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11 Attorneys for Plaintiff Prison Legal News

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ARIZONA

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

16 Plaintiff,

17 v.

18 PAUL BABEU, individually and in his official  
19 capacity as Sheriff of Pinal County, Arizona;  
20 PINAL COUNTY, ARIZONA; Sergeant TONYA  
21 DELGADO, in her individual and official  
22 capacities; Detention Aide ALYSSA ROMERO, in  
23 her individual capacity; Detention Aide  
24 LAURENDA HENSLEY-SALISBERRY, in her  
25 individual capacity; Detention Aide CHERYL  
26 MCBIRNIE, in her individual capacity; Detention  
27 Aide JOHN JOHNSTON, in his individual  
28 capacity; Detention Aide LAUREN MCVICKER,  
in her individual capacity; LORETTA VALDEZ, in  
her individual capacity; DALTON GAY, in his  
individual capacity; ERICA CHAVEZ, in her  
individual capacity; DENA KELLY, in her  
individual capacity; Sergeant AMADO  
MARTINEZ, in his individual and official  
capacities; Sergeant LEONARD ARNOLD, in his  
individual and official capacities; Training

Case No. CV 11-01761-PHX-GMS

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND DECLARATORY AND  
INJUNCTIVE RELIEF FOR VIOLATIONS  
OF 42 U.S.C. § 1983 – FIRST AMENDMENT  
FREEDOM OF SPEECH AND FREEDOM OF  
THE PRESS AND DUE PROCESS OF LAW –  
AND VIOLATIONS OF THE ARIZONA  
CONSTITUTION**

**JURY TRIAL DEMANDED**

1 Specialist DAVID LINDERHOLM, in his  
2 individual and official capacities; Lieutenant  
3 FRANCES HAWKINS, in her individual and  
4 official capacities; Lieutenant DENNIS RUSHING,  
5 in his individual and official capacities; Lieutenant  
6 MATTHEW HULL, in his individual and official  
7 capacities; Lieutenant DARREN RUSHING, in his  
8 individual and official capacities; Lieutenant  
9 VERNITA GANT, in her individual and official  
10 capacities; Lieutenant MICHELE MCNEELY, in  
11 her individual and official capacities; Lieutenant  
12 GILBERT HOYOS, in his individual and official  
13 capacities; Captain TERRY JOHNSON, in his  
14 individual and official capacities; Captain JAYME  
15 VALENZUELA, in his individual and official  
16 capacities; Captain RUBEN MONTAÑO, in his  
17 individual and official capacities; and Deputy Chief  
18 JAMES KIMBLE, in his individual and official  
19 capacities,

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Defendants.

1 COMES NOW Plaintiff PRISON LEGAL NEWS, a project of the Washington  
2 nonprofit corporation HUMAN RIGHTS DEFENSE CENTER, and for its complaint  
3 against Defendants PAUL BABEU, individually and in his official capacity as Sheriff of  
4 Pinal County; PINAL COUNTY; Sergeant TONYA DELGADO, in her individual and  
5 official capacities; Detention Aide ALYSSA ROMERO, in her individual capacity;  
6 Detention Aide LAURENDA HENSLEY-SALISBERRY, in her individual capacity;  
7 Detention Aide CHERYL MCBIRNIE, in her individual capacity; Detention Aide JOHN  
8 JOHNSTON, in his individual capacity; Detention Aide LAUREN MCVICKER, in her  
9 individual capacity; LORETTA VALDEZ, in her individual capacity; DALTON GAY, in  
10 his individual capacity; ERICA CHAVEZ, in her individual capacity; DENA KELLY, in  
11 her individual capacity; Sergeant AMADO MARTINEZ, in his individual and official  
12 capacities; Sergeant LEONARD ARNOLD, in his individual and official capacities;  
13 Training Specialist DAVID LINDERHOLM, in his individual and official capacities;  
14 Lieutenant FRANCES HAWKINS, in her individual and official capacities; Lieutenant  
15 DENNIS RUSHING, in his individual and official capacities; Lieutenant MATTHEW  
16 HULL, in his individual and official capacities; Lieutenant DARREN RUSHING, in his  
17 individual and official capacities; Lieutenant VERNITA GANT, in her individual and  
18 official capacities; Lieutenant MICHELE MCNEELY, in her individual and official  
19 capacities; Lieutenant GILBERT HOYOS, in his individual and official capacities;  
20 Captain TERRY JOHNSON, in his individual and official capacities; Captain JAYME  
21 VALENZUELA, in his individual and official capacities; Captain RUBEN MONTAÑO,  
22 in his individual and official capacities; and Deputy Chief JAMES KIMBLE, in his  
23 individual and official capacities, alleges as follows:

