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COUNTY OF ORANGE
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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ORANGE

BY FAX

21 MARY DOE, a minor, by and through her
22 guardians ad litem JAMES and JANE
23 DOE; JAMES and JANE DOE; ORANGE
24 COUNTY EQUALITY COALITION,

25 Plaintiffs,

26 vs.

27 NEWPORT-MESA UNIFIED SCHOOL
28 DISTRICT; JEFFREY HUBBARD,
Superintendent of Newport-Mesa Unified
School District; FALL ASRANI, Principal
of Corona del Mar High School;
DUNCAN MCCULLOCH, Asst. Principal
of Corona del Mar High School,

Defendants.

Case No.: 30-2009-00120182

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES**

1. Equal Protection, U.S. Const.,
amend. XIV

2. Title IX, 20 U.S.C. §§ 1681-1688

3. Equal Protection, Cal. Const.,
art. I, §§ 7(a), (b); art. IV, §16(a)

4. Safe Schools Clause, Cal. Const.
art. I, § 28

5. Cal. Educ. Code § 220 et seq.

6. Cal. Civil Code §§ 51, 51.7 52(a),
52.1(b) & Penal Code § 422.6

Jury Trial Demanded

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INTRODUCTION

1. Plaintiffs – a student at Corona del Mar High School, her parents, and the Orange County Equality Coalition, a local community group dedicated to combating harassment and discrimination on the basis of sexual orientation – bring this civil rights suit to uphold federal and state law, which mandate that school and district administrators prevent, prohibit, and remedy discrimination and harassment.

2. School and district officials have permitted and even fostered the dangerous development of an environment plainly hostile to female students, and lesbian, gay, bisexual, and transgender students, and students who fall outside of traditional sex stereotypes. That hostile environment has come to a boiling point in recent weeks, with one student in particular–Plaintiff “Doe”–in serious, daily danger for her safety but without support or recourse from the school and district that are constitutionally and statutorily charged with keeping her and all her classmates safe at school. The safety of other students is also at risk, but, like Plaintiff Doe, these students receive the clear message from the school administration that complaints will neither be supported nor tolerated. The pervasive hostility toward students based on sex, sex stereotypes, and actual or perceived sexual orientation profoundly affects their educational experience, preventing them from feeling safe, secure, and respected at school, severely impeding their participation in classes and school activities, and dictating changes in their behavior at school to account for concerns about physical safety. School and district officials, through their action and inaction, have not only failed to take steps to address this hostile environment, but they have contributed to it and given sanction to it.

3. In January of 2009, three male students at the high school posted a video, on a internet social networking site directed to other students at the school, in which they use a string of homophobic slurs, “out” another student as

1 homosexual, and directly address a female student, Plaintiff "Doe" in this case,
2 with sexually harassing, graphically explicit comments and threats of violence.
3 On the posted video, one of the three male students says that a fourth male student
4 wants to kill Plaintiff Doe: "[He] told me that he wants to kill you. That he wants
5 to legitimately kill you." The student makes the statement with evident glee and
6 certainly not as a safety warning or an offer of help. Another male student in the
7 video says, "I hope [Plaintiff] watches this. And then you take a sniper to her
8 forehead." The third student in the video discusses the fourth male student raping
9 her in the back of a truck, and later asks if she "catches cum in her mouth." The
10 students in the video gleefully boast that "everyone" will see the video and in fact
11 the contents of the video have been the subject of frequent on-campus
12 conversation and discussion, further subjecting Plaintiff Doe to harassment and
13 cementing the hostile campus environment.

14 4. Plaintiff Doe's parents alerted school officials to the video within three days
15 of its posting and requested that they investigate and take action on the threats to
16 their daughter and address the sexism and homophobia evidenced in the video.
17 Subsequent to this incident, Plaintiff Doe was threatened at school by the male
18 student on whose internet social networking page the video was posted and who
19 was described in the video as wanting to kill Plaintiff. He told her that reporting
20 the video to the school administration "was the biggest mistake of her life."

21 5. School and district officials have a clear legal obligation to establish and
22 maintain a safe, secure, and peaceful school environment at the high school.
23 Despite the harassment, and the direct retaliation for complaining about it (about
24 which Plaintiff Doe's parents also alerted the school administration), school and
25 district officials have failed, first and foremost, to take appropriate action to
26 protect Plaintiff Doe from a hostile environment. Insofar as school officials have
27 responded to the threats against Plaintiff Doe, they have put the entire burden on
28 her rather than the harassing students. The school administration's response to the

1 safety threat to Plaintiff Doe has been to require her to drastically alter her class
2 schedule such that she now takes only two classes at the school campus and must
3 complete the rest of her course work by independent study off the campus. In
4 stark contrast, the school administration has not adjusted the course schedules of
5 the four harassing male students or otherwise altered their access to their
6 education.

7 6. Plaintiff Doe remains, however, vulnerable to verbal, psychological, and
8 even physical harassment when she is on campus. Plaintiff Doe's parents have
9 asked school and district officials to advise the harassing students to avoid all
10 contact with Plaintiff Doe, and they have asked for a monitor to be assigned to the
11 student who threatened her on campus and who has continued to seek to intimidate
12 her, but school and district officials have refused. As a result of the sexual
13 harassment and threats to which Plaintiff Doe has been subjected, and school and
14 district officials' failure to take prompt and appropriate corrective action, Plaintiff
15 has been severely burdened and deprived of educational opportunities.

16 7. School and district officials have failed, moreover, to address the hostile
17 environment that exists at the high school, choosing to ignore obvious signs of a
18 school culture gone awry. This silence not only sends the message that
19 harassment is tolerated, but it leaves students vulnerable to further harassment.
20 One clear illustration that effective corrective action has not been taken is
21 provided by the harassing students: approximately one month after they posted
22 the sexist and homophobic video on the internet, they also produced a video for a
23 school-sponsored event that contained a host of sexist and homophobic discussion.

24 8. Specific instances of harassment and discrimination on school grounds, in
25 addition to those directed against Plaintiff Doe, include but are not limited to:

- 26 • Homophobic slurs are routinely used by school coaches in
27 athletic practices.
- 28 • Homophobic slurs are routinely used with impunity by students

1 within earshot of teachers in hallways and classrooms. Indeed, the
2 school's drama teacher reportedly chose "Rent" as the spring musical
3 precisely because he had noticed an increase this school year in
4 homophobic language on campus.

- 5 • In connection with the political campaign concerning Proposition 8,
6 an initiative on the November 4, 2008 ballot that changed the
7 California Constitution to eliminate the right of same-sex couples to
8 marry, students who expressed political views opposing Proposition 8
9 were called "dykes" and other homophobic slurs in the hallways and
10 classrooms of the school.
- 11 • A student at the school posted in an online forum that the school
12 principal, during an English class, "openly admitted her negative
13 views on gay marriage and how she is yes on prop 8."
- 14 • In February 2009, the school principal canceled the school's
15 production of "Rent." The principal reportedly stated that she was
16 cancelling the musical because of its homosexual content.
- 17 • The school principal reversed that decision only after intense national
18 media spotlight. Even then, however, school officials have permitted
19 the confiscation of the button worn by at least one student in support
20 of the musical and refused to allow announcements to be made at
21 school about it.

22 9. Given the hostile environment that school and district officials have
23 permitted to take hold at the high school, students who face harassment,
24 discrimination, or other hostility cannot rely on their teachers or administration to
25 protect them, address the problems, or even acknowledge the environment that
26 exists. Indeed, because of the views expressed by some of the administrators and
27 teachers at the high school, some students who are lesbian, bisexual, or gay fear
28 that if their teachers were aware of their sexual orientation, they would receive

1 lower grades in their classes.

2 10. Accordingly, Plaintiffs seek declaratory, injunctive, or monetary relief from
3 the district and school and district officials for depriving them or their members of
4 established constitutional and statutory rights based on their actual or perceived
5 sexual orientation, sex, and sex stereotyping.

