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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; *et al.*,

Defendants.

CIVIL NO. 05-00566 JMS-LEK  
[Civil Rights Action]

STIPULATION FOR DISMISSAL  
WITH PREJUDICE PURSUANT TO  
FED. R. CIV. P. 41 AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action, through their respective attorneys, that pursuant to Rules 41(a)(1)(ii) and 41(a) (2) of the Federal Rules of Civil Procedure, this action and all claims asserted herein by Plaintiffs against any and all Defendants, be and is hereby dismissed with prejudice, each party to bear any remaining costs and attorneys' fees other than the amounts already paid pursuant to the Settlement Agreement and Mutual Release ("Settlement Agreement").

The parties stipulate to dismiss this action with prejudice upon the Court's approval of this stipulation and order expressly incorporating herein the terms of the executed Settlement Agreement as follows:

Plaintiffs R.G., C.P., and J.D., (whose true names are known by the parties and whose signatures will be filed under seal, if necessary) (collectively "Plaintiffs") and Defendants 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 ("HYCF") Administrator, in her individual and official capacities; CYNTHIA HUBBELL, Youth Corrections Officer ("YCO"), in her individual and

official capacities; PHYLLIS ROSETE, YCO, in her official capacity, EARLENE JOSIAH, YCO, in her individual and official capacities; LEILA HOLLOWAY, YCO, in her individual and official capacities; HENRY HAINA, YCO and HYCF Investigator, in his individual and official capacities; MITCH SIMAO, YCO, in his individual and official capacities; and ROBERT MICHAEL KIM, YCO, in his individual and official capacities and former Defendants RICARDO KOEHLER, YCO, in his individual and official capacities, LAWRENCE ALVARO, YCO, in his individual and official capacities and PHYLLIS ROSETE, YCO, in her individual capacity (all current and former Defendants are referred to herein collectively as “Defendants”) enter into this SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the “Settlement Agreement”) effective as of the Effective Date (as defined below).

Plaintiffs and Defendants (collectively “the Parties” and each a “Party”) enter into this Settlement Agreement with reference to the following facts and understandings:

A. On September 29, 2005, Plaintiffs filed a First Amended Complaint in the United States District Court for the District of Hawaii (Case No. CV 05-00566 JMS/LEK) asserting certain federal constitutional claims and state law claims (the “Action”).

B. Nothing in this Settlement Agreement should be construed as an admission of liability by any of the Defendants related to the claims asserted in the Action.

C. The Parties enter into this Settlement Agreement with the mutual desire and intention to ensure safe conditions at HYCF for current and future wards who are or are perceived to be lesbian, gay, bisexual or transgender (“LGBT”).

D. The Parties to this Settlement Agreement wish to resolve all disputes between them as provided herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Settlement Agreement, the Parties agree as follows:

1. Effective Date

a. The “Effective Date” of this Settlement Agreement shall be the date upon which the last signatory executes this Settlement Agreement.

b. The validity of this Settlement Agreement shall be subject to the following conditions subsequent: (1) execution of a separate agreement and release regarding a structured settlement and assignment for the Plaintiffs’ annuities, if Plaintiffs deem it

necessary, however, the Parties shall have until August 28, 2006 to execute said separate agreement and release or this condition subsequent shall expire; (2) payment of the funds contemplated in Paragraphs 4 and 5, all of which have been appropriated by the Legislature and (3) inclusion of the material terms hereof in an Order of Dismissal whether under Fed. R. Civ. P. 41(a)(ii) (as set forth in Subparagraph 15(a) below) or in any other Order of the Court regarding dismissal of the Action.

c. In the event that this Settlement Agreement, including the terms proposed herein, is not approved by the United States District Court for the District of Hawaii or fails to become effective for any reason, or the funds contemplated in Paragraphs 4 and 5 have not been paid or tendered to be paid by August 31, 2006, the Settlement Agreement shall be null and void and of no legal effect and Plaintiffs and Defendants shall revert to their respective positions prior to the execution of this Settlement Agreement.

2. Dismissal of the Action

It is understood and agreed that at the time this Settlement Agreement is fully and finally executed and the funds contemplated in Paragraphs 4 and

5 have either been paid, or are available to be paid or tendered and Plaintiffs' counsel has requested a delay in payment, the Plaintiffs and Defendants will execute and lodge a Stipulation of Dismissal With Prejudice and Order, pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1)(ii), which will set forth this Settlement Agreement (including, but not limited to, Exhibit A hereto) verbatim (except for the signature blocks) in Civil No. 05-00566 JMS/LEK filed in the United States District Court for the District of Hawaii. Such Stipulation and Order shall set forth this Settlement Agreement verbatim so that the Court shall retain jurisdiction for purposes of any enforcement action arising from non-compliance with this Settlement Agreement.

