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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

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

No. CV12-0071-SI

Plaintiffs,

v.

DECLARATION OF GREGORY R.
ROBERSON

COLUMBIA COUNTY; COLUMBIA
COUNTY SHERIFF'S OFFICE; JEFF
DICKERSON, individual and in his capacity
as Columbia County Sheriff,

In Support of Defendants' Response to
Plaintiff's Motion for a Preliminary Injunction

Defendants.

I, Gregory Roberson, declare as follows:

1. I am one of the attorneys representing defendants in this matter.
2. Attached as Exhibit A is a true and accurate copy of the Spokane County Sheriff's Office Inmate Policy 204, effective September 1, 2011.

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3. Attached as Exhibit B is a true and accurate copy of the signed consent decree between plaintiff and Spokane County in Eastern District of Washington U.S. District Court Case No. CV-11-00029-RHW, sent to defendants in this matter by plaintiff's counsel.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Respectfully submitted this 21st day of February, 2012.

By: /s/ Gregory R. Roberson
Gregory R. Roberson

SPOKANE COUNTY SHERIFF'S OFFICE DETENTION SERVICES

Policy 204

Inmate Mail

PURPOSE AND SCOPE

Spokane County Sheriff's Office, Detention Services will provide employees and inmates with guidelines and a process to send and receive mail in a timely manner while ensuring the safety, security, and orderly operation of the facilities.

Mail is an important means of assisting inmates in maintaining family and community ties while incarcerated. Mail must be regulated and handled in a manner that protects an inmate's constitutional right of expression while maintaining a safe, secure, efficient and effective custodial environment.

204.1 DEFINITIONS:

The following words/terms are defined as:

Contraband – Includes illegal items, hazardous materials, explosives, deadly weapons, alcoholic beverages, drugs, tobacco products, controlled substances, and any item that is controlled, limited, or prohibited on the grounds or within the secure perimeter of a correctional facility.

Contraband also includes lawful items that can secrete illegal items such as correction tape, fluids, crayon, metal clasps, staples, lipstick, glitter, stains, perfume, glue, adhesives, stickers, rubber inked stamps, stickers/labels.

Letters - Consist of handwritten/typed communications and/or written/pictorial enclosures to and from inmates. A standard first class, one ounce letter shall be consistent with the dimensions, weight, and thickness as prescribed by the U.S. Postal Service. A properly addressed and stamped post card or greeting card shall be processed with the same standards as described above for a first class one ounce letter. Nonstandard first class mail requires a surcharge as established by the U.S. Postal Service.

Mail - Consists of letters, publications, or packages delivered by the U.S. Postal Service or by other established and authorized carriers.

Packages - Wrapped or boxed objects; a parcel or bundle containing one or more objects; or a container in which something is packed for storage, transport, or mailing.

September 1st, 2011

Approved Sheriff Ozzie Knezovich

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Publications – Include books, periodicals, magazines, newspapers, circulars, pamphlets, catalogs, and newsletters.

204.2 GENERAL REQUIREMENTS

- A. Inmates will be responsible for informing their correspondents regarding the rules governing inmate mail, including legal mail.
- B. When the inmate bears the mailing cost, there is no limit on the volume of letters s/he can send or receive, or on the length, content, or source of mail or publication, except when there is reasonable belief such limitation is necessary to protect public safety or facility order and security. Inmates must comply with module policies in storing their mail and publications.
- C. An inmate's writing privileges to a particular person or group may be withdrawn for the following reasons:
 - 1. At the request of the recipient;
 - 2. If the recipient is a minor and his/her parent or guardian has requested, in writing, that the privilege be terminated;
 - 3. To comply with a court ordered restriction;
 - 4. For specific cause supported by criteria in this policy; or
 - 5. An inmate may grieve any withdrawal of writing privileges.
- D. Excluding weekends and holidays or emergency situations (i.e., incidents which create a significant disruption of normal jail operations) mail will be processed as follows:
 - 1. Incoming first class mail will be distributed to the inmate within 24 hours of receipt;
 - 2. Outgoing first class mail will not be held for more than 24 hours; and
 - 3. All other mail will be delivered to the inmate within 3 to 5 days.
- E. No "over the counter" mail will be accepted for inmates, except for that mail from those within the criminal justice system. (E.g. prosecutor, public defender)
- F. Incoming mail that contains contraband will be returned to sender.
- G. Incoming mail that contains illegal contraband may be seized as evidence, and handled accordingly.

