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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

ADELA AYALA, individually, and as next friend )	Case No.
of L.O.A., a minor child, )	
)	
Plaintiffs, )	<b>COMPLAINT FOR</b>
)	<b>DECLARATORY AND</b>
v. )	<b>INJUNCTIVE RELIEF</b>
)	
RICHARD M. ARMSTRONG, in his official )	
capacity as Director of the Idaho Department of )	
Health and Welfare and ELKE SHAW-TULLOCH, )	
in her official capacity as Administrator of the )	
Division of Public Health, Bureau of Vital Records )	
and Health Statistics, )	
Defendants. )	
_____ )	

Plaintiffs, ADELA AYALA, individually and as next friend of L.O.A, a minor child, file this Complaint against Defendants RICHARD M. ARMSTRONG, in his official capacity as Director of the Idaho Department of Health and Welfare (“IDHW”), and ELKE SHAW-TULLOCH, in her official capacity as Administrator of the Idaho Department of Health and Welfare’s Division of Public Health and Bureau of Vital Records and Health Statistics (“Bureau”), allege as follows:

## INTRODUCTION

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 seeking declaratory and preliminary and permanent injunctive relief requesting this Court to require the Defendants to apply Idaho's Paternity Act, Vital Statistics Act and Artificial Insemination Act in a sex-neutral manner, recognize the parentage of same-sex couples and their children, and issue the Plaintiffs an amended two-parent birth certificate recognizing Plaintiff Ayala as the parent of her minor child L.O.A.

2. Plaintiffs challenge the constitutionality of Idaho's statutes that govern paternity, the issuance of birth certificates, and the regulation of births by artificial insemination because the statutes do not afford the same rights, privileges, and protections to same-sex couples and their children on equal terms to similarly situated opposite-sex couples and their children.

3. Individual decisions concerning family relationships, procreation, and childrearing and the recognition and protection of the intimate association between a parent and child are fundamental rights that are protected by the Constitution regardless of an individual's sexual orientation.

4. "The decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices." *Carey v. Population Services, Intern.*, 431 U.S. 678, 685 (1977).

5. Defendants' policy, practice, and custom of denying paternity and two-parent birth certificates to children born to same-sex couples causes significant and ongoing irreparable harm, and makes it more difficult for them to obtain the benefits and protections that married and unmarried opposite-sex couples can more easily obtain without any legitimate justification.

6. Defendants' policy, practice, and custom serves to stigmatize and denote an inferior status to same-sex couples and their children by sending a message of second-class status, the unsuitability of same-sex couples to be parents, and the illegitimacy of children born to same-sex couples without any legitimate justification.

7. Defendants' policy, practice, and custom serves to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the ability of sex-same couples to act as parents without any legitimate justification and is not in the best interest of the children.

8. Defendants' failure to afford same-sex couples with the right to establish paternity, and receive two-parent birth certificates for their children is not in the best interest of children.

9. Defendants' failure under color of state law to afford same-sex couples with the right to establish paternity, and receive two-parent birth certificates for their children violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

#### **IDAHO'S PATERNITY, VITAL STATISTICS AND ARTIFICIAL INSEMINATION STATUTES**

10. Idaho's "Paternity Act", I.C. §§ 7-1101 et seq., defines a "child born out of wedlock" as child who is "born outside of lawful matrimony." I.C. § 7-1103(1) (2016). The Act defines "mother" as "the mother of a child born out of wedlock." I.C. § 7-1103(2). The Act defines "father" as "the **biological** father of a child born out of wedlock." I.C. § 7-1103(2). (emphasis added).

11. The Paternity Act provides the “legal status and legal relationships and the rights and obligations . . . are the same for all persons and his parents, whether or not the parents have been married.” I.C. § 7-1104.

12. The Paternity Act provides that “[a] voluntary acknowledgement of paternity for an Idaho birth shall be admissible as evidence of paternity and shall constitute a legal finding of paternity upon the filing of a signed and notarized acknowledgement with the vital statistics unit of the department of health and welfare.” I.C. § 7-1106(1).

13. The Paternity Act creates a presumption that the “husband” of the mother is the biological father of a child born during a marriage which can be rebutted by a genetic test that shows the husband is not the biological father of the child, or “[a]n affidavit of non-paternity signed by the natural mother and her husband, and an affidavit of paternity signed by the natural mother and the natural father.” I.C. § 7-1119.

14. The Paternity Act provides that the presumption that the “husband” is the parent of a child during a marriage can be overcome if 1) the mother was married at the time of either conception or birth or between conception and birth; and 2) the husband has executed an affidavit of non-paternity attesting that he is not the father, the mother has executed a voluntary acknowledgement of paternity attesting that the husband is not the father, and the alleged father has executed an voluntary acknowledgment of paternity attesting that he is the father. I.C. § 7-1106(1).

15. The Paternity Act provides that after a sixty-day period of rescission has elapsed, “an executed acknowledgment of paternity may be challenged only in court on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the party challenging the acknowledgement.” I.C. § 7-1106(2).

16. The Paternity Act provides that a court “[p]roceeding to establish the paternity of a child and to compel support . . . may be commenced by the mother . . . , by the child’s guardian or other person standing in a paternal relation or being next of kin of the child, or by the department of health and welfare . . . .” I.C. § 7-1110.

17. The Paternity Act provides that after a court proceeding is commenced “[a] voluntary acknowledgement of parenting may be executed by the mother . . . , and the father, . . . , regardless of married status of the mother or father.” I.C. § 7-1111(2).

18. The Paternity Act provides a “court may enter an order for the support of a child upon the execution of a voluntary acknowledgement without further proceedings to establish paternity.” I.C. § 7-1106(2).

19. The Paternity Act provides that the Director of IDHW shall proscribe forms for voluntary acknowledgement of paternity and non-paternity affidavits. I.C. § 7-1106(4).

20. The Director has promulgated a form for the voluntary acknowledgment of paternity and non-paternity affidavit only for the unmarried “biological father” and mother to complete. *See* Exhibit A attached.

21. The biological father who signs a voluntary acknowledgment of paternity affidavit is automatically named the legal parent of the child without having to go to court.

22. Idaho’s Vital Statistics Act, I.C. §§ 39-240 et seq. (2016) provides that a certificate of birth shall be filed with the IDHW within fifteen (15) days of the date of the birth. I.C. § 39-255.

23. The Vital Statistics Act requires that “[i]f the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless: (i) Paternity has been determined

otherwise by a court . . . ; or (ii) The husband has executed an affidavit of non-paternity attesting that he is not the father, the mother has executed an acknowledgment of paternity attesting that the alleged father is the father, and the alleged father has executed an acknowledgment of paternity attesting that he is the father.” I.C. § 39-255(e)(1) (i) and (ii).

24. The Vital Statistics Act requires that “[i]f the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father shall not be entered on the certificate without a notarized voluntary acknowledgment of paternity.” I.C. § 39-255(e) (2).

