

1 MICHELLE R. BURROWS OSB 86160
Attorney at Law
2 618 NW Glisan St. Ste. 203
Portland OR 97209
3 503/241-1955
503/241-3127 (facsimile)
4 mrburrows@qwest.net

5 Attorney for Plaintiff

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10 IN THE UNITED STATE DISTRICT COURT
11 FOR THE DISTRICT OF OREGON

12 MARK WILSON,

13 Plaintiff

14 v.

15 JEFREY VAN VALKENBURGH, MAX
16 WILLIAMS, DAVID COOK, BENJAMIN
DEHAAN, MITCH MORROW, STAN
17 CZERNIAK, JOAN PALMATEER,
BRIAN BELLEQUE, JERRY LONG,
18 MICHAEL YODER, TRENT AXEN,
LT. MANU, WILLIAM CAHAL,
19 DON MILLS, DOUG HARDER, ROBERT
KNODEL, W. MOORE, A. HANNON, CPL)
20 ROBINSON, JOHN TABER, ALAN
SCHARN, R. OGDEN, R. ACKLEY,
21 CARLA TUPOU, RANDY BRIONES,
JOHN AND JANE DOES 1-20, each sued
22 in their individual and official capacities.,

23 Defendants.

No. **CV'06 1391 SU**

COMPLAINT
Civil Rights: Retaliation; Denial of
Access to Courts; First Amendment;
Civil Conspiracy

Jury Trial Demanded

Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
503/241-1955

1-COMPLAINT

11715

INTRODUCTORY STATEMENT

1.
1.

This is a civil rights action brought by Plaintiff Wilson, a state prisoner pursuant to 42 U.S. C. §1983. Plaintiff alleges that a) defendants have engaged and continue to engage in a pattern and practice of retaliation against Plaintiff for his efforts to access the courts and prison grievance procedures concerning the redress of constitutional violation suffered by himself and other prisoners. Plaintiff also seeks damages for actions by defendants which violated his protected constitutional rights pursuant to the First and Fourteenth Amendments to the Constitution. Plaintiff seeks declaratory and injunctive relief, nominal, compensatory and punitive damages and reasonable costs and attorney's fees, pursuant to 42 U.S. C. §1988.

JURISDICTION AND VENUE

2.

This court has jurisdiction over Plaintiff's claims of violations of federal constitutional rights, pursuant to 28 U.S.C. §§1331(a) and 1343.

3.

This court has supplemental jurisdiction over Plaintiff's claims of violations of state constitutional rights, pursuant to 28 U.S. C. §1367.

4.

Venue is properly before this Court pursuant to 28 U.S.C. §1391(b).

PARTIES

5.

Plaintiff MARK J. WILSON is, and was at all times relevant, a prisoner of the Oregon Department of Corrections (ODOC). From May 24, 1988 to June 22, 1990 he was confined within the Oregon State Correction Institution (OSCI) in Salem, Marion County Oregon; from June 22, 1990 to September 20, 2001 he was confined within the Oregon State Penitentiary

Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
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1 (OSP) in Salem Marion County Oregon ; and from September 30 2004 to the present he has been
2 confined within the Eastern Oregon Correctional Institution (EOCI)in Pendleton, Umatilla
3 County Oregon. From August 1989 to June 22, 1990 plaintiff was employed at OSCI as an
4 Inmate Legal Assistant (ILA), as defined by OAR 291-139-0010(4) and OAR 291-139-0015(2);
5 and from November 20, 1991 to September 20, 2004 plaintiff was employed as an ILA at OSP.

6 6.

7 Defendant JEFROY VANVALKENBURGH is and was at all times relevant, a Senior
8 Assistant Attorney general employed by the Oregon Department of Justice (DOJ) and assigned to
9 the Government Services Section of DOJ, serving as General Counsel for the ODOC. He has
10 been personally involved in the violations alleged herein. He is sued in his official and
11 individual capacities.

12 7.

13 Defendant MAX WILLIAMS is the current Director of the ODOC. He is responsible for
14 the orderly operation of the ODOC, the training and supervision of all subordinate staff and the
15 promulgation of rules and policies of the ODOC. Defendant Williams has been personally
16 involved in the violations alleged herein. He is sued in his official and individual capacities.

17 8.

18 Defendant DAVID COOK is a former Director of the ODOC. He was responsible for the
19 orderly operation of the ODOC, the training and supervision of all subordinate staff and the
20 promulgation of rules and policies of the ODOC. Defendant Cook was a named defendant in
21 litigation to which plaintiff was a party, or otherwise significantly involved in, to wit: Prison
22 Legal News et al v. David Cook, 238 F. 3d 1145 (9th Cir. 2001) and Rodger Anstett et al v. State
23 of Oregon et al, USDC Case No. CV1619BR. Defendant Cook has been personally involved in
24 the violations alleged herein. He is sued in his official and individual capacities.

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26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 Defendant BENJAMIN DEHAAN is a former Interim Director of the ODOC. He was
2 responsible for the orderly operation of the ODOC, the training and supervision of all
3 subordinate staff and the promulgation of rules and policies of the ODOC. Defendant DEHAAN
4 has been personally involved in the violations alleged herein. He is sued in his official and
5 individual capacities.

6 10.

7 Defendant MITCH MORROW was previously the Superintendent of the OSP and is
8 currently the Deputy Director of the ODOC. He has been personally involved in the violations
9 alleged herein. He is sued in his official and individual capacities.

10 11.

11 Defendant STANLEY CZERNIAK was previously the superintendent of the OSP and is
12 currently an Assistant Director of the ODOC. He has been personally involved in the violations
13 alleged herein. He is sued in his official and individual capacities.

14 12.

15 Defendant JOAN PALMATEER is and was at all times relevant an Assistant Director of
16 the ODOC. She has been personally involved in the violations alleged herein. She is sued in her
17 official and individual capacities.

18 13.

19 Defendant BRIAN BELLEQUE is the Superintendent of the OSP. He is responsible for
20 the orderly operation of OSP and the training and supervision of all subordinate staff. He has
21 been personally involved in the violations alleged herein. He is sued in his official and
22 individual capacities.

23 14.

24 Defendant JERRY LONG is and was at all times relevant an Assistant Superintendent of
25 Security at the OSP. He has been personally involved in the violations alleged herein. He issued

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28
Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
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1 in his official and individual capacities.

2 15.

3 Defendant MICHAEL YODER was at all times relevant, the Executive Assistant to the
4 Superintendent of the OSP. He has been personally involved in the violations alleged herein. He
5 is sued in his official and individual capacities.

6 16.

7 Defendant TRENT AXEN, is and was at all times relevant, the Library Coordinator for
8 OSP. From 1993 to September 30, 2004 he was plaintiff's immediate supervisor. He has been
9 personally involved in the violations alleged herein. He is sued in his official and individual
10 capacities.

11 17.

12 Defendant LT. MANU is, and was at all times relevant, a guard at ODOC holding the
13 rank of Lieutenant. He has been assigned to work within OSP and has been involved in the OSP
14 Security Threat Group (STG) Management Team. He has been personally involved in the
15 violations alleged herein. He is sued in his official and individual capacities.

16 18.

17 Defendant WILLIAM CAHAL was at all times relevant a Registered Nurse (RN)
18 employed by the ODOC and assigned to work at the OSP. He was previously assigned as the
19 Health Services Manager of the OSP. He has been personally involved in the violations alleged
20 herein. He is sued in his official and individual capacities.

21 19.

22 Defendant DON MILLS is, and was at all times relevant, the Assistant Superintendent of
23 Security at EOCI. He has been personally involved in the violations alleged herein. He is sued in
24 his official and individual capacities

25 20.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 Defendant DOUG HARDER is and was at all times relevant the Executive Assistant to
2 the Superintended of EOCI. He has been personally involved in the violations alleged herein. He
3 is sued in his official and individual capacities

4 21.

5 Defendant ROBERT KNODEL was at all times relevant, an Investigator with the Internal
6 Affairs (IA)/Special Investigations Unit (SIU) of the ODOC. He has been personally involved in
7 the violations alleged herein. He is sued in his official and individual capacities.

8 22.

9 Defendant W. MOORE, was at all times relevant, the Investigation Manager of the
10 IA/SIU of ODOC. He has been personally involved in the violations alleged herein. He is sued
11 in his official and individual capacities

12 23.

13 Defendant A. HANNON was at all times relevant, a guard of ODOC, holding the rank of
14 Lieutenant. He has been assigned to work within OSP. He has been personally involved in the
15 violations alleged herein. He is sued in his official and individual capacities

16 24.

17 Defendant ROBINSON was at all times relevant a guard of ODOC, holding the rank of
18 corporal. He has been assigned to the position of Property Officer at EOCI. He has been
19 personally involved in the violations alleged herein. He is sued in his official and individual
20 capacities

21 25.

22 Defendant JOHN TABER is and was at all times relevant an Inspector within the SIU of
23 ODOC assigned to EOCI. He has been personally involved in the violations alleged herein. He
24 is sued in his official and individual capacities

25 26.

26
27 Michelle R. Burrows
Attorney at Law
28 618 NW Glisan Ste. 203
Portland OR 97209
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1 Defendant K. JESKE, is and was at all times relevant, an Inspector with the SIU of
2 ODOC. He has been personally involved in the violations alleged herein. He is sued in his
3 official and individual capacities

4 27.

5 Defendant ALAN SCHARN is and was at all times relevant, an Investigation Manager of
6 the SIU of ODOC. He has been personally involved in the violations alleged herein. He is sued
7 in his official and individual capacities

8 28.

9 Defendant R. OGDEN, is and was at all times relevant a guard of ODOC holding the rank
10 of Captain and assigned to the post of Operation Captain at OSCI. He has been personally
11 involved in the violations alleged herein. He is sued in his official and individual capacities

12 29.

13 Defendant R. ACKLEY, was at all times relevant a guard at ODOC holding the rank of
14 Captain and assigned to the post of Special Operations Caption at OSCI. He is involved in STG
15 management within the prison. He has been personally involved in the violations alleged herein.
16 He is sued in his official and individual capacities

17 30.