3. Incorporation of Agreement Re Consultant, Policies, Practices, Training and Implementation

Defendants Agnew and Tufono-Iosefa, in their official capacities only, and on behalf of themselves, their agents, their assigns and/or their successors agree to execute and to undertake the obligations set forth in the "Agreement Re Consultant, Policies, Practices, Training and Implementation" which is attached as Exhibit "A" hereto. The Parties agree

that Exhibit "A" is incorporated by reference into this Settlement Agreement as if fully set forth herein.

4. Payments to be made on behalf of Defendants to Plaintiffs

Plaintiffs represent they have suffered physical injuries or physical sickness as a result of the transactions or occurrences that are the subject of this Action. Thus the consideration described in Subparagraphs 4(a)-4(c) of this Agreement shall be for alleged general damages for alleged physical injuries or physical sickness that are non-wage and non-income in nature under Internal Revenue Code § 104(a)(2). No withholding shall be made from the payments as described in Subparagraphs 4(a)-4(c) of this Agreement, and no IRS Forms 1099-MISC shall be issued or filed in connection with these payments. The following amounts as specified below and subject to these terms shall be paid on behalf of Defendants no later than August 31, 2006 to settle this matter:

- a. For Plaintiff R.G., \$85,000 will be paid for the purchase of an annuity. Plaintiffs' counsel is to arrange for the annuity and Defendants' obligation to purchase the annuity does not arise until all arrangements regarding its purchase have been completed.

b. For Plaintiff C.P., \$110,000 will be paid for the purchase of an annuity. Plaintiffs' counsel is to arrange for the annuity and Defendants' obligation to purchase the annuity does not arise until all arrangements regarding its purchase have been completed.

c. For Plaintiff J.D., \$150,000 will be paid for the purchase of an annuity. Plaintiffs' counsel is to arrange for the annuity and Defendants' obligation to purchase the annuity does not arise until all arrangements regarding its purchase have been completed.

5. Attorneys' Fees

a. The sum of \$255,000 shall be paid on behalf of Defendants to the American Civil Liberties Union of Hawaii Foundation (a tax exempt organization), which sum constitutes statutory attorneys' fees and costs under 42 U.S.C. Sections 1983 and 1988. This allocation or characterization of the fees and costs shall have no bearing on any future request for fees and costs in the event of further action relating to substantial compliance. In consideration of the payment, Plaintiffs' attorneys and Plaintiffs hereby waive all other rights that they may have to seek fees and costs against Defendants incurred in



this Action, except as otherwise provided in this Settlement Agreement.

b. With regard to the \$255,000 set forth above, the State of Hawaii will issue an IRS Form 1099 to the American Civil Liberties Union of Hawaii Foundation (a tax exempt organization) in the amount of \$255,000, if that is consistent with the standard practice of the State. As fees are paid pursuant to statute and as such are the property of the attorneys (and will be allocated in accordance with a separate agreement amongst Plaintiffs' counsel in this Action), no IRS Form 1099 shall be issued by any of the Defendants or the State of Hawaii to any of the Plaintiffs for these fees and costs.

6. Consultant

Defendants shall pay up to \$25,000 to Consultant to perform the services as described in "Agreement Re Consultant, Policies, Training and Implementation," which is attached as Exhibit "A" hereto.

7. Releases and Covenants Not to Sue

The following mutual releases and covenants not to sue shall become binding as of the Effective Date, but shall be null and void if any of the

conditions subsequent set forth in Subparagraph 1(b) are not satisfied or if the dismissal contemplated in Paragraph 2 is not entered.

a. Release by Plaintiffs. Plaintiffs R.G., C.P. and J.D., individually and/or collectively, for themselves, their heirs, and their assigns hereby covenant not to sue and fully and forever release, waive, and discharge from and for any and all Released Claims, as defined in Subparagraph 7(c) below: each of the Defendants, individually and/or collectively; the State of Hawaii; all state agencies; all present and former state employees; and any of their predecessors, successors, attorneys, insurers, and assigns (hereafter collectively “Defendant Releasees”). However, in the event that: (1) a non-Defendant who is released herein files suit against a Plaintiff, and (2) some or all of the claims against the Plaintiff in such suit contain, relate to, or arise out of a Released Claim; then the Plaintiff who is sued may assert against that suing but released non-Defendant any claims, including Released Claims, such Plaintiff has or may have against such suing but released non-Defendant, notwithstanding the release and covenant not to sue herein.

