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12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION
 14

15 HUMAN RIGHTS DEFENSE CENTER,,

16 Plaintiff,

17 v.

18 COUNTY OF TEHAMA; DAVE
 HENCRATT, Sheriff, individually and in
 19 his official capacity; and JOHN AND
 JANE DOES 1-10, Staff, individually and
 20 in their official capacities,

21 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF AND
 DAMAGES UNDER THE CIVIL
 RIGHTS ACT, 42 U.S.C. § 1983,
 CALIFORNIA CIVIL CODE, § 52.1,
 AND THE CALIFORNIA
 CONSTITUTION**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Plaintiff Human Rights Defense Center (“HRDC” or “Plaintiff”) brings this
3 action to enjoin Defendants from censoring publications and correspondence that it mails
4 to incarcerated persons at the Tehama County Jail (the “Jail”). Defendants have adopted
5 and implemented mail policies and practices that unconstitutionally prohibit delivery of
6 publications and correspondence mailed by Plaintiff to persons incarcerated at the Jail, and
7 that deny due process of law to senders, like Plaintiff, whose mail is censored, by failing to
8 provide adequate notice and an opportunity to challenge each instance of censorship.
9 Plaintiff alleges that Defendants’ actions violate its rights under the First and Fourteenth
10 Amendments to the United States Constitution, Article I, Section 2 and Article I, Section 7
11 of the California Constitution, and the Bane Act, Cal. Civ. Code § 52.1, and seeks
12 injunctive and declaratory relief pursuant to 42 U.S.C. § 1983, and damages in an amount
13 to be proven at trial.

JURISDICTION AND VENUE

14
15 2. This action is brought pursuant to 42 U.S.C. § 1331 (federal question), as
16 this action arises under the Constitution and laws of the United States, and pursuant to 28
17 U.S.C. § 1343 (civil rights), as this action seeks redress for civil rights violations under 42
18 U.S.C. § 1983.

19 3. Venue is proper under 28 U.S.C. § 1391(b). At least one Defendant resides
20 within this judicial district and the events giving rise to the claims asserted herein all
21 occurred within this judicial district.

22 4. Plaintiff’s claims for relief under federal law are brought pursuant to 42
23 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state
24 law, of rights, privileges and immunities secured by the First and Fourteenth Amendments
25 to the United States Constitution and laws of the United States.

26 5. This Court has jurisdiction over claims seeking declaratory and injunctive
27 relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of
28 Civil Procedure, as well as nominal and compensatory damages, against all Defendants.

1 6. Plaintiff's claim for attorneys' fees and costs for its federal claims is
2 predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs
3 to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

4 7. This Court has supplemental jurisdiction over Plaintiff's state law claims
5 pursuant to 28 U.S.C. § 1367, as they arise from the same case or controversy as Plaintiff's
6 claims under federal law.

7 8. Plaintiff's claims for relief under state law are predicated upon the Bane Act
8 (Cal. Civ. Code § 52.1), which authorizes actions to protect the exercise or enjoyment of
9 rights secured under federal or California law, as well as upon the direct causes of action to
10 enforce constitutional rights guaranteed under Article I, Section 2 and Article I, Section 7
11 of the California Constitution.

12 9. Plaintiff's claim for attorneys' fees and costs under state law is predicated
13 upon California Civil Code § 52.1, which authorizes the award of attorneys' fees and costs
14 in an action brought under that statute, and California Code of Civil Procedure § 1021.5,
15 which authorizes the award of attorneys' fees and costs to prevailing plaintiffs whose
16 actions vindicate important rights.

17 10. Plaintiff is informed, believes, and based thereon alleges that the individual
18 Defendants as described herein acted with reckless disregard for Plaintiff's rights and/or
19 with the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel
20 and unjust hardship in conscious disregard of Plaintiff's rights with the intention of
21 causing Plaintiff injury and depriving it of its constitutional rights. As a result of the
22 foregoing, Plaintiff seeks compensatory and punitive damages against the individual
23 Defendants.

