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 CITY AND COUNTY OF SAN FRANCISCO
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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 vs.

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

27 Defendants,
 28

Case No. 09-CV-2292 VRW

**COMPLAINT IN INTERVENTION FOR
 DECLARATORY, INJUNCTIVE OR OTHER
 RELIEF**

Hearing Date: August 19, 2009
 Time: 10:00 a.m.
 Place: Courtroom 6, 17th Fl.,
 450 Golden Gate Ave.

Trial Date: Not set

1 and

2 PROPOSITION 8 OFFICIAL PROPONENTS
3 DENNIS HOLLINGSWORTH, GAIL J.
4 KNIGHT, MARTIN F. GUTIERREZ, HAK-
5 SHING WILLIAM TAM, and MARK A.
6 JANSSON; and PROTECTMARRIAGE.COM –
7 YES ON 8, A PROJECT OF CALIFORNIA
8 RENEWAL,

9 Defendant-Intervenors.

10 CITY AND COUNTY OF SAN FRANCISCO,

11 Plaintiff-Intervenor

12 vs.

13 ARNOLD SCHWARZENEGGER, in his official
14 capacity as Governor of California; EDMUND G.
15 BROWN JR., in his official capacity as Attorney
16 General of California; MARK B. HORTON, in
17 his official capacity as Director of the California
18 Department of Public Health and State Registrar
19 of Vital Statistics; and LINETTE SCOTT, in her
20 official capacity as Deputy Director of Health
21 Information & Strategic Planning for the
22 California Department of Public Health,

23 Defendants.

24 Plaintiff-Intervenor the City and County of San Francisco complain of Defendants and allege:

25 **INTRODUCTION**

26 1. Proposition 8 requires San Francisco to violate the federal constitutional rights of its
27 lesbian and gay citizens by denying them marriage licenses on the basis of their sexual orientation and
28 gender. Before Proposition 8 was adopted, California granted same-sex couples the same right to
marry as heterosexual couples, as required by the California Supreme Court's decision in *In re*
Marriage Cases, 43 Cal. 4th 757 (2008). But in November 2008, Proposition 8 amended the
California Constitution to state that "[o]nly a marriage between a man and a woman is valid or
recognized in California." Cal. Const. Art. I § 7.5 ("Prop. 8"). By eliminating the right of same-sex
couples to marry, Prop. 8 denies lesbians and gay men the basic liberties and equal protection of the
law guaranteed by the Fourteenth Amendment to the United States Constitution.

2. For these reasons, Plaintiff-Intervenor seeks declaratory and injunctive relief against Prop. 8.

JURISDICTION AND VENUE

3. Plaintiff-Intervenor adopts and incorporates by reference Plaintiffs' statement of Jurisdiction and Venue, Docket 1-1 at ¶¶ 3-4.

4. This action arises under the Fourteenth Amendment to the United States Constitution and Plaintiff-Intervenor seeks declaratory relief under 28 U.S.C. § 2201 and any further relief that may be proper under 28 U.S.C § 2202.

NATURE OF DISPUTE

5. This action pursuant to 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983 seeks: 1) a declaration that Prop. 8, which denies gay and lesbian individuals the opportunity to marry civilly and enter into the same officially sanctioned family relationship with their loved ones as heterosexual individuals, is unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; and 2) a permanent injunction preventing Defendants from enforcing Prop. 8.

6. Plaintiff-Intervenor believes it is clearly established that California Family Code §§ 300 and 308.5, which purport to restrict civil marriage in California to opposite-sex couples, and California Family Code § 301, which also could be read to impose such a restriction, have no continuing legal force after the California Supreme Court's decision in *In re Marriage Cases*, 43 Cal. 4th 757 (2008). But in an abundance of caution, Plaintiff-Intervenor seeks: 1) a declaration that California Family Code §§ 300 and 308.5, which purport to restrict civil marriage in California to opposite-sex couples, and California Family Code § 301, which also could be read to impose such a restriction, are unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; and 2) a permanent injunction preventing Defendants from enforcing those provisions against Plaintiffs.

7. Plaintiff-Intervenor the City and County of San Francisco is a unit of local government with the responsibility to issue civil marriage licenses and to solemnize and record marriages. Prop. 8

1 requires San Francisco to violate the federal constitutional rights of its gay and lesbian citizens – and
 2 other gay and lesbian couples – by denying them the marriage licenses that it issues daily to
 3 heterosexual couples. Because of Prop. 8, San Francisco must provide health care, welfare benefits,
 4 and other social services to citizens whose mental and physical health suffers because of
 5 discrimination and to citizens who become dependent on public resources when families disintegrate.
 6 Prop. 8 also deprives San Francisco of revenue that would be generated by the weddings of same-sex
 7 couples and associated tourism.

