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8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 DONALD YORK EVANS, and
12 JOHN WITHEROW

13 Plaintiffs,

14 03-05: cv-0327-ECR-RAM

15 v.

16 LENARD VARÉ, ROSEMARY
17 SEALS, KELLY BELANGER, ROBERT
18 LEGRAND, CRAIG FARWELL, GLEN
19 WHORTON, JACKIE CRAWFORD,
20 GREG COX, CHERIE SCOTT, and
21 DOES I-X,

22 Defendants.

23 SECOND AMENDED COMPLAINT
24 (42 USC § 1983)

25 Plaintiffs, above-named, by and through their undersigned counsel, ROBERT R.
26 HAGER, ESQ., hereby complain and allege against Defendants, above-named, and each of
27 them, as follows:

28 JURISDICTION

1. Jurisdiction of this Court over the claims alleged in this action is found in the provisions of 28 USC §§ 1331, 1343, 1651, 2201 and 2202 and 42 USC §§ 1983 and 1988.

VENUE

2. Venue lies properly in this Court pursuant to 28 USC § 1391.

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PARTIES

3. Plaintiff DONALD YORK EVANS (hereafter EVANS) is a citizen of the United States and a resident of the State of Nevada, and at all times relevant to the claims alleged in this action he has been an attorney duly authorized to practice law in the courts of the United States and Nevada and he has a professional and personal association and friendship with Plaintiff JOHN WITHEROW.

4. Plaintiff JOHN WITHEROW (hereinafter WITHEROW) is a citizen of the United States and a prisoner confined by the Nevada Department of Corrections (NDOC) at Lovelock Correctional Center (LCC).

5. Defendant LENARD VARE (hereafter VARE) is believed to be a citizen of the United States and a resident of the State of Nevada, and at all times relevant to the claims alleged against him in this action he was acting under color of State law as the NDOC LCC Warden.

6. Defendant ROSEMARY SEALS (hereafter SEALS) is believed to be a citizen of the United States and a resident of the State of Nevada, and at all times relevant to the claims alleged against her in this action she was acting under the State law as the NDOC LCC Association Warden of Programs (AWP).

7. Defendant KELLY BELANGER (hereafter BELANGER) is believed to be a citizen of the United States and a resident of the State of Nevada, and at all times relevant to the claims alleged against her in this action she was acting under color of State law as the NDOC LCC Law Library Supervisor (LLS).

8. Defendant ROBERT LEGRAND (hereinafter LEGRAND) is believed to be a citizen of the United States and a resident of the State of Nevada, and at all times relevant to the claims alleged against him in this action he was acting under color of State law as an NDOC LCC Correctional Caseworker Specialist (CCS) III.

9. Defendant CRAIG FARWELL (hereinafter FARWELL) is believed to be a citizen of the United States and a resident of the State of Nevada, and at all times relevant to the

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1 claims alleged against him in this action he was acting under color of State law as the NDOC
2 LCC Warden.

3 10. Defendant GLEN WHORTON (hereinafter WHORTON) is believed to be a
4 citizen of the United States and a resident of the State of Nevada, and at all times relevant to the
5 claims alleged him in this action he was acting under color of State law as the NDOC Assistant
6 Director of Programs (ADP).

7 11. Defendant JACKIE CRAWFORD (hereinafter CRAWFORD) is believed to be
8 a citizen of the United States and a resident of the State of Nevada, and at all times relevant to
9 the claims alleged against her in this action she was acting under color of State law as the
10 NDOC Director.

11 12. Defendant GREG COX (hereinafter COX) is believed to be a resident of the
12 United States and a resident of the State of Nevada, and at all times relevant to the claims
13 alleged against him in this action he was acting under color of State law as the NDOC Assistant
14 Director of Operations (ADO).

15 13. Defendant CHERIE SCOTT (hereinafter SCOTT) is believed to be a citizen of
16 the United States and a resident of the State of Nevada, and at all times relevant to the claims
17 alleged against her in this action she was acting under color of State law as the NDOC LCC
18 Associate Warden of Operations (AWO).

19 14. Defendants DOES I-X, whose true identities are unknown to Plaintiffs at this
20 time, are believed to be citizens of the United States and residents of the State of Nevada and
21 are believed to be responsible in some manner for the events and occurrences that are the
22 subject of this Second Amended Complaint. Plaintiffs will seek leave to amend this Complaint
23 to insert the true name(s) of these Defendants when the same has been ascertained, with
24 appropriate allegations pertaining to their capacities and conduct while acting under color of
25 State law.

26 15. Defendants, and each of them, are sued in both their official and individual
27 capacities for their conduct while acting under color of State law.

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1 FACTS

2 16. Plaintiff EVANS is a civil rights activist and attorney and has engaged in various
3 civil rights litigation on behalf of prisoners and other oppressed persons against various
4 government officials for over 18 years, and a practicing member of the Stat Bar of Nevada for
5 over 26 years, since 1979.

6 17. Plaintiff WITHEROW is a layman, self and college trained as a paralegal/law
7 clerk, and is a civil rights activist engaged in various civil rights activities on his own behalf and
8 on behalf of other prisoners and oppressed persons against various government officials for over
9 26 years.

10 18. Plaintiff EVANS met Plaintiff WITHEROW over 21 years ago, he has
11 represented WITHEROW in both criminal and civil matters during the past 21 years, he has
12 utilized thousands of hours of voluntary and free assistance provided by WITHEROW as a
13 paralegal/law clerk, he has retained the services of WITHEROW as a paralegal/law clerk and
14 he intends to utilize the voluntary and free or retained services of WITHEROW as a
15 paralegal/law clerk in the future.

