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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HUMANISTS OF WASHINGTON; THE
NATIONAL PRISON PROJECT OF THE
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION, INC.; ROLLIN WRIGHT;
BILLY BLANKENSHIP; KEITH CLOSSON;
MARK COOK; WILLIAM ROBERT HARRIS;
JERRY HAWKINS; MICHAEL PETERSON;
RANDY TOLLEFSEN; and PAUL WRIGHT,

Plaintiffs,

v.

JOSEPH D. LEHMAN; TOM ROLFS; ELDON
VAIL; TANA WOOD; KENNETH
DuCHARME; KAY WALTER; ROBERT
WRIGHT; and PHIL STANLEY,

Defendants.

NO. **C97-5499** FDB

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Plaintiffs Humanists of Washington, the National Prison Project of the American Civil
Liberties Union Foundation, Inc. ("NPP-ACLUF"), Rollin Wright, Billy Blankenship, Keith
Closson, Mark Cook, William Robert Harris, Jerry Hawkins, Michael Peterson, Randy
Tollefsen, and Paul Wright in and for their complaint, allege as follows:

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 1

[25610-0001/SL962710.254]

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JURISDICTION AND VENUE

1
2
3 1. This action arises under the First Amendment to the United States
4
5 Constitution, the Fourteenth Amendment to the United States Constitution and 42 U.S.C.
6
7 § 1983. This Court therefore has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question)
8
9 and 28 U.S.C. § 1343 (deprivation of civil rights).

10
11 2. Defendants Lehman, Rolfs, Vail, DuCharme, Wright and Stanley reside in this
12
13 judicial district. In addition, some of plaintiffs' claims arose in Clallam County, Mason
14
15 County, Snohomish County and Thurston County, all of which lie within this judicial district.
16
17 Venue in this Court is therefore proper pursuant to 28 U.S.C. § 1391(b). Insofar as this
18
19 action involves confiscation of property in more than one judicial district within the State of
20
21 Washington, venue in this Court is also proper pursuant to 28 U.S.C. § 1392(a).

PARTIES

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25 3. Plaintiff Humanists of Washington is a non-profit Washington corporation with
26
27 its principal place of business in Seattle, Washington.

28
29 4. Plaintiff NPP-ACLUF is a project of the American Civil Liberties Union
30
31 Foundation, Inc., which is a non-profit New York corporation with its principal place of
32
33 business in New York, New York.

34
35 5. Plaintiff Rollin Wright is a resident of Lake Worth, Florida.

36
37 6. Plaintiff Billy Blankenship is a Washington state prison inmate incarcerated at
38
39 the Airway Heights Corrections Center ("AHCC") in Airway Heights, Spokane County,
40
41 Washington.

42
43 7. Plaintiff Keith Closson is a Washington state prison inmate incarcerated at the
44
45 Washington Corrections Center ("WCC") in Shelton, Mason County, Washington.

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COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 2

[25610-0001/SL962710.254]

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8. Plaintiff Mark Cook is a Washington state prison inmate incarcerated at the Washington State Reformatory ("WSR") in Monroe, Snohomish County, Washington.

9. Plaintiff William Robert Harris is a Washington state prison inmate incarcerated at WSR in Monroe, Snohomish County, Washington.

10. Plaintiff Jerry Hawkins is a Washington state prison inmate incarcerated at the Washington State Penitentiary ("WSP") in Walla Walla, Walla Walla County, Washington.

11. Plaintiff Michael Peterson is a Washington state prison inmate incarcerated at the WSP in Walla Walla, Walla Walla County, Washington.

12. Plaintiff Randy Tollefsen is a Washington state prison inmate incarcerated at AHCC in Airway Heights, Spokane County, Washington.

13. Plaintiff Paul Wright is a Washington state prison inmate incarcerated at WSR in Monroe, Snohomish County, Washington.

14. Defendant Joseph D. Lehman is the Secretary of the Washington State Department of Corrections. His office is located in Olympia, Thurston County, Washington.

15. Defendant Tom Rolfs is the Director of Prisons for the State of Washington. His office is located in Olympia, Thurston County, Washington.

16. Defendant Eldon Vail is the Assistant Director, Division of Prisons, for the State of Washington. His office is located in Olympia, Thurston County, Washington.

