

1 Jesse Wing, WSBA #27751
JesseW@mhb.com
2 Katherine C. Chamberlain, WSBA #40014
KatherineC@mhb.com
3 MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
4 Seattle, Washington 98104-1745
(206) 622-1604
5

6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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

9 Plaintiff,

10 v.

11 CHELAN COUNTY; CHELAN
12 COUNTY SHERIFF'S OFFICE;
13 BRIAN BURNETT, individually and in
his capacity as Chelan County Sheriff;
14 MIKE HARUM, individually and in his
capacity as Chelan County Sheriff; PHIL
15 STANLEY, in his official and individual
capacity; and RON WINEINGER, in his
official and individual capacity,

16 Defendants.
17

No.

COMPLAINT

JURY DEMAND

18 **I. NATURE OF THE CASE**

19 1.1 Plaintiff Prison Legal News, a project of the Human Rights Defense
20 Center, brings this action to enjoin Defendants' censorship of its monthly
21 publication, books, and other correspondence mailed to prisoners who are held in
22 custody at the Chelan County Jail, in violation of the First Amendment and the
23 Fourteenth Amendment's Due Process Clause. Defendants have adopted and
24

1 implemented written mail policies and practices that unconstitutionally prohibit
2 delivery to prisoners of periodicals or magazines, books, and other correspondence
3 including but not limited to book catalogs, informational subscription brochures,
4 and book offers. Further, Defendants' policies and practices do not afford due
5 process notice and an opportunity to challenge the censorship as required by the
6 Constitution.

7 **II. JURISDICTION AND VENUE**

8 2.1 This action arises under the First and Fourteenth Amendments to the
9 United States Constitution. This Court has jurisdiction over this action under 28
10 U.S.C. §§ 1331, 1343, 2201, and 2202.

11 2.2 Venue is proper in the Eastern District of Washington under 28 U.S.C.
12 § 1391(b)(2) because a substantial part of the events complained of occurred in this
13 District, and because the Defendants reside in this District.

14 **III. PARTIES**

15 3.1 Plaintiff Prison Legal News (PLN) is a project of the Human Rights
16 Defense Center (HRDC), a Washington Non-Profit Corporation. The core of
17 HRDC's mission is public education, prisoner education, advocacy, and outreach
18 in support of the rights of prisoners and in furtherance of basic human rights. PLN
19 publishes and distributes a monthly journal of corrections news and analysis and
20 certain books about the criminal justice system and legal issues affecting prisoners,
21 to prisoners, lawyers, courts, libraries, and the public throughout the Country.
22 PLN also maintains a website (www.prisonlegalnews.org) and operates an email
23
24
25

1 list-serve. Prisoners of all types, family and friends of prisoners, and prisoner
2 advocates, are among the intended beneficiaries of PLN's activities.

3 3.2 Defendant Chelan County is a municipal corporation formed under
4 the laws of the State of Washington.

5 3.3 Defendant Chelan County Sheriff's Office is a department of Chelan
6 County and operates the Chelan County Regional Justice Center (RJC) and satellite
7 buildings located in Wenatchee, Washington. The Chelan RJC facility houses
8 convicted prisoners and pretrial detainees. The Chelan RJC is a 383-bed adult
9 correctional facility and its satellite buildings include a 43-bed minimum security
10 facility and a 66-bed direct supervision minimum security facility for work release
11 and volunteer inmate worker participants. The Chelan RJC and associated
12 satellite buildings are referred to herein, collectively, as "Chelan County Jail."

13 3.4 Defendant Brian Burnett is the Sheriff of Chelan County. He was
14 elected in November 2010 and took office on January 1, 2011. Sheriff Burnett is
15 employed by and is an agent of Chelan County and the Sheriff's Office. He is
16 responsible for the operations of the Chelan County Jail, and the training and
17 supervision of the Jail staff who interpret and implement the Jail's mail policy for
18 prisoners. He is the policymaker for the Jail policy governing mail for prisoners.

19 3.5 Defendant Mike Harum was the Sheriff of Chelan County from 2002
20 until January 1, 2011. Sheriff Harum was employed by and was an agent of
21 Chelan County and the Sheriff's Office when the mail policies at issue in this case
22 were created, approved and implemented. He was responsible for the operations of
23 the Chelan County Jail, and the training and supervision of the Jail staff who
24

1 interpret and implement the Jail's mail policy for prisoners when Defendants began
2 censoring PLN's mail. He was the policymaker for the Jail policy governing mail
3 for prisoners during his employment as Sheriff.

4 3.6 Defendant Phil Stanley is the Director of the Chelan County Jail. He
5 is employed by and is an agent of Chelan County and the Sheriff's Office. He
6 approved the mail policies at issue in this case. On information and belief,
7 Defendant Stanley is responsible for and personally participated in creating,
8 implementing, and enforcing the Jail's mail policies at issue in this case.

9 3.7 Defendant Ron Wineinger is the Deputy Director of the Chelan
10 County Jail. He is employed by and is an agent of Chelan County and the Sheriff's
11 Office. On information and belief, Defendant Wineinger is responsible for and
12 personally participated in creating, implementing, and enforcing the Jail's mail
13 policies at issue in this case.

14 3.8 Each of the acts and omissions of persons alleged herein were taken
15 under color of state law and within the scope of their official duties as employees
16 and officers of Chelan County and the Chelan County Sheriff's Office.

17 **IV. FACTUAL ALLEGATIONS**

18 4.1 Prison Legal News publishes and distributes a soft-cover monthly
19 journal of corrections news and analysis, about prisoner rights, court rulings,
20 management of prison facilities and prison conditions. PLN also publishes and
21 distributes paperback books about the criminal justice system and legal issues
22 affecting prisoners.

