

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN**

HUMAN RIGHTS DEFENSE CENTER,)

Plaintiff,)

vs.)

**O’BELL WINN, in his individual)
capacity, HEIDI WASHINGTON)**

**Director, in her official and individual)
capacities, BONITA HOFFNER,)**

**WILLIE SMITH, CARMEN PALMER,)
in their individual capacities, and)**

DOES 1-30, in their individual capacities.)

Defendants.)

Case No. 1:19-cv-12470

Hon. Thomas L. Ludington

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. The HUMAN RIGHTS DEFENSE CENTER (“HRDC”) brings this action to enjoin Defendants’ improper censorship of its monthly journal, *Prison Legal News*, and other publications that HRDC sends to prisoners in the Michigan Department of Corrections (“MDOC”).

2. Defendants have adopted and implemented mail policies and practices prohibiting delivery of written speech from HRDC while failing to provide due process notice of and an opportunity to challenge that censorship. Defendants’ actions violate HRDC’s rights under the First and the Fourteenth Amendments of the United States Constitution. HRDC thus brings this action, pursuant to 42

U.S.C. § 1983, seeking injunctive and declaratory relief and damages to be proven at trial.

II. JURISDICTION AND VENUE

3. This action arises under the First and Fourteenth Amendments of the United States Constitution and is brought pursuant to 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to HRDC by the laws of the United States.

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over claims seeking declaratory, injunctive, and monetary relief pursuant to 28 U.S.C. §§ 2201 and 2202 against all Defendants.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). On information and belief, at least one Defendant, O’Bell Winn, resides within this judicial district, and many of the events giving rise to the claims asserted herein occurred within this judicial district. On information and belief, all Defendants are residents of the state of Michigan.

III. PARTIES

6. HRDC is a not-for-profit charitable corporation recognized under § 501(c)(3) of the Internal Revenue Code, with its principal place of business in Lake Worth, Florida. Founded in 1990, HRDC publishes the monthly newsprint journal *Prison Legal News*, the longest-running independent newsprint journal

concerning prisons and detention centers in the United States, along with publications focusing on prisoner rights issues. HRDC also corresponds regularly with prisoners on constitutional issues and potential violations of their civil rights.

7. Defendant O’Bell Winn (“Winn”) is, and on information and belief at all relevant times herein mentioned was, the Warden of the Saginaw Correctional Facility (“Saginaw”), a prison under the control of MDOC within the State of Michigan. Defendant Winn has responsibility for the execution of MDOC policies, procedures, and practices at Saginaw, including the approval of publication censorship decisions. As to all claims presented herein against him, Defendant Winn is being sued in his individual capacity for damages. At all relevant times, Defendant Winn has acted under color of state law.

8. Defendant Heidi Washington (“Washington”) is, and at all relevant times herein mentioned was, the Director of MDOC, the state agency that manages the correctional facilities within the State of Michigan. Defendant Washington has ultimate responsibility for the promulgation and implementation of MDOC policies, procedures, and practices and for the management of MDOC. As to all claims presented herein against her, Defendant Washington is being sued in her official and individual capacities for damages, and for injunctive and declaratory relief. At all relevant times, Defendant Washington has acted under color of state law.

9. Defendant Bonita Hoffner (“Hoffner”) was the Warden of the Lakeland Correctional Facility (“Lakeland”) from May 2012 until December 2017. During her time as Warden, Defendant Hoffner had responsibility for the execution of MDOC policies, procedures, and practices at Lakeland, including the approval of publication censorship decisions. As to all claims presented herein against her, Defendant Hoffner is being sued in her individual capacity for damages. At all relevant times, Defendant Hoffner acted under color of state law.

10. Defendant Willie Smith (“Smith”) was the Warden of the Ionia Correctional Facility (“Ionia”) from October 2002 until May 2018. During his time as Warden, Defendant Smith had responsibility for the execution of MDOC policies, procedures, and practices at Ionia, including the approval of publication censorship decisions. As to all claims presented herein against him, Defendant Smith is being sued in his individual capacity for damages. At all relevant times, Defendant Smith acted under color of state law.

