

SANFORD JAY ROSEN – Cal. Bar No. 062566*
KENNETH M. WALCZAK – Cal. Bar No. 247389*
ROSEN, BIEN & GALVAN, LLP
315 Montgomery Street, Tenth Floor
San Francisco, California 94104-1823
Telephone: (415) 433-6830
Facsimile: (415) 433-7104
Email: kwalczak@rbg-law.com

LOIS K. PERRIN – 8065
DANIEL M. GLUCK – 7959
AMERICAN CIVIL LIBERTIES UNION
OF HAWAII
P. O. Box 3410
Honolulu, Hawaii 96801
Telephone: (808) 522-5908
Facsimile: (808) 522-5909
Email: dgluck@acluhawaii.org

LANCE WEBER – NH Bar No. 19942*
HUMAN RIGHTS DEFENSE CENTER
P.O. Box 2420
Brattleboro, Vermont 05303-2420
Telephone: (802) 257-1342
Facsimile: (866) 228-1681
Email: lweber@humanrightsdefensecenter.org

Attorneys for Plaintiffs ESTATE OF BRONSON NUNUHA, *et al.*

* = Pro Hac Vice Applications to Be Filed

STATE OF HAWAII
CIRCUIT COURT OF THE FIRST CIRCUIT

Estate of BRONSON NUNUHA, deceased, by and through
BRANDY NUNUHA-TACHERA, as Administrator; BRANDY
NUNUHA-TACHERA; DAVINA WAIALAE; and Z.L.S., a Minor,
by and through his guardian *ad litem* Davina Waialae,

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.,
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; Correctional Counselor NYOKA R. CLARK;
Classification Supervisor CHRISTINE FRAPPIEA; Shift Supervisor
JESUS GUILIN; Unit Manager FRANK GARCIA; Unit Manager
TIMOTHY DOBSON; Senior Correctional Officer ALFRED
TREJO; Assistant Warden BEN GRIEGO; Assistant Warden
KALUM KALANI; Warden TODD THOMAS; Assistant Chief of
Security SEAN MEINER; and DOES 1 through 30, inclusive,

Defendants.

Civil Case No.

12-1-0441-02

**COMPLAINT FOR
DAMAGES; SUMMONS**

JURY TRIAL DEMANDED

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

J. KUBO
CLERK

2012 FEB 15 AM 8:43

FILED
1ST CIRCUIT COURT
STATE OF HAWAII

PLC

INTRODUCTION

Plaintiffs complain and allege as follows:

1. Bronson Nunuha was a citizen of Hawaii, born in Kahului on the island of Maui. Bronson died at the age of 26, in the Saguaro Correctional Facility (SCF) in Eloy, Arizona. He was stabbed more than 140 times by other prisoners whose violent acts were enabled by Defendants' negligence, recklessness, and flagrant failure to protect him.

2. Mr. Nunuha's Estate, though its Administrator, Brandy Nunuha-Tachera, his mother, Davina Waiialae, his sister, Brandy Nunuha-Tachera, and his son Z.L.S. bring this action. At bottom, they seek to redress the harm inflicted on them when Defendants, having custody of Bronson, 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 the violent criminals surrounding him.

3. Defendant Corrections Corporation of America (CCA) received millions of dollars in Hawaii taxpayer money between 1995 and 2010, yet CCA and its officers, managers, employees, and agents failed to spend those dollars on reasonable and necessary safety measures and adequate staffing for the cell blocks holding Hawaii prisoners. Bronson was a tragic victim of CCA's policies and its unchecked hunger for profits, as well as a host of deliberately indifferent policies, practices, and/or failures to meet the applicable standards of care.

4. Defendants the State of Hawaii, the Hawaii Department of Public Safety (DPS), and their officers, managers, employees, and agents participated in the decision to understaff SCF and the program in which Bronson was held, turning their backs on a Hawaii citizen, Bronson, whom they relegated to CCA's custody and control.

5. Bronson was convicted of three property crimes (second-degree burglary, attempted second-degree burglary, and third-degree criminal property damage) in Maui in 2006. He was sentenced to five years in prison. At the time of his death on February 18, 2010, he was preparing for release just a few months later.

6. Between 1995 and 2010, the State of Hawaii and its Department of Public Safety entered into no-bid contracts with CCA, a private for-profit company, to house prisoners in correctional facilities on the mainland.

7. Bronson was transferred to one such facility, CCA's Saguaro Correctional Facility (SCF) in Eloy, Arizona, when it opened in 2007.

8. During his time at SCF, Bronson sent letters home describing his plans for the future. He described the Hawaiian language correspondence course he was taking, mailed his mother recipes, and wrote of his repentance for past misdeeds and his desire to get out of prison and care for his son. He spoke by videoconference to his sister, Brandy Nunuha-Tachera.

9. During his time at SCF, Bronson was harassed, attacked, and repeatedly made to fear for his life at the hands of prison gang members.

10. Bronson was scheduled for release in October 2010. Hawaii law provides for the return of prisoners from out-of-state facilities at least one year prior to their release dates. Under that law, Bronson should have returned to Hawaii in October 2009, to serve the rest of his sentence. Yet CCA and Hawaii officials kept Bronson at SCF until his death in February 2010.

11. CCA required Bronson and many other prisoners to participate in its Special Housing Incentive Program (SHIP), which meant housing in a progression of cell blocks (SHIP I, SHIP II and SHIP III). In every stage of the SHIP, CCA mixed convicts of every level of dangerousness, and gang members with rival gang members and unaffiliated prisoners. CCA and its officers, managers, employees, and agents placed Bronson in segregated housing (the equivalent of solitary confinement), or threatened to place him in segregated housing, until he "agreed" to participate in the SHIP.

12. After gang members in the SHIP threatened Bronson's safety, Plaintiffs are informed and believe and thereon allege that CCA and its officers, managers, employees,

and agents repeatedly ignored his requests for a transfer to a different housing unit where he would be safer.

13. Plaintiffs are informed and believe and thereon allege that the State of Hawaii and DPS agreed to and tolerated insufficient staffing levels in the SHIP program at SCF, 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 in the SHIP program at SCF.

