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JOSEPH O'LEARY and PHI NGO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOSEPH O'LEARY and PHI NGO,

Plaintiffs,

vs.

THE UNIVERSITY OF HAWAII,

Defendant.

) CIVIL NO. _____
) (Other Civil Action)

**COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY
RELIEF; SUMMONS**

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

Clerk Circuit Court, First Circuit

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
2008 MAR 10 AM 9:56

B. TERAOKA
CLERK

KS SA

08-1-0504-03

**COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs Joseph Lawrence O'Leary ("O'Leary") and Phi Hoang-Phan Ngo ("Ngo") (collectively "Plaintiffs"), by and through their attorneys, file this Complaint for damages and other relief against Defendant The University of Hawai'i at Manoa (the "University" or "Defendant"), and allege as follows:

INTRODUCTION

1. Plaintiffs are a loving and committed same-sex couple challenging the University's discriminatory decision to deny them family housing in 2007 because they are both men, after the University provided them such housing in 2006. The University's discrimination caused plaintiffs to incur higher housing and related costs, forced a commute to campus, and profoundly devalued the plaintiffs' relationship by treating it as inferior to the relationships of different-sex couples and as unworthy of being respected and treated equally. Under the Hawai'i Constitution's guarantee of equality, Plaintiffs seek damages, a declaration that the University's conduct violated the law, and an injunction against such discrimination in the future.

PARTIES

2. O'Leary is a student at the University working toward a bachelor's degree in history.

3. Ngo is a student at a private college in Honolulu.

4. Defendant University is a government entity established pursuant to H.R.S. § 304A-101 *et seq.*

5. Defendant University is amenable to suit pursuant to H.R.S. § 304A-108.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to H.R.S. §§ 603-21.5(a)(3), 632-1, 661-1, 662-3 and Hawai'i Rules of Civil Procedure 57 and 65.

7. Venue is proper in this Court pursuant to H.R.S. § 603-36 as the acts and omissions complained of occurred in this Circuit.

FACTS

8. O'Leary and Ngo are in a committed and exclusive, same-sex intimate relationship and intend to remain in that relationship indefinitely. They have lived together for three years, sharing a common residence. They are committed to providing for each other's basic living expenses and to caring for each other in times of need. Neither O'Leary nor Ngo is married or in a domestic partnership with another person. They are not related by blood. They are both over the age of 18 and mentally competent. They freely entered into their relationship with one another without force, duress or fraud.

9. O'Leary and Ngo are registered as reciprocal beneficiaries with the Hawai'i State Department of Health.

10. As individuals in a same-sex couple, O'Leary and Ngo cannot marry under Hawai'i law.

11. O'Leary and Ngo would marry each other if they could do so. O'Leary and Ngo view themselves and hold themselves out as a couple and are as committed to one another as spouses in a marital relationship.

12. On May 1, 2006 O'Leary submitted a "University of Hawai'i at Manoa Residence Hall Application/Contract" for the 2006 - 2007 academic

year (the "2006 Application"). The 2006 Application designated Ngo as O'Leary's spouse, indicated that Ngo is a male, and stated that O'Leary intended for Ngo to reside with him in University housing.

13. The University approved the 2006 Application.

14. During the 2006 - 2007 academic year, O'Leary and Ngo resided in a room designated as a "Double (family)" in the Hale Wainani Apartment Complex (the "Complex"), which is owned by the University.

15. The Complex contains 650 one-and-two bedroom furnished apartments equipped with kitchen facilities and full baths. The Complex is within walking distance of the buildings where Joseph has attended and currently attends classes. Residents at the Complex are not required to pay utilities.

16. In its application form for housing, the University does not designate specific housing for married students, but does offer double occupancy rooms and apartments designated for family members (including siblings, children, and spouses), which allows students to live with those with whom they share familial relationships who may or may not be University students themselves.

17. O'Leary and Ngo paid \$5,044.24 each semester for University housing in a "double occupancy suite" in the 2006-07 academic year. They also paid a \$150.00 security deposit.

