

1 Lisa Ells – Cal. Bar No. 243657\*  
Jenny S. Yelin – Cal. Bar No. 273601\*  
2 ROSEN BIEN GALVAN &  
GRUNFELD LLP  
3 50 Fremont Street, 19th Floor  
San Francisco, California 94105-2235  
4 Telephone: (415) 433-6830  
Facsimile: (415) 433-7104  
5 lells@rbgg.com  
jyelin@rbgg.com

6 Lance Weber – Fla. Bar No. 104550\*  
7 Sabarish Neelakanta – Fla. Bar No. 26623\*  
HUMAN RIGHTS DEFENSE CENTER  
8 Post Office Box 1151  
Lake Worth, Florida 33460-1151  
9 Telephone: (561) 360-2523  
Facsimile: (866) 735-7136  
10 lweber@humanrightsdefensecenter.org  
sneelakanta@humanrightsdefensecenter.org

11  
12 David J. Bodney  
bodneyd@ballardspahr.com  
13 Heather Todd Horrocks  
horrocksh@ballardspahr.com  
14 BALLARD SPAHR LLP  
1 East Washington Street, Suite 2300  
15 Phoenix, AZ 85004-2555  
Telephone: 602.798.5400  
16 Facsimile: 602.798.5595

17 \* *Pro Hac Vice* applications to be filed  
18 forthwith

19 Attorneys for Plaintiff Prison Legal News

20 IN THE UNITED STATES DISTRICT COURT

21 FOR THE DISTRICT OF ARIZONA

22 Prison Legal News, a project of the Human  
23 Rights Defense Center,

24 Plaintiff,

25 v.

26 Charles L. Ryan, in his official capacity as  
Director of the Arizona Department of  
27 Corrections and in his individual capacity;  
Gail Rittenhouse, in her official capacity as  
28 Division Director, Support Services of the  
Arizona Department of Corrections and in  
her individual capacity; Jeff Hood, in his

NO. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES UNDER THE CIVIL  
RIGHTS ACT, 42 U.S.C. § 1983**

**JURY TRIAL DEMANDED**

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Suite 2300  
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1 official capacity as Deputy Director of the  
2 Arizona Department of Corrections and in  
3 his official capacity; Alf Olson, in his  
4 official capacity as an employee of the  
5 Office of Publication Review of the Arizona  
6 Department of Corrections and in his  
7 individual capacity; and Does 1 to 20,  
8 inclusive,

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Defendants.

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**INTRODUCTION**

1  
2 1. Plaintiff PRISON LEGAL NEWS (“PLN” or “Plaintiff”), a project of the  
3 Human Rights Defense Center, brings this action regarding Defendants’ censorship of  
4 four issues of its monthly publication mailed to prisoners in the Arizona Department of  
5 Corrections (“ADC”), in violation of PLN’s clearly established rights under the First and  
6 Fourteenth Amendments to the United States Constitution. Defendants have adopted and  
7 implemented mail policies and a pattern of practices that unconstitutionally prevent  
8 distribution of PLN’s eponymously named monthly publication. The censored issues  
9 contain articles that include non-salacious descriptions of sexual activity to make clear  
10 the factual basis for legal cases of interest to PLN’s readers. In particular, Defendants  
11 refuse to deliver issues of PLN’s monthly publication to subscribers in ADC facilities  
12 when those issues contain articles describing sexual contact between jail or prison guards  
13 and prisoners to which the prisoners did not consent.

14 2. Defendants’ mail policies and practices also do not afford constitutionally  
15 adequate notice and an opportunity to challenge Defendants’ censorship, in violation of  
16 PLN’s right to due process. Defendants’ actions violate PLN’s rights and the rights of  
17 others under the First Amendment and the Due Process Clause of the Fourteenth  
18 Amendment. PLN thus brings this action, pursuant to 42 U.S.C. § 1983, seeking  
19 injunctive and declaratory relief, and damages to be proven at trial.

**JURISDICTION AND VENUE**

20  
21 3. This action arises under the First and Fourteenth Amendments to the United  
22 States Constitution and is brought pursuant to 42 U.S.C. § 1983. This Court has subject  
23 matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. The Court has  
24 jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57.

25 4. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b)(2)  
26 because substantial acts and omissions giving rise to the claims occurred in this District,  
27 including Defendants’ implementation of the challenged mail policies and practices, and  
28 because Defendants reside in this District.

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**PARTIES**

1  
2 5. Plaintiff PRISON LEGAL NEWS is a project of the Human Rights  
3 Defense Center, a Washington non-profit corporation. PLN publishes a 72-page monthly  
4 journal of corrections news and analysis called *Prison Legal News*, and distributes books  
5 about the criminal justice system and legal issues affecting prisoners to prisoners,  
6 lawyers, courts, libraries, and the public throughout the country.

7 6. The Defendants listed below are sued in their official capacities only for  
8 equitable relief as to each and every violation of federal rights alleged in this complaint.  
9 Defendants are also sued in their individual capacities for damages.

10 7. Defendant CHARLES L. RYAN (“RYAN”) is, and at all relevant times  
11 herein mentioned was, the Director of the ADC, the state agency that manages the  
12 correctional facilities within the State of Arizona. Defendant RYAN has ultimate  
13 responsibility for the promulgation and implementation of ADC policies, procedures, and  
14 practices and for the management of the ADC. As to all claims presented herein against  
15 him, Defendant RYAN is being sued in his individual capacity for damages, and in his  
16 official capacity for injunctive and declaratory relief. At all relevant times, Defendant  
17 RYAN has acted under color of state law.

