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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

TYRONE KAWAELANILUA`OLE
NA`OKI GALDONES,

Plaintiff,

vs.

NEIL ABERCROMBIE, in his official
capacity as the Governor of the State of
Hawaii; TED SAKAI, in his official
capacity as Director of the Hawaii

CIVIL NO. 11-00144 LEK/BMK
(Declaratory and Injunctive Relief and
Other Civil Action)

**SUPPLEMENTAL COMPLAINT
FOR DAMAGES AND FOR
CLASSWIDE DECLARATORY
AND INJUNCTIVE RELIEF;
SUMMONS**

Department of Public Safety,
CORRECTIONS CORPORATION OF
AMERICA,

Defendants.

**SUPPLEMENTAL COMPLAINT FOR DAMAGES AND FOR
CLASSWIDE DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

This civil rights action for declaratory and injunctive relief and damages, was originally filed by six Native Hawaiian religious practitioners in the Circuit Court of First Circuit Court, State of Hawaii, as Civil No. 11-1-0266-02 RMB but was removed to this Court by Defendants on March 8, 2011. After this action was filed, other Native Hawaiian religious practitioners detained in a CCA-operated facility were wrongfully disciplined in retaliation for actions viewed by Defendants as supporting this lawsuit.

Plaintiff TYRONE KAWAELANILUA`OLE NAOKI GALDONES is a Native Hawaiian religious practitioner who was incarcerated under the laws of the State of Hawaii, but is currently serving his sentence in a for-profit private prison under various governmental contracts with the State of Hawaii. By Order of this Court, dated August 13, 2012, TYRONE KAWAELANILUA`OLE NAOKI GALDONES is a named Plaintiff in this action and a proposed class representative for all claims except for his retaliation claim against Defendants.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Federal Constitutional and Federal Statutory claims pursuant to 28 U.S.C. §1331 and §1343.
2. This Court has jurisdiction over Plaintiffs' Hawaii State law claims pursuant to 28 U.S.C. § 1367.
3. There is an actual controversy between the Plaintiff and the Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57.
4. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc-1 et seq. ("RLUIPA").
5. This action also arises under the Constitution and laws of the State of Hawaii, including Article 1, §§ 4 and 5, and Article XII, § 7 of the Hawaii State Constitution and Hawaii Revised Statutes §§ 1-1 603-21.9(1), (6) and 603-2.
6. Venue is proper in this Court pursuant to 28 USC § 1441(a) as this Court embraces the District to which the Defendants removed Plaintiffs' State of Hawaii action.

THE PARTIES

7. Plaintiff GALDONES is, and was at all times mentioned herein, an adult citizen of the United States of America, and a resident of the state of Hawaii.

8. Plaintiff GALDONES is a descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

9. Plaintiff GALDONES was convicted of violating crimes under Hawaii state law and sentenced under the same.

10. Plaintiff GALDONES is detained in a private prison in Eloy, Arizona, owned and operated by Defendant Corrections Corporation of America (“CCA”), pursuant to various contracts with the State of Hawaii and the Corrections Corporation of America.

11. Plaintiff GALDONES is a person residing in or confined to an institution for purposes of RLUIPA.

12. Each member of the Plaintiff class is an identifiable person (a) who was convicted of violating crimes under the laws of the state of Hawaii and was a resident of the state of Hawaii; (b) and who has resided in or was confined to a CCA-operated facility at any time within four years prior to the filing of this Complaint until the resolution of this lawsuit; (c) and who declares that Native

Hawaiian religion is their faith. Each member of the class and subclass are persons residing in or confined to an institution for purposes of RLUIPA.

13. Defendant NEIL ABERCROMBIE, Governor of the State of Hawaii, is the chief executive of the State of Hawaii, and is capable of being sued in this Court. Defendant ABERCROMBIE is responsible for the supervision and management of all state instrumentalities and employees charged with (a) executing the State of Hawaii's prison regulations and procedures; and (b) monitoring out-of-state public and private correctional facilities where Hawaii state inmates are serving their sentences.

14. Defendant TED SAKAI, the Director of the State of Hawaii Department of Public Safety, is sued in his official capacity as the state official responsible for overseeing the implementation of Chapter 353 of the Hawaii Revised Statutes, and more particularly, H.R.S. § 353-16.2 which concerns the oversight of those committed persons from the State of Hawaii who have been transferred to out-of-state institutions pursuant to contract with the State of Hawaii, including, but not limited to all policies relating to those committed persons' freedom to practice their respective religions while in custody.