b. Release of Plaintiffs by Defendants. Each of the Defendants,

individually and/or collectively, for themselves, their heirs, and their assigns hereby covenant not to sue and fully and forever release, waive, and discharge from and for any and all Released Claims, as defined in Subparagraph 7c below: Plaintiffs R.G., C.P. and J.D., and their heirs, attorneys, and assigns (hereafter collectively “Plaintiff Releasees”).

c. Released Claims. “Released Claims” means any and all claims, counter-claims, demands, causes of action, rights of appeal, costs, expenses, damages, judgments, orders and liabilities of whatever kind or nature, in law, equity or otherwise, including but not limited to claims for attorneys’ fees or costs (all of the foregoing collectively referred to herein as “Claims”), whether now known or unknown, vested or contingent, suspected or unsuspected, that have existed or may have existed, or that do exist as of the Effective Date, that:

(i) arise out of or in any way relate to any and all Claims or allegations made, or which could have been made, in the Action; and/or

(ii) arise out of or in any way relate to any aspect of the Plaintiffs’ confinement and/or treatment and/or actions at

HYCF.

Nothing contained herein is intended to prevent any Party from enforcing this Settlement Agreement.

d. No Prior Transfer of Released Claims or Rights. Each Party to this Settlement Agreement represents and warrants that no Claim or right that would have been relinquished or released under this Settlement Agreement if held by that Party on the Effective Date has been transferred, hypothecated, assigned, subrogated, conveyed, sold or given away by that Party prior to the Effective Date of this Settlement Agreement to any person or entity that would not be bound hereby. A Party that breaches this representation and warranty shall indemnify, defend and hold harmless the non-breaching Parties from and against claims, demands, liabilities, losses and expenses caused by that Party's breach (in each Plaintiff's case up to the amount of his or her respective payments set forth in Subparagraphs 4(a)-4(c) above). The Parties understand and agree the foregoing provision is not meant to require a non-breaching Party to defend and indemnify for the breach of this representation and warranty by any other Party.

e. Joint Tortfeasor Release. It is covenanted and agreed that this Release shall be construed as a joint tortfeasor release and that this Joint Tortfeasor Release shall, within the meaning of Chapter 663 of the Hawaii Revised Statutes as amended by Act 300, Session Laws of Hawaii 2001: (1) not discharge any other party not released from liability unless specifically set forth herein; (2) reduce the Releasor's recovery against all other joint tortfeasors by the amount stipulated by this Release, or in the amount of the consideration paid for it, whichever is greater; and (3) discharge the Releasee from all liability for any indemnity or contribution to any other joint tortfeasor. It is also further covenanted and agreed that the settlement of this matter as documented in this Release was entered into in good faith within the meaning of Chapter 663 of the Hawaii Revised Statutes as amended by Act 300, Session Laws of Hawaii 2001. Settlement of this matter as documented by this Release is subject to court approval of good faith settlement pursuant to Chapter 663 of the Hawaii Revised Statutes as amended by Act 300, Session Laws of Hawaii 2001.

8. Indemnities.

a. Each Plaintiff agrees on behalf of himself or herself and on behalf of his or her successors and assigns to indemnify and hold harmless the Defendant Releasees against any liability that may result from any claims, demands, suits, proceedings, causes of action and/or liens relating in any way to or arising from that Plaintiff's Released Claims which are pending or which may now or hereafter be made or asserted by that Plaintiff, or anyone claiming by or through that Plaintiff (including but not limited to parents, persons acting in a parental capacity, foster parents, spouses, siblings and/or children)("Indemnified Claims"). Such Indemnified Claims shall not include any action or proceedings arising out of this Settlement Agreement as set forth in Paragraph 15. Each Plaintiff agrees to reimburse Defendant Releasees for any final liability arising from any Indemnified Claim that may be made or asserted by that Plaintiff, or anyone claiming by or through that Plaintiff, specifically excluding any attorneys' fees, costs, and expenses that may be incurred with respect to the Indemnified Claims up to a maximum amount of \$85,000.

