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FIRST CIRCUIT COURT
STATE OF HAWAII
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F. OTAKE
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RICHARD KAPELA DAVIS, MICHAEL)	CIVIL NO. <u>11-1-0266-02</u> RMB
HUGHES, DAMIEN KAAHU, ROBERT)	(Declaratory and Injunctive Relief and
A. HOLBRON, JAMES KANE III, and)	Other Civil Action)
ELLINGTON KEAWE,)	
)	COMPLAINT FOR DECLARATORY
Plaintiffs,)	AND INJUNCTIVE RELIEF and
vs.)	DAMAGES; SUMMONS
)	
NEIL ABERCROMBIE, in his official)	
capacity as the Governor of the State of)	
Hawaii; JODIE MAESAKA-HIRATA, in)	
her official capacity as Interim Director of)	
the Hawaii Department of Public Safety;)	
CORRECTIONS CORPORATION OF)	
AMERICA,)	
Defendants.)	
)	
)	

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

PRELIMINARY STATEMENT

This is a State and Federal civil rights action for declaratory and injunctive relief and damages. Plaintiffs, and other similarly situated individuals, are Native Hawaiian religious practitioners who have been incarcerated under the laws of the State of Hawai'i, but are currently

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.



Clerk Circuit Court, First Circuit

EXHIBIT A

serving their terms of sentence in for-profit private prisons under various governmental contracts with the State of Hawai'i.

Native Hawaiians, the indigenous people of Hawai'i, are an over-represented group in these privately-operated prison facilities. Many of them practice spiritual beliefs first established by their ancestors, who exercised sovereignty over the area that now comprises the state of Hawai'i.

The State of Hawai'i, through its elected and appointed officials, is allowing its private prison subcontractor to operate without any oversight, authority and/or control to protect its inmates. Consequently, the Defendants' deliberate actions and/or omissions have resulted in a violation of Plaintiffs' rights to exercise their religion as secured by the Hawaii State Constitution and the United States Constitution protecting their civil rights.

Plaintiffs ask this Court to address this wrong. This Court has jurisdiction to declare that the Defendants have violated the Hawaii State Constitution, and enjoin them from exercising a policy that causes such injury upon the Plaintiffs. This Court also holds concurrent jurisdiction to declare that Defendants have violated the U.S. Constitution, and enjoin them from exercising a policy that causes such injury upon the Plaintiffs pursuant to 42 U.S.C. § 1983. Plaintiffs are also entitled to seek damages caused by Defendants' violations.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Hawaii Revised Statutes § 603-21.5(a)(3) and 42 U.S.C. § 1983.
2. This Court has jurisdiction over all of the Defendants in this action pursuant to Hawaii Revised Statutes § 634-31 and/or § 634-35(a)(1) and (4).
3. Plaintiffs' claims for declaratory relief to remedy the deprivation, under color of state law, of rights guaranteed by Article 1, §§ 4 and 5, and Article XII, § 7 of the Hawaii State

Constitution and H.R.S. § 1-1 is authorized under Hawaii Revised Statutes §§ 603-21.9(1), (6) and Rule 57 of the Hawaii Rules of Civil Procedure.

4. Plaintiffs' claims for injunctive relief to remedy the deprivation, under color of state law, of rights guaranteed by Article 1, §§ 4 and 5, and Article XII, § 7 of the Hawaii State Constitution and H.R.S. § 1-1 is authorized under Hawaii Revised Statute §§ 603-23 and Rule 65 of the Hawaii Rules of Civil Procedure.

5. Plaintiffs' claims for declaratory and injunctive relief to remedy the deprivation, under color of state law, of rights guaranteed by the First and Fourteenth Amendments to the United States Constitution is authorized under 42 U.S.C. § 1983 and Hawaii Revised Statutes §§ 603-21.9(1), (6).

6. Plaintiffs' claims for declaratory and injunctive relief to remedy the deprivation, under color of state law, of rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is authorized under 42 U.S.C. § 1983 and Hawaii Revised Statutes §§ 603-21.9(1), (6).

7. Venue in this circuit court is proper pursuant to Hawaii Revised Statute §§ 603-36(5) because all of the events or omissions giving rise to these claims occurred in the City and County of Honolulu, State of Hawai'i and are under the control of Defendants residing in the City and County of Honolulu, State of Hawai'i.

THE PARTIES

8. Plaintiffs are, and were at all times mentioned herein, an adult citizen of the United States of America, and a resident of the state of Hawai'i.

9. Plaintiffs are descendants of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawai'i.

10. Plaintiffs has been convicted of violating crimes under Hawai'i state law and sentenced under the same.

11. In or around 2007, Plaintiffs were involuntarily transferred from either the State of Hawaii or from various private prisons owned and operated by Defendant Corrections Corporation of America ("CCA") to one of two of its private prisons in Eloy, Arizona pursuant to various contracts with the State of Hawaii and the Corrections Corporation of America.

12. Defendant NEIL ABERCROMBIE, Governor of the State of Hawai'i, is the chief executive of the State of Hawai'i, 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 Hawai'i's prison regulations and procedures; and (b) monitoring out-of-state public and private correctional facilities where Hawai'i state inmates are serving their sentences.

13. Defendant JODIE MAESAKA-HIRATA, the Interim Director of the State of Hawai'i Department of Public Safety, is sued in her 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 Hawai'i.

14. Unless otherwise specified in this Complaint, Defendants NEIL ABERCROMBIE, and JODIE MAESAKA-HIRATA are collectively referred to as "Defendants STATE OF HAWAI'I."

15. As the primary legal custodian of those individuals incarcerated under its criminal statutes, Defendants STATE OF HAWAI'I 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.

16. Defendant CCA is a private, for-profit corporation organized under the laws of the State of Tennessee. CCA manages and operates Saguaro and Red Rock Correctional Facilities ("SCF" and "RRCF," respectively), which presently supervises and controls committed persons convicted and sentenced under Hawai'i 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.

17. 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 Hawai'i 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.

18. 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 that this Court may exercise its long-arm jurisdiction.

19. Moreover, Plaintiffs' claims arise out of said contracts between the Defendants STATE OF HAWAII and Defendant CCA which also allows this Court to properly exercise its long-arm jurisdiction.

20. 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 and RRCF are state actors. Consequently, Defendant CCA and its employees of SCF and RRCF 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.

FACTUAL ALLEGATIONS

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

22. 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 Hawai'i.

23. 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 Hawai'i state law and sentenced under the same at a privately-owned correctional facility located in Eloy, Arizona.

24. 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.

25. Plaintiff RICHARD KAPELA DAVIS ("DAVIS") was convicted of violating crimes under Hawai'i state law and sentenced under the same. In or around 2006, DAVIS 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.