6 **PARTIES**

7 11. Plaintiff MARY DOE ("Plaintiff DOE" or "MARY")¹ is and at all relevant
8 times was a female student attending Corona del Mar High School. Plaintiff is a
9 minor and appears in this action by and through her next friends, her father and
10 mother, James and Jane Doe.

11 12. Plaintiffs JAMES and JANE DOE ("JAMES" or "JANE") are taxpayers
12 residing within Orange County and the boundaries of the Newport-Mesa Unified
13 School District. They bring this lawsuit in their individual capacities and as
14 guardians ad litem for their child, MARY. They have filed, concurrent with this
15 complaint, a petition with the Court to act as Plaintiff DOE's duly-appointed
16 guardians ad litem.

17 13. Plaintiff ORANGE COUNTY EQUALITY COALITION ("Plaintiff
18 COALITION") is a non-profit corporation exempt from federal income taxation
19 under Section 501(c)(4) of the Internal Revenue Code. Plaintiff COALITION is
20 organized and exists under the laws of the State of California. Its members are
21 part of the lesbian, gay, bisexual, transgender, and heterosexual communities in
22 Orange County. Plaintiff COALITION is dedicated to ensuring equality for all
23

24 ¹ Plaintiff DOE and her parents use pseudonyms in this complaint due
25 to the highly sensitive nature of the allegations it makes. As this complaint
26 details, Plaintiff DOE has been subjected to severe and pervasive harassment on
27 the basis of sex, and she seeks to avoid further harassment, retaliation, or violence.
28 The use of pseudonyms is appropriate here because Plaintiff DOE is a minor, she
is challenging governmental activity, and using her real identity would compel her
to reveal highly intimate information.

1 Orange County residents through education, dialogue, and advocacy, and seeks to
2 eradicate homophobia and to eliminate prejudice based on sexual orientation.
3 Some Plaintiff COALITION members are students at Corona del Mar High School
4 who have experienced harassment, discrimination, and the hostile environment
5 based on sex and perceived and actual sexual orientation at the school. Some
6 Plaintiff COALITION members are parents of students or are themselves students
7 enrolled in the Newport-Mesa Unified School District, who will attend or are
8 attending Corona del Mar High School.

9 14. Defendant NEWPORT-MESA UNIFIED SCHOOL DISTRICT (the
10 "DISTRICT") is a public school district organized and operating under the laws of
11 the State of California. The DISTRICT is responsible for the administration of
12 educational services for all students enrolled in its school, including Corona del
13 Mar High School (the "School" or "Corona del Mar"). On information and belief,
14 the DISTRICT is a recipient of federal financial assistance.

15 15. Defendant JEFFREY HUBBARD is the Superintendent of the DISTRICT.
16 As such, he supervises and manages the DISTRICT and is and at all relevant times
17 was acting under color of law and within the scope of his employment. He is sued
18 in both his official and individual capacities.

19 16. Defendant FAL ASRANI is the principal at Corona del Mar and is and at all
20 relevant times was acting under color of law and within the scope of her
21 employment. She is sued in both her official and individual capacities.

22 17. Defendant DUNCAN MCCULLOCH is the assistant principal at Corona del
23 Mar and is and at all relevant times was acting under color of law and within the
24 scope of his employment. He is sued in both his official and individual capacities.

25 18. Defendants are entrusted with the responsibility for creating and
26 maintaining an educational environment that is physically and psychologically
27 safe for students. In addition, Defendants are entrusted with the responsibility for
28 making and/or implementing policy with respect to student harassment and

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24 scope of his employment. He is sued in both his official and individual capacities.

25 18. Defendants are entrusted with the responsibility for creating and
26 maintaining an educational environment that is physically and psychologically
27 safe for students. In addition, Defendants are entrusted with the responsibility for
28 making and/or implementing policy with respect to student harassment and

1 discipline. Last, Defendants are entrusted with the responsibility for ensuring that
2 their subordinates, agents, and employees comply with anti-discrimination laws
3 and policies by taking prompt remedial action following the reporting of acts of
4 inappropriate behavior, harassment, or discrimination against students, as well as
5 affirmative action to combat bias based on sex, sexual orientation, and other
6 suspect bases.

7 19. Upon information and belief, and at all relevant times, each Defendant was
8 the agent or employee of each other Defendant, was acting within the course and
9 scope of such agency or employment, and was acting with the consent, permission,
10 or authorization of each other Defendant.

11 **VENUE**

12 20. Venue is proper in this Court because Defendants are located, and Plaintiffs
13 reside, in the County of Orange.

14 **STATEMENT OF FACTS**

15 **Facebook Posting**

16 21. Facebook (<http://www.facebook.com>) is an online social networking site
17 that is free of charge and open for anyone to join. Each member who signs up for
18 Facebook has his or her own "profile" page, where the member can describe
19 himself or herself, provide "status" updates, and post pictures, videos, weblinks,
20 and other online content. Each member can control how visible his or her profile
21 is to other members. Usually a member's online "friends" and "networks" can
22 view the member's full profile, and the member can further choose whether all
23 members of Facebook can view the profile as well.

24 22. One of the standard features of Facebook is each member's "home page,"
25 which is the landing page upon which the member arrives when logging in each
26 time. This page has "news," "status update," "photo," and "video" feeds that show
27 recent posts by people in the member's "friends" and "networks" groups. For
28 example, if person A and person B are friends and person A posted a new picture,

1 video or status update, when person B logged into Facebook, person B would see
2 an entry on the page that person A made a new post, along with a link to the
3 content posted.

4 23. On January 23, 2009, three male students who are seniors at Corona del Mar
5 posted an online video to the "Facebook" page of another male senior, who will be
6 called "Jeff" in this complaint.² All four students are leading athletes at Corona
7 del Mar, and each of them is a member of the Facebook network "Corona del Mar
8 High School," which has more than one thousand members. Each of them also has
9 hundreds (464, 501, 695, and 734, respectively) of Facebook "friends" who
10 automatically receive updates about any new post. The students knew and boasted
11 that "everyone" would see the video.

12 24. The video consists of the three male students talking to the fourth male
13 student, Jeff, and to the larger community of Corona del Mar. They refer to Jeff as
14 "gay," "faggot," and "homo"; they proceed to "out" another male student; and then
15 address MARY directly in the only extended commentary directed to a person
16 other than Jeff. One says that Jeff wants to kill her: "MARY, Jeff told me that he
17 wants to kill you. That he wants to legitimately kill you." Another says, "I hope
18 MARY watches this. And then you take a sniper to her forehead." The third
19 discusses Jeff raping her in the back of a truck and later asks if she "catches cum
20 in her mouth."

21 25. Far from disavowing the video or his alleged desire to kill MARY, Jeff
22 posted a response that repeated the remark about MARY catching "kummmm" in
23 her mouth.

24 ///

25 ///

26
27 ² Out of an abundance of caution, Plaintiffs will not refer by name to
28 the students who posted the video and will refer to the student on whose Facebook
page the video was posted by the fictitious name "Jeff."

1 **MARY Sees Video; Her Parents Report It to Proper Authorities**

2 26. On January 23, 2009, MARY first saw the video posted on Facebook, with a
3 group of other students at one student's home. She was horrified, frightened, and
4 offended by what she saw and heard. She had often heard these students use
5 vulgar and offensive language about female students at school, but she had never
6 heard them talk about shooting or raping anyone.

7 27. That night, MARY went home and tried to put the video out of her mind,
8 but found she could not. She felt anxious and her thoughts kept returning to what
9 the boys said and how enthusiastically and casually they described committing
10 violence against her. She felt threatened and afraid.

11 28. Her parents noticed that night that she seemed despondent and withdrawn,
12 and noticed the next night that she was not communicating with friends, which
13 was unusual for MARY.

14 29. On January 25, MARY gave her parents a brief description of the video and
15 told them how upset and anxious she was feeling as a result of the video.