b. Plaintiffs specifically agree that, in exchange for the consideration described in Subparagraphs 4(a)-4(c) of this Agreement, they intend to release and indemnify the Defendants, and all of them, as set forth in Paragraph 7 and Subparagraph 8(a) of this Agreement. It is acknowledged and agreed by Plaintiffs and their attorneys that neither Defendants nor Defendants' attorneys have expressed any opinions or made any representation concerning the tax consequences, if any, that may be associated with the payments described in Subparagraphs 4(a)-4(c) of this Agreement and that Plaintiffs have had the benefit of, or the opportunity to seek, advice from their own counsel or other advisors. Each Plaintiff agrees that it shall be his or her sole duty and responsibility to pay, before the sum becomes delinquent, all taxes, impositions, and other governmental assessments, if any, that may result from the payments to him or her as set forth in Subparagraphs 4(a)-4(c) of this Agreement. Further, Plaintiffs agree to indemnify, defend and hold harmless Defendants for any cost or expense, including reasonable attorneys' fees, incurred by Defendants as a result of any taxation that may be imposed by any

federal, state or local governmental body based on the consideration described in Subparagraphs 4(a)-4(c) of this Agreement.

c. Each Defendant agrees on behalf on himself or herself and on behalf of his or her successors and assigns to indemnify and hold harmless the Plaintiff Releasees against any liability that may result from any claims, demands, suits, proceedings, causes of action and/or liens relating in any way to or arising from that Defendant's Released Claims which are pending or which may now or hereafter be made or asserted by that Defendant, or anyone claiming by or through that Defendant (including but not limited to parents, persons acting in a parental capacity, foster parents, spouses, siblings and/or children) ("Indemnified Claims"). Such Indemnified Claims shall not include any action or proceedings arising out of this Settlement Agreement as set forth in Paragraph 15. Each Defendant agrees to reimburse the Plaintiff Releasees for any final liability arising from any Indemnified Claim that may be made or asserted by that Defendant, or anyone claiming by or through that Defendant, specifically excluding any attorneys' fees, costs, and expenses that may be incurred with respect to the Indemnified Claims up to a maximum amount of \$85,000.



9. Confidentiality of Information and Effect of Court Orders

a. Pseudonyms. Nothing in this Settlement Agreement shall in any way restrict, abrogate or undermine the Court's September 6 and October 7, 2005 Orders, which allowed Plaintiffs: (1) to proceed using pseudonyms from the inception of this lawsuit and to file under seal the declaration of Lois Perrin in support; (2) to file under seal their declarations and the declaration of Dr. Robert J. Bidwell in support of plaintiffs' motion for preliminary injunction; and (3) to file under seal all future declarations, exhibits and court documents that reveal plaintiffs' identities, provided that the Parties comply with certain conditions. The Parties shall continue their compliance with all of the terms set forth in those Orders. Defendants shall refrain from taking any steps that are reasonably likely to reveal any of the Plaintiffs' true identities and shall take all reasonable steps to continue to preserve the confidentiality of the Plaintiffs' true identities.

b. Stipulated Confidentiality Agreement. Nothing in this Settlement Agreement shall in any way restrict, abrogate or undermine the Stipulated Confidentiality Agreement and Order

entered on February 27, 2006. Any person in the possession of Confidential Information pursuant to the terms of the Stipulated Confidentiality Agreement and Order shall within ten (10) business days after the Effective Date, return all Confidential Information including copies, notes, or other transcriptions made therefrom – to the counsel who provided the person with the Confidential Information.

c. Sealed Documents. Nothing in this Settlement Agreement shall in any way restrict, abrogate or undermine the protections afforded by the sealing of documents in this Action. The Parties shall continue their compliance with all of the terms set forth in any orders sealing documents in the Action. Defendants shall refrain from taking any steps that are reasonably likely to reveal any of the Plaintiffs' true identities and shall take all reasonable steps to continue to preserve the confidentiality of the Plaintiffs' true identities.

d. Protocol Regarding J.D. Nothing in this Settlement Agreement shall in any way restrict, abrogate or undermine the court-ordered protocol concerning Plaintiff J.D. should he be returned to the

custody of the Office of Youth Services and/or HYCF prior to his 19<sup>th</sup> birthday.

e. All other orders. It is understood and agreed by the Parties that upon entry of the Stipulation for Dismissal With Prejudice and Order contemplated in Paragraph 2 of this Settlement Agreement, all orders of the Court in the Action, except those referenced in this Paragraph above and the Order of Dismissal itself, shall no longer have any force or effect. This includes, but is not limited to: the Temporary Restraining Order filed October 28, 2005; the Order Granting In Part And Denying In Part Plaintiffs' Motion For Preliminary Injunction filed February 7, 2006; the Preliminary Injunction Order, filed March 1, 2006; and all orders appointing a consultant and/or related to the appointment of a consultant.

f. Pending motions or appeals. It is understood and agreed by the Parties that upon the Effective Date, all pending motions and/or appeals shall be deemed to be moot, provided however, that if this Settlement Agreement fails to become effective for any reason or if the dismissal is not filed by the Court then the Parties shall have the right to renew or re-file such motions and/or appeals.

