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6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9
10 AMERICAN HUMANIST ASSOCIATION)
11 and BENJAMIN ESPINOSA,)
12 Plaintiffs,)

13 v.)

Case No.: 3:16-cv-00141-RCJ-WGC

14 JAMES DZURENDA, in his official capacity as)
15 Director of the NEVADA DEPARTMENT OF)
16 CORRECTIONS, JOSEPH STOGNER, in his)
17 official capacity as Head Chaplain of Lovelock)
18 Correctional Center and in his personal capacity,)
DOES I – X, unknown individuals,)
in their official and personal capacities,)

FIRST AMENDED COMPLAINT
(Jury Trial Demanded)

19 Defendants.)

20 Seeking to protect and vindicate their civil liberties and constitutional rights, including the
21 constitutional requirement of separation of church and state and equal protection, the above-
22 captioned Plaintiffs state as their amended complaint against the above-captioned Defendants the
23 following:

24 **NATURE OF THE CLAIMS**

25 1. This action arises out of the Defendants’: (1) refusal to allow a Nevada inmate with
26 sincerely held Humanist convictions to form a Humanist study group to meet on the same terms
27 that Defendants authorize inmates of theistic religious traditions to meet; (2) refusal to allow
28 inmates to identify as Humanists for assignment purposes; and (3) refusal to allow Humanist

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1 inmates to store items in the chapel, as inmates belonging to a recognized religion are allowed to
2 do. Defendants' policy and practice of discriminating against Humanist inmates because of their
3 sincerely held convictions violates the Establishment Clause of the First Amendment of the United
4 States Constitution as well as the Equal Protection Clause of the Fourteenth Amendment of the
5 United States Constitution.

6 2. Plaintiffs seek injunctive and declaratory relief and damages under 42 U.S.C. §
7 1983 against the Defendants to redress these constitutional violations, together with recovery of
8 attorney's fees and costs under 42 U.S.C. § 1988(b).

9 **JURISDICTION AND VENUE**

10 3. This case arises under the First and Fourteenth Amendments to the Constitution of
11 the United States and 42 U.S.C. § 1983 and presents a federal question within this Court's
12 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). The Court has jurisdiction to issue a
13 declaratory judgment under 28 U.S.C. § 2201 and to provide injunctive relief and damages under
14 28 U.S.C. § 1343 and Fed. R. Civ. P. 65.

15 4. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b)(2)
16 because a substantial part of the events giving rise to Plaintiffs' claims occurred herein, and
17 because the majority of defendants reside herein.

18 **PARTIES**

19 5. Plaintiff, the American Humanist Association ("AHA"), is a national nonprofit
20 501(c)(3) organization incorporated in Illinois with a principal place of business at 1777 T Street
21 N.W., Washington, D.C., 20009. AHA is a membership organization with over 200 chapters and
22 affiliates nationwide, including in Nevada, and over 600,000 members and supporters, including
23 members residing in Nevada. AHA promotes Humanism and is dedicated to advancing and
24 preserving separation of church and state and the constitutional rights of its members, including
25 Humanist and atheist inmates in Nevada correctional facilities and other institutions.

26 6. Plaintiff Benjamin Espinosa ("Espinosa"), inmate #74296, is a resident of the State
27 of Nevada. Espinosa is an inmate in the custody of the Nevada Department of Corrections
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1 (“NDOC”), currently incarcerated at Northern Nevada Correctional Center, PO Box 711, Carson
2 City, NV 89702. Espinosa is a member of AHA. His membership number is 5056326.

3 7. Defendant James Dzurenda (“DZURENDA”) is the duly appointed Director of the
4 Nevada Department of Corrections. He is sued in his official capacity. As Director of NDOC,
5 DZURENDA is responsible for the care, custody and supervision of all offenders sentenced to a
6 term of imprisonment in any of the NDOC’s facilities. Pursuant to Administrative Regulation 810
7 (“AR 810”), DZURENDA is responsible for appointing members to the Religious Review Team
8 and for ultimately deciding whether the NDOC will allow for certain religious accommodations.

9 8. Defendant Joseph Stogner (“STOGNER”) is, or was during the time pertinent to
10 this Complaint, the Head Chaplain of the NDOC. He is sued in both his official capacity and
11 personal capacity. As Head Chaplain, STOGNER is responsible for overseeing administration and
12 operations of religious activities at NDOC facilities, use of facility chapels, storage of religious
13 property, scheduling of worship times and meeting groups, donations from outside groups, and
14 other activities.

