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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

PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS (CV 12-71-SI)

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Plaintiff Prison Legal News respectfully submits the following proposed jury instructions:

INSTRUCTION NO. 1
(To Be Given Before Trial)

Duty of Jury

Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

Ninth Circuit Model Civil Jury Instruction 1.1B (2007).

INSTRUCTION NO. 2
(To Be Given Before Trial)

Claims and Defenses

To help you follow the evidence, I will give you a brief summary of the positions of the parties.

Plaintiff Prison Legal News (“PLN”) is a project of the Human Rights Defense Center, a non-profit corporation. PLN publishes a monthly journal of corrections, news, and analysis by the same name: *Prison Legal News: Dedicated to Protecting Human Rights*. PLN has about 7,000 subscribers, including attorneys, journalists, public libraries, judges, and prisoners at about 2,200 correctional facilities nationwide. In addition to publishing its monthly journal, PLN is maintains a website of articles and legal documents, distributes books of interest to prisoners and publishes self-help, non-fiction reference books. Its mission is public education, prisoner education, advocacy, and outreach in support of the rights of prisoners and basic human rights.

Defendant Sheriff Jeff Dickerson is the Columbia County Sheriff. He operates Defendant Columbia County Sheriff’s Department and the Jail for Defendant Columbia County. The Sheriff adopted a Jail policy that prohibited all mail in envelopes, restricting all incoming and outgoing mail to postcards only. The Jail also prohibited delivery of magazines to prisoners. And, the Jail did not provide due process notice to the sender or the intended recipient when the Jail censored mail nor did it afford them the opportunity to challenge the Jail’s censorship decisions. The Jail then censored numerous letters, book catalogs, and monthly subscription news journals that PLN mailed to Columbia County prisoners.

PLN claims that it suffered damages as a result of the Defendants’ censorship and lack of due process notice and an opportunity to challenge Defendants’ censorship decisions. PLN has the burden of proving these claims.

[DEFENDANTS TO INSERT DESCRIPTION OF THEIR DEFENSES]

Ninth Circuit Model Civil Jury Instruction 1.2 (2007) (modified to give particulars of case.)

INSTRUCTION NO. 3
(To Be Given Before Trial)

What is Evidence and What is Not Evidence

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence and the facts to which the parties have agreed.

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits are received only for a limited purpose; when I give a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Ninth Circuit Model Civil Jury Instructions 1.6 and 1.7 (2007) (Modified to say agreed facts are evidence and to select from among bracketed options.)

INSTRUCTION NO. 4
(To Be Given Before Trial)

Ruling on Objections

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

Ninth Circuit Model Civil Jury Instruction 1.10 (2007).

INSTRUCTION NO. 5
(To Be Given Before Trial)

Conduct of Jury

I will now say a few words about your conduct as jurors.

First, you are not to discuss this case with anyone, including members of your family, people involved in the trial, or anyone else; this includes discussing the case in internet chat rooms or through internet blogs, internet bulletin boards or e mails. Nor are you allowed to permit others to discuss the case with you. If anyone approaches you and tries to talk to you about the case, please let me know about it immediately;

Second, do not read or listen to any news stories, articles, radio, television, or online reports about the case or about anyone who has anything to do with it;

Third, do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own;

Fourth, if you need to communicate with me simply give a signed note to the bailiff to give to me; and

Fifth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Finally, until this case is given to you for your deliberation and verdict, you are not to discuss the case with your fellow jurors.

Ninth Circuit Model Civil Jury Instruction 1.12 (2007) (modified to select from bracketed options.)

INSTRUCTION NO. 6
(To Be Given Before Trial)

Taking Notes

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you. When you leave, your notes should be left in the courtroom. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Ninth Circuit Model Civil Jury Instruction 1.14 (2007) (modified to select from among bracketed options.)

INSTRUCTION NO. 7
(To Be Given Before Trial)

Questions to Witnesses By Jurors

You will be allowed to propose written questions to witnesses after the lawyers have completed their questioning of each witness. You may propose questions in order to clarify the testimony, but you are not to express any opinion about the testimony or argue with a witness. If you propose any questions, remember that your role is that of a neutral fact finder, not an advocate.

Before I excuse each witness, I will offer you the opportunity to write out a question on a form provided by the court. Do not sign the question. I will review the question with the attorneys to determine if it is legally proper.