September 1st, 2011
Approved Sheriff Ozzie Knezovich

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SPOKANE COUNTY SHERIFF'S OFFICE DETENTION SERVICES

204. 3 INCOMING MAIL

- A. Designated Detention Services personnel are authorized to open and inspect incoming mail to prevent:
1. Receiving contraband or any materials that could secrete contraband and other materials that could threaten the security and order of the facility through the mail, and
 2. Criminal activity.

204. 4 CONTENT AND STRUCTURE OF INMATE MAIL

A. INCOMING INMATE MAIL

1. United States Postal Service (USPS) Mail

- a. Mail sent to inmates via the USPS will be addressed with the inmate's name written as it appears on the Inmate Roster. See Sheriff's Office Web Site:
<http://www.spokanecounty.org/Sheriff/inmateroster/default.aspx>

Sample:

Inmate First, MI, Last Name
C/o Spokane County Detention Services
1100 W. Mallon
Spokane, WA 99260

- b. Staff will make reasonable efforts to identify the inmate for whom the mail is intended. Mail not adequately addressed and for whom the intended recipient cannot be identified will be returned to the sender with the reason for return noted on the outside of the envelope.

2. Money Orders/Checks

Detention Services will accept US postal money orders, Western Union Money Orders, Cashiers Checks, US Treasury checks, checks from Tribal institutions and other correctional facilities through the mail for posting on an inmate's account.

Social Security, SSI, and unemployment checks will be placed in the inmate's property. These checks will not be posted to the inmate's account.

SPOKANE COUNTY SHERIFF'S OFFICE DETENTION SERVICES

Any other checks or cash will be returned to sender.

3. Incoming mail must contain only correspondence for the addressed inmate. Correspondence for a third party is not permitted.
4. Incoming mail for inmates must have a return address as defined by the USPS, including an identifiable first and last name. Mail without a return address will be rejected.
5. Mail in a foreign language will be handled per Attachment A of this policy.
6. **Certified or Registered Mail**
 - a. Certified and registered mail for inmates will be accepted by the mail room.
 - b. Registered mail with restricted delivery may be signed by a designee of Detention Services, as outlined in the USPS Domestic Mail Manual.
 - c. Any Detention Services employee may sign for certified or registered mail.
 - d. If not authorized, the certified/registered mail will be returned to sender.
 - e. A receipt of this mail will be completed by the mail clerk, and sent to the inmate for signature.

B. OUTGOING INMATE MAIL

1. Letters sent by inmates must have a complete return address, to include cell number/housing location, facility address, and the inmate's name as it appears on the roster.

Sample:

Inmate First, MI, Last Name
Spokane County Detention Services, Cell Number/Housing Location
1100 W. Mallon
Spokane, WA 99260

The inmate is responsible for instructing his/her correspondents to use the correct address as posted on the return address of the inmate.

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2. Outgoing mail, including legal mail, may be opened and inspected when there are reasonable grounds to believe that such mail: (1) poses a threat to public safety or the order and security of the jail, or (2) contains contraband. Provided that, outgoing legal mail will be opened and inspected only in the inmate's presence.
3. Outgoing mail from an inmate must contain only his/her correspondence. Correspondence from a third party is not permitted.

204. 5 LEGAL MAIL

A. Legal mail must meet all of the following requirements:

1. Legal mail must be:
 - a. Correspondence to or from courts and court staff, attorneys, public defender, prosecuting attorney, the Indeterminate Sentence Review Board (ISRB), established groups involved in the representation of inmates in judicial proceedings (e.g., American Civil Liberties Union, Disability Rights Washington, legal services groups, etc.), the President or Vice President of the United States, members of the United States Congress, embassies and consulates, the United States Department of Justice, state attorneys general, governors, members of the state legislature, law enforcement officers in their official capacities, and the Prison Rape Elimination Act Unit at Headquarters, or Mail between inmates verified to be co-parties to the same legal proceeding which contains personal legal documents/papers and/or a legal pleading.
2. Incoming legal mail must have the return address on the front of the envelope clearly indicating that it is from one of the above listed sources.
3. The front of the envelope must be clearly marked "Legal Mail", "Attorney/Client", or similar designation of the item as legal mail.
 - a. Mail readily identifiable as being from a court will be handled as legal mail regardless of whether it has been marked legal mail.

