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 12

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
 15

16 HUMAN RIGHTS DEFENSE CENTER,
 17 Plaintiff,
 18 v.
 19 COUNTY OF SONOMA; EDDIE ENGRAM,
 Sheriff, individually and in his official
 20 capacity; MELISSA PARMENTER, Detention
 Division Operations Captain, individually and
 21 in her official capacity; and JOHN AND
 JANE DOES 1-10, Staff, individually and in
 22 their official capacities,
 23 Defendants.

Case No. 3:25-cv-00361-PHK

**PLAINTIFF’S NOTICE OF MOTION
 AND MOTION FOR PRELIMINARY
 INJUNCTION; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 PRELIMINARY INJUNCTION**

Date: February 28, 2025
 Time: 1:00 p.m.
 Crtrm.: F – 15th Floor

Judge: Hon. Peter H. Kang

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NOTICE OF MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 28, 2025, at 1:00 p.m., or as soon thereafter as the matter may be heard, Plaintiff Human Rights Defense Center (“Plaintiff”), by its undersigned counsel, pursuant to Federal Rule of Civil Procedure 65(a), will and hereby does move this Court to issue a preliminary injunction enjoining Defendant County of Sonoma, Defendant Eddie Engram, and Defendant Melissa Parmenter (collectively “Defendants”) from implementing unconstitutional mail policies and practices and refusing to deliver Plaintiff’s publications and correspondence to incarcerated persons in Defendants’ custody, in violation of Plaintiff’s rights to free speech and due process under federal and California law. This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Paul Wright and Louis Christopher Eichenlaub filed herewith, the pleadings in the above-captioned matter, and any oral argument or evidence permitted at any hearings on this motion.

DATED: January 13, 2025

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Marc J. Shinn-Krantz
Marc J. Shinn-Krantz

HUMAN RIGHTS DEFENSE CENTER

By: /s/ Jonathan P. Picard
Jonathan P. Picard
* *Pro Hac Vice* application to be filed

Attorneys for Plaintiff
HUMAN RIGHTS DEFENSE CENTER

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff, Human Rights Defense Center (“HRDC” or “Plaintiff”) files this motion to enjoin the Defendants from unconstitutionally censoring HRDC’s books, magazines, and correspondence mailed to incarcerated persons, and from failing to provide due process to challenge censorship decisions. HRDC’s mission is to provide incarcerated persons with reading materials with news and analysis relevant to their constitutional and human rights and options for accessing education while incarcerated. HRDC publishes and distributes magazines and books to incarcerated persons, and also mails them other written communications, including informational brochure packets.

Since October 2023, Defendants have engaged in at least forty-seven (47) separate instances of unlawful suppression of HRDC’s speech without due process, by refusing to deliver books, magazines, and correspondence mailed by HRDC to persons incarcerated at the Sonoma County Main Adult Detention Facility (the “Detention Facility”), in violation of the First Amendment and Article I, Section 2 of the California Constitution. Defendants have also failed to provide adequate notice and an opportunity to challenge the censorship decisions, in violation of the Due Process Clause of the Fourteenth Amendment and Article I, Section 7 of the California Constitution. By implementing these policies and practices with reckless disregard for clearly established free speech and due process rights of Plaintiff and others who send publications and correspondence to incarcerated persons by mail, Defendants are interfering with the exercise and enjoyment of Plaintiff’s constitutional rights in violation of the Bane Act, California Civil Code § 52.1.

HRDC’s publications and correspondence pose no threat to the safety or security of the Detention Facility and, in fact, have been successfully mailed to incarcerated persons in thousands of jails and prisons across the United States for thirty-four years without incident. Plaintiff attempted to resolve these violations without litigation by filing a Claim for Damages on July 18, 2024, and an amended claim on August 14, 2024. The County rejected Plaintiff’s amended claim on August 30, 2024, without any information about why

[4577026.8]

1 HRDC's mail was being censored or whether there was any means by which HRDC could
2 appeal the censorship by Defendants.

3 As Defendants' censorship is not rationally related to any legitimate penological
4 interest, and HRDC's free speech rights are being eviscerated without due process,
5 Plaintiff's likelihood of success on the merits is great. The violations of HRDC's
6 constitutional rights are causing irreparable harm, and the balance of hardships from
7 Defendants' continuing refusal to deliver Plaintiff's publications tilts sharply toward
8 Plaintiff. A preliminary injunction should be granted.

9 **FACTUAL BACKGROUND**

10 **I. HRDC'S PUBLICATIONS AND BOOKS.**

11 The Human Rights Defense Center is a not-for-profit charitable organization under
12 Section 501(c)(3) of the Internal Revenue Code. *See* Declaration of Paul Wright in
13 Support of Plaintiff's Motion for Preliminary Injunction ("Wright Decl.") ¶ 2. For thirty-
14 four years, HRDC has focused its mission on public education, advocacy and outreach to
15 incarcerated persons and the public about the economic and social costs of prisons to
16 society, and to help incarcerated persons to educate themselves about their constitutional
17 and human rights and to learn about accessing education while incarcerated. *Id.* HRDC
18 accomplishes this mission through advocacy, litigation, and publication and distribution of
19 books, magazines, and other information about correctional facilities and the rights of
20 incarcerated persons. *Id.*

21 HRDC publishes two soft-cover magazines, which are each printed on newsprint
22 bound by two small staples. Wright Decl. ¶¶ 4-5. HRDC publishes and distributes an
23 award-winning monthly magazine titled *Prison Legal News: Dedicated to Protecting*
24 *Human Rights* ("*Prison Legal News*"), which contains news and analysis about the
25 conditions and management of correctional facilities, the rights of incarcerated persons,
26 court opinions, and other matters of interest to incarcerated persons. *Id.* ¶ 4. HRDC also
27 publishes and distributes a monthly magazine titled *Criminal Legal News Dedicated to*
28 *Protecting Human Rights* ("*Criminal Legal News*"), which contains news and analysis

1 about individual rights, court rulings, and other criminal legal-related issues. *Id.* ¶ 5.
 2 HRDC’s magazines provide timely, in-depth coverage of judicial decisions and other
 3 recent events concerning the criminal legal system in a way that would be impossible
 4 through other means of communication. *Id.* ¶ 6.

5 HRDC also distributes several different soft-cover books on criminal justice, health,
 6 and legal issues that are of interest to incarcerated persons and others. Wright Decl. ¶ 7.
 7 HRDC does not publish, but is the sole national distributor of *Protecting Your Health and*
 8 *Safety* (“*PYHS*”), which describes the rights, protections and legal remedies available to
 9 persons concerning their health and safety while they are incarcerated. *Id.*

10 HRDC also communicates with incarcerated persons through the mail by sending
 11 them informational brochure packets, and letters that provide pertinent information about
 12 HRDC’s publications and related topics. Wright Decl. ¶ 9.