11. Defendant Carmen Palmer (“Palmer”) was the Warden of the Michigan Reformatory at all relevant times herein mentioned. During her time as Warden, Defendant Palmer had responsibility for the execution of MDOC policies, procedures, and practices at the Michigan Reformatory, including the approval of publication censorship decisions. As to all claims presented herein against her, Defendant Palmer is being sued in her individual capacity for damages. At all relevant times, Defendant Palmer acted under color of state law.

12. The true names and identities of Defendants DOES 1 through 30 are presently unknown to HRDC. Each of Defendants DOES 1 through 30 are or were employed by and are or were agents of MDOC when some or all of the challenged inmate mail policies and practices were adopted and/or implemented. Each of Defendants DOES 1 through 30 were personally involved in the adoption and/or implementation of the mail policies and practices at the MDOC facilities, and/or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of MDOC facilities staff who interpret and implement these mail policies. HRDC will seek to amend this First Amended Complaint as soon as the true names and identities of Defendants DOES 1 through 30 have been ascertained.

IV. FACTUAL ALLEGATIONS

A. HRDC'S MISSION

13. For more than 28 years, the focus of HRDC's mission has been public education, advocacy, and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. HRDC engages in core protected speech and expressive conduct on matters of public concern, such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoners' rights. HRDC's mission, if realized, has a salutary effect on public safety.

14. In furtherance of its mission, HRDC publishes and distributes a soft-cover monthly journal titled *Prison Legal News*, which contains news and analysis about prisons, jails, and other detention facilities, prisoners' rights, court rulings, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals. The monthly journal is published on newsprint and is 72-pages long.

15. More recently, HRDC also began publishing a second monthly magazine, *Criminal Legal News*. This magazine focuses on review and analysis of individual rights, court rulings, and news concerning criminal justice-related issues. This magazine is also published on newsprint, and is 48 pages long.

16. HRDC also publishes and/or distributes approximately 40 different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. These books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics. Pertinent to this lawsuit, HRDC publishes and/or distributes the books 1) *Protecting Your Health and Safety*, which describes the rights, protections and legal remedies available to prisoners concerning their incarceration, 2) the *Prisoner Diabetes Handbook*, which provides information on how to manage diabetes in a carceral setting, and 3) the *Prisoners'*

Self-Help Litigation Manual, which is a guide for understanding and protecting the rights of prisoners.

17. HRDC's monthly journal and other publications, as described above, contain political speech and social commentary, which are core First Amendment rights and are entitled to the highest protection afforded by the U.S. Constitution.

18. HRDC has thousands of subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and members of the general public. HRDC has distributed its monthly publication to prisoners and law librarians in more than 3,000 correctional facilities located across all 50 states, including the Federal Bureau of Prisons and MDOC.

19. *Prison Legal News* is popular among inmates in Michigan. Despite Defendants' censorship, as of July of 2019 HRDC had 46 subscribers to its monthly publication within the MDOC, including: 2 at Baraga Correctional Facility ("Baraga"); 3 at Bellamy Creek Correctional Facility ("Bellamy Creek"); 2 at Carson City Correctional Facility ("Carson City"); 1 at Central Michigan Correctional Facility ("Central Michigan"); 2 at Chippewa Correctional Facility ("Chippewa"); 2 at Cooper Street Correctional Facility ("Cooper Street"); 2 at the Earnest C. Brooks Correctional Facility ("Brooks"); 4 at the G. Robert Cotton Correctional Facility ("Cotton"); 1 at the Richard A. Handlon Correctional Facility ("Handlon"); 6 at the Gus Harrison Correctional Facility ("Harrison"); 2 at Ionia; 4 at Lakeland; 2 at Macomb Correctional Facility ("Macomb"); 3 at the Marquette

Branch Prison (“Marquette”), 1 at the Michigan Reformatory, 2 at Muskegon Correctional Facility (“Muskegon”); 1 at Oaks Correctional Facility (“Oaks”), 3 at Saginaw, and 1 at the Women’s Huron Valley Correctional Facility (“WHV”).