8 8. To enforce the rights afforded by the United States Constitution, Plaintiff-Intervenor
 9 brings this suit under 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983 for declaratory and injunctive relief
 10 against the enforcement of Prop. 8. Plaintiff-Intervenor also seeks to recover all its attorneys' fees,
 11 costs, and expenses incurred in this action and any other relief that this Court may order.

12 **THE PARTIES**

13 9. Defendant Arnold Schwarzenegger is the governor of the State of California. He is
 14 sued in his official capacity. As the chief executive officer of the State, the Governor is responsible
 15 for ensuring that the laws of the State are properly enforced, subject to any limits imposed by the
 16 Constitution and laws of the United States. The Governor maintains an office in San Francisco.

17 10. Defendant Edmund G. Brown, Jr., is the Attorney General of the State of California.
 18 He is sued in his official capacity. As the chief legal officer of the State, the Attorney General has the
 19 duty to see that the laws of the State are uniformly and adequately enforced, subject to his duty to
 20 uphold the Constitution and laws of the United States. The Attorney General maintains offices in
 21 Oakland and San Francisco.

22 11. Defendant Mark B. Horton is the Director of the California Department of Public
 23 Health and, as such, is the State Registrar of Vital Statistics of the State of California. He is sued in
 24 his official capacity. The Director of the California Department of Public Health is responsible for
 25 prescribing and furnishing the forms for the application for license to marry, the certificate of registry
 26 of marriage including the license to marry, and the marriage certificate. He is also responsible for
 27 instructing and supervising local registrars in the use of these forms.

1 12. Defendant Linette Scott is the Deputy Director of Health Information & Strategic
2 Planning for the California Department of Public Health. She is sued in her official capacity. On
3 information and belief, Scott reports to Defendant Horton and is the California Department of Public
4 Health official responsible for prescribing and furnishing the forms for the application for license to
5 marry, the certificate of registry of marriage, and the marriage certificate.

6 13. Plaintiff-Intervenor the City and County of San Francisco is a charter city and county
7 organized and existing under the Constitution and laws of the State of California. San Francisco is
8 responsible for issuing marriage licenses, performing civil marriage ceremonies, and maintaining vital
9 records of marriages.

10 14. Defendants-Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez,
11 Hak-Shing William Tam, and Mark A. Jansson are the official proponents of Prop. 8 under California
12 law. Defendant-Intervenor ProtectMarriage.com – Yes on 8, a Project of California Renewal is a
13 "primarily formed ballot measure committee" under California law and was established to support
14 Proposition 8. The Court granted Defendants-Intervenors' motion to intervene in this action before
15 this Complaint was filed.

16 **FACTS**

17 15. Plaintiff-Intervenor adopts and incorporates by reference Plaintiffs' statement of facts,
18 Docket 1-1 at ¶¶ 20-36.

19 16. Prop. 8 requires San Francisco to violate the federal constitutional rights of lesbians and
20 gay men by denying them the marriage licenses that it daily issues to heterosexual couples. Under
21 California state law, city and county officials may not decline to enforce statutory restrictions on
22 marriage until a court holds them unconstitutional.

23 17. Denying same-sex couples the right to marry imposes significant harms on lesbian and
24 gay individuals, their families, and their communities. When the State excludes same-sex couples
25 from the institution of marriage, San Francisco must respond to the financial and public health
26 consequences of this discrimination.

27 18. San Francisco provides its neediest citizens with welfare benefits; shelters and
28 supportive housing for the homeless; primary, emergency, psychiatric and other kinds of public health

1 care; juvenile delinquency and dependency services including foster care; nursing home care and other
2 types of support. Discrimination, including sexual orientation discrimination, results in increased use
3 of many such services.

4 19. San Francisco bears the financial burden of providing health care, welfare benefits, and
5 other social services to adults and children who become dependent on public resources when a
6 relationship breaks down. By denying same-sex couples the right to marry, Prop. 8 makes it less
7 likely that such couples will formalize their relationships in a way that imposes obligations of support
8 upon which adults and children may rely. Studies show that same-sex couples are significantly less
9 likely to enter into domestic partnerships and civil unions, which lack the full social and governmental
10 sanction and status of marriage, than they are to enter into marriage. Notwithstanding California's
11 domestic partnership law, its denial of marriage to same-sex couples increases the likelihood that San
12 Francisco's citizens will depend on local health and welfare programs.

