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23 *themselves and all others similarly situated*

24 UNITED STATES DISTRICT COURT
25 DISTRICT OF ARIZONA

26 Joseph R. Diaz, Beverly Seckinger, Stephen
27 Russell, Deanna Pfleger, and Corey
28 Seemiller, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

Janice K. Brewer, personally and in her
official capacity as Governor of the State of
Arizona, et al.,

Defendants.

No. CV09-2402-PHX-JWS

**UNOPPOSED MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CLASS CERTIFICATION**

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1 **I. UNOPPOSED MOTION FOR CLASS CERTIFICATION**

2 Plaintiffs Joseph R. Diaz, Beverly Seckinger, Stephen Russell, Deanna Pflieger, and
3 Corey Seemiller, by and through their attorneys, respectfully move the Court for an order
4 certifying this proceeding as a class action pursuant to Rules 23(a) and 23(b)(2) of the
5 Federal Rules of Civil Procedure. The proposed class, on whose behalf the representative
6 Plaintiffs bring a constitutional claim, is defined below. Plaintiffs further request an order
7 appointing the undersigned counsel to represent the certified class pursuant to Rule 23(g).
8 This Motion is supported by the following Memorandum of Points and Authorities, the
9 Declarations of Joseph R. Diaz (“Diaz Decl.”), Beverly Seckinger (“Seckinger Decl.”),
10 Stephen Russell (“Russell Decl.”), and Deanna Pflieger (“Pflieger Decl.”), and the attorney
11 declarations from Tara L. Borelli (“Borelli Decl.”) and Daniel C. Barr (“Barr Decl.”).

12 **II. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE**
13 **MOTION FOR CLASS CERTIFICATION**

14 This case arises from the discriminatory elimination of family health insurance
15 coverage for lesbian and gay employees of the State of Arizona (the “State”). On
16 September 4, 2009, Defendant Arizona Governor Janice K. Brewer reviewed, approved,
17 and signed House Bill 2013 (“H.B. 2013”), a budget enactment that includes a statutory
18 provision (“Section O”) limiting family coverage to “spouses,” a status that Arizona has
19 restricted to different-sex life partners. Section O, if enforced,¹ withdraws family
20 coverage solely from lesbian and gay State employees with committed same-sex life
21 partners because only heterosexual State employees may marry their partners and obtain
22 such coverage. Section O thereby deprives all lesbian and gay State employees with
23 committed same-sex life partners of equal compensation for equal work and subjects them
24 to anxiety, stress, financial burdens, and the risk of family members’ untreated or
25 inadequately treated health problems solely because of the employees’ sexual orientation
26 and sex in relation to their partner.

27 _____
28 ¹ Although Section O was scheduled to go into effect on January 1, 2011, this
Court has preliminarily enjoined its enforcement by a July 23, 2010 order. [Dkt. 47]

1 Four lesbian and gay State employees who currently receive family health
2 insurance benefits for their same-sex partners (“Named Plaintiffs”) seek to represent a
3 class of similarly situated lesbian and gay State employees.² In their current complaint,
4 Named Plaintiffs define the proposed class as “all lesbian and gay employees of the State
5 who are now, or will in the future, be eligible under the criteria specified in former Ariz.
6 Admin. Code § R2-5-101 to obtain State health insurance benefits for their committed
7 same-sex partners and their partners’ dependents.” [Dkt. 81, Second Amended Complaint
8 (“Compl.”) ¶ 105]

9 The Class satisfies all the requirements for certification under Rule 23. The Class
10 consists of approximately 230 lesbian and gay State employees who receive family health
11 insurance benefits from the State as well as other lesbian and gay State employees who
12 are currently eligible or may qualify in the future for family coverage. As demonstrated
13 below, Named Plaintiffs’ claims are common to, and typical of, those of the Class because
14 Section O, if enforced, would prevent all lesbian and gay State employees from obtaining
15 State health insurance for their domestic partners and dependents. As further shown
16 below, Named Plaintiffs and their counsel also satisfy the adequacy of representation
17 prong of Rule 23(a)(4). Moreover, class actions challenging statutes on constitutional
18 grounds historically have been certified under Rule 23(b)(2). *See Zablocki v. Redhail*, 434
19 U.S. 374, 376-77 (1978) (class action challenged a Wisconsin statute as violating the
20 equal protection and due process clauses of the Fourteenth Amendment); *Waters v. Barry*,
21 711 F. Supp. 1125, 1130-32 (D.D.C. 1989) (certifying a class that challenged that a
22 curfew law infringed class members’ equal protection and other constitutional rights).