17. Defendant Tana Wood is the Superintendent of WSP, located in Walla Walla, Walla Walla County, Washington.

18. Defendant Kenneth DuCharme is the Superintendent of WSR, located in Monroe, Snohomish County, Washington.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 3**

[25610-0001/SL962710.254]

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2 19. Defendant Kay Walter is the Superintendent of AHCC, located in Airway
3 Heights, Spokane County, Washington.
4

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6 20. Defendant Robert Wright is the Superintendent of the Clallam Bay Corrections
7 Center, located in Clallam Bay, Clallam County, Washington.
8

9
10 21. Defendant Phil Stanley is the Superintendent of WCC, located in Shelton,
11 Mason County, Washington.
12

13
14 22. Defendants, and each of them, are now, or were at times material hereto,
15 agents, officials, and/or employees of the Washington Department of Corrections. Defendants
16 act or have acted under color of law, in their capacities as agents, officials, and/or employees
17 of the Washington Department of Corrections. Defendants are sued in both their official and
18 individual capacities for declaratory and injunctive relief.
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22

23
24 **ADMINISTRATIVE REMEDIES**

25
26 23. Plaintiffs Blankenship, Closson, Cook, Harris, Hawkins, Peterson, Tollefsen,
27 and Paul Wright ("Prisoner Plaintiffs") have each filed institutional grievances and exhausted
28 all available avenues of administrative relief, without obtaining corrective action. The
29 Prisoner Plaintiffs therefore have no adequate remedy at law other than the relief requested
30 herein.
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36 **FIRST CLAIM FOR RELIEF--**
37 **VIOLATION OF PRISONER PLAINTIFFS' FIRST AMENDMENT**
38 **RIGHTS--BULK MAIL POLICY**
39 **(on behalf of Plaintiffs Blankenship, Closson, Cook, Harris, Hawkins,**
40 **Peterson, Tollefsen, and Paul Wright)**
41
42

43 24. Plaintiffs incorporate by reference, as if set forth in full, the allegations set forth
44 above in paragraphs 1 through 23.
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1
2 25. WSR, WSP, WCC and AHCC have each adopted field instructions or other
3 policies and procedures under which they will no longer process or deliver to inmates any mail
4 received as "bulk mail". "Bulk mail" is defined or interpreted by prison officials to include all
5 mail sent to inmates at Third Class or Fourth Class rates, including but not limited to
6 publications and non-profit literature.
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11 26. Defendants Lehman, Rolfs, Vail, Wood, Walter, Stanley and DuCharme have
12 refused to allow delivery of publications to one or more of the Prisoner Plaintiffs under the
13 bulk-mail policies adopted at WSR, WSP, WCC and AHCC even though defendants or
14 persons who report to defendants had approved these plaintiffs' subscriptions to publications
15 that defendants now refuse to deliver.
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21 27. Publications that have been confiscated and/or discarded rather than delivered
22 solely because they were mailed to the Prisoner Plaintiffs as bulk mail include publications that
23 contain political speech and religious speech, both of which are entitled to the highest
24 protection under the United States Constitution.
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29 28. Defendants' refusal to allow delivery of publications to which the Prisoner
30 Plaintiffs have subscribed constitutes a violation of the First Amendment rights of the Prisoner
31 Plaintiffs, as made applicable to the State of Washington through the Fourteenth Amendment
32 to the United States Constitution.
33
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36

37 29. Defendants' refusal to allow delivery of publications to which the Prisoner
38 Plaintiffs have subscribed constitutes a violation of the civil rights of the Prisoner Plaintiffs
39 under 42 U.S.C. § 1983.
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42

43 30. The Prisoner Plaintiffs are entitled to a declaration that all regulations and field
44 instructions on which defendants base their refusal to allow delivery of publications for which
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1
2 the Prisoner Plaintiffs have a subscription, solely because the publications were mailed to the
3
4 Prisoner Plaintiffs as bulk mail, are unconstitutional both on their face and as applied, in
5
6 violation of the First Amendment, the Fourteenth Amendment and 42 U.S.C. § 1983.
7

8 31. The Prisoner Plaintiffs are entitled to entry of an injunction prohibiting
9
10 defendants from enforcing their bulk mail policies so as to preclude delivery to the Prisoner
11
12 Plaintiffs of publications to which the Prisoner Plaintiffs have a subscription solely because
13
14 such publications were mailed as "bulk mail," and requiring defendants to deliver to the
15
16 Prisoner Plaintiffs any and all subscribed-to publications that were confiscated rather than
17
18 delivered as a result of defendants' bulk mail policies.
19

