

1 MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER (SBN 113973)
2 KELCIE M. GOSLING (SBN 142225)
LANDON D. BAILEY (SBN 240236)
3 980 9th Street, Suite 1700
Sacramento, CA 95814-2736
4 Telephone: 916-553-4000
Facsimile: 916-553-4011
5 E-mail: kcm@mgslaw.com

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

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

13 KRISTIN M. PERRY, SANDRA B. STIER,)
14 PAUL T. KATAMI, and JEFFREY J.)
15 ZARRILLO,)

16 Plaintiffs,)

17 v.)

18 ARNOLD SCHWARZENEGGER, in his)
official capacity as Governor of California;)
19 EDMUND G. BROWN, JR., in his official)
capacity as Attorney General of California;)
20 MARK B. HORTON, in his official)
capacity as Director of the California)
Department of Public Health and State)
21 Registrar of Vital Statistics; LINETTE)
SCOTT, in her official capacity as Deputy)
22 Director of Health Information & Strategic)
Planning for the California Department)
23 of Public Health; PATRICK O'CONNELL,)
in his official capacity as Clerk-Recorder for)
24 the County of Alameda; and DEAN C.)
LOGAN, in his official capacity as)
25 Registrar-Recorder/County Clerk for the)
County of Los Angeles,)

26 Defendants.)
27)
28)

Case No. 09-CV-02292 VRW

**THE ADMINISTRATION'S ANSWER TO
COMPLAINT 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 Plaintiffs’ Complaint for
3 Declaratory, Injunctive, or Other Relief as follows:

4 Plaintiffs’ Complaint presents important constitutional questions that require and
5 warrant judicial determination. In a constitutional democracy, it is the role of the courts to
6 determine and resolve such questions. To the extent that Plaintiffs have stated a justiciable
7 controversy, setting forth federal constitutional challenges to Proposition 8, it is appropriate for
8 the federal courts to determine and resolve those challenges. The Administration encourages the
9 Court to resolve the merits of this action expeditiously.

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

12 1. In response to Paragraph 1 of the Complaint, the Administration admits
13 that, in November 2008, California voters passed Proposition 8, and that Proposition 8 amended
14 the California Constitution by adding a provision that states: “Only marriage between a man and
15 a woman is valid or recognized in California.” Cal. Const. art. I, § 7.5. The Administration also
16 admits that the California Family Code contains provisions that allow for the recognition of
17 same-sex unions as domestic partnerships. The Administration also admits that the United States
18 Supreme Court decided *Loving v. Virginia* in 1967, and the Supreme Court’s decision contains
19 the language quoted in Paragraph 1 of Plaintiffs’ Complaint. As to the remaining allegations of
20 Paragraph 1, the Administration notes that those remaining allegations state opinions and legal
21 conclusions which require no answer. To the extent that the remaining allegations of
22 Paragraph 1 contains allegations that require a response, the Administration responds by stating
23 that it lacks knowledge or information sufficient to admit or deny those allegations.

24 2. In response to Paragraph 2 of the Complaint, the Administration admits
25 that Plaintiffs have asked this Court to enjoin, preliminarily and permanently, enforcement of
26 Proposition 8 (as set forth in the California Constitution, in article I, section 7.5) and certain
27 California statutes. As to any remaining allegations of Paragraph 2, the Administration lacks
28 knowledge or information sufficient to admit or deny those remaining allegations.

1 3. The Administration admits that the Complaint presents a claim under 42
2 U.S.C. section 1983, and that this Court has subject matter jurisdiction under 28 U.S.C. section
3 1331.

4 4. The allegations of Paragraph 4 of the Complaint consist of legal
5 conclusions which require no answer. To the extent that Paragraph 4 contains an allegation that
6 requires a response, the Administration lacks knowledge or information sufficient to admit or
7 deny any such allegation.

8 5. In response to Paragraph 5 of the Complaint, the Administration admits
9 that Plaintiffs have brought an action pursuant to 42 U.S.C. section 1983 seeking the declarations
10 and preliminary and permanent injunctions described by Plaintiffs in Paragraph 5. The
11 Administration lacks knowledge or information sufficient to admit or deny the remaining
12 allegations, if any, in Paragraph 5.

13 6. In response to Paragraph 6 of the Complaint, the Administration admits
14 that Plaintiffs have brought an action seeking the declarations and preliminary and permanent
15 injunctions described by Plaintiffs in Paragraph 6 of the Complaint. The Administration lacks
16 knowledge or information sufficient to admit or deny the remaining allegations, if any, in
17 Paragraph 6.