23 **A. Background**

24 As part of its personnel compensation system, the State provides heterosexual
25 employees with the ability to obtain certain family health benefits, including subsidized

26
27 ² The four Named Plaintiffs who seek to represent the class are Joseph R. Diaz,
28 Beverly Seckinger, Stephen Russell, and Deanna Pflieger. Corey Seemiller does not
currently seek to represent the class because her eligibility for family health coverage may
change in the near future.

1 access to health care coverage for their different-sex spouses and qualifying children
2 through health benefit plans offered by the State. In 2008, Arizona Administrative Code
3 § R2-5-101 (the “benefits regulation”) was amended to provide, inter alia, lesbian and gay
4 State employees with the ability to obtain subsidized access to health care coverage for
5 their committed same-sex partners and partners’ qualifying children if they satisfied
6 certain criteria showing financial interdependence.³ Thus, under the benefits regulation,
7 lesbian and gay State employees, who previously were denied access to family coverage,
8 were able to obtain employment compensation equal to their heterosexual coworkers for
9 the very first time.

10 On August 20, 2009, the Arizona House of Representatives transmitted H.B. 2013
11 to Defendant Brewer for review, consideration, and approval or rejection in her capacity
12 as the Governor of Arizona. H.B. 2013 amended, inter alia, Ariz. Rev. Stat. § 38-651, the
13 statute authorizing the Department to procure health and accident coverage for State
14 employees and their qualifying dependents. H.B. 2013 added Section O to the statute,
15 which provides that, “For the purposes of this section” the term “‘dependent’ means a
16 spouse under the laws of this state.” Defendant Brewer reviewed, approved, and signed
17 H.B. 2013 on September 4, 2009.

18 _____
19 ³ The benefits regulation provided that to qualify for family coverage, an employee
must have a committed life partner who:

- 20 a. Shares the employee’s permanent residence;
- 21 b. Has resided with the employee continuously for at least 12 months
and is expected to continue to reside with the employee indefinitely;
- 22 c. Does not have any other domestic partner or spouse, has not signed a
declaration of domestic partnership with any other person, and has
not had another domestic partner within the prior 12 months;
- 23 d. Is not a blood relative any closer than would prohibit marriage in
Arizona;
- 24 e. Was mentally competent and of legal age to consent to contract
when the domestic partnership began, is not acting under fraud or
duress in accepting benefits; and
- 25 f. Is financially interdependent with the employee as demonstrated, for
26 example, through joint ownership of real property or significant
personal property; joint credit or bank accounts; shared debt;
27 beneficiary designations on life insurance or retirement annuities;
and written agreements to assume financial responsibility for each
28 other.

[Compl. ¶ 30]

1 The Arizona Constitution provides that “[o]nly a union of one man and one woman
 2 shall be valid or recognized as a marriage in this state.” Ariz. Const. art. 30, § 1; *see also*
 3 Ariz. Rev. Stat. § 25-101(C) (“Marriage between persons of the same sex is void and
 4 prohibited.”). State law, therefore, prevents lesbians and gay men from entering into civil
 5 marriages with committed same-sex life partners in the State. Thus far, the State also has
 6 declined to recognize civil marriages validly entered by committed same-sex couples in
 7 other jurisdictions. *See Atwood v. Riviotta*, No. 1 CA-CV 12-0280, 2013 WL 2150021, at
 8 *1 (Ariz. Ct. App. May 16, 2013) (memorandum decision). As a result, Section O’s
 9 restriction of family coverage to a “spouse under the laws of this state” eliminates family
 10 health care coverage for lesbian and gay State employees’ committed same-sex life
 11 partners and those partners’ children.