20 **SECOND CLAIM FOR RELIEF--**
21 **VIOLATION OF PUBLISHERS' FIRST AMENDMENT RIGHTS--**
22 **BULK MAIL POLICY**
23 **(on behalf of plaintiffs Humanists of Washington, NPP-ACLUF and**
24 **Rollin Wright)**
25

26
27 32. Plaintiffs incorporate by reference, as if set forth in full, the allegations set forth
28
29 above in paragraphs 1 through 31.
30

31 33. Plaintiff Humanists of Washington is the publisher of Secular Humanist Press,
32
33 a quarterly journal of news and opinion related to issues pertinent to secular humanism,
34
35 including topics such as free speech issues, abortion rights, right-to-die issues and drug
36
37 legalization.
38

39 34. Plaintiff NPP-ACLUF is the publisher of the National Prison Project's Journal
40
41 ("NPP Journal"), a quarterly publication which seeks to further the goals of the NPP-ACLUF,
42
43 i.e., (1) to strengthen and protect the rights of adult and juvenile offenders, (2) to improve
44
45 overall conditions in correctional facilities, and (3) to encourage a rational debate on the over-
46
47 use and misuse of imprisonment in the United States. The NPP Journal covers issues of

COMPLAINT FOR DECLARATORY AND
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1
2 interest to attorneys, corrections officials, civil rights groups, academics, and prisoners and
3
4 their families. Topics include in-depth analysis of the most significant new legislation and
5
6 litigation affecting prisons, summaries of all recent noteworthy cases, articles on new
7
8 developments in corrections, medical care and other issues, and reports on NPP-ACLUF
9
10 activities including its current docket and the work of its AIDS education project.

11
12 35. Plaintiff Rollin Wright is the publisher of Prison Legal News, a monthly
13
14 magazine of news and analysis pertaining to legal and political developments affecting those
15
16 involved in the criminal justice system.

17
18 36. Secular Humanist Press, NPP Journal and Prison Legal News are protected
19
20 speech, including political and/or religious speech, and violate no prison policies or
21
22 regulations other than the bulk mail policies and regulations at issue.

23
24 37. Defendants Lehman, Rolfs, Vail, Wood, Walter, Stanley and DuCharme have
25
26 refused to deliver or allow delivery of copies of Secular Humanist Press, NPP Journal and
27
28 Prison Legal News to prisoners in Washington State correctional facilities who had subscribed
29
30 to these publications solely on grounds that these publications were mailed to Washington
31
32 State inmates as bulk mail.

33
34 38. Defendants' refusal to deliver or allow delivery of Secular Humanist Press,
35
36 NPP Journal and/or Prison Legal News to inmates who have subscribed to these publications
37
38 constitutes a violation of the First Amendment rights of plaintiffs Humanists of Washington,
39
40 NPP-ACLUF and Rollin Wright (together, the "Publisher Plaintiffs"), as made applicable to
41
42 the State of Washington through the Fourteenth Amendment to the United States
43
44 Constitution.

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39. Defendants' refusal to deliver or allow delivery of Secular Humanist Press, NPP Journal and/or Prison Legal News to inmates who have subscribed to these publications constitutes a violation of the civil rights of the Publisher Plaintiffs under 42 U.S.C. § 1983.

40. The Publisher Plaintiffs are entitled to a declaration that all regulations and/or field instructions on which defendants base their refusal to deliver or allow delivery of Secular Humanist Press, NPP Journal and/or Prison Legal News to inmates who have a subscription, solely because these publications were mailed to inmates as bulk mail, are unconstitutional both on their face and as applied, in violation of the First Amendment, the Fourteenth Amendment and 42 U.S.C. § 1983.

41. The Publisher Plaintiffs are entitled to entry of an injunction prohibiting defendants from refusing to process and deliver, or allow delivery of, Secular Humanist Press, NPP Journal and/or Prison Legal News to inmates who have a subscription solely on grounds that these publications were mailed as bulk mail.

**THIRD CLAIM FOR RELIEF--
VIOLATION OF PRISONER PLAINTIFFS' FIRST AMENDMENT
RIGHTS--PERSONAL SUBSCRIPTION POLICY
(on behalf of Plaintiff Hawkins)**

42. Plaintiffs incorporate by reference, as if set forth in full, the allegations set forth above in paragraphs 1 through 41.

