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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

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

v.

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

No. 3:12-CV-71-SI

DECLARATION OF JESSE WING IN
SUPPORT OF REPLY MEMORANDUM
RE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON CLAIMS
FOR DECLARATORY AND
INJUNCTIVE RELIEF

DECLARATION OF JESSE WING IN SUPPORT OF REPLY
MEMORANDUM RE PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT ON CLAIMS FOR DECLARATORY AND INJUNCTIVE
RELIEF (CV 12-71-SI) - 1

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

I, Jesse Wing, declare as follows:

I am one of the attorneys for Plaintiff Prison Legal News. I am over the age of 18, and am competent to testify.

1. Exhibit A is a true copy of a page from the Columbia County, Oregon Payroll Register for the period 1/1/2012 – 1/31/2012 showing that Columbia County paid wages to Sheriff Jeffrey M. Dickerson.

2. Prior to filing this motion for summary judgment, Plaintiff communicated and conferred with Defendants for months seeking clarity on which facts and issues the parties could stipulate to and which were in dispute and needed to be resolved by the Court. Plaintiff asked Defendants to stipulate to the undisputed facts and to admit that their Postcard-Only, No-Magazines, and Due Process policies violated the Constitution. Plaintiff also provided a draft stipulation and asked Defendants to sign it, suggest changes, or to propose their own stipulation. But Defendants declined to do so forcing Plaintiff to file this motion addressing all facts and legal issues.

3. Exhibit B is a true copy of a letter dated June 4, 2012 from Plaintiff's counsel Katherine C. Chamberlain to Defense counsel Steven A. Kraemer and Greg R. Roberson.

4. Exhibit C is a true copy of an e-mail dated June 20, 2012 from Plaintiff's counsel Jesse Wing to Gregory Roberson.

5. Exhibit D is a true copy of an e-mail and letter dated July 11, 2012 from Jesse Wing to Gregory Roberson.

6. At no time prior to filing their opposition to summary judgment did Defendants identify or disclose as witnesses or persons with knowledge to the Plaintiff the persons who signed declarations submitted as Dkt. 115-12. Defendants did not disclose these individuals or their declarations, in any Initial or Supplemental Initial Disclosures, any interrogatory answers, in any documents produced, or in depositions.

7. At no time prior to filing their opposition to summary judgment did Defendants identify or disclose the *Oregon Live* online news article, Dkt. 115-11, submitted with their opposition brief.

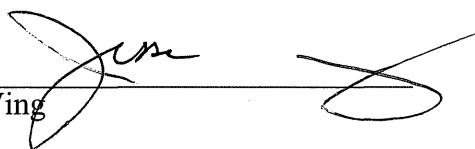
8. Defendants did not produce the Washington County documents it submitted with its opposition brief, Dkt. 115-6, until October 4, 2012, after discovery had closed in August, and after PLN filed its motion for summary judgment. The Defense stated that the documents were found in the office of Captain Carpenter.

9. Prior to filing the motion to strike contained in Plaintiff's Reply in support of summary judgment, Plaintiff's counsel sought to confer with Defense counsel Gregory Roberson to resolve this dispute, but Mr. Roberson stated that he did not have time to discuss the issues raised by Plaintiff's counsel.

I declare under penalty of perjury of the laws of the United States of America and the State of Washington that the foregoing is true and correct.

DATED this 2nd day of November, 2012, at Seattle, Washington.

Jesse Wing



CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, I electronically filed the foregoing to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Marc D. Blackman**
marc@ransomblackman.com, pat@ransomblackman.com
- **Steven A. Kraemer**
sak@hartwagner.com, rcd@hartwagner.com
- **Gregory R. Roberson**
grr@hartwagner.com, cej@hartwagner.com
- **Lynn S. Walsh**
walsh@europa.com
- **Lance Weber**
lweber@humanrightsdefensecenter.org, ahull@humanrightsdefensecenter.org