20. Additionally, in furtherance of its mission and to increase the dissemination of its message, HRDC sends individually addressed sample copies of its publications to non-subscriber prisoners within MDOC.

B. CENSORSHIP AT MDOC FACILITIES

21. The First Amendment of the United States Constitution protects HRDC’s right to communicate with prisoners who are incarcerated within the MDOC. Regulations, policies, or practices that restrict the receipt of mail by prisoners are invalid unless they are rationally related to a legitimate penological interest.

22. The Fourteenth Amendment of the United States Constitution requires that publishers receive notice of and be allowed to challenge restrictions on prisoners’ receipt of mail. Regulations, policies, or practices that do not provide these minimum procedural safeguards are invalid. Fourteenth Amendment rights are also violated where procedural safeguards are not followed as applied to a particular publisher.

23. HRDC is informed and believes and thereon alleges that various prisons within MDOC’s system do not comply with the First and/or Fourteenth Amendments. HRDC is informed and believes and thereon alleges that

Defendants' policies and practices have deprived and will continue to deprive HRDC of the right to distribute its materials to prisoners, and of notice or opportunity to appeal when its publications are not delivered to prisoner subscribers.

24. As described in further detail below, certain prisons within the state of Michigan have withheld all or part of issues of *Prison Legal News*, *Criminal Legal News*, and books published and/or distributed by HRDC. HRDC is informed and thereon believes that at least one officer at each prison (listed by name or as one of DOES 1-30 above), had direct knowledge of and were directly involved in each and every instance of censorship complained of below.

25. *Prison Legal News* and *Criminal Legal News* pose no threat to any legitimate penological interests. However, in numerous instances prison officials erroneously rejected issues of *Prison Legal News* and *Criminal Legal News*, on the grounds that content of the magazines' articles posed a threat to the security, good order, or discipline of the facility, facilitated or encouraged criminal activity, or interfered with the rehabilitation of prisoners.

26. In all, between August 2016 and July 2019, 29 of the 36 monthly issues of *Prison Legal News* were censored by at least one MDOC facility.

27. MDOC officials also rejected books sent by HRDC to prisoners in its custody, on the grounds that HRDC was not the publisher or authorized vendor.

28. Further, although MDOC's policies state that when a piece of mail is rejected a copy of the Notice of Package/Mail Rejection shall be sent to the sender, a majority of MDOC facilities have a custom and practice of failing to send the required notice.

29. Even when notice is sent to a sender, MDOC does not provide a process to challenge censorship decisions. On several occasions, HRDC appealed the rejection of its publications. In many cases, the facility that censored the materials ignored the appeal.

30. In one instance where HRDC's appeal was considered, the facility's rejection decision was reversed. On March 21, 2018, an official at the Earnest C. Brooks Correctional Facility informed HRDC that it would allow the delivery of the *Prisoners' Self-Help Litigation Manual*.

31. On June 11, 2018, HRDC sent a letter to Defendant Washington detailing the censorship of its publications at MDOC facilities, and demanding that MDOC cease rejecting *Prison Legal News*, *Criminal Legal News*, and HRDC's books without a legitimate penological interest. Neither Defendant Washington nor anyone else at MDOC responded to the letter.

32. HRDC is aware of at least the following specific examples of improper censorship and/or lack of notice by prisons within MDOC:

1. CENSORSHIP AT ALGER

33. HRDC is informed and believes and thereon alleges that prisoner

subscribers incarcerated at Alger did not receive issues of *Prison Legal News* on multiple occasions.

34. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Alger from receiving the October 2016, March 2017, June 2017, June 2019, and July 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Alger. HRDC is informed and believes that, although each of those issues was properly delivered to Alger, the issues were withheld from delivery by staff at the facility.

35. HRDC has never received any notice from MDOC relating to the censorship of the October 2016, March 2017, and June 2017 issues of *Prison Legal News* at Alger. HRDC also never received any notification of an opportunity to appeal those censorship decisions.

36. The Notice of Package/Mail Rejection for the June 2019 issue of *Prison Legal News* states the reason for rejection as “PRISON LEGAL NEWS VOLUME 30 # 6 FOR June 2019 IS REJECTED DUE TO POSING A SECURITY THREAT.” The Notice failed to specify how or in what manner that issue was a threat.