10. Implementation of Changes at HYCF

The Parties understand and agree that any and all provisions in Exhibit “A”, including but not limited to the implementation of new policies, practices and procedures at HYCF and the retention of a consultant, are the obligation of Defendants Agnew and Tufono-Iosefa, in their official capacities only, and/or their respective successors, agents or assigns and are not the responsibility of the other Defendants. Defendants Koller, Agnew and Tufono-Iosefa, in their official capacities only, represent that Defendants Agnew and Tufono-Iosefa (referred to as the “State Management Defendants”) have the authority to make the changes set forth in Exhibit “A.”

11. Other Facts

The Parties to this Settlement Agreement acknowledge and understand that it is possible that they, or their agents or attorneys, may discover Claims or facts different from or additional to the ones they presently believe to exist concerning this Settlement Agreement or the Claims compromised or released hereby. Each of the Parties to this Settlement Agreement expressly accepts and assumes the risk of any such different or additional Claims or facts, and agrees that this Settlement

Agreement, and the compromises, releases and other provisions hereof, shall remain effective notwithstanding the discovery of any such different or additional Claims or facts.

12. No Admission of Liability

This Settlement Agreement is entered into in compromise of disputed claims. Neither this Settlement Agreement, nor the releases provided for herein, nor the consideration provided hereunder, nor any other act or agreement in furtherance of this settlement, shall be construed in any way as an admission of liability on the part of any Party to this Settlement Agreement.

13. Notices

Any notice or communication to any Party to this Settlement Agreement permitted or required to be made hereunder shall be made in writing, with a copy transmitted by facsimile to those entitled to notice that have notified the others of a facsimile number. All notices or communications shall be addressed as follows, until further notice:

a. If to Plaintiffs:

Lois Perrin, Esq.  
ACLU of Hawaii Foundation  
P.O. Box 3410  
Honolulu, HI 96801  
Facsimile: (808) 522-5909

With a copy to:

Tamara Lange, Esq.  
American Civil Liberties Union Foundation  
LGBT Project  
39 Drumm Street  
San Francisco, California 94111  
Facsimile: (415) 255-8437

b. If to Defendants:

First Deputy Attorney General Lisa Ginoza  
Department of the Attorney General  
425 Queen St., Honolulu, HI 96813

Deputy Attorney General John F. Molay  
Department of the Attorney General  
465 S. King St., Rm. 200  
Honolulu, HI 96813

14. Further Acts

Each of the Parties hereto agrees promptly to execute all other documents and take all other actions reasonably necessary to effectuate all of this Settlement Agreement's terms and conditions.

15. Compliance and/or Enforcement

a. This Settlement Agreement (including, but not limited to, Exhibit A hereto) shall be set forth verbatim (except for the signature blocks) in the Stipulation for Dismissal with prejudice and Order Pursuant to Fed. R. Civ. P. 41(a)(ii) or in any other Order of the Court regarding dismissal of the Action (“Settlement Agreement and Order”).

The Parties agree that Plaintiffs have the right to initiate an action or proceedings to compel substantial compliance with the Settlement Agreement and Order. In the event of such an action or proceedings, Defendants recognize and agree that the United States District Court for the District of Hawaii shall have jurisdiction and further agree that Defendants shall not contest Plaintiffs’ standing.

b. The Parties agree that Plaintiffs have the right to initiate an action or proceedings to compel substantial compliance with the Settlement Agreement and Order. In the even of such an action or proceedings, Defendants recognize and agree that the United States District Court for the District of Hawaii shall have jurisdiction and further agree that Defendants shall not contest Plaintiffs’ standing.

c. If Plaintiffs believe that any of the State Management Defendants or their agents, assigns or successors is not in substantial compliance with the terms of the Settlement Agreement, then Plaintiffs' counsel will give written notice to the Attorney General's office specifying the non-compliance. The State Management Defendants will have 30 calendar days from receipt of the written notice to cure the alleged non-compliance and to provide written notice to Plaintiffs' counsel in which they specify the actions taken to cure.