14. 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 one gang "runs the facility," and that Hawaii prisoners were made vulnerable by CCA's failure to provide sufficient staff in the housing units during prisoner movement. The auditor wrote: "Movements are made on the hour and in great numbers with lack of personnel on the floor, allowing inmates to 'cluster' in the halls, making it difficult for the officers to control and observe the possible passing of contraband. Officers in the pod do not know where any one inmate is at any given time of day."

15. Hawaii state officials and CCA officials knew or should have known that the danger of gang violence persisted in SHIP II and SHIP III units after a July 17, 2005 incident at CCA's Tallahatchie County Correctional Facility (TCCF) in Tutwiler, Mississippi. On that day, a group of prisoners took advantage of CCA's failure to maintain security of cell doors to brutally assault 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). One of the prisoners who attacked and killed Bronson Nunuha, Miti Maugaotega Jr., was part of the July 17, 2005 disturbance that led to the attack on Lonoaea.

16. The prisoners who threatened and then killed Bronson Nunuha were violent criminals with histories of committing gruesome attacks, both before and after their incarceration. In January 2005, DPS identified Maugaotega as responsible for a dayroom attack at a Hawaii state prison against another prisoner that left the victim bloodied. The Department nevertheless transferred Maugaotega to CCA in March 2005. In June 2005, CCA employees at TCCF wrote a disciplinary report against Maugaotega for injuring a cellmate in a fight during which weapons were found. In July 2005, CCA wrote up Maugaotega for taking part in the disturbance and attack that permanently disabled Ronnie Lonoaea. In May 2007, CCA officials at TCCF wrote up Maugaotega for attacking prisoner Alejandro Steele, breaking his jaw and sending him to the hospital. One of the investigators of the attack on Steele was then TCCF Associate Warden Ben Griego, a Defendant in this case. Thus CCA was well aware and notified of Maugaotega's history of violence against other prisoners.

17. While Bronson was housed in SHIP II, CCA and its officers, managers, employees, and agents frequently left a single Correctional Counselor to supervise all 50 prisoners in his housing unit.

18. On the day Bronson was killed, Defendant Nyoka Clark was the sole Counselor on duty. Clark was known to conduct "office hours" during morning dayroom time, leaving cell doors in the SHIP II housing unit open while she did so. These periods provided the perfect opportunity for violence among rival gang members deliberately mixed in the SHIP II unit, and for prisoners already known to CCA to be predatory to attack more vulnerable prisoners.

19. Neither CCA, nor officers, managers, employees, or agents, nor the State of

Hawaii or DPS, nor the State of Hawaii's officers, managers, employees, or agents, did anything to prevent or to mitigate these exceptionally dangerous practices in the SHIP units at SCF. 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 Bronson Nunuha.

20. The State of Hawaii officials charged with managing the contracts between Hawaii and CCA, and acting reasonably to preserve the safety of Hawaii's prisoners, acted negligently or grossly negligently, recklessly, and/or with deliberate indifference to Bronson'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 Bronson and other prisoners, and their actions fell far short of the applicable standard of care.

21. CCA, the State of Hawaii, DPS, and many of the individual Defendants named here also knew or should have known that specific prison gang members meant Bronson harm. On or about February 10, 2010, eight days before Bronson was murdered, Maugaotega punched Bronson in the face on the SCF basketball court. Defendant Nyoka Clark was on duty at the time of this attack.

22. Maugaotega was a "shot caller" in a dominant, violent prison gang at SCF. A "shot caller" is a high-ranking gang member who directs the activities of other gang members, and authorizes the use of violence. CCA housed Maugaotega in the SHIP II housing unit despite his long rap sheet including rape, home invasion, brutal beatings, and at least one shooting.

23. After the assault on Bronson on the basketball court, CCA officers, managers, employees, and agents failed to conduct the "standing head counts" at roll call that would have enabled Corrections Officers to observe the black eyes he sustained. Defendant Clark and the other SCF officers chose instead to confirm each prisoner's presence by voice alone, failing to observe Bronson's injuries. These omissions were in

keeping with Defendants' pattern of ignoring warning signs that Bronson was in serious jeopardy. CCA's own investigation of the 2007 Steele assault at the Tallahatchie County Correctional Facility (TCCF) had previously identified the failure to conduct standing head counts as a factor in that attack.

24. On February 18, 2010, Bronson succumbed to the fatal mixture of CCA's dangerous policies, its lack of oversight and training, its paltry staffing of the SHIP II unit, the failures of CCA's officers, managers, employees, and agents, and the failure of the State of Hawaii, DPS, and the individual Hawaii defendants named here to monitor dangerous conditions in the SHIP II unit, or ensure the safety of Hawaii prisoners at SCF.

25. At approximately 9:00 a.m. on February 18, 2010, Defendant Clark left Bronson's cell door open, then retreated to her office during dayroom time. Several prisoners distracted Defendant Clark, who was the sole CCA employee on duty in the unit, while several others entered the unlocked door to Bronson's cell and attacked him.

26. While Defendant Clark was in her office, two prisoners punched, kicked, and stomped on Bronson. They stabbed him more than 140 times with two different weapons, and carved the name of their gang into his chest. As he lay dying, other prisoners mopped up the bloody footprints leading away from his cell, while Counselor Clark remained distracted by a cluster of prisoners. The assailants showered, changed clothes, and re-mingled with the other prisoners. At approximately 9:36 a.m. on February 18, 2010, Defendant Clark discovered Bronson's lifeless body.

27. Defendants' failures caused Bronson intense and wholly preventable suffering, and ultimately cost Bronson his life. Defendants' indifference to Bronson's safety, and their gross negligence, deprived the Plaintiffs in this action of Bronson's society, companionship, comfort, protection, care, attention, advice, training, guidance, and/or attention.

28. 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 understaffing the SHIP II unit, housing violent offenders with non-violent offenders, failing to separate members of rival gangs, failing to separate gang members from non-gang members, ignoring signs that Bronson was in danger, and failing to monitor or oversee dangerous conditions at SCF that directly contributed to Bronson's death.