12 Named Plaintiffs are highly skilled and valuable State employees whose job duties
 13 are neither different from their heterosexual co-workers nor reduced due to their sexual
 14 orientation or sex in relation to their committed life partner.⁴ Each Named Plaintiff seeks
 15 to maintain the family coverage for immediate family members that he or she currently
 16 receives and relies upon as an important part of his or her compensation for State
 17 employment.⁵ Each Named Plaintiff established eligibility for such family coverage at the
 18 time of enrollment and remains eligible at the present time.⁶ Moreover, each Named
 19 Plaintiff authorized continued pay check deductions for his or her portion of the health
 20 plan premiums, with the intent and desire to continue receiving family coverage.⁷

21 **B. Argument**

22 A lawsuit can be maintained as a class action if it satisfies the threshold
 23 requirements of Rule 23(a) and at least one of the requirements of Rule 23(b). *Walters v.*
 24

25
 26 ⁴ Diaz Decl. ¶¶ 2-5; Seckinger Decl. ¶¶ 2-6; Russell Decl. ¶¶ 2-8; Pflieger Decl.
 ¶¶ 2-8.

27 ⁵ Diaz Decl. ¶¶ 6-8; Seckinger Decl. ¶¶ 7-9; Russell Decl. ¶¶ 9-10; Pflieger Decl.
 ¶¶ 9-11.

28 ⁶ Diaz Decl. ¶¶ 6-7; Seckinger Decl. ¶ 7; Russell Decl. ¶ 9; Pflieger Decl. ¶ 10.

⁷ Diaz Decl. ¶ 7; Seckinger Decl. ¶ 7; Russell Decl. ¶ 9; Pflieger Decl. ¶ 10.

1 *Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998). Here, Named Plaintiffs seek certification of a
2 class under the standard of Rule 23(b)(2), a standard which this case clearly meets.

3
4 **1. Named Plaintiffs Satisfy the Numerosity, Commonality,
Typicality, and Adequacy Requirements of Rule 23(a).**

5 A class can be certified if the named plaintiffs in the litigation fulfill the
6 numerosity, commonality, typicality, and adequacy of representation requirements of
7 Rule 23(a). Named Plaintiffs satisfy each of these four requirements.

8 **a. Joinder of all members is impracticable.**

9 The numerosity requirement dictates that the class be “so numerous that joinder of
10 all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Generally, a class with 40 or
11 more members raises a presumption that the numerosity requirement has been satisfied.
12 William B. Rubenstein, et al., *Newberg on Class Actions*, § 3.12 (5th ed. 2011). In fact,
13 classes composed of as few as 18 members have been certified. *See Gaspar v. Linvatec*
14 *Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996).

15 The Class in this case consists of all lesbian and gay employees of the State who
16 are now, or will in the future be, eligible to obtain State health insurance for their
17 committed same-sex partners and their partners’ dependents. This includes approximately
18 230 lesbian and gay State employees that the State already has identified as currently
19 receiving family health insurance benefits from the State. [Compl. ¶ 95; Dkt. 86,
20 Defendants’ Answer to Second Amended Complaint ¶ 95]⁸ In addition, the Class
21 includes, among others, (1) lesbian and gay State employees with committed same-sex
22 partners who qualify for family coverage but do not currently receive it, (2) lesbian and
23 gay State employees with same-sex partners who do not currently qualify for family
24 coverage but will qualify in the future, and (3) lesbian and gay State employees who may
25 enter into committed relationships with same-sex partners during their State employment
26

27 ⁸ *See* Howard Fischer, Court: State must provide benefits for domestic partners,
28 *ARIZ. DAILY SUN*, Dec. 11, 2012, *available at* <http://azdailysun.com/news/local/state-and-regional/985e37eb-b9f6-520d-b07a-5a8f86e66e98.html>.

1 and later qualify for family coverage. By any measure, the approximately 230 lesbian and
2 gay State employees currently receiving family coverage, coupled with others who are or
3 may become eligible in the future, satisfy Rule 23(a)(1)'s numerosity requirement.

4 **b. There are common questions of law and fact.**

5 To meet the commonality requirement, there must be “questions of law or fact
6 common to the class.” Fed. R. Civ. P. 23(a)(2). Indeed, a single common question can be
7 sufficient to satisfy this requirement. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,
8 2556 (2011). Any common question must show that each of “the class members have
9 suffered the same injury.” *Id.* at 2551 (citation and internal quotation marks omitted).
10 Thus, class claims “depend upon a common contention ... that ... is capable of classwide
11 resolution—which means that determination of its truth or falsity will resolve an issue that
12 is central to the validity of each one of the claims in one stroke.” *Id.* In other words,
13 “[w]hat matters to class certification ... [is] the capacity of a classwide proceeding to
14 generate common *answers* apt to drive the resolution of the litigation.” *Id.* (citation
15 omitted).