There are some proposed questions that I will not permit, or will not ask in the wording submitted by the juror. This might happen either due to the rules of evidence or other legal reasons, or because the question is expected to be answered later in the case. If I do not ask a proposed question, or if I rephrase it, do not speculate as to the reasons. Do not give undue weight to questions you or other jurors propose. You should evaluate the answers to those questions in the same manner you evaluate all of the other evidence.

By giving you the opportunity to propose questions, I am not requesting or suggesting that you do so. It will often be the case that a lawyer has not asked a question because it is legally objectionable or because a later witness may be addressing that subject.

Ninth Circuit Model Civil Jury Instruction 1.15 (2007).

INSTRUCTION NO. 8
(To Be Given Before Trial)

Outline of Trial

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross examine. Then the defendant may present evidence, and counsel for the plaintiff may cross examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

Ninth Circuit Model Civil Jury Instruction 1.19 (2007).

INSTRUCTION NO. 9
(To Be Given During Trial)

Deposition in Lieu of Live Testimony

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.

The deposition of [witness] was taken on [date]. You should consider deposition testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way as if the witness had been present to testify.

Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

Ninth Circuit Model Civil Instruction 2.4 (2007) (modified to select from among bracketed options.)

INSTRUCTION NO. 10
(To Be Given During Trial)

Evidence for Limited Purpose

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

[The testimony [you are about to hear] [you have just heard] may be considered only for the limited purpose of [describe purpose] and for no other purpose.]

Ninth Circuit Model Civil Instruction 1.8 (2007).

INSTRUCTION NO. 11
(To Be Given During Trial)

Stipulations of Fact

The parties have agreed to certain facts that will be read to you. You should therefore treat these facts as having been proved.

[INSERT STIPULATED FACTS]

Ninth Circuit Model Civil Jury Instruction 2.2 (2007) (modified to select among bracketed options.)

INSTRUCTION NO. 12
(To Be Given After Trial)

Duty of Court

Members of the Jury: Now that you have heard all of the evidence, it is my duty to instruct you as to the law of the case.

Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

Ninth Circuit Model Civil Jury Instruction 1.1C (2007) (modified to select from bracketed options.)

INSTRUCTION NO. 13
(To Be Given After Trial)

What is Evidence and What is Not Evidence

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence and the facts to which the parties have agreed.

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits are received only for a limited purpose; when I have given a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Ninth Circuit Model Civil Jury Instructions 1.6 and 1.7 (2007) (modified to select from among bracketed options.)

INSTRUCTION NO. 14
(To Be Given After Trial)

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Ninth Circuit Model Civil Jury Instruction 1.9 (2007).

INSTRUCTION NO. 15
(To Be Given After Trial)

Credibility of Witnesses

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Ninth Circuit Model Civil Jury Instruction 1.11 (2007).

INSTRUCTION NO. 16
(To Be Given After Trial)

Expert Opinion

Conditional Instruction: Plaintiff submits this proposed instruction for use *only in the event* that the Court denies Plaintiff's motion in limine to exclude Defendants' expert witness. Otherwise, the Court should issue no expert opinion instruction.

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Ninth Circuit Model Civil Jury Instruction 2.11 (2007).

INSTRUCTION NO. 17
(To Be Given After Trial)

Equal Treatment of Parties

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

Ninth Circuit Model Civil Jury Instruction 4.1 (2007) (modified to select from among bracketed options.); *Hardenbrook v. United Parcel Serv., Co.*, CV07-509-S-EJL, 2010 WL 3540124, *8 (D. Idaho Sept. 3, 2010) (affirming utility of jury instruction stating that “[a]ll persons are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any other person.”).

INSTRUCTION NO. 18
(To Be Given After Trial)

Stipulations of Fact

The parties have agreed to certain facts set out below. You should therefore treat these facts as having been proved.

[INSERT STIPULATED FACTS FROM PRETRIAL ORDER]

Ninth Circuit Model Civil Jury Instruction 2.2 (2007) (modified to say the stipulated facts are set out below and to describe the stipulated facts in the pretrial order.)

INSTRUCTION NO. 19
(To Be Given After Trial)

Liability of the Government -- Scope of Authority Not at Issue

Under the law, a local governing body, such as a County, is considered to be a person. It can only act through its employees, agents, or officers. Therefore, a government is responsible for the acts of its employees, agents, and officers performed within the scope of authority.