13 Since its creation in 1990, HRDC has sent its publications and books to incarcerated
 14 persons and law librarians in more than 3,000 correctional facilities in all fifty states,
 15 including at the highest security prisons. Wright Decl. ¶ 12. HRDC mails publications
 16 and books to hundreds of persons held in numerous California jails, , prisons, and secure
 17 hospital facilities throughout the state. *Id.* In its more than 34-year history, HRDC is not
 18 aware of and has never been notified of any security incident caused by any of its
 19 publications or correspondence at any jail, prison, or other detention facility. *Id.* ¶ 21.

20 **II. DEFENDANTS’ UNCONSTITUTIONAL MAIL AND BOOK POLICIES**
 21 **AND PRACTICES.**

22 Since October 2023, HRDC has mailed magazines, books and other correspondence
 23 to incarcerated persons at the Detention Facility. Wright Decl. ¶¶ 22-30. Each of these
 24 items were individually addressed and separately mailed with postage fully paid. *Id.*
 25 Defendants, however, have refused to deliver many of these items to the intended
 26 recipients. *Id.* ¶¶ 31-39. Since October 2023, Defendants have censored at least forty-
 27 seven (47) items of mail sent to incarcerated persons at the Detention Facility by HRDC,
 28 including twenty-seven (27) informational brochure packs (“Info Packs”); nine (9) issues

1 of *Prison Legal News*; eight (8) issues of *Criminal Legal News*; and three (3) letters from
 2 HRDC’s attorney. *Id.* ¶ 32.¹ Each item of mail was returned to HRDC by Defendants via
 3 the “Return to Sender” service of the United States Postal Service (“USPS”), at HRDC’s
 4 expense. *Id.* ¶ 32. They contained markings such as “RETURN TO SENDER” and “NO
 5 INMATE SOLICITATIONS.” *Id.* ¶¶ 33-34. One issue of *Criminal Legal News* that
 6 Defendants refused to deliver has “NIC” handwritten on it, which may stand for “not in
 7 custody,” but HRDC staff confirmed that the addressee was still incarcerated at the
 8 Detention Facility at the time that the mailing was returned to HRDC. *Id.* ¶ 34, *see also Id.*
 9 ¶¶ 19, 43. Other than these vague markings, Defendants never provided notice to HRDC
 10 of any of these censorship decisions, nor was HRDC provided any opportunity to appeal
 11 the censorship decisions. *Id.* ¶ 44.

12 The Sonoma County Sheriff’s Office Custody Manual, dated December 30, 2024
 13 (“Custody Manual”), is available on the County’s public website,
 14 <https://www.sonomasheriff.org/policies-and-training> (last visited January 9, 2025), which
 15 includes a hyperlink to a PDF of the Custody Manual at [https://static1.squarespace.com/
 16 static/542ec317e4b0d41ade8801fb/t/67747a4fa9dce32351a320bf/1735686741151/
 17 RELEASE_20241230_T152025_Sonoma+County+Sheriff%27s+Office+Custody+Manual](https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/67747a4fa9dce32351a320bf/1735686741151/RELEASE_20241230_T152025_Sonoma+County+Sheriff%27s+Office+Custody+Manual.pdf)
 18 [.pdf](https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/67747a4fa9dce32351a320bf/1735686741151/RELEASE_20241230_T152025_Sonoma+County+Sheriff%27s+Office+Custody+Manual.pdf) (last visited January 9, 2025). Defendants’ current policy on incoming mail for
 19 persons incarcerated at the Detention Facility, Policy 1009 (“Mail Policy”), is recorded on
 20 pages 378 to 382 of the Custody Manual. A copy of The Mail Policy, is attached as
 21 **Exhibit J** to the Wright Declaration and provides, in pertinent part:

22 When mail is found to be inappropriate in accordance with the provisions of
 23 this policy or when an incarcerated person is sent material that is not
 24 prohibited by law but is considered contraband by the facility, the material
 25 may be returned to the sender or held in the incarcerated person’s property to

26 ¹ **Exhibit A** to the Wright Declaration is a spreadsheet of information kept in the normal
 27 course of business by HRDC that lists all items of mail that were returned by the Detention
 28 Facility to HRDC, excluding returned mail that was intended for incarcerated persons who
 were no longer in custody at the Detention Facility. Wright Decl. ¶ 31. **Exhibit B** to the
 Wright Declaration contains true and correct electronic copies of the front page or mailing
 envelope each of the censored and returned items. *Id.*

1 be given to the incarcerated person upon release.

2 ...

3 Notices should be sent to the sender of censored correspondence or
4 publications, even when the sender is the editor or publisher. A single
5 notification may be sent if the publication is received by multiple
6 incarcerated persons.

7 ...

8 Unless otherwise in conflict with this policy and prohibited by the Facility
9 Manager, incarcerated persons are permitted to purchase, receive, and read
10 any book, newspaper, periodical, or writing accepted for distribution by the
11 U.S. Postal Service (15 CCR 1066(a)).

12 Publications, magazines, or newspapers shall be accepted only if they are
13 mailed directly from the publisher to a named incarcerated person.

14 ...

15 The Office may reject magazines, periodicals, and other materials that may
16 inhibit the reasonable safety, security, and discipline in the daily operation of
17 this facility. Generally, books, newspapers, and magazines are accepted only
18 if they are sent directly by the publisher. Materials that may be rejected
19 include but are not limited to (15 CCR 1066(a)):

- 20 • Materials that advocate violence or a security breach.
- 21 • Literature that could incite racial unrest.
- 22 • Sexually explicit material, including pornographic magazines, nude
23 pictures, or pictures or descriptions of sexually explicit activities.
- 24 • Obscene publications or writings and mail containing information
25 concerning where or how such matter may be obtained; any material
26 that would have a tendency to incite murder, arson, riot, violent
27 racism, or any other form of violence; any material that would have a
28 tendency to incite crimes against children; any material concerning
unlawful gambling or an unlawful lottery; any material containing
information on the manufacture or use of weapons, narcotics, or
explosives or any other unlawful activity.
- Material that could lead to sexual aggression or an offensive
environment for incarcerated persons.
- Material that could create a hostile or offensive work environment.
- Any material with content that could reasonably demonstrate a
legitimate government interest in rejecting the material.

Staff shall notify the Watch Commander whenever a decision is made to
reject books, magazines, or periodicals. The Facility Manager or the
authorized designee will be responsible for making the final decision as to
the specific magazines, periodicals, and other materials that will be

1 prohibited within this facility.

