United States Postal Service. Plaintiff has a delivery confirmation
10 slip that verifies that the package was delivered. On February 18, 2009, Mr. Serrano received a
11 notice titled "Correspondence/Package/Contraband Denial Form" stating that he had received
12 correspondence from Plaintiff that was being denied. On the form, under "reasons for denial,"
13 the box was checked for "other material which would, if communicated, create a serious danger
14 to the security of the facility." A handwritten note stated that this was an "unauthorized book
15 from unapproved vendor." Saguario neither notified Plaintiff that the book had been censored nor
16 returned the book to Plaintiff. On information and belief, the book was destroyed by Saguario
17 personnel.

18 25. On February 6, 2009, Plaintiff mailed a letter and a book to Saguario prisoner
19 Jefferson Pau through the United States Postal Service. Plaintiff has a delivery confirmation slip
20 that verifies that the package was delivered. On February 18, 2009, Mr. Pau received a notice
21 titled "Correspondence/Package/Contraband Denial Form" stating that he had received
22 correspondence from Plaintiff that was being denied. On the form, under "reasons for denial,"
23 the box was checked for "other material which would, if communicated, create a serious danger
24 to the security of the facility." A handwritten note below stated "book not allowed also from
25 unapproved vendor." Saguario neither notified Plaintiff that the book had been censored nor
26 returned the book to Plaintiff. On information and belief, the book was destroyed by Saguario
27 personnel.
28

1 26. On February 6, 2009, Plaintiff mailed a letter and a book to Saguaro prisoner
2 Wendell Jenkins through the United States Postal Service. Plaintiff has a delivery confirmation
3 slip that verifies that the package was delivered. On February 18, 2009, Mr. Jenkins received a
4 notice titled “Correspondence/Package/Contraband Denial Form” stating that he had received
5 correspondence from Plaintiff that was being denied. On the form, under “reasons for denial,”
6 the box was checked for “other material which would, if communicated, create a serious danger
7 to the security of the facility.” A handwritten note stated that this was an “unauthorized book
8 from unapproved vendor.” Saguaro neither notified Plaintiff that the book had been censored nor
9 returned the book to Plaintiff. On information and belief, the book was destroyed by Saguaro
10 personnel.

11 27. On February 6, 2009, Plaintiff mailed a letter and a book to Saguaro prisoner
12 Joseph Menor through the United States Postal Service. Plaintiff has a delivery confirmation slip
13 that verifies that the package was delivered. On February 18, 2009, Mr. Menor received a notice
14 titled “Correspondence/Package/Contraband Denial Form” stating that he had received
15 correspondence from Plaintiff that was being denied. On the form, under “reasons for denial,”
16 the box was checked for “other material which would, if communicated, create a serious danger
17 to the security of the facility.” A handwritten note stated that this was an “unauthorized book
18 from unapproved vendor.” Saguaro neither notified Plaintiff that the book had been censored nor
19 returned the book to Plaintiff. On information and belief, the book was destroyed by Saguaro
20 personnel.

21 28. On November 24, 2008, Plaintiff mailed a letter and a book to Saguaro prisoner
22 Edmund Abordo through the United States Postal Service. Plaintiff has a delivery confirmation
23 slip that verifies that the package was delivered. Mr. Abordo never received the book. Saguaro
24 neither notified Plaintiff that the book had been censored nor returned the book to Plaintiff. On
25 information and belief, the book was destroyed by Saguaro personnel.

26 29. On May 1, 2008, Plaintiff mailed a book to Saguaro prisoner Michael Samson
27 through the United States Postal Service. Plaintiff has a delivery confirmation slip that verifies
28 that the package was delivered. Mr. Samson never received the book. Saguaro neither notified

1 Plaintiff that the book had been censored nor returned the book to Plaintiff. On information and
2 belief, the book was destroyed by Saguaro personnel.

3 30. In March 2008, Plaintiff mailed an order of books to Saguaro prisoner Keola Kanae
4 through the United States Postal Service. The books arrived at Saguaro on March 10, 2008.
5 Mr. Kanae was told by Saguaro staff he could not receive the books because Plaintiff was not an
6 approved vendor. Mr. Kanae eventually received his books in April 2008, but Mr. Kanae was
7 told by Saguaro staff that he could not order books from Plaintiff in the future because Plaintiff
8 was not an approved vendor.