Ninth Circuit Model Civil Jury Instruction 4.2 (2007) (modified “corporation” to “local governing body, such as a County”); Ninth Circuit Model Civil Jury Instruction 9 (Civil Rights Actions—42 U.S.C. § 1983) (“It is well settled that a ‘person’ subject to § 1983 liability can be an individual sued in an individual capacity or in an official capacity, or a local governing body. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir.2001) (en banc)”).

INSTRUCTION NO. 20
(To Be Given After Trial)

Burden of Proof -- Preponderance of the Evidence

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

Ninth Circuit Model Civil Jury Instruction 1.3 (2007) (modified to select from among bracketed options.)

INSTRUCTION NO. 21
(To Be Given After Trial)

The Court finds that Defendants Violated Plaintiff's Free Speech Rights

The plaintiff has the burden of proving that the acts of the defendants Sheriff Dickerson, the Columbia County Sheriff's Department, and Columbia County deprived the plaintiff of particular rights under the United States Constitution. Under the First Amendment to the Constitution, a citizen and a publisher have the right to free expression.

I have found, and I instruct you, that Defendants' Postcard-Only Policy and ban on magazines violate the First Amendment. Further, I have found that each of the sixty-five (65) PLN mailings that Defendants censored, Trial Exhibits 1 through 65, are speech protected by the First Amendment. And, I have found that each of the eighteen (18) mailings of PLN news articles that Lucy Lennox printed from PLN's website that Defendants censored, Trial Exhibits 71 through 87 and 89, are speech protected by the First Amendment.

Accordingly, I instruct you that Defendants Sheriff Dickerson, the Columbia County Sheriff's Department, and Columbia County violated the First Amendment and violated PLN's rights to free speech and expression by: (1) adopting and enforcing its Postcard-Only Policy prohibiting incoming and outgoing mail in envelopes; (2) banning magazines and periodicals from the Jail; and (3) censoring each of PLN's sixty-five (65) news journals, subscription materials, book offers, book catalogs, renewal letters, fundraising letters, and other mail to prisoners.

Turner v. Safley, 482 U.S. 78, 89-90 (1987); *Prison Legal News v. Lehman*, 397 F.3d 692, 696 (9th Cir. 2005).

INSTRUCTION NO. 22
(To Be Given After Trial)

Court Finds That Defendants Violated PLN's Due Process Rights

The plaintiff has the burden of proving that the acts of the defendants Sheriff Dickerson, the Columbia County Sheriff's Department, and Columbia County deprived the plaintiff of particular rights under the United States Constitution. Under the Fourteenth Amendment Due Process Clause, before being deprived of a protected interest in life, liberty, or property by the government, a citizen and a publisher has the right to due process.

I instruct you that Defendants Sheriff Dickerson, the Columbia County Sheriff's Department, and Columbia County violated the Fourteenth Amendment Due Process Clause by: (1) failing to adopt and enforce provisions in their mail policies that afford the sender and intended recipient of mail due process rights to: (a) adequate written notice when Defendants censor their mail; and (b) an opportunity to challenge the censorship decision.

I also instruct you that each of the Defendants violated Prison Legal News's due process rights by failing to afford PLN written notice and an opportunity to challenge Defendants' censorship decisions when they censored each of PLN's sixty-five (65) mailings.

Shanks v. Dressel, 540 F.3d 1082, 1090 (9th Cir. 2008); *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999); *David Hill Dev., LLC v. City of Forest Grove*, 3:08-CV-266-AC, 2012 WL 5381555, *25 (D. Or. Oct. 30, 2012); *Ruff v. County of Kings*, CV-F-05-631 OWWGSA, 2009 WL 5111766, *4 (E.D. Cal. Dec. 18, 2009).

INSTRUCTION NO. 23
(To Be Given After Trial)

Damages-Generally

It is the duty of the Court to instruct you about the measure of damages.

Since I have instructed you that Defendants violated Prison Legal News's constitutional rights on each of its claims, you must determine its damages. PLN has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate PLN for any injury you find was caused by Defendants.

It is for you to determine what damages, if any, have been proved.