18 8. Defendant GAIL RITTENHOUSE is, and at all relevant times herein  
19 mentioned was, Division Director, Support Services of ADC. Defendant  
20 RITTENHOUSE is responsible for the promulgation and implementation of policies,  
21 procedures, and practices at the ADC. As to all claims presented herein against her,  
22 Defendant RITTENHOUSE is being sued in her individual capacity for damages, and in  
23 her official capacity for injunctive and declaratory relief. At all relevant times,  
24 Defendant RITTENHOUSE has acted under color of state law.

25 9. Defendant JEFF HOOD is, and at all relevant times herein mentioned was,  
26 Deputy Director of ADC. Defendant HOOD is responsible for the promulgation and  
27 implementation of policies, procedures, and practices at the ADC. As to all claims  
28 presented herein against him, Defendant HOOD is being sued in his individual capacity

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1 for damages, and in his official capacity for injunctive and declaratory relief. At all  
2 relevant times, Defendant HOOD has acted under color of state law.

3 10. Defendant ALF OLSON is, and at all relevant times herein mentioned was,  
4 an ADC employee who worked or works in the Office of Publication Review. Defendant  
5 OLSON is responsible for the promulgation and implementation of policies, procedures,  
6 and practices at the ADC. As to all claims presented herein against him, Defendant  
7 OLSON is being sued in his individual capacity for damages associated with clearly  
8 established federal rights, and in his official capacity for injunctive and declaratory relief.  
9 At all relevant times, Defendant OLSON has acted under color of state law.

10 11. The names and capacities of the persons sued as DOES 1 to 20, inclusive,  
11 herein are unknown to Plaintiff at this time. Each of Defendants DOES 1 through 20 is  
12 or was employed by and is or was an agent of ADC when some or all of the challenged  
13 prisoner mail policies and practices were adopted and/or implemented. Each of  
14 Defendants DOES 1 through 20 is or was personally involved in the adoption and/or  
15 implementation of the ADC's mail policies for prisoners, and/or is or was responsible for  
16 the hiring, screening, training, retention, supervision, discipline, counseling, and/or  
17 control of the ADC staff who interpret and implement these prisoner mail policies. Each  
18 of Defendants DOES 1 through 20 is or was acting under color of state law. Each of  
19 Defendants DOES 1 through 20 is sued in his or her individual capacity for damages and  
20 his or her official capacity for injunctive and declaratory relief. PLN will seek to amend  
21 this Complaint as soon as the true names and identities of Defendants DOES 1 through  
22 20 have been ascertained.

23 12. Each and every act and omission alleged herein of Defendants, their  
24 officers, agents, servants, employees, or persons acting at their behest or direction, were  
25 done and are continuing to be done under the color of state law and within the scope of  
26 their official duties as officers, employees or agents of the ADC. Each Defendant was or  
27 is an agent of each other Defendant in committing the unconstitutional acts alleged in this  
28 complaint.

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**FACTUAL BACKGROUND**

1  
2 13. Plaintiff PRISON LEGAL NEWS publishes and distributes *Prison Legal*  
3 *News: Dedicated to Protecting Human Rights*, a monthly journal of corrections news and  
4 analysis. PLN also publishes and distributes paperback books about the criminal justice  
5 system and legal issues impacting prisoners.

6 14. *Prison Legal News* has thousands of subscribers in the United States and  
7 abroad, including prisoners, attorneys, journalists, public libraries, judges, and other  
8 members of the public. PLN distributes its publication to prisoners and law librarians in  
9 approximately 2,600 correctional facilities across the United States, including institutions  
10 within the Federal Bureau of Prisons and all of the adult prisons of the California  
11 Department of Corrections and Rehabilitation.

12 15. PLN also distributes approximately fifty (50) different books about the  
13 criminal justice system, legal reference books, and self-help books of interest to  
14 prisoners. These books are designed to foster a better understanding of criminal justice  
15 policies and to allow prisoners to educate themselves about related issues, such as legal  
16 research, how to write a business letter, health care issues, and similar topics.

17 16. Plaintiff’s organizational purpose, as stated in its Articles of Incorporation,  
18 is to disseminate legal information on issues affecting prisoners and their loved ones on  
19 the outside and to educate prisoners and the public about the destructive nature of racism,  
20 sexism, and the economic and social costs of prisons to society, among other purposes.

21 17. For more than 25 years, the core of PLN’s mission has been public  
22 education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners  
23 who seek legal redress for infringements of their constitutionally guaranteed and other  
24 basic human rights. PLN’s mission, if realized, has a salutary effect on public safety.

25 18. PLN engages in core protected speech and expressive conduct on matters of  
26 public concern, such as the operations of corrections facilities, jail and prison conditions,  
27 prisoner health and safety, and prisoners’ rights. PLN regularly receives correspondence  
28 from prisoners in correctional facilities around the country, including ADC prisons, in

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1 which they ask questions and report on jail or prison conditions.

2 19. Currently, PLN has ninety-seven (97) subscribers to its monthly publication  
3 at ADC facilities. Despite ADC's recent censorship of issues of *Prison Legal News*, PLN  
4 continues to pursue its mission to promote public safety through educational and  
5 journalistic avenues by sending its monthly publication to prisoners confined at ADC  
6 prisons.

### 7 **Overview of Censorship and Lack of Due Process**

8 20. Until approximately March 2014, ADC prisoners who subscribed to *Prison*  
9 *Legal News* or ordered other publications from PLN generally received those publications  
10 without incident.

11 21. Beginning in March 2014, Defendants began refusing to deliver certain  
12 issues of *Prison Legal News* to prisoner subscribers in the custody of ADC with more  
13 consistency. In particular, Defendants refused to deliver the March 2014, April 2014,  
14 July 2014, and October 2014 issues of *Prison Legal News*.

15 22. Defendants did not return the censored issues of *Prison Legal News* to  
16 PLN, nor did they provide any notice to PLN of their refusal to deliver the issues. PLN  
17 only learned of the censorship from its subscribers.

