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California, Mark B. Horton, in his official capacity as Director of the  
8 California Department of Public Health and State Registrar of Vital  
Statistics, and Linette Scott, in her official capacity as Deputy Director  
9 of Health Information & Strategic Planning for the California Department  
of Public Health

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**  
13

14 KRISTIN M. PERRY, et al., )

15 Plaintiffs, )

16 CITY AND COUNTY OF SAN )  
FRANCISCO, )

17 Plaintiff-Intervenor, )

18 v. )

19 ARNOLD SCHWARZENEGGER, in his )  
20 official capacity as Governor of California, )  
et al., )

21 Defendants, )

22 and )

23 PROPOSITION 8 OFFICIAL )  
24 PROPONENTS DENNIS )  
HOLLINGSWORTH, et al., )

25 Defendant-Intervenors. )  
26 \_\_\_\_\_ )

Case No. 09-CV-02292 VRW

**THE ADMINISTRATION'S ANSWER TO  
CITY AND COUNTY OF SAN  
FRANCISCO'S COMPLAINT IN  
INTERVENTION FOR DECLARATORY,  
INJUNCTIVE OR OTHER RELIEF**

1 Defendants Arnold Schwarzenegger, Mark B. Horton, and Linette Scott  
2 (collectively “the Administration”), by and through counsel, answer the City and County of San  
3 Francisco’s (“Plaintiff-Intervenor”) Complaint in Intervention for Declaratory, Injunctive, or  
4 Other Relief (the “Complaint in Intervention”) as follows:

5 This legal proceeding presents important constitutional questions that require and  
6 warrant judicial determination. In a constitutional democracy, it is the role of the courts to  
7 determine and resolve such questions. To the extent that Plaintiff-Intervenor has stated a  
8 justiciable controversy, setting forth federal constitutional challenges to Proposition 8, it is  
9 appropriate for the federal courts to determine and resolve those challenges. The Administration  
10 encourages the Court to resolve the merits of this action expeditiously.

11 In response to each of the specific allegations in Plaintiff-Intervenor’s Complaint  
12 in Intervention, the Administration responds as follows:

13 1. In response to Paragraph 1 of the Complaint in Intervention, the  
14 Administration admits that, following the California Supreme Court’s decision in *In re Marriage*  
15 *Cases*, 43 Cal. 4th 757 (2008), same-sex couples had the same right to marry as heterosexual  
16 couples in California. The Administration further admits that in November 2008, California  
17 voters passed Proposition 8, and that Proposition 8 amended the California Constitution by  
18 adding a provision that states: “Only marriage between a man and a woman is valid or  
19 recognized in California.” Cal. Const. art. I, § 7.5. To the extent that the remainder of  
20 Paragraph 1 contains allegations that require a response, the Administration responds by stating  
21 that it lacks knowledge or information sufficient to admit or deny those allegations.

22 2. Paragraph 2 of the Complaint in Intervention merely recites the relief that  
23 Plaintiff-Intervenor seeks, and does not require a response. To the extent that Paragraph 2  
24 contains an allegation that requires a response, the Administration lacks knowledge or  
25 information sufficient to admit or deny any such allegation.

26 3. In response to Plaintiff-Intervenor’s incorporation by reference of  
27 Plaintiffs’ “statement of Jurisdiction and Venue,” as set forth in Paragraph 3 of the Complaint in  
28 Intervention, the Administration adopts and incorporates by reference its answer to Plaintiffs’

1 statement of jurisdiction and venue set forth in “The Administration’s Answer to Complaint for  
2 Declaratory, Injunctive, or Other Relief” (Doc. # 46), ¶¶ 3-4.

3           4.       In response to Paragraph 4 of the Complaint in Intervention, the  
4 Administration admits that this action arises under the Fourteenth Amendment to the United  
5 States Constitution and that Plaintiff-Intervenor seeks declaratory relief under 28 U.S.C. § 2201  
6 and any further relief that may be proper under 28 U.S.C. § 2202. As to any remaining  
7 allegations in Paragraph 4, the Administration lacks knowledge or information sufficient to admit  
8 or deny those allegations.

