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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11

13 **KRISTIN M. PERRY, ET AL.,**
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 Plaintiffs,
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 v.
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GOVERNOR ARNOLD SCHWARZENEGGER, ET
AL.,
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 Defendants.
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3:09-cv-02292-VRW
ANSWER OF ATTORNEY GENERAL
EDMUND G. BROWN JR.
 Date:
 Time:
 Courtroom:
 Judge: Hon. Vaughn R. Walker, C.J.
 Trial Date:
 Action Filed: May 22, 2009

20 This case arises under a factual and legal history that is unique to California. In May 2008,
 21 the California Supreme Court held that denying same-sex couples the right to marry while
 22 affording them the benefits of marriage through the domestic partnership law violated principles
 23 of equal protection, liberty, and privacy. *In re Marriage Cases*, 43 Cal.4th 757 (2008). The
 24 following November, a bare majority of California voters passed Proposition 8, which amended
 25 the State Constitution to declare that only marriages between a man and a woman would be
 26 recognized. Between May and November 2008, over 18,000 same-sex couples were married. In
 27 2009, the California Supreme Court upheld the validity of these marriages but declared that the
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1 voters had the authority to carve out of the state constitution an exception to the rights of liberty
2 and equal protection with respect to marriage. *Strauss v. Horton*, ___ Cal.4th ___, 93 Cal.Rptr.3d
3 591 (2009). Still, the court reaffirmed the liberty and equal protection principles that were
4 recognized in the *In re Marriage Cases* and that are at issue in this federal constitutional
5 challenge.

6 The Attorney General of California is sworn to uphold the Constitution of the United States
7 in addition to the Constitution of the State of California. Cal. Const., art. XX, § 3. The United
8 States Constitution is the “supreme law of the land.” U.S. Const., art. VI, § 2; Cal. Const., art. III,
9 § 1. Taking from same-sex couples the right to civil marriage that they had previously possessed
10 under California’s Constitution cannot be squared with guarantees of the Fourteenth Amendment.
11 Accordingly, the Attorney General answers the Complaint consistent with his duty to uphold the
12 United States Constitution, as Attorney General Thomas C. Lynch did when he argued that
13 Proposition 14, passed by the California voters in 1964, was incompatible with the Federal
14 Constitution. *Reitman v. Mulkey*, 387 U.S. 369 (1967).

15 1. In response to paragraph 1 of the Complaint, the Attorney General admits that in
16 November 2008 California adopted Proposition 8; that Proposition 8 amended Article I of the
17 California Constitution by adding section 7.5 which provides that “[o]nly marriage between a
18 man and a woman is valid or recognized in California;” and that the effect of Proposition 8 is to
19 deny gay men and lesbians and their same-sex partners access to civil marriage in California and
20 to deny them recognition of their civil marriages performed elsewhere. The Attorney General
21 admits that lesbians and gay men and their same-sex partners may form domestic partnerships in
22 California pursuant to California Family Code sections 297 through 299.6, and that such domestic
23 partnerships are not equal to civil marriage, and that this unequal treatment denies lesbians and
24 gay men rights guarantees by the Fourteenth Amendment to the United States Constitution.
25 Except as specifically admitted herein, the Attorney General denies the allegations of paragraph 1
26 of the Complaint.

27 2. In response to paragraph 2 of the Complaint, the Attorney General admits that it is for
28 the reasons stated in paragraph 1 of the Complaint that the Plaintiffs ask this court to enjoin

1 enforcement of Proposition 8 and other California statutes. Except as specifically admitted
2 herein, the Attorney General denies the allegations of paragraph 2 of the Complaint.

3 3. In response to paragraph 3 of the Complaint, the Attorney General admits that this
4 Court has jurisdiction over claims for injunctive and declaratory relief against the officials
5 exercising executive powers that are named as defendants in the Complaint, and which may
6 operate to enjoin future enforcement of Proposition 8. Except as specifically admitted herein, the
7 Attorney General denies the allegations of paragraph 3 of the Complaint.

8 4. The Attorney General admits the allegations of paragraph 4 of the Complaint.

9 5. In response to paragraph 5 of the Complaint, the Attorney General admits that
10 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically
11 admitted herein, the Attorney General denies the allegations of paragraph 5 of the Complaint.

12 6. In response to paragraph 6 of the Complaint, the Attorney General admits that
13 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically
14 admitted herein, the Attorney General denies the allegations of paragraph 6 of the Complaint.

