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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

NORTHEAST DISTRICT

Jake Miller, Petitioner, v. Elayne Angel, Respondent.	Case No. GD 053 180 **BRIEF OF AMICI CURIAE NATIONAL CENTER FOR LESBIAN RIGHTS AND TRANSGENDER LAW CENTER IN SUPPORT OF PETITIONER** DATE: JULY 29, 2014, 1:30PM DEPARTMENT: K JUDGE: Hon. Dianna Gould-Saltman

BY FAX

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION & INTERESTS OF AMICI 1

STATEMENT OF FACTS 3

ARGUMENT 6

I. CALIFORNIA RECOGNIZES THAT A TRANSGENDER PERSON MAY CHANGE THEIR GENDER 7

II. JAKE AND RESPONDENT ENTERED INTO A VALID MARRIAGE IN LOUISIANA 11

a. Jake Was Male According to Louisiana's Gender Change Statute at the Time of the Marriage 11

b. Jake's Court-Ordered Gender Change from California is Entitled to Full Faith and Credit 14

c. The Parties' Marriage is Valid Even Though Copies of Their Birth Certificates Were Not Provided to the Official Who Issued Their Marriage License 16

III. EVEN IF THE PARTIES' MARRIAGE WAS NOT VALID, THE PARTIES WOULD BE PUTATIVE SPOUSES UNDER CALIFORNIA LAW 17

IV. STATE COURTS ACROSS THE COUNTRY HAVE UPHELD THE VALIDITY OF MARRIAGES BETWEEN TRANSGENDER AND NON-TRANSGENDER SPOUSES 19

CONCLUSION 21

PROOF OF SERVICE 22

TABLE OF AUTHORITIES

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Baker v. Gen. Motors Corp.,
(1998) 522 U.S. 222 14

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Dkt. No. 139,251 & 139,252 (E.B.R. Parish, Fam. Ct. 01/16/02) 1, 12

Ceja v. Rudolph & Sletten, Inc.,
(2013) 56 Cal. 4th 1113 18

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(La. 2000) 774 So. 2d 119 12

Estate of Hafner,
(1986) 184 Cal. App. 3d 1371 18

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(1908) 210 U.S. 230 14

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(La. App. 2008) 998 So.2d 731 17

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(Tex. App. Feb. 13, 2014) 2014 WL 576085 20

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(Md. 2003) 816 A.2d 68 20

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(2008) 43 Cal.4th 757 2

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(D. Minn. 2012) 867 F. Supp. 2d 1023 20

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(La. App. 2007) 965 So. 2d 425, ... 17

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(Super. Ct. Orange County, 1998, No. 96D003769) 1, 19, 20

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(1942) 317 U.S. 287 14

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(La. 2005) 903 So. 2d 1071 12

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Fam. Code, § 2251 17

Fam. Code § 308, subd. (a) 6

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Health & Saf. Code, § 103425 ..... 7, 21

Health & Saf. Code § 103440 7

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La. Civ. Code Ann. art. 88 11

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La. Civ. Code Ann. art. 90 11

La. Rev. Stat. Ann. § 40:62 ..... 6, 7, 11, 21

La. Rev. Stat. Ann. § 9:225 16

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INTRODUCTION & INTERESTS OF AMICI

Amicus curiae National Center for Lesbian Rights (hereafter NCLR) is a non-profit public legal organization committed to advancing the rights of lesbian gay, bisexual, and transgender people and their families. NCLR has worked numerous cases around the country involving transgender people whose spouses claim that their marriage was not valid. Examples of those cases include: *Kantaras v. Kantaras* (Fla. 2d DCA 2004) 884 So.2d 155 (attached as Exhibit 1[1]); *Carter v. Carter*, Dkt. No. 139,251 & 139,252, p. 8 (E.B.R. Parish, Fam. Ct. 01/16/02) (upholding the validity of a marriage between a transgender woman and a non-transgender man); *Vecchione v. Vecchione* (Super. Ct. Orange County, 1998, No. 96D003769) (upholding the validity of a marriage between a transgender man and non-transgender woman).

Amicus curiae Transgender Law Center is the leading national legal organization dedicated to advancing the rights of transgender and gender nonconforming people. Transgender Law Center works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. Transgender Law Center has co-sponsored legislation modernizing the legal standard for changing the gender marker on a California birth certificate (*The Vital Statistics Modernization Act of 2011*); legislation permitting individuals born in California but currently living out of state to petition a California court to change the gender marker on their birth certificates (*The Equal I.D. Act* in 2009); as well counseled numerous

[1] Many out-of-state authorities cited by *Amici* have already been submitted to this Court by the Petitioner. To avoid duplication, *Amici* only attach exhibits of out-of-state authorities that have not been submitted by the Petitioner.

transgender individuals seeking to change their state and federal identity documents. As a result, *Amici* are deeply familiar with the legal standards for changing gender markers on identity documents, and with the legal standard for changing California identity documents, specifically.