16 19. Plaintiff EVANS has the utmost respect for the skills, abilities and knowledge of
17 Plaintiff WITHEROW in both criminal and civil litigation, and has common interest with
18 WITHEROW in the civil rights of prisoners and other oppressed people, and has considered
19 WITHEROW a friend, colleague and contemporary civil rights activist for a substantial period
20 of time and he is currently engaged with WITHEROW in various relationships, *excluding* a
21 business relationship relating to the retention for wages or fees of WITHEROW's services as
22 a paralegal/law clerk.

23 20. Plaintiffs discuss and consult frequently on various civil rights activities of mutual
24 interest, exchange views, ideas and opinions regarding those and other matters and they
25 frequently provide voluntary and free assistance to each other in various matters outside of their
26 business and professional relationship.

27 21. NDOC and Attorney General officials in 1990 became aware of Plaintiffs'
28 relationship in various civil rights litigation and, after Plaintiffs prevailed in various litigation

1 against prison officials, attempted to prohibit and stop Plaintiff WITHEROW from providing
2 voluntary and free paralegal/law clerk services to Plaintiff EVANS in prisoner litigation, citing
3 administrative regulations prohibiting a prisoner providing legal assistance to another prisoner
4 from charging any fees or accepting any gratuities for providing the assistance.

5 22. Plaintiff reviewed the referenced cited regulations, determined those regulations
6 were not applicable to the conduct in which Plaintiffs were engaged and continued to engage
7 in those activities.

8 23. As a result of the above-described actions of NDOC and Attorney General
9 officials and Plaintiffs discussion of those matters, Plaintiff WITHEROW obtained a business
10 license for a paralegal business, began operating that business from the Ely State Prison and
11 began billing Plaintiff EVANS for the paralegal/law clerk services he had previously provided
12 voluntarily and free of charge.

13 24. NDOC and Attorney General officials, acting jointly, together, in conspiracy,
14 without statutory or regulatory authority to prohibit or stop Plaintiffs from engaging in the
15 above-described civil rights and litigation activities, began a series of retaliatory actions aimed
16 at hindering, impeding, interfering and stopping Plaintiffs from engaging in the above-described
17 civil rights and litigation activities. Those retaliatory actions are partially reflected in
18 Defendants' Opposition to First Amended Motion for Preliminary Injunction and in Plaintiffs'
19 Reply to Opposition to First Amended Motion for Preliminary Injunction, which are
20 incorporated by reference as though fully set forth herein.

21 25. NDOC and Attorney General officials, in a further act of retaliation specifically
22 directed at Plaintiffs and intended to hinder, impede, interfere and stop Plaintiffs above-
23 described civil rights and litigation activities, in 1997 sought and obtained passage of a statute
24 requiring prisoners to obtain approval from the NDOC to operate a business while confined in
25 prison.

26 26. Plaintiff WITHEROW has not operated his paralegal/law clerk business while
27 confined in prison since the passage of the above-referenced statute.

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1 27. Plaintiff WITHEROW in 1997, 1998 and again in 1999 requested and was denied
2 NDOC Director approval to operate his paralegal/law clerk business while confined in prison.

3 28. Plaintiff WITHEROW in 2002 resumed providing Plaintiff EVANS with
4 paralegal/law clerk assistance on a voluntary and free of charge basis in various civil rights
5 litigation being pursued by EVANS because of WITHEROW's interest in the issues involved
6 in those cases.

7 29. Defendant FARWELL in April of 2004, became aware of the fact Plaintiff
8 EVANS had sent money to Plaintiff WITHEROW and FARWELL issued instructions of his
9 subordinate employees to investigate and stop WITHEROW from providing EVANS with any
10 type of assistance in any cases other than WITHEROW's own personal cases.

11 30. Defendants BELANGER and LEGRAND on May 19, 2004, June 10, 2005 and
12 June 11, 2004, censored and refused to deliver to Plaintiff WITHEROW four pieces of clearly
13 marked legal mail from Plaintiff EVANS containing letters and public record documents based
14 upon their determination that the documents did not pertain to WITHEROW's cases, the
15 documents pertained to legal cases of other persons and the documents were legal work of
16 another person.

17 31. Defendant BELANGER and LEGRAND were acting upon instructions of
18 Defendant FARWELL in censoring and refusing to deliver to Plaintiff WITHEROW the above-
19 described four pieces of legal mail from Plaintiff EVANS.

20 32. Plaintiff EVANS was not provided by Defendants BELANGER, LEGRAND, or
21 any other NDOC employee, with notice or an opportunity to appeal the decisions of
22 BELANGER and LEGRAND to censor and refuse to deliver to Plaintiff WITHEROW three
23 of the above-referenced pieces of legal mail.

24 33. Plaintiff WITHEROW filed grievances, numbered GR-2004-19-380, GR-2004-
25 19-721, and GR-2004-19-734, pertaining to the above-referenced decisions of Defendants
26 BELANGER and LEGRAND to censor and refuse to deliver Plaintiff EVANS' legal mail to
27 him and Defendants FARWELL and WHORTON refused to grant him any relief in the
28 grievance process.

1 34. Plaintiff EVANS, after being advised by Plaintiff WITHEROW of the above-
2 referenced censorship and refusal to deliver his legal mail, attempted to informally resolve those
3 matters with prison officials and Deputy Attorney General (DAG) Daniel Wong; and on June
4 15, 2004, acting upon instructions from Daniel Wong, Defendant BELANGER delivered to
5 WITHEROW all of the above-referenced censored and withheld letters and public record
6 documents sent to him by EVANS as legal mail.

7 35. On November 2, 2004, Plaintiff WITHEROW had a dispute with Defendant
8 BELANGER regarding legal copy work and indicated he would file a grievance to resolve the
9 matter. When WITHEROW left, BELANGER telephoned Defendant SEALS and advised her
10 of WITHEROW's intent to file a grievance. SEALS immediately retaliated against
11 WITHEROW by revoking his approval to use an LCC Education Department computer for a
12 limited specific purpose.