15 9. Upon information and belief, Defendant STOGNER is a member of the Religious
16 Review Team (“RRT”), and in that capacity he is directly responsible for processing, reviewing,
17 and making recommendations to Director DZURENDA regarding whether to approve or deny a
18 Request for Accommodation of Religious Practice, which includes both requests for
19 accommodations for specific practices, property, or other items, as well as the recognition of new
20 groups.

21 10. Defendants DOES I – X are unknown individuals whose true identities are
22 unknown to Plaintiffs. They are sued in their official and personal capacities. Plaintiffs believe
23 these individuals to be members of the RRT, which is a three-member body composed of a
24 Warden, Chaplain, and Deputy Attorney General. The RRT makes recommendations to the
25 NDOC Director on various topics related to religious practice, such as recognition (or refusal to
26 recognize) a new faith group, and other matters related to use of chapels and other activities by
27 inmates. Plaintiffs also believe that some of these individuals are not members of the RRT, but are
28 individuals who exercise decision-making authority and/or make recommendations to the Director

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1 on matters such as whether to allow inmates access to chapel services, meeting times and groups,
2 recognition of faith groups, and related matters. When Plaintiffs learn of the true identities of DOE
3 Defendants, Plaintiffs will move to amend this Amended Complaint to list the true names of those
4 Defendants.

5 **FACTS**

6 11. Plaintiff Benjamin Espinosa is a Nevada inmate currently housed at Northern
7 Nevada Correctional Center (“NNCC”), which is a NDOC facility located in Carson City, Nevada.
8 He was first admitted to NDOC on or about June 25, 2002.

9 12. Espinosa was transferred to NNCC from Lovelock Correctional Center (“LCC”) on
10 or about August 24, 2016. Espinosa expects to be transferred back to LCC in several months.

11 13. Espinosa sincerely holds Humanist convictions. Humanism comforts, guides, and
12 provides meaning to him in the way that religions traditionally provide such comfort, guidance,
13 and meaning. By practicing Humanist principles in his relationships, Espinosa is confident that he
14 is acting in a positive way.

15 14. Humanist principles are promoted and defended by formal organizations such as
16 the AHA (which provides a statement of Humanist principles in a document known as
17 “Humanism and Its Aspirations,” signed by 21 Nobel laureates and thousands of others), as well
18 as the International Humanist and Ethical Union (which provides a statement of Humanist
19 principles known as “The Amsterdam Declaration”).

20 15. Humanists celebrate various holidays including National Day of Reason (May 2),
21 Darwin Day (February 12), HumanLight (in December) and other solstice-related holidays.

22 16. Whereas Atheism is a religious view that essentially addresses only the specific
23 issue of the existence of a deity, the Humanism affirmed by Espinosa is a broader worldview that
24 includes, in addition to a non-theistic view on the question of deities, an affirmative naturalistic
25 outlook; an acceptance of reason, rational analysis, logic, and empiricism as the primary means of
26 attaining truth; an affirmative recognition of ethical duties; and a strong commitment to human
27 rights.

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1 17. Humanism also has a formal structure akin to many religions, with clergy (usually
2 known as “celebrants” who perform Humanist weddings, funerals, baby-welcoming ceremonies,
3 counseling, and other functions commonly performed by clergy), chaplains (including Humanist
4 Chaplains at Harvard University, New York University, Yale University, Stanford University,
5 Columbia University, Rutgers University, and American University), and with formal entities
6 dedicated to the practice of religious Humanism, such as the American Ethical Union (based on
7 the Ethical Culture movement founded by Felix Adler in 1876) and the Society for Humanistic
8 Judaism (founded by Rabbi Sherwin Wine in 1969), among others.

9 18. AHA’s adjunct organization, the Humanist Society, is a religious 501(c)(3)
10 organization. The Humanist Society prepares Humanist Celebrants to lead ceremonial observances
11 across the nation and worldwide, including weddings, memorial services, and other life cycle
12 events. The Humanist Society was started in 1939 by a group of Quakers who decided to form a
13 nontheistic society based on similar goals and beliefs. In Humanism’s tenets they saw the promise
14 of a genuine union between science and ethics. The society was incorporated in December 1939,
15 under the state laws of California as a religious, educational, charitable nonprofit organization
16 authorized to issue charters anywhere in the world and to train and certify people, who upon
17 endorsement would be accorded the same rights and privileges granted by law to priests,
18 ministers, and rabbis of traditional theistic religions.

