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7 Timothy D. Chandler (Cal. State Bar No. 234325)*
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 8 101 Parkshore Drive, Suite 100
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 10 Counsel for All Plaintiffs

11 * *Designated Counsel for Service*

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 13 **United States District Court**
Eastern District of California
 14 **Sacramento Division**

<p>15 ProtectMarriage.com, et al.,</p> <p>16 <i>Plaintiffs,</i></p> <p>17 <i>v.</i></p> <p>18 Debra Bowen, et al.,</p> <p>19 <i>Defendants.</i></p>	<p>Case No. 2:09-CV-00058-MCE-DAD</p> <p>PLAINTIFFS' <i>EX PARTE</i> RULE 21 MOTION TO DISMISS DEFENDANT TEICHERT AND JOIN DEFENDANT DENNIS J. HERRERA.</p> <p>Judge Morrison C. England, Jr.</p>
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Plaintiffs' *Ex Parte* Motion to
Dismiss Defendant Teichert and Join
Defendant Dennis J. Herrera

1 Plaintiffs ProtectMarriage.com - Yes on 8, a Project of California Renewal
2 (“ProtectMarriage.com”), National Organization for Marriage California - Yes on 8, Sponsored
3 by National Organization for Marriage (“NOM-California”), and Plaintiff John Doe #1, an
4 individual, and as a representative of the Class of Major Donors, hereby apply to the Court, *ex*
5 *parte*, pursuant to Fed. R.Civ. P. 21, for leave to dismiss Defendant Eileen Teichert, both in her
6 official capacity as the City Attorney for the City of Sacramento, and as representative of the
7 Class of City Attorneys, from this action as improperly joined, and for leave to join Dennis J.
8 Herrera, the elected city attorney of the City and County of San Francisco, California, in his
9 official capacity and as a representative of the Class of Elected City Attorneys in the State of
10 California.

11 Defendant Eileen Teichert, the city attorney for Sacramento, California, is not an elected
12 city attorney and does not have the authority, pursuant to Cal. Gov’t Code (“CGC”) § 91001.5,
13 to enforce provisions of the Political Reform Act of 1974, Cal. Gov’t Code § 81000 *et seq.* (the
14 “Act”). Plaintiffs originally named Defendant Eileen Teichert with the understanding that she
15 had authority to pursue actions under Cal. Gov. Code § 91001.5.

16 Proposed Defendant Dennis J. Herrera, the city attorney for the City and County of San
17 Francisco, California, is an elected city attorney and therefore does have enforcement authority,
18 pursuant to CGC § 91001.5, to enforce provisions of the Political Reform Act of 1974.

19 Furthermore, Proposed Defendant Herrera would not be prejudiced by this change, as his
20 office is already defending the Department of Elections for the City and County of San
21 Francisco.

22 Therefore, Plaintiffs ProtectMarriage.com, NOM-California, and the Class of Major
23 Donors respectfully move this Court for leave to:

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27 **Plaintiffs’ *Ex Parte* Motion to**
28 **Dismiss Defendant Teichert and Join**
Defendant Dennis J. Herrera

1 (1) Dismiss Defendant Eileen Teichert from this action, both in her official capacity
2 and as a representative of the Class of City Attorneys in the State of California;
3 and

4 (2) Join Dennis J. Herrera, the elected city attorney of San Francisco, California, in
5 his official capacity and as a representative of the Class of Elected City Attorneys
6 in the State of California.

7 Plaintiffs have filed a Stipulation to Amend with this motion, signed by all parties,
8 consenting to filing of Plaintiffs' Second Amended Complaint.

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10 Dated this 20th day of January, 2009.

11 Respectfully submitted,

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13 Timothy D. Chandler (Cal. Bar No. 234325)
14 ALLIANCE DEFENSE FUND
15 101 Parkshore Drive, Suite 100
16 Folsom, CA 95630
17 Counsel for All Plaintiffs
18 Designated Counsel for Service

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/s/ James Bopp, Jr.
James Bopp, Jr. (Ind. Bar No. 2838-84)
Barry A. Bostrom (Ind. Bar No. 11912-84)
Sarah E. Troupis (Wis. Bar No. 1061515)
Scott F. Bieniek (Ill. Bar No. 6295901)
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1 South Sixth Street
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Counsel for All Plaintiffs

27 **Plaintiffs' *Ex Parte* Motion to**
28 **Dismiss Defendant Teichert and Join**
Defendant Dennis J. Herrera

1 **CERTIFICATE OF SERVICE**

2 I, Scott F. Bieniek, am over the age of 18 years and not a party to the within action. My
3 business address is 1 South Sixth Street, Terre Haute, Indiana 47807.

4 On January 20, 2009, I electronically filed the foregoing document described as
5 Plaintiffs' *Ex Parte* Motion to Dismiss Defendant Teichert and Join Defendant Dennis J.
6 Herrera, with the Clerk of Court using the CM/ECF system which will send notification of such
7 filing to:

8 Zackary Paul Morazzini
9 Zackary.Morazzini @doj.ca.gov
10 *Attorney for Defendants Debra Bowen and Edmund C. Brown, Jr.*

11 And, pursuant to Rule 5-135(f), on January 20, 2009, I served the foregoing document
12 described as Plaintiffs' *Ex Parte* Motion to Dismiss Defendant Teichert and Join Defendant
13 Dennis J. Herrera by placing true and correct copies of the documents in sealed envelopes with
14 postage thereon fully prepaid, in the United States mail at Terre Haute, Indiana, addressed to the
15 following non-CM/ECF participants:

16 Dean C. Logan
17 Office of the Registrar-Recorder
18 12400 Imperial Highway
19 Norwalk, California 90650

20 Department of Elections, City and County of San Francisco
21 c/o Office of the Mayor Gavin Newsom
22 1 Dr. Carlton B. Goodlett Place
23 San Francisco, California 94102

24 Jan Scully
25 Office of the District Attorney
26 901 G Street
27 Sacramento, California 95814

28 Eileen Teichert
Office of the City Attorney
New City Hall Building
915 I Street, 4th Floor
Sacramento, California 95814

29 **Plaintiffs' *Ex Parte* Motion to**
30 **Dismiss Defendant Teichert and Join**
31 **Defendant Dennis J. Herrera**

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Ross Johnson
California Fair Political Practices Commission
428 J. Street, Suite 620
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Robert Leidigh
California Fair Political Practices Commission
428 J. Street, Suite 620
Sacramento, California 95814

and

Ray Remy
California Fair Political Practices Commission
428 J. Street, Suite 620
Sacramento, California 95814

Defendants

I declare under the penalty of perjury under the laws of the State of Indiana that the above is true and correct. Executed on January 20, 2009.

/s/ Scott F. Bieniek
Scott F. Bieniek (Ill. State Bar No. 6295901)
Counsel for All Plaintiffs