B. Incoming legal mail will be opened in the presence of the inmate by designated Detention Services personnel. Staff will be authorized to inspect the contents of the legal mail to ensure it:

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Approved Sheriff Ozzie Knezovich

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1. Does not contain contraband or any other material that would threaten the security and order of the facility, and
2. Meets the policy requirements for legal mail. If there is a question whether the mail qualifies as legal mail, it may be retained for not more than 24 hours, excluding weekends and holidays, to resolve the question.

204. 6 UNAUTHORIZED MAIL

- A. Mail to or from inmates will be rejected based on specific and articulated legitimate facility interests of order and security and/or for any reason identified in Unauthorized Mail (See: Attachment "A").

204. 7 REJECTION OF MAIL

A. Incoming Mail (Content Based)

1. A rejection is for content if it is based on the written or pictorial content of the mail.
2. If an inmate's incoming mail restriction is content based, written notification will be provided to the inmate and sender.
3. The notification shall specify the publication, letter, package or other mail which has been restricted and specify the reason for the restriction as outlined in this policy.
4. The notice shall notify the inmate that the Detention Services grievance procedures will apply to his/her request for review.
5. The sender will be notified that the restriction will become final 15 days after the postmark date of the notice unless the sender seeks review by the Detention Services Commander/designee.
6. The sender's request for review must be postmarked within 15 days of the postmark date of the notice of rejection and sent to the Detention Services Commander/designee.
7. The request for review shall include the sender's reasons for disagreeing with the restriction and any other information the sender wants the Detention Services Commander/designee to consider.

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8. Within 10 days after receiving the sender's request for review, the Detention Services Commander/designee will issue a written decision and send it to the party seeking review.

B. Incoming Mail (Non-Content Based)

1. A rejection is non-content based when the restriction is based on the presence of contraband, improper address, lack of postage or other reason not relating to written or pictorial content of the mail.
2. The sender will be notified of the rejection but have no right to administrative review. The inmate will be notified of the rejection and may grieve the same.

C. Outgoing Mail (Content Based)

1. A rejection is for content if it is based on the written or pictorial content of the mail. A rejection on the grounds stated in Attachment "A" Paragraph II is not content based.
2. If an inmate's outgoing mail restriction is content based, written notification will be provided to the inmate and intended recipient.
3. The notification shall specify the publication, letter, package or other mail which has been restricted and specify the reason for the restriction as outlined in this policy.
4. The notice shall notify the inmate that the Detention Services grievance procedures will apply to his/her request for review.
5. The intended recipient will be notified that the restriction will become final 15 days after the postmark date of the notice unless such person seeks review by the Detention Services Commander/designee.
6. The intended recipient's request for review must be postmarked within 15 days of the postmark date of the notice of rejection and sent to the Detention Services Commander/designee.
7. The request for review shall include the intended recipient's reasons for disagreeing with the restriction and any other information such person wants the Detention Services Commander/designee to consider.

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8. Within 10 days after receiving the intended recipient's request for review, the Detention Services Commander/designee will issue a written decision and send it to the party seeking review.

D. Outgoing Mail (Non-Content)

1. A rejection is non-content based when the restriction is based on Attachment "A", Paragraph II, the presence of contraband, improper address, lack of postage or other reason not relating to written or pictorial content of the mail.
 2. If an inmate's outgoing mail restriction is non-content based the inmate will be notified in writing and may grieve the same.
- E. Detention Services staff shall keep a mail rejection log of incoming and outgoing mail.
- F. The Detention Services Commander/designee shall keep a record of all mail rejection reviews to include notice of rejection, request for review/grievance, decision and copy of the rejected mail.