13 36. Plaintiff WITHEROW on November 2, 2004, requested a meeting with Defendant
14 SEALS to resolve the above-referenced issues and on November 3, 2004, he filed a grievance,
15 numbered GR-2004-19-7821, pertaining to the copy work and retaliation.

16 37. Plaintiff WITHEROW on November 4, 2004, sent a letter to Defendant
17 CRAWFORD pertaining to perceived inappropriate conduct by Defendant BELANGER while
18 working in the LCC Law Library. He receive no response to that letter. He believes that letter
19 was intercepted by Defendants SEALS and/or BELANGER and discussed amongst themselves.

20 38. Defendant SEALS on November 8, 2004, meet with Plaintiff WITHEROW
21 regarding the copy work/retaliation grievance and informally resolved the matter by SEALS
22 granting WITHEROW approval for the requested copy work and reinstating his approval to use
23 the referenced computer for the limited purpose.

24 39. Defendant SEALS, at the conclusion of the above-referenced meeting, acting
25 pursuant to the above-referenced conspiracy and to retaliate against Plaintiff WITHEROW for
26 exercising his constitutional rights and reporting the perceived inappropriate conduct of
27 Defendant BELANGER, informed WITHEROW she was prohibiting him from communicating
28 with Plaintiff EVANS regarding any cases other than his own personal cases.

1 40. Plaintiff WITHEROW on November 16, 2004, wrote to Defendant CRAWFORD
2 regarding the decision of Defendant SEALS to restrict, prohibit and censor his communications
3 with Plaintiff EVANS regarding civil rights litigation other than his own cases.

4 41. Defendant VARE, after consultation with Defendants SEALS, BELANGER and
5 CRAWFORD and at the direction of Defendant CRAWFORD, wrote Plaintiff WITHEROW
6 a letter advising WITHEROW that he was “denying future correspondence between
7 [WITHEROW] and [Plaintiff] EVANS involving legal work and cases, other than your own
8 personal legal matters”.

9 42. Plaintiff EVANS was not provided by Defendants SEALS, VARE, CRAWFORD,
10 or any other NDOC employee with notice nor due process, or an opportunity to appeal their
11 decisions to restrict, prohibit and censor his legal communications with Plaintiff WITHEROW
12 involving civil rights and cases other than WITHEROW’s own personal legal matters.

13 43. Plaintiff WITHEROW on November 30, 2004, filed a grievance, numbered GR-
14 2004-19-7107, regarding the restraints, prohibitions and censorship of his legal mail
15 communications with Plaintiff EVANS pertaining to civil rights and cases other than his own
16 personal legal matters and Defendants VARE and COX refused to grant him any relief in the
17 grievance process.

18 44. Defendants BELANGER and SEALS, jointly and together in concert, after
19 consultation and discussion, pursuant to Defendants SEALS, VARE and CRAWFORD’s
20 restrictions, prohibitions and censorship imposed on Plaintiff EVANS’ legal communications
21 with Plaintiff WITHEROW regarding civil rights and other legal matters, on February 11, 2005,
22 March 2, 2005, and May 25, 2005, refused to deliver EVANS’ legal mail communications to
23 WITHEROW and required WITHEROW to return the legal mail to EVANS without providing
24 him with an opportunity to review these communications.

25 45. Plaintiff EVANS was not provided by Defendants BELANGER, SEALS, or any
26 other NDOC employee, with notice nor due process, nor an opportunity to appeal the decisions
27 of BELANGER and SEALS to censor and refuse to deliver to Plaintiff WITHEROW the above-
28 referenced three pieces of legal mail.

1 46. Plaintiff WITHEROW filed grievances, numbered GR-2005-19-1844 and GR-
2 2005-19-5440, pertaining to the above-referenced decisions of Defendant BELANGER and
3 SEALS to censor and refuse to deliver Plaintiff EVANS' legal mail to him. Defendants VARE
4 and COX refused to grant him any relief in the grievance process.

5 47. Plaintiff WITHEROW on June 7, 2005, wrote to Defendant CRAWFORD
6 requesting permission/approval to operate his paralegal/law clerk business while confined by
7 the NDOC. His renewed request was made and based upon the fact that other prisoners
8 similarly situated are/have been granted permission/approval to operate and engage in business
9 activities while confined by the NDOC.

10 48. Defendant VARE, acting upon instructions from Defendant CRAWFORD,
11 without a hearing or a full and fair opportunity to be heard and without regulations governing
12 and controlling the business operation application and approval process, and without any due
13 process on June 22, 2005, wrote Plaintiff WITHEROW a letter in which he advised
14 WITHEROW of his decision denying the request for permission/approval to operate a business
15 while confined by the NDOC and indicating that WITHEROW's request would not be approved
16 during his incarceration, the denial decision would not be reversed and any further
17 correspondence regarding the subject would not be considered.

18 49. Plaintiff WITHEROW on June 25, 2005, filed a grievance, numbered GR-2005-
19 19-6627, pertaining to the above-referenced decision of Defendants VARE and CRAWFORD
20 to deny him permission/approval to operate his paralegal/law clerk business and Defendants
21 SCOTT and COX refused to grant him any relief in the grievance process.

22 50. Plaintiff WITHEROW on December 12, 2005, and December 30, 2005, sent
23 money to the Clerks of the Nevada Supreme Court and the U.S. District Court to purchase
24 public record documents of interest to him in his civil rights and litigation activities.

