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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

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

Plaintiffs,

v.

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

Defendants.

No. 3:12-cv-0071-SI

DEFENDANTS' ALTERNATIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to Plaintiff's suggested findings of facts not objected to by Defendants, Defendants submit the following alternative suggested findings of fact and conclusions of law.

DEFENDANTS' SUGGESTED FINDINGS OF FACT

I. Additional Facts Regarding the Parties

A. Plaintiff's core mission also includes advocating for its rights in court, devoting its resources to the investigation of and litigation against correctional institutions, and promoting its litigation activities.

B. Defendant Sheriff Dickerson has authority to hire and terminate employees of CCSO subject to budgetary constraints imposed by the Columbia County Board of Commissioners.

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C. Columbia County does not hire and terminate employees of CCSO, nor did it create the inmate mail policy for the Jail.

D. CCSO has reduced its staff by the equivalent of 8.5 positions since 2009, a reduction of about one-third from 2009 levels, due to the reduction in revenues to fund operations.

E. Since the postcard policy went into effect in March, 2010, CCSO reduced its sworn jail staff by five positions, a reduction of about one-fifth from 2010 levels.

F. The Columbia County Jail's funded capacity dropped from 255 inmates to 150 inmates in 2011.

II. Facts Regarding Standing, Mootness, and Plaintiff's Equitable Claims

G. CCSO and Sheriff Jeff Dickerson admitted liability for the rejection of Plaintiff's magazines and other correspondence in violation of the First and Fourteenth Amendments. *See generally* Defendants' Answer and Defendants' Suggested Findings of Fact and Conclusions of Law.

H. CCSO changed its inmate mail policy and practice shortly after the lawsuit was filed to allow the delivery of mail such as Plaintiff's magazines and other correspondence.

I. Plaintiff's mail has not been rejected by CCSO since the filing of this lawsuit.

J. CCSO has delivered plaintiff's mail so long as the inmate was in custody since the filing of this lawsuit.

K. Sheriff Dickerson has represented CCSO will not re-institute the postcard policy, regardless of any Order of this Court, absent a change in the law that would permit a postcard policy, although even then the Sheriff does not know at this time if there would be a change in the current policy.

III. Additional Facts Regarding the Merits

Facts Relevant to Magazines and Due Process

L. Defendants incorporate the mail procedures contained in CCSO Inmate Mail Policy J603-R05 (October 21, 2011), see Plaintiff's Proposed Trial Exhibit 113, and subsequent policies, J603-R06 (January 26, 2012), J603-R07 (February 10, 2012), J603-R08 (May

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25, 2012), J603-R09 (June 18, 2012), J603-R10 (July 5, 2012), see Defendants' Proposed Trial Exhibits 272-276.

M. Each policy permitted periodicals such as Plaintiff's magazine to be delivered to inmates so long as the magazine did not violate other restrictions in the policy.

N. Prior to January 26, 2012, the Jail did not deliver many magazines addressed to inmates in violation of the policy, but delivered some.

O. CCSO's Inmate Mail Policy effective October 21, 2011 did not provide the person corresponding with an inmate with notice or an opportunity to appeal the Jail's decision to reject mail. The policy also did not provide the inmate with notice or an opportunity to appeal the Jail's decision to reject an inmate's outgoing mail. Although the policy provided the inmate with notice and an opportunity to appeal the Jail's decision to reject incoming inmate mail, the jail often did not do so.

P. CCSO's inmate mail policies including and subsequent to January 26, 2012, provided notice and an opportunity to appeal to the sender and receiver of inmate mail.

Q. As of January 26, 2012, the Jail delivered magazines according to its policy.

R. As of January 26, 2012, the Jail provided notice and an opportunity to appeal according to its policy.

S. The changes to the Jail's mail policy and practices with respect to magazines and due process was in response the notice that Plaintiff's lawsuit provided to Defendant Sheriff Jeff Dickerson that the Jail had these problems.

