

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01840-WYD-BNB

David Clay;  
Matthew Deherrera;  
Lamont Morgan;  
William LaFontaine; and  
Cynthia Shaw-Pierce, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Joe Pelle, in his official capacity as Boulder County Sheriff, and  
Larry R. Hank, in his official capacity as administrator of the BCJ and Division Chief of the Boulder  
County Sheriff Office,

Defendants.

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**SETTLEMENT AND RELEASE AGREEMENT**

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This Settlement Agreement is made and entered into this 11<sup>th</sup> day of April, 2011  
between David C. Fathi and Mark Silverstein of the American Civil Liberties Union ("ACLU")  
who are Appointed Counsel representing all Class Members for the class defined as "all current  
and future prisoners in the Boulder County Jail who are subject to or affected by the defendants'  
postcard-only policy," hereinafter referred to as "Releasor" and the Boulder County Sheriff,  
hereinafter referred to as "Releasee."

### RECITALS

A. WHEREAS, on August 3, 2010, Releasor filed a lawsuit designated as Civil Action Number 10-cv-01840-WYD-BNB in the United States District Court for the District of Colorado against Joe Pelle, in his official capacity as Boulder County Sheriff, and Larry R. Hank, in his official capacity as administrator of the Boulder County Jail (“Jail”) and Division Chief of the Boulder County Sheriff Office. The lawsuit challenged the portion of Boulder County Jail Inmate Mail Policy Number 15-01-05 that concerned the use of postcards for outgoing non-legal inmate mail.

B. WHEREAS, on March 8, 2011, the Court issued an order granting plaintiff’s motion for class certification for the class defined as “all current and future prisoners in the Boulder County Jail who are subject to or affected by the defendants’ postcard-only policy,” and ordered that David C. Fathi and Mark Silverstein of the ACLU be Appointed Counsel representing all Class Members.

C. WHEREAS, on March 17, 2011 the parties participated in a Settlement Conference with the Honorable Magistrate Judge Boyd N. Boland. A Memorandum of Understanding (“MOU”) was prepared to memorialize the settlement terms agreed to by the parties. A copy of the MOU is attached as Exhibit 1 and incorporated herein by reference.

C. NOW, THEREFORE, the parties wish to provide for the settlement of all claims for injunctive relief, declaratory relief, and attorneys’ fees, pled or unpled, between the Releasor and Releasee arising out of Civil Action No. 10-cv-01840-WYD-BNB in the United States District Court for the District of Colorado.

### WARRANTIES

1. Releasor and Releasee warrant and represent, each to the other, that they have been fully informed and have full knowledge of the terms, conditions and effects of this Agreement.
2. Releasor and Releasee warrant and represent, each to the other, that they have, either personally or through their attorney or attorneys, fully investigated to each party's full satisfaction all facts surrounding the various claims, controversies, and disputes and are fully satisfied with the terms and effect of this Agreement.
3. Releasor and Releasee warrant and represent, each to the other, that no promise or inducement has been offered or made except as herein set forth, and that this Agreement is executed without reliance upon any statement or representation by any other party or her agent.
4. Releasor and Releasee warrant and represent, each to the other, that they have the power and authority to execute this Agreement.

### AGREEMENT

1. Undertaking of Releasee.

A. Releasee Boulder County Sheriff, through the Board of County Commissioners of the County of Boulder will tender to Releasor a Boulder County warrant in the total amount of Sixty-five Thousand Dollars (\$65,000.00), within fourteen (14) days of the Court's entry of the Stipulated Judgment and Order incorporating the terms of this Agreement as an Order of the Court pursuant to paragraph 5 of this Agreement. Releasee shall tender this amount as payment for Plaintiffs' counsel's costs and attorneys' fees incurred in this matter.

B. On April 8, 2011, Releasee changed the Jail's Inmate Mail Policy regarding outgoing non-legal mail to reflect that:

i. Postcards shall be utilized by inmates, if at all, on a voluntary basis; and

ii. Inmates shall be allowed to write and send personal letters on paper designated by the Jail for such use and in envelopes supplied by the Jail without having to first ask, and/or receive, permission to do so.

C. Releasee agrees that henceforth it will maintain an inmate outgoing mail policy that:

i. Does not require inmates to use postcards for their outgoing mail; and

ii. Allows inmates to write personal letters on paper designated by the Jail for such use and in envelopes supplied by the Jail without having to first ask, and/or receive, permission to do so.

D. Releasee further agrees that for two years after the execution of the MOU, it will notify Releasor of any changes to the Releasee's outgoing inmate mail policy as it relates to inmates' abilities to send personal letters on paper and in envelopes.

2. This agreement does not affect Releasee's previously established power under the law to inspect outgoing mail and to read outgoing non-legal mail.