18 Defendant CARLA TUPOU is and was at all times relevant, the Assistant Superintendent
19 of the Program Services of OSCI. She has been personally involved in the violations alleged
20 herein. He is sued in his official and individual capacities

21 31.

22 Defendant RANDY BRIONES was at all times relevant the Social Services Manager at
23 OSCI. He has been personally involved in the violations alleged herein. He is sued in his
24 official and individual capacities

25 32.

26
27 Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
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1 Defendant JOHN and JANE DOES 1-20 are and were at all times relevant, employees of
2 the ODOC and/or DOJ whose identities are currently unknown to Plaintiff. All Doe Defendants
3 have been personally involved in the violations alleged herein. Plaintiff will amend this
4 complaint to formally name all DOE defendants once their identities are revealed to plaintiff in
5 discovery. All Doe Defendants are sued in their official and individual capacities.

6 33.

7 All defendants have acted, and continue to act, at all times relevant under color of state
8 law.

9 34.

10 At all times relevant a civil conspiracy existed between two or more defendant to
11 retaliate against plaintiff, impede his access to courts and the grievance process and impede
12 plaintiff from assisting in litigation and assisting fellow prisoners in accessing courts and prison
13 grievance systems, impede plaintiff's association and free speech rights and opportunities.

14 FACTUAL BACKGROUND

15 35.

16 On or about May 24, 1988 Plaintiff began serving a sentence of life imprisonment within
17 the legal and physical custody of the ODOC at OSCI. On or about June 22, 1990 Plaintiff was
18 transferred from OSCI to OSP.

19 36.

20 From approximately August 1989 to June 22, 1990 plaintiff was employed at OSCI as an
21 Inmate Legal Assistant ILA pursuant to OAR 291-129-005 to 291-139-0045. From November
22 20, 1991 until Plaintiff September 30, 2004 transfer from OSP to EOCL, plaintiff was employed
23 at OSP as an ILA.

24 37.

25 From approximately 1993 until plaintiff's September 30, 2004 transfer from OSP to

26
27 Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
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1 EOCI, OSP Library Coordinator Defendant Axen was plaintiff's immediate supervisor.

2 38.

3 Pursuant to OAR 291-139-0020 OSP, OSCI, EOCI and SRCI maintain "Level 1 law
4 library" which provide the most comprehensive level of legal services and resources.

5 39.

6 The March 1, 1999 ODOC Legal Affairs rule at OAR 291-139-0005 to 291-139-0045 is
7 the rule which presently governs legal services and resources for ODOC inmates and that rule
8 was in effect at all times relevant.

9 40.

10 By rule a "legal assistant" is "an inmate assigned to work in a facility law library to assist
11 in the provision of legal access for other inmates by consulting, legal research and typing as
12 necessary". OAR 291-139-0010(4). Legal assistants shall "assist other inmates with their legal
13 concerns when requested by assisting inmates in the preparation and filing of legal documents
14 with the court through consulting, legal research and typing as necessary. OAR 291-139-
15 0015(2)(a).

16 41.

17 Assignment and removal of an inmate legal assistant shall not be based upon retaliation
18 for legitimate legal activities. OAR 291-139-0015(2)(e). ILAs are responsible for assisting any
19 and all inmates who request their assistance. OAR 291-139-0015(2)(a).

20 42.

21 For the thirteen years plaintiff served as an OSP ILA the inmate population of OSP
22 averaged between 2,000 and 2,200 inmates being served by only five ILAs. OSP inmates were
23 authorized to request assistance from the ILA of their choice. The average case/workload for each
24 ILA at OSP was approximately 500-550 inmates per ILA.

25 43.

26
27 Michelle R. Burrows
Attorney at Law
28 618 NW Glisan Ste. 203
Portland OR 97209
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1 Due to a widely varying legal knowledge, experience, ability, desire and motivation to
2 assist others possessed by the five ILA's at OSP, a disproportionate number of requests for
3 assistance were directed to and fulfilled by, plaintiff.

4 44.

5 In an attempt to address the workload disparity among OSP ILAs, officials at OSP
6 instituted a system whereby ILAs were assigned based upon the second to last digit of the
7 inmate's state identification (SID) numbers. The system was unpopular and unworkable at OSP
8 due to the varying degrees of competency and abilities of the OSP ILAs. And despite the
9 assignment system, inmates at OSP were still permitted to request assistance from the OSP ILA
10 of their choice.

11 45.

12 Following plaintiff's September 30, 2004 transfer from OSP to EOICI, Defendant Van
13 Valkenburgh reported that approximately 35 standard archive boxes of inmate legal materials
14 were seized by prison officials from plaintiff's job site.

15 46.

16 Defendant Van Valkenburgh further reported that "there are approximately nineteen (129)
17 boxes of materials that pertain to inmates that are housed at other institutions, at out of state
18 institutions or to inmates that have been released and have either discharged their sentences or
19 are on parole of post prison supervision in the community".

20 47.

21 Defendant Van VALKENBURGH also reported that one hundred, twenty seven (127)
22 OSP inmates were "on call pass to the legal library to retrieve their material" and Defendant
23 AXEN would "be making arrangements. . . to have material delivered to the inmates that were in
24 the special housing units".

25 48.

26
27 Michelle R. Burrows
Attorney at Law
28 618 NW Glisan Ste. 203
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1 Throughout the thirteen years plaintiff served as OSP ILA, he consistently scheduled and
2 met with in excess of fifty (50) OSP inmates per month, frequently meeting with between 5 and
3 10 inmates per day during his normal five hour work day.

4 49.

5 In addition to seeing/assisting general population inmates, plaintiff and the other OSP
6 ILAs were responsible for providing legal assistance to segregated prisoners via telephone,
7 pursuant to OAR 291-139-0035(4)© and via correspondence.

8 50.

9 Throughout the thirteen years plaintiff served as an OSP ILA he was responsible for
10 taking weekly telephone calls from inmates segregated in the Disciplinary Segregation Unit
11 (DSU), Intensive Management Unit (IMU) and death row when those inmates requested legal
12 assistance pursuant to OAR 291-139-0035(4)©. During his thirteen year tenure as ILA he
13 routinely received 20-30 calls per week from DSU, IMU and/or death row inmates.

14 51.

15 Throughout the thirteen years plaintiff served as an OSP ILA he and the other OSP ILAs
16 were responsible for providing legal assistance to prisoners confined in the prison's psychiatric
17 unit. SMU and infirmary, by meeting with those inmates in SMU and/or the infirmary.

18 52.

19 Pursuant to OAR 291-139-0035(3)(b) ILA and inmates in general, confined in other
20 ODOC facilities are authorized to call OSP ILAs for assistance. Throughout his tenure as an ILA
21 Plaintiff routinely received telephonic and written requests for assistance from inmates confined
22 in other facilities.

23 53.

24 Pursuant to OAR 291-139-0035(5) and (6) inmates confined in out of state and federal
25 jurisdictions but serving Oregon sentences are authorised to seek legal assistance frm OSP ILA
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27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
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1 via telephone and/or correspondence. Throughout his thirteen year tenure, plaintiff routinely
2 received and responded to written requests for assistance from inmates confined out of state and
3 federal jurisdictions.

4 54

5 Many of the inmates who request assistance of ILAs are not capable of accessing the
6 courts and/or grievance procedures for the redress of grievances without assistance due to mental
7 illness, language barriers, low IQ level, learning disabilities, illiteracy , lack of education, lack of
8 legal knowledge and experience and other barriers to access.

9 55.

10 Throughout the thirteen years plaintiff served as an OSP ILA, he routinely represented
11 prisoners at hearings before the Oregon Board of Parole and Post-Prison Supervision (Board).

12 56.

13 Plaintiff's duties as an ILA included but were not limited to, drafting motions, affidavits,
14 legal memoranda, petitions, complaints, letters, appellate briefs, administrative review requests
15 and prison grievances.

16 57.

17 Throughout his tenure as an ILA plaintiff frequently engaged in informal advocacy to
18 resolve issues with prison officials at the administrative level on various conditions of
19 confinement issues.

20 58.

21 AS an ILA plaintiff received requests for assistance from prisoners on a wide array of
22 legal issues, including but not limited to : appeals of convictions and sentences, conditions of
23 confinement challenges, Board of Parole issues child support/custody/visitation issues,
24 dissolution proceedings, wills and estate issues, defense of civil actions.

25 59.

26
27 Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 Throughout the entire thirteen years of his service as an OSP ILA plaintiff was authorised
2 to utilized the telephone in the OSP Law Library to call courts and attorney as necessary to assist
3 OSP inmates with their legal problems. This practice was terminated the day plaintiff was
4 transferred from OSP to EOCL.

5 60.

6 Throughout the thirteen years plaintiff served as an OSP ILA he developed working
7 relationships with numerous attorneys, prisoner and mental health advocacy groups, court
8 personnel and others as necessary to carry out his ILA duties effectively and efficiently.

9 61

10 Throughout the thirteen years plaintiff served as an OSP ILA he was allowed discretion
11 with respect to legal matters, to do those things he deemed necessary to properly effectively and
12 efficiently perform his duties as ILA with little interference, oversight or input from ODOC
13 officials.

14 62.

15 Throughout the entire time plaintiff served as an ODOC ILA at OSCI and OSP plaintiff
16 never received a negative work performance report/evaluation, as defined by OAR 291-077-
17 0022(6) or was otherwise told that there were any problems or concerns with his performance.

18 63.

19 From January 1999 to the present plaintiff has served as a “contributing writer” for Prison
20 Legal News (PLN) a monthly national news publication reporting on prison conditions, abuses,
21 litigation and reform. During that time plaintiff has written in excess of three hundred articles for
22 PLN concerning prison abuses, litigation and reform in Oregon and nationally. These articles
23 were all published in PLN. The articles in PLN are generally critical of prison officials and
24 conditions. Many of the articles written by plaintiff were critical of ODOC officials and actions.