29. Plaintiffs bring this tort and civil rights action against Defendants for causing Bronson's wrongful and premature death, for negligence and/or gross negligence, for subjecting Bronson to cruel and unusual punishment and depriving 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

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

31. 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; *Mankanui v. Dept. of Education*, 6 Haw. App. 397, 721 P. 2d 165 (1986).

32. 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 DPS contracted with CCA in this Circuit, made the decision to send Bronson to SCF from this Circuit, and acted with negligence and/or deliberate indifference to Bronson'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. The Plaintiffs are residents of Hawaii. 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

33. Plaintiffs demand a jury trial.

PARTIES

34. Plaintiffs' decedent is BRONSON NUNUHA, who, at the time of his death, was a 26-year-old citizen of the State of Hawaii, and a prisoner at the Saguaro Correctional Facility (SCF). BRANDY NUNUHA-TACHERA, as Administrator of the Estate of BRONSON NUNUHA, 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 Bronson Nunuha'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.

35. Plaintiff BRANDY NUNUHA-TACHERA also brings 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, as Bronson Nunuha's sister. She was Bronson's best friend growing up, and she remained in contact with him after his incarceration. Ms. Nunuha-Tachera last spoke to her brother by video conference a month before he died.

36. Plaintiff DAVINA WAIALAE is Bronson Nunuha's mother. She is suing individually for violation of her rights under HRS § 663-3, the Hawaii Constitution and Hawaii common law, and for violations of her civil rights under the First and Fourteenth Amendments. Plaintiffs BRANDY NUNUHA-TACHERA and DAVINA WAIALAE are residents of the City and County of Honolulu, Hawaii.

37. Plaintiff Z.L.N. is Bronson Nunuha's son. He is suing individually for violation of his rights under HRS § 663-3 and the Hawaii Constitution, and for violations of his civil rights under the First and Fourteenth Amendments. Plaintiff Z.L.N., a minor, is suing through his guardian *ad litem*, Davina Waialae.

38. 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."

39. 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.” She is sued solely for violations of the Hawaii Constitution and Hawaii state law.

40. 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.

41. Defendant JOE W. BOOKER, JR. is the Deputy Director of the Hawaii Department of Public Safety, and head of the Corrections Division. 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, Defendant JOE W. BOOKER, JR. is sued in his individual capacity, for actions under color of state law.

42. Defendant TOMMY JOHNSON is the previous Deputy Director of the Hawaii Department of Public Safety, and head of the Corrections Division. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. Defendant CORRECTIONS CORPORATION OF AMERICA 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 2/14/2012). Between 1995 and 2010, CCA and the State of Hawaii have entered into no-bid contracts to house prisoners on the mainland, in facilities including SCF, located in Eloy, Arizona.

50. Defendant NYOKA R. CLARK was employed by CCA at SCF at the time of Bronson's death. Her title was Correctional Counselor. According to a 2007 edition of the SCF Inmate Handbook, a Correctional Counselor "comes from a security background and has experience as a corrections officer, [and] is part of the unit team with the primary responsibility for resolving daily inmate issues before they become significant matters, incidents or grievances." She was frequently the only CCA employee on duty in the 50-man SHIP II unit. On February 18, 2010, as was her practice, Clark opened some or all of the SHIP II cell doors, including Bronson's, and left them open during dayroom time while she went back to her office. Several prisoners distracted her, while two others murdered Bronson.

51. Defendant CHRISTINE FRAPPIEA was employed by CCA at SCF at the time of Bronson's death. She served as Classification Supervisor for SCF from 2007 until at least March of 2010. According to a 2007 edition of the SCF 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 SCF. Her failure to properly apply such standards meant that Bronson was

housed among violent criminals like Miti Maugaotega and Micah Kanahele.

52. Defendant TODD THOMAS was a CCA employee and the Warden of SCF at the time of Bronson's death. As Warden of SCF, Defendant THOMAS was responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and control of CCA employees and/or agents assigned to SCF, including Defendants CLARK, FRAPPIEA, GIULIN, GARCIA, DOBSON, TREJO, GRIEGO, KALANI, MEINER, and some or all of DOES 16 through 30. 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.

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

54. Defendant FRANK GARCIA was employed by CCA as a Unit Manager at SCF at the time of Bronson's death. According to a 2007 edition of the SCF 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."

55. Defendant TIMOTHY DOBSON was employed by CCA as a Unit Manager at SCF at the time of Bronson's death. According to a 2007 edition of the SCF 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."

56. Defendant ALFRED TREJO was employed by CCA as a Senior

Correctional Officer at SCF at the time of Bronson's death.

57. Plaintiffs are informed and believe and thereon allege that Defendants JESUS GIULIN, FRANK GARCIA, TIMOTHY DOBSON, and ALFRED TREJO exercised supervisory authority over Defendant NYOKA CLARK within the CCA chain of command. 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 SCF at the time of Bronson's death.

58. Defendant BEN GRIEGO was employed by CCA as an Assistant Warden at SCF at the time of Bronson'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, ALFRED TREJO, and NYOKA CLARK 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 SCF, and that Defendant BEN GRIEGO had additional responsibilities during the times relevant herein, including conducting investigations of violent altercations between prisoners. Plaintiffs are informed and believe and thereon allege that Defendant BEN GRIEGO investigated a May 2007 attack at TCCF involving one or more of Bronson's assailants.

59. Defendant KALUM KALANI was employed by CCA as an Assistant Warden of SCF at the time of Bronson'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, ALFRED TREJO, and NYOKA CLARK 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 SCF.

60. Defendant SEAN MEINER was a CCA employee and the Assistant Chief

of Security at SCF at the time of Bronson'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, ALFRED TREJO, and NYOKA CLARK 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 SCF, and that Defendant SEAN MEINER was specifically charged with maintaining order at SCF during the times relevant herein.

61. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 THROUGH 30 and therefore sue said Defendants by such fictitious names. DOES 1 THROUGH 15 are fictitiously-named officers, managers, employees, or agents of the STATE OF HAWAII. DOES 16 THROUGH 30 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.