1 4.2 Prison Legal News has approximately 7,000 subscribers in the United
2 States and abroad, including prisoners, attorneys, journalists, public libraries,
3 judges, and other members of the public. PLN distributes its publication to
4 prisoners and law librarians in approximately 2,200 correctional facilities across
5 the United States, including the Federal Bureau of Prisons and the Washington
6 Department of Corrections.

7 4.3 Prison Legal News engages in core protected speech and expressive
8 conduct on matters of public concern, such as operations of prison facilities, prison
9 conditions, prisoner health and safety, and prisoners' rights.

10 **A. CENSORSHIP AND LACK OF DUE PROCESS**

11 4.4 Since December 2010 the Defendants have been censoring PLN's
12 monthly publications, paperback books, book catalogs, book offers, and
13 informational brochures and subscription forms mailed to prisoners held in custody
14 at the Chelan County Jail. The mail items censored by Defendants include, but are
15 not limited to, the items identified below.

16 **Monthly Publications**

17 4.5 **January 2011 Issue of *Prison Legal News***

18 4.5.1 On or about January 13, 2011, Prison Legal News mailed
19 its January 2011 *Prison Legal News* publication addressed to each of the following
20 prisoners at the Chelan County Jail:

21 Prisoner Name
22 Cameron Bibles
23 Scott Brixey
24 David Dronen
25 Donald Foust

1 Carlos Garcia
2 Scott Martin
3 Jose Quintana
4 Terry Wilsey
5 Christopher Wilson
6 Aaron Yancey

7 4.5.2 The individuals identified in paragraph 4.5.1 were
8 prisoners at the Chelan County Jail at the time that the Jail received the January
9 2011 *Prison Legal News* publications from PLN.

10 4.5.3 Prison Legal News sent each January 2011 *Prison Legal*
11 *News* publication to the Chelan County Jail by U.S. Mail.

12 4.5.4 Defendants censored each January 2011 *Prison Legal*
13 *News* publication and did not deliver the publications to the prisoner-addressees.

14 4.5.5 Defendants did not provide Prison Legal News due
15 process notice or an opportunity to appeal the censorship decisions.

16 **4.6 February 2011 Issue of *Prison Legal News***

17 4.6.1 On or about February 10, 2011, PLN mailed its February
18 2011 *Prison Legal News* publication addressed to each of the following prisoners
19 at the Chelan County Jail:

20 Prisoner Name
21 Cameron Bibles
22 Scott Brixey
23 Donald Foust
24 Scott Martin
25 Christopher Wilson
Aaron Yancey

1 4.6.2 The individuals identified in paragraph 4.6.1 were
2 prisoners at the Chelan County Jail at the time that the Jail received the February
3 2011 *Prison Legal News* publications from PLN.

4 4.6.3 Prison Legal News sent each February 2011 *Prison Legal*
5 *News* publication to the Chelan County Jail by U.S. Mail.

6 4.6.4 Defendants censored each February 2011 *Prison Legal*
7 *News* publication and did not deliver the publications to the prisoner-addressees.

8 4.6.5 Defendants did not provide Prison Legal News due
9 process notice or an opportunity to appeal the censorship decisions.

10 **4.7 March 2011 Issue of *Prison Legal News***

11 4.7.1 On or about March 10, 2011, PLN mailed its March 2011
12 *Prison Legal News* publication addressed to each of the following prisoners at the
13 Chelan County Jail:

14 Prisoner Name
15 Maynard Allen
16 Scott Brixey
17 Donald Foust
18 Mark Lehrman
19 Jason Long
20 Scott Martin
21 Christopher Wilson
22 Aaron Yancey

23 4.7.2 The individuals identified in paragraph 4.7.1 were
24 prisoners at the Chelan County Jail at the time that the Jail received the March
25 2011 *Prison Legal News* publication from PLN.

1 4.7.3 Prison Legal News sent each March 2011 *Prison Legal*
2 *News* publication to the Chelan County Jail by U.S. Mail.

3 4.7.4 Defendants censored each March 2011 *Prison Legal*
4 *News* publication and did not deliver the publications to the prisoner-addressees.

5 4.7.5 Defendants did not provide Prison Legal News due
6 process notice or an opportunity to appeal the censorship decisions.

7 **4.8 April 2011 Issue of *Prison Legal News***

8 4.8.1 On or about April 11, 2011, PLN mailed its April 2011
9 *Prison Legal News* publication addressed to each of the following prisoners at the
10 Chelan County Jail:

11 Prisoner Name
12 Donald Foust
13 March Lehrman
14 Scott Martin
15 Christopher Wilson
16 Aaron Yancey

17 4.8.2 The individuals identified in paragraph 4.8.1 were
18 prisoners at the Chelan County Jail at the time that the Jail received the April 2011
19 *Prison Legal News* publications from PLN.

20 4.8.3 Prison Legal News sent each April 2011 *Prison Legal*
21 *News* publication to the Chelan County Jail by U.S. Mail.

22 4.8.4 Defendants censored each April 2011 *Prison Legal News*
23 publication and did not deliver the publications to the prisoner-addressees.

24 4.8.5 Defendants did not provide Prison Legal News due
25 process notice or an opportunity to appeal the censorship decisions.

1 4.9 **May 2011 Issue of *Prison Legal News***

2 4.9.1 On or about May 18, 2011, PLN mailed its May 2011
3 *Prison Legal News* publication addressed to each of the following prisoners at the
4 Chelan County Jail:

5 Prisoner Name
6 Donald Foust
7 Mark Lehrman
8 Scott Martin
9 Christopher Wilson

10 4.9.2 The individuals identified in paragraph 4.9.1 were
11 prisoners at the Chelan County Jail at the time that the Jail received the May 2011
12 *Prison Legal News* publications from PLN.

13 4.9.3 Prison Legal News sent each May 2011 *Prison Legal*
14 *News* publication to the Chelan County Jail by U.S. Mail.