2 See Wright Decl. ¶¶ 47-48 & Ex. J at 376-78.

3 In addition to Defendants’ Mail Policy, another document entitled Detention
4 Facilities Mail Guidelines (“Mail Guidelines”) is available on the County’s public website
5 at <https://www.sonomasheriff.org/inmate-mail-guidelines> (last visited December 19,
6 2024), which includes a hyperlink to a PDF of the Mail Guidelines at
7 [https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/
8 5e961fb66872ea5a8c374e9d/1586896822388/mail+guidelines.pdf](https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/5e961fb66872ea5a8c374e9d/1586896822388/mail+guidelines.pdf) (last visited
9 December 19, 2024). A copy of the Mail Guidelines is attached as **Exhibit K** to the
10 Wright Declaration and provides, in pertinent part:

11 New books deemed to be appropriate will be accepted from Amazon and
12 Barnes & Noble only. **Used books, hardcover books and books with spiral
13 bindings will not be accepted.** Magazines and other publications including
14 periodicals and newspapers that are deemed to be appropriate will be
15 accepted from the publisher.

14 See Wright Decl. ¶ 49 & Ex. K.

15 Defendants’ Mail Policy is unconstitutional on its face and as applied, and is unduly
16 broad and vague. This is especially true because the books and magazines published
17 and/or distributed by HRDC cover topics of great public concern and contain core
18 protected speech, including political speech and social commentary, and educational
19 information relating to the rights of incarcerated persons, pertinent legal cases, and
20 incarcerated persons’ health and safety, *id.* at ¶¶ 4-8, 13, 52, and are thus entitled to the
21 highest protection afforded by the First Amendment to the United States Constitution and
22 the California Constitution. There is no legitimate penological justification for Defendants
23 to refuse to accept books and other publications for delivery at the Detention Facility
24 unless they are “sent directly by the publisher,” and the grounds whereby Defendants may
25 reject mailed publications listed in Defendants’ Mail Policy are overly broad and/or too
26 vague for a sender to understand what is prohibited and what is permissible. See
27 Declaration of Louis Christopher Eichenlaub in Support of Plaintiff’s Motion for
28 Preliminary Injunction (“Eichenlaub Decl.”) ¶¶ 50, 52-54, 58, 60. Defendants’ Mail

1 Policy also does not provide any appeals process for senders to challenge Defendants’
2 decisions to censor publications or other mailings. *Id.* ¶ 57.

3 Defendants’ Mail Guidelines are also unconstitutional on their face and as applied.
4 By restricting all books not sent by vendors Amazon and Barnes & Noble, Defendants ban
5 all books sent by HRDC to prisoners at the Detention Facility. Accordingly, Defendants’
6 Mail Guidelines also violate HRDC’s rights to free speech afforded by the First
7 Amendment to the United States Constitution and the California Constitution. There is no
8 legitimate penological justification for Defendants to refuse to accept books for delivery at
9 the Detention Facility unless they are sent Amazon and Barnes & Noble. *Id.* ¶ 52.

10 Although Defendants’ current Mail Policy states that “[n]otices should be sent to
11 the sender of censored correspondence or publications, even when the sender is the editor
12 or publisher,” it does not provide for any appeals process by which a sender may challenge
13 a censorship decision. Wright Decl. Ex. J at § 1009.6.2. The current Mail Policy also
14 requires specific documentation to create a written record for all instances of censorship
15 including “[a] description of the action taken and the reason for such action” and
16 “[n]otification to the incarcerated person and sender (unless such notification jeopardizes
17 any investigation or the security of the facility).” *Id.* at § 1009.6.3. Defendants, however,
18 did not provide HRDC with notice of the reason any mailing was rejected beyond vague
19 and/or incorrect markings on the outside of items returned via the United States Postal
20 Service’s Return to Sender service. Wright Decl. ¶¶ 34-35. Defendants also never
21 provided any opportunity to HRDC to challenge the censorship. *Id.* ¶ 44.

22 HRDC brought these problems to the County’s attention through a government tort
23 claim submitted on July 18, 2024 and an amended claim on August 14, 2024. Wright
24 Decl. ¶ 45, Ex. H. The County rejected the amended claim in a letter dated August 30,
25 2024. Wright Decl. ¶ 45, Ex. I. Even after HRDC submitted its tort claim, Defendants
26 have not provided any notice of the reason(s) for the rejections of HRDC’s mailings or an
27 opportunity to appeal the censorship decisions. *Id.* ¶ 45 & Ex. I.

28 By its adoption and application of these policies and practices, Defendants are

1 impermissibly interfering with protected expressive activities and chilling future speech
 2 from HRDC and others. Since HRDC continues, and will continue, to communicate with
 3 incarcerated persons confined at the Detention Facility, *see* Wright Decl. ¶ 46, Defendants’
 4 current policies and practices, unless enjoined, will continue to violate HRDC’s
 5 constitutional rights, causing irreparable harm.

6 LEGAL STANDARD

7 A preliminary injunction is appropriate where a plaintiff demonstrates “[1] that he
 8 is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
 9 absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that
 10 an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127
 11 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).
 12 Ninth Circuit precedent “clearly favors granting preliminary injunctions to a plaintiff ...
 13 who is likely to succeed on the merits of his First Amendment claim.” *Klein v. City of San*
 14 *Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). Under the Ninth Circuit’s “sliding scale”
 15 approach, “the elements of the preliminary injunction test are balanced, so that a stronger
 16 showing of one element may offset a weaker showing of another.” *Hernandez v. Sessions*,
 17 872 F.3d 976, 990 (9th Cir. 2017) (internal quotation marks and citation omitted). To
 18 grant preliminary injunctive relief, a court must only find that “a certain threshold showing
 19 [has been] made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011)
 20 (*per curiam*). Under either approach, a preliminary injunction should be issued.

21 ARGUMENT

22 III. HRDC IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS.

23 A. Defendants Are Violating HRDC’s Constitutional Rights to 24 Communicate With Incarcerated Persons.

25 Defendants’ policies and practices violate settled law on the First Amendment
 26 rights of publishers and incarcerated persons. “Prison walls do not form a barrier
 27 separating prison inmates from the protections of the Constitution,” *Turner v. Safley*, 482
 28 U.S. 78, 84 (1987), nor do they bar others “from exercising their own constitutional rights

1 by reaching out to those on the ‘inside,’” *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989).
2 Courts have long held that publishers and incarcerated persons have First Amendment
3 rights to communicate with each other, subject only to limitations required by legitimate
4 security concerns. “[T]here is no question that publishers who wish to communicate with
5 those who ... willingly seek their point of view have a legitimate First Amendment interest
6 in access to prisoners.” *Thornburgh*, 490 U.S. at 408. Indeed, the interests of senders and
7 their intended recipients are “inextricably meshed,” and “censorship of prisoner mail
8 works a consequential restriction on the First and Fourteenth Amendments rights of those
9 who are not prisoners.” *Procunier v. Martinez*, 416 U.S. 396, 409 (1974), *overruled in*
10 *part on other grounds by Thornburgh*, 490 U.S. at 411-14. “Whatever the status of a
11 prisoner’s claim to uncensored correspondence with an outsider, it is plain that the latter’s
12 interest is grounded in the First Amendment’s guarantee of freedom of speech.”
13 *Procunier*, 416 U.S. at 408.