25 64.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 As part of the settlement agreement in *Prison Legal News v. Schumacher*, USDC No.
2 CV-02-428 AS (D. OR), ODOC was required to purchase a two-year subscription to PLN and
3 make it available to prisoners in the law library of every ODOC facility each month, beginning in
4 2002.

5 65.

6 Plaintiff was a named Plaintiff in *Prison Legal News et al v. David Cook*, 238 F.3d 1145
7 (9th Cir. 2001) wherein plaintiffs' successfully challenged ODOC rules restricting prisoners from
8 receiving PLN and other publications sent by 3d and 4th class postage.

9 66.

10 In January 2001, in his capacity as OSP ILA, plaintiff initiated what would come to be the
11 class action litigation in *Rodger Anstett et al v. State of Oregon et al*, USDC No. CV 01-1619 BR
12 (D. OR) wherein prisoners challenged ODOC's refusal to properly diagnose and treat the
13 progressive and fatal hepatitis C virus (HCV) with which more than 30% of the ODOC inmate
14 population is estimated to be infected.

15 67.

16 In his capacity as OSP ILA, plaintiff contacted counsel to represent ODOC inmates in
17 what would become the Anstett litigation. In his capacity as OSP ILA plaintiff assisted
18 extensively in the drafting of the Anstett complaint and the Motion to Certify Class which was
19 granted by Judge Brown.

20 68.

21 Plaintiff's supervisor, Defendant Axen, was fully aware of plaintiff's efforts described
22 above, but expressed no concerns and did not order plaintiff to cease or modify his actions.

23 69.

24 On or about March 23, 2001 plaintiff in his capacity as OSP ILA with the assistance of
25 his immediate supervisor, Defendant Axen, several OSP counselors and the other OSP ILA met

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28
Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 with and assisted fifty-six OSP inmates in the preparation of: fee agreements, HCV Medical
2 History Questionnaires and Release of Information Forms for Anstett counsel; and internal
3 grievance related to the ODOC's refusal to properly diagnose and treat their HCV infection.

4 70.

5 Due to the fact that the entire complaint/issue could not be fully addressed within the
6 limited space provided on the ODOC grievance form (CD 117), plaintiff in his capacity as OSP
7 ILA, prepared a typed attachment to the grievance form, specifying the details of the complaint
8 issue. Plaintiff typed the grievance attachments for each inmate in the Anstett case on the legal
9 library typewriter with the permission and consent of Defendant Axen.

10 71.

11 Prior to initiating the grievance process in the Anstett case, plaintiff, in his capacity as
12 OSP ILA, advised the OSP Grievance Coordinator of his intentions and sought his input
13 concerning the best way to proceed. The OSP Grievance Coordinator requested that Plaintiff, in
14 his capacity as OSP ILA, hand deliver all of the HCV grievance to his office at one time, rather
15 than having each of the fifty-six inmates submit their grievance individual through the prison
16 mail system. Thereafter, on or about March 23, 2001 plaintiff, in his capacity as OSP ILA hand-
17 delivered the fifty-six HCV grievances to the office of the OSP Grievance Coordinator.

18 72.

19 Approximately four months after filing the grievances ODOC had failed to respond to
20 any of the grievances. Plaintiff in his capacity as OSP ILA assisted the 56 inmate who had filed
21 the grievance submit grievance appeals related to ODOC's refusal to respond to the March
22 grievances and grievances related to the prison officials refusal to answer the March grievance
23 with the fourteen day time set forth in the ODOC grievance rule. Plaintiff typed the grievance
24 appeals and hand delivered to the Grievance Coordinator. Defendant Axen was fully aware of the
25 actions taken by Plaintiff.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
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1 73.

2 On or about July 6, 2001 ODOC staff informed Plaintiff that defendant Van Valkenburgh
3 and Oregon Department of Justice objected to plaintiff “acting as a spokesman or representative
4 of the grieving inmates”. On July 6, 2001 ODOC staff informed plaintiff that Defendant Van
5 Valkenburgh indicated that the ODOC grievance rule would be amended to prevent the types of
6 activities plaintiff had engaged in concerning the HCV grievances.

7 74.

8 On or about July 6, 2001 Defendant Cahal completed responses to the original 56
9 grievances on HCV and returned the response to the Grievance Coordinator. All 56 grievances
10 were denied.

11 75

12 On or about July 6, 2001, after “talking to some people” the OSP Grievance Coordinator
13 advised plaintiff that he would not process the 56 July 5, 2001 grievances and grievance appeals
14 described above. On July 5, 2001 plaintiff hand delivered 29 new grievances to the OSP
15 grievance coordinator. As of this time those 29 grievances remain unanswered.

16 76.

17 ON or about July 13, 2001 plaintiff in his capacity as OSP ILA assisted the original 56
18 inmates who had filed HCV grievances in preparing grievance appeals of the denial of the March
19 23, 2001 grievances. Plaintiff typed the additional attachment needed for each of the 56 inmates,
20 and after receiving approval he delivered the 56 grievance appeals to the OSP Grievance
21 Coordinator on July 23, 2001.

22 77.

23 ODOC officials did not respond to the 56 grievance appeals until October 2001. The
24 Grievance rule requires a response within thirty days.

25 78.

26
27 Michelle R. Burrows
Attorney at Law
28 618 NW Glisan Ste. 203
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1 After plaintiff hand-delivered the 56 HCV grievance appeals to the OSP Grievance
2 Coordinator on or about July 23, 2001 but before October 22, 2001, Defendant Axen informed
3 plaintiff and the other OSP ILAs that they were no longer authorized to assist OSP inmates in the
4 preparation and filing of grievances and grievance appeals and that they were no longer
5 authorized to type attachments to grievances and grievance appeals on law library equipment.
6 Other ILA's at other ODOC facilities did not receive any such orders.

7 79.

8 Defendant Axen's stated reasons for the order was that grievances and grievance appeals
9 are not "legal documents" within the meaning of ODOC inmate legal affairs rule, because they
10 are not being filed with the court or parole board.

11 80.

12 Defendant Axen's interpretation of "legal documents" and the restrictions of the legal
13 affairs rule was inaccurate and contrary to the rule itself and the Prisoner Litigation Reform Act
14 mandates on exhaustion of grievance prior to access to courts.

15 81.

16 The ODOC grievance rules also provides that in the event an inmate is unable to
17 complete the grievance due to some disabilities "another person may complete the form for the
18 inmate". OAR 291-109-0140(3)(d).

19 82.

20 Defendant Axen was acting on the order of, and in conjunction with, Defendant Does
21 when he ordered plaintiff and the other OSP ILAs to cease assisting OSP inmates with the
22 preparation and filing of grievances and grievance appeals, and to cease typing attachments to
23 grievance and grievance appeals. The orders given to Plaintiff to cease assisting inmates with
24 grievances came directly from one or all of the defendants to include Defendant Van
25 Valkenburgh and was in direct response to the actions taken by Plaintiff.

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Michelle R. Burrows
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618 NW Glisan Ste. 203
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1 83.

2 The actions taken by Defendants Axen and Van Valkenburgh and John Does was a
3 deliberate attempt by defendants to make it more difficult or OSP/ODOC inmates to obtain
4 meaningful access to the courts and prison grievance system for the redress of grievances,
5 terminate plaintiff's involvement in the Anstett litigation.

6 84

7 Defendants enforced the "stop assisting with grievances" order from July 23, 2001
8 through September 30, 2004.

9 85.

10 After plaintiff hand-delivered the 56 HCV grievance appeals to the OSP Grievance
11 Coordinator on or about July 23, 2001 but before October 22, 2001 Defendant Axen advised
12 plaintiff that the ODOC grievance rules were going to be amended by order of Defendant Van
13 Valkenburgh.

14 86.

15 Prior to 2001 plaintiff's immediate supervisor, Defendant Axen, placed a "job hold" on
16 plaintiff, to prevent his transfer from OSP. Prior to 2001 OSP medical staff placed a "hospice
17 hold" on plaintiff in conjunction with his work as a prison hospice volunteer to prevent his
18 transfer from OSP.

19 87.

20 Between July 5, 2001 and September 30, 2001 Defendants Cahal and Does removed
21 plaintiff's hospice hold.

22 88.

23 Between July 5, 2001 and September 30, 2001, Defendant Cahal requested that
24 Defendant Axen lift plaintiff's work hold so that Defendant Cahal and Does could have plaintiff
25 transferred out of OSP.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
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1 89.

2 ODOC medical staff learned of the attempt by Defendant Cahal and Does to have
3 plaintiff transferred from OSP and reported the conduct to Defendant Cahal's supervisor.
4 Defendant Cahal and Does were prevented from transferring plaintiff from OSP in 2001.

5 90.

6 Defendants sought to transfer plaintiff from OSP in 2001 in retaliation for plaintiff's
7 involvement in the Anstett litigation as described above, as well as the related grievance process
8 described herein. Defendants Cahal and Does sought to transfer plaintiff from OSP in 2001 in a
9 deliberate effort to terminate plaintiff's involvement in the Anstett litigation and his assistance of
10 inmates generally, in accessing the courts and prison grievance system. Defendant Cahal
11 frequently told OSP inmates, "I don't like people who file grievances and if I see one come
12 across my desk you will wake up in a different time zone".

13 91.

14 A transfer from OSP to SRCI, EOCI and TRCI (Two Rivers) in Umatilla County is
15 recognized among prison staff and inmates alike as a punitive transfer to less desirable living
16 conditions.

17 92

18 In 2001 prison staff advised plaintiff of the attempt by Defendant Cahal and Does to
19 transfer plaintiff from OSP and warned him that he should avoid Cahal when possible as Cahal
20 was angry at plaintiff and was looking for ways to punish and retaliate against Plaintiff. Based on
21 the warning plaintiff felt it unsafe to be in the OSP infirmary for his hospice duties when Cahal
22 was present. Plaintiff limited his hospice work to weekends and after 6 p.m.

23 93.