15. Unless otherwise specified in this Complaint, Defendants NEIL ABERCROMBIE, and TED SAKAI are collectively referred to as "Defendants STATE OF HAWAII."

16. As the primary legal custodian of those individuals incarcerated under its criminal statutes, Defendants STATE OF HAWAII must guarantee to those individuals the rights, privileges, or immunities secured by the Hawaii State Constitution, the United States Constitution and federal and state laws in a manner that is not inconsistent with their status as institutionalized persons, or with the legitimate penological objectives of the corrections system, including those State of Hawaii committed persons who have been transferred to out-of-state institutions pursuant to contract with the State of Hawaii.

17. Defendant CCA is a private, for-profit corporation organized under the laws of the State of Tennessee. CCA manages and operates the Saguaro Correctional Facilities (“SCF”), which presently supervises and controls committed persons convicted and sentenced under Hawaii state laws pursuant to various contracts executed with the Defendants STATE OF HAWAII in exchange for substantial payments made by the State of Hawaii for this service.

18. Since at least 2002, Defendant CCA and the Defendants STATE OF HAWAII have been parties to various contracts executed in the State of Hawaii in which Defendant CCA accepted responsibility of supervising and controlling those individuals who have been convicted and sentenced under the criminal statutes of the State of Hawaii and have been involuntarily transferred by Defendants STATE

OF HAWAII to CCA prison facilities in exchange for substantial payments made by the State of Hawaii.

19. Based upon previous contractual relations with the State of Hawaii and based upon its present contracts with the State of Hawaii, Defendant CCA has sufficient and material contacts with the State of Hawaii and has therefore purposefully availed itself to the State pursuant to the State of Hawaii's long-arm jurisdiction.

20. Moreover, Plaintiff GALDONES's claims arise out of said contracts between the Defendants STATE OF HAWAII and Defendant CCA pursuant to the State of Hawaii's long-arm jurisdiction.

21. As the contractually authorized legal custodian of those individuals incarcerated under the laws of the State of Hawaii, Defendant CCA is charged with a task and function that is traditionally and fundamentally performed by the government and/or are sufficiently intertwined with the government to the extent that Defendants CCA and its employees at SCF serve as instrumentalities of the Hawaii Department of Public Safety and are therefore state actors. Consequently, Defendant CCA and its employees of SCF must guarantee to those individuals under its supervision and control the rights, privileges, or immunities secured by the Hawaii State Constitution, the United States Constitution and federal and state

laws in a manner that is not inconsistent with their status as institutionalized persons, or with the legitimate penological objectives of the corrections system.

CLASS ALLEGATIONS

22. Plaintiff GALDONES brings this action, on behalf of himself and all other similarly situated persons, as a class action pursuant to Federal Rule of Civil Procedure 23.

23. The proposed Plaintiff Class is composed of and defined as:
(a) all persons who were convicted of violating crimes under the laws of the state of Hawaii and were residents of the state of Hawaii; (b) and who have resided in or were confined to a CCA-operated facility at any time within two years prior to the filing of this Complaint until the resolution of this lawsuit; (c) and who declare that Native Hawaiian religion is their faith.

24. The proposed Segregation Subclass is composed of and defined as:
(a) all persons residing in or confined to a CCA-operated facility at any time within two years prior to the filing of this complaint and until this lawsuit is resolved; (b) in segregation from the general population; and (c) who declare Native Hawaiian religion is their faith.

25. The proposed Plaintiff Class and Segregation Subclass consist of readily ascertainable persons who can be located using information in Defendants' records. Defendants require that Plaintiff GALDONES and class members declare their religious faith through a registration process established by the facility.

26. The potential quantity of members of the proposed classes as defined is so numerous that joinder of all members would be unfeasible and impractical. Upon information and belief, there are approximately over one hundred and fifty members of the proposed Plaintiff Class. Upon information and belief, there are approximately thirty to fifty class members of the Segregation Subclass. As of November 2010, approximately 7% of the population at SCCF was registered as Native Hawaiian religious practitioners. As of November 2010, approximately 35% of the Hawaii inmates at RRCF registered was Native Hawaiian religious practitioners. The disposition of their claims through this class action will benefit both the parties and this Court.

