# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA AT SAN FRANCISCO

BRIAN P. O'CONNOR (pro hac vice application to be filed) LEGAL, EDUCATION & RESEARCH PROJECT; K.L.E.S.;

> COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The Plaintiffs, Erotic Service Provider Legal, Education & Research Project ("ESPLERP"), K.L.E.S., C.V., J.B., and John Doe complain of Defendants and allege:

### INTRODUCTION

- 1. American courts continue to recognize that private sexual activity is a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution. Yet, when the private, consensual sexual activity occurs as part of a voluntary commercial exchange between adults, the State prohibits the activity and deprives those adults of their constitutional rights.
- The commercial exchange of private sexual activity between consenting 2. adults harms no one. Unlike other acts made criminal (things like murder, human trafficking, or robbery), the commercial exchange of sex produces no victims. As such, there is no compelling or legitimate governmental interest in its criminalization.
- 3. By this complaint, Plaintiffs challenge the constitutionality of statutes (both on their face and as they may be applied to Plaintiffs) criminalizing the commercial exchange of consensual, adult sexual activity. Plaintiffs seek a declaration that the laws themselves are unconstitutional, as well as preliminary and permanent injunctive relief prohibiting their enforcement.

### **JURISDICTION AND VENUE**

- 4. The case raises questions under the Constitution of the United States and 42 U.S.C. § 1983 and this Court therefore has jurisdiction under 28 U.S.C. §§ 1331, 1343, 2201, This Court has supplemental jurisdiction over the Plaintiffs' state law claims and 2202. under 28 U.S.C. § 1367.
- 5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because all Plaintiffs and Defendants either reside in or do business within this judicial district. In addition, venue is proper in this Court because a substantial part of the events giving rise to the claim occurred in this judicial district.

15

16

17

18

20

1

2

3

4

5

6

7

8

9

### **THE PARTIES**

6. Plaintiff Erotic Service Provider Legal, Education and Research Project ("ESPLERP") is a nonprofit public benefit corporation duly organized and authorized to do business under the laws of the State of California. ESPLERP's business address is located in San Francisco, California. ESPLERP is a diverse community-based erotic service provider led group which seeks to empower the erotic community and advance sexual privacy rights through legal advocacy, education, and research. ESPLERP represents the interests of its constituents in the public and private arenas. It advocates that sexual privacy includes the commercial exchange of private sexual activity. It educates the public about the harms inherent in the current prohibition and criminalization of prostitution. ESPLERP provides a clearinghouse for research and advocacy on behalf of the adult erotic industry, and it seeks to alter the current cultural climate of perceived sexual repression into one of sexual acceptance and freedom. Many, but not all, of ESPLERP's constituents are current or former erotic service providers, escorts, or other types of workers in the human sexuality field. Because some of the activities in which ESPLERP's constituents engage or wish to engage including, most importantly, acts potentially characterized as prostitution – are currently illegal in the State of California, many of those constituents wish to remain anonymous. Thus, ESPLERP as an organization is charged with representing those interests in the public arena and in the courts.

- 19
  - 7. Plaintiff K.L.E.S. is a citizen of California who desires to work in the Northern District of California. Plaintiff K.L.E.S. is a constituent of ESPLERP.
- 22

21

- 8. Plaintiff C.V. is a citizen of California who resides in the Northern District of California. Plaintiff C.V. is a constituent of ESPLERP.
- 23 24
- 9. Plaintiff J.B. is a citizen of California who resides in the Northern District of California. Plaintiff J.B. is a constituent of ESPLERP.
- 26

27

28

25

10. Plaintiff John Doe is a citizen of California. Plaintiff John Doe is a constituent of ESPLERP.

2

3

4

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

11. Plaintiffs K.L.E.S., C.V., J.B., and John Doe file this lawsuit pseudonymously because pseudonymity is necessary to protect Plaintiffs from injury and harassment. As explained herein, identification would create a risk of retaliation against the Plaintiffs and the pseudonymous Plaintiffs may risk criminal prosecution by virtue of the allegations contained herein.