15 7. In response to paragraph 7 of the Complaint, the Attorney General admits that
16 Proposition 8 denies same-sex couples the right to civil marriage in California, and that it
17 therefore violates the Fourteenth Amendment to the United States Constitution. The Attorney
18 General lacks knowledge or information sufficient to form a belief as to the truth of the remaining
19 matters asserted in paragraph 7 of the Complaint and on that basis denies them.

20 8. In response to paragraph 8 of the Complaint, the Attorney General admits that
21 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically
22 admitted herein, the Attorney General denies the allegations of paragraph 8 of the Complaint.

23 9. The Attorney General lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations of paragraph 9 of the Complaint and on that basis denies them.

25 10. The Attorney General lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations of paragraph 10 of the Complaint and on that basis denies them.

27 11. The Attorney General lacks knowledge or information sufficient to form a belief as to
28 the truth of the allegations of paragraph 11 of the Complaint and on that basis denies them.

1 12. The Attorney General lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of paragraph 12 of the Complaint and on that basis denies them.

3 13. In response to paragraph 13 of the Complaint, the Attorney General admits that
4 Arnold Schwarzenegger is the Governor of the State of California; that in his official capacity the
5 supreme executive power of the state is vested in him; that it is his duty to properly execute the
6 laws of the state; and that the Governor has a district office in San Francisco. Except as
7 specifically admitted herein, the Attorney General denies the allegations of paragraph 13 of the
8 Complaint.

9 14. In response to paragraph 14 of the Complaint, the Attorney General admits that he is
10 the Attorney General of the State of California; that in his official capacity he is the chief law
11 officer of the state; that it is his duty to see that the laws of the state are uniformly and adequately
12 enforced; and that the Attorney General has offices in Oakland and San Francisco. Except as
13 specifically admitted herein, the Attorney General denies the allegations of paragraph 14 of the
14 Complaint.

15 15. In response to paragraph 15 of the Complaint, the Attorney General admits that Mark
16 B. Horton is the Director of the California Department of Public Health. The Attorney General
17 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
18 allegations of paragraph 15 of the Complaint and on that basis denies them.

19 16. In response to paragraph 16 of the Complaint, the Attorney General admits that
20 Linette Scott is the Deputy Director of Health Information and Strategic Planning for the
21 California Department of Public Health. The Attorney General lacks knowledge or information
22 sufficient to form a belief as to the truth of the remaining allegations of paragraph 16 of the
23 Complaint and on that basis denies them.

24 17. In response to paragraph 17 of the Complaint, the Attorney General admits that
25 Patrick O'Connell is the Auditor-Controller of Alameda County, which supervises the Clerk-
26 Recorder's Office. The Attorney General lacks knowledge or information sufficient to form a
27 belief as to the truth of the remaining allegations of paragraph 17 of the Complaint and on that
28 basis denies them.

1 18. In response to paragraph 18 of the Complaint, the Attorney General admits that Dean
2 C. Logan is the Registrar-Recorder/County Clerk for Los Angeles County. The Attorney General
3 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations of paragraph 18 of the Complaint and on that basis denies them.

5 19. The Attorney General admits that he has enforcement responsibilities in relation to
6 California law, which includes Proposition 8, and that Plaintiffs seek the relief that they allege.
7 Except as specifically admitted herein, the Attorney General denies the allegations of paragraph
8 19 of the Complaint.

9 20. In response to paragraph 20 of the Complaint, the Attorney General admits that
10 sexual orientation is a characteristic that bears no relation to a person's ability to perform or
11 contribute to society and that the sexual orientation of gays and lesbians has been associated with
12 a stigma of inferiority and second-class citizenship, manifested by the group's history of legal and
13 social disabilities (see *In re Marriage Cases*, 43 Cal.4th at 841). The Attorney General admits the
14 remaining allegations of paragraph 20 of the Complaint.

15 21. In response to paragraph 21 of the Complaint, the Attorney General admits that in the
16 mid-1970s several same-sex couples sought and were denied marriage licenses from county
17 clerks in California; and that in 1977, the California Legislature enacted California Family Code
18 section 300, which defined marriage as "a personal relation arising out of a civil contract between
19 a man and a woman, to which the consent of the parties capable of making that contract is
20 necessary" (see *In re Marriage Cases*, 43 Cal.4th at 795). The Attorney General lacks knowledge
21 or information sufficient to form a belief as to the truth of the remaining allegations of paragraph
22 21 of the Complaint and on that basis denies them.