19 19. Modern Humanism, also called Naturalistic Humanism, Scientific Humanism,
20 Ethical Humanism, and Democratic Humanism, was defined by one of its leading proponents,
21 Corliss Lamont, as “a naturalistic philosophy that rejects all supernaturalism and relies primarily
22 upon reason and science, democracy and human compassion.”

23 20. Religious Humanism largely emerged out of Ethical Culture, Unitarianism, and
24 Universalism. Today, many Unitarian Universalist congregations and all Ethical Culture societies
25 describe themselves as Humanist in the modern sense. To serve personal needs, Religious
26 Humanism offers a basis for moral values, an inspiring set of ideals, methods for dealing with
27 life’s harsher realities, a rationale for living life joyously, and an overall sense of purpose.
28 Religious Humanism rejects the existence of a supreme being.

1 21. Secular Humanism is an outgrowth of eighteenth century enlightenment rationalism
2 and nineteenth century freethought. Many secular groups, such as the Council for Secular
3 Humanism and the American Rationalist Federation, and many otherwise unaffiliated academic
4 philosophers and scientists, advocate this philosophy.

5 22. Secular and Religious Humanists both share the same worldview and the same
6 basic principles. This is made evident by the fact that both Secular and Religious Humanists were
7 among the signers of Humanist Manifesto I in 1933, Humanist Manifesto II in 1973, and
8 Humanist Manifesto III in 2003.

9 23. Humanists are united under the Humanist Manifesto III, also known as “Humanism
10 and Its Aspirations.” (A copy of the Humanist Manifesto III is attached hereto as Exhibit 1). This
11 document is a consensus of Humanist convictions. The ultimate concern for Humanists is to lead
12 ethical lives of personal fulfillment that aspire to the greater good of humanity. The manifesto
13 provides in part: “Humanists ground values in human welfare shaped by human circumstances,
14 interests, and concerns and extended to the global ecosystem and beyond. We are committed to
15 treating each person as having inherent worth and dignity, and to making informed choices in a
16 context of freedom consonant with responsibility.” The Humanist Manifesto III further provides:
17 “We seek to minimize the inequities of circumstance and ability, and we support a just distribution
18 of nature's resources and the fruits of human effort so that as many as possible can enjoy a good
19 life.”

20 24. The Establishment Clause forbids the government from preferring or favoring
21 “those religions based on a belief in the existence of God as against those religions founded on
22 different beliefs.” *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). The Supreme Court has
23 recognized that “Secular Humanism” is included among the latter group of “religions in this
24 country which do not teach what would generally be considered a belief in the existence of God.”
25 *Id.* at n. 11.

26 25. Federal courts have held that corrections departments violate the Establishment
27 Clause when they refuse to authorize atheist and Humanist study groups on the same terms as
28 theistic groups. *See, e.g. Kaufman v. Pugh*, 733 F.3d 692 (7th Cir. 2013) (*Kaufman II*) (state

1 facility); *Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005) (Kaufman I); *Am. Humanist Ass'n*
2 & *Jason Michael Holden v. United States*, 63 F.Supp.3d 1274, 1283 (D. Or. Oct. 30, 2014)
3 (federal facility).

4 26. Notably, the court in *Am. Humanist Ass'n*, denied the Federal Bureau of Prison's
5 motion to dismiss AHA's lawsuit challenging the BOP's refusal to recognize Humanism as a
6 religious assignment and its refusal to authorize a Humanist study group. *Id.* at 1283. Relying on
7 Supreme Court and Ninth Circuit precedent, the court found "that Secular Humanism is a religion
8 for Establishment Clause purposes" and for equal protection purposes. *Id.* at 1283, 1284.

9 27. The court in *Am. Humanist Ass'n* additionally denied the defendants' motion to
10 dismiss based on qualified immunity. *Id.* at 1286-87. The court cited *Torcaso* and *Kaufman, supra*.
11 It also quoted *Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869, 873 (7th Cir.
12 2014), which characterized *Kaufman* as holding that: "when making accommodations in prisons,
13 states must treat atheism as favorably as theistic religion. What is true of atheism is equally true of
14 humanism, and as true in daily life as in prison." Based on these authorities, the court found that
15 the inmate's constitutional rights under the Establishment Clause and the Equal Protection Clause
16 were clearly established. 63 F.Supp.3d at 1286.

