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**ATTACHMENT TO CIVIL RIGHTS  
COMPLAINT OF  
ROSARIO GENNARO AND  
ALEXANDER PATTEN GARDNER  
AGAINST  
ADOPTION MEDIA, LLC AND  
ADOPTION PROFILES, LLC**

**I. Introduction**

Rosario Gennaro and Alexander Patten Gardner (“Mr. Gennaro and Mr. Gardner” or “Complainants”) bring this complaint against Adoption Media, LLC and Adoption Profiles, LLC (“Adoption Media and Adoption Profiles” or “Respondents”). Mr. Gennaro and Mr. Gardner are a committed New York couple seeking and qualified to adopt a child. Adoption Media and Adoption Profiles are Arizona-based companies that operate ParentProfiles.com, a leading website service for prospective adoptive parents to publish their profiles and match with biological parents seeking to place their babies with adoptive parents. Adoption Media and Adoption Profiles refuse their services to same-sex couples, thus discriminating on the basis of sexual orientation, sex, and marital status in violation of New York State and New York City human rights laws, N.Y. Exec. Law § 296(2)(a) (McKinney 2008), N.Y.C. Admin. Code § 8-107(4)(a) (2008), and New York public policy.

This discrimination prevents Complainants, and many other prospective adoptive same-sex parent couples like them in New York, from participating in the largest Internet-based adoption matching service in the nation. Indeed, Respondents have already been successfully sued in California for violating that state’s non-discrimination laws and, following a federal court ruling against them, ceased to engage in their discriminatory business practices there. *See Butler*

*v. Adoption Media, LLC*, 486 F. Supp. 2d 1022 (N.D. Cal. 2007). Yet Respondents continue to solicit business via the Internet from New York residents, flagrantly violating our State's non-discrimination laws and the civil rights of New York lesbian and gay residents. Complainants urge this Office to take appropriate steps to end Respondents' unlawful discrimination in New York.

## **II. The Complainants**

Mr. Gennaro and Mr. Gardner live in Manhattan. Mr. Gennaro is a computer researcher at IBM. Mr. Gardner is a grants administrator at the Shelley and Donald Rubin Foundation and a visiting professor in the Religious Studies Program at New York University. Mr. Gennaro and Mr. Gardner met in 2004 and registered as domestic partners in New York City on October 4, 2005. They were married on May 24, 2008 in a civil marriage ceremony in Quebec, Canada, and their marriage is recognized as valid and subject to respect in New York. *See, e.g., Martinez v. County of Monroe*, 50 A.D.3d 189, 850 N.Y.S.2d 740 (4th Dep't 2008).

Mr. Gennaro and Mr. Gardner had known for a long time that they wanted children and that adoption was the way to make that happen for them. In November 2006, the couple hired a private adoption attorney. In March 2007, the couple had a home study done by a licensed social worker, and in May 2007, they obtained Certification as Qualified Adoptive Parents from the New York City Surrogate Court. The couple decided they wanted to use the services of Adoption Media and Adoption Profiles to post their profile on Respondents' website, ParentProfiles.com. Complainants felt that using ParentProfiles.com would be an effective and affordable route to adopt, since the fee it charges for posting profiles of potential adoptive parents is less than the cost of many other routes to adoption. Birth parents can search the

profiles to choose potential adoptive parents for their babies and can view the prospective couples' letters to birth mothers, photo albums, journals, and audio clips. ParentProfiles.com is well-known among couples seeking to adopt and among birth parents and plays a leading role in this field. It is advertised on some of the Internet's most popular adoption websites and so gives its clients wide exposure.

While researching the company, Mr. Gennaro and Mr. Gardner discovered a news article about the California litigation against Respondents and the resulting cessation of ParentProfiles.com's business in California. Complainants were surprised and upset to learn that Adoption Media and Adoption Profiles are soliciting, advertising, and/or conducting business in New York while discriminating against lesbian and gay couples who live here. As explained below, Respondents post discriminatory criteria for doing business with ParentProfiles.com that exclude Complainants from use of the service.<sup>1</sup>

Lambda Legal Defense and Education Fund ("Lambda Legal") brings this complaint on behalf of Mr. Gennaro and Mr. Gardner to end Respondents' discriminatory practices so that Complainants and many other New York same-sex couples like them may have non-discriminatory access to adoption services. Lambda Legal is the nation's oldest and largest civil rights organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people ("LGBT"), and those with HIV, through impact litigation, education, and public policy work. Lambda Legal has thousands of New York members, many of whom form their families through adoption.

Lambda Legal's work to protect the rights of LGBT prospective foster and adoptive parents at the state and national levels dates back to the 1970s, when the organization helped a

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<sup>1</sup> In early 2008, Complainants were able to adopt their daughter, Matilde Teresa Gardner, through other means. Complainants wish to adopt a second child and would use ParentProfiles.com but for Respondents' discriminatory and illegal policies.

lesbian foster mother retain custody of her foster children. Since then, Lambda Legal has participated in numerous cases to establish the rights of LGBT parents with respect to custody, visitation, and adoption and continues to work to ensure enforcement of non-discrimination laws across the nation and particularly in New York. *See, e.g., In re Jacob*, 86 N.Y.2d 651, 660 N.E.2d 397, 636 N.Y.S.2d 716 (1995) (holding that unmarried partner of a child's biological parent has standing to adopt the child).<sup>2</sup>

Complainants and their counsel believe that a challenge to Respondents' discriminatory practices is important to vindicate the rights of many New York same-sex couples who seek to form families through adoption. It is also significant to advance more broadly the interests of New York residents, who should not be subject via the Internet to discriminatory business practices of out-of-state companies flouting our State's consumer and minority protection laws.