- 12. Defendant George Gascón is the District Attorney for the City and County of San Francisco, California ("Gascón"). He is sued in his official capacity only. Gascón, an elected official, is the chief law enforcement officer of the County of San Francisco. Gascón is the public prosecutor and initiates legal actions on behalf of the People of the State of California. California Const. art. 5, § 13; art. 11, §§ 1, 4; California Government Code § 24000 et seq., § 26500 et seq.
- 13. Defendant Edward S. Berberian, Jr. is the District Attorney for Marin County, California ("Berberian"). He is sued in his official capacity only. Berberian, an elected official, is the chief law enforcement officer of the County of Marin. Berberian is the public prosecutor and initiates legal actions on behalf of the People of the State of California. California Const. art. 5, § 13; art. 11, §§ 1, 4; California Government Code § 24000 et seq., § 26500 et seq.
- 14. Defendant Nancy O'Malley is the District Attorney for Alameda County, California ("O'Malley"). She is sued in her official capacity only. O'Malley, an elected official, is the chief law enforcement officer of the County of Alameda. O'Malley is the public prosecutor and initiates legal actions on behalf of the People of the State of California. California Const. art. 5, § 13; art. 11, §§ 1, 4; California Government Code § 24000 et seq., § 26500 et seq.
- 15. Defendant Jill Ravitch is the District Attorney for Sonoma County, California ("Ravitch")(Gascón, Berberian, O'Malley, and Ravitch are collectively referred to herein as the "District Attorneys"). Ravitch is sued in her official capacity only. Ravitch, an elected official, is the chief law enforcement officer of the County of Sonoma. Ravitch is the public prosecutor and initiates legal actions on behalf of the People of the State of California.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

California Const. art. 5, § 13; art. 11, §§ 1, 4; California Government Code § 24000 et seq., § 26500 et seq.

16. Defendant Kamala D. Harris is the Attorney General for the State of California (the "Attorney General"). She is sued in her official capacity only. The Attorney General, an elected official, is the chief law officer of the State of California. She is vested with the responsibility of defending the laws of the State of California in litigation. In addition, the Attorney General has direct supervision over every district attorney and sheriff in the State of California. California Const. art. 5, § 13.

## STATEMENT OF THE FACTS

# THE HISTORY OF CALIFORNIA'S CRIMINALIZATION OF PROSTITUTION AND SOLICITATION

17. Historically, there has been a lack of rigorous and systematic punishment of the commercial exchange of consensual, adult sexual activity within our nation. Indeed, for much of our nation's history, the commercial exchange of private sexual activity – at least where its solicitation and consummation was conducted discreetly and not on the public streets – was widely accepted, was not illegal, and was, in fact, integral to our development. See, e.g., Beverly Balos & Mary Louise Fellows, A Matter of Prostitution: Becoming Respectable, 74 N.Y.U. L. REV. 1220, 1283 (1999) (noting that "[i]n nineteenth-century California, prostitution was an essential component of industrialization"); Prostitution and Sex Work, 14 GEO. J. GENDER & L. 553, 554 (Tom DeFranco & Rebecca Stellato, eds., 2013)(describing how "[u]ntil the nineteenth century, prostitution was generally legal in the United States and flourished in large cities" until "groups concerned with social morality \* \* \* crusaded against prostitution"); Gail M. Deady, Note, The Girl Next Door: A Comparative Approach to Prostitution Laws and Sex Trafficking Victim Identification Within the Prostitution Industry, 17 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 515 (2011).

18. Indeed, "[p]rostitution and solicitation per se were not outlawed in California until 1961." M. Anne Jennings, Comment, The Victim as Criminal: A Consideration of California's Prostitution Law, 64 CALIF. L. REV. 1235, 1240 (1976). Professor Arthur H.

