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21 Attorneys for Plaintiffs  
22 JOHN DOE, et al.  
23 on behalf of themselves and others similarly situated

24 UNITED STATES DISTRICT COURT  
25 FOR THE NORTHERN DISTRICT OF CALIFORNIA

26 JOHN DOE, JACK ROE, and  
27 CALIFORNIA REFORM SEX  
28 OFFENDER LAWS, on behalf of  
themselves and others similarly situated,

Plaintiffs,

v.

KAMALA D. HARRIS, Attorney General  
of California; and CITY OF ALAMEDA,

Defendants.

Civil Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 Plaintiffs, for their Complaint in this action, allege and aver as follows:

2 **INTRODUCTION**

3 1. This is a challenge to a just-enacted California statute that requires more  
4 than 73,000 Californians who are required to register under California Penal Code § 290 as a result  
5 of being convicted of a sex-related offense to immediately provide the police with their Internet  
6 identifiers and service providers. These requirements, enacted as part of Proposition 35, cover  
7 individuals who were convicted of a wide range of crimes, including misdemeanor indecent  
8 exposure, at any point since July 1, 1944, and they require registrants to provide information about  
9 online activities that have no possible relationship to criminality, such as the screen names they  
10 use to post comments about articles on a newspaper's website or names that they use to access  
11 political discussion groups. In addition, when registrants use a new screen name, they must now  
12 provide information about that name to the police within 24 hours. These new requirements  
13 burden the online speech of all such persons, infringe on their right to engage in lawful,  
14 anonymous speech on the Internet, and require them to reveal their membership in online groups,  
15 including groups devoted to political reform. Because they sweep much too broadly in terms of  
16 who must comply with them and the types of information they must provide, they are overbroad,  
17 in violation of the First Amendment. In addition, the statutory definitions of "Internet identifier"  
18 and "Internet service provider," which do not comport with the common understanding of these  
19 terms, are unconstitutionally vague. As a result of these and other constitutional infirmities, the  
20 statutes are facially invalid and cannot be enforced.

21 **JURISDICTION AND VENUE**

22 2. This action arises under 42 U.S.C. § 1983 and the United States  
23 Constitution. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

24 3. The Defendants are all public officials of the State of California or its  
25 political subdivisions. Each of the Defendants resides within this District and/or performs official  
26 duties within the State of California. This Court, accordingly, has personal jurisdiction over each  
27 of the Defendants.



1           8.     Plaintiff Roe is an individual who is required to register under Penal Code  
2 § 290 when he resided in California because of convictions that occurred before 1993. Neither of  
3 them involved the Internet or a stranger. Since his release from custody in the late 1990s he has  
4 never been arrested or convicted of any crime.

5           9.     Roe engages in a wide variety of online speech, including through  
6 participation in online discussion forums about political topics and the posting of comments in  
7 response to articles on the websites of newspapers. Much of this speech is anonymous. Roe posts  
8 online comments from the perspective of a registered sex offender but does so anonymously  
9 because of the fear of retaliation and social stigma associated with such status. Roe has  
10 experienced retaliation in the past on the basis of his status as a registered sex offender. As a  
11 result, if Roe were required to disclose to law enforcement all screen names he uses to engage in  
12 online speech, he would cease engaging in such speech because of the fear of the consequences of  
13 losing anonymity and the burdens of registration. If Roe were required to disclose his identity in  
14 publicly filed pleadings in this action, he would also be reluctant to participate in this litigation due  
15 to fear of retaliation.

16           10.    Roe had lived in California nearly his entire life and would like to do so  
17 again. However, his concerns about having to provide the government with information about his  
18 lawful online speech, and the practical burdens of doing so, have led him to leave the state, and he  
19 now resides elsewhere. These laws are all that are keeping him from returning; he intends to  
20 return to California if the law that he and the other Plaintiffs are here challenging are held  
21 unconstitutional.

22           11.    Plaintiff California Reform Sex Offender Laws (“California Reform”) is a  
23 California tax-exempt corporation organized under 501(c)(4) of the Internal Revenue Code.  
24 California Reform’s mission is to protect the rights of those accused or convicted of sex crimes.  
25 California Reform believes that no sexual abuse is ever acceptable; that sex offense laws and  
26 policies should be based on sound research and common sense, not fear, panic, or paranoia; that  
27 current laws and policies that paint all sex offenders with one broad brush are counterproductive,  
28 wasteful, and cause needless harm; that each offense must be judged on its own merits, with a

1 punishment that fits the crime and does not waste taxpayer dollars; that the public sex offender  
2 registry and residency restriction laws do not protect children, but instead ostracize and  
3 dehumanize individuals and their families; and that money spent on purely punitive measures  
4 would be better used for prevention, healing, and rehabilitation. California Reform has members  
5 who are registrants throughout the state.