3. Release. In consideration for the relief provided for herein, Releasor fully releases, acquits and forever discharges Releasee, and its employees, attorneys, predecessors, successors and assigns, to whom and for whose conduct the parties hereby released may be liable, including, but not

limited to the Boulder County Sheriff, Division Chief Larry R. Hank, and the Board of County Commissioners of the County of Boulder, from any and all claims for injunctive and declaratory relief, including class action claims, as well as claims for attorneys' fees, against the Defendants arising out of Civil Action No. 10-cv-01840-WYD-BNB. This release is made by Releasor on behalf of the class certified and defined as "all current and future prisoners in the Boulder County Jail who are subject to or affected by the defendants' postcard-only policy."

4. Attorneys' Fees and Costs. Other than as provided for herein, each party shall bear his/her/its own costs, attorneys' fees, disbursements and expenses of any kind incurred in connection with this matter.

5. Compromise of Disputed Claims. It is understood and agreed that the acceptance of the consideration herein mentioned is in full accord and satisfaction of a disputed claim and that the payment of said sums, the entering into this Agreement or anything recited herein shall not constitute an acknowledgment of any liability whatsoever on the part of the parties or persons released. This Agreement does not include any finding of a constitutional or statutory violation.

6. Enforcement. Upon execution of this Agreement, the parties will file a Joint Motion for Entry of Stipulated Judgment and Order, incorporating the terms of this Agreement as an Order of the Court. The Court shall have the power to enforce this Agreement upon appropriate motion. The prevailing party in any such enforcement action, in addition to any other legal or equitable remedies, shall be entitled to recover attorneys' fees and costs in accordance with the standards set forth in 42 U.S.C. § 1988 as determined by the Court.

7. Prison Litigation Reform Act Compliance. The Parties stipulate that the Settlement Agreement complies with the Prison Litigation Reform Act, and its terms are

narrowly drawn, extend no further than necessary to correct the alleged violation of Plaintiffs' constitutional rights, are the least intrusive means necessary to correct the alleged violation of Plaintiffs' constitutional rights, and that the Proposed Order to be submitted to the District Court pursuant to paragraph 6 of this Settlement Agreement will include these findings.

8. Compliance with Federal Rules of Civil Procedure 23(e) and (h)

A. Upon execution of this agreement, the Parties agree to jointly request that the Court set a date for a hearing, pursuant to Rule 23(e)(2), to consider whether the terms of this Settlement Agreement constitute a fair, reasonable, and adequate resolution of Plaintiffs' claims in the Action. The Parties agree that the terms of this Settlement Agreement provide all the relief requested in the Complaint. Accordingly, the Parties agree that the proposed resolution is not only fair to the absent members of the class, it is also reasonable and adequate.

B. The Parties agree that, pending the Court's approval and pursuant to Rule 23(e), Releasee shall post notice to class members of the proposed resolution of this case (attached hereto as Exhibit 2) in a noticeable location in each of the pods within the Boulder County Jail (and individually deliver the notice to inmates who are in segregation, or otherwise do not have ready access to the location in which the notice is posted), within forty-eight (48) hours after the Court sets a date for a hearing, pursuant to Rule 23(e), to determine whether the resolution is fair, reasonable, and adequate. The notice shall remain posted until the date the Court establishes for the Rule 23(e) fairness hearing. The Parties agree that posting the notice in such a manner is a reasonable way to notify all class members who would be bound by the proposed resolution of this case.

C. The Parties agree that, upon execution of this Agreement, and pursuant to Federal Rule of Civil Procedure 23(h):

- i. Releasor shall file a motion for reasonable costs and attorneys fees in this Action in the amount of \$65,000;
- ii. Releasee agrees that this motion will be unopposed; and
- iii. Releasee does not contest that an award to Plaintiffs' counsel of \$65,000.00 in attorneys' fees and costs is reasonable in this case.

9. Dismissal. Within fifteen (15) days of Court's Entry of Stipulated Judgment and Order, incorporating the terms of this Agreement as an Order of the Court, the parties will file a Joint Motion to Dismiss With Prejudice Civil Action No. 10-cv-01840-WYD-BNB in the United States District Court for the District of Colorado. The parties agree that the motion shall ask the Court to retain jurisdiction over this Agreement, and that the proposed order of dismissal submitted to the Court shall include such a retention of jurisdiction.

10. Entire Agreement. This Agreement contains the entire contract, understanding and agreement between the Parties, is a full, final and complete compromise settlement of all disputed claims, and supersedes any prior understandings or agreements, all of which are by the execution hereof rendered null and void. The parties expressly warrant and represent that they have carefully read this Agreement, reviewed it with counsel as to its meaning and effect, understand that this is a full, complete and final settlement of all claims and causes of action arising from Civil Action No. 10-cv-01840-WYD-BNB, and is forever binding, and have entered into the Agreement as their own free and voluntary act.