2

3

4

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Sherry, the author of the 1961 law criminalizing the commercial exchange of sex, did "not offer any rationale for section 647(b), unlike the section's other subdivisions, beyond remarking that 'the pimp, the panderer, and the prostitute cannot be permitted to flaunt their services at large." Id. at 1241-42, n. 31 (citing Arthur H. Sherry, Vagrants Rogues and Vagabonds - Old Concepts in Need of Revision, 48 CALIF. L. REV. 557, 566 (1960) and Selected 1960-61 California Legislation, 36 CALIF. St. B.J. 801 (1961)).

# THE CURRENT LAW OF THE STATE OF CALIFORNIA

- 19. As it stands now, Section 647 of the California Penal Code provides, among other things, that every person who "solicits or who agrees to engage in or who engages in any act of prostitution" is guilty of disorderly conduct, a misdemeanor. Cal.Pen.Code § 647(b).
- 20. The term "prostitution" is defined by Section 647(b) to include "any lewd act between persons for money or other consideration." Cal.Pen.Code § 647(b). The term "lewd" is not defined by statute, but has been interpreted by the California courts as the touching of the genitals, buttocks, or female breast, for the purpose of sexual arousal or gratification. See e.g., People v. Freeman, 758 P.2d 1128, 1130, 46 Cal.3d 419, 424 (Cal. 1988); Pryor v. Municipal Court, 599 P.2d 636, 25 Cal.3d 238 (Cal. 1979); Wooten v. Superior Court, 93 Cal.App.4<sup>th</sup> 422, 428-30 (Cal. App. 2001); People v. Hill, 103 Cal.App.3d 525 (Cal. App. 1980).
- 21. Thus, to constitute the act of prostitution, the genitals, buttocks, or female breasts of either the erotic service provider or the customer must come in contact with some part of the body of the other for the purpose of sexual arousal or gratification of the customer or the provider, and in exchange for money or other consideration. See e.g., Wooten, 93 Cal.App.4<sup>th</sup> at 430-31; Hill, 103 Cal.App.3d at 534-35; Freeman, 46 Cal.3d at 422-24; Cal.Pen.Code § 647(b).
  - 22. Section 647(b) further provides that:
    - [a] person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act.

Cal.Pen.Code § 647(b). However, the California courts have held that words alone may constitute an "act in furtherance" of an agreement to engage in prostitution, provided they are a clear and unequivocal statement directed at completing the act of prostitution. See e.g., Kim v. Superior Court, 136 Cal.App.4<sup>th</sup> 937, 945 (Cal.App. 2006).

- 23. Thus, anyone in California who, in exchange for money or other consideration, engages in, agrees to engage in, or solicits a sexual act for the purpose of sexual arousal or gratification of the payor or the payee is guilty of a misdemeanor.
- 24. Because California's disorderly conduct statute, Cal.Pen.Code § 647, makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution, the District Attorneys, the Attorney General, and their respective offices are charged with the duty of enforcing the statute in the counties in which they serve. Compelled by this duty, the District Attorneys and the Attorney General are presently enforcing this state law in contravention of Plaintiffs' constitutional rights.

## THE EFFECT OF CALIFORNIA'S LAW ON THE PLAINTIFFS

- 25. K.L.E.S. is a resident of California, who at times has been licensed to provide sexual activity for hire to consenting adults in Nevada. K.L.E.S. would engage in her chosen profession of erotic service provider in the Northern District of California but for California's prohibition and criminalization of sexual activity for hire.
- 26. C.V. is a resident of California. C.V. was arrested on prostitution charges in 2007 in the Northern District of California, but the charges were ultimately dismissed. C.V. previously worked as an erotic service provider in the Northern District of California, but stopped working in that profession because she feared arrest and prosecution. She now works in an unrelated field. C.V. would again engage in her chosen profession of erotic service provider but for California's current prohibition and criminalization of sexual activity for hire.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

	27.	J.B. is a resident of Sonoma County, California. J.B. previously worked in the
erotic	service	industry in the San Francisco Bay area, performing activities that may be
consid	ered pro	ostitution under California law, but she now works in an unrelated field. J.B
would	again e	ngage in her chosen profession of erotic service provider but for California's
curren	t prohib	ition and criminalization of sexual activity for hire.

