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\* = Pro Hac Vice Applications to be Filed

STATE OF HAWAII  
CIRCUIT COURT OF THE FIRST CIRCUIT

Estate of CLIFFORD MEDINA, deceased, by and through BEVERLY LOKELANI MEDEIROS, as Administrator; MOLLIAN WALTJEN; BEVERLY LOKELANI MEDEIROS, in her individual capacity; KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS and ROSEANNA MEDEIROS,

Plaintiffs,

v.

STATE OF HAWAII; HAWAII DEPARTMENT OF PUBLIC SAFETY; JODIE F. MAESAKA-HIRATA, Director, Hawaii Department of Public Safety; CLAYTON FRANK, former Director, Hawaii Department of Public Safety; JOE W. BOOKER, JR., former Deputy Director, Hawaii Department of Public Safety, Corrections Division; TOMMY JOHNSON, former Deputy Director, Hawaii Department of Public Safety, Corrections Division; SCOTT JINBO, Contract Monitor; JEANETTE BALTERO, Contract Monitor; CAROL PAYNE, Health Care Administrator; LARRY HALES, MAUREEN TITO, Program Administrator; SHARI KIMOTO, Mainland Branch Coordinator, Hawaii Department of Public Safety; CORRECTIONS CORPORATION OF AMERICA, a Maryland Corporation; Classification Supervisor CHRISTINE FRAPPIEA; Shift Supervisor JESUS GUILIN; Unit

(Continued Next Page)

Civil Case No. 12-1-1405

COMPLAINT FOR DAMAGES; SUMMONS

JURY TRIAL DEMANDED

(Other Non-Vehicle Tort;  
Wrongful Death;  
Constitutional Rights)

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

Clark Circuit Court, First Circuit

2012 MAY 23 AM 8:46  
FILED  
FIRST CIRCUIT COURT  
STATE OF HAWAII  
ECN 11

Manager FRANK GARCIA; Unit Manager TIMOTHY DOBSON; Senior Correctional Officer ALFRED TREJO; Assistant Warden BEN GRIEGO; Assistant Warden KALUM KALANI; Assistant Warden JODY BRADLEY; Warden TODD THOMAS; Assistant Chief of Security SEAN MEINER; and DOES 1 through 40, inclusive,

Defendants.

## INTRODUCTION

1. Clifford Medina was a citizen of Hawaii. Medina was murdered at the age of 23, while imprisoned in the Saguaro Correctional Center (SCC) in Eloy, Arizona, a prison owned and operated by Defendant Corrections Corporation of America (CCA). He was strangled by his cellmate due to Defendants' deliberate indifference, negligence, recklessness, and flagrant failure to protect him despite having ample notice of the likelihood that his cellmate posed a threat to his safety and wellbeing, and that Medina was particularly vulnerable due to his developmental disability.

2. This was the second murder in SCC within less than four months, and like the first, resulted from Defendants' deliberate indifference to and/or negligence and gross negligence of the victims' safety. Indeed, this murder, like the first one, is traceable to Defendants' inexcusable failures to control prison gangs and to ignore the patent risks to the lives and safety of vulnerable inmates.

3. The State of Hawaii failed in its duties to protect Mr. Medina by abdicating responsibility to inmates in its charge by turning over to Defendant CCA and its agents full responsibility and custody over Mr. Medina. When Hawaii washed its hands of Mr. Medina's welfare, CCA's nationwide pattern of greed-driven corner-cutting and short-staffing took over. Contrary to all sound correctional practice, CCA made no effort to address Mr. Medina's particular vulnerabilities as a person with a developmental disability, and just ran him through its one-size-fits-all, profit-driven incarceration mill.

4. Mr. Medina's Estate brings this action through its Administrator, Beverly Lokelani Medeiros. His mother, Molliann Waltjen, his aunt, Beverly Lokelani Medeiros, his aunt, Kawahinekuuipolani Cliffann Medeiros, and his sister, Roseanna Medeiros also sue as his survivors. They seek to redress the harm inflicted on them when Defendants, having custody of Medina, knowingly placed him in jeopardy of serious injury and death, and failed to follow basic common-sense correctional practices that would have prevented his brutal murder at the hands of a violent cellmate.

5. Plaintiffs bring this tort and civil rights action against Defendants for causing Medina’s wrongful and premature death, for negligence and/or gross negligence, for subjecting Medina to cruel and unusual punishment and depriving him and his family of substantive due process under the Hawaii Constitution, and for violating the First, Eighth, and Fourteenth Amendments to the United States Constitution.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the state claims in this matter pursuant to Hawaii Revised Statutes (“HRS”) § 663-3, and jurisdiction over all Defendants pursuant to HRS § 634-35. Plaintiffs seek compensatory damages in excess of \$25,000.

7. This Court has concurrent jurisdiction over the federal constitutional claims in this matter pursuant to 42 U.S.C. § 1983. *See Howlett v. Rose*, 496 U.S. 356, 378 n. 20 (1990); *Martinez v. California*, 444 U.S. 277, 283-84 n. 7 (1980); *Mankanui v. Dept. of Education*, 6 Haw. App. 397, 721 P. 2d 165 (1986).

8. Venue is proper in this Circuit, because substantial acts and omissions giving rise to the claims occurred in this Circuit. The State of Hawaii and the Hawaii Department of Public Safety (“DPS”) contracted with Corrections Corporation of America (“CCA”) in this Circuit, made the decision to send Medina to SCC from this Circuit, and acted with negligence and/or deliberate indifference to Medina’s safety, or they failed to act at all, from this Circuit. CCA executed its contracts with the State of Hawaii and DPS in this Circuit, and receives payment from the State’s Treasury located in this Circuit. Plaintiff Estate of Clifford Medina is located in Hawaii, Plaintiffs Beverly Lokelani Medeiros, Kawahinekuuipolani Cliffann Medeiros, and Roseanne Medeiros are residents of Hawaii. Plaintiff Molliann Waltjen, Clifford Medina’s mother, currently lives in Virginia but lived in Hawaii during Clifford Medina’s upbringing. Defendants Maesaka-Hirata, Frank, Booker, Jr., Johnson, Jinbo, Baltero, Payne, Hales, Tito, and Kimoto are or were residents of Hawaii. Defendants Frank, Booker, Jr., Johnson, Jinbo, Baltero, Payne, Hales, Tito, and Kimoto acted or failed to act from this Circuit, in ways

that were the legal cause of damages to the Plaintiffs. All of the parties have significant contacts with Hawaii, and many witnesses reside in this Circuit and the State of Hawaii.

**JURY TRIAL DEMANDED**

9. Plaintiffs demand a jury trial.

**PARTIES**

10. Plaintiffs' decedent is CLIFFORD MEDINA, who, at the time of his death, was a 23-year-old citizen of the State of Hawaii, and a prisoner at the Saguaro Correctional Center ("SCC"). CLIFFORD MEDINA was diagnosed in childhood with moderate mental retardation and other impairments. He was a person with particular vulnerabilities that the Defendants in this action knew, or should have recognized and acted upon. BEVERLY LOKELANI MEDEIROS, as Administrator of the Estate of CLIFFORD MEDINA, brings this action pursuant to Hawaii's wrongful death statute, HRS § 663-3, the Hawaii Constitution, and the First, Eighth, and Fourteenth Amendments to the Constitution of the United States, pursuant to 42 U.S.C. § 1983. The survival claims for relief in this matter are based on violations of Clifford Medina's rights under Hawaii state law, and the First and Fourteenth Amendments to the Constitution of the United States, pursuant to 42 U.S.C. § 1983.

11. Plaintiff MOLLIANN WALTJEN is Clifford Medina's mother, and brings her claims individually under HRS § 663-3, the Hawaii Constitution, Hawaii common law, and the First and Fourteenth Amendments to the Constitution of the United States, pursuant to 42 U.S.C. § 1983. Plaintiff MOLLIANN WALTJEN is a former resident of the County of Hawaii, and now resides in Virginia.

12. Plaintiff BEVERLY LOKELANI MEDEIROS ("Loke Medeiros") is Clifford Medina's aunt. Loke Medeiros was Clifford Medina's "hanai mother" and had a role in Clifford Medina's life far beyond what would ordinarily be expected of an aunt. Under Hawaiian family custom, "hanai motherhood" can refer to a range of relationships, including the close loving support, care, and mentorship that a child receives from

particular family members other than parents. During Clifford Medina’s childhood, he lived with his extended family, and saw Loke Medeiros as a hanai mother, and he was raised together with her children. When Clifford Medina was diagnosed in childhood with a developmental disability, Loke Medeiros was his guardian and advocate in the special education system. Loke Medeiros brings her claims individually under HRS § 663-3, the Hawaii Constitution, Hawaii common law, and the First and Fourteenth Amendments to the Constitution of the United States, pursuant to 42 U.S.C. § 1983. Plaintiff BEVERLY LOKELANI MEDEIROS is a resident of the County of Hawaii.

