LOIS K. PERRIN #8065
ACLU OF HAWAII FOUNDATION
P.O. Box 3410
Honolulu, HI 96801
Telephone: (808) 522-5907; Facsimile: (808) 522-5909
Email: lperrin@acluhawaii.org

TAMARA LANGE *Pro Hac Vice Pending*
ACLU FOUNDATION
LESBIAN & GAY RIGHTS PROJECT
1663 Mission Street, Suite 460
San Francisco, CA 94103
Telephone: (415) 293-6361; Facsimile: (415) 255-8437
Email: tlange@aclu.org

ALSTON HUNT FLOYD & ING
PAUL ALSTON #1126
MEI-FEI KUO #7377
ASB Tower
1001 Bishop Street, 18th Floor
Honolulu, HI 96813
Telephone: (808) 524-1800; Facsimile: (808) 524-4591
Email: palston@ahfi.com

MORRISON & FOERSTER LLP
ANGELA L. PADILLA *Pro Hac Vice Pending*
MATTHEW I. HALL *Pro Hac Vice Pending*
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000; Facsimile: (415) 268-7522
Email: apadilla@mofo.com

MORRISON & FOERSTER LLP
MARILYN D. MARTIN-CULVER *Pro Hac Vice Pending*
ASHLEIGH E. AITKEN *Pro Hac Vice Pending*
19900 MacArthur Blvd., 12th Floor
Irvine, CA 92612-2445
Telephone: (949) 251-7500; Facsimile: (949) 251-0900
Email: mmartin-culver@mofo.com

Attorneys for Plaintiffs

CIVIL NO._____
[Civil Rights Action]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

R.G., an individual; C.P., an individual by and through her next friend, A.W.; and J.D., an individual, Plaintiffs, vs. LILLIAN KOLLER, Director of the State Department of Human Services, in her individual and official capacities; SHARON AGNEW, Director of the Office of Youth Services, in her individual and official capacities; KALEVE TUFONO-IOSEFA, Hawaii Youth Correctional Facility Administrator, in her individual and official capacities; CYNTHIA HUBBELL, Youth Corrections Officer ("YCO"), in her individual and official capacities; PHYLLIS ROSETE, YCO, in her individual and official capacities, EARLENE JOSIAH, YCO, in her individual and official capacities; LEILA HOLLOWAY, YCO, in her individual and official capacities; HENRY HAINA, HYCF Investigator, in his individual and official capacities; MITCH SIMAO, YCO, in his individual and official capacities; LAWRENCE ALVARO, YCO, in his individual and official capacities; MICHAEL KIM, YCO, in his individual and official capacities and DOES 1-20, Defendants.	CIVIL NO: **[CIVIL RIGHTS ACTION]** **COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF; EXHIBITS A-D; SUMMONS** **Jury Trial Demanded**

COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiffs are teenagers who have been confined at the Hawaii Youth Correctional Facility ("HYCF"), in Kailua, Hawaii and who have been subjected to a campaign of unrestrained harassment, abuse and other maltreatment because they are or are perceived to be lesbian, gay, bisexual or transgender ("LGBT"). Defendants have told R.G. that being gay is disgusting and wrong, have preached to her that being gay is not of God and that she will go to hell, and have threatened to send her to "the boys side" or to isolation for talking about her relationship with another girl. Defendants have allowed J.D. to be subjected to anti-gay ridicule on a daily basis, to have semen rubbed onto his face, and to be jumped on and subjected to pantomimed anal rape, including in the shower. Defendants have conveyed to C.P., a transgender girl with long hair, their view that she is "really a boy," have threatened to cut her hair, have disregarded medical advice about the need to protect her mental health and physical safety, and have allowed and encouraged harassment by other wards, including physical and sexual assaults and commands such as "suck my dick" or "give me head." Each of the Plaintiffs has been detained at HYCF on more than one occasion, and the terms of each Plaintiff's release create a reasonable expectation that he or she will again be confined at HYCF and subjected to the same offending conduct.

2. Despite being on notice for years of the egregious conditions to which LGBT wards are subjected at HYCF, Defendants have at all times remained deliberately indifferent to Plaintiffs' constitutional and legal rights and have maintained conditions, policies, and practices at HYCF that constitute punishment and that are a substantial departure from accepted professional judgment, practices and standards.

3. On August 14, 2003, the American Civil Liberties Union of Hawaii ("ACLU of Hawaii") issued a 34-page report detailing systemic problems at HYCF ("ACLU Report") and recommended 47 steps for HYCF to take to address problems ranging from inadequate supervision and training of Youth Correctional Officers ("YCOs"), to abusive discipline, punitive living conditions, pervasive harassment by administrators, staff and other wards, lack of access to courts and counsel, and inadequate grievance procedures. A true and correct copy of the ACLU Report, which has been redacted for confidentiality purposes, is attached to the Complaint as Exhibit A. Although the ACLU of Hawaii and others have tried for over two years to bring HYCF into compliance with the Constitution and federal laws, these efforts have failed because of the deliberate indifference, hostility and lack of will among Defendants.

4. On August 16, 2004, the United States Department of Justice ("DOJ") launched a sweeping investigation of conditions, policies and practices at HYCF.

DOJ's investigation included on-site inspections of HYCF in October of 2004 by expert consultants in juvenile justice administration, medicine and education. The investigation also included interviews with female wards who were then housed temporarily at the Salt Lake Valley Detention Center in West Salt Lake City, Utah. Before, during and after the site visits, the DOJ reviewed internal and external documents relating to HYCF.

5. On August 4, 2005, DOJ released a findings letter ("DOJ Findings Letter") and announced its conclusion that conditions, policies and practices at HYCF violated the constitutional and statutory rights of juvenile wards. The DOJ investigation revealed rampant and unchecked staff-on-youth abuse, exploitation of youth in a myriad of circumstances, and youth-on-youth abuse. A true and correct copy of the DOJ Findings Letter is attached to this Complaint as Exhibit B. The majority of the unconstitutional and illegal conditions, policies and practices complained of in the ACLU Report of August 2003 and confirmed by the DOJ Findings Letter persist to this day.

6. Notably absent from the DOJ Findings Letter, however, is any mention of the severe anti-LGBT harassment to which Plaintiffs were subjected on a regular basis.

7. Although the Defendants' response to the DOJ Findings Letter alludes to plans and drafts of corrective action, the response contains no mention of, and

no plan to address, the pervasive harassment of and failure to protect wards based on their actual or perceived sexual orientation, sex, and/or transgender status. *See* August 12, 2005 letter from Attorney General Mark Bennett to Acting Assistant Attorney General Schlozman. A true and correct copy of this letter is attached to this Complaint as Exhibit C.

8. This Complaint concerns constitutional violations that remain unaddressed both by Defendants and by the DOJ Findings Letter. Specifically, Defendants operate HYCF in the absence of policies and procedures, fail to supervise or to train directors, administrators and staff and are responsible for: (a) a pervasive climate of hostility towards, discrimination against and harassment of Plaintiffs based on their actual or perceived sexual orientation, sex, and/or transgender status in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment; (b) acts of religious preaching by HYCF staff in violation of the Establishment Clause of the First Amendment (as incorporated by the Fourteenth Amendment); (c) content-based and viewpoint-discriminatory silencing of Plaintiffs' speech regarding their lives as LGBT teenagers, their feelings and their important relationships, in violation of their free speech rights under the First Amendment (as incorporated by the Fourteenth Amendment); and (d) interference with access to counsel and the courts in violation of the First, Sixth and Fourteenth Amendments.

9. This action challenges Defendants' customs, practices, and policies of denying the rights of Plaintiffs as guaranteed under the First, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, all of which are actionable pursuant to 42 U.S.C. § 1983.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction in this case pursuant to 28 U.S.C. §§ 1331 and 1343.

11. This Court is authorized to order declaratory and injunctive relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

12. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of law, of rights secured by the United States Constitution.

13. Venue properly lies before this Court under 28 U.S.C. § 1391(b). The acts or omissions giving rise to Plaintiffs' claims have occurred or will occur in this District.