Amici submit this brief in support of Petitioner, who is seeking a divorce in California, his state of residence, based on his valid Louisiana marriage to Respondent. Because this case involves a challenge to the validity of the underlying marriage, an issue that *Amici* has significant experience litigating and is of significant importance to advancing the rights of transgender people, *Amici* have a direct and substantial interest in the outcome of this litigation sufficient to allow them to file a brief in support of Petitioner.

The California Supreme Court has expressly determined that Superior Courts in California have "traditional broad discretion over the conduct of pending litigation" with "the authority to determine the manner and extent of . . . participation as amici curiae that would be of most assistance to the court." (*In re Marriage Cases* (2008) 43 Cal.4th 757, 792, fn. 10; see also Code Civ. Proc., §§ 128, 187.) Amici respectfully submit that this Court should exercise that broad discretion and allow *Amici* to file this brief.

It is well-established that transgender people who obtain a court-ordered gender change are considered that gender for all purposes, including marriage. (See, e.g., *M.T. v. J.T.* (N.J. Sup. Ct. App. Div. 1976) 355 A.2d 204, 209 [attached as Exhibit 2].) Moreover, the validity of the marriage is determined based on the time and place that the marriage occurred, and the parties' marriage was validly entered in Louisiana. *Amici* therefore submit this brief to assist the Court in applying Louisiana law regarding marriage and

gender changes to the facts of the instant case.

STATEMENT OF FACTS

Jake has known he was male for as long as he can remember. (Declaration of Jake Miller (hereafter "Miller Decl.") ¶ 3.) When he was growing up, Jake envisioned himself having stereotypical male characteristics such as short hair, a deep voice, body hair, and a muscular build. (Miller Decl. ¶ 4.) During his childhood, Jake told his parents and family that he was a boy. (Miller Decl. ¶ 5.) Unfortunately, as a result of his gender dysphoria, Jake hated himself physically and mentally. (Miller Decl. ¶ 7.) Jake began psychotherapy and was diagnosed with gender dysphoria. (Miller Decl. ¶ 6.)

In 1995, Jake began his transition to living life as male. (Miller Decl. ¶ 6.) That process marked the end of a very difficult time of intense psychological distress relating to his physical appearance being in conflict with his male gender identity. (Miller Decl. ¶ 7.) Jake applied for new identity documents that reflected his chosen name and male gender. (Miller Decl. ¶¶ 13, 14, 15.) As part of his transition, Jake also started taking testosterone to masculinize his appearance. (Miller Decl. ¶¶ 8, 9.) Watching those changes take effect, Jake felt as though he has been given a second chance at life. (Miller Decl. ¶ 9.)

In addition to the testosterone treatments, Jake underwent permanent surgical treatment to further align his body to conform to his male gender and to enable him to live more comfortably as a man. (Miller Decl. ¶ 10.) On July 19, 1996, he underwent extensive permanent "top surgery." (Miller Decl. ¶¶ 10, 12.) "Top surgery" is male chest reconstruction which not only removes female-appearing breast tissue, a visible marker of designated birth sex, but also the surgical reconstruction of chest contours and structures

that conform to those of a typical male. (Monstrey et al., *Sex Reassignment Surgery in the Female-to-Male Transsexual* (2011) 25 Seminars in Plastic Surgery 229, 230 [citing Hage & van Kesteren, *Chest-wall contouring in female-to-male transsexuals: basic considerations and review of the literature* (1995) 96 Plastic Reconstructive Surgery 386].) According to the surgeon who performed that procedure, the surgery was "for the sole purpose of altering his sexual characteristics to those of the opposite sex . . . . and for no other reason." (Petitioner's Trial Brief, Exhibit 8, Affidavit of Gary J. Alter ¶ 4.)

On November 12, 1998, Jake filed a petition with the Los Angeles Superior Court to legally change his name and gender. (Miller Decl. ¶ 14.) After attending a hearing on December 24, 1998, the court ordered that "[i]t is further ordered, adjudged and decreed that the gender of Jake Winslow Miller is hereby changed from female to male." (*In re Petition of Laura Jane Miller* (Super. Ct. L.A. County, 1998, No. BS054363).) From that point forward, Jake was to be considered legally male for all purposes, regardless of whether he used that order to correct his birth certificate or other government-issued identity documents. (*Ibid.*) The attorney who represented Jake in those proceedings was supposed to obtain a corrected birth certificate that reflected his new legal gender. (Miller Decl. ¶ 13.) However, the attorney failed to do that and, as a result, Jake did not receive the new birth certificate until April 2006. (Miller Decl. ¶ 15.) Relying on his court-ordered gender change, Jake married his first wife, whom he later divorced in California. (Miller Decl. ¶ 17.)