6           12. California Reform maintains a website, <http://californiarsol.org/>. One of its  
7 purposes in maintaining this website is to inform the public and its members about legal and policy  
8 issues relating to persons who are required to register under § 290 and to promote political and  
9 social change on these issues. For example, these are a few of the many articles and information  
10 that appeared on the website in October and November of 2012: information about a pending  
11 proposal in Anaheim to enact an ordinance banning registrants from its parks, a notice of a  
12 California Reform meeting to be held on November 10 in Los Angeles, information about a recent  
13 California Court of Appeals decision upholding an injunction prohibiting the enforcement in San  
14 Diego of a state law restricting where registrants can live. The website also included an  
15 exhortation for people to vote in the 2012 election and links to information about how to register  
16 to vote in California and who is eligible to do so. California Reform also used the website to help  
17 it meet its goal of obtaining 500 signatures on a petition to the Orange County District Attorney  
18 challenging a county ordinance that prohibits all registrants from entering parks, beaches, harbors,  
19 and other recreational areas.

20           13. The California Reform website allows people to comment on these items,  
21 and people regularly do so anonymously. For example, as of November 2, one item about the  
22 Anaheim Parks ban included 13 comments, ranging from expressions of thanks for California  
23 Reform's advocacy efforts to statements that such laws are unconstitutional and bad policy. An  
24 item about the November 10 meeting had generated 8 comments, including questions about who  
25 would be allowed to attend and how to do so. As their content often makes clear, many of the  
26 persons who comment are registrants with questions or comments about how these laws affect  
27 them and with updates on efforts to change California's registration law.

28

1           14.     A discussion of the provisions of Proposition 35 here at issue had generated  
2 15 comments on the website, many of them by registrants expressing confusion about what they  
3 will be required to do. For example, one commenter (“MM”) writes “My question is . . . Internet  
4 Identifier, I’m confused. I know that your AOL, YAHOO or GMAIL account information would  
5 have to be provided, but what about your Directv account? your car insurance account? Your  
6 Macy’s log on? We all have “internet identifiers”, “username” and they are not necessarily the  
7 same as your email . . . does it include your work email? I tired [sic] to decipher some of the Prop  
8 but got lost in the mumbo-jumbo of internet identifiers and whether it’s at a library or work or  
9 home.”

10           15.     Another commenter on the California Reform website asks, “What about  
11 posting on this website? You can post under a new name all day long, if you so please. Is every  
12 time you write something under a user name (just because you do not register per se that does not  
13 mean you are not posting under that name) cause to provide that name? What if you stop using it?”

14           16.     The comments sections of its website site further California Reform’s  
15 interests in several ways. First, they allow registrants and others to express matters of fact and  
16 opinion about an original article. Second, they allow registrants and others to ask questions about  
17 the organization and about legal and policy matters, which are often answered by staff or by other  
18 commenters. Third, and related to both of these other interests, allowing comments encourages  
19 membership by providing a safe and welcoming forum for registrants and others to speak and ask  
20 questions about issues relating to persons convicted or accused of sex offenses.

21           17.     Almost all of these comments, aside from those submitted by staff, are  
22 submitted using pseudonyms. Reform California recognizes that its members face social  
23 ostracism, the risk of violence, and other adverse consequences because they are registrants, and  
24 thus exists the importance of allowing them to participate anonymously. Therefore, its meetings  
25 are open to registrants, family members, and supporters but closed to media and government  
26 officials. And the website allows commenters to remain anonymous by using pseudonyms.

27           18.     The challenged laws will invade this anonymity because registrants who  
28 leave comments on the website generate what is clearly within Proposition 35’s definition of







1           27.     The claims of Plaintiff Class members share common issues of law,  
2 including but not limited to whether the challenged statutes violate the First Amendment because  
3 they are overbroad; whether the challenged statutes violate the First Amendment and Due Process  
4 Clause because they are vague; and whether they violate the Equal Protection Clause of the  
5 Fourteenth Amendment.

6           28.     The claims of Plaintiff Class members share common issues of fact,  
7 including but not limited to whether these new statutes will be effective at addressing the problem  
8 that they are meant to address; what the Department of Justice intends to do with the information it  
9 is collecting; and how the state plans to implement the new laws.

10          29.     The claims or defenses of the named Plaintiffs are typical of the claims of  
11 members of the Plaintiff Class, particularly because this is a facial challenge to the statutes.