9           5.       In response to Paragraph 5 of the Complaint in Intervention, the  
10 Administration admits that this is an action brought pursuant to 28 U.S.C. §§ 2201-02 and  
11 42 U.S.C. § 1983, seeking a declaration that Proposition 8 is unconstitutional under the Due  
12 Process and Equal Protection Clauses of the Fourteenth Amendment of the United States  
13 Constitution. The Administration further admits that Plaintiffs and Plaintiff-Intervenor seek a  
14 permanent injunction preventing Defendants from enforcing Proposition 8. As to any remaining  
15 allegations in Paragraph 5, the Administration lacks knowledge or information sufficient to admit  
16 or deny those allegations.

17           6.       In response to Paragraph 6 of the Complaint in Intervention, the  
18 Administration admits that Plaintiff-Intervenor seeks a declaration that California Family Code  
19 sections 300, 301 and 308.5 are unconstitutional under the Due Process and Equal Protection  
20 Clauses of the Fourteenth Amendment to the United States Constitution. The Administration  
21 further admits that Plaintiff-Intervenor seeks a permanent injunction preventing Defendants from  
22 enforcing California Family Code sections 300, 301 and 308.5 against Plaintiffs. As to any  
23 remaining allegations in Paragraph 6, the Administration lacks knowledge or information  
24 sufficient to admit or deny those allegations.

25           7.       In response to Paragraph 7 of the Complaint in Intervention, the  
26 Administration admits that Plaintiff-Intervenor is a unit of local government that is responsible  
27 for issuing civil marriage licenses and solemnizing and recording marriages. As to the remaining  
28

1 allegations in Paragraph 7, the Administration lacks knowledge or information sufficient to admit  
2 or deny those allegations.

3           8.       In response to Paragraph 8 of the Complaint in Intervention, the  
4 Administration admits that Plaintiff-Intervenor brought this action seeking the declarations and  
5 injunctions described therein, and that Plaintiff-Intervenor seeks to recover its attorneys' fees,  
6 costs, and expenses incurred in this action and any other relief that this Court may order. As to  
7 any remaining allegations in Paragraph 8, the Administration lacks knowledge or information  
8 sufficient to admit or deny those allegations.

9           9.       The Administration admits the allegations in Paragraph 9 of the Complaint  
10 in Intervention.

11           10.      The Administration admits the allegations in Paragraph 10 of the  
12 Complaint in Intervention.

13           11.      The Administration admits the allegations in Paragraph 11 of the  
14 Complaint in Intervention.

15           12.      The Administration admits the allegations in Paragraph 12 of the  
16 Complaint in Intervention.

17           13.      The Administration admits the allegations in Paragraph 13 of the  
18 Complaint in Intervention.

19           14.      The Administration admits the allegations in Paragraph 14 of the  
20 Complaint in Intervention.

21           15.      The Administration adopts and incorporates by reference its answer to  
22 Plaintiffs' statement of facts as set forth in the Administration's Answer to Complaint for  
23 Declaratory, Injunctive, or Other Relief (Doc. # 46), ¶¶ 20-36.

24           16.      In response to Paragraph 16 of the Complaint in Intervention, the  
25 Administration admits that the California Supreme Court has held that, under California law,  
26 county clerks and county recorders have a mandatory ministerial duty to enforce marriage laws  
27 and generally do not have the authority, in the absence of a judicial determination of  
28 unconstitutionality, to refuse to enforce such laws on the basis of a belief that they are

1 unconstitutional. *See Lockyer v. City & County of San Francisco*, 33 Cal. 4th 1055, 1082 (2004);  
2 *see also* Cal. Fam. Code § 350 (marriage requires applicant to obtain license from county clerk);  
3 Cal. Health & Safety Code § 102285 (county recorder is local registrar of marriages). As to any  
4 remaining allegations in Paragraph 16, the Administration lacks knowledge or information  
5 sufficient to admit or deny those allegations.

6           17. The Administration lacks knowledge or information sufficient to admit or  
7 deny the allegations in Paragraph 17 of the Complaint in Intervention.

8           18. The Administration lacks knowledge or information sufficient to admit or  
9 deny the allegations in Paragraph 18 of the Complaint in Intervention.

10           19. The Administration lacks knowledge or information sufficient to admit or  
11 deny the allegations in Paragraph 19 of the Complaint in Intervention.

12           20. The Administration lacks knowledge or information sufficient to admit or  
13 deny the allegations in Paragraph 20 of the Complaint in Intervention.