15 4.9.4 Defendants censored each May 2011 *Prison Legal News*
16 publication and did not deliver the publications to the prisoner-addressees.

17 4.9.5 Defendants did not provide Prison Legal News due
18 process notice or an opportunity to appeal the censorship decisions.

19 **4.10 Continued Censorship**

20 4.10.1 Prison Legal News sent its monthly journal to prisoners
21 at the Chelan County Jail in June, July, and August 2011, and intends to
22 correspond with prisoners at the Chelan County Jail in the future.

23 4.10.2 On information and belief, the Jail censored all the
24 monthly journals that PLN sent to prisoners at the Chelan County Jail, and
25 continues to do so.

Protecting Your Health & Safety Book

4.11 Prison Legal News publishes and distributes paperback books relevant to its mission, and offers a catalog of these books to prisoners throughout the county. One of the paperback books that Prison Legal News offers and sells is titled *Protecting Your Health & Safety*.

4.12 Beginning in December 2010, Prison Legal News sent the *Protecting Your Health & Safety* book to the following prisoners at the Chelan County Jail:

<u>Inmate Name</u>	<u>Date Sent by PLN</u>
Wilber Allen	August 22, 2011
Cameron Bibles	January 13, 2011
Scott Brixey	January 10, 2011
Frank Dean	August 22, 2011
Keith Driver	August 22, 2011
David Dronen	January 7, 2011
Donald Foust	January 10, 2011
Carlos Garcia	December 21, 2010
Enrique Gonzalez	July 29, 2011
Terry Hoefler	July 29, 2011
Michael Marconi	July 29, 2011
Scott Martin	January 6, 2011
Darwin Munson	August 22, 2011
Jose Quintana	January 7, 2011
Issac Spauer	July 29, 2011
Christopher Wilson	January 7, 2011
Devin Wood	July 29, 2011 and August 11, 2011
Aaron Yancey	December 21, 2010

4.13 The individuals identified in paragraph 4.12 were prisoners at the Chelan County Jail at the time that the Jail received the *Protecting Your Health and Safety* books from PLN.

1 4.14 Prison Legal News sent all of the *Protecting Your Health & Safety*
2 books to the Chelan County Jail via Media Mail through the United States Postal
3 Service, delivery confirmation requested.

4 4.15 Defendants censored each book, did not deliver it to the prisoner-
5 addressee, marked the package "REFUSED", and returned the books to PLN.

6 4.16 Prison Legal News also sent the *Protecting Your Health & Safety*
7 book to prisoner Terry Wilsey at the Chelan County Jail on January 5, 2011.
8 Defendants censored the book, did not deliver it to Mr. Wilsey, and did not return
9 the book to Prison Legal News.

10 4.17 Defendants did not provide Prison Legal News due process notice or
11 an opportunity to appeal the censorship decisions.

12 4.18 Prison Legal News intends to continue sending paperback books to
13 prisoners at the Chelan County Jail in the future.

14 **Informational Brochures, Subscription Order Forms, Book Catalogs**

15 4.19 Prison Legal News has sent informational brochures about PLN and
16 subscription order forms, book catalogs, and book offers to prisoners at the Chelan
17 County Jail.

18 **4.20 Prison Legal News Brochure and Subscription Order Form:**
19 Prison Legal News sent certain prisoners at the Chelan County Jail an
20 informational brochure about its organization and publications. The double-sided
21 single-page brochure included: a description of the topics covered in PLN's
22 monthly journal, subscription rates, special subscription offers, and an order form;
23 a description of three books available for purchase or included with a subscription

1 to *Prison Legal News—Protecting your Health & Safety, With Liberty for Some:*
2 *500 Years of Imprisonment in America*, and *Prison Profiteers: Who Makes Money*
3 *from Mass Incarceration*; and other information about PLN's bookstore.

4 **4.21 Book Catalog:** Prison Legal News sent certain prisoners at the
5 Chelan County Jail its 2010 PLN Book List. The double-sided single-page book
6 list includes a description of 43 books, dictionaries, and resource materials
7 available for purchase. The books available for purchase include information
8 about a variety of topics, including but not limited to: the basic rights of prisoners
9 regarding health and safety; the American criminal justice system; self-
10 representation in court; finding the right lawyer; DNA testing; issues related to
11 imprisoned women; developing a successful re-entry plan upon release from
12 prison; searching for a job; crime and poverty; and the mental health crisis in U.S.
13 prisons and jails.

14 **4.22 Book Offers:** Prison Legal News sent certain prisoners at the Chelan
15 County Jail a double-sided single-page informational brochure about two books for
16 sale: *The Habeas Citebook: Ineffective Assistance of Counsel*, a handbook
17 containing case citations, pleadings, and forms designed to help a prisoner seek
18 habeas corpus relief; and *Prisoners' Guerrilla Handbook to Correspondence*
19 *Programs in the United States and Canada*, a handbook on high school,
20 vocational, paralegal, undergraduate, and graduate courses available through
21 correspondence study.

1 4.23 Collectively, the PLN Brochure, Book List, and Book Offer described
2 above in paragraphs 4.18-4.20 are referred to as “Informational Brochure Packs”
3 below.

4 4.24 In December 2010 or January 2011, Prison Legal News mailed
5 Informational Brochure Packs addressed to each of the following prisoners at the
6 Chelan County Jail:

7 Prisoner Name
8 Scott Brixey
9 David Dronen
10 Donald Foust
11 Carlos Garcia
12 Scott Martin
13 Jose Quintana
14 Christopher Wilson
15 Aaron Yancey

16 4.25 The prisoners identified above in paragraph 4.24 were prisoners at the
17 Chelan County Jail at the time that the Jail received the Informational Brochure
18 Pack addressed to each prisoner from PLN.

19 4.26 PLN mailed its Informational Brochure Pack to each prisoner in a
20 white standard # 10 envelope via first-class mail.