62. 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.

63. Plaintiffs allege that all Defendants employed by CCA were acting under color of state law at all times relevant herein.

FACTS COMMON TO ALL CLAIMS

A. 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.

64. 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. SCF is the largest of these facilities. At the time of Bronson's death, SCF housed approximately 1,871 Hawaii prisoners.

65. CCA secured the \$66 million contract in effect when Bronson 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.

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

67. Bronson was transferred to SCF 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.

68. 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 SCF “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 ... SCF, 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.

... SCF 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/at_download/file](#), last accessed 2/14/2012.

69. DPS has developed and promulgated an Inmate Classification System, to govern the housing of prisoners by propensity to engage in violence. Plaintiffs are informed and believe and thereon allege that, at the time of Bronson's death, the Inmate Classification System was inadequate to protect Bronson from known risks of serious harm and death.

70. 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. 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 from different classification levels, 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 Bronson from known risks of serious harm and death.

71. 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 SCF prisoners and SHIP participants.

B. Defendants Endangered Bronson by Holding Him at SCF Beyond October 2009, in Violation of Hawaii Law.

72. HRS § 353H-7 provides in relevant part that "The director of public safety shall return Hawaii inmates held in out-of-state prisons at least one year prior to the inmate's parole or release date in order for these inmates to participate in programs

preparing them for reentry on the island where they have the most support; provided that inmates participating in reentry programs at the mainland facility in which they are incarcerated consent to the return.”

73. Because Bronson was due to be released from custody in October 2010, the Department of Public Safety was required to return him to Hawaii no later than October 2009, pursuant to the plain language of HRS § 353H-7.

74. Had the Department of Public Safety returned Bronson to Hawaii in October 2009 as required by law, he would not have been housed in CCA’s SHIP II program in February 2010 and would not have been exposed to the dangerous conditions at SCF that caused his death.

75. SHIP is not a reentry program. Plaintiffs are informed and believe and thereon allege that SCF does not provide programs designed to aid the transition to society in Hawaii. Even if SHIP were considered a reentry program, however, Bronson’s letters show that he was eager to return to Hawaii to see his family, and would not have withheld his consent to return in compliance with Hawaii law.

76. Defendants’ failure to transfer Bronson back to Hawaii was a legal cause of his injuries, pain and suffering, and death.

C. Defendants Endangered Bronson by Requiring Him to Live Among Gang-Affiliated Prisoners with a Proven Propensity for Extreme Violence.

77. Defendant CCA and its officers, managers, employees, and agents, including Defendants Thomas, Griego, Kalani, Meiner, Frappiea, and Clark, required Bronson to participate in the SHIP. Plaintiffs are informed and believe and thereon allege that each time Bronson would refuse to participate in the SHIP due to concerns about his safety, Defendants imposed additional time in disciplinary segregation, creating an endless loop of segregation until such time as he agreed to participate in the SHIP.

78. CCA did not classify prisoners in the SHIP based on any rational classification system reflecting propensity for violence, or otherwise reasonably

calculated to preserve the safety of Hawaii prisoners. Following an October 2008 visit to SCF, 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 SHIP/Administrative Segregation.” Defendant Shari Kimoto wrote that “HI reclassification has not been completed on a consistent monthly basis and sent to Mainland Branch.”

79. 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 reflecting propensity for violence, or otherwise reasonably calculated to preserve the safety of Hawaii prisoners, in the SHIP. As a result, Bronson, serving a short sentence for non-violent offenses, was easily accessible to violent members of the dominant prison gang, including Miti Maugaotega, Jr. and Micah Kanahale, the two members of a major prison gang who have been charged with stabbing Bronson to death on February 18, 2010.

80. All Defendants knew or should have known that in 2005 and 2007, Hawaii prisoners at TCCF were severely injured in gang-related attacks involving members of the same gang whose members attacked Bronson. The State of Hawaii and CCA had documented Mugaotega’s involvement in previous incidents of serious violence against other Hawaii prisoners, including a January 2005 bloodying of another prisoner at a Hawaii state prison, 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.

81. All Defendants knew or should have known that rival gangs often fight

violently in prison and jail settings. CCA and its managers, employees, and officers were aware that prison gang members frequently used violence against rivals and unaffiliated prisoners.

82. Defendant officers, managers, employees, and agents of DPS co-authored the Hawaii Security Threat Groups Reference Manual, the 2004 edition of which contains six detailed pages on the prison gang to which Bronson's killers belonged. The Manual states that the gang has a "high" propensity for violence, and the particular branch of the gang for which Maugaotega was a known shot-caller is perhaps the most vicious and dangerous of all.

83. All Defendants knew or should have known of Maugaotega's specific propensity for violence. Plaintiffs are informed and believe and thereon allege that at the time of Bronson's murder, Maugaotega was serving the longest sentence ever given to any Hawaii convict. The 40-day 2003 crime spree for which he was imprisoned included a home-invasion-style armed robbery, the rape and pistol-whipping of a 55-year-old woman, and a shooting and robbery. These crimes were well publicized. One judge described him as a "walking crime wave." As described above, Maugaotega's history as a gang shot caller, who frequently orchestrated and participated in attacks on those singled out for punishment, was also well documented by the CCA. Defendants, including those officials charged with managing and staffing SCF in general, and the SHIP in particular, knew or should have known of this history.

84. Defendants failed to take any action to separate gang members, including Maugaotega, from non-members or members of rival gangs, or to keep extremely violent offenders like Maugaotega away from prisoners like Bronson, who was serving a short sentence for property crimes and was only a few months from release.

85. To the contrary, Defendants insisted that the blending of gang members with rival gang members or non-members was an integral and important feature of the SHIP, rather than a dangerous and anomalous practice. In response to a prisoner's 2010

grievance asking to be separated from antagonistic gang members, Defendant Clark wrote, “All gangs are mixed together because gangs are suppose [sic] to be behind you.”

