



defending the Defense of Marriage Act and Proposition 8 in California by filing *amicus curiae* briefs as well as educating the public through the media.

4. Defendant is an agency of the United States Government and is headquartered at U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530-0001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On February 23, 2011, Attorney General Eric Holder issued a statement announcing that Defendant would not defend the constitutionality of Section 3 of the Defense of Marriage Act (“DOMA”) as applied to same-sex married couples in two recently-filed cases, *Pederson v. Office of Personnel Management*, Case No. 2010-cv-1750 pending in the U.S. District Court for the District of Connecticut, and *Windsor v. United States*, Case No. 2010-cv-8435, pending in the U.S. District Court for the Southern District of New York. Attorney General Holder also announced that Defendant would not defend the constitutionality of Section 3 of DOMA as applied to same-sex married couples in any other pending or future litigation of the issue. Finally, Attorney General Holder sent a letter to members of the Congress announcing his decision.

6. Moreover, less than three hours after Attorney General Holder’s announcement, litigants seeking to strike down California’s traditional marriage definition filed a motion to vacate the stay of its case with the U.S. Court of Appeals for the Ninth Circuit. In its motion, the litigants cited to, and quoted from, Attorney General Holder’s letter to the Congress.

7. Following Attorney General Holder’s announcement and the litigants filing their motion with the U.S. Court of Appeals for the Ninth Circuit, on February 28, 2011, Plaintiff sent a

FOIA request to the Civil Rights Division, a component of Defendant, seeking access to:

records of communications regarding any same-sex marriage litigation or policy discussion between the employees of the Department of Justice and employees of the following: the law firm Boies, Schiller & Flexner, LLP; the law firm Gibson, Dunn & Crutcher, LLP; and, any public interest organization involved in political or legal opposition to either Proposition 8 or the Defense of Marriage Act that might include but not be limited to the American Civil Liberties Union, Lambda Legal Defense and Education Fund, Gay & Lesbian Alliance Against Defamation (GLAAD), and Gay & Lesbian Advocates and Defenders. We time limit our request to communications made after February 1, 2011.

8. By letter dated June 2, 2011, the Civil Division informed Plaintiff that it had made a determination on its FOIA request. Specifically, the Civil Division notified Plaintiff that the Civil Division had searched for and identified 357 pages of email chains responsive to Plaintiff's FOIA request. Moreover, the Civil Division informed Plaintiff that the Civil Division was withholding 8 pages of responsive records in part and 19 pages of responsive records in their entirety, pursuant to FOIA Exemption 5. All non-exempt records were produced with Defendant's letter.

9. By letter dated June 27, 2011, Plaintiff administratively appealed Defendant's June 2, 2011 adverse determination to withhold 27 pages of responsive records either in part or in their entirety.

10. By letter dated July 28, 2011, Defendant acknowledged receiving Plaintiff's administrative appeal on July 18, 2011.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), Defendant was required to make a determination with respect to Plaintiff's administrative appeal within twenty working days of July 18, 2011, or by August 15, 2011.

12. As of the date of this Complaint, Defendant has failed to make a determination with

respect to Plaintiff's administrative appeal

13. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(ii), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request. 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**

**(Violation of FOIA, 5 U.S.C. § 552)**

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

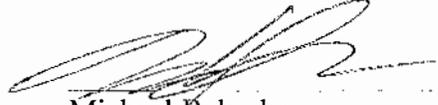
15. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

16. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

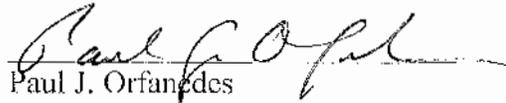
WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed a search method reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: August 29, 2011

Respectfully submitted,



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