13. Plaintiff KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS (“Kawahine Medeiros”) is Clifford Medina’s aunt. Kawahine Medeiros had a close relationship with Clifford Medina and was his “hanai mother” the year before he was arrested and imprisoned. Kawahine Medeiros maintained contact with Clifford Medina while he was in prison. Kawahine Medeiros was Clifford Medina’s next-of-kin and was the family member notified by SCC authorities regarding his death. Kawahine Medeiros brings her claims individually under HRS § 663-3, the Hawaii Constitution, Hawaii common law, and the First and Fourteenth Amendments to the Constitution of the United States, pursuant to 42 U.S.C. § 1983. Plaintiff KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS is a resident of the City & County of Honolulu on the island of Oahu.

14. Plaintiff ROSEANNA MEDEIROS is Clifford Medina’s sister. Roseanna Medeiros helped to raise Clifford Medina, and with her aunt, Loke Medeiros, acted as Clifford Medina’s advocate in the special education system. Roseanna Medeiros brings her claims individually under HRS § 663-3, the Hawaii Constitution and Hawaii common law, and for violations of her civil rights under the First and Fourteenth Amendments. Plaintiff ROSEANNA MEDEIROS is a resident of the City & County of Honolulu on the island of Oahu.

15. Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY is a public agency and a subsidiary of Defendant STATE OF HAWAII. Both Defendant HAWAII

DEPARTMENT OF PUBLIC SAFETY and Defendant STATE OF HAWAII are charged with preserving the safety of prisoners incarcerated pursuant to orders of the courts of the State of Hawaii. They are subject to tort liability pursuant to the State Tort Liability Act, Hawaii Revised Statutes §§ 662-1, *et seq.* These two Defendants are sued solely for violations of the Hawaii Constitution and Hawaii state law. Under its authority, Defendant STATE OF HAWAII was, at all relevant times mentioned herein, responsible for the acts and/or omissions and the policies, procedures, customs, and practices of the HAWAII DEPARTMENT OF PUBLIC SAFETY, and for its officers, managers, employees, and/or agents. Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY was, at all relevant times mentioned herein, responsible for the acts and/or omissions and the policies, procedures, customs, and practices of its officers, managers, employees, and/or agents. According to the Hawaii State Auditor: “The Department of Public Safety is responsible for formulating and implementing State policies and objectives for correctional, security, law enforcement, and public safety programs and functions, and maintaining all public or private correctional facilities and services. The Department’s mission is to provide for the safety of the public and state facilities through law enforcement and correctional management.”

16. Defendant JODIE F. MAESAKA-HIRATA is the Director of the Hawaii Department of Public Safety. According to the State Auditor, the Director of the Department of Public Safety “charges, directs, and coordinates the plans, programs, and operations [of DPS] to provide for the safety of people, both residents and visitors, from crimes against people and property.” For purposes of Plaintiffs’ federal law claims, she is sued in her individual capacity, for actions under color of state law.

17. Defendant CLAYTON FRANK is the previous Director of the Hawaii Department of Public Safety. Plaintiffs are informed and believe that Defendant CLAYTON FRANK was the Director of the Department of Public Safety at all times

relevant herein. For purposes of Plaintiffs' federal law claims, he is sued in his individual capacity, for actions under color of state law.

18. Defendant JOE W. BOOKER, JR. served as the Deputy Director of the Hawaii Department of Public Safety, and head of the Corrections Division, from 2011 until April 2012. According to the State Auditor, the Deputy Director for Corrections "provides for the custody, care, and assistance of all persons incarcerated by the courts or otherwise subject to confinement based on an alleged commitment of a criminal offense." Plaintiffs are informed and believe that Defendant JOE W. BOOKER, JR. was also the designated Contract Administrator for the State of Hawaii, charged with administering the contract between the State of Hawaii and CCA, for some or all of the relevant time period. For purposes of Plaintiffs' federal law claims, he is sued in his individual capacity, for actions under color of state law.

19. Defendant TOMMY JOHNSON served as Deputy Director of the Hawaii Department of Public Safety, and head of the Corrections Division, prior to Defendant BOOKER. Plaintiffs are informed and believe that Defendant TOMMY JOHNSON was the Deputy Director for some or all of the relevant time period. For purposes of Plaintiffs' federal law claims, he is sued in his individual capacity, for actions under color of state law.

20. Defendant SCOTT JINBO is a Contract Monitor and a member of the Audit Team charged by Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY with assessing Defendant CCA's compliance with its contract to house Hawaii prisoners. For purposes of Plaintiffs' federal law claims, he is sued in his individual capacity, for actions under color of state law.

21. Defendant JEANETTE BALTERO is a Contract Monitor and a member of the Audit Team charged by Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY with assessing Defendant CCA's compliance with its contract to house Hawaii prisoners.



For purposes of Plaintiffs' federal law claims, she is sued in her individual capacity, for actions under color of state law.

22. Defendant CAROL PAYNE is a Health Care Administrator and a member of the Audit Team charged by Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY with assessing Defendant CCA's compliance with its contract to house Hawaii prisoners. For purposes of Plaintiffs' federal law claims, she is sued in her individual capacity, for actions under color of state law.

23. Defendant LARRY HALES is a Substance Abuse Administrator and a member of the Audit Team charged by Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY with assessing Defendant CCA's compliance with its contract to house Hawaii prisoners. For purposes of Plaintiffs' federal law claims, he is sued in his individual capacity, for actions under color of state law.

24. Defendant MAUREEN TITO is a Program Administrator and a member of the Audit Team charged by Defendant HAWAII DEPARTMENT OF PUBLIC SAFETY with assessing Defendant CCA's compliance with its contract to house Hawaii prisoners. For purposes of Plaintiffs' federal law claims, she is sued in her individual capacity, for actions under color of state law.

25. Defendant SHARI KIMOTO is the Mainland Branch Coordinator for the HAWAII DEPARTMENT OF PUBLIC SAFETY, charged with overseeing the operations of mainland facilities holding Hawaii prisoners. On the document labeled as "State of Hawaii Agreement, Contract No. 55331," available on the HAWAII DEPARTMENT OF PUBLIC SAFETY website, which appears to be the body of the State's contract with CCA, Defendant SHARI KIMOTO appears as the State's contact person. Defendant SHARI KIMOTO also led the Audit Team charged with assessing Defendant CCA's compliance with its contract to house Hawaii prisoners. For purposes of Plaintiffs' federal law claims, she is sued in her individual capacity, for actions under color of state law.

26. Defendant CORRECTIONS CORPORATION OF AMERICA (“CCA”) is a Maryland corporation with its principal place of business in Nashville, Tennessee. CCA “manages approximately 75,000 inmates including males, females, and juveniles at all security levels, in more than 60 facilities under contract for management in 19 states and the District of Columbia.” <http://www.cca.com/facilities/> (last accessed 5/7/2012). Between 1995 and 2010, CCA and the State of Hawaii entered into no-bid contracts to house prisoners on the mainland, in facilities including SCC, located in Eloy, Arizona.

27. Defendant CHRISTINE FRAPPIEA was employed by CCA at SCC at the time of Medina’s death. She served as Classification Supervisor for SCC from 2007 until at least March of 2010. According to a 2007 edition of the SCC Inmate Handbook, the Classification Supervisor “reviews all classification documentation.” Plaintiffs are informed and believe and thereon allege that, as Classification Supervisor, Defendant FRAPPIEA was responsible for applying rational standards to classify and re-classify prisoners at SCC. Her failure to properly apply such standards meant that Medina did not receive any protection for his particular vulnerabilities as a person with a developmental disability, and that he was housed with Silva in disregard of CCA’s documented allegations of incompatible gang involvement.

28. Defendant TODD THOMAS was a CCA employee and the Warden of SCC at the time of Medina’s death. As Warden of SCC, Defendant THOMAS was responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and control of CCA employees and/or agents assigned to SCC, including Defendants FRAPPIEA, GIULIN, GARCIA, DOBSON, TREJO, GRIEGO, KALANI, MEINER, and some or all of DOES 21 through 40. Defendant THOMAS is and was also responsible for the promulgation of the policies and procedures and allowance of the practices and customs pursuant to which the acts and omissions of CCA alleged herein were committed.

29. Defendant JESUS GIULIN was employed by CCA as a Shift Supervisor at SCC at the time of Medina's death. According to a 2007 edition of the SCC Inmate Handbook, a Shift Supervisor "is responsible for the supervision of the administrative and operational security activities on a specific shift."