17 28. The case, *Am. Humanist Ass'n*, resulted in an enforceable settlement agreement, the
18 terms of which require the BOP to acknowledge Humanism as a worldview that deserves the same
19 recognition as theistic beliefs. A true and correct copy of the settlement agreement is attached
20 hereto as Exhibit 2. As a result of the settlement, the BOP Manual on Inmate Beliefs and
21 Practices now includes a section on Humanism, and inmates may identify as Humanists for
22 official assignment purposes. The settlement agreement also requires BOP prisons to authorize
23 Humanist study groups and permit Humanist inmates to annually observe Darwin Day.

24 29. Espinosa wishes to meet with other Humanists who share his sincerely held
25 Humanist convictions.

26 30. Espinosa wishes to identify as a Humanist on his official record with the NDOC.
27 NDOC uses a form, DOC 3503 "Faith Group Affiliation Declaration Form," for inmates to
28

1 designate their religious beliefs. The information on this form is entered into NDOC's electronic
2 records system, the Nevada Offender Tracking Information System ("NOTIS").

3 31. As of October 1, 2016, the Department recognizes the following religious
4 assignments (hereafter referred to as "Recognized Faith Groups"):

- 5 • American Indian / Native American (Earth-Based)
- 6 • Asatru / Odinism (Earth-Based)
- 7 • Baha'i
- 8 • Buddhism
- 9 • Christian (General)
- 10 • Christian, Non-denominational
- 11 • Christian, Orthodox
- 12 • Christian, Protestant
- 13 • Church of Christ, Scientist
- 14 • Church of Scientology
- 15 • Druid, Celtic Pagans, Pre-Christian (Earth-Based)
- 16 • Hindu
- 17 • Islam / Muslim (orthodox variants, including Sunni and Shi'ite)
- 18 • Islam / Muslim, Nation of Islam (NOI)
- 19 • Jehovah's Witnesses
- 20 • Judaism
- 21 • Judaism, Messianic
- 22 • Krishna Consciousness / Hare Krishna
- 23 • Moorish Science Temple of America
- 24 • Mormons / Church of Jesus Christ of Latter Day Saints
- 25 • Rastafarian
- 26 • Roman Catholic
- 27 • Seventh day Adventist (SDA)
- 28 • Siddha Yoga

- 1 • Sikh
- 2 • Thelema (Earth-Based)
- 3 • Wicca (Earth-Based)

4 32. The above-listed religions are recognized in NDOC's AR 810.2, "Faith Group
5 Overview," p. 4. A true and accurate copy of AR 810.2 is attached hereto as Exhibit 3.

6 33. Inmates who are members of Recognized Faith Groups receive privileges,
7 including but not limited to the following: (1) ability to meet with community-funded or volunteer
8 chaplains on a regular basis; (2) ability to keep religious items both in their cells and in faith group
9 storage containers in the prison chapel; (3) eligibility for enrollment in a religious correspondence
10 course; (4) to have community chaplain perform religious rites/rituals; (5) work proscriptioin days
11 and observance of holidays; and (6) to receive donated materials or to purchase items such as
12 books, DVDs, and various articles such as medallions, crosses, crystals, herbs, incense, etc.

13 34. Inmates who are members of Recognized Faith Groups are allowed to meet with
14 their respective subgroups so that their communities can develop their ethical foundations with
15 some sense of consistency in their teaching.

16 35. Inmates who are members of Recognized Faith Groups are allowed to meet with
17 their respective subgroups to discuss their beliefs, support and help each other in applying those
18 beliefs to personal growth and problem-solving, and to celebrate various events or holidays.

19 36. Specifically, Recognized Faith Groups have scheduled service / study time, either
20 in the large chapel area, or in a small study room. Even small groups have scheduled time slots,
21 like the non-Messianic Judaism group at LCC, which has approximately 2-4 members. Upon
22 information and belief, some scheduled Faith Group meetings have no attendance at all.

23 37. Other small-sized Faith Group meetings include the Yoga group and the Moorish
24 Science Temple group.