25 51. Defendants BELANGER and LEGRAND on January 13, 2006, and January 19,
26 2006, censored and refused to deliver to Plaintiff WITHEROW privileged correspondence sent
27 to him by, respectively, the Clerk of the U.S. District Court and the Clerk of the Nevada

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1 Supreme Court contained public record documents filed in cases in those courts which he had
2 purchased for reference in his civil rights and litigation activities.

3 52. NDOC regulations do not prohibit Plaintiff WITHEROW from obtaining or
4 possessing public record documents filed in courts and other person similar situated to
5 WITHEROW are permitted to receive and possess public record documents via privileged
6 correspondence or to obtain such documents through the LCC law library.

7 53. Plaintiff WITHEROW filed grievances, pertaining to the above-referenced
8 decisions of Defendants BELANGER and to censor and refuse to deliver to him the public
9 record documents belonging to him and sent to him by the Court Clerks via privileged
10 correspondence. Plaintiff WITHEROW anticipates receiving any relief in the grievance
11 process.

12 54. Defendants, and each of them, acted arbitrarily and capriciously, without
13 regulatory authority, and in violation of NDOC regulations, in the above-described adverse
14 actions directed towards Plaintiffs, without legitimate or reasonable penalogical purpose or goal.

15 55. Defendants, and each of them, engaged in the above-described adverse actions
16 towards Plaintiffs to retaliate and punish Plaintiffs for engaging in constitutionally protected
17 civil rights and litigation activities directed against prison officials, which caused Plaintiffs
18 harm by chilling their exercise of their constitutional rights and hindering and impeding their
19 engagement in constitutionally protected activities.

20 56. Defendants, and each of them, acted together and jointly in concert, pursuant to
21 a conspiracy, in their above-described adverse actions against Plaintiffs, to hinder, impede and
22 attempt to stop Plaintiffs from engaging in constitutionally protected civil rights and litigation
23 activities directed towards remedying the unconstitutional conduct of prison and other
24 government officials in the State of Nevada.

25 57. Defendants, and each of them, acted intentionally, or recklessly, with deliberate
26 indifference, or disregard for, Plaintiffs' constitutional rights in their above-described conduct
27 in a manner not tailored to advance legitimate or reasonable penalogical purposes or goals.

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1 FIRST CAUSE OF ACTION

2 Declaratory Relief

3 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
4 of this Complaint as though fully set forth here.

5 58. Plaintiffs request declaratory relief pursuant to Fed.R.Civ.P. Rule 57 and 28 USC
6 § 2201 determining that:

7 A. Plaintiffs have/had clearly established rights at all times relevant to the
8 claims alleged in this action to:

9 (1) Due process and equal protection of law under the Fourteenth
10 Amendment of the U.S. Constitution;

11 (2) Freedom of speech, freedom of association and to petition the
12 government for redress of grievances under the First Amendment to the U.S. Constitution of
13 each of those rights are/were protected by the Due Process Clause of the Fourteenth
14 Amendment to the U.S. Constitution.

15 (3) Be free from unreasonable searches and seizures under the Fourth
16 Amendment to the U.S. Constitution and that right is/was protected by the Due Process Clause
17 of the Fourteenth Amendment to the U.S. Constitution; and

18 (4) Confidential attorney/client communications under common law and
19 statutes and that right is/was protected by the Due Process Clause of the Fourteenth Amendment
20 to the U.S. Constitution.

21 (5) To review and obtain copies of public records under the common
22 law and statutes and that right is/was protected by the Due Process and Equal Protection Clauses
23 of the Fourteenth Amendment to the U.S. Constitution.

24 B. Plaintiff WITHEROW has/had a clearly established right to acquire and
25 possess property under the common law and Nevada Constitution and that right is/was protected
26 by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S.
27 Constitution at all times relevant to the claims alleged in this action;

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1 C. Plaintiffs' First Amendment rights permit Plaintiffs to communicate
2 privately with each other regarding any civil rights or litigation matter, and any other matters
3 that may be of mutual interest to them and to exchange their views, opinions and comments
4 regarding those matters;

5 D. Plaintiffs' right to confidential attorney/client communication permit
6 Plaintiffs to communicate privately and in confidence with each other regarding any legal matter
7 Plaintiff WITHEROW is, or may be considering, pursuing with the assistance of Plaintiff
8 EVANS and to exchange their views, opinions and ideas pertaining to any and all issues which
9 are, or may be, involved in those legal matters regardless of whether those issues are ever
10 actually pursued in litigation.

11 E. Plaintiff EVANS determines the information or documents that may
12 contain information relevant to any issues involved in any of Plaintiff WITHEROW's litigation
13 activities and EVANS may send any such relevant information or documents to WITHEROW
14 through the mail as confidential attorney/client "legal mail";

15 F. Any document filed in the record of any court in the United States of
16 America in a criminal or civil case that is not subjected to a protective or sealing order is a
17 public record;

18 G. Plaintiff WITHEROW may possess copies of public records he purchased
19 for his use in his civil rights and litigation activities;

20 H. Plaintiff EVANS may send via legal mail to Plaintiff WITHEROW any
21 public record document containing any information pertaining to any issue which may be of
22 interest to WITHEROW in any legal matter WITHEROW is, or may be considering, pursuing;

23 I. Plaintiff EVANS is not required to redact from any public record document
24 he sends to Plaintiff WITHEROW via legal mail the names of the parties reflected in those
25 documents.

26 J. Defendants may not read or censor any portion of Plaintiffs confidential
27 attorney/client communications without first obtaining a judicially authorized search warrant;

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1 K. Defendants may open the envelopes containing Plaintiff EVANS’
2 confidential attorney/client legal mail to Plaintiff WITHEROW only in the presence of
3 WITHEROW and may only inspect the envelope and its contents for contraband items;

4 L. Defendants’ inspection of the contents of Plaintiffs’ legal mail does not
5 permit Defendants to read any of the words contained within any of the documents contained
6 within the legal mail envelopes.