86. In CCA’s SCF Policy 10-101, effective May 15, 2008, and approved by Defendant Todd Thomas, gang membership is listed as a criterion for SHIP placement. Policy 10-101 contains no provision for separating members of rival gangs, or separating gang members from prisoners unaffiliated with gangs, in the SHIP.

87. Defendants knew or should have known that living among violent gang members and dangerous criminals is inherently dangerous. Plaintiffs are informed and believe and thereupon allege that some prisoners were required to participate in the SHIP program as punishment for bad behavior, showing that Defendants did know that the program was dangerous.

D. Defendants Failed to Exercise Ordinary Care for Bronson and Were Deliberately Indifferent to His Safety, by Repeatedly Failing to Transfer Him from the Dangerous SHIP II Unit.

88. Members of Mr. Maugaotega’s gang repeatedly threatened Bronson. CCA and its officers, managers, employees, or agents were aware of these threats. Plaintiffs are informed and believe and thereupon allege that Bronson repeatedly requested alternative housing, and refused to participate in the SHIP program where dangerous gang members lived.

89. CCA required Bronson to live in the SHIP II cell block, and denied his repeated requests to transfer to a different cell block. Defendants Thomas, Griego, Frappiea, and Clark specifically enforced CCA’s policies against transfers based on gang affiliation. According to numerous prisoner accounts, Defendants Thomas and Griego told Bronson that he “must be housed with everybody no matter what” in order to complete the SHIP program.

90. On or about February 11, 2010, a prisoner hit Bronson in the face on the basketball court. Defendant Clark was on duty during the incident.

91. After February 11, other prisoners noted that Bronson had two black eyes

as a result of the basketball court attack.

92. During the week prior to Bronson's murder, Defendants did not conduct "standing head counts" in SHIP. Requiring him to stand up during roll call would have led to discovery of Bronson's injuries. Discovery of Bronson's injuries would have led to placement in 24/7 segregation, which would have saved his life. CCA and the individual named Defendants took none of these actions.

E. Defendants Inadequately Staffed the SHIP II Cell Block, Leading to Lapses in Security Which Were the Legal Cause of Bronson's Death.

93. 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. Paragraph 5(l) 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.

There is no reference anywhere in these Standards to the number of Correctional Officers needed to preserve the safety of prisoners in a 50-man cell block like the SHIP.

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.

94. 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.

95. Despite these contract provisions, neither CCA nor its officers, managers, employees, or agents, nor the Hawaii Defendants, acted to ensure that the SHIP II cell block at SCF was properly staffed.

96. Instead CCA, and the individual CCA-employed Defendants named herein, acted deliberately to understaff the SHIP II, placing Bronson and other Hawaii prisoners in mortal danger.

97. 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 which valued profits over the safety of Hawaii prisoners, yet they condoned systematic understaffing of the SHIP units. In numerous audits or monitoring reports signed by Defendant Kimoto while Bronson was housed at SCF, 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 SCF was operating "at 95% staffing."

98. 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.”

99. Defendant officers, managers, employees, and agents of the State of Hawaii agreed to inadequate staffing levels, ignored the dangerous conditions revealed during audits of SCF, 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.

100. By the policy and practice of CCA officials, ratified by CCA and the Defendant officials and employees of State of Hawaii and DPS, the 50-man SHIP II unit was routinely monitored or guarded by a single CCA employee.

101. Defendant Clark was routinely the only CCA employee on duty in the SHIP, charged with supervising 50 convicts, many of them violent and many of them commingled members of rival gangs.

102. Defendant Clark was known to leave cell doors unlocked during dayroom time, so that prisoners could get back into their cells to retrieve items that they might need for showering or for other needs, and to save herself the inconvenience of repeatedly unlocking and relocking individual cell doors. Plaintiffs are informed and believe and thereon allege that Defendant Clark was previously disciplined for this dangerous practice, but that she resumed it after a short time.

103. Plaintiffs are informed and believe and thereon allege that Defendant Clark was on duty on the day prisoners assaulted Bronson on the basketball court, on or about February 10, 2010. Yet she failed to observe or report Bronson’s injuries from that assault, failed to conduct standing head counts, and failed to place Bronson in protective segregation or take any other action to safeguard Bronson.

F. Defendants’ Failures to Take Ordinary Care to Preserve the Safety of SCF Prisoners, and Their Deliberate Indifference to Unsafe Conditions and Inadequate Staffing, Were the Legal Cause of Bronson’s Wrongful Death.

104. Defendant Clark was the only CCA employee on duty in the SHIP II unit on February 18, 2010. Defendant Clark had been the only employee on duty when

Bronson was assaulted a week prior. Yet she did nothing to separate Bronson from the gang members who posed a threat to him, nor did she take the reasonable precautions that would have disrupted the fatal assault on February 18. Defendant Clark enabled Bronson's assailants to carry out their plan by leaving SHIP II cell doors unlocked and failing to supervise the unit during dayroom time.

105. Plaintiffs are informed and believe, based in part on the statements of many Hawaii prisoners who were housed with Bronson in the SHIP in 2009-2010, and thereon allege that Maugaotega's vendetta against Bronson was common knowledge in February 2010. SHIP participants spoke of Maugaotega's desire to kill Bronson for the perceived offense of carving insults to the prison's dominant gang into cafeteria trays, or for "playing the door," *i.e.*, insulting gang-affiliated prisoners from inside his locked cell.

106. Defendants acted negligently and with deliberate indifference to this information, and to Bronson's pleas for removal from the SHIP. They likewise deliberately or negligently ignored or failed to observe the physical evidence of the previous first attack on Bronson, on February 10, 2010. Moreover, none of the CCA Defendants acted to prevent gang members from escalating their campaign of violence that culminated in Bronson's murder.

107. At approximately 8:30 a.m. on February 18, Defendant Clark unlocked some or all of the SHIP II cell doors, including the door to Bronson's cell. She then began to supervise the dayroom, beginning with a visit to her office. While in her office, she could not adequately supervise the dayroom and she left the rest of the cell block completely unattended.