18 23. After PLN notified Defendant RYAN, the director of ADC, on February 6,  
19 2015 of the unlawful censorship of *Prison Legal News* in ADC facilities and of  
20 Defendants' failure to provide due process to PLN, Defendants reconsidered some of  
21 their censorship decisions. But to date, Defendants have still not delivered the full,  
22 uncensored version of the October 2014 issue of *Prison Legal News*, and some prisoner  
23 subscribers never received copies of the other three previously censored issues that  
24 Defendants ultimately agreed to deliver after PLN protested the censorship.

25 24. Moreover, in its February 6, 2015 letter to Defendants, PLN asked  
26 Defendants to identify all issues of *Prison Legal News* that it censored from March 2014  
27 to February 2015. Defendants informed PLN about three of the four issues they had  
28 censored, but never informed PLN that they censored the March 2014 issue. As alleged

1 *infra*, PLN later confirmed Defendants’ censorship of the March 2014 issue from another  
2 source.

3 25. ADC’s mail policies (a true and correct copy of which are attached hereto  
4 as **Exhibit A**) state that publications are “prohibited” in ADC facilities if they contain,  
5 *inter alia*, “depictions or descriptions that incite, aid, or abet riots, work stoppages, or  
6 means of resistance,” or “pictures, photographs, illustrations, text or other content that  
7 may encourage unacceptable sexual or hostile behaviors, or creates a hostile environment  
8 for volunteers, including but not limited to sexual representations of inmates, law  
9 enforcement, military, professional medical staff, teachers and Clergy.” **Exhibit A**, ADC  
10 DO 914.08, Policy Numbers 1.1.1; 1.1.18. ADC policies also prohibit publications with  
11 “sexually explicit material,” which is defined as “publications that contain any of the  
12 following acts and behaviors either visually, written, or in audio (non-lyric) form: (1)  
13 Physical contact by another person with a person’s unclothed genitals, pubic area,  
14 buttocks, or if such a person is a female, breast; (2) Sadomasochistic abuse; (3) Sexual  
15 intercourse, vaginal or anal, fellatio, cunnilingus, bestiality or sodomy; (4) Masturbation,  
16 excretory functions, and lewd exhibition of the genitals; (5) Incestuous sexual activity;  
17 (6) Sexual activity involving an unwilling participant, or a participant who is the subject  
18 of coercion, or any sexual activity involving children.” **Exhibit A**, ADC DO 914.07,  
19 Policy Number 1.2.

20 26. Defendants’ policies do not contain an exception permitting delivery of  
21 publications that describe sexual acts in a non-salacious way as part of an article  
22 reporting on the facts of a court case or published legal decision, such as the articles in  
23 the issues of *Prison Legal News* that Defendants censored.

24 27. Plaintiff is informed and believes and thereon alleges that ADC’s  
25 censorship policies and practices are widespread. In addition to their censorship of  
26 *Prison Legal News*, Defendants have also recently refused to deliver issues of  
27 publications such as *Bloomberg Business*, *The Economist*, *National Geographic*, and  
28 *Newsweek* to prisoner subscribers in ADC facilities.

1 28. Plaintiff is informed and believes and thereon alleges that Defendants'  
2 policies and practices continue to deprive publishers such as PLN of any notice or  
3 opportunity to appeal when their publications are not delivered to prisoner subscribers.

4 **Censorship of March 2014 Issue of *Prison Legal News***

5 29. On or about March 10, 2014, PLN mailed its March 2014 *Prison Legal*  
6 *News* publication to ninety-seven (97) of ADC prisoners in Defendants' custody at the  
7 following ADC facilities: Arizona State Prison-Kingman; ASPC Aspen; ASPC Douglas;  
8 ASPC Eyman-Browning; ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-  
9 Rynning; ASPC Eyman-SMU; ASPC Florence Central; ASPC Florence East; ASPC  
10 Florence North Unit; ASPC Florence South; ASPC Lewis-Barchey; ASPC Lewis-  
11 Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC Perryville-Lumley; ASPC  
12 Perryville-San Pedro; ASPC Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-  
13 Cimarron; ASPC Tucson-Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester;  
14 ASPC Winslow; ASPC Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota;  
15 Central Arizona Correctional Institute; Central Arizona Correctional Facility; and  
16 Florence Correctional Center. A true and correct copy of the March 2014 issue is  
17 attached hereto as **Exhibit B**.

18 30. Plaintiff is informed and believes and thereon alleges that many of the  
19 prisoner subscribers incarcerated at the ADC facilities did not receive the March 2014  
20 issue of *Prison Legal News*. Several subscribers in ADC facilities wrote to Plaintiff to  
21 notify it that they did not receive the March 2014 issue, and/or sent Plaintiff copies of  
22 notices they received from Defendants informing them that the March 2014 issue was  
23 being withheld for purportedly violating Defendants' mail policies.

24 31. PLN has never received any notice from Defendants that the March 2014  
25 issue, or any article in it, would not be delivered or was not delivered to the addressed  
26 recipients, even after PLN asked Defendants to identify all issues of *Prison Legal News*  
27 from March 2014 to February 2015 that were censored in ADC facilities.

28 32. In 2015, the American Civil Liberties Union ("ACLU") submitted a request

1 pursuant to the Arizona Public Records Law, Ariz. Rev. Stat. §§ 39-121 et seq. to the  
2 ADC. The ADC, in response, produced to the ACLU a copy of an ADC “Notice of  
3 Result-Publication Review” dated May 9, 2014 (“May 9, 2014 Notice”), which excluded  
4 the March 2014 issue of *Prison Legal News* from distribution in ADC facilities. A true  
5 and correct copy of that notice is attached hereto as **Exhibit C**.