30. Defendant FRANK GARCIA was employed by CCA as a Unit Manager at SCC at the time of Medina's death. According to a 2007 edition of the SCC Inmate Handbook, Unit Managers are "supervisors who work in the living units. They hire workers to work in their area of responsibility as well as coordinate workers for the other departments such as Education, Maintenance, Food Service, Medical Department, etc. The Unit Manager is also responsible for bed/unit moves."

31. Defendant TIMOTHY DOBSON was employed by CCA as a Unit Manager at SCC at the time of Medina's death. According to a 2007 edition of the SCC Inmate Handbook, Unit Managers are "supervisors who work in the living units. They hire workers to work in their area of responsibility as well as coordinate workers for the other departments such as Education, Maintenance, Food Service, Medical Department, etc. The Unit Manager is also responsible for bed/unit moves."

32. Defendant ALFRED TREJO was employed by CCA as a Senior Correctional Officer at SCC at the time of Medina's death. Sergeant Trejo received information regarding the danger of violence created by housing Medina with the cell mate who eventually killed him, but he did nothing in response, other than to make a flippant remark about not caring what happened, "as long as you two don't kill each other."

33. Plaintiffs are informed and believe and thereon allege that Defendants JESUS GIULIN, FRANK GARCIA, TIMOTHY DOBSON, and ALFRED TREJO were responsible for enforcing CCA policies and procedures at SCC at the time of Medina's death.

34. Defendant BEN GRIEGO was employed by CCA as an Assistant Warden at SCC at the time of Medina's death. Plaintiffs are informed and believe and thereon allege that Defendant BEN GRIEGO exercised supervisory authority over Defendants JESUS GIULIN, FRANK GARCIA, TIMOTHY DOBSON, and ALFRED TREJO within the CCA chain of command. Plaintiffs are informed and believe and thereon allege that Defendant BEN GRIEGO was responsible for enforcing CCA policies and procedures at SCC, and that Defendant BEN GRIEGO had additional responsibilities during the times relevant herein, including conducting investigations of violent altercations between prisoners.

35. Defendant JODY BRADLEY was employed by CCA as an Assistant Warden at SCC at the time of Medina's death. Plaintiffs are informed and believe and thereon allege that Defendant JODY BRADLEY exercised supervisory authority over Defendants JESUS GIULIN, FRANK GARCIA, TIMOTHY DOBSON, and ALFRED TREJO within the CCA chain of command. Plaintiffs are informed and believe and thereon allege that Defendant JODY BRADLEY was responsible for enforcing CCA policies and procedures at SCC, and that Defendant JODY BRADLEY had additional responsibilities during the times relevant herein, including conducting investigations of violent altercations between prisoners.

36. Defendant KALUM KALANI was employed by CCA as an Assistant Warden of SCC at the time of Medina's death. Plaintiffs are informed and believe and thereon allege that Defendant KALUM KALANI exercised supervisory authority over Defendants JESUS GIULIN, FRANK GARCIA, TIMOTHY DOBSON, and ALFRED TREJO within the CCA chain of command. Plaintiffs are informed and believe and thereon allege that Defendant KALUM KALANI was responsible for enforcing CCA policies and procedures at SCC.

37. Defendant SEAN MEINER was a CCA employee and the Assistant Chief of Security at SCC at the time of Medina's death. Plaintiffs are informed and believe and

thereon allege that Defendant SEAN MEINER exercised supervisory authority over Defendants JESUS GIULIN, FRANK GARCIA, TIMOTHY DOBSON, and ALFRED TREJO within the CCA chain of command. Plaintiffs are informed and believe and thereon allege that Defendant SEAN MEINER was responsible for enforcing CCA policies and procedures at SCC, and that Defendant SEAN MEINER was specifically charged with maintaining order at SCC during the times relevant herein.

38. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 THROUGH 40 and therefore sue said Defendants by such fictitious names. DOES 1 THROUGH 20 are fictitiously named officers, managers, employees, or agents of the STATE OF HAWAII. DOES 21 THROUGH 40 are fictitiously named officers, managers, employees, or agents of CCA. Plaintiffs will amend this Complaint to allege their true names and capacities and thereon allege that each of the fictitiously named Defendants is responsible in his/her official and/or individual capacity for the occurrences herein alleged, and that Plaintiffs' damages, as herein alleged, were legally caused by their conduct. Plaintiffs have made good faith and diligent efforts to identify said Defendants, including interviewing individuals with knowledge of the claims herein.

39. In addition to the agency relationships described above, Plaintiffs are informed and believe that, for purposes of the state and federal law claims stated herein, every Defendant was an agent of all other Defendants.

### **FACTS COMMON TO ALL CLAIMS**

#### **I. MISTREATMENT AND DEATH OF CLIFFORD MEDINA**

40. Clifford Medina was a person with a developmental disability. At various points in his short and troubled life, he was diagnosed as moderately mentally retarded and as developmentally delayed. His teenage years were spent in foster care and in various institutions for the mentally disabled. Medina's developmental symptoms

included susceptibility to influence by others and lack of the social awareness needed to escape from trouble created by poorly chosen companions. After running away from a mental health group home, he got in trouble with the law. Later, caught for a probation violation, he was sentenced to five years in prison in May 2009.

41. In the Hawaii state prisons and in CCA's SCC prison, Medina was the victim of systematic failures to protect prisoners with developmental disabilities. Neither CCA, nor its officers, managers, employees, or agents, nor the State of Hawaii or DPS, and their officers, managers, employees, or agents did anything to screen Medina for developmental disabilities, to inform themselves of the particular vulnerabilities faced by Medina and other prisoners with developmental disabilities, to take steps to protect Medina and other prisoners with developmental disabilities from serious risks of harm arising from their particular vulnerabilities, to take steps to provide reasonable modifications of prison services, programs and activities and reasonable accommodations necessary for persons with developmental disabilities, including Medina, to receive the benefits of prison services, programs and activities, including the most fundamental prison service, program and activity—that of reasonably safe confinement.

42. The particular vulnerabilities of prisoners with developmental disabilities have been well established in the corrections field for decades and therefore are obvious to any corrections professional. In particular, those with mental retardation, such as Clifford Medina, are slower to adjust to prison routines, have more difficulty in learning regulations, and accumulate more rule infractions than other prisoners. Prisoners with mental retardation are vulnerable to being manipulated and victimized by other inmates in the general population, and exhibit behaviors such as poor judgment, and eagerness to please and be accepted by others.

43. In addition to the systematic lack of proper systems to manage prisoners with developmental disabilities, CCA's facilities held another deadly trap for prisoners with special vulnerabilities such as Clifford Medina. The CCA prisons in which Hawaii

inmates were held were notorious for gang domination and gang warfare. CCA's Hawaii-contracted prisons have a long and well-documented history of gang problems. Competing gangs vie for membership and control in the inmate populations. It is well known to Defendants that members of the dominant Hawaii-based gang at the SCC have engaged in violence, including murders, inside that facility and other prisons where Hawaii inmates are incarcerated for more than ten years prior to Medina's death. Hawaii state officials and CCA officials knew that the danger of violence from members of this gang persisted in CCA's prisons after a July 17, 2005 incident at CCA's Tallahatchie County Correctional Facility (TCCF) in Tutwiler, Mississippi. On that day, a group of prisoners affiliated with the dominant gang took advantage of CCA's failure to maintain security of cell doors and brutally assaulted Hawaii prisoner Ronnie Lonoaea, inflicting massive injuries to his head and face, and leaving him for dead. As a result of the attack, Mr. Lonoaea may never be able to live outside an institution. *See Lonoaea v. CCA*, 665 F. Supp. 2d 677 (N.D. Miss. 2009). Hawaii state officials and CCA officials knew that the danger of violence due to gang influence in the SCC could lead to extreme violence, resulting in death.

44. A mere three and a half months prior to Medina's death, Hawaii prisoner Bronson Nunuha, who, was housed in another pod in the "November" unit where Medina was killed, was punched, kicked, stomped on, and stabbed more than 140 times by two other prisoners who were members of the dominant gang.

45. Held in a system that made no provision for the particular vulnerabilities of persons with developmental disabilities, Medina developed a disciplinary history and, at the time of this death, was placed in administrative segregation. Housed in the general population, with no consideration made for his particular vulnerabilities as a person with the developmental disability, Medina fell prey to the rampant gang politics at SCC. It is well-known to the point of being obvious to corrections professionals that persons with mental impairments are useful to gang leaders for exploitation as pliant recruits. CCA

records allege that at the time of his death Medina was considered a “recruit” for the dominant gang at SCC.