21 4.27 Defendants censored each Informational Brochure Pack sent by PLN
22 and did not deliver them to the prisoner-addressees.

23 4.28 Defendants did not provide Prison Legal News due process notice or
24 an opportunity to appeal the censorship decisions.

25 4.29 Prison Legal News intends to continue sending Informational
Brochure Packs to prisoners at the Chelan County Jail in the future.

1 **B. JAIL POLICIES**

2 4.30 On September 21, 2010, the Chelan County Jail implemented a policy
3 governing mail services for prisoners. A true copy of the policy is attached to this
4 Complaint as Exhibit A.

5 4.31 **Ban on Speech that is a Periodical or Magazine:** Defendants' Mail
6 policy bans all periodicals and magazines except for one specific newspaper. The
7 Jail's Mail Policy states, in pertinent part:

8 [The Chelan County Regional Justice Center] currently provides the
9 Wenatchee World newspaper to general population inmates. *No*
subscriptions to any periodical or magazine will be allowed.

10 *See Exhibit A at III. D (emphasis added).*

11 4.32 Defendants have used their Policy to censor Plaintiff's *Prison Legal*
12 *News* journal, books, Informational Brochure Packs, and other correspondence.

13 4.33 On information and belief, Defendants have used this Policy to censor
14 publications, newspapers, magazines, journals, and correspondence from other
15 publishers, book distributors, companies, and individuals.

16 4.34 Defendants' policy is unconstitutionally overbroad.

17 4.35 Defendants' policy governing incoming mail that prohibits all
18 periodicals and magazines other than one newspaper that has been approved by the
19 Jail and its practice of enforcing this policy unconstitutionally burdens Plaintiff's
20 First Amendment rights, the First Amendment rights of other correspondents who
21 send mail to prisoners confined at the Chelan County Jail, and the First
22 Amendment rights of prisoners at the Chelan County Jail.

1 4.36 **Ban on Speech that Is a Book:** The Chelan County Jail’s Mail
2 Policy regarding “Unauthorized Incoming Mail” prohibits “paperback books of
3 any kind.” See Exhibit A at VII. 26.

4 4.37 Defendants have used this policy to censor Plaintiff’s *Prison Legal*
5 *News* journal, books, Informational Brochure Packs, and other correspondence.

6 4.38 On information and belief, Defendants have used their Policy to
7 censor books from other publishers and book distributors.

8 4.39 Defendants’ policy is unconstitutionally overbroad.

9 4.40 Defendants’ policy governing incoming mail that prohibits all books
10 and its practice of enforcing this policy unconstitutionally burdens Plaintiff’s First
11 Amendment rights, the First Amendment rights of other correspondents who send
12 mail to prisoners confined at the Chelan County Jail, and the First Amendment
13 rights of prisoners at the Chelan County Jail.

14 **4.41 Lack of Procedural Due Process Protections:**

15 4.41.1 While Defendants’ policy governing incoming mail
16 provides prisoners a way to appeal censorship decisions, their policy does not
17 provide an opportunity for the sender to be heard to appeal the Jail’s censorship
18 decisions. The Jail Policy states in pertinent part:

19 Unauthorized items that arrive in the mail will be logged and placed
20 on the inmate’s property. A mail denial notice will be completed
21 indicating the unauthorized item(s). One copy of the notice will be
22 given to the inmate, one copy to the sender, one copy placed in the
23 inmate’s property, and one copy sent to Records.

24 ...

25 When an inmate is prohibited from sending or receiving mail, the
affected inmate is entitled to have such decision reviewed by the
disciplinary hearing body upon written request and shall be informed

1 of this right. A written decision of the review of such denial shall be
delivered to the inmate.

2 See Exhibit A at VI. A. and C.

3 4.41.2 In contrast to Defendants' policy itself, their "Mail
4 Denial Notice" form states that the sender may appeal the censorship decision:

5 A sender who has received a mail violation notice may obtain an
6 independent review of the rejection by writing to the Deputy Director
7 at 401 Washington Street – 2nd Level Wenatchee, WA 98801,
requesting an administrative review.

8 See Exhibit A, form attached.

9 4.41.3 But the "Mail Denial Notice" form undercuts the option
10 set forth in paragraph 4.41.2 by denying the opportunity to appeal if the mail is
11 censored because it contains unauthorized attachments or enclosures:

12 6. Unauthorized attachments or enclosures in or on packages (*no*
13 *administrative review*).

14 *Id.* (Emphasis added.)

15 4.41.4 In contrast to Defendants' policy itself, their "Mail
16 Denial Notice" form denies prisoners the right to appeal unless the mail is
17 censored based on its content:

18 Administrative review shall be available to the intended inmate
19 recipient only for rejected correspondence based on its written or
pictorial content.

20 *Id.*

21 4.41.5 In practice, Defendants generally do not provide due
22 process notice to the sender of the censored mail and reason for censorship.

1 4.41.6 In practice, Defendants generally do not provide an
2 opportunity for the sender to appeal the Jail's censorship decisions.

3 4.41.7 On December 23, 2010, Defendants sent Prison Legal
4 News a "Mail Denial Notice" form stating that its mail addressed to prisoner Aaron
5 Yancey was rejected by the Jail for the following reason: "6. Unauthorized
6 attachments or enclosures in or on packages (no administrative review)" with a
7 handwritten note that states "No Books/magazines." Defendants did not identify
8 the item censored by the Chelan County Jail. Defendants' form states no appeal is
9 permitted for such censorship.

10 4.41.8 On December 23, 2010, Defendants sent Prison Legal
11 news a "Mail Denial Notice" form stating that its mail addressed to prisoner Jamie
12 Moore was rejected by the Jail for the following reason: "6. Unauthorized
13 attachments or enclosures in or on packages (no administrative review)" with a
14 handwritten note that states "Books/magazine." Defendants did not identify the
15 item censored by the Chelan County Jail. Defendants' form states no appeal is
16 permitted for such censorship.