6 33. The May 9, 2014 Notice states that the March 2014 issue of *Prison Legal*  
7 *News* was excluded because of “Riots/Work Stoppages/Resistance,” and “Unacceptable  
8 Sexual or Hostile Behaviors,” and cites to Department Order (“DO”) 914.08, Policy  
9 Numbers 1.1.1 and 1.1.18 (*see Exhibit A*). The Notice does not specify which article(s)  
10 or page(s) of the March 2014 issue of *Prison Legal News* purportedly violated those  
11 policies.

12 34. There are no articles in the March 2014 issue of *Prison Legal News* which  
13 “incite, aid, or abet riots, work stoppages, or means of resistance,” or that “may  
14 encourage unacceptable sexual or hostile behaviors.” **Exhibit A**, DO 914.08, Policy  
15 Numbers 1.1.1 and 1.1.18.

16 35. Plaintiff is informed and believes and thereon alleges that the article in the  
17 March 2014 issue to which Defendants objected is on page 54 of the issue, and is entitled  
18 “Ninth Circuit Holds Staff Sexual Abuse Presumed Coercive; State Bears Burden of  
19 Rebutting Presumption.” *See Exhibit B* at 54. The article describes the facts underlying  
20 a Ninth Circuit reported decision, including a non-salacious description of sexual contact  
21 between a prison guard and a prisoner in an Idaho prison, to which the prisoner did not  
22 consent.

23 36. Plaintiff is informed and believes and thereon alleges that Defendants have  
24 never delivered the March 2014 issue to any PLN subscribers incarcerated in ADC  
25 facilities.

26 **Censorship of April 2014 Issue of *Prison Legal News***

27 37. On or about April 4, 2014, PLN mailed its April 2014 *Prison Legal News*  
28 publication to one-hundred and fourteen (114) ADC prisoners in Defendants’ custody at

1 the following ADC facilities: Arizona State Prison-Kingman; ASPC Aspen; ASPC  
2 Douglas; ASPC Eyman-Browning; ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC  
3 Eyman-Rynning; ASPC Eyman-SMU; ASPC Florence Central; ASPC Florence East;  
4 ASPC Florence North Unit; ASPC Florence South; ASPC Bachman; ASPC Lewis-  
5 Barchey; ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC  
6 Perryville-Lumley; ASPC Perryville-Piestewa; ASPC Perryville-San Pedro; ASPC  
7 Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-  
8 Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC  
9 Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota; ASPC Phoenix-Alhambra;  
10 ASPC Safford-Tonto; Central Arizona Correctional Institute; Central Arizona  
11 Correctional Facility; and Florence Correctional Center. A true and correct copy of the  
12 April 2014 issue of *PLN* is attached hereto as **Exhibit D**.

13 38. PLN did not receive any notice from Defendants that the April 2014 issue,  
14 or any article in it, would not be delivered or was not delivered to the addressed  
15 recipients.

16 39. Plaintiff is informed and believes and thereon alleges that many of the  
17 prisoner subscribers incarcerated at the ADC facilities did not receive the April 2014  
18 issue of *Prison Legal News*. Several subscribers in ADC facilities wrote to Plaintiff to  
19 notify it that they did not receive the April 2014 issue, and/or sent Plaintiff copies of  
20 notices they received from Defendants informing them that the April 2014 issue was  
21 being withheld for purportedly violating Defendants' mail policies.

22 40. On or about March 20, 2015, in response to a letter from PLN regarding the  
23 censorship of its publications in ADC facilities, Assistant Attorney General Pamela J.  
24 Linnins informed PLN that the April 2014 issue of *Prison Legal News* had been excluded  
25 from ADC prisons. Ms. Linnins did not identify the reason for the censorship of the  
26 April 2014 issue.

27 41. In the same letter, Ms. Linnins also notified PLN that, after PLN objected  
28 to the censorship, Defendants had reconsidered their decision to withhold the April 2014

1 issue of *Prison Legal News* from distribution to subscribers in ADC facilities.

2 42. On or about May 26, 2015, after PLN sent a follow-up letter objecting to  
3 the censorship and requesting Defendants' basis for doing so, Defendants provided PLN  
4 with a copy of the Notice of Result-Publication Review for the April 2014 issue of *Prison*  
5 *Legal News*, which had a "Review Date" of November 25, 2014 ("November 25, 2014  
6 Notice"). A true and correct copy of the November 25, 2014 Notice is attached hereto as  
7 **Exhibit E**.

8 43. The November 25, 2014 Notice states that the April 2014 issue of *Prison*  
9 *Legal News* was excluded from ADC facilities pursuant to DO 914.08, Policy Number  
10 1.1.18, "Unacceptable Sexual or Hostile Behaviors." See **Exhibit A**. The Notice does  
11 not specify which article(s) or page(s) of the April 2014 issue of *Prison Legal News*  
12 purportedly violated those policies.

13 44. There are no articles in the April 2014 issue of *Prison Legal News* that  
14 "may encourage unacceptable sexual or hostile behaviors." **Exhibit A**, DO 914.08,  
15 Policy Number 1.1.18.

16 45. Plaintiff is informed and believes and thereon alleges that the article in the  
17 April 2014 issue to which Defendants objected is on page 20 of the issue, and is entitled  
18 "Kitchen Supervisor Gets Prison Time for Sexually Abusing Two Prisoners." See  
19 **Exhibit D** at 20. The article describes the facts underlying a criminal case in the United  
20 States District Court for the District of Arizona, including a non-salacious description of  
21 non-consensual sexual contact between a prison kitchen supervisor and two prisoners in a  
22 federal prison in Arizona.

23 46. In the May 26, 2015 correspondence from Ms. Linnins, Defendants  
24 provided PLN with a copy of a follow-up Notice of Result-Publication Review for the  
25 April 2014 issue of *Prison Legal News*, with a "Review Date" of March 18, 2015  
26 ("March 18, 2015 Reconsideration Notice"). A true and correct copy of the March 18,  
27 2015 Reconsideration Notice is attached hereto as **Exhibit F**. The March 18, 2015  
28 Reconsideration Notice states that the April 2014 issue of *Prison Legal News* would be

1 allowed.