9 31. On December 25, 2007, Saguaro prisoner Joseph Menor attempted to order a two-
10 year subscription to Plaintiff's monthly publication, *Prison Legal News*. When he filled out the
11 "Release of Funds Authorization and Approval" Form requesting the release of \$36 for his
12 subscription, his request was denied. The January 3, 2008 denial stated that *Prison Legal News*
13 was "not an approved vendor."

14 32. Plaintiff is informed and believes, and thereon alleges, that CCA policy and
15 practice has no provision for notice to the sender when mail is rejected. Defendants have never
16 provided Plaintiff with notice that any of its books or publications mailed to prisoners at Saguaro
17 have been withheld from prisoners, nor have Defendants provided Plaintiff with any opportunity
18 to be heard.

19 33. Defendants' actions, policies, regulations, and practices limiting the distribution of
20 Plaintiff's books and publications to Saguaro prisoners through the United States mail are not
21 reasonably related to legitimate penological interests in that (1) they are not rationally related to a
22 legitimate and neutral governmental objective; (2) there are no alternative avenues that remain
23 open to Plaintiff to exercise its rights under the United States Constitution and the Arizona
24 Constitution to ensure that Saguaro prisoners receive its books and publications; (3)
25 accommodating Plaintiff's First Amendment and Arizona Constitutional rights will have no
26 adverse impact on personnel, prisoners, or the allocation of public resources; and (4) ready
27 alternatives exist for Defendants to protect any legitimate interests.

28

1 34. Plaintiff is informed and believes, and thereon alleges, that CCA policy and
2 practice at Saguaro also prohibits prisoners from ordering and/or receiving books and
3 publications from vendors other than Barnes & Noble for any book that Barnes & Noble carries.
4 Plaintiff is informed and believes, and thereon alleges, that CCA policy recently changed to
5 allow Saguaro prisoners to order and receive a book from Amazon.com if a book is not available
6 from Barnes & Noble. Plaintiff's books and publications are not sold or distributed through
7 Barnes & Noble, Amazon.com, or any other commercial source. Because PLN often distributes
8 books and publications to indigent prisoners at no cost to the prisoners, distributing books
9 through Barnes & Noble, Amazon.com, or another source would not be possible. CCA's book
10 ordering policy is not reasonably related to a legitimate penological interest, but instead is an
11 exaggerated response by prison officials where other ready alternatives exist.

12 35. Plaintiff is informed and believes, and thereon alleges, that CCA policy and
13 practice complained of herein also prohibits prisoners from ordering and receiving hardcover
14 books and publications. Some of the books that Plaintiff distributes are hardcover books. CCA's
15 prohibition of hardcover books is not reasonably related to a legitimate penological interest and
16 is an exaggerated response by prison officials where other ready alternatives exist.

17 36. Plaintiff is informed and believes, and thereon alleges, that CCA policy and
18 practice for Saguaro prisoners prohibits prisoners from receiving gift publications. Plaintiff
19 sometimes distributes books and publications to prisoners free of charge. This ban on gift
20 publications also does not allow friends and family members to order books and magazines on
21 behalf of prisoners. CCA's gift publication policy and practice is not reasonably related to a
22 legitimate penological interest, but instead is an exaggerated response by prison officials where
23 other ready alternatives exist.

24 37. Plaintiff is informed and believes, and thereon alleges, that CCA policy and
25 practice provided for the rejection of the books or publications Plaintiff sent to prisoners solely
26 because they were sent from Plaintiff instead of an "approved" source such as Barnes and Noble
27 or Amazon. The books Plaintiff sells (including hardcover books) are accepted at prisons and
28 jails across the country as a matter of course, and have not created any security problems at these

1 institutions. Bans such as those imposed by defendants are unconstitutional. *See, e.g. Ashker v.*
2 *California Dept. of Corrections*, 350 F.3d 917 (9th Cir. 2003).

3 38. Plaintiff is informed and believes, and thereon alleges, that CCA policy and
4 practice is inconsistent as to whether subscription publications such as Plaintiff's monthly
5 journal may be ordered by prisoners from publishers and vendors that are not on the list of
6 approved vendors. On at least one occasion, defendants arbitrarily rejected a prisoner's request
7 for subscription to Plaintiff's monthly journal by asserting that it was not an "approved vendor."
8 CCA's inconsistent policy and practice with respect to subscription publications is not
9 reasonably related to a legitimate penological interest and is an exaggerated response by prison
10 officials where other ready alternatives exist.