24 **EXHAUSTION OF PRE-LAWSUIT PROCEDURES FOR STATE LAW CLAIMS**

25 11. Plaintiff submitted a state tort claim for damages to Defendant COUNTY OF
26 TEHAMA on July 18, 2019, but no response was ever received from Defendant COUNTY
27 OF TEHAMA by Plaintiff.

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PARTIES

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12. Plaintiff HUMAN RIGHTS DEFENSE CENTER is a not-for-profit charitable organization recognized under § 501(c)(3) of the Internal Revenue Code, incorporated in the state of Washington and with principal offices in Lake Worth, Florida. For nearly thirty years, HRDC has focused its mission on public education, advocacy and outreach to incarcerated persons and the public about the economic and social costs of prisons to society, and to help incarcerated persons educate themselves about their constitutional and human rights and to learn about accessing education while incarcerated. HRDC accomplishes its mission through advocacy, litigation, and publication and/or distribution of books, magazines and other information concerning prisons and the rights of incarcerated persons. Prison Legal News is a wholly-owned project and publishing arm of HRDC. Through its publishing project, HRDC engages in core protected speech and expressive conduct on matters of public concern, such as the operation of correctional facilities, prison and jail conditions, and the health, safety and the constitutional and human rights of incarcerated persons. HRDC publishes and distributes two monthly magazines covering corrections and criminal justice news and analysis, and publishes and distributes books about the criminal justice system and legal issues affecting incarcerated persons, which HRDC distributes by mail to incarcerated persons, lawyers, courts, libraries, and the public throughout the United States.

13. Defendant COUNTY OF TEHAMA (the “County”) is a political subdivision of the State of California organized and existing under the laws of California. The County is, and at all relevant times herein was, responsible for the actions and/or inactions and the policies, procedures, customs, and practices of the Tehama County Sheriff’s Office and its employees and agents. The Tehama County Sheriff’s Office is and was responsible for adopting and implementing mail policies governing incoming mail for incarcerated persons at the Tehama County Jail.

14. Defendant DAVE HENCRATT is the Sheriff of the County of Tehama, and has held that position since January 3, 2011. Sheriff Hencratt is employed by and is an

1 agent of Defendant COUNTY OF TEHAMA and the Tehama County Sheriff's Office. He
2 is responsible for overseeing the management and operations of the County's jails, and for
3 the hiring, screening, training, supervision, discipline, counseling, and control of the
4 personnel at the Tehama County Jail who interpret and apply its incoming mail policies.
5 As Sheriff, Defendant HENCRATT is a final policymaker for Defendant COUNTY OF
6 TEHAMA with respect to the operation of the Tehama County Jail, including for policies
7 and practices governing incoming mail for incarcerated persons. He is sued in his
8 individual and official capacities.

9 15. The true names and identities of Defendants DOES 1 through 10 are
10 presently unknown to HRDC. Each of Defendants DOES 1 through 10 are or were
11 employed by and are or were agents of Defendant COUNTY OF TEHAMA and were
12 personally involved in the adoption and/or implementation of the policies and practices
13 governing incoming mail for incarcerated persons at the Tehama County Jail, and/or are or
14 were responsible for the hiring, screening, training, retention, supervision, discipline,
15 counseling, and/or control of the Tehama County Jail staff who interpret and implement
16 these incoming mail policies and practices. They are sued in their individual and official
17 capacities. HRDC will seek to amend this Complaint as soon as the true names and
18 identities of Defendants DOES 1 through 10 have been ascertained.

19 16. At all times material to this action, the actions of all Defendants as alleged
20 herein were taken under the authority and color of state law.

21 17. At all times material to this action, all Defendants were acting within the
22 course and scope of their employment as agents and/or employees of Defendant COUNTY
23 OF TEHAMA.

24 **FACTUAL ALLEGATIONS**

25 18. For nearly thirty years, the focus of HRDC's mission has been public
26 education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners
27 who seek legal redress for infringements of their constitutionally guaranteed and other
28 basic human rights. HRDC's mission, if realized, has a salutary effect on public safety.