17 4.41.9 On December 24, 2010, Defendants provided prisoner
18 Carlos Garcia a "Mail Denial Notice" form stating that mail addressed to him from
19 PLN Editor Paul Wright was rejected by the Jail for the following reason: "8.
20 Other than written correspondence, newspaper or magazine clippings, small
21 pamphlets, approved photo/carbon copies, hand-made drawings, and photographs,
22 no unauthorized item shall be enclosed in the envelope." Defendants did not
23
24

1 identify the item censored by the Chelan County Jail. Defendants did not provide a
2 copy of this rejection notice form to PLN.

3 4.41.10 On August 14, 2011, Defendants provided prisoner
4 Christopher Wilson a "Mail Denial Notice" form stating that mail addressed to him
5 from PLN was rejected by the Jail for the following reason: "Books, Magazines,
6 and newspapers must be received directly from the publisher" with a handwritten
7 note that states "WE DO NOT ACCEPT ANYTHING THRU THE MAIL."
8 Defendants did not identify the item censored by the Chelan County Jail.
9 Defendants did not provide a copy of this rejection notice form to PLN.

10 4.41.11 Defendants failed to provide a "Mail Denial
11 Notice" form to Prison Legal News for the other-mail items they censored,
12 including those identified in this Complaint. Although Defendants censored
13 at least sixty-one (61) items sent by PLN to prisoners at the Chelan County
14 Jail, they provided PLN only *two* "Mail Denial Notice" forms. Nor did
15 Defendants communicate to PLN by other means the reasons they censored
16 the mail that Prison Legal News sent to prisoners at the Chelan County Jail.

17 4.42 **Ratification of Policies and Practices:** Through their deliberate
18 denials of prisoner grievances challenging the constitutionality of the Jail's mail
19 policies, Defendants consciously ratified their policies and practices of censoring
20 all books, periodicals, and magazines:

21 4.42.1 On December 2, 2010, Prisoner Brandon Jahr notified
22 Defendants of the following:
23
24

1 I feel like Chelan County Regional Justice Center (Phil Stanley) has
2 violated my right to freedom of speech & expression or you could also
3 say since I'm a pretrial detainee that my due process rights are being
4 violated. Mr. Phil Stanley has issued a ban on inmates ordering any
5 books whatsoever, wether [sic] they are legal, religious, or basic
6 novels. . .

7 4.42.2 On December 2, 2010, Defendants rejected Mr. Jahr's
8 grievance, stating "Per policy, no books can be sent to the Jail through inmate mail.
9 You could request books through the Jail education program."

10 4.42.3 On December 2, 2010, Mr. Jahr filed a second grievance,
11 stating:

12 Sgt. Larsen answered the 1st grievance & I disagree with his decision
13 because your policy violates federal law. This policy or a better word,
14 "Punishment of pretrial detainee" to refuse me to order any news
15 periodicals or legal periodicals or any magazines or basic novels is a
16 direct violation of my 1st Amendment rights. It could also be stated as
17 violating my due process rights. For the past 35 days I've been
18 punished with this unlawful policy. To receive these items through
19 the mail, through a [sic] approved vendor, "there is no security threat
20 that exist[.]" It serves no penological interest to block our mail in such
21 a way. . .

22 4.42.4 On December 9, 2010, Defendants denied Mr. Jahr's
23 second grievance, stating:

24 You are provided access to newspaper and books. We are not
25 required to provide you access to legal periodicals other than the
materials in the law library.

26 4.42.5 On December 14, 2010, Mr. Jahr submitted a "Jail
Request Form" to Defendant Phil Stanley, requesting:

1 I would like a copy of your mail policy please, (not in Inmate
2 Handbook[] specifically the part that says we are not allowed any
3 other periodicals, legal or otherwise because you provide the
4 Wenatchee World. . .

5 4.42.6 Defendant Stanley denied Mr. Jahr's request for a copy
6 of the mail policy, stating: "We are not going to provide a copy of the policy unless
7 it is requested under Public Disclosure and you pay the copy costs. . ."

8 4.42.7 On December 15, 2010, Mr. Jahr submitted a third level
9 grievance, stating:

10 You answered my second level grievance about your complete ban
11 on, subscriptions, legal books sent in & even the most basic novels by
12 stating that "we are provided access to newspaper & books, therefore
13 everything else is banned . . ."

14 4.42.8 On December 20, 2010, Defendants again denied
15 Mr. Jahr's grievance by stating, "You are permitted access to our collection of
16 legal material and state law on the third floor upon a kite request. . ."

17 4.42.9 On December 28, 2010, Prisoner Carlos Garcia appealed
18 Defendants' rejection of his correspondence from Prison Legal News, stating:

19 In our First Amendment it states (The first Amendment protects your
20 right to receive and keep reading material like books and magazines.)
21 The books that you refused are books to help all our situations and
22 help all of [us] earn our GED's and other programs that you don't
23 supply. [P]lus it keeps us busy and out of trouble. The Prison Legal
24 News sent me a couple of books and I would like to know if you
25 refused them or sent them back to Prison Legal News.

26 4.42.10 On December 28, 2010, Defendants rejected
27 Mr. Garcia's appeal, stating it was "unfounded" and that:

1 Jail Policy prohibits periodicals, Prison Legal News is such.
2 Correspondence from Prison Legal News in [sic] placed in your
3 property and you will receive a mail denial notice. Inmates may kite
4 the education director (Latimore) for education material. (Unfounded)

4.42.11 On December 29, 2010, Mr. Garcia again appealed
5 Defendants' rejection of his correspondence from Prison Legal News, stating:

6 What happened to my Constitutional Rights of receiving books or
7 magazines from Publisher (Prison Legal News) [?] I feel my FIRST
8 AMENDMENT and my CONSTITUTIONAL RIGHTS are being
9 taken away from me. And you do not have a program for trying to
10 receive a G.E.D. in your EDUCATION Program.

