

1 **P O R T E R | S C O T T**

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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 PROTECTMARRIAGE.COM - YES ON 8, A
13 PROJECT OF CALIFORNIA RENEWAL;
14 NATIONAL ORGANIZATION FOR
15 MARRIAGE CALIFORNIA - YES ON 8,
16 SPONSORED BY NATIONAL
17 ORGANIZATION FOR MARRIAGE, JOHN
18 DOE #1, an individual and as representative
19 of the CLASS OF MAJOR DONORS,

Case No. 2:09-CV-00058-MCE-DAD

**DEFENDANT JAN SCULLY'S ANSWER
TO SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

20 Plaintiffs,

21 vs.

22 DEBRA BOWEN, Secretary of State for the
23 State of California, in her official capacity;
24 EDMUND G. BROWN, JR., Attorney
25 General for the State of California, in his
26 official capacity; DEAN C. LOGAN,
27 Registrar-Recorder of Los Angeles County,
28 California, in his official capacity;
DEPARTMENT OF ELECTIONS - CITY
AND COUNTY OF SAN FRANCISCO; JAN
SCULLY, District Attorney for Sacramento
County, California in her official capacity and
as a representative of the Class of District
Attorneys in the State of California; DENNIS
J. HERRERA, City Attorney for the City and
County of San Francisco, California, in his
official capacity and as a representative of the
Class of Elected City Attorneys in the State of
California; ROSS JOHNSON, TIMOTHY
HODSON, EUGENE HUGUENIN, JR.,
ROBERT LEIDIGH and RAY REMY,
members of the California Fair Political
Practices Commision, in their official
capacities,

Defendants.

_____ /

1 Defendant JAN SCULLY, in her official capacity as District Attorney for the County
2 of Sacramento, hereby answers Plaintiffs' Second Amended Complaint as follows:

3 1. Answering paragraphs 1, 2, 3 and 4, this answering Defendant contends that
4 said paragraphs contain conclusions of law and not averments of fact to which an answer
5 may be required, but insofar as an answer may be deemed required, this answering Defendant
6 generally and specifically denies each and every allegation in said paragraphs.

7 **I.**

8 **JURISDICTION AND VENUE**

9 2. Answering paragraphs 5, 6 and 7, this answering Defendant contends that said
10 paragraphs contain conclusions of law and not averments of fact to which an answer may be
11 required, but insofar as an answer may be deemed required, this answering Defendant
12 generally and specifically denies each and every allegation in said paragraphs.

13 **II.**

14 **PARTIES**

15 3. Answering paragraphs 8, 9, 10, 11 and 12, this answering Defendant lacks
16 sufficient information or knowledge to enable her to answer the allegations contained in said
17 paragraph, and basing her denial on that ground, generally and specifically denies each and
18 every allegation contained in said paragraphs.

19 4. Answering paragraph 13, this answering Defendant admits that Debra Bowen
20 is the Secretary of State of California. Answering the remaining allegations contained in said
21 paragraph, this answering Defendant contends that said paragraph contains conclusions of
22 law and not averments of fact to which an answer may be required, but insofar as an answer
23 may be deemed required, this answering Defendant generally and specifically denies each
24 and every allegation in said paragraph.

25 5. Answering Paragraph 14, this answering Defendant admits that Edmund
26 Brown, Jr., is the Attorney General of California. Answering the remaining allegations
27 contained in said paragraph, this answering Defendant contends that said paragraph contains
28 conclusions of law and not averments of fact to which an answer may be required, but insofar

1 as an answer may be deemed required, this answering Defendant generally and specifically
2 denies each and every allegation in said paragraph.

3 6. Answering Paragraphs 15 and 16, this answering Defendant lacks sufficient
4 information or knowledge to enable her to answer the allegations contained in said
5 paragraphs, and basing her denial on that ground, generally and specifically denies each and
6 every allegation contained in said paragraphs.