1 19. To accomplish its mission, HRDC publishes and distributes books,
2 magazines, and other materials containing news and analysis about prisons, jails and other
3 detention facilities, prisoners' rights, court rulings, management of prison facilities, prison
4 conditions, and other matters pertaining to the rights and/or interests of incarcerated
5 individuals. HRDC's publications contain political speech and social commentary, which
6 are core First Amendment rights and are entitled to the highest protection afforded by the
7 United States Constitution.

8 20. Sending publications through the mail to incarcerated persons is essential to
9 accomplishing the mission of HRDC. The primary aim of HRDC is to communicate with
10 incarcerated persons about developments in the law and protection of one's health and
11 personal safety while in prison or jail. Reading materials enable incarcerated persons to
12 engage in productive activity rather than sitting idle, thus helping to avoid conflicts and
13 incidents of violence in correctional facilities and encouraging lawful methods of dispute
14 resolution. In addition, reading allows incarcerated persons to keep their minds sharp,
15 helping them prepare to become productive citizens when released back into society.

16 21. HRDC publishes and distributes an award-winning monthly magazine titled
17 *Prison Legal News: Dedicated to Protecting Human Rights*, which contains news and
18 analysis about correctional facilities, the rights of incarcerated persons, court opinions,
19 prison and jail conditions, excessive force, and religious freedom. *Prison Legal News* is
20 published on newsprint bound by two small staples, and is 72 pages long.

21 22. HRDC also publishes and distributes a second monthly magazine titled
22 *Criminal Legal News*, which contains news and analysis about individual rights, court
23 rulings, and other criminal justice-related issues. *Criminal Legal News* is also published
24 on newsprint bound by two small staples, and was 48 pages long, but has more recently
25 expanded to 56 pages long.

26 23. HRDC also publishes and/or distributes several different soft-cover books on
27 subjects on criminal justice, health, and legal issues that are of interest to incarcerated
28 persons and others. HRDC publishes and distributes the *Prisoners' Guerilla Handbook: A*

1 *Guide to Correspondence Programs in the United States and Canada (“Prisoners’*
2 *Handbook”)*, which provides information on enrolling at accredited higher educational,
3 vocational and training schools. HRDC does not publish, but is the sole national
4 distributor of *Protecting Your Health and Safety (“PYHS”)*, which describes the rights,
5 protections and legal remedies available to persons concerning their health and safety
6 while they are incarcerated.

7 24. In addition to its publications, HRDC also communicates with incarcerated
8 persons through the United States Postal Service by mailing them: (a) informational
9 brochure packets, which contain a brochure and subscription order form, a book list, and a
10 published books brochure (each of which is a single page); (b) copies of judicial opinions
11 of import to incarcerated persons, which are marked “Court Ruling;” and (c) letters that
12 provide pertinent information about these publications and related topics to incarcerated
13 persons. HRDC does not enclose extra envelopes or stamps with the informational
14 brochure packets or judicial opinions that it mails to incarcerated persons.

15 25. Since 1990, HRDC has sent its publications by mail to incarcerated persons
16 and law librarians in more than 3,000 correctional facilities in all fifty states, including at
17 death row housing units and “supermax” prisons, including the federal Administrative
18 Maximum Facility at Florence, Colorado, which is known as the most secure prison in the
19 United States. The publications and books that HRDC distributes are mailed to hundreds
20 of persons incarcerated in California jails and prisons, including at the San Diego Central
21 Jail, the Vista Detention Facility, Los Angeles County’s Twin Towers Correctional
22 Facility, Orange County’s Theo Lacy Facility, San Bernardino County’s West Valley
23 Detention Center, the Rio Cosumnes Correctional Center, the Fresno County Jail, the
24 Humboldt County Correctional Facility, the Madera County Jail, the Santa Clara Main Jail,
25 the Santa Rita County Jail, the San Joaquin County Jail, the Ventura County Detention
26 Center, and 32 prisons run by the California Department of Corrections and Rehabilitation.