III. PARTIES

A. Plaintiffs

14. Each of the Plaintiffs is a citizen of the United States and of Hawaii, has been confined at HYCF on more than on occasion, has been subjected to Defendants' unlawful conditions, actions, policies and practices, and has a

reasonable expectation that he or she will again be confined at HYCF and subjected to the same offending conduct.

15. Plaintiff R.G. is an adult citizen of Hawaii who is 18 years of age and who is subject to the continuing jurisdiction of HYCF until her 19th birthday. Plaintiff R.G. refers to herself as gay. R.G. has been confined at HYCF on two occasions and has been subjected to and faces a reasonable expectation that she will again be subjected to Defendants' unlawful conditions, policies, and practices, including harassment and discriminatory treatment on the basis of her actual or perceived sexual orientation and sex by HYCF staff, administration and wards; verbal abuse by YCOs and other HYCF staff; denial of her right to receive, to distribute, and to express information regarding her sexual orientation, free from viewpoint-based censorship; being subjected to religious-based preaching by HYCF staff; the inappropriate and extended use of isolation and disciplinary measures without due process; lack of a grievance process to address her concerns; and denial of access to counsel and the courts.

16. Plaintiff C.P. is a minor who brings her action by and through her Next Friend, A.W. An *ex parte* motion for appointment of C.P.'s Next Friend is being filed contemporaneously with this Complaint. C.P. is a male to female transgender girl who is subject to the jurisdiction of HYCF until her 18th birthday. C.P. has been confined at HYCF on two occasions and has been subjected to and

faces a reasonable expectation that she will again be subjected to Defendants' unlawful conditions, policies, and practices, including harassment and discriminatory treatment on the basis of her actual or perceived sex and transgender status; verbal abuse and harassment by YCOs and other HYCF staff; unaddressed verbal, sexual and physical abuse and harassment perpetrated by other wards based on her transgender status with the knowledge of HYCF staff and administrators; the inappropriate and extended use of isolation and discipline without due process; lack of an adequate grievance process to address her concerns; and denial of access to counsel and the courts.

17. Plaintiff J.D. is an adult citizen of Hawaii who is 18 years of age and who is subject to the continuing jurisdiction of HYCF until his 19th birthday pursuant to a stayed mittimus. Plaintiff J.D. is perceived to be gay, has been confined at HYCF on two occasions and has been subjected to and faces a reasonable expectation that he will again be subjected to Defendants' unlawful conditions, policies, and practices, including harassment and discriminatory treatment on the basis of his perceived sexual orientation; mental, sexual and physical abuse and harassment perpetrated by other wards on the basis of his perceived sexual orientation with the knowledge of HYCF staff and administrators; the inappropriate and extended use of isolation without due process; and lack of an adequate grievance process to address his concerns.

18. Each of the Plaintiffs has used initials as pseudonyms in this Complaint due to the highly sensitive nature of the allegations contained herein and the risk of retaliation by Defendants and others. Plaintiffs have been subjected to severe and pervasive harassment and discrimination based on their actual or perceived sexual orientation, sex, and/or transgender status. Each of the Plaintiffs seeks to avoid well-grounded fears of harassment, stigma, retaliation, and violence. An *ex parte* motion to proceed under pseudonym is being filed contemporaneously with this Complaint.

B. Defendants

19. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the conditions, policies and practices complained of herein are the result of and pursuant to specific decisions, official policies or customs of Defendants. Each of the Defendants knows of and is responsible for the conditions, policies and practices set forth herein.

20. Defendant Lillian Koller is Director of the State Department of Human Service ("DHS"), which oversees the Office of Youth Services ("OYS"), and has been since her appointment in January of 2003. In that capacity, Defendant Koller exercises administrative control of and has responsibility for the operation of all juvenile institutions, facilities, and programs under OYS's administration, including HYCF. Defendant Koller was and is at all relevant times

personally and directly involved in decisions to establish and to maintain the conditions, policies, and practices at HYCF complained of herein and in decisions regarding the hiring, firing, training and supervision of the HYCF Administrator and the HYCF staff. Furthermore, based on Plaintiffs' information and belief, the injuries suffered by the Plaintiffs, and the DOJ Findings, Plaintiffs allege that Defendant Koller inadequately trained Defendant Agnew, Director of OYS, in the proper performance of her duties and inadequately supervised OYS and its staff and HYCF and its staff, thereby proximately causing the injuries that give rise to this action. Moreover, Plaintiffs allege that Defendant Koller has had actual knowledge of the conditions complained of herein and has been aware that Plaintiffs' rights have been violated, but has failed to conduct a reasonable inquiry into the deficiencies that are causing Plaintiffs' injuries and has not undertaken reasonable means to correct or eradicate those deficiencies. She is sued in both her individual and official capacities.

21. Defendant Sharon Agnew is Director of OYS. Under H.R.S. § 352D-5, Defendant Agnew is responsible for carrying out the duties of OYS. In that capacity, Defendant Agnew exercises administrative control of and has responsibility for the operation of all juvenile institutions, facilities, and programs under OYS's administration, including HYCF and for the hiring, firing, training and supervision of the HYCF Administrator and the HYCF staff. Defendant

Agnew was and is at all relevant times personally and directly involved in decisions to establish and to maintain the conditions, policies, and practices at the HYCF complained of herein. Based on Plaintiffs' information and belief, the injuries suffered by the Plaintiffs, and the DOJ Findings, Plaintiffs allege that Defendant Agnew inadequately trained Defendant Tufono-Iosefa, Administrator of HYCF, in the proper performance of her duties and inadequately supervised Defendant Tufono-Iosefa, HYCF and its staff, thereby proximately causing the injuries that give rise to this action. Moreover, Plaintiffs allege that Defendant Agnew has had actual knowledge of the conditions complained of herein and has been aware that Plaintiffs' rights have been violated, but has failed to conduct a reasonable inquiry into the deficiencies that are causing Plaintiffs' injuries, and has not undertaken reasonable means to correct or to eradicate those deficiencies. She is sued in both her individual and official capacities.

22. Defendant Kaleve Tufono-Iosefa is the Youth Facility Administrator of HYCF. In that capacity, Defendant Tufono-Iosefa is responsible for the administration and day-to-day operations of HYCF. Defendant Tufono-Iosefa was and is at all relevant times personally and directly involved in decisions to establish and to maintain the conditions, policies, and practices at HYCF complained of herein and in decisions regarding the hiring, firing, training and supervision of HYCF staff. Based on Plaintiffs' information and belief, the injuries suffered by

the Plaintiffs, and the DOJ Findings, Plaintiffs allege that Defendant Tufono-Iosefa inadequately trained HYCF staff, thereby proximately causing the injuries that give rise to this action. Moreover, Plaintiffs allege that Defendant Tufono-Iosefa has had actual knowledge of the conditions complained of herein and has been aware that Plaintiffs' rights have been violated, but has failed to conduct a reasonable inquiry into the deficiencies that are causing Plaintiffs' injuries, and has not undertaken reasonable means to correct or to eradicate those deficiencies. She is sued in both her individual and official capacities.

23. Defendant Cynthia Hubbell is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Hubbell is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Defendant Hubbell is being sued in her official and individual capacities for the violation of R.G.'s legal and constitutional rights and the physical and emotional injuries sustained by R.G. while she was detained at HYCF.

24. Defendant Phyllis Rosete is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Rosete is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant

Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Defendant Rosete is being sued in her official and individual capacities for the violation of R.G.'s legal and constitutional rights and the physical and emotional injuries sustained by R.G. while she was detained at HYCF.

25. Defendant Earlene Josiah is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Josiah is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Defendant Josiah is being sued in her official and individual capacities for the violation of R.G.'s legal and constitutional rights and the physical and emotional injuries sustained by R.G. while she was detained at HYCF.

26. Defendant Leila Holloway is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Holloway is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and

safety of those wards. Defendant Holloway is being sued in her official and individual capacities for the violation of R.G.'s legal and constitutional rights and the physical and emotional injuries sustained by R.G. while she was detained at HYCF.