16 30. Later that night, MARY's mother, JANE, viewed the video. JANE was
17 alarmed by the threats against her daughter and horrified by the rampant sexism
18 and homophobia exhibited. JANE immediately downloaded the video and made a
19 copy to provide to the authorities.

20 31. Although MARY tried to avoid the four male students, at school the next
21 day, on January 26, Jeff (the student on whose Facebook page the video was
22 posted) confronted her. MARY asked him why he had not removed it and was
23 keeping it posted. He told her she was over-reacting and refused to remove it.

24 32. Later that day, MARY's father, JAMES, reported the video to the Newport
25 Beach Police Department. JAMES was told that the matter would be referred to a
26 detective in a few days. JAMES demanded an immediate assignment and was told
27 that the matter would be handled by the school resource officer, Tom Monarch.

28 33. MARY's parents learned only later that Monarch is listed on the school's

1 website as an assistant football coach at Corona del Mar; the male students
2 depicted in the video are all members of the school football team.

3 34. On January 26, MARY's parents also met with Assistant Principal
4 MCCULLOCH, showed him the video, and expressed their concerns about
5 MARY's safety and about the homophobia and misogyny in the video.
6 MCCULLOCH told them he would take this matter to the DISTRICT and he
7 assured them that he would do everything he could to make sure the male students
8 were punished. He agreed to change MARY's class schedule so she would not
9 share any classes with the harassers. MCCULLOCH asked MARY's parents for
10 the name of the officer they talked to at the Newport Beach Police Department.
11 MARY's parents also requested that the school take affirmative steps to educate
12 the student body about equality and different forms of discrimination, and
13 MARY's mother, JANE, commented that the school's production of the musical
14 "Rent" that spring would be beneficial for helping to counteract the homophobic
15 environment. MCCULLOCH made no response to these comments.

16
17 **MARY Threatened At School**

18 35. On January 27, 2009, after MARY entered her English classroom, Jeff, who
19 was also in the class, screamed at her: "This is the biggest mistake of your life."
20 Jeff, who sat adjacent to MARY, then proceeded to loudly describe what had
21 happened to the students around them.

22 36. After this threat occurred, MARY immediately contacted her mother, who
23 called assistant principal MCCULLOCH. MCCULLOCH told MARY's mother,
24 JANE, that there was nothing he could do because he had no evidence of the
25 threat, and could not take action on something "made up." Later, MCCULLOCH
26 met with MARY for approximately fifteen minutes and made similar statements to
27 her. She left the meeting with the impression that he did not take the threat against
28 her seriously.

1 37. On information and belief, MCCULLOCH has never investigated the threat
2 Jeff made against MARY on school grounds.

3 38. After this threat from Jeff, MARY became particularly fearful. She suspects
4 Jeff is taking steroids, and she has seen him fly into uncontrollable rages in the
5 past, which he and his friends refer to as "roid rage." She became increasingly
6 afraid for her safety and changed her behavior at school.

7
8 **MARY's Parents Attempt to Secure Her Safety and Have School Address**
9 **Hostile Environment**

10 39. Later on January 27, 2009, MARY's father, JAMES, called MCCULLOCH
11 to discuss how to avoid contact between MARY and the harassing students. It
12 was final exam week at Corona del Mar, and MCCULLOCH suggested that
13 MARY take her remaining final exams in his office. Subsequently, however,
14 MCCULLOCH called and left a voice-mail message stating that MARY was to
15 report to her assigned classrooms to take her exams.

16 40. On January 28, MARY began parking her car in a different lot than normal
17 to avoid contact with the harassing students. She continues to do this through the
18 present time. MARY's parents informed the school that she had begun to take this
19 safety measure and the school administration offered her neither support nor an
20 alternate safety option. Similarly, MARY has changed other ways that she
21 behaves on campus because of safety concerns that have not been addressed by the
22 school, including changing the routes she takes to class and trying to avoid
23 bathrooms and other places where she might be alone and particularly vulnerable.

24 41. That same day, when MARY reported to her assigned classroom for the
25 final exam, as MCCULLOCH's message instructed, Jeff was also present and sat
26 adjacent to MARY.

27 42. Afraid and confused to find Jeff in the classroom, MARY contacted her
28 parents, who then called MCCULLOCH to find out what was going on and to

1 repeat their request again that MARY not be in the same classroom with any of the
2 boys. No further clarity was provided by the school.

3 43. On January 29, MARY stayed home from school because she was
4 uncomfortable and anxious about being in the same classroom with Jeff. On
5 January 30, a Friday, MARY did not have class, so she was able to avoid school.

6 44. The next week, MARY returned to school. She heard from classmates that
7 a rumor had circulated that she was transferring to another school because of what
8 had occurred, and that Jeff told other students that he and the other male students
9 had "scared her away" and she was not coming back. MARY was told that when
10 students informed Jeff that she had not transferred, he expressed disappointment.

11 45. When MARY returned to school, she was ostracized by her peers and felt
12 like "a pariah" because students avoided her or did not talk to her, which was
13 unusual. A fellow student also delivered what was characterized to MARY as a
14 "message from Jeff" that he wanted MARY to know that she should not attend any
15 extracurricular or social events. MARY's parents informed the school
16 administration of these facts and the school administration did not provide any
17 support or remedy.

18
19 **DISTRICT's Policies and DISTRICT's Response to Harassment Against**
20 **MARY**

21 46. The DISTRICT's written policy recognizes its legal obligation under
22 California law that "[a]ll students have the inalienable right to attend classes on
23 campuses which are safe, secure, and peaceful" and that it has "an obligation to
24 promote mutual respect and safe and harmonious relations that support human
25 dignity and equality." Accordingly, the DISTRICT's policy states that it "shall
26 make reasonable efforts to see that students are provided an environment that is
27 secure and protected from fear, intimidation, and physical harm"

28 47. The DISTRICT's written policy also states that it "will not tolerate any

1 gestures, comments, threats or actions, either written, verbal, or physical, which
2 cause, or threaten to cause or are likely to cause, bodily harm or personal
3 degradation." Specifically, the policy provides that the following constitute cause
4 for suspension:

- 5 • causing, attempting to cause, or threatening to cause physical injury
6 to another person;
- 7 • committing sexual harassment;
- 8 • intentionally engaging in harassment, threats, or intimidation,
9 directed at a pupil;
- 10 • harassing, threatening, or intimidating a pupil who is a complaining
11 witness.

12 48. On February 3, 2009, MCCULLOCH told MARY's father, JAMES, that
13 disciplinary action had been taken, but he refused to provide any more
14 information. On information and belief, two of the students involved in the video
15 were suspended for five days each; no disciplinary action was taken against Jeff,
16 the student on the Facebook page where the video was posted, and who threatened
17 MARY for reporting the video, in violation of DISTRICT policy against
18 threatening, intimidating, or harassing a student who is a complaining witness; and
19 no disciplinary action was taken against the student who stated that Jeff should
20 take a sniper to MARY's head, in violation of DISTRICT policy against
21 threatening to cause physical injury to another person and intentionally engaging
22 in harassment, threats, or intimidation directed at a pupil.

23 49. To put the discipline in context, the student who described Jeff's desire to
24 kill MARY had been suspended earlier in the year (on information and belief) for
25 two months when he streaked naked through the campus quad. Upon information
26 and belief, that action did not involve the making of threats to any student nor was
27 it directed at any student in particular.

28 50. Rather than taking appropriate action to respond to the offensive, harassing,

1 gestures, comments, threats or actions, either written, verbal, or physical, which
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24 kill MARY had been suspended earlier in the year (on information and belief) for
25 two months when he streaked naked through the campus quad. Upon information
26 and belief, that action did not involve the making of threats to any student nor was
27 it directed at any student in particular.

28 50. Rather than taking appropriate action to respond to the offensive, harassing,

1 and threatening actions and statements of the four male students, the DISTRICT
2 instead affirmatively engaged in action that furthered the exalted status of these
3 male students at the School. For example, on February 11, 2009, two of the
4 students were named as members of the football "Dream Team" by the School.
5 On February 24, 2009, an Assistant Principal at the School posted an
6 announcement on the School web page about an upcoming dance performance in
7 which he stated, "In addition to the performances by the very talented Orchesis
8 girls, twelve of your favorite senior boys will showcase their dancing ability!"
9 This group of "favorite senior boys" included the male students who had harassed
10 and threatened MARY DOE and made offensive and homophobic statements in
11 the Facebook video.

