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STATE OF MONTANA
BEFORE THE COMMISSIONER OF LABOR AND INDUSTRY
EMPLOYMENT RELATIONS DIVISION
HUMAN RIGHTS BUREAU

JOHN HENRY KNOWS HIS GUN; DEE)
CHANCE WHITE HIP; DARRLY LEWIS)
FROST; JASON JAY CHIEFSTICK;)
BRIAN ANTHONY JOHNSTON; JOHN)
DOES 1-30,)

Plaintiffs,)

v.)

STATE OF MONTANA; MONTANA)
DEPARTMENT OF CORRECTIONS;)
CORRECTIONS CORPORATION OF)
AMERICA; CROSSROADS)
CORRECTIONAL CENTER; WARDEN)
MIKE MAHONEY; WARDEN SAM)
LAW,)

Defendants.)

Cause No. _____

COMPLAINT OF
DISCRIMINATION

The Plaintiffs as described below hereby bring this complaint pursuant to section 49-2-501, MCA:

I. PARTIES

A. Plaintiffs

Plaintiffs are all inmates at Crossroads Correctional Center, located at 50 Crossroads Drive, Shelby, MT 59474, and include the following individuals who are of Native American heritage or enrolled tribal members: John Henry Knows His Gun, Dee Chance White Hip, Darryl Lewis, Jason Jay Chiefstick, Brian Anthony Johnston, and John Does 1-30, who include any and all persons who are or have been incarcerated at Crossroads Correctional Center and subjected to the discriminatory conduct alleged herein.

B. Defendants

State of Montana

7. In House Bill 2, the fifty-fifth Montana legislature authorized the Montana Department of Corrections to enter into a contract with Crossroads Correctional Center for the construction and operation of a private correctional facility and the housing of inmates in the facility.

Montana Department of Corrections

8. In July of 1998, the Montana Department of Corrections contracted with Corrections Corporation of America for the operation and management of Crossroads Correctional Center.

Corrections Corporation of America

9. Corrections Corporation of America is a corrections management provider, specializing in the design, construction, expansion, and management of prisons, jails, and detention facilities. The main office for Corrections Corporation of America is 10 Burton Hills Blvd., Nashville, TN. 37215.

Crossroads Correctional Center

10. Crossroads Correctional Center is a five hundred-bed, minimum to close security prison, for adult male offenders, located at 50 Crossroads Drive, Shelby, Montana, 59474.

Warden Mike Mahoney

11. Mike Mahoney is the Warden of Montana State Prison and is in charge of monitoring conditions of confinement at Crossroads Correctional Center. Warden Mahoney is named in his official capacity. Warden Mahoney's address is 500 Conley Lake Road, Deer Lodge, MT 59722.

Warden Samuel Law

12. Samuel Law is the Warden of Crossroads Correctional Center and is named in his official capacity. Warden Law's address is 50 Crossroads Lane, Shelby, Montana, 59722

II. ALLEGATIONS OF DISCRIMINATION

Defendants engaged in a systematic pattern of racial, cultural, and religious discrimination against Plaintiffs, as evidenced by the following:

A. En Masse Strip Searches

13. From approximately mid-August 2008 until mid-October 2008, all inmates attending Native American sweat lodge ceremonies at Crossroads Correctional

Center, including John Henry Knows His Gun, Dee Chance White Hip, Darryl Lewis Frost, Jason Jay Chiefstick, Brian Anthony Johnston, and John Does 1-30, were subjected to en masse strip searches both before and after entering the ceremonial sweat lodge grounds. Approximately ten to twelve en masse strip searches occurred during this period.

14. The en masse strip searches were conducted in the hallway of Crossroads Correction Center's recreation area and could be observed by other inmates. Approximately thirty to forty inmates were strip searched at a time. They were asked to take off their clothes, squat and cough, in front of other inmates who were using the recreational facility at Crossroads.

15. On at least one occasion, en masse strip searches were conducted in plain view of the prison's main control cameras, the recordings of which were visible to female officials. An inmate reported that a female guard stated to him after the search, "nice show last week," or words to that effect.