25 38. Humanist inmates cannot meet in groups in the same way inmates who are
26 members of Recognized Faith Groups can meet.

27 39. Humanist inmates in Nevada prisons have no venue for meetings, and no group
28 area to store books, DVDs, or other materials.

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1 40. Atheist inmates in NDOC prisons have no venue for meetings, and no group area to
2 store books, DVDs, or other materials.

3 41. NDOC does not allow and does not recognize Humanism as a Faith Group option.

4 42. NDOC does not allow and does not recognize Atheism as a Faith Group option.

5 43. At present, there is no Humanist meeting group at any Nevada state prison.

6 44. At present, there is no Atheist meeting group at any Nevada state prison.

7 45. Neither Humanism nor Atheism is an option for prisoner programming purposes.

8 46. Upon information and belief, there are at least ten Humanist and Atheist inmates at
9 LCC alone.

10 47. According to NDOC policy, inmates may request NDOC to recognize a new Faith
11 Group by filling out a request in writing on form DOC-3505, Request for Accommodation of
12 Religious Practices Form. AR 810.3, pp. 12-14. A true and correct copy of AR 810.3 is attached
13 hereto as Exhibit 4.

14 48. The policy also states: “When any group/individual wishes to have the NDOC
15 recognize a new Faith Group they must use the process set forth in this section. This process must
16 be completed before a grievance can be filed pursuant to AR 740, Inmate Grievance Procedure.”
17 *See* Exhibit 4, p. 13, ¶ B(1).

18 49. On June 11, 2014, Espinosa submitted a DOC-3505 Request for Accommodation
19 of Religious Practices Form (hereafter “Request”), requesting that Humanism be recognized by
20 NDOC, and that space be provided for the storage of books, DVDs, CDs, and similar materials, as
21 well as the ability for Humanists to congregate and study their shared convictions on the same
22 terms as other Faith Groups. A copy of the Request is attached hereto as Exhibit 5. On the form,
23 Espinosa identified the AHA, Humanist Manifestos, and *Torcaso v. Watkins*, as “source[s] of
24 authority” for the request. *Id.*

25 50. On June 14, 2014, LLC Chaplain Anthony Carrasco forwarded the Request to the
26 Religious Review Team (“RRT”). *See id.*, Exhibit 5.

27 51. Espinosa received no response to his Request.

28 52. Espinosa did not receive any accommodations for practicing Humanism.

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1 53. On January 10, 2015, Espinosa filed an Informal Grievance stating that he never
2 received any response to his Request, and that he checked with Chaplain Carrasco, who confirmed
3 with Defendant STOGNER that the Request was on the correct form. The Informal Grievance
4 stated that Espinosa was requesting an “umbrella” group to cover nontheistic beliefs, including
5 Secular and Religious Humanism. A copy of the Informal Grievance is attached hereto as Exhibit
6 6.

7 54. Espinosa’s Informal Grievance was denied. The Official Response, dated February
8 9, 2015, stated, in part: “[Y]our DOC 3505 ‘Request for Accommodation of Religious Practices’
9 form has been forwarded to the RRT. After review by the RRT it is forwarded to the designated
10 Deputy Director, with the RRT’s recommendation, for final approval. As stated in the N.D.O.C.
11 Religious Practice Manual, request and approval process MUST be completed before any
12 grievance process can be initiated. Grievance Denied.” A copy of this Official Response is
13 attached hereto as Exhibit 7.

14 55. On February 15, 2015, Espinosa submitted a timely First Level Grievance (Form
15 DOC-3093) in which he complained of the delay and stated that he had spoken to LCC Chaplain
16 Carrasco, who could not give him any information regarding the status of the Request. A copy of
17 the First Level Grievance is attached hereto as Exhibit 8.

18 56. The First Level Grievance was also denied. The Official Response, dated March
19 13, 2015, stated: “Your response at the informal level was correct and accurate. There is not a time
20 frame indicated for approval or denial of your request. If you have questions as to the status of
21 your request you can contact the LCC Chaplain. Grievance denied.” A copy of this Official
22 Response is attached hereto as Exhibit 9.

23 57. On March 23, 2015, Espinosa filed a Second Level Grievance stating that there
24 should be a time frame for approving or denying such requests. He noted that it had been 9 months
25 since he made the Request, and no one could give him any information as to the reason for the
26 delay. He also repeated his request for recognition of nontheistic beliefs, and equal treatment with
27 inmates of theistic beliefs. A copy of the Second Level Grievance is attached hereto as Exhibit 10.

