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9 *Application Pending for Admission to U. S. District Court, Northern District of California

10 ATTORNEYS FOR PROPOSED INTERVENORS COUNTY OF IMPERIAL
 11 OF THE STATE OF CALIFORNIA, BOARD OF SUPERVISORS OF IMPERIAL
 12 COUNTY, AND ISABEL VARGAS IN HER OFFICIAL CAPACITY AS DEPUTY
 13 CLERK/DEPUTY COMMISSIONER OF CIVIL MARRIAGES FOR THE COUNTY OF
 14 IMPERIAL

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 KRISTIN M. PERRY, SANDRA B. STIER,
 18 PAUL T. KATAMI, and JEFFREY J.
 19 ZARRILLO,

20 Plaintiffs,

21 CITY AND COUNTY OF SAN FRANCISCO,

22 Plaintiff-Intervenor,

23 v.

24 ARNOLD SCHWARZENEGGER, in his official
 25 capacity as Governor of California; EDMUND G.
 26 BROWN, JR., in his official capacity as Attorney
 27 General of California; MARK B. HORTON, in his
 28 official capacity as Director of the California
 Department of Public Health and State Registrar
 of Vital Statistics; LINETTE SCOTT, in her
 official capacity as Deputy Director of Health
 Information & Strategic Planning for the
 California Department of Public Health;

CASE NO. 09-CV-2292 VRW

**[PROPOSED] ANSWER TO
 PLAINTIFF-INTERVENOR CITY
 AND COUNTY OF SAN
 FRANCISCO'S COMPLAINT IN
 INTERVENTION OF PROPOSED
 INTERVENORS COUNTY OF
 IMPERIAL, THE BOARD OF
 SUPERVISORS OF IMPERIAL
 COUNTY, AND ISABEL VARGAS
 IN HER OFFICIAL CAPACITY AS
 DEPUTY CLERK/DEPUTY
 COMMISSIONER OF CIVIL
 MARRIAGES FOR THE COUNTY
 OF IMPERIAL**

Date: January 21, 2010
 Time: 10:00 a.m.
 Judge: Chief Judge Vaughn R. Walker
 Location: Courtroom 6, 17th Floor

1 PATRICK O'CONNELL, in his official capacity
2 as Clerk-Recorder for the County of Alameda; and
3 DEAN C. LOGAN, in his official capacity as
4 Registrar-Recorder/County Clerk for
5 the County of Los Angeles,

6 Defendants,

7 DENNIS HOLLINGSWORTH, GAIL J.
8 KNIGHT, MARTIN F. GUTIERREZ, HAK-
9 SHING WILLIAM TAM, and MARK A.
10 JANSSON, as official proponents of
11 Proposition 8,

12 Defendant-Intervenors,

13 PROPOSED INTERVENORS COUNTY OF
14 IMPERIAL OF THE STATE OF CALIFORNIA,
15 BOARD OF SUPERVISORS OF IMPERIAL
16 COUNTY, AND ISABEL VARGAS IN HER
17 OFFICIAL CAPACITY AS DEPUTY
18 CLERK/DEPUTY COMMISSIONER OF CIVIL
19 MARRIAGES FOR THE COUNTY OF
20 IMPERIAL

21 Proposed-Intervenors

22 Proposed Intervenors, the County of Imperial of the State of California, the Board of
23 Supervisors of Imperial County, and Isabel Vargas in her official capacity as Deputy
24 Clerk/Deputy Commissioner of Civil Marriages for the County Of Imperial, by and through
25 counsel, answer Plaintiff-Intervenor's Complaint for Declaratory, Injunctive, or Other Relief
26 as follows:

27 1. Proposed Intervenors deny the allegations in Paragraph 1 of Plaintiff-
28 Intervenor's Complaint except to admit that before the enactment of Proposition 8, the
California Supreme Court in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), interpreted the
California Constitution to require the state government to issue marriage licenses to same-sex
couples, and to admit that in November 2008, the people of California approved Proposition 8,

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1 which amended the California Constitution to state that “[o]nly a marriage between a man and
2 a woman is valid or recognized in California.” Cal. Const. art. I, § 7.5.

3 2. Paragraph 2 of Plaintiff-Intervenor’s Complaint is a request for relief that does
4 not require a response. To the extent that a response is required, Proposed Intervenor deny
5 that Plaintiff-Intervenor is entitled to the relief requested.