27. Plaintiff GALDONES's claims are typical of all persons who were convicted of violating crimes in Hawaii and were residents of the state of Hawaii residing in or confined to a CCA-operated facility and who declare that Native Hawaiian religion is their faith. Plaintiff GALDONES's claims are also typical of persons residing in or confined to a CCA-operated facility, segregated from the general population, and who declare that their faith is Native Hawaiian religion. Plaintiff GALDONES's claims are typical of those in this class because Defendants failed to provide Plaintiff and those similarly situated with the right to practice Native Hawaiian religion as required by federal law. In sum, Plaintiff

GALDONES's claims are typical of both the proposed Plaintiff Class and the Segregation Subclass.

28. Plaintiff GALDONES will fairly and adequately represent the class members and will vigorously pursue this suit. Plaintiff GALDONES possesses the requisite personal interest in the subject matter of the lawsuit. The classes are represented by counsel experienced in class action and civil rights litigation and in the statutory and constitutional provisions at issue in this case.

29. The nature of this action and the nature of the laws available to Plaintiff GALDONES make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs committed by Defendants.

30. Defendants have acted or refused to act on grounds generally applicable to all members of the class, making appropriate final declaratory and injunctive relief to the class as a whole.

31. There are common questions of law and fact as to the members of proposed Plaintiff Class and proposed Segregation Subclass which predominate over questions affecting only individual members of these classes. Questions of law and fact common to the class members in the classes include, but are not limited to, the following:

- a. Whether Defendants' conduct deprived and/or deprives class members of rights guaranteed under RLUIPA;
- b. Whether Defendants' conduct deprived and/or deprives class members of rights guaranteed by the United States Constitution and the Hawaii State Constitution;
- c. Whether Plaintiff GALDONES and class members are entitled to the declaratory relief prayed for below;
- d. Whether Plaintiff GALDONES and class members are entitled to injunctive relief; and
- e. The nature of such injunctive and declaratory relief.

FACTUAL ALLEGATIONS

32. Upon information and belief, the federal government provides financial assistance to Defendants STATE OF HAWAII which is responsible for administering corrections in Hawaii.

33. Upon information and belief, in or around 2002, the Defendants STATE OF HAWAII executed one or more contracts with CCA delegating its statutory authority to supervise and monitor the custody of certain individuals who were convicted of violating crimes under Hawaii state law and sentenced under the same at a privately-owned correctional facility located in Eloy, Arizona.

34. On information and belief, Native Hawaiians make up the highest percentage of people incarcerated in CCA-operated facilities.

35. A recent study by the Office of Hawaiian Affairs concluded that Native Hawaiians constitute 41% of all persons incarcerated in out-of-state facilities like Saguaro Correctional Center and Red Rock Correctional Center. Native Hawaiians constitute 39% of the imprisoned population, although they make up 24% of the general population of Hawaii.

36. Upon information and belief, in or around 2002, the Defendants STATE OF HAWAII executed one or more contracts with CCA delegating its statutory authority to supervise and monitor the custody of certain individuals who were convicted of violating crimes under Hawaii state law and sentenced under the same at a privately-owned correctional facility located in Eloy, Arizona.

37. Defendant CCA's execution of those previous and current contracts with the Defendants STATE OF HAWAII has established substantial contacts with the State of Hawaii and has purposefully availed itself to the State of Hawaii concerning its scope of responsibility of supervision of Plaintiffs at CCA facilities.

38. Plaintiff TYRONE KAWAELANILUA`OLE NAOKI GALDONES ("GALDONES") was convicted of violating crimes under Hawaii state law and sentenced under the same. GALDONES was involuntarily transferred from a private prison owned and operated by CCA pursuant to previous governmental

contracts with the STATE OF HAWAII to SCF in Eloy, Arizona pursuant to various contracts with the STATE OF HAWAII and CCA.

39. GALDONES has been in general population for most of the time that he has been detained in SCF.

40. From about April 2012 until June 2012, GALDONES' security classification precluded him from the general population of inmates at SCF.

41. Plaintiff GALDONES is a Native Hawaiian whose religious and spiritual beliefs and practices originate in, and are interpreted from within the traditional Native Hawaiian culture and community.

42. A critical tenet of Native Hawaiian religion essential to the sincere expression of Plaintiff GALDONES' faith is to congregate out of doors on a daily basis, preferably at dawn, to pule (pray), oli (chant), hula (dance), and perform other specific religious protocol activities.

43. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiff GALDONES' faith is to participate in certain religious rituals and ceremonies marking the beginning and end of the Makahiki season, a four month period dedicated to Lono, the Hawaiian god of agriculture, fertility and peace.