MACDONALD HOAGUE & BAYLESS

/s/ Jesse Wing

KATHERINE C. CHAMBERLAIN

OSB #042580

JESSE WING

Pro Hac Vice Admission

(206) 622-1604

Of Attorneys for Plaintiff Prison Legal News

EXHIBIT A

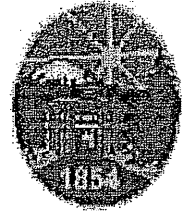
TO

DECLARATION OF JESSE WING
IN SUPPORT OF REPLY MEMORANDUM
RE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON CLAIMS FOR
DECLARATORY AND INJUNCTIVE RELIEF

Payroll
Payroll Register

User: ripaj
Printed: 03/15/2012 - 2:38 PM

Columbia County
230 Strand Street
St. Helens, OR 97051



Department: 100-06

Employee No: Redacted Name: JEFFREY M DICKERSON Department: 100-06

Check Number: 0 Period: 12/1/2011 - 12/31/2011

Pay/Ded/Ben	Rate Code	Shift Code	Hours	Hourly Rate	Gross Wages	Ded Amount	Ben Amount	Task	W/C	G/L Account
1002 1002-Exempt-Unemployment			173.33	40.71000	7,057.00				7720	
6000 6000-Cell Phone Allowance			0.00		50.00	Redacted			99999	
FED Federal Income Tax										
FICA FICA Employee Portion										
MEDI Medicare Employee Portion										
Redacted										
Redact:										
STATE State Income Tax										
WBF WBF Oregon OQ- Employee										
ZSHFCU % St. Helens FCU										
Redacted								Redacted		
FICAR FICA Employer Portion										
Redacted										

CC 000389

UNEMPR Unemployment - Employer
W/C-R Worker's Comp - Employer
WBF-R WBF Oregon OQ - employer

Totals: 173.33 7,107.00 7,107.00

Federal Gross: 7,107.00 State Gross: 7,107.00 FICA Gross: 7,107.00 Medicare Gross: 7,107.00 Other Gross: 0.00
Retirement Gross: 7,107.00 FLSA Gross: 7,057.00 Gross Wages: 7,107.00 Net Amount: 0.00 Retirement 2 Gross: Red

Check Number: 0 Period: 1/1/2012 - 1/31/2012

Pay/Ded/Ben	Rate Code	Shift Code	Hours	Hourly Rate	Gross Wages	Ded Amount	Ben Amount	Task	W/C	G/L Account
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EXHIBIT B
TO
DECLARATION OF JESSE WING
IN SUPPORT OF REPLY MEMORANDUM
RE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON CLAIMS FOR
DECLARATORY AND INJUNCTIVE RELIEF



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Katrin E. Frank
Felicia L. Gittleman
Ester Greenfield
Elizabeth Poh
Amy M. Royalty
Joseph R. Shaeffer
Kirsten Taniguchi
David J. Whedbee
Jesse Wing

June 4, 2012

VIA EMAIL & U.S. MAIL

Steven A Kraemer
Greg R. Roberson
Hart Wagner LLP
1000 SW Broadway Ste 2000
Portland OR 97205

Re: *PLN v. Columbia County, et al.*
USDC District of OR Cause No. CV-12-71-SI

Dear Steve and Greg:

We would like to schedule a telephone conference with you to confer about the following motions:

Motion to Amend Order

We intend to file a FRCP 59(e) Motion to Amend the Court's Order on Plaintiff's Motion for Preliminary Injunction, Dkt. 64. It is clear that *Martinez*, not *Turner*, applies to restrictions on outgoing mail. *See, Barrett v. Belleque*, 544 F.3d 1060, 1062 (9th Cir. 2008) (reversing dismissal of First Amendment claim where district court failed to apply *Martinez* standard for censorship of outgoing mail). Therefore, we intend to ask the Court to amend the Order Granting Plaintiff's Motion for Preliminary Injunction, to include a short summary of the *Martinez* standard and statement that since the Jail's policy did not meet the lower *Turner* standard, it failed to meet the higher *Martinez* standard as well. This issue was previously briefed by the parties.