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1 58. The Second Level Grievance was also denied. The Official Response, dated July
2 23, 2015, stated that the previous responses were correct. It also stated that “Chaplain Stogner . . .
3 will be meeting with you to address your concerns.” It also stated: “The RRT committee needs
4 more information from you before they can process your request. Additionally, you failed to attach
5 a copy of the form you claim you submitted. Grievance Denied.” A copy of this Official Response
6 is attached hereto as Exhibit 11.

7 59. This response was the first indication that the RRT committee needed any
8 information from Espinosa, and the first indication that Espinosa received of the status of his
9 request.

10 60. In the summer of 2015, Espinosa spoke with Defendant STOGNER over the phone,
11 while in Chaplain Carrasco’s office. Defendant STOGNER stated that the RRT had reviewed the
12 Request, but that Espinosa would have to wait about four months to receive a response. No
13 explanation was given for the four month delay.

14 61. Upon information and belief, Defendant STOGNER is a member of the RRT or is
15 otherwise involved in the process of approving or denying the Request, or making a
16 recommendation to approve or deny the Request.

17 62. Upon information and belief, Defendant STOGNER intentionally or negligently
18 delayed Espinosa’s Request.

19 63. Upon information and belief and in the alternative, Defendant STOGNER denied
20 or recommended the denial of Espinosa’s Request.

21 64. As a result of the Request being delayed more than two years and three months,
22 Defendants, including Defendant STOGNER, have effectively denied Espinosa his rights under
23 the First and Fourteenth Amendments.

24 65. On June 1, 2016, Espinosa submitted a “Faith Group Affiliation Declaration Form”
25 (Form DOC-3503) in which he requested his Current Faith Group affiliation be changed to
26 “Humanist.” A copy of said form is attached hereto as Exhibit 12.

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1 66. On August 2, 2016, NDOC Chaplain Anthony Carrasco sent Espinosa “Inmate
2 Institutional Correspondence,” attached hereto as Exhibit 13, which stated, in part:

3
4 I’m returning your DOC 3503 Form where you wish to be listed as “Humanist.” You know
5 that I can’t do anything with your form or this request as “Humanist” is not among the
6 recognized NDOC religions. A list is provided indicating those religions. The only route,
7 which you have already attempted is to submit for NDOC recognition. Also attached is
8 Form DC 3505 for that purpose, if you so desire.

9 67. The aforementioned “Inmate Institutional Correspondence” included a note from
10 Chaplain Carrasco, dated July 19, 2016, with “a list of NDOC Recognized Faith Groups.” A copy
11 of said note from Chaplain Carrasco is attached hereto as Exhibit 14, and includes the same
12 NDOC “Recognized Religions” identified in the AR 810.2 (Exhibit 3, p. 4).

13 68. Chaplain Carrasco told Espinosa that “the only route, which you have already
14 attempted” was to submit a DC 3505, even though Espinosa had already submitted the request on
15 that same form more than two years earlier and was still waiting on a definitive response from
16 NDOC. Correspondence, Exhibit 13. (*See also* DOC 3505, Exhibit 5).

17 69. To date, Espinosa still has not received any response from the RRT, nor has he
18 received any of the accommodations that he requested.

19 70. Regardless of the fact that the NDOC policy does not provide any particular
20 timeframe for resolving the Request, Defendants’ delay of more than two years and three months
21 in responding to Espinosa’s Request constitutes a *de facto* denial of his Request.

22 71. AR 810 expressly prohibits inmates from filing grievances based on the lack of
23 accommodation until after the process in that AR is completed. However, AR 810 does not
24 provide any particular time frame for completing that process. Thus, as stated in AR 810 and as
25 demonstrated by the Defendants’ delay of over two years in responding to Espinosa’s Request, the
26 Defendants have a policy and practice of effectively denying inmates accommodations by simply
27 delaying a response to a request indefinitely.

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1 72. Defendants’ refusal to accommodate Humanist inmates by allowing a Humanist
2 group, while authorizing such groups for inmates of a wide array of religious traditions, including
3 non-theistic traditions, is a violation of the Establishment Clause and Equal Protection Clause.