44. The Makahiki season is signaled by the rising of the Makali`i (Pleiades) Constellation in October-November of each year. The Makahiki season

ends by the setting of Makali`i (Pleiades) Constellation in February-March of each year.

45. The ceremonies marking the beginning and end of Makahiki Season includes the following customary and traditional activities critical to the Native Hawaiian faith: a) a sunrise service; b) a two-hour session dressing the image of Lono, and preparing offerings and giving offerings, including chanting and dancing; c) a one-hour procession; d) a 30-minute opening prayer; e) a 1.5-hour session of traditional games; f) a two-hour session of chanting, prayer, and an awa ceremony; g) a three-hour ceremonial feast, food to be prepared by inmates serving the following ceremonial foods, ia ulaula (red fish), taro, sweet potato, pork, breadfruit, coconut, banana and the awa drink. These activities should be performed outdoors by all practitioners, as well as attendance and presence of a *kahu* or other religious leaders.

46. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiff GALDONES' faith is to have access to the following sacred items required for specific religious protocol activities: *malo*, *kihei* and *pau* (native garments), block of *lama* wood, *kapa*, *pa`a kai* (sea salt), *apu* (coconut shell bowl), ti shoots and leafs, *kala* (seaweed), *`olena* (yellow ginger), a *kahili* (pole with cylindrical top covered with feathers, cloth, flora and/or painted), *pu kani* (conch shell), *pahu* (tree stump drum), *ipu* (gourd drum), *ipu heke* (double gourd

drum), *`ohe ka eke`eke* (percussion instrument), *pu niu* (small knee drum), *`ohe hano ihu* (bamboo nose flute), *pu ohe* (bamboo shell horn), and *moena* (floor mats made of woven lauhala, grasses, natural fibers).

47. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiff GALDONES' faith is to establish an out-of-doors altar composed of at least two spiritually significant stones as a focal point for specific religious protocol activities.

48. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiff GALDONES' faith is to regularly meet with a respected *kahu* (religious) leader to assist in their worship activities.

49. A State of Hawaii Department of Public Safety employee named Kaina Haili visits SCF occasionally throughout the year purportedly to aid Plaintiffs and other similarly situated inmates' spiritual needs.

50. Kaina Haili's occasional visits, however, do not address Plaintiffs' spiritual needs to meet with a *kahu* on a regular basis.

51. Because Plaintiffs cannot regularly meet with a *kahu*, they are prevented them from engaging in conduct that is important to them and motivated by sincere religious belief, and thereby puts substantial pressure on them to modify their respective behavior and to violate their respective beliefs.

52. As a result of Defendants' policies and practices, Plaintiff GALDONES is unable to practice these critical tenets of Native Hawaiian religion.

53. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in CCA-operated facilities are allowed to exercise their religion by gathering together on a regular basis to pray, chant, and perform other activities that are essential to expressing their faith without unreasonable disturbance and/or intrusion from employees of CCA-operated facilities or other inmates.

54. Plaintiff GALDONES is informed and believes that prisoners of other religions who are incarcerated in CCA-operated facilities are allowed to participate in religious ceremonies and rituals at specified times during the year that are integral to their faith and that express their religious and spiritual beliefs.

55. Plaintiff GALDONES is informed and believes that prisoners of other religions who are incarcerated in CCA-operated facilities are allowed access to religious items that are integral to their faith and that express their religious and spiritual beliefs.

56. Plaintiff GALDONES is informed and believes that prisoners of other religions who are incarcerated in SCF are allowed to access a worship space appropriate to their faith and that express their religious and spiritual beliefs.

57. Plaintiff GALDONES is informed and believes that prisoners of other religions who are incarcerated in SCF have regular and frequent access to a spiritual advisor to assist them in practicing their respective faiths.

58. Plaintiffs are informed and believe that other prisoners of other religions who are precluded from the general population at SCF are allowed to exercise their religion by regularly meeting with a spiritual advisor to assist in: a) regular worship activities; b) special worship activities for certain religiously significant holidays; and c) providing access to sacred worship items essential to expressing their faith.

59. Plaintiffs are informed and believe that the Defendant CCA provides regularly scheduled weekly educational classes on topics concerning Native Hawaiian culture, language and history at SCF.

60. Plaintiffs are informed and believe that the Warden and or other personnel at SCF retain absolute discretion to modify, cancel and/or reschedule the weekly Native Hawaiian educational classes without notice.