43. Defendant Wood, or persons under her direction, have refused delivery to plaintiff Hawkins of copies of USA Today, for which he has a subscription, solely because his subscription was paid for by his parents rather than with funds from his personal inmate account. Defendant Wood and persons acting under her direction have relied upon WSP Field

1
2 Instruction 450.100 to justify their refusal to deliver USA Today to plaintiff Hawkins on this
3
4 basis.

5
6 44. The refusal by defendant Wood to deliver or allow delivery of USA Today to
7
8 plaintiff Hawkins solely because plaintiff Hawkins did not pay for his subscription with funds
9
10 in his personal inmate account constitutes a violation of the rights of plaintiff Hawkins under
11
12 the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C.
13
14 § 1983.

15
16 45. Plaintiff Hawkins is entitled to a declaration that defendant Wood's refusal to
17
18 allow delivery of USA Today to him, and all regulations on which defendant Wood bases her
19
20 refusal to allow delivery of USA Today to him, based solely on the fact that payment for such
21
22 publication was not made with funds from inmate accounts, violates the First Amendment, the
23
24 Fourteenth Amendment, and 42 U.S.C. § 1983.

25
26 46. Plaintiff Hawkins is entitled to entry of an injunction prohibiting defendant
27
28 Wood and persons under her command from refusing to deliver publications to him based
29
30 solely on the fact that plaintiff Hawkins did not pay for the publications with funds from his
31
32 personal inmate account, and requiring defendant Wood to deliver to him any and all copies of
33
34 USA Today that were confiscated and denied to him based on the fact that plaintiff Hawkins
35
36 did not pay for his subscription with funds from his personal inmate account.

37
38 **FOURTH CLAIM FOR RELIEF--**
39 **VIOLATION OF PRISONERS' FIRST AMENDMENT**
40 **RIGHTS--MIM NOTES**
41 **(on behalf of Plaintiffs Cook and Paul Wright)**

42
43 47. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set
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45 forth above in paragraphs 1-46.
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COMPLAINT FOR DECLARATORY AND
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2 48. Plaintiffs Cook and Paul Wright are subscribers to a twice-monthly newsletter
3
4 entitled MIM Notes, which is published by the Maoist Internationalist Movement. MIM
5
6 Notes contains political speech, which is entitled to the highest degree of protection under the
7
8 Constitution of the United States.

9
10 49. Defendant Rolfs issued a statewide order requiring that prison officials refuse
11
12 delivery of each issue of MIM Notes, based on DOC Policy 450.100E.3.b, on grounds that
13
14 each and every issue of the publication incites violence and is a threat to legitimate penological
15
16 objectives.

17
18 50. Defendant Rolfs' objection to MIM Notes is based on the sole fact that every
19
20 issue describes MIM's organizational purpose as "struggl[ing to] end oppression by build[ing]
21
22 public opinion to seize power through armed struggle."

23
24 51. Based on defendant Rolfs' direction, defendant DuCharme has refused to allow
25
26 delivery of MIM Notes to plaintiffs Cook and Paul Wright.

27
28 52. The refusal by defendants Rolfs and DuCharme to permit delivery of MIM
29
30 Notes to plaintiffs Cook and Paul Wright, as described above, constitutes a violation of the
31
32 rights of plaintiffs Cook and Paul Wright under the First and Fourteenth Amendments to the
33
34 United States Constitution.

35
36 53. The refusal by defendants Rolfs and DuCharme to permit delivery of MIM
37
38 Notes to plaintiffs Cook and Paul Wright, as described above, constitutes a violation of
39
40 plaintiffs' civil rights under 42 U.S.C. § 1983.

41
42 54. Plaintiffs Cook and Paul Wright are entitled to a declaration that DOC Policy
43
44 450.100E.3.b, both on its face and as applied with respect to MIM Notes, violates the First
45
46
47

1
2 Amendment to the United States Constitution, the Fourteenth Amendment to the United
3
4 States Constitution and 42 U.S.C. § 1983.

5
6 55. Plaintiffs Cook and Paul Wright are entitled to an injunction prohibiting
7
8 defendants from refusing to deliver MIM Notes based solely upon its statement of
9
10 organizational purpose, and requiring defendants to deliver to them any and all copies of MIM
11
12 Notes that defendants confiscated and did not deliver to them.