Several years later, in 2003, Jake met Elayne through a dating website designed specifically for transgender people and those interested in dating transgender people.

(Miller Decl. ¶ 18.) Jake moved from California to live with Elayne in New Orleans, Louisiana. (Miller Decl. ¶ 19.) The couple decided to get married. (Miller Decl. ¶ 20.) They applied for a marriage license in New Orleans and were only asked to provide a state-issued identification as proof of identity. (Miller Decl. ¶ 20.) Jake provided his Louisiana driver's license, which correctly indicated his gender as male. (Miller Decl. ¶¶ 20, 21.) The clerk who gave them the marriage license never informed them that certified copies of their birth certificates were needed in order to obtain the marriage license. (Miller Decl. ¶ 20.) Moreover, given that Jake's identity documents listed him as male, he had obtained a court-order gender change in California, and was previously legally married to a woman in California, Jake reasonably and correctly believed he was legally male and could legally marry Elayne in Louisiana. (Miller Decl. ¶¶ 17, 18, 19, 21.)

Jake and Elayne were granted a marriage license and married in a ceremony conducted on November 17, 2003. (Miller Decl. ¶ 20.) Approximately ten years later, they separated in September 2013. (Miller Decl. ¶ 26.) Following the separation, Jake moved back to California. (Miller Decl. ¶ 27.) He filed for a legal separation from Elayne in Los Angeles County Superior Court on October 12, 2013. (Petitioner's Trial Brief at p. 2.) The action was later converted to dissolution matter on April 24, 2014. (*Ibid.*)

In response to the dissolution action, Elayne alleged that her marriage with Jake was invalid. She has argued that their marriage was not valid because: 1) Louisiana would not have recognized Jake as legally male; and 2) the couple did not provide certified copies of their birth certificates, which Louisiana statute requires officers to collect before issuing a marriage license. (Respondent's Trial Brief at pp. 2-3.)

ARGUMENT

Jake and Elayne met all the eligibility requirements for marriage in Louisiana at the time of their marriage. They were a different-sex couple eligible to marry in Louisiana, obtained a marriage license, and solemnized their marriage on November 11, 2003. At the time the parties married, Jake was legally male under Louisiana law. The sex-reassignment surgery he had undergone met the Louisiana statutory requirement that he have "sex reassignment or corrective surgery which has changed the anatomical structure of the sex of the individual . . ." (La. Rev. Stat. Ann., § 40:62, subd. (A) [attached as Exhibit 3].) Moreover, Louisiana was required to recognize Jake's California court-ordered declaration that he had legally changed his gender and is legally male under the Full Faith and Credit Clause of the U.S. Constitution.

Additionally, the fact that the officer who issued their marriage license did not request copies of the parties' birth certificates has no effect on the validity of their marriage because under Louisiana law, statutory requirements relating to an official's duties in issuing marriage licenses or solemnizing marriages only bind the official and do not invalidate the marriage. Because the parties legally married in Louisiana, this marriage must be recognized in California. (Fam. Code, § 308, subd. (a) ["A marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state."].)

Finally, in any case, even if the parties' marriage were not plainly valid, which it is, the parties had a subjective good faith belief that they validly married and are putative

spouses entitled to all the same remedies as spouses for property division, support, and attorneys fees.

I. CALIFORNIA RECOGNIZES THAT A TRANSGENDER PERSON MAY CHANGE THEIR GENDER.

California has an established process for transgender people to seek a court-ordered gender change. (Health & Saf. Code, § 103425.) California, in conformity with the current medical standards for gender transition, no longer requires any type of sex-reassignment surgery in order for a transgender person to obtain a legal gender change; however, at the time that Jake petitioned the court for a gender change, California's law was virtually identical to that of Louisiana and required a person petitioning for a legal gender change to undergo "surgical treatment for the purpose of altering his or her sexual characteristics to those of the opposite sex." (Former Health & Saf. Code, § 103425, added by Stats. 1995, ch. 415, §4 and amended by Stats. 2011, ch. 718, §1, eff. Jan. 1, 2012.) The issuance of the order acknowledges and declares the person's legal gender and establishes that gender for all purposes, as evidenced by the fact that under both the Louisiana and California statutes, the petitioner can use the order to obtain a new birth certificate reflecting the new legal gender, and the old certificate is placed under seal, thereby ensuring the person's privacy and ability to live their life going forward in their legal gender. (Health & Saf. Code, § 103440; La. Rev. Stat. Ann., § 40:62, subd. (D).)[2]

[2] The order is also recognized by the federal government. See, e.g., SSA Program Operations Manual Sys. RM 10212.200 (Sept. 30, 2013), *available at* http://policy.ssa.gov/poms.nsf/lnx/0110212200.