26. Plaintiff MICHAEL HUGHES ("HUGHES") was convicted of violating crimes under Hawai'i state law and sentenced under the same. In or around 2006, HUGHES 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.

27. Plaintiff DAMIEN KAAHU ("KAAHU") was convicted of violating crimes under Hawai'i state law and sentenced under the same. In or around 2006, KAAHU 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.

28. Plaintiff ROBERT A. HOLBRON ("HOLBRON") was convicted of violating crimes under Hawai'i state law and sentenced under the same. In or around 2006, HOLBRON

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. Plaintiffs are informed and believe that HOLBRON's security classification precludes him from the general population of inmates at SCF.

29. Plaintiff JAMES KANE III ("KANE") was convicted of violating crimes under Hawai'i state law and sentenced under the same. In or around 2007, KANE was involuntarily transferred from a private prison owned and operated by CCA pursuant to previous governmental contracts with the STATE OF HAWAII to RRCF in Eloy, Arizona pursuant to various contracts with the STATE OF HAWAII and CCA. Plaintiffs are informed and believe that KANE's security classification precludes him from the general population of inmates at SCF.

30. Plaintiff ELLINGTON KEAWE ("KEAWE") was convicted of violating crimes under Hawai'i state law and sentenced under the same. In or around 2007, KEAWE was involuntarily transferred from a private prison owned and operated by CCA pursuant to previous governmental contracts with the STATE OF HAWAII to RRCF in Eloy, Arizona pursuant to various contracts with the STATE OF HAWAII and CCA. Plaintiffs are informed and believe that KEAWE's security classification precludes him from the general population of inmates at SCF.

31. Plaintiffs are Native Hawaiians whose religious and spiritual beliefs and practices originate in, and are interpreted from within the traditional Native Hawaiian culture and community.

32. A critical tenet of Native Hawaiian religion essential to the sincere expression of Plaintiffs' 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.

33. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiffs' 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.

34. 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.

35. 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.

36. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiffs' 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).

37. A critical tenet of Native Hawaiian religion essential to the expression of Plaintiffs' 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.

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

39. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in SCF 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 SCF or other inmates.

40. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in RRCF 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 SCF or other inmates.

41. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in SCF 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.

42. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in RRCF 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.

43. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in SCF are allowed access to religious items that are integral to their faith and that express their religious and spiritual beliefs.

44. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in RRCF are allowed to access to religious items that are integral to their faith and that express their religious and spiritual beliefs.

45. Plaintiffs are informed and believe 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.

46. Plaintiffs are informed and believe that prisoners of other religions who are incarcerated in RRCF are allowed to access a worship space appropriate to their faith and that express their religious and spiritual beliefs.

47. Plaintiffs are informed and believe 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.

48. Plaintiffs are informed and believe that other prisoners of other religions who are incarcerated in RRCF have regular and frequent access to a spiritual advisor to assist them in practicing their respective faiths.

49. 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.

50. 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.

51. Plaintiffs are informed and believe that the Warden and or other personnel at SCF authorizes only certain inmates to supervise, lead, control and teach those educational classes on topics concerning Native Hawaiian culture, language and history.

52. 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.

53. Plaintiffs are informed and believe that the CCA does not provide any Hawaiian educational classes to inmates who are incarcerated at RRCF.

54. Plaintiffs are informed and believe that CCA provides only an arbitrarily selected group of Native Hawaiian religious practitioners who are incarcerated in facilities located at SCF to participate in a ceremony to observe the beginning and ending of the Makahiki Season with certain religious protocol and the use of certain sacred items. Consequently, Plaintiffs are informed and believe that those Native Hawaiian religious practitioners who are arbitrarily denied in participating in the Makahiki Season ceremonies are relegated to only attend and observe those activities, if at all.

55. Plaintiffs are informed and believe that CCA does not provide any Native Hawaiian religious practitioners who are incarcerated in facilities located at RRCF to participate in a ceremony to observe the beginning and ending of the Makahiki Season.

56. 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.

57. In or around July 2009, DAVIS, HUGHES, KAAHU, KANE and KEAWE each 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. Plaintiffs requested that these gatherings occur at an outdoor location during sunrise, last approximately 30 minutes, and include chanting, dancing and prayer.

58. In or around July 2009, HOLBRON submitted an inmate request form, in accordance with CCA's administrative procedure, requesting to be allowed to meet with a spiritual advisor to chant, dance and pray in observance of the Native Hawaiian Religion.

59. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's request for daily gatherings. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed timely a formal grievance form seeking reconsideration of the denial.

60. In or around August 2009, employees at SCF denied HOLBRON's request for gatherings with a spiritual advisor. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

61. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's grievance concerning the denial of their request for daily gatherings. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed a timely appeal seeking reconsideration of the denial.

62. In or around August 2009, employees at SCF denied HOLBRON's grievance concerning the denial of meeting with a spiritual leader for gatherings. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

63. In or around August 2009, the Warden of SCF denied DAVIS, HUGHES and KAAHU's appeal concerning the denial of their request for daily gatherings. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU have now administratively exhausted this claim.

64. As a consequence of the Warden's denial, above, DAVIS, HUGHES and KAAHU were unable to gather with other practitioners to practice their Native Hawaiian faith with dance, chanting and prayer in a spiritually meaningful way.

65. From approximately January to November 2010, SCF restricted DAVIS, HUGHES and KAAHU from attending any of its Native Hawaiian cultural educational classes, apparently due to their prior lack of regular attendance.

66. As of November 2010, however, SCF allowed DAVIS, HUGHES and KAAHU to attend its Native Hawaiian cultural educational classes.

67. KAAHU, however, cannot attend any of the Native Hawaiian cultural education classes because he is a participant in the "R-DAP" substance abuse program, recommended by the parole board to assist in his early release. The R-DAP meetings conflict with the Native Hawaiian cultural education classes, and administer sanctions and penalties against KAAHU for attending the Native Hawaiian cultural education classes instead of the R-DAP meetings.

68. In or around August 2009, the Warden of SCF denied HOLBRON's appeal concerning the denial of his request to meet with a spiritual leader.

69. As a consequence of the Warden's denial, above, HOLBRON has been unable to gather with a *kahu* to practice his Native Hawaiian faith with dance, chanting and prayer in a spiritually meaningful way.

70. In or around August 2009, employees at RRCF denied KANE and KEAWE's request for daily gatherings. Pursuant to CCA's administrative procedure, KANE then filed timely a formal grievance form seeking reconsideration of the denial.

71. In or around August 2009, employees at RRCF denied KANE and KEAWE's grievance concerning the denial of their request for daily gatherings. Pursuant to CCA's administrative procedure, KANE then filed a timely appeal seeking reconsideration of the denial.