27 26. The Defendants’ incoming mail policy (“Defendants’ Mail Policy”) for
28 persons incarcerated at the Jail is posted on the public website of the Tehama County

1 Sheriff's Office at <https://tehamaso.org/jail-division/current-inmates/> (last visited
2 February 14, 2020). This policy provides, in pertinent part:

3 The Tehama County Jail has strict mail procedures that must be followed for
4 the safety and security of the facility, staff, and inmates. Please follow these
5 rules to reduce delays and ensure a timely delivery of mail. The following is
6 a **sample** of **Unacceptable** items which will be returned to the sender or
7 confiscated:

- 8 • Drugs, weapons, hazardous materials, etc.
- 9 • Stationery, stamps, envelopes, post-its, etc.
- 10 • Publications that are held together by ordinary staples will be rejected.
- 11 • Paperclips, metal, plastic, laminations, balloons, jewelry, etc.
- 12 • Stickers, labels, tape, glue, or any adhesives on the inside or outside of the
13 envelope/letter.
- 14 • Musical cards, glitter, paint, string, etc.
- 15 • Mail containing bubble wrap or plastic.
- 16 • Padded envelopes.
- 17 • Polaroid photographs or photos larger than 4"x6". Inmates are not allowed to
18 possess more than ten (10) photographs at any given time.
- 19 • Photographs or pictures that are pornographic, nude, suggestive, showing
20 gangs, gang tattoos, or hand gestures (signs) are not allowed.
- 21 • Cash, checks & money orders are not allowed.
- 22 • Identification cards and phone cards are not allowed.
- 23 • Mail that does not have a return address will be labeled "Dead Mail" and
24 returned the USPS. Mail that does not have a complete return address (Nick
25 names or full name) will be return to sender.
- 26 • Do not draw on the envelope, neatly print all information.
- 27 • Any items not listed which may compromise the security of the facility.

28 **Books, Newspapers and Subscriptions:**

The Jail **will not** accept books, newspapers, or magazine mailed from a book
store or an individual. Books, newspapers and magazines will **ONLY** be
accepted directly from the publisher or through online services (Amazon,
Barnes and Noble...etc.) on behalf of the inmate. All publishers must be
verifiable. **No hardcover books** are allowed to be sent to an inmate, only
paperback books and magazines will be accepted.

- 1 • No Hardcover Books/ Paperback only
- 2 • Must be from publisher, No book stores. (Amazon, Barnes and Noble,
3 Borders, etc. are okay[)]
- 4 • Publications that are held together by ordinary staples will be rejected.
- 5 • Books, Magazines and Newspapers that contain photographs or pictures that
6 display drugs, pornography, nudity, suggestive, gangs, gang tattoos, or hand
7 gestures (signs) are not allowed.
- 8 • No CD, DVD, or tapes allowed.
- 9 • No food products, cosmetic items, board games, personal clothing, etc.
- 10 • No stationary, note pads, envelopes, stamps, pens, pencils, etc. (These items
11 may be purchased through commissary.)
- 12 • Inmates are not allowed to possess more than five (5) books at any given
13 time.
- 14 • Any material that appears to be obscene or tends to incite murder, arson, riot,
15 racism or otherwise compromises the security of the facility will not be
16 accepted.
- 17 • Any items not listed which may compromise the security of the facility.

18 27. Defendants' Mail Policy is both unconstitutional on its face and as applied,
19 and is unduly broad and vague. There is no legitimate penological justification for
20 Defendants to refuse to accept magazines for delivery at the Jail that are held together with
21 ordinary staples. There is no legitimate concern that these small staples pose any potential
22 threat to the safety and security of the Jail. There is also no legitimate penological
23 justification for Defendants to refuse to accept books and other publications for delivery at
24 the Jail unless they are mailed "directly from the publisher" or from "online services" such
25 as Amazon, Barnes and Noble, and Borders, and for banning books published or
26 distributed by HRDC and other neutral publishers and distributors other than those listed in
27 Defendants' Mail Policy. This is especially true because HRDC's publications cover
28 topics of great public concern and contain core protected speech, including political speech
and social commentary, and educational information relating to the rights of incarcerated
persons, pertinent legal cases, and incarcerated persons' health and safety, and are thus
entitled to the highest protection afforded by the First Amendment to the United States

