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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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14 **KRISTIN M. PERRY, et al.,**

15 Plaintiffs,

16 v.

17 **ARNOLD SCHWARZENEGGER, et al.,**

18 Defendants.
 19

Civil Case No. 09-2292-VRW

**ATTORNEY GENERAL'S CASE
 MANAGEMENT STATEMENT**

Date: August 19, 2009
 Time: 10 a.m.
 Courtroom: 6
 Judge: Hon. Vaughn R. Walker, C.J.
 Trial Date: None
 Action Filed: 5/27/2009

1 In accord with the reasoning of the California Supreme Court in the *Marriage Cases*, 43
2 Cal.4th 757 (2008), defendant California Attorney General Edmund G. Brown Jr. has admitted
3 the material allegations of the Complaint. He is therefore an interested but nominal defendant in
4 this case. As a nominal defendant, the Attorney General will likely play a minor role in creating
5 the evidentiary record in these proceedings, but he stands ready to assist the Court as required and
6 to work cooperatively with the other parties to do so. The Attorney General plans to participate in
7 the case primarily by briefing the legal issues as he sees them from the perspective of the State of
8 California.

9 The Attorney General participated in a conference call with the other parties at which
10 methods and shortcuts for the introduction of evidence were discussed. During that call, there
11 was some discussion of the defendant intervenors and the plaintiffs exchanging draft joint case
12 management statements with all the parties. This made sense at the time, because it was apparent
13 that the plaintiffs and defendant intervenors would be shouldering the greatest share of the burden
14 in creating the record. As of the date of this writing, however, the Attorney General has not
15 received a draft joint case management statement from any party for review.

16 Accordingly, the Attorney General respectfully submits this case management statement as
17 directed by the Court at the hearing in this matter held July 2, 2009 and pursuant to Federal Rule
18 of Civil Procedure, Rule 16, Civil Local Rule 16 and the Court's Standing Order for All Judges.

19 1. **Jurisdiction and Service.** The asserted basis for jurisdiction is 28 U.S.C. § 1983.
20 The Attorney General does not challenge the Court's jurisdiction or venue and is informed and
21 believes that all parties have been served.

22 2. **Facts.** In May 2008, the California Supreme Court held that same-sex couples had
23 right to marry under principles of equal protection and due process found in the California
24 Constitution. *In re Marriage Cases*, 43 Cal.4th 757 (2008). The following November, however,
25 the voters passed Proposition 8, which amended the state constitution to declare that only
26 marriages between a man and a woman would be legally recognized. Between May and
27 November 2008, over 18,000 same-sex couples were married in California. In May 2009, The
28 California Supreme court upheld the validity of these marriages, but declared that the voters had

1 the authority to carve out of the state constitution an exception to the rights of liberty and equal
2 protection with respect to marriage. *Strauss v. Horton*, ___ Cal.4th ___, 93 Cal.Rptr.3d 591
3 (2009).

4 This suit followed, challenging Proposition 8 under the United States Constitution. The
5 Court identified at a high level the factual issues in dispute in its June 30, 2009 Order, at pages 6-
6 9. The Attorney General is informed and believes that the plaintiffs and defendant intervenors
7 (who are to date the real parties in interest) have not been able to agree to any stipulations that
8 would obviate the need for a trial on these issues.

9 3. **Legal Issues.** The legal issue in this case is whether Proposition 8 violates the
10 Fourteenth Amendment.

11 4. **Motions.**

12 a. Resolved and Pending Motions:

13 i. Plaintiffs' Motion for Preliminary Injunction. Status: Continued pending
14 trial on the merits.

15 ii. Motion to Intervene as Defendants of Dennis Hollingsworth, Gail J.
16 Knight, Martin F. Gutierrez, Hak-Shing William Tam, Mark A. Jansson, and
17 Protectmarriage.Com – Yes On 8, a Project of California Renewal. Status: Granted by Order
18 filed June 30, 2009.

19 iii. Motion to Intervene as Defendants of Campaign for California Families.
20 Status: set for hearing August 19, 2009.

21 iv. Motion to Intervene as Plaintiffs of Our Family Coalition, Lavender
22 Seniors of the East Bay, and Parents, Family, and Friends of Lesbians and Gays. Status: set for
23 hearing August 19, 2009.

24 v. Motion to Intervene as Plaintiffs of the City and County of San Francisco.
25 Status: set for hearing August 19, 2009.

26 b. Anticipated Motions: The Attorney General anticipates that he will brief any
27 dispositive motions brought, but does not anticipate initiating motion practice.
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- 1 5. **Amendment of Pleadings.** None anticipated.
- 2 6. **Evidence Preservation.** No issues anticipated.
- 3 7. **Disclosures.** None yet made.
- 4 8. **Discovery.** None yet initiated. At this time the Attorney General does not anticipate
5 initiating discovery, but reserves the right to change position as the case parameters become more
6 focused.
- 7 9. **Class Allegations.** None.
- 8 10. **Related Cases.** None.
- 9 11. **Relief Sought.** The plaintiffs seek a declaration invalidating Proposition 8, and an
10 order permanently enjoining its enforcement.
- 11 12. **Settlement.** This case is not amenable to settlement.
- 12 13. **Consent to Magistrate.** This case is not amenable to reference.
- 13 14. **Other References.** This case is not amenable to reference.
- 14 15. **Narrowing of Issues.** It may be that some of the factual issues raised by the Court's
15 June 30, 2009 Order are amenable to summary adjudication, but that will not be clear until some
16 discovery is conducted.
- 17 16. **Expedited Schedule.** As stated above, the Attorney General expects that the
18 plaintiffs and defendant intervenors will shoulder the greatest burden in creating a record for the
19 court. Accordingly, it is not appropriate for the Attorney General to suggest a schedule in the
20 absence of any understanding from those parties about how long they think it will take to prepare
21 for trial.
- 22 17. **Scheduling.** Please see above.
- 23 18. **Trial.** This will be a bench trial. Length to be determined in consultation with the
24 plaintiffs and defendant intervenors.
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1 19. **Civil Local Rule 3-16 Disclosure.** The Attorney General is a government entity
2 excused from disclosure.

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Dated: August 7, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
JONATHAN K. RENNER
Senior Assistant Attorney General
GORDON BURNS
Deputy Solicitor General

/s/Tamar Pachter

TAMAR PACHTER
Deputy Attorney General
Attorneys for Defendant
Attorney General Edmund G. Brown Jr.

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CERTIFICATE OF SERVICE

Case Name: **Kristin M. Perry, et al. v. Arnold Schwarzenegger, et al.** No. **3:09-cv-02292-VRW**

I hereby certify that on August 7, 2009, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

ATTORNEY GENERAL'S CASE MANAGEMENT STATEMENT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On August 7, 2009, I have mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2009, at San Francisco, California.

Esther McDonald
Declarant

/s/ Esther McDonald
Signature