2 47. On June 22, 2015, Defendants notified PLN that the April 2014 issue of  
3 *Prison Legal News* had been distributed to subscribers.

4 48. Plaintiff is informed and believed and thereon alleges that while some  
5 subscribers to *Prison Legal News* incarcerated in ADC prisons ultimately received their  
6 copies of the April 2014 issue, others never did, even though those subscribers remained  
7 in custody after the March 18, 2015 Reconsideration Notice and Defendants' June 22,  
8 2015 confirmation that the issue had been delivered.

9 49. Plaintiff is further informed and believes and thereon alleges that some of  
10 the subscribers to *Prison Legal News* who were incarcerated in ADC facilities in April  
11 2014 never received the April 2014 issue of *Prison Legal News* because they were no  
12 longer in custody when Defendants decided to reverse their initial censorship decision  
13 approximately one year later.

14 **Censorship of July 2014 Issue of *Prison Legal News***

15 50. On or about July 1, 2014, PLN mailed its July 2014 *Prison Legal News*  
16 publication to one hundred and thirty-five (135) ADC prisoners in Defendants' custody at  
17 the following ADC facilities: Arizona State Prison-Kingman; Arizona State Prison –  
18 Kingman/Cerbat; ASPC Aspen; ASPC Douglas; ASPC Eyman-Browning; ASPC  
19 Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-Rynning; ASPC Eyman-SMU;  
20 ASPC Florence – Globe Detention; ASPC Florence Central; ASPC Florence East; ASPC  
21 Florence North Unit; ASPC Florence South; ASPC Bachman; ASPC Lewis-Barchey;  
22 ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC Perryville-Lumley;  
23 ASPC Perryville-Piestewa; ASPC Perryville-San Pedro; ASPC Perryville-Santa Cruz;  
24 ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-Manzanita; ASPC Tucson-  
25 Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC Yuma-Cheyenne; ASPC  
26 Yuma-Cibola; ASPC Yuma-Dakota; ASPC Phoenix-Alhambra; ASPC Safford-Tonto;  
27 Central Arizona Correctional Institute; Central Arizona Correctional Facility; and  
28 Florence Correctional Center. A true and correct copy of the July 2014 issue is attached

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1 hereto as **Exhibit G.**

2 51. PLN did not receive any notice from Defendants that the July 2014 issue, or  
3 any article in it, would not be delivered or was not delivered to the addressed recipients.

4 52. Plaintiff is informed and believes and thereon alleges that many of the  
5 prisoner subscribers incarcerated at the ADC facilities did not receive the July 2014 issue  
6 of *Prison Legal News*. Several subscribers in ADC facilities wrote to Plaintiff to notify it  
7 that they did not receive the July 2014 issue, and/or sent Plaintiff copies of notices they  
8 received from Defendants informing them that the July 2014 issue was being withheld for  
9 purportedly violating Defendants' mail policies.

10 53. On or about March 20, 2015, in response to a letter from PLN regarding the  
11 censorship of its publications in ADC facilities, Assistant Attorney General Pamela J.  
12 Linnins informed PLN that the July 2014 issue of *Prison Legal News* had been excluded  
13 from ADC prisons. Ms. Linnins did not state the reason for the censorship of the July  
14 2014 issue.

15 54. Also in that letter, Ms. Linnins notified PLN that Defendants had  
16 reconsidered their decision to withhold the July 2014 issue of *Prison Legal News* from  
17 distribution to subscribers in ADC facilities.

18 55. On or about May 26, 2015, after PLN sent a follow-up letter objecting to  
19 the censorship and requesting Defendants' basis for doing so, Defendants provided PLN  
20 with a copy of an undated "Complex Publications Review – Sexually Explicit Material"  
21 form ("Undated Complex Publications Review Form") from the ASPC-Tucson facility  
22 for the July 2014 issue of *Prison Legal News*, completed by an ADC staff member  
23 identified as "AA II Vasquez" from the "Complex-Level Publications Staff." A true and  
24 correct copy of the Undated Complex Publications Review Form is attached hereto as  
25 **Exhibit H.**

26 56. The Undated Complex Publications Review Form states that the July 2014  
27 issue of *Prison Legal News* was excluded from ADC facilities pursuant to DO 914.07,  
28 Policy Numbers 1.1 through 1.2.2.6, which prohibit "publications that feature nudity

1 and/or sexual behaviors and/or the publication is promoted based on such depictions.”  
2 *See Exhibit A.* The Notice does not specify which article(s) or page(s) of the July 2014  
3 issue of *Prison Legal News* purportedly violated those policies.

4 57. There are no articles in the July 2014 issue of *Prison Legal News* which  
5 “feature nudity and/or sexual behaviors,” and *Prison Legal News* is not “promoted based  
6 on such depictions.”

7 58. Plaintiff is informed and believes and thereon alleges that the article in the  
8 July 2014 issue to which Defendants objected is on page 36 of the issue, and is entitled  
9 “New York Jail Guard Sentenced for Sexually Abusing Seven Prisoners.” *See Exhibit G*  
10 at 36. The article describes the facts of a state criminal case and federal civil rights cases,  
11 including a non-salacious description of forced sexual contact between a jail guard and  
12 seven prisoners in a New York correctional facility.