6 3. Paragraph 3 of Plaintiff-Intervenor’s Complaint incorporates Paragraphs 3 and 4
7 of Plaintiffs’ Complaint; thus, Proposed Intervenor likewise incorporate their responses to
8 Paragraphs 3 and 4 of Plaintiffs’ Complaint.

9 4. Proposed Intervenor acknowledge, as indicated in Paragraph 4 of Plaintiff-
10 Intervenor’s Complaint, that Plaintiff-Intervenor asserts claims for declaratory relief under the
11 Fourteenth Amendment to the United States Constitution, but deny that Plaintiff-Intervenor is
12 entitled to such relief.

13 5. Proposed Intervenor acknowledge, as indicated in Paragraph 5 of Plaintiff-
14 Intervenor’s Complaint, that Plaintiff-Intervenor asserts claims against Proposition 8 for
15 declaratory and injunctive relief under the Fourteenth Amendment to the United States
16 Constitution, but deny that Plaintiff-Intervenor is entitled to such relief.

17 6. Proposed Intervenor acknowledge, as indicated in Paragraph 6 of Plaintiff-
18 Intervenor’s Complaint, that Plaintiff-Intervenor asserts claims against California Family Code
19 Sections 300, 301, 308.5 for declaratory and injunctive relief under the Fourteenth
20 Amendment to the United States Constitution, but deny that Plaintiff-Intervenor is entitled to
21 such relief.

22 7. Proposed Intervenor deny the allegations in Paragraph 7 of Plaintiff-
23 Intervenor’s Complaint except to admit that Plaintiff-Intervenor is a unit of local government
24 with the responsibility to issue civil marriage licenses.

25 8. Proposed Intervenor acknowledge, as indicated in Paragraph 8 of Plaintiff-
26 Intervenor’s Complaint, that Plaintiff-Intervenor asserts claims against Proposition 8 for
27 declaratory and injunctive relief under the United States Constitution, but deny that Plaintiff-
28 Intervenor is entitled to such relief. Proposed Intervenor also acknowledge that Plaintiff-

1 Intervenor requests attorneys' fees, costs, and expenses, but deny that Plaintiff-Intervenor is
2 entitled to such relief.

3 9. Proposed Intervenors admit that Defendant Arnold Schwarzenegger is the
4 Governor of the State of California. The second and third sentences of paragraph 9 of the
5 Complaint state legal conclusions that do not require a response. Proposed Intervenors lack
6 sufficient information to respond to the remaining allegations in Paragraph 9 of Plaintiff-
7 Intervenor's Complaint; thus they are deemed denied.

8 10. Proposed Intervenors admit that Defendant Edmund G. Brown, Jr., is the
9 Attorney General of the State of California. The second and third sentences of paragraph 10 of
10 Plaintiff-Intervenor's Complaint state legal conclusions that do not require a response.
11 Proposed Intervenors lack sufficient information to respond to the remaining allegations in
12 Paragraph 10 of Plaintiff-Intervenor's Complaint; thus they are deemed denied.

13 11. Proposed Intervenors admit that Defendant Mark B. Horton is the Director of the
14 California Department of Public Health. The remaining allegations of paragraph 11 of
15 Plaintiff-Intervenor's Complaint state legal conclusions that do not require a response..

16 12. Proposed Intervenors admit that Defendant Linette Scott is the Deputy Director
17 of Health Information & Strategic Planning for the California Department of Public Health.
18 Proposed Intervenors lack sufficient information to respond to the remaining allegations in
19 Paragraph 12 of Plaintiff-Intervenor's Complaint; thus they are deemed denied.

20 13. Proposed Intervenors admit the allegations in Paragraph 13 of Plaintiff-
21 Intervenor's Complaint.

22 14. Proposed Intervenors admit the allegations in Paragraph 14 of Plaintiff-
23 Intervenor's Complaint.

24 15. Paragraph 15 of Plaintiff-Intervenor's Complaint purports to incorporate
25 Paragraphs 20-36 of Plaintiffs' Complaint. Proposed Intervenors object to the extent that
26 Plaintiff-Intervenors' purport to incorporate allegations beyond the scope of the limited
27 intervention permitted by the Court. In the alternative, Proposed Intervenors likewise
28 incorporate their responses to Paragraphs 20-36 of Plaintiffs' Complaint.