7 7. Answering paragraph 17, this answering Defendant admits that she is the duly
8 elected District Attorney for Sacramento County, California. Answering the remaining
9 allegations contained in said paragraph, this answering Defendant contends that said
10 paragraph contains conclusions of law and not averments of fact to which an answer may be
11 required, but insofar as an answer may be deemed required, this answering Defendant
12 generally and specifically denies each and every allegation in said paragraph.

13 8. Answering paragraphs 18 and 19, this answering Defendant lacks sufficient
14 information or knowledge to enable her to answer the allegations contained in said
15 paragraphs, and basing her denial on that ground, generally and specifically denies each and
16 every allegation contained in said paragraphs. In addition, Defendant contends that said
17 paragraphs contain conclusions of law and not averments of fact to which an answer may be
18 required, but insofar as an answer may be deemed required, this answering Defendant
19 generally and specifically denies each and every allegation in said paragraphs.

20 **III.**

21 **CLASS ACTION ALLEGATIONS**

22 9. Answering paragraphs 20 and 21, Defendant contends that said paragraphs
23 contain conclusions of law and not averments of fact to which an answer may be required,
24 but insofar as an answer may be deemed required, this answering Defendant generally and
25 specifically denies each and every allegation in said paragraphs.

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1 **IV.**

2 **FACTS**

3 10. Answering paragraphs 22, 23, 24, 25, 26, 27 and 28, this answering Defendant
4 lacks sufficient information or knowledge to enable her to answer the remaining allegations
5 contained in said paragraphs, and basing her denial on that ground, generally and specifically
6 denies each and every allegation contained in said paragraphs.

7 11. Answering paragraph 29, 30, 31, and 32, this answering Defendant lacks
8 sufficient information or knowledge to enable her to answer the allegations contained in said
9 paragraphs, and basing her denial on that ground, generally and specifically denies each and
10 every allegation contained in said paragraphs. In addition, Defendant contends that said
11 paragraphs contain conclusions of law and not averments of fact to which an answer may be
12 required, but insofar as an answer may be deemed required, this answering Defendant
13 generally and specifically denies each and every allegation in said paragraphs.

14 12. Answering paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46,
15 this answering Defendant lacks sufficient information or knowledge to enable her to answer
16 the allegations contained in said paragraphs, and basing her denial on that ground, generally
17 and specifically denies each and every allegation contained in said paragraphs.

18 13. Answering paragraphs, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61
19 and 62, this answering Defendant contends that said paragraphs contain conclusions of law
20 and not averments of fact to which an answer may be required, but insofar as an answer may
21 be deemed required, this answering Defendant generally and specifically denies each and
22 every allegation in said paragraphs.

23 **V.**

24 **COUNT 1**

25 14. Answering paragraph 63, this answering Defendant incorporates by reference
26 her responses to paragraphs 1 through 62 as though fully restated herein.

27 15. Answering paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75
28 (including footnotes), this answering Defendant contends that said paragraphs contain

1 conclusions of law and not averments of fact to which an answer may be required, but insofar
2 as an answer may be deemed required, this answering Defendant generally and specifically
3 denies each and every allegation in said paragraphs.

4 16. Answering paragraphs 76, 77, 78, 79, 80, 81 and 82, this answering Defendant
5 lacks sufficient information or knowledge to enable her to answer the allegations contained
6 in said paragraphs, and basing her denial on that ground, generally and specifically denies
7 each and every allegation contained in said paragraphs. In addition, Defendant contends that
8 said paragraphs contain conclusions of law and not averments of fact to which an answer
9 may be required, but insofar as an answer may be deemed required, this answering Defendant
10 generally and specifically denies each and every allegation in said paragraphs.

11 **Prayer for Relief**

12 17. Answering paragraph 83 and its subparagraphs of Plaintiffs' Prayer for Relief,
13 this answering Defendant contends that said paragraphs do not contain averments of fact to
14 which an answer may be required, but insofar as an answer may be deemed required,
15 Defendant generally and specifically denies each and every allegation in said paragraphs.