27. Defendant Henry Haina is, and was at all relevant times herein, employed by HYCF, first as a YCO and then as an internal investigator. Defendant Haina is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Additionally, in his role as an internal investigator, Defendant Haina, although aware that Plaintiffs' rights have been violated, has failed to conduct a reasonable inquiry into the deficiencies that are causing Plaintiffs' injuries, and has not undertaken reasonable means to correct or to eradicate those deficiencies. Defendant Haina is being sued in his official and individual capacities for the violation of Plaintiffs' legal and constitutional rights and the physical and emotional injuries sustained by Plaintiffs while they were detained at HYCF.

28. Defendant Mitch Simao is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Simao is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant

Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Defendant Simao is being sued in his official and individual capacities for the violation of C.P.'s legal and constitutional rights and the physical and emotional injuries sustained by C.P. while she was detained at HYCF.

29. Defendant Lawrence Alvaro is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Alvaro is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Defendant Alvaro is being sued in his official and individual capacities for the violation of C.P.'s legal and constitutional rights and the physical and emotional injuries sustained by C.P. while she was detained at HYCF.

30. Defendant Michael Kim is, and was at all relevant times herein, employed as a YCO at HYCF. Defendant Kim is an employee of HYCF and under the direct supervision of Defendant Tufono-Iosefa, the YFA, and Defendant Agnew, the Director of the OYS. The YCOs have daily oversight of the wards detained at HYCF, and are personally and directly responsible for the care and safety of those wards. Defendant Kim is being sued in his official and individual

capacities for the violation of C.P.'s legal and constitutional rights and emotional injuries sustained by C.P. while she was detained at HYCF.

31. Defendants are legally responsible, in whole or in part, for the operation of and for conditions at HYCF; for ensuring the safety and security of youth, including the responsibility for creating and maintaining an environment that is physically and psychologically safe for wards; for ensuring that youth are protected from harm, including from pervasive harassment; for ensuring that youth are provided due process of law; for ensuring that youth receive equal protection of the laws; and for ensuring that youths' rights under the United States Constitution are protected. The Defendants also are entrusted with the responsibility for making policies and/or for implementing disciplinary, harassment, and anti-discrimination laws and policies. Further, Defendants are entrusted with the responsibility for enforcing, and ensuring that their subordinates, agents, and employees enforce, such laws and policies by taking prompt remedial action following acts of inappropriate behavior, harassment, or discrimination against the wards and for the hiring, firing, training and supervision of HYCF staff.

32. Upon information and belief, each of the Defendants failed to make, to implement, or to enforce, and to ensure that their subordinates, agents, and employees enforced, the above-described laws and policies or to take necessary

and prompt remedial action following knowledge or reports of harassment and/or discrimination.

33. Upon information and belief, each of the Defendants, including Defendants DOES 1 through 20, performed, participated in, aided and/or abetted, or was deliberately indifferent to the acts averred herein, and thereby proximately caused the injuries averred below. The true names and official capacities of Defendants designated as DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs will seek leave of Court to amend their complaint to show the true names and capacities of these Defendants when they have been ascertained.

34. Upon information and belief, and at all relevant times, each and every Defendant was the agent or employee of each and every other Defendant, was acting within the course and scope of such agency or employment, and was acting with the consent, permission, and authorization of each of the remaining Defendants. Upon information and belief, all actions of each Defendant were ratified and approved by every other Defendant. Further, upon information and belief, all of the actions alleged in this Complaint were taken pursuant to the customs, policies, and practices of HYCF, and all relevant acts or omissions described herein by Defendants have been taken under the color and authority of state law.

IV. FACTUAL ALLEGATIONS

A. HYCF BACKGROUND

35. HYCF is a secure juvenile correctional facility operated by OYS, located in Kailua, Hawaii. OYS is administratively associated with the Department of Human Services.

36. HYCF is one of two facilities in Hawaii where children who have been adjudicated delinquent in court are committed for the purpose of rehabilitation.

37. HYCF is comprised of two separate facilities: one for secure confinement and another that is for housing "short-termers." For secure confinement for the boys, HYCF has three housing modules (Modules A, B, and C). There are 10 cells per module with a total of 30 cells. Each cell was originally designed for a single occupant. Upon information and belief, there are currently approximately 38 boys in residence, ages 15 to 18 years old. Additionally, upon information and belief, there are currently approximately 8 additional boys in residence at the Ho'okipa Cottage for "short-termers."

38. For secure confinement of the girls, the Observation and Assessment Cottage ("O&A"), a separate unit, has ten cells with bunk beds to sleep up to 20 female youth. Upon information and belief, there are currently approximately 9 girls in residence, ages 14 to 17 years old.

B. FAILURE TO ADOPT POLICIES AND PROCEDURES AND FAILURE TO TRAIN AND TO SUPERVISE

39. Defendants have failed to draft, to adopt and to implement governing policies and procedures necessary to protect wards who are or who are perceived to be LGBT from harassment, sexual abuse and violence by other wards and by HYCF staff and have failed to supervise or to train directors, administrators and staff despite an obvious need for such training and supervision and despite the fact that the punitive conditions and discrimination Plaintiffs faced was a highly predictable consequence of their failure to provide such training and supervision.

40. Upon information and belief, HYCF has been ordered on at least one occasion by one court in the State of Hawaii to take specific measures to address the conditions and lack of policies, procedures and training for LGBT youth at the facility, but no such measures were ever implemented.

41. The DOJ's Findings Letter concluded that "[t]he most fundamental problem that plagues HYCF is the absence of policies or procedures to govern the facility. The absence of rules or regulations has permitted a culture to develop where abuse of youth often goes unreported and uninvestigated. Security staff have stepped into the vacuum of order and taken control of every aspect of the operation of the facility. Security staff, who have received no training in over five years and have no rules to guide their decisions, routinely use excessive force against youth, confine youth to their cells for days on end, discipline youth without

justification or oversight, deny youth access to medical and mental health services, and prevent youth from receiving education." *See* DOJ Findings Letter, Exhibit B, pp. 3-4 (footnote omitted).

42. Upon information and belief, from personal experience of the Plaintiffs and from counsel's consistent contact with wards and HYCF staff members over the last year, the DOJ's conclusion regarding the lack of policies, procedures, training and compliance, the resulting culture at HYCF, and the resulting harm to youth applies with equal force as of the date of this filing.

43. The DOJ specifically referenced the Inmate Handbook as one of the most glaring examples of HYCF's failure to draft, adopt and implement governing policies and procedures appropriate for a juvenile facility. *See* DOJ Findings Letter, p. 3, n.4. Until November of 2004, each HYCF ward was given a handbook entitled *Title 17, Administrative Rules of the Corrections Division: Inmate Handbook* ("Inmate Handbook"). The Inmate Handbook is dated October 1983. On its inside cover, the Inmate Handbook Preface provides that each ward will be issued a full copy of the Inmate Handbook and will be apprised of any amendments or changes as they occur.

44. Despite contentions to the contrary in Mr. Bennett's letter in response to the DOJ Findings Report (*see* August 12, 2005 letter, Exh. C.), to the extent new policies and procedures have been adopted in recent months, they remain

unenforced or are enforced inconsistently as a result of failure to train and/or as a result of failure to supervise staff to ensure compliance. By way of example, the person now responsible for responding to ward grievances, Randall Quemmel, has a five-month backlog, making even the purportedly newly-minted grievance process entirely ineffectual and effectively non-existent. Additionally, the Ward Handbook dated November 2004 is woefully incomplete and is not enforced or consistently followed. By way of example, although the Handbook explicitly states that legal calls are permitted to the ACLU of Hawaii, as recently as the week of August 15, 2005, R.G. and C.P.'s requests to call the ACLU of Hawaii were denied by certain staff members.

45. Moreover, as of August 12, 2005, Defendants, through the Hawaii Attorney General, admitted that HYCF has virtually no revised policies or procedures in final form and further that, despite being on notice of exploitation and assaults of wards since at least August 2003 (upon receipt of the ACLU report), HYCF has yet to train its staff regarding the most fundamental of policies such as the proper use of force or proper investigation techniques. *See* August 12, 2005 letter, Exh. C. Furthermore, upon information and belief, none of the staff have been trained in how to use the new "incident" form described by Attorney General Bennett in his response to DOJ.