72. In or around August 2009, the Warden of RRCF denied KANE's appeal concerning the denial of their request for daily gatherings. Pursuant to CCA's administrative procedure, KANE and KEAWE have now administratively exhausted this claim.

73. In or around July 2009 DAVIS, HUGHES, KAAHU, and KANE each submitted an inmate request form requesting to be allowed to celebrate the opening and closing days of the 2009-10 Makahiki Season.

74. With respect to the Makahiki requests as described above, DAVIS, HUGHES, KAAHU, and KANE 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.

75. In or around July 2009 HOLBRON submitted an inmate request form requesting to be allowed to meet with a spiritual advisor to assist in celebrating the opening and closing of the 2009-10 Makahiki Season with activities commensurate with his security level.

76. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's request to celebrate Makahiki. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed timely a formal grievance form seeking reconsideration of the denial.

77. In or around August 2009, employees at SCF denied HOLBRON's request to meet with a spiritual advisor to celebrate Makahiki. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

78. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's grievance concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed a timely appeal seeking reconsideration of the denial.

79. In or around August 2009, employees at SCF denied HOLBRON's grievance concerning the denial of meeting with a spiritual leader to celebrate Makahiki. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

80. In or around August 2009, the Warden of SCF denied DAVIS, HUGHES and KAAHU's appeal concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU have now administratively exhausted this claim.

81. In or around August 2009, the Warden of SCF denied HOLBRON's appeal concerning the denial of his request to meet with a spiritual leader to celebrate Makahiki. Pursuant to CCA's administrative procedure, HOLBRON has now administratively exhausted this claim.

82. Upon information and belief, SCF authorized some Native Hawaiian practitioners the opportunity to observe the opening day of the 2009-10 Makahiki Season in November 2009 with a religious ceremony, but denied DAVIS, HUGHES and KAAHU the opportunity to participate apparently due to their lack of regular participation in the Native Hawaiian education culture classes.

83. Upon information and belief, SCF authorized some Native Hawaiian practitioners the opportunity to observe the closing day of the 2009-10 Makahiki Season in February 2010

with a religious ceremony, but denied DAVIS, HUGHES and KAAHU the opportunity to participate apparently due to their lack of regular participation in the Native Hawaiian education culture classes.

84. HOLBRON was unable to observe the opening or closing day of the 2009-10 Makahiki Season in any meaningful way.

85. In or around August 2009, employees at RRCF denied KANE's request to celebrate Makahiki. Pursuant to CCA's administrative procedure, KANE then filed timely a formal grievance form seeking reconsideration of the denial.

86. In or around August 2009, employees at RRCF denied KANE's grievance concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, KANE then filed a timely appeal seeking reconsideration of the denial.

87. In or around August 2009, the Warden of RRCF denied KANE's appeal concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, KANE has now administratively exhausted this claim.

88. As a consequence of the Warden's denial, above, KANE was unable to observe the 2009-2010 Makahiki Season in a spiritually meaningful way.

89. In or around July 2009, DAVIS, HUGHES, KAAHU, KANE and KEAWE each submitted an inmate request form requesting access to religiously significant objects for daily use and for use during the Makahiki celebration.

90. Specifically, DAVIS, HUGHES, KAAHU, KANE and KEAWE 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 leaves, *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).

91. In or around July 2009 HOLBRON submitted an inmate request form requesting to be allowed to meet with a spiritual advisor to assist him in using the following sacred items to practice his faith: *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).

92. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's request for access to those sacred items described above. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed timely a formal grievance form seeking reconsideration of the denial.

93. In or around August 2009, employees at SCF denied HOLBRON's request to meet with a spiritual advisor to access those sacred items described above. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

94. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's grievance concerning the denial of access to those sacred items. Pursuant to CCA's

administrative procedure, DAVIS, HUGHES and KAAHU then filed a timely appeal seeking reconsideration of the denial.

95. In or around August 2009, employees at SCF denied HOLBRON's grievance concerning the denial of meeting with a spiritual leader to access those sacred items. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

96. In or around August 2009, the Warden of SCF denied DAVIS, HUGHES and KAAHU's appeal concerning the denial of their request to access those sacred items. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU have now administratively exhausted this claim.

97. As a consequence of the Warden's denial, above, DAVIS, HUGHES and KAAHU have been unable to practice their Native Hawaiian faith with those sacred items to worship in a spiritually meaningful way.

98. In or around August 2009, the Warden of SCF denied HOLBRON's appeal concerning the denial of his request to meet with a spiritual leader to access those sacred items. Pursuant to CCA's administrative procedure, HOLBRON has now administratively exhausted this claim.

99. As a consequence of the Warden's denial, above, HOLBRON has been unable to practice his Native Hawaiian faith with those sacred items to worship in a spiritually meaningful way.

100. In or around August 2009, employees at RRCF denied KANE's request to access those sacred items. Pursuant to CCA's administrative procedure, KANE then filed timely a formal grievance form seeking reconsideration of the denial.

101. In or around August 2009, employees at RRCF denied KANE's grievance concerning the denial of his request to access those sacred items. Pursuant to CCA's administrative procedure, KANE then filed a timely appeal seeking reconsideration of the denial.

102. In or around August 2009, the Warden of RRCF denied KANE's appeal concerning the denial of his request to access those sacred items. Pursuant to CCA's administrative procedure, KANE has now administratively exhausted this claim.

103. As a consequence of the Warden's denial above, KANE has been unable to practice his Native Hawaiian faith with those sacred items to worship in a spiritually meaningful way.

104. In or around July 2009, DAVIS, HUGHES, KAAHU and KANE each 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.

105. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's request for authorization to prepare a sacred space for their worship activities at SCF. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed timely a formal grievance form seeking reconsideration of the denial.

106. In or around August 2009, employees at SCF denied DAVIS, HUGHES and KAAHU's grievance concerning the denial of their request to prepare a sacred space at SCF. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed a timely appeal seeking reconsideration of the denial.

107. In or around August 2009, the Warden of SCF denied DAVIS, HUGHES and KAAHU's appeal concerning the denial of their request to prepare a sacred space at SCF.

Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU have now administratively exhausted this claim.

108. In or around August 2009, employees at RRCF denied KANE and KEAWE's request for authorization to prepare a sacred space for their worship activities at RRCF. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU then filed timely a formal grievance form seeking reconsideration of the denial.

109. In or around August 2009, employees at RRCF denied KANE's grievance concerning the denial of his request to prepare a sacred space at RRCF. Pursuant to CCA's administrative procedure, KANE and KEAWE then filed a timely appeal seeking reconsideration of the denial.