12          30.     The named Plaintiffs will fairly and adequately protect the interests of the  
13 Plaintiff Class. The named Plaintiffs have no interest that is now or may be potentially  
14 antagonistic to the interests of the class. The attorneys representing the Plaintiffs include  
15 experienced civil rights attorneys and are considered able practitioners in federal constitutional  
16 litigation. These attorneys should be appointed as class counsel.

17          31.     Defendants have threatened to act and will act on grounds generally  
18 applicable to the Plaintiff Class, thereby making final injunctive and declaratory relief appropriate  
19 to the class as a whole. The Plaintiff Class may therefore be properly certified pursuant to Fed. R.  
20 Civ. P. 23(b)(2).

21          32.     Prosecution of separate actions by individual members of the Plaintiff Class  
22 would create the risk of inconsistent or varying adjudications and would establish incompatible  
23 standards of conduct for individual members of the Plaintiff Class. The Plaintiff Class may  
24 therefore be properly certified, alternatively, under Fed. R. Civ. P. 23(b)(1).

### **THE MATTERS IN CONTROVERSY**

25  
26          33.     In California, every person who has been convicted of a variety of offenses  
27 since July 1, 1944, must register as a sex offender for the rest of his or her life. § 290(b). The  
28 requirement applies to persons convicted of a number of listed crimes as well as to persons who

1 committed non-registerable offenses “as a result of sexual compulsion or for the purposes of  
2 sexual gratification.” §§ 290(c), 290.006. Registerable offenses include misdemeanor indecent  
3 exposure, and California appellate courts have upheld convictions and the registration requirement  
4 for such offenses based on nude erotic dancing on a stage at a bar, exposing oneself during an  
5 incident of road rage, and exposing oneself to an undercover officer who the defendant thought  
6 was interested in engaging in sexual activity.

7           34. Because California’s registration statute is so broad, was enacted so long  
8 ago, and because it, unlike most states, imposes a lifetime requirement for all offenders, there are  
9 currently more than 73,000 people required to register in California, not including persons who are  
10 in custody or who have been deported. This is so even though California does, in other contexts,  
11 distinguish between sex offenders who pose a high risk to the public and those who do not, using  
12 tools such as the Static-99 instrument that have been developed for just this purpose. *See* §§  
13 290.04-290.07, 1203e, 1203f, 3008.

14           35. Prior to the adoption of the challenged laws, California’s registration law  
15 specifically required that registrants provide local law enforcement with their address, employer,  
16 and license plate numbers. § 290.015(a). Registrants must provide this information within  
17 5 working days of changing their residence address and annually within 5 days of their birthday.  
18 §§ 290.012, 290.013.

19           36. The specific statutes here at issue were adopted as part of a voter initiative,  
20 Proposition 35, on November 6, 2012, and went into effect the following day pursuant to Article II  
21 § 10(a) of the California Constitution. Although the bulk of this initiative focuses on issues  
22 relating to what it describes as human trafficking, the challenged sections apply to all registrants.

23           37. Proposition 35 amends § 290.015(a) so that registrants must provide the  
24 following additional information whenever they register or re-register: “A list of any and all  
25 Internet identifiers established or used by the person” and “[a] list of any and all Internet service  
26 providers used by the person.” § 290.015(a)(4), (5).

27           38. The initiative defines these terms as follows:

28           “Internet service provider” means a business, organization, or other entity providing

1 a computer and communications facility directly to consumers through which a person  
2 may obtain access to the Internet. An Internet service provider does not include a  
3 business, organization, or other entity that provides only telecommunications services,  
4 cable services, or video services, or any system operated or services offered by a library or  
5 educational institution.

6 "Internet identifier" means an electronic mail address, user name, screen name, or  
7 similar identifier used for the purpose of Internet forum discussions, Internet chat room  
8 discussions, instant messaging, social networking, or similar Internet communication.  
9 § 290.024(a), (b).

10 39. The initiative requires that registrants provide this newly required  
11 information "immediately" after the law becomes effective and also that they advise the police  
12 within 24 hours of changes:

13 If any person who is required to register pursuant to the Act adds or changes his or her  
14 account with an Internet service provider or adds or changes an Internet identifier, the  
15 person shall send written notice of the addition or change to the law enforcement agency  
16 or agencies with which he or she is currently registered within 24 hours. The law  
17 enforcement agency or agencies shall make this information available to the Department  
18 of Justice. Each person to whom this subdivision applies at the time this subdivision  
19 becomes effective shall immediately provide the information required by this subdivision.  
20 § 290.014(b).

