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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ANDREW L. "KICKING HORSE"
13 MCCARTER,

14 Plaintiff,

15 v.

16 JEFFREY BEARD, Director, California
17 Department of Corrections & Rehabilitation
18 (CDCR) , Individually and in his Official
19 Capacity; DAVID SKAGGS, Community
20 Resources Manager, CDCR, Individually and in
21 his Official Capacity; JOHN SOTO, Warden,
22 California State Prison, Los Angeles County
23 (CSP-LAC), Individually and in his Official
24 Capacity; BEVERLY RUSSELL, Acting
25 Community Resources Manager, CSP-LAC,
26 Individually and in her Official Capacity;
27 J. LAZAR, Chaplain, CSP-LAC, Individually and
28 in his Official Capacity,

Defendants.

Case No. CV-15-0094 BRO (CWx)

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF**

Judge: The Honorable Beverly Reid
O'Connell

DEMAND FOR JURY TRIAL

1 Native American sweat lodge ceremonies at the Facility “A” housing unit at
2 California State Prison, Los Angeles County.
3

4 **Defendants**

5 7. Defendant Jeffrey Beard is, and during time periods relevant to the
6 claims alleged in this lawsuit has been, the Secretary of the California Department
7 of Corrections and Rehabilitation, and is being sued in his official and individual
8 capacities. Defendant Beard is vested by California law with the responsibility for
9 the supervision, management and control of the state prisons, and the responsibility
10 for the care, custody, treatment, training, discipline and employment of persons.
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12 8. Defendant John Soto is, and during time periods relevant to the claims
13 alleged in this lawsuit has been, employed as Warden at California State Prison,
14 Los Angeles County, in Lancaster, California, and is being sued in his official and
15 individual capacities. As Warden, Defendant Soto is the chief executive officer of
16 California State Prison, Los Angeles County and is responsible for the custody,
17 treatment, training, and discipline of all inmates under his charge.
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19 9. Defendant David Skaggs is, and during time periods relevant to the
20 claims alleged in this lawsuit has been, a Community Resources Manager
21 employed by Defendant California Department of Corrections and Rehabilitation,
22 and is being sued in his official and individual capacities.
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1 10. Defendant Barbara Russell is, and during time periods relevant to the
2 claims alleged in this lawsuit has been, employed as a Community Resources
3 Manager at California State Prison, Los Angeles County, in Lancaster, California,
4 and is being sued in her official and individual capacities.
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6 11. Defendant J. Lazar is, and during time periods relevant to the claims
7 alleged in this lawsuit has been, employed as a Chaplain at California State Prison,
8 Los Angeles County, in Lancaster, California, and is being sued in his official and
9 individual capacities.
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11 12. At all times relevant to the claims alleged in this lawsuit, Defendants,
12 and each of them, were the agent, employee, and/or joint venturer of their co-
13 defendants, and were acting within the course and scope of such agency,
14 employment, and/or joint venture, with the permission and consent of their co-
15 defendants and defendants. All references to Defendants in the subsequent
16 paragraphs of this complaint refer jointly and severally to all of the above named
17 Defendants.
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22 **III. INTRODUCTION**

23 13. This action arises from the violation of Plaintiff's civil rights under
24 the United States Constitution and the Religious Land Use & Institutionalized
25 Persons Act ("RLUIPA"). This action is brought by a Native American inmate in
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1 the custody of the California Department of Corrections (“CDCR”) and
2 Rehabilitation at California State Prison, Los Angeles County (“CSP-LAC”).
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4 14. It is Plaintiff’s sincerely held religious belief that the sweat lodge is a
5 sacred place of worship and ceremonies are not to be conducted at an area that has
6 been desecrated or is easily subject to intrusion by non-practitioners or
7 unauthorized persons. This belief is acknowledged by the California Department
8 of Corrections and Rehabilitation Departmental Operations Manual, which
9 provides that “[t]he designated area in which the American Indian Sweat Lodge is
10 situated is to be considered sacred. The sanctity must be observed and preserved,
11 not only by inmates, but staff as well.”
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15 15. Defendants have violated Plaintiff’s First Amendment right to the free
16 exercise of religion by forcibly removing the Native American sweat lodge at
17 Facility “A” at CSP-LAC from a protected and secure location and relocating it to
18 an unprotected area on the recreational yard at Facility “A” where it is subject to
19 desecration and intrusion by non-practitioner inmates. Conducting a sweat lodge
20 ceremony at the unprotected and desecrated location on the Facility “A”
21 recreational yard substantially burdens the exercise of Plaintiff’s sincere religious
22 beliefs.
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27 16. Whereas other religious denominations at CSP-LAC are afforded
28 semi-private areas that are not accessible by non-practitioners during religious