24 **INTRODUCTORY STATEMENT**

25 1. Plaintiff PRISON LEGAL NEWS (“PLN”), a project of the Washington  
26 nonprofit HUMAN RIGHTS DEFENSE CENTER (“HRDC”), brings this action pursuant  
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1 to 42 U.S.C. § 1983 (“Section 1983”) and the Arizona Constitution, to redress the harm  
2 caused by Defendants’ censorship of its monthly publication and correspondence mailed to  
3 Pinal County prisoners.

4 2. Defendants have adopted and implemented mail policies and practices that  
5 unconstitutionally restrict the right to free expression held by PLN and its subscribers, and  
6 protected by the United States and Arizona Constitutions. Defendants have adopted and  
7 implemented mail policies and practices that unconstitutionally prohibit delivery to  
8 prisoners of all magazines, hardcover books, and letters of more than one page in length.

9 3. On dozens of occasions, Defendants have prohibited subscribers and  
10 correspondents from receiving mail sent by PLN. Defendants have undertaken this blanket  
11 suppression of speech without any reference to or justification in, safety concerns or any  
12 other correctional necessity.

13 4. Defendants’ policies and practices do not provide constitutionally adequate  
14 due process protections to senders of mail, such as notice of the Defendants’ decision to  
15 censor mail and an opportunity to challenge the censorship.

16 5. Defendants’ actions therefore violate PLN’s rights to freedom of speech,  
17 freedom of the press and freedom of association under the First Amendment and its right  
18 to due process of law and equal protection under the Fourteenth Amendment to the United  
19 States Constitution, and PLN’s rights under Article II, Sections 4 and 6 of the Arizona  
20 Constitution. Plaintiff seeks damages in an amount to be proved at trial, and injunctive  
21 and declaratory relief, pursuant to 42 U.S.C. § 1983.

22 **DEMAND FOR JURY TRIAL**

23 6. Plaintiff respectfully demands a jury trial on all causes of action set forth  
24 herein.

25 **JURISDICTION AND VENUE**

26 7. This action arises under 42 U.S.C. § 1983, which provides for recovery of  
27 damages for violations of the First and Fourteenth Amendments to the United States

1 Constitution, and under the Arizona Constitution. This Court has jurisdiction, including  
2 diversity jurisdiction, over this action under 28 U.S.C. §§ 1331, 1332 and 1343. This  
3 Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C.  
4 § 1367. This Court is authorized to grant declaratory relief pursuant to 28 U.S.C. §§2201  
5 and 2202 and Fed. R. Civ. P. 57, and is further empowered to grant injunctive relief  
6 pursuant to Fed. R. Civ. P. 65.

7 8. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b) because  
8 the Defendants reside in and a substantial part of the events complained of occurred in this  
9 District.

### 10 **PARTIES**

11 9. Plaintiff PRISON LEGAL NEWS is a project of the Human Rights Defense  
12 Center, a Washington non-profit corporation.

13 10. For the past 21 years, the core of PLN's mission has been public education,  
14 advocacy and outreach in support of the rights of prisoners and in furtherance of basic  
15 human rights. PLN maintains a website, operates an email list, publishes and distributes  
16 books about the criminal justice system and legal issues affecting prisoners, and publishes  
17 and distributes a monthly journal of corrections news and analysis, *Prison Legal News*, to  
18 prisoners, lawyers, courts, libraries, and the public throughout the country. Prisoners, their  
19 family, friends and advocates are among the intended beneficiaries of PLN's activities.