110. In or around August 2009, the Warden at SCF denied DAVIS, HUGHES and KAAHU's appeal concerning the denial of their request to prepare a sacred space at SCF. Pursuant to CCA's administrative procedure, DAVIS, HUGHES and KAAHU have now administratively exhausted this claim.

111. In or around July 2009, DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE each submitted an inmate request form requesting authorization to meet regularly with a spiritual advisor.

112. In or around August 2009, employees at SCF denied DAVIS, HUGHES KAAHU and HOLBRON's request to meet regularly with a spiritual advisor. Pursuant to CCA's administrative procedure, DAVIS, HUGHES KAAHU and HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

113. In or around August 2009, employees at SCF denied DAVIS, HUGHES KAAHU and HOLBRON's grievance concerning the denial of their request to meet regularly with a

spiritual advisor. Pursuant to CCA's administrative procedure, DAVIS, HUGHES, KAAHU and HOLBRON then filed a timely appeal seeking reconsideration of the denial.

114. In or around August 2009, the Warden of SCF denied DAVIS, HUGHES KAAHU and HOLBRON's appeal concerning the denial of their request to meet regularly with a spiritual advisor. Pursuant to CCA's administrative procedure, DAVIS, HUGHES, KAAHU and HOLBRON have now administratively exhausted this claim.

115. As a consequence of the Warden's denial, above, DAVIS, HUGHES, KAAHU and HOLBRON have been unable to practice their Native Hawaiian faith with the attendance and guidance of a *kahu* in a spiritually meaningful way.

116. In or around August 2009, employees at RRCF denied KANE and KEAWE's request to meet regularly with a spiritual advisor. Pursuant to CCA's administrative procedure, KANE and KEAWE then filed timely a formal grievance form seeking reconsideration of the denial.

117. In or around August 2009, employees at RRCF denied KANE and KEAWE's grievance concerning the denial of their request to meet regularly with a spiritual advisor. Pursuant to CCA's administrative procedure, KANE and KEAWE then filed a timely appeal seeking reconsideration of the denial.

118. In or around August 2009, the Warden of RRCF denied KANE and KEAWE's appeal concerning the denial of their request to meet regularly with a spiritual advisor. Pursuant to CCA's administrative procedure, KANE and KEAWE have now administratively exhausted this claim.

119. As a consequence of the Warden's denial, above, KANE and KEAWE have been unable to practice their Native Hawaiian faith with the attendance and guidance of a *kahu* in a spiritually meaningful way.

120. In or around July 2010 DAVIS, HUGHES, and KEAWE each submitted an inmate request form requesting to be allowed to celebrate the opening and closing days of the 2010-11 Makahiki Season.

121. With respect to the Makahiki requests as described above, DAVIS, HUGHES, and KEAWE 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.

122. In or around July 2010, HOLBRON submitted an inmate request form requesting to be allowed to meet with a spiritual advisor to assist in celebrating the opening and closing days of the 2010-11 Makahiki Season with activities commensurate with his security level.

123. In or around August 2010, employees at SCF denied DAVIS and HUGHES's request to celebrate Makahiki. Pursuant to CCA's administrative procedure, DAVIS and HUGHES then filed timely a formal grievance form seeking reconsideration of the denial.

124. In or around August 2010, employees at SCF denied HOLBRON's request to meet with a spiritual advisor to celebrate Makahiki. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

125. In or around August 2010, employees at SCF denied DAVIS and HUGHES's grievance concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, DAVIS and HUGHES then filed a timely appeal seeking reconsideration of the denial.

126. In or around August 2010, employees at SCF denied HOLBRON's grievance concerning the denial of meeting with a spiritual leader to celebrate Makahiki. Pursuant to CCA's administrative procedure, HOLBRON then filed timely a formal grievance form seeking reconsideration of the denial.

127. In or around August 2010, the Warden of SCF denied DAVIS and HUGHES's appeal concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, DAVIS, and HUGHES have now administratively exhausted this claim.

128. In or around August 2010, the Warden of SCF denied HOLBRON's appeal concerning the denial of his request to meet with a spiritual leader to celebrate Makahiki. Pursuant to CCA's administrative procedure, HOLBRON has now administratively exhausted this claim.

129. Upon information and belief, SCF authorized some Native Hawaiian practitioners the opportunity to observe the opening day of the 2010-11 Makahiki Season in November 2010

with a religious ceremony. DAVIS, HUGHES and KAAHU were allowed the opportunity to observe the ceremony, but were not allowed to participate in any spiritually meaningful way.

130. On or about January 25, 2011, SCF authorized some Native Hawaiian practitioners to gather for the ostensible purpose of observing the closing day of the 2010-11 Makahiki Season, but approximately six weeks earlier than the setting of the Makali`i (Pleiades) Constellation.

131. DAVIS and HUGHES were allowed the opportunity to observe the January 25, 2011 ceremony, but were not allowed to participate in any spiritually meaningful way.

132. KAAHU did not attend the January 25, 2010 ceremony because the Makahiki Season because the Makali`i (Pleiades) Constellation had not yet set to mark the ending of the Makahiki Season.

133. HOLBRON was unable to observe the opening or closing day of the 2010-11 Makahiki Season in any meaningful way.

134. In or around August 2010, employees at RRCF denied KEAWE's request to celebrate Makahiki. Pursuant to CCA's administrative procedure, KEAWE then filed timely a formal grievance form seeking reconsideration of the denial.

135. In or around August 2010, employees at RRCF denied KEAWE's grievance concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, KEAWE then filed a timely appeal seeking reconsideration of the denial.

136. In or around August 2010, the Warden of RRCF denied KEAWE's appeal concerning the denial of their request to celebrate Makahiki. Pursuant to CCA's administrative procedure, KEAWE has now administratively exhausted this claim.

137. As a consequence of the Warden's denial, above, neither KEAWE nor KANE were able to observe the 2009-2010 Makahiki Season in a spiritually meaningful way.

138. On information and belief, Plaintiffs have exhausted all of the administrative remedies required by all of Defendants in relation to their request to practice and express their religion and perform other activities that are essential to expressing their religious belief and faith.

CLAIMS FOR RELIEF

VIOLATION OF FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION RELATING TO FREE EXERCISE OF RELIGION

139. Plaintiffs re-allege paragraphs 1 through 138, and incorporate them herein by reference.

140. The Free Exercise Clause of the First Amendment to the U.S. Constitution provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]."

141. 42 U.S.C. § 1983 provides in relevant part: "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . ."

142. The Free Exercise Clause of the First Amendment is applied to the Defendants STATE OF HAWAII through the Fourteenth Amendment of the U.S. Constitution as state actors.

