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10 Attorneys for Plaintiffs

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 MICHAEL DRAGOVICH, MICHAEL  
14 GAITLEY, ELIZABETH LITTERAL,  
15 PATRICIA FITZSIMMONS, CAROLYN  
16 LIGHT, and CHERYL LIGHT, on behalf of  
17 themselves and all others similarly situated,

18 Plaintiffs,

19 v.

20 UNITED STATES DEPARTMENT OF THE  
21 TREASURY, TIMOTHY GEITHNER, in his  
22 official capacity as Secretary of the Treasury,  
23 United States Department of the Treasury,  
24 INTERNAL REVENUE SERVICE,  
25 DOUGLAS SHULMAN, in his official  
26 capacity as Commissioner of the Internal  
27 Revenue Service, BOARD OF  
28 ADMINISTRATION OF CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM, and ANNE STAUSBOLL, in her  
official capacity as Chief Executive Officer,  
CalPERS,

Defendants.

Case No. CV 4:10-01564-CW

STIPULATION AND ORDER GRANTING  
PLAINTIFFS LEAVE TO FILE FIRST  
AMENDED COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF

WHEREAS, Plaintiffs filed this action as a putative class on April 13, 2010, alleging constitutional claims on behalf of three gay and lesbian couples, all three of whom were married in 2008, and two of whom were registered as domestic partners;

WHEREAS, following extensions granted by the Plaintiffs, the defendants Board of

1 Administration of CalPERS and Anne Stausboll (“the state defendants”) answered the  
2 complaint on July 2, 2010;

3 WHEREAS, following an extension granted by the Plaintiffs, the defendants United  
4 States Department of the Treasury, Timothy Geithner, the Internal Revenue Service, and  
5 Douglas Shulman (“the federal defendants”) filed a motion to dismiss on July 2, 2010;

6 WHEREAS, the Plaintiffs opposed the motion to dismiss on August 12, 2010, and the  
7 federal defendants filed their reply on August 26, 2010;

8 WHEREAS, on September 2, 2010, the parties filed their first joint Case Management  
9 Conference statement, and the Plaintiffs disclosed their intention to file a motion to amend the  
10 complaint by December 15, 2010 to add plaintiffs, *see* Joint Case Management Conference  
11 Statement, page 7;

12 WHEREAS, the hearing on the motion to dismiss in this matter was held on October 14,  
13 2010, as was the first case management conference;

14 WHEREAS, on October 14, 2010, Plaintiffs’ counsel stated during the case  
15 management conference that Plaintiffs were no longer planning to file a motion to amend the  
16 complaint by December 15, 2010, but that things might change;

17 WHEREAS, on December 12, 2010, Plaintiffs’ counsel emailed counsel for the state  
18 defendants and for the federal defendants, disclosing: “Since the hearing, things have changed.  
19 We now intend to file the motion to add plaintiffs. Specifically, we will ask the court to allow  
20 us to amend the complaint to add two plaintiffs who are registered domestic partners, but who  
21 are not married. (Alternatively, the parties could stipulate to such a filing.)”

22 WHEREAS, on January 18, 2011, the Court issued an order denying the federal  
23 defendants’ motion to dismiss;

24 WHEREAS, on January 18, 2011, and on January 21, 2011, plaintiffs’ counsel shared  
25 with all opposing counsel drafts of their First Amended Complaint, including the addition of  
26 two plaintiffs who are registered as domestic partners but who are not married (Joanne Schmidt  
27 and Reide Garnett);

1           WHEREAS, on January 26, 2011, the federal defendants filed a motion for clarification  
2 as to whether this Court’s Order intended to hold that Plaintiffs have stated a constitutional  
3 claim regarding the exclusion of registered domestic partners from section 7702B(f)(2)(C)(iii)  
4 of the Internal Revenue Code, noting that “Plaintiffs have requested Federal Defendants’  
5 position regarding their plan to amend the Complaint to add plaintiffs who are not married but  
6 are registered domestic partners under California law.”;

7           WHEREAS, on February 9, 2011, the Court issued an order stating that, “The Court  
8 clarifies that, because Plaintiffs are legally married, it was not necessary to rule on whether  
9 Plaintiffs have stated a claim that I.R.C. § 7702B(f), separate and apart from 1 U.S.C. § 7  
10 (section three of the Defense of Marriage Act), is unconstitutional.”;

11           WHEREAS, on February 22, 2011, plaintiffs’ counsel shared with all opposing counsel  
12 a revised draft of their First Amended Complaint, including the addition of a plaintiff couple  
13 who are registered as domestic partners but who are not married (Joanne Schmidt and Reide  
14 Garnett), as well as a plaintiff couple who are registered as domestic partners and who are  
15 married (Charles Cole and David Beers);

16           THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

17           Plaintiffs shall be granted leave to file their First Amended Complaint, adding Plaintiffs  
18 Joanne Schmidt, Reide Garnett, Charles Cole, and David Beers, attached as Exhibit A to the  
19 supporting declaration of Claudia Center; and

20           The state defendants’ answer to the original complaint shall be deemed their answer to  
21 the amended complaint. The federal defendants shall have 60 days to answer or to file a motion  
22 to dismiss.

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Respectfully submitted,

THE LEGAL AID SOCIETY  
EMPLOYMENT LAW CENTER



Date: February 24, 2011

By:

CLAUDIA CENTER  
Attorneys for Plaintiffs

U.S. DEPARTMENT OF JUSTICE

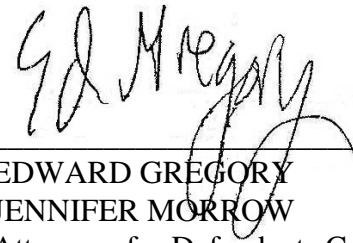


Date: February 24, 2011

By:

JEAN LIN  
Attorney for Defendants Dept. of the  
Treasury, Timothy Geithner, IRS, Douglas  
Shulman

STEPTOE & JOHNSON LLP



Date: February 23, 2011

By:

EDWARD GREGORY  
JENNIFER MORROW  
Attorneys for Defendants CalPERS and  
Anne Stausboll

**ORDER**

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

Date: 3/1/2011

By:

  
THE HONORABLE CLAUDIA WILKEN