20 11. Defendant PINAL COUNTY is a municipal corporation formed under the  
21 laws of the State of Arizona.

22 12. Defendant PAUL BABEU is the Sheriff of Pinal County. Sheriff Babeu is  
23 employed by and is an agent of Pinal County and the Pinal County Sheriff's Department.  
24 As the Sheriff, he is the final decision maker for Pinal County for jail operations, practices,  
25 and policies. He is sued in his individual and official capacities and was acting under color  
26 of state law at all times relevant hereto.

1           13. Defendant Sergeant TONYA DELGADO is employed by the Pinal County  
2 Sheriff's Department at Pinal County Jail. From January 2006 to the present, her duties  
3 have included handing or processing mail, and deciding whether or not to deliver incoming  
4 mail, addressed to detainees at Pinal County Jail. Pursuant to her duties, she has returned  
5 to sender or refused to deliver books, magazines, and/or letters sent to detainees by Prison  
6 Legal News, and decided to prohibit delivery of Prison Legal News publications from the  
7 Jail. She has also been responsible for training and supervising Pinal County Jail staff in  
8 handling and processing inmate mail. She is sued in her individual and official capacities  
9 and was acting under color of state law at all times relevant hereto.

10           14. Defendant Detention Aide ALYSSA ROMERO is employed by the Pinal  
11 County Sheriff's Department at Pinal County Jail. From April 2010 to the present, her  
12 duties have included handing or processing mail, and deciding whether or not to deliver  
13 incoming mail, addressed to detainees at Pinal County Jail. Pursuant to her duties, she has  
14 returned to sender or refused to deliver books, magazines, and/or letters sent to detainees  
15 by Prison Legal News, and decided to prohibit delivery of Prison Legal News publications  
16 from the Jail. She is sued in her individual capacity, for actions under color of state law.

17           15. Defendant Detention Aide LAURENDA HENSLEY-SALISBERRY is or  
18 was employed by the Pinal County Sheriff's Department at Pinal County Jail. From April  
19 2007 to January 2012, her duties included handing or processing mail, and deciding  
20 whether or not to deliver incoming mail, addressed to detainees at Pinal County Jail.  
21 Pursuant to her duties, she has returned to sender or refused to deliver books, magazines,  
22 and/or letters sent to detainees by Prison Legal News, and decided to prohibit delivery of  
23 Prison Legal News publications from the Jail. She is sued in her individual capacity, for  
24 actions under color of state law.

25           16. Defendant Detention Aide CHERYL MCBIRNIE is employed by the Pinal  
26 County Sheriff's Department at Pinal County Jail. From May 2006 to the present, her  
27 duties have included handing or processing mail, and deciding whether or not to deliver  
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1 incoming mail, addressed to detainees at Pinal County Jail. Pursuant to her duties, she has  
2 returned to sender or refused to deliver books, magazines, and/or letters sent to detainees  
3 by Prison Legal News, and decided to prohibit delivery of Prison Legal News publications  
4 from the Jail. She is sued in her individual capacity, for actions under color of state law.

5 17. Defendant Detention Aide JOHN JOHNSTON is employed by the Pinal  
6 County Sheriff's Department at Pinal County Jail. From December 2011 to the present,  
7 his duties have included handing or processing mail, and deciding whether or not to deliver  
8 incoming mail, addressed to detainees at Pinal County Jail. He is sued in his individual  
9 capacity, for actions under color of state law.

10 18. Defendant Detention Aide LAUREN MCVICKER is employed by the Pinal  
11 County Sheriff's Department at Pinal County Jail. From December 2011 to the present,  
12 her duties have included handing or processing mail, and deciding whether or not to  
13 deliver incoming mail, addressed to detainees at Pinal County Jail. She is sued in her  
14 individual capacity, for actions under color of state law.