21 40. As with the other registration requirements, a violation of any of these  
22 requirements is a crime. If the person is required to register as a result of a prior misdemeanor  
23 conviction and has no prior convictions for registration violations, a violation is a misdemeanor,  
24 punishable by no less than 90 days and no more than 1 year in jail; otherwise, it is a felony,  
25 punishable by no less than 90 days in jail and up to 3 years in prison, a sentence that may be  
26 dramatically increased if the registrant has prior felony convictions. § 290.018(a)-(c).

27 41. These new reporting requirements burden speech in several ways. First, the  
28 requirement that registrants provide new Internet identifiers or Internet service provider accounts  
to the government within 24 hours burdens their ability to engage in all manner of online speech,  
as does the requirement that they provide a yearly list of all Internet identifiers or Internet service  
providers that they use.

42. In addition, requiring registrants to provide this information infringes upon  
their right to engage in anonymous online speech. Not only does it require them to identify  
themselves to the government, but, because there are inadequate limits on what the government  
can disclose, it may mean that information about their lawful but anonymous online speech

1 activities will be released to the public. A 2009 survey of California law enforcement agencies  
2 found that 39% had “proactively” provided information about registrants to the public, apparently  
3 without any evidence that the registrant had been involved in any sort of criminal activity; nothing  
4 in the new law prevents them from doing the same with the information about registrants’ online  
5 speech that registrants must now provide.

6 43. Scholarly research suggests that requiring all registrants to provide their  
7 Internet identifiers and Internet service providers is not an effective way to accomplish the  
8 government’s stated goal of protecting children.

9 44. First, as the California Department of Justice reports, the vast majority of  
10 sex crimes against children are committed by family members or acquaintances: 90% of child  
11 victims know their offender, with almost half of the offenders being a family member. Of sexual  
12 assaults against people aged 12 years and up, approximately 80% of the victims know the  
13 offender.

14 45. Second, the best available data show that, as measured by arrests, online  
15 offenses constitute only about 1% of sex crimes committed against children and youth. And only  
16 4% of those arrested for online sex crimes against youth victims in 2006 were registered sex  
17 offenders. Few of these crimes involve violence, abduction, or stalking, and few involved young  
18 children. A rapidly growing proportion of those arrested for such crimes are themselves aged 25  
19 years or under.

20 46. Third, because the government can, as it does in other contexts, distinguish  
21 between registrants who pose a high risk of reoffending from those who pose a much lower risk,  
22 requiring all registrants to comply with this new law is needlessly overbroad. Most sex offenders  
23 do not reoffend, and the government can use tools such as the Static-99 test to determine which  
24 registrants pose a high risk of reoffending and which do not. A 2009 study by the state showed  
25 that the majority of felony sex offenders sentenced to prison and released on parole in California  
26 after 2005 were classified as posing a low or moderate-low risk of reoffending under Static-99. In  
27 addition, the longer ex-offenders remain offense-free in the community, the less likely they are to  
28 reoffend sexually. On average, the likelihood of reoffending drops by 50% every 5 years that an



1           50.     This controversy is ripe for judicial decision, and declaratory relief is  
2 necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202, so that the parties may know  
3 the legal obligations that govern their present and future conduct.

4           51.     In the absence of court-ordered relief, Plaintiffs will suffer imminent,  
5 immediate, and ongoing irreparable harm in the form of loss of anonymity, and a chilling of their  
6 free speech and associational rights. No future award of damages can remedy the loss of these  
7 constitutional rights. Both the public interest and equity favor granting an injunction to allow  
8 Plaintiffs to exercise their constitutional free speech and associational rights. Injunctive relief is  
9 therefore necessary and appropriate.

10                           **COUNT I: VIOLATION OF THE FIRST AMENDMENT TO**  
11                           **THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)**

12           52.     Plaintiffs hereby re-allege and incorporate by reference the allegations  
13 contained in the above paragraphs as though fully set forth herein.

14           53.     The provisions of §§ 290.015(a)(4), (5) and § 290.014(b) that require  
15 registrants to provide their Internet identifiers and Internet service providers to the government  
16 violate the First Amendment rights to free speech and association because the provisions are  
17 vague, overbroad, burden speech without being appropriately tailored to the government's stated  
18 goals, and require the compelled disclosure of individuals with whom registrants associate.

19           54.     The provisions of §§ 290.015(a)(4), (5) and § 290.014(b) that require  
20 registrants to provide their Internet identifiers and Internet service providers to the government  
21 violate the First Amendment because they apply to some persons but not others without sufficient  
22 justification.