14           21. The Administration lacks knowledge or information sufficient to admit or  
15 deny the allegations in Paragraph 21 of the Complaint in Intervention.

16           22. The Administration lacks knowledge or information sufficient to admit or  
17 deny the allegations in Paragraph 22 of the Complaint in Intervention.

18           23. The Administration lacks knowledge or information sufficient to admit or  
19 deny the allegations in Paragraph 23 of the Complaint in Intervention.

20           24. The Administration lacks knowledge or information sufficient to admit or  
21 deny the allegations in Paragraph 24 of the Complaint in Intervention.

22           25. In response to Paragraph 25 of the Complaint in Intervention, the  
23 Administration admits that there is a long history of public and private discrimination against  
24 gays and lesbians, which has included criminal penalties for private sexual conduct between  
25 consenting adults (*see Lawrence v. Texas*, 539 U.S. 558 (2003)), hate crimes and harassment,  
26 public and private discrimination in employment, and laws stripping lesbians and gay men of  
27 rights afforded to other citizens (*see Romer v. Evans*, 516 U.S. 620 (1996)).  
28

1           26.    The Administration admits the allegations in Paragraph 26 of the  
2 Complaint in Intervention.

3           27.    The Administration lacks knowledge or information sufficient to admit or  
4 deny the allegations in Paragraph 27 of the Complaint in Intervention.

5           28.    In response to Paragraph 28 of the Complaint in Intervention, the  
6 Administration admits that, in 1999, the California Legislature passed domestic partnership  
7 legislation, 1999 Cal. Stats. ch. 588, § 2. The Administration further admits that, in 2003, the  
8 California Legislature passed legislation expanding the rights and responsibilities of domestic  
9 partnership, 2003 Cal. Stats. ch. 421, § 1. The Administration further admits that, in 2000, the  
10 voters of California adopted Proposition 22, which stated that “[o]nly marriage between a man  
11 and a woman is valid or recognized in California.” The Administration further admits that, in  
12 2008, the California Supreme Court held that Proposition 22 violated the California Constitution.  
13 *See In re Marriage Cases*, 43 Cal. 4th 757 (2008). The Administration further admits that the  
14 voters of California subsequently adopted Proposition 8. As to any remaining allegations in  
15 Paragraph 28, the Administration lacks knowledge or information sufficient to admit or deny  
16 those allegations.

17           29.    The Administration lacks knowledge or information sufficient to admit or  
18 deny the allegations in Paragraph 29 of the Complaint in Intervention.

19           30.    The Administration lacks knowledge or information sufficient to admit or  
20 deny the allegations in Paragraph 30 of the Complaint in Intervention.

21           31.    The Administration lacks knowledge or information sufficient to admit or  
22 deny the allegations in Paragraph 31 of the Complaint in Intervention.

23           32.    The Administration lacks knowledge or information sufficient to admit or  
24 deny the allegations in Paragraph 32 of the Complaint in Intervention.

25           33.    The Administration admits the allegations in Paragraph 33 of the  
26 Complaint in Intervention.

27           34.    The Administration lacks knowledge or information sufficient to admit or  
28 deny the allegations in Paragraph 34 of the Complaint in Intervention.

1           35.     The Administration lacks knowledge or information sufficient to admit or  
2 deny the allegations in Paragraph 35 of the Complaint in Intervention.

3           36.     The Administration lacks knowledge or information sufficient to admit or  
4 deny the allegations in Paragraph 36 of the Complaint in Intervention.

5           37.     The Administration lacks knowledge or information sufficient to admit or  
6 deny the allegations in Paragraph 37 of the Complaint in Intervention.

7           38.     In response to Paragraph 38 of the Complaint in Intervention, the  
8 Administration admits that marriage in California is not limited to those who are capable of  
9 procreating. The Administration further admits that the State has not established as a legal  
10 requirement for marriage that the members of the couple be fertile, of child-bearing age, or intent  
11 on having or raising children. The Administration further admits that the State has never  
12 established as a legal requirement for marriage that the members of the couple be physically or  
13 mentally healthy, provided that the members of the couple are capable of consent. *See* Cal. Fam.  
14 Code § 300(a).