108. Several prisoners distracted Defendant Clark with questions or requests during the period immediately after 8:30 a.m., when she was in her office. Plaintiffs are informed and believe and thereon allege that other prisoners started fights to distract CCA Correctional Officers stationed elsewhere in SCF, including Defendant Trejo, to prevent them from intervening in the planned attack on Bronson.

109. While these distractions were occurring, Maugaotega and Kanahale entered Bronson's unlocked cell and attacked him, punching him, pushing him off the top bunk, stepping on his neck, stabbing him approximately 140 times with two different weapons, and carving the name of their gang into his flesh. Bronson died from his injuries. Maugaotega and Kanahale disposed of the weapons, showered, and washed their bloody clothes.

110. At approximately 9:20 a.m., Defendant Clark discovered Bronson's body while letting prisoners back into their cells from the dayroom.

111. Police reports filed after the murder describe copious amounts of blood on the walls and floor of the cell. The floor was so coated in Bronson's blood that CCA nurses who responded to the scene had to kneel on blankets from the cell's bedding in order to position themselves to attempt CPR.

112. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff's decedent BRONSON NUNUHA, 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;
- d. Cruel and unusual punishment, as forbidden by the Eighth Amendment to the United States Constitution.

113. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs BRANDY NUNUHA-TACHERA, DAVINA WAIALAE, and Z.L.S., 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, consortium, and protection;
- f. Loss of care, attention, advice, and counsel;
- g. Loss of filial care and attention;
- h. Loss of parental care, training, guidance, or education;
- i. Emotional trauma and suffering, including fear, extreme emotional distress, and horror;
- j. Burial expenses of the deceased; and
- k. Attorney's fees and costs.

FIRST CLAIM FOR RELIEF
Wrongful Death – HRS § 663-3
(Against All Defendants)

114. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 113, above.

115. BRONSON NUNUHA died as a direct and proximate result of the wrongful acts, omissions, or defaults of Defendants, and each of them.

116. As a direct result of BRONSON NUNUHA's wrongful death, Plaintiffs ESTATE OF BRONSON NUNUHA, BRANDY NUNUHA-TACHERA, DAVINA WAIALAE, and Z.L.S. suffered pecuniary injury and loss of society, companionship, comfort, and/or protection.

117. As a direct result of BRONSON NUNUHA's wrongful death, Plaintiff

DAVINA WAIALAE suffered pecuniary injury, including loss of filial care and attention.

118. As a direct result of BRONSON NUNUHA's wrongful death, Plaintiff BRANDY NUNUHA-TACHERA lost her best friend, the brother who took her to the beach and taught her how to throw a football. She suffered pecuniary injury, including loss of the ability to work due to her emotional devastation after her brother's death.

119. As a direct result of BRONSON NUNUHA's wrongful death, Plaintiff Z.L.S suffered pecuniary injury, including loss of parental care, training, guidance, and education. Plaintiff Z.L.S. lost the opportunity to receive future support payments from BRONSON NUNUHA.

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

121. 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 BRONSON NUNUHA'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 16 through 30 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)

122. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 121, above.

123. At all times relevant herein, every Defendant had a duty to exercise ordinary care for the safety of prisoners in the SHIP at SCF, including BRONSON NUNUHA.

124. Every Defendant breached that duty, leading directly to BRONSON NUNUHA's death and injuries to the Plaintiffs. Every Defendant failed to use that care which a reasonable person would use to avoid injury to BRONSON NUNUHA. BRONSON NUNUHA'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 BRONSON NUNUHA's injuries, his wrongful death, and the accompanying damage to Plaintiffs.

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

125. 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 15 had a duty to exercise ordinary care for the safety of Hawaii prisoners.

126. 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 15 breached that duty by housing BRONSON NUNUHA at SCF.

127. 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 15 breached their duty to BRONSON NUNUHA by failing to exercise control over staffing and security provided for by their contract with Defendant CCA.

128. 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 15 breached their duty to BRONSON NUNUHA by failing to ensure that Defendant CCA properly classified prisoners, separating violent criminals from mere property offenders.

129. 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 15 breached their duty to BRONSON NUNUHA by failing to ensure that CCA separated prisoners based on gang affiliation.

130. 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 15 breached their duty to BRONSON NUNUHA by allowing CCA to house him with known prison gang leaders with a history of violence against other prisoners.

131. 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 15 breached their duty to BRONSON NUNUHA 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 and 2007.

132. 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 15 breached their duty to BRONSON NUNUHA by failing to ensure that he was transferred to another housing unit after complaining that prison gang members had threatened him.

133. 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 15 breached their duty to BRONSON NUNUHA by failing to observe or respond to the injuries he sustained on or about February 10, 2010.

134. 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 15 breached their duty to BRONSON NUNUHA by creating the environment that resulted in his preventable wrongful death on February 18, 2010.

135. 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 SCF. 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 BRONSON NUNUHA's death, including some or all of DOES 1 through 15.

136. 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 15 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 SCF. They are liable to Plaintiffs for negligent supervision, hiring, and/or training under Hawaii law.

137. 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 15 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.

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

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

139. Defendant CCA breached that duty by housing BRONSON NUNUHA at SCF while failing to exercise proper control over staffing and security.

140. Defendant CCA breached its duty to BRONSON NUNUHA by requiring him to participate in the SHIP, and placing him in disciplinary segregation when he

refused.

141. Defendant CCA breached its duty to BRONSON NUNUHA by failing to adequately staff the SHIP with Correctional Officers or other security personnel.

142. Defendant CCA breached its duty to BRONSON NUNUHA by failing to properly classify prisoners, and by failing to separate violent criminals from mere property offenders.

143. Defendant CCA breached its duty to BRONSON NUNUHA by failing to separate prisoners based on gang affiliation.

144. Defendant CCA breached its duty to BRONSON NUNUHA by housing him with known prison gang leaders with a history of violence against other prisoners.

145. Defendant CCA breached its duty to BRONSON NUNUHA by failing to ensure that he was transferred to another housing unit after complaining that prison gang members had threatened him.

146. Defendant CCA breached its duty to BRONSON NUNUHA by failing to note or respond to the injuries he sustained on or about February 10, 2010.