37. The Notice of Package/Mail Rejection for the July 2019 issue of *Prison Legal News* states the reason for rejection as “ONE ARTICLE CONTAINING INFORMATION THAT POSES A SECURITY THREAT.” The

Notice failed to specify which article was problematic, or how or in what manner that article was a threat.

38. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

2. CENSORSHIP AT BARAGA

39. HRDC is informed and believes and thereon alleges that prisoner subscribers incarcerated at Baraga did not receive issues of *Prison Legal News* on multiple occasions.

40. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Baraga from receiving the December 2017, January 2018, March 2018, March 2019 and other issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Baraga. HRDC is informed and believes that, although each of those issues was properly delivered to Baraga, the issues were withheld from delivery by staff at the facility.

41. Additionally, staff at Baraga rejected a copy of the book *Protecting Your Health and Safety* sent to a prisoner in December 2018. The Notice of Package/Mail Rejection form sent to HRDC listed the reasons for rejection as "mail that may pose a threat to the security, good order, or discipline of the facility" and "[t]he sender is not the publisher, and is not an authorized vendor."

42. HRDC has never received any notice from MDOC relating to the censorship of the March 2019 issue of *Prison Legal News* at Baraga. HRDC also never received any notification of an opportunity to appeal that censorship decision. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

3. CENSORSHIP AT BELLAMY CREEK

43. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Bellamy Creek did not receive issues of *Prison Legal News* on multiple occasions.

44. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Bellamy Creek from receiving the July 2017, December 2017, January 2018, March 2018, May 2018, June 2018, and August 2018 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Bellamy Creek. HRDC is informed and believes that, although each of those issues was properly delivered to Bellamy Creek, the issues were withheld from delivery by staff at the facility.

45. This failure of Defendants to deliver *Prison Legal News* violates HRDC's First Amendment rights, as further detailed below.

4. CENSORSHIP AT BROOKS

46. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Chippewa did not receive issues of *Prison Legal News* on multiple occasions.

47. HRDC is informed and believes and thereon alleges that prisoner subscribers incarcerated at Brooks did not receive the June 2019 and July 2019 issues of *Prison Legal News*. These issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Brooks. HRDC is informed and believes that, although that issue was properly delivered to Brooks, the issue was withheld from delivery by staff at the facility.

48. HRDC has never received any notice relating to censorship of any issues of *Prison Legal News* at Brooks. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

5. CENSORSHIP AT CARSON CITY

49. HRDC is informed and believes and thereon alleges that prisoner subscribers incarcerated at Carson City did not receive the January 2018 issue of *Prison Legal News*. This issue of *Prison Legal News* was individually addressed and mailed to the subscribers incarcerated at Carson City. HRDC is informed and

believes that, although that issue was properly delivered to Carson City, the issue was withheld from delivery by staff at the facility.

50. The Notice of Package/Mail Rejection for this issue states the reason for rejection as “Article in Prison Legal News Jan 2018 Issue” was “mail that may pose a threat to the security, good order, or discipline of the facility, may facilitate or encourage criminal activity, or may interfere with the rehabilitation of the prisoner.” The Notice failed to specify which article was objectionable, or why it was a threat.

51. The Notice provided to HRDC is insufficient, as it fails to provide sufficient basis to justify the censorship, and does not contain enough information for HRDC to reasonably challenge the rejection decision. This conduct by Defendants violates HRDC’s First and Fourteenth Amendment rights, as further detailed below.

6. CENSORSHIP AT CENTRAL MICHIGAN

52. HRDC is informed and believes and thereon alleges that prisoners incarcerated at Central Michigan are not allowed to receive *Prison Legal News*. A prisoner bought a subscription to *Prison Legal News* in January 2018, but prison staff told him that he could not receive the magazines.

53. The issues of *Prison Legal News* were individually addressed and mailed to the subscriber incarcerated at Central Michigan. HRDC is informed and

believes that, although each of those issues were properly delivered to Central Michigan, they were withheld from delivery by staff at the facility.