46. Despite being on notice of the problem for two years, there continues to be no functioning procedure for the filing and resolution of ward grievances at HYCF. Wards are commonly intimidated out of writing grievances; grievance forms and writing implements must often be obtained from HYCF staff; completed forms must be handed to YCOs or social workers, or dropped off in a box close to the YCO station. Additionally, wards seldom, if ever, receive timely responses to the grievances they write. The few responses that are received are generally weeks or even months late and do not address the merits of the complaint. The effect is that wards, including each of the Plaintiffs, are deprived of any grievance system at all.

C. HARASSMENT BASED ON ACTUAL OR PERCEIVED SEXUAL ORIENTATION, SEX AND/OR TRANSGENDER STATUS

47. Plaintiffs have been harassed, assaulted, intimidated, and discriminated against repeatedly by administrators, YCOs, other wards and HYCF staff based on Plaintiffs' actual or perceived sexual orientation, sex, and/or transgender status and face a reasonable expectation that they will again be subjected to such unlawful conduct.

48. As set forth in the DOJ Findings Letter, Defendants have failed and continue to fail to protect youth from harm in the following six ways: "(1) self harm; (2) staff violence; (3) youth–on–youth violence; (4) excessive use of

disciplinary isolation; (5) lack of supervision; and (6) an inadequate grievance system." *See* DOJ Findings Letter, pp. 5-6 (details set forth on pp. 6-20).

49. Defendants Agnew, Tufono-Iosefa, Koller, and other agents and employees of HYCF are and were aware of the harassment, violence, intimidation, and discrimination faced by Plaintiffs and had the duty and authority to institute corrective measures, but they deliberately and intentionally failed to take steps reasonably calculated to end such actions. As a result, the harassment and discriminatory treatment on the basis of actual or perceived sexual orientation, sex, and/or transgender status that Plaintiffs experienced at HYCF continued throughout their confinement, and Plaintiffs face a reasonable expectation that they will again be subjected to the abusive conditions fostered at HYCF.

50. The specific instances of harassment and of Defendants' failure to take adequate remedial measures listed herein are merely representative, not exhaustive, and have included but not been limited to the following:

Plaintiff R.G.

51. YCO Earlene Josiah has repeatedly told R.G. and her girlfriend that homosexual relationships are "not normal" and "bad." She has quoted the Bible to them about this. She also has repeatedly referred to aspects of their relationship as "this butchie shit," "this butchie action," and "this butchie drama."

52. YCO Cindy Hubbell said to R.G. and her girlfriend when fish was served for lunch one day, “Oh yeah, good, the fish. Oh, what, you two eating fish earlier!? At least you’re not finger-banging yourselves in the TV-room.”

53. YCO Leila Holloway has told R.G. and her girlfriend “this ‘I love you’ shit has got to stop. Who do you think you are? If we wanted you to have relationships we’d bring the boys over. It’s not fair to the other girls to see you two together. It’s disgusting.”

54. DOE 1, an outside program person working at HYCF, took Plaintiff R.G. aside and told her that being gay “was a disease.”

55. YCO Lani Rosete has given R.G. and her girlfriend several lectures about their relationship, telling them that being gay is “bad” and “not of God.” She has told them they are going to go to hell and has had a Bible either with or close to her when she has said these things. When one of the girls asked how Rosete knew it was true, Rosete said it was in the scriptures that “man should not lay with man” and that anyone who did so would be punished.

56. R.G. was instructed by Defendant Tufono-Iosefa that she could not speak to her girlfriend, who was also a ward at the time, and that she would be disciplined if she did so. YCOs threatened repeatedly to send one of the two girls to “the boys side” or to stay in isolation.

57. Teacher Barbara Tanji quoted the Biblical story of Sodom and Gomorrah to R.G. and her girlfriend, relating it to their romantic relationship.

58. In February Sheriff Nelly heard R.G. listening to a song on the radio and said to her, "Oh, you look kind of horny. Do you want me to take you to your room so you can finger-bang yourself?" This was said in the presence of several other girls and staff at O & A and was extremely humiliating.

59. In February of 2005, HYCF staff distributed an Internal Communication Form ("ICF") to the female wards at O & A. The purpose of the ICF was to ask about verbal and physical abuse by HYCF staff on the youth.

60. Question 3 of the ICF asked, "Please describe in detail the type of abuse that occurred and whether or not you reported abuse to anyone." Plaintiff R.G. responded to Item 3 by stating that Defendant Josiah "makes comment about my sex life like I'm a carpet muacha [sic] and at least she not fucken finger banging someone else," and that Defendant "Hubble say similar stuff. Sheriff Nelly told me I look horny and I should go to my cell and finger bang yourself." Plaintiff R.G. responded to Item 4 that she had written an ICF concerning the incident with Sheriff Nelly.

61. In response to Item 7, which asked the females wards to describe instances of discrimination, R.G. responded "Sexual preference cause I'm gay they accept [sic] me to stay away from certain girls." In response to Item 8, which

asked “Is there anything else you would like to report or say at this time,” R.G. stated “No. I just sorry for the YCOs. I’m telling on maybe they didn’t mean any harm. But then again there very inappropriate with their wards toward me and the girls who are gay in here.”

62. Upon information and belief, the ICFs were turned over to one of the then Youth Correctional Supervisors (“YCS”). The YCS provided the ICFs to Defendant Tufono-Iosefa. Additionally, upon information and belief, Defendant Tufono-Iosefa reviewed the ICFs and instructed Defendant Haina to conduct internal investigations concerning some of the complaints by female wards such as physical assault by a staff member.

63. Upon information and belief, Defendants Tufono-Iosefa and Haina ignored R.G.’s complaints about being harassed based on her sexual orientation, failed to conduct any investigation into R.G.’s claims and failed to take reasonable remedial actions to prevent harassment of R.G. and other wards based on their actual or perceived sexual orientation, sex, and/or transgender status. Upon information and belief Defendants Tufono-Iosefa and Haina and other HYCF staff have investigated and taken remedial action to address other types of complaints brought by wards who are not, and are not perceived to be, LGBT.

64. On April 20, 2005 Defendant Tufono-Iosefa convened a meeting of all the girls and staff at O & A Unit, excepting R.G. and her girlfriend, who were kept in their rooms.

65. Upon information and belief, at the meeting, Defendant Tufono-Iosefa asked the girls, "How do you feel about their [the two girls'] relationship?" When no one answered, she looked around at all the girls and gave her own answer, "For me, it's wrong." Defendant Tufono-Iosefa made it clear that it was not only sexual contact in the context of HYCF that was wrong, but that their very relationship as two young women who loved and cared for each other was wrong.

66. Upon information and belief, at the April 20 meeting, Defendant Tufono-Iosefa demanded that the other wards discuss R.G.'s relationship with her girlfriend. When no one spoke up, Defendant Tufono-Iosefa informed the wards that if they did not voice their feelings about this matter, their levels of privileges might be affected or they might get an "8210" (a disciplinary write-up for infraction of rules).

67. This meeting continued for over an hour, after which R.G. and her girlfriend were called from their rooms to join the group. They were told that the purpose of the meeting was to have all the other girls at O & A discuss their feelings about the two girls' relationship and to ask those other girls to come up with rules and consequences for the two girls related to their relationship.

68. Under the rules set by the other female wards, which were approved by Defendant Tufono-Iosefa, R.G and her girlfriend were to be "separated from each other," were not permitted to "talk[] with each other without permission from staff," were not allowed to make "hand signals" and were not permitted to "write letters to each other." The consequences for breaking the rules were first a verbal warning, second a time-out in cells, and third, for total non-compliance, a referral to security staff. Defendant Tufono-Iosefa memorialized these rules and consequences in an ICF dated April 21, 2005, which was circulated among HYCF staff.

69. In the same meeting, Defendant Tufono-Iosefa told R.G. and her girlfriend that the other girls had come up with these rules because they were "disgusted" by the two girls' relationship, including both their verbal and physical signs of affection, such as saying "I love you" or giving each other a hug. Defendant Tufono-Iosefa herself referred to their relationship as "bothersome," "disgusting," and "wrong," and it was clear that this referred not solely or primarily to sexual contact between them but to their relationship as two women.