1 ceremonies, the Native American inmates must now endure direct and close
2 critical observation, derogatory verbal comments, and other physical interference
3 by non-practitioner inmates and staff during the ceremonies due to the unprotected
4 nature of the new sweat lodge area on the yard.
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7 17. The new sweat lodge area on the recreational yard has already been
8 subjected to repeated acts of desecration and intrusion by non-Native American
9 inmates. Plaintiff has observed trash, a dead animal, and recreational equipment,
10 such as soccer balls and volley balls, inside the unprotected sweat lodge area on the
11 Facility "A" yard.
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14 18. A sweat lodge ceremony necessarily involves the use of a fire pit and
15 hot stones, all of which are in close proximity to the participants in the ceremony.
16 Therefore, the sweat lodge area must be protected from possible accidental or
17 intentional incursion by errant objects and non-Native practitioners in order to
18 protect the physical safety of participants during the ceremonies.
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21 19. Defendants have rejected an alternative secure area proposed by
22 Plaintiff that would be less restrictive of the exercise of his religious beliefs, but
23 Defendants have not demonstrated that they considered the implementation of
24 security measures at the alternative area so as to accommodate Plaintiff's religious
25 concerns about the sanctity and protection of the sweat lodge.
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1 20. Defendants have allowed other inmates to use the same proposed
2 alternative area to grow and maintain a garden, and have recently begun to
3 construct a canine recreation area in the vicinity of that site that will be more
4 highly protected than the new sweat lodge area on the recreational yard.
5

6 21. Defendants have prevented Plaintiff and other Native American
7 inmates from possessing necessary religious ceremonial items that are required to
8 be allowed by Defendants' regulations and policies.
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11 22. Defendants have failed to obtain the services of a Native American
12 Spiritual Advisor to provide for the spiritual needs of Plaintiff and other Native
13 American inmates. Defendants have rejected several applicants for the Native
14 American Spiritual Advisor position on the basis of undisclosed, alleged criminal
15 violations which may or may not have any bearing on the applicant's ability to
16 safely and legitimately attend to the Native American inmates' spiritual needs.
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19 23. Defendants have instead provided to Plaintiff and other Native
20 American inmates the services of a non-Native American Chaplain, Defendant
21 Lazar, who has been unsupportive of Native American inmates' religious beliefs
22 and practices and prevented Plaintiff and other Native American inmates at CSP-
23 LAC from practicing traditional Native American religious and cultural
24 ceremonies.
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24. For these reasons, Defendants have placed a substantial burden on the free exercise of Plaintiff's religion that is not the least restrictive means of furthering a compelling interest, in violation of RLUIPA, and have violated Plaintiff's right to the free exercise of religion protected by the First Amendment.

IV. FACTUAL ALLEGATIONS

A. Plaintiff's Use of the Native American Sweat Lodge at a Protected and Secure Location Near Facility "A" Prior to the Defendants' Forced Removal and Relocation of the Sweat Lodge to an Unprotected Area.

25. Plaintiff is a person of Native American descent currently incarcerated as an inmate at CSP-LAC, and has been incarcerated at CSP-LAC during all time periods relevant to the claims alleged in this complaint.

26. Plaintiff and other Native American inmates harmed by Defendants' actions are housed at Facility "A" at CSP-LAC. Facility "A" is a Progressive Programming Facility at CSP-LAC that is designed to house inmates with exemplary records of model behavior and provide expanded opportunities for positive rehabilitative development.

27. Plaintiff and other Native American inmates at CSP-LAC are sincere believers in and practitioners of Native American religion.