Motion for Summary Judgment

We also plan to file a Motion for Summary Judgment seeking judgment on all claims, declaratory relief, and injunctive relief. At our conference, we would like to discuss the following:

Steven A Kraemer
Greg R. Roberson
Hart Wagner LLP
June 4, 2012
Page 2

1. Will Defendants stipulate to liability on all claims, a declaratory judgment and permanent injunction?
2. If Defendants will not so stipulate:
 - a. Will Defendants clarify the statement in their answer that "Defendants admit that *some* of its past mail policies violated *some* of Plaintiff's constitutional rights" (Dkt. 25 at ¶¶1.1, 4.74.3-4.74.4, 5.2 5.6) (emphasis added), to make clear which alleged constitutional violations are in dispute and which are undisputed?
 - b. Will Defendants admit that the facts alleged by Plaintiff and admitted by Defendants (Dkt. 26 at ¶¶ 4.5-4.27, 4.36-4.41, 4.45-4.51, 4.55-4.61, 4.65-4.71) constitute violations of the 1st and 14th Amendments to the United States Constitution?
 - c. Will Defendants admit all facts set forth in Plaintiff's Memorandum in Support of Motion for Preliminary Injunction, Dkt. 15 at pgs. 2-13, and if not, will Defendants identify which facts they contend are in dispute?
 - d. Will Defendants admit all facts set forth in Plaintiff's Reply Brief, Dkt. 46 at pgs. 1-19, and if not, will Defendants identify which facts they contend are in dispute?

Please let us know when you are available on Wednesday, June 6, 2012 to confer about these motions. If you are not available on Wednesday, please let us know what dates and times you are available to confer this week. Thank you.

Sincerely,

MACDONALD HOAGUE & BAYLESS



Katherine C. Chamberlain

KCC/idm

cc: Client
Marc D. Blackman

EXHIBIT C
TO
DECLARATION OF JESSE WING
IN SUPPORT OF REPLY MEMORANDUM
RE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON CLAIMS FOR
DECLARATORY AND INJUNCTIVE RELIEF

Jesse Wing

From: Jesse Wing
Sent: Wednesday, June 20, 2012 1:36 PM
To: Gregory Roberson
Cc: Katherine C. Chamberlain; Brina M. Carranza
Subject: PLN v. Columbia - MSJ Issues

Dear Greg:

To help facilitate our call this afternoon I am sending you the list of issues for Plaintiff's summary judgment motion, asking whether Defendants will stipulate to the following:

i) Postcard-Only Policy:

- (1) that their censorship of the PLN mail that is specifically identified in the Complaint and attached to Mr. Wright's declaration violated the First Amendment?
- (2) that their censorship of Lucy Lennox's mail that is specifically identified in the Complaint and her declarations violated the First Amendment?
- (3) that their Postcard-Only Policy violated the First Amendment?
- (4) to be permanently enjoined from censoring mail on the ground that it is not in the form of a postcard?

ii) No Magazines Policy:

- (1) that their censorship of the PLN journals that is specifically identified in the Complaint and attached to Mr. Wright's declaration violated the First Amendment?
- (2) that their *practice* of censoring magazines and periodicals violated the First Amendment?
- (3) that their Mail Policy that was posted on the Sheriff's website at the time this lawsuit was filed (1/13/12) and contain in the Inmate Manual ("We do not accept magazines" and "We do not accept any periodicals") violated the First Amendment?
- (4) to be permanently enjoined from censoring mail on the ground that it is a magazine or periodical?

iii) Due Process

- (1) that their censorship of PLN mail that is specifically identified in the Complaint and attached to Mr. Wright's declaration did not afford due process notice and an opportunity to be heard to PLN in violation of the Fourteenth Amendment?
- (2) that their censorship of mail that is specifically identified in the Complaint and attached to Ms. Lennox's declaration did not afford due process and an opportunity to be heard to Ms. Lennox in violation of the 14th Amendment?