70. When R.G. and her girlfriend protested that other girls were permitted to discuss their sexual relationships with their boyfriends without penalty, Ms. Tufono-Iosefa answered, "This meeting is all about you two, not them." R.G. felt

tremendously humiliated, hurt, and angry that her committed relationship was publicly disparaged by a person of authority in this way.

71. By correspondence dated May 17, 2005, Dr. Robert J. Bidwell, M.D., Associate Professor of Pediatrics, John A. Burns School of Medicine of the University of Hawaii, put Defendants Agnew, Koller and Tufono-Iosefa on notice that Plaintiff R.G. was suffering pervasive harassment and discrimination based on her sexual orientation. Despite being put on notice, none of the Defendants responded formally or informally to Dr. Bidwell's letter or stated concerns and each of them deliberately and intentionally failed to take steps reasonably calculated to end such actions.

72. The prohibition on speaking about her sexual orientation, relationship and feelings for a loved one, together with the Defendants' harassment and failure to take adequate remedial measures to address and prevent harassment by other wards, has caused R.G. to become angry, depressed and despondent, and to experience significant emotional distress and related physical symptoms including insomnia, fatigue, and anxiety.

Plaintiff J.D.

73. Plaintiff J.D. was first confined at HYCF in 2004. Beginning in July 2004 J.D. was subjected to a constant campaign of sexual harassment, physical assault, and threats of rape and other harm because he was perceived to be gay.

HYCF employees condoned, encouraged, and even participated in the harassment against J.D.

74. Numerous wards have threatened to physically and/or sexually assault J.D., and some have assaulted him by engaging in various forms of unwanted sexual touching. One ward rubbed semen onto J.D.'s face after exiting the bathroom. One ward jumped on J.D. and pantomimed engaging in anal sex with him. Wards have grabbed J.D.'s buttocks or rubbed suggestively against J.D., in one case while he was in the shower. One ward dangled his testicles in front of J.D.'s face while J.D. was playing pool, and on a different occasion, placed his testicles in J.D.'s hand while J.D. was playing pool. Wards have placed their pubic hairs on J.D.'s head or body.

75. In addition, numerous wards have stated that J.D. should engage in anal and/or oral sex with them, in some cases while exposing themselves to him. Other wards have pantomimed fellatio with fruit, and told J.D. that "you're going to do me like that."

76. Many of these incidents occurred in the presence of YCOs, who did not take adequate or reasonable steps to address the other wards' behavior, and in some instances encouraged it.

77. On August 2, 2004, J.D. wrote a grievance to Defendant Tufono-Iosefa spelling out in some detail the campaign of verbal and physical harassment,

sexual abuse, and threats of rape and other physical harm directed at him because he was perceived to be gay. On August 8, 2004, J.D. wrote a letter to Defendant Tufono-Iosefa further describing some of the above-identified harassment.

78. Defendants responded to J.D.'s written grievances, not by disciplining the guilty parties, but by placing J.D. in isolation. Although Defendant Tufono-Iosefa ordered J.D. to be placed in a single cell for lock-down periods, this placement was not sufficient to protect him from verbal harassment and physical and sexual abuse.

79. HYCF staff and administration, including Defendants Koller, Agnew and Tufono-Iosefa was aware of the abuse suffered by J.D. and the utter lack of policies and procedures regarding protection of LGBT youth but failed to take adequate or reasonable steps to address the problem.

80. Defendants' harassment of J.D. and failure to take adequate remedial measures to address and to prevent him from being harassed by other wards, caused J.D. to become angry, depressed and despondent, and to experience significant emotional distress and related physical symptoms.

Plaintiff C.P.

81. For most of 2004, during her first stay at HYCF, C.P., who is a transgender girl, was housed with the other girls in her own cell at O & A. When the rest of the girls were transferred out of state temporarily to allow for some

physical repairs at HYCF, Defendants housed C.P. with the boys for the remainder of her first stay. During her second stay at HYCF, Defendants placed C.P. in isolation.

82. While being housed at HYCF with the female wards, C.P. was subjected to verbal harassment by the YCOs and staff and occasionally by other wards, including insults, tauntings, threats to cut off her hair and threats to send her "over to the boys," where the staff told C.P. that life would be much worse.

83. For example, Defendant Simao referred to C.P. as "cupcake" and "fruitcake" during her first couple of days at HYCF in 2004. These comments were made in front of other wards and HYCF staff. Defendant Simao also instructed C.P. not to play with or put up her hair "like the girls." These comments insulted and humiliated C.P. When C.P. was crying in reaction to Defendant Simao's comments, wards questioned C.P. asking "How come he gotta be so mean to you?"

84. C.P. was not one of the more troublesome wards at HYCF. For example, her entire time while housed in O & A, C.P. got into only one altercation with another female ward, one who had called her "faggot" and threatened her. In response to this incident, YCO Alvaro threatened to send C.P. over to the boys' side.

85. During the first few months that C.P. was housed at O & A (when R.G. was also housed at O & A), wards were not allowed to have any personal effects in their cells at all. After a couple of months, the staff instituted a new policy and practice of allowing wards to keep a Bible, and only a Bible, in their cells, despite being on notice since at least July 24, 2003 that such a practice was unconstitutional. *See* letter from Brent White to Mel Ando, dated July 24, 2003, a true and correct copy of which is attached to this Complaint as Exhibit D.

86. On or about June 21, 2004, Defendant Tufono-Iosefa issued an ICF entitled "Reading Materials in Cells," which provides, in relevant part: "Wards shall be allowed to have other reading materials in their cells, not limited to a Bible. Reading materials will be offered to wards anytime they will be in their cells for more than 30 minutes and will be collected from them no sooner than 30 minutes before "lights out." The ICF, however, was not uniformly applied and, on information and belief and based on the personal knowledge and experiences of Plaintiffs, as recently as February of 2005, female wards often were not allowed to have any materials in their cells other than a Bible, depending on which staff was on duty.

87. In September of 2004, the girls were being temporarily transferred to Utah so that Defendants could make some necessary physical changes to HYCF. Defendant Tufono-Iosefa came to O & A to announce the girls' transfer. During

that meeting, C.P. asked if she could go to Utah as well, but Defendant Tufono-Iosefa said "No." When C.P. asked "Why," Defendant Tufono-Iosefa replied that C.P. would stay with the boys.

88. On or about September 20, 2004, the girls were temporarily transferred to Utah and C.P. was housed alone for approximately one day. The next day, some of the male wards were transferred to O & A.

89. C.P.'s relocation to be housed with the male ward was against her wishes and the strong urgings of a number of the medical staff, psychologists and counselors at HYCF. The medical staff warned Defendant Tufono-Iosefa and Defendant Agnew in writing on September 20, 2004 that transferring C.P. to the boys' facility would be psychologically traumatic and physically dangerous for her.

90. The unheeded warnings of the medical staff proved to be correct. Almost immediately, C.P. was subjected to almost continuous harassment by the male YCOs, staff and other wards. Male wards almost immediately began harassing C.P. in front of other wards and staff. For example, wards would call C.P. "faggot," "mahu," and "gay" repeatedly and would ask C.P. "Oh how come you gay? Why can't you be straight?" Wards also insulted, taunted, threatened with violence, physically assaulted, grabbed and groped, and made explicit sexual demands to C.P. such as "suck my dick" or "give me head" or "why don't you

touch this," made threats such as "I am going to touch you," and made comments and references to and about C.P., frequently in front of and with the implicit approval of YCOs and staff. Often the YCOs' approval was more than implicit, with YCOs and staff participating in the taunts and jokes made by the male wards, and at times initiating this behavior.

91. When C.P. was transferred to the boys' facility, the staff at HYCF was instructed not to let C.P. interact with the male wards without supervision; however, such supervision was not readily forthcoming due to a combination of staffing shortages, lethargy and prejudice against C.P.

92. Rather than provide proper supervision to ensure C.P.'s safety, from September 2004 to late-December 2004, the YCOs placed C.P. in a single cell unit. When C.P. was not locked down, she was instructed not to have anything to do with any of the male wards – she was not supposed to sit with them, speak with them, look at them or interact with them in any way. C.P. was instructed to sit a chair or two away from the boys in the common area during free time and meals.