54. HRDC has never received any notice relating to censorship of any issues of *Prison Legal News* at Central Michigan. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

7. CENSORSHIP AT CHIPPEWA

55. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Chippewa did not receive issues of *Prison Legal News* on multiple occasions.

56. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Chippewa from receiving the February 2017, April 2017, January 2018, February 2018, March 2018, April 2018, May 2018, June 2018, July 2018, and August 2018 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Chippewa. HRDC is informed and believes that, although each of those issues was properly delivered to Chippewa, the issues were withheld from delivery by staff at the facility.

57. Staff at Chippewa sent HRDC Notice of the rejection of the March 2018 and June 2018 issues of *Prison Legal News*. HRDC did not receive any notice from MDOC relating to censorship of any other issues of *Prison Legal News* at Chippewa, and HRDC also never received any notification of an opportunity to appeal the decision to censor other issues. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

8. CENSORSHIP AT COOPER STREET

58. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Cooper Street did not receive issues of *Prison Legal News* on multiple occasions.

59. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Cooper Street from receiving the December 2016, January 2017, March 2017, March 2018, and other issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Cooper Street. HRDC is informed and believes that, although each of those issues was properly delivered to Cooper Street, the issues were withheld from delivery by staff at the facility.

60. HRDC has never received any notice from MDOC relating to censorship of any issues of *Prison Legal News* at Cooper Street. HRDC also never

received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

9. CENSORSHIP AT COTTON

61. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Cotton did not receive issues of *Prison Legal News* on multiple occasions.

62. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Cotton from receiving the September 2016, February 2017, December 2017, and January 2018 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Cotton. HRDC is informed and believes that, although each of those issues was properly delivered to Cotton, the issues were withheld from delivery by staff at the facility.

63. Staff at Cotton sent HRDC Notice of the rejection of the September 2016 and January 2018 issues of *Prison Legal News*. HRDC did not receive any notice from MDOC relating to censorship of any other issues of *Prison Legal News* at Cotton, and HRDC also never received any notification of an opportunity to appeal the decision to censor other issues. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC

violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

10. CENSORSHIP AT HANDLON

64. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Handlon did not receive issues of *Prison Legal News* on multiple occasions.

65. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Handlon from receiving the May 2017, June 2017, December 2017, January 2018, August 2018, September 2018, April 2019, and May 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Handlon. HRDC is informed and believes that, although each of those issues was properly delivered to Handlon, the issues were withheld from delivery by staff at the facility.

66. HRDC did not receive any notice from MDOC relating to censorship of the September 2018 issue of *Prison Legal News* at Handlon, and HRDC also never received any notification of an opportunity to appeal the decision to censor that issue. The failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

11. CENSORSHIP AT HARRISON

67. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Harrison did not receive issues of *Prison Legal News* on multiple occasions.

68. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Harrison from receiving the June 2017, January 2018, February 2018, March 2018, April 2018, May 2018, July 2018, August 2018, September 2018, December 2018, March 2019, April 2019 and other issues of *Prison Legal News*. Staff at Harrison have also rejected issues of *Criminal Legal News*. Each of these issues of *Prison Legal News* and *Criminal Legal News* were individually addressed and mailed to the subscribers incarcerated at Harrison. HRDC is informed and believes that, although each of those issues was properly delivered to Harrison, the issues were withheld from delivery by staff at the facility.

69. HRDC has never received any notice from MDOC relating to the censorship of *Prison Legal News* or *Criminal Legal News* at Harrison. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

12. CENSORSHIP AT IONIA

70. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Ionia did not receive issues of *Prison Legal News* on multiple occasions.

71. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Ionia from receiving the September 2016, October 2016, November 2016, December 2016, March 2017, May 2017, June 2017, July 2017, August 2017, December 2017, January 2018, March 2018, April 2018, June 2018, August 2018, September 2018, December 2018, January 2019, March 2019, April 2019, May 2019, June 2019, July 2019, and other issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Ionia. HRDC is informed and believes that, although each of those issues was properly delivered to Ionia, the issues were withheld from delivery by staff at the facility.