Gender identity is a deeply felt, internal identification and self-image as male or female. (American Psychological Association, *Answers To Your Questions About Transgender People, Gender Identity, and Gender Expression*, *available at* http://www.apa.org/topics/sexuality/transgender.pdf [as of Jul. 14, 2014].) Everyone has a gender identity. In most cases, a person's gender identity aligns with their designated birth sex. For transgender people, however, their birth sex and their gender identity are different. (See, e.g., Cole et al., *Treatment of Gender Dysphoria* (1994) 90 Tex. Med. 68, 68-72.) Although the particular factors that contribute to the development of a person's gender identity are still unknown, it is extremely well established that some individuals have a gender identity that does not match their outward anatomy at birth. (See, e.g., Cohen-Kettenis & Gooren, *Transsexualism: A Review of Etiology, Diagnosis and Treatment* (1999) 46 J. Psychosomatic Res. 315; Zhou et al., *A sex difference in the human brain and its relation to transsexuality* (1995) 378 Nature 68; Gooren, *Gender Transpositions: The Brain Has Not Followed Other Markers of Sexual Differentiation?* (2000) 4 Int'l J. of Transgenderism (2000), *available at* http://www.wpath.org/journal/www.iiav.nl/ezines/web/IJT/97-03/numbers/symposion/abstracts-1.htm [as of Jul. 14, 2014].) Today, due to greater understanding and support, the age at which many transgender children understand and express their gender identity is dropping. (See, e.g., Ehrensaft, *Gender Identity Creativity* (2012) 59 J. of Homosexuality 337, 345 ["[T]he vast majority of gender nonconforming children . . . . come from stable families in which the most distinguishing features of their developmental histories are the parents' reports that their child just presented him or herself

that way, typically in the second year of life, but even occasionally as early as nine months to one year of age."].) In the past, however, including when Jake was growing up, many transgender children and young adults suffered without having access to accurate information or support. (See, e.g., Vanderburgh, *Appropriate Therapeutic Care for Families with Pre-Pubescent Transgender/Gender-Dissonant Children* (2009) 26 Child Adol. Soc. Work J. 135, 139.) Even today, the age at which individuals come to understand and express their gender identity may vary based on their social development, home environment, and access to resources, among other factors. (See Mallon, *Practice with Transgendered Children* in Social Services with Transgendered Youth (Mallon edit., 1999) pp. 55, 58.)

Transgender people experience varying levels of psychological distress as a result of the disconnect between their gender identity and physical bodies. (American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) p. 451.) This distress, often referred to as Gender Dysphoria, is a serious medical condition with established standards of care. (*Id.* at pp. 451-59; World Professional Association for Transgender Health, *Standards of Care for the Health Transsexual, Transgender, and Gender Non-Conforming People* (7th ed. 2012); The Endocrine Society, *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline* (2009).) Without appropriate treatment, people experiencing Gender Dysphoria can develop significant mental health symptoms such as depression, suicidal ideation, severe anxiety, and engage in self-harming behaviors like cutting. (Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) 80-83;

Bockting et al., *Counselling and Mental Health Care of Transgender Adults and Loved Ones* (2006) 25-28, *available at* http://www.amsa.org/AMSA/Libraries/Committee_Docs/CounselingAndMentalHealthCareOfTransgenderAdultsAndLovedOnes.sflb.ashx [as of Jul. 14, 2014]; Brill & Pepper, *The Transgender Child: A Handbook for Families and Professionals* (2008) 114.)

To alleviate that distress, many transgender people undertake a process of transition to live in a manner consistent with their gender identity. (Israel & Tarver, *Transgender Care: Recommended Guidelines, Practical Information, and Personal Accounts* (1997) 29-30 ["The transition from one gender to another occurs across psychological and physical planes and is experienced as self-fulfilling and stress-relieving for the transgender individual"].) The process can include both social and medical components. (WPATH, *Standards of Care*, *supra*, at pp. 9-10.) Social transition includes changing a person's manner of dress and appearance, seeking a court-ordered name and gender change, and interacting with the public in a manner consistent with their gender identity. (See Brill & Pepper, *supra*, at pp. 113-15.) Many transgender people also seek out medical treatment to further bring their bodies in line with their gender identity. (WPATH, *Standards of Care*, *supra*, at pp. 9-10.) Those treatments can include hormone medication and a variety of surgeries, which may or may not include genital reconstructive surgery. (*Ibid.*) Genital reconstructive surgery is not required as a part of medical transition, and many transgender people, especially including transgender men such as Jake, do not obtain genital reconstructive surgery due to its complexity and cost, or because they are able to live comfortably and successfully without it. (*Id.* at pp. 8-9, 54.)