13 59. In the May 26, 2015 correspondence from Ms. Linnins, Defendants  
14 provided PLN with a copy of a Memorandum from Defendant OLSON in the Office of  
15 Publication Review to a prisoner whose name was redacted, dated January 15, 2015 and  
16 regarding “Prison Legal News, July 2014, V25 N7” (“January 15, 2015 Memorandum”).  
17 A true and correct copy of that Notice is attached hereto as **Exhibit I.**

18 60. The January 15, 2015 Memorandum notified the prisoner that upon second  
19 review, the July 2014 issue of *Prison Legal News* was determined “**not [to] contain**  
20 **material** that meets the sexually explicit criteria,” that the “prior decision to exclude this  
21 publication is rescinded,” and that the publication “**shall be distributed** to those inmates  
22 who were to receive the edition.” **Exhibit I** (emphasis in original).

23 61. On June 22, 2015, Defendants notified PLN that the April 2014 issue of  
24 *Prison Legal News* had been distributed to subscribers.

25 62. Plaintiff is informed and believes and thereon alleges that while some  
26 subscribers to *Prison Legal News* incarcerated in ADC prisons received their copies of  
27 the July 2014 issue of *Prison Legal News*, others did not, even though they remained in  
28 ADC custody after January 15, 2015 Memorandum and Defendants’ June 22, 2015

1 confirmation that the issue had been delivered.

2 63. Plaintiff is informed and believes and thereon alleges that some of the  
3 subscribers to *Prison Legal News* who were incarcerated in ADC facilities in July 2014  
4 never received the July 2014 issue of *Prison Legal News* because they were no longer in  
5 custody when Defendants decided to reverse their initial censorship decision  
6 approximately six months later.

7 **Censorship of October 2014 Issue of *Prison Legal News***

8 64. On or about October 9, 2014, PLN mailed its October 2014 *Prison Legal*  
9 *News* publication to one hundred and forty-two (142) ADC prisoners in Defendants'  
10 custody at the following ADC facilities: Arizona State Prison-Kingman; Arizona State  
11 Prison – Kingman/Cerbat; ASPC Aspen; ASPC Douglas; ASPC Eyman-Browning;  
12 ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-Rynning; ASPC Eyman-  
13 SMU; ASPC Florence – Globe Detention; ASPC Florence Central; ASPC Florence East;  
14 ASPC Florence North Unit; ASPC Florence South; ASPC Bachman; ASPC Lewis-  
15 Barchey; ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC  
16 Perryville-Lumley; ASPC Perryville-Piestewa; ASPC Perryville-San Pedro; ASPC  
17 Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-  
18 Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC  
19 Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota; ASPC Phoenix-Alhambra;  
20 ASPC Safford-Tonto; Central Arizona Correctional Institute; Central Arizona  
21 Correctional Facility; and Florence Correctional Center. A true and correct copy of the  
22 October 2014 issue is attached hereto as **Exhibit J**.

23 65. PLN did not receive any notice from Defendants that the October 2014  
24 issue, or any article in it, would not be delivered or was not delivered to the addressed  
25 recipients.

26 66. Plaintiff is informed and believes and thereon alleges that many of the  
27 prisoner subscribers incarcerated at the ADC facilities did not receive the October 2014  
28 issue of *Prison Legal News*, and none of the prisoner subscribers incarcerated at the ADC

1 facilities received a full, unredacted copy of the October 2014 issue. Several subscribers  
2 in ADC facilities wrote to Plaintiff to notify it that they did not receive the October 2014  
3 issue, and/or sent Plaintiff copies of notices they received from Defendants informing  
4 them that the October 2014 issue was being withheld for purportedly violating  
5 Defendants' mail policies.

6 67. On or about March 20, 2015, in response to a letter from PLN regarding the  
7 censorship of its publications in ADC facilities, Assistant Attorney General Pamela J.  
8 Linnins informed PLN that the October 2014 issue of *Prison Legal News* had been  
9 excluded from ADC prisons. Ms. Linnins did not state the reason for the censorship of  
10 the October 2014 issue.

11 68. On or about May 26, 2015, after PLN sent a follow-up letter objecting to  
12 the censorship and requesting Defendants' basis for doing so, Defendants provided PLN  
13 with a copy of the Notice of Result-Publication Review for the October 2014 issue of  
14 *Prison Legal News*, which had a "Review Date" of February 11, 2015 ("February 11,  
15 2015 Notice"). A true and correct copy of the February 11, 2015 Notice is attached  
16 hereto as **Exhibit K**.

17 69. The February 11, 2015 Notice states that the October 2014 issue of *Prison*  
18 *Legal News* was excluded from ADC facilities pursuant to DO 914.07, "Sexually Explicit  
19 Material." See **Exhibit A**. The February 11, 2015 Notice does not specify which  
20 article(s) or page(s) of the October 2014 issue of *Prison Legal News* purportedly violated  
21 that policy.

22 70. On or about June 22, 2015, Defendants informed PLN that, after further  
23 review of the October 2014 issue, Defendants distributed a redacted version of the issue  
24 to subscribers. A true and correct copy of the page of the October 2014 issue with those  
25 redactions is attached hereto as **Exhibit L**. PLN did not authorize Defendants to make  
26 any redactions or modifications to its publication at any point.

27 71. The unredacted version of the article Defendants censored appears on page  
28 32 of the October 2014 issue, and is entitled "Tenth Circuit Holds 'Consensual' Sex

1 Defeats Prisoner's Eighth Amendment Claim." See **Exhibit J** at 32. The article  
2 describes the facts underlying an opinion by the Tenth Circuit Court of Appeals, *Graham*  
3 *v. Sheriff of Logan County*, 741 F.3d 1118 (10th Cir. 2013), including a non-salacious  
4 description of sexual contact between a prisoner in a county jail and two jail guards, to  
5 which the prisoner asserted she did not consent.

6 72. Defendants' unauthorized redaction of the October 2014 issue violates  
7 Defendants' own mail policies. ADC DO 914.06, Policy Number 1.12 prohibits ADC  
8 staff from "remov[ing] pages of any publication to make the publication acceptable,"  
9 because "[r]emoving pages alters the publication rendering it as contraband." See  
10 **Exhibit A**.