11 39. Plaintiff has an interest, protected by the First and Fourteenth Amendments to the
12 United States Constitution and by Article 2, Section 6 of the Arizona Constitution, in
13 communicating with Saguaro prisoners who have requested or ordered books or publications.
14 Plaintiff has been harmed and continues to be harmed by Defendants' interference with that
15 communication. Plaintiff has also been harmed and continues to be harmed by the loss of
16 revenue as Saguaro prisoners are deterred and prevented from ordering books from Plaintiff or
17 subscribing to Plaintiff's monthly journal. Plaintiff has also been chilled in the exercise of its
18 First Amendment rights, insofar as it is reluctant to continue sending materials that may be
19 destroyed. Plaintiff's First Amendment rights have been chilled in a different way as well:
20 because prisoner-subscribers could be disciplined for attempting to bring "contraband" into the
21 facility, Plaintiff is reluctant to send materials to its subscribers out of fear that its subscribers
22 will be punished.

23 40. Defendants' actions also violate Plaintiff's rights to due process and equal
24 protection of the laws under the Fourteenth Amendment to the United States Constitution and
25 under Article 2, Sections 4 and 13 of the Arizona Constitution.

26 41. Defendants continue to enforce the censorship policies and practices complained of
27 herein as of the date of this Complaint. Plaintiff is suffering irreparable harm as a result of
28 Defendants' ongoing violations of its Constitutional rights, and therefore Plaintiff has no

1 adequate remedy at law. These violations are continuing and will continue until enjoined by this
2 Court.

3 42. Defendants' policies and practices complained of herein have been undertaken by
4 Defendants under color of state law.

5 43. Defendants' actions and inactions are motivated by evil motive and intent and are
6 committed with reckless and callous indifference to Plaintiff's rights as protected by the United
7 States Constitution and the Arizona Constitution.

8 **CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

10 **(For Violations of the First Amendment, As Incorporated Through the Fourteenth
11 Amendment, Under Color Of State Law, Actionable Through 42 U.S.C. § 1983)**

12 44. Plaintiff realleges and incorporates herein by reference each of the allegations
13 contained in the preceding paragraphs of this Complaint.

14 45. The censorship policies and practices complained of herein violate Plaintiff's right
15 to freedom of expression as guaranteed by the First Amendment to the United States
16 Constitution, made applicable to the states by the Fourteenth Amendment to the United States
17 Constitution.

18 46. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
19 First Amendment rights as set forth above, Plaintiff has suffered, and continues to suffer, lost
20 business income, lost business good will, emotional distress, and a chilling effect on its First
21 Amendment rights.

22 **SECOND CLAIM FOR RELIEF**

23 **(For Violations of Article 2, Section 6 of the Arizona Constitution
24 Under Color Of State Law)**

25 47. Plaintiff realleges and incorporates herein by reference each of the allegations
26 contained in the preceding paragraphs of this Complaint.

27 48. The censorship policies and practices complained of herein violate Plaintiff's right
28 to freedom of expression as guaranteed by Article 2, Section 6 of the Arizona Constitution.

49. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
rights under the Arizona Constitution as set forth above, Plaintiff has suffered, and continues to

1 suffer, lost business income, lost business good will, emotional distress, and a chilling effect on
2 its Article 2, Section 6 rights.

3 **THIRD CLAIM FOR RELIEF**
4 **(For Violations of Fourteenth Amendment Equal Protection Clause**
5 **Under Color Of State Law, Actionable Through 42 U.S.C. § 1983)**

6 50. Plaintiff realleges and incorporates herein by reference each of the allegations
7 contained in the preceding paragraphs of this Complaint.

8 51. Plaintiff is informed and believes that Plaintiff is being treated differently from
9 other similarly situated book vendors and publishers. This differential treatment is not narrowly
10 tailored to a compelling governmental interest. Nor is there any rational basis for Saguaro's
11 decision to treat Plaintiff differently than other book vendors and publishers. Instead, this
12 distinction is arbitrary and irrational.

13 52. By failing to treat Plaintiff similarly to other similarly situated book vendors and
14 publishers, Defendants have deprived and continue to deprive Plaintiff of equal protection under
15 the laws, in violation of the Fourteenth Amendment to the United States Constitution.

16 53. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
17 rights as set forth above, Plaintiff has suffered, and continues to suffer, lost business income, lost
18 business good will and emotional distress.