1 16. Proposed Intervenors deny the allegations in Paragraph 16 of Plaintiff-
2 Intervenor's Complaint except to admit that city and county officials may not decline to
3 enforce Proposition 8. *See Lockyer v. City and County of San Francisco*, 95 P.3d 459, 473
4 (Cal. 2004).

5 17. Proposed Intervenors deny the allegations in Paragraph 17 of Plaintiff-
6 Intervenor's Complaint.

7 18. Proposed Intervenors deny, as alleged in Paragraph 18 of Plaintiff-Intervenor's
8 Complaint, that discrimination based on sexual-orientation results in an increased use of the
9 services identified in Paragraph 18. Proposed Intervenors lack sufficient knowledge or
10 information to respond to the remaining allegations in that Paragraph; thus those allegations
11 are deemed denied.

12 19. Proposed Intervenors lack sufficient knowledge or information to respond to the
13 allegations in the first sentence of Paragraph 19 of Plaintiff-Intervenor's Complaint;
14 accordingly those allegations are deemed denied. Proposed Intervenors deny the remaining
15 allegations in Paragraph 19 of Plaintiff-Intervenor's Complaint.

16 20. Proposed Intervenors deny the allegations in Paragraph 20 of Plaintiff-
17 Intervenor's Complaint.

18 21. Proposed Intervenors deny the allegations in Paragraph 21 of Plaintiff-
19 Intervenor's Complaint.

20 22. Proposed Intervenors admit that San Francisco issued marriage licenses to same-
21 sex couples between June 16, 2008 and November 4, 2008. Proposed Intervenors lack
22 sufficient knowledge or information to respond to the remaining allegations in Paragraph 22 of
23 Plaintiff-Intervenor's Complaint; thus those allegations are deemed denied.

24 23. Proposed Intervenors lack sufficient knowledge or information to respond to the
25 allegations in Paragraph 23 of Plaintiff-Intervenor's Complaint; thus those allegations are
26 deemed denied.

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1 24. Proposed Intervenors lack sufficient knowledge or information to respond to the
2 allegations in Paragraph 24 of Plaintiff-Intervenor's Complaint; thus those allegations are
3 deemed denied.

4 25. Proposed Intervenors object to the allegations in Paragraph 25 of Plaintiff-
5 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
6 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

7 26. Proposed Intervenors object to the allegations in Paragraph 26 of Plaintiff-
8 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
9 permitted by the Court. In the alternative, Proposed Intervenors deny any factual allegations
10 in Paragraph 26 of Plaintiff-Intervenor's Complaint.

11 27. Proposed Intervenors object to the allegations in Paragraph 27 of Plaintiff-
12 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
13 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

14 28. Proposed Intervenors object to the allegations in Paragraph 28 of Plaintiff-
15 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
16 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations except
17 to admit that in 1999, the California Legislature passed domestic-partnership legislation, that
18 in subsequent years the California Legislature expanded the rights and responsibilities of
19 domestic partners, that in 2000, Californian voters enacted the statutory initiative known as
20 Proposition 22, *see* Cal. Fam. Code § 308.5, that in May 2008, the California Supreme Court
21 found Proposition 22 to be invalid under the California Constitution, *see In re Marriage*
22 *Cases*, 183 P.3d 384 (Cal. 2008), and that in November 2008, Californian voters enacted
23 Proposition 8 and thereby amended the California Constitution.

24 29. Proposed Intervenors object to the allegations in Paragraph 29 of Plaintiff-
25 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
26 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

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1 30. Proposed Intervenors object to the allegations in Paragraph 30 of Plaintiff-
2 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
3 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

4 31. Proposed Intervenors object to the allegations in Paragraph 31 of Plaintiff-
5 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
6 permitted by the Court. In the alternative, Proposed Intervenors lack sufficient knowledge or
7 information to respond to these allegations; thus they are deemed denied.

8 32. Proposed Intervenors object to the allegations in Paragraph 32 of Plaintiff-
9 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
10 permitted by the Court. In the alternative, Proposed Intervenors lack sufficient knowledge or
11 information to respond to these allegations; thus they are deemed denied.