15 19. Defendant LORETTA VALDEZ is employed by the Pinal County Sheriff's  
16 Department at Pinal County Jail. From September 2011 to the present, her duties have  
17 included handing or processing mail, and deciding whether or not to deliver incoming  
18 mail, addressed to detainees at Pinal County Jail. She is sued in her individual capacity,  
19 for actions under color of state law.

20 20. Defendant DALTON GAY is employed by the Pinal County Sheriff's  
21 Department at Pinal County Jail. From December 2011 to the present, his duties have  
22 included handing or processing mail, and deciding whether or not to deliver incoming  
23 mail, addressed to detainees at Pinal County Jail. He is sued in his individual capacity, for  
24 actions under color of state law.

25 21. Defendant ERICA CHAVEZ is employed by the Pinal County Sheriff's  
26 Department at Pinal County Jail. From December 2011 to the present, her duties have  
27 included handing or processing mail, and deciding whether or not to deliver incoming  
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1 mail, addressed to detainees at Pinal County Jail. She is sued in her individual capacity,  
2 for actions under color of state law.

3         22. Defendant DENA KELLY is employed by the Pinal County Sheriff's  
4 Department at Pinal County Jail. From December 2011 to the present, her duties have  
5 included handing or processing mail, and deciding whether or not to deliver incoming  
6 mail, addressed to detainees at Pinal County Jail. She is sued in her individual capacity,  
7 for actions under color of state law.

8         23. Defendant Sergeant AMADO MARTINEZ was employed by the Pinal  
9 County Sheriff's Department at Pinal County Jail, during times relevant to this Complaint.  
10 His responsibilities included training Pinal County Jail staff in handling and processing  
11 inmate mail. He is sued in his individual and official capacities and was acting under color  
12 of state law at all times relevant hereto.

13         24. Defendant Sergeant LEONARD ARNOLD is employed by the Pinal County  
14 Sheriff's Department at Pinal County Jail. From December 2011 to the present, his duties  
15 have included deciding whether or not to deliver incoming mail addressed to detainees at  
16 Pinal County Jail. He has been responsible for training and supervising Pinal County Jail  
17 staff in handling and processing inmate mail. He is sued in his individual and official  
18 capacities and was acting under color of state law at all times relevant hereto.

19         25. Defendant Training Specialist DAVID LINDERHOLM is employed by the  
20 Pinal County Sheriff's Department. He has been responsible for training Pinal County Jail  
21 staff in handling and processing inmate mail. He is sued in his individual and official  
22 capacities and was acting under color of state law at all times relevant hereto.

23         26. Defendant Lieutenant FRANCES HAWKINS is employed by the Pinal  
24 County Sheriff's Department. She has been responsible for training Pinal County Jail staff  
25 in handling and processing inmate mail. She is sued in her individual and official  
26 capacities and was acting under color of state law at all times relevant hereto.



1           27. Defendant Lieutenant DENNIS RUSHING is employed by the Pinal County  
2 Sheriff's Department. He has been responsible for training Pinal County Jail staff in  
3 handling and processing inmate mail. He is sued in his individual and official capacities  
4 and was acting under color of state law at all times relevant hereto.

5           28. Defendant Lieutenant MATTHEW HULL is employed by the Pinal County  
6 Sheriff's Department. He has been responsible for training Pinal County Jail staff in  
7 handling and processing inmate mail. He is sued in his individual and official capacities  
8 and was acting under color of state law at all times relevant hereto.

9           29. Defendant Lieutenant DARREN RUSHING is employed by the Pinal  
10 County Sheriff's Department. He has been responsible for training Pinal County Jail staff  
11 in handling and processing inmate mail. He is sued in his individual and official capacities  
12 and was acting under color of state law at all times relevant hereto.

13           30. Defendant Lieutenant VERNITA GANT is employed by the Pinal County  
14 Sheriff's Department. She has been responsible for training Pinal County Jail staff in  
15 handling and processing inmate mail. She is sued in her individual and official capacities  
16 and was acting under color of state law at all times relevant hereto.