25. Idaho’s Artificial Insemination Act, I.C. §§ 39-240 et seq. (2016), accords the same relationship, rights and obligation between a child born by artificial insemination and the mother’s husband “for all legal intents and purposes as if the child had been naturally and legitimately conceived by the mother and the mother’s husband. . . .” I.C. § 39-5405.

26. Without any evidence of a biological relationship or genetic connection to the child, Idaho recognizes, and automatically and immediately establishes at the time of birth, the parental rights of a consenting husband when a child is conceived or born by artificial insemination during a marriage of opposite-sex couples.

27. A same-sex couple and an opposite-sex couple that decide to have a child by artificial insemination are similarly situated in all relevant respects because the purpose of the statute is to establish parentage regardless if both partners share a biological relationship or genetic connection with the child.

28. The Bureau administers the establishment of paternity and issues birth certificates for all children born in the State of Idaho. I.C. § 39-255.

29. Idaho's Paternity Act and Vital Statistics Act does not acknowledge or recognize the parental rights of married or unmarried same-sex couples.

30. The Bureau will not accept a voluntary acknowledgement of paternity affidavit and will not issue two-parent birth certificates for children born to same-sex couples.

31. Without any evidence of a biological relationship or genetic connection, Idaho recognizes the parentage of unmarried fathers when a child is conceived or born to an opposite-sex couple who submits a voluntary acknowledgement of paternity affidavit.

32. Without any evidence of a biological relationship or genetic connection, Idaho has established a statutory presumption for the parentage of a married father when a child is conceived or born to an opposite-sex couple during the marriage without requiring the execution of a voluntary acknowledgement of paternity affidavit.

33. Upon information and belief it is the Bureau's policy, practice, and custom to refuse to issue and accept a voluntary acknowledgment of paternity affidavit from a same-sex couple.

34. Upon information and believe it is the Bureau's policy, practice, and custom to refuse to issue a two-parent Certificate of Live Birth for a child, born to same-sex couples, listing both as parents. *See Exhibit B attached.*

35. The Bureau routinely issues two-parent birth certificates, for a child born to opposite-sex couples, without any regard to how the child is conceived, or whether the child shares a biological relationship or genetic connection to the husband because the couple was married under the presumption created in the Paternity Act, was conceived using artificial insemination under the Artificial Insemination Act, or when the mother became pregnant through intercourse with a man who was not her spouse.

36. Idaho's Paternity Act, Vital Statistics Act, and Artificial Insemination Act does not require an opposite-sex couple to file a court petition seeking parental termination and second-parent adoption to establish paternity or for the issuance of a two-parent birth certificate in order to obtain the recognition and the parental rights and protections for their children.

37. Requiring same-sex couples, but not opposite-sex couples, to use the parental termination and second-parent adoption statutes to establish paternity, or for the issuance of a two-parent birth certificate imposes significant and unjustified burdens of same-sex couples and their children.

38. Same-sex couples and their children should be provided the same recognition, and parental rights and protections as opposite-sex couples and their children.

### **JURISDICTION AND VENUE**

39. This action arises under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation of rights secured by the Fourteen Amendment to the Constitution of the United States.

40. This Court has federal question and civil rights subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a) because the matters in controversy arise under the Fourteen Amendment to the Constitution of the United States.

41. This Court has jurisdiction to issue the declaratory relief requested pursuant to 28 U.S.C §§ 2201(a) and 2202 and Fed. R. Civ. P. 57(a).

42. Personal jurisdiction over Defendants is proper because they are domiciled in the District of Idaho and/or has otherwise made and established contacts with the District of Idaho sufficient to permit the exercise of personal jurisdiction over them.



43. Venue in the District of Idaho is proper under 28 U.S. § 1391(b) and L.R. 3.1, and because Defendants reside the district, and the events giving rise to these claims occurred in the district.

### **PARTIES**

44. Plaintiff Adela Ayala is 37 years old and resides in Canyon County, Idaho. She is the parent of L.O.A, a minor child, who was conceived by artificial insemination together and with the consent of L.O.A.'s birth mother, and Adela's former same-sex partner, Janina O.

45. Plaintiff L.O.A., represented by Plaintiff Ayala as next friend, is a four-year-old minor who was conceived by artificial insemination and born during the same-sex relationship between Plaintiff Ayala and Janina O.

46. Plaintiff Ayala has provided the primary care and financial support of L.O.A for her entire life. She is harmed by Defendants' refusal to accept a voluntary acknowledgment of paternity affidavit and the denial of a birth certificate naming her as a parent.

47. Defendant Richard Armstrong is sued in his official capacity as the Director of the Idaho Department of Health and Welfare ("IDHW"). Defendant Armstrong as Director is responsible for the supervision and enforcement of the statutory procedures relating to paternity, the issuance of birth certificates, and artificial insemination, and is required under State law to prescribe forms for the voluntary acknowledgement of paternity and birth certificates. Defendant Armstrong was acting under the color of State statutes and the Idaho Constitution at all times relevant to this Complaint.

48. Defendant Elke Shaw-Tulloch is sued in her official capacity as the IDHW Administrator of the Division of Public Health, Bureau of Vital Records and Health Statistics. Defendant Shaw-Tulloch as Administrator of the Division, which includes the Bureau, is

responsible for the supervision and enforcement of the statutory procedures relating to paternity and vital statistics including the acceptance of the voluntary acknowledgement of paternity affidavits and the issuance of birth certificates. Defendant Shaw-Tulloch was acting under the color of State statutes and the Idaho Constitution at all times relevant to this Complaint.

### **FACTUAL ALLEGATIONS**

49. Plaintiff Adela Ayala (“Adela”) and Janina O. (“Janina”) began their relationship in February of 2007. In March of 2011 the couple moved to Idaho.

50. Adela and Janina were engaged in February of 2012, but were unable to get married because Idaho had enacted a statute and passed a constitutional amendment prohibiting same-sex couples from marrying, and the State refused to recognize the legality of same-sex marriages performed in other states.

51. Adela and Janina decided to conceive a child using donated sperm of a mutual friend because Janina had some existing health problems that could affect her ability to conceive at a later time.

52. Adela and Janina were both involved in the selection of the donor.

53. In preparation for the birth of their daughter, Adela and Janina selected the OBGY-N, chose the hospital where the baby would be delivered, attended childbirth classes, and went to pre-natal medical appointments together.

54. The couple purchased the clothing, furniture and other items for the baby and set up the nursery together.

55. Adela and Janina chose the baby’s name together.

56. Janina gave birth to the couple's daughter, L.O.A. in the summer of 2012 at Saint Alphonsus Regional Medical Center.

57. Adela was present at L.O.A.'s birth. She cut L.O.A.'s umbilical cord and was the first one to hold her.

58. When hospital staff gave Janina and Adela the IDHW form for the purpose of obtaining a birth certificate, Adela was informed that because Idaho did not recognize same-sex couples as parents of children conceived by artificial insemination, her name could not be recorded on the birth certificate.

59. Janina was listed as the birth mother on L.O.A.'s birth certificate.

60. The couple did not list a birth father's name on L.O.A.'s birth certificate because the couple considered Adela to be L.O.A.'s other parent.