16. The manner in which the en masse strip searches were conducted violated Montana Department of Corrections Policy Directive, Policy Number DOC 3.1.17,¹ which applies to Crossroads Correctional Center under its contract with the Montana Department of Corrections.

¹ *Montana Department of Corrections Policy Directive, Policy No. DOC 3.1.17(IV)(D)(1-4)* ("1. Facility procedures will outline appropriate strip search requirements and techniques applicable to both offenders and non-offenders. 2. Written procedures will provide that, except in emergency situations, staff of the same gender as the offender will conduct offender strip searches in private and based on a reasonable belief that the offender is carrying contraband or other prohibited material. 3. Reasonable suspicion is not required when offenders return from contact with the general public or from outside the facility. 4. In all cases, trained staff will conduct strip searches and do so in a respectful and dignified manner.").

17. The en masse strip searches were extremely degrading and dehumanizing to inmates, including members of the Plaintiff class, and caused inmate participation in sweat lodge ceremonies to be reduced.

18. Crossroads Correctional Center's motive for the en masse strip searches was discriminatory. The en masse strip searches were unnecessarily harsh and burdensome on Plaintiffs' religious rights, and were designed to humiliate and degrade Plaintiffs rather than address Crossroads Correctional Center's penological interests. Crossroads Correctional Center's penological interests could have been furthered and accomplished via much less harsh, degrading, and burdensome means.

19. The en masse strip searches conducted *prior* to the sweat lodge ceremonies were not a reasonable and necessary response to Crossroads Correctional Center's discovery of illegal contraband being smuggled *from* sweat lodge grounds to the prison housing unit.

20. The fact that non-Native American sweat lodge participants were subjected to en masse strip searches does not diminish Plaintiffs' allegations of religious and cultural discrimination.

21. Crossroads Correctional Center has not subjected participants of other religious ceremonies to en masse strip searches.

22. Crossroads Correction Center's justification for the en masse strip searches is a pretext for its discriminatory motive.

23. While the en masse strip searches appear to have been suspended by Crossroads Correctional Center, there is no assurance that they will not resume, and reports indicate that the searches could readily continue.

B. Pat Down Searches

24. Sweat lodge participants, including John Henry Knows His Gun, Dee Chance White Hip, Darryl Lewis Frost, Jason Jay Chiefstick, Brian Anthony Johnston, and John Does 1-30, are currently subjected to pat down searches both before and after entering the ceremonial sweat lodge grounds.

C. Denial of Adequate Religious Materials, Facilities, and Advisors

25. Crossroads Correctional Center has confiscated and/or forbidden the use of smudge tobacco, antlers, herbs, and other sacred materials during sweat lodge ceremonies. These materials are essential to a meaningful and proper sweat lodge ceremony. Participation in a proper sweat lodge ceremony is a cornerstone of John Henry Knows His Gun, Dee Chance White Hip, Darryl Lewis Frost, Jason Jay Chiefstick, Brian Anthony Johnston, and John Does 1-30's religious faith.

26. The substance provided by Crossroads Correctional Center for use in the sweat lodge ceremony's sacred pipe, usually a cured tobacco, is uncured. Inmates report that the substance provided does not appear to be tobacco and that it burns the lips, mouths, and lungs of sweat lodge participants.

27. Crossroads Correctional Center's prohibition of the use of antlers during sweat lodge ceremonies has forced participants to use a shovel to transfer hot rocks to the sweat lodge. At least one sweat lodge participant has been severely burned while attempting to transfer hot rocks to the sweat lodge using the shovel.

28. Until approximately January 2009, little or no drinking and cleansing water was available at the sweat lodge facilities provided by Crossroads Correctional

Center. Buckets of water are now available to sweat lodge participants but there is no assurance that they will continue to be available.

29. Until approximately January 2009, toilet facilities were not accessible at the sweat lodge facilities provided by Crossroads Correctional Center. Toilet facilities are now more readily available to sweat lodge participants, but there is no assurance that they will continue to be available.