1 Constitution.

2 28. From May 2019 to the present, Defendants have been censoring books,
3 magazines, informational brochure packets, and judicial opinions mailed by HRDC to
4 incarcerated persons held in custody at the Jail by refusing to deliver the publications and
5 correspondence to the intended recipients, and by returning the items to HRDC's offices
6 via the Return to Sender service of the United States Postal Service.

7 29. HRDC has identified at least ninety-three (93) instances since May 2019
8 where publications and correspondence that HRDC mailed to twenty (20) incarcerated
9 persons, individually addressed and separately mailed with postage fully paid, were not
10 delivered to intended recipients who were incarcerated at the Jail when the items arrived in
11 the mail. This includes twenty-two (22) issues of *Prison Legal News*, twenty-three (23)
12 issues of *Criminal Legal News*, fourteen (14) copies of the *Prisoner's Handbook*, fourteen
13 (14) copies of *PYHS*, ten (10) informational brochure packets, and ten (10) judicial
14 opinions. Each of these items of mail were not delivered to the intended recipients at the
15 Jail, and were instead returned to HRDC's office by Defendants using the Return to Sender
16 service of the United States Postal Service, at Plaintiff's expense.

17 30. The items of mail that Defendants refused to deliver to incarcerated persons
18 at the Jail have been returned marked in various ways, including with ink stamps
19 containing the words "CONTRABAND" or "RETURN TO SENDER," and/or with the
20 words "RTS" or "Refused" handwritten in ink. Some items of mail were also returned
21 with stickers affixed to them containing the words "TEHAMA COUNTY SHERIFF'S
22 OFFICE" "RETURN TO SENDER," and "ITEMS NOT ALLOWED FOR INCOMING
23 JAIL" in large-sized letters across the top, followed by a list of twelve different
24 explanations for why the item of mail might have been rejected in smaller-sized letters
25 directly underneath. In all but seventeen cases, Defendants did not mark or otherwise note
26 that the item of mail was being rejected for any of the twelve reasons listed on the sticker.

27 31. Defendants refused to deliver twenty-eight (28) soft-cover books mailed to
28 incarcerated persons at the Jail by HRDC—fourteen copies of the *Prisoner's Handbook*

1 and fourteen copies of *PYHS*. The books were all returned to HRDC with either the
2 abbreviation “RTS” or the word “Refused” handwritten in black ink on the outside of the
3 item of mail, with no other information as to why Defendants refused to deliver them to
4 the intended recipients.

5 32. Defendants refused to deliver forty-five (45) issues of HRDC’s magazines to
6 incarcerated persons at the Jail—twenty-two issues of *Prison Legal News*, twenty-three
7 issues of *Criminal Legal News*. Twenty magazines were returned with the abbreviation
8 “RTS” handwritten in black ink and with the word “CONTRABAND” ink-stamped on the
9 item of mail, while two others merely had the word “Refused” handwritten in black ink,
10 with no other information as to why Defendants refused to deliver them to the intended
11 recipients. Another magazine was returned to HRDC without any markings at all
12 indicating why it was rejected by Defendants. The remaining twenty-two magazines were
13 returned with stickers affixed to them containing the words “TEHAMA COUNTY
14 SHERIFF’S OFFICE” “RETURN TO SENDER,” and “ITEMS NOT ALLOWED FOR
15 INCOMING JAIL” in large-sized letters across the top, followed by a list of twelve
16 different explanations for why the item of mail might have been rejected in smaller-sized
17 letters directly underneath; seven were also ink stamped with the word “CONTRABAND.”
18 On nine issues of *Prison Legal News* and five issues of *Criminal Legal News*, the seventh
19 reason for returning mailings to sender was highlighted or circled: “NO Contraband ...
20 Staples.” The remaining eight magazines returned with stickers affixed to them did not
21 contain any markings or other indication that the item of mail was being rejected for any of
22 the twelve reasons listed on the sticker.