### **III. Respondents' Discriminatory Practices**

Respondents conduct business over the Internet in New York through their website, ParentProfiles.com. Respondents advertise on the website for New York couples to post their profiles and for birth mothers to search the profiles. The website displays information about many New York couples who use Respondents' services to seek an adoptive child and boasts of New York adoption "success stories." According to the website, Respondents are actively soliciting customers and transacting business in the state.

ParentProfiles.com includes "Eligibility Requirements" that must be met by any potential customer in order to use its services. These requirements provide that only a "Qualifying Husband and Wife Couple" is eligible to use the services, defined as:

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<sup>2</sup> Lambda Legal filed a brief amicus curiae in *In re Jacob* and was counsel in the companion *In re Dana* case decided in the same opinion. *See* 86 N.Y.2d at 653, 660 N.E.2d at 397, 636 N.Y.S.2d at 716.

one male husband and one female wife that, a) meet all of the Eligibility Requirements that are contained in the ParentProfiles.com Conditions of Service, b) who have agreed to be subject exclusively to the Controlling Law, Legal Jurisdiction and Venue of the state of Arizona, and c) who legally reside anywhere in the United States, EXCEPT within the state of California, or are citizens of the United States residing abroad as an active member of a branch of the U.S. military or U.S. Diplomatic Corps, or who are otherwise employed outside the United States.

ParentProfiles.com, *Eligibility Requirements for the ParentProfiles.com Website 1* (revised Mar. 18, 2008), <http://www.parentprofiles.com/docs/EligibilityRequirement.pdf> (last visited June 24, 2008) (emphasis in original).

In addition, the Eligibility Requirements specify that parent profiles will only be created for:

Qualifying Husband and Wife Couples that meet *all six* of the following criteria:

- a. **They are Fit to Adopt Children . . . .**
- b. **They Are Legally Married to Each Other as Husband and Wife . . . .**
- c. **They Do Not Reside in the State of California . . . .**
- d. **They Have Completed All Pre-Adoption Legal Requirements . . . .**
- e. **They Have Successfully Completed a Qualifying Home Study . . . . [and]**
- f. **They Are Being Assisted in the Adoption Process by a Licensed Adoption Professional.**

*Id.* at 5-6 (emphasis in original). In the definition of “Legally Married to Each Other as Husband and Wife,” the eligibility requirements further provide that an eligible couple must be “legally

married to each other as Husband and Wife, in a manner that is legally recognized in all states in the United States.” *Id.* at 5.

These requirements posted on Respondents’ Internet business exclude same-sex prospective parent couples that neither consist of “one male husband and one female wife” nor are able to marry “in a manner that is legally recognized in all states in the United States.” *Id.* at 1, 5. In effect, Respondents have posted a sign on the door to their business announcing that lesbian and gay couples will not be served there.

Respondents attempt – unsuccessfully – to insulate themselves from New York’s non-discrimination laws through ParentProfiles.com’s “choice of law” provisions. When a couple is ready to register their profile on ParentProfiles.com, they must purport to agree to limit liability for damages and waive application of controlling law, jurisdiction, and venue in their home states. This online click-wrap contract requires an agreement that “the laws of the state of Arizona, and none other, shall apply” and that “sole and exclusive jurisdiction and venue . . . shall rest exclusively in the Southeast Judicial District of the Superior Court of Maricopa County, Arizona . . . .” ParentProfiles.com, <http://www.parentprofiles.com/create/account> (last visited June 24, 2008).

#### **IV. Respondents’ Violation of New York Non-Discrimination Law and Policy Should Not Go Unchecked**

Respondents’ posted eligibility requirements on their face violate New York State and New York City prohibitions against discrimination on the basis of sexual orientation, sex, and marital status. N.Y. Exec. Law § 296(2)(a), N.Y.C. Admin. Code § 8-107(4)(a). They also are contrary to State adoption law and policy, which prohibit discrimination in adoption on the basis of marital status and sexual orientation. *See* N.Y. Comp. Codes R. & Regs. tit. 18, §§ 421.16(d),

421.16(h)(2) (2008) (providing that qualified adoption agencies shall not “consider marital status in their acceptance or rejection of applicants” and that “applicants shall not be rejected solely on the basis of homosexuality”); *In re Jacob*, 86 N.Y.2d at 651, 660 N.E.2d at 397, 636 N.Y.S.2d at 716.

Indeed, Respondents’ efforts to discriminate against lesbian and gay couples have already been challenged in California in *Butler*, 486 F. Supp. 2d 1022, under California’s non-discrimination law. The federal district court in that case denied the Respondents’ summary judgment motion, also ruling that Adoption Media and Adoption Profiles could not evade application of California’s non-discrimination law by arguing that only Arizona law should govern its Arizona-based Internet business. The court held that “[w]here an out-of-state business solicits California customers and does business with customers living in California, California has an interest in ensuring that the out-of-state business does not discriminate against the California customers.” *Id.* at 1051. No less is true in New York. The California challenge resulted in Respondents’ decision to stop conducting business in California rather than comply with that state’s non-discrimination laws, and the Eligibility Requirements posted on ParentProfiles.com make express that Respondents are not soliciting or engaging in business in that state. As a result, the residents of California are no longer subject to the discriminatory practices of Adoption Media and Adoption Profiles. Yet Respondents continue to advertise and conduct their discriminatory practices in New York.

Complainants ask this Office to investigate and take immediate steps to end this discrimination against lesbian and gay New Yorkers. If Respondents are to continue to advertise, solicit, and/or conduct business in New York, they must be required to provide services regardless of sexual orientation, sex, and marital status. Our State should not be a safe

haven for out-of-state Internet companies that solicit business from our residents while openly advertising that they discriminate on the basis of sexual orientation, sex, and marital status.