15           39.     In response to Paragraph 39 of the Complaint in Intervention, the  
16 Administration admits that same-sex couples are legally permitted to participate in assisted  
17 reproduction, adoption, and foster parenting in the state of California. As to the remaining  
18 allegations in Paragraph 39, the Administration lacks knowledge or information sufficient to  
19 admit or deny those allegations.

20           40.     The Administration lacks knowledge or information sufficient to admit or  
21 deny the allegations in Paragraph 40 of the Complaint in Intervention.

22           41.     The Administration lacks knowledge or information sufficient to admit or  
23 deny the allegations in Paragraph 41 of the Complaint in Intervention.

24           42.     The allegations in Paragraph 42 of the Complaint in Intervention contain  
25 legal conclusions that require no answer. To the extent Paragraph 42 contains allegations that  
26 require a response, the Administration responds by stating that it lacks knowledge or information  
27 sufficient to admit or deny those allegations.

1           43.     The Administration admits the allegations in Paragraph 43 of the  
2 Complaint in Intervention.

3           44.     In response to Paragraph 44 of the Complaint in Intervention, the  
4 Administration incorporates by reference its answers to paragraphs 1 through 43 as if fully set  
5 forth herein.

6           45.     The allegations in Paragraph 45 of the Complaint in Intervention contain  
7 legal conclusions that require no answer. To the extent Paragraph 45 contains allegations that  
8 require a response, the Administration responds by stating that it lacks knowledge or information  
9 sufficient to admit or deny those allegations.

10          46.     The allegations in Paragraph 46 of the Complaint in Intervention contain  
11 legal conclusions that require no answer. To the extent Paragraph 46 contains allegations that  
12 require a response, the Administration responds by stating that it lacks knowledge or information  
13 sufficient to admit or deny those allegations.

14          47.     The Administration lacks knowledge or information sufficient to admit or  
15 deny the allegations in Paragraph 47 of the Complaint in Intervention.

16          48.     In response to Paragraph 48 of the Complaint in Intervention, the  
17 Administration incorporates by reference its answers to paragraphs 1 through 47 as if fully set  
18 forth herein.

19          49.     The allegations in Paragraph 49 of the Complaint in Intervention contain  
20 legal conclusions that require no answer. To the extent Paragraph 49 contains allegations that  
21 require a response, the Administration responds by stating that it lacks knowledge or information  
22 sufficient to admit or deny those allegations.

23          50.     In response to Paragraph 50 of the Complaint in Intervention, the  
24 Administration admits that California law provides civil marriage to heterosexual couples, but  
25 not to lesbian and gay couples. The Administration further admits that California law authorizes  
26 lesbian and gay couples to enter domestic partnerships. The Administration lacks knowledge or  
27 information sufficient to admit or deny the remaining allegations in Paragraph 50 of the  
28 Complaint in Intervention.



1 Case Name: *Perry, et al. v. Schwarzenegger, et al.*;  
2 Case No: US District Court, Northern District, Case No. 3:09-cv-2292 VRW

3 **CERTIFICATE OF SERVICE**

4 I declare as follows:

5 I am a resident of the State of California and over the age of eighteen years, and  
6 not a party to the within action; my business address is 980 9th Street, Suite 1700, Sacramento,  
California 95814. On September 4, 2009, I served the within document(s):

7 **THE ADMINISTRATION'S ANSWER TO CITY AND COUNTY OF SAN**  
8 **FRANCISCO'S COMPLAINT IN INTERVENTION FOR DECLARATORY,**  
9 **INJUNCTIVE OR OTHER RELIEF**

10

11 by placing the document(s) listed above in a sealed Federal Express  
12 envelope and affixing a pre-paid air bill, and delivering to a Federal  
13 Express agent for delivery.

14

15 by placing the document(s) listed above in a sealed envelope, with postage  
16 thereon fully prepared, in the United States mail at Sacramento, California  
17 addressed as set forth below.

18 **SEE ATTACHED SERVICE LIST**

19 I am readily familiar with the firm's practice of collection and processing  
20 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal  
21 Service on that same day with postage thereon fully prepared in the ordinary course of business.

22 I declare that I am employed in the office of a member of the bar of this Court at  
23 whose direction this service was made.

24 Executed on September 4, 2009, at Sacramento, California.

25 /s/ Angela Knight  
26 Angela Knight

**SERVICE LIST**

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