23 33. Defendants also refused to deliver ten informational brochure packets and
24 ten judicial opinions mailed by HRDC to incarcerated persons at the Jail. Seventeen of
25 these twenty items were returned to HRDC with the abbreviation “RTS” handwritten in
26 black ink on the item of mail, with no other information as to why Defendants refused to
27 deliver them to the intended recipients. Two informational brochure packets and one
28 judicial opinion were returned with stickers affixed to them containing the words

1 “TEHAMA COUNTY SHERIFF’S OFFICE” “RETURN TO SENDER,” and “ITEMS
2 NOT ALLOWED FOR INCOMING JAIL” in large-sized letters across the top, followed
3 by the list of twelve different explanations for why the item of mail might have been
4 rejected in smaller-sized letters directly underneath, with the second reason either
5 highlighted or circled: “NO Stationary Items ... NO EXTRA ... Envelopes,” even though
6 none of these three items of mail included an extra envelope or any other stationary item.

7 34. On information and belief, other publications and correspondence mailed by
8 HRDC to persons incarcerated at the Jail have also been censored by Defendants.

9 35. Defendants did not provide HRDC with notice or opportunity to appeal the
10 censorship decisions in any of the instances where the publications and correspondence
11 were rejected for delivery to persons incarcerated at the Jail. Defendants did not provide
12 HRDC with notice of the reason any item of mail was rejected beyond the vague markings
13 on the outside of the items returned via the United States Postal Service’s Return to Sender
14 service, and the returned items did not include notice of the right to appeal the rejection or
15 information about how to challenge the censorship decision. Even after HRDC submitted
16 a government tort claim to the County regarding the censorship and violation of its right to
17 due process, Defendants did not provide any notice of the reason(s) for the rejections of
18 HRDC’s items of mail or an opportunity to appeal the censorship decisions. Instead, the
19 County did not even respond to HRDC’s government tort claim.

20 36. Defendants’ Mail Policy states that a sender of rejected mail “may appeal the
21 decision to the Jail Lieutenant” by sending a “written request for review” which “must be
22 postmarked within fifteen (15) days of the notice and mailed to the Jail Lieutenant,” as the
23 decision to reject the mail “will be final fifteen (15) days after the date of the notice sent to
24 the sender, unless the sender requests a review by the Jail Lieutenant.” Defendants’ Mail
25 Policy further requires that an “appeal must be in writing, and should include the reason(s)
26 for disagreeing with the mail rejection and any other pertinent information.” Because
27 Defendants have not in practice provided adequate notice that actually communicates the
28 reason(s) that HRDC’s mailings were rejected for delivery at the Jail, this policy does not

1 provide for a meaningful opportunity to appeal a censorship decision. Even if HRDC was
2 able to determine the reason(s) for the rejection of a particular mailing, without adequate
3 notice, Defendants' Mail Policy requires that a written appeal be mailed within fifteen days
4 of the date Defendants send the notice—without accounting for the time it takes for the
5 United States Postal Service to deliver the rejected mail via the Return to Sender service—
6 and thus does not provide sufficient opportunity to challenge the decision. Any attempt to
7 appeal the censorship decisions would also be futile because Defendants do not retain the
8 rejected mailings for secondary review by another Jail official.

9 37. Defendants' conduct prohibiting HRDC from mailing its publications and
10 correspondence to persons incarcerated at the Jail violates the First Amendment by
11 censoring these expressive activities and has a chilling effect on future speech and
12 expression directed at the persons incarcerated at the Jail.

13 38. HRDC will continue to mail books, magazines, and other correspondence to
14 subscribers, customers, and other persons incarcerated at the Jail.

15 39. The accommodation of the free speech, free expression, and due process
16 rights of HRDC with respect to written speech will not have any significant impact on the
17 Jail's staff, other incarcerated persons at the Jail, or Defendants' allocation of resources.