24 On or about October 22, 2001 then OSP Superintendent Defendant Czerniak issued a
25 memorandum to OSP ILAs directing that OSP ILAs were no longer authorized to assist any
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 inmates who were represented by counsel. No other ODOC facility or ILAs were issued similar
2 orders.

3 94.

4 Defendant Czerniaks' October 22, 2001 directive to OSP ILAs that they cease assisting
5 represented inmates is not supported or otherwise authorized by the Inmate Legal Affairs rule.
6 On or about October 22, 2001 Defendant Axen advised plaintiff about Czerniak's order and
7 issued copies of the memorandum to plaintiff and each OSP ILA. Axen thereafter ordered
8 plaintiff to cease all involvement in the Anstett case preparation and prosecution and he was
9 further ordered to immediately "box up all HCV materials" in plaintiff's possession for mailing
10 to Anstett class counsel at ODOC expense. Axen seized the boxed materials and mailed them in
11 October 2001.

12 95.

13 Defendant's Axen and Czerniak were acting in conjunction with Defendant Does, and
14 some of the named Defendants herein but whose exact involvement is not yet known, on or about
15 October 22, 2001 when they: ordered plaintiff and all OSP ILA to cease assisting inmates
16 represented by counsel; ordered plaintiff to cease all involvement in the Anstett case preparation
17 and prosecution; ordered plaintiff to box up all HCV materials for mailing to Anstett counsel;
18 seized two boxes of HCV related materials from plaintiff and mailed to counsel.

19 96.

20 Defendant Axen enforced Czerniak's order referenced herein from October 22,2001
21 through September 30, 2004.

22 97.

23 On or about October 23, 2001 Defendant Knodel arrived in the OSP law Library and
24 interrogated plaintiff in the presence of Defendant Axen in conjunction with an Internal Affairs
25 (IA) investigation. Defendant Knodel and Does initiated against plaintiff, concerning his
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27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 involvement in the Anstett litigation and whether counsel had paid plaintiff for his work on that
2 case.

3 98.

4 On or about November 2, 2001 the initial complaint in Anstett was filed in the United
5 States District Court for the District of Oregon. Defendants Cook, Cahal and Does are named
6 Defendants in the Anstett litigation and the subsequent damages matter presently pending.

7 99.

8 On or about November 14, 2001 Defendant Knodel issued plaintiff an ODOC
9 Misconduct Report charging plaintiff with violating OAR 291-105-0014(4)(a) Disobedience of
10 an Order I; and OAR 291-104-0015(4)(k)-Unauthorized Area I, for plaintiff's October 19, 2001
11 attendance at a club function banquet. Knodel listed plaintiff's immediate supervisor Axen and
12 OSP Recreation Specialist Car Hadlock as staff witnesses to plaintiff's alleged misconduct. On
13 or about November 14, 2001 Defendant W. Moore IA Investigation Manager, signed Defendant
14 Knodel's November 14, 2001 Misconduct Report as the reviewing supervisor thereby approving
15 of the content thereof.

16 100.

17 Disobedience of an Order I and Unauthorized Area I are classified in the ODOC rules of
18 prohibited conduct as "Level 3" major violations. The potential sanctions for each of the
19 violations was 7-14 days in disciplinary segregation, 14-21 days of loss of privileges and \$75
20 fine. Additional punishment includes confiscation of property, reduction to basic visiting, extra
21 work detail, recommendation for no favorable future consideration of parole release date,
22 recommendation for an extension of parole release date. A finding of either of the violations
23 alleged by Knodel would result in numerous "informal sanctions" to include but not necessarily
24 limited to: loss of incentive level, incentive housing, loss of performance points, monetary award
25 for work, loss of job and potential transfer.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 101

2 At the time of Defendant Knodel Disciplinary Report as noted herein, plaintiff had only
3 one other disciplinary finding against him and which dated nearly ten years earlier. Plaintiff had
4 resided in incentive housing for ten years and had held the same job for nearly ten years.

5 102.

6 On or about November 14, 2001 Defendant Hannon ordered plaintiff's pre-hearing
7 confinement in the DSU on the basis of Defendant Knodel's Misconduct Report. The violations
8 alleged by Defendant Knodel in the November 14, 2001 Misconduct Report was allegedly a
9 single incident/act occurring on or about October 19, 2001 26 days before plaintiff was issued the
10 misconduct report and placed in segregation. The misconduct alleged was not of the type and/or
11 severity which would ordinarily result in a finding that the inmate "is a direct threat to staff and
12 inmates" and it is not of the type and/or severity which would ordinarily warrant, or otherwise
13 result in an inmate's prehearing confinement in disciplinary segregation pursuant to OAR 291-
14 105-0021(3).

15 103.

16 On or about November 16, 2001 a disciplinary hearing was held by ODOC Hearings
17 officer Barb Cooney. During the hearing on Disciplinary Case No. 0111-A063-A15, OSP
18 Recreation Specialist Carl Hadlock appeared as a witnessing plaintiff's behalf despite being
19 listed as a witness to plaintiff's alleged misconduct. Following Mr. Hadlock's favorable
20 testimony, the matter was dismissed with specific findings that the "inmate was on call out, he
21 had permission to be at the banquet. Inmate did not conduct and introduce attorney at banquet
22 therefore not violating any order given by T. Axen again verified by R-S Hadlock". On or about
23 November 20, 2001 Defendant Czerniak signed the Hearings officers' November 16, 2001 order,
24 approving her findings of fact, conclusions and order.

25 104.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 The disciplinary proceedings initiated by Defendant Knodel, More, Hannon and Does
2 described above were brought against plaintiff in retaliation for plaintiff's efforts as an ILA on
3 Anstett specifically, and his efforts generally to access the court and prison grievance system and
4 to assist other ODOC inmates in accessing the courts and prison grievance system to redress
5 grievances.

6 105.

7 On or about February 13, 2003 the ODOC filed significant amendments to the ODOC
8 Inmate Grievance Rule OAR 2919-109-0100 to 291-109-0140 which became effective on March
9 1, 2003. These amendments make is more difficult for prisoner to exhaust prison grievances and
10 to prevent prisoners from filing grievances in the manner that the Anstett grievances were
11 exhausted. The March 2003 amendments to the Grievance Rule were designed to form a barrier
12 to ODOC prisoner's meaningful access to the courts and redress of grievances. The amendment
13 was in direct response to plaintiff's efforts in Anstett as described above and were designed to
14 prohibit such efforts in the future.

15 106.

16 On or about April 6, 2004 the parties to the Anstett litigation entered into a "Release and
17 Settlement Agreement" and filed a "Stipulated Motion to Stay Proceedings" which were
18 subsequently accepted by the court.

19 107.

20 On or about June 3, 2004 Defendant Manu interrogated plaintiff and accused him of
21 "passing messages" for OSP inmate Gary D. Haugen who was segregated in IMU under
22 investigation for a homicide that was committed within OSP on or about September 7, 2003.

23 108.

24 Defendant Manu advised plaintiff that security was in possession of the "message" in
25 question and that he had searched plaintiff job site with Defendant Axen and had seized various
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 samples of plaintiff's handwriting. Defendant Axen refused to show the "message" in question to
2 plaintiff.

3 109

4 On or about June 4, 2004 Defendant Axen advised plaintiff that he had seen the note and
5 that it was not plaintiff's handwriting. Defendant Axen also advised plaintiff that he had told the
6 same to Defendant Axen.

7 110.

8 Despite the fact that the message was not in plaintiff's handwriting and there was no
9 additional evidence connecting the message to plaintiff Defendant Manu persisted in
10 "investigating" plaintiff. Plaintiff requested permission to stop taking calls from segregation
11 where several individuals connected to the homicide were being held.

12 111.

13 Defendant Axen agreed to seek permission from his supervisor to release plaintiff from
14 his formal duties to the inmates in segregation pending the investigation. Defendant Yoder and
15 OSP Assistant Superintendent of Program Services Lou Allen both ordered plaintiff to continue
16 to take legal calls from segregation. Plaintiff believe Lou Allen to be a potential John Doe
17 Defendant and believes based on information that Lou Allen may be the ODOC official who
18 ordered many of the repeated contrived investigations and efforts to transport plaintiff following
19 the settlement of the Anstett matter. Defendants are on notice of the potential to include Lou
20 Allen in these claims.

21 112.

22 In June 2004 after hearing nothing about the state of the investigation, plaintiff met with
23 his institutional counselor, Don Cornthwaite, who suggested plaintiff write to Defendant Manu
24 and seek information on the status of the investigation and to retrieve his handwriting exemplars.
25 Defendant Manu did not respond and when approached by plaintiff Defendant Manu refused to

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28
Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 speak with plaintiff at all.

2 113.

3 On or about July 6, 2004 Defendant Axen received an email from Defendant Manu who
4 told Axen “I guess I’ll leave your legal assistants alone now”. Manu never responded to the
5 written inmate communication form sent by plaintiff and refused to speak directly with plaintiff
6 on the subject. He did return the handwriting examples.

7 114.

8 On or about July 15, 2004 plaintiff was awakened at 4:30 a.m. to told he was being
9 transferred to another prison. At that time there were two “holds” on plaintiff for his work and
10 his hospice work. On or about July 15, 2004 Defendants Manu, Does and likely Lou Allen
11 attempted to transfer plaintiff to EOCI in Pendleton Oregon but OSP Captain Gangitano and
12 Defendant Long stopped the transfer.

13 115.

14 On or about July 15, 2004 Defendant Long informed Plaintiff that the transfer attempt
15 was requested by Manu and was related to the “Haugen matter” and “security” had “received
16 information” that plaintiff was attempting to “compromise. . . staff” at OSP implying some kind
17 of attempted inappropriate inmate employee relationship of a personal or sexual nature.

18 116.

19 On or about July 15, 2004 Defendant Long advised plaintiff that it appeared that security
20 had received “some bad information” and that he was rescinding the transfer order and the matter
21 was resolved.

22 117.