204. 8 PACKAGES

- A. Packages are not allowed except for those that contain publications or legal mail.

204. 9 PUBLICATIONS RECEIVED BY INMATES

- A. Inmates may receive publications as follows, provided they meet the requirements of this policy and Attachment "A".
1. Inmates may receive new/used paperback books, newspapers, and other publications sent directly from the publisher or a bona fide bookstore/retailer.
- B. Publications not meeting the requirements of this Policy and Attachment "A" will initially be rejected by Detention Services personnel. The initial rejection shall be reviewed by the Detention Services Commander/designee prior to a notice of rejection being given pursuant to Section VI.
- C. No publications will be withheld solely on the basis of their appeal to a particular ethnic, racial, religious, or political group or sexual orientation.

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Approved Sheriff Ozzie Knezovich

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- D. Items such as product samples, CDs, DVDs, etc. will be removed from publications and placed in the inmate's property. Items such as perfume samples will be discarded.
- E. Any ribbon or bookmarks attached or included with any publication will be cut away and discarded.
- F. All publications shall be receipted by the Detention Services personnel, and signed for by the inmate.

204. 10 FORWARDING MAIL

- A. Inmates are responsible for informing their correspondents, including publishers, of any change of address.
- B. If the inmate is not in Detention Services custody, the mail will be returned to the sender.

204. 11 RETURNED MAIL

- A. All mail returned to the facility by the post office as undeliverable will be opened and inspected for contraband.
- B. Any re-mailing must be done at the inmate's expense.
- C. Any return mail qualifying as "Legal Mail" will be opened and inspected for contraband in the inmate's presence.

204. 12 MAIL RECORDS

- A. The Detention Services Commander/designee will be responsible for maintaining a continuous chronological written record of the following types of incoming and outgoing inmate mail:
 - 1. Legal mail, and
 - 2. Items of monetary value (e.g., money orders, cashier's checks, etc.).

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B. The continuous written record will show:

1. Source,
2. Destination,
3. Date received/sent,
4. Description,
5. Printed name and initials of staff person distributing, and
6. Signature and printed name of inmate receiving/sending legal mail, or items of monetary value.

C. The continuous written record books will be maintained in the mailroom, by the Detention Services personnel.

204. 13 MAIL COSTS

A. Inmates must pay for their own mail costs.

1. Inmates may purchase pre-franked envelopes at cost from the commissary store to mail first class, one ounce letters.

B. Inmates will be allowed to incur a postage debt for outgoing legal mail.

C. Specialized services (e.g., certified, return receipt requested, etc.) will not be authorized.

D. Legal mail arriving at the facility with postage due will be delivered to the inmate without undue delay.

E. Indigent inmates may order three (3) stamped envelopes per week from Commissary.

1. Request for additional legal envelopes shall be submitted with a jail request form to the law library. A Property Release form should accompany the additional envelopes for any correspondence postage.

**SPOKANE COUNTY SHERIFF'S OFFICE
DETENTION SERVICES**

ATTACHMENT "A"

UNAUTHORIZED MAIL

I. Mail to or from inmates, will not be allowed for any of the following reasons:

1. Mail unauthorized by this policy.
2. Mail to or from an individual with whom contact is restricted by a court.
3. Mail containing threats of physical harm against any persons or any other threats of criminal activity.
4. Mail containing blackmail or extortion threats.
5. Mail that is contraband or could secrete contraband, or relates to sending contraband in or out of the facility.
6. Mail depicting or describing the procedures for constructing or using weapons, ammunition, bombs, or incendiary devices.
7. Mail containing plans to escape, or mail depicting or describing blueprints or operational detail of an existing facility's security devices (e.g., locks, electronics, facility grounds/ buildings, etc.).
8. Mail containing plans for activities in violation of facility rules or for criminal activity, or mail that violates facility rules.
9. Mail that appears to be in code.
10. Maps, charts (e.g., topographical, nautical), or aerial photographs of any kind, with the exception of those received by the facility libraries.
11. Mail in a foreign language with contents not understood by the inspecting staff, when reasonable efforts to have the mail interpreted have been unsuccessful.
12. Mail containing information that, if communicated, could create a risk of violence and/or physical harm to any person.