1 28. The right of Plaintiff and other Native American inmates to practice
2 Native American religion at CSP-LAC is protected by the United States
3 Constitution and other relevant federal laws.
4

5 29. The sweat lodge ceremony is a sacred and central aspect of the
6 traditional Native American religion practiced by Plaintiff and other Native
7 American inmates at CSP-LAC.
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9 30. Native American practitioners of sweat lodge ceremonies consider the
10 sweat lodge to be a sacred place of worship and are prohibited by their sincerely
11 held religious beliefs from constructing a sweat lodge or conducting sweat lodge
12 ceremonies in an area that has been desecrated or is subject to unnecessary
13 interference or unauthorized entry by non-practitioners.
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15 31. Section 101060.9 of the California Department of Corrections &
16 Rehabilitation Departmental Operations Manual provides that “[t]he designated
17 area in which the American Indian Sweat Lodge is situated is to be considered
18 sacred. The sanctity must be observed and preserved, not only by inmates, but
19 staff as well.”
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21 32. The sweat lodge ceremony involves the heating of special rocks called
22 “Grandfathers” in a sacred fire in an open fire pit in the lodge area. The
23 Grandfather rocks are transported inside the lodge and water is poured on the rocks
24 to produce the steam inside the sweat lodge.
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1 33. Every stage of the sweat lodge ceremony, from the construction of the
2 lodge to the exit of the participants at the end of the ceremony, is governed by
3 traditional spiritual practices and customs that are considered sacred to adherents
4 of this form of Native American religion.
5

6 34. For many years, Defendants have accommodated the Native
7 American inmates' exercise of religion at CSP-LAC by allowing them to conduct
8 sweat lodge ceremonies at a secure and protected area located outside of the yard
9 of Facility "A" that was inaccessible to other inmates but within view of and
10 accessible to correctional officers ("Prior Sweat Lodge Location"). The Native
11 American inmates were provided with a portable toilet facility and a water source
12 at the Prior Sweat Lodge Location.
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17 35. Upon information and belief, there have been no serious security
18 incidents associated with or caused by the Native American inmates' use of the
19 sweat lodge at the Prior Sweat Lodge Location.
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21 36. Upon information and belief, the Native American inmates were not
22 required to stop their sweat lodge ceremonies at the Prior Sweat Lodge Location
23 when an alarm sounded on the yard at Facility "A".
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B. Defendants’ Decision to Relocate the Sweat Lodge to an Unprotected Area of the Yard at Facility “A” and Refusal to Relocate the Sweat Lodge to an Alternative Location that is Less Restrictive of Plaintiff’s Exercise of His Religion.

37. In 2013, Defendants and other persons employed by the CDCR and CSP-LAC proposed to build a new medical infirmary building at the Prior Sweat Lodge Location.

38. Defendants thereafter informed Plaintiff and other Native American inmates of the decision to construct the new medical building at the Prior Sweat Lodge Location.

39. Upon learning of Defendants’ plan to construct a new medical building at the old sweat lodge location, Plaintiff and other Native American inmates proposed to relocate the sweat lodge to a secure site (“Proposed Secure Area”) located south of a Dining Hall building situated east of the Facility “A” recreational yard. The Proposed Secure Area is enclosed by a tall fence topped with razor wire and is accessible only by correctional officers who have the key required to unlock the gate.

40. Upon information and belief, the Proposed Secure Area is not within the complete or direct view of certain security control towers. For this reason, Plaintiff proposed to Defendants the installation of a security camera in or near the

1 Proposed Secure Area so that Defendants could directly observe and monitor the
2 sweat lodge area during the ceremonies. Plaintiff proposed to Defendants an
3 additional security measure of posting a correctional officer outside of a Proposed
4 Secure Area during the time that the Native American inmates are conducting the
5 ceremonies. Either of these measures, or other possible security accommodations,
6 would be a less restrictive burden on the Plaintiff's religious exercise than placing
7 the sweat lodge in an unprotected area on the recreational yard at Facility "A".
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11 41. The Fire Marshal at CSP-LAC acknowledged that relocation of the
12 Native American sweat lodge to Proposed Secure Area would not violate any
13 applicable fire codes.
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15 42. Defendants denied Plaintiff's request to relocate the sweat lodge to the
16 Proposed Secure Area.
17

18 43. Defendants broadly asserted that the Proposed Secure Area was not
19 optimal from a security standpoint. Defendants did not address generally or
20 specifically in their denial of Plaintiff's request the Plaintiff's proposal to install
21 surveillance cameras or post a correctional officer near the Proposed Secure Area,
22 or discuss the feasibility of any other security measures that might be taken to
23 accommodate relocation of the sweat lodge to the Proposed Secure Area.
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27 44. Plaintiff appealed Defendants' refusal to relocate the sweat lodge to
28 the area proposed by Plaintiff and other Native American inmates pursuant to CSP-

1 LAC's administrative appeals process. Defendants denied Plaintiff's appellate
2 requests to relocate the sweat lodge area to the Proposed Secure Location.
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4 45. Plaintiff exhausted the administrative appeals process at CSP-LAC.