23 Defendants Manu and Does true motivation in attempting to transfer plaintiff from OSP
24 on July 15, 2004 was to punish and/or retaliate against plaintiff for his efforts in Anstett, his
25 litigation advocacy efforts and political speech generally. Plaintiff was told that it was because of
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27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 “hep c”.

2 118.

3 Defendant Manu and Does sought to send a message to the entire OSP inmate population
4 via plaintiff’s attempted July 15, 2004 transfer, that anyone who engaged in similar litigation
5 advocacy efforts would receive similar punitive retaliatory treatment. It was the generalized
6 feeling amongst ODOC staff that the Hepatitis litigation was “over”.

7 119.

8 From July 19,2004 to July 23, 2004 and July 25, 2004 to July 28, 2004 the entire OSP
9 inmate population of approximately 2000 inmates, stopped using the payphones due to the
10 excessive phone rates and numerous other complaints about prison conditions.

11 120.

12 Throughout the boycott representatives of the Western Prison Project (WPP) a
13 community based prison advocacy reform group were in contact with Defendants Morrow,
14 Czerniak, Palmateer and Belleque seeking to facilitate a positive peaceful resolution to the crisis.

15 121.

16 Anstett class counsel is and was at all times relevant, the Chairperson of the WPP’s “legal
17 Advisory Committee”. Plaintiff was and is at all times relevant an ad hoc member of the WPP
18 Legal Advisory Committee and a member of WPPs Prisoner Advisory Committee”. Throughout
19 the July 2004 OSP prisoner unrest plaintiff communicated with WPP staff via the OSP Law
20 Library telephone concerning developments and concerns within the prison.

21 122.

22 Plaintiff was authorized by Defendant Axen to call WPP on the library telephone and the
23 calls to WPP were made in the presence of defendant Axen who expressed no concerns with
24 plaintiff’s conduct and could have ordered him not to use the telephone.

25 123.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 Plaintiff had been authorised to use the law library telephone to call other mental health
2 and prison advocacy groups, including but not limited to the Oregon Advocacy Center and the
3 American Civil Liberties Union.

4 124.

5 On or about July 29, 2004 Plaintiff's cell was searched for anything related to Brigitte
6 Sarabi, Executive Director of WPP.

7 125.

8 A copy of the August 2004 issue of the Prison Legal News and plaintiff's address book
9 were seized during the cell search and were later returned. There were numerous letters and
10 memoranda within plaintiff's cell which he typed on the law library and sent to WPP on prison
11 and parole issues, which were not seized during the July 29,2004 search of plaintiff's cell.

12 126.

13 On or about July 30, 2004 Defendant Yoder advised plaintiff that an investigation was
14 being conducted to determine what role WPP and/or plaintiff had in instigating the July 7 19,
15 2004 to July 23, 2004 and July 25, 204 to July 28, 2004 OSP inmate telephone boycott. On or
16 about August 3, 2004 Defendant Axen was ordered to report to Defendant Belleque's office
17 concerning the investigation of plaintiff and WPP.

18 127.

19 On or about August 3, 2004 Defendant Axen told plaintiff that Defendant Belleque
20 ordered "from this day forward" plaintiff was no longer authorised to type letters or other
21 documents or sue the library telephone to communicate with any advocacy groups. Defendant
22 Axen enforced Defendant Belleque's order from August 32, 2004 to September 30, 2004.

23 128.

24 The August 3, 2005 orders and actions of Defendants Belleque, Axen and Does were a
25 deliberate attempt by Defendants to make it more difficult for plaintiff and prisoners generally to
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27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 communicate with WPP and other advocacy groups for assistance in the redress of grievances.

2
3
4 129.

5 In early September 2004 plaintiff facilitated an inmate charity donation drive that was
6 expressly approved by Defendant Belleque and Yoder. On or about September 25, 2004 the
7 charity group received the inmate donation.

8 130.

9 On or about September 30, 2004 Defendants Belleque, Manu, Mills, Long and Does
10 transferred plaintiff from OSP to EOIC. The transfer of plaintiff started at 4 a.m when plaintiff
11 and his cell partner were awakened before the rest of the institution, ordered to report to the
12 “control floor”. Plaintiff was removed to a isolated cage away from the view of other prisoners,
13 his cell partner was locking in a waiting room removed from other prisoners. Plaintiff was
14 transported out of the institution before anyone else was awakened. This transport was highly
15 unusual and very secretive.

16 131.

17 Defendants Manu and Mills had agreed to the transfer between themselves. Manu,
18 Belleque and Long controlled the highly secretive and selective manner of the transport.
19 Defendants Manu, Mills, Long, Belleque and Does motivation in transferring plaintiff from OSP
20 where he had been incarcerated for nearly 13 years was to punish and/or retaliate against plaintiff
21 for his efforts in litigation, specifically Anstett, his advocacy efforts for prisoners within and
22 without the prison, his political speech and associations with groups and individuals in the
23 community.

24 132.

25 Defendant Manu, Mills, Belleque, Long and Does sought to send a message to the entire
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 OSP inmate population via plaintiff's September 30, 2004 transfer, that anyone who engaged in
2 similar litigation/advocacy efforts would receive similar punitive, retaliatory treatment.

3
4
5 133.

6 On or about September 30, 2004 OSP Security Threat Group Management staff searched
7 plaintiff's cell and job site seizing his computer hard drive, discs and approximately thirty
8 standard archive boxes of legal papers and other property.

9 134

10 On or about September 30, 2004 Defendant Manu was a member of OSP's STG
11 Management Team and was leading the investigation of plaintiff. Defendant's Manu and Does
12 destroyed or otherwise seized books and other information from the law library which were not
13 "required". OSP ILA's were advised that the ODOC Legal Affairs rule would be amended to
14 severely restrict what ILAs were allowed to do.

15 135.

16 On or about September 30, 2004 one of the remaining OSP ILAs was fired for refusing to
17 assist security staff in the removal of items seized from plaintiff's worksite, another ILA was
18 threatened with disciplinary action if he disclosed the events occurring in the library. One ILA
19 was held in DSU for several days while his cell, work site were searched, his computer seized
20 and he was administratively removed from his job. Eventually two other ILA quit their jobs in
21 the law library due to the threats, punishment and retaliatory practices against them. They were
22 ordered to not talk about plaintiff to staff. Effective September 30, 2004 Defendants Axen and
23 Does terminated the 13 year practice of allowing OSP ILAs to use the law library telephone to
24 call courts and attorneys. Defendants Axen, Van Valkenburgh, Manu and Does removed
25 significant amounts of legal material from the law library and did not replace it.

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28
Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 136.

2 From approximately 1990 until September 30,2004 OSP consistently maintained five
3 IILA to serve the needs of the OSP population. Defendants Axen, Van Valkenburgh and Does
4 know that 2-3 ILAs is insufficient to adequately service the needs of the OSP inmate population
5 but has deliberately under staff the OSP law library to prevent ILA's from assisting inmates in
6 the manner and to the degree that plaintiff did, and to impede prisoner access to courts and the
7 prisoner grievance system.

8 137.

9 From September 30,2004 to the present OSP has employed no more than 2-3 ILAs who
10 have been severely restricted in the manner they and can perform their jobs. As of September
11 30,2004 Defendant Axen, Van Valkenburgh and Does ordered ILAs to stop assisting inmates
12 with their legal concerns and they are now only allowed to type documents for inmates.

13 138.

14 The actions of Defendants Axen, Van VALKENBURGH, Manu and Does described
15 herein were in direct response to plaintiff's efforts in the Anstett litigation and in accessing the
16 courts and prison grievance system generally and were designed an motivated to impede prisoner
17 access to courts and the prison grievance system.

18 139.

19 Defendants Manu, Axen, Van Valkenburgh and Does true motivation in engaging in the
20 action involving the closing of the law library, removing the ILAs and transferring plaintiff was
21 to punish and/or retaliate against OSP ILAs and inmates generally for plaintiff's efforts in Anstett
22 and his litigation advocacy efforts and political speech, generally and his ties to the legal
23 community, and to send a message to the entire OSP inmate population that anyone who engaged
24 in litigation efforts similar to those plaintiff engaged in would receive punitive, retaliatory
25 treatment and to make it more difficult for OSP prisoners to receive meaningful legal assistance
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27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 and access to the court and prison grievance system.

2 140.

3 Contrary to ODOC rules, policy and practice plaintiff was not permitted take any of his
4 personal property or legal papers with him when he was transferred to EOCI on September
5 30,2004 and his property and/or legal papers were not returned to him until January 18, 2005.

6 141.

7 Defendants Does, Manu prepared on an ODOC misconduct Report for plaintiff, charging
8 him with violating OAR 291-125-0015(4)(m)(B), Unauthorized Organization I (Racketeering)
9 and other violations which was transported to EOCI with Plaintiff on ora bout September
10 30,2004. The DR had plaintiff's photographed to it and was sent to a Captain at EOCI. Plaintiff
11 was never served with or otherwise required to defend himself against the misconduct report. No
12 disciplinary proceedings were brought against him and it is unknown what happened with the
13 report or the matters alleged.

14 142.

15 On or about October 1, 2004 Defendant Morrow suggested that plaintiff was transferred
16 due to the "Haugen matter". Defendant Palmateer suggested variously that it was because of
17 "things no one knows" and intimated that Plaintiff was getting "too big for his own good".

18 143.

19 In an October 3, 2004 Oregonian article concerning the inmate charity donation
20 Defendant Belleque was paraphrase as saying plaintiff "never sought permission or approval for
21 his fund-raising efforts" despite the fact the fact that Belleque has signed documents approving
22 the fund raising. Belleque later acknowledge that he had approved the fund raising.

23 144.

24 Defendants Czerniak, Palmateer and Belleque indicated that ODOC was engaged in an
25 'investigation" of plaintiff of a "complex and indeterminate" nature which could take "months
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 and months” with plaintiff ultimately not being implicated in any wrongdoing but things would
2 get worse for plaintiff if he did not quietly accept his transfer. This was perceived to be a direct
3 threat against plaintiff and he understood it to be one.