61. Plaintiffs are informed and believe that SCF provides inmates who are Christian with the option of being housed in a separate area within SCF that allows them to: a) worship together on a daily basis; b) observe all important holidays with specific protocol; c) access religiously sacred items and educational materials required of their faith; d) access to a spiritually significant space for worship

activities; and e) meet regularly with a spiritual teacher/leader to assist in their worship.

62. In or around July 2009, GALDONES had a security classification at SCF allowing him to be in the general population at SCF.

63. In or around July 2009, GALDONES submitted an inmate request form, in accordance with CCA's administrative procedure, requesting to be allowed to gather daily with fellow Native Hawaiian inmates in observance of the Native Hawaiian Religion at an outdoor location during sunrise, last approximately 30 minutes, and include chanting, dancing and prayer.

64. CCA Employees never responded to GALDONES' inmate request form concerning his request to gather daily with fellow Native Hawaiian inmates in observance of the Native Hawaiian Religion.

65. From approximately August 2009 to April 2012, GALDONES attended SCF's Hawaiian cultural education classes while his security classification was in general population.

66. In or around July 2009 GALDONES submitted an inmate request form requesting to be allowed to celebrate the opening and closing days of the 2009-10 Makahiki Season.

67. With respect to the Makahiki requests as described above, GALDONES requested permission to perform certain religious rituals and

ceremonies that included the following activities: a) two-hour preparation session on the day before; b) a sunrise service; c) a two-hour session dressing the image of Lono, and preparing offerings and giving offerings, including chanting and dancing; d) a one-hour procession; e) a 30-minute opening prayer; f) a 1.5-hour session of traditional games; g) a two-hour session of chanting, prayer, and an awa ceremony; h) a 30-minute clean up session; i) a three-hour ceremonial feast, food to be prepared by inmates serving the following ceremonial foods, ia ulaula (red fish), taro, sweet potato, pork, breadfruit, coconut, banana and the awa drink. They requested access to the outdoors for all the above activities, as well as attendance and presences of a kahu or other religious leaders.

68. CCA employees never responded to GALDONES' inmate request form concerning his Makahiki request.

69. In or around November 2009, some inmates in the general population of the Saguaro Correctional Facility participated in a ceremony purportedly recognizing the opening of the 2009-10 Makahiki Season, but this ceremony failed to include all of the specific religious protocol activities previously requested by Plaintiffs.

70. In or around February 2010, some inmates in the general population of the Saguaro Correctional Facility participated in a ceremony purportedly recognizing the closing of the 2009-10 Makahiki Season, but the ceremony did not

include all of the specific religious protocol activities previously requested by Plaintiffs.

71. In or around November 2010, some inmates in the general population of the Saguaro Correctional Facility participated in a ceremony purportedly recognizing the opening of the 2010-11 Makahiki Season, but this ceremony failed to include all of the specific religious protocol activities necessary for Plaintiff GALDONES to observe his faith.

72. In or around February 2011, some inmates in the general population of the Saguaro Correctional Facility participated in a ceremony purportedly recognizing the closing of the 2010-11 Makahiki Season, but the ceremony did not include all of the specific religious protocol activities previously requested by Plaintiffs.

73. In or around November 2011 some inmates in the general population of the Saguaro Correctional Facility participated in a ceremony purportedly recognizing the opening of the 2011-12 Makahiki Season, but this ceremony failed to include all of the specific religious protocol activities previously requested by Plaintiffs.

74. In or around February 2012, some inmates in the general population of the Saguaro Correctional Facility participated in a ceremony purportedly recognizing the closing of the 2011-12 Makahiki Season, but the ceremony did not

include all of the specific religious protocol activities previously requested by Plaintiffs.

75. In or around July 2009, Plaintiff GALDONES submitted an inmate request form requesting access to religiously significant objects for daily use and for use during the Makahiki celebration.

76. Specifically, Plaintiff GALDONES sought access to: *malo*, *kihei* and *pau* (native garments), block of *lama* wood, *kapa*, *pa`a kai* (sea salt), *apu* (coconut shell bowl), *ti* shoots and leafs, *kala* (seaweed), *`olena* (yellow ginger), a *kahili* (pole with cylindrical top covered with feathers, cloth, flora and/or painted), *pu kani* (conch shell), *pahu* (tree stump drum), *ipu* (gourd drum), *ipu heke* (double gourd drum), *`ohe ka eke`eke* (percussion instrument), *pu niu* (small knee drum), *`ohe hano ihu* (bamboo nose flute), *pu ohe* (bamboo shell horn), and *moena* (floor mats made of woven lauhala, grasses, natural fibers).