II. JAKE AND RESPONDENT ENTERED INTO A VALID MARRIAGE IN LOUISIANA.

When Jake and Elayne married, they were a different-sex couple who met the requirements for entering into a valid marriage. The Louisiana Civil Code sets forth three basic requirements for a valid marriage: (1) the absence of a legal impediment to the marriage; (2) a marriage ceremony; and (3) consent of the parties. (La. Civ. Code Ann. art. 87.) The only legal impediments to a marriage are: either party is already married to another person, (La. Civ. Code Ann., art. 88 [attached as Exhibit 4]); the parties are close relatives whether by blood or adoption, (La. Civ. Code Ann., art. 90 [attached as Exhibit 5]); or the parties are of the same sex, (La. Civ. Code Ann., art. 89 [attached as Exhibit 6]). The parties met all of these requirements to validly marry. The parties obtained a marriage license and celebrated their marriage in a ceremony, and both parties consented to the marriage. There was no legal impediment to their marriage because neither party was married at the time of the marriage; the parties are not closely related; and Jake met the requirements for being legally male under relevant Louisiana and federal law at the time of their marriage.

a. Jake Was Male According to Louisiana's Gender Change Statute at the Time of the Marriage.

Jake was legally male under Louisiana law at the time the parties married. Like most states, Louisiana permits transgender people to seek a court order to change the gender designation on their birth certificate after undergoing "sex reassignment or corrective surgery which has changed the anatomical structure of the sex of the individual to that of a sex other than that which appears on the original birth certificate of the individual." (La. Rev. Stat. Ann., § 40:62(A).) This statute does not require that a transgender person undergo

any particular procedure or set of procedures. At least one Louisiana court has previously granted a court-ordered gender change to a transgender man who had not had genital surgery because he had a "surgery to facilitate anatomical sex change," coupled with hormone replacement therapy and mental health services. (*Pierre v. Pierre* (2004) 898 So.2d 419, 421 & fn. 5 [noting in a later proceeding to modify child custody after a divorce of a transgender husband and a non-transgender wife that that the transgender man had previously received a court-ordered gender change authorized by Louisiana statute];[3] see also *Carter v. Carter* (E.B.R. Parish, Fam. Ct. Jan. 16, 2002) Dkt. No. 139,251 & 139,252, p. 8 [upholding the validity of a marriage between a transgender woman who had changed her gender and a non-transgender man].)

At the time that Jake obtained his court-ordered gender change in California, California's statute governing gender changes was nearly identical to Louisiana's. In order to obtain a court order changing their gender and allowing amendment of a birth certificate, a transgender person would have to show that they have "undergone surgical treatment for the purpose of altering his or her sexual characteristics to those of the opposite sex." (Former Health & Saf. Code, § 103425.) Neither state required any particular type of

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[3] Unlike most states, Louisiana has a civil law system, which places greater weight on the Louisiana Civil Code and Revised Statutes than on judicial opinions. (La. Civ. Code Ann. art. 3 [attached as Exhibit 7].) Under Louisiana's civil law system, the Louisiana Civil Code is the central source of law. (*Ibid.*) Within this legal system, the state's revised statutes are "to be interpreted according to the rules set forth in the Civil Code." (*Willis-Knighton Med. Ctr. v. Caddo Shreveport Sales & Use Tax Comm'n* (La. 2005) 903 So. 2d 1071, 1085 [attached as Exhibit 8].) As a result, individual judicial opinions do not by themselves establish precedent, (*Doerr v. Mobil Oil Corp.* (La. 2000) 774 So. 2d 119, 128 [attached as Exhibit 9]); however, a series of cases reaching the same result can form the basis for a "common law" type interpretation of a code section or statute. (*Ibid.*)

surgery to obtain a gender change – each statute merely required surgical intervention that changed a person's sex characteristics for the purpose of permanently changing the person's sex. The surgery Jake had amply met the requirements of both statutes. Jake's petition for the gender change was based on his having undergone permanent surgical treatment for male chest reconstruction. (Miller Decl. ¶¶ 12-14; Petitioner's Trial Brief, Exhibit 8, Affidavit of Gary J. Alter ¶ 4.) This procedure is more than a simple removal of the breast tissue and differs significantly from a mastectomy undergone by women for the purpose of treating cancer. (Monstrey et al., *supra*, 25 Seminars in Plastic Surgery at p. 230.) The surgeon makes the incision into the breast tissue in a manner that will allow the subsequent scars to help form the contours of a typical male chest. Moreover, the surgeon removes the nipple-areolar complex from its original position, resizes the areola to approximate that of a male's and reconnects the nipple-areolar complex in a position that is aesthetically consistent with a typical male chest. Thus, the surgery changes the anatomical structure of a defining female sex characteristic into that of a male one. This is an extensive, radical surgery resulting in permanent anatomical changes for the purpose of gender transition. The permanence and seriousness of this surgery reflect the seriousness of gender dysphoria and the deep-seated nature of gender identity.