143. The Free Exercise Clause of the First Amendment applies to Defendant CCA, through the Fourteenth Amendment to the U.S. Constitution because its task of supervising and

controlling State of Hawai'i inmates is a task that is traditionally and fundamentally performed by the government, and thus is state actor.

COUNT I: AS TO DAILY WORSHIP VIOLATIONS

144. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize when inmates of a certain religion can congregate for group worship.

145. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that refuses Native Hawaiian Practitioners from meeting with each other on a daily basis for group worship.

146. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that refuses Native Hawaiian Practitioners from meeting with each other on a daily basis for group worship.

147. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE to meet with other Native Hawaiian practitioners on a daily basis for group worship in violation of the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

148. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, KANE and KEAWE from meeting with other Native Hawaiian practitioners on a daily basis for group

worship in violation of the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

149. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

150. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize when administrative segregation inmates of a certain religion can meet with a spiritual advisor on a regular basis.

151. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice refusing Native Hawaiian Practitioners who are in administrative segregation from regularly meeting with a spiritual advisor on a regular basis.

152. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in CCA's policy of refusing HOLBRON from meeting with a spiritual advisor on a regular basis for worship activities in violation of the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

153. Consequently, Defendant CCA's policy of refusing HOLBRON from meeting with a spiritual advisor on a regular basis for worship activities in violation of the Free Exercise

Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

154. As a consequence of the above violation, HOLBRON has suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

155. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT II: AS TO OBSERVANCE OF MAKAHIKI VIOLATIONS

156. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize whether inmates of a certain religion can observe important religious days with certain protocol.

157. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows only some Native Hawaiian Practitioners to observe the opening and closing days of Makahiki Season with certain religious protocol.

158. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice refusing all Native Hawaiian Practitioners from observing the opening and closing days of Makahiki Season with certain religious protocol.

159. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and

KEAWE to observe the opening and closing days of the Makahiki Season violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

160. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, and KAAHU, KANE and KEAWE from observing the opening and closing days of the Makahiki Season violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

161. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

162. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs that permits its contractor, Defendant CCA to authorize whether administrative segregation inmates of a certain religion can meet with a spiritual advisor to observe important religious days with specific protocol.

163. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice refusing Native Hawaiian Practitioners who are in administrative segregation from meeting with a spiritual advisor to observe the opening and closing of Makahiki with specific protocol.

164. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to

observe important religious days with specific protocol violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

165. Consequently, Defendant CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to observe the opening and closing of Makahiki with specific protocol violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

166. As a consequence of the above violation, HOLBRON has suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

167. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT III: AS TO ACCESS TO SACRED ITEMS VIOLATIONS

168. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize whether inmates can access sacred items critical to the worship of their faith.

169. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners access to the following sacred items: *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).

170. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from access to the following sacred items: *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).

171. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's access the above listed sacred items violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

172. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, KANE and KEAWE to access the above listed sacred items violates the Free Exercise Clause of the

First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

173. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

174. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs that permits its contractor, Defendant CCA to authorize whether administrative segregation inmates of a certain religion can meet with a spiritual advisor to utilize certain sacred objects critical to the worship of their faith.

175. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice refusing Native Hawaiian Practitioners who are in administrative segregation from meeting with a spiritual advisor to assist in the use of *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).

176. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to access

those sacred items violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

177. Consequently, Defendant CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to access those sacred items violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

178. As a consequence of the above violation, HOLBRON has suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

179. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT IV: AS TO ACCESS TO SACRED SPACE VIOLATIONS

180. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize a sacred space for inmates to engage in religious worship activities.

181. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from establishing a sacred outdoor space with at least two spiritually significant stones for group worship.

182. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from establishing a sacred outdoor space with at least two spiritually significant stones for group worship.

183. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish a sacred outdoor space with at least two spiritually significant stones for group worship violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

184. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish a sacred outdoor space violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

185. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

186. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT V: AS TO ACCESS TO SPIRITUAL ADVISOR VIOLATIONS

187. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize inmates to meet with a spiritual advisor on a regular basis.

188. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from meeting with a spiritual advisor on a regular basis.

189. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from to meet with a spiritual advisor on a regular basis.

190. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual advisor on a regular basis violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

191. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual advisor on a regular basis violates the Free Exercise Clause of the First Amendment to the U.S. Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

192. As a consequence of the above violation, DAVIS, HUGHES, KAAHU HOLBRON, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

193. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

**VIOLATION OF EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION**

194. Plaintiffs re-allege paragraphs 1 through 138, and incorporate them herein by reference.

195. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that no State shall "deny to any person within its jurisdiction, the equal protection of the laws."

196. 42 U.S.C. § 1983 provides in relevant part: "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . ."

197. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution is applied to the Defendants STATE OF HAWAII through the Fourteenth Amendment of the U.S. Constitution as state actors.

198. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution applies to Defendant CCA, because its task of supervising and controlling State of

Hawai'i inmates is a task that is traditionally and fundamentally performed by the government, and thus is state actor.

COUNT VI: AS TO DAILY WORSHIP VIOLATIONS

199. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to meet on a daily basis for group worship and thus advances and give preference of those faiths over Plaintiffs' religion.

200. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet on a daily basis for group worship and thus advances and gives preference of those faiths over Plaintiffs' religion.

201. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet on a daily basis for group worship and thus advances and give preference of those faiths over Plaintiffs' religion.

202. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to congregate on a daily basis at either the Saguaro or Red Rock Correctional Centers for Native Hawaiian religious services, while allowing other state prisoners at Saguaro

and Red Rock Correctional Centers of other faiths to meet on a daily basis for group worship has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

203. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to congregate on a daily basis at either the Saguaro or Red Rock Correctional Centers for Native Hawaiian religious services, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet on a daily basis for group worship has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

204. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

205. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT VII: AS TO OBSERVANCE OF MAKAHIKI VIOLATIONS

206. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to observe their important holidays with specific religious protocol, and thus advances and gives preference of those faiths over Plaintiffs' religion.

207. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to observe their important holidays with specific religious protocol, and thus advances and give preference of those faiths over Plaintiffs' religion.

208. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to observe their important holidays with specific religious protocol, and thus advances and gives preference of those faiths over Plaintiffs' religion.

209. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to actively participate in the opening and closing days of the Makahiki season with specific religious protocol, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to observe their important holidays has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

210. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to actively participate in the opening and closing days of the Makahiki season with specific religious protocol, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to observe their important holidays has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

211. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

212. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to assist in observing important holidays with specific religious protocol, and thus advances and gives preference of those faiths over Plaintiffs' religion.

213. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to assist in the observance of important holidays with specific religious protocol, and thus advances and give preference of those faiths over Plaintiffs' religion.

214. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to observe the opening and closing days of the Makahiki season with specific religious protocol, while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to assist in observing their important holidays has denied Plaintiffs the equal protection of the laws as

guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

215. Consequently, Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to observe the opening and closing days of the Makahiki season with specific religious protocol, while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to assist in observing their important holidays has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

216. As a consequence of the above violation, HOLBRON have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

217. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT VIII: AS TO ACCESS TO SACRED ITEMS VIOLATIONS

218. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions access to sacred items to practice their faith, and thus advances and gives preference of those faiths over Plaintiffs' religion.

219. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions access to sacred items to practice their faith, and thus advances and gives preference of those faiths over Plaintiffs' religion.

220. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions access to sacred items to practice their faith, and thus advances and gives preference of those faiths over Plaintiffs' religion.

221. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request access *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) while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to access their respective sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

222. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to access *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) while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to access their respective sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

223. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

224. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to access important sacred items for worship, and thus advances and gives preference of those faiths over Plaintiffs' religion.

225. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a

corporate policy and/or customary practice that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to access important sacred items for worship, and thus advances and give preference of those faiths over Plaintiffs' religion.

226. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to access the following items of worship *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) while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to access their sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

227. Consequently, Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to access the following items of worship *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) while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to access their sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

228. As a consequence of the above violation, HOLBRON have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

229. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT IX: AS TO ACCESS TO SACRED SPACE VIOLATIONS

230. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to consecrate a special area for their worship, and thus advances and gives preference of those faiths over Plaintiffs' religion.

231. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to consecrate a special area for their worship, and thus advances and give preference of those faiths over Plaintiffs' religion.

232. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to consecrate a special area for their worship and thus advances and give preference of those faiths over Plaintiffs' religion.

233. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish an area out of doors with two spiritually significant stones for their worship activities, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to consecrate a special area for their worship has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

234. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish an area out of doors with two spiritually significant stones for their worship activities, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to consecrate a special area for their worship has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

235. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

236. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT X: AS TO ACCESS TO SPIRITUAL ADVISOR VIOLATIONS

237. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to meet with a spiritual leader on a regular basis, and thus advances and gives preference of those faiths over Plaintiffs' religion.

238. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet with a spiritual leader on a regular basis, and thus advances and give preference of those faiths over Plaintiffs' religion.

239. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet with a spiritual leader on a regular basis, and thus advances and give preference of those faiths over Plaintiffs' religion.

240. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual leader on a regular basis, while allowing

other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leaders on a regular basis has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

241. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual leader on a regular basis, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leaders on a regular basis has denied Plaintiffs the equal protection of the laws as guaranteed by the Equal Protection Clause of the Fourteenth Amendments to the U.S. Constitution.

242. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

243. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

**VIOLATIONS OF ARTICLE I, SECTION 4 OF THE HAWAII STATE
CONSTITUTION RELATING TO FREE EXERCISE OF RELIGION**

244. Plaintiffs re-allege paragraphs 1 through 138, and incorporate them herein by reference.

245. Article I, Section 4 of the Hawaii State Constitution provides that "[n]o law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof.. ."

246. The Free Exercise Clause of the Hawaii State Constitution applies to the Defendants STATE OF HAWAII because they are state actors.

247. The Free Exercise Clause of the Hawaii State Constitution applies to Defendant CCA because it is the contractually authorized legal custodian of those individuals incarcerated under the laws of the State of Hawaii, and 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 and RRCF are state actors.

COUNT XI: AS TO DAILY WORSHIP VIOLATIONS

248. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize when inmates of a certain religion can congregate for group worship.

249. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that refuses Native Hawaiian Practitioners from meeting with each other on a daily basis for group worship.

250. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that refuses Native Hawaiian Practitioners from meeting with each other on a daily basis for group worship.

251. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE to meet with other Native Hawaiian practitioners on a daily basis for group worship in violation of Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

252. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, KANE and KEAWE from meeting with other Native Hawaiian practitioners on a daily basis for group worship in violation of Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

253. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

254. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize when administrative segregation inmates of a certain religion can meet with a spiritual advisor on a regular basis.

255. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice refusing Native Hawaiian Practitioners who are in administrative segregation from regularly meeting with a spiritual advisor on a regular basis.

256. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in CCA's policy of refusing HOLBRON from meeting with a spiritual advisor on a

regular basis for worship activities in violation of Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

257. Consequently, Defendant CCA's policy of refusing HOLBRON from meeting with a spiritual advisor on a regular basis for worship activities in violation of Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

258. As a consequence of the above violation, HOLBRON has suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

259. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XII: AS TO OBSERVANCE OF MAKAHIKI VIOLATIONS

260. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize whether inmates of a certain religion can observe important religious days with certain protocol.

261. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows only some Native Hawaiian Practitioners to observe the opening and closing days of Makahiki Season with certain religious protocol.

262. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice refusing all Native Hawaiian Practitioners from observing the opening and closing days of Makahiki Season with certain religious protocol.

263. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE to observe the opening and closing days of the Makahiki Season violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

264. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, and KAAHU, KANE and KEAWE from observing the opening and closing days of the Makahiki Season violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

265. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

266. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs that permits its contractor, Defendant CCA to authorize whether administrative segregation inmates of a certain religion can meet with a spiritual advisor to observe important religious days with specific protocol.

267. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice refusing Native Hawaiian Practitioners who are in administrative segregation from meeting with a spiritual advisor to observe the opening and closing of Makahiki with specific protocol.

268. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to observe important religious days with specific protocol violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

269. Consequently, Defendant CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to observe the opening and closing of Makahiki with specific protocol violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

270. As a consequence of the above violation, HOLBRON has suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

271. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XIII: AS TO ACCESS TO SACRED ITEMS VIOLATIONS

272. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which

permits its contractor, Defendant CCA to authorize whether inmates can access sacred items critical to the worship of their faith.

273. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners access to the following sacred items: *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).

274. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from access to the following sacred items: *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).

275. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's access the above listed sacred items violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

276. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, KANE and KEAWE to access the above listed sacred items Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

277. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

278. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs that permits its contractor, Defendant CCA to authorize whether administrative segregation inmates of a certain religion can meet with a spiritual advisor to utilize certain sacred objects critical to the worship of their faith.

279. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice refusing Native Hawaiian Practitioners who are in administrative segregation from meeting with a spiritual advisor to assist in the use of *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).

280. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to access those sacred items Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

281. Consequently, Defendant CCA's policy of refusing HOLBRON from meeting with a spiritual advisor to access those sacred items Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

282. As a consequence of the above violation, HOLBRON has suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

283. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XIV: AS TO ACCESS TO SACRED SPACE VIOLATIONS

284. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which

permits its contractor, Defendant CCA to authorize a sacred space for inmates to engage in religious worship activities.

285. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from establishing a sacred outdoor space with at least two spiritually significant stones for group worship.

286. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from establishing a sacred outdoor space with at least two spiritually significant stones for group worship.

287. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish a sacred outdoor space with at least two spiritually significant stones for group worship Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

288. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish a sacred outdoor space violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

289. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

290. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XV: AS TO ACCESS TO SPIRITUAL ADVISOR VIOLATIONS

291. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize inmates to meet with a spiritual advisor on a regular basis.

292. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from meeting with a spiritual advisor on a regular basis.

293. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that prevents Native Hawaiian Practitioners from to meet with a spiritual advisor on a regular basis.

294. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual advisor on a regular basis violates Article

I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

295. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual advisor on a regular basis violates Article I, Section 4 of the Hawaii State Constitution because said policies and procedures are not reasonably related to legitimate penological interests.

296. As a consequence of the above violation, DAVIS, HUGHES, KAAHU HOLBRON, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

297. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

**VIOLATION OF ARTICLE I, SECTION 5 OF THE HAWAII STATE CONSTITUTION
RELATING TO EQUAL PROTECTION**

298. Plaintiffs re-allege paragraphs 1 through 138, and incorporate them herein by reference.

299. Article I, Section 5 of the Hawaii State Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

300. The Equal Protection Clause of the Hawaii State Constitution applies to the Defendants STATE OF HAWAII because they are state actors.

301. The Equal Protection Clause of the Hawaii State Constitution applies to Defendant CCA because it is the contractually authorized legal custodian of those individuals

incarcerated under the laws of the State of Hawaii, and 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 and RRCF are state actors.

COUNT XVI: AS TO DAILY WORSHIP VIOLATIONS

302. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to meet on a daily basis for group worship and thus advances and give preference of those faiths over Plaintiffs' religion.

303. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet on a daily basis for group worship and thus advances and gives preference of those faiths over Plaintiffs' religion.

304. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet on a daily basis for group worship and thus advances and give preference of those faiths over Plaintiffs' religion.

305. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and

KEAWE's request to congregate on a daily basis at either the Saguaro or Red Rock Correctional Centers for Native Hawaiian religious services, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet on a daily basis for group worship has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

306. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to congregate on a daily basis at either the Saguaro or Red Rock Correctional Centers for Native Hawaiian religious services, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet on a daily basis for group worship has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

307. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

308. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XVII: AS TO OBSERVANCE OF MAKAHIKI VIOLATIONS

309. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain

religions to observe their important holidays with specific religious protocol, and thus advances and gives preference of those faiths over Plaintiffs' religion.

310. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to observe their important holidays with specific religious protocol, and thus advances and give preference of those faiths over Plaintiffs' religion.

311. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to observe their important holidays with specific religious protocol, and thus advances and gives preference of those faiths over Plaintiffs' religion.

312. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to actively participate in the opening and closing days of the Makahiki season with specific religious protocol, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to observe their important holidays has denied Plaintiffs the equal protection of the laws as guaranteed Article I, Section 5 of the Hawaii State Constitution.

313. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to actively participate in the opening and closing days of the Makahiki season with specific religious protocol, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to observe their important holidays

has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

314. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

315. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to assist in observing important holidays with specific religious protocol, and thus advances and gives preference of those faiths over Plaintiffs' religion.

316. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to assist in the observance of important holidays with specific religious protocol, and thus advances and give preference of those faiths over Plaintiffs' religion.

317. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to observe the opening and closing days of the Makahiki season with specific religious protocol, while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to assist in

observing their important holidays has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

318. Consequently, Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to observe the opening and closing days of the Makahiki season with specific religious protocol, while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to assist in observing their important holidays has denied Plaintiffs the equal protection of the laws as guaranteed Article I, Section 5 of the Hawaii State Constitution.

319. As a consequence of the above violation, HOLBRON have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

320. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XVIII: AS TO ACCESS TO SACRED ITEMS VIOLATIONS

321. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions access to sacred items to practice their faith, and thus advances and gives preference of those faiths over Plaintiffs' religion.

322. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a

corporate policy and/or customary practice that allows inmates of only certain religions access to sacred items to practice their faith, and thus advances and gives preference of those faiths over Plaintiffs' religion.

323. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions access to sacred items to practice their faith, and thus advances and gives preference of those faiths over Plaintiffs' religion.

324. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request access *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) while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to access their respective sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

325. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to access *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) while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to access their respective sacred items has denied Plaintiffs the equal protection of the laws as guaranteed Article I, Section 5 of the Hawaii State Constitution.

326. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be redressed by declaratory and injunctive relief.

327. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to access important sacred items for worship, and thus advances and gives preference of those faiths over Plaintiffs' religion.

328. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows administratively segregated inmates of only certain religions to meet with a spiritual advisor to access important sacred items for worship, and thus advances and give preference of those faiths over Plaintiffs' religion.

329. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to access the following items of worship *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) while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to access their sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

330. Consequently, Defendant CCA's policy of refusing HOLBRON's request to meet with a spiritual leader to access the following items of worship *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) while allowing other administratively segregated state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leader to access their sacred items has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

331. As a consequence of the above violation, HOLBRON have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

332. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XIX: AS TO ACCESS TO SACRED SPACE VIOLATIONS

333. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to consecrate a special area for their worship, and thus advances and gives preference of those faiths over Plaintiffs' religion.

334. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to consecrate a special area for their worship, and thus advances and give preference of those faiths over Plaintiffs' religion.

335. Upon information and belief, Defendant CCA authorized Bruno Stolz, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to consecrate a special area for their worship and thus advances and give preference of those faiths over Plaintiffs' religion.

336. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish an area out of doors with two spiritually significant stones for their worship activities, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to consecrate a special area for their worship has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

337. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, KANE and KEAWE's request to establish an area out of doors with two spiritually significant stones for their worship activities, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to consecrate a special area for their worship has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

338. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

339. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

COUNT XX: AS TO ACCESS TO SPIRITUAL ADVISOR VIOLATIONS

340. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which

permits its contractor, Defendant CCA to exercise a policy that allows inmates of only certain religions to meet with a spiritual leader on a regular basis, and thus advances and gives preference of those faiths over Plaintiffs' religion.

341. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet with a spiritual leader on a regular basis, and thus advances and give preference of those faiths over Plaintiffs' religion.

342. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice that allows inmates of only certain religions to meet with a spiritual leader on a regular basis, and thus advances and give preference of those faiths over Plaintiffs' religion.

343. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual leader on a regular basis, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leaders on a regular basis has denied Plaintiffs the equal protection of the laws as guaranteed by Article I, Section 5 of the Hawaii State Constitution.