23           55.     Defendants, acting under color of state law, have threatened to and will  
24 enforce and implement the challenged laws against the individual Plaintiffs, members of the  
25 organizational Plaintiff, and members of the Plaintiff Class, in violation of their First Amendment  
26 rights.

27           56.     As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs  
28 have and will suffer irreparable harm, which will continue absent injunctive relief.

1                   **COUNT II: VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH**  
2                                   **AMENDMENT TO THE UNITED STATES**  
3   **CONSTITUTION (42 U.S.C. § 1983)**

4                   57.     Plaintiffs hereby re-allege and incorporate by reference the allegations  
5 contained in the above paragraphs as though fully set forth herein.

6                   58.     The definitions of “Internet identifier” and “Internet service providers” in §§  
7 290.024(a), (b) are impermissibly vague in that persons of common intelligence must guess at their  
8 meaning; this problem is magnified because a registrant who reads the provisions too narrowly is  
9 subject to criminal prosecution and punishment, and one who reads them too broadly suffers a  
10 greater infringement of his First Amendment rights than the statutes require. These statutes  
11 therefore violate due process.

12                  59.     Defendants, acting under color of state law, have threatened to and will  
13 enforce and implement the challenged laws against the individual Plaintiffs, members of the  
14 organizational Plaintiff, and members of the Plaintiff Class, in violation of their due process rights.  
15 As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs have and will suffer  
16 irreparable harm, which will continue absent injunctive relief.

17                                   **COUNT III: VIOLATION OF EQUAL PROTECTION**  
18   **UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES**  
19   **CONSTITUTION (42 U.S.C. § 1983)**

20                  60.     Plaintiffs hereby re-allege and incorporate by reference the allegations  
21 contained in the above paragraphs as though fully set forth herein.

22                  61.     The provisions of §§ 290.015(a)(4), (5) and § 290.014(b) that require  
23 registrants to provide their Internet identifiers and Internet service providers to the government  
24 violate equal protection because they apply to some persons but not others without sufficient  
25 justification.

26                  62.     Defendants, acting under color of state law, have threatened to and will  
27 enforce and implement the challenged laws against the individual Plaintiffs, members of the  
28

1 organizational Plaintiff, and members of the Plaintiff Class, in violation of their equal protection  
2 rights.

3 63. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs  
4 have and will suffer irreparable harm, which will continue absent injunctive relief.

5 **COUNT IV: EX POST FACTO LAW**

6 **UNDER ARTICLE II § 10 cl. 1 OF THE UNITED STATES**

7 **CONSTITUTION (42 U.S.C. § 1983)**

8 64. Plaintiffs hereby re-allege and incorporate by reference the allegations  
9 contained in the above paragraphs as though fully set forth herein.

10 65. The provisions of §§ 290.015(a)(4), (5) and § 290.014(b) that require  
11 registrants to provide their Internet identifiers and Internet service providers to the government  
12 violate the Ex Post Facto Clause because they impose additional punishment for crimes committed  
13 before they were enacted.

14 66. Defendants, acting under color of state law, have threatened to and will  
15 enforce and implement the challenged laws against the individual Plaintiffs, members of the  
16 organizational Plaintiff, and members of the Plaintiff Class, in violation of their rights under the  
17 Ex Post Facto Clause.

18 67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs  
19 have and will suffer irreparable harm, which will continue absent injunctive relief.

20 **RELIEF SOUGHT**

21 WHEREFORE, Plaintiffs, on behalf of themselves and the Plaintiff Class, seek the  
22 following relief:

23 1. A declaration that California Penal Code §§ 290.015(a)(4), (5),  
24 § 290.014(b), and §§ 290.024(a), (b) are unconstitutional, facially and as applied.

25 2. A temporary restraining order, preliminary injunction, and permanent  
26 injunction enjoining Defendants, including all of Defendant Harris's officers, agents, servants,  
27 employees, attorneys, and other persons in active concert or participation with Defendant Harris,  
28 including but not limited to every California District Attorney, City Attorney, or peace officer,



1 from enforcing §§ 290.015(a)(4), (5), § 290.014(b) and §§ 290.024(a), (b) or from otherwise  
2 requiring registrants to provide their Internet identifiers or Internet service providers to the  
3 government.

4 3. Costs and attorney's fees incurred in this action pursuant to 42 U.S.C.  
5 § 1988 and other applicable authority.

6 4. Such other and further relief as may be just and proper.

7  
8 DATED: November 7, 2012

Respectfully submitted,

9 By: 

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