13 20. The State's separate and unequal scheme for recognizing same-sex relationships also
14 sends a message to the world that in the State's eyes, lesbians and gay men are unequal to other
15 citizens. This message was evidenced by an increase in anti-gay violence during the Prop. 8 campaign
16 and after its passage.

17 21. San Francisco bears the financial burden of providing health care, welfare benefits and
18 other social services to adults and youth whose physical or mental health suffers because of
19 discrimination, bias, bullying, and violence targeted at lesbians and gay men. Negative health
20 consequences of discrimination – especially officially sanctioned discrimination like Prop. 8 and the
21 negative message it sends – include suicide, depression and substance abuse, injuries from hate crimes,
22 and homelessness. By denying same-sex couples the right to marry, Prop. 8 harms lesbian and gay
23 individuals by branding them with a mark of inferiority. This directly injures the mental health of
24 lesbian and gay individuals. State-sanctioned discrimination also encourages private discrimination
25 and increases the likelihood that lesbian and gay individuals will be subject to bias, bullying and
26 violence on the basis of their sexual orientation. This increases the likelihood that San Francisco will
27 be required to provide health care, welfare benefits and other social services to its citizens.

28

1 22. Between June 16, 2008, and November 4, 2008, San Francisco issued thousands of
2 marriage licenses to same-sex couples. San Francisco benefitted from fees, taxes and other revenue
3 generated by the weddings of same-sex couples and tourism associated with those weddings. This
4 revenue includes fees for issuing and recording licenses and solemnizing marriages, fees for rental of
5 public buildings, parking fees, sales tax, hotel tax, airport revenues, and payroll tax for hotel and
6 restaurant workers.

7 23. Prop. 8 deprives San Francisco of the revenue that would be generated by the weddings
8 of same-sex couples in San Francisco.

9 24. Prop. 8 stunts economic growth in San Francisco by making it more difficult for San
10 Francisco employers to recruit and retain talented employees, who may instead choose to live in states
11 that provide full marriage equality such as Maine, New Hampshire, Massachusetts, Vermont and Iowa.
12 This reduces San Francisco's tax base and deprives San Francisco of revenue.

13 25. There is a long history of public and private discrimination against lesbians and gay
14 men. This discrimination includes unconstitutional criminal penalties for private sexual conduct
15 between consenting adults, hate crimes and harassment, public and private discrimination in
16 employment, and laws stripping lesbians and gay men of rights afforded to all other citizens.

17 26. Sexual orientation bears no relation to an individual's ability to contribute to society.

18 27. The vast majority of people experience little or no choice about their sexual orientation,
19 which cannot be changed readily, if at all. Attempts to change sexual orientation often cause serious
20 harm.

21 28. Although lesbians and gay men have made significant advances, they lack the political
22 power to ensure protection of their rights through the political process. In 1999, the California
23 Legislature passed domestic partnership legislation, 1999 Cal. Stats. ch. 588, § 2, and subsequently
24 expanded the rights and responsibilities of domestic partnership, 2003 Cal. Stats. ch. 421, § 1. Despite
25 this progress in achieving a measure of formal recognition for same-sex relationships, the initiative
26 process has been used to deny same-sex couples the full rights and dignity of marriage. Voters
27 adopted Proposition 22 ("Prop. 22") in 2000, which stated that "[o]nly marriage between a man and a
28 woman is valid or recognized in California." Cal. Fam. Code § 308.5. In 2008 the California

1 Supreme Court held that Prop. 22 violated the privacy, due process, and equal protection guarantees of
2 the California Constitution. *In re Marriage Cases*, 43 Cal. 4th 757 (2008). But the voters responded
3 by adopting Prop. 8, which amended the California Constitution to selectively repeal – for lesbians and
4 gay men only – a portion of those rights protected by the privacy, due process and equal protection
5 guarantees of the state constitution.

6 29. The right of two consenting adults to marry is deeply rooted in the history and tradition
7 of this Nation.

8 30. The definition and understanding of marriage in California have evolved significantly
9 over time. These changes have not destroyed marriage but have allowed it to continue to be relevant
10 and remain an esteemed institution despite significant cultural change.

11 31. Excluding same-sex couples from marriage does not lead to increased stability in
12 marriages between opposite-sex couples. Permitting same-sex couples to marry does not destabilize
13 the marriages of opposite-sex couples.