4.42.12 On January 4, 2011, Defendants rejected Mr. Garcia's
11 second appeal, stating:

12 I am not aware of any violation of your constitutional rights. *The mail*
13 *policy at CCRJC restricts inmates [sic] ability to receive books or*
14 *periodicals through the mail as individual subscriptions*, it does not
15 limit your access to the educational program of the jail or the
16 assortment of library books available. As for the lack of a GED
17 program at CCRJC, you may send a kite to the education program and
18 they will evaluate your situation and their ability to assist you in
19 getting your GED.

4.43 Defendants' conduct prohibiting Prison Legal News from mailing its
20 monthly journal, informational brochures and subscription forms, book catalogs,
21 book offers, paperback books, and other publications and correspondence to
22 prisoners confined at the Chelan County Jail, and its conduct in prohibiting mail
23 from other correspondents, violates the First Amendment.

4.44 Defendants' censorship of these expressive activities has a chilling
24 effect on future speech.

1 4.45 Defendants' policies and practices described above frustrate Prison
2 Legal News's organizational mission, and have caused Prison Legal News to divert
3 its resources.

4 4.46 Defendants' actions have violated, continue to violate, and are
5 reasonably expected to violate in the future Plaintiff's constitutional rights to
6 communicate its political message to prisoners, to recruit new supporters, readers
7 and subscribers, and have caused Plaintiff additional financial harm in the form of
8 diversion of its resources, lost subscriptions, purchases of its publications, book
9 purchases, and return to sender charges.

10 4.47 Defendants Burnett, Harum, Stanley, Wineinger, and other agents of
11 Chelan County are responsible for or personally participated in creating and
12 implementing these unconstitutional policies, practices, and customs and for
13 training and supervising the mail staff members whose conduct also have injured
14 and continue to injure the Plaintiff and others, or ratified or adopted the policies or
15 actions described herein.

16 **V. CLAIM ALLEGATIONS**

17 **COUNT 1**

18 **FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

19 5.1 Plaintiff realleges and incorporates by reference the preceding
20 paragraphs.

21 5.2 The acts described above constitute violations of Plaintiff's rights, the
22 rights of other correspondents who have attempted to or intend correspond with
23 prisoners at the Chelan County Jail, and the rights of prisoners confined at the
24

1 Chelan County Jail, under the First Amendment to the United States Constitution
2 through 42 U.S.C. § 1983.

3 5.3 The acts described above have caused damages to Plaintiff, and will
4 continue to cause damage.

5 5.4 Plaintiff seeks declaratory and injunctive relief and nominal and
6 compensatory damages against all Defendants. Plaintiff seeks punitive damages
7 solely against the individual Defendants in their individual capacities.

8 **COUNT 2**

9 **DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT** 10 **TO THE UNITED STATES CONSTITUTION**

11 5.5 Plaintiff realleges and incorporates by reference the preceding
12 paragraphs.

13 5.6 The acts described above constitute violations of Plaintiff's rights, the
14 rights of other correspondents who have attempted to or intend to correspond with
15 prisoners at the Chelan County Jail, and the rights of prisoners confined at the
16 Chelan County Jail, under the Fourteenth Amendment to the United States
17 Constitution through 42 U.S.C. § 1983.

18 5.7 The acts described above have caused damages to Plaintiff, and will
19 continue to cause damage.

20 5.8 Plaintiff seeks declaratory and injunctive relief and nominal and
21 compensatory damages against all Defendants. Plaintiff seeks punitive damages
22 solely against the individual Defendants in their individual capacities.

1 7.7 Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988,
2 and under other applicable law.

3 7.8 Prejudgment and post judgment interest.

4 7.9 The right to conform the pleadings to the proof and evidence
5 presented at trial.

6 7.10 Such other relief as the Court deems just and equitable.

7 DATED this 9th day of September, 2011.

8 MacDONALD HOAGUE & BAYLESS

9
10 By: 

Jesse Wing, WSBA # 27751

JesseW@mhb.com

Katherine Chamberlain, WSBA #40014

KatherineC@mhb.com

Attorneys for Plaintiff

EXHIBIT A
TO COMPLAINT

CHELAN COUNTY REGIONAL JUSTICE CENTER

POLICY

APPROVED BY: Director Phil Stanley

DATE APPROVED: 09/21/10

POLICY-111 INMATE MAIL SERVICES

The Chelan County Regional Justice Center has established procedures governing mail services for inmates.

PROCEDURE

I. GENERAL REQUIRMENTS

- A. Inmates are responsible for informing their correspondents the rules governing mail, including legal mail.
- B. Outgoing mail for indigent inmates is limited to ten (10) letters per week at the facility's expense. Manila envelopes, other than those marked as legal and containing legal documents will not be processed for postage at the facility's expense. (See V Legal Mail) There is no limit on the volume of letters non-indigent inmates can send at their expense or receive, except when there is reasonable belief that limitation is necessary to protect public safety and or the safety and security of the facility. There is no limit to the volume of legal mail sent or received.
- C. An inmate's writing privileges to a particular person or group may be withdrawn under authorization from the Director or designee.
- D. Inmate mail will not be processed or handled by inmates other than the writer or the inmate to whom the mail is addressed.
- E. Inmate to inmate mail will not be allowed, unless approved by the Director or designee. Inmate to inmate mail that is not approved by the Director or designee will be returned to the place of origin.
- F. Excluding weekends and holidays or emergency situations:
 - 1. All mail will be delivered to the inmates within two (2) days of receipt.
 - 2. All legal mail will be delivered within 24 hours of receipt.