16 As the preliminary injunction proceedings in this matter already have confirmed,
17 virtually all questions in the case are common to the Class. They include, for example:

18 (1) Whether Section O violates the Class members' rights to equal protection by
19 drawing an impermissible distinction between heterosexual State employees and lesbian
20 and gay State employees based on their sexual orientation and sex in relation to their
21 committed life partner. Specifically, heterosexual State employees may obtain State
22 health insurance coverage for immediate family members because they—but not lesbian
23 and gay State employees—can marry under the laws of the State. By deliberately tying
24 health care coverage eligibility to marriage, a status that the State categorically bars from
25 same-sex couples, Section O discriminates against lesbian and gay State employees on the
26 basis of their sexual orientation and sex in relation to the sex of their committed partners
27 without any adequately tailored justification. *See Collins v. Brewer*, 727 F. Supp. 2d 797,
28 803 (D. Ariz. 2010) (determining on grounds common to all State lesbian and gay

1 employees that Section O discriminates “on the basis of sexual orientation”), *aff’d sub*
2 *nom. Diaz v. Brewer*, 656 F.3d 1008, 1014 (9th Cir. 2011); *cf. United States v. Windsor*,
3 133 S. Ct. 2675, 2696 (2013) (holding that Section 3 of the Defense of Marriage Act,
4 which barred federal recognition of marriages validly entered by same-sex couples, was
5 invalid under the Fifth Amendment because “no legitimate purpose overcomes the
6 purpose and effect to disparage and to injure those whom the State, by its marriage laws,
7 sought to protect in personhood and dignity”).

8 Another aspect of this inquiry is whether Defendants deny equal compensation to
9 lesbian and gay State employees with committed same-sex partners by eliminating their
10 family coverage while continuing coverage for heterosexual State employees with legally
11 recognized spouses. As explained above, the State provides heterosexual employees with
12 subsidized access to family coverage as part of their compensation. If lesbian and gay
13 State employees are denied access to such coverage, they do not receive equal
14 compensation for the same work.

15 (2) Whether any conceivable governmental interests support Section O. Indeed,
16 every purported governmental interest offered by Defendants thus far has uniform
17 application to all lesbian and gay State employees. *See Collins*, 727 F. Supp. 2d at 804-05
18 (describing five governmental interests offered by Defendants relating to cost,
19 administrative efficiency, and promotion of marriage and child welfare). Moreover, the
20 Court’s answer to this question is “apt to drive the resolution of the litigation” because it
21 will allow the Court to determine whether there has been a violation of the Equal
22 Protection Clause, a conclusion that will apply to all lesbian and gay State employees.
23 *Wal-Mart*, 131 S. Ct. at 2551 (citation omitted).

24 (3) Whether all lesbian and gay State employees suffer irreparable harm based
25 on Defendants’ denial of their right to equal protection. *See Collins*, 727 F. Supp. 2d at
26 812 (“constitutional violations cannot be adequately remedied through damages and
27 therefore generally constitute irreparable harm”) (quotation omitted). Like the other
28

1 questions identified above, this question applies to the Class generally and does not vary
2 from individual to individual.

3 **c. Named Plaintiffs' claims are representative of the claims**
4 **of the Class.**

5 To meet the typicality requirement, the claims of Named Plaintiffs must be "typical
6 of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The Ninth Circuit has
7 instructed that "[t]he purpose of the typicality requirement is to assure that the interest of
8 the named representative aligns with the interests of the class." *Wolin v. Jaguar Land*
9 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). Whether
10 typicality exists depends on "whether other members have the same or similar injury,
11 whether the action is based on conduct which is not unique to the named plaintiffs, and
12 whether other class members have been injured by the same course of conduct." *Id.*
13 (citation omitted). "In assessing typicality, the court considers the nature of the claim or
14 defense of the class representative, and not ... the specific facts from which it arose or the
15 relief sought." *Winkler v. DTE, Inc.*, 205 F.R.D. 235, 241 (D. Ariz. 2001) (citation and
16 internal quotation marks omitted).