77. CCA did not grant GALDONES' request concerning his sacred items request.

78. In or around July 2009, Plaintiff GALDONES submitted an inmate request form requesting authorization to prepare a sacred space in their respective prison yards with at least two spiritually significant stones to serve as a focal point for their worship activities.

79. CCA employees never responded to GALDONES' inmate request form concerning his request for a sacred space.

80. The original complaint, filed in or around February 2011, addressed requests made by four other Native Hawaiian practitioners at Saguaro for the substantially the same religious exercises requested by Plaintiff GALDONES in or around July 2009.

81. In or around October 2011, the court in this case granted leave to the Plaintiffs, which included four Native Hawaiian practitioners at SCF, to convert their individual case into a proposed class action by filing class action allegations on behalf of all Native Hawaiian practitioners in CCA-operated facilities.

82. In or around November 2011, some Native Hawaiian practitioners at Saguaro Correctional Center, one of the facilities that would be affected by a class action, began writing letters about the need for a class action to protect their rights.

83. At all relevant times alleged herein, Todd Thomas serves as the Warden at SCF.

84. At all relevant times alleged herein, Ben Griego serves as the Assistant Warden at SCF.

85. In or around November 2011, Warden Todd Thomas and Assistant Warden Ben Griego discovered that Native Hawaiian practitioners were writing letters about the need for a class action to protect their rights. Shortly thereafter,

Warden Todd Thomas and Assistant Warden Ben Griego began questioning inmates, including Plaintiffs, about these letters. Warden Thomas and Assistant Warden Griego investigated whether Plaintiff GALDONES was involved in encouraging other Native Hawaiian practitioners to write letters of support for this class action.

86. On or about April 25, 2012, Plaintiff GALDONES attended SCF's regularly scheduled Hawaiian culture class, where he attempted to participate in prayer, chanting, dancing and other religious protocol with and among other Native Hawaiian practitioners.

87. Like most other Hawaiian classes, this session was led by inmates designated by CCA, instead of a well-respected *kahu* or *kumu*.

88. Plaintiff GALDONES often serves as a class assistant for the Native Hawaiian classes offered at Saguaro.

89. Assistant Warden Ben Griego is responsible for oversight of the Native Hawaiian classes offered at Saguaro.

90. On or about April 25, 2012, Plaintiff GALDONES attempted to ensure that appropriate protocols were followed during the Hawaiian class.

91. Immediately following Plaintiff GALDONES' attempt to practice Native Hawaiian religious activities SCF's Hawaiian culture class on or about

April 25, 2012, Plaintiff GALDONES was charged with certain violations of SCF inmate policies.

92. The charges against GALDONES were documented in a written disciplinary report signed by Assistant Warden Ben Griego.

93. The charges against GALDONES resulted in his immediate detention in disciplinary segregation.

94. Plaintiff GALDONES had no prior disciplinary charges relating to institutional violence.

95. Upon being placed in segregation in April 2012, GALDONES submitted an inmate request form seeking to meet with a *kahu* to provide him with access to those sacred items as requested.

96. While Plaintiff GALDONES was in segregation, Kaina Haili met with GALDONES once.

97. Kaina Haili, however, did not provide GALDONES with any sacred items during this visit.

98. Kaina Haili, however, did not assist GALDONES with prayer, chanting, dancing or other Native Hawaiian religious protocol during this May 15, 2012 visit.

99. Plaintiff GALDONES appealed the wrongful disciplinary charges leveled against him by Assistant Warden Griego but Warden Thomas denied this appeal.

100. Defendants' wrongful charges against Plaintiff GALDONES resulted in his immediate detention in segregation.

101. The charges against GALDONES were in direct response to his attempt to practice his Native Hawaiian religion practices.

102. Practicing one's religion is protected conduct under the First Amendment.

103. The charges against GALDONES were in direct response to his support for this proposed class action.

104. Supporting a class action is protected conduct under the First Amendment.

105. Defendants are well-aware of how well-regarded GALDONES is by other Native Hawaiian practitioners. By placing him in segregation, Defendants sought to make an example of him to deter other Native Hawaiian practitioners from providing testimony that would support the approval of a class action.

106. The charges against GALDONES and resulting detention in segregation have caused him tangible harm as set forth below.

107. The charges against GALDONES and resulting detention in segregation have precluded GALDONES from meeting with other Native Hawaiians to pray, chant, dance and perform other religious protocol essential to his faith.