The law has not furnished us with any fixed standards by which to measure the value of censorship or denial of due process. With reference to these matters, you must be governed by your own judgment, by the evidence in this case, and by these instructions.

Ninth Circuit Model Civil Jury Instructions 5.1 and 5.2 (2007) (modified to reflect a directed finding of liability and to not select any bracketed options.)

INSTRUCTION NO. 24
(To Be Given After Trial)

Measuring Economic Damages

In determining the measure of economic damages, you should consider:

Plaintiff's diversion of resources. These damages are equivalent to "opportunity costs" of the activities that the Plaintiff had to forego to address a defendant's action. Examples include the costs of investigating complaints, testing possible violations of the law, and litigating to prove and redress a defendant's actions. One measure of such costs is reasonable hourly rates multiplied by the time expended by the Plaintiff on these activities.

Frustration of Plaintiff's mission. These damages are future costs that the Plaintiff will be forced to expend to rectify the effects of a defendant's actions. Plaintiff is entitled to recover expenditures necessary to counterbalance the effects of a defendant's unconstitutional practices. Examples of such expenditures include those for education, outreach, advertising, monitoring, and testing.

Since I have instructed you that the plaintiff suffered violations of its constitutionally-protected rights, you must decide what if any diversion of resources or frustration of mission damages the plaintiff is entitled to for each violation. It will be for you, the jury, to determine the amount. The damages awarded should be reasonable and should compensate the plaintiff for harm that it suffered and probably will suffer from the defendant's wrongful conduct.

Ninth Circuit Model Civil Jury Instructions 5.2 (2007) (modified to reflect a directed finding of liability and to add diversion of resources and frustration of mission.); *S. California Hous. Rights Ctr. v. Krug*, 564 F. Supp. 2d 1138, 1152-53 (C.D. Cal. 2007); *Fair Housing of Marin v. Combs*, 2000 WL 365029, at *3-4, aff'd, *Fair Housing of Marin v. Combs*, 285 F.3d 899 (9th Cir. 2002); *Housing Rights Center v. Snow*, 2007 WL 91148, at *2 (E.D. Cal. Jan.3, 2007); *U.S. v. Balistrieri*, 981 F.2d 916, 933 (7th Cir. 1992); *Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th Cir. 1990).

INSTRUCTION NO. 25
(To Be Given After Trial)

Presumed Damages

In this case the plaintiff seeks to recover what the law calls “presumed damages” for the actual losses suffered by the plaintiff as a result of the defendants’ violation of the plaintiff’s First Amendment rights as a result of the defendants’ censorship of PLN’s mail to prisoners and of the policy that impeded prisoners from sending mail to the Plaintiff.

Presumed damages may be awarded when the plaintiff seeks compensation for harms that are likely to have occurred, but are difficult to establish. If you find that the plaintiff suffered violations of its federally protected rights, I am instructing you, as a matter of law, that the plaintiff is entitled to an award of presumed damages for each violation.

It will be for you, the jury, to determine the amount of presumed damages. You may not award damages for the abstract value or importance of the constitutional right to free speech. The damages awarded should be reasonable in relation to the harm that the plaintiff suffered from the defendants’ wrongful conduct, and thereby fairly compensate plaintiff for harm that may be impossible to measure precisely.

Schwartz & Pratt, Section 1983 Litigation: Jury Instructions, Instruction 18.02.1; *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 310-12 (1986); *Preferred Communications, Inc. v. City of Los Angeles*, 13 F.3d 1327, 1334 (9th Cir. 1994); *City of Watseka v. Illinois Pub. Action Council*, 796 F.2d 1547, 1558 (7th Cir. 1986), *aff’d*, 479 U.S. 1048 (1987) (affirming \$5,000 award for injury to First Amendment rights because of “(1) its inability to recruit new members in Watseka, (2) its inability to disseminate its views to Watseka residents, and (3) its inability to encourage Watseka citizens to support IPAC positions on various issues by signing petitions or contacting local legislators.”); *Brooks v. Andolina*, 826 F.2d 1266, 1269 (3d Cir. 1987) (prisoner entitled to general damages for First Amendment violations related to his mail); *Dellums v. Powell*, 566 F.2d 167, 195 (D.C. Cir. 1977) (affirming award for “loss of an opportunity to demonstrate constitutes loss of First Amendment rights ‘in their most pristine and classic form’” even where not “a case in which the demonstration was thwarted altogether”).