12
13 **Cancellation of "Rent"; MARY's Parents Continued Efforts to Secure Her**
14 **Safety and Have School Address Hostile Environment**

15 51. On February 13, 2009, it was widely reported in the media that Principal
16 ASRANI canceled the school's production of "Rent" due to its inclusion of
17 homosexual content. MARY was involved in the musical production.

18 52. That same day, after learning that the play had been canceled, Plaintiff's
19 mother, JANE, sent an email to ASRANI objecting to the cancellation and raising
20 the inadequacy of the school's response regarding the Facebook video and threats
21 to MARY.

22 53. On February 14, ASRANI sent JANE a form response regarding "Rent"
23 which neither mentioned the Facebook video nor acknowledged JANE's concern
24 for her daughter's safety.

25 54. Upon receiving ASRANI's response, JANE sent another email to ASRANI
26 objecting to the lack of concern expressed by ASRANI for MARY's safety. In
27 response, JANE received another generic response from ASRANI that did not
28 address JANE's concern for MARY.

1 55. On February 16, ASRANI emailed JANE, apologizing for the oversight.
2 ASRANI stated she had been briefed on the matter by MCCULLOCH, and she
3 understood JANE's concerns, and suggested that MARY's parents meet with her
4 if the resolution achieved was not satisfactory.

5 56. JANE responded to ASRANI and requested a meeting for the following day,
6 February 17. ASRANI responded that the school was on break that week, but
7 ASRANI'S secretary would contact JANE the next week.

8 57. On February 20, JANE emailed Superintendent HUBBARD, the Assistant
9 Superintendent, and DISTRICT Board members regarding the Facebook video and
10 the cancellation of "Rent."

11 58. On February 22, Plaintiff's father, JAMES, sent ASRANI a detailed email
12 regarding what had happened to date, stating his and JANE's concerns, and
13 requesting accommodations in MARY's schedule. JAMES expressed concerns
14 based on statements MARY had heard at school and on MARY's parents'
15 monitoring of comments on internet sites discussing the Facebook video and the
16 cancellation of "Rent" that the male students had been emboldened rather than
17 chastened by the school's actions and inactions since the Facebook video incident.
18 JAMES also advised ASRANI of the serious detrimental effects of the video,
19 threat, and subsequent events on MARY. By this time, MARY had missed several
20 days of school because her schedule change had not been finalized and she was
21 fearful of being at school.

22 59. On February 23, Superintendent HUBBARD emailed MARY's mother a
23 one-line response to her February 20 email, which stated that he had referred the
24 matter to the Assistant Superintendent, who would follow up.

25 60. Also on February 23, MARY's parents met with Principal ASRANI for the
26 first time. They repeated their concerns about the threats made against their
27 daughter, the homophobia and sexism expressed in the video, and the cancellation
28 of the school production of "Rent." During the meeting, Principal ASRANI told

1 MARY's parents, "I'm sorry they're calling your daughter a lesbian," in reference
2 to a website covering the "Rent" cancellation. Principal ASRANI did not say, nor
3 has she ever said, that she was sorry to hear about the threatening and sexually
4 harassing statements made to MARY.

5 61. On February 24, MARY's mother, JANE, initiated an email exchange with
6 Principal ASRANI. JANE expressed concern that MARY's schedule still had not
7 been finalized and that she had fallen behind in her classes. Principal ASRANI
8 promised to address the scheduling issues, and also committed to further
9 investigation of the Facebook video and threats, including an investigation by a
10 police officer other than Officer Monarch. In her last email, JANE reaffirmed that
11 she and JAMES desired that all of these measures take place. JANE also repeated
12 her concern about the homophobia that was present in the video and in further
13 comments on internet sites covering the "Rent" cancellation, and asked how the
14 school planned to address this issue. ASRANI responded to these issues only with
15 a vague statement that the school would work with student leadership groups to
16 address the "social issues."

17 62. By February 25, MARY's schedule still was not finalized. MARY's mother,
18 JANE, had received a message from the school counselor instructing MARY to
19 report to her third period class, despite the fact that arrangements were supposed
20 to have been made for her to take it on an independent study basis. Accordingly,
21 MARY attended her third period class. Near the beginning of the class, Principal
22 ASRANI came into the room, saw Plaintiff, and in front of the class, told MARY
23 that she could not be in that class. She further loudly instructed MARY to "cover
24 her chest," referring to the sweater MARY was wearing over her dress and asked
25 MARY if "we are having an attitude problem." Principal ASRANI then pulled
26 MARY out of the classroom and told MARY that she was being disrespectful of
27 the school and the arrangements it had made for her. Principal ASRANI further
28 stated that MARY was in violation of the dress code and had "no self-respect."

1 MARY has never been cited for any dress code violations during her attendance at
2 Corona del Mar.

3 63. On March 1, Principal ASRANI emailed MARY's mother, JANE, regarding
4 MARY's schedule, which still had not been finalized. In the email Principal
5 ASRANI stated that MARY was "disrespectful." JANE grew anxious that the
6 Principal and school administration were singling MARY out because of her
7 parents' continued efforts to secure safe arrangements for their daughter.

8 64. During the week of March 2, 2009, MARY's current schedule was finally
9 put into place. She attends only two classes at school and is on school grounds for
10 classes only eight hours during the entire week. She takes the rest of her classes
11 on an independent study basis. Upon information and belief, the male students
12 who harassed and threatened her are able to attend their regularly scheduled
13 classes and have not had to restrict any of their classes or activities since they
14 posted the Facebook video.

15 65. Even with this severely restricted schedule, MARY still has basis for fearing
16 and worrying about harassment by Jeff and the other male students. On March 4,
17 as MARY was leaving class, she saw Jeff and another male student in the school
18 quad approaching her. As Jeff walked toward her, he deliberately maintained a
19 threatening stare at her. MARY felt intimidated and frightened.

20 66. On March 6, MARY was walking across the quad between the only two
21 classes for which she is on campus and Jeff walked towards her. Two of Jeff's
22 friends were standing behind MARY gesturing to him to alert him of her presence.
23 At that point, Jeff flexed his muscles and growled at MARY. MARY felt
24 threatened and anxious.

25 67. On March 4, after MARY's run-in with Jeff, MARY's parents sent a letter
26 by mail and email to Superintendent HUBBARD. They informed HUBBARD that
27 the actions taken by the administration of the school in response to the harassment,
28 threats, and hostile environment experienced by MARY had been wholly

1 inadequate, and sent the message that at Corona del Mar, sexual harassment is not
2 taken seriously. MARY's parents also pointed out that to the extent that the school
3 has done anything, it has forced MARY into the position of having to change her
4 schedule, classes, and routines in order to avoid these young men – in effect,
5 penalizing her rather than the harassing students. MARY's parents requested that
6 the school and DISTRICT make all reasonable and necessary accommodations to
7 ensure that MARY is able to fully access equal educational opportunities. And, in
8 light of statements made by Principal ASRANI to and about MARY, MARY's
9 parents expressed concerns about retaliation against MARY for reporting the
10 unacceptable, threatening, and abusive conduct to which she has been subjected.

11 68. On March 11, MARY's parents received a letter from Assistant
12 Superintendent Hinman in response to their letter to Superintendent HUBBARD.
13 This letter stated that he is coordinating an investigation into the situation. The
14 letter did not respond to the immediate concerns MARY's parents expressed
15 regarding MARY's safety at school.