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Approved Sheriff Ozzie Knezovich

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**SPOKANE COUNTY SHERIFF'S OFFICE
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13. Mail that is sexually explicit.
 - a. The term sexually explicit refers to any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts any of the following sexual behaviors:
 - 1) One or more of the participants appears to be:
 - a. Non-consenting,
 - b. A minor, or a minor alone is depicted in a sexually suggestive way,
 - c. Acting in a forceful, threatening, or violent manner,
 - d. Dominating one or more of the other participants,
 - e. In a submissive role, or
 - f. Degraded or humiliated, or appears to willingly engage in behavior that is degrading or humiliating.
 - 2) Bodily excretory behavior that appears to be sexual in nature;
 - 3) Bestiality, sadomasochistic behavior, and/or bondage; or
 - 4) Sexual acts including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.
14. Mail that is deemed a threat to specific and articulated legitimate penological objectives.
15. Publications that have been altered after publication (e.g., pages or portions of pages removed, extraneous markings, etc.).
16. Mail advocating that any group is inferior based on national origin, race, color, religion, age, gender, marital status or status as a state registered domestic partner, 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.

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17. Mail purported to be legal mail, but upon visual scanning for contraband is determined to be general correspondence.
18. Mail containing cash or personal check(s).
19. Mail containing markings of gang symbols or symbols of other groups that may reasonably be thought to precipitate violence.
20. Mail containing a photo wherein the non-photo side is, or can be, separated from the photo side of the picture, or mail containing multiple copies of the same photo.
21. Mail containing items such as hazardous materials, correction tape, fluids, crayon, metal clasps, staples, lipstick, glitter, stains, perfume, glue, adhesives, stickers, rubber inked stamps, stickers/labels, stamps, batteries, or other envelopes or containing another inmate's correspondence.
22. Mail containing cassette tape(s) or CD(s).
23. Publications (i.e., reproduced handwritten, typed/printed, or pictorial materials including books, periodicals, newspapers, magazines, and pamphlets) and catalogs (i.e., a publication predominantly or substantially focused on offering items for sale) not mailed directly from the publisher/retailer.
24. Mail without an identifiable author/sender.
25. The outside of the envelope or package does not contain a return address as defined in this policy.
26. Other items that threaten the security and order of the facility or the inmate's treatment as identified by the Detention Services Commander/designee.

II. Outgoing mail from inmates may also be denied for any of the following reasons:

1. The inmate's Judgment and Sentence prohibits contact with the individual or class of individuals during or upon release from incarceration.
2. The mail is addressed to a minor whose parent(s) or guardian(s) have objected, in writing, to such correspondence.

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3. There is an active no contact order with the individual.
4. The mail is addressed to an individual or his/her guardian who has previously received unwanted mail from the offender and has complained or asked that mail from the offender not be sent.
5. Mail that does not specify the intended recipient.
6. Mail that threatens facilitates criminal activity or constitutes evidence of a crime.

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Approved Sheriff Ozzie Knezovich

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Hon. Robert H. Whaley

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

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

Plaintiff,

v.

SPOKANE COUNTY; SPOKANE
COUNTY SHERIFF'S OFFICE; OZZIE
KNEZOVICH, individually and in his
capacity as Spokane County Sheriff;
JOANNE LAKE, in her official and
individual capacity; LYNETTE
BROWN, in her official and individual
capacity,

Defendants.

No. CV-11-029 RHW

CONSENT DECREE

COME NOW the parties and request entry of the following:

1. Plaintiff Prison Legal News publishes and distributes a monthly
journal of corrections news and analysis, and offers and sells books about the

CONSENT DECREE - 1

9870.02 eg206311

EXHIBIT

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MACDONALD HOAGUE & BAYLESS
705 Second Avenue, Suite 1500
Seattle, Washington 98104
Tel 206.622.1604 Fax 206.343.3961

1 criminal justice system and legal issues affecting prisoners, to prisoners, lawyers,
2 courts, libraries, and the public throughout the Country. PLN engages in protected
3 speech and expressive conduct on matters of public concern. *See Prison Legal*
4 *News v. Lehman*, 397 F.3d 692 (9th Cir. 2005).