19 **FOURTH CLAIM FOR RELIEF**
20 **(For Violations of the Equal Privileges Clause of Article 2, Section 13 of the Arizona**
21 **Constitution Under Color Of State Law)**

22 54. Plaintiff realleges and incorporates herein by reference each of the allegations
23 contained in the preceding paragraphs of this Complaint.

24 55. Plaintiff is informed and believes that Plaintiff is being treated differently from
25 other similarly situated book vendors and publishers. This differential treatment is not narrowly
26 tailored to a compelling governmental interest. Nor is there any rational basis for Saguaro's
27 decision to treat Plaintiff differently than other book vendors and publishers. Instead, this
28 distinction is arbitrary and irrational.

56. By failing to treat Plaintiff similarly to other similarly situated book vendors and
publishers, Defendants have deprived and continue to deprive Plaintiff of equal protection under

1 the laws, in violation of the Equal Privileges Clause of Article 2, Section 13 of the Arizona
2 Constitution.

3 57. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
4 rights as set forth above, Plaintiff has suffered, and continues to suffer, lost business income, lost
5 business good will and emotional distress.

6 **FIFTH CLAIM FOR RELIEF**
7 **(For Violations of Fourteenth Amendment Due Process Clause**
8 **Under Color Of State Law, Actionable Through 42 U.S.C. § 1983)**

9 58. Plaintiff realleges and incorporates herein by reference each of the allegations
10 contained in the preceding paragraphs of this Complaint.

11 59. By failing to give Plaintiff notice of the censorship of its books and publications,
12 and an opportunity to be heard with respect to that censorship, Defendants have deprived and
13 continue to deprive Plaintiff of liberty and property without due process of law, in violation of
14 the Fourteenth Amendment to the United States Constitution.

15 60. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
16 rights as set forth above, Plaintiff has suffered, and continues to suffer, lost business income, lost
17 business good will and emotional distress.

18 **SIXTH CLAIM FOR RELIEF**
19 **(For Violations of the Due Process Clause in Article 2, Section 4 of the Arizona**
20 **Constitution)**

21 61. Plaintiff realleges and incorporates herein by reference each of the allegations
22 contained in the preceding paragraphs of this Complaint.

23 62. By failing to give Plaintiff notice of the censorship of its books and publications,
24 and an opportunity to be heard with respect to that censorship, Defendants have deprived and
25 continue to deprive Plaintiff of liberty and property without due process of law, in violation of
26 Article 2, Section 4 of the Arizona Constitution.

27 63. As a direct and proximate result of Defendants' conduct in violation of Plaintiff's
28 rights as set forth above, Plaintiff has suffered, and continues to suffer, lost business income, lost
business good will and emotional distress.

1 **PRAYER FOR RELIEF**

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

5 WHEREFORE, Plaintiff prays for judgment as follows:

6 1. A declaration that Defendants’ actions, described herein, violate the First and
7 Fourteenth Amendments to the United States Constitution as well as Article 2, Sections 4, 6 and
8 13 of the Arizona Constitution;

9 2. An order enjoining all Defendants and their employees, agents, and any and all
10 persons acting in concert with them from further violation of Plaintiff’s civil rights under the
11 First and Fourteenth Amendments to the United States Constitution and under Article 2,
12 Sections 4, 6 and 13 of the Arizona Constitution;

13 3. An order awarding actual damages in amounts to be proven at trial for violations of
14 rights protected by the United States Constitution and Arizona Constitution, or at least
15 nominal or presumed damages for each incident that violated plaintiffs’ rights; and punitive
16 damages in amounts to be proven at trial for each incident that violated plaintiffs rights.

17 4. An order awarding Plaintiff’s reasonable attorneys’ fees, litigation expenses and
18 costs under 42 U.S.C. § 1988, under the Arizona private attorney general doctrine, as recognized
19 in *Arnold v. Arizona Dept. of Health Services*, 775 P.2d 521 (Ariz. 1989), and any other
20 applicable law;

21 5. An order awarding such other and further relief as the Court deems just and proper.

22
23 Dated: September 2, 2009

Respectfully submitted,
ACLU Foundation of Arizona

24
25
26 By: /s/ Daniel J. Pochoda
DANIEL J. POCHODA
27 Attorney for Plaintiff
28

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: September 2, 2009

Respectfully submitted,

ACLU Foundation of Arizona

By: /s/ Daniel J. Pochoda
DANIEL J. POCHODA
Attorney for Plaintiff