17           31. Defendant Lieutenant MICHELE MCNEELY is employed by the Pinal  
18 County Sheriff's Department. She has been responsible for training Pinal County Jail staff  
19 in handling and processing inmate mail. She is sued in her individual and official  
20 capacities and was acting under color of state law at all times relevant hereto.

21           32. Defendant Lieutenant GILBERT HOYOS is employed by the Pinal County  
22 Sheriff's Department at Pinal County Jail. From December 2011 to the present, his duties  
23 have included deciding whether or not to deliver incoming mail addressed to detainees at  
24 Pinal County Jail. He has also been responsible for training and supervising Pinal County  
25 Jail staff in handling and processing inmate mail. He is sued in his individual and official  
26 capacities and was acting under color of state law at all times relevant hereto.



1 management of prison and jail facilities and conditions of confinement. PLN also  
2 distributes books about the criminal justice system and legal issues affecting prisoners.

3 38. PLN engages in core protected political speech and expressive conduct on  
4 matters of public concern.

5 39. PLN has approximately 7,000 subscribers throughout the United States and  
6 abroad, including prisoners, pre-trial detainees, attorneys, journalists, public libraries,  
7 judges, and other members of the public.

8 40. Defendants have written, instituted and implemented policies at the Pinal  
9 County Jail that prohibit delivery to prisoners of all magazines, hardcover books, and  
10 letters of more than one page.

11 41. As of August 18, 2011, the Frequently Asked Questions page of the Pinal  
12 County Jail website reads, in pertinent part:

13 **How do I send mail to an inmate?**

14 You may send post cards no larger than 5X7 mailed via United States Postal  
15 Service Only.

16 ...

17 Magazines of any kind or hard cover books are not permitted, however  
18 paperback books (limited to 3) may be sent via a publisher or publishing  
19 company only using the address listed.

20 *See*

21 [http://pinalcountyaz.gov/DEPARTMENTS/SHERIFF/ADULTDETENTIONCENTER/Pa](http://pinalcountyaz.gov/DEPARTMENTS/SHERIFF/ADULTDETENTIONCENTER/Pages/FAQ.aspx#2008-02-26%2009:33:53)  
22 [ges/FAQ.aspx#2008-02-26%2009:33:53](http://pinalcountyaz.gov/DEPARTMENTS/SHERIFF/ADULTDETENTIONCENTER/Pages/FAQ.aspx#2008-02-26%2009:33:53) (last accessed 8/18/11).

23 19. Pursuant to this and other policies, Defendants have improperly and illegally  
24 censored PLN's publications, books, brochures, and other correspondence sent to prisoners  
25 at the Pinal County Jail. Defendants have improperly and illegally refused to deliver  
26 paperback copies of the publication *Protecting your Health and Safety*, sent by PLN to  
27 prisoners at the Pinal County Jail.

1           20.     Since at least February 2011 and continuing to the present day, Defendants  
2 have censored at least three different types of publications distributed by PLN: the monthly  
3 publication *Prison Legal News* and subscription notices for said publication; PLN's  
4 "Informational Brochure Pack" and individual brochures contained therein (including a  
5 Prison Legal News Brochure and Subscription Order Form, a Book List, and an  
6 Educational Courses Brochure); and the paperback book *Protecting Your Health and*  
7 *Safety*. The censorship took the form of failing to deliver the mailed material to the  
8 addressee.

9                   (a)     ***Prison Legal News***: This is PLN's monthly journal of corrections  
10 news and analysis regarding prisoners' rights, court rulings, management of prison and jail  
11 facilities and conditions of confinement.