d. Within 10 calendar days after receipt of the State Management Defendants' written notice of the actions to cure, Plaintiffs and the State Management Defendants shall meet and confer. If an agreement is not reached by the Parties within 10 calendar days after meeting and conferring, then the Parties agree to mediate in good faith. The Parties agree that the mediation will be held with Keith Hunter, or if he is unavailable with a mediator at Dispute Prevention and Resolution ("DPR"). If the Parties are unable to agree on an alternative mediator, Magistrate Leslie Kobayashi or her successor shall select the mediator from DPR. The mediator's fees and expenses



shall be paid by the State. The Parties will bear their own respective attorneys' fees, costs and expenses related to all matters set forth in this subparagraph. However, in the event mediation is unsuccessful and legal action ensues, the prevailing party in the litigation shall be entitled to seek reasonable attorneys' fees subject to the discretion of the court. Should the court award such fees, the Court may, in its discretion, consider the relative success or not of the prevailing party. Nothing in this Paragraph shall prevent or limit the prevailing party from seeking fees and costs associated with an unsuccessful mediation.

e. Within 30 calendar days of the commencement of mediation, unless otherwise agreed upon by the Parties, Plaintiffs have the right to initiate an action or proceeding to compel substantial compliance with this Settlement Agreement. Such action will be brought only after exhausting Subparagraphs (c) and (d) above.

f. The Parties recognize and agree that the United States District Court for the District of Hawaii shall have jurisdiction to resolve any such claims to compel substantial compliance with this Settlement Agreement, and that the court's jurisdiction shall be limited to such

claims to compel substantial compliance and shall include no other claims, including claims otherwise pendent thereto. The Parties agree that the Plaintiffs in this case shall have standing to initiate and maintain such an action or proceeding. In such action or proceeding, the prevailing party in the litigation shall be entitled to seek reasonable attorneys' fees. In awarding such fees, the Court may, in its discretion, consider the relative success or not of the prevailing party.

g. The right to institute litigation or proceedings as set forth in this Paragraph shall terminate on February 9, 2009.

16. Successors

This Settlement Agreement shall bind the successors, assigns, heirs and personal representatives of each of the Parties to this Settlement Agreement.

17. Parties Represented

Each Party to this Settlement Agreement has been advised and represented by counsel in connection with the negotiation and preparation hereof; each Party enters into this Settlement Agreement voluntarily; and each Party to this Settlement Agreement shall be deemed its co-author for

purposes of the Settlement Agreement's construction. Each Party further acknowledges that that Party has had an opportunity to review this Settlement Agreement (including the release of all claims and Exhibit A hereto) and to have its language and intended effect explained by an attorney of his or her choice.

18. Integrated Writing

This Settlement Agreement, including Exhibit A hereto, shall constitute the whole and only existing and binding agreement between the Parties to this Settlement Agreement on the subject matters hereof, superseding all prior understandings, whether written or oral as of the Effective Date. Other than the warranties, covenants, and representations expressly stated as such in this Settlement Agreement, including Exhibit A hereto, there are no warranties, covenants or representations of any kind, express or implied, upon which any Party to this Settlement Agreement has relied in entering into this Settlement Agreement, or as to the future relations or dealings of the Parties to this Settlement Agreement.

19. Amendments

This Settlement Agreement may be modified or amended only by a writing duly signed by the Party to this Settlement Agreement against whom the amendment or modification is to be enforced.

20. No Waiver

The waiver by any Party to this Settlement Agreement of any right, privilege, covenant or condition hereunder will not operate as or indicate a waiver of any other, or a continuing waiver of the same, right, privilege, covenant or condition hereunder.

21. Choice of Law

This Settlement Agreement shall be governed by the law of the State of Hawaii applicable to contracts executed and to be wholly performed in that State.

22. Counterparts

This Settlement Agreement may be executed in any number of counterparts, all of which together shall comprise a single agreement.

EXHIBIT "A"  
AGREEMENT RE CONSULTANT, POLICIES, PRACTICES, TRAINING AND  
IMPLEMENTATION

As part of, and in partial consideration for, the Settlement Agreement and Mutual Release (to which this Exhibit "A" is attached and into which it is incorporated) entered into by the Parties in settlement of the lawsuit entitled *R.G., et al. v. Koller, et al.*, Civ. No. 05-566 JMS/LEK, United States District Court for the District of Hawaii, the Parties agree as follows:

1. The only Defendants with obligations under this Exhibit "A" are Defendants Agnew and Tufono-Iosefa, in their official capacities only, and/or their respective agents, assigns or successors (hereafter referred to in this exhibit as the "State Management Defendants"). State Management Defendants represent, in their official capacities only, that they have the authority to make the changes set forth in this Exhibit "A".