18 40. Due to Defendants' actions as described above, HRDC has suffered
19 damages, and will continue to suffer damages, including, but not limited to: the
20 suppression of HRDC's speech; the impediment of HRDC's ability to disseminate its
21 political message; frustration of HRDC's non-profit organizational mission; diversion of
22 resources; the loss of potential subscribers and customers; an inability to recruit new
23 subscribers and supporters; the loss of reputation; and the cost of printing, handling,
24 mailing, and staff time, among other damages.

25 41. Defendants' actions and inactions were and are motivated by ill motive and
26 intent, and were and are all committed under color of law with deliberate indifference to
27 HRDC's rights.

28

1 42. Defendants, and other agents of the Jail, are responsible for or personally
2 participated in creating and implementing these unconstitutional policies, practices, and
3 customs, or for ratifying or adopting them. Further, Defendants are responsible for
4 training and supervising the staff persons whose conduct has injured and continues to
5 injure HRDC.

6 43. Defendants' unconstitutional policy, practices, and customs are ongoing,
7 continue to violate HRDC's rights, and were and are the moving force behind the injuries
8 HRDC suffered as a direct result of the constitutional violations. As such, HRDC has no
9 adequate remedy at law.

10 44. Plaintiff is entitled to injunctive relief prohibiting Defendants from refusing
11 to deliver or refusing to allow deliver of books published and/or distributed by HRDC to
12 incarcerated persons at the Jail, and prohibiting Defendants from censoring mail without
13 due process of law.

14 **FIRST CLAIM FOR RELIEF**
15 ***(Violations of the First Amendment (Free Speech)—42 U.S.C. § 1983)***

16 45. HRDC re-alleges and incorporates the allegations of paragraphs 1 through 44
17 of the Complaint as if fully set forth herein.

18 46. Defendants' acts described above constitute violations of HRDC's right to
19 communicate with persons incarcerated at the Jail under the First Amendment to the
20 United States Constitution.

21 47. The conduct of Defendants was objectively unreasonable and was
22 undertaken recklessly, intentionally, willfully, with malice, and with deliberate
23 indifference to the rights of others.

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

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

1 50. HRDC seeks declaratory and injunctive relief, and nominal and
2 compensatory damages against all Defendants. HRDC also seeks punitive damages solely
3 against the individual Defendants in their individual capacities.

4 **SECOND CLAIM FOR RELIEF**
5 ***(Violation of the Fourteenth Amendment (Due Process)—42 U.S.C. § 1983)***

6 51. HRDC re-alleges and incorporates the allegations of paragraphs 1 through 50
7 of the Complaint as if fully set forth herein.

8 52. HRDC has a constitutionally-protected liberty interest in communicating
9 with persons incarcerated at the Jail by sending publications and correspondence to them
10 via the United States Postal Service, a right clearly established under existing case law.

11 53. HRDC has a right under the Due Process Clause of the Fourteenth
12 Amendment to receive notice and an opportunity to object and/or appeal Defendants'
13 decisions to prevent the publications and correspondence mailed by HRDC to from
14 reaching the incarcerated persons at the Jail to whom they were mailed.

15 54. Defendants have failed to give HRDC sufficient notice of the censorship of
16 its publications and correspondence, and an opportunity to be heard with respect to that
17 censorship. In doing so, Defendants have deprived and continue to deprive HRDC of
18 liberty and property without due process of law, in violation of the Fourteenth Amendment
19 to the United States Constitution.

20 55. The conduct of Defendants was objectively unreasonable and was
21 undertaken recklessly, intentionally, willfully, with malice, and with deliberate
22 indifference to the rights of others.

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

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

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1 58. HRDC seeks declaratory and injunctive relief, and nominal and
2 compensatory damages against all Defendants. HRDC also seeks punitive damages solely
3 against the individual Defendants in their individual capacities.