5 2. Defendant Spokane County is a municipal corporation formed under
6 the laws of the State of Washington.

7 3. Defendant Spokane County Sheriff's Office operates the Spokane
8 County Jail and the Geiger Corrections Center, located in Spokane, Washington,
9 which house convicted prisoners and pretrial detainees charged with federal, state
10 or local crimes.

11 4. On September 1, 2010, Defendants enacted new policies that
12 restricted incoming and outgoing mail at Spokane County Jail to 5.5" x 8.5"
13 postcards. The postcards-only policy prohibited mail other than "non-glossy" and
14 "pre-franked" postcards, apart from "legal and official mail." The mail policy also
15 restricted the types of "Publications" allowed in prison to: "newspapers, paperback
16 books, and approved magazines," prohibiting all other types of publications,
17 including catalogs. The policy restricted delivery of magazines to only the fifteen
18 magazines named in the policy, which does not include Prison Legal News.
19 Defendants refer to this mail policy as "Inmate Mail Policy No. 204."

20 5. The September 1, 2010 mail policies did not require the Defendants to
21 notify the non-inmate sender or addressee of rejected mail that Defendants had
22 censored it or of the reasons for their censorship.
23

1 6. In August, September, 2010 and afterwards, Prison Legal News
2 mailed its monthly journal, a soft-cover book entitled *Protecting Your Health and*
3 *Safety*, informational brochures about subscribing to PLN and book offers, and a
4 catalog of books that PLN offers, in envelopes addressed personally to prisoners at
5 the Spokane County Jail.

6 7. The Jail censored 24 issues of the journal Prison Legal News mailed
7 to prisoners. Defendants stamped them with the phrase "unauthorized content" as
8 the sole justification for rejecting 23 journals, and added the phrase "not a
9 postcard" on the 24th journal, and returned the journals to PLN.

10 8. The Jail censored the one-page informational brochures, book
11 catalogs, and book offers that PLN mailed to 27 prisoners in envelopes. The Jail
12 stamped "unauthorized content" on thirteen of the envelopes and returned them to
13 PLN, without further explanation. The Jail stamped and returned eleven envelopes
14 with the phrase "unauthorized content" adding the notation "postcard policy" on
15 three envelopes and the phrase "not a post card" on eight envelopes, without
16 further explanation. The Jail returned three envelopes stamped "Exceeds 1/4"
17 thickness/size limit" that did not exceed 1/4" thickness.

18 9. The Jail censored four copies of the *Protecting Your Health and*
19 *Safety* book that PLN had mailed to prisoners, stamped "unauthorized content" on
20 the mailings as the justification for rejection, and returned the books to PLN.

21 10. Consistent with their policy, Defendants did not notify PLN of any
22 opportunity to appeal the censorship decisions.
23

1 11. The Jail's censorship of PLN's mail occurred between September 1,
2 2010 and September 17, 2010 but the Jail continued to censor other incoming and
3 outgoing correspondents' non-legal mail.

4 12. On January 21, 2011, PLN filed a lawsuit in this matter. On February
5 3, 2011, PLN filed a motion for preliminary injunction.

6 13. On February 14, 2011, Defendants amended Inmate Mail Policy No.
7 204 to eliminate the postcards-only restriction on outgoing prisoner mail. On
8 February 17, 2011, Defendants amended Inmate Mail Policy 204 to eliminate: (a)
9 the postcards-only restriction on incoming legal, official, and business mail—
10 including letters, publications, and catalogs; and (b) the restrictions limiting
11 magazines to those listed by name in the policy. In addition, Defendants
12 established due process notice and appeal procedures for prisoners and for non-
13 prisoners who send rejected mail. Defendants retained the policy restricting
14 incoming non-business mail to postcards only.