61. As recognition of Adela's parentage to L.O.A., the couple decided to give L.O.A. Adela's last name on her birth certificate, and all legal documents, such as social security and health insurance cards.

62. Adela and Janina consistently and publicly declared to their family, friends, and co-workers that L.O.A. is their daughter including but not limited to their birth announcement when L.O.A. was born and birthday celebrations.

63. Adela worked full-time throughout their entire relationship in order to provide for L.O.A., Janina, and Janina's son from a previous relationship.

64. Adela provided the financial support for her family, and Janina stayed home with the children.

65. Adela and Janina would return to California about twice a year so that the children could visit with their extended family.

66. When necessary, Adela would request time off from work to attend to L.O.A.'s needs, including taking her to medical appointments.

67. In 2014, the couple's relationship became strained as a result of Janina's reaction to the death of her brother.

68. Janina became increasingly uninvolved with the children's upbringing and Adela began to care for the children without her help.

69. The relationship ended in February of 2015, and Adela and L.O.A. moved in with Adela's sister for a few months.

70. Adela cannot adopt L.O.A. because Janina will not consent to the adoption.

71. Adela was L.O.A.'s primary parent, caregiver, and financial supporter after the couple separated in February of 2015.

72. In February 2016, Janina was charged with burglary and theft.

73. Janina and Adela became concerned about the legal custody and care of L.O.A. because of the possibility that Janina could be incarcerated if found guilty of her criminal charges.

74. Janina agreed to give Adela custody of both children for three years.

75. On May 13, 2016, Janina executed a power of attorney giving Adela full parental authority over the care of L.O.A., and her son from a prior relationship.

76. On June 9, 2016, Janina revoked the power of attorney, and took physical custody of both children.

77. Janina brought L.O.A. to stay with her godmother for 2 weeks and grandmother for 3.5 weeks, both of whom reside in California.

78. Adela was not permitted to speak or visit with L.O.A. for approximately the 3.5 weeks L.O.A. was with her grandmother.

79. On or about July 2, 2016 L.O.A. was brought back to Idaho from California.

80. L.O.A. stayed with Adela for approximately seven or eight days before Janina would take her for one to two days at a time before returning her to Adela.

81. At the present time Adela has physical custody of L.O.A on a full time basis, and Janina comes to visit.

82. The State of Idaho will not recognize the parental rights of Adela without an acknowledgement of paternity and a birth certificate.

83. Defendants' policy, practice, and custom of refusing to recognize the parentage of children conceived and born to same-sex couples harms L.O.A. by casting a cloud of uncertainty over whether she has a legal parent-child relationship with Adela.

#### **IRREPARABLE HARM.**

84. Defendants' refusal to accept voluntary acknowledgement of paternity affidavits and issue two-parent birth certificates from same-sex couples poses significant and ongoing irreparable harm to Adela, L.O.A., and other same-sex couples and their children.

85. Recognition as a parent is necessary on a two-parent birth certificate so Adela can rely upon the presumption of "joint legal custody" and seek a court order for legal and physical custody and visitation of L.O.A. as her parent. I.C. §32-717A.

86. Recognition as a parent is necessary on a two-parent birth certificate so Adela has the ability to authorize medical care and enroll L.O.A. in school or extracurricular activities. I.C. §32-717A.

87. Recognition as a parent is necessary on a two-parent birth certificate because Adela cannot seek a court order for custody and visitation of L.O.A. as a de facto parent because she is not related to her within the third degree of consanguinity even though she meet all other legal requirements. I.C. § 32—1703.

88. Recognition as a parent is necessary on a two-parent birth certificate so Adela can have access to records and information pertaining to L.O.A.’s medical, dental, health, and school and educational records. I.C. §32-717A.

89. Recognition as a parent is necessary on a two-parent birth certificate for Adela to enroll L.O.A. in an employer’s health plan and other insurance plans.

90. Recognition as a parent is necessary on a two-parent birth certificate so L.O.A. can inherit if Adela dies intestate and by representation. I.C. § 15-2-103(a), I.C. § 15-2-106 and I.C. § 15-2-109(b).

91. Recognition as a parent is necessary on a two-parent birth certificate so L.O.A. can receive worker’s compensation if Adela dies while working. I.C. § 72-431.

92. Recognition as a parent is necessary on a two-parent birth certificate so L.O.A. can receive crime victim’s compensation if Adela is a victim of a crime and is killed. I.C. § 72-1019.

93. Recognition as a parent is necessary on a two-parent birth certificate for Adela to have a higher priority to make medical decisions if L.O.A. becomes ill or incapacitated. I.C. § 39-4504.

94. Recognition as a parent is necessary on a two-parent birth certificate so L.O.A. can qualify for Social Security survivor benefits in the event of Adela’s death. Social Security Administration, *Social Security Survivors Benefits*, <https://www.ssa.gov/pubs/EN-05->

10084.pdf (accessed Nov. 15, 2016).

95. Recognition as a parent is necessary because it gives Adela the legal ability to protect and assert her legal and custody rights to notice and an opportunity to appear and be heard in a Child Protective Act proceeding under I.C. §§ 16-1601 et seq. and a guardianship proceeding under I.C. §§ 15-5-201 et seq.

96. Recognition of Adela as a parent will subject her to the payment of child support, and for her to be able to receive child support from the non-custodial parent. I.C. § 32-706.

97. Recognition of Adela as a parent gives L.O.A. the right to be supported financially by her until she graduates from high school or turns eighteen-years-old. I.C. § 18-401 and I.C. §32-706(2).

98. Recognition of Adela as a parent is in L.O.A.'s best interest. I.C. §32-717.

99. Defendants' policy, practice, and custom of denying paternity and two-parent birth certificates to children born to sex-same couples, pursuant to State statute, serves as an unjustified barrier to their ability to exercise their fundamental rights because it makes it more difficult to obtain the benefits and protections that similarly situated married and unmarried opposite-sex couples can more easily obtain without any legitimate justification.

100. Defendants, policy, practice, and custom, pursuant to State statute, denies Adela and L.O.A. of the same protections, status, and dignity that are accorded to similarity situated opposite-sex parents and their children.

101. Defendants' policy, practice, and custom, pursuant to State statute, of denying paternity and two-parent birth certificates to children born to sex-same couples serves to stigmatize and denotes an inferior status to same-sex couples and their children by sending a

message of second-class status, the unsuitability of same-sex couples to be parents, and the illegitimacy of children born to same-sex couples without any legitimate justification.

102. Defendants' policy, practice, and custom, pursuant to State statute, of denying paternity and two parent birth certificates to children born to sex-same couples serves to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the ability of same-sex couples to act as parents without any legitimate justification.

103. Defendants' policy, practice, and custom, pursuant to State statute, of denying paternity and two-parent birth certificates to children born to sex-same couples humiliates hundreds, if not thousands, of children in the State of Idaho now being raised by same-sex couples, and makes it difficult for children of same-sex couples to understand the integrity and closeness of their own family as compared to opposite-sex families.