147. Defendant CCA breached its duty to BRONSON NUNUHA by creating the environment that resulted in his preventable wrongful death on February 18, 2010.

148. At all times relevant herein, Defendant CLARK had a duty to exercise ordinary care for the safety of prisoners in the SHIP at SCF, including BRONSON NUNUHA.

149. Defendant CLARK breached her duty to BRONSON NUNUHA by failing to ensure that he was transferred to another housing unit after complaining that prison gang members had threatened him.

150. Defendant CLARK breached her duty to BRONSON NUNUHA by failing to observe or respond to the injuries he sustained on or about February 10, 2010.

151. Defendant CLARK breached her duty to BRONSON NUNUHA by failing to perform “standing head counts” in the SHIP between February 10, 2010 and February

18, 2010, which would have led to the discovery of Bronson's injuries.

152. Defendant CLARK breached her duty to BRONSON NUNUHA by opening the door to his cell and leaving it unlocked on February 18, 2010, then retreating to her office and failing to adequately supervise the unit during dayroom time.

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

154. Defendant CCA had a duty to properly hire, train, supervise and/or retain employees and agents to supervise Hawaii prisoners at SCF. Defendants NYOKA CLARK; CHRISTINE FRAPPIEA; JESUS GUILIN; FRANK GARCIA; TIMOTHY DOBSON; ALFRED TREJO; BEN GRIEGO; KALUM KALANI; TODD THOMAS; SEAN MEINER; and/or DOES 16 through 30 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.

155. Alternatively, Defendants NYOKA CLARK; CHRISTINE FRAPPIEA; JESUS GUILIN; FRANK GARCIA; TIMOTHY DOBSON; ALFRED TREJO; BEN GRIEGO; KALUM KALANI; TODD THOMAS; SEAN MEINER; and/or DOES 16 through 30 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.

156. 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.

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

158. 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 BRONSON NUNUHA'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 16 through 30 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

Violation of HRS § 353H-7

(Against 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, DOES 1 through 15, and CCA)

159. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 158, above.

160. Pursuant to HRS § 353H-7, 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, DOES 1 through 15, and CCA were required to return BRONSON NUNUHA to Hawaii on or before October 31, 2009.

161. 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, DOES 1 through 15, and CCA had the authority and the ability to return BRONSON NUNUHA to Hawaii on or before October 31, 2009, but did not return BRONSON NUNUHA to Hawaii at any point before

his death on February 18, 2010.

162. By failing to return BRONSON NUNUHA to Hawaii, 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, DOES 1 through 15, and CCA violated HRS § 353H-7.

163. As a direct and proximate result of this failure, BRONSON NUNUHA was exposed to the dangerous conditions that caused his death on February 18, 2010. Had 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, DOES 1 through 15, and CCA complied with HRS § 353H-7 and returned BRONSON NUNUHA to Hawaii, BRONSON NUNUHA would not have been killed at SCF on February 18, 2010.

164. As a direct and proximate result of the aforementioned actions and/or omissions, Plaintiffs suffered injuries and damages as alleged herein due to the death of BRONSON NUNUHA.

FOURTH CLAIM FOR RELIEF
Cruel and Unusual Punishment – Haw. Const. Art. I, Sec. 12
(Against all Defendants)

165. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 164, above.

166. Defendants, and each of them, were deliberately indifferent to BRONSON NUNUHA's health and safety.

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

168. Such policies, customs and/or practices include, but are not limited to, an

ongoing pattern of deliberate indifference to: the safety and security of SCF prisoners, SHIP participants, and BRONSON NUNUHA; the failure to ensure appropriate classification procedures were followed; the failure to segregate gang members from rival gang members or unaffiliated prisoners; the failure to provide adequate staffing at SCF in general and the SHIP in particular; the requirement that Hawaii prisoners participate in the SHIP and the use of disciplinary segregation to punish those who refuse to participate; the failure to prevent violent altercations, or to detect or respond to the injuries resulting from such altercations; and the failure to ensure that cell doors were locked during dayroom time and that SHIP units were adequately supervised during dayroom time.

169. 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 30 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.

170. The customs, policies, and/or practices of all Defendants were a direct and legal cause of Plaintiffs' injuries and the death of BRONSON NUNUHA. 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 30 failed to adequately train and supervise their employees and/or agents to prevent the occurrence of the constitutional violations

suffered by Plaintiffs and BRONSON NUNUHA, and by other prisoners at SCF. 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 BRONSON NUNUHA, and by other prisoners at SCF.

171. 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 BRONSON NUNUHA.

172. 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 16 through 30 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.

FIFTH CLAIM FOR RELIEF
Substantive Due Process – Haw. Const. Art. I – Sec. 5
(Against all Defendants)

173. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 172, above.

174. By acting or failing to act as described above, by being deliberately indifferent to BRONSON NUNUHA's safety, by violating BRONSON NUNUHA'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 SCF to prevent the untimely and wrongful death of BRONSON NUNUHA, Defendants deprived Plaintiffs DAVINA WAIALAE

and Z.L.S. of their liberty interest in the parent-child relationship in violation of their substantive due process rights as defined by Article I, Section 5, of the Hawaii Constitution.

175. 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 BRONSON NUNUHA.

176. 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 16 through 30 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.

SIXTH 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)**

177. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 176, above.

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

- a. Prison gang members, including some of the same individuals placed in SHIP II with BRONSON NUNUHA, committed gang-related violent assaults against other Hawaii prisoners in CCA facilities in 2005 and 2007;
- b. Defendants possessed records showing the criminal history and violent tendencies of Maugaotega, Kanahale, and other prison gang members;

c. BRONSON NUNUHA repeatedly complained of threats from prison gang members, and requested a transfer for his own safety;

d. Defendant NYOKA CLARK was on duty when a prisoner struck BRONSON NUNUHA a week before his death;

e. BRONSON NUNUHA had visible injuries, including black eyes, following that attack; and

f. Defendant NYOKA CLARK had been previously disciplined for leaving a cell door open, leading to an attack on an SCF prisoner.