12 33. Proposed Intervenors object to the allegations in Paragraph 33 of Plaintiff-
13 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
14 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations except
15 to admit that in 1999, the California Legislature enacted a law creating domestic partnerships,
16 that California law defines "domestic partners" as "two adults who have chosen to share one
17 another's lives in an intimate and committed relationship of mutual caring," *see* Cal. Fam.
18 Code § 297(a), that in subsequent years the California Legislature expanded the rights and
19 responsibilities of domestic partners, and that California law permits a "domestic partner" to
20 adopt a child of his or her domestic partner, *see* Cal. Fam. Code § 9000(b).

21 34. Proposed Intervenors object to the allegations in Paragraph 34 of Plaintiff-
22 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
23 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

24 35. Proposed Intervenors object to the allegations in Paragraph 35 of Plaintiff-
25 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
26 permitted by the Court. In the alternative, Proposed Intervenors lack sufficient knowledge or
27 information to respond to these allegations; thus they are deemed denied.

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1 36. Proposed Intervenors object to the allegations in Paragraph 36 of Plaintiff-
2 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
3 permitted by the Court. In the alternative, Proposed Intervenors lack sufficient knowledge or
4 information to respond to these allegations; thus they are deemed denied.

5 37. Proposed Intervenors object to the allegations in Paragraph 37 of Plaintiff-
6 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
7 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

8 38. Proposed Intervenors object to the allegations in Paragraph 38 of Plaintiff-
9 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
10 permitted by the Court. In the alternative, Proposed Intervenors lack sufficient knowledge or
11 information to respond to these allegations; thus they are deemed denied.

12 39. Proposed Intervenors object to the allegations in Paragraph 39 of Plaintiff-
13 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
14 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations except
15 to admit that same-sex couples in California employ assisted reproduction, adoption, and
16 foster parenting to bring children into their lives.

17 40. Proposed Intervenors object to the allegations in Paragraph 40 of Plaintiff-
18 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
19 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations.

20 41. Proposed Intervenors object to the allegations in Paragraph 41 of Plaintiff-
21 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
22 permitted by the Court. In the alternative, Proposed Intervenors deny these allegations except
23 to admit that marriage is a valued social institution and that California law treats married
24 couples differently than unmarried couples in some respects.

25 42. Proposed Intervenors object to the allegations in Paragraph 42 of Plaintiff-
26 Intervenor's Complaint on the ground that they go beyond the limited scope of intervention
27 permitted by the Court. In the alternative, Proposed Intervenors admit that the qualifications
28 for entering into or dissolving a domestic partnership differ in certain respects from the

1 qualifications for entering into or dissolving a marriage, and that there are certain minor
2 differences between the rights and benefits associated with marriage and those associated with
3 domestic partnership.

4 43. Proposed Intervenors admit, as alleged in Paragraph 43 of Plaintiff-Intervenor's
5 Complaint, that Attorney General Edmund G. Brown, in his Answer to Plaintiffs' Complaint,
6 expressed his opinion that "[t]aking from same-sex couples the right to civil marriage that they
7 had previously possessed under California's Constitution cannot be squared with guarantees of
8 the Fourteenth Amendment." (Doc. # 39 at p. 2.) Proposed Intervenors also admit, as alleged
9 in Paragraph 43 of Plaintiff-Intervenor's Complaint, that Governor Arnold Schwarzenegger,
10 Director of Public Health Mark B. Horton, and Deputy Director Linette Scott, in their Answer
11 to Plaintiffs' Complaint, expressed their opinion that this case "presents important
12 constitutional questions that require and warrant judicial determination." (Doc. # 46 at p. 2.)

13 44. Proposed Intervenors incorporate their responses to Paragraphs 1 through 43 of
14 Plaintiff-Intervenor's Complaint as if fully set forth here.

15 45. Proposed Intervenors deny the allegations in Paragraph 45 of Plaintiff-
16 Intervenor's Complaint.

17 46. Proposed Intervenors deny the allegations in Paragraph 46 of Plaintiff-
18 Intervenor's Complaint.

19 47. Proposed Intervenors deny the allegations in Paragraph 47 of Plaintiff-
20 Intervenor's Complaint.

21 48. Proposed Intervenors incorporate their responses to Paragraphs 1 through 47 of
22 Plaintiff-Intervenor's Complaint as if fully set forth here.

23 49. Proposed Intervenors deny the allegations in Paragraph 49 of Plaintiff-
24 Intervenor's Complaint.