30. The amount of wood provided by Crossroads Correctional Center for use during sweat lodge ceremonies is inadequate to perform a proper ceremony.

31. The tarps provided by Crossroads Correctional Center for use during the sweat lodge ceremonies have holes in them and are not of the quality needed to perform a proper ceremony.

32. Crossroads Correctional Center does not provide a Native American spiritual advisor to assist in sweat lodge ceremonies. Accordingly, sweat lodge participants are forced to officiate the ceremonies themselves. A Christian chaplain is provided by Crossroads Correctional Center. However, the Christian chaplain, apparently acting under direction of Crossroads management, is restricted from providing proper support for the sweat lodge ceremonies or otherwise helping to maintain the unique tenets of the Native American religion.

33. Crossroads Correctional Center has not denied other religious groups access to adequate religious materials, facilities, and advisors in this manner.

D. Inadequate Opportunities for Religious Exercise

34. The sweat lodge facility provided by Crossroads Correctional Center, with a maximum capacity of forty persons, is not large enough to accommodate all inmates

who would like to participate in sweat lodge ceremonies. Accordingly, on several occasions, inmates, including members of the Plaintiff class, were forced to return to their housing units and have been denied the opportunity to participate in sweat lodge ceremonies.

35. Reports indicate that on August 10, 2008, fifteen to twenty-five inmates were forced to return to their cells and were denied the opportunity to participate in the sweat lodge ceremony, due to a lack of room in the sweat lodge facility.

36. Crossroads Correctional Center's failure to provide adequate space for Native American religious programs violates Montana Department of Corrections Policy Directive, Policy Number DOC 5.6.1(IV)(A)(1).²

37. Inmates are only permitted to attend the sweat lodge ceremony every other week, because the opportunity for participation rotates on a weekly basis between high and low classification inmates.

38. Smudging is available to inmates whose classification prohibits their participation in sweat lodge ceremonies during any given week. However, smudging is not an adequate substitution for the sweat lodge ceremony. Sweat lodge ceremonies provide inmates with numerous religious, cultural, and institutional benefits that smudging cannot provide.

39. On several occasions, sweat lodge participants were ordered by Crossroads Correctional Center officials to prematurely stop sweat lodge ceremonies before completion of the final ceremonial sweat.

² *Montana Department of Corrections Policy Directive*, Policy No. DOC 5.6.1(IV)(A)(1) ("The facility must provide adequate space for religious programs. To the extent practical, all faith groups must be granted equal access to the religious facilities for their worship activities.").

40. Crossroads Correctional Center's aforementioned conduct violates Section XIX of the contract between the prison and Montana Department of Corrections.

Pursuant to Section XIX of the contract, Crossroads Correctional Center is required to "provide religious programs and activities . . . [and is specifically required to] provide for religious programs for Native Americans."

E. Racial Slurs

41. On several occasions during sweat lodge ceremonies, participants, including members of the Plaintiff class, were reportedly harassed and called derogatory names by Crossroad Correctional Center officials.

42. Crossroad Correctional Center officials are used to oversee sweat lodge ceremonies. Reports indicate these officials are disrespectful towards sweat lodge participants and have actively confronted and harassed participants on several occasions.

43. During one sweat lodge ceremony, a Crossroad Correctional Center official reportedly asked another guard if he wanted his last piece of beef jerky, to which the guard allegedly replied that he should throw the jerky into the sweat lodge to see if the participants would fight over it like "dogs or savages."

F. Retaliation

44. In violation of Montana Code Annotated § 49-2-301,³ and Montana Department of Corrections Policy Directive, Policy Number DOC 3.3.3(IV)(A)(5)(f),⁴ Crossroads Correctional Center and its officials have reportedly retaliated against, and

³ Mont. Code Ann. § 49-2-301 ("Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.").

⁴ *Montana Department of Corrections Policy Directive*, Policy No. DOC 3.3.3(IV)(A)(5)(f) ("Offenders who use the grievance process are guaranteed protection from reprisals by staff members.").

continue to threaten retaliation against, Plaintiffs for their opposition to the prison's unlawful discriminatory practices.