Given the non-specific language of the Louisiana gender change statute and the significance of the surgical procedure Jake had undergone prior to the marriage, Jake met the criteria outlined in Louisiana statute section 40:62 and was legally male under Louisiana law.

b. Jake's Court-Ordered Gender Change from California is Entitled to Full Faith and Credit.

Moreover, at the time of their marriage in 2003 – as well as now – Louisiana was required to recognize Jake as legally male for all purposes by the Full Faith and Credit Clause of the U.S. Constitution, which requires every state to fully recognize court judgments issued by other states. Prior to the parties' marriage, Jake obtained a valid, legal gender change order from a California court in 1998. As the U.S. Supreme Court has explained, there are no exceptions to the mandate created by the Full Faith and Credit Clause that every state must recognize court judgments issued by courts in other states – a state's obligation to honor judgments issued by the courts of sister states is "exacting" so long as the original state had subject-matter jurisdiction over the action. (*Baker v. Gen. Motors Corp.* (1998) 522 U.S. 222, 233.) As the U.S. Supreme Court explained, the judgments of sister states must be given full force and effect by every state, even if the judgment conflicts with the forum state's public policy.[4] (*Ibid* ["our decisions support no roving 'public policy exception' to the full faith and credit due judgments"]; *Williams v. North Carolina* (1942) 317 U.S. 287, 294 [North Carolina was required to recognize a Nevada divorce decree that would not have been granted under North Carolina law].)

Full faith and credit is required even if the judgment was erroneous as a matter of law, so long as the issuing court had subject matter jurisdiction. (*Fauntleroy v. Lum* (1908) 210 U.S. 230, 237 [holding that so long as the issuing court had jurisdiction over the matter, "the judgment cannot be impeached in Mississippi even if it went upon a misapprehension

[4] As explained above, the Louisiana and California public policy regarding gender changes are identical, so there is no conflict in this case.

of the . . . law"].) In this case, however, Jake also met the statutory requirements for filing the petition (*i.e.* surgery) as well as the procedural prerequisites for obtaining a name and gender change order (*i.e.* publication of notice, in-person appearance in court).

On December 24, 1998, the Los Angeles County Superior Court in California entered an order that states "[i]t is further ordered, adjudged and decreed that the gender of Jake Winslow Miller is hereby changed from female to male." (*In re Petition of Laura Jane Miller* (Super. Ct. L.A. County, 1998, No. BS054363).) Full Faith and Credit requires Louisiana to recognize Jake's court-ordered gender change because it was a final judgment and California had subject matter jurisdiction over the proceeding. California Superior Courts are courts of general and original jurisdiction with subject matter jurisdiction over all proceedings not specifically removed from their jurisdiction. (Cal. Const. Art. 6, § 10.) California statute explicitly authorized the "superior court of the county where the petitioner resides" to issue a gender change order. (Former Health & Saf. Code, § 103425.) At the time the order was issued, Jake was living in Los Angeles County, giving the court jurisdiction over the matter. Consequently, there is no basis for challenging the order or the full faith and credit to which it is entitled.

Thus, Jake's name and gender change order from California is entitled to full faith and credit and a Louisiana court would consider Jake to be male for the purpose of marriage, making his marriage to Respondent a valid, opposite-sex marriage.

c. The Parties' Marriage is Valid Even Though Copies of Their Birth Certificates Were Not Provided to the Official Who Issued Their Marriage License.

Elayne incorrectly argues that the parties' marriage is invalid because they did not provide copies of their birth certificates at the time they applied for a marriage license. (Response and Request for Dissolution of Marriage, Attachment at p. 1 (April 28, 2014).) Louisiana statute requires that certified copies of the couples' birth certificates be attached to an application for marriage license. (La. Rev. Stat. Ann., § 9:225 [attached as Exhibit 10].) An officer authorized to issue marriage licenses is not permitted to issue a license without the certified copies of the birth certificate, (La. Rev. Stat. Ann., § 9:225(B)), although a court may waive the birth certificate requirement, (La. Rev. Stat. Ann., § 9:228 [attached as Exhibit 11]).