13
14 **FIFTH CLAIM FOR RELIEF--**
15 **VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHTS--**
16 **SEXUALLY EXPLICIT MATERIALS**
17 **(on behalf of Plaintiff Paul Wright)**
18

19
20 56. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set
21
22 forth above in paragraphs 1 through 55.

23
24 57. Defendants Rolfs and DuCharme and/or persons acting under their direction
25
26 have refused to deliver or allow delivery of publications to plaintiff Paul Wright on grounds
27
28 that they contained sexually explicit materials, relying on DOC Policy No. 450.100 and
29
30 institutional field instructions based thereon. Defendants have not made any determination
31
32 that the publications denied to plaintiff were obscene either in whole or in part.

33
34 58. In making the decision to refuse delivery of publications to plaintiff Paul
35
36 Wright, prison personnel have reviewed the entire publication, line by line, to locate
37
38 statements or other depictions of sexual conduct that allegedly violate prison regulations and
39
40 field instructions.

41
42 59. In most, if not all, instances, defendants Rolfs and DuCharme have determined
43
44 to refuse delivery of an entire publication based on no more than a single sentence, a single
45
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COMPLAINT FOR DECLARATORY AND
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1
2 photograph or even a single cartoon panel that depicts sexual conduct deemed by prison
3 officials to be objectionable, often times in an advertisement contained in the publication.

4
5
6 60. The actions of defendants Rolfs and DuCharme in refusing to deliver or allow
7 the delivery of publications to plaintiff Paul Wright solely because such publications contain
8 sexually explicit material deemed objectionable by defendants, constitute a violation of the
9 rights of plaintiff Paul Wright under the First Amendment and the Fourteenth Amendment to
10 the United States Constitution.
11
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15
16 61. The actions of defendants Rolfs and DuCharme in refusing to deliver or allow
17 the delivery of publications to plaintiff Paul Wright, as set forth above, constitutes a violation
18 of plaintiff's civil rights under 42 U.S.C. § 1983.
19
20
21

22 62. Plaintiff Paul Wright is entitled to a declaration that all regulations that prohibit
23 delivery to him of publications solely because they contain sexually explicit statements or
24 depictions, but which taken as a whole are not obscene, are either unconstitutional on their
25 face or as applied and constitute a violation of his civil rights under 42 U.S.C. § 1983.
26
27
28

29
30 63. Plaintiff Paul Wright is entitled to an injunction prohibiting defendants from
31 refusing to deliver magazines, for which he has a subscription, solely on the grounds that they
32 contain sexually explicit statements or depictions, even though taken as a whole the
33 publications are not obscene, and requiring defendants to deliver to him any and all
34 publications that were confiscated rather than delivered to him on grounds that they violated
35 restrictions on sexually explicit materials.
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**SIXTH CLAIM FOR RELIEF--
VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHTS--
SEXUALLY EXPLICIT MATERIALS
(on behalf of Plaintiff Harris)**

64. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set forth above in paragraphs 1 through 63.

65. Defendants Rolfs and DuCharme and/or persons acting under their direction have infringed plaintiff Harris for possessing a catalog, delivered to him by prison officials, which they subsequently deemed to violate restrictions on possession of sexually explicit materials. In so acting, defendants relied on WAC 137-28-260(728).

66. In making the decision to infract plaintiff Harris, prison personnel have reviewed the entire catalog, line by line, to locate statements or other depictions of sexual conduct that allegedly violate prison regulations. In issuing an infraction to plaintiff Harris, moreover, neither defendants nor persons acting under their direction made any determination that the catalog in plaintiff Harris' possession was obscene, either in whole or in part.

67. The actions of defendants Rolfs and DuCharme in issuing and upholding the infraction to plaintiff Harris constitute a violation of the rights of plaintiff Harris under the First Amendment and the Fourteenth Amendment to the United States Constitution.

68. The actions of defendants Rolfs and DuCharme, as set forth above, constitute a violation of plaintiff Harris' civil rights under 42 U.S.C. § 1983.

69. Plaintiff Harris is entitled to a declaration that all regulations that prohibit possession of publications solely because they contain sexually explicit statements or depictions, but which taken as a whole are not obscene, are either unconstitutional on their face or as applied and constitute a violation of their civil rights under 42 U.S.C. § 1983.