7 M. Plaintiff WITHEROW is not operating a “business” or conducting a
8 “business activity” when he voluntarily and without charge provides Plaintiff EVANS with his
9 views, opinions, comments, or ideas, expressed in any written format WITHEROW chooses,
10 pertaining to any civil rights, legal matter, or litigation activity in which EVANS may be
11 engaged in pursuing;

12 N. Defendants may not deny Plaintiff WITHEROW permission/approval to
13 operate a business while confined by the NDOC without a regulation governing and controlling
14 the application process, establishing procedures to be followed, criteria to be considered in
15 determining whether to grant or deny the application; and without adequate and sufficient due
16 process procedural protections, including, but not limited to, a hearing before an impartial
17 director designee or panel, a full and fair opportunity to be heard on all matters relevant to the
18 application and a reasonably supported by a preponderance of the evidence for any denial of the
19 application;

20 O. Defendants violated rights secured to Plaintiffs by common law statutes
21 and the First, Fourth and Fourteenth Amendments to the U.S. Constitution, in violation of 42
22 USC § 1983, by:

23 (1) Censoring and refusing to deliver Plaintiff EVANS’ legal mail
24 communications to Plaintiff WITHEROW containing letters and other public record documents;

25 (2) Imposing arbitrary and capricious restrictions and prohibitions on
26 Plaintiffs’ legal mail communications;

27 (3) Retaliating against Plaintiffs for engaging in constitutionally
28 protected activities; and

1 (4) Conspiring to violate Plaintiffs' constitutional rights by hindering,
2 impeding and attempting to stop Plaintiffs' civil rights and litigation activities;

3 P. Defendants violated rights secured to Plaintiff EVANS by the common law
4 and First, Fourth and Fourteenth Amendments of the U.S. Constitution, in violation of 42 USC
5 § 1983, by failing to provide EVANS with notice and an opportunity to appeal the decisions to
6 censor and refuse to deliver his attorney/client legal mail to Plaintiff WITHEROW and
7 imposing restrictions and prohibitions of EVANS' attorney/client legal mail communications
8 with WITHEROW; and

9 Q. Defendants violated rights secured to Plaintiff WITHEROW by the
10 common law and the Fourteenth Amendment to the U.S. Constitution, in violation of 42 USC
11 § 1983, when Defendants arbitrarily and capriciously, without regulatory authority, denied
12 WITHEROW's application to operate his paralegal/law clerk business while confined by the
13 NDOC without a hearing on the application or a reason for the denial, without a legitimate or
14 reasonable penalogical purpose or goal and when other prisoners similarly situated to
15 WITHEROW are permitted/approved to conduct business activities while confined by the
16 NDOC.

17 R. Defendants violated rights secured to Plaintiff WITHEROW by the First
18 and Fourteenth Amendments of the U.S. Constitution, in violation of 42 USC § 1983, when
19 Defendants arbitrarily and capriciously, without regulatory authority, censored and refused to
20 deliver to him public record documents belonging to him without a legitimate penalogical
21 purpose or goal and when other prisoners similarly situated to WITHEROW are permitted to
22 obtain similar public record documents via privileged correspondence.

23 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

24 SECOND CAUSE OF ACTION

25 Injunctive Relief

26 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
27 of this Complaint as though fully set forth here.

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1 59. Plaintiffs request preliminary and permanent injunctive relief pursuant to
2 Fed.R.Civ.P. Rule 65 and 28 USC § 1651 enjoining and prohibiting Defendants, and each of
3 them or their agents or employees from engaging in the following:

4 (a) Imposing restrictions or prohibitions of Plaintiffs' communications to or
5 from each other on any civil rights or other legal matter Plaintiffs may decide to express their
6 views, opinions, comments, or ideas thereon to each other;

7 (b) Refusing to deliver within 24 hours of receipt by the NDOC Plaintiff
8 EVANS' legal mail communications sent to Plaintiff WITHEROW on any civil rights or other
9 legal matter EVANS may deem of interest to WITHEROW or upon which EVANS desires the
10 views, ideas, opinions, or comments of WITHEROW thereon;

11 (c) Reading any portion of Plaintiff EVANS' confidential attorney/client legal
12 mail communications to Plaintiff WITHEROW regarding any legal matter he may be pursuing,
13 or considering pursuing, on behalf of WITHEROW or any other person; and

14 (d) Denying Plaintiff WITHEROW permission/approval to operate his
15 paralegal/law clerk business, or any other business activity, without providing WITHEROW
16 with a hearing and adequate and sufficient due process procedural protections in the application
17 process.

18 (e) Refusing to deliver to Plaintiff WITHEROW public record documents
19 purchased or otherwise sent to him via privileged correspondence for his use in any civil rights
20 or other legal activity he may be pursuing.

21 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

22 THIRD CAUSE OF ACTION

23 Violation of Constitutional Rights

24 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
25 of this Complaint as though fully set forth here.

26 60. Plaintiffs were denied their rights to confidential attorney/client communications,
27 to freedom of speech, to freedom of association, to petition the government for redress of
28 grievances to be free from unreasonable searches and seizures, and to due process of law, as

1 guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution, in
2 violation of 42 USC § 1983, when Defendants BELANGER, LEGRAND, FARWELL and
3 WHORTON, acting jointly and together in concert, on May 19, 2004, and thereafter, refused
4 to deliver Plaintiff EVANS' legal privileged correspondence to Plaintiff WITHEROW
5 pertaining to a civil rights case of mutual interest to them in their litigation activities.

6 61. Defendants BELANGER, LEGRAND, FARWELL and WHORTON knew, or
7 should have known, that their above-described conduct denied and deprived Plaintiffs of their
8 above-described rights in violation of 42 USC § 1983.