104. Defendants' policy, practice, and custom, pursuant to State statute, of denying paternity and two-parent birth certificates to children born to sex-same couples born in Idaho has no legal justification because children born to same-sex couples in other states that recognize the paternity and issue two-parent birth certificate to same-sex couples who subsequently move to Idaho will have their parentage and rights recognized by State governmental agencies and private entities.

105. Adela and L.O.A. are suffering these injuries and indignities not because Adela is an unfit parent, did not provide a loving home, or failed to financially support L.O.A., but because of who she is, and the sex of the individual who she chose to start her family with.

106. The public interest and the balance of equities favor Adela and L.O.A. because there is no legitimate state interest in excluding same-sex couples and their children from the



protections, benefits, and status that Idaho has determined it is in its interest to accord to opposite-sex couples.

107. Denying equal government protections, benefits, and status to parents and children of same-sex couples is not a legitimate governmental interest and has no justification.

## **CLAIMS FOR RELIEF**

### **First Claim for Relief**

#### **Deprivations under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution**

108. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this Complaint as though fully set forth herein.

109. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

110. Defendants' refusal to issue and accept a voluntary acknowledgment of paternity affidavit and issue a two parent birth certificate for L.O.A. and other children born to same-sex couples deprives these children of the dignity, legitimacy, security, support, and protections available upon birth of children to married and unmarried, opposite-sex couples, and deprives Adela and other same-sex couples the privacy, dignity, security, support, and protections available to opposite-sex couples.

111. Classifications based upon sexual orientation and sex should be reviewed under heightened scrutiny and cannot survive under any level of constitutional scrutiny.

112. Same-sex couples are members of a discrete minority that have suffered from a history of discrimination in Idaho and in the United States.

113. The Idaho Legislature has passed statutes and a constitutional amendment to the Idaho State Constitution that prevented same-sex couples from marrying and refused to recognize same-sex marriages performed in other states as legally valid.

114. Idaho's Governor defended the State's discrimination against same-sex couples "because opposite-sex parents are better for children than same-sex parents" and that children raised by opposite-sex couples receive a better upbringing." *Latta v. Otter*, 771 F.3d 456, 464 and 469 (9thCir. 2014).

115. Sexual orientation bears no relationship to the ability to parent a child, and classifications of parents and their children as a lesser value on the basis of sexual orientation is repugnant to the fundamental rights recognized by the Constitution.

116. The Idaho Legislature has refused to consider protecting the rights of same-sex couples on the basis of sexual orientation by amending the Idaho Human Right Act, I.C. 67 §§ 5901 et seq. to afford them with the same civil right protections afforded to opposite-sex couples in connection with employment, public accommodation, and housing.

117. This history and the failure to act to prevent unjustifiable discrimination against same-couples and their children, serves to convey an official governmental message of disfavor on the basis of sexual orientation and sex.

118. Defendants' refusal to recognize the parentage of same-sex couples and their children by issuing and accepting voluntary acknowledgement of paternity affidavits from same-sex couples discriminates against Adela and other same-sex parents on the basis of sexual orientation and sex without a legitimate purpose and compelling state interest or justification.

119. Defendants' refusal to recognize the parentage of same-sex couples by issuing two-parent birth certificates discriminates against Adela and other same-sex couples on the basis

of sexual orientation and sex without a legitimate purpose and compelling state interest or justification.

120. Defendants' denial of a two-person birth certificate to L.O.A and other children born to same-sex couples discriminates against such children on the basis of their parents' status as a same-sex couple and their parents' sexual orientation and sex without a legitimate purpose and compelling state interest or justification.

121. There is no constitutionally adequate basis for Idaho's decision to refuse to issue and recognize a voluntary acknowledgement of paternity from Adela and other same-sex couples.

122. There is no constitutionally adequate basis for Idaho's decision to refuse to issue a birth certificate listing both names of a same-sex couple as a parent.

### **Second Claim for Relief**

#### **Deprivations under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution**

123. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this Complaint as though fully set forth herein.

124. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

125. Plaintiffs Adela and L.O.A. have a protected liberty interest in their family privacy, integrity, and association, which includes the fundamental right to security in their legal parent-child relationship.

126. Plaintiff Adela has a protected liberty interest in her parental autonomy and status, including the fundamental right to make choices and decisions concerning whether and how to

create a family and decisions concerning the care, custody, and control of her child, L.O.A., which is presumptively in her best interests.

127. Defendants' refusal to accept a voluntary acknowledgment of paternity affidavit and issue a two-parent birth certificate violates the Due Process Clause of the United States Constitution by unconstitutionally infringing on the protected liberty interests and fundamental rights of Adela, L.O.A., and other same-sex couples and their children without a legitimate purpose or state justification.

128. Defendant's refusal to recognize the parentage of same-sex couples and their children by issuing and accepting voluntary acknowledgment of paternity affidavits and issuing two-parent birth certificates from same-sex couples unconstitutionally infringes on Adela and other same-sex couples' fundamental right to create and raise a family without a legitimate purpose or state justification.

129. By refusing to issue L.O.A. a two-parent birth certificate that correctly identifies both Adela and Janina as parents, Defendants are unconstitutionally infringing on Adela's and L.O.A.'s liberty interests and depriving Adela of the single most important identity document necessary to demonstrate her parent-child familial relationship to L.O.A.

130. There is no constitutionally adequate basis for Idaho's decision to infringe on the fundamental rights of Adela, L.O.A., and other same-sex couples to create a family, and care and provide for their children.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that Defendants' refusal under the Idaho Paternity Act, Vital Statistic Act and Artificial Insemination Act to recognize the parentage and to issue a two-parent birth

certificate to L.O.A. on equal terms as similarly situated children of opposite-sex couples violates the Plaintiffs' guarantees of equal protection of law under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States;

B. Declaring that Defendants' refusal to recognize the parentage and to issue a two-parent birth certificate to L.O.A. that names both Adela and Janina as her parents violates the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States;

C. Declaring that Idaho Paternity Act, Vital Statistic Act and Artificial Insemination Act are invalid and unconstitutional as written and are henceforth to be construed in a sex-neutral manner to require the recognition of the parentage of same-sex couples and issuance of two-parent birth certificates to same-sex couples on an equal basis;

D. Issue a preliminary and permanent injunction enjoining Defendants from continuing to enforce pursuant to State statute their policy, custom and practice, of denying children born to a same-sex couples of the ability to file a voluntary acknowledgement of paternity affidavit, and a consent and request form for a child conceived and born to a same-sex couple by artificial insemination and denying a two-parent birth certificate that list the same-sex couple as the child's parents.