72. On February 1, 2017, HRDC sent a letter to the warden of Ionia appealing the decision to censor the December 2016 issue of *Prison Legal News*. HRDC did not receive a response to the letter.

73. On July 28, 2017, HRDC sent a letter to the warden of Ionia appealing the decision to censor the June 2017 and July 2017 issues of *Prison Legal News*.

74. On August 9, 2017, Ionia upheld the decision to withhold the June 2017 and July 2017 issues of *Prison Legal News* from the prisoners. The prison

essentially stated that anything that described an MDOC facility in a negative light was a threat to security.

75. This failure of Defendants to deliver HRDC's publications, and Smith's actions personally sanctioning unconstitutional censorship by denying HRDC's appeals, violate HRDC's First Amendment rights, as further detailed below.

13. CENSORSHIP AT KINROSS

76. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Kinross did not receive issues of *Prison Legal News* on multiple occasions.

77. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Kinross from receiving the February 2017, June 2017, and July 2017 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Kinross. HRDC is informed and believes that, although each of those issues was properly delivered to Kinross, the issues were withheld from delivery by staff at the facility.

78. HRDC has never received any notice from MDOC relating to censorship of any issues at Kinross. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to

HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

14. CENSORSHIP AT LAKELAND

79. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Lakeland did not receive issues of *Prison Legal News* on multiple occasions.

80. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Lakeland from receiving the April 2017, June 2017, March 2018 and other issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Lakeland. HRDC is informed and believes that, although each of those issues was properly delivered to Lakeland, the issues were withheld from delivery by staff at the facility.

81. Additionally, staff at Lakeland rejected a copy of the book *Prisoner Diabetes Handbook* sent to a prisoner in January 2017. The Notice of Package/Mail Rejection form sent to HRDC listed the reasons for rejection as "did not come from an authorized vendor or the publisher."

82. On February 2, 2017, HRDC sent a letter to the warden of Lakeland appealing the decision to censor the *Prisoner Diabetes Handbook*. HRDC did not receive any response to the letter.

83. HRDC has never received any notice from MDOC relating to censorship of any issues at Lakeland. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC, and Hoffner's actions personally sanctioning unconstitutional censorship by denying HRDC's appeal, violate HRDC's First and Fourteenth Amendment rights, as further detailed below.

15. CENSORSHIP AT MACOMB

84. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Macomb did not receive issues of *Prison Legal News* on multiple occasions.

85. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Macomb from receiving the September 2016, August 2018, June 2019, and July 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Macomb. HRDC is informed and believes that, although each of those issues was properly delivered to Macomb, the issues were withheld from delivery by staff at the facility.

86. The Notice of Package/Mail Rejection for the July 2019 issue of *Prison Legal News* states the reason for rejection as "Contains articles that may

pose a threat to the order of the facility.” The Notice failed to specify which articles were problematic, or how or in what manner the articles were a threat.

87. HRDC has never received any notice from MDOC relating to the censorship of the June 2019 issue of *Prison Legal News* at Macomb. HRDC also never received any notification of an opportunity to appeal that censorship decision. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC’s First and Fourteenth Amendment rights, as further detailed below

88. This failure of Defendants to deliver HRDC’s publications and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC’s First and Fourteenth Amendment rights, as further detailed below.

16. CENSORSHIP AT MARQUETTE

89. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Marquette from receiving the July 2018 and June 2019 issues of *Prison Legal News*. These issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Marquette. HRDC is informed and believes that, although these issues were properly delivered to Marquette, they were withheld from delivery by staff at the facility.

90. HRDC has never received any notice from MDOC relating to the censorship of the June 2019 issue of *Prison Legal News* at Marquette. HRDC also never received any notification of an opportunity to appeal that censorship

decision. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

17. CENSORSHIP AT THE MICHIGAN REFORMATORY

91. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at the Michigan Reformatory did not receive issues of *Prison Legal News* on multiple occasions.

92. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at the Michigan Reformatory from receiving the June 2017, July 2017, November 2017, December 2017, January 2018, April 2018, August 2018, January 2019, and May 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at the Michigan Reformatory. HRDC is informed and believes that, although each of those issues was properly delivered to the Michigan Reformatory, the issues were withheld from delivery by staff at the facility.