46. CCA and its officers, managers, employees, and agents placed Medina in segregated housing in a cell with Mahinauli Silva, a 22-year-old Hawaii prisoner serving up to 10 years for burglary, theft, and robbery convictions. CCA records demonstrate that CCA officials were aware that Silva was a reluctant member of the dominant Hawaii prison gang, that he had requested protective custody as a result of his fear of violence from other members of that gang, and that, in the period just before Medina’s death, Silva’s situation with the gang created an extreme risk of violence. Silva had notified CCA through written grievances that he had informed leaders of that gang that he wanted to leave the gang, and that the gang had a “blood out, blood in” policy—meaning that new members entered by beating or killing someone, or existing members who tried to leave would be killed. In addition to his gang involvement, Silva was known to CCA and its officials as a person with anger problems, who was likely to be aggressive and violent toward other prisoners.

47. CCA was well aware and notified of Silva’s intended aggression toward his cellmate, Medina. Silva told CCA officials, including Sergeant Alfred Trejo, that they should move Medina to another cell because he would instigate a fight and beat up Medina if he remained in their shared cell. A witness has stated that Sergeant Trejo responded: “As long as you two don’t kill each other, I don’t care.”

48. On the morning of June 8, 2010, sometime after breakfast, Silva and Medina engaged in a heated argument, which developed into a physical altercation. As the fight escalated, Silva put Medina in a “guillotine choke hold,” a choke in which the assailant’s arms are used to encircle the opponent’s neck in a fashion similar to a guillotine. Silva went to the ground and was on his back with Medina’s back resting on his chest, legs wrapped tightly around Medina so that he could not get out of the choke



hold. After holding him in the choke hold for approximately 10 minutes, Silva released Medina.

49. Sometime after Silva released Medina from the choke hold, Defendant Assistant Warden Bradley was conducting rounds in the housing unit. Bradley stood at the cell door, spoke with Silva, observed Medina lying prone on the blue mattress near the front of the cell. After speaking with Silva, Bradley left the cell at approximately 8:21 a.m. and continued on his rounds in the unit, failing to notice anything amiss with Medina. Defendant Sergeant Trejo also came by the cell at one point, spoke with Silva and failed to notice that Medina was motionless and unable to respond. Had Bradley or Trejo followed the minimally sound correctional practice of conducting a “standing count/check” or even of seeking acknowledgment from the prisoners on whose welfare they were purportedly checking, medical help would have been initiated earlier for Medina, and his life might have been saved. Bradley’s and Trejo’s failure to follow these minimally sound correctional practices were caused not only by their individual lapses, but also by policy and practice decisions of the policy making officials and supervisors of the CCA and the Hawaii Defendants.

50. At approximately 8:37 a.m., CCA staff arrived at the cell, in response to an emergency call button that Silva had pushed to request a check on his cell mate who was not breathing. By this time, it was too late. Efforts to resuscitate Medina were unsuccessful, and he was later determined to have died by strangulation.

## **II. SYSTEMIC TOLERANCE OF GANG DOMINATION AND FATALLY INADEQUATE CLASSIFICATION PRACTICES**

51. Plaintiffs are informed and believe and thereon allege that the State of Hawaii and DPS agreed to and tolerated inadequate classification practices at SCC, and that neither the State of Hawaii, nor DPS, nor the individuals charged with monitoring the CCA contracts acted to enforce the terms of those contracts that would have protected

Hawaii prisoners. State officials did nothing, even after Hawaii auditors found understaffing and unabated gang activity at CCA's Arizona facilities. As a result, CCA chose profits over prisoner safety, and dangerous conditions persisted at SCC, which were ignored or condoned by the Hawaii Defendants.

52. From the beginning of its practice of sending Hawaii prisoners to the mainland, DPS and Hawaii officials recognized the dangers of CCA's practice with regard to mixing gang-involved and non-gang involved prisoners, as well as rival gang members, and the dangers of lax supervision of housing units. In a 2001 report on the CCA facility in Florence, Arizona, the auditor wrote that there was a "high error rate" in Hawaii's classifications due to "numerous errors in calculations and documentation of misconducts." The auditor also noted that inmates were sometimes reviewed for classification months after they were scheduled for a review.

53. Neither CCA, nor its officers, managers, employees, or agents, nor the State of Hawaii or DPS, and their officers, managers, employees, or agents did anything to prevent or to mitigate the exceptionally dangerous classification and housing practices at SCC. Instead, many of the individual Defendants employed by the State of Hawaii condoned CCA's decision to value its profit margin over the lives of the Hawaii prisoners entrusted to its care, including Clifford Medina.

54. The State of Hawaii Defendants charged with managing the contracts between Hawaii and CCA, and acting reasonably to preserve the safety of Hawaii's prisoners, acted negligently and/or grossly negligently, recklessly, and/or with deliberate indifference to Medina's safety, or they failed to act at all, despite a wealth of evidence that he was in serious danger of grave injury or death. All Defendants had a duty to exercise ordinary care to preserve the safety of Medina and other prisoners, and their actions fell far short of the applicable standard of care.

55. CCA, the State of Hawaii, DPS, and many of the individual Defendants named here also knew or should have known that housing Medina together with Mahinauli Silva exposed each of them to serious danger of violence.

56. All Defendants had a duty to exercise ordinary care to preserve the safety of Hawaii prisoners at CCA. CCA and its officers, managers, employees, and agents put profits ahead of prisoner safety, and failed to exercise the proper care. CCA's failures, condoned by the Hawaii Defendants, included failure to respond properly to gang infiltration of housing units, failure to recognize the particular vulnerabilities of prisoners with developmental disabilities, ignoring signs that Medina was in danger and refusing his requests to be housed elsewhere, understaffing the housing units, and failing to monitor or oversee dangerous conditions at SCC that directly contributed to Medina's death.

57. The Defendant officials in charge of SCC did not classify prisoners in the Administrative Segregation unit where Medina was killed based on any rational classification system reasonably calculated to preserve the safety of Hawaii prisoners. Following an October 2008 visit to SCC, auditors from the State of Hawaii marked CCA "non-compliant" in three classification-related categories, including "[Classification] Completed Annually by the Facility Classification Officer," and "Special Classification completed for . . . Administrative Segregation." Defendant Shari Kimoto wrote that "HI reclassification has not been completed on a consistent monthly basis and sent to Mainland Branch."

58. Yet the Defendant officers, managers, employees, and agents of the State of Hawaii did not effectively follow up on the 2008 audit. Defendant officers, managers, employees, and agents of the State of Hawaii did not ensure that CCA used the DPS Classification System, or any rational classification system that took into account inmates' propensity for violence, or the vulnerability of prisoners with developmental

disabilities, such as Medina, or that was otherwise reasonably calculated to preserve the safety of Hawaii prisoners.

59. All Defendants knew that in February of 2010, Hawaii prisoner Bronson Nunuha was brutally stabbed and murdered in a gang-related incident, perpetrated by members of the dominant gang in Hawaii prisons, in another pod of the housing unit where Medina was killed. In 2005 and 2007, Hawaii prisoners at TCCF were severely injured in gang-related attacks by members of this same gang. The State of Hawaii and CCA had documented incidents of serious violence against Hawaii prisoners, including a June 2005 fight with a cell mate during which weapons were found at TCCF, the July 2005 attack on Ronnie Lonoaea at TCCF that left Lonoaea permanently disabled by brain injuries and severely disfigured, and a May 2007 attack at TCCF in which the victim's jaw was broken, which was investigated by Defendant Ben Griego.

60. Defendant officers, managers, employees, and agents of DPS co-authored the Hawaii Security Threat Groups Reference Manual, the 2004 edition of which contains detailed pages on the dominant Hawaiian prison gang, indicating that Defendants have been aware of the high propensity for violent, including murder, by members of this gang since at least 1990.

61. Defendants failed to take any action to separate especially vulnerable prisoners from the general population, to protect particularly vulnerable prisoners from double-celling in segregation, and to take account of gang relations in housing decisions.

### **III. DEFENDANTS INADEQUATELY STAFFED SCC HOUSING UNITS, LEADING TO LAPSES IN SECURITY WHICH WERE THE LEGAL CAUSE OF MEDINA'S DEATH.**

62. Paragraph 23(c) of Exhibit A to CCA's contract with the State of Hawaii requires that CCA comply with all mandatory provisions and 90% of all non-mandatory provisions in the American Correctional Association ("ACA") Standards for Adult Correctional Institutions, Fourth Edition, and Supplements. Paragraph 5(1) specifically

requires that “security/control and operating plans shall be in accordance with CCA Policies and ACA Standards.” These Policies and Standards are inadequate to assure reasonable safety of Hawaii’s prisoners. For example, the “Staffing Requirements” Standards in the 4th Edition of the ACA Standards (published in 2003) read in their entirety:

**4-4050:** The staffing requirements for all categories of personnel are determined on an ongoing basis to ensure that inmates have access to staff, programs, and services.