E. Issue a preliminary and permanent injunction requiring Defendants to recognize that same-sex couples and their children should be subject to equal terms and conditions to establish parentage and the issuance of two-parent birth certificates that apply to opposite-sex couples and their children;

F. Issue a preliminary and permanent injunction ordering Defendants to immediately issue an amended birth certificate to L.O.A. that lists both Adela and Janina as her parents;

G. Awarding Plaintiffs costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and,

H. Granting such other and further relief as the Court deems just and proper.

Dated this 17th day of November, 2016

/s/ Howard A. Belodoff

/s/ Jennifer A. Giuttari

Attorneys for Plaintiffs

ACKNOWLEDGEMENT OF PATERNITY AFFIDAVIT

AFFIDAVIT FOR THE BIOLOGICAL FATHER TO COMPLETE

State of \_\_\_\_\_
County of \_\_\_\_\_

I, \_\_\_\_\_, born on \_\_\_\_\_, in the state of \_\_\_\_\_

Being first duly sworn, depose and say: that I am the biological father of \_\_\_\_\_, a child born on/to be born on or about \_\_\_\_\_ at \_\_\_\_\_, Idaho, to \_\_\_\_\_

I consent to the recording of my name, date, and place of birth on the birth certificate of the above-described child. I request that the birth certificate be prepared to show the child's name as \_\_\_\_\_

I further state that I have received written and oral notice of the Rights and Responsibilities of acknowledging paternity.

SIGNED \_\_\_\_\_ ADDRESS \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public \_\_\_\_\_

SEAL

Residing at \_\_\_\_\_

My Commission expires \_\_\_\_\_

AFFIDAVIT FOR THE MOTHER TO COMPLETE

State of \_\_\_\_\_
County of \_\_\_\_\_

I, \_\_\_\_\_, born on \_\_\_\_\_, in the state of \_\_\_\_\_

Being first duly sworn, depose and say: that I am the mother of \_\_\_\_\_, a child born on/to be born on or about \_\_\_\_\_ at \_\_\_\_\_, Idaho, and that \_\_\_\_\_ is the biological father of this child.

I acknowledge that the man named above is the biological father of my child. I consent to the recording of his name, date, and place of birth on the birth certificate of the above-described child.

I request that the birth certificate be prepared to show the child's name as \_\_\_\_\_

I also declare and affirm that I was NOT married at the time of either conception or between conception and the birth of this child, or that I WAS married to someone other than the above-named father at conception or between conception and birth of this child.

I further state that I have received written and oral notice of the Rights and Responsibilities of acknowledging paternity.

SIGNED \_\_\_\_\_ ADDRESS \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public \_\_\_\_\_

SEAL

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

COMPLETE THIS SECTION ONLY IF THE MOTHER WAS MARRIED AT CONCEPTION OR BETWEEN CONCEPTION AND BIRTH OF THIS CHILD TO THE MOTHER AND LEGAL FATHER (HUSBAND)

When you sign this affidavit, you agree that the legal father (husband) will have NO parental rights and responsibilities to this child. You give your permission that the biological father and this child will have the legal relationship of parent and child. You agree the biological father will have all the rights and responsibilities of a legal parent to this child. Do not sign this affidavit if you do not understand it, if you have any questions, or if you want to talk to your attorney before signing.

I, \_\_\_\_\_, being first duly sworn, depose and say: that I am/was married to \_\_\_\_\_, at the time of conception or birth of a child born on/to be born on or about \_\_\_\_\_, but I am NOT the biological father of this child. I request that my name not be listed on the birth certificate.

SIGNED \_\_\_\_\_ ADDRESS \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public \_\_\_\_\_

SEAL

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**SIGN THIS AFFIDAVIT IF:**

- You freely state that you are the biological father of this child and want to establish you are the legal father of this child.
- No one has pressured you to say that you are the biological father of this child.
- No one has pressured you to sign this form.

**IF YOU SIGN THIS AFFIDAVIT:**

- You will automatically be identified as the legal father of this child. You will not have to go to court to be named the legal father of this child.
- There are rights and responsibilities that go along with raising this child. A judge may order you to pay child support each month. A judge may also order you to provide medical insurance for this child. These duties will continue until the child is an adult OR until a judge changes your obligation.
- You may have to pay child support if the child receives public assistance money from any state.
- You may have to pay for hospital or doctor costs for the birth of the child.
- You may have to go to court if you want visitation or if you want to share custody. Vital Records cannot help you with visitation or custody matters.
- When you sign the affidavit, you give Vital Records permission to list you as "father" on this child's birth certificate. You also give them permission to list the date and place of YOUR birth on this child's birth certificate.

**DO NOT SIGN THIS AFFIDAVIT IF:**

- You are not sure that you are this child's biological father. The mother, the child, and you can take a genetic test. This test will prove if you are the biological father. Do not sign this affidavit if you want a genetic test.
- You do not understand the legal rights and responsibilities of raising this child.
- You have questions about any part of this affidavit.
- You want to talk to an attorney.

**IF YOU FILL OUT THIS AFFIDAVIT AT THE HOSPITAL WHEN YOUR CHILD IS BORN:**

- The hospital staff will send the signed affidavit and your child's birth certificate to Vital Records for you. You will not have to pay a fee to file the affidavit.
- The hospital cannot give you a copy of your child's birth certificate. You can get a certified copy of your child's birth certificate from Vital Records. There will be a fee for the certified copy.

**IF YOU FILL OUT THIS AFFIDAVIT AFTER YOU LEAVE THE HOSPITAL:**

- Mail the signed affidavit to Vital Records. You will have to pay a filing fee. Vital Records will amend your child's birth certificate.
- You can get a certified copy of your child's amended birth certificate from Vital Records. There will be a fee for the certified copy.
- The address for Vital Records is:

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**Vital Records**  
P.O. Box 83720  
Boise, ID 83720-0036

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**IF YOU SIGN THIS AFFIDAVIT, AND LATER BELIEVE YOU SHOULD NOT HAVE DONE SO, YOU MAY RESCIND OR CANCEL THIS AFFIDAVIT.**

You have 60 days from the date the affidavit was filed with Vital Records to rescind it. You must do it in one of the following ways:

- You can rescind this affidavit at a court proceeding relating to the child (such as a proceeding to establish a support order), or
- You can sign a rescission form within 60 days from the day this affidavit was filed with Vital Records. Forms to rescind an affidavit of paternity are available from any regional Health and Welfare office.
- You must rescind your affidavit at whichever action listed above happens first.

**IF YOU RESCIND THIS AFFIDAVIT:**

- The other person(s) who signed the affidavit may still want to establish a legal father/child relationship. He or she can ask a judge to decide who should be named as the child's legal father; and
- If the child receives public assistance money, Health and Welfare may want to establish a legal father/child relationship. They can ask a judge to decide who should be named as the child's legal father.
- The father's name will remain on the child's birth certificate. If you want the name removed, you will need to go to court. A judge must sign an order stating that the man named on the child's birth certificate is not the child's legal father.

**MORE INFORMATION**

- Please call or visit the regional Health and Welfare office nearest you if you have any questions about these rights and responsibilities, acknowledging paternity, or your right to rescind an acknowledgment of paternity affidavit.
- Please call Vital Records at (208)334-5980 if you have any questions about this acknowledgment affidavit or your child's birth certificate.
- When you sign an Acknowledgment of Paternity Affidavit, you state you received written and oral notice of the rights and responsibilities of acknowledging paternity. Written notice is provided above, and you may receive oral notice at the Health and Welfare, Self-Reliance office nearest you.