16 69. On March 11, MARY was called to an assistant principal's office at Corona
17 del Mar and told she was going to be interviewed by a detective.³ MARY notified
18 her parents, and her mother called the assistant principal and requested that they
19 wait to interview MARY until she arrived in approximately fifteen minutes. The
20 assistant principal told MARY's mother that the detective could interview MARY
21 without her mother there, and if necessary, could haul MARY down to the station.
22 MARY's mother and MARY felt threatened by this statement, which also violated
23 school policy because only a student under arrest may be taken in custody to the
24 police station. After MARY's mother continued to insist that she be present,

25
26 ³ On March 4, Plaintiffs' counsel sent a letter to the Orange County
27 District Attorney notifying that office of the apparent conflict of interest in the
28 police investigation that was undertaken by Officer Monarch and requesting that
the investigation be re-opened and re-assigned.

1 MARY was told to return to class and the interview did not take place.

2 70. The next day, MARY's mother contacted the detective and arranged for him
3 to interview MARY off campus. MARY's mother and Plaintiffs' counsel met with
4 two detectives from the Newport Beach Police Department. On information and
5 belief, the Newport Beach Police Department confirmed that on January 27, Jeff
6 threatened MARY, stating: "This is the biggest mistake of your life."

7 71. On Friday, March 13, Plaintiffs' counsel sent a letter to Superintendent
8 HUBBARD reiterating that MARY continues to experience harassment and
9 intimidation at school and requesting that immediate actions be taken to secure
10 MARY's safety, including written direction to the four male harassers that they
11 avoid any contact with MARY on school grounds, and an adult staff monitor to
12 escort the male student who continues to most actively harass MARY during the
13 hours when MARY is on campus. Defendant HUBBARD provided no response.
14 On Monday, March 16, Plaintiffs' counsel contacted the DISTRICT's attorney to
15 inform him that the harassment and intimidation MARY is experiencing is actively
16 interfering with her ability to participate in school, including in school
17 performances in which she was scheduled to participate as part of her class work,
18 and again requested that Defendants take immediate action to secure MARY'S
19 safety. Plaintiffs' counsel received no response until this lawsuit was filed on
20 March 18, 2009. To date, Defendants have not adequately responded to MARY's
21 safety concerns, despite repeated requests by her parents and counsel.

22
23 **Effect of Harassment on MARY**

24 72. As a direct, legal, and proximate result of the harassment, threats, and
25 hostile environment to which she has been subjected, and the failure of Defendants
26 to take reasonable remedial steps, MARY has suffered and continues to suffer
27 extreme emotional distress, including but not limited to fear, anxiety, humiliation,
28 frustration, and isolation. She has experienced difficulty sleeping and an inability

1 to concentrate, and she has withdrawn socially. She feels scared and anxious
2 much of the time, even when she is at home because she worries that some of the
3 harassers may come to her home.

4 73. As a direct, legal, and proximate result of the harassment, threats, and
5 hostile environment, and the failure of Defendants to take reasonable remedial
6 steps, MARY has been and continues to be severely burdened and deprived of
7 educational opportunities. She has been absent from school more than usual
8 because of concerns for her own safety, and her schoolwork has suffered. She is
9 behind in her classes both because of her absences and because she is unable to
10 concentrate on learning because she fears for her safety. MARY has had to
11 change her class schedule to avoid being in the same classroom with the harassing
12 students, and switched to taking some classes on an independent study basis, so as
13 to allow her to minimize the amount of time she spends on campus—she now
14 attends school for a total of only eight hours per week. MARY is consciously
15 having to expend time and energy to avoid harm at school: for instance, she parks
16 in a different parking lot on the opposite side of the school from her classes in
17 order to avoid campus areas where the harassing students often congregate and in
18 the hope that the harassers will not be able to find her car, takes different routes
19 walking through the school, and does not go to the bathroom at school because she
20 feels vulnerable by herself and is scared of being ambushed by the boys or their
21 friends. This energy spent avoiding harm at school could otherwise be devoted to
22 learning. MARY has been negatively and substantially affected by the heavy
23 emotional toll arising both from the harassment she has experienced and from the
24 DISTRICT and school's failure to adequately address and remedy the harassment,
25 despite repeated efforts by Plaintiff and her parents to secure a remedy.

26 74. Accordingly, as a direct, legal, and proximate result of Defendants'
27 violations of MARY's statutory and constitutional rights, MARY has suffered
28 emotional and other distress and has been damaged in an amount to be determined

1 at trial. She will seek leave of court to amend the complaint when the amount of
2 damage is ascertained or will amend to conform to proof at time of trial.

3
4 **Hostile Environment Based on Sex and Sexual Orientation at Corona del Mar**

5 75. The environment at Corona del Mar is plainly hostile to female, lesbian,
6 gay, bisexual, and transgender students, and students who otherwise fall outside of
7 traditional sex stereotypes. As MARY's experience vividly illustrates, the
8 pervasive hostility towards students based on sex, sex stereotypes, and actual or
9 perceived sexual orientation profoundly affects their educational experience; this
10 hostility prevents students from feeling safe, secure, and respected at school,
11 severely impedes their participation in classes and school activities, and dictates
12 changes in their behavior at school to account for concerns about physical safety.
13 School and DISTRICT officials, through their action and inaction, have not only
14 failed to take steps to address this hostile environment, but have also contributed
15 to it and given sanction to it.

16 76. Students at Corona del Mar are routinely subjected to harassment based on
17 sex, sex stereotyping, and/or perceived or actual sexual orientation. Students are
18 routinely referred to pejoratively with words such as "dyke," "butch," "fairy,"
19 "gay," "homo," and "queer" by other students at school in hallways and classrooms
20 within earshot of teachers, but without repercussion. Some athletic coaches at the
21 Corona del Mar use these words to negatively critique athletes' performances,
22 telling them that if they do not perform well, they are "fairies," "sissies," or "gay."
23 The word "gay" when used generally by students or coaches at the Corona del Mar
24 is understood to have a negative connotation and to mean "stupid" and "not
25 masculine." Female students are called "dykes" or "lesbians" if they are perceived
26 not to be sufficiently feminine. Some students who attended portions of middle
27 school or high school outside Corona del Mar report that the free-flowing use of
28 these slurs at Corona del Mar is overwhelming compared to their prior school

1 experiences.

2 77. MARY has previously experienced the hostile environment at Corona del
3 Mar. Between approximately February and May 2008, MARY had a series of
4 sexually suggestive and offensive fliers placed on her car while it was parked at
5 school. In that same time frame, as MARY was walking in the hall at school, a
6 male student grabbed her from behind, started mock-humping her, and ran off.
7 MARY was not able to identify the student. MARY and her parents reported this
8 harassment to the school.

9 78. During the political campaigns prior to the November 4, 2008 election in
10 which Proposition 8 was on the ballot, students at the school who expressed
11 opposition to Proposition 8 were subjected to additional harassment on the basis of
12 actual or perceived sexual orientation. Students who wore "No on 8" signs to
13 school as part of their Halloween costumes were called "dykes" and "queer" by
14 their classmates. Principal ASRANI stopped one student who was wearing a "No
15 on 8" sign and asked him if it was "a joke." One student at the school reported in
16 on online forum that Principal ASRANI, during an English class, "openly admitted
17 her negative views on gay marriage and how she is yes on prop 8."

18 79. This type of daily harassment profoundly affects the educational experience
19 of these students. For example, one male student who participated both on an
20 athletic team and in dance was called "gay" so frequently by his peers because of
21 his participation in dance that he dropped out of the dance program. Another
22 student who is perceived to be gay stopped participating in sports, which he
23 previously enjoyed and competed in, because of the constant homophobia to
24 which he was subjected as a member of the school's teams. He worried for his
25 physical safety. A female student at the school who is perceived as lesbian or
26 bisexual at school stopped participating in discussions in one of her classes
27 because every time she spoke, a group of students in the class would make fun of
28 her, without any repercussion from the teacher. The student eventually transferred

1 out of that class because she did not feel comfortable participating. A male
2 student who identifies as gay has repeatedly been called a "fag" and is reluctant to
3 volunteer in some of his classes because he has been made fun of as effeminate
4 when he speaks, again without any intervention from a teacher or administrator.
5 Because of the views about sexual orientation, sex, and sex stereotyping expressed
6 by some of the administrators and teachers at Corona del Mar, students who are
7 lesbian, bisexual, or gay fear that if their teachers were aware of their sexual
8 orientation, they would receive lower grades in their classes. They do not feel safe
9 and secure at school because of their sexual orientation. As a result of the hostile
10 environment based on sex, sex stereotyping, and sexual orientation, these students
11 do not feel that they can express themselves honestly at school.