4 73. Defendants’ refusal to recognize Humanism for NOTIS purposes, for
5 programming, for receipt and storage of donated or purchased materials, and related privileges
6 while recognizing a wide array of religious traditions for these purposes, is a violation of the
7 Establishment Clause and Equal Protection Clause.

8 74. The reason that Humanist inmates were denied the opportunity to meet like
9 Recognized Faith Groups was not because the number of Humanist inmates desiring to meet was
10 smaller than the number of inmates wishing to meet in other religious groups.

11 **CAUSES OF ACTION**

12 **COUNT 1: VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST**
13 **AMENDMENT (U.S. CONST. AM. I; 42 U.S.C. § 1983)**

14 75. All preceding allegations are incorporated herein by reference.

15 76. The actions of Defendants and their agents, servants, or employees, as described
16 above, violate the Establishment Clause of the First Amendment. Said violations include, but are
17 not limited to:

- 18 • Defendants’ refusal to recognize Humanist as a “Recognized Faith Group” and religious
19 affiliation in NOTIS.
- 20 • Defendants’ refusal to authorize a Humanist study group.
- 21 • Defendants’ refusal to permit Espinosa to form a Humanist study group to meet with other
22 Humanist inmates to study and discuss their commonly held convictions and principles
23 relating to religion on the same terms the Defendants authorize groups for inmates of other
24 faith traditions.
- 25 • Defendants’ refusal to permit Espinosa or a recognized Humanist group to receive or
26 purchase materials related to Humanism and to store those materials in a tub in the chapel
27 or other suitable location, as is permitted for Recognized Religions.

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1 77. Defendants' actions described above lack a secular purpose, have the effect of
2 promoting, favoring and endorsing some religions over others and religion over non-religion
3 generally, and result in an excessive entanglement between government and religion. Said actions
4 also fail strict scrutiny because they lack a compelling governmental interest and the means used
5 to achieve any said interest are not narrowly tailored.

6 78. Defendants intentionally or recklessly violated Plaintiffs' well-settled constitutional
7 rights under the Establishment Clause.

8 79. Defendants acted under color of law in violating the First Amendment as described
9 herein in violation of 42 U.S.C. § 1983.
10

11 **COUNT 2: VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
12 **FOURTEENTH AMENDMENT (U.S. CONST., AM. XIV; 42 U.S.C. § 1983)**

13 80. All preceding allegations are incorporated herein by reference.

14 81. Defendants' refusal to recognize Humanism as a religious assignment violates the
15 Equal Protection Clause of the Fourteenth Amendment.

16 82. Defendants' refusal to permit Espinosa to form a group to meet with other
17 Humanist inmates to study and discuss their commonly held convictions regarding religion on the
18 same terms Defendants authorize groups for inmates of other faith traditions violates the Equal
19 Protection Clause.

20 83. Defendants' refusal to allow non-theistic inmates who identify as Humanist to meet
21 on the same terms the Defendants authorize similarly situated theistic inmates to meet, including
22 but not limited to those who identify as Catholic, Muslim, or Buddhist violates the Equal
23 Protection Clause.

24 84. Defendants' refusal to permit Espinosa or a recognized Humanist group to receive
25 or purchase materials related to Humanism and to store those materials in a tub in the chapel or
26 other suitable location, as is permitted for Recognized Faith Groups.

27 85. Defendants' actions described above lack a compelling, important or even
28 legitimate governmental interest therefore violating the Equal Protection Clause.

1 86. Defendants intentionally or recklessly violated Plaintiffs' well-settled constitutional
2 rights under the Equal Protection Clause.

3 87. Defendants acted under color of law in violating the Equal Protection Clause as
4 described herein in violation of 42 U.S.C. § 1983.

5 **WHEREFORE**, Plaintiffs request that this Court grant the following relief:

6 i. A declaratory judgment that Defendants' actions described above violate the
7 Establishment Clause of the First Amendment to the United States Constitution.

8 ii. A declaratory judgment that the following actions of Defendants violate the
9 Establishment Clause:

10 a. Defendants' refusal to authorize a Humanist meeting group.

11 b. Defendants' refusal to recognize Humanism as an assignment option for
12 NOTIS and all attendant privileges and accommodations that are afforded to Recognized Faith
13 Groups.