14 32. Excluding same-sex couples from marriage does not optimize the child-rearing
15 environment of married opposite-sex couples.

16 33. California recognizes that lesbians and gay men have the right to form state-sanctioned
17 relationships of mutual caring and support and have the right and ability to raise children. In 1999, the
18 California Legislature created the status of registered domestic partnership and defined "domestic
19 partners" as "two adults who have chosen to share one another's lives in an intimate and committed
20 relationship of mutual caring." Cal. Fam. Code § 297(a). In 2003 the Legislature adopted AB 205,
21 which extended to registered domestic partners additional rights, benefits and responsibilities that are
22 given to married spouses under California law. The Legislature found that "[e]xpanding the rights and
23 creating responsibilities of registered domestic partners would further California's interests in
24 promoting family relationships and protecting family members during life crises." 2003 Cal. Stats. ch.
25 421, § 1(b). California also treats lesbian and gay men as capable parents equal to heterosexual
26 individuals. Cal. Welf. & Inst. Code §§ 16001.9(a)(23); 2003Cal. Stats. ch. 331; Cal. Fam. Code
27 §§ 8600, 9000(b).

28

1 34. The development of California's ban on permitting same-sex couples to marry reflects a
2 history of animus and continued animus towards lesbians and gay men.

3 35. Denying same-sex couples the right to marry meaningfully restricts options available to
4 lesbians and gay men. Marriage to opposite-sex partners is not a meaningful option for lesbians and
5 gay men.

6 36. Denying same-sex couples the right to marry does not meaningfully restrict options
7 available to heterosexuals.

8 37. Requiring one man and one woman in marriage promotes stereotypical gender roles.
9 The idea that men and women should or necessarily do fulfill distinct roles in marriage, based on their
10 gender, is premised on gender stereotypes that in other contexts have long been rejected as an
11 illegitimate basis for legal classifications.

12 38. Marriage is not now, and has never in this State been, limited to those who are capable
13 of procreating. The State has never established as a legal requirement for marriage that the members
14 of the couple be fertile, of child-bearing age, physically or mentally healthy or intent on having or
15 raising children.

16 39. Insofar as same-sex couples employ assisted reproduction or adoption or foster
17 parenting to bring children into their lives, the State freely permits and encourages them to do so in the
18 form of laws that allow such methods of reproduction and permit lesbians and gay men to be foster
19 parents and to adopt children. In these respects, same-sex couples are indistinguishable from the many
20 opposite-sex couples in California who use these same methods to bring children into their lives to
21 love and raise as their own. The only difference between these couples is that same-sex couples
22 cannot marry and they and their children therefore do not enjoy all the social and other benefits that
23 the title and stature of marriage bring, whereas opposite-sex couples can marry and they and their
24 children can enjoy these benefits.

25 40. Support for Prop. 8 was motivated by animus towards lesbians and gay men and moral
26 disapproval of same-sex relationships.

27 41. There are meaningful differences in the actual practice of registered domestic
28 partnerships, civil unions and marriage. Marriage is a valued social institution and married couples are

1 treated differently than unmarried couples. Creating a separate institution of domestic partnership
 2 stigmatizes same-sex couples and sends a message of inferiority to these couples, their children, and
 3 lesbians and gay men generally. This stigma increases the likelihood that lesbians and gay men will
 4 experience discrimination and harassment in schools, employment and other settings.

5 42. The qualifications and requirements for entering into or dissolving domestic partnership
 6 differ in certain respects from the qualifications and requirements for entering into or dissolving a
 7 marriage. Certain rights and benefits associated with marriage do not attach to domestic partnership.

8 43. State Defendants either assert that Prop. 8 violates the federal constitution or take no
 9 position on the matter. Attorney General Brown asserts that "[t]aking from same-sex couples the right
 10 to civil marriage that they had previously possessed under California's Constitution cannot be squared
 11 with guarantees of the Fourteenth Amendment." (Docket 39 at 2). Governor Schwarzenegger,
 12 Director of Public Health Horton, and Deputy Director Scott state that the federal challenge to Prop. 8
 13 "presents important constitutional questions that require and warrant judicial determination." (Docket
 14 46 at 2).

CLAIMS FOR RELIEF

CLAIM ONE: DEPRIVATION OF FUNDAMENTAL LIBERTIES AND DUE PROCESS BROUGHT PURSUANT TO 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 1983

17 44. Plaintiff-Intervenor incorporates here by reference paragraphs 1 through 43, supra, as if
 18 fully set forth herein.

19 45. Prop. 8 violates fundamental liberties that are protected by the Due Process Clause of
 20 the Fourteenth Amendment.

21 46. Prop. 8 impinges on fundamental liberties by denying gay and lesbian individuals the
 22 freedom to marry civilly and to enter into the same officially sanctioned family relationship as
 23 individuals who desire to marry someone of a different sex. For example, by denying same-sex
 24 couples the same designation of "marriage" that is afforded to opposite-sex couples, and instead
 25 allowing them access only to the separate designation and status of "domestic partnership," the State
 26 stigmatizes lesbians and gay men, as well as their children and families, and denies them the same
 27 dignity, respect, and stature afforded to the family relationships of different-sex couples.
 28

1 47. Prop. 8 substantially burdens lesbians' and gay men's fundamental right to autonomy
2 and privacy in establishing an intimate relationship with a chosen partner and their fundamental right
3 to marry and create a family with a chosen partner.

4 **CLAIM TWO: DEPRIVATION OF EQUAL PROTECTION BROUGHT PURSUANT TO**
5 **28 U.S.C. §§ 2201-02 AND 42 U.S.C. § 1983**

6 48. Plaintiffs incorporate here by reference paragraphs 1 through 47, as if fully set forth
7 herein.

8 49. Prop. 8 violates the Equal Protection Clause of the Fourteenth Amendment.

9 50. Prop. 8 arbitrarily excludes otherwise qualified lesbian and gay individuals from the
10 legal institution and status of civil marriage and thereby prohibits lesbians and gay men from marrying
11 the person of their choice, both because of their sexual orientation and because of their sex. Thus,
12 California law treats similarly-situated people differently by providing civil marriage to heterosexual
13 couples, but not to lesbian and gay couples. Instead, California law affords same-sex couples and their
14 families only the separate and unequal status of domestic partnership. Even if domestic partnership
15 provided all of the tangible benefits and privileges of marriage, it would remain unequal because of the
16 social, psychological, expressive, and symbolic difference between the designation "marriage," which
17 enjoys a long history and uniform recognition, and the different and unequal institution of "domestic
18 partnership," which is a recent and manifestly unequal creation. Lesbians and gay men are therefore
19 unequal in the eyes of the law, and their families are denied the same respect as officially sanctioned
20 families of opposite-sex couples. By purposefully denying civil marriage to lesbians and gay men,
21 Prop. 8 discriminates on the basis of sexual orientation and sex.

22 51. The disadvantage Prop. 8 imposes upon gays and lesbians is the result of moral
23 disapproval and animus against a politically unpopular group. The history of Prop. 8 demonstrates
24 that it was adopted as backlash to strip lesbians and gay men of rights previously conferred upon them
25 by the California Constitution, as interpreted by the California Supreme Court in *In re Marriage*
26 *Cases*, 43 Cal. 4th 757 (2008). As such, Prop. 8 withdrew from lesbians and gay men, but not others,
27 specific legal protections afforded by the California Constitution, and imposed a special disability
28 upon those persons alone. Accordingly, Prop. 8 violates the Equal Protection Clause of the Fourteenth

1 Amendment because it singles out lesbians and gay men for a disfavored legal status, thereby creating
2 a category of second-class citizens.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff-Intervenor pray for judgment as follows:

5 1. Plaintiff-Intervenor respectfully requests that this Court, pursuant to 28 U.S.C. § 2201,
6 enter a declaratory judgment stating that Prop. 8 and any other California law that excludes same-sex
7 couples from marriage violates the Due Process and Equal Protection Clauses of the Fourteenth
8 Amendment and 42 U.S.C. § 1983.

9 2. Plaintiff-Intervenor respectfully requests that this Court enter a permanent injunction
10 enjoining enforcement or application of Prop. 8 and any other California law that excludes same-sex
11 couples from marriage.

12 3. Plaintiff-Intervenor respectfully requests costs of suit, including reasonable attorney
13 fees under 42 U.S.C. § 1988, and all further relief to which it may be justly entitled.

14 Dated: August 20, 2009

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21
22 By: _____/s/_____
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Pursuant to General Order 45, § X(B), I hereby attest that the concurrence in the filing of this document has been obtained from single signatory, Therese M. Stewart.

Dated: August 20, 2009

By: _____ /s/
RONALD P. FLYNN, SBN 184186

Attorneys for Plaintiff-Intervenor
CITY AND COUNTY OF SAN FRANCISCO