**CERTIFICATE OF LIVE BIRTH**

ONLY A COPY OF THIS DOCUMENT, CERTIFIED BY THE STATE REGISTRAR WITH THE DEPARTMENT OF HEALTH AND WELFARE RAISED SEAL SHALL BE USED AS PRIMA FACIE EVIDENCE OF THIS BIRTH UNDER IDAHO CODE 39-2411 AND 39-274

STATE FILE NO. \_\_\_\_\_

<b>CHILD</b>	1. CHILD'S NAME (First, Middle, Last, Suffix)		2. TIME OF BIRTH (24 hr)	3. SEX	4. DATE OF BIRTH (Mo/Day/Yr)
	5. FACILITY NAME (If not facility, give street and number)		6. CITY, TOWN, OR LOCATION OF BIRTH		7. COUNTY OF BIRTH
<b>MOTHER</b>	8a. MOTHER'S CURRENT LEGAL NAME (First, Middle, Last, Suffix)				8b. DATE OF BIRTH (Mo/Day/Yr)
TYPE/PRINT IN PERMANENT BLACK INK  FOR INSTRUCTIONS SEE HANDBOOK	8c. MOTHER'S MAIDEN NAME (First, Middle, Last, Suffix)				8d. BIRTHPLACE (State, Territory, or Foreign Country)
	9a. RESIDENCE OF MOTHER - STATE		9b. COUNTY	9c. CITY, TOWN, OR LOCATION	
	9d. STREET AND NUMBER		9e. APT. NO.	9f. ZIP CODE	9g. INSIDE CITY LIMITS? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>FATHER</b>	10a. FATHER'S CURRENT LEGAL NAME (First, Middle, Last, Suffix)		10b. DATE OF BIRTH (Mo/Day/Yr)	10c. BIRTHPLACE (State, Territory, or Foreign Country)	
<b>INFORMANT</b>	11. INFORMANT'S SIGNATURE: I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief. (Name of Parent or Guardian)				

<b>CERTIFIER</b>	12a. CERTIFIER'S SIGNATURE: I certify that stated information concerning this child is true to the best of my knowledge and belief.  Certifier's Signature > _____ Name (Type or print) _____		12b. CERTIFIER'S MAILING ADDRESS (Street and Number, City, State, Zip Code)		
	12c. CERTIFIER'S LICENSE NUMBER	12d. DATE SIGNED MM DD YYYY	12e. CERTIFIER'S TITLE <input type="checkbox"/> MD <input type="checkbox"/> DO <input type="checkbox"/> Hospital Administrator <input type="checkbox"/> CNM/GM <input type="checkbox"/> Other Midwife <input type="checkbox"/> Other (Specify)		

**INFORMATION FOR MEDICAL AND HEALTH USE ONLY - COMPLETE EACH ITEM**

<b>ADMINISTRATIVE USE ONLY</b>	13. MOTHER'S MAILING ADDRESS: <input type="checkbox"/> Same as residence, OR: State _____ City, Town, or Location _____ Street and Number _____ Apartment Number _____ Zip Code _____				
	14. MOTHER MARRIED? (at birth, conception, or any time between) <input type="checkbox"/> Yes <input type="checkbox"/> No IF "NO", HAS PATERNITY ACKNOWLEDGMENT BEEN SIGNED? <input type="checkbox"/> Yes <input type="checkbox"/> No		15. SOCIAL SECURITY NUMBER REQUESTED FOR CHILD? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	16. MOTHER'S SOCIAL SECURITY NUMBER	17. FATHER'S SOCIAL SECURITY NUMBER	18. CONSENT OBTAINED FOR IMMUNIZATION REGISTRY ENROLLMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No		

<b>MEDICAL AND HEALTH SECTION Complete Each Item</b>	19. MOTHER'S EDUCATION (Check the box that best describes the highest degree or level of school completed at the time of delivery)		20. MOTHER OF HISPANIC ORIGIN? (Check one or more boxes to best describe whether the mother is Spanish/Hispanic/Latina. Check the "No" box if mother is not Spanish/Hispanic/Latina)		21. MOTHER'S RACE (Check one or more races to indicate what the mother considers herself to be)	
	1 <input type="checkbox"/> 8th grade or less (includes none) 2 <input type="checkbox"/> 9th-12th grade, but no diploma 3 <input type="checkbox"/> High school graduate or GED completed 4 <input type="checkbox"/> Some college credit, but no degree 5 <input type="checkbox"/> Associate degree (eg. AA, AS) 6 <input type="checkbox"/> Bachelor's degree (eg. AB, BA, BS) 7 <input type="checkbox"/> Master's degree (eg. MA, MBA, MEd, MEng, MS, MSW) 8 <input type="checkbox"/> Doctorate or professional degree (eg. DDS, DO, DVM, EdD, JD, LLB, MD, PhD)		0 <input type="checkbox"/> No, not Spanish/Hispanic/Latina 1 <input type="checkbox"/> Yes, Mexican, Mexican American, Chicana 2 <input type="checkbox"/> Yes, Puerto Rican 3 <input type="checkbox"/> Yes, Cuban 4 <input type="checkbox"/> Yes, other Spanish/Hispanic/Latina (Specify) _____		01 <input type="checkbox"/> White 02 <input type="checkbox"/> Black or African American 03 <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled or principal tribe) _____ 04 <input type="checkbox"/> Asian Indian 05 <input type="checkbox"/> Chinese 06 <input type="checkbox"/> Filipino 07 <input type="checkbox"/> Japanese 08 <input type="checkbox"/> Korean 09 <input type="checkbox"/> Vietnamese 10 <input type="checkbox"/> Other Asian (Specify) _____ 11 <input type="checkbox"/> Native Hawaiian 12 <input type="checkbox"/> Guamanian or Chamorro 13 <input type="checkbox"/> Samoan 14 <input type="checkbox"/> Other Pacific Islander (Specify) _____ 15 <input type="checkbox"/> Other (Specify) _____	
DEATH UNDER ONE YEAR OF AGE Enter State File Number of death certificate for this child	22. FATHER'S EDUCATION (Check the box that best describes the highest degree or level of school completed at the time of delivery)		23. FATHER OF HISPANIC ORIGIN? (Check one or more boxes to best describe whether the father is Spanish/Hispanic/Latino. Check the "No" box if father is not Spanish/Hispanic/Latino)		24. FATHER'S RACE (Check one or more races to indicate what the father considers himself to be)	
	1 <input type="checkbox"/> 8th grade or less (includes none) 2 <input type="checkbox"/> 9th-12th grade, but no diploma 3 <input type="checkbox"/> High school graduate or GED completed 4 <input type="checkbox"/> Some college credit, but no degree 5 <input type="checkbox"/> Associate degree (eg. AA, AS) 6 <input type="checkbox"/> Bachelor's degree (eg. AB, BA, BS) 7 <input type="checkbox"/> Master's degree (eg. MA, MBA, MEd, MEng, MS, MSW) 8 <input type="checkbox"/> Doctorate or professional degree (eg. DDS, DO, DVM, EdD, JD, LLB, MD, PhD)		0 <input type="checkbox"/> No, not Spanish/Hispanic/Latino 1 <input type="checkbox"/> Yes, Mexican, Mexican American, Chicano 2 <input type="checkbox"/> Yes, Puerto Rican 3 <input type="checkbox"/> Yes, Cuban 4 <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify) _____		01 <input type="checkbox"/> White 02 <input type="checkbox"/> Black or African American 03 <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled or principal tribe) _____ 04 <input type="checkbox"/> Asian Indian 05 <input type="checkbox"/> Chinese 06 <input type="checkbox"/> Filipino 07 <input type="checkbox"/> Japanese 08 <input type="checkbox"/> Korean 09 <input type="checkbox"/> Vietnamese 10 <input type="checkbox"/> Other Asian (Specify) _____ 11 <input type="checkbox"/> Native Hawaiian 12 <input type="checkbox"/> Guamanian or Chamorro 13 <input type="checkbox"/> Samoan 14 <input type="checkbox"/> Other Pacific Islander (Specify) _____ 15 <input type="checkbox"/> Other (Specify) _____	
MULTIPLE BIRTHS Enter State File Number(s) of mate(s)	25. PLACE WHERE BIRTH OCCURRED (Check one)		26. ATTENDANT'S NAME AND TITLE		27. WAS MOTHER TRANSFERRED FOR MATERNAL MEDICAL OR FETAL INDICATIONS FOR DELIVERY? <input type="checkbox"/> Yes <input type="checkbox"/> No IF "YES", NAME OF FACILITY MOTHER TRANSFERRED FROM:	
LIVE BIRTH(S)	<input type="checkbox"/> Hospital <input type="checkbox"/> Freestanding birthing center <input type="checkbox"/> Home birth Planned to deliver at home? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Clinic/Doctor's Office <input type="checkbox"/> Other Specify _____		NAME _____ TITLE <input type="checkbox"/> MD <input type="checkbox"/> DO <input type="checkbox"/> CNM/GM <input type="checkbox"/> Other Midwife <input type="checkbox"/> Other (Specify) _____		_____	
STILLBIRTH(S)						