4
5
6 145.

7 On or about October 13, 2004 Defendant Van Valkenburgh caused a “warning” to be
8 issued to all the defense attorneys in the State of Oregon who subscribe to the Oregon Criminal
9 Defense Lawyer Association (OCDLA) list serve “that it is improper for attorney to have inmate
10 legal assistants help them in representing clients.. Inmate legal assistants are only to be helping
11 non-represented inmates, not inmates represented by counsel.”

12 146.

13 The October 13, 2004 warning made by Defendant Van Valkenburgh is virtually identical
14 to the October 22, 2001 directive order of Defendant Czerniak and Axen referred to previously.

15 147.

16 On or about October 13, 2004 Defendant Van Valkenburgh advised those on the OCDLA
17 list serve that the ODOC/AAG would be changing the rules to severely restrict even more than
18 they do now what inmate legal assistants do for inmates because of plaintiff’s work on past cases.

19 148.

20 As a result of his transfer to EOCI plaintiff lost significant personal property, his job, his
21 incentive housing and was placed in the least desirable part of EOCI.

22 149.

23 On or about October 15, 2004 plaintiff sent an Inmate Communication form to EOCI
24 Grievance Coordinator P. Maines requesting to see her about grieving his September 30,2004
25 transfer.

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28
Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 150.

2 On or about October 22, 2004 Defendant Van Valkenburgh advised Anstett counsel that
3 he “represents ODOC and ODOC officials regarding the matter of [plaintiffs] transfer from the
4 Oregon State Penitentiary and all related matters, specifically including without limitation the
5 matters concerning [plaintiffs] personal property and the disposition of legal material found in his
6 cell and in the legal library at OSP following [plaintiff’s] transfer to EOCI”.

7 151.

8 On or about October 22, 2004 Defendant Van Valkenburgh advised Anstett counsel that
9 Defendant Axen would be sending plaintiff’s legal materials to plaintiff within a week and
10 Defendant Van Valkenburgh had “been advised that all of [plaintiff’s] personal property from his
11 cell at OSP save for his personal legal materials has now been transferred and provided to him at
12 EOCI or has been discarded or mailed out at his election, in accordance with ODOC rules and
13 EOCI facility policies and procedures”.

14 152

15 The statements made by Defendant Van Valkenburgh about plaintiff’s personal property
16 were materially false.

17 153.

18 On or about October 22, 2004 plaintiff was ordered to report to meet with Assistant to the
19 Superintendent Defendant Harder. Defendant Harder advised plaintiff that he was aware that
20 plaintiff requested to see the grievance coordinator concerning the September 30, transfer.
21 Defendant Harder attempted to dissuade plaintiff from filing a grievance then told plaintiff that
22 he would “escalate things” by “bringing more staff into it” by grieving and plaintiff should
23 simply “let the dust settle”.

24 154.

25 Plaintiff perceived Defendant Harder’s October 22,2004 statement as a threat which was
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 virtually identical to that conveyed to him by Defendant's Czerniak, Palmateer and Belleque on
2 or about October 8,2004.

3 155.

4 During the first 2-3 weeks plaintiff was confined at EOCI he inquired about a job in the
5 EOCI law library and EOCI Library Coordinator Shari Holman told him "they will never hire
6 you to work in this library".

7 156.

8 Shortly after plaintiff was incarcerated at EOCI he was handed a completed "Inmate
9 Personal Property List' by Defendant Robinson who ordered him to sign it. Plaintiff did not
10 recognize the majority of the listed property as belonging to him as it reflected a large quantity of
11 property purchased at the OSP canteen and which plaintiff had never purchased or possessed.
12 Plaintiff attempted to tell Defendant Robinson there appeared to be a mistake because the list
13 reflected property which did not belong to plaintiff.

14 157.

15 In response Defendant Robinson told plaintiff that he "had arrived" at EOCI with five
16 large bags of canteen items and Robinson told plaintiff he either had to send them home or throw
17 them away. Prior to this discussion plaintiff had never seen nor spoken with Defendant
18 Robinson. Plaintiff had arrived at EOCI with no property at all.

19 158.

20 Neither the September 30,2004 "ODOC-Inmate Personal Property List" prepared by OSP
21 Security staff nor the October 6, 2004 Department of Corrections Inmate Personal Property List"
22 prepared by EOCI CO Keizer reflect any of the extensive list of canteen/food items reflected
23 upon the "Inmate Personal Property List' presented by Defendant Robinson on or about October
24 25, 2004.

25 159.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 Plaintiff attempted to explain the discrepancy to Defendant Robinson who in response
2 became increasingly angry, loud, disrespectful and was insistent that he and plaintiff had an
3 earlier discussion about the canteen items. Plaintiff was concerned based on Robinson's
4 demeanor that if plaintiff did not cooperate and sign the property list plaintiff would be subject to
5 some type of disciplinary measure. Defendant Robinson failed to provide plaintiff with a copy of
6 the October 25, 2004 property form contrary to ODOC policy and practice.

7 160.

8 The October 25, 2004 actions of Defendant Robinson were designed to establish facts
9 alleged by Defendant Van Valkenburgh in his October 22, 2004 letter to Anstett counsel that
10 property had already been sent to plaintiff.

11 161.

12 Between September 30, 2004 and October 25, 2004 plaintiff received letters from OSP
13 inmates who advised him that OSP security staff had indicated that "[plaintiff's] situation would
14 probably blow over eventually, unless he decides to make waves".

15 162.

16 Plaintiff perceived the comments as a threat that his situation would get worse if he did
17 not accept what had already happened to him and as being virtually identical to those made by
18 defendants Czerniak, Palmateer and Belleque on or about October 8, 2004 and Defendant Harder
19 on or about October 22, 2004.

20 163.

21 On or about October 26, 2004 EOCI Grievance Coordinator P. Maines met with plaintiff
22 in response to his October 15, 2004 Inmate Communication form.

23 164.

24 Based on the perceived threats of Defendants Czerniak, Palmateer, Belleque, Harder and
25 Does, plaintiff feared that if he filed a grievance concerning his September 30 transfer and/or any
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 of the other related actions he had been subjected to up to that point, other, worse retaliatory
2 actions would be forthcoming, therefore, plaintiff advised Ms. Maines on October 26, 2004 that
3 he thought it was probably in his best interest to follow Defendant Harder's advise and "let the
4 dust settle' rather than pursue any grievances.

5
6
7 165.

8 In late October 2004 plaintiff was told that Defendant Manu was attempting to convince
9 OSP inmates to quite advocating for and supporting plaintiff by telling inmates that plaintiff is a
10 "snitch". Even the rumor of being a snitch in prison can result in death.

11 166.

12 On or about November 17,2004 Defendant Yoder advised plaintiff that Defendant Axen
13 delivered plaintiff's property to the OSP mail room on November 16, 2004 for mailing to
14 plaintiff at EOCI. On or about December 1, 2004 Ms. Holman advised plaintiff that his property
15 had been received by the EOCI mailroom. Plaintiff sent an inmate communication form to
16 Defendant Harder inquiring about his property.

17 167.

18 On or about December 7,2004 plaintiff sent an Inmate Communication form to EOCI
19 Property Officer Defendant Robinson inquiring about his property. On or about December
20 9,2004 Defendant Harder acknowledged that plaintiff's property had arrived from OSP and
21 consisted of "like thirteen boxes" and told plaintiff to "be patient" while Defendant Harder
22 arranged to get plaintiff's property to him.

23 168.

24 In December 2004 plaintiff applied for a job with the Secretary of State Call center.

25 169.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 On or about December 29,2004 plaintiff was informed that ODOC staff reported that
2 plaintiff was removed from his job as OSP ILA and transferred because “OSP and Domeland
3 didn’t want any flack from [plaintiff] concerning the installation and operation of the new CD-
4 ROM computerized legal research system”.

5 170

6 From December 29, 2004 to August 11, 2005 plaintiff has been advised repeatedly from
7 numerous unrelated sources, that he was removed from his job as ILA and transferred for the
8 reasons referenced in the previous paragraph.

9 171.

10 On or about January 2, 2005, three months after his transfer, plaintiff sent another
11 communication to Defendant Harder about the location of his property.

12 172.

13 On or about January 5, 2005 Defendant Harder advised plaintiff that he spoke with
14 Defendant Robinson, Defendant Mills and Captain Burcham and “was assured that we should get
15 these matters resolved very soon”. This was three months after plaintiff’s transfer, three months
16 after a Senior Assistant Attorney General in a representative capacity had informed another
17 attorney that the property had already been delivered to plaintiff.

18 173.

19 On or about January 13, 2005 plaintiff again sent Defendant Harder an Inmate
20 Communication form concerning his property. Defendant Harder Thereafter advised plaintiff that
21 Harder had referred the matter to Defendant Mills who “says that he will take care of the issue”.

22 174.

23 On or about January 18,2005 plaintiff was ordered to report to R & D at EOCI where he
24 was presented with ten boxes of personal property which had been sent from Defendant Axen at
25 OSP nearly two months earlier.

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 175.

2 Although a large majority of plaintiff's personal property and legal materials were
3 delivered to him on January 18, 2005 several items were not delivered to plaintiff and has not
4 been returned to him to date.

5 176.

6 On or about January 14, 2005 plaintiff was informed that ODOC/OSP staff described
7 plaintiff as a "troublemaker" and indicated "that they sent him to Pendleton because he was
8 pretending to be an attorney".

9 177.

10 In late February 2005, plaintiff received a letter from Roy Bayes of the Secretary of State
11 call center at OSCI indicating that plaintiff's name had been added to their hiring list. On or
12 about March 2, 2005 plaintiff's EOCI counselor advised plaintiff, "I was notified today that you
13 have been selected to go to OSCi to work. Exactly how long it will take them to move you there
14 remains to be seen".

15 178.

16 On or about March 2, 2005 Defendant Jeske began an Internal Affairs/SIU investigation
17 of plaintiff concerning an alleged inappropriate inmate employee relationship from 1998 and
18 which had already been investigated and determined to be unfounded..