**4-4051:** The institution uses a formula to determine the number of staff needed for essential positions. The formula considers, at a minimum, holidays, regular days off, annual leave, and average sick leave.

**4-4052:** The warden/superintendent can document that the overall vacancy rate among the staff positions authorized for working directly with inmates does not exceed 10 percent for any 18-month period.

63. There is no reference anywhere in these Standards to the number of Correctional Officers needed to preserve the safety of prisoners. The State of Hawaii, and the individual Hawaii defendants, failed to insist on more concrete and definite staffing levels, including a prisoner-to-guard ratio rationally calculated to protect the safety of prisoners. In so doing, they illegally abdicated their responsibility to protect Hawaii citizens incarcerated on the mainland.

64. In any event, Paragraphs 5(1), 23(c), and 28(b) of Exhibit A to Hawaii’s contract with CCA acknowledge Hawaii’s right and duty to oversee and control staffing decisions, and to assess liquidated damages against CCA if positions are not filled and staffing quotas are not met.

65. Despite these contract provisions, neither CCA nor its officers, managers, employees, or agents, nor the Hawaii Defendants, acted to ensure that SCC was properly staffed.

66. Instead CCA, and the individual CCA-employed Defendants named herein, acted deliberately by understaffing SCC, placing Medina and other Hawaii prisoners in mortal danger.

67. Plaintiffs are informed and believe that Defendant officers, managers, employees, and agents of the State of Hawaii were aware of the CCA policies and practices that valued profits over the safety of Hawaii prisoners, yet they condoned systematic understaffing of SCC. In numerous audits or monitoring reports signed by Defendant Kimoto while Medina was housed at SCC, CCA was marked “compliant” in the areas of “Security Staffing Plan,” “24-Hour Staffing Plan,” and “Case Managers.” In an audit report dated October 27-29, 2008, Defendant Kimoto wrote that SCC was operating “at 95% staffing.”

68. In December 2010, State Auditor Marion M. Higa found that the State of Hawaii had almost completely abdicated its responsibility to oversee the treatment of Hawaii prisoners on the mainland. She wrote that DPS “has no written policies or procedures for contract administration, and the administrator and staff readily accepted CCA’s representations and conclusions of its performance without verifying statements against documented evidence.”

69. Defendant officers, managers, employees, and agents of the State of Hawaii agreed to inadequate staffing levels, ignored the dangerous conditions revealed during audits of SCC, and/or failed to assess damages or other contractual sanctions against CCA for understaffing, which was a legal cause of the injuries that Plaintiffs suffered.

**IV. HAWAII PROVIDED CCA WITH A NO-BID CONTRACT TO HOUSE PRISONERS ON THE MAINLAND, AND RETAINED AUTHORITY TO MANAGE, SUPERVISE, AND MONITOR CONDITIONS AND STAFFING AT CCA FACILITIES.**

70. Hawaii entered into contracts with CCA from 1995 until 2011. Under the terms of those contracts, CCA housed prisoners in Arizona facilities at all times relevant to this Complaint. SCC is the largest of these facilities. At the time of Medina's death, SCC housed approximately 1,871 Hawaii prisoners.

71. CCA secured the \$66 million contract in effect when Medina was killed via a no-bid process, about which the Hawaii State Auditor raised serious questions. In a December 2010 Report, the Auditor wrote as follows:

**Circumventing the law**

In 2006, the past department director signed an inter-governmental agreement (IGA) with the City of Eloy, Arizona, to consolidate housing for Hawai'i inmates to three prisons owned and operated by Corrections Corporation of America (CCA), a for-profit provider of correctional facilities. At the time, the corporation was building a \$95 million prison in Saguaro, Arizona, specifically for Hawai'i inmates.

As the name indicates, IGAs are agreements that involve government-to-government transactions. These agreements are exempt from competitive procurement methods that state agencies must generally employ when soliciting proposals, a requirement of the Hawai'i Public Procurement Code. However, in the department's IGA with Eloy, the department actually conducts all transactions directly with CCA. We found no evidence that Eloy sub-contracted inmate services to CCA, nor is the city compensated for its role in the agreement. In the State chief procurement officer's opinion, such a contract inappropriately used the IGA exemption and is circumventing the law. Through this misuse of the

exemption, the department was able to secure CCA as its preferred provider. ...

We found that the department has no written policies or procedures for contract administration, and the administrator and staff readily accepted CCA's representations and conclusions of its performance without verifying statements against documented evidence.

72. As alleged below, CCA has not met its obligations under its contract to maintain reasonable levels of safety for Hawaii citizens in its custody.

73. Medina was transferred to SCC and housed there pursuant to the contract under which both the State of Hawaii and CCA retained responsibility to preserve the safety of Hawaii prisoners.

74. The DPS website contains a document labeled as "State of Hawaii Agreement, Contract No. 55331." Although the bottom of each page of that document reads "Exhibit A," the provisions appear to be from the body of a contract between the State and CCA. Those provisions include the following:

- a. Hawaii must provide information to CCA upon inmate transfer, including an "Inmate Classification Score," (§ 3c) and both the "State and the facility staff" have input into inmate classifications (§§ 13 & 24i);
- b. CCA is responsible for staffing SCC "in accordance with CCA policies and [American Correctional Association] standards." CCA must give the Hawaii Department of Public Safety "copies of its staffing pattern and the identification of all mandatory posts" and "copies of any staffing pattern changes." (§ 51);
- c. CCA must provide "the State with office space, telephone and computer access for the on-site monitor that the State may employ" (§ 24j);



- d. Hawaii retains broad powers to monitor compliance, inspect premises, records, and information (§§ 25-27), and to review and approve “inmate transfers, classification custody level changes, determination of release dates, parole eligibility, and work line salaries” (§ 27); and
- e. CCA must make substantial, regular reports to Hawaii:

[CCA] shall provide to the [State] progress reports every 6 months summarizing each Inmate’s conduct, adjustment, and program participation, and recommendations regarding the Inmate’s continued placement in ... SCC, and an annual consideration for reclassification. Semiannual reports shall be submitted no later than 10 working days after the end of each 6-month period.

... SCC shall submit the following reports to the [State] by the 5th working day of each month:

- a. Name and number of Inmates placed in disciplinary, administrative or medical segregation, along with the reason for placement and the dates of placement;
- b. Name and number of Inmates who are in educational, vocational training, treatment, and other programs;
- c. Name and number of Inmates who are assigned to jobs, along with the title of their jobs, hours of work, and rate of pay;
- d. Monthly grievance log containing Inmate's name, description of grievance and outcome of grievance;
- e. Narrative of Facility highlights, serious incidents, and other significant issues; and
- f. Summary reports on the results of urinalysis conducted on Inmates pursuant to this Contract; and
- g. Staffing plan patterns.

[CCA] shall provide the State with copies of reports of inspections conducted by local fire, health, and other regulatory agencies. (§ 32).

See <http://hawaii.gov/psd/corrections/institutions-division/prisons/contracts/ARIZONA%20Contract.PDF>, last accessed 5/22/2012.

75. DPS has developed and promulgated an Inmate Classification System to govern the housing of prisoners to prevent known risks of serious harm. Plaintiffs are informed and believe and thereon allege that, at the time of Medina's death, the Inmate Classification System was inadequate to protect Medina and other Hawaii inmates from known risks of serious harm and death.

76. Paragraph 23(c) of Exhibit A to CCA's contract with the State of Hawaii requires that CCA comply with all mandatory provisions and 90% of all non-mandatory provisions in the ACA Standards for Adult Correctional Institutions, Fourth Edition, and Supplements. ACA Standards 4-4295 through 4-4299 require adult correctional institutions to develop and apply a system of classification for prisoners. However, none of these standards mandates the separation of prisoners with different classification levels or with differing or incompatible critical housing factors, to ensure safety. For this reason, Plaintiffs are informed and believe and thereon allege that the ACA Standards referred to in the contract between Hawaii and CCA were inadequate to protect Medina and other Hawaii inmates from known risks of serious harm and death.

77. To the extent that the DPS and/or ACA classification systems included any proper elements, the Hawaii Defendants failed to enforce them; and CCA failed to deploy them in a rational way, or to use any classification system reasonably calculated to respond to known risks of serious injury and death to SCC prisoners.

## **V. PLAINTIFFS' INJURIES.**

78. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff's decedent CLIFFORD MEDINA, and his estate, suffered the following injuries and damages:

- a. Wrongful death, attributable to the deliberate indifference, negligence, and/or gross negligence of Defendants;
- b. Egregious pain and suffering and emotional distress;
- c. Violation of his right to substantive due process, freedom from deprivation of life without due process, as guaranteed by the Fourteenth Amendment to the United States Constitution; and
- d. Cruel and unusual punishment, as forbidden by the Eighth Amendment to the United States Constitution.

79. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs MOLLIANN WALTJEN, BEVERLY LOKELANI MEDEIROS, KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS, and ROSEANNA MEDEIROS suffered the following injuries and damages:

- a. Violation of their First Amendment right to freedom of association;
- b. Violation of their due process rights under the Fourteenth Amendment to the United States Constitution;
- c. Needless physical pain and suffering, emotional distress, hardship, suffering, shock, worry, anxiety, sleeplessness, illness, trauma, suffering, and the loss of the services, society, care, and protection of the decedent;
- d. Loss of financial support and contributions, loss of the present value of future services and contributions, and loss of economic security;
- e. Loss of society, companionship, comfort, and protection;
- f. Loss of care, attention, advice, and counsel;
- g. Emotional trauma and suffering, including fear, extreme emotional distress, and horror;
- h. Burial expenses of the deceased; and
- i. Attorneys' fees and costs.

**FIRST CLAIM FOR RELIEF**

**Wrongful Death – HRS § 663-3**

**(Against All Defendants)**

80. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 79, above.

81. CLIFFORD MEDINA died as a direct and proximate result of the wrongful acts, omissions, or defaults of Defendants, and each of them.

82. As a direct result of CLIFFORD MEDINA's wrongful death, Plaintiffs ESTATE OF CLIFFORD MEDINA, deceased, by and through BEVERLY LOKELANI MEDEIROS as Administrator, MOLLIANN WALTJEN, BEVERLY LOKELANI MEDEIROS, KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS and ROSEANNA MEDEIROS suffered pecuniary injury and loss of society, companionship, comfort, and/or protection.

83. As a direct result of CLIFFORD MEDINA's wrongful death, Plaintiff MOLLIANN WALTJEN, suffered pecuniary injury, and loss of love and affection, including loss of society, companionship, comfort, consortium, or protection, loss of filial care and attention.

84. As a direct result of CLIFFORD MEDINA's wrongful death, Plaintiff BEVERLY LOKELANI MEDEIROS, suffered pecuniary injury, and loss of love and affection, including loss of society, companionship, comfort, consortium, or protection, loss of filial care and attention.

85. As a direct result of CLIFFORD MEDINA's wrongful death, Plaintiff KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS, suffered pecuniary injury, and loss of love and affection, including loss of society, companionship, comfort, consortium, or protection, loss of filial care and attention.

86. As a direct result of CLIFFORD MEDINA's wrongful death, Plaintiff ROSEANNA MEDEIROS, suffered pecuniary injury, and loss of love and affection,

including loss of society, companionship, comfort, consortium, or protection, loss of filial care and attention.

87. Defendants are jointly and severally liable for the wrongful death of CLIFFORD MEDINA, and liable to all Plaintiffs for substantial general and special damages as described above, in an amount to be proved at trial.

88. Plaintiffs are entitled to recover punitive damages against CCA and its officers, managers, employees, and agents named as individual Defendants herein who, with conscious disregard of CLIFFORD MEDINA's rights, failed to provide him with supervision and security meeting the professional standard of practice and failed to adhere to the legal mandates of prisoner supervision, resulting in his wrongful death and injuries to the Plaintiffs. The aforementioned acts of Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 21 through 40 were willful, wanton, malicious, and oppressive, thereby justifying an award to Plaintiffs of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

## **SECOND CLAIM FOR RELIEF**

**(Negligence/ Gross Negligence)  
(Survival Actions – Hawaii State Law)  
(Against All Defendants)**

89. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 88, above.

90. At all times relevant herein, every Defendant had a duty to exercise ordinary care for the safety of prisoners at SCC, including CLIFFORD MEDINA.

91. Every Defendant breached that duty, leading directly to CLIFFORD MEDINA's death and injuries to the Plaintiffs. Every Defendant failed to use the care

that a reasonable person would use to avoid injury to CLIFFORD MEDINA. CLIFFORD MEDINA's injuries, and his wrongful death, were the reasonably foreseeable outcome of Defendants' acts and omissions. The acts and/or omissions of each Defendant were substantial factors in bringing about CLIFFORD MEDINA's injuries, his wrongful death, and the accompanying damage to Plaintiffs.

**A. Negligence/Gross Negligence of Hawaii, DPS, and Hawaii Officials**

92. At all times relevant herein, Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 had a duty to exercise ordinary care for the safety of Hawaii prisoners.

93. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached that duty by housing CLIFFORD MEDINA at SCC.

94. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached their duty to CLIFFORD MEDINA by failing to exercise control over staffing and security provided for by their contract with Defendant CCA.

95. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER,

JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached their duty to CLIFFORD MEDINA by failing to ensure that Defendant CCA properly classified prisoners according to pertinent factors, including but not limited to developmental disability, potential for violence, and gang involvement.

96. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached their duty to CLIFFORD MEDINA by failing to ensure that CCA housed prisoners with due regard for particularized vulnerabilities.

97. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached their duty to CLIFFORD MEDINA by continuing to contract with CCA, and by abdicating their responsibility to oversee security matters at CCA facilities, especially after prior incidents involving Hawaii prisoners and prison gangs in 2005, 2007, and 2010.

98. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached their duty to CLIFFORD MEDINA by failing to ensure that he was transferred to another housing unit after receipt of complaints regarding the potential for violence resulting from housing Medina with Silva.

99. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 breached their duty to CLIFFORD MEDINA by creating the environment that resulted in his preventable wrongful death on June 8, 2010, including placing him in an administrative segregation unit without regard for his particularized vulnerabilities, cell mate incompatibility, and understaffing of the unit in which he was housed.

100. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK and JOE W. BOOKER, JR. had a duty to properly hire, train, supervise and/or retain employees and agents to take reasonable precautions to preserve the safety of Hawaii prisoners at SCC. Defendants breached this duty by negligently hiring, training, supervising, and/or retaining persons who acted with deliberate indifference and/or negligence and/or gross negligence, resulting in CLIFFORD MEDINA's death, including some or all of DOES 1 through 20.

101. Defendants JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 acted outside the scope of their employment. Therefore Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, and JOE W. BOOKER, JR. breached their duty to properly hire, supervise, and/or train employees and agents to act reasonably to preserve the safety of Hawaii prisoners at SCC. They are liable to Plaintiffs for negligent supervision, hiring, and/or training under Hawaii law.

102. Alternatively, Defendants JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE



BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 were engaged and acting within the scope of their employment, and Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, and JOE W. BOOKER, JR. are liable for said conduct under the doctrine of respondeat superior, and/or through ratification.

103. Plaintiffs are entitled to recover punitive damages against Defendants JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20, who, with conscious disregard of CLIFFORD MEDINA's rights, failed to provide him with supervision and security meeting the professional standard of practice and failed to adhere to the legal mandates of prisoner supervision, resulting in his wrongful death and injuries to the Plaintiffs. The aforementioned acts of Defendants JODIE F. MAESAKA-HIRATA, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, and DOES 1 through 20 were willful, wanton, malicious, and oppressive, thereby justifying an award to Plaintiffs of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

**B. Negligence/Gross Negligence of CCA and CCA Employees and Agents**

104. At all times relevant herein, Defendant CCA had a duty to exercise ordinary care for the safety of prisoners in its custody.

105. Defendant CCA breached that duty by housing CLIFFORD MEDINA at SCC while failing to exercise proper control over staffing and security.

106. Defendant CCA breached its duty to CLIFFORD MEDINA by failing to properly classify prisoners according to pertinent factors, including but not limited to developmental disability, potential for violence, and gang involvement.

107. Defendant CCA breached its duty to CLIFFORD MEDINA by failing to ensure that he was transferred to another housing unit after receipt of complaints regarding the potential for violence resulting from housing Medina with Silva.

108. Defendant CCA breached its duty to CLIFFORD MEDINA by creating the environment that resulted in his preventable wrongful death on June 8, 2010, including placing him in an administrative segregation unit without regard for his particularized vulnerabilities, cell mate incompatibility, and understaffing of the unit in which he was housed.

109. Defendant Assistant Warden JODY BRADLEY breached his duty to CLIFFORD MEDINA by failing to observe and respond to the injuries Clifford sustained on or about June 8, 2010.

110. As a direct and proximate result of the breaches of duty committed by Defendant Assistant Warden JODY BRADLEY, Plaintiffs sustained substantial general and special damages, in an amount to be proved at trial.