25 50. Proposed Intervenors admit that there is a symbolic difference between the
26 designation "marriage," which enjoys a long history and uniform recognition, and any other
27 type of designation for an intimate relationship. Proposed Intervenors deny the remaining
28 allegations in Paragraph 50 of Plaintiff-Intervenor's Complaint.

1 51. Proposed Intervenors deny the allegations in Paragraph 51 of Plaintiff-
2 Intervenor's Complaint.

3 52. The remainder of Plaintiff-Intervenor's Complaint is a Prayer for Relief that
4 does not require a response. To the extent that a response is required, Proposed Intervenors
5 deny that Plaintiff-Intervenor is entitled to the relief requested.

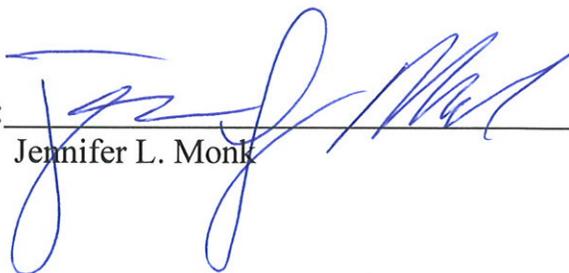
6 **First Affirmative Defense**

7 Plaintiff-Intervenor has failed to state a claim upon which relief can be granted.

8 WHEREFORE, Proposed Intervenors respectfully request that this Court dismiss
9 Plaintiff-Intervenor's claims with prejudice, deny Plaintiff-Intervenor's Prayer for Relief,
10 order Plaintiff-Intervenor to pay Proposed Intervenors' costs and attorneys' fees, and grant
11 other relief deemed just and proper.

12 DATED: December 15, 2009

13 ADVOCATES FOR FAITH AND FREEDOM
14 ATTORNEYS FOR PROPOSED
15 INTERVENORS COUNTY OF IMPERIAL
16 OF THE STATE OF CALIFORNIA, BOARD
17 OF SUPERVISORS OF IMPERIAL
18 COUNTY, AND ISABEL VARGAS IN HER
19 OFFICIAL CAPACITY AS DEPUTY
20 CLERK/DEPUTY COMMISSIONER OF
21 CIVIL MARRIAGES FOR THE COUNTY
22 OF IMPERIAL

23 By: 
24 Jennifer L. Monk

25
26
27
28

DECLARATION OF SERVICE

I, Jennifer L. Monk, declare as follows:

I am employed in the State of California; I am over the age of eighteen years and am not a party to this action; my business address is 24910 Las Brisas Road, Suite 110, Murrieta, California 92562. On December 15, 2009, I served the following document(s):

1. **[PROPOSED] ANSWER TO PLAINTIFF-INTERVENOR CITY AND COUNTY OF SAN FRANCISCO'S COMPLAINT IN INTERVENTION OF PROPOSED INTERVENORS COUNTY OF IMPERIAL, THE BOARD OF SUPERVISORS OF IMPERIAL COUNTY, AND ISABEL VARGAS IN HER OFFICIAL CAPACITY AS DEPUTY CLERK/DEPUTY COMMISSIONER OF CIVIL MARRIAGES FOR THE COUNTY OF IMPERIAL**

on the parties stated below by the following means of service:

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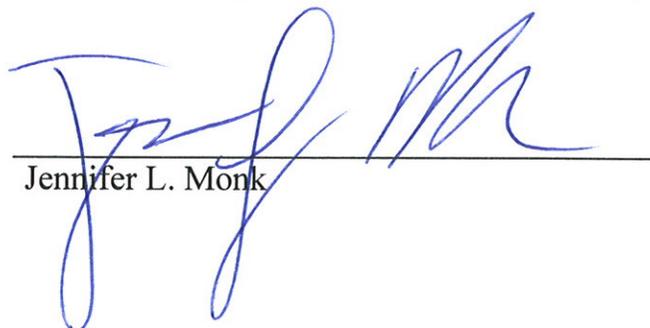
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Attorneys for Plaintiff Kristin M. Perry

BY ELECTRONIC MAIL: I caused the following documents to be transmitted via electronic mail to the attorneys of record at the email addresses listed above pursuant to an agreement in writing between the parties that such service is appropriate under Federal Rule of Civil Procedure 5(b)(2)(E).

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed in Murrieta, California, December 15, 2009.



Jennifer L. Monk