11 73. PLN has never received an updated Notice of Result-Publication Review  
12 for the October 2014 issue that indicates that the issue was delivered to subscribers, with  
13 or without the redactions.

14 74. Plaintiff is informed and believes and thereon alleges that some subscribers  
15 to *Prison Legal News* incarcerated in ADC prisons received copies of the redacted  
16 October 2014 issue of *Prison Legal News* between March 18, 2015 and June 22, 2015.

17 75. Plaintiff is informed and believes and thereon alleges that some of the  
18 subscribers to *Prison Legal News* who were incarcerated in ADC facilities in October  
19 2014 never received the October 2014 issue of *Prison Legal News* because they were no  
20 longer in custody when Defendants decided to reverse their censorship decision. Plaintiff  
21 is further informed and believes and thereon alleges that additional subscribers may not  
22 have received the redacted issue, even though they remained in custody after March 18,  
23 2015.

#### 24 **Defendants Failed to Provide Due Process to PLN**

25 76. Defendants did not provide PLN with constitutionally adequate due process  
26 when censoring PLN's written speech. Defendants provided neither notice nor an  
27 opportunity to appeal the aforementioned censorship decisions at or shortly after the time  
28 they occurred.

1 77. Defendants failed to provide notice to PLN of the reason for rejecting  
2 issues of *Prison Legal News* by, among other inadequacies, failing to notify PLN directly  
3 of their refusal to deliver the issues to *Prison Legal News* subscribers in a timely fashion  
4 (or at all), failing to explain the basis for their censorship decisions or to identify the mail  
5 policies relied on at the time of the decision, and otherwise failing to give meaningful  
6 notice of the censorship. Even when Defendants notified PLN of the censorship months  
7 after it occurred, in response to inquiries from PLN, Defendants failed to identify specific  
8 articles or pages of the issues of *Prison Legal News* that they found objectionable, and  
9 failed to notify PLN that they had censored the March 2014 issue. At no time did  
10 Defendants provide an opportunity for PLN to appeal the rejection of its mail.

11 78. Plaintiff is informed and believes and thereon alleges that Defendants fail  
12 to provide notice and an opportunity to appeal to other senders of censored mail  
13 addressed to prisoners at the ADC prisons.

14 79. Plaintiff is informed and believes and thereon alleges that Defendants fail  
15 to provide constitutionally adequate notice to some of the prisoner subscribers when  
16 ADC censors issues of *Prison Legal News*. Defendants also fail to provide the same  
17 prisoner subscribers with any opportunity to be heard to challenge the censorship  
18 decisions.

19 **ADC Policies and Practices Do Not Provide for Notice and Are Overbroad**

20 80. ADC policies do not provide for any notice to be given to the publisher or  
21 sender when a publication or mailing is censored by ADC staff. **Exhibit A**, ADC DO  
22 914.02, Policy Number 1.7 specifies that “[u]nauthorized property or material discovered  
23 in incoming mail shall be removed,” and a “Notice to Sender of Rejection of Incoming  
24 Mail, Form 909-3, shall be completed and sent to the inmate.” The policy is explicit that  
25 the ADC “shall not pay for the cost of notifying the sender.” **Exhibit A**, ADC DO  
26 914.02, Policy Number 1.7 violates constitutional requirements regarding notice to  
27 senders of mail to prison prisoners.

28 81. Moreover, ADC policies explicitly prohibit appeals of “decisions to

1 exclude publications” from ADC facilities. **Exhibit A**, ADC DO 914.06, Policy Number  
2 1.13 states that “[p]reviously excluded Publications shall not be re-submitted for review  
3 or appeal under this Department Order.” **Exhibit A**, ADC DO 914.06, Policy Number  
4 1.13 violates constitutional requirements regarding due process for senders of mail to  
5 prison prisoners.

6 82. Similarly, while ADC DO 914.07, Policy Number 1.5 provides an  
7 opportunity for a *prisoner recipient* of a publication deemed to contain “Sexually Explicit  
8 Material” to request second-level review of ADC staff’s decision to exclude the  
9 publication, it has no such provision for the publisher or sender to request a second-level  
10 review. **Exhibit A**, ADC DO 914.07, Policy Number 1.5 violates constitutional  
11 requirements regarding due process for senders of mail to prison prisoners.

12 83. As noted above, Defendants’ policies prohibiting distribution of  
13 publications with sexual content do not contain any exception for discussion of sexual  
14 acts in a non-salacious manner for the purpose of discussing the facts underlying a  
15 reported decision or legal proceeding, and are therefore overbroad.

16 84. Allowing PLN to distribute publications with articles that contain a  
17 discussion of sexual acts in a non-salacious manner for the purpose of discussing the facts  
18 underlying a court case will not have any negative impact on the operation of ADC  
19 facilities or programs.

20 85. Defendants’ mail policies, practices, and customs have been used to censor  
21 PLN’s correspondence with prisoners at ADC prisons, in particular PLN’s monthly  
22 publication.

23 86. Defendants’ conduct prohibiting distribution of at least four issues of  
24 *Prison Legal News* in a seven month period in 2014 to prisoners confined at ADC prisons  
25 violates the First Amendment. Defendants’ policies, practices and customs censor PLN’s  
26 expressive activities and have a chilling effect on PLN’s future speech and expression  
27 directed toward inmates confined there. Defendants’ policies, practices and customs are  
28 unconstitutional both facially and as applied to PLN. Defendants’ censorship of *Prison*

Ballard Spahr LLP  
1 East Washington Street  
Suite 2500  
Phoenix, AZ 85004-2555

1 *Legal News* serves no legitimate penological purpose.