18. On March 24, 2007, O'Leary submitted a "University of Hawai'i at Manoa Residence Hall Application/Contract" for the 2007 - 2008 academic year (the "2007 Application"). The 2007 Application designated Ngo

as O'Leary's spouse, indicated that Ngo is a male, and stated that O'Leary intended for Ngo to reside with him in University housing.

19. In April 2007, O'Leary received a notification from the University denying his 2007 Application.

20. O'Leary requested a reason or reasons for the University's denial of his 2007 Application.

21. In a letter dated May 30, 2007, Laurie Furutani, Interim Director of Student Housing Services at the University, stated that O'Leary's request for family housing was denied because "[o]ur assignment policy recognizes marital status as defined in Section 572-1 of the Hawai'i Revised Statutes" which limits marriage to different-sex couples. Ms. Furutani's letter further stated that "[u]ntil such time that the state revises its definition of marital status, we will continue to apply the existing definition to our assignment policy for married housing."

22. The University provides certain benefits including health insurance benefits and tuition waivers for individuals in same-sex committed relationships with university employees.

23. In order to be eligible for domestic partnership benefits, a University employee must certify that he or she and his or her domestic partner intend to remain in their domestic partnership indefinitely; that they share a place of common residence; that they agree to be responsible for each other's basic living expenses; that neither the employee nor his or her domestic partner is married or a member of another domestic partnership; that they are not related by blood in a way that would prevent them from being married to

each other in the state of Hawai`i; that they are both at least eighteen years of age and mentally competent to contract; and that the consent to the domestic partnership has not been obtained by force, duress or fraud; and that the employee and his or her domestic partner agree to sign and file with the University any and all declarations of domestic partnership and/or verifications of eligibility as the University may from time to time prescribe.

24. O'Leary and Ngo meet the criteria established by the University for the recognition of a domestic partnership.

25. As a result of the University's denial of the 2007 Application, O'Leary and Ngo were forced to enter into a private lease for an off-campus apartment.

26. Under the terms of the private lease, O'Leary and Ngo are responsible for rent and a fee for "incidentals" totaling \$1,270.00 per month.

27. O'Leary and Ngo's lease began on August 1, 2007 and runs until May 15, 2008.

28. As a result of the University's denial of family housing to Plaintiffs, O'Leary and Ngo will be required to pay \$12,065.00 to rent their private apartment for the 2007 - 2008 academic year.

29. O'Leary and Phi are required to pay utilities for their private apartment.

30. O'Leary is now required to incur expenses to commute to campus.

31. The amount Plaintiffs will be required to pay rent for the 2007 - 2008 academic year exceeds the amount they would have to pay to the University had they been granted family student housing.

32. As a result of the University's denial of family housing to Plaintiffs, O'Leary and Ngo have suffered financial damage, including but not limited to the cost of utilities, increased rent, and commuting expenses.

33. Plaintiffs attempted to resolve this matter without filing a lawsuit, but were unable to do so because the University currently refuses to promptly alter its discriminatory policy.

COUNT ONE
(Denial of Equal Protection Based on Sex)

34. Plaintiffs reallege and incorporate the allegations contained in Paragraphs 1 through 33 above, as if fully set forth herein.

35. Article I section 3 of the Hawai'i Constitution states "Equality of rights under the law shall not be denied or abridged by the State on account of sex."

36. Article I section 5 of the Hawai'i Constitution states "No person shall be denied life, liberty or property without due process of law, nor be denied equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

37. The University chose in 2007 to exclusively link eligibility to family student housing for individuals in committed relationships to Section

572-1 of the Hawai`i Revised Statutes, which defines marriage as limited to individuals of a different sex.

38. Neither Section 572-1 of the Hawai`i Revised Statutes, nor any other provision of the Hawai`i Statutes, requires the University to provide family housing to couples with individuals who are of a different sex only.

39. The University's independent decision to tie family housing benefits for individuals who are in committed relationships exclusively to the definition of marriage under section 572-1 of the Hawai`i Revised Statutes restricts access to family housing based on the sex of a student's partner.

40. The University's decision to tie family housing benefits for individuals who are in committed relationships exclusively to the definition of marriage under section 572-1 of the Hawai`i Revised Statutes serves as an absolute barrier to such housing for students in committed same-sex relationships.