- 28. John Doe is a male with a disability. He desires to be able to procure the services of an erotic service provider. John Doe would engage in this sexual activity consensually, respectfully, and in the privacy of his own residence.
- 29. Plaintiffs each fear that they may be prosecuted by the District Attorneys and the Attorney General under California's prostitution or solicitation laws if they do engage in sexual activity for hire, particularly in light of their participation in this lawsuit.
- 30. Plaintiffs have refrained from engaging in voluntary, consensual sexual acts that may be considered prostitution or solicitation under Cal.Pen.Code § 647(b) for the specific reason that they fear prosecution. This is a particularly difficult concession for K.L.E.S., who had been licensed to perform identical activities in Nevada, where she was not subject to prosecution.
- 31. Plaintiffs' fears of arrest and prosecution if they choose to again work as erotic service providers are reasonable and grounded in actual enforcement activities throughout the State of California. These enforcement activities threaten to impact the sexual privacy rights of Plaintiffs, their customers, and countless others who desire to sell or purchase sexual services.
- 32. Additionally, the criminalization of commercial sexual activities under Cal.Pen.Code § 647(b) harms Plaintiffs because criminalization serves to discourage safe sex practices. For example, when prosecuting cases under Cal.Pen.Code § 647(b), the Defendants use the fact of condom possession as evidence of prostitution-related offenses. By doing so, the Defendants discourage condom use and thwart safe sex practices. See generally Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US CITIES (HUMAN RIGHTS WATCH 2012).

33. The prohibition on the commercial exchange of private sexual activity also unconstitutionally limits the individuals' right to earn a living in his or her chosen profession and to enter into and maintain certain intimate or private relationships. Further, the enforcement of California's prostitution laws violates the First Amendment rights of Plaintiffs and others similarly situated by making pure speech a criminal activity and by defining a crime based solely on the speaker's message and the content of his or her speech.

# **CLAIMS FOR RELIEF**

### **CLAIM ONE:**

# Section 1983 Claim for Violation of Fourteenth Amendment Substantive Due Process Right to Sexual Privacy

- 34. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully set forth herein.
- 35. Section 647(b) of the California Penal Code violates the right to substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution in that the statute, both on its face and as it would be applied to Plaintiffs, impinges upon the fundamental liberty interest in one's own private sexual conduct recognized by various courts throughout the United States. *See Lawrence v. Texas*, 539 U.S. 558 (2003); *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738 (5th Cir. 2008); *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014)(Berzon, J., concurring)("More recently, *Lawrence* clarified that licit, consensual sexual behavior is no longer confined to marriage, but is protected when it occurs, in private, between two consenting adults...")
- 36. The rights of adults to engage in consensual, private sexual activity (even for compensation) is a fundamental liberty interest. That right is one that is, objectively speaking, deeply rooted in this nation's history and tradition and one that is implicit in the concept of ordered liberty. Therefore, any regulation regarding the commercial exchange of private sexual activity is subject to strict scrutiny.
- 37. There is not even a legitimate governmental interest which could possibly justify California's prostitution laws. The government has no interest in regulating such

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

activities so long as the activities occur in private amongst consenting adults in furtherance of their liberty interest in their own sexual behavior. Furthermore, the fact that the governing majority in a state has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting its practice. See, e.g., Baskin v. Bogan, 766 F.3d 648, 669-70 (7th Cir. 2014)(Posner, J.)(citing Loving v. Virginia, 388 U.S. 1 (1967); Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012); and Lawrence v. Texas, 539 U.S. 558 (2003)).