12                   (b)     **Informational Brochure Pack**: This includes 3 items: (1) a *Prison*  
13 *Legal News* subscription order form and brochure about the topics covered in PLN's  
14 monthly magazine and a description of three books available for purchase or included with  
15 a subscription (*Protecting Your Health & Safety, With Liberty for Some: 500 Years of*  
16 *Imprisonment in America*, and *Prison Profiteers: Who Makes Money from Mass*  
17 *Incarceration*); (2) a book list including a description of 42 dictionaries, resource materials  
18 and books available for purchase, with information about a variety of topics, including: the  
19 basic health and safety rights of prisoners, the criminal justice system, finding the right  
20 lawyer, DNA testing, issues related to imprisoned women, self-representation in court,  
21 developing a successful re-entry plan upon release from prison, searching for a job, crime  
22 and poverty, and the mental health crisis in U.S. prisons and jails; and (3) an educational  
23 courses brochure including detailed information about and an order form for a book on  
24 high school, vocational, paralegal, undergraduate, and graduate courses available through  
25 correspondence study, as well as detailed information about and an order form for a book  
26 on ineffective assistance of counsel and *habeas corpus* litigation.

1 (c) ***Protecting Your Health and Safety***: This book, published by the  
 2 Southern Poverty Law Center and distributed by PLN, is an easy to read, plain language  
 3 guide prisoners can use to identify and litigate federal civil rights claims against prison  
 4 officials. Despite the language on the Pinal County Jail website suggesting that paperback  
 5 books may be sent, Defendants prohibited delivery of the paperback edition of this book  
 6 on numerous occasions.

7 21. As described below, Defendants have censored materials from PLN on at  
 8 least 65 occasions from February 2011 to the present.

9 22. The methods by which Defendants have censored PLN publications being  
 10 sent to prisoners held in custody in the Pinal County Jail (“Jail”) include refusing to deliver  
 11 said items to the prisoners and/or returning items to PLN’s offices via the Return To  
 12 Sender (“RTS”) service of the United States Postal Service.

13 23. When Defendants have censored and returned PLN’s mailings, Defendants  
 14 have often have often drawn a red line through the addressee information on the mailings,  
 15 marking the outside of various items with red pen notations of “RTS,” and writing the  
 16 words “NOT ALLOWED,” “ONLY 1 PAGE LETTERS ALLOWED,” or “NOT FROM  
 17 AN APPROVED PUBLISHER” near the recipient’s address.

18 24. From February to June 2011, PLN sent a sample issue of *Prison Legal News*,  
 19 in a manila envelope via first-class mail, to each of more than 60 prisoners. During the  
 20 same period, PLN sent the same prisoners copies of the informational brochure pack,  
 21 under separate cover in a standard #10 sized envelope via first-class mail. During the same  
 22 period, PLN sent the same prisoners a new copy of the paperback book *Protecting Your*  
 23 *Health & Safety* via Media Mail. All items were addressed to specific, individual inmates  
 24 using the format:

25 [Inmate Name] [Inmate Number]

26 Pinal County Jail

27 P.O. Box 2610

1 Florence, AZ 85132

2 All items bore a return address of:

3 Prison Legal News

4 PO Box 2420

5 W. Brattleboro, VT 05303.

6 25. Beginning in February 2011 and monthly thereafter, PLN has sent current  
7 issues of *Prison Legal News* directly from its printer addressed individually to several  
8 individual prisoners in Defendants' custody.

9 26. As a result of Defendants' policies and practices, this mail was not received  
10 by its intended recipients at the Pinal County Jail.

11 27. In April and June 2011, counsel for PLN sent single-page letters to more  
12 than 60 prisoners in Defendants' custody, listing the items that had been mailed under  
13 separate cover, and asking "for confirmation of your receipt of these three (3) items which  
14 have all been mailed separately. ... If you have not received all three of the items  
15 mentioned above within the next few weeks, please write to us and let us know."

16 28. At least 7 of these prisoners wrote back via postcards, to say that they had  
17 not received any correspondence other than the letter from PLN's counsel. No letters or  
18 postcards were received from any prisoner in Pinal County Jail *confirming* his or her  
19 receipt of a sample issue of *Prison Legal News*, the informational brochure pack, or  
20 *Protecting Your Health and Safety*.