41. The University's decision to deny family student housing to O'Leary and Ngo by conditioning family housing on marriage under section 572-1 of the Hawai`i Revised Statutes denies equal protection on the basis of sex.

42. The University can and does condition benefits for partners in committed same-sex relationships, other than housing, to non-marital classifications such as domestic partnership.

43. The University has, in the past, allowed students in committed same-sex relationships access to family housing.

44. The University has no compelling or adequate interest justifying its decision to tie access to family student housing to the definition of marriage under section 572-1 of the Hawai'i Revised Statutes.

45. The decision of the University to condition family student housing on sex violates Article 1, sections 3 and 5 of the Hawai'i Constitution.

46. As a direct and proximate result of the University's actions, Plaintiffs have suffered financial damages, emotional distress, and other damages in an amount to be proven at trial.

COUNT TWO
(Denial of Equal Protection Based on Sexual Orientation)

47. Plaintiffs reallege and incorporate the allegations contained in Paragraphs 1 through 33 above, as if fully set forth herein.

48. Article I section 5 of the Hawai'i Constitution states "No person shall be denied life, liberty or property without due process of law, nor be denied equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

49. For purposes of Article I section 5 of the Hawai'i Constitution, discrimination on the basis of sex includes discrimination on the basis of sexual orientation.

50. The University's decision to tie family housing benefits to the definition of marriage under section 572-1 of the Hawai'i Revised Statutes serves as an absolute barrier to access to such housing for gay and lesbian students in committed relationships.

51. The University's decision to deny family student housing by conditioning family housing on marriage under section 572-1 of the Hawai'i Revised Statutes denies equal protection based on sexual orientation.

52. The University can and does provide certain partnership benefits for gay and lesbian students and employees by conditioning those benefits to non-marital classifications such as domestic partnership.

53. The University has, in the past, allowed gay and lesbian students in committed relationships access to family housing.

54. The University has no compelling or adequate interest justifying its decision categorically to deny gay and lesbian students in committed relationships access to family housing.

55. The decision of the University to provide family student housing to heterosexual married students, but not to gay and lesbian students in committed relationships, violates Article 1, section 5 of the Hawai'i Constitution.

56. As a direct and proximate result of the University's actions, Plaintiffs have suffered financial damages, emotional distress, and other damages in an amount to be proven at trial.

WHEREFORE Plaintiffs pray for judgment as follows:


A. Entering a declaratory judgment that Defendant's denial of family student housing to students in committed same-sex relationships violates the Constitution of the State of Hawai'i;

B. Preliminarily and permanently enjoining Defendant (and its officers, agents, servants, employees, and attorneys, and all persons acting or

purporting to act in concert or cooperation with Defendant) from denying students in committed same-sex relationships access to family student housing;

- C. Awarding Plaintiffs general, compensatory and special damages in an amount to be proven at trial;
- D. Awarding Plaintiffs pre-judgment and post-judgment interest;
- E. Awarding Plaintiffs reasonable attorneys' fees and costs; and
- F. Awarding Plaintiffs such other and further relief as the Court deems just and equitable.

Dated: Honolulu, Hawai'i, March 10, 2008.



PAUL ALSTON
CLYDE J. WADSWORTH

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LAMBDA LEGAL DEFENSE AND
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Attorneys for Plaintiffs
JOSEPH O'LEARY and PHI NGO

STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF JOSEPH O'LEARY and PHI NGO	vs.	DEFENDANT THE UNIVERSITY OF HAWAI'I
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) PAUL ALSTON 1126-0 CLYDE J. WADSWORTH 8495-0 Alston Hunt Floyd & Ing American Savings Bank Tower, 18th Floor 1001 Bishop Street, Honolulu, Hawai'i 96813 Phone: (808) 524-1800, Fax: (808) 524-4591		
<p>TO THE DEFENDANT(S):</p> <p>You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, and answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.</p> <p>If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p style="text-align: center;">This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.</p> <p style="text-align: center;">A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.</p>		
DATE ISSUED MAR 10 2008	CLERK B. TERAOKA	
I do hereby certify that this is a full, true, and correct copy of the original on file in this office.	CIRCUIT COURT CLERK	