- 38. California's prohibition against the commercial exchange of private sexual activity is not narrowly tailored, nor is it the least restrictive means for advancing whatever governmental interest that the Defendants may claim the law advances.
- 39. By prohibiting the commercial exchange of private sexual activity, Section 647 of the California Penal Code precludes many individuals, including both those who want to sell their sexual services and those who want to buy them, from deciding how to conduct their private lives in matters pertaining to sex. This law also significantly hinders, if not deprives, many individuals from their ability and right to engage in sexual intimacy.
- 40. Insofar as they are enforcing California's prostitution laws, the District Attorneys and the Attorney General, acting under color of state law, are depriving and will continue to deprive Plaintiffs of rights secured by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.
- 41. Plaintiffs are therefore entitled to a declaration of unconstitutionality, both on its face and as applied, and injunctive relief prohibiting the enforcement of Section 647(b) of the California Penal Code.

### **CLAIM TWO:**

# Section 1983 Claim for Violation of First Amendment **Right to Free Speech**

- 42. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully set forth herein.
- 43. Section 647(B) of the California Penal Code makes the solicitation of, or the agreement to engage in, prostitution a crime. Furthermore, although the statute provides that

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

"[n]o agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act", see Cal.Pen.Code § 647(b), the California courts have held that words alone may constitute an "act in furtherance" of an agreement to engage in prostitution. See e.g., Kim, 136 Cal.App.4<sup>th</sup> at 945.

- 44. Section 647 of the California Penal Code therefore makes pure speech a criminal activity. The statute also utilizes speech to make an otherwise lawful act (engaging in sexual activity in private or even agreeing to engage in sexual activity at some point in the future) a crime based solely on the speaker's message and the content of his or her speech.
- 45. The government can assert no compelling or substantial interest in justifying such a regulation on speech, particularly where that speech is communicated privately to only consenting adults. California's prohibition on speech intended to convey a desire or intent to offer or exchange sexual activity for money does not directly advance any compelling governmental interest or even a substantial state interest.
- 46. Insofar as they are enforcing California's prostitution laws, the District Attorneys and the Attorney General, acting under color of state law, are depriving and will continue to deprive Plaintiffs of rights secured by the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.
- 47. Plaintiffs are therefore entitled to a declaration that Section 647(b) of the California Penal Code violates the First Amendment, both on its face and as applied, and is unenforceable. Plaintiffs are equally entitled to an injunction restraining the enforcement and application of Section 647(b) of the California Penal Code.

### **CLAIM THREE:**

# Section 1983 Claim for Violation of Fourteenth Amendment Substantive Due Process Right to Earn a Living

48. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully set forth herein.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

49.	Section	647(b) of	the	California	Penal	Code	makes	the	act	of	prostitution	ıa
crime in the S	tate of Ca	lifornia										

- 50. Many persons in the State of California, including Plaintiffs herein, desire to engage in the commercial exchange of sex, but refrain from doing so for fear of being arrested and prosecuted. Alternatively, many persons, including some of the Plaintiffs herein, have in the past engaged in the commercial exchange of sex despite the threats of criminal prosecution because this profession provides them with a livelihood and the ability to support themselves and/or their families. They would like to do so in the future but for California's prohibition.
- 51. Because this statute severely infringes on the ability to earn a living through one's chosen livelihood or profession, it unconstitutionally burdens the right to follow any of the ordinary callings of life; to live and work where one will; and for that purpose to enter into all contracts which may be necessary and essential to carrying out these pursuits, all liberty interests protected by the Fourteenth Amendment right to substantive due process. See e.g., Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Allgeyer v. Louisiana, 165 U.S. 578, 589-90 (1897).
- 52. Insofar as they are enforcing California's prostitution laws, the District Attorneys and the Attorney General, acting under color of state law, have deprived, are depriving, and will continue to deprive Plaintiffs of rights secured by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.
- 53. Plaintiffs are therefore entitled to a declaration that Section 647(b) of the California Penal Code, both on its face and as applied, violates the substantive due process right to earn a living, and injunctive relief prohibiting the enforcement of Section 647(b) of the California Penal Code as violative of the Fourteenth Amendment to the United States Constitution.