93. Because of her need for social interaction, C.P. repeatedly requested recreation time, reading material, and permission to interact with the some of the kinder male wards. These requests were denied by YCOs.

94. After several weeks, C.P.'s emotional state grew increasingly worse. C.P. was stressed, unable to sleep and found herself crying often. C.P. then asked

Defendant YCO Haina for a grievance form in early October of 2004. Defendant Haina asked her why she wanted a form and C.P. expressed that she would like to complain of the persistent harassment, isolation and punishment due to her transgender status. Defendant Haina replied that "It's [being transgender] your choice. You can stop this."

95. C.P. filed two written grievances in October 2004, seeking, *inter alia*, recreation time and permission to interact with the friendlier male wards. C.P. did not receive a response to these grievances during her 2004 confinement at HYCF. After C.P. filed the two grievances, YCOs retaliated by abandoning all attempts at discipline of the male wards who were harassing C.P.

96. The extended isolation and prohibition on all social interaction with her peers, together with the YCOs' harassment and encouragement of harassment by male wards and Defendants' failure to take adequate remedial measures to address the pervasive harassment, caused C.P. to become depressed and despondent and to experience significant emotional distress and related physical symptoms including insomnia, fatigue, anxiety, nausea, and loss of appetite.

97. On or about August 12, 2005, Plaintiff C.P. was returned to HYCF. Upon information and belief, Defendant Tufono-Iosefa was contemplating housing C.P. with the boys even after being reminded by medical staff that C.P. had suffered severe physical, emotional, verbal and sexual abuse when she was

previously housed with the boys in late 2004. On August 12, 2005, Dr. Bidwell wrote to Defendant Tufono-Iosefa (with a copy to Defendant Agnew) expressing his concerns with the treatment and placement of Plaintiff C.P. with the boys.

98. Ultimately Defendants decided, based on C.P.'s status as a transgender person, to hold her in solitary confinement in the central building rather than being with the other girls. C.P. stayed isolated in the holding cell for her 6-day stay at HYCF, and was locked up and under surveillance for 23 hours a day with nothing in her cell other than a pillow and a blanket. After a few days, staff brought her some reading materials. C.P. was allotted 1 hour to wash, to eat and to engage in "recreation." She was not permitted letters, writing instruments, radio, television or to interact or to socialize with any other wards.

99. During that week of confinement, several HYCF staff subjected her to verbal abuse and harassment. For example, one YCO (DOE 2 who appears to be of Hawaiian descent) would stand by C.P.'s holding cell and call out "twinkle toes" and "fairy." DOE 2 also made these comments to C.P. when she was being transferred for recreation time and when he was escorting her out of the cell to shower.

100. Another YCO, DOE 3, who upon information and belief is named Smith, also made repeated threats to C.P. that they were going to cut her hair,

which C.P. understood to be because YCO Smith thinks C.P. is "really a boy" and should be treated as such.

101. The harassment by HYCF staff and the isolation (which was punitive in nature based on her transgender status) caused C.P. to become angry, depressed and despondent, and to experience significant emotional distress and related physical symptoms.

Defendants' Conduct Generally

102. Despite being put on notice, Defendants failed to take reasonable steps to protect R.G., C.P. and J.D. from discrimination on the basis of actual or perceived sexual orientation, sex, and/or transgender status. HYCF has no formal policies, procedures or guidelines concerning the treatment of LGBT wards and no training of staff concerning proper treatment or conduct regarding LGBT wards.

103. Defendants actively permit and themselves intentionally engage in harassment of wards, including Plaintiffs, intentionally place Plaintiffs in situations likely to lead to harassment by other wards, and/or are deliberately indifferent to harassment of wards, including Plaintiffs, based on their actual or perceived sexual orientation, sex, and/or transgender status.

104. Defendants promote and foster a hostile environment at HYCF. The lack of policies, procedures and guidelines relating to the treatment of LGBT youth makes HYCF physically and emotionally unsafe for wards who are or are

perceived to be LGBT and/or who do not conform to sex stereotypes. YCOs, administrators and other HYCF staff are not trained at all or receive inadequate training in how to avoid engaging in, respond to and prevent harassment based on sexual orientation, sex, and transgender status. HYCF has no adequate formal or informal policy for preventing or responding to such harassment; the absence of such a policy promotes and perpetuates harassment.

105. Wards, who are or are perceived to be LGBT, and others on their behalf, have complained repeatedly to Defendants about the hostile climate for them at HYCF. Defendants have ignored the complaints and/or have taken no reasonable remedial actions to prevent harassment, which has caused Plaintiffs injury. Upon information and belief, Defendants have taken appropriate remedial actions to address other types of complaints brought by wards who are not, and are not perceived to be, LGBT.

106. The intentional discrimination, hostile environment, and deliberate indifference toward Plaintiffs based on their actual or perceived sexual orientation, sex and/or transgender status violates Plaintiffs' constitutional rights.

D. PUNISHING THE VICTIMS: ABSENCE OF CLASSIFICATION SYSTEM AND USE OF ISOLATION AND SEGREGATION

107. The DOJ Findings Letter attributes widespread youth-on-youth violence at HYCF, in part, to "the absence of a classification criteria for housing youth." *See* DOJ Findings Letter, Exh. B, p. 16. Absence of a classification

system likewise fosters the pervasive anti-LGBT harassment suffered by Plaintiffs at HYCF. DOJ concluded that "At present, security staff place youth committed for short periods of time at Ho'okipa and youth committed for longer terms at SCF. Within SCF and Ho'okipa, staff places aggressive youth with vulnerable youth regardless of the risk of harm." *Id.*

108. Rather than protecting Plaintiffs by establishing a classification system for wards, YCOs arbitrarily and excessively subjected Plaintiffs to lockdown segregation without due process as punishment and because they are or are perceived to be LGBT.

109. Lockdown segregation or "early dorms" punishment entails lockdown and strictest deprivation of reading materials and personal items. Wards are forced to sit alone in a bare cell for hours, frequently with no explanation as to why they have been punished. Wards have no opportunity to appeal a decision of early dorms. Prolonged lockdown segregation results in emotional and physical disturbance to wards, including Plaintiffs.

110. As a result of continuing policies and practices, Defendants regularly placed Plaintiffs in isolation as punishment, for the convenience of staff, instead of therapeutic programming and in place of taking appropriate remedial measures directed at harassers rather than at the victims of harassment. Defendants do not

have a procedure by which qualified professionals determine the need for isolation or the amount of time permissible for isolation.

111. Defendants fail to use isolation only for instances where Plaintiffs pose an immediate threat to the health or safety of themselves or others. For example, Defendants used excessive isolation and segregation with respect to Plaintiff J.D. because he was perceived to be gay and with respect to Plaintiff C.P. based on her transgender status. Defendants failed to release C.P. from segregation when she demonstrated that she was in control and desired to have contact with other wards. Defendants failed to provide adequate programming, counseling, recreation, or other rehabilitative treatment to Plaintiffs in isolation, compounding the punitive nature of isolation and segregation.

112. Plaintiffs held in isolation experience extreme loneliness, anxiety, rage, and depression, among other potentially debilitating emotional and psychological problems.

113. Defendants fail to ensure that prolonged use of isolation and segregation does not have adverse psychological consequences on isolated wards, including Plaintiffs. As a result of Defendants' continuing policies and practices of prolonged isolation, wards, including Plaintiffs, suffer from physical injuries, including self-inflicted injuries and emotional harm.

E. SUPPRESSION OF CONSTITUTIONALLY-PROTECTED EXPRESSION AND UNEQUAL DISCIPLINE BASED ON SEXUAL ORIENTATION

114. Plaintiffs R.G. and C.P. have been prohibited by Defendants from being open about and discussing with other wards their sexual orientation, gender identity, and relationships, and have been disciplined, threatened with discipline and subjected to punitive conditions, including a pervasive climate of harassment, for doing so.

115. Plaintiffs were discriminated against based on their actual or perceived sexual orientation, sex and/or transgender status with respect to discipline they received from HYCF officials. They were singled out for prohibitions against, and discipline for, conduct also engaged in by other students who were not disciplined. Wards who identify as straight have not been prohibited from discussing their sexual orientation and/or relationships, nor, on information and belief, have they been subjected to discipline for doing so.