18 7. In response to Paragraph 7 of the Complaint, the Administration lacks
19 knowledge or information sufficient to admit or deny these allegations.

20 8. The Administration admits that Plaintiffs have brought an action seeking
21 the declarations and preliminary and permanent injunctions described by Plaintiffs in Paragraph 8
22 of the Complaint, and that Plaintiffs seek to recover attorneys' fees, costs, and expenses incurred
23 in this action and any other relief that this Court may order. The Administration lacks knowledge
24 or information sufficient to admit or deny the remaining allegations of Paragraph 8, if any.

25 9. The Administration lacks knowledge or information sufficient to admit or
26 deny the allegations of Paragraph 9 of the Complaint.

27 10. The Administration lacks knowledge or information sufficient to admit or
28 deny the allegations of Paragraph 10 of the Complaint.

1 11. The Administration lacks knowledge or information sufficient to admit or
2 deny the allegations of Paragraph 11 of the Complaint.

3 12. The Administration lacks knowledge or information sufficient to admit or
4 deny the allegations of Paragraph 12 of the Complaint.

5 13. The Administration admits the allegations in Paragraph 13 of the
6 Complaint.

7 14. The Administration admits the allegations in Paragraph 14 of the
8 Complaint.

9 15. The Administration admits the allegations in Paragraph 15 of the
10 Complaint.

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

13 17. The Administration lacks knowledge or information sufficient to admit or
14 deny the allegations of Paragraph 17 of the Complaint.

15 18. The Administration lacks knowledge or information sufficient to admit or
16 deny the allegations of Paragraph 18 of the Complaint.

17 19. In response to Paragraph 19 of the Complaint, the Administration admits
18 that the California Supreme Court has held that, under California law, county clerks and county
19 recorders have a mandatory ministerial duty to enforce marriage laws and generally do not have
20 the authority, in the absence of a judicial determination of unconstitutionality, to refuse to
21 enforce such laws on the basis of a belief that they are unconstitutional. *Lockyer v. City &*
22 *County of San Francisco*, 33 Cal. 4th 1055, 1082 (2004); see also Cal. Fam. Code § 350
23 (marriage requires applicant to obtain license from county clerk); Cal. Health & Safety Code
24 § 102285 (county recorder is local registrar of marriages). The Administration further admits
25 that the Director of Public Health, who is designated as the State Registrar of Vital Statistics, is
26 required to prescribe and furnish forms for use in registering marriages and to supervise local
27 officials in the use of those forms (Cal. Health & Safety Code §§ 102175, 102100, 102180,
28 102200), and that the Deputy Director of Health Information and Strategic Planning assists the

1 Director of Public Health in the fulfillment of his responsibilities. The Administration admits
2 that the Governor has a duty to ensure that the laws are uniformly enforced. Cal. Const., art. V,
3 sec. 1. As to the remaining allegations of Paragraph 19 of the Complaint, the Administration
4 lacks knowledge or information sufficient to admit or deny any such remaining allegations.

5 20. The Administration lacks knowledge or information sufficient to admit or
6 deny the allegations of Paragraph 20 of the Complaint.

7 21. In response to Paragraph 21 of the Complaint, the Administration admits
8 that, in 1977, the California Legislature enacted legislation amending Civil Code section 4100,
9 now codified at California Family Code section 300, and that section 300 defined marriage using
10 the language quoted in Paragraph 21 of the Complaint. As to the remaining allegations of
11 Paragraph 21 of the Complaint, the Administration lacks knowledge or information sufficient to
12 admit or deny those remaining allegations.

13 22. In response to Paragraph 22 of the Complaint, the Administration admits
14 that in 1999 the California Legislature adopted a domestic partnership law codified at California
15 Family Code sections 297-299.6, that the law defines domestic partners using the language
16 quoted in Paragraph 22 of the Complaint, and that the domestic partnership law sets forth certain
17 requirements for persons who seek to enter into a domestic partnership (at Family Code section
18 297(b)), including the requirements described in Paragraph 22 of the Complaint. As to the
19 remaining allegations of Paragraph 22 of the Complaint, the Administration lacks knowledge or
20 information sufficient to admit or deny those remaining allegations.

21 23. The allegations of Paragraph 23 of the Complaint contain legal
22 conclusions which require no answer. To the extent that the allegations of Paragraph 23 require a
23 response, the Administration responds by stating that it lacks knowledge or information sufficient
24 to admit or deny those allegations.