19 179.

20 On or about April 6, 2005 plaintiff was interrogated by Defendant Tabler on behalf of
21 Defendant Jeske, concerning an alleged relationship with ODOC Contractor Volunteer Deborah
22 Hogan.

23 180.

24 On or about April 12, 2005 Defendant Jeske prepare a two page ODOC Misconduct
25 Report charging plaintiff with violating OAR 291-105-0015(4)(g)–Employee Inmate
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 Relationship and disobedience of an Order I. The charges are Level II and Level II major
2 violations which, with plaintiff's lack of disciplinary record ODOC rule mandates a sanction of
3 \$100 fine, 28-42 days in disciplinary segregation and 28 days loss of privileges.

4 181.

5 On or about April 12, 2005 Defendant Scharn signed the Misconduct Report of
6 Defendant Jeske approving of the content thereof. The allegations in the report are false and not
7 supported by any evidence. Defendant Jeske knew this prior to initiating the investigation. The
8 purpose of the investigation and report was to prevent plaintiff from being transferred from
9 EOCI.

10 182.

11 On or about April 18, 2005 EOCI/ODOC Hearing Officer P. Sturdevant convened plaintiff's
12 disciplinary hearing in relation to the misconduct report prepared by Defendant Jeske. The
13 hearing was delayed.

14 183.

15 On or about May 5, 2005 plaintiff was ordered to report to the office of P. Maines, where
16 SIU Inspector Robert Hess indicated he was asked to interview plaintiff concerning the April 12,
17 2005 Misconduct Report on behalf of Defendant Jeske. Inspector Hess advised plaintiff that
18 "they" had come up with a list of questions "they" wanted plaintiff to answer, then Hess
19 produced a typed list of twenty seven questions for plaintiff to provide written responses to. Six
20 questions related directly to issues raised in Anstett's counsel April 14, 2005 letter to Defendant
21 Morrow about the pending disciplinary action and two questions related to plaintiff's September
22 30, 2004 transfer.

23 184.

24 On or about June 24, 2005 Hearings Officer Sturdevant advised plaintiff "I have been
25 directed to step away from your hearing and it has been assigned to Mr. Nagy". Thereafter on or
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 about July 12, 2005 plaintiff was ordered to report for a telephonic hearing on the Disciplinary
2 Report via teleconference before Hearings Officer Nagy.

3 185.

4 During the July 12, 2005 hearing, Mr. Nagy advised plaintiff that Defendant Van
5 Valkenburgh ordered Mr. Sturdevant's removal from plaintiff's disciplinary hearing.

6
7
8 186.

9 At the end of the July 12, 2005 hearing, Mr. Nagy found that ODOC failed to make its
10 case on either of the charges brought against plaintiff and dismissed the charges without
11 prejudice. The hearing was recorded and despite the fact that plaintiff ordered and paid for the
12 tapes of the hearing, they have not been provided.

13 187.

14 On July 12, 2005 Mr. Nagy issued written findings of fact and found "insufficient
15 evidence on this record". The Order became final on July 17,2005.

16 188.

17 Between July 12, 2005 and August 4, 2005 plaintiff's EOCI counselor obtained approval
18 to transfer plaintiff to OSCI to work for the Secretary of State call center. Plaintiff was
19 transferred to OSCI to begin his new job on August 4, 2005.

20 189.

21 During the evening of August 4, 2005 plaintiff was informed that before he arrived at
22 OSCI OSCI Operations Captain Defendant Ogden had met with Secretary of State Oregon health
23 Plan staff and told them they were not to hire plaintiff and plaintiff was going to be transferred
24 out of OSCI on the next available transfer chain.

25 190.

26
27 Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 On or about August 5, 2005 OSCI Special Operations STG Captain, Defendant Ackley
2 advised plaintiff that the “rumor” he heard was not true, “if I had a problem with you, I would
3 have told you” and “you were brought here to work and that’s what you are going to do”.

4 191.

5 On or about August 5, 2005 plaintiff sent T. Bowser OSCI Security Manager and
6 Defendant Ogden Inmate Communication forms asking for a meeting to address their concerns.
7 Mr. Bowser failed to answer or acknowledge receipt of the Inmate Communication Form. On or
8 about August 8, 2005 Defendant Ogden answered stating: “[Secretary of State] has enough
9 workers. You were not cleared by OSCI for transport. You will return to EOCI”.

10 192.

11 On or about August 8, 2005 Secretary of State still had several vacant positions it needed
12 to fill and plaintiff was advised if he could clear it with the prison he had a job.

13 193.

14 On or about August 9, 2005 Defendant Ogden met with plaintiff and assured him that he
15 was putting plaintiff’s transfer back to EOCI on hold while he looked plaintiff over with a fine
16 tooth comb.

17 194

18 On or about August 11, 2005 plaintiff was transferred from OSCI to EOCI as a last
19 minute add on pursuant to the orders of Defendants Tupou and Briones due to an unspecified
20 “conflict”.

21 195.

22 On or about October 6, 2005 plaintiff wrote Defendant Briones seeking reconsideration of
23 the August 11, 2005 decision to transfer plaintiff back to EOCI from OSCI. Defendant Tupou
24 wrote back on November 14, 2005: “Security made the decision the conflict will stand. You will
25 not be returning to OSCI. I expect no further conversation regarding a transfer request”. This was
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 perceived as a threat by plaintiff.

2 196.

3 On or about December 31, 2005 one of the two ILA positions at EOCI became vacant and
4 Plaintiff wrote to the EOCI Library Coordinator S. Holman asking to be considered for the
5 position. Ms. Holman failed to respond. Plaintiff wrote a second request on or about January 8,
6 2006. Ms. Holman acknowledged receipt of the second request on January 10, 2006. Thereafter
7 Plaintiff sent a third request to Ms. Holman on February 7, 2006 concerning the vacant ILA
8 position. Ms. Holman wrote back indicating she was unsure when the position would be filled.
9 Thereafter on February 23, 2006, without notice to Plaintiff, Ms. Holman hired an inmate with no
10 legal experience to fill the ILA position at EOCI. This action was in violation of OAR 291-139-
11 0015(2).

12 197.

13 The decision not to hire or otherwise consider plaintiff for the EOCI ILA position is
14 consistent with, and in furtherance of, Library Coordinator Shari Holman's statement that "they
15 will never hire you to work in this library". The decision not to hire or otherwise consider
16 Plaintiff for the EOCI ILA position was in retaliation for and designed to prevent plaintiff's
17 assistance of other prisoner's in accessing the courts and prison grievance system.

18 RETALIATION ALLEGATIONS

19 198.

20 The acts and omissions of defendant alleged in the previous paragraph were taken in
21 direct response to plaintiff's involvement the Anstett litigation, his assistance of other prisoners
22 in general, in accessing the courts and prison grievance system and his writing for Prison Legal
23 News, and his association within the legal community.

24 199.

25 The adverse actions of defendants alleged previously, were motivated by a desire and

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 intent to improperly terminate plaintiffs's involvement in the Anstett litigation and his assistance
2 of other prisoners in accessing the courts and grievance system.

3 200.

4 The adverse actions of defendants and alleged previously, were a deliberate attempt by
5 Defendants to make it more difficult for OSP/ODOC inmates to obtain meaningful access to the
6 courts and prison grievance system for the redress of legal claims against ODOC generally and
7 the Anstett case specifically.

8 201.

9 The adverse actions of defendants alleged previously, were a deliberate attempt by
10 Defendants to improperly chill or otherwise interfere with and impeded the protected First and
11 Fourteenth Amendment rights of plaintiff and prisoners generally, specifically the right to access
12 the courts, a fair and meaningful grievance system and to speak out against adverse prison
13 conditions.

14 202.

15 The adverse actions of defendants alleged herein previously, are not supported by any
16 legitimate penological interest, were not narrowly tailored to advance/address any purportedly
17 legitimate penological interest.

18 203.

19 Each of the defendants in this action entered into an agreement to violate plaintiff's civil
20 rights in the manner alleged herein and each of the defendants shared in the general
21 conspiratorial objective to violate plaintiff's civil rights as alleged herein.

22 204.

23 Each of the defendants herein engaged in an overt act in furtherance of the conspiracy that
24 caused serious irreparable injury and harm to plaintiff including loss of housing, loss of job, loss
25 of pay, loss of property, adverse and spurious repeated disciplinary actions including placement

26
27 Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 in disciplinary segregation for no cause, repeated orders to participate in interviews with
2 investigators, creation of false documentation and false claims which could have adverse
3 consequences on any parole efforts. The adverse actions of defendants alleged herein are part of
4 a continuing, escalating pattern and practice of retaliation and interference with the protected
5 rights of plaintiff.

6 205.

7 Plaintiff has fully exhausted all available administrative remedies within the meaning of
8 42 U.S.C. 1997e(a) and no further administrative remedies remain available to plaintiff.

9 FIRST CLAIM FOR RELIEF: Retaliation
10 (First and Fourteenth Amendment: Speech and Due Process)

11 206.

12 Plaintiff realleges all prior allegations set forth herein as if more fully set forth.

13 207.

14 From 2001 to the present, Defendants individually and together have engaged in and
15 continue to engage in an improper, escalating pattern and practice of retaliation against plaintiff
16 as follows:

- 17 1. Restrict or remove or punish Plaintiff for exercising his First Amendment rights to
18 write articles for Prison Legal News which were critical or explanatory of ODOC.
- 19 2. Restrict, remove or punish for his work as an ILA in the class action case Anstett v.
20 State of Oregon;
- 21 3. Restrict, remove or punish Plaintiff for his work as an ILA assisting inmates access the
22 courts and the grievance system.
- 23 4. Restrict, remove or punish Plaintiff for his membership on the Prisoner Advisory
24 Committee and Legal Advisory Committee of Western Prison Project;
- 25 5. Restrict, remove or punish Plaintiff for his association with lawyers, prison reform
26 groups and mental health advocacy groups for the purpose of advocating against prison abuses or

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 to change prison conditions.