14 HRDC’s speech covers topics of great public concern and therefore “occupies the
15 highest rung of the hierarchy of First Amendment values, and is entitled to special
16 protection.” *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation marks
17 omitted); *see also Pell v. Procunier*, 417 U.S. 817, 830 n.7 (1974) (“[T]he conditions in
18 this Nation’s prisons are a matter that is both newsworthy and of great public
19 importance”); *Prison Legal News v. Cook*, 238 F.3d 1145, 1149 (9th Cir. 2001) (holding
20 speech contained in *Prison Legal News* is core protected speech).

21 To withstand First Amendment scrutiny, a jail or prison policy must be “reasonably
22 related to legitimate penological interests.” *Turner*, 482 U.S. at 89. This inquiry turns on
23 four factors:

24 (1) whether the regulation is rationally related to a legitimate and neutral
25 government objective; (2) whether there are alternative avenues that remain
26 open to the inmates to exercise the right; (3) the impact that accommodating
27 the asserted right will have on other guards and prisoners, and on the
allocation of prison resources; and (4) whether the existence of easy and
obvious alternatives indicates that the regulation is an exaggerated response
by prison officials.

28 *Cook*, 238 F.3d at 1149 (citing *Turner*, 482 U.S. at 89-90). If a correctional facility “fails

1 to show that the regulation is rationally related to a legitimate penological objective,
 2 [courts] do not consider the other factors,” and the rule is invalid. *Ashker v. Cal. Dep’t of*
 3 *Corrs.*, 350 F.3d 917, 922 (9th Cir. 2003). While respectful of correctional officials’
 4 expertise, *Turner*’s “reasonableness standard is not toothless.” *Thornburgh*, 490 U.S. at
 5 414 (internal quotation marks omitted).

6 Accordingly, the Ninth Circuit has regularly ruled in favor of publishers challenging
 7 rules restricting delivery of their publications to incarcerated persons, and has specifically
 8 upheld HRDC’s right to send *Prison Legal News* to incarcerated persons. *See, e.g., Prison*
 9 *Legal News v. Ryan*, 39 F.4th 1121, 1130, 1136 (9th Cir. 2022) (holding that prison
 10 officials violated the First Amendment by restricting sexual material that is not explicit and
 11 by redacting an article describing a prison riot); *Hrdlicka v. Reniff*, 631 F.3d 1044, 1055
 12 (9th Cir. 2011) (addressing ban on unsolicited publications); *Prison Legal News v.*
 13 *Lehman*, 397 F.3d 692, 703 (9th Cir. 2005) (rejecting regulation that prevented delivery of
 14 *Prison Legal News*); *Cook*, 238 F.3d at 1149-50 (same); *Crofton v. Roe*, 170 F.3d 957,
 15 960-61 (9th Cir. 1999) (rejecting ban on gift publications). HRDC is highly likely to
 16 prevail on each of the *Turner* factors.²

17 **1. Defendants’ Mail Policies And Practices Are Not Rationally**
 18 **Related To Any Legitimate Penological Objectives.**

19 The first *Turner* factor looks to whether there is “a ‘valid, rational connection’
 20 between the prison regulation and the legitimate governmental interest put forward to
 21 justify it.” *Turner*, 482 U.S. at 89. “The first factor is a sine qua non Therefore, if the
 22 prison fails to show that the regulation is rationally related to a legitimate penological
 23 objective, [the Court] do[es] not consider the other factors.” *Ashker*, 350 F.3d at 922
 24 (citations omitted). Under this prong, “the ‘logical connection between the regulation and
 25 the asserted goal’ must not be ‘so remote as to render the policy arbitrary or irrational,’ and
 26

27 ² While this case involves HRDC’s free speech rights (and not the rights of incarcerated
 28 persons), for purposes of this motion, HRDC assumes the Court will apply the *Turner* test
 to ensure that injunctive relief employs due deference for the exigencies of jail operations.

1 the governmental objective must be both ‘legitimate and neutral.’” *Frost v. Symington*,
2 197 F.3d 348, 354 (9th Cir. 1999) (quoting *Turner*, 482 U.S. at 89-90). When a plaintiff
3 “refutes a common-sense connection between a legitimate objective and a prison
4 regulation,” the defendant “must present enough counter-evidence to show that the
5 connection is not so ‘remote as to render the policy arbitrary or irrational.’” *Id.* at 357
6 (citations omitted).

7 Prison authorities cannot rely on general or conclusory assertions to support
8 their policies. Rather, they must first identify the specific penological
9 interests involved and then *demonstrate* both that those specific interests are
10 *the actual bases* for their policies and that the policies are reasonably related
11 to the furtherance of the identified interests. An *evidentiary showing* is
12 required as to each point.

13 *Walker v. Sumner*, 917 F.2d 382, 386 (9th Cir. 1990) (emphasis added).

14 Here, it cannot be reasonably argued that there is any “valid, rational connection”
15 between Defendants’ censorship of HRDC’s mailings and any legitimate governmental
16 interest. HRDC is unable to ascertain the basis for Defendants’ censorship because the
17 returned magazines and correspondence were either returned with no markings,
18 indiscernible markings, or markings that do not pertain to HRDC’s publications or
19 correspondence. Sixteen (16) of the seventeen (17) returned magazines were marked with
20 an ink stamp stating “NO INMATE SOLICITATIONS,” but Defendants’ Mail Policy does
21 not define what constitutes an “inmate solicitation,” and HRDC’s magazines do not fall
22 within any reasonable definition of the term solicitation. Wright Decl. ¶ 34. The
23 remaining magazine was not physically returned to HRDC, but HRDC received a post card
24 from the United States Postal Service with an image of the censored item printed on it. *Id.*
25 The magazine has “NIC” handwritten on it, which may stand for not in custody, but
26 HRDC staff confirmed that the addressee was still incarcerated at the Detention Facility at
27 the time that the mailing was returned to HRDC. *Id.*

28 Defendants’ censorship of HRDC’s publications and correspondence has no rational
connection to any legitimate penological interest. Defendants’ current Mail Policy states
that “[p]ublications, magazines, or newspapers shall be accepted only if they are mailed