2 87. PLN publishes and distributes content concerning the rights of prisoners  
3 and the means by which they may obtain relief from unconstitutional conditions of  
4 confinement. As a result, PLN is informed and believes and thereon alleges that  
5 Defendants have retaliated against PLN by refusing to deliver PLN's written materials to  
6 inmates held at ADC prisons.

7 88. Defendants' actions have violated, continue to violate, and are reasonably  
8 expected in the future to violate PLN's constitutional rights, and have caused Plaintiff  
9 financial harm in the form of lost subscriptions and diversion of resources to address the  
10 censorship. In addition, Defendants' actions have frustrated Plaintiff's mission of  
11 education and advocacy, including the dissemination of PLN's political message, and the  
12 reporting and publishing of news regarding the human and legal rights of persons held in  
13 prisons and jails. Further, Defendants' actions have interfered with PLN's ability to  
14 recruit new donors, writers and supporters.

15 89. Defendants' actions and inactions were and are malicious, oppressive, and  
16 were and are all committed under color of law with reckless disregard to PLN's rights.

17 90. Defendants CHARLES L. RYAN, GAIL RITTENHOUSE, JEFF HOOD,  
18 ALF OLSON, DOES 1 to 20, and other agents of the ADC are responsible for or  
19 personally participated in creating and implementing these unconstitutional policies,  
20 practices, and customs, or for ratifying or adopting them. Further, Defendants are  
21 responsible for training and supervising the mail staff whose conduct has injured and  
22 continues to injure PLN.

23 91. Defendants' unconstitutional policies, practices, and customs are ongoing,  
24 and continue to violate PLN's rights. It is likely that Defendants will continue to censor  
25 future issues of *Prison Legal News* in violation of the First Amendment and without  
26 providing due process. As such, PLN has no adequate remedy at law.

27 92. PLN is entitled to injunctive relief prohibiting Defendants from refusing to  
28 deliver its publication without any legal justification, and prohibiting Defendants from

1 censoring mail without due process of law.

2 **CLAIMS FOR RELIEF**

3 **FIRST CLAIM FOR RELIEF**

4 **(Against all Defendants – For Violations of the First Amendment Under Color of  
5 State Law – Free Speech; Section 1983)**

6 93. Plaintiff realleges and incorporates herein by reference each and every  
7 allegation set forth in paragraphs 1-92.

8 94. The acts described above constitute violations of Plaintiff's rights under the  
9 First Amendment to the United States Constitution through 42 U.S.C. § 1983, and have  
10 caused and will continue to cause damages and irreparable injury to Plaintiff.

11 95. Plaintiff seeks declaratory and injunctive relief, as well as nominal and  
12 compensatory damages, against all Defendants.

13 96. Plaintiff is informed, believes, and based thereon alleges that in engaging in  
14 the conduct alleged herein, the individual Defendants acted with the intent to injure, vex,  
15 annoy and harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in  
16 conscious disregard of Plaintiff's rights with the intention of causing Plaintiff injury and  
17 depriving it of its constitutional rights.

18 97. As a result of the forgoing, Plaintiff seeks nominal and compensatory  
19 damages against Defendants in their individual capacities.

20 98. Moreover, Plaintiff is informed, believes, and based thereon alleges that in  
21 engaging in the conduct alleged herein, the individual Defendants' actions were  
22 malicious, oppressive, and/or in reckless disregard for Plaintiff's rights, and therefore  
23 Plaintiff seeks exemplary and punitive damages against Defendants in their individual  
24 capacities.

25 WHEREFORE, Plaintiff seeks relief as set forth below.

26 **SECOND CLAIM FOR RELIEF**

27 **(Against all Defendants – For Violations of the Due Process Clause of the  
28 Fourteenth Amendment Under Color of State Law)**

99. Plaintiff realleges and incorporates herein by reference each and every

Ballard Spahr LLP  
1 East Washington Street  
Suite 2500  
Phoenix, AZ 85004-2555

Ballard Spahr LLP  
1 East Washington Street  
Suite 2300  
Phoenix, AZ 85004-2555

1 allegation set forth in paragraphs 1-98.

2 100. By failing to give Plaintiff sufficient notice of the censorship of its written  
3 speech, and by failing to give an opportunity to be heard with respect to that censorship,  
4 Defendants have deprived and continue to deprive Plaintiff of liberty and property  
5 without due process of law, in violation of the Fourteenth Amendment to the United  
6 States Constitution via 42 U.S.C. § 1983.

7 101. The acts described above have caused and will continue to cause damage to  
8 Plaintiff.

9 102. Plaintiff seeks declaratory and injunctive relief, as well as nominal and  
10 compensatory damages, against all Defendants.

11 103. Moreover, Plaintiff is informed, believes, and based thereon alleges that in  
12 engaging in the conduct alleged herein, the individual Defendants' actions were  
13 malicious, oppressive, and/or in reckless disregard for Plaintiff's rights, and therefore  
14 Plaintiff seeks exemplary and punitive damages against Defendants in their individual  
15 capacities.

16 WHEREFORE, Plaintiff seeks relief as set forth below.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff PRISON LEGAL NEWS, a project of the Human Rights  
19 Defense Center, prays for judgment against Defendants CHARLES L. RYAN, in his  
20 official capacity as Director of the Arizona Department of Corrections and in his  
21 individual capacity; GAIL RITTENHOUSE, in her official capacity as Division Director,  
22 Support Services of the Arizona Department of Corrections and in her individual  
23 capacity; JEFF HOOD, in his official capacity as Deputy Director of the Arizona  
24 Department of Corrections and in his individual capacity; ALF OLSON, in his official  
25 capacity as an employee of the Office of Publication Review of the Arizona Department  
26 of Corrections and his individual capacity; and DOES 1 to 20, inclusive, as follows:

27 1. A declaration that Defendants' policies, practices, and customs violate the  
28 First and Fourteenth Amendments to the United States Constitution;