2 208.

3 The adverse actions of defendant alleged above have improperly chilled plaintiff's
4 exercise of his First Amendment rights and inflicted tangible injuries upon plaintiff.

5
6
7
8
9 SECOND CLAIM FOR RELIEF: Interference with Access to Courts
10 First and Fourteenth Amendment

11 209.

12 Plaintiff realleges all matters previously alleged herein.

13 210.

14 From 2001 up to and including the present, Defendants individually and jointly have
15 engaged in an continue to engage in, an improper pattern and practice of chilling, interfering
16 with, and otherwise denying plaintiff, and ODOC prisoners generally, the rights of meaningful
17 access to the courts and prison grievance system for the redress of constitutional deficiencies in
18 violation of the First and Fourteenth Amendments to the United States Constitution.

19 211

20 Defendants had, and have, no legitimate penological interests in chilling, interfering with
21 and otherwise denying access to the courts and prison grievance systems as alleged herein.

22 212

23 Defendants failed, and continue to fail, to sufficiently tailor the acts and omissions
24 alleged herein to address any purportedly legitimate penological interests defendants purportedly
25 seek to advance.

26 THIRD CLAIM FOR RELIEF: Unconstitutional Restrictions on Speech

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
503/241-1955

First and Fourteenth Amendment

213

Plaintiff reallages all previous paragraphs as if more fully set forth.

214.

From 2001 to the present, Defendants have engaged in and continue to engage in improper pattern and practice of chilling, interfering with and otherwise denying plaintiff and ODOC prisoners generally, the rights of freedom of speech and association related to prison conditions and abuses and the reform thereof, in violation of the First and Fourteenth Amendments to the United States Constitution.

215

Defendants had and have no legitimate penological interests in chilling, interfering with and otherwise denying plaintiff's right to freedom of speech and association in the manner alleged herein.

216

Defendants failed and continue to fail to sufficiently tailor the adverse actions alleged herein to address any purportedly legitimate penological interests that Defendants purport to advance.

FOURTH CLAIM FOR RELIEF: Civil Conspiracy
Retaliation, Interference with Court/Grievance Access and Association
First and Fourteenth Amendments

217

Plaintiff realleges matters alleged above.

218

From 2001 to the present, defendant have engaged and continue to engage, in a civil conspiracy to retaliate against Plaintiff for hiw work as an Inmate Legal Assistant to include his participation in the Anstett litigation, his involvement in PLN v. Cook, his efforts to assist

Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
503/241-1955

1 inmates, his writing for Prison Legal News, his participation with Western Prison Project, his
2 association with lawyers, advocacy groups.

3 219

4 From 2001 to the present defendants have engaged in a civil conspiracy to chill interfere
5 with and deny plaintiff and ODOC inmates generally the rights of access to the courts and
6 grievance system for the redrewss of constitutional deficiencies and otherwise have denied
7 plaintiff and ODOC prisoners generally the right of freedom of speech and association for the
8 purpose of challenging unconstitutional conditions of confinement.

9
10 220.

11 Defendants have no legitimate penological interests into entering into the civil conspiracy
12 as alleged herein and have failed to tailor their acts to address any purportedly legitimate
13 penological interests they sought to advance.

14 RELIEF SOUGHT

15 WHEREFORE Plaintiff prays for judgement as follows:

16 A. Issue a Declaratory Judgement:

- 17 1. Stating that from 2001 to the present ODOC and all defendants herein have
- 18 engaged in a pattern and practice of retaliation against Plaintiff for exercising his
- 19 protected constitutional rights and that such interference has no legitimate
- 20 penological purpose.
- 21 2. That Plaintiff has sufficiently satisfied each of the elements of a retaliation
- 22 claim pursuant to Rhodes v. Robinson.
- 23 3. Defendants continuing pattern and practice of retaliation against plaintiff
- 24 violates the First and Fourteenth Amendments to the United States Constitution.
- 25 4. From 20001 Defendants jointly and individually engaged in and continue to

26
27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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1 engage in an improper pattern and practice of chilling, interfering with and
2 otherwise denying plaintiff and ODOC prisoners generally, the rights of access to
3 the courts and prison grievance system for the redress of constitutional
4 deficiencies.

5 5. That Defendants continuing pattern and practice of chilling, interfering with
6 and otherwise denying meaningful access to the courts and prison grievance
7 system violates the First and Fourteenth Amendments to the United States
8 Constitution with no legitimate penological interest being advanced.

9 6. That Defendants continuing pattern and practice of chilling, interfering with
10 and otherwise denying freedom of speech, association related to prison conditions
11 and abuses and the reform thereof violates the First and Fourteenth Amendment to
12 the United States Constitution and has no underlying legitimate penological
13 purpose.

14 7. From 2001 to the present the Defendants engaged in a civil conspiracy to
15 retaliate against Plaintiff for his work in exercising his protected constitution
16 rights to speech and association specifically in his work as an Inmate Legal
17 Assistant, his writing for Prison Legal News, his association with the Western
18 Prison Project, his efforts to assist inmates grieve and litigation conditions of
19 confinement especially his role in the Anstett case, and otherwise exercising his
20 right to speak and act against prison abuses.

21 8. Defendants had no legitimate penological interests in entering into and
22 furthering the civil conspiracy and that the conspiracy serves no legitimate
23 penological interest.

24 9. That defendant actions herein were wilful, knowing, malicious and committed
25 with the intent and purpose to retaliate against plaintiff for engaging in
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
503/241-1955

1 constitutionally protected conduct, chilling, interfering with and otherwise
2 denying meaningful access to the courts and grievance system for the redress of
3 constitutional deficiencies or chilling interfering with and otherwise denying
4 freedom of speech and association.

5 10. That Plaintiff has suffered serious and irreparable harm as a result of the
6 actions of Defendants herein.

7 B. Issue an injunction ordering defendants and their agents to immediately:

- 8 1. Cease engaging in any and all ongoing acts of retaliation against plaintiff;
9 2. Refrain from subjecting plaintiff to any future acts of retaliation in any and all
10 forms.
11 3. Cease engaging in any and all ongoing chilling, interference with and or denial
12 of the rights of plaintiff and ODOC prisoners generally, to meaningful access to
13 the courts and prison grievance system for the redress of constitutional
14 deficiencies.
15 4. Refrain from any and all future chilling, interference with and/or denial of the
16 rights of plaintiffs and ODOC prisoners generally, to meaningful access to the
17 courts and prison grievance system for the redress of constitutional deficiencies.
18 5. Cease engaging in any and all ongoing chilling, interference with and/or denial
19 of the rights of plaintiff and ODOC prisoners generally to freedom of speech and
20 association related to prison conditions and abuses.
21 6. Refrain from any and all future chilling, interference with and/or denial of the
22 rights of plaintiff and ODOC prisoners generally to freedom of speech, and
23 association related to prison conditions and abuses.
24 7. Cease engaging in any and all acts in furtherance of the ongoing civil
25 conspiracy to a) retaliate against plaintiff; b) chill, interfere with and/or deny
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
503/241-1955

1 prisoners meaningful access to the courts and prison grievance system fore the
2 redress fo constitutional deficiencies; c) chill interfere with, and/or deny prisoners
3 freedom of speech, and association related to prison conditions and abuses and/or
4 the reform thereof.

5 8. Refrain from any and all future acts in furtherance of a civil conspiracy to
6 retaliate against plaintiff, chill, interfere with and/or deny prisoners meaningful
7 access to the courts and prison grievance system for the redress of constitutional
8 deficiencies and/or chill, interfere with and/or deny7 prisoners freedom of speech,
9 and association related to prison conditions and abuses.

10 9. Expunge any and all reports or records or any references to any and all ODOC
11 investigations from January 1, 2001 to the present to which plaintiff was a subject,
12 individually or jointly, minor or major, of the investigation, from any and all files,
13 computer systems and/or any other data storage retention devices and/or systems
14 of the ODOC.

15 10. Expunge any and all information concerning any ODOC disciplinary action
16 initiated and/or concluded against plaintiff from January 1, 2001 to the present.

17 11. Credit Plaintiff's inmate trust account with the difference in the monetary
18 award he would have earned as an Inmate Legal Assistant and the amount of
19 monetary awards he actually received for each month from October 1, 2004 to the
20 present.

21 12. Transfer plaintiff from EOCI to OSCI and allow plaintiff to serve out the
22 remainder of his sentence at OSCI unless and until a specific security threat,
23 created by plaintiff, requires that he be transferred elsewhere or plaintiff expressly
24 requests to be transferred to another prison.

25 13. Assign plaintiff to work for the Secretary of State or Oregon Medical
26

27 Michelle R. Burrows
28 Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
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Assistance Program Call Center or comparable Oregon Corrections Enterprises positions at OSCI.

14. Assign plaintiff to incentive housing, upon cell availability within ODOC and specifically at OSCI.

C. Award compensatory damages against Defendants.

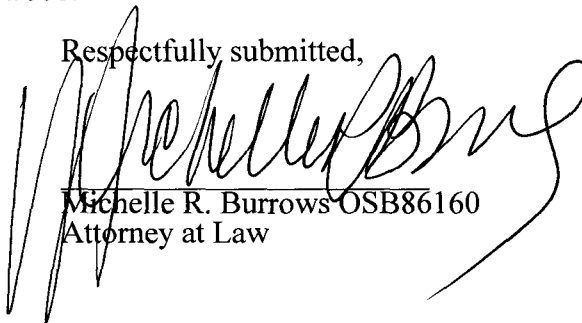
D. Award punitive damages against Defendants for an amount to be determined at trial.

E. Award reasonable costs and attorney fees.

F. Grant such other relief as this court deems just and equitable.

Dated this 26th day of September 2006.

Respectfully submitted,



Michelle R. Burrows OSB86160
Attorney at Law

Michelle R. Burrows
Attorney at Law
618 NW Glisan Ste. 203
Portland OR 97209
503/241-1955