Postcard Policy – Application to Plaintiff's Mail

T. Each of CCSO's postcard policies (the policies effective until the Court's Opinion and Order on Plaintiff's Motion for a Preliminary Injunction dated May 29, 2012) were restricted to inmates and their family and friends. However, the Jail rejected many mailings, such as those from Plaintiff, on the basis that it was not in postcard form, in violation of its policy.

Postcard Policy - Constitutionality

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U. CCSO adopted a postcard policy because it would reduce the risk of contraband from entering and leaving the facility.

V. CCSO adopted a postcard policy because it would reduce mail costs and save staff resources.

W. At the time of the postcard policy's adoption, no court had ruled that it was unconstitutional.

X. The postcard policy was proposed by members of the Washington County Sheriff's Office at an Oregon State Sheriff's Association conference, and had passed legal review by its counsel.

Y. The Washington County Sheriff's Office is considered by Sheriff Dickerson to be a leader in Oregon on jail policies and procedures, and it frequently assists smaller county jails, including Columbia County, in developing and implementing jail policies and procedures.

Z. The postcard policy was permitted by the Oregon Jail Standards put forth by the Oregon State Sheriff's Association Jail Command Council.

AA. The postcards available to inmates were half the size of a regular sheet of paper.

BB. Contraband is broadly defined as objects, substances, and other materials that inmates are not allowed to possess. Inmates possessing contraband can harm themselves and others, and prohibited items can become a form of currency among inmates, which can often lead to violence, extortion, and other criminal behavior.

CC. Contraband can be drugs, bodily fluids, glue, paint, gunpowder and other explosives, lipsick, and perfume. These can be hidden in the flaps and glue strips of envelopes such that they are difficult to detect. The can also be hidden between multiple sheets of paper.

DD. Objects that are contraband include handcuff keys, metal wires, razor blades, and knives.

EE. Items can become contraband depending on how many the inmate possesses. Examples include paper clips and staples, which can be sued to fashion weapons or makeshift handcuff keys.

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FF. These small contraband objects can be hidden in the flaps and glue strips of envelopes such that they are difficult to detect by corrections staff. The can also be hidden between multiple sheets of paper.

GG. Inmate mail must be scanned or read by jail deputies, with some exceptions, such as for mail defined as legal.

HH. Inmates are prohibited from communicating plans for escape, criminal activity, violations of jail policies, or threats of physical harm. They are not allowed to coordinate testimony or discuss criminal activity, destroying evidence or intimidating witnesses.

II. Inmates often attempt to contact people with whom they are under a court order not to communicate with.

JJ. Gang members are particularly adept as using coded messages to discuss prohibited topics. They can use symbols or can imbed a message in a communication that is difficult to detect by corrections officers, but the person receiving the communications can easily decipher.

KK. Inmates and their family and friends were not restricted in the number of postcards they could use to communicate.

LL. Inmates were not restricted from written communications. They could receive magazines (and did after January 26, 2012), newspapers, books, and solicited and unsolicited junk and bulk mail.

MM. The postcard policy did not restrict inmates and their family and friends from communicating in others ways, such as through jail visits and phone calls.

NN. For persons using postcards to communicate with inmates, the costs of postcards and additional stamps was comparable to the costs of envelopes, sheets of paper, and stamps.

OO. Postcards are easier to hold in one's hand than multiple sheets of paper.

PP. Postcards are easier to turn over to inspect both sides than multiple sheets of paper.

QQ. Postcards are on thick paper, which makes them more durable than sheets of paper. It also easier to identify foreign substances on postcards than on sheets of paper.

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RR. It is easier to scan or read postcards than doing the same with sheets of paper.

SS. It is easier to identify prohibited topics being discussed on a postcard that doing the same with a sheet of paper.

TT. The postcard policy saved the Jail thirty to sixty minutes per day of staff time depending of the volume of mail.

UU. By reducing the risk of contraband from entering the facility, the postcard policy avoided the expenditure of staff resources in the event that contraband enters the facility.

VV. By reducing the risk of contraband from entering or exiting the facility, the postcard policy made inmates, jail staff, and the intended and potential correspondents of inmates (family, friends, crime victims, co-conspirators, gang members, co-defendants) safer.

WW. CCSO's Inmate Mail Policy, effective May 25, 2012, clarified the previous postcard policy, and ensured the following: (1) inmate mail from educational, community, and religious organizations was not required to be in postcard form, (2) inmate mail to confining authorities, religious leaders, and the news media was not required to be in postcard form.

XX. CCSO stopped enforcing its postcard policy on May 29, 2012.

YY. CCSO decided it will not re-institute the postcard policy.

Lucy Lennox's Mailings

ZZ. The two Prohibited Mail Notices received by Ms. Lennox (see #57) provided a reason for the Jail's rejection and an opportunity for her to appeal the Jail's decision to reject it.

AAA. Ms. Lennox said that because three of her mailings in February, 2012 were returned to her, the Jail may have not delivered the other eleven.

BBB. Ms. Lennox did not appeal the Jail's decision not to deliver her February, 2012 mailings.

CCC. Ms. Lennox sent her mailings in December, 2011 and February, 2012 solely because Paul Wright asked her to participate in this lawsuit.

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DEFENDANTS' CONCLUSIONS OF LAW

Columbia County Is Not Liable

A. Defendant Sheriff Jeff Dickerson is not an agent of Defendant Columbia County with respect to the Jail's inmate mail policy and practices. *See*, *e.g.*, ORS 204.601, ORS 204.635, ORS 206.210.

B. Defendant Columbia County Sheriff's Office is not an agent of Defendant Columbia County with respect to the Jail's inmate mail policy and practices. *Id.*

Constitutional Violations

C. The parties have agreed that Defendant Columbia County Sheriff's Office violated the First and Fourteenth Amendments to the U.S. Constitution by returning Plaintiff's mail addressed to inmates at the Jail and not providing due process. The First and Fourteenth Amendment rights of both Plaintiff and the inmate with whom they desired to communicate with were violated.

Plaintiff Lacks Third-Party Standing for Equitable Relief

D. The Court finds that Plaintiff lacks third-party standing to bring its equitable claims on behalf of inmates and their family and friends because Plaintiff has not shown that the ability of inmates and their family and friends to assert their own rights is sufficiently hindered. *See Coalition of Clergy, Lawyers, and Professors v. Bush*, 310 F.3d 1153, 1163 (9th Cir. 2002) (quoting *Powers v. Ohio*, 499 U.S. 400, 410-11 (1991)). Nothing about CCSO's inmate mail policy and practices threatened inmates and their correspondents with criminal prosecution, nor were they forced to forego their rights entirely. *See The Pitt News v. Fisher*, 215 F.3d 354, 364 (3d Cir. 2000), *cert. denied* 531 U.S. 1113 (2001).

Mootness

E. To prove a dispute is moot, Defendants must prove that its cessation of a challenged practice make it "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Environmental*

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Services (TOC), Inc., 528 U.S. 167, 180-81 (2000). The Court finds that CCSO's admission of liability and immediate cessation of the unconstitutional conduct with respect to having rejected magazines and other correspondence and not providing due process notification for rejected mail demonstrates this conduct has been "irrevocably eradicated." *See Norman-Bloodsaw v. Lawrence Berkely Laboratory*, 135 F.3d 1260, 1274 (9th Cir. 1998); *see also Smith v. University of Washington Law School*, 233 F.3d 1188, 1194-95 (9th Cir. 2000) (holding dispute moot because, after law school stopped the use of race in the admissions process in response to a change in state law, if law school was "temerarious enough" to violate state law, then plaintiff or others "can commence a new battle at that time.")

F. Likewise, the Court is satisfied that CCSO will not re-implement the postcard policy absent a change in the law, and possibly not even if that occurs and accordingly, finds the dispute moot.

Declaratory Relief

G. The admissions of liability in Defendants' Answer established the legal relations between the parties with respect to the delivery of Plaintiff's mail, including its magazines, subscription renewal letters, fundraising appeals, and advertising material, and to the provision of due process. The admissions of liability extended to the constitutional rights of Plaintiff's inmate correspondents as well. Furthermore, Defendants have admitted that CCSO's handling of inmate mail prior to January 26, 2012 was part of an unconstitutional practice subject to liability pursuant to 42 U.S.C. § 1983. Accordingly, the Court finds it is unnecessary to enter declaratory relief relating to the delivery of Plaintiff's magazines, subscription renewal letters, fundraising appeals, and advertising material. *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1112 (9th Cir. 1987); *United States v. Walsh*, 759 F.2d 1353, 1356 (9th Cir. 1985) (citing *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961)).

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H. Plaintiff and Defendants dispute whether CCSO's postcard policies were a violation of the First Amendment pursuant to *Turner v. Safley*, 482 U.S. 78 (1987).

I. The Court declines to apply *Procunier v. Martinez*, 416 U.S. 396, 417-18 (1974), *overruled in part on other grounds by Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989) to outgoing inmate mail restrictions. The Court will apply *Turner v. Safley*, 482 U.S. 78 (1987).

J. The Court finds that CCSO's postcard policies did not violate the First Amendment.

a. **Rational Relationship to the Legitimate Penological Interest of Jail Security.** The Court finds that jail security is a legitimate penological interest. *Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989). The parties agree CCSO's postcard policy was neutral because it operated without regard to the content of the expression. (Dkt. 64, Op. & O. Plf. Mot. Prelim. Inj. at 16 n.1, *citing Turner*, 482 U.S. at 90.) For the reasons stated above, the Court finds that CCSO's postcard policy was rationally related to maintaining security at the jail by reducing the contraband risk presented by inmate mail. The Court also finds that it was rational to limit the use of postcards to correspondence between an inmate and their family and friends, *i.e.*, mail that is not defined as legal or official mail, and excepting magazines, bulk, and junk mail, due to the increased risks inherent in this type of correspondence.

b. **Rational Relationship to the Legitimate Penological Interest of Jail Efficiency.** The Court finds that a correctional institution's efficient use of resources is a legitimate penological interest. *Freeman v. Texas Dep't of Criminal Justice*, 369 F.3d 854, 861 (5th Cir. 2004). For the reasons stated above, the Court finds that Sheriff Jeff Dickerson rationally believed that CCSO's postcard policy would save staff resources by reducing mail-processing times. *See Mauro v. Arpaio*, 188 F.3d 1054, 1060 (9th Cir. 1999) (holding that "prison official need not prove that the banned material actually caused problems in the

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past, or that the materials are 'likely' to cause problems in the future"). The Court also finds that CCSO's postcard policy was a rational management of staff resources because it reduced the risk of contraband from entering and exiting the jail, which made it less likely that jail resources would have to be dedicated to the interception and investigation of contraband incidents.

c. **Alternative Avenues of Communication.** In analyzing this factor, the Court is required to determine "whether 'other avenues' remain available for the exercise of the asserted right." *Turner*, 482 U.S. at 90; *see also Thornburgh*, 490 U.S. 417-18 (second *Turner* factor "clearly satisfied" when a prison regulation banned certain publications but still allowed a broad range of publications to be sent and received); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987) ("In *Turner*, we did not look to see whether prisoners had other means of communicating with fellow inmates, but instead examined whether the inmates were deprived of 'all means of expression.'" The Court finds that CCSO's postcard policy merely changed the form of communication, *i.e.*, from that of letters in envelopes to that of postcards. Thus, written communication remained available to inmates and their correspondents. In addition to written communication, inmates had phone and visitation privileges. Accordingly, the Court finds that CCSO's postcard policy did not deprive inmates of "all means of communication," nor did it prohibit written communication.

d. Impact on Resources. The Court must consider the impact of accommodating the asserted right on the jail staff and inmates and the allocation of prison resources generally. *Turner*, 482 U.S. at 90. Here, the asserted right is communication by regular-size sheets of paper and the use of envelopes. The Court finds that stopping the postcard policy increases the risk that contraband enters or exits the jail and, thus, the risk of a consequent use of valuable resources when contraband is intercepted. Accordingly, the Court finds this factor satisfied

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because accommodating the asserted right will have a "ripple effect" on inmates, jail staff, and the jail's resources generally. *Id.*

e. **No Easy and Obvious Alternatives.** This factor requires the Court to address whether easy and obvious alternatives exist to the postcard policy that "fully accommodates the prisoner's right at *de minimis* cost to valid penological interest." *Turner*, 482 U.S. at 90-91. Here, the cost is to the interest of jail security and the efficient use of resources. The Court finds that CCSO lacks an easy and obvious alternative that allows inmates to communicate with family and friends but still results in the same level of jail security and use of resources that the postcard policy achieves. Requiring CCSO to return to the use of letters and envelopes results in more than a *de minimis* cost to jail security and the efficient use of resources.

K. **Qualified Immunity for Postcard Policy.** Alternatively, if the Court finds that CCSO's postcard policy violated the First Amendment, and to the extent Plaintiff claims equitable relief against Defendant Sheriff Jeff Dickerson in his personal capacity, he has immunity because it was not clearly established when the postcard policy was implemented that it violated the First Amendment. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009); *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001). Courts have upheld postcard policies for inmate mail similar to CCSO's postcard policy. *See*, *e.g.*, *Covell v. Arpaio*, 662 F. Supp.2d 1146 (D. Az. 2009) (postcard policy for incoming inmate mail upheld as constitutional); *Daniels v. Harris*, 2012 WL 3901646 (M.D. Ga. Aug. 8, 2012) (postcard policy for incoming and outgoing inmate mail upheld as constitutional); *Martinez v. May*, No. 2:11-cv-14039, p. 24 (S.D. Fla. Apr. 25, 2012) (postcard policy for outgoing mail upheld as constitutional) (attached as Exhibit M to the Declaration of Gregory R. Roberson at Docket #115).

L. **Due Process for Lucy Lennox's Mailings.** Defendants have previously agreed that CCSO did not provide due process to Lucy Lennox or to her inmate correspondents for

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her December, 2011 mailings. To the extent Plaintiff claims that Lucy Lennox's February, 2012 eleven mailings violated Ms. Lennox's due process, the Court finds that she waived any such claim because each piece of mail contained the same article and after three were returned to her with two Prohibited Mail Notices that informed her of the reason for the rejection and a process to appeal, she was reasonably on notice that all eleven were not delivered and she chose not to file an appeal. *See Ostlund v. Bobb*, 825 F.2d 1371, 1373 (9th Cir. 1987) ("Waiver of a constitutional right must be knowing and voluntary.").

M. **Qualified Immunity for Lucy Lennox's Mailings.** If the Court rules that Lucy Lennox's February, 2012 mailings violated her due process rights, and to the extent Plaintiff clams equitable relief against Defendant Sheriff Dickerson in his personal capacity, he has immunity because it was not clearly established that in the unique circumstances of Lucy Lennox's eleven identical mailings, due process required her to receive eleven notices of the reason for the rejection and of her right to appeal. *Pearson*, 555 U.S. at 236; *Saucier*, 533 U.S. at 200-01.

Permanent Injunctive Relief

N. To obtain a permanent injunction, Plaintiff must show (1) actual success on the merits, (2) an irreparable injury for which monetary damages are inadequate to compensate for that injury, (3) a remedy in equity is warranted considering the balance of hardships between the plaintiff and defendant, and (4) a permanent injunction is in the public interest. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). Plaintiff bears the burden of proof on each of these elements of a permanent injunction. *Olagues v. Rossoniello*, 770 F.2d 791, 799, 803 (9th Cir. 1985).

O. **Success on the Merits re Magazines and Due Process.** Defendants have admitted in their Answer to constitutional violations regarding Plaintiff's magazines and due process matters. , However, the Court is not finding that had Plaintiff brought these matters to the attention of Defendants prior to filing this lawsuit, Defendants would not have made the

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changes to its policies and practices they in fact have made, without the necessity of Plaintiff filing this lawsuit

P. **Irreparable Harm.** Plaintiff cannot rely on previous claims of harm and must demonstrate the reasonable possibility of a recurrent injury for a permanent injunction to issue. *United States v. Laerdal Mfg. Corp.*, 73 F.3d 852, 854-55 (9th Cir. 1995). The factors to consider are:

> the degree of scienter involved; the isolated or recurrent nature of the infraction; the defendant's recognition of the wrongful nature of his conduct; the extent to which the defendant's professional and personal characteristics might enable or tempt him to commit future violations; and the sincerity of any assurances against future violations.

Id. (quoting *F.E.C. v. Furgatch*, 869 F.2d 1256, 123 (9th Cir. 1989)). In this instance, the Court finds that Plaintiff is not challenging CCSO's current inmate mail policy and practices, and failed to submit evidence that there was a reasonable chance of recurrent harm to Plaintiff and inmates and their correspondents. Further, the Court finds that CCSO and Sheriff Jeff Dickerson recognized the gravity of the unconstitutional conduct by admitting liability in their Answer and quickly remedying the unconstitutional conduct. It is unlikely that CCSO and Sheriff Dickerson will engage in this type of unconstitutional conduct in the future.

Q. **Balance of Hardships.** Plaintiff does not face any hardships as the evidence submitted demonstrates no ongoing harm to Plaintiff, inmates or their correspondents. Furthermore, the Court is satisfied that CCSO will not re-implement the postcard policy, regardless of the Court's decision on its constitutionality, and is abiding by the First and Fourteenth Amendments with respect to inmate mail.

R. **Public Interest.** The Court must assess the impact an injunction would have on non-parties and continues to find "the public interest factor largely neutral," *see* Dkt. 64, Op. & O. Plf. Prelim. Inj. at 24, and even more so now given that Plaintiff does not challenge the current inmate mail policy and practices of CCSO.

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S. In the event a permanent injunction is ordered, the Court must comply with 18 U.S.C. § 3626(a) by ensuring that prospective relief "is narrowly drawn, extends no further than necessary to correct the violation of Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." Pursuant to 18 U.S.C. § 3626(g)(2), the statute applies to "any civil proceeding arising under Federal law with respect to prison conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison," excepting habeas corpus proceedings. The Court finds that it must abide by this statute.

T. Plaintiff argues that 18 U.S.C. § 3626 does not apply because it was enacted by the Prison Litigation Reform Act of 1995, Pub. L. 104-134, 110 Stat. 1321-66 to 1321-77, and Plaintiff argues the Act only applies to lawsuits brought by prisoners. The Court declines to adopt Plaintiff's position. Subsection (g)(2) of the statute, as cited above, directly conflicts with Plaintiff's position. In addition, the authorities cited by Plaintiff refer to Sections 803 and 804 of the Act, which are codified at 42 U.S.C. § 1997a-h, 28 U.S.C. § 1915, and other statutes that specifically relate to prisoner lawsuits. Section 802 of the Act amended 18 U.S.C. § 3626 and it is not exclusive to prisoner lawsuits. Accordingly, the Court finds that Plaintiff's authorities are not on point.

U. The Court finds Plaintiff's permanent injunctive relief request requiring CCSO to provide written notice to the sender and addressee for "each piece of mail," "identifying" the mail in "sufficient detail" and the "identity and basic substance" of the reason for the rejection, the "identify of the official to whom an appeal may be submitted," to be too inexact to serve any practical purpose and also to be in excess of the requirements of procedural due process. *See Procunier v. Martinez*, 416 U.S. 396, 417-19 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989) (due process requires notification to the sender and addressee of inmate mail notice of the rejection and a reasonable opportunity to appeal to a jail official other than the one who made the decision to reject the mail); *Prison Legal News v. Cook*, 238 F.3d 1145, 1152 (same). Accordingly, the

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Court declines to adopt Plaintiff's suggested permanent injunction conditions for due process.

V. The Court finds Plaintiff's permanent injunctive relief request barring CCSO from rejecting mail on the ground that it is not in the form of a postcard or a magazine to be unnecessary and the Court exercises its discretion to not permanently enjoin CCSO given that there has been no showing of a risk of recurrent injury. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 32 (2008) (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982)) (holding that a court may decline to enter permanent injunctive relief even if a plaintiff succeeds on the merits).

Respectfully submitted this 7th day of January, 2013.

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