179. Defendants failed to provide adequate supervision for BRONSON NUNUHA. They repeatedly and egregiously disregarded his pleas for help, and left him largely unsupervised in a 50-person cell block filled with violent gang members wishing to harm him.

180. Defendants' acts and/or omissions as alleged herein, including but not limited to their failure to provide BRONSON NUNUHA 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 SCF in order to prevent BRONSON NUNUHA's death and other prisoner deaths, constituted deliberate indifference to BRONSON NUNUHA's safety.

181. By the acts and omissions described above, Defendants acted with deliberate indifference to a known or obvious danger, in subjecting BRONSON NUNUHA to that danger. Defendants left BRONSON NUNUHA in a situation that was considerably more dangerous – indeed, life-threatening, and ultimately fatal – than the one in which they found him.

182. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to BRONSON NUNUHA's health and safety and violating BRONSON NUNUHA'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 30.

183. Such policies, customs and/or practices include but are not limited to an ongoing pattern of deliberate indifference to: the safety and security of SCF prisoners, SHIP participants, and BRONSON NUNUHA; the failure to ensure appropriate classification procedures were followed; the failure to segregate gang members from rival gang members or unaffiliated prisoners; the failure to provide adequate staffing at SCF in general and the SHIP in particular; the requirement that Hawaii prisoners participate in the SHIP and the use of disciplinary segregation to punish those who refuse to participate; the failure to prevent violent altercations, or to detect the injuries resulting from such altercations; and the failure to ensure that cell doors were locked during dayroom time and that SHIP units were adequately supervised during dayroom time.

184. 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.

185. 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 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.

186. 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 30 were a direct and legal cause of Plaintiffs' injuries and the death of BRONSON NUNUHA 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 30 failed to adequately train and supervise their employees and/or agents to prevent the occurrence of the constitutional violations suffered by Plaintiffs and BRONSON NUNUHA, and by other prisoners at SCF. 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 30 also failed to promulgate appropriate policies or procedures or take other measures to prevent the constitutional violations suffered by Plaintiffs and BRONSON NUNUHA, and by other prisoners at SCF.

187. As a direct and proximate result of Defendants' conduct, BRONSON NUNUHA experienced physical pain, severe emotional distress, mental anguish, loss of his life, and the damages alleged herein.

188. 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.

SEVENTH 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 16 through 30)

189. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 188, above.

190. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to BRONSON NUNUHA'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 16 through 30, as alleged herein.

191. Such policies, customs, and/or practices include but are not limited to: an ongoing pattern of deliberate indifference to the safety of SCF prisoners, SHIP participants, and BRONSON NUNUHA; the failure to ensure appropriate classification procedures were followed; the failure to segregate gang members from rival gang members or unaffiliated prisoners; the failure to provide adequate staffing at SCF in general and the SHIP in particular; the requirement that Hawaii prisoners participate in the SHIP and the use of disciplinary segregation to punish those who refuse to participate; the failure to prevent violent altercations, or to detect the injuries resulting from such altercations; and the failure to ensure that cell doors were locked during dayroom time and that SHIP units were adequately supervised during dayroom time.

192. Defendants CCA, JESUS GUILIN, CHRISTINE FRAPPIEA, FRANK GARCIA, TIMOTHY DOBSON, ALFRED TREJO, BEN GRIEGO, KALUM KALANI, TODD THOMAS, SEAN MEINER, and DOES 16 through 30, 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.

193. The customs, policies, and/or practices of said Defendants were a direct and legal cause of Plaintiffs' injuries and the death of BRONSON NUNUHA 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 and BRONSON NUNUHA, and by other SCF prisoners and SHIP participants. Defendants also failed to promulgate appropriate policies or procedures or take other measures to prevent the constitutional violations suffered by Plaintiffs and BRONSON NUNUHA, and by other SCF prisoners and SHIP participants.

194. 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 BRONSON NUNUHA.

195. 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.

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)**

196. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 195, above.

197. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to BRONSON NUNUHA's safety and violating his civil rights and their failure to train, supervise and/or take other measures at SCF to prevent the conduct that caused the untimely and wrongful death of BRONSON NUNUHA and

deprived Plaintiffs DAVINA WAIALAE, BRANDY NUNUHA-TACHERA, and Z.L.S. of their right to familial association as protected by the First Amendment to the United States Constitution.

198. 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. BRONSON NUNUHA was one such individual for BRANDY NUNUHA-TACHERA. Only a year apart in age, they were best friends and shared many cherished childhood experiences together. BRANDY NUNUHA-TACHERA remained in contact with BRONSON NUNUHA after his incarceration, and spoke to him by video conference only a month before he died. Losing him was and continues to be devastating for her.

199. 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 BRONSON NUNUHA.

200. 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.

NINTH CLAIM FOR RELIEF

**Substantive Due Process in Violation of Fourteenth Amendment
to the Constitution of the United States – Loss of Parent/Child Relationship
(42 U.S.C. § 1983)
(Against all Defendants, except STATE OF HAWAII and HAWAII
DEPARTMENT OF PUBLIC SAFETY)**

201. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 200, above.

202. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to BRONSON NUNUHA's safety and violating his civil rights

and their failure to train, supervise and/or take other measures at SCF to prevent the conduct that caused the untimely and wrongful death of BRONSON NUNUHA and deprived Plaintiffs DAVINA WAIALAE and Z.L.S. of their liberty interest in the parent-child relationship in violation of their substantive due process rights as defined by the Fourteenth Amendment to the United States Constitution.

203. 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 BRONSON NUNUHA.

204. 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 the amount proven at trial;
2. For damages related to loss of familial relations as to Plaintiffs BRANDY NUNUHA-TACHERA, DAVINA WAIALAE, and Z.L.S.,
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, 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 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, and as otherwise authorized by any other statute or law; and

8. For such other relief as the Court may deem proper.

DATED: February 15, 2012

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF
HAWAII

A handwritten signature in black ink, appearing to read 'D. M. Gluck', written over a horizontal line.

By:

Daniel M. Gluck

Attorneys for Plaintiffs
ESTATE OF BRONSON NUNUHA, et al.