1
2 70. Plaintiff Harris is entitled to an injunction (a) prohibiting defendants from
3
4 infracting or otherwise punishing him for possessing catalogs or other written materials, solely
5
6 on the grounds that they contain sexually explicit statements or depictions, even though taken
7
8 as a whole the publications are not obscene; and (b) requiring defendants to expunge from the
9
10 record infractions previously entered against him for possessing such catalogs and/or other
11
12 written materials.

13
14 **SEVENTH CLAIM FOR RELIEF--**
15 **PROCEDURAL DUE PROCESS VIOLATIONS**
16 **(on behalf of all plaintiffs)**
17

18 71. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set
19
20 forth above in paragraphs 1-70.
21

22 72. Defendants have denied plaintiffs their right to due process under the
23
24 Fourteenth Amendment to the United States Constitution by imposing practices, with respect
25
26 to censorship of prisoner mail, which include:
27

28 (a) requiring that administrative appeals of censorship decisions be made to
29
30 the person(s) responsible for imposing the censorship;
31

32 (b) refusing to allow the Prisoner Plaintiffs to inspect the censored
33
34 publications in connection with their efforts to draft administrative appeals;
35

36 (c) with respect to denial of bulk mail, refusing to notify the Prisoner
37
38 Plaintiffs that bulk mail has been received and confiscated or discarded by prison authorities;
39
40 and
41

42 (d) with respect to denial of bulk mail, refusing to notify the Publisher
43
44 Plaintiffs that publications which they have sent to inmates as bulk mail were confiscated or
45
46 discarded rather than delivered.
47

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2 73. Defendants' actions, as described above, also constitute a violation of plaintiffs'
3
4 civil rights under 42 U.S.C. § 1983.

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6 74. The Prisoner Plaintiffs are entitled to a declaration that defendants have
7
8 violated the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983
9
10 by denying them administrative appeal procedures that meet the minimum requirements of due
11
12 process and by refusing to notify them when publications mailed to them as bulk mail have
13
14 been received and confiscated or discarded rather than delivered.

15
16 75. The Prisoner Plaintiffs are entitled to an injunction that prohibits defendants
17
18 from: (1) denying the Prisoner Plaintiffs their right to due process in connection with the
19
20 appeal of censorship decisions, including through (A) requirements that administrative appeals
21
22 filed by the Prisoner Plaintiffs be determined by the person responsible for the initial decision
23
24 to censor receipt of mail, and (B) refusing to allow the Prisoner Plaintiffs to inspect mail that
25
26 has been denied to them in order to facilitate their administrative appeals, and (2) enacting and
27
28 enforcing policies to confiscate and/or discard publications received as bulk mail without
29
30 notification to the Prisoner Plaintiffs of the receipt, confiscation and/or discarding of such
31
32 publications.

33
34 76. The Publisher Plaintiffs are entitled to a declaration that defendants have
35
36 violated the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983
37
38 by refusing to notify them when publications that they have mailed to inmates as bulk mail
39
40 have been confiscated and/or discarded rather than delivered to the subscribing inmates.

41
42 77. The Publisher Plaintiffs are entitled to an injunction prohibiting defendants
43
44 from enacting and enforcing policies to confiscate and/or discard publications received as bulk
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1
2 mail without notification to the publisher that such publications have been confiscated and/or
3
4 discarded rather than delivered.

5
6 **EIGHTH CLAIM FOR RELIEF--**
7 **CENSORSHIP OF LEGAL-RELATED MAIL**
8 **(on behalf of Plaintiffs Closson and Paul Wright)**
9

10 78. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set
11 forth above in paragraphs 1-77.
12

13
14 79. Defendants Wright and Stanley and persons acting under their direction on
15 numerous occasions have refused to deliver or allow delivery of law-related materials mailed
16 by plaintiff Paul Wright to prisoners incarcerated at the Clallam Bay Corrections Center and
17 the Washington Corrections Center, including plaintiff Closson. Defendants Rolfs and Vail on
18 many occasions have upheld such decisions. Law-related materials at issue include but are not
19 limited to settlement agreements, published and unpublished opinions of the Ninth Circuit, and
20 unpublished District Court rulings and magistrate's reports and recommendations.
21

22 80. The seizure of and refusal to deliver mail containing law-related materials
23 constitute a content-based censorship of mail for purposes unrelated to any legitimate
24 penological interest.
25