16 **VI.**

17 **COUNT 2**

18 18. Answering paragraph 84, this answering Defendant incorporates by reference
19 her responses to paragraphs 1 through 83 as though fully restated herein.

20 19. Answering paragraphs 85, 86, 87, 88, 89, 90, 91, 92, 93, 94 and 95, this
21 answering Defendant lacks sufficient information or knowledge to enable her to answer the
22 allegations contained in said paragraphs, and basing her denial on that ground, generally and
23 specifically denies each and every allegation contained in said paragraphs. In addition,
24 Defendant contends that said paragraphs contain conclusions of law and not averments of
25 fact to which an answer may be required, but insofar as an answer may be deemed required,
26 this answering Defendant generally and specifically denies each and every allegation in said
27 paragraphs.

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Prayer for Relief

20. Answering paragraph 96 and its subparagraphs of Plaintiffs' Prayer for Relief, this answering Defendant contends that said paragraphs do not contain averments of fact to which an answer may be required, but insofar as an answer may be deemed required, Defendant generally and specifically denies each and every allegation in said paragraphs.

VII.

COUNT 3

21. Answering paragraph 97, this answering Defendant incorporates by reference her responses to paragraphs 1 through 96 as though fully restated herein.

22. Answering paragraphs 98, 99, 100, 101, 102, 103, 104, 105 and 106, this answering Defendant lacks sufficient information or knowledge to enable her to answer the allegations contained in said paragraphs, and basing her denial on that ground, generally and specifically denies each and every allegation contained in said paragraphs. In addition, Defendant contends that said paragraphs contain conclusions of law and not averments of fact to which an answer may be required, but insofar as an answer may be deemed required, this answering Defendant generally and specifically denies each and every allegation in said paragraphs.

Prayer for Relief

23. Answering paragraph 107 and its subparagraphs of Plaintiff's Prayer for Relief, this answering Defendant contends that said paragraphs do not contain averments of fact to which an answer may be required, but insofar as an answer may be deemed required, Defendant generally and specifically denies each and every allegation in said paragraphs.

VIII.

COUNT 4

24. Answering paragraph 108, this answering Defendant incorporates by reference her responses to paragraphs 1 through 107 as though fully restated herein.

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FIFTH AFFIRMATIVE DEFENSE

This matter is not an appropriate class action and Defendant is not a class representative and therefore any judgment cannot bind any other purported party other than Defendant.

SIXTH AFFIRMATIVE DEFENSE

Defendant is mandated by statute to enforce the codified laws of the State of California and therefore this action against her is without basis in law.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and each of them are barred on the grounds that Plaintiffs lack any remedy and therefore the Court lacks jurisdiction over any such claims.

WHEREFORE, Defendant JAN SCULLY prays for judgment as follows:

- 1. That Plaintiffs' action be dismissed;
- 2. That Plaintiffs take nothing by way of their Complaint;
- 3. That Defendant be awarded her costs of suit, including attorney fees; and,
- 4. For such other relief as the Court deems proper.

Respectfully submitted,

Dated: February 5, 2009

PORTER SCOTT
A PROFESSIONAL CORPORATION

By /s/Terence J. Cassidy
Terence J. Cassidy
Attorney for Defendant
JAN SCULLY, District Attorney for
Sacramento County, California in her
official capacity

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DEMAND FOR JURY TRIAL

Defendant JAN SCULLY hereby demands a trial by jury in the above-entitled action as provided by the Seventh Amendment to the United States Constitution and Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

Dated: February 5, 2009

PORTER SCOTT
A PROFESSIONAL CORPORATION

By /s/Terence J. Cassidy
Terence J. Cassidy
Attorney for Defendant
JAN SCULLY, District Attorney for
Sacramento County, California in her
official capacity