II. INSPECTION

- A. Designated Jail staff are authorized to inspect and review incoming mail to prevent:
 - 1. Receiving contraband, or any other material that threatens the safety and security of the facility, and
 - 2. Criminal activity
- B. Cash and endorsed money orders will be logged and sent directly to Control for processing. Receipts will be printed and forwarded to the inmate with the incoming mail. If an inmate refuses to endorse the back of the money order and/or check, a comment will be added to the inmate's Property Update in the Jail Management System, stating "refused to sign", the check number, amount, and sender. The updated property sheet and the money order and/or check will be placed into the inmate's property. The only checks that will be accepted are those received over our Western Union in the control room and those from other agencies, unless approved by a supervisor.
- C. Unauthorized mail will be removed, logged and returned to sender or placed into the inmate's property; a mail denial notice will be given to the inmate and copies distributed as listed.

III INCOMING MAIL

- A. Incoming mail will only be accepted from the U.S. postal service or other authorized commercial carriers.
- B. Mail sent to inmates will be addressed with their full committed name. Staff will make reasonable effort to identify the inmate for whom the mail is intended.
 - 1. Money orders may be sent to inmates – made payable to CCRJC with the inmate's name recorded in the memo section of the document.
- C. Incoming mail for inmates must have a viable return address as defined by the U.S. postal service. Mail without a viable return address will be rejected and may be placed in the inmate's property.
- D. CCRJC currently provides the Wenatchee World newspaper to general population inmates. No subscriptions to any periodical or magazine will be allowed.

IV OUTGOING MAIL

- A. Letters from inmates must have a complete return address that includes their full committed name and housing assignment. The return address may include any other legal name, as long as it is listed below the inmate's committed name. Other than the return

- address referenced above and complete mailing address, no other markings or drawings on the envelope are allowed.
- B. Jail staff will collect outgoing mail at lockdown/count and confirm indigent status on all outgoing correspondence. Excluding extraordinary situations, the mail will be sent out via the U.S. postal service on the next available day.
 - C. If contraband (homemade necklaces, bracelets, picture frames, commissary items, etc.) is suspected in an outgoing letter, the letter will be opened and contraband confirmed. An infraction will be issued to the inmate and the contraband secured as evidence for potential disciplinary action.
 - D. Outgoing homemade envelopes of any kind will not be allowed. A mail denial notice will be completed indicating the unauthorized item(s). One copy of the notice will be given to the inmate, one copy placed in the inmate's property, and the remaining copies sent to Records. The envelope will be placed in the inmate's property.
 - E. Outgoing mail with any foreign substance on the envelope is prohibited. A mail denial notice will be completed and copies dispersed as noted above. The envelope will be placed in the inmate's property.

V LEGAL MAIL

- A. Incoming mail must have the return address on the front of the envelope, if the address is readily identifiable as being from the courts, court staff, attorneys, law enforcement officers in their official capacity, or established groups involved in representing or corresponding to inmates in judicial proceedings it will be treated as "LEGAL MAIL".
- B. The front of an envelope that is stamped "LEGAL MAIL", "Attorney/Client", "Confidential", or similar designation will be treated as "LEGAL MAIL".
- C. Incoming legal mail will be opened in the presence of the addressed inmate by designated jail staff.

VI UNAUTHORIZED MAIL

- A. Unauthorized items that arrive in the mail will be logged and placed on the inmate's property. A mail denial notice will be completed indicating the unauthorized item(s). One copy of the notice will be given to the inmate, one copy to the sender, one copy placed in the inmate's property, and one copy sent to Records.

- B. If any contraband or illegal items are found in the incoming mail, they will be treated as evidence for potential disciplinary or criminal action.
- C. When an inmate is prohibited from sending or receiving mail, the affected inmate is entitled to have such decision reviewed by the disciplinary hearing body upon written request and shall be informed of this right. A written decision of the review of such denial shall be delivered to the inmate.
- D. Inmate to inmate mail is prohibited, unless approved by the Director or designee. Inmate to inmate mail that is not approved by the director or their designee will be returned to the place of origin. This includes mail to inmates housed at other jails or prisons.
- E. Repeated violations of unauthorized mail and or the CCRJC mail policy may result in denial of mail privileges to the sender.

VII LIST OF UNAUTHORIZED INCOMING MAIL

1. Mail unauthorized by policy
2. Items not permitted by jail rules.
3. Mail to or from an individual with whom contact is restricted.
4. Material that threatens or is detrimental to the safety, security, or discipline of the facility.
5. Mail containing information that, if communicated, could create a risk of violence and/or physical harm to any person.
6. Mail containing items available for purchase on the commissary.
7. Gang-related material such as signs, drawings, language, and symbols – to include pictures of persons displaying gang signs and or gang activities.
8. Mail that is in code.
9. Mail that contains contraband, or relates to sending contraband in or out of the facility.
10. Mail containing plans to escape, or mail depicting or describing blueprints or operational details of existing facility security devises (e.g. locks, electronics, facility grounds/buildings etc.).
11. Mail containing instructions for the manufacture or use of weapons, ammunition, explosives, drugs, alcohol, other unlawful substances or contraband.
12. Mail containing threats of physical harm against any person or any other threats or criminal activity.