### **CLAIM FOUR:**

### Section 1983 Claim for Violation of First Amendment

### Freedom of Association

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

	54.	Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully
set for	th herei	1.
	55.	The First Amendment to the United States Constitution affords constitutional

- al protection to the freedom of association. Construing this constitutional protection, the Supreme Court has held that the Constitution protects against unjustified government interference with an individual's choice to enter into and maintain certain intimate or private relationships. Board of Directors of Rotary Intern. v. Rotary Club of Duarte, 481 U.S. 537, 544 (1987). Indeed, "the freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights." *Id.* at 545. "Such relationships may take various forms, including the most intimate." Id.
- 56. Section 647(b) of the California Penal Code severely infringes on the rights to freedom of association of many persons in the State of California, including Plaintiffs herein. By prohibiting the commercial exchange of private sexual activity, many persons in the State of California, including Plaintiffs herein, are unable to enter into and maintain certain intimate and private relationships.
- 57. Insofar as they are enforcing California's prostitution laws, the District Attorneys and the Attorney General, acting under color of state law, are depriving and will continue to deprive Plaintiffs of rights secured by the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.
- 58. Plaintiffs are therefore entitled to a declaration that Section 647(b) of the California Penal Code, both on its face and as applied, violates the freedom of association, and injunctive relief prohibiting the enforcement of Section 647(b) of the California Penal Code as violative of the First Amendment to the United States Constitution.

### **CLAIM FIVE:**

### **Violations of the California Constitution**

59. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully set forth herein.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

	60.	Section 647(b) of the California Penal Code violates Article I, Section 7(a) of
the Ca	llifornia	Constitution by depriving Plaintiffs and all others similarly situated the right to
substa	ntive an	nd procedural due process. In the manner set forth in Claims One and Three
above	, the stat	tutes impinge upon the fundamental rights to sexual privacy, to live and work
where	one wil	l, to pursue any livelihood or vocation, and to associate.

61. Section 647(b) of the California Penal Code also violates the California Constitution's Liberty of Speech Clause, Article I, Section 2(a), by impinging upon the right to free speech as set forth in Claim Two above.

### **IRREPARABLE INJURY**

- 62. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully set forth herein.
- 63. Plaintiffs are now severely and irreparably injured by Section 647(b) of the California Penal Code, a state law that violates the Due Process Clause of the Fourteenth Amendment. By way of example only, Plaintiffs' injury includes the deprivation of rights guaranteed by the Fourteenth Amendment and the severe humiliation, emotional distress, pain, suffering, psychological harm, and stigma caused by the State of California's restrictions on Plaintiffs' ability to decide how to conduct their private lives in matters pertaining to sex. Plaintiffs' injuries will be redressed only if this Court declares Section 647(b) unconstitutional and enjoins the District Attorneys and the Attorney General from enforcing it.
- 64. An actual and judicially cognizable controversy exists between Plaintiffs and Defendants regarding whether Section 647(b) of the California Penal Code violates the federal and state constitutions.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

### PRAYER FOR RELIEF

# WHEREFORE, Plaintiffs pray for judgment as follows:

- A declaration that California's prostitution statute, Section 647(b) of the California Penal Code, is unconstitutional, both facially and as it may be applied against Plaintiffs;
- 2. Preliminary and permanent injunctive relief prohibiting Defendants from enforcing Section 647(b) of the California Penal Code;
- 3. An award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- 4. Any other such award or relief that the Court finds justified under the circumstances.

Dated: March 4, 2015

SANTEN & HUGHES LPA H. LOUIS SIRKIN BRIAN P. O'CONNOR

THE LAW OFFICES OF D. GILL SPERLEIN D. GILL SPERLEIN

By: /s/ D. Gill Sperlein
D. Gill Sperlein

Attorneys for Plaintiffs EROTIC SERVICE PROVIDER LEGAL EDUCATION & RESEARCH PROJECT; K.L.E.S.; CV.; J.B.; and JOHN DOE

563680.5

28