108. The charges against GALDONES and resulting detention in segregation precluded GALDONES from his access to certain sacred items as described above to allow him perform important religious protocol essential to his faith.

109. The charges against GALDONES and resulting detention in segregation precluded GALDONES from meeting with a spiritual leader to assist him in performing important religious protocol essential to his faith.

110. The charges against Plaintiff GALDONES have caused him to lose his job, deprive him of his ability to serve as a class assistant in Hawaiian classes offered at Saguaro, and deprived him wrongfully of other privileges.

111. The charges against Plaintiff GALDONES and resulting detention in segregation did not advance any legitimate correctional goal.

112. On information and belief, the disciplinary charges against Plaintiff GALDONES were reported by CCA to the State Defendants Neil Abercrombie and Ted Sakai, as required by the contract between CCA and the State Defendants.

113. On information and belief, the State Defendants failed to investigate the wrongful disciplinary charges against Plaintiff GALDONES.

114. The charges against GALDONES and resulting detention in segregation precluded GALDONES from meeting with other Native Hawaiians to pray, chant, dance and perform other religious protocol essential to his faith.

115. SCF's charges against GALDONES and resulting detention in segregation precluded GALDONES from his access to certain sacred items as described above to allow him perform important religious protocol essential to his faith.

116. The charges against GALDONES and resulting detention in segregation precluded GALDONES from meeting with a spiritual leader to assist him in performing important religious protocol essential to his faith.

117. The charges against GALDONES will harm him even after he returns to general population. As a result of those charges, GALDONES will be barred from working for six months. Prior to the wrongful charges, GALDONES worked as a porter and earned wages that he used for hygiene items.

118. As a result of Defendants' wrongful charges against him, GALDONES will be barred from participating in hobby shop where he crafts objects that have cultural significance to him as a Native Hawaiian and that he sends to his family in Hawaii.

119. As a result of Defendants' wrongful charges against him, Plaintiff GALDONES will be restricted in the amount of participation he can engage in as a member of the Hawaiian classes offered by Defendants at Saguaro.

120. The charges against GALDONES and resulting detention in segregation did not advance any legitimate correctional goal.

121. GALDONES attempted to address the wrongful charges through an appeal at the facility level and by filing grievances concerning the retaliation.

122. GALDONES' disciplinary charges and resulting administrative detention was a product of Defendants' reckless disregard for Plaintiff GALDONES' constitutional rights and were done in a deliberate and malicious attempt to retaliate against them for asserting their First Amendment rights.

123. Defendants' actions proximately caused Plaintiff GALDONES' injuries.

CLAIMS FOR RELIEF

124. Plaintiff GALDONES hereby re-alleges the fore-going paragraphs, and in so doing, Plaintiff GALDONES hereby joins in and asserts COUNTS I through XXVI of the Amended Complaint on his own behalf and on behalf of all those similarly situated.

125. Plaintiff GALDONES asserts an additional claim of unlawful retaliation as set forth below.

COUNT XXVII: DEFENDANTS' UNLAWFUL RETALIATION

126. Plaintiff GALDONES re-alleges the fore-going paragraphs, and incorporates them herein by reference.

127. Upon information and belief, the retaliatory acts taken by Warden Todd Thomas and Assistant Warden Ben Griego are directly traceable to the Defendant STATE OF HAWAII's policy or custom of condoning, and/or, acquiescing in retaliation by its contractor Defendant CCA.

128. In the alternative, the retaliatory acts taken by Warden Todd Thomas and Assistant Warden Ben Griego are directly traceable to the Defendant STATE OF HAWAII's policy of illegally delegating to Defendant CCA all of their constitutional and statutory responsibilities owed to Plaintiff GALDONES which permits its contractor, Defendant CCA to arbitrarily and capriciously places inmates in segregation for charges that do not reasonably advance legitimate correctional goals.

129. Upon information and belief, Defendant CCA authorized Warden Todd Thomas and Assistant Warden Ben Griego, employees of CCA, to serve as their chief policymakers at SCF to enforce a policy and/or customary practice that retaliates against inmates by leveling disciplinary charges against them that does not reasonably advance a legitimate correctional goal.

130. In the alternative, the retaliatory acts taken by Warden Todd Thomas and Assistant Warden Ben Griego are directly traceable to Defendant CCA's custom or policy of approving of, and or acquiescence in retaliation by its employees.

131. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of retaliating against inmates by leveling disciplinary charges against them because they have exercised their First Amendment rights to file prison grievances, otherwise seek access to the courts, and practice their religion.

132. Defendants took adverse action against Plaintiff GALDONES because of his protected conduct.

133. Defendants' adverse action against Plaintiff GALDONES caused him tangible harm.

134. Beyond causing these tangible harms, Defendants' adverse actions against Plaintiffs GALDONES chilled his exercise of his First Amendment rights.

135. Defendants' disciplinary charges against Plaintiff GALDONES did not reasonably advance a legitimate correctional goal.

136. As a consequence of the above violation, Plaintiff GALDONES has suffered, and continue to suffer irreparable injury that must be readdressed by declaratory and injunctive relief.

137. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiffs GALDONES has also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff GALDONES prays that this Court:

1. Issue an order, pursuant to Federal Rule of Civil Procedure 23, certifying this action as a Class Action, Appoint Plaintiff GALDONES as a representative of the Class; and Appoint Counsel for Plaintiffs as Class Counsel;
2. Declare that Defendants have violated Plaintiff GALDONES' and all other class members' rights under the Free Exercise Clause of the First Amendment of the United States Constitution;
3. Declare that Defendants have violated Plaintiff GALDONES' and all other class members' rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
4. Declare that Defendants have violated Plaintiff GALDONES' and all other class members' rights under the Free Exercise Clause of the Hawaii State Constitution;
5. Declare that Defendants have violated Plaintiff GALDONES' and all other class members' rights under the Equal Protection Clause of the Hawaii State Constitution;

6. Declare that Defendants have violated Plaintiff GALDONES' and all other class members' rights under Article XII Section 7 of Hawaii State Constitution and H.R.S. 1-1;

7. Declare that Defendants violated RLUIPA;

8. Order Defendants to allow Plaintiff GALDONES and all other class members to exercise their Native Hawaiian religion by gathering once daily in observance of the Native Hawaiian Religion;

9. Order Defendants to allow Plaintiff GALDONES and all other class members to exercise their Native Hawaiian religion by participating in certain and specific ceremonies critical to their observation of the annual Makahiki Season as requested by Plaintiffs;

10. Order Defendants to allow Plaintiff GALDONES and all other class members to exercise their Native Hawaiian religion by using and maintaining traditional and customary objects and items that are essential to expressing their religious belief and faith as requested by Plaintiffs

11. Order Defendants to allow Plaintiff GALDONES and all other class members to exercise their Native Hawaiian religion by constructing and accessing an outdoor sacred space to expressing their religious belief and faith as requested by plaintiffs

12. Order Defendants to allow Plaintiff GALDONES and all other class members to exercise their Native Hawaiian religion by meeting a spiritual leader on a daily basis to expressing their religious belief and faith as requested by plaintiffs.

13. Order Defendants to develop a comprehensive plan and promulgate official policy guidelines on how Native Hawaiians who have been convicted and sentenced under the laws of the State of Hawaii can practice their religion on a regular and equal basis with all other religions represented at correctional facilities.

14. Appoint a Special Master to monitor Defendants' compliance with the relief granted by this Court;

15. Grant Plaintiff GALDONES and all other class members compensatory damages against Defendants jointly and severally, in an amount to be proven at trial;

16. Award Plaintiff GALDONES and all other class members their costs, including reasonable attorneys' fees and costs, as authorized by statute; and

17. Declare that Defendants committed an unlawful retaliation against Plaintiff GALDONES by placing him in segregation;

18. Award Plaintiff GALDONES compensatory and punitive damages against Defendants for unlawful retaliation;

19. Order Defendants to expunge the wrongful disciplinary charges described herein from Plaintiff GALDONES's institutional files and any other records maintained by Defendants;

20. Order Defendants to return Plaintiff GALDONES to the job he held prior to the wrongful disciplinary charges complained-of herein and to reinstate his pre-retaliation pay;

21. Enjoin Defendants from pursuing any further retaliation against Plaintiff GALDONES;

22. Enjoin Defendants from taking retaliatory adverse actions against Plaintiff GALDONES, any other named Plaintiff, or any other class member;

23. Order Defendant STATE OF HAWAII to monitor any decision by Defendant CCA to discipline Plaintiff GALDONES, any other named Plaintiff, or any other class member with segregation;

24. Grant such other and further appropriate relief as this Court deems just and proper.

DATED: Honolulu, Hawaii, August 22, 2012.

/s/ Andrew B. Sprenger
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JAMES KAWAHITO
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Attorneys for Plaintiffs