9 62. Plaintiffs suffered, and continue to suffer, injuries and damages as a direct or
10 proximate result of the above-described conduct of Defendants BELANGER, LEGRAND,
11 FARWELL and WHORTON as will more fully appear at trial.

12 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

13 FOURTH CAUSE OF ACTION

14 Violation Of Constitutional Rights

15 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
16 of this Complaint as though fully set forth here.

17 63. Plaintiffs were denied their rights to confidential attorney/client communications,
18 to freedom of speech, to freedom of association, to petition the government for redress of
19 grievances to be free from unreasonable searches and seizures, and to due process of law, as
20 guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution, in
21 violation of 42 USC § 1983, when Defendants BELANGER, LEGRAND, FARWELL and
22 WHORTON, acting jointly and together in concert, on June 10, 2004, and thereafter, refused
23 to deliver Plaintiff EVANS' legal privileged correspondence to Plaintiff WITHEROW
24 pertaining to a civil rights case of mutual interest to them in their litigation activities.

25 64. Defendants BELANGER, LEGRAND, FARWELL and WHORTON knew, or
26 should have known, that their above-described conduct denied and deprived Plaintiffs of their
27 above-described rights in violation of 42 USC § 1983.

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NINTH CAUSE OF ACTION

Violation Of Constitutional Rights

Plaintiffs incorporate by reference all allegations contained in each numbered paragraph of this Complaint as though fully set forth here.

78. Plaintiff EVANS was denied his rights to confidential attorney/client communications, to freedom of speech, to freedom of association, to petition the government for redress of grievances to be free from unreasonable searches and seizures and to due process of law, as guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution, when Defendants SEALS, VARE, CRAWFORD and COX on November 8, 2004, and thereafter, acting jointly and together in concert, imposed restrictions and prohibitions of Plaintiff EVANS' legal mail communications to Plaintiff WITHEROW regarding civil rights and other legal matters other than WITHEROW's own personal case without providing EVANS with notice, a hearing and an opportunity to appeal the restrictions and prohibition decisions.

79. Defendants SEALS, VARE, CRAWFORD and COX knew, or should have known, that their above-described conduct denied and deprived Plaintiff EVANS of his above-described rights in violation of 42 USC § 1983. \

80. Plaintiff EVANS suffered, and continues to suffer, injuries and damages as a direct or proximate result of the above-described conduct of Defendants SEALS, VARE, CRAWFORD and COX as will more fully appear at trial.

WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

TENTH CAUSE OF ACTION

Violation Of Constitutional Rights - Retaliation

Plaintiffs incorporate by reference all allegations contained in each numbered paragraph of this Complaint as though fully set forth here.

81. Plaintiff WITHEROW was denied his rights to confidential attorney/client communications, to freedom of speech, to freedom of association, to petition the government for redress of grievances to be free from unreasonable searches and seizures and to due process of law, as guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution,

1 when Defendant SEALS imposed restrictions and prohibitions on his communications with
2 Plaintiff EVANS regarding civil rights and legal matters other than his own personal cases to
3 retaliate against and punish him for engaging in the constitutionally protected activity of filing
4 a grievance over copy work and retaliation and for writing a letter to Director CRAWFORD
5 regarding perceived inappropriate conduct of Defendant BELANGER.

6 82. Defendant SEALS knew, or should have known, that her above-described conduct
7 denied and deprived Plaintiff WITHEROW of his above-described rights in violation of 42 USC
8 § 1983.

9 83. Plaintiff WITHEROW suffered, and continues to suffer, injuries and damages as
10 a direct or proximate result of the above-described conduct of Defendant SEALS as will more
11 fully appear at trial.

12 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

13 ELEVENTH CAUSE OF ACTION

14 Violation Of Constitutional Rights - Retaliation

15 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
16 of this Complaint as though fully set forth here.

17 84. Plaintiffs were denied their rights to confidential attorney/client communications,
18 to freedom of speech, to freedom of association, to petition the government for redress of
19 grievances to be free from unreasonable searches and seizures and to due process of law, as
20 guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution, when
21 Defendants SEALS, VARE, CRAWFORD and COX, acting jointly and together in concert,
22 imposed restrictions and prohibitions on Plaintiffs' legal mail communications regarding civil
23 rights and other legal matters other than WITHEROW's own personal cases to retaliate against
24 and punish Plaintiffs for engaging in constitutionally protected activity in pursuing litigation
25 against prison officials.

26 85. Defendants SEALS, VARE, CRAWFORD and COX knew, or should have
27 known, that their above-described conduct denied and deprived Plaintiffs of their above-
28 described constitutional rights in violation of 42 USC § 1983.

1 86. Plaintiffs suffered, and continued to suffer, injuries and damages as a direct or
2 proximate result of the above-described conduct of Defendant SEALS, VARE, CRAWFORD
3 and COX as will more fully appear at trial.

4 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

5 TWELFTH CAUSE OF ACTION

6 Violation Of Constitutional Rights

7 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
8 of this Complaint as though fully set forth here.

9 87. Plaintiffs were denied their rights to confidential attorney/client communications,
10 to freedom of speech, to freedom of association, to petition the government for redress of
11 grievances to be free from unreasonable searches and seizures and to due process of law, as
12 guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution, in
13 violation of 42 USC § 1983, when Defendants SEALS, VARE, CRAWFORD and COX, acting
14 jointly and together in concert, on February 11, 2005, and therefore, refused to deliver Plaintiff
15 EVANS' legal mail communication to Plaintiff WITHEROW containing public record
16 information pertaining to a civil rights case other than WITHEROW's own personal cases.