21 29. To date, PLN has received returns of at least: 50 issues of *Prison Legal News*  
22 marked "RTS not allowed" or "Refused"; 31 paperback copies of *Protecting Your Health*  
23 *and Safety* marked "RTS" or "RTS not allowed" or "RTS not from an approved  
24 publisher"; 29 envelopes containing the informational brochure pack, marked "RTS only 1  
25 page letters allowed" or "RTS not allowed" or "RTS only a 1 page letter allowed;" and 17  
26 letters related to subscription renewal or cancellations, marked "RTS not allowed."

1 30. Defendants did not provide Plaintiff with constitutionally adequate notice  
2 nor with any opportunity to appeal the decision to censor or exclude any of its  
3 correspondence or publications.

4 31. Defendants' conduct prohibiting PLN from mailing its publications,  
5 informational brochures, books, and subscription renewal letters to prisoners confined at  
6 the Jail violates the First Amendment by censoring these expressive activities and has a  
7 chilling effect on future speech and expression directed at prisoners confined there.

8 32. Defendants' policy governing incoming mail does not provide notice or an  
9 opportunity for the sender or the intended recipient to appeal the Jail's censorship  
10 decisions.

11 33. In adopting and implementing the above censorship policies, Defendants  
12 have knowingly violated, continue to violate, and are reasonably expected to violate in the  
13 future, PLN's constitutional rights, and have caused PLN serious and irreparable harm  
14 including, but not limited to: suppression of its political message, frustration of its  
15 organizational mission, lost ability to recruit new supporters, subscribers and writers, lost  
16 subscriptions, lost opportunities for purchases and sales of its publications, lost  
17 opportunities for book sales, and diversion of its resources. Absent intervention by this  
18 Court these actions will continue and PLN will be subjected to the same irreparable and  
19 serious injuries.

20 34. The above violations of PLN's rights and the harms to PLN were caused by  
21 mail and censorship policies adopted or approved by Defendant BABEU in his capacity as  
22 Sheriff of Pinal County.

23 35. The individual Defendants named herein are responsible for, or personally  
24 participated in, creating and implementing these unconstitutional mail and censorship  
25 policies, practices, and customs, and for training and supervising the mail staff at the Pinal  
26 County Jail who carry out these policies and whose conduct has injured and continues to  
27 injure PLN.

1 36. Defendants’ unconstitutional policy, practices, and customs are ongoing and  
2 continue to violate PLN’s rights, and as such PLN has no adequate remedy at law.

3 37. PLN is entitled to injunctive relief prohibiting Defendants from refusing to  
4 deliver or refusing to allow delivery of publications, books, informational brochures and  
5 catalogs, and other correspondence from Prison Legal News, and prohibiting Defendants  
6 from censoring mail without due process of law.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**  
9 **(For Violations of the First Amendment, As Incorporated**  
10 **Through the Fourteenth Amendment, Under Color Of**  
11 **State Law – Free Speech; Section 1983)**

12 38. Plaintiff realleges and incorporates by reference the preceding paragraphs.

13 39. The acts described above constitute violations of Plaintiff’s rights to freedom  
14 of the press, to freedom of speech, and Plaintiff’s right to be free of government  
15 censorship, under the First Amendment to the United States Constitution through 42  
16 U.S.C. § 1983, and have caused damages to Plaintiff, and will continue to cause damage.

17 40. Plaintiff seeks declaratory and injunctive relief and compensatory damages  
18 against all Defendants. Plaintiff also seeks punitive damages solely against the individual  
19 Defendants.

20 **SECOND CLAIM FOR RELIEF**  
21 **(For Violations of Article 2, Section 6 of the Arizona**  
22 **Constitution Under Color of State Law)**

23 41. Plaintiff realleges and incorporates by reference the preceding paragraphs.

24 42. The censorship policies and practices complained of herein violate Plaintiff’s  
25 right to freedom of expression as guaranteed by Article 2, Section 6 of the Arizona  
26 Constitution.

27 43. To remedy these violations of Plaintiff’s constitutional rights, and to ensure  
28 that such violations do not recur, Plaintiff seeks declaratory and injunctive relief against all  
Defendants.