4 **THIRD CLAIM FOR RELIEF**
5 ***(Violation of the right to free speech—California Constitution Art. I, Sec. 2)***

6 59. HRDC re-alleges and incorporates the allegations of paragraphs 1 through 58
7 of the Complaint as if fully set forth herein.

8 60. The acts described above constitute violations of HRDC's speech rights
9 under Article 1, Section 2 of the California Constitution and have caused damage to
10 HRDC, and will continue to cause damage.

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

14 62. As a result of the conduct of Defendants, HRDC seeks declaratory and
15 injunctive relief against all Defendants.

16 **FOURTH CLAIM FOR RELIEF**
17 ***(Violation of the right to due process —California Constitution Art. I, Sec. 7)***

18 63. HRDC re-alleges and incorporates the allegations of paragraphs 1 through 62
19 of the Complaint as if fully set forth herein.

20 64. By failing to give HRDC sufficient notice of the censorship of its
21 publications and correspondence and an opportunity to be heard with respect to that
22 censorship, Defendants have deprived and continue to deprive HRDC of liberty and
23 property without due process of law, in violation of Article I, Section 7 of the California
24 Constitution, and have caused damage to HRDC, and will continue to cause damage.

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

28

1 66. As a result of the Defendants' conduct, HRDC seeks declaratory and
2 injunctive relief against all Defendants.

3 **FIFTH CLAIM FOR RELIEF**
4 *(Violations of the Bane Act—California Civil Code Sec. 52.1)*

5 67. HRDC re-alleges and incorporates the allegations of paragraphs 1 through 66
6 of the Complaint as if fully set forth herein.

7 68. By their actions as described above, Defendants, acting in conspiracy and/or
8 in concert, with threat, intimidation, and/or coercion, violated HRDC's rights under
9 California Civil Code § 52.1 and interfered with the exercise or enjoyment of HRDC's
10 clearly established rights secured by the Constitution and laws of the United States and
11 Constitution and laws of California. Defendants' actions have caused actual damages to
12 HRDC within the meaning of California Civil Code §§ 52 and 52.1.

13 69. The conduct of Defendants described above was objectively unreasonable
14 and was undertaken recklessly, intentionally, willfully, with malice, and with deliberate
15 indifference to the rights of others.

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

19 71. As a proximate result of the conduct of Defendants, HRDC is also entitled to
20 injunctive relief and an award of exemplary damages, civil penalties, and attorneys' fees,
21 as provided by California Civil Code §§ 52 and 52.1

22 **REQUEST FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests relief as follows:

24 1. A declaration that Defendants' policies and practices violate the First and
25 Fourteenth Amendments to the United States Constitution; Article 1, Section 2 and
26 Article 1, Section 7 of the California Constitution; and California Code Section 52.1;

27 2. A preliminary and permanent injunction preventing Defendants and their
28 employees, agents, and any and all persons acting in concert with them from further

1 violation of HRDC's civil rights under the First and Fourteenth Amendments to the United
2 States Constitution; Article 1, Section 2 and Article 1, Section 7 of the California
3 Constitution; and California Code Section 52.1; and providing other equitable relief;

4 3. Nominal damages for each violation of HRDC's rights by the Defendants;

5 4. Compensatory damages in an amount to be proved at trial;

6 5. Punitive damages against the individual Defendants in an amount to be
7 proved at trial;

8 6. Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and
9 under other applicable law, including but not limited to California Civil Code § 52.1 and
10 California Code of Civil Procedure § 1021.5; and

11 7. Any other such relief that this Court deems just and equitable.

12 **JURY DEMAND**

13 Plaintiff, by and through its attorneys, hereby demands a trial by jury pursuant to
14 Federal Rule of Civil Procedure 38(b) on all issues so triable.

15
16 DATED: February 14, 2020

Respectfully submitted,

17 ROSEN BIEN GALVAN & GRUNFELD LLP

18
19 By: /s/ Jeffrey L. Bornstein
20 Jeffrey L. Bornstein

21 Attorneys for
22 HUMAN RIGHTS DEFENSE CENTER
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