1 directly from the publisher to a named incarcerated person.” *See* Wright Decl. ¶¶ 47-48 &
2 Ex. J at § 1009.7. Despite the fact that HRDC is the publisher of its magazines, *Prison*
3 *Legal News* and *Criminal Legal News*, Defendants refused to deliver these magazines to
4 incarcerated persons at the Detention Facility and returned them without explanation.
5 Defendant’s Mail Guidelines further restrict delivery of any incoming books to those sent
6 by Amazon or Barnes & Noble. *See Id.* ¶ 49 & Ex. K. Defendants’ Mail Guidelines also
7 prohibits HRDC from sending books that it distributes but does not publish, such as
8 *Protective Your Health and Safety*. *Id.* ¶ 35. There is no legitimate penological basis for
9 Defendants’ to arbitrarily restrict publications unless they are sent by the publisher, and to
10 further restrict books unless they are sent by one of two vendors. Jails and prisons do have
11 a legitimate penological interest in restricting family or other private individuals from
12 sending publications directly to incarcerated persons to limit contraband from being
13 introduced into the facility, and “[i]t is thus sensible to limit such mailings to neutral
14 outside distributors and publishers that present no practical threat to jail security.”
15 Eichenlaub Decl. ¶ 49. But there is no practical security risk to allowing HRDC—a not-
16 for-profit charitable organization that has been mailing publications to incarcerated persons
17 at thousands of jails and prisons for over thirty-four years without incident—to mail books
18 and magazines to incarcerated persons. Wright Decl. ¶¶ 2, 11-12, 21, 51; *see also*
19 Eichenlaub Decl. ¶¶ 60-61.

20 The publications and correspondence that Defendants rejected comply with all other
21 provisions of Defendants’ Mail Policy. The censored publications do not “advocate
22 violence or a security breach,” “incite murder, arson, riot, violent racism, or any other form
23 of violence,” contain “[o]bscene publications or writings,” “lead to sexual aggression,”
24 “create a hostile or offensive work environment,” or “demonstrate a legitimate government
25 interest in rejecting the material.” *Id.* ¶¶ 48, 51, Ex. J at § 1009.8. In short, there is no
26 rational basis or penological justification for censoring HRDC’s publications and
27 correspondence. Eichenlaub Decl. ¶¶ 50-54, 58; Wright Decl. ¶ 50. To the extent that
28 Defendants may assert the censored publications run afoul of one of these categories, they

1 are unconstitutionally too vague and overbroad, certainly in application, for a publisher or
2 distributor to know what is permissible and what is prohibited. *See Americans for*
3 *Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021) (quoting *United States v. Stevens*,
4 559 U.S. 460, 473 (2010)) (“In the First Amendment context ... ‘a law may be invalidated
5 as overbroad if a substantial number of its applications are unconstitutional, judged in
6 relation to the statute’s plainly legitimate sweep.”); *Prison Legal News v. Ryan*, 39 F.4th
7 1121, 1129 (9th Cir. 2022) (“When a plaintiff presents such a facial challenge to a prison
8 regulation, we evaluate it using the *Turner* framework, just as we would if the challenge
9 were to a specific application of the regulation.”).

10 In addition to the censored items that Defendants returned to Plaintiff, the Detention
11 Facility also presumptively has received and either delivered or censored multiple copies
12 of the same types of publications and correspondence that Defendants have censored.
13 Absent proof to the contrary, “a properly-addressed piece of mail placed in the care of the
14 Postal Service has been delivered.” *See Busquets-Ivars v. Ashcroft*, 333 F.3d 1008, 1009
15 (9th Cir. 2003); *see also* Eichenlaub Decl. ¶ 55. Defendants did not provide HRDC with
16 any information as to two hundred and three (203) items that were properly addressed to
17 people incarcerated at the Detention Facility, and thus presumably delivered: seventy-two
18 (72) copies of *Criminal Legal News*, seventy-one (71) copies *Prison Legal News*, thirty
19 (30) copies of *PYHS*, seventeen (17) follow-up letters, and thirteen (13) informational
20 brochures. Wright Decl. ¶ 30. This checkered approach of censoring some items while
21 presumably letting in others is entirely arbitrary and capricious and is not rationally related
22 to any legitimate penological interest. *See* Eichenlaub Decl. ¶ 58. If the facility withheld
23 the mailings from their intended recipients, and did not return them to HRDC, that
24 constitutes a violation of HRDC’s due process right to notice. *See infra* Section I.B.
25 Either way, these facts are proof positive that the Defendants’ policies, practices, training,
26 and supervision are so flawed and violative of HRDC rights that court intervention is
27 necessary. *See* Eichenlaub Decl. ¶¶ 58-59.

28 Banning reading materials actually threatens jail security because reading helps to

1 alleviate idleness, boredom, and frustrations that can contribute to disturbances and
2 disciplinary infractions. Eichenlaub Decl. ¶¶ 25, 28-29, 42, 61; Wright Decl. ¶ 13. Such
3 censorship also threatens public safety because the information in HRDC’s books and
4 magazines helps prepare incarcerated persons for reentry into society and reduce
5 recidivism. Eichenlaub Decl. ¶¶ 25-26, 29-30, 35, 38, 61; Wright Decl. ¶ 13. The
6 Supreme Court has recognized that since “most offenders will eventually return to society,
7 a paramount objective of the corrections system is the rehabilitation of those committed to
8 its custody.” *McKune v. Lile*, 536 U.S. 24, 36 (2002) (alteration omitted) (quoting *Pell*,
9 417 U.S. at 823 (1974)). Further, “the weight of professional opinion seems to be that
10 inmate freedom to correspond with outsiders advances rather than retards the goal of
11 rehabilitation” *Procunier*, 416 U.S. at 412; *see also Paris Adult Theatre I v. Slaton*,
12 413 U.S. 49, 63 (1973) (citing the “well nigh universal belief that good books ... lift the
13 spirit, improve the mind, enrich the human personality, and develop character”).
14 Understanding the benefits of the availability of reading materials, corrections
15 professionals throughout the country recognize that any minimal security concerns
16 associated with incoming publications are outweighed by the safety and security benefits
17 they bring. *See* Eichenlaub Decl. ¶¶ 26-28. Defendants’ censorship is not rationally
18 related to any legitimate penological interest.

19 **2. Defendants Have Failed To Provide Alternative Means Of**
20 **Exercising HRDC’s Rights to Communicate with Incarcerated**
21 **Persons.**

22 The second *Turner* factor looks to whether alternative means exist to exercise the
23 constitutional right. The absence of alternative means is evidence that the prison
24 regulations in question are unreasonable. *See Beard v. Banks*, 548 U.S. 521, 532 (2006).

25 Here, Defendants’ censorship of HRDC’s publications and correspondence leaves
26 HRDC without any alternative means of exercising the First Amendment right at issue, *see*
27 *Turner*, 492 U.S. at 90—the right to distribute its publications to incarcerated persons in
28 furtherance of its mission to help incarcerated persons to educate themselves about their
constitutional and human rights and to learn about accessing education while incarcerated.