13. Mail containing blackmail or extortion threats.
14. Any item larger than 8 ½" by 11".
15. Envelopes or contents altered from original form or soaked/permeated in a liquid, solid, or gaseous solution.
16. Homemade envelopes of any size are prohibited.
17. Mail containing greeting cards that are padded, laminated/layered, musical, and/or larger than 8 ½" by 11".
18. Other than the cancelled stamp attached to the front of the envelope or package, no item shall be glued, taped, or affixed to the envelope, package, or its contents.
19. Polaroid type photographs or photograph wherein the non-photo side is, or can be, separated from the photo side.
20. Electronic items (including batteries).
21. Glue, paperclips, clasps, staples, magnets, stickers, tape, plastic, wood, cloth, glass, ribbon, liquids, metal, or any like materials.
22. Negotiable instruments such as un-cancelled stamps, blank paper, envelopes, stickers/labels or other items that can be traded or sold.
23. Profanity on envelopes.
24. Lipstick on envelopes, packages or contents.
25. Mail that appears to be legal mail, but upon visual scanning for contraband is determined to be general correspondence.
26. Hardbound or paperback books of any kind.
27. Mail advocating that any group is inferior based on national origin, race, color, religion, age, gender, marital status, sexual orientation, status as a Vietnam Era Veteran, Wartime Veteran, or Disabled Veteran, or the presence of a physical, mental, or sensory impairment and makes such group the object of ridicule and scorn, and may reasonably be thought to precipitate a violent confrontation between the recipient and a member(s) of the target group.
28. Mail containing photocopies or carbon copies, except:
 - a. Photocopies/carbon copies that meet the definition of legal mail,
 - b. Photocopies/carbon copies between inmates verified as co-parties in a legal matter and the copy (ies) are Legal Pleadings or Discovery documents,
 - c. A single copy or carbon copy of an item that would otherwise be allowed. Multiple copies of the same document are not allowed.

- d. Photocopies of birth/death certificates, marriage licenses, or other legal documents affecting status from:
 - 1) A city, county, state, or federal court, or
 - 2) A person initiating visiting privileges and the copy(ies) pertains to the visitor approval process.
29. The outside of the envelope or package does not contain a return address as defined in policy.
30. The outer envelope contains envelopes of correspondence and/or loose letters addressed to a party other than the party whose address appears on the outer envelope, that are, or appear to be, intended to be mailed by a third party.
31. Mail that is obscene, violent, pornographic, sexually illicit, sexually erotic, sexually enticing, sexually prurient, or sexually explicit**.
 - a. **The term "sexually explicit" refers to any pictorial representation or written material that is intended for sexual gratification and shows male or female genitalia, partial or full frontal nudity, or depicts sexual acts or behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation, or depicts any of the following sexual behaviors:
 - 1) One or more of the participants appears to be:
 - a) Non-consenting,
 - b) Acting in a forceful, threatening, or violent manner,
 - c) Dominating one or more of the other participants,
 - d) In a submissive role,
 - e) Degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating, or
 - f) A minor or a minor alone is depicted in a sexually suggestive way,
 - 2) Bodily excretory behavior that appears to be sexual in nature, and
 - 3) Bestiality, sadomasochistic behavior, and/or bondage.
 - b. The term sexually explicit also refers to written materials that are intended for sexual gratification

and describe any of the following sexual behaviors as the predominant theme of the publication or letter:

- 1) Sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.
- 2) One or more of the participants appears to be:
 - a) Non-consenting,
 - b) Acting in a forceful, threatening, or violent manner.
 - c) Dominating one or more of the other participants,
 - d) In a submissive role,
 - e) Degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating, or
 - f) A minor, or a minor alone is depicted in a sexually suggestive way,
- 3) Bodily excretory behavior that appears to be sexual in nature, or
- 4) Bestiality, sadomasochistic behavior, and/or bondage.

CHELAN COUNTY REGIONAL JUSTICE CENTER

MAIL DENIAL NOTICE

Mail addressed to: _____, Name # _____, Housing Unit _____, is in violation of POL 111-INMATE MAIL SERVICES. The material has been rejected and returned or placed in your property for the following reason(s): (Circle the correct number)

- 1. Mail between inmates is prohibited, unless approved the Director or designee.
2. Mail shall not contain correspondence to anyone except the inmate whose name appears on the front of the envelope.
3. Inmates shall not request another inmate to forward correspondence beyond the immediate address.
4. Inmate's committed name must appear on the front of the envelope.
5. Sender's complete name and return address must appear on the front of the envelope.
6. Unauthorized attachments or enclosures in or on packages (no administrative review)
7. Other than the cancelled stamp, address, and return address attached to the front of an envelope or package, no item or other marking shall be glued, taped or affixed to the envelope or package or contents.
8. Other than written correspondence, newspaper or magazine clippings, small pamphlets, approved photo/carbon copies, hand-made drawings, and photographs, no unauthorized item shall be enclosed in the envelope.
9. Sexually explicit material, gang-related material, inflammatory material or correspondence that is in code is prohibited.
10. Material that is considered contraband, threatens or is detrimental to the security, good order, or discipline of the facility is prohibited.
11. Negotiable instruments, uncancelled stamps, and stamp collections are prohibited.
12. Items larger than 8 1/2" x 11" are prohibited.
13. Electronic items, including batteries are prohibited.
14. No foreign substance is allowed in or on any mail items.
15. Polaroid-type photographs with a chemical substance on the back of the photograph are prohibited.
16. Items available for purchase on commissary will not be accepted.
17. No other forms of currency other than money orders or cash are accepted.
18. Other as described in POL 111 Inmate Mail Services.

Items denied may be placed into the inmate's personal property box or returned to the sender. A sender who has received a mail violation notice may obtain an independent review of the rejection by writing to the Deputy Director at 401 Washington Street - 2nd Level Wenatchee, WA 98801, requesting an administrative review. Administrative review shall be available to the intended inmate recipient only for rejected correspondence based on its written or pictorial content. A request for an Administrative review must be in writing and received within 15 days of the date of notice, and should specify the reason(s) why the rejection should not be sustained. If the correspondence is returned with the mail violation notice, the rejected correspondence must be submitted with the review request. If no review is requested, the sender may correct or remove the portion of the document that violates jail policy; then re-send the non-violating mail back to the inmate.

Sender: _____ Deputy Signature & PIN _____

Address: _____

_____ Date _____

Green-Inmate

Yellow-Deputy Director

Pink-Records

Goldenrod-Property