12 80. The culture at the school is one of harassment and intimidation. Female,
13 lesbian, gay, bisexual, and transgender students, and students who fall outside of
14 traditional sex stereotyping worry that they will be retaliated against for
15 complaining about the environment at the school.

16 81. After it was reported that Principal ASRANI had decided to cancel "Rent"
17 because of its homosexual content, some students at Corona del Mar engaged in
18 advocacy in the community to call attention to the issue. The national media
19 picked up the story, and after intense media scrutiny, the DISTRICT released a
20 statement on February 25, 2009 that it would allow "Rent" to be performed.

21 82. However, as a result of students' advocacy to reverse the cancellation of
22 "Rent" at Corona del Mar, some students have been pulled out of class for
23 interviews and interrogation by Defendants. Students have been reprimanded by
24 teachers and administrators for bringing the cancellation of "Rent" to the media's
25 attention and advised not to pursue any further complaints. Defendant Principal
26 ASRANI told some students involved with the "Rent" production that she would
27 "give" them the production if they keep the press "out of it." These students worry
28 that if they do not stay silent, the teachers and administrators may interfere with

1 their chances for college admission.

2 83. On February 27, 2009, some students wore buttons to school in support of
3 "Rent." The buttons had rainbow backgrounds and said "Our Rent Is Past Due."
4 Pursuant to direction from school administrators, security officers at the school
5 confiscated the button worn by at least one of the students.

6 84. During a previous production by the drama department at the school, the
7 students and teacher involved in the production elected to donate one dollar for
8 every ticket sold to the charity Broadway Cares/Equity Fights AIDS, which raises
9 funds to fight HIV and AIDS. The drama teacher had previously checked with the
10 DISTRICT to make sure this was an approved charity and had completed the
11 required administrative steps for the donation. However, the "Associated Student
12 Body" student government organization at Corona del Mar refused to write the
13 check. The reason the organization provided was that the audience was not given
14 an opportunity to opt out of supporting the cause. The teacher and students
15 understood this justification to be based on hostility towards people with
16 HIV/AIDS and lesbian, gay, bisexual, and transgender individuals.

17 85. One male student briefly considered bringing his boyfriend to a school
18 dance, but decided not to after talking with friends about fears for his safety. He
19 concluded that if he brought another male student to the dance, he or his date
20 might be physically assaulted.

21 86. Perhaps most telling, some students at the school who identify as or are
22 perceived to be lesbian, bisexual, or gay measure their safety by the criterion that
23 they have not been beaten up "yet."

24 87. In late February 2009, approximately one month after the four male students
25 posted this sexist and homophobic video on Facebook, and two weeks after
26 Principal ASRANI attempted to cancel production of "Rent" because of its
27 homosexual content, the same students who made the Facebook video produced a
28 video for a school-sponsored production that contained a host of homophobic and

1 sexist discussion. Although this language was ultimately edited out of the video by
2 the dance teacher, the students nonetheless performed a "dance" in which they
3 ridiculed women and the lesbian, gay, bisexual, and transgender community. The
4 actions of these students clearly reflect the failure of Defendants to take adequate
5 and appropriate corrective action to address harassment and bias in the school
6 environment.

7 88. The effects of verbal harassment based on actual or perceived sexual
8 orientation on children and teenagers are profound, ranging from seriously
9 undermining self-confidence to the inducement of suicide. It is well-established
10 that gay, lesbian, and bisexual teens and young adults have one of the highest rates
11 of suicide attempts, as well as other health and mental health problems including
12 substance abuse. A 2007 study of the experiences of lesbian, gay, bisexual, and
13 transgender students in California schools found that students who were more
14 frequently verbally harassed because of their sexual orientation or gender
15 expression were more than twice as likely to miss days of school because they felt
16 unsafe than students who were less frequently harassed.

17 89. The 2007 study also found that having adults in school who provide support
18 for lesbian, gay, bisexual, and transgender students can offset the negative
19 implications of a hostile school climate for these students. Yet, at Corona del Mar
20 High School, administrators consistently fail to take any action to combat
21 homophobia in the high school, or even make public statements that homophobia
22 will not be tolerated. Even after a group from Fred Phelps's Kansas church that
23 runs a website titled "God Hates Fags" publicized plans to travel to California to
24 picket the School's production of "Rent," a local newspaper reported that
25 Principal ASRANI "declined to comment on her view of homosexuality, citing the
26 district's advice not to talk about the controversy." This demonstrates the
27 District's failure, yet again, to take appropriate action to protect its students and
28 address harassment based on sexual orientation.

1 90. Upon information and belief, teachers at the school do not receive any
2 training and/or education about sexual orientation or bias based on sexual
3 orientation.

4
5 **CAUSES OF ACTION**

6 **FIRST CLAIM FOR RELIEF**

7 **(42 U.S.C. § 1983; Equal Protection under Fourteenth Amendment)**

8 **[Against HUBBARD, ASRANI & MCCULLOCH]**

9 91. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

10 92. Defendants have discriminated against Plaintiff DOE and other students,
11 who are members or whose parents are members of Plaintiff COALITION, in the
12 educational activities and programs of Corona del Mar on the basis of sex, sexual
13 orientation, and sex stereotyping in violation of the Fourteenth Amendment.

14 93. Defendants had a duty to provide and ensure an educational environment for
15 Plaintiff DOE and other students that is free of sexual innuendo, intimidation and
16 discriminatory animus, and to enforce the rules, regulations, and laws necessary to
17 protect students from acts of sexual harassment.

18 94. Plaintiff DOE and other students have been subjected to severe, pervasive,
19 and objectively offensive sexual harassment and hostility based on sex, sexual
20 orientation, or sex stereotyping by students under Defendants' direct control and
21 disciplinary authority.

22 95. Defendants, who had authority to rectify the situation, were given notice
23 that Plaintiff DOE and other students were being subjected to harassment or
24 discrimination on the basis of sex, sexual orientation, and sex stereotyping, but
25 failed to take immediate and appropriate corrective actions.

26 96. Defendants were deliberately indifferent to the harassment and hostility to
27 which Plaintiff DOE and other students have been subjected. Defendants'
28 deliberate indifference has prevented Plaintiff DOE and other students from

1 enjoying the educational benefits and opportunities provided at Corona del Mar by
2 the DISTRICT.

3 97. Defendants promoted and fostered this hostile environment. Defendants'
4 actions and policies are not adequate for ensuring that the school is physically and
5 emotionally safe for female, lesbian, gay, bisexual, and transgender students, and
6 students who fall outside traditional sex stereotypes. Defendants' actions and
7 inactions promoted hostility and discrimination based on sex, sexual orientation,
8 and sex stereotyping. Defendants' actions and inactions have prevented Plaintiff
9 DOE and other students from enjoying a safe and secure educational environment
10 and educational benefits and opportunities provided at Corona del Mar by the
11 DISTRICT.

12 98. Unless enjoined by this Court, Defendants will continue to violate the
13 Fourteenth Amendment.

14 99. Plaintiffs seek a judgment declaring that Defendants' intentional acts, failure
15 to act, and/or the acts of deliberate indifference described above regarding the
16 harassment, hostility, and discrimination that Plaintiff DOE and other students
17 have suffered because of sex, sexual orientation or sex stereotypes are prohibited
18 by the Equal Protection of the Clause of the Fourteenth Amendment. Plaintiffs
19 seek the injunctive relief set forth in the prayer for relief, and, because of the
20 emotional distress and other damages Plaintiff DOE has suffered as a result of
21 Defendants' actions, she seeks damages in an amount to be proved at trial.
22 Because the aforementioned actions and failures to act were willful, wanton,
23 malicious, or oppressive, and/or were done with a conscious disregard for Plaintiff
24 DOE's rights, subjected Plaintiff DOE to unjust hardship, and caused Plaintiff
25 DOE injury, Plaintiffs also seek punitive damages against Defendant ASRANI and
26 Defendant MCCULLOCH, in amounts to be proven at trial.