5 46. Despite Defendants' claim that the Proposed Secure Area is not an
6 optimal location based on security concerns, and upon information and belief,
7 Defendants have for several years allowed non-Native American inmates to
8 maintain a garden within the immediate vicinity of the Proposed Secure Area.
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11 47. Despite Defendants' claim that the Proposed Secure Area is not a
12 secure location, and upon information and belief, Defendants later approved the
13 construction of a canine recreation area in the Proposed Secure Area for use in a
14 canine therapy program available to inmates housed at Facility "A". Defendants
15 did not explain why the security concerns that allegedly motivated their decision to
16 refuse to relocate the Native American sweat lodge to the Proposed Secure Area
17 did not apply to the construction and use of a canine recreation area in that same
18 location.
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22 48. Upon information and belief, Defendants have recently decided to
23 locate the canine recreation area at a site near, but not within, the Proposed Secure
24 Area. Upon information and belief, Defendants have recently installed posts for an
25 eight-foot-high security fence in the planned area of the canine recreation area near
26 the Proposed Secure Area. The fence for the canine recreation area is twice the
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1 height of the sweat lodge area on the Facility “A” recreation yard and therefore
2 affords the canine area more protection and security from unauthorized entry than
3 the sweat lodge area.
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5 **C. Defendants’ Forced Relocation of the Sweat Lodge Area to an**
6 **Unprotected Site on the Recreational Yard at Facility “A”.**
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8 49. The new area on the yard at Facility “A” to which the Defendants
9 have relocated the Native American sweat lodge (“Defendants’ Relocated Sweat
10 Lodge Area”) is inadequately secured against interference and desecration by non-
11 Native American inmates and staff. The fence that separates the Defendants’
12 Relocated Sweat Lodge Area from the rest of the recreational yard is only four feet
13 high.
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15 50. The inadequately secured sweat lodge area on the yard of Facility “A”
16 has been repeatedly invaded by non-Native American inmates, who have jumped
17 the four-foot high fencing to retrieve recreational items such as volleyballs and
18 soccer balls that have fallen into the Defendants’ Relocated Sweat Lodge Area.
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20 51. Plaintiff has observed items of trash and a dead animal inside the
21 Defendants’ Relocated Sweat Lodge Area on the yard at Facility “A”.
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23 52. The inadequate fencing and lack of significant separation of the
24 Defendants’ Relocated Sweat Lodge Area from the rest of the Facility “A” yard
25 will allow non-Native American inmates to stand at or near the sweat lodge area,
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1 freely observe and comment upon the ceremonial proceedings as they occur, and
2 continue to gain physical access to and further desecrate the lodge grounds even
3 though they are not authorized to use the area.
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5 53. The inadequate fencing and lack of significant separation of the
6 Defendants' Relocated Sweat Lodge Area from the rest of the Facility "A" yard
7 poses a significant health and safety risk to participants of the sweat lodge
8 ceremony because of the presence of the sacred fire pit and the heated stones inside
9 the sweat lodge. A recreational item that is intentionally or accidentally thrown or
10 kicked into the Defendants' Relocated Sweat Lodge Area by a non-participant
11 could impact the active fire pit or impact the sweat lodge in such a way as to cause
12 an uncontrolled spread of fire from the fire pit or movement of the heated stones
13 inside the sweat lodge, which are in close proximity to the practitioners inside the
14 lodge.
15

16 54. Upon information and belief, Plaintiff and other Native inmates
17 participating in any sweat lodge ceremony at the Defendants' Relocated Sweat
18 Lodge Area would be required to immediately exit the sweat lodge and lay face
19 down on the ground in the event that a general alarm sounded on the yard or an
20 inmate were being transferred through the yard.
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22 55. There are suitable alternative locations outside of but close to the
23 Facility "A" yard at which the sweat lodge area could be relocated, including the
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location that the Plaintiff and other Native American inmates at CSP-LAC have proposed, and such areas could better protect the sanctity and security of the sweat lodge area while also accommodating necessary security measures.