17 Here, the injuries suffered by Named Plaintiffs are typical of the Class as a whole.
18 Named Plaintiffs allege that they, like all prospective Class members, will be deprived of
19 family health insurance if Section O is implemented and enforced by the Defendants.
20 Named Plaintiffs and Class members have an identical constitutional claim: Section O
21 violates their right to equal protection under the law. In addition, Defendants have not
22 identified any defenses that are unique to Named Plaintiffs that would make class
23 certification inappropriate.

24 **d. Named Plaintiffs will fairly and adequately protect the**
25 **interests of the class.**

26 The final requirement is that the representative plaintiffs must fairly and adequately
27 represent the interests of the class. Fed. R. Civ. P. 23(a)(4). "Adequate representation
28 depends on the qualifications of counsel for the representatives, an absence of antagonism,

1 a sharing of interests between representatives and absentees, and the unlikelihood that the
2 suit is collusive.” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas*
3 *Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001) (internal quotation marks and
4 citations omitted).

5 Here, Named Plaintiffs will fairly and adequately protect the interests of the Class
6 members because Named Plaintiffs and Class members both have a common interest in
7 receiving family health insurance benefits as part of their compensation for State
8 employment. Named Plaintiffs are committed to the vigorous prosecution of this suit and
9 view their interests as coextensive with the Class members.⁹ In fact, from the inception of
10 this suit, Named Plaintiffs have acted in the interests of all other similarly situated State
11 employees by seeking (and defending on appeal) a preliminary injunction that affords
12 class-wide relief. Accordingly, there is no antagonism between Named Plaintiffs and the
13 Class; nor is there any suggestion of collusion between Named Plaintiffs and any
14 Defendants. To the contrary, this case has been particularly hard-fought, with Defendants
15 vigorously contesting Named Plaintiffs’ request for preliminary relief through an
16 unsuccessful interlocutory appeal to the Ninth Circuit and unsuccessful petitions for en
17 banc review and for writ of certiorari to the Supreme Court. Moreover, as shown in
18 Section III below, and in the Declarations of Tara L. Borelli and Daniel C. Barr, counsel
19 retained to prosecute this suit are competent and experienced in class action and other
20 complex litigation.

21 2. Named Plaintiffs Satisfy the Requirements of Rule 23(b)(2).

22 In addition to satisfying Rule 23(a), a class action must meet the requirements of
23 one of the provisions of Rule 23(b). This case fits squarely within Rule 23(b)(2), which
24 authorizes class certification where “the party opposing the class has acted or refused to
25 act on grounds that apply generally to the class, so that final injunctive relief or
26 corresponding declaratory relief is appropriate respecting the class as a whole.” As the
27

28 ⁹ Diaz Decl. ¶ 9; Seckinger Decl. ¶ 10; Russell Decl. ¶ 11; Pflieger Decl. ¶ 12.

1 Ninth Circuit has explained, Section 23(b)(2) “was adopted in order to permit the
2 prosecution of civil rights actions.” *Walters*, 145 F.3d at 1047; *see Parsons v. Ryan*, 289
3 F.R.D. 513, 524 (D. Ariz. 2013) (finding that prisoners’ claims for injunctive relief to
4 remedy a constitutional violation “are the quintessential type of claims that Rule 23(b)(2)
5 was meant to address”).

6 Whether a class may be certified under Rule 23(b)(2) depends on “whether class
7 members seek uniform relief from a practice applicable to all of them.” *Rodriguez v.*
8 *Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2009); *see Wal-Mart*, 131 S. Ct. at 2557 (“The key
9 to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy
10 warranted—the notion that the conduct is such that it can be enjoined or declared unlawful
11 only as to all of the class members or as to none of them.”) (internal quotation marks and
12 citation omitted). The fact that class members have suffered different injuries—or no
13 injury at all—does not bar certification under Rule 23(b)(2). *Rodriguez*, 591 F.3d at 1125;
14 *see Walters*, 145 F.3d at 1047 (“We note that with respect to 23(b)(2) in particular, the
15 government’s dogged focus on the factual differences among the class members appears
16 to demonstrate a fundamental misunderstanding of the rule. . . . It is sufficient if class
17 members complain of a pattern or practice that is generally applicable to the class as a
18 whole.”).