15 14. The First Amendment of the United States Constitution protects a
16 publisher's right to correspond with prisoners through the mail. *Thornburgh v.*
17 *Abbott*, 490 U.S. 401, 408 (1989); *Prison Legal News v. Cook*, 238 F.3d 1145,
18 1149 (9th Cir. 2001); *Prison Legal News v. Lehman*, 397 F.3d 692, 699 (9th Cir.
19 2005). "[W]hen a prison regulation impinges on inmates' constitutional rights, the
20 regulation is valid if it is reasonably related to legitimate penological interests."
21 *Turner v. Safley*, 482 U.S. 78, 89 (1987). To withstand First Amendment scrutiny,
22 "prison authorities . . . must first identify the specific penological interests involved
23 and then demonstrate both that those specific interests are the actual bases for their

1 policies and that the policies are reasonably related to the furtherance of the
2 identified interests. An evidentiary showing is required as to each point." *Walker v.*
3 *Sumner*, 917 F.2d 382, 386 (9th Cir. 1990).

4 15. Defendants have not articulated a legitimate penological interest for
5 their September 1, 2010, mail policies: (1) restricting incoming business mail to
6 postcard form, (2) restricting outgoing prisoner mail to postcard form, and (3)
7 restricting delivery of publications to "newspapers, paperback books, and approved
8 magazines" and prohibiting all other types of publications including catalogs and
9 brochures. These policies are not reasonably related to legitimate penological
10 interests. Defendants' restriction of incoming business mail to postcards only,
11 restriction of outgoing prisoner mail to postcards only, and ban on catalogs and
12 brochures was unconstitutional under the First Amendment.

13 16. Defendants' September 1, 2010 mail policy prohibiting delivery of
14 magazines that are not listed by name in the policy (and which did not list Prison
15 Legal News by name), violated the First Amendment.

16 17. By enforcing the September 1, 2010 mail policies to censor PLN's
17 monthly journal, PLN's informational subscription and book brochures, PLN's
18 book catalog, and the *Protecting Your Health and Safety* book, addressed
19 personally to prisoners at the Spokane County Jail, and the incoming business mail
20 and outgoing mail of prisoners, Defendants violated the First Amendment.

21 18. Defendants failed to afford due process protections to PLN when
22 censoring its mail to prisoners. Defendants' notice when censoring Prison Legal
23

1 News's publications, catalogs, books, and correspondence was inadequate and
2 failed to provide an opportunity to appeal.

3 19. Defendants failed to provide minimum procedural safeguards to PLN,
4 in violation of the Due Process Clause of the Fourteenth Amendment.

5 20. Defendants have denied that their remaining postcard-only policy
6 restricting incoming non-business mail to postcard form ("Remaining Postcard-
7 Only Policy") is unconstitutional. There is no decision of a United States Court of
8 Appeals upholding or overturning a Remaining Postcard-Only Policy under facts
9 comparable to those facts presented here. Defendants believe there is a substantial
10 risk that a court may find that Defendants' postcard policy violates inmates' or
11 others' First Amendment rights. For that reason, Defendants agree at the present
12 time that an injunction is appropriate in that it lessens risk and clearly protects such
13 rights.

14 21. While Defendants dispute that their Remaining Postcard-Only Policy
15 is unconstitutional, they agree for the Court to enjoin such policy under the *Turner*
16 test. However, the parties agree that Defendants may seek relief from the terms of
17 this paragraph in the event that the United States Supreme Court or the United
18 States Court of Appeals for the Ninth Circuit, or three (3) other circuits of the
19 United States Court of Appeals, decide in a published opinion that such a policy is
20 constitutionally permissible. In seeking such relief, Defendants must present facts
21 specific to the Spokane County Jail and show that a new policy of their own would
22 be constitutionally permissible. Defendants must provide sixty (60) days advance
23 notice to Plaintiff before seeking modification of this Order.

1 22. The Ninth Circuit held in *Keith v. Volpe*, 833 F.2d 850 (9th Cir. 1987)
2 that a party which prevails by obtaining a consent decree may recover attorneys'
3 fees under § 1988 for monitoring compliance with the decree, even when such
4 monitoring does not result in judicially sanctioned relief.