111. Defendant CCA had a duty to properly hire, train, supervise and/or retain employees and agents to supervise Hawaii prisoners at SCC. Defendants JODY BRADLEY; CHRISTINE FRAPPIEA; JESUS GUILIN; FRANK GARCIA; TIMOTHY DOBSON; ALFRED TREJO; BEN GRIEGO; KALUM KALANI; TODD THOMAS; SEAN MEINER; and/or DOES 21 through 40 acted outside the scope of their employment and caused harm to Plaintiffs. Therefore Defendant CCA breached its duty, and is liable to Plaintiffs for negligent supervision, hiring, and/or training.

112. Alternatively, Defendants JODY BRADLEY; CHRISTINE FRAPPIEA; JESUS GUILIN; FRANK GARCIA; TIMOTHY DOBSON; ALFRED TREJO; BEN GRIEGO; KALUM KALANI; TODD THOMAS; SEAN MEINER; and/or DOES 21

through 40 were engaged and acting within the scope of their employment, and Defendant CCA is liable for said conduct under the doctrine of respondeat superior, and/or through ratification.

113. As a direct and proximate result of Defendants' breach of duty, Plaintiffs suffered substantial general and special damages in an amount to be proved at trial.

114. Defendants are jointly and severally liable to all Plaintiffs for general and special damages, in an amount to be proved at trial.

115. Plaintiffs are entitled to recover punitive damages against CCA and its officers, managers, employees, and agents named as individual Defendants herein who, with conscious disregard of CLIFFORD MEDINA's rights, failed to provide him with supervision and security meeting the professional standard of practice and failed to adhere to the legal mandates of prisoner supervision, resulting in his wrongful death and injuries to the Plaintiffs. The aforementioned acts of Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 21 through 40 were willful, wanton, malicious, and oppressive, thereby justifying an award to Plaintiffs of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

### **THIRD CLAIM FOR RELIEF**

#### **Cruel and Unusual Punishment – Haw. Const. Art. I, Sec. 12 (Against all Defendants)**

116. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 115, above.

117. Defendants, and each of them, were deliberately indifferent to CLIFFORD MEDINA's health and safety.

118. As a result of Defendants' acts, omissions, policies, customs, and/or practices, CLIFFORD MEDINA suffered cruel and unusual punishment in violation of Article I, Section 12 of the Hawaii Constitution.

119. Such policies, customs and/or practices include, but are not limited to, an ongoing pattern of deliberate indifference to: the safety and security of SCC prisoners, the particular vulnerabilities faced by Medina and other prisoners with developmental disabilities, measures necessary to protect Medina and other prisoners with developmental disabilities from serious risks of harm arising from their particular vulnerabilities, proper classification according to pertinent factors, including but not limited to developmental disability, potential for violence, and gang involvement; adequate staffing at SCC in general and the administrative segregation unit in which Medina died; measures necessary to promptly detect or respond to the injuries resulting from such altercations.

120. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40 tacitly encouraged, ratified, and/or approved of the acts and/or omissions alleged herein, and knew that such conduct was unjustified and would result in violations of constitutional rights.

121. The customs, policies, and/or practices of all Defendants were a direct and legal cause of Plaintiffs' injuries and the death of CLIFFORD MEDINA. Defendants STATE OF HAWAII, HAWAII DEPARTMENT OF PUBLIC SAFETY, CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY

DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40 failed to adequately train and supervise their employees and/or agents to prevent the occurrence of the constitutional violations suffered by Plaintiffs and CLIFFORD MEDINA, and by other prisoners at SCC. Defendants CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 30 also failed to promulgate appropriate policies or procedures or take other measures to prevent the constitutional violations suffered by Plaintiffs and CLIFFORD MEDINA, and by other prisoners at SCC.

122. As a direct and proximate result of the aforementioned customs, policies, and/or practices of Defendants, Plaintiffs suffered injuries and damages as alleged herein due to the death of CLIFFORD MEDINA.

123. The aforementioned acts of Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 21 through 40 were willful, wanton, malicious, and oppressive, thereby justifying an award to Plaintiffs of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

#### **FOURTH CLAIM FOR RELIEF**

##### **Substantive Due Process – Haw. Const. Art. I – Sec. 5**

##### **(Against all Defendants)**

124. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 123, above.

125. By acting or failing to act as described above, by being deliberately indifferent to CLIFFORD MEDINA's safety, by violating CLIFFORD MEDINA's civil rights, by failing to properly hire, train, and/or supervise their employees and agents, and/or by failing to take other measures at SCC to prevent the untimely and wrongful death of CLIFFORD MEDINA, Defendants deprived Plaintiffs MOLLIANN WALTJEN, BEVERLY LOKELANI MEDEIROS, KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS, and ROSEANNA MEDEIROS of their liberty interest in their relationship with CLIFFORD MEDINA in violation of their substantive due process rights as defined by Article I, Section 5, of the Hawaii Constitution.

126. By acting or failing to act as described above, Defendants deprived Clifford Medina, and the ESTATE OF CLIFFORD MEDINA, by and through its administrator BEVERLY LOKELANI MEDEIROS, of his life in violation of his substantive due process rights as defined by Article I, Section 5 of the Hawaii Constitution.

127. As a direct and proximate result of the aforementioned acts and/or omissions of Defendants, Plaintiffs suffered injuries and damages as alleged herein due to the death of CLIFFORD MEDINA.

128. The aforementioned acts and/or omissions of Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 21 through 40 were willful, wanton, malicious, and oppressive, thereby justifying an award of exemplary and punitive damages, to punish the wrongful conduct alleged herein and to deter such conduct in the future.

**FIFTH CLAIM FOR RELIEF**

**Cruel and Unusual Punishment in Violation of the Eighth and Fourteenth  
Amendments to the Constitution of the United States – Deliberate Indifference to**

**Health and Safety**

**(42 U.S.C. § 1983)**

**(Against all Defendants, except STATE OF HAWAII and HAWAII  
DEPARTMENT OF PUBLIC SAFETY)**

129. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 128, above.

130. Defendants knew that there was a strong likelihood that CLIFFORD MEDINA was in danger of serious personal harm, and that he would be seriously injured or killed, because:

131. Prison gang members committed gang-related violent assaults against other Hawaii prisoners in CCA facilities in 2005, 2007, and 2010;

132. Defendants possessed records showing the criminal history and violent tendencies of Mahinauli Silva, and other prison gang members;

133. Defendants received complaints regarding the potential for violence resulting from housing Medina with Silva.

134. Medina was a person with a developmental disability, and as such was a person with particularized vulnerabilities to manipulation and victimization by other prisoners, and to exploitation by the prison gangs whose dominance was tolerated by Defendants at SCC;

135. Silva was a member of the dominant prison gang at SCC who had notified CCA officials of his attempts to leave the gang, a situation known to Defendants to lead to a very high potential for violence; and

136. Medina was, at the same time, being recruited for exploitation by the dominant gang at SCC.

137. Defendants' acts and/or omissions as alleged herein, including but not limited to their failure to provide CLIFFORD MEDINA with adequate supervision and/or to take other measures to protect him from physical harm and to prevent his brutal murder, along with the acts and/or omissions of the Defendants in failing to properly hire, train, supervise, and/or promulgate appropriate policies and procedures at SCC in order to prevent CLIFFORD MEDINA's death and other prisoner deaths, constituted deliberate indifference to CLIFFORD MEDINA's safety.

138. By the acts and omissions described above, Defendants acted with deliberate indifference to a known or obvious danger, in subjecting CLIFFORD MEDINA to that danger.

139. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to CLIFFORD MEDINA's health and safety and violating CLIFFORD MEDINA's civil rights were the direct and proximate result of customs, practices, and policies of Defendants CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40.

140. Such policies, customs and/or practices include but are not limited to an ongoing pattern of deliberate indifference to: the safety and security of SCC prisoners and CLIFFORD MEDINA; the failure to ensure appropriate classification procedures were followed; the failure to house prisoners with due regard for particularized vulnerabilities; the failure to provide adequate staffing at SCC in general and the administrative segregation unit in which Medina died; the failure to prevent violent altercations, or to detect the injuries resulting from such altercations.



141. Defendant CCA tacitly encouraged, ratified and/or approved of the acts and/or omissions alleged herein, and knew that such conduct was unjustified and would result in violations of constitutional rights.

142. Defendants CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40 tacitly encouraged, ratified and/or approved of the acts and/or omissions alleged herein, and knew that such conduct was unjustified and would result in violations of constitutional rights.

143. The customs, policies and/or practices of Defendants CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40 were a direct and legal cause of Plaintiffs' injuries and the death of CLIFFORD MEDINA in that Defendants CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY HALES, MAUREEN TITO, SHARI KIMOTO, CCA, CHRISTINE FRAPPIEA, JESUS GUILIN, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40 failed to adequately train and supervise their employees and/or agents to prevent the occurrence of the constitutional violations suffered by Plaintiffs and CLIFFORD MEDINA, and by other prisoners at SCC.