1 See Wright Decl. ¶¶ 13, 53. HRDC cannot reasonably be expected to communicate its
 2 writings to incarcerated persons by telephone or in-person. *Id.* ¶ 54. Even if it had other
 3 practical ways of communicating with incarcerated persons, HRDC’s messages can be
 4 conveyed effectively only through print publications. See *Morrison v. Hall*, 261 F.3d 896,
 5 904 (9th Cir. 2001) (even if incarcerated persons can obtain information from other means,
 6 such as television or radio, those avenues “should not be considered a substitute for
 7 reading newspapers and magazines”). The monthly issues of *Prison Legal News* and
 8 *Criminal Legal News* provide incarcerated persons with timely, in-depth coverage of
 9 judicial decisions and other recent events concerning our nation’s criminal legal system in
 10 a way that no other method of communication can match. Wright Decl. ¶¶ 6, 54. The
 11 books that HRDC distributes through the mail similarly provide incarcerated persons with
 12 in-depth information about their rights, protections and legal remedies, and about enrolling
 13 at accredited higher educational, vocational, and training schools, which could not
 14 reasonably or practically be communicated in any other form. *Id.* ¶ 8. Under Defendants’
 15 current policies and practices, HRDC is left with no practical way to reach its intended
 16 audience.

17 **3. Defendants’ Mail Policies and Practices Fail the Third and**
 18 **Fourth Prongs of the Turner Standard (Effect On Resources and**
Feasibility of Alternative Policies).

19 The third and fourth *Turner* factors turn on whether accommodating the First
 20 Amendment right at issue will impose a significant burden on prison officials and whether
 21 ready alternatives to the challenged policies exist. *Turner*, 482 U.S. at 90-91. Where a
 22 plaintiff “can point to an alternative that fully accommodates the prisoner’s rights at *de*
 23 *minimis* cost to valid penological interests, a court may consider that as evidence that the
 24 regulation does not satisfy the reasonable relationship standard.” *Id.* at 91. “[T]he
 25 existence of obvious, easy alternatives may be evidence that the regulation is not
 26 reasonable, but is an ‘exaggerated response’ to prison concerns.” *Id.* at 90.

27 Allowing the exercise of the First Amendment rights at issue here will create no
 28 significant burden on Detention Facility officials, incarcerated persons, or the allocation of

1 resources. Defendants would simply be required to deliver HRDC’s publications and
2 correspondence along with the other mail delivered to incarcerated persons every day.
3 This is what thousands of other correctional facilities do with the very HRDC mailings that
4 Defendants are refusing to deliver. Wright Decl. ¶¶ 11-12. HRDC does not send a high
5 volume of mail to the Detention Facility, but rather sends individually addressed mailings
6 to a limited number of incarcerated persons who subscribe to its magazines or who place
7 orders for books published and/or distributed by HRDC, or who HRDC specifically
8 identifies as potential subscribers or people likely to be in need of the information
9 contained in the publications that HRDC distributes. *Id.* ¶ 14.

10 Regardless, limited effects on staff time do not justify restrictions on First
11 Amendment rights. *See, e.g., Lehman*, 397 F.3d at 700 (rejecting regulation designed to
12 reduce volume of mail); *Cook*, 238 F.3d at 1151 (rejecting administrative burden
13 justification for banning certain type of mail where lifting the ban would result only in “the
14 addition of 15 to 30 pieces of mail” each day); *Clement v. Cal. Dep’t. of Corr.*, 364 F.3d
15 1148, 1152 (9th Cir. 2004) (per curiam) (banning certain type of mail to reduce total
16 volume is “arbitrary” method to reduce mail volume).

17 That thousands of correctional facilities nationwide, including throughout
18 California, allow incarcerated persons to receive all types of HRDC’s mail without
19 creating penological problems, Wright Decl. ¶¶ 12, 21, highlights that ready alternatives to
20 Defendants’ censorship are available. *See, e.g., Hrdlicka*, 631 F.3d at 1055 (final *Turner*
21 factor favored publisher where it was undisputed that publisher’s magazine was already
22 distributed in other California county jails); *Morrison*, 261 F.3d at 905 (looking to
23 California state prison system mail policies to conclude Oregon prison mail policies were
24 an exaggerated response). Distribution of HRDC’s books to persons incarcerated in these
25 other facilities demonstrates that Defendants’ censorship is unnecessary and unreasonable,
26 and is an “exaggerated response” that cannot stand. *Turner*, 482 U.S. at 90-91.

1 **B. Defendants Have Violated HRDC’s Constitutional Rights to Due Process**
2 **By Failing To Provide HRDC With Adequate Notice And Opportunity**
3 **To Challenge Defendants’ Censorship.**

4 A publisher’s right to communicate with incarcerated persons is rooted not only in
5 the First Amendment, but also the Due Process Clause of the Fourteenth Amendment:

6 [T]he decision to censor or withhold delivery of a particular letter must be
7 accompanied by minimum procedural safeguards. The interest of prisoners
8 and their correspondents in uncensored communication by letter, grounded
9 as it is in the First Amendment, is plainly a “liberty” interest within the
10 meaning of the Fourteenth Amendment even though qualified of necessity by
11 the circumstance of imprisonment. As such, it is protected from arbitrary
12 governmental invasion.

13 *Procunier*, 416 U.S. at 417-18. The Due Process Clause requires that each time a jail or
14 prison refuses to deliver a publication or other correspondence to the intended recipient, it
15 must provide both the incarcerated person and the sender notice and an opportunity to
16 challenge the censorship. *Id.* at 418-19 (requiring “that an inmate be notified of the
17 rejection of a letter written by or addressed to him, that the author of that letter be given a
18 reasonable opportunity to protest that decision, and that complaints be referred to a prison
19 official other than the person who originally disapproved the correspondence”). This
20 requirement is clearly established and is not subject to the four-pronged *Turner* analysis.
21 *See Krug v. Lutz*, 329 F.3d 692, 698-699 & n.5 (9th Cir. 2003); *see also Cook*, 238 F.3d at
22 1152-53; *Jacklovich v. Simmons*, 392 F.3d 420, 433 (10th Cir. 2004).

23 Providing due process allows publishers to investigate and challenge violations of
24 their First Amendment rights, and helps subscribers challenge such violations through the
25 correctional grievance system. *See Montcalm Publ’g Corp. v. Beck*, 80 F.3d 105, 109 (4th
26 Cir. 1996) (notice to the incarcerated person alone is insufficient because “[a]n inmate who
27 cannot even see the publication can hardly mount an effective challenge to the decision to
28 withhold that publication”). Correctional facilities in other jurisdictions provide due
29 process to publishers and incarcerated persons when refusing to deliver publications and
30 other correspondence. Eichenlaub Decl. ¶ 32. The Federal Bureau of Prisons has an
31 explicit policy requiring it to notify incarcerated persons and publishers, identifying the
32 specific materials rejected and allowing independent review of a rejection decision. *Id.*;

1 *see also Thornburgh*, 490 U.S. at 406.