116. By way of example, Plaintiff R.G. was prohibited from saying "I love you" to another female ward and was prohibited from speaking to her and from discussing their relationship with other wards under threat of discipline. Upon information and belief, HYCF staff permits wards to discuss heterosexual relationships openly and with no threat of discipline.

117. Plaintiffs intend to continue to be open about their sexual orientation and gender identity, but fear that if they do, they will face further discipline.

F. INADEQUATE ACCESS TO THE COURTS

118. HYCF denies wards, including Plaintiffs, access to courts and counsel. HYCF does not have a law library at all, nor does it provide wards with any legal assistance from persons trained in the law such as access to volunteer or legal services attorneys, law students, or inmate paralegals.

119. Since the ACLU's investigation in the summer of 2003, Defendants have intentionally obstructed the rights of wards to seek counsel to address the ongoing legal and constitutional violations at HYCF.

120. The only document that HYCF will accept to authorize a legal visit from the ACLU or an attorney with the firm Alston Hunt Floyd & Ing is a consent form that is executed not by the child but rather by the child's parent or legal guardian.

121. Since August of 2003, on information and belief, approximately one dozen wards (whose parents or guardians have not executed the consents or who have no legal parents or guardians other than Defendants themselves), including Plaintiffs R.G. and C.P., have requested a visit with the ACLU. Staff at HYCF has denied these requests the overwhelming majority of the time. These policies and

practices deny youth at HYCF their constitutional right of access to counsel and the courts.

122. Additionally, all telephone calls, including calls to counsel, are made in the presence of an HYCF staff member. Despite being put on notice for years that this practice hampers the children's ability to voice their concerns and violates the children's right to privileged communications with attorneys, HYCF continues to enforce this communication policy.

123. Immediately after the release of the DOJ Findings Letter, the Defendants have undertaken a strategy to further limit wards' access to counsel concerning legal and constitutional violations, including conditions of confinement. For example, during the week of August 15, 2005, a concerned person delivered an urgent message to the ACLU from C.P. (who had been held in solitary confinement for days since arriving at HYCF) that she would like to speak with the ACLU. Defendant Tufono-Iosefa refused to consent to an ACLU visit and stated instead, "I have been directed that all requests for consent to see the kids must now go directly to the Attorney General's office."

124. Additionally, during the week of August 15, at least two female wards, including Plaintiff R.G., requested permission to call the ACLU. The social worker denied their requests saying "No, I can't. There is a lot of shit going down right now." This practice is in direct violation of the Ward Handbook dated

November 2004 and a denial of Plaintiffs' constitutional right of access to the courts.

V. DECLARATORY AND INJUNCTIVE RELIEF

125. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants. The parties have genuine and opposing interests that are direct and substantial.

126. Plaintiffs have no adequate remedy at law. Each of the Plaintiffs has been detained at HYCF on more than one occasion, and the terms of each Plaintiff's release create a reasonable expectation that he or she will again be confined at HYCF and subjected to the same offending conduct. Unless enjoined by the Court, Plaintiffs may continue to be subjected to Defendants' unlawful policies, practices, acts, and omissions.

VI. PUNITIVE DAMAGES

127. Defendants' actions on which this Complaint is based were malicious in that they were accompanied by ill will toward Plaintiffs and/or toward LGBT individuals in general. Defendants' actions were also done wantonly, in reckless or callous disregard of, or with deliberate indifference to, the rights of Plaintiffs. Defendants acted oppressively and injured Plaintiffs with unnecessary harshness or severity by misuse and abuse of their authority and power over Plaintiffs.

FIRST CAUSE OF ACTION

Against All Defendants in their Official Capacities
Violation of the Fourteenth Amendment of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Due Process)

128. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 127, above.

129. Defendants' acts, omissions, policies and practices complained of herein are a substantial departure from accepted professional judgment, standards and practices, constitute punishment, and reflect deliberate indifference to known or obvious consequences to Plaintiffs, including actual harm and pervasive risk of harm, and thereby unlawfully burden Plaintiffs' protected liberty interest and violate Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

130. Plaintiffs seek a judgment declaring that the acts, omissions, policies and practices complained of herein are prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

Against All Defendants in their Individual Capacities
Violation of the Fourteenth Amendment of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Due Process)

131. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 130, above.

132. Defendants' acts, omissions, policies and practices complained of herein are a substantial departure from accepted professional judgment, standards and practices, constitute punishment, and reflect deliberate indifference to the known or obvious consequences to Plaintiffs, including actual harm and pervasive risk of harm, and thereby unlawfully burden Plaintiffs' protected liberty interest and violate Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

133. Defendants' acts, omissions, policies and practices complained of herein have caused Plaintiffs to suffer economic and non-economic damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Against All Defendants in their Official Capacities
Violation of the Eighth Amendment (as incorporated by the Fourteenth Amendment) of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Cruel and Unusual Punishment)

134. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 133, above.

135. Defendants' acts, omissions, policies and practices complained of herein constitute cruel and unusual punishment and subject Plaintiffs to actual harm, to pervasive risk of harm and to other unlawful conditions in violation of the Eighth Amendment of the United States Constitution (as incorporated by the Fourteenth Amendment).

136. Plaintiffs seek a judgment declaring that the acts, omissions, policies and practices complained of herein are prohibited by the Eighth Amendments of the United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

FOURTH CAUSE OF ACTION

Against All Defendants in their Individual Capacities
Violation of the Eighth Amendment (as incorporated by the Fourteenth Amendment) of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Cruel and Unusual Punishment)

137. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 136, above.

138. Defendants' acts, omissions, policies and practices complained of herein constitute cruel and unusual punishment and subject Plaintiffs to actual harm, to pervasive risk of harm and to other unlawful conditions in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

139. Defendants' acts, omissions, policies and practices complained of herein have caused Plaintiffs to suffer economic and non-economic damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

Against All Defendants in their Official Capacities
Violation of the Fourteenth Amendment Actionable
Pursuant to 42 U.S.C. § 1983
(Equal Protection)

140. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 139, above.

141. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents,

Defendants, without adequate justification, intentionally discriminated against Plaintiffs based on their actual or perceived sexual orientation, sex and/or transgender status and acted with deliberate indifference to the known or obvious consequences to Plaintiffs of harassment and/or discrimination based on their actual or perceived sexual orientation, sex and/or transgender status, including actual harm and pervasive risk of harm, in violation of the Fourteenth Amendment of the United States Constitution.

142. Plaintiffs seek a judgment declaring that the acts, omissions, policies and practices complained of herein are prohibited by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

SIXTH CAUSE OF ACTION

Against All Defendants in their Individual Capacities
Violation of the Fourteenth Amendment Actionable
Pursuant to 42 U.S.C. § 1983
(Equal Protection)

143. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 142, above.

144. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents, Defendants, without adequate justification, intentionally discriminated against Plaintiffs based on their actual or perceived sexual orientation, sex and/or

transgender status and acted with deliberate indifference to the known or obvious consequences to Plaintiffs of harassment and/or discrimination based on their actual or perceived sexual orientation, sex and/or transgender status, including actual harm and pervasive risk of harm, in violation of the Fourteenth Amendment of the United States Constitution.

145. Defendants' acts, omissions, policies and practices complained of herein have caused Plaintiffs to suffer economic and non-economic damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

Plaintiffs R.G. and C.P against Defendants Hubbell, Rosete, Agnew and Tufono-Iosefa in their Official Capacities
Violation of the First Amendment (as incorporated by the Fourteenth Amendment) Actionable Pursuant to 42 U.S.C. § 1983
(Establishment Clause)

146. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 145, above.

147. Defendants' policy and practice of providing Plaintiffs with copies of the Bible while restricting all other reading materials, including academic materials, is not part of a secular program. Rather, the purpose of such restriction of reading material is to promote religion generally and certain sects of Christianity specifically.

148. Defendants' policy and practice of preaching of religious views to Plaintiffs is not part of a secular program. Rather, the purpose of such preaching is to promote religion generally and certain sects of Christianity specifically.