25 24. The Administration admits that, in 2000, California voters approved
26 Proposition 22 (codified at California Family Code section 308.5), which provided: "Only
27 marriage between a man and a woman is valid or recognized in California." The Administration
28 also admits that, in 2004, the California Supreme Court decided *Lockyer v. City & County of San*

1 *Francisco*. That decision speaks for itself. As for any remaining allegations of Paragraph 24 of
2 the Complaint, the Administration lacks knowledge or information sufficient to admit or deny
3 those remaining allegations.

4 25. The Administration admits that Proposition 8's proponents submitted
5 petitions with enough signatures to place Proposition 8 on the ballot for the November 2008
6 election. As for the remaining allegations of Paragraph 25, the Administration lacks knowledge
7 or information sufficient to admit or deny those remaining allegations.

8 26. The Administration admits the allegations in Paragraph 26 of the
9 Complaint.

10 27. The Administration admits that on June 2, 2009, the California Secretary
11 of State certified that Proposition 8 qualified for placement on the ballot for the November 2008
12 election. The Administration admits that the General Election Voter Information Guide,
13 prepared by the Attorney General, stated, among other things, that Proposition 8 "Changes the
14 California Constitution to eliminate the right of same-sex couples to marry in California." As for
15 the remaining allegations of Paragraph 27 of the Complaint, the Administration lacks knowledge
16 or information sufficient to admit or deny those remaining allegations.

17 28. The Administration admits the allegations in Paragraph 28 of the
18 Complaint.

19 29. In response to Paragraph 29 of the Complaint, the Administration admits
20 that, since Proposition 8 took effect, California law precludes the issuance of marriage licenses to
21 same-sex couples.

22 30. The allegations of Paragraph 30 of the Complaint contain legal
23 conclusions which require no answer. To the extent that Paragraph 30 of the Complaint contains
24 allegations that require a response, the Administration responds by stating that it lacks
25 knowledge or information sufficient to admit or deny those allegations.

26 31. The allegations of Paragraph 31 of the Complaint contain legal
27 conclusions which require no answer. To the extent that Paragraph 31 of the Complaint contains
28

1 allegations that require a response, the Administration responds by stating that it lacks
2 knowledge or information sufficient to admit or deny those allegations.

3 32. The Administration lacks knowledge or information sufficient to admit or
4 deny the allegations of Paragraph 32 of the Complaint.

5 33. The Administration lacks knowledge or information sufficient to admit or
6 deny the allegations of Paragraph 33 of the Complaint.

7 34. The allegations of Paragraph 34 of the Complaint contain legal
8 conclusions which require no answer. To the extent that Paragraph 34 of the Complaint contains
9 allegations that require a response, the Administration responds by stating that it lacks
10 knowledge or information sufficient to admit or deny those allegations.

11 35. In response to Paragraph 35 of the Complaint, the Administration admits
12 that the United States Supreme Court decided *Loving v. Virginia* in 1967, and the Supreme
13 Court's decision contains the language quoted in Paragraph 35 of Plaintiffs' Complaint. As to
14 the remaining allegations of Paragraph 35, the Administration notes that those remaining
15 allegations state opinions and legal conclusions which require no answer. To the extent that the
16 remaining allegations of Paragraph 35 contain allegations that require a response, the
17 Administration responds by stating that it lacks knowledge or information sufficient to admit or
18 deny those allegations.

19 36. In response to Paragraph 36 of the Complaint, the Administration admits
20 that, in the absence of an injunction barring the enforcement of Proposition 8 or a final judicial
21 determination that Proposition 8 is unconstitutional, California law provides that "Only marriage
22 between a man and a woman is valid or recognized in California." As for the remaining
23 allegations of Paragraph 36, those remaining allegations state opinions and legal conclusions
24 which require no answer. To the extent that the remaining allegations of Paragraph 36 require a
25 response, the Administration responds by stating that it lacks knowledge or information sufficient
26 to admit or deny those allegations.

27 37. In response to Paragraph 37 of the Complaint, the Administration
28 incorporates by reference its answers to paragraphs 1 through 36 as if fully set forth herein.

1 38. The allegations of Paragraph 38 of the Complaint contain legal
2 conclusions which require no answer. To the extent Paragraph 38 contains allegations that
3 require a response, the Administration responds by stating that it lacks knowledge or information
4 sufficient to admit or deny those allegations.