27 //

28 //

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1983; Title IX, 20 U.S.C. §§ 1681-1688)
[Against DISTRICT]

100. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

101. Defendant has discriminated against Plaintiff DOE and other students in the educational activities and programs of Corona del Mar on the basis of sex and sex stereotyping in violation of Title IX.

102. Plaintiff DOE and other students have been subjected to severe, pervasive, and objectively offensive harassment and hostility based on sex or sex stereotypes by students under the DISTRICT's direct control and disciplinary authority.

103. Defendant knew or should have known of the harassment.

104. Defendant failed to take prompt, appropriate corrective action.

105. Unless enjoined by this Court, Defendant will continue to violate Title IX.

106. Accordingly, Plaintiffs seek a judgment declaring that Defendant's failure to take prompt, appropriate corrective action is prohibited by Title IX, and Plaintiffs seek the injunctive relief set forth in the prayer for relief.

107. Plaintiff DOE and other students have been subjected to severe, pervasive, and objectively offensive harassment and hostility based on sex or sex stereotypes by students under the DISTRICT's direct control and disciplinary authority.

108. Defendant has actual knowledge of the sexual harassment and hostility to which Plaintiff DOE and other students have been subjected, but failed to take immediate and appropriate corrective actions.

109. Defendant has been deliberately indifferent to the harassment to which Plaintiff DOE and other students have been subjected.

110. Defendant's deliberate indifference prevented Plaintiff DOE and other students from enjoying the educational benefits and opportunities provided at Corona del Mar by the DISTRICT.

111. Plaintiffs seek the injunctive relief set forth in the prayer for relief, and,

1 because of the emotional distress and other damages Plaintiff DOE has suffered as
2 a result of Defendants' actions, she seeks damages in an amount to be proved at
3 trial. Because the aforementioned actions and failures to act were willful, wanton,
4 malicious, or oppressive, and/or were done with a conscious disregard for Plaintiff
5 DOE's rights, subjected Plaintiff DOE to unjust hardship, and caused Plaintiff
6 DOE injury, Plaintiffs also seek punitive damages against Defendant ASRANI and
7 Defendant MCCULLOCH, in amounts to be proven at trial.

8 **THIRD CLAIM FOR RELIEF**

9 **(Equal Protection, Cal. Const. art. I, §§ 7(a), (b); art. IV, §16(a))**

10 **[Against HUBBARD, ASRANI & MCCULLOCH]**

11 112. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

12 113. Defendants have discriminated against Plaintiff DOE and other students in
13 the educational activities and programs of Corona del Mar on the basis of sex or
14 sexual orientation in violation of the equal protection provisions of the California
15 Constitution.

16 114. Defendants had a duty to provide and ensure an educational environment for
17 Plaintiff DOE and other students that is free of sexual innuendo, intimidation and
18 discriminatory animus, and to enforce the rules, regulations, and laws necessary to
19 protect students from acts of sexual harassment.

20 115. Plaintiff DOE and other students have been subjected to severe, pervasive,
21 and objectively offensive sexual harassment and hostility based on sex or sexual
22 orientation by students under Defendants' direct control and disciplinary authority.

23 116. Defendants, who had authority to rectify the situation, were given notice
24 that Plaintiff DOE and other students were being subjected to harassment or
25 discrimination on the basis of sex or sexual orientation, but failed to take
26 immediate and appropriate corrective actions.

27 117. Defendants were deliberately indifferent to the harassment to which
28 Plaintiff DOE and other students have been subjected.

1 118. Defendants' deliberate indifference prevented Plaintiff DOE and other
2 students from enjoying the educational benefits and opportunities provided at
3 Corona del Mar by the DISTRICT.

4 119. Defendants promoted and fostered this hostile environment. Defendants'
5 actions and policies are not adequate for ensuring that the school is physically and
6 emotionally safe for female, lesbian, gay, bisexual, and transgender students, and
7 students who fall outside traditional sex stereotypes. Defendants' actions and
8 inactions promoted hostility and discrimination based on sex, sexual orientation,
9 and sex stereotyping. Defendants' actions and inactions have prevented Plaintiff
10 DOE and other students from enjoying a safe and secure educational environment
11 and educational benefits and opportunities provided at Corona del Mar by the
12 DISTRICT.

13 120. Unless enjoined by this Court, Defendants will continue to violate the
14 Fourteenth Amendment.

15 121. Plaintiffs seek a judgment declaring that Defendants' intentional acts, failure
16 to act, and/or the acts of deliberate indifference described above regarding the
17 harassment, hostility, and discrimination Plaintiff DOE and other students have
18 suffered because of sex, sexual orientation, and sex stereotypes are prohibited by
19 the equal protection provisions of the California Constitution. Plaintiffs seek the
20 injunctive relief set forth in the prayer for relief, and, because of the emotional
21 distress and other damages Plaintiff DOE has suffered as a result of Defendants'
22 actions, she seeks damages in an amount to be proved at trial. Because the
23 aforementioned actions and failures to act were willful, wanton, malicious, or
24 oppressive, and/or were done with a conscious disregard for Plaintiff DOE's
25 rights, subjected Plaintiff DOE to unjust hardship, and caused Plaintiff DOE
26 injury, Plaintiffs also seek punitive damages against Defendant ASRANI and
27 Defendant MCCULLOCH, in amounts to be proven at trial.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Safe Schools Clause, Cal. Const. art. I, § 28)**

3 **[Against HUBBARD, ASRANI & MCCULLOCH]**

4 122. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

5 123. Defendants have failed to protect Plaintiff DOE and other students from
6 harassment and threats in violation of the Safe Schools Clause of the California
7 Constitution.

8 124. The California Constitution provides that all students at public schools have
9 "the inalienable right to attend campuses which are safe, secure, and peaceful."
10 Cal. const. art. I, § 28.

11 125. Defendants have a duty to take all reasonable steps to protect Plaintiff DOE
12 and other students and provide them with a learning environment that is safe,
13 secure, and peaceful.

14 126. Defendants have breached their duty through their negligence and deliberate
15 indifference in response to the harassment and hostile environment to which
16 Plaintiff DOE and other students have been subjected.

17 127. As a result of Defendants' breach, Plaintiff DOE and other students have
18 been subjected to a learning environment that is not safe, secure, or peaceful.

19 128. Plaintiffs seek a judgment declaring that Defendants' intentional acts, acts of
20 deliberate indifference, or unreasonable failures to act are prohibited by the Safe
21 Schools Clause of the California Constitution, and Plaintiffs seek the injunctive
22 relief set forth in the prayer for relief.

23 **FIFTH CLAIM FOR RELIEF**

24 **(California Education Code § 220 et seq.; Student Discrimination)**

25 **[Against DISTRICT, HUBBARD, ASRANI & MCCULLOCH]**

26 Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

27 129. Defendants have discriminated against Plaintiff DOE and other students in
28 the educational activities and programs of Corona del Mar on the basis of sex or

1 sexual orientation in violation of California Education Code § 220 et seq.

2 Defendants have also retaliated against Plaintiff DOE for reporting discrimination
3 and harassment based on sex in violation of California Education Code § 220 et
4 seq.

5 130. Plaintiff DOE and other students have been subjected to severe, pervasive,
6 and objectively offensive sexual harassment and hostility based on sex and actual
7 or perceived sexual orientation by students under the Defendants' direct control
8 and disciplinary authority.

9 131. Defendants have actual knowledge of the harassment and hostility to which
10 Plaintiff DOE and other students have been subjected, but failed to take immediate
11 and appropriate corrective actions.