93. On July 28, 2017, HRDC sent a letter to the warden of the Michigan Reformatory appealing the decision to censor the June 2017 and July 2017 issues of *Prison Legal News*. HRDC did not receive any response to the letter.

94. HRDC has never received any notice from MDOC relating to the censorship of the August 2018 and January 2019 issues of *Prison Legal News* at the Michigan Reformatory. HRDC also never received any notification of an

opportunity to appeal those censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC, and Palmer's actions personally sanctioning unconstitutional censorship by denying HRDC's appeals, violate HRDC's First and Fourteenth Amendment rights, as further detailed below.

18. CENSORSHIP AT MUSKEGON

95. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Muskegon did not receive issues of *Prison Legal News* on multiple occasions.

96. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Muskegon from receiving the March 2017 and June 2017 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Muskegon. HRDC is informed and believes that, although each of those issues was properly delivered to Muskegon, the issues were withheld from delivery by staff at the facility.

97. HRDC has never received any notice from MDOC relating to the censorship of the June 2017 issue of *Prison Legal News* at Muskegon. HRDC also never received any notification of an opportunity to appeal that censorship decision. This censorship of *Prison Legal News* and the failure of Defendants to

provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

19. CENSORSHIP AT OAKS

98. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at Oaks did not receive issues of *Prison Legal News* on multiple occasions.

99. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Oaks from receiving the March 2017, April 2017, June 2017, July 2017, and January 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Oaks. HRDC is informed and believes that, although each of those issues was properly delivered to Oaks, the issues were withheld from delivery by staff at the facility.

100. HRDC has never received any notice from MDOC relating to the censorship of the March 2017, June 2017, and January 2019 issues of *Prison Legal News* at Oaks. HRDC also never received any notification of an opportunity to appeal those censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

20. CENSORSHIP AT SAGINAW

101. HRDC is informed and believes and thereon alleges that many of the

prisoner subscribers incarcerated at Saginaw did not receive issues of *Prison Legal News* on multiple occasions.

102. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at Saginaw from receiving the June 2017, July 2017, July 2018, and June 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at Saginaw. HRDC is informed and believes that, although each of those issues was properly delivered to Saginaw, the issues were withheld from delivery by staff at the facility.

103. Additionally, staff at Saginaw rejected a copy of the book *Prisoners' Self-Help Litigation Manual* sent to a prisoner in February 2018.

104. HRDC has never received any notice from MDOC relating to censorship of any publications at Saginaw. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of HRDC's publications and the failure of Defendants to provide adequate notice and explanation to HRDC, and Winn's actions sanctioning unconstitutional censorship, violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

21. CENSORSHIP AT ST. LOUIS

105. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at St. Louis did not receive issues of *Prison Legal*

News on multiple occasions.

106. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at St. Louis from receiving the December 2016, January 2017, February 2017, March 2017, April 2017, June 2017, July 2017, November 2017, and June 2019 issues of *Prison Legal News*. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at St. Louis. HRDC is informed and believes that, although each of those issues was properly delivered to St. Louis, the issues were withheld from delivery by staff at the facility.

107. HRDC has never received any notice from MDOC relating to censorship of any issues at St. Louis. HRDC also never received any notification of an opportunity to appeal any censorship decisions. This censorship of *Prison Legal News* and the failure of Defendants to provide adequate notice and explanation to HRDC violates HRDC's First and Fourteenth Amendment rights, as further detailed below.

22. CENSORSHIP AT WHV

108. HRDC is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at WHV did not receive issues of *Prison Legal News* on multiple occasions.

109. HRDC is informed and believes and thereon alleges that prison staff prevented prisoners at WHV from receiving the June 2018 and other issues of

Prison Legal News. Each of these issues of *Prison Legal News* were individually addressed and mailed to the subscribers incarcerated at WHV. HRDC is informed and believes that, although each of those issues was properly delivered to WHV, the issues were withheld from delivery by staff at the facility.

110. This failure of Defendants to deliver HRDC's publications violates HRDC's First Amendment rights, as further detailed below.