5 23. The Parties agree that PLN shall seek neither attorneys' fees nor costs
6 for monitoring compliance with this Order. This does not limit PLN's right to seek
7 fees and costs for any other action or enforcement effort (other than the cost of
8 monitoring compliance with this Order).

9 ACCORDINGLY, the COURT HEREBY ORDERS, ADJUGES AND
10 DECREES as follows:

11 (1) Defendants' September 1, 2010 mail policy violates the First and
12 Fourteenth Amendments to the United States Constitution in the following ways:

13 a. The mail policy did not require that Defendants provide due process
14 notice and an opportunity to be heard to non-inmate senders when mail is rejected;

15 b. The mail policy allowed Defendants to reject incoming business mail
16 and outgoing prisoner mail because the mail was not in postcard form; and

17 c. The mail policy restricted delivery of publications to newspapers,
18 paperback books and approved magazines and prohibited all other types of
19 publications including catalogs and brochures.

20 (2) Defendants believe there is a substantial risk that a court may find that
21 Defendants' Remaining Postcard-Only Policy violates inmates' or others' First
22 Amendment rights and the Defendants have agreed to be enjoined as follows:
23 Defendants are enjoined from rejecting non-business mail on the ground that it is

1 contained in an envelope rather than in postcard form. The Court further orders
2 that Defendants may seek relief from the terms of this paragraph in the event that
3 the United States Supreme Court or the United States Court of Appeals for the
4 Ninth Circuit, or three (3) other circuits of the United States Court of Appeals,
5 decide in a published opinion that such a policy is constitutionally permissible; in
6 doing so, Defendants must present facts specific to the Spokane County Jail and
7 show that a new policy of their own would be constitutionally permissible.

8 (3) Defendants are further enjoined as follows:

9 a. Defendants are enjoined from rejecting mail without giving
10 constitutionally adequate due process.

11 b. Defendants are enjoined from rejecting incoming business mail and
12 outgoing prisoner mail on the ground that it is contained in an envelope rather than
13 in postcard form.

14 c. Defendants are enjoined from rejecting delivery of publications on a
15 categorical basis. Defendants may reject incoming business mail on a case by case
16 basis where they can satisfy the *Turner* test as to that particular publication.

17 (4) Defendants are ordered to modify their mail policy to be consistent
18 with this Order within thirty (30) days. Defendants shall post the amendments in
19 the inmates' living areas for a period of 90 days and post the mail policy on their
20 website, update their automated telephone message and update applicable written
21 material that are accessible to inmates.

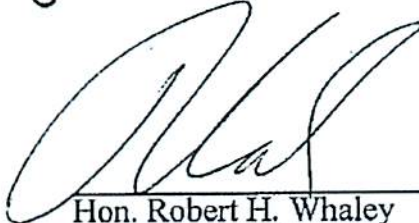
22 (5) Plaintiff is a prevailing party entitled to payment by Defendants of
23 \$230,000 which includes all claims for damages (\$55,000), fees (\$172,867.40) and

1 costs (\$2,132.60) pursuant to 42 U.S.C. § 1983 and § 1988. Defendants will pay
2 this sum within ten (10) calendar days of the entry of this Order. By agreement by
3 the Parties, PLN shall not seek and shall not recover attorneys' fees or other relief
4 for the costs for monitoring compliance with this Order. This does not limit PLN's
5 right to seek fees and costs for any other action or enforcement effort (other than
6 the cost of monitoring compliance with this Order).

7 (6) The public interest is served by the entry of this Order, which protects
8 the constitutional rights of publishers and other persons who correspond with
9 prisoners by mail, and the right of prisoners to send and receive mail.

10 (7) The Court retains jurisdiction of this matter for the purpose of
11 enforcement of its Order.

12 DATED this 3rd of August, 2011.

13
14
15 

16 Hon. Robert H. Whaley
United States District Court Judge

17 PRESENTED BY:

18 MacDONALD HOAGUE & BAYLESS

19
20 By:

21 Jesse Wing, WSBA # 27751
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22 Katherine C. Chamberlain, WSBA #40014
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23 Attorneys for Plaintiff

CONSENT DECREE - 9

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EXHIBIT B
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