144. Defendants CLAYTON FRANK, JOE W. BOOKER, JR., TOMMY JOHNSON, SCOTT JINBO, JEANETTE BALTERO, CAROL PAYNE, LARRY

HALES, MAUREEN TITO, SHARI KIMOTO, CCA, CHRISTINE FRAPPIEA, JESUS GUILIN, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 1 through 40 also failed to promulgate appropriate policies or procedures or take other measures to prevent the constitutional violations suffered by Plaintiffs and CLIFFORD MEDINA, and by other prisoners at SCC.

145. As a direct and proximate result of Defendants' conduct, CLIFFORD MEDINA experienced physical pain, severe emotional distress, mental anguish, loss of his life, and the damages alleged herein suffered by Plaintiffs.

146. The aforementioned acts and/or omissions of the individual Defendants named herein were malicious, reckless and/or accomplished with a conscious disregard of decedent's rights thereby entitling Plaintiffs to an award of exemplary and punitive damages, to punish the wrongful conduct alleged herein and to deter such conduct in the future.

### **SIXTH CLAIM FOR RELIEF**

#### **Failure to Properly Supervise, Hire and Train**

**(Survival Action – 42 U.S.C. § 1983)**

**(Against Defendants CCA, JESUS GUILIN; CHRISTINE FRAPPIEA; FRANK GARCIA; TIMOTHY DOBSON; ALFRED TREJO; BEN GRIEGO; KALUM KALANI; TODD THOMAS; SEAN MEINER; and DOES 21 through 40)**

147. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 146, above.

148. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to CLIFFORD MEDINA's safety and violating his civil rights were the direct and proximate result of the customs, practices, and policies of Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY

DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 21 through 40, as alleged herein.

149. Such policies, customs and/or practices include, but are not limited to, an ongoing pattern of deliberate indifference to: the safety and security of SCC prisoners; the particular vulnerabilities faced by Medina and other prisoners with developmental disabilities; measures necessary to protect Medina and other prisoners with developmental disabilities from serious risks of harm arising from their particular vulnerabilities; proper classification according to pertinent factors, including but not limited to developmental disability, potential for violence, and gang involvement; adequate staffing at SCC in general and the administrative segregation unit in which Medina died; measures necessary to promptly detect or respond to the injuries resulting from such altercations.

150. Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 21 through 40, tacitly encouraged, ratified and/or approved of the acts and/or omissions alleged herein, and knew that such conduct was unjustified and would result in violations of constitutional rights.

151. The customs, policies, and/or practices of said Defendants were a direct and legal cause of Plaintiffs' injuries and the death of CLIFFORD MEDINA in that Defendants failed to adequately hire, train, and supervise their employees and/or agents to prevent the occurrence of the constitutional violations suffered by Plaintiffs MOLLIANN WALTJEN, BEVERLY LOKELANI MEDEIROS, KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS, and ROSEANNA MEDEIROS, and by CLIFFORD MEDINA and by other SCC prisoners. Defendants also failed to promulgate appropriate policies or procedures or take other measures to prevent the constitutional violations suffered by Plaintiffs and CLIFFORD MEDINA, and by other SCC prisoners.

152. As a direct and proximate result of the aforementioned customs, policies and/or practices of Defendants, Plaintiffs suffered injuries and damages as alleged herein due to the death of CLIFFORD MEDINA.

153. The aforementioned acts and/or omissions of the individual Defendants named herein were willful, wanton, malicious, and oppressive, thereby justifying an award of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

### **SEVENTH CLAIM FOR RELIEF**

#### **Violations of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973**

**(Against Defendants HAWAII DEPARTMENT OF SAFETY and CCA)**

154. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 153, above.

155. The conduct of Defendants, as alleged herein, violates Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, *et seq.*, and the federal regulations promulgated pursuant thereto.

156. At all times relevant to this action, the ADA, 42 U.S.C. §§ 12101 *et seq.*, was in full force and effect in the United States.

157. CLIFFORD MEDINA was a qualified individual with a disability, as that term is defined in Section 504 of the Rehabilitation Act, 29 U.S.C. § 705(20), and the ADA.

158. The ADA, 42 U.S.C. § 12132, prohibits public entities from discriminating against a qualified individual with a disability in the provision of services, programs, or activities. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 prohibits any program or activity receiving federal financial assistance from denying a qualified individual with

a disability the benefits of the program or activity or discriminating against the qualified individual with a disability because of the disability.

159. Defendants HAWAII DEPARTMENT OF PUBLIC SAFETY and CCA receive federal financial assistance as that term is used in 29 U.S.C. § 794.

160. Defendants HAWAII DEPARTMENT OF PUBLIC SAFETY and CCA violated the ADA and Rehabilitation Act by denying persons with developmental disabilities, including Clifford Medina the benefits of the programs, services and activities inherent in the operation of a prison system. Defendants HAWAII DEPARTMENT OF PUBLIC SAFETY and CCA violated the ADA and Rehabilitation Act by operating a prison system that failed to identify persons with developmental disabilities, failed to identify, create, and disseminate policies and procedures needed by persons with developmental disabilities, failed to identify and provide the reasonable accommodations needed by persons with developmental disabilities, failed to provide effective communication to persons with developmental disabilities, failed to provide assistance to persons with developmental disabilities in disciplinary, administrative and classification proceedings, failed to house persons with developmental disabilities in a manner consistent with their particular vulnerabilities, including but not limited to, vulnerability to manipulation and victimization by other inmates in the general population, and vulnerability to manipulation and victimization by cell mates.

161. The aforementioned acts and/or omissions, as alleged herein, were malicious, reckless and/or accomplished with a wanton or conscious disregard of Clifford Medina's and Plaintiffs' rights.

162. As a proximate result of Defendants' wrongful conduct, Clifford Medina and Plaintiffs suffered injuries and damages as alleged herein.

**EIGHTH CLAIM FOR RELIEF**

**Loss of Freedom of Association in Violation of First Amendment  
to the Constitution of the United States**

**(42 U.S.C. § 1983)**

**(Against all Defendants, except STATE OF HAWAII and HAWAII  
DEPARTMENT OF PUBLIC SAFETY)**

163. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 162, above.

164. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to CLIFFORD MEDINA's safety and violating his civil rights and their failure to train, supervise and/or take other measures at SCC to prevent the conduct that caused the untimely and wrongful death of CLIFFORD MEDINA deprived Plaintiffs of their right to familial association as protected by the First Amendment to the United States Constitution.

165. The First Amendment protects certain intimate human relationships that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. CLIFFORD MEDINA was one such individual for his mother, MOLLIANN WALTJEN, his aunt, BEVERLY LOKELANI MEDEIROS, his aunt, KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS, and his sister, ROSEANNA MEDEIROS.

166. As a direct and proximate result of the aforementioned acts and/or omissions of Defendants, Plaintiffs suffered injuries and damages as alleged herein due to the death of CLIFFORD MEDINA.

167. The aforementioned acts and/or omissions of the individual Defendants named herein were willful, wanton, malicious, and oppressive, thereby justifying an

award of exemplary and punitive damages, to punish the wrongful conduct alleged herein and to deter such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiffs pray for relief against Defendants as follows:

1. For compensatory, general, and special damages against each Defendant, jointly and severally, in an amount to be proven at trial;
2. For damages related to loss of familial relations as to Plaintiffs  
MOLLIANN WALTJEN, BEVERLY LOKELANI MEDEIROS,  
KAWAHINEKUUIPOLANI CLIFFANN MEDEIROS, and ROSEANNA MEDEIROS;
3. For funeral and burial expenses, and incidental expenses not yet fully ascertained;
4. For general damages in an amount greater than \$25,000, including damages for physical and emotional pain, emotional distress, hardship, suffering, shock, worry, anxiety, sleeplessness, illness and trauma and suffering, loss of enjoyment of life, the loss of the services, society, care and protection of the decedent, as well as the loss of financial support and contributions, loss of the present value of future services and contributions, and loss of economic security;
5. For prejudgment interest;
6. For punitive and exemplary damages against the individual Defendants, as set forth herein, in an amount appropriate to adequately punish them and deter others from engaging in similar misconduct;
7. For costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, HRS § 662-12, the Hawaii private attorney general doctrine, 42 U.S.C. § 12205 (the Americans with Disabilities Act), 29 U.S.C. § 794a (the Rehabilitation Act of 1973), and as otherwise authorized by any other statute or law; and
8. For such other relief as the Court may deem proper.

DATED: May 23, 2012

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF  
HAWAII

By:   
\_\_\_\_\_

Daniel M. Gluck

Attorneys for Plaintiffs ESTATE OF CLIFFORD  
MEDINA, et al.