2. State Management Defendants shall retain Marty Beyer as a consultant for: (1) the prompt development and implementation of policies, procedures and practices that are to be implemented hereunder; and (2) the development and implementation of appropriate training to the same end. Consultant Beyer's work shall, at a minimum, address policies, practices and training necessary to recognize, respond to, and prevent discrimination,

harassment and abuse based on a ward's actual or perceived sexual orientation and/or gender identity. Consultant Beyer will be paid up to \$25,000 for her reasonable fees and cost of services, and she will execute a standard contract for goods and services with the State of Hawaii, subject to approval by the State Procurement Office.

3. Consultant Beyer shall have the right to speak with Plaintiffs, Plaintiffs' counsel, employees or contractors of HYCF, and any outside advisors or experts if she feels that it would be helpful. However, Consultant Beyer shall not release or disclose any information that she obtains in her role as the Consultant and that is protected from disclosure under law.

4. Consultant Beyer shall prepare a report and recommendations to be provided to the State Management Defendants and Plaintiffs' counsel no later than May 31, 2006.

5. State Management Defendants shall develop a reasonable plan for implementation of policies, procedures, practices and training required under this Exhibit "A" and shall provide such implementation plan to the Plaintiffs' counsel within 30 calendar days of receiving the report and/or recommendations of Consultant Beyer. State Management Defendants shall use reasonable best efforts to substantially implement the policies, procedures, and practices within one year

of the Effective Date. State Management Defendants recognize that training is and shall be an ongoing responsibility.

6. Plaintiffs' counsel shall have the opportunity to provide comments on the proposed implementation plan, and State Management Defendants and Plaintiffs' counsel shall use their best efforts to reach agreement regarding any disputed details in the proposed implementation plan. However, no Party may claim a breach of the Settlement Agreement or this Exhibit "A" solely based on the failure to use best efforts to reach such an agreement.

7. State Management Defendants are free to accept or reject any part of the Consultant's recommendations. In the event State Management Defendants reject the Consultant's recommendations in whole or in part, State Management Defendants shall provide Plaintiffs' counsel with a general explanation for this decision and shall articulate how the implementation plan falls within generally accepted professional standards.

8. State Management Defendants shall provide Plaintiffs' counsel with the final implementation plan within 5 business days of its completion.

9. State Management Defendants shall provide Plaintiffs' counsel with a report as to the status of the implementation plan 90 calendar days after adoption of the final implementation plan, and every six (6) months thereafter and shall

provide a final status report by October 15, 2008.

10. State Management Defendants shall:

a. Develop policies, procedures, and practices for the Hawaii Youth Correctional Facility (HYCF) administration and staff regarding their obligation to refrain from discrimination, harassment, or abuse of wards who are or who are perceived to be LGBT. State Management Defendants shall appropriately counsel or discipline employees who violate this provision, and such counseling or discipline shall comply with Hawaii law.

b. Develop policies, procedures, and practices for HYCF administration and staff regarding their obligation not to use any form of isolation,<sup>1</sup> excepting temporary emergency protective segregation, as a means of keeping a ward safe from discrimination, harassment or abuse based on actual or

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<sup>1</sup> “Isolation” means placement of a youth alone in a locked room, and includes such practices as lockdown, seclusion, and early dorms. The term isolation does not apply to locking a youth in a room during normal sleeping hours, with normal sleeping hours not to exceed 8 to 10 hours, as long as any period in excess of 8 hours is as part of a behavior modification and/or level system for the youth and not associated with discipline or punishment of the youth (such as “early dorms”). This definition is adopted from the Memorandum of Agreement Between the United States and the State of Hawaii, which is attached as Exhibit A to the Joint Motion for Conditional Dismissal Pursuant to Rule 41(a) (2) of the Federal Rules of Civil Procedure filed in *United States v. Hawaii, et. al*, Case No. CV 06-00073 JMS/LEK (D. Haw. 2006).



perceived LGBT status. State Management Defendants shall adopt a policy defining temporary emergency protective segregation.

c. Develop policies, procedures, and practices for HYCF administration and staff regarding their obligation not to prohibit or discourage any form of communication between members of the same sex that is not also prohibited or discouraged between members of different sexes.