45. Reports indicate that when several inmates met with Warden Samuel Law and Department of Corrections officials regarding their complaints, Warden Law told them if they continued to pursue the complaints he would "slam them."

46. Reportedly in response to inmate complaints, on or about November 16, 2008, Crossroad Correctional Center officials prematurely called the sweat lodge ceremony to close before completion of the final ceremonial sweat. Subsequently, several sweat lodge participants, including members of the Plaintiff class, were issued disciplinary infractions for failing to obey direct orders, despite their timely response to prison officials' orders to close the sweat lodge ceremony.

47. While setting up the sweat lodge ceremony on or about November 23, 2008, Plaintiff Knows His Gun, pipe carrier at the time, was told by the prison Chaplain to place Kinni-kinnik or some other inappropriate substance – not the normative mixture of tobacco – in the ceremonial medicine pipe. Mr. Knows His Gun refused to place the inappropriate substance in the ceremonial medicine pipe and was relieved of his position as pipe carrier on or about November 30, 2008. Mr. Knows His Gun was then placed in solitary confinement for forty-five days for allegedly asking inmates to file grievances regarding the prison's discriminatory actions, and was found guilty of flagrant disobedience and encouraging others. These charges lack an objective basis and constitute a retaliatory response to Mr. Knows His Gun's complaints.

48. Crossroads Correctional Center's interference with and retaliatory discipline against Mr. Knows His Gun, as pipe carrier, was significant and unnecessary,

and was designed to further burden and restrain Plaintiffs' practice of religious and cultural ceremonies.

49. Crossroads Correctional Center has arbitrarily denied Plaintiffs access and participation with the pipe carrier of their choosing. Mr. White Hip filed grievances with Crossroads Correctional Center seeking redress for the prison's arbitrary replacement of Mr. Knows His Gun as pipe carrier, but the grievances were summarily denied.

50. Prison officials' aforementioned conduct is an unlawful retaliatory response to inmate opposition to the discriminatory practices occurring at Crossroad Correctional Center.

G. Inadequate Grievance Procedure

51. Crossroad Correctional Center's grievance procedure is inadequate for redressing the prison's aforementioned discriminatory conduct. Grievance forms have been returned to inmates, including members of the Plaintiff class, because of spelling and punctuation errors. When re-submitted, the corrected forms have been denied as untimely.

52. By denying Plaintiffs access to a grievance procedure that is adequate to redress the prison's discriminatory conduct, Crossroads Correctional Center has denied Plaintiffs access to meaningful, reasonable remedies, in violation of Montana Department of Corrections Policy Directive, Policy Number DOC 3.3.3(IV)(A)(5)(b, h).⁵

⁵ *Montana Department of Corrections Policy Directive*, Policy No. DOC 3.3.3(IV)(A)(5)(b) ("The grievance procedure is accessible to all youth and adult offenders in all facilities and programs, regardless of classification, status, or disability."); *Montana Department of Corrections Policy Directive*, Policy No. DOC 3.3.3(IV)(A)(5)(h) ("The procedure affords meaningful, reasonable remedies . . .").

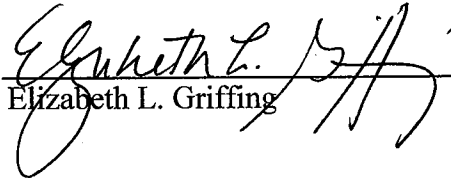
I will advise the Human Rights Commission if I change my address or telephone number and will cooperate fully with the Human Rights Commission in the processing of this complaint in accordance with its procedures.

VERIFICATION

STATE OF MONTANA)
 : ss.
County of)

Elizabeth L. Griffing, being first duly sworn states as follows:

1. That she represents the Plaintiffs in this action.
2. That she has read the foregoing Complaint and understands the contents.
3. That the matters, facts and things stated herein are true, accurate and complete.


Elizabeth L. Griffing

ACKNOWLEDGMENT

STATE OF MONTANA)
 : ss.
County of)

This instrument was acknowledged before me on the 10th day of April, ~~1996~~ 2009,
by Elizabeth L. Griffing.