344. Consequently, Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE's request to meet with a spiritual leader on a regular basis, while allowing other state prisoners at Saguaro and Red Rock Correctional Centers of other faiths to meet with their respective spiritual leaders on a regular basis has denied Plaintiffs

the equal protection of the laws as guaranteed Article I, Section 5 of the Hawaii State Constitution.

345. As a consequence of the above violation, DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

346. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

**VIOLATION OF ARTICLE XII, SECTION 7 OF THE HAWAII STATE
CONSTITUTION and H.R.S. SECTION 1-1 RELATING TO NATIVE HAWAIIAN
TRADITIONAL AND CUSTOMARY RIGHTS**

347. Plaintiffs re-allege paragraphs 1 through 138, and incorporate them herein by reference.

348. Article XII, Section 7 of the Hawaii State Constitution provides that the State "reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights."

349. Hawaii Revised Statutes Section 1-1 provides in pertinent part: "[t]he common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage..."

350. Article XII, Section 7 of the Hawaii State Constitution and Hawaii Revised Statutes Section 1-1 applies to the Defendants STATE OF HAWAII as state actors.

351. Article XII, Section 7 of the Hawaii State Constitution and Hawaii Revised Statutes Section 1-1 applies to Defendant CCA because it is the contractually authorized legal custodian of those individuals incarcerated under the laws of the State of Hawaii, and 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 and RRCF are state actors.

352. But for Plaintiffs' involuntary seizure from the State of Hawaii to the State of Arizona, Plaintiffs would have continued to practice critical tenets of their Native Hawaiian faith in their respective ahupua'a as their ancestors had done before them.

COUNT XXI: AS TO OBSERVANCE OF MAKAHIKI VIOLATIONS

353. Upon information and belief, the Defendants STATE OF HAWAII are enforcing an official policy, or in the alternative, engaging in a persistent widespread practice of illegally delegating all of their Constitutional and statutory responsibilities owed to Plaintiffs which permits its contractor, Defendant CCA to authorize whether inmates who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 are allowed to engage in traditional and customary practices which originate in, and are interpreted from within the traditional Native Hawaiian culture and community.

354. Upon information and belief, Defendant CCA authorized Todd Thomas, an employee of CCA and Warden for SCF, to serve as its chief policymaker at SCF to enforce a corporate policy and/or customary practice to restrict inmates who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 from engaging in traditional and

customary practices which originate in, and are interpreted from within the traditional Native Hawaiian culture and community.

355. Upon information and belief, Defendant CCA authorized Bruno Stolc, an employee of CCA and Warden for RRCF, to serve as its chief policymaker at RRCF to enforce a corporate policy and/or customary practice to restrict inmates who are descendents of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 from engaging in traditional and customary practices which originate in, and are interpreted from within the traditional Native Hawaiian culture and community.

356. Consequently, Defendant STATE OF HAWAII's actions and or omissions have resulted in Defendant CCA's policy of refusing DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE to meaningfully participate in the recognition of the opening and closing days of the Makahiki Season with specific protocol and the use of sacred items violates Article XII, Section 7 of the Hawaii State Constitution and Hawaii Revised Statutes Section 1-1.

357. Consequently, Defendant CCA's refusal of DAVIS, HUGHES, KAAHU, HOLBRON, KANE and KEAWE to meaningfully participate in the recognition of the opening and closing days of the Makahiki Season with specific protocol and the use of sacred items violates Article XII, Section 7 of the Hawaii State Constitution and Hawaii Revised Statutes Section 1-1.

358. As a consequence of the above violations, Plaintiffs have suffered, and continue to suffer irreparable injury that can only be readdressed by declaratory and injunctive relief.

359. As a direct, proximate and foreseeable result thereof, Plaintiffs have also suffered damages caused by Defendants' violations as described above in amounts to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that Defendants have violated Plaintiffs' rights under the Free Exercise Clause of the First Amendment of the United States Constitution;
2. Declare that Defendants have violated Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
3. Declare that Defendants have violated Plaintiffs' rights under the Free Exercise Clause of the Hawaii State Constitution;
4. Declare that Defendants have violated Plaintiffs' rights under the Equal Protection Clause of the Hawaii State Constitution;
5. Declare that Defendants have violated Plaintiffs' rights under Article XII Section 7 of Hawaii State Constitution and H.R.S. 1-1;
6. Order Defendants to allow Plaintiffs to exercise their Native Hawaiian religion by gathering once daily in observance of the Native Hawaiian Religion as requested by Plaintiffs;
7. Order Defendants to allow Plaintiffs 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;
8. Order Defendants to allow Plaintiffs 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;
9. Order Defendants to allow Plaintiffs 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;

10. Order Defendants to allow Plaintiffs 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;

11. 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 Hawai'i can practice their religion on a regular and equal basis with all other religions represented at correctional facilities;

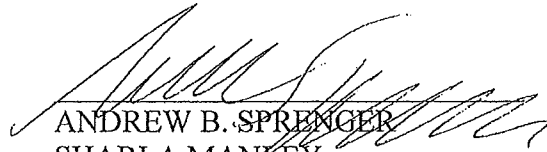
12. Appoint a Special Master to monitor Defendants' compliance with the relief granted by this Court;


13. Grant Plaintiffs compensatory damages against Defendants jointly and severally, in an amount to be proven at trial.

14. Award Plaintiffs their costs, including reasonable attorneys' fees and costs, as authorized by statute.

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

DATED: Honolulu, Hawai'i, February 4, 2011.


ANDREW B. SPRENGER
SHARLA MANLEY
Attorneys for Plaintiffs

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT		CASE NUMBER Civil No. _____
PLAINTIFF RICHARD KAPELA DAVIS, MICHAEL HUGHES, DAMIEN KAAHU, ROBERT A. HOLBRON, JAMES KANE III, and ELLINGTON KEAWE		vs.	DEFENDANT NEIL ABERCROMBIE, in his official capacity as the Governor of the State of Hawaii; JODIE MAESAKA-HIRATA, in her official capacity as Interim Director of the Hawaii Department of Public Safety; CORRECTIONS CORPORATION OF AMERICA	
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) Andrew B. Sprenger 7681 Sharla Manley 8868 1164 Bishop Street, Suite 1205 Honolulu, Hawaii 96813 Tel. No. (808) 521-2302				
<p>TO THE DEFENDANT(S):</p> <p>You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, and answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.</p> <p>If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.</p> <p>A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.</p>				
DATE ISSUED FEB - 7 2011	CLERK F. OTAKE			
I do hereby certify that this is a full, true, and correct copy of the original on file in this office.		CIRCUIT COURT CLERK		