26 81. The refusal by defendants Wright, Stanley, Rolfs and Vail to deliver or allow
27 delivery of law-related materials based on their content constitutes a violation of the First
28 Amendment to the United States Constitution and the Fourteenth Amendment to the United
29 States Constitution, and also violates the civil rights of plaintiffs Closson and Paul Wright
30 under 42 U.S.C. § 1983.
31

32 82. Plaintiffs Closson and Paul Wright are entitled to a declaration that defendants
33 Wright, Stanley, Rolfs and Vail and persons acting under their direction have violated their
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2 rights under the First Amendment and the Fourteenth Amendment to the United States
3
4 Constitution and 42 U.S.C. § 1983 by refusing to allow delivery of law-related materials based
5
6 solely on their content and without any legitimate penological reason to do so.

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8 83. Plaintiffs Closson and Paul Wright are entitled to an injunction that prohibits
9
10 defendants Wright, Stanley, Rolfs and Vail from refusing to deliver mail solely because it
11
12 contains copies of law-related documents, including settlement agreements and both published
13
14 and unpublished decisions of the Ninth Circuit and other courts.

15
16 **NINTH CLAIM FOR RELIEF--**
17 **CONVERSION**
18 **(on behalf of Plaintiffs Blankenship and Tollefson)**
19

20 84. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set
21
22 forth above in paragraphs 1-83.
23

24 85. After prison officials refused to deliver copies of Prison Legal News to them
25
26 because they had been mailed as bulk mail, plaintiffs Blankenship and Tollefson each arranged
27
28 with the publisher of Prison Legal News to have subsequent copies of their subscription
29
30 mailed to them as first class mail.
31

32 86. When Prison Legal News arrived as first class mail, defendant Walter or
33
34 persons acting under her direction confiscated the publication and refused to deliver it to
35
36 plaintiffs Blankenship and Tollefson, without notice to these plaintiffs of the arrival and/or
37
38 confiscation of this first class mail.
39

40 87. Defendant Walter or persons acting under her direction retained copies of
41
42 Prison Legal News which had been mailed to plaintiffs Blankenship and Tollefson as first class
43
44 mail, and used them as evidence in other proceedings and otherwise retained them and used
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2 them in manners inconsistent with, and in derogation of, the property rights and interests of
3
4 plaintiffs Blankenship and Tollefson.

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6 88. Plaintiffs Blankenship and Tollefson are entitled to an order of replevin
7
8 requiring defendant Walter to deliver to plaintiffs Blankenship and Tollefson all copies of
9
10 Prison Legal News mailed to them as first class mail that have been seized and retained by
11
12 prison officials.

13
14 **PRAYER FOR RELIEF**

15
16 WHEREFORE, plaintiffs pray for relief as follows:

17
18 A. All plaintiffs request a declaration by the Court that defendants' rejection of
19
20 mail addressed to inmates, including the Prisoner Plaintiffs, on the sole ground that such mail
21
22 is sent as bulk mail violates the First Amendment to the United States Constitution, the
23
24 Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

25
26 B. Plaintiff Jerry Hawkins requests a declaration by the Court that defendants'
27
28 rejection of a publication addressed to him on the sole ground that such publication was not
29
30 paid for by plaintiff with funds in his personal inmate account violates the First Amendment to
31
32 the United States Constitution, the Fourteenth Amendment to the United States Constitution
33
34 and 42 U.S.C. § 1983.

35
36 C. Plaintiffs Mark Cook and Paul Wright request a declaration by the Court that
37
38 defendants' rejection of MIM Notes on the sole ground that such publication states the
39
40 publishing organization's purpose to end oppression by building public opinion to seize power
41
42 through armed struggle violates the First Amendment to the United States Constitution, the
43
44 Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