INSTRUCTION NO. 26
(To Be Given After Trial)

Nominal Damages

The law which applies to this case authorizes an award of nominal damages. I have instructed you that on 65 occasions the Defendants have violated the Plaintiff's Fourteenth Amendment rights to due process. Plaintiff requests nominal damages for the deprivation of its due process rights. I instruct that you must award nominal damages of one dollar per violation for the violation of Plaintiff's due process rights.

Ninth Circuit Model Civil Jury Instructions 5.6 (2007) (modified to add "that a violation of the law occurred" and "as to that claim" and to remove "not to exceed"); *Schneider v. County of San Diego*, 285 F.3d 784, 794-95 (9th Cir. 2002) (plaintiff "legally entitled to judgment with a mandatory nominal damages award of \$1.00 as a symbolic vindication of her constitutional right").

INSTRUCTION NO. 27
(To Be Given After Trial)

Punitive Damages

You may, but are not required to, award punitive damages. The purposes of punitive damages are to punish a defendant and to deter similar acts in the future. Punitive damages may not be awarded to compensate a plaintiff.

The plaintiff has the burden of proving by a preponderance of the evidence that punitive damages should be awarded, and, if so, the amount of any such damages.

You may award punitive damages only if you find that the defendant's conduct that harmed the plaintiff was malicious, oppressive or in reckless disregard of the plaintiff's rights. Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring the plaintiff. Conduct is in reckless disregard of the plaintiff's rights if, under the circumstances, it reflects complete indifference to the plaintiff's safety or rights, or if the defendant acts in the face of a perceived risk that its actions will violate the plaintiff's rights under federal law. An act or omission is oppressive if the defendant injures or damages or otherwise violates the rights of the plaintiff with unnecessary harshness or severity, such as by the misuse or abuse of authority or power or by the taking advantage of some weakness or disability or misfortune of the plaintiff.

If you find that punitive damages are appropriate, you must use reason in setting the amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purposes but should not reflect bias, prejudice or sympathy toward any party. In considering the amount of any punitive damages, consider the degree of reprehensibility of the defendant's conduct, including whether the conduct that harmed the plaintiff was particularly reprehensible because it also caused actual harm or posed a substantial risk of harm to people who are not parties to this

case. You may not, however, set the amount of any punitive damages in order to punish the defendant for harm to anyone other than the plaintiff in this case.

Punitive damages may not be awarded against Defendants Columbia County and Columbia County Sheriff's Department. You may impose punitive damages against any other Defendant. Punitive damages may be awarded even if you award plaintiff only nominal, and not compensatory, damages.

Ninth Circuit Model Civil Jury Instruction 5.5 (2007) (modified to select among bracketed options, to preclude an award against Defendants Columbia County and Columbia County Sheriff's Department, and to remove language suggesting an award against two defendants)

INSTRUCTION NO. 28
(To Be Given After Trial)

Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Ninth Circuit Model Civil Jury Instruction 3.1 (2007).

INSTRUCTION NO. 29
(To Be Given After Trial)

Communication With Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone including me how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

Ninth Circuit Model Civil Jury Instruction 3.2 (2007) (modified to select from among bracketed options.)

INSTRUCTION NO. 30
(To Be Given After Trial)

Return of Verdict

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.

Ninth Circuit Model Civil Jury Instruction 3.3 (2007) (modified to select among bracketed options).

Additional Possible Instructions

No proposed instructions are submitted on the following topics because liability will be decided by the Court. Plaintiff reserves the right to submit proposed instructions in the event that the Court rules that any of these topics are issues for the jury to decide:

1. Censorship under the First Amendment of the United States Constitution;
2. Denial of due process in violation of the Fourteenth Amendment of Constitution;
3. Section 1983 claim—introductory instruction;
4. Section 1983 claim against local governing body defendants based on official policy, practice, custom, and act of final policy-maker—elements and burden of proof;
5. Section 1983 claim against individual defendant; and
6. Color of State Law

DATED this 31st day of December, 2012.

MACDONALD HOAGUE & BAYLESS

/s/ Jesse Wing

JESSE WING, admitted *pro hac vice*

KATHERINE C. CHAMBERLAIN

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Of Attorneys for Plaintiff Prison Legal News

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 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**
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