2 Defendants failed to provide due process protections to HRDC when refusing to
3 deliver its publications and correspondence to incarcerated persons at the Detention
4 Facility, even after HRDC brought the problem to Defendants’ attention by submitting a
5 government tort claim prior to filing this lawsuit. Wright Decl. ¶¶ 45-46. To date,
6 Defendants have censored at least forty-seven (47) items of HRDC’s mail, and HRDC did
7 not receive meaningful notice or opportunity to challenge the censorship of any of them.
8 *Id.* ¶¶ 32-34, 44. The items of mail were merely returned to HRDC via the USPS Return
9 to Sender service with no pertinent markings indicating why the items were rejected—
10 except in the one case where Defendants inaccurately asserted that an intended recipient
11 was not in custody—without any further explanation as to why Defendants had refused to
12 deliver them. *Id.* Many of the items were marked with an ink stamp stating “NO
13 INMATE SOLICITATIONS,” but Defendants’ Mail Policy does not define what
14 constitutes an inmate solicitation, and HRDC’s magazines, books, and correspondence do
15 not fall within any reasonable definition of the term solicitation. *Id.* ¶ 34. At no point did
16 Defendants contact HRDC to provide notice that its mailings would be rejected or the
17 reason(s) for the rejections. *Id.* ¶ 44.

18 Defendants may claim that rejecting the items of mail for delivery and returning
19 them to HRDC via the USPS Return to Sender service qualifies as “notice,” but this is not
20 minimally adequate notice. First, none of the returned items contained any notice of a
21 right to appeal the rejections, or any information on how HRDC could challenge the
22 censorship. *Id.* ¶¶ 32-34, 44. Second, the returned mailings did not provide meaningful
23 notice why the mail was rejected by Defendants. Many of the censored items were
24 returned without any discernible markings, and others were returned imprinted with an ink
25 stamp stating “NO INMATE SOLICITATIONS.” *Id.* ¶¶ 32-34. Even the County’s
26 summary rejection of HRDC’s government tort claim provided no explanation as to why
27 HRDC’s mailings were censored or how HRDC could appeal the censorship. *Id.* ¶¶ 45 &
28 Ex. I. Furthermore, Defendants did not return any of the two hundred and three (203)

1 additional items that were properly addressed to people incarcerated at the Detention
2 Facility leaving HRDC without any information as to whether those items were censored
3 and why, or if they were delivered why the Detention Facility delivered only those items
4 but not others. *Id.* ¶ 30.

5 Defendants wholly failed to provide HRDC with any opportunity to challenge the
6 censorship decisions, and Defendants' current Mail Policy makes no provision for an
7 appeal by the sender of mail. *See* Wright Decl. ¶ 47, Ex. J. Furthermore, any attempt to
8 appeal would be futile because the censored items of mail are not retained for secondary
9 review by another Detention Facility official, as they were instead sent back to HRDC via
10 the USPS Return to Sender service. *Id.* ¶ 32. HRDC is thus likely to succeed on the
11 merits of its due process claims.

12 C. Defendants' Actions Violate the California Bane Act.

13 Defendants violated HRDC's rights under California Civil Code § 52.1 and
14 interfered with the exercise or enjoyment of HRDC's clearly established rights secured by
15 the Constitution and laws of the United States and Constitution and laws of California.
16 "The Bane Act authorizes individual civil actions for damages and injunctive relief by
17 individuals whose federal or state rights have been interfered with by threats, intimidation,
18 or coercion." *Scalia v. County of Kern*, 308 F.Supp.3d 1064, 1079 (E.D. Cal. 2018). The
19 Bane Act does not require "that the coercion element be separate from the underlying
20 constitutional or statutory violation." *Id.* at 1084. Rather, showing Defendants' "reckless
21 disregard of the right at issue is all that is necessary." *Id.* (internal markings omitted)
22 (quoting *Cornell v. City & Cnty. of San Francisco*, 17 Cal. App. 5th 766, 803 (2017)).

23 Defendants' conduct described above, including the practices of censoring HRDC's
24 mailings, Wright Decl. ¶¶ 31-39, 44, failing to provide HRDC with adequate or possibly
25 any notice of the reasons for censoring its mailings, Wright Decl. ¶¶ 29-32, 44, and failing
26 to provide HRDC any mechanism to challenge the censorship, *id.* ¶¶ 47-48, Ex. J., is
27 objectively unreasonable and was undertaken recklessly and with deliberate indifference.
28 Defendants' actions have caused actual damages to HRDC within the meaning of

1 California Civil Code §§ 52 and 52.1 and will continue to cause damages absent a
 2 preliminary injunction. *Id.* ¶¶ 46, 53, 56.

3 **IV. A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT**
 4 **IRREPARABLE HARM.**

5 Defendants’ unconstitutional policies and practices prevent HRDC from carrying
 6 out its core function—to communicate with incarcerated persons about developments in
 7 the law and protection of their health and personal safety. Wright Decl. ¶¶ 13, 52-53. As
 8 the Supreme Court and Ninth Circuit have held, “[t]he loss of First Amendment freedoms,
 9 for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v.*
 10 *Burns*, 427 U.S. 347, 373 (1976); *see also Klein*, 584 F.3d at 1207-08; *Warsoldier v.*
 11 *Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). Courts have repeatedly found
 12 irreparable harm based on the denial of First Amendment rights in correctional settings.
 13 *See, e.g., Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009) (affirming grant of
 14 preliminary injunction against prison mail policy); *Human Rights Defense Center v. Sw.*
 15 *Va. Reg’l Jail Auth.*, No. 1:18-cv-00013, 2018 WL 3239299, at *6 (W.D. Va. July 3, 2018)
 16 (granting preliminary injunction against jail authority’s ban on staples); *Prison Legal News*
 17 *v. Cnty. of Ventura*, No. CV 14-773-GHK (ex), 2014 WL 2519402, at *8 (C.D. Cal. May
 18 29, 2014) (granting preliminary injunction against jail’s postcard-only policy); *Prison*
 19 *Legal News v. Betterton*, No. 2:12-CV-00699-JRG, Dkt. 59 at 13-15 (E.D. Tex. Sept. 30,
 20 2013) (granting preliminary injunction against jail’s impermissibly vague and arbitrary
 21 policy on mail censorship and inadequate appeals process); *Prison Legal News v. Cnty. of*
 22 *Sacramento*, No. 2:11-CV-00907 JAM-DAD, 2012 WL 1075852, at *1 (E.D. Cal. Mar. 8,
 23 2012) (granting preliminary injunction against jail’s ban on staples).