- (3) that the Mail Policy that was posted on the Sheriff's website at the time this lawsuit was filed (1/13/12), which contained no provisions for due process, violated the 14th Amendment?
- (4) that the Mail Policy dated October 21, 2011, which failed to require notice to the publisher or other sender of incoming mail, or to the prisoner or intended recipient of rejected outgoing mail, violated the 14th Amendment?
- (5) that the Mail Policy dated January 26, 2012, which was deficient in its due process notice and opportunity to appeal provisions, violated the 14th Amendment?
- (6) to be permanently enjoined from denying due process to prisoners and their non-prisoner correspondents when censoring mail, and to be enjoined to require notice to the sender and addressee of: the identity of the mail, the specific reason for rejection, the identity of the mail policy, and the rights to appeal and appeal procedures?

iv) Internet-Generated Mail

- (1) that censoring mail on the basis that it was generated from the internet, such as the censorship of Lucy Lennox's mail of PLN news articles that was specifically identified in the Complaint and her declarations, violated the First Amendment?
- (2) to be permanently enjoined from censoring mail on the ground that it was generated from the internet?

v) Catalogs, Bulk Mail, Unsolicited Mail

- (1) that censoring mail on the basis that it is a catalog, was sent via bulk mail rate, or was unsolicited by a prisoner-addressee violate the First Amendment?
- (1) to be permanently enjoined from censoring mail on the ground that it is a catalog, was sent via bulk mail rate, or was unsolicited by a prisoner-addressee ?

Jesse Wing
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, WA 98104
☎ **206.622.1604 | Fax 206.343.3961**
✉ **jessew@mhb.com www.mhb.com**

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EXHIBIT D

TO

DECLARATION OF JESSE WING
IN SUPPORT OF REPLY MEMORANDUM
RE PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON CLAIMS FOR
DECLARATORY AND INJUNCTIVE RELIEF

Jesse Wing

From: Jesse Wing
Sent: Wednesday, July 11, 2012 4:38 PM
To: 'Gregory Roberson'
Cc: Katherine C. Chamberlain; Brina M. Carranza
Subject: PLN v. Columbia County -- Stipulation re Liability
Attachments: 2012-07-11 LTR to OC re stip re liability.pdf; Stip re Liability.pdf

Hi Greg,

Attached is a letter from me and our proposed stipulation to Defendants' liability on certain claims for your review.

We look forward to hearing back from you this week to move this forward.

Thank you,

Jesse

Jesse Wing
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, WA 98104
☎ **206.622.1604 | Fax 206.343.3961**
✉ **jessew@mhb.com www.mhb.com**

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ATTORNEYS AND COUNSELORS AT LAW

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Amy M. Royalty
Joseph R. Shaeffer
Kirsten Taniguchi
David J. Whedbee
Jesse Wing

July 11, 2012

VIA E-MAIL

Greg R. Roberson
Hart Wagner LLP
1000 SW Broadway Ste 2000
Portland OR 97205

Re: *PLN v. Columbia County, et al.*
USDC District of OR Cause No. CV-12-71-SI

Dear Greg:

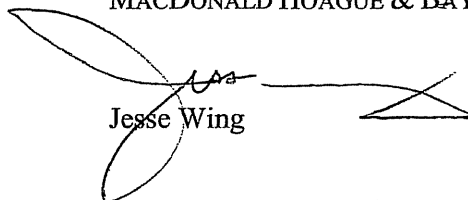
I'm writing as part of our continuing efforts to confer about plaintiff's intention to file a summary judgment motion. In our discussions, you stated that the defendants are willing to stipulate to liability on certain claims that plaintiff has filed and we agreed to send you a proposed stipulation based on our discussions and the e-mail that Katie sent to you summarizing what stipulation the defense would agree to. Please find attached that proposed stipulation for your review.

The vast majority of the stipulation is drawn from plaintiff's Complaint, setting forth the facts and admissions using the same paragraphs set forth in the Complaint. I changed the wording to put it in stipulation form, added a couple of paragraphs of basic law near the beginning—some of it drawn from your opposition to our preliminary injunction motion—and I removed the allegation about prisoner Lloyd Meyers who the jail's records show was not in the jail when PLN sent its mailing to him.

Since the stipulation comes mostly from the Complaint, you should be able to focus on the additions and changes. Please let me know by the end of the week whether this stipulation is acceptable or if you have changes to suggest. I'm available to discuss them at any time, before noon on Friday.

Very truly yours,

MACDONALD HOAGUE & BAYLESS


Jesse Wing