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2 D. Plaintiff Paul Wright requests a declaration by the Court that defendants'
3 rejection of mail addressed to him solely on grounds that such mail contains sexually explicit,
4 but not obscene, statements or depictions violates the First Amendment to the United States
5 Constitution, the Fourteenth Amendment to the United States Constitution and 42 U.S.C.
6 § 1983.
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11 E. Plaintiff William Robert Harris requests a declaration by the Court that
12 defendants' infraction of him for possessing mail delivered to him by prison personnel, solely
13 on grounds that such mail contains sexually explicit, but not obscene, statements or depictions
14 violates the First Amendment to the United States Constitution, the Fourteenth Amendment
15 to the United States Constitution and 42 U.S.C. § 1983.
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21 F. Plaintiffs Billy Blankenship, Keith Closson, Mark Cook, William Robert Harris,
22 Jerry Hawkins, Michael Peterson, Randy Tollefsen, and Paul Wright request a declaration by
23 the Court that defendants' restrictions on their ability to file meaningful administrative appeals,
24 by means that include (1) requiring that the person who issued the censorship order determine
25 the appeals and (2) refusing to allow plaintiffs to review the mail that was censored or
26 otherwise denied to them in order to prepare their appeals, violates plaintiffs' right to due
27 process under the Fourteenth Amendment to the United States Constitution and plaintiffs' civil
28 rights under 42 U.S.C. § 1983.
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37 G. All plaintiffs request a declaration by the Court that defendants' refusal to
38 notify both the receiving inmate and the publisher that publications mailed to an inmate as bulk
39 mail were confiscated and/or discarded rather than delivered violates plaintiffs' right to due
40 process under the Fourteenth Amendment to the United States Constitution and their civil
41 rights under 42 U.S.C. § 1983.
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2 H. Plaintiffs Keith Closson and Paul Wright request a declaration by the Court
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4 that defendants' refusal to deliver mail to inmates that contains legal materials, including
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6 settlement agreements and published and unpublished court decisions, is an impermissible,
7
8 content-based restriction in violation of their rights under the First and Fourteenth
9
10 Amendments to the United States Constitution and their civil rights under 42 U.S.C. § 1983.

11
12 I. Plaintiffs Billy Blankenship and Randy Tollefsen request entry of an order
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14 affirmatively requiring defendant Walter to deliver all converted property, including but not
15
16 limited to copies of Prison Legal News, to them.

17
18 J. All plaintiffs request that the Court enjoin defendants and their agents from
19
20 rejecting and refusing to deliver mail addressed to inmates (including the Prisoner Plaintiffs)
21
22 solely on grounds that the mail is sent as bulk mail.

23
24 K. Plaintiff Jerry Hawkins requests that the Court enjoin defendants and their
25
26 agents from rejecting and refusing to deliver pre-paid, subscribed-to publications addressed to
27
28 him solely on grounds that the subscriptions were not paid for by plaintiff with funds from his
29
30 personal inmate account.

31
32 L. Plaintiffs Mark Cook and Paul Wright request that the Court enjoin defendants
33
34 and their agents from rejecting mail addressed to them on grounds that the mail (in the case of
35
36 MIM Notes) contains a statement of organizational purpose of struggling to end oppression
37
38 by building public opinion to seize power through armed struggle.

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40 M. Plaintiff Paul Wright requests that the Court enjoin defendants and their agents
41
42 from rejecting mail addressed to him on grounds that the mail contains sexually explicit (but
43
44 not obscene) statements or depictions.

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N. Plaintiff William Robert Harris requests that the Court enjoin defendants and their agents from infracting or otherwise punishing him solely for possessing mail which contains sexually explicit (but not obscene) statements or depictions, and order that infractions previously entered against him for possession of such mail be expunged from the record.

O. Plaintiffs Billy Blankenship, Keith Closson, Mark Cook, William Robert Harris, Jerry Hawkins, Michael Peterson, Randy Tollefsen, and Paul Wright request that the Court enjoin defendants and their agents from restricting plaintiffs' ability to file meaningful administrative appeals, such as by (1) requiring that the person who issued the censorship order determine the appeals and by (2) refusing to allow plaintiffs to review the mail that was censored or otherwise denied to them in order to prepare their appeals.

P. All plaintiffs request that the Court enjoin defendants, either directly or indirectly through their agents, from refusing to notify the receiving inmate and the sender that mail addressed to an inmate was confiscated and/or discarded rather than delivered.

Q. Plaintiffs Keith Closson and Paul Wright request that the Court enjoin defendants either directly or indirectly through their agents from refusing to deliver mail that contains law-related materials, including settlement agreements and published and unpublished court decisions.

R. All plaintiffs request that defendants be ordered to deliver to them publications or other mail which defendants have confiscated from and/or refused to deliver to them on any of the grounds described in this complaint.

S. All plaintiffs request an award of costs and attorneys fees pursuant to 42 U.S.C. § 1988.

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T. All plaintiffs request that the Court grant any other relief that the Court may deem just and appropriate.

DATED this 7th day of August, 1997.

PERKINS COIE

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