17 88. Defendants BELANGER, SEALS, VARE, CRAWFORD and COX knew, or
18 should have known, that their above-described conduct denied and deprived Plaintiffs of the
19 above-described rights in violation of 42 USC § 1983.

20 89. Plaintiffs suffered, and continue to suffer, injuries and damages as a direct or
21 proximate result of the above-described conduct of Defendants BELANGER, SEALS, VARE,
22 CRAWFORD and COX as will more fully appear at trial.

23 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

24 THIRTEENTH CAUSE OF ACTION

25 Violation Of Constitutional Rights

26 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
27 of this Complaint as though fully set forth here.

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1 94. Defendants BELANGER, SEALS, VARE, CRAWFORD and COX knew, or
2 should have known, that their above-described conduct denied and deprived Plaintiffs of the
3 above-described rights in violation of 42 USC § 1983.

4 95. Plaintiffs suffered, and continue to suffer, injuries and damages as a direct or
5 proximate result of the above-described conduct of Defendants BELANGER, SEALS, VARE,
6 CRAWFORD and COX as will more fully appear at trial.

7 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

8 FIFTEENTH CAUSE OF ACTION

9 Violation Of Constitutional Rights

10 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
11 of this Complaint as though fully set forth here.

12 96. Plaintiff EVANS was denied his rights to confidential attorney/client
13 communications, to freedom of speech, to freedom of association, to petition the government
14 for redress of grievances, to be free from unreasonable searches and seizures, and to due process
15 of law, as guaranteed by the First, Fourth and Fourteenth Amendments to the U.S. Constitution,
16 in violation of 42 USC § 1983, when Defendants BELANGER and LEGRAND, acting jointly
17 and together, in concert, failed to provide him with notice and an opportunity to appeal their
18 February 11, 2005, and March 2, 2005, decisions to refuse to deliver his privileged
19 correspondence to Plaintiff WITHEROW pertaining to a civil rights case of mutual interest to
20 them in their litigation activities.

21 97. Defendants BELANGER and LEGRAND knew, or should have known, that their
22 above-described conduct denied and deprived Plaintiff EVANS of the above-described rights
23 in violation of 42 USC § 1983.

24 98. Plaintiff EVANS suffered, and continues to suffer, injuries and damages as a
25 direct or proximate result of the above-described conduct of these Defendants as will more fully
26 appear at trial.

27 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

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SIXTEENTH CAUSE OF ACTION

Violation Of Constitutional Rights

Plaintiffs incorporate by reference all allegations contained in each numbered paragraph of this Complaint as though fully set forth here.

99. Plaintiff WITHEROW was denied his rights to acquire and possess property and to due process of law, as guaranteed by the Fourteenth Amendment to the U.S. Constitution, in violation of 42 USC § 1983, when Defendants VARE, CRAWFORD, SCOTT and COX, acting jointly and together in concert, denied WITHEROW permission/approval to operate a paralegal/law clerk business while confined by the NDOC without a hearing or a full and fair opportunity to be heard and without a legitimate penalogical purpose or goal.

100. Defendants VARE, CRAWFORD, SCOTT and COX knew, or should have known, that their above-described conduct denied and deprived Plaintiff WITHEROW of his above-described rights in violation of 42 USC § 1983.

101. Plaintiff WITHEROW suffered, and continues to suffer, injuries and damages as a direct or proximate result of the above-described conduct of Defendants VARE, CRAWFORD, SCOTT and COX as will more fully appear at trial.

WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

SEVENTEENTH CAUSE OF ACTION

Violation Of Constitutional Rights

Plaintiffs incorporate by reference all allegations contained in each numbered paragraph of this Complaint as though fully set forth here.

102. Plaintiff WITHEROW was denied his rights to acquire and possess property, to due process of law and to equal protection of law, as guaranteed by the Fourteenth Amendment to the U.S. Constitution, in violation of 42 USC § 1983, when Defendant VARE, CRAWFORD, SCOTT and COX, acting jointly and together in concert, denied WITHEROW permission/approval to operate a paralegal/law clerk business while confined by the NDOC when other prisoners similar situated to WITHEROW are/have been granted permission/approval to operate or engage in business activities while confined by the NDOC.

1 103. Defendants VARE, CRAWFORD, SCOTT and COX knew, or should have
2 known, that their above-described conduct denied and deprived Plaintiff WITHEROW of the
3 above-described rights in violation of 42 USC § 1983.

4 104. Plaintiff WITHEROW suffered, and continues to suffer, injuries and damages as
5 a direct or proximate result of the above-described conduct of Defendants VARE,
6 CRAWFORD, SCOTT and COX as will more fully appear at trial.

7 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

8 EIGHTH CAUSE OF ACTION

9 Conspiracy to Violate Constitutional Rights

10 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
11 of this Complaint as though fully set forth here.

12 105. Plaintiff WITHEROW was denied his rights to copies of public records, to
13 freedom of speech, to petition the government for redress of grievances, to due process of law
14 and to equal protection of law, as guaranteed by the First and Fourteenth Amendments to the
15 U.S. Constitution, in violation of 42 USC § 1983, when Defendants BELANGER, LEGRAND,
16 and other unknown actors, acting jointly and together in concert, on January 13, 2006, censored
17 and refused to deliver U.S. District Court Clerk's privileged correspondence to WITHEROW
18 containing a public record document purchased by WITHEROW for his use in his civil rights
19 and litigation activities when persons similarly situated are permitted to receive such
20 documents.

21 106. Defendants BELANGER, LEGRAND, and other unknown actors, knew, or
22 should have known, that their above-described conduct denied and deprived Plaintiff
23 WITHEROW of his above-described rights in violation of 42 USC § 1983.