<b>MEDICAL AND HEALTH SECTION</b> Complete Each Item	28a. DATE OF FIRST PRENATAL CARE VISIT MM / DD / YYYY <input type="checkbox"/> No Prenatal Care		28b. DATE OF LAST PRENATAL CARE VISIT MM / DD / YYYY <input type="checkbox"/> No Prenatal Care		29. TOTAL NUMBER OF PRENATAL VISITS FOR THIS PREGNANCY _____ (IF NONE, ENTER "0")	
	30. MOTHER'S HEIGHT _____ (feet/inches)		31. MOTHER'S PREPREGNANCY WEIGHT _____ (pounds)		32. MOTHER'S WEIGHT AT DELIVERY _____ (pounds)	
				33. DID MOTHER GET WIC FOOD FOR HERSELF DURING THIS PREGNANCY? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>PREGNANCY HISTORY (Complete each section)</b>						36. CIGARETTE SMOKING BEFORE AND DURING PREGNANCY For each time period, enter either the number of cigarettes or the number of packs of cigarettes smoked (IF NONE, ENTER "0") Average number of cigarettes or packs of cigarettes smoked per day: # OF CIGARETTES    # OF PACKS Three months before pregnancy _____ OR _____ First three months of pregnancy _____ OR _____ Second three months of pregnancy _____ OR _____ Last three months of pregnancy _____ OR _____
PREVIOUS LIVE BIRTHS (Do not include this child)  Complete items 34a-34c		OTHER PREGNANCY OUTCOMES (spontaneous or induced losses or ectopic pregnancies)  Complete items 35a-35b		37. PRINCIPAL SOURCE OF PAYMENT FOR THIS DELIVERY  <input type="checkbox"/> Private insurance <input type="checkbox"/> Medicaid <input type="checkbox"/> Self-pay <input type="checkbox"/> Indian Health Service <input type="checkbox"/> CHAMPUS/TRICARE <input type="checkbox"/> Other government (federal, state, local) <input type="checkbox"/> Other <input type="checkbox"/> None		
34a. Now Living Number _____ <input type="checkbox"/> None	34b. Now Dead Number _____ <input type="checkbox"/> None	35a. Other Outcomes Number _____ <input type="checkbox"/> None				
34c. DATE OF LAST LIVE BIRTH MM / YYYY		35b. DATE OF LAST OTHER PREGNANCY OUTCOME MM / YYYY		38. DATE LAST NORMAL MENSES BEGAN MM / DD / YYYY		
				39. WAS SYPHILIS SEROLOGY PERFORMED FOR THIS PREGNANCY? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Refused		