12 132. Defendants have been deliberately indifferent to the harassment and
13 hostility to which Plaintiff DOE and other students have been subjected.

14 133. Defendants' deliberate indifference prevented and continues to prevent
15 Plaintiff DOE and other students from enjoying the educational benefits and
16 opportunities provided at Corona del Mar by the DISTRICT.

17 134. Defendants promoted and fostered this hostile environment. Defendants'
18 actions and policies are not adequate for ensuring that the school is physically and
19 emotionally safe for female students, lesbian, gay, bisexual, and transgender
20 student, and students who fall outside traditional sex stereotypes. Defendants'
21 actions and inactions promoted hostility and discrimination based on sex, sexual
22 orientation, and sex stereotyping. Defendants' actions and inactions prevented
23 Plaintiffs and other students from enjoying a safe and secure educational
24 environment and educational benefits and opportunities provided at Corona del
25 Mar by the DISTRICT.

26 135. Unless enjoined by this Court, Defendants will continue to violate
27 California Education Code § 220 et seq.

28 136. Plaintiffs seek a judgment declaring that Defendants' failure to take

1 immediate and appropriate corrective actions, as well as Defendants' intentional
2 acts, acts of deliberate indifference, and/or unreasonable failures to act violate
3 California Education Code § 220 et seq. Plaintiffs seek the injunctive relief set
4 forth in the prayer for relief, and, because of the emotional distress and other
5 damages Plaintiff DOE has suffered as a result of Defendants' actions, she seeks
6 damages in an amount to be proved at trial. Because the aforementioned actions
7 and failures to act were willful, wanton, malicious, or oppressive, and/or were
8 done with a conscious disregard for Plaintiff DOE's rights, subjected Plaintiff
9 DOE to unjust hardship, and caused Plaintiff DOE injury, Plaintiffs also seek
10 punitive damages against Defendant ASRANI and Defendant MCCULLOCH, in
11 amounts to be proven at trial.

12 **SIXTH CLAIM FOR RELIEF**

13 **(California Civil Code §§ 51, 51.7 52(a), 52.1(b) & Penal Code § 422.6)**

14 **[Against HUBBARD, ASRANI & MCCULLOCH]**

15 137. Plaintiffs incorporate the preceding paragraphs as if fully set forth here.

16 138. Defendants are engaged in the business of operating schools that are a
17 business and public accommodation as defined by Civil Code Section 51.

18 139. Plaintiff DOE and other students have been subjected to harassment and
19 hostility by students and staff on the basis of sex or sexual orientation.

20 140. Defendants have been deliberately indifferent to the harassment and
21 hostility Plaintiff DOE and other students have suffered. As a result, Plaintiff
22 DOE and other students have been denied full and equal advantages, facilities,
23 privileges, and services in a business and accommodation under Civil Code
24 sections 51, 51.7, and 52(a).

25 141. Unless enjoined by this Court, Defendant will continue to violate Civil
26 Code sections 51, 51.7, and 52(a).

27 142. Plaintiffs seek a judgment declaring that Defendants' failure to take
28 immediate and appropriate corrective actions, as well as Defendants' intentional

1 acts, acts of deliberate indifference, and/or unreasonable failures to act violate
2 Civil Code sections 51, 51.7, and 52(a). Plaintiffs seek the injunctive relief set
3 forth in the prayer for relief, and, because of the emotional distress and other
4 damages Plaintiff DOE has suffered as a result of Defendants' actions, she seeks
5 damages in an amount to be proved at trial. Plaintiffs are also entitled to a civil
6 penalty as provided for by Civil Code section 52. Because the aforementioned
7 actions and failures to act were willful, wanton, malicious, or oppressive, and/or
8 were done with a conscious disregard for Plaintiff DOE's rights, subjected
9 Plaintiff DOE to unjust hardship, and caused Plaintiff DOE injury, Plaintiffs also
10 seek punitive damages against Defendant ASRANI and Defendant
11 MCCULLOCH, in amounts to be proven at trial.

12 13 **PRAYER FOR RELIEF**

14 Accordingly, Plaintiffs pray for judgment as follows:

15 A. For a declaration that Defendants have violated the Equal Protection
16 Clause of the Fourteenth Amendment to the U.S. Constitution; Title IX of the
17 Education Amendments of 1972; the equal protection provisions and the Safe
18 Schools Clause of the California Constitution; California Education Code § 220 et
19 seq.; and further that said constitutional and statutory rights so violated are present
20 rights that must immediately be respected and protected.

21 B. For an injunction prohibiting Defendants from continuing to
22 discriminate by failing to respond reasonably to complaints of harassment and
23 hostility based on sex and sexual orientation, and ordering Defendants to take
24 measures to address the hostile environment to which Plaintiffs have been
25 subjected, including but not limited to the following:

26 i. Require Defendants to adopt a formal process for the filing and
27 investigation of a complaint when a student is subjected to harassment or
28 discrimination because of sex or actual or perceived sexual orientation, publish

1 this process, notify all students and parents about this process, and develop an
2 audit to ensure that this process is followed.

3 ii. Require Defendants to designate and adequately train specific
4 school staff to be point persons for students to talk to regarding harassment or
5 discrimination because of sex or actual or perceived sexual orientation. Identify a
6 DISTRICT administrator who will be available for questions if any employee
7 seeks guidance on how to create and maintain a safe learning environment for
8 students who are experiencing discrimination and/or harassment.

9 iii. Require Defendants to immediately provide meaningful
10 training for all students at Corona del Mar to educate students about issues of
11 diversity, harassment, and discrimination, wherein students are instructed about
12 laws prohibiting harassment and discrimination based on sex and actual or
13 perceived sexual orientation.

14 iv. Require Defendants to immediately provide meaningful
15 training for all staff and administrators at Corona del Mar to educate staff about
16 harassment and discrimination based on sex and actual or perceived sexual
17 orientation; to educate staff about the affirmative responsibility of schools to
18 maintain a safe and non-discriminatory learning environment; and to provide
19 school staff with specific intervention tools that can be used to help prevent and
20 stop harassment and discrimination against students on the basis of sex and actual
21 or perceived sexual orientation.

22 v. Require Defendants to take adequate steps to meaningfully
23 protect students who are subjected to threats and/or harassment based on their sex,
24 sex stereotyping, or actual or perceived sexual orientation.

25 vi. Require Defendants to survey students at Corona del Mar
26 during this school year to assess the level of bias based on sex and actual or
27 perceived sexual orientation in the school and take appropriate steps in light of the
28 results to address bias.

1 during this school year to assess the level of bias based on sex and actual or
2 perceived sexual orientation in the school and take appropriate steps in light of the
3 results to address bias.

4 vii. Require Defendants to take no reprisal or retaliatory action
5 against any Plaintiff or any student, administrator, teacher, or staff member who
6 speaks out in support of Plaintiffs.

7 viii. Require Defendants to take no further discriminatory action to
8 interfere with the Corona del Mar production of "Rent."

9 C. For an award of damages in an amount to be proved at trial.

10 D. For an award of punitive damages against Defendants ASRANI
11 and MCCULLOCH.

12 E. For civil penalties pursuant to Civil Code section 52.

13 F. For an award of reasonable attorneys' fees and costs.

14 G. For a jury trial on all issues so triable.

15 H. For such other relief as the Court may deem just and proper.

16 Dated: May 1, 2009

17 ACLU FOUNDATION OF SOUTHERN
18 CALIFORNIA

Hector O. Villagra
Belinda Escobosa Helzer

19
20 By: 

Hector O. Villagra

21
22 Dated: May 1, 2009

23 ACLU FOUNDATION OF SOUTHERN
24 CALIFORNIA

Mark D. Rosenbaum
Lori Rifkin

25 By: 

Lori Rifkin

26
27 Attorneys for Plaintiffs
28 MARY DOE, by and through her guardians ad
litern, JAMES and JANE DOE; ORANGE
COUNTY EQUALITY COALITION