* * * *

111. In adopting and implementing the above censorship policies and practices, Defendants have knowingly violated, continue to violate, and are reasonably expected to violate in the future, HRDC's constitutional rights.

112. Defendants' unconstitutional policies and practices have caused HRDC serious and irreparable harm including, but not limited to: suppression of its political message, frustration of its organizational mission, loss of its ability to recruit new supporters, subscribers, and writers, loss of subscriptions, loss of opportunities for purchases and sales of its publications, loss of opportunities for book sales, and diversion of its resources. Absent intervention by this Court these actions will continue and HRDC will be subjected to a continuation of the same irreparable and serious injuries.

113. The above violations of HRDC's rights and the harms to HRDC were caused by mail and censorship policies adopted or approved by Defendant Washington in her capacity as head of MDOC.

114. The individual Defendants named herein are responsible for, or personally participated in, creating and implementing these unconstitutional mail and censorship policies, practices, and customs, for improperly denying the appeals of the censorship of HRDC's publications, and for training and supervising the mail staff at the various MDOC facilities who carry out these policies and whose conduct has injured and continues to injure HRDC.

115. Defendants' unconstitutional policy, practices, and customs are ongoing and continue to violate HRDC's rights, and as such HRDC has no adequate remedy at law.

116. HRDC is entitled to injunctive relief requiring Defendant Washington to prohibit Defendants from refusing to deliver or refusing to allow delivery of HRDC's books and magazines, and prohibiting Defendants from censoring mail without due process of law.

117. As a result of the foregoing, HRDC seeks compensatory and punitive damages against the individual Defendants.

COUNT I
Violation of the First Amendment (Censorship)
42 U.S.C. § 1983

118. HRDC re-alleges and incorporates by reference herein all of the allegations contained in the above paragraphs.

119. The acts described above constitute violations of HRDC's rights under the First Amendment of the United States Constitution.

120. HRDC has a constitutionally protected liberty interest in communicating with incarcerated individuals, a right clearly established under existing case law.

121. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference.

122. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which were and are the moving force of the violations.

123. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

124. HRDC seeks injunctive relief against Heidi Washington in her official capacity, and nominal and compensatory damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

COUNT II
Violation of the Fourteenth Amendment (Due Process)
42 U.S.C. § 1983

125. HRDC re-alleges and incorporates by reference herein all of the allegations contained in the above paragraphs.

126. The acts described above constitute violations of HRDC's rights under the Fourteenth Amendment to the United States Constitution.

127. Because HRDC has a liberty interest in communicating with

prisoners, HRDC has a right under the Due Process Clause of the Fourteenth Amendment to receive notice of and an opportunity to appeal Defendants' decisions to censor their written speech.

128. Defendants' policies and practices fail to provide HRDC with adequate notice and an opportunity to be heard.

129. The conduct of Defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference.

130. HRDC's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of Defendants, which are and were the moving force of the violations.

131. Defendants' acts described above have caused damages to HRDC, and if not enjoined, will continue to cause damage to HRDC.

132. HRDC seeks injunctive relief against Heidi Washington in her official capacity, and nominal and compensatory damages against all Defendants. HRDC seeks punitive damages against the individual Defendants in their individual capacities.

V. RELIEF REQUESTED

WHEREFORE, HRDC respectfully requests judgment against Defendants, jointly and severally, for the following:

- A.** A declaration that Defendants' policies and practices violate the Constitution;

- B.** A preliminary and permanent injunction requiring Washington to prohibit Defendants from continuing to violate the Constitution, and providing other equitable relief;
- C.** An award of compensatory, punitive, and nominal damages;
- D.** An award of full costs and attorneys' fees arising out of this litigation; and
- E.** Any and other further relief this Court may deem just and appropriate.

VI. DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, HRDC hereby demands a trial by jury in this action of all issues so triable.

Respectfully submitted,

Human Rights Defense Center

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*Applications for admission to be filed

Dated: October 23, 2019

CERTIFICATE OF SERVICE

This is to certify that on October 23, 2019, a copy of the foregoing was electronically filed with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

Respectfully submitted,

Honigman LLP

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