Although the parties obtained a marriage license apparently without providing certified copies of their birth certificates, this procedural defect does not invalidate their marriage. Under well-settled Louisiana law, an official's failure to comply with procedural requirements regarding the provision of marriage licenses and the performance of marriage ceremonies does not affect the validity of the marriage. (See 1987 Revision Comments, La. Civ. Code Ann., art. 91 ["An officiant's failure to comply with any other ceremonial provision than is imposed by [Civil Code Articles 87 and 91] may subject him to civil sanction . . . but it will not invalidate the resulting marriage."] [attached as Exhibit 12].) Louisiana courts have likewise long held that requirements relating to "the manner and form in which marriages are to be contracted and celebrated . . . are merely directory to the celebrant, and that the failure to technically observe these formalities does not invalidate

the marriage." (*Parker v. Saileau* (La. Ct. App. 1968) 213 So. 2d 190, 191 [upholding the validity of a marriage despite the failure to comply with the requirement that a ceremony may not be performed until 72 hours after a marriage license is issued and the then-requirement of having three witnesses present at the ceremony, and citing cases]; *Tennison v. Nevels* (La. App. 2007) 965 So. 2d 425, 427 [holding that a marriage is valid so long as the requirements of the Code are met, and failure to have two witnesses present at the wedding ceremony, as required by statute, does not invalidate the marriage]; cf. also, *Ghassemi v. Ghassemi* (La. App. 2008) 998 So.2d 731, 738 ["[I]t is the public policy of Louisiana that every effort be made to uphold the validity of marriages."].)

III. EVEN IF THE PARTIES' MARRIAGE WAS NOT VALID, THE PARTIES WOULD BE PUTATIVE SPOUSES UNDER CALIFORNIA LAW.

Even if the parties did not legally marry in Louisiana, which they did, this Court should recognize them as putative spouses with all the same rights relating to property division, support, and attorneys' fees as spouses in a dissolution action. California statute provides that if a marriage is invalid, if "either party or both parties believed in good faith that the marriage was valid, the court shall . . . [d]eclare the party or parties to have the status of a putative spouse" and shall apply the rules governing dissolutions of marriage to questions of property division, support, and attorneys' fees. (Fam. Code, §§ 2251, 2254-55.)[5] The California Supreme Court has explained that the putative spouse must only show

[5] Respondent incorrectly argues that the putative spouse doctrine does not apply because Louisiana's putative spouse doctrine is not satisfied. (Respondent's Trial Brief at p. 6.) If a marriage entered in another state is found to be invalid in a California proceeding, California applies its own putative spouse doctrine, not the

that he or she subjectively believed in good faith that the marriage was validly entered. (*Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal. 4th 1113, 1120 ["we conclude that the good faith inquiry is purely subjective and evaluates the state of mind of the alleged putative spouse, and that the reasonableness of the claimed belief is properly considered as part of the totality of the circumstances in determining whether the belief was genuinely and honestly held."].)

Besides alleging that their marriage was a nullity, Elayne does not offer any facts to indicate that Jake acted in bad faith in entering into the marriage, or that she acted in bad faith. To the contrary, Jake has provided the Court with ample basis for finding that he entered the marriage based on a good faith belief that Louisiana recognized his legal gender change and that he had provided all the documentation required to obtain a valid marriage license. As previously noted, prior to the marriage Jake obtained a court order from the Los Angeles County Superior Court declaring that he had legally changed his gender. With that order, he had his government-issued identity documents changed to reflect his corrected male name and gender identity. He then married his first wife, whom he later divorced, in reliance on his gender change order. (Miller Decl. ¶ 17.) Because he had a court-ordered gender change from California, Jake had every reason to believe that Louisiana would recognize him as legally male. Similarly, when applying for the marriage license, the clerk who processed their marriage license application never asked Jake or Elayne for certified

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putative spouse doctrine in the state of the attempted marriage. (See, e.g., *Estate of Hafner* (1986) 184 Cal. App. 3d 1371, 1379 [recognizing a putative spouse who attempted to marry in Nevada].)

copies of their birth certificates. (Miller Decl. ¶ 20.) Because the clerk did not request their birth certificates, Jake had no reason to know that the license could not be issued without them. Once the clerk issued the license, Jake had no reason to believe that he and Elayne had not met all the requirements for entering into a valid marriage in Louisiana. Thus, even if the parties' marriage was not valid under Louisiana law, which it is, this court should recognize that they are putative spouses under California law.

IV. STATE COURTS ACROSS THE COUNTRY HAVE UPHELD THE VALIDITY OF MARRIAGES BETWEEN TRANSGENDER AND NON-TRANSGENDER SPOUSES.