V. FIRST CLAIM

Violation of the Religious Land Use

& Institutionalized Persons Act

56. Plaintiff refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 55 as if fully set forth in this claim for relief.

57. Defendants' refusal to relocate the Native American sweat lodge to a secure area at CSP-LAC Facility "A" that is free from the threat of desecration by CSP-LAC staff and non-Native American inmates violates Plaintiff's right to practice religion in a penal institution pursuant to the protection of Section 2000cc-1 of the Religious Land Use & Institutionalized Persons Act ("RLUIPA").

58. RLUIPA provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . , even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."

a. The relocation of the sweat lodge to an insecure and unprotected area on the Yard of Facility “A” that is easily accessible by non-Native American inmates and therefore subject to desecration imposes a substantial burden on the religious exercise of Plaintiff and other Native American inmates at CSP-LAC because Plaintiff and other Native American inmates cannot engage in sweat lodge ceremonies at that location without violating their religious beliefs about the sanctity of the sweat lodge grounds and structure, or without fear of being interrupted by the activities of non-practitioners.

b. The substantial burden created by the Defendants' relocation of the lodge to an area that will subject the sweat lodge and the ceremonies performed therein to desecration and interruption by staff and non-Native American inmates does not further a compelling government interest.

c. Even if the Defendants' action is found to further a compelling interest, it is not the least restrictive means of furthering that compelling government interest.

VI. SECOND CLAIM

Violation of the First Amendment

59. Plaintiff refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 58 as if fully set forth in this claim for relief.

1 60. Defendants, acting under color of state law, have violated Plaintiff's
2 First Amendment Right to the free exercise of religion in the following manner:
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4 a. Defendants ordered the destruction of the Native American
5 sweat lodge at the Prior Secure Location in October of 2014. For more than seven
6 months, Defendants have provided no suitable alternative location for Plaintiff and
7 other Native American inmates at Facility "A" to conduct sweat lodge ceremonies.
8

9 b. The new sweat lodge area offered by Defendants is not
10 sufficiently protected from desecration by non-Native American inmates and
11 prison staff. Plaintiff and other Native American inmates must violate their
12 sincerely held religious beliefs if they are to conduct a sweat lodge ceremony at the
13 location on the recreational yard.
14

15 c. Defendants have refused to allow Plaintiff and other Native
16 American inmates to possess items of religious property that are necessary to
17 conduct the sweat lodge ceremonies, even though such items are contained on a list
18 published by CDCR of religious items that Native American inmates are allowed
19 to possess for religious ceremonial purposes.
20

21 d. Defendants have not provided a Native American Spiritual
22 Adviser to Plaintiff or other Native American inmates at CSP-LAC for a period of
23 at least three years. Instead, Defendants have rejected qualified applicants on the
24 basis of undisclosed alleged criminal violations that may or may not have any
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bearing on the applicants' ability to safely and legitimately provide spiritual advisory services to Native American inmates at CSP-LAC.

VII. PRAYER FOR RELIEF

61. Plaintiff respectfully requests that the Court enter a judgment, including, but not limited to:

a. Declaring that the actions, decisions, policies, and/or regulations of Defendants, insofar as they require the Plaintiff and other similarly situated Native American inmates at California State Prison, Los Angeles County to violate their sincerely held religious beliefs by conducting Native American sweat lodge ceremonies in unprotected areas subject to desecration and other direct interference by non-Native American inmates and prison staff, violate RLUIPA and the Plaintiff's First Amendment right to the free exercise of religion;

b. Temporarily and permanently enjoining Defendants from continuing to undertake, implement and enforce such illegal actions, decisions, policies, and/or regulations, including taking punitive measures against Plaintiff in retaliation for the filing of this complaint;

c. Compensatory damages in an amount to be proven at trial;

d. Punitive damages in an amount to be proven at trial;

e. Costs and reasonable attorneys' fees; and

1 f. Such additional and further relief as the Court deems just and
2 equitable.
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4 **VIII. JURY DEMAND**

5 62. Plaintiff hereby demands a trial by jury.
6

7 Respectfully submitted,

8 BERKEY WILLIAMS LLP
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10 Date: June 15, 2015

11 By: /s/ William M. Haney

12 William M. Haney

13 *Attorney for Plaintiff,*

14 *Andrew L. "Kicking Horse" McCarter*
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