14 c. Defendants' refusal to allow Espinosa and other Humanist inmates from
15 receiving and storing donated or purchased material related to Humanism and to store those
16 materials in a tub in the chapel or other suitable location, as is permitted for Recognized Faith
17 Groups.

18 iii. A declaratory judgment that the above actions of the Defendants':

19 a. lack a secular purpose;

20 b. have the effect of endorsing, favoring, and preferring some religions over
21 others, and in particular, theistic traditions over non-theistic traditions and religion over non-
22 religion;

23 c. result in excessive government entanglement with religion; and/or

24 d. lack a compelling governmental interest.

25 iv. A declaratory judgment that the Defendants' actions violate the Equal Protection
26 Clause of the Fourteenth Amendment.

27 v. A declaratory judgment that the following actions of the Defendants violate the
28 Equal Protection Clause:

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- 1 a. Defendants' refusal to authorize a Humanist meeting group.
- 2 b. Defendants' refusal to recognize Humanism as an assignment option for
3 NOTIS and all attendant privileges and accommodations that are afforded to Recognized
4 Religions.
- 5 c. Defendants' refusal to allow Espinosa and other Humanist inmates from
6 receiving and storing donated or purchased material related to Humanism and to store those
7 materials in a tub in the chapel or other suitable location, as is permitted for Recognized Faith
8 Groups.
- 9 vi. A declaratory judgment that the above actions of the Defendants lack a compelling,
10 important or legitimate governmental interest in violation of the Equal Protection Clause.
- 11 vii. A declaratory judgment that the Defendants discriminated against Espinosa on
12 account of religion in violation of the Equal Protection Clause.
- 13 viii. A declaratory judgment that Defendants' discrimination against Humanist inmates
14 lacks a compelling, important or legitimate governmental interest in violation of the Equal
15 Protection Clause.
- 16 ix. A declaratory judgment that Defendants intentionally or recklessly violated
17 Plaintiffs' constitutional rights.
- 18 x. A permanent injunction ordering Defendants, their agents, successors, and any
19 person in active concert with the Defendants to:
- 20 a. Authorize Humanist study groups in all Department prisons and allow such
21 Humanist groups to meet on the same terms the Defendants authorize groups for inmates of other
22 faith traditions;
- 23 b. Authorize Espinosa to meet in a Humanist study group on the same terms
24 Defendants authorize for inmates of other faith traditions;
- 25 c. Authorize a Humanist study group upon the request of any inmate at any
26 Department facility in which religious groups are permitted, and approve of said Humanist group
27 without requiring inmates to file a formal request such as a DOC-3505 or administrative remedy
28 appeal. Any such Humanist group must be provided with the same rights, privileges, and benefits

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1 of other Recognized Faith Groups. Humanist study groups at NDOC facilities must be permitted
2 to have an outside volunteer under the same circumstances that outside volunteers are authorized
3 for other religious study groups;

4 d. Authorize Espinosa and other Humanist inmates to receive and store donated
5 or purchased material related to Humanism and to store those materials in a tub in the chapel or
6 other suitable location, as is permitted for Recognized Faith Groups;

7 e. Recognize Humanism as a religious assignment option in NOTIS and all
8 attendant privileges and accommodations that are afforded to Recognized Faith Groups; and

9 f. Recognize Humanism as an equivalent to already accepted religions in all
10 Department facilities, such that no inmate shall be required to fill out a DOC-3505 or similar
11 proposal to establish Humanist group meetings.

12 xi. A permanent injunction prohibiting the Defendants, their agents, successors and any
13 person in active concert with the Defendants, from:

14 a. Refusing to authorize a Humanist study group to meet on the same terms
15 NDOC authorizes groups for inmates of other faith traditions;

16 b. Refusing to authorize an Atheist study group to meet on the same terms
17 NDOC authorizes groups for inmates of other faith traditions;

18 c. Refusing to allow Humanist inmates from receiving and storing donated or
19 purchased material related to Humanism and to store those materials in a tub in the chapel, as is
20 permitted for Recognized Faith Groups; and,

21 d. Otherwise discriminating against Atheist and Humanist inmates.

22 xii. An award of nominal damages to the Plaintiffs.

23 xiii. An award to the Plaintiffs of their reasonable costs, disbursements and attorneys'
24 fees as allowed by law from the Defendants pursuant to 42 U.S.C. § 1988.

25 xiv. An award of such other and further relief as the Court shall deem just and proper.

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