d. Develop policies, procedures, and practices for HYCF administration and staff regarding their obligation not to use in the course of their employment relating to the HYCF, and to intervene to stop wards from using, terms that convey hatred, contempt or prejudice towards LGBT wards. Such terms may, in context, include such words as “butch”, “butchie”, “bull”, “faggot”, “fag”, “wahine”, “mahu”, “cupcake”, or “fruitcake”.

e. Develop policies, procedures, and practices for HYCF administration and staff regarding their obligation to take reasonable steps to protect wards from discrimination, or verbal, sexual, or physical harassment or abuse by other wards based on actual or perceived LGBT status.

f. Develop policies, procedures, and practices for HYCF administration and staff regarding their obligation to intervene in discrimination against or abuse or harassment of wards who are, or who are perceived to, be

LGBT. State Management Defendants shall appropriately counsel or discipline employees who violate this provision, and such counseling or discipline shall comply with Hawaii law.

g. Develop policies, procedures, and practices for HYCF administration and staff regarding their obligation to appropriately investigate and respond to grievances by wards at HYCF who allege discrimination, harassment, or abuse based on actual or perceived LGBT status. The term “grievance” refers to any complaint by a ward recognized under the grievance system to be developed pursuant to the Memorandum of Understanding, dated February 9, 2006, between the State of Hawaii and the United States Department of Justice.

h. Develop policies, procedures, and practices regarding adequate staffing and supervision of LGBT youth housed at HYCF, so as to minimize incidents of anti-LGBT ward-on-ward harassment.

i. Develop policies, procedures, and practices to provide for a classification system that protects wards who are, or who are perceived to be, LGBT, from other wards.

j. Develop and implement appropriate training for all HYCF administration and staff concerning the policies, procedures and practices set forth in this Paragraph, specifically Subparagraphs 10(a)-(i) of Exhibit A above, with a

training timeline to be part of the final implementation plan set forth in Paragraph 8 of Exhibit A above.

This stipulation is signed by counsel for all parties in this action. This Court will retain jurisdiction for the purpose of enforcing the Settlement Agreement.

Dated: August \_\_\_\_, 2006

By: \_\_/S/ Mark J. Bennett\_\_\_\_\_

MARK J. BENNETT, Attorney General, Counsel for all Defendants and former Defendants in their official capacities only

Dated: August \_\_\_\_, 2003

By: \_\_/S/ John F. Molay\_\_\_\_\_

JOHN F. MOLAY, Deputy Attorney General, Counsel for Lillian Koller, Sharon Agnew, and Kaleve Tufono-Iosefa in their individual capacities

Dated: August \_\_\_\_, 2006

By: \_\_/S/ William J. Wynhoff\_\_\_\_\_

WILLIAM J. WYNHOFF, Deputy Attorney General, Counsel for Cynthia Hubbell in her individual capacity

Dated: August \_\_\_\_, 2006

By: \_\_/S/ Cora Lum\_\_\_\_\_

CORA LUM, Deputy Attorney General, Counsel for Earlene Josiah in her individual capacity

Dated: August \_\_\_\_, 2006

By: \_\_/S/ Brian P. Aburano\_\_\_\_\_

BRIAN P. ABURANO, Deputy Attorney General, Counsel for Henry Haina in his individual capacity

Dated: August \_\_\_\_, 2006

By: \_\_/S/ Dennis K. Ferm\_\_\_\_\_

DENNIS K. FERM, Deputy Attorney General, Counsel for Leila Holloway, Mitch Simao, Robert Michael Kim in their individual capacities and former Defendants Phyllis Rosete, Lawrence Alvaro and Ricardo Koehler in their individual capacities

Dated: August \_\_\_\_, 2006

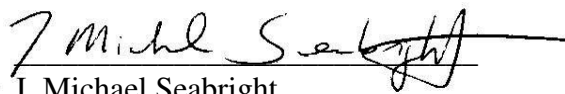
By: \_\_/S/ Lois K. Perrin\_\_\_\_\_

LOIS K. PERRIN, ACLU of Hawaii Foundation, Counsel for Plaintiffs

APPROVED AND SO ORDERED.

DATED: Honolulu, Hawaii, September 5, 2006.



  
J. Michael Seabright  
United States District Judge

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*R.G., et al. v. Koller, et al.*, USDC 05-00566 JMS/LEK; STIPULATION FOR DISMISSAL WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 41 AND ORDER