149. The primary effect of Defendants' policies and practices of preaching, citing the Bible and providing Plaintiffs with copies of the Bible is to advance religion generally and certain sects of Christianity specifically.

150. Defendants' preaching, citation to the Bible and provision to Plaintiffs of copies of the Bible foster an excessive entanglement of government with religion.

151. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents, Defendants have deprived and will continue to deprive Plaintiffs of rights guaranteed to them by the Establishment Clause of the First Amendment and by the Fourteenth Amendment of the United States Constitution.

152. Plaintiffs seek a judgment declaring that the acts, omissions, policies and practices complained of herein are prohibited by the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

EIGHTH CAUSE OF ACTION

Plaintiffs R.G. and C.P. against Defendants Hubbell, Rosete, Agnew and Tufono-Iosefa in their Individual Capacities
Violation of the First Amendment (as incorporated by the Fourteenth Amendment) Actionable Pursuant to 42 U.S.C. § 1983
(Establishment Clause)

153. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 152, above.

154. Defendants' policy and practice of providing Plaintiffs with copies of the Bible while restricting all other reading materials, including academic materials, is not part of a secular program. Rather, the purpose of such restriction of reading material is to promote religion generally and certain sects of Christianity specifically.

155. Defendants' policy and practice of preaching of religious views to Plaintiffs is not part of a secular program. Rather, the purpose of such preaching is to promote religion generally and certain sects of Christianity specifically.

156. The primary effect of Defendants' policies and practices of preaching, citing the Bible and providing Plaintiffs with copies of the Bible is to advance religion generally and certain sects of Christianity specifically.

157. Defendants' preaching, citation to the Bible and provision to Plaintiffs of copies of the Bible foster an excessive entanglement of government with religion.

158. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents, Defendants have violated and will continue to violate the Establishment Clause of the First Amendment and the Fourteenth Amendment of the United States Constitution.

159. Defendants' acts, omissions, policies and practices complained of herein have caused Plaintiffs to suffer economic and non-economic damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION

Plaintiffs R.G. and C.P. against All Defendants in their Official Capacities Violation of the First Amendment (as incorporated by the Fourteenth Amendment) Actionable Pursuant to 42 U.S.C. § 1983 (Freedom of Speech)

160. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 159, above.

161. Defendants have restricted and will continue to restrict Plaintiffs' freedom to speak openly about their lesbian, gay or bisexual orientation, gender identity, relationships, feelings for loved ones and related matters, and have subjected and will continue to subject Plaintiffs to harassment, discipline, and threats of discipline based on the content and viewpoint of their speech.

162. Defendants' actions constitute viewpoint discrimination.

163. Defendants' actions constitute a prior restraint of Plaintiffs' speech and have caused them to fear that they will be disciplined further for exercising that right.

164. Defendants' actions did not and will not reasonably advance any legitimate or compelling correctional goal.

165. Plaintiffs' speech about gender identity, lesbian, gay or bisexual orientation, relationships, feelings for loved ones and related matters did not cause, and could not reasonably have been expected to cause, a substantial and material disruption or interfere with the rights of others.

166. Defendants' acts and omissions, failure to adopt adequate policies and procedures, and failure to supervise and to train their employees and agents, would chill or silence a person of ordinary firmness from future First Amendment activities.

167. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents, Defendants have deprived and will continue to deprive Plaintiffs of the freedom of speech guaranteed to them by the First and Fourteenth Amendments of the United States Constitution.

168. Plaintiffs seek a judgment declaring that the acts, omissions, policies and practices complained of herein are prohibited by the First and Fourteenth

Amendments of the United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

TENTH CAUSE OF ACTION

All Plaintiffs against All Defendants in their Individual Capacities Violation of the First Amendment (as incorporated by the Fourteenth Amendment), Actionable Pursuant to 42 U.S.C. § 1983 (Freedom of Speech)

169. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 168, above.

170. Defendants have restricted and will continue to restrict Plaintiffs' freedom to speak openly about their lesbian, gay or bisexual orientation, gender identity, relationships, feelings for loved ones and related matters, and have subjected and will continue to subject Plaintiffs to harassment, discipline, and threats of discipline based on the content and viewpoint of their speech.

171. Defendants' actions constitute viewpoint discrimination.

172. Defendants' actions constitute a prior restraint of Plaintiffs' speech and have caused them to fear that they will be disciplined further for exercising that right.

173. Defendants' actions did not and will not reasonably advance any legitimate or compelling correctional goal.

174. Plaintiffs' speech about gender identity, lesbian, gay or bisexual orientation, relationships, feelings for loved ones and related matters did not cause,

and could not reasonably have been expected to cause, a substantial and material disruption or interfere with the rights of others.

175. Defendants' acts and omissions, failure to adopt adequate policies and procedures, and failure to supervise and to train their employees and agents, would chill or silence a person of ordinary firmness from future First Amendment activities.

176. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents, Defendants have deprived and will continue to deprive Plaintiffs of the freedom of speech guaranteed to them by the First and Fourteenth Amendments of the United States Constitution.

177. Defendants' acts, omissions, policies and practices complained of herein have caused Plaintiffs to suffer economic and non-economic damages in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION

Against All Defendants in their Official Capacities
Violation of the First, Sixth and Fourteenth Amendments
of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Access to Counsel and Courts)

178. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 177, above.

179. By their acts and omissions, by failing to adopt adequate policies and procedures, and by failing to supervise and to train their employees and agents, Defendants have denied Plaintiffs access to counsel and therefore to the courts, in violation of the First, Sixth and Fourteenth Amendments of the United States Constitution.

180. Plaintiffs seek a judgment declaring that the acts, omissions, policies and practices complained of herein are prohibited by of the First, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;

2. Enter an order allowing Plaintiffs and C.P.'s Next Friend to proceed in pseudonym (a separate *ex parte* motion for which has been filed herewith);

3. Award compensatory and special damages according to proof, including without limitation damages for the severe emotional distress that Plaintiffs have suffered as a result of Defendants' acts and omissions, and related physical manifestations of such emotional distress;

4. Award punitive damages according to proof;

5. Issue declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure that the conditions of confinement at HYCF, and the policies, practices, acts, and omissions complained of herein:

a. constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights;

b. are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights;

c. constitute deliberate indifference to a known risk of serious harm, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights;

d. burden Plaintiffs' liberty interest protected by the Due Process Clause of the Fourteenth Amendment by penalizing them for being LGBT or for failing to conform to sex stereotypes;

e. violate Plaintiffs' rights under the First, Eighth and Fourteenth Amendments of the United States Constitution;

f. violate Plaintiffs' rights to access to the courts under the First, Sixth and Fourteenth Amendments of the United States Constitution;

g. constitute illegal discrimination and harassment in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment of the United States Constitution.

6. Issue a preliminary and permanent injunction enjoining Defendants (and their divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendants or pursuant to Defendants' authority) from subjecting Plaintiffs to the conditions, policies and practices set forth in this Complaint;

7. Issue a preliminary and permanent injunction requiring Defendants to develop and implement a comprehensive plan for the correction of the unlawful policies, practices, acts, and omissions complained of herein and to submit this plan to the Court and to the attorneys for the Plaintiffs for review;

8. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur;

9. Appoint a monitor with expertise in the areas alleged herein to implement and to enforce the provisions of the injunction, to review and to approve all plans submitted by Defendants to come into compliance with the terms of the injunction, to receive and to review complaints concerning the

implementation thereof and to take appropriate steps to ensure timely compliance with the injunction;

10. Award reasonable attorneys' fees, costs, and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. § 1988 and other applicable laws; and

11. Order such other relief as this Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable herein.

DATED: Honolulu, Hawaii, September 1, 2005.

Respectfully submitted,

LOIS K. PERRIN
ACLU OF HAWAII FOUNDATION

TAMARA LANGE
ACLU FOUNDATION
LESBIAN AND GAY RIGHTS PROJECT

ALSTON HUNT FLOYD & ING
PAUL ALSTON
MEI-FEI KUO

MORRISON & FOERSTER LLP
ANGELA L. PADILLA
MARILYN D. MARTIN-CULVER
MATTHEW I. HALL
ASHLEIGH E. AITKEN

Attorneys for Plaintiffs