24 HRDC’s magazines cover recent events and judicial decisions that affect the lives
 25 and legal cases of incarcerated persons, and its books provide incarcerated persons with in-
 26 depth information about their rights, protections and legal remedies, and on enrolling at
 27 accredited higher educational, vocational, and training schools. Wright Decl. ¶¶ 6, 8. The
 28 ability to deliver its publications and correspondence timely—and before news becomes

1 stale or filing deadlines expire—is critical to HRDC’s mission. *Id.* ¶ 52. If HRDC loses
2 the opportunity to deliver these publications to incarcerated persons, it has lost precious
3 opportunities to communicate with those persons at a time when that information will be
4 most useful, in furtherance of its mission to help incarcerated persons access educational
5 opportunities and educate themselves about their constitutional and human rights. *Id.* ¶¶ 6,
6 8, 52. Incarcerated persons also often move quickly in and out of jails, so if publications
7 and correspondence are not delivered on a timely basis, HRDC may lose contact with the
8 intended recipient permanently. *Id.* ¶ 52. An injunction is necessary to prevent irreparable
9 harm to Plaintiff.

10 **V. THE BALANCE OF EQUITIES FAVORS A PRELIMINARY INJUNCTION.**

11 Given the irreparable harm suffered by HRDC if a preliminary injunction does not
12 issue, the balance of equities here tips toward Plaintiff. The irreparable harm suffered by
13 HRDC is concrete, severe and ongoing. Wright Decl. ¶¶ 46, 53, 56. HRDC is blocked
14 from distributing its publications and correspondence to incarcerated persons in
15 Defendants’ custody, and without a preliminary injunction, Defendants will continue to
16 censor HRDC’s communications without due process, banning HRDC’s core protected
17 speech. By contrast, any potential injuries to Defendants are minimal and speculative. No
18 great cost or expenditure of time is required to allow HRDC to deliver its publications and
19 correspondence to incarcerated persons and afford constitutionally mandated due process,
20 as is already the case in correctional facilities across the country. *Id.* ¶¶ 11-12. Given the
21 penological benefits of access to publications, the requested injunction would likely
22 improve security and rehabilitation at the Detention Facility. Eichenlaub Decl. ¶¶ 60-61.
23 The balance of equities favors Plaintiff.

24 **VI. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST.**

25 Courts have “consistently recognized the ‘significant public interest’ in upholding
26 free speech principles ... as the ‘ongoing enforcement of the potentially unconstitutional
27 regulations ... would infringe not only the free expression interests of [plaintiffs], but also
28 the interests of other people’ subjected to the same restrictions.” *Klein*, 584 F.3d at 1208

1 (citations omitted). “The public interest inquiry primarily addresses impact on non-parties
2 rather than parties.” *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir.
3 2002), *abrogated on other grounds by Winter*, 555 U.S. at 22. Defendants’ mail policies
4 and practices harm not only HRDC, but also other publishers and booksellers—who
5 presumably have been and will continue to be censored without due process if Defendants’
6 unconstitutional policies and practices are not enjoined—and incarcerated persons at the
7 Detention Facility.

8 It is in the public interest to allow incarcerated persons access to reading materials,
9 which enable them to engage in productive activity rather than sitting idle, thus helping to
10 avoid conflicts and incidents of violence. Eichenlaub Decl. ¶¶ 23, 27. By educating
11 incarcerated persons about their rights and key legal developments that affect their lives
12 and legal cases, HRDC encourages them to channel their energies into lawful methods of
13 dispute resolution. Wright Decl. ¶ 13. Reading materials also help incarcerated persons
14 keep their minds sharp, helping them prepare to become productive citizens when released
15 back into society. *Id.*; Eichenlaub Decl. ¶¶ 23, 28. This speaks to the hunger for
16 expressive freedom that Justice Thurgood Marshall described in *Procunier*, 416 U.S. at
17 428 (Marshall, J., concurring) (“When the prison gates slam behind an inmate, he does not
18 lose his human quality; his mind does not become closed to ideas; his intellect does not
19 cease to feed on a free and open interchange of opinions It is the role of the First
20 Amendment and this Court to protect those precious personal rights by which we satisfy
21 such basic yearnings of the human spirit.”). An injunction serves the public interest.

22 **VII. THE BOND REQUIREMENT SHOULD BE WAIVED.**

23 Under Federal Rule of Civil Procedure 65(c), district courts have wide discretion to
24 set the amount of the bond accompanying a preliminary injunction, which includes setting
25 no bond or only a nominal bond. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126
26 (9th Cir. 2005).

27 Several factors here warrant waiver of the bond requirement. The “harm” to
28 Defendants if enjoined—*i.e.*, being forced to employ a constitutional mail policy—is

1 minimal and non-monetary, if it exists at all. *See Jorgensen v. Cassidy*, 320 F.3d 906,
2 919 (9th Cir. 2003) (“The district court may dispense with the filing of a bond when it
3 concludes there is no realistic likelihood of harm to the defendant from enjoining his or her
4 conduct.”); *United Food & Com. Workers Loc. 99 v. Brewer*, 817 F. Supp. 2d 1118, 1128
5 (D. Ariz. 2011) (“no realistic likelihood” defendants would be harmed by injunction
6 against enforcing law that violated the First Amendment).

7 Further, HRDC is a small nonprofit organization with a staff of approximately
8 thirteen employees, and does not have financial resources to post anything more than a
9 nominal bond. Wright Decl. ¶ 55; *see Save Strawberry Canyon v. Dep’t of Energy*, 613 F.
10 Supp. 2d 1177, 1191 (N.D. Cal. 2009) (not requiring small non-profit organization to post
11 bond because plaintiff “indicated that it would have difficulty posting the bond”); *Cal.*
12 *Indep. Sys. Operator Corp. v. Reliant Energy Servs.*, 181 F. Supp. 2d 1111, 1130 (E.D.
13 Cal. 2001) (waiving bond requirement for not-for-profit public benefit corporation); *Prison*
14 *Legal News v. Cnty. of Ventura*, 2014 WL 2519402, at *10 (waiving bond requirement due
15 to plaintiff’s “limited financial resources”).

16 Requiring HRDC to post a bond would effectively deny access to prompt judicial
17 review. *See Flowers*, 408 F.3d at 1126. This is especially true because HRDC alleges
18 violations of its fundamental constitutional rights, seeks to vindicate the public interest,
19 and is likely to succeed on the merits. *See Hernandez v. County of Monterey*, 110 F. Supp.
20 3d 929, 958-59 (N.D. Cal. 2015) (bond waived where plaintiffs were “protecting
21 constitutional rights in the public interest, and they are likely to succeed on the merits”);
22 *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996) (holding
23 that “to require a bond would have a negative impact on plaintiff’s constitutional rights, as
24 well as the constitutional rights of other members of the public affected by the policy”).
25 The bond requirement should be waived.

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CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Preliminary Injunction should be granted.

DATED: January 13, 2025

Respectfully submitted,

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* *Pro Hac Vice* application to be filed

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