**THIRD CLAIM FOR RELIEF  
(For Violations of Fourteenth Amendment Due Process  
Clause Under Color of State Law, Actionable Through 42  
U.S.C. § 1983)**

44. Plaintiff realleges and incorporates by reference the preceding paragraphs.

45. By failing to give Plaintiff sufficient notice of the censorship of its publications, and an opportunity to be heard with respect to that censorship, Defendants have deprived and continue to deprive Plaintiff of liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution through 42 U.S.C. § 1983.

46. As a direct and proximate result of Defendants’ conduct in violation of Plaintiff’s rights as set forth above, Plaintiff has suffered, and continues to suffer, damages.

**FOURTH CLAIM FOR RELIEF  
(For Violations of the Due Process Clause in Article 2,  
Section 4 of the Arizona Constitution)**

47. Plaintiff realleges and incorporates by reference the preceding paragraphs.

48. By failing to give Plaintiff sufficient notice of the censorship of its publications, and an opportunity to be heard with respect to that censorship, Defendants have deprived and continue to deprive Plaintiff of liberty and property without due process of law, in violation of the Article 2, Section 4 of the Arizona Constitution.

49. To remedy these violations of Plaintiff’s constitutional rights, and to ensure that such violations do not recur, Plaintiff seeks declaratory and injunctive relief against all Defendants.

**DAMAGES**

50. Plaintiff realleges and incorporates by reference the preceding paragraphs.

**Paragraphs 51 and 52 below refer only to Plaintiff’s claims under the United States Constitution and 42 U.S.C. § 1983, i.e., Plaintiff’s First and Third Claims for Relief.**

51. As a direct and proximate result of the infringement of Plaintiff’s rights in each of the above claims for relief, Plaintiff sustained and continues to sustain substantial

1 injuries including but not limited to: suppression of its political message, frustration of its  
2 organizational mission, lost ability to recruit new supporters, subscribers and writers,  
3 diversion of resources, lost business income, lost business goodwill, and a chilling effect  
4 on future exercise of Plaintiff's rights. Plaintiff is entitled to compensation for the harms  
5 resulting from the unconstitutional and illegal acts by Defendants.

6 52. As set forth above, the individual Defendants' actions demonstrated a  
7 reckless disregard for the rights and interests of Plaintiff. On information and belief,  
8 Defendants will continue to act in this manner absent legal deterrents. Exemplary damages  
9 are required as punishment and to deter Defendants from repeating these harmful and  
10 illegal acts in the future.

11 **PRAYER FOR RELIEF**

12 The conduct previously alleged, unless and until enjoined by order of this Court,  
13 will cause great and irreparable injury to Plaintiff. Further, a judicial declaration is  
14 necessary and appropriate at this time so that all parties may know their respective rights  
15 and act accordingly.

16 WHEREFORE, Plaintiff prays for judgment as follows:

17 1. A declaration that Defendants' policies, practices, and customs violate the  
18 United States and Arizona Constitutions as set forth herein;

19 2. A preliminary and permanent injunction preventing Defendants and their  
20 employees, agents, and any and all persons acting in concert with them from continuing to  
21 violate the United States and Arizona Constitutions;

22 3. An order awarding compensatory and punitive damages in amounts to be  
23 proven at trial for each incident that violated Plaintiff's rights under the United States  
24 Constitution, as actionable under 42 U.S.C. § 1983;

25 4. An order awarding Plaintiff its reasonable attorney's fees, litigation expenses  
26 and costs under 42 U.S.C. § 1988, under the Arizona private attorney general doctrine, as  
27

1 recognized in *Arnold v. Arizona Dept. of Health Services*, 775 P.2d 521 (Ariz. 1989), and  
2 any other applicable law; and

3 5. Such other relief as the Court deems just and proper.

4 **PLAINTIFF DEMANDS A JURY TRIAL.**

5 DATED: March 11, 2012

Respectfully submitted,

6 By

s/ *Kenneth Walczak*

7 Kenneth M. Walczak  
8 ROSEN, BIEN & GALVAN, LLP

9 Attorneys for Plaintiff Prison Legal News

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