19 If Section O is enforced, Named Plaintiffs and all members of the Class will suffer
20 a violation of their right to equal protection under the law. Specifically, they will be
21 deprived of family health insurance solely because of their sexual orientation and sex in
22 relation to their partner. Because the same constitutional violation has been committed
23 against each member of the Class, injunctive and declaratory relief for the Class as a
24 whole is appropriate. Named Plaintiffs seek to permanently enjoin Defendants from
25 implementing and enforcing Section O, which would allow all Class members to obtain
26 family coverage provided they meet certain financial interdependence criteria. Indeed,
27 this is consistent with the Court’s preliminary injunction, which granted relief to all
28 lesbian and gay State employees. [Dkt. 47] Moreover, inconsistent adjudications with

1 respect to individual class members would work a hardship on Defendants. Defendants,
2 who have expressed concern about administrative efficiency in prior briefing [Dkts. 22 at
3 9-10, 40 at 6-7], would find it difficult to adhere to separate, varying, and potentially
4 contradictory rulings on whether a particular gay or lesbian State employee can obtain
5 family health insurance.

6 **III. THE COURT SHOULD DESIGNATE PLAINTIFFS' COUNSEL AS CLASS**
7 **COUNSEL UNDER RULE 23(G)(1).**

8 Rule 23(g) requires that the district court appoint class counsel for any class that is
9 certified. The attorneys appointed to serve as class counsel must "fairly and adequately
10 represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). The appointed class
11 counsel must be listed in the Court's class certification order. Fed. R. Civ. P. 23(c)(1)(B).

12 The Federal Rules of Civil Procedure identify four factors that the Court must
13 consider in appointing class counsel: (1) "the work counsel has done in identifying or
14 investigating potential claims in the action;" (2) "counsel's experience in handling class
15 actions, other complex litigation, and the types of claims asserted in the action;"
16 (3) "counsel's knowledge of the applicable law;" and (4) "the resources that counsel will
17 commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). Lambda Legal and
18 Perkins Coie LLP, which will jointly serve as counsel for the Class if the Court so
19 designates them, satisfies each of these requirements.

20 First, Plaintiffs' counsel have worked for over four years to identify, litigate, and
21 successfully defend on appeal the claims in this action.¹⁰ In particular, Plaintiffs' counsel
22 have interviewed Named Plaintiffs and other putative class members and defended a
23 preliminary injunction protecting all of them through appeals up to the Supreme Court.¹¹
24 Plaintiffs' counsel have significant experience litigating complex matters and class
25 actions, including class actions involving federal constitutional law, and are
26

27 _____
28 ¹⁰ Borelli Decl. ¶ 4; Barr Decl. ¶ 4.

¹¹ Borelli Decl. ¶¶ 4-5; Barr Decl. ¶¶ 4-5.

1 knowledgeable with regard to the applicable law.¹² Plaintiffs' litigation team also has
2 dedicated, and will continue to commit, the appropriate staffing and material resources to
3 the representation of the Class.¹³ In sum, Plaintiffs' counsel fully satisfy the criteria for
4 class counsel set forth in Rule 23(g).

5 **CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that this Court certify,
7 pursuant to Rules 23(a) and (b)(2), a Class consisting of all lesbian and gay employees of
8 the State who are now, or will in the future, be eligible under the criteria specified in
9 former Ariz. Admin. Code § R2-5-101 to obtain State health insurance benefits for their
10 committed same-sex partners and their partners' dependents. Plaintiffs also request that
11 the Court appoint the undersigned as class counsel pursuant to Rule 23(g).

12 Dated: December 20, 2013

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**LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.**

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Attorneys for Plaintiffs

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28 ¹² Borelli Decl. ¶¶ 6-10; Barr Decl. ¶ 6.

¹³ Borelli Decl. ¶¶ 11-12; Barr Decl. ¶¶ 7-8.

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2013, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Charles A. Grube (charles.grube@azag.gov)
Kathryn J. Winters (kathryn.winters@azag.gov)

I hereby certify that on December 20, 2013, I transmitted the attached document by Federal Express overnight delivery to the Honorable John W. Sedwick, United States District Court, Federal Building and United States Courthouse, 222 West 7th Avenue, Box 32, Anchorage, Alaska 99513-9513.

s/ Delana Freouf

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