11. Counterparts. This Settlement Agreement may be executed in several counterparts, each of which shall be an original as against any party who signed it, and all of which will constitute one and the same document.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement this 15 day of April, 2011.

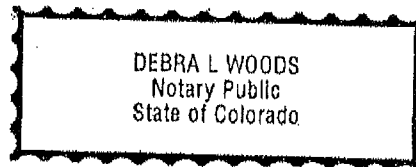
I CERTIFY THAT I HAVE FULLY READ AND UNDERSTAND THE FOREGOING SETTLEMENT AND RELEASE AGREEMENT and I hereby affix my hand and seal this 15<sup>th</sup> day of April, 2011 as my free and voluntary act.

APPOINTED COUNSEL REPRESENTING ALL CLASS MEMBERS.

Mark Silverstein  
Mark Silverstein, Legal Director  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF COLORADO  
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Email: msilver2@att.net

Debra L. Woods  
Notary Public

My Commission Expires  
8-26-2014



David C. Fathi 4/15/11

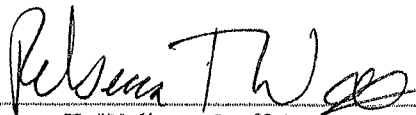
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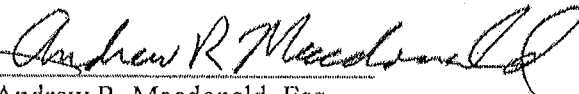
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APPROVED AS TO FORM:

BOULDER COUNTY ATTORNEY

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ATTORNEY FOR RELEASEE

ATTORNEY FOR RELEASOR

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01840-WYD-BNB

David Clay;  
Matthew Deherrera;  
Lamont Morgan;  
William LaFontaine; and  
Cynthia Shaw-Pierce, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Joe Pelle, in his official capacity as Boulder County Sheriff, and  
Larry R. Hank, in his official capacity as administrator of the BCJ and Division Chief of  
the Boulder County Sheriff Office,

Defendants.

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**MEMORANDUM OF UNDERSTANDING**

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This Memorandum of Understanding (“MOU”) memorializes the terms of the Parties’ agreement to resolve this matter.

1. The settlement is a compromise of all disputed claims. Defendants admit no liability in this matter.
2. Within twenty-one (21) days of the execution of this MOU, Defendants shall change the outgoing mail policy of the Boulder County Jail so that:
  - a. Postcards shall be utilized by inmates, if at all, on a voluntary basis; and
  - b. Inmates shall be allowed to write and send personal letters on paper designated by the jail for such use and in envelopes supplied by the jail without having to first ask, and/or receive, permission to do so.

- c. This agreement does not affect Defendants' previously established right to inspect outgoing mail and to read outgoing non-legal mail.
3. Defendants agree that henceforth the Boulder County Jail will maintain an inmate outgoing mail policy that:
  - a. Does not require inmates to use postcards for their outgoing mail; and
  - b. Allows inmates to write personal letters on paper designated by the jail for such use and in envelopes supplied by the jail without having to first ask, and/or receive, permission to do so.
  - c. This agreement does not affect Defendants' previously established right to inspect outgoing mail and to read outgoing non-legal mail.
4. For two years after the execution of this MOU, Defendants shall notify Plaintiffs of any changes to the Boulder County Jail's outgoing inmate mail policy as it relates to inmates' abilities to send personal letters on paper and in envelopes.
5. Defendants shall pay Plaintiffs' reasonable costs and attorneys' fees in this matter in the total amount of sixty five thousand and no dollars (\$65,000), subject to final approval by the Board of County Commissioners of Boulder County ("Board"), which shall vote on this settlement by Tuesday, April 12, 2011.
6. Counsel for Defendants', Andrew Macdonald, warrants that:
  - a. He has authority from the Board to settle this matter for a total of \$65,000 in costs and attorneys' fees;
  - b. He has a good faith belief based on facts known to him that the Board will approve the terms of this settlement, including an award of costs and attorneys' fees in the total amount \$65,000; and

- c. He and Defendants will urge the Board to approve all of the terms of this settlement, including an award of costs and attorneys' fees in the total amount \$65,000.


7. The Parties agree to draft and execute a Settlement Agreement ("Settlement Agreement") containing, *inter alia*, the following language:

- a. This Settlement Agreement does not constitute an admission of liability against the interest of any party. It is a compromise of a disputed claim for the sole purpose of avoiding the expense, hardship and uncertainty of litigation.
- b. This Settlement Agreement will not include any finding of a constitutional or statutory violation.
- c. Plaintiffs agree to waive and release all claims for injunctive and declaratory relief, including class action claims, against the Defendants arising out of Civil Action No. 10-cv-01840-WYD-BNB . Plaintiffs will dismiss their case with prejudice, each party to pay its own fees and costs, except as provided in this Settlement Agreement.
- d. The parties stipulate that the terms of the Settlement Agreement are narrowly drawn, extend no further than necessary to correct the alleged violation of Plaintiffs' constitutional rights, are the least intrusive means necessary to correct the alleged violation of Plaintiffs' constitutional rights, and that the Proposed Order submitted to the District Court pursuant to [paragraph titled "Enforcement," below] of this Settlement Agreement will include these findings.
- e. Enforcement
  - i. Upon execution of this Agreement, the parties will file a Joint Motion for Entry of Stipulated Judgment and Order, incorporating the terms of this Settlement Agreement as an Order of the Court.
  - ii. The Court shall have the power to enforce this Settlement Agreement upon appropriate motion, after due notice and hearing. The prevailing party in any such enforcement action, in addition to all other legal or equitable remedies, shall be entitled to recover attorneys' fees and costs in accordance with the standards set forth in 42 U.S.C. § 1988 as determined by the Court.

8. Pursuant to ¶7(e), as soon as practicably possible after execution of the Settlement Agreement, the Parties agree to file with the Court a Joint Motion for Entry of Stipulated Judgment and Order, requesting that the Court incorporate the terms of this Settlement Agreement as an Order of the Court.

Executed by the undersigned attorneys this 18<sup>th</sup> day of March, 2011.

APPROVED:



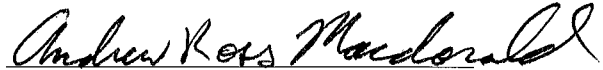
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*Counsel for Plaintiffs*

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**Attorneys for Plaintiffs**



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*Counsel for Defendants*



# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01840-WYD-BNB

David Clay;  
Matthew Deherrera;  
Lamont Morgan;  
William LaFontaine; and  
Cynthia Shaw-Pierce, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Joe Pelle, in his official capacity as Boulder County Sheriff, and  
Larry R. Hank, in his official capacity as administrator of the BCJ and Division Chief of the  
Boulder County Sheriff Office,

Defendants.

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**NOTICE TO BOULDER COUNTY JAIL PRISONERS**

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1. In March, 2010, the Boulder County Jail (“Jail”) implemented a new policy that limited most outgoing inmate mail to postcards.
2. On August 3, 2010, five inmates filed a legal challenge to that policy, arguing that the policy violated inmates’ First Amendment rights: *Clay, et al. v. Pelle, et al.*, case number 10-cv-01840-WYD-BNB, United States District Court, District of Colorado. The inmate-plaintiffs also filed a motion to certify the case as a class action.
3. The lawsuit seeks a declaratory judgment and an injunction ordering the Jail to stop what the lawsuit called the “postcard-only” policy. The lawsuit does not seek monetary damages on behalf of any prisoners.
4. On March 8, 2011, the Court issued an order granting plaintiffs’ motion for class certification for the class defined as “all current and future prisoners in the Boulder County Jail who

are subject to or affected by the defendants' postcard-only policy." The Court appointed attorneys working for the American Civil Liberties Union ("ACLU") of Colorado and the ACLU National Prison Project to serve as counsel for the class.

5. On April 8, 2011, the Jail rescinded the postcard-only policy and allowed inmates to write and send personal letters on paper designated by the Jail for such use and in envelopes supplied by the Jail without having to first ask, and/or receive, permission to do so.

6. The parties have now agreed to a proposed settlement that will resolve all issues in the case. Pursuant to Fed. R. Civ. P. 23(e), this notice is provided to class members to advise them of the terms of the proposed settlement, which are summarized as follows:

- a. The Jail will henceforth maintain an inmate outgoing mail policy that: (1) does not require inmates to use postcards for their outgoing mail; and (2) allows inmates to write personal letters on paper designated by the Jail for such use and in envelopes supplied by the Jail without having to first ask, and/or receive, permission to do so.
- b. This settlement does not affect the Jail's previously established power under the law to inspect outgoing mail and to read outgoing non-legal mail.
- c. Counsel for Plaintiffs are entitled to an award of reasonable attorney's fees and costs to be paid by the Defendant. The parties have agreed that \$65,000 represents a reasonable amount.

7. The Court has set a date of \_\_\_\_\_ for a hearing to determine whether the settlement is fair, reasonable, and adequate. Any class member who objects to the proposed settlement may submit an objection. Objections must be postmarked no later than \_\_\_\_\_, 2011 and should be sent to: \_\_\_\_\_.