Treating Jake and Elayne's marriage as valid is consistent with the growing body of case law that respects and affirms the gender identity of the transgender litigant. In these cases, courts have found that the transgender spouse's transition, which included obtaining corrected identity documents, requires that the transgender spouse be treated in a manner consistent with their gender identity. For example, in *M.T. v. J.T.*, *supra*, 355 A.2d at p. 209, a New Jersey appellate court ruled that in the context of marriage "if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards." Nearly twenty years later, a California Superior Court in Orange County in an unpublished trial court opinion, followed the reasoning of *M.T.* and rejected a non-transgender spouse's argument that the couple's marriage was an invalid same-sex marriage. (*Vecchione v. Vecchione* (Super. Ct. Orange County, 1998, No. 96D003769) p.2.) Again, the court focused on the steps that the transgender spouse had taken to transition and California's policy of recognizing a transgender person's gender identity,

which was embodied in the statutory process that allowed transgender people to legally change their gender. (*Ibid*; see also *In re Heilig* (Md. 2003) 816 A.2d 68, 87 [recognizing transgender residents of Maryland could petition state court for a gender change based on statutory requirement to recognize gender change orders from other states and the transgender person made a "permanent and irreversible change" of gender] [attached as Exhibit 13].) In 2012, a federal district court held that an employee benefits plan had wrongly denied healthcare benefits to an employee's transgender spouse, finding that their marriage was valid under Minnesota law and that Minnesota law allowed the transgender spouse to change her gender. (*Radtke v. Miscellaneous Drivers & Helpers Union Local No. 638 Health, Welfare, Eye & Dental Fund* (D. Minn. 2012) 867 F. Supp. 2d 1023, 1036 [attached as Exhibit 14].)

The few courts that have departed from this reasoning have been located in states that, at the time, did not have a process for obtaining a legal gender change. (See, e.g., *Kantaras v. Kantaras*, *supra*, 884 So.2d at p. 161.) For example, a Texas court invalidated a marriage between a transgender and non-transgender spouse in 1999, finding that Texas statutes did not allow a change in gender at that time. (*Littleton v. Prange* (Tex. App. San Antonio 1999) 9 S.W.3d 223, 230 [attached as Exhibit 15].) However, Texas later enacted such a statute, and earlier this year, a Texas appellate court held that because Texas now has a statute allowing transgender individuals to change the gender designation on their birth certificates, a transgender woman validly married a man after changing her gender. (*In re Estate of Araguz* (Tex. App. Feb. 13, 2014) 2014 WL 576085 [decision not yet released for publication] [attached as Exhibit 16].) Both California, where Jake was born,

and Louisiana, where Jake and Elayne were married, explicitly permit a transgender person to obtain a court-ordered gender change and to correct their government-issued identity documents to be consistent with their gender identity. (Health & Saf. Code, § 103425; La. Rev. Stat. Ann., § 40:62(A).) As discussed previously, Jake has met the requirements of those provisions and obtained a court-ordered gender change.

Thus, there is no basis for departing from the well-established policies of those states to uphold the validity of marriages of opposite-sex couples where one spouse is transgender.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court uphold the validity of the parties' marriage.

Respectfully submitted,

July 18, 2014

By: _____
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TRANSGENDER LAW CENTER
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PROOF OF SERVICE BY FIRST CLASS MAIL

Case Name: Jake Miller v. Elayne Angel
Case Number: GD 053 180

I am over the age of eighteen years and not a party to this matter. I am employed by the National Center for Lesbian Rights in the City and County of San Francisco in the State of California; my business address is 870 Market Street, Suite 370, San Francisco, CA 94102.

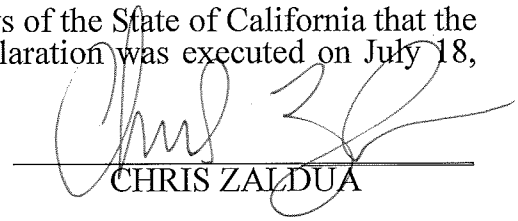
On July 18, 2014, I served the attached documents entitled:

1. **Brief of *Amici Curiae* National Center for Lesbian Rights and Transgender Law Center in Support of Petitioner**

by placing true copies thereof in sealed envelopes and causing such envelopes to be delivered on the following business day by First Class Mail through the U.S. Postal Service, addressed to the following parties to this action:

Alana Chazan Baumer & Chazan Law Group, LLP 5015 Eagle Rock Blvd., Suite 220 Los Angeles, CA 90041	Attorney for Petitioner Jake Miller
Michael L. Whitmarsh Land Whitmarsh LLP 1900 Avenue of the Stars, Suite 1800 Los Angeles, CA 90064	Attorney for Respondent Elayne Angel

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 18, 2014, at San Francisco, California.



CHRIS ZALDUA