<b>MEDICAL AND HEALTH SECTION</b> Complete Each Item	40. RISK FACTORS IN THIS PREGNANCY (Check all that apply) Diabetes: 01 <input type="checkbox"/> Prepregnancy (diagnosis prior to this pregnancy) 02 <input type="checkbox"/> Gestational (diagnosis in this pregnancy) Hypertension: 03 <input type="checkbox"/> Prepregnancy (chronic) 04 <input type="checkbox"/> Gestational (PIH, preeclampsia, eclampsia) 05 <input type="checkbox"/> Previous preterm birth 06 <input type="checkbox"/> Other previous poor pregnancy outcome (includes perinatal death, small-for-gestational age/intrauterine growth restricted birth) 07 <input type="checkbox"/> Vaginal bleeding during this pregnancy prior to the onset of labor 08 <input type="checkbox"/> Pregnancy resulted from infertility treatment 09 <input type="checkbox"/> Mother had a previous cesarean delivery If yes, how many? _____ 10 <input type="checkbox"/> None of the above		41. INFECTIONS PRESENT AND/OR TREATED DURING THIS PREGNANCY (Check all that apply) 01 <input type="checkbox"/> Gonorrhoea 02 <input type="checkbox"/> Syphilis 03 <input type="checkbox"/> HIV Infection 04 <input type="checkbox"/> Herpes Simplex Virus (HSV) 05 <input type="checkbox"/> Chlamydia 06 <input type="checkbox"/> Listeria 07 <input type="checkbox"/> Group B Streptococcus 08 <input type="checkbox"/> Cytomegalovirus 09 <input type="checkbox"/> Parvovirus 10 <input type="checkbox"/> Toxoplasmosis 11 <input type="checkbox"/> Hepatitis B 12 <input type="checkbox"/> Hepatitis C 13 <input type="checkbox"/> Other (Specify) _____ 14 <input type="checkbox"/> None		42. OBSTETRIC PROCEDURES (Check all that apply) 1 <input type="checkbox"/> Cervical Cerclage 2 <input type="checkbox"/> Tocolysis External cephalic version: 3 <input type="checkbox"/> Successful 4 <input type="checkbox"/> Failed 5 <input type="checkbox"/> None of the above	
	44. CHARACTERISTICS OF LABOR AND DELIVERY (Check all that apply) 01 <input type="checkbox"/> Induction of labor 02 <input type="checkbox"/> Augmentation of labor 03 <input type="checkbox"/> Non-vertex presentation 04 <input type="checkbox"/> Steroids (glucocorticoids) for fetal lung maturation received by the mother prior to delivery 05 <input type="checkbox"/> Antibiotics received by the mother during labor 06 <input type="checkbox"/> Clinical chorioamnionitis diagnosed during labor or maternal temperature $\geq 38^{\circ}\text{C}$ (100.4 $^{\circ}\text{F}$ ) 07 <input type="checkbox"/> Moderate/heavy meconium staining of the amniotic fluid 08 <input type="checkbox"/> Fetal intolerance of labor such that one or more of the following actions was taken: in-utero resuscitative measures, further fetal assessment, or operative delivery 09 <input type="checkbox"/> Epidural or spinal anesthesia during labor 10 <input type="checkbox"/> None of the above		45. METHOD OF DELIVERY A. Was delivery with forceps attempted but unsuccessful? <input type="checkbox"/> Yes <input type="checkbox"/> No B. Was delivery with vacuum extraction attempted but unsuccessful? <input type="checkbox"/> Yes <input type="checkbox"/> No C. Fetal presentation at birth (Check one) <input type="checkbox"/> Cephalic <input type="checkbox"/> Breech <input type="checkbox"/> Other D. Final route and method of delivery (Check one) <input type="checkbox"/> Vaginal/Spontaneous <input type="checkbox"/> Vaginal/Forceps <input type="checkbox"/> Vaginal/Vacuum <input type="checkbox"/> Cesarean If cesarean, was a trial of labor attempted? <input type="checkbox"/> Yes <input type="checkbox"/> No		43. ONSET OF LABOR (Check all that apply) 1 <input type="checkbox"/> Premature rupture of the membranes (prolonged, $\geq 12$ hrs.) 2 <input type="checkbox"/> Precipitous labor (< 3 hrs.) 3 <input type="checkbox"/> Prolonged labor ( $\geq 20$ hrs.) 4 <input type="checkbox"/> None of the above	
				46. MATERNAL MORBIDITY (complications associated with labor and delivery) (Check all that apply) 1 <input type="checkbox"/> Maternal transfusion 2 <input type="checkbox"/> Third or fourth degree perineal laceration 3 <input type="checkbox"/> Ruptured uterus 4 <input type="checkbox"/> Unplanned hysterectomy 5 <input type="checkbox"/> Admission to intensive care unit 6 <input type="checkbox"/> Unplanned operating room procedure following delivery 7 <input type="checkbox"/> None of the above		
				47. MOTHER'S MEDICAL RECORD NUMBER		

<b>MEDICAL AND HEALTH SECTION</b> Complete Each Item	48. NEWBORN'S MEDICAL RECORD NUMBER		55. ABNORMAL CONDITIONS OF THE NEWBORN (Check all that apply) 1 <input type="checkbox"/> Assisted ventilation required immediately following delivery 2 <input type="checkbox"/> Assisted ventilation required for more than six hours 3 <input type="checkbox"/> NICU admission 4 <input type="checkbox"/> Newborn given surfactant replacement therapy 5 <input type="checkbox"/> Antibiotics received by the newborn for suspected neonatal sepsis 6 <input type="checkbox"/> Seizure or serious neurologic dysfunction 7 <input type="checkbox"/> Significant birth injury (skeletal fracture, peripheral nerve injury, and/or soft tissue/solid organ hemorrhage which requires intervention) 8 <input type="checkbox"/> Failed newborn hearing test 9 <input type="checkbox"/> None of the above		56. CONGENITAL ANOMALIES OF THE NEWBORN (Check all that apply) 01 <input type="checkbox"/> Anencephaly 02 <input type="checkbox"/> Meningocele/Spina bifida 03 <input type="checkbox"/> Cyanotic congenital heart disease 04 <input type="checkbox"/> Congenital diaphragmatic hernia 05 <input type="checkbox"/> Omphalocele 06 <input type="checkbox"/> Gastroschisis 07 <input type="checkbox"/> Limb reduction defect (excluding congenital amputation and dwarfing syndromes) 08 <input type="checkbox"/> Cleft lip with or without cleft palate 09 <input type="checkbox"/> Cleft palate alone Down Syndrome: 10 <input type="checkbox"/> Karyotype confirmed 11 <input type="checkbox"/> Karyotype pending Suspected other chromosomal disorder: 12 <input type="checkbox"/> Karyotype confirmed 13 <input type="checkbox"/> Karyotype pending 14 <input type="checkbox"/> Hypospadias 15 <input type="checkbox"/> None of the above	
	49. BIRTH WEIGHT (Check unit, grams preferred) <input type="checkbox"/> grams OR <input type="checkbox"/> lb/oz _____		50. OBSTETRIC ESTIMATE OF GESTATION _____ (completed weeks)		51. APGAR SCORE Score at 5 minutes _____ If 5 minute score is less than 6, Score at 10 minutes _____	
52. PLURALITY (single, twin, triplet, etc.) (Specify) _____		53. IF NOT SINGLE BIRTH (born first, second, third, etc.) (Specify) _____		54. IS INFANT BEING BREASTFED? <input type="checkbox"/> Yes <input type="checkbox"/> No		
57. WAS AN APPROVED PROPHYLACTIC AGENT USED IN INFANT'S EYES? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No", reason: _____		58. WAS SAMPLE COLLECTED FOR NEWBORN METABOLIC SCREENING TESTS? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No", reason: _____		59. WAS INFANT TRANSFERRED WITHIN 24 HOURS OF DELIVERY? <input type="checkbox"/> Yes <input type="checkbox"/> No IF "YES", NAME OF FACILITY INFANT TRANSFERRED TO: _____		
				60. IS INFANT LIVING AT TIME OF REPORT? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Infant transferred, status unknown		

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Lists various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Idaho



ADELA AYALA, individually and as next friend of L.O.A. a minor child

Plaintiff(s)

v.

RICHARD M ARMSTRONG, in his official capacity, and ELKE SHAW-TULLOCH in her official capacity.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) RICHARD ARMSTRONG Idaho Department of Health and Welfare 450 W State Street Boise ID 83702

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Howard Belodoff Jennifer Giuttari Idaho Legal Aid Services, Inc. 1447 S. Tyrell Lane Boise ID 83706

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Idaho



ADELA AYALA, individually and as next friend of L.O.A. a minor child

Plaintiff(s)

v.

RICHARD M ARMSTRONG, in his official capacity, and ELKE SHAW-TULLOCH in her official capacity.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ELKE SHAW-TULLOCH Idaho Department of Health and Welfare 450 W State Street Boise ID 83702

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

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I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: