UNITED STATES DISTRICT COURT

**DISTRICT OF ARIZONA** 

Plaintiff,

Defendants.

Swenson, Thomas, Griego, and Lopez, through counsel, admit, deny, and allege as

Plaintiff's Complaint which is not specifically admitted, denied or otherwise pled to.

Defendants Corrections Corporations of American ("CCA"),

These answering Defendants deny each and every allegation of

NO. CV-09-1831-PHX-ROS

DEFENDANTS SWENSON.

OF AMERICA'S ANSWER TO

PLAINTIFF'S COMPLAINT

THOMAS, GRIEGO, LOPEZ, AND CORRECTIONS CORPORATION

Corporation of America, Todd Thomas, Ben

Griego, Marcos Lopez and Daren Swenson

PRISON LEGAL NEWS, a project of the

CORRECTIONS CORPORATION OF

SWENSON, CCA Regional Director of Operations; TODD THOMAS, Warden,

AMERICA, a Maryland corporation; DAREN

Saguaro Correctional Center; BEN GRIEGO, Assistant Warden, Saguaro Correctional Center; MARCO LOPEZ, Chief of Security,

Saguaro Correctional Center; and DOES1-100,

non-profit charitable corporation,

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Human Rights Defense Center, a Washington

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inclusive.

follows:

1 2. In answering Paragraph 1 of Plaintiff's Complaint, Defendants deny 2 same. 3 4 **JURISDICTION AND VENUE** 5 3. In answering Paragraph 2 of Plaintiff's Complaint, Defendants admit 6 that jurisdiction and venue are proper in this court. 7 8 4. In answering Paragraph 3 of Plaintiff's Complaint, Defendants do not 9 have sufficient information or knowledge to admit or deny whether the amount in 10 controversy exceeds \$75,000. 11 12 5. In answering Paragraph 4 of Plaintiff's complaint, Defendants admit 13 same. 14 15 **THE PARTIES** 16 6. In answering Paragraph 5 of Plaintiff's Complaint, Defendants are 17 18 without sufficient knowledge or information to admit or deny the allegations, and 19 therefore deny same. 20 21 7. In answering Paragraph 6 of Plaintiff's Complaint, Defendants admit 22 same. 23 24 8. In answering Paragraph 7 of Plaintiff's Complaint, Defendants admit 25 same. 26 27 28 2 2122500.1

9. In answering Paragraph 8 of Plaintiff's Complaint, Defendants admit same.

- 10. In answering Paragraph 9 of Plaintiff's Complaint, Defendants admit that Defendant Thomas was an employee of CCA during the relevant time period and is currently the warden of the Saguaro Correctional Center.
- 11. In answering Paragraph 10 of Plaintiff's Complaint, Defendants admit that Defendant Griego was an employee of CCA during the relevant time period and is currently the assistant warden of the Saguaro Correctional Center.
- 12. In answering Paragraph 11 of Plaintiff's Complaint, Defendants admit only that Defendant Lopez was an employee of CCA during the relevant time period.
- 13. In answering Paragraph 12 of Plaintiff's Complaint, Defendants are without sufficient knowledge and information to admit or deny the allegations, and therefore deny same.
- 14. In answering Paragraph 13 of Plaintiff's Complaint, Defendants admit only that CCA is a private prison corporation, acting under color of law in the incarceration of inmates for various local, state and federal jurisdictions. Defendants deny the remaining allegations set forth in Paragraph 13.
- 15. In answering Paragraph 14 of Plaintiff's Complaint, Defendants admit same.

16. In answering Paragraph 15 of Plaintiff's Complaint, Defendants deny same.

## **FACTS**

- 17. In answering Paragraph 16 of Plaintiff's Complaint, Defendants admit same.
- 18. In answering Paragraph 17 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 19. In answering Paragraph 18 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 20. In answering Paragraph 19 of Plaintiff's Complaint, Defendants deny same.
- 21. In answering Paragraph 20 of Plaintiff's Complaint, Defendants admit that some inmates subscribe to *Prison Legal News*. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 20, and therefore deny same.
- 22. In answering Paragraph 21 of Plaintiff's Complaint, Defendants allege that CCA's policies speak for themselves, and deny the remainder of the allegations.

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- 23. In answering Paragraph 22 of Plaintiff's Complaint, Defendants allege that CCA's policies speak for themselves, and deny the remainder of Plaintiff's allegations.
- 24. In answering Paragraph 23 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 25. In answering Paragraph 24 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 26. In answering Paragraph 25 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 27. In answering Paragraph 26 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 28. In answering Paragraph 27 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.

29. In answering Paragraph 28 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.

- 30. In answering Paragraph 29 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 31. In answering Paragraph 30 of Plaintiff's Complaint, Defendants admit that inmate Kanae received his books. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 30, and therefore deny same.
- 32. In answering Paragraph 31 of Plaintiff's Complaint, Defendants are without sufficient knowledge or information to admit or deny the allegations, and therefore deny same.
- 33. In answering Paragraph 32 of Plaintiff's Complaint, Defendants allege that CCA's policies speak for themselves. Defendants are without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 32, and therefore deny same.
- 34. In answering Paragraph 33 of Plaintiff's Complaint, Defendants deny same.

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1 2	same.	35.	In answering Paragraph 34 of Plaintiff's Complaint, Defendants deny
<ul><li>3</li><li>4</li><li>5</li></ul>	same.	36.	In answering Paragraph 35 of Plaintiff's Complaint, Defendants deny
6 7 8		37.	In answering Paragraph 36 of Plaintiff's Complaint, Defendants deny
9 10	same.	38.	In answering Paragraph 37 of Plaintiff's Complaint, Defendants deny
<ul><li>11</li><li>12</li><li>13</li></ul>			are unconstitutional. Defendants are without sufficient knowledge or nit or deny the remaining allegations contained in Paragraph 37, and
14	therefore de	ny sam	e.
15 16	same.	39.	In answering Paragraph 38 of Plaintiff's Complaint, Defendants deny
<ul><li>17</li><li>18</li><li>19</li></ul>		40.	In answering Paragraph 39 of Plaintiff's Complaint, Defendants deny
20 21	same.	41.	In answering Paragraph 40 of Plaintiff's Complaint, Defendants deny
<ul><li>22</li><li>23</li><li>24</li></ul>	same.		
<ul><li>24</li><li>25</li><li>26</li></ul>	same.	42.	In answering Paragraph 41 of Plaintiff's Complaint, Defendants deny
27 28			
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1 2 3 4 5 6 7 8	43. In answering Paragraph 42 of Plaintiff's Complaint, Defendants admit only that CCA is a private prison corporation, acting under color of law in the incarceration of inmates for various local, state and federal jurisdictions. Defendants deny the remaining allegations set forth in Paragraph 42.  44. In answering Paragraph 43 of Plaintiff's Complaint, Defendants deny same.			
9	CLAIMS FOR RELIEF			
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11	<u>FIRST CLAIM FOR RELIEF</u>			
12	(For Violations of the First Amendment, As Incorporated Through the Fourteenth			
13	Amendment, Under Color of State Law, Actionable through 42 U.S.C. § 1983)			
14	Amendment, Under Color of State Law, Actionable through 42 U.S.C. § 1765)			
15	45. In answering Paragraph 44 of Plaintiff's Complaint, Defendants			
<ul><li>16</li><li>17</li></ul>	incorporate by reference herein, Paragraphs 1-44, above.			
18	The first of the state of the s			
19	46. In answering Paragraph 45 of Plaintiff's Complaint, Defendants deny			
20	same.			
21				
22	47. In answering Paragraph 46 of Plaintiff's Complaint, Defendants deny			
23	same.			
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25	SECOND CLAIM FOR RELIEF			
26	(For Violations of Article 2, Section 6 of the Arizona Constitution Under Color of			
27	State Law)			
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1		48.	In answering Paragraph 47 of Plaintiff's Complaint, Defendants		
2	incorporate by reference herein, Paragraphs 1-47, above.				
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4		49.	In answering Paragraph 48 of Plaintiff's Complaint, Defendants deny		
5	same.				
6					
7		50.	In answering Paragraph 49 of Plaintiff's Complaint, Defendants deny		
8	same.				
9					
10			THIRD CLAIM FOR RELIEF		
11	(For Violat	tions of	f Fourteenth Amendment Equal Protection Clause Under Color of		
12			State Law, Actionable through 42 U.S.C. § 1983)		
13					
14		51.	In answering Paragraph 50 of Plaintiff's Complaint, Defendants		
15	incorporate b	y refe	rence herein, Paragraphs 1-50, above.		
16 17					
18		52.	In answering Paragraph 51 of Plaintiff's Complaint, Defendants deny		
19	same.				
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21		53.	In answering Paragraph 52 of Plaintiff's Complaint, Defendants deny		
22	same.				
23		<i>7.</i> 4			
24		54.	In answering Paragraph 53 of Plaintiff's Complaint, Defendants deny		
25	same.				
26			EQUIDTU CLAIM EQD DELIEE		
27			FOURTH CLAIM FOR RELIEF		
28	(For Violations of the Equal Privileges Clause of Article 2, Section 13 of the Arizona				
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1		Constitution Under Color of State Law)
2	55.	In answering Paragraph 54 of Plaintiff's Complaint, Defendants
3	incorporate by refe	erence herein, paragraphs 1-54, above.
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5	56.	In answering Paragraph 55 of Plaintiff's Complaint, Defendants deny
6	same.	
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8	57.	In answering Paragraph 56 of Plaintiff's Complaint, Defendants deny
10	same.	
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12	58.	In answering Paragraph 57 of Plaintiff's Complaint, Defendants deny
13	same.	
14		FIFTH CLAIM FOR RELIEF
15		
16	(For Violations	of Fourteenth Amendment Due Process Clause Under Color State
17		Law, Actionable Through 42 U.S.C. § 1983)
18	50	In anaryaning Danaganah 50 of Plaintiff's Complaint Defendants
19	59.	In answering Paragraph 58 of Plaintiff's Complaint, Defendants
20	incorporate by refe	erence herein, Paragraphs 1-58, above.
21	60.	In answering Paragraph 59 of Plaintiff's Complaint, Defendants deny
22		in answering Paragraph 39 of Plaintiff's Complaint, Defendants deny
23	same.	
24	61.	In answering Paragraph 60 of Plaintiff's Complaint, Defendants deny
25		5
26	same.	
27		SIXTH CLAIM FOR RELIEF
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1	(For Violations of the Due Process Clause in Article 2, Section 4 of the Arizona				
2	Constitution)				
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4	62. In answering Paragraph 61 of Plaintiff's Complaint, Defendants				
5	incorporate by reference herein, Paragraphs 1-61, above.				
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7	63. In answering Paragraph 62 of Plaintiff's Complaint, Defendants deny				
8	same.				
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10	64. In answering Paragraph 63 of Plaintiff's Complaint, Defendants deny				
11	same.				
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13	<u>AFFIRMATIVE DEFENSES</u>				
14	65. As a separate defense, or in the alternative, Defendants allege that the				
15	Plaintiff's claims may be barred by the applicable statute of limitations.				
16	Traintiff s claims may be barred by the applicable statute of immutations.				
17	66. As a separate defense, or in the alternative, Defendants allege that				
18	Plaintiff's Complaint fails to state a claim upon which relief may be granted.				
19	Traintiff 5 Complaint fails to state a claim upon which rener may be granted.				
20	67. As a separate defense, or in the alternative, Defendants allege that				
21	Plaintiff does not have standing to assert a violation of 42 U.S.C. 81083, or violations of				
22	Plaintiff does not have standing to assert a violation of 42 U.S.C. §1983, or violations of				
23	the Arizona or United States Constitution.				
24	68. As a congrete defense or in the alternative Defendants allege that				
25	68. As a separate defense, or in the alternative, Defendants allege that				
26	their actions and policies were reasonably related to legitimate penological interests.				
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69. As a separate defense, or in the alternative, Defendants allege that they were acting under legal process, with good, sufficient and probable cause to be so acting, and that the actions of Defendant were in good faith and without malice.

- 70. As a separate defense, or in the alternative, Defendants assert that they did not violate Plaintiff's rights under the First Amendment of the United States Constitution.
- 71. As a separate defense, or in the alternative, Defendants allege that Plaintiff has failed to set forth the requisite showing of subjective intent necessary to sustain a cause of action alleging a constitutional violation, thereby warranting dismissal of this lawsuit.
- 72. As a separate defense, or in the alternative, Defendants allege that their actions were objectively reasonable under the circumstances and that they were acting in good faith and without malice.
- 73. As a separate defense, or in the alternative, Defendants allege that Plaintiff has failed to set forth a grave deprivation in regard to its allegation that a constitutional violation has occurred, thereby warranting dismissal of this lawsuit.
- 74. As a separate defense, or in the alternative, Defendants allege that there existed no conduct in this case motivated by an evil motive or intent, nor did any conduct involve reckless or callous indifference to the rights of Plaintiff, thereby precluding punitive damages.

75. As a separate defense, or in the alternative, Defendants allege that Plaintiff suffered no actual injury, therefore warranting dismissal of these claims.

- 76. As a separate defense, or in the alternative, Defendants allege that Plaintiff has failed to allege that Defendant promulgated a custom and policy or practice which was the moving force behind the alleged violations to Plaintiff's constitutional rights, thereby warranting dismissal of certain claims against them.
- 77. As a separate defense, or in the alternative, Defendants allege that Plaintiff is not a member of a protected class by which Defendant discriminated against Plaintiff, or otherwise treated Plaintiff differently from others similarly situated, due to membership in a protected class of persons.
- 78. As a separate defense, or in the alternative, Defendants allege that any actions by Defendants furthered a legitimate and important governmental interests in maintaining the safety and security of the prison, thereby warranting dismissal of Plaintiff's claims.
- 79. Although Defendants do not presently have fact in support of the following defenses, Defendants wish to assert the following defenses should subsequent discovery reveal these defenses are appropriate. Specifically, the following affirmative defenses set forth in Rule 8(c), F.R.C.P. and Rule 12, including but not limited to: arbitration and award, assumption of risk, contributory negligence, duress, estoppel, fraud, illegality, statute of limitations, release, res judicata, waiver, venue, insufficiency of process and insufficiency of service of process.

1	80. WHEREFORE, having fully answered the allegations of Plaintiff's
2	Complaint, Defendants pray that Plaintiff take nothing and that Defendants be discharged
3 4	with costs and attorneys fees' incurred pursuant to 42 U.S.C. § 1988.
5	81. Defendant demands a jury trial as to all triable issues.
6	DATED this 6th day of November, 2009.
7 8	JONES, SKELTON & HOCHULI, P.L.C.
9	
10	By <u>s/Daniel P. Struck</u> Daniel P. Struck
11	2901 North Central Avenue, Suite 800 Phoenix, Arizona 85012
12	Attorneys for Defendants Corrections Corporation of America, Todd Thomas,
13	Ben Griego, Marcos Lopez and Daren Swenson
14	ORIGINAL electronically filed
15	this 6th day of November, 2009.
16	COPY e-mailed this 6th day of November, 2009, to:
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27	
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5	s/Diane Mari
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