24 107. Plaintiff WITHEROW suffered, and continues to suffer, injuries and damages as
25 a direct or proximate result of the above-described conduct of Defendant BELANGER,
26 LEGRAND, and others as will more fully appear at trial.

27 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

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NINETEENTH CAUSE OF ACTION

Conspiracy to Violate Constitutional Rights

Plaintiffs incorporate by reference all allegations contained in each numbered paragraph of this Complaint as though fully set forth here.

108. Plaintiff WITHEROW was denied his rights to copies of public records, to freedom of speech, to petition the government for redress of grievances, to due process of law and to equal protection of law, as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution, in violation of 42 USC § 1983, when Defendants BELANGER, LEGRAND, and other unknown actors, acting jointly and together in concert, on January 19, 2006, censored and refused to deliver Nevada Supreme Court Clerk’s privileged correspondence to WITHEROW containing a public record document purchased by WITHEROW for his use in his civil rights and litigation activities when persons similarly situated are permitted to receive such documents.

109. Defendants BELANGER, LEGRAND, and other unknown actors, knew, or should have known, that their above-described conduct denied and deprived Plaintiff WITHEROW of his above-described rights in violation of 42 USC § 1983.

110. Plaintiff WITHEROW suffered, and continues to suffer, injuries and damages as a direct or proximate result of the above-described conduct of Defendant BELANGER, LEGRAND, and others as will more fully appear at trial.

WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

TWENTIETH CAUSE OF ACTION

Conspiracy to Violate Constitutional Rights

Plaintiffs incorporate by reference all allegations contained in each numbered paragraph of this Complaint as though fully set forth here.

111. Plaintiffs were denied their rights to confidential attorney/client communications, to freedom of speech, to freedom of associations, to petition the government for redress of grievances to be free from unreasonable searches and seizures and to due process of law and Plaintiff WITHEROW was denied his rights to acquire and possess property, copies of public

1 record documents and to equal protections of law, all of which are guaranteed by the First,
2 Fourth and Fourteenth Amendments to the U.S. Constitution, in violation of 42 USC § 1983,
3 when Defendants VARE, SEALS, BELANGER, LEGRAND, FARWELL, WHORTON,
4 CRAWFORD, COX, SCOTT and DOES 1-X, acting jointly and together in concert, conspired
5 to deny and deprive Plaintiffs of their constitutional rights in a concerted effort to hinder,
6 impede and stop Plaintiffs from engaging in civil rights and other litigation activities directed
7 towards NDOC employees.

8 112. Defendants, and each of them, knew, or should have known, that their above-
9 described conduct denied and deprived Plaintiffs of their above-described rights in violation of
10 42 USC § 1983.

11 113. Plaintiffs suffered, and continue to suffer, injuries and damages as a direct and
12 proximate result of the above-described conduct of Defendants, and each of them, as will more
13 fully appear at trial.

14 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

15 PUNITIVE DAMAGES

16 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
17 of this Complaint as though fully set forth here.

18 114. Plaintiffs allege that Defendants, and each of them, acted with deliberate
19 indifference to Plaintiffs' clearly established constitutional rights, violating those rights and
20 causing them to suffer injuries and damages, and therefore, punitive damages should be
21 awarded to punish Defendants for their misconduct and to deter similar misconduct in the
22 future, with the amount of punitive damages to be determined by the trier of fact at trial.

23 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

24 JURY TRIAL DEMANDED

25 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
26 of this Complaint as though fully set forth here.

27 115. Plaintiffs demand a trial by jury on all of the facts which may be submitted to a
28 jury for determination in this action.

1 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

2 PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES

3 Plaintiffs incorporate by reference all allegations contained in each numbered paragraph
4 of this Complaint as though fully set forth here.

5 116. Plaintiffs have not filed any previous lawsuits pertaining to the claims alleged in
6 this action.

7 117. Plaintiff EVANS has no administrative remedy available to him to resolve the
8 claims alleged in this action with the NDOC and therefore has no other adequate remedy at law
9 other than the relief requested herein.

10 118. Plaintiff WITHEROW has exhausted his administrative remedies with the NDOC
11 regarding the claims alleged herein through grievance numbers GR-2004-19-380, GR-2004-19-
12 721, GR2004-19-734, GR-2004-19-7107, GR-2005-19-1844, GR -2005-19-5440 and GR-2005-
13 19-6627.

14 WHEREFORE, Plaintiffs pray for relief as is more fully enumerated below.

15 PRAAYER FOR RELIEF

16 WHEREFORE, Plaintiffs pray for the following relief:

- 17 1. For the declaratory relief requested herein above;
- 18 2. For the injunctive relief requested herein above;
- 19 3. For nominal, compensatory and punitive damages for each of the Defendants
20 herein in an amount to be determined by the trier of fact;
- 21 4. For a trial by jury on all issues so triable;
- 22 5. For costs and attorney fees incurred by Plaintiffs in pursuit of the claims alleged
23 in this action to be paid by Defendants herein;
- 24 6. For leave to amend this Complaint should the same become necessary; and

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7. For any other or further relief deemed just and proper in the interests of fairness and justice.

DATED: This _____ day of February, 2006.

Robert R. Hager, Esq. #1482
HAGER & HEARNE
910 East Parr Blvd., Suite 8
Reno, NV 89512
Telephone: #775/329.5800
Facsimile: #775/329.5819
Attorney For Plaintiffs

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CERTIFICATE OF SERVICE

I certify that I am an employee of HAGER & HEARNE., and that on this date I

_____ deposited for mailing, via U.S. mail

_____ caused to be delivered, via Reno-Carson Messenger Service

_____ delivered via facsimile machine

_____ personally delivered

a true and correct copy of the foregoing document, addressed to:

Kelly S. Werth, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

DATED this _____, day of _____, 2006.