5 39. The allegations of Paragraph 39 of the Complaint contain legal
6 conclusions which require no answer. To the extent Paragraph 39 contains allegations that
7 require a response, the Administration responds by stating that it lacks knowledge or information
8 sufficient to admit or deny those allegations.

9 40. In response to Paragraph 40 of the Complaint, the Administration
10 incorporates by reference its answers to paragraphs 1 through 39 as if fully set forth herein.

11 41. The allegations of Paragraph 41 of the Complaint contain legal
12 conclusions which require no answer. To the extent Paragraph 41 contains allegations that
13 require a response, the Administration responds by stating that it lacks knowledge or information
14 sufficient to admit or deny those allegations.

15 42. The allegations of Paragraph 42 of the Complaint contain legal
16 conclusions which require no answer. To the extent Paragraph 42 contains allegations that
17 require a response, the Administration responds by stating that it lacks knowledge or information
18 sufficient to admit or deny those allegations.

19 43. The allegations of Paragraph 43 of the Complaint contain legal
20 conclusions which require no answer. To the extent Paragraph 43 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 44. The allegations of Paragraph 44 of the Complaint contain legal
24 conclusions which require no answer. To the extent that Paragraph 44 contains allegations that
25 require a response, the Administration lacks knowledge or information sufficient to admit or
26 deny the remaining allegations.

27 45. In response to Paragraph 45 of the Complaint, the Administration
28 incorporates by reference its answers to paragraphs 1 through 44 as if fully set forth herein.

1 46. The allegations of Paragraph 46 of the Complaint contain legal
2 conclusions which require no answer. To the extent Paragraph 46 contains allegations that
3 require a response, the Administration responds by stating that it lacks knowledge or information
4 sufficient to admit or deny those allegations.

5 47. In response to Paragraph 47 of the Complaint, the Administration
6 incorporates by reference its answers to paragraphs 1 through 46 as if fully set forth herein.

7 48. The allegations of Paragraph 48 of the Complaint contain legal
8 conclusions which require no answer. To the extent Paragraph 48 contains allegations that
9 require a response, the Administration responds by stating that it lacks knowledge or information
10 sufficient to admit or deny those allegations.

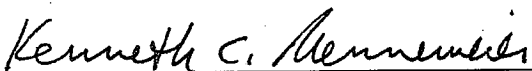
11 49. The Administration admits that Proposition 8, as embodied in the
12 California Constitution, is presently in effect in California. The Administration also admits that
13 the Complaint presents important legal issues that require and warrant a judicial determination.
14 As for the remaining allegations of Paragraph 49, if any, the Administration lacks knowledge or
15 information sufficient to admit or deny the remaining allegations.

16 WHEREFORE, the Administration respectfully requests that this Court grant any
17 and all relief the Court determines to be just and proper.

18 Dated: June 16, 2009

MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER
KELCIE M. GOSLING
LONDON D. BAILEY

21 By:



Kenneth C. Mennemeier
Attorneys for Defendants Arnold Schwarzenegger,
Mark B. Horton, and Linette Scott

1 Case Name: *Perry, et al. v. Schwarzenegger, et al.*;
2 Case No: US District Court, Northern District, Case No. 3:09-cv-09-2292 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,
7 California 95814. On June 16, 2009, I served the within documents:

8 **THE ADMINISTRATION'S ANSWER TO COMPLAINT FOR DECLARATORY,
9 INJUNCTIVE, OR OTHER RELIEF**

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

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

16 **SEE ATTACHED SERVICE LIST**

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

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

22 Executed on June 16, 2009, at Sacramento, California.

23 
24 _____
25 Angela Knight
26
27
28

SERVICE LIST

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

AUSTIN R. NIMOCKS
ALLIANCE DEFENSE FUND
801 G STREET NW
SUITE 509
WASHINGTON, DC 20001

DAVID BOIES
BOIES SCHILLER & FLEXNER LLP
333 MAIN STREET
ARMONK, NY 10504

JORDAN W. LORENCE
ALLIANCE DEFENSE FUND
801 G STREET NW
SUITE 509
WASHINGTON, DC 20001

THEANE EVANGELIS KAPUR
GIBSON DUNN & CRUTCHER LLP
333 SOUTH GRAND AVENUE
LOS ANGELES, CA 90071

THEODORE HIDEYUKI UNO
BOIES SCHILLER & FLEXNER LLP
333 MAIN STREET
ARMONK, NY 10504