23 22. In response to paragraph 22 of the Complaint, the Attorney General admits that in
24 1999 the California Legislature adopted a domestic partnership law codified at California Family
25 Code sections 297-299.6; that the law defines domestic partners as "two adults who have chosen
26 to share one another's lives in an intimate and committed relationship of mutual caring;" and that
27 under the law domestic partners must share a common residence, each be at least 18 years of age,
28 be unrelated by blood in any way that would prevent them from being married to one another, not

1 be married or a member of another domestic partnership, be capable of consenting, and either
2 both be of the same sex or include one person more than 62 years of age. The Attorney General
3 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations of paragraph 22 of the Complaint and on that basis denies them.

5 23. In response to paragraph 23 of the Complaint, the Attorney General admits that
6 California's domestic partnership law gives same-sex couples many of the substantive legal
7 benefits and privileges that California civil marriage provides; that the domestic partnership law
8 does not permit the marriage of same-sex couples; and that the California Supreme Court has
9 noted at least nine ways in which statutes concerning marriage differ from corresponding statutes
10 concerning domestic partnerships (see *In re Marriage Cases*, 43 Cal.4th at 805 fn. 24). The
11 Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the
12 remaining allegations of paragraph 23 of the Complaint, and on that basis denies them.

13 24. In response to paragraph 24 of the Complaint, the Attorney General admits that in
14 2000, California voters approved Proposition 22 (codified as Cal. Fam. Code § 308.5), which
15 provided that "[o]nly marriage between a man and a woman is valid or recognized in California;
16 and that in *Lockyer v. City & County of San Francisco*, 33 Cal.4th 1055 (2004), the California
17 Supreme Court found that Family Code sections 300 and 308.5 prohibited the City and County of
18 San Francisco from issuing marriage licenses to same-sex couples but did not address whether
19 those statutes were constitutional. The Attorney General lacks knowledge or information
20 sufficient to form a belief as to the truth of the remaining allegations of paragraph 24 of the
21 Complaint and on that basis denies them.

22 25. In response to paragraph 25 of the Complaint, on information and belief, the Attorney
23 General admits proponents of Proposition 8 submitted petitions with sufficient signatures to place
24 it on the November 2008 ballot. The Attorney General lacks knowledge or information sufficient
25 to form a belief as to the truth of the remaining allegations of paragraph 25 of the Complaint and
26 on that basis denies them.

27 26. The Attorney General admits the allegations of paragraph 26 of the Complaint.
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1 27. In response to paragraph 27 of the Complaint, on information and belief, the Attorney
2 General admits that the California Secretary of State certified that Proposition 8 qualified for the
3 November 2008 General Election ballot; admits that the Official Title and Summary (prepared by
4 the Attorney General) printed in the Voter Information Guide stated that Proposition 8 “Changes
5 the California Constitution to eliminate the right of same-sex couples to marry in California” and
6 “Provides that only marriage between a man and a woman is valid or recognized in California;”
7 admits that the effect of passage of Proposition 8 was to overturn the decision of the California
8 Supreme Court in *In re Marriage Cases*, by taking away the rights previously protected by the
9 California Constitution to same-sex civil marriage in California, and the right to have a same-sex
10 civil marriages that are performed elsewhere recognized in California; and admits that in doing so
11 Proposition 8 imposed a special disability on gays and lesbians and their families on the basis of
12 sexual orientation. The Attorney General lacks knowledge or information sufficient to form a
13 belief as to the truth of the remaining allegations of paragraph 27 of the Complaint, and on that
14 basis denies them.

15 28. The Attorney General admits the allegations of paragraph 28 of the Complaint.

16 29. In response to paragraph 29 of the Complaint, the Attorney General admits that since
17 the passage of Proposition 8 it has not been lawful to issue a marriage license to same-sex couples
18 in California. The Attorney General lacks knowledge or information sufficient to form a belief as
19 to the truth of the remaining allegations of paragraph 29 of the Complaint, and on that basis
20 denies them.

21 30. In response to paragraph 30 of the Complaint, the Attorney General admits that since
22 the passage of Proposition 8, California law has restricted civil marriage to opposite-sex couples,
23 and denied civil marriage to same-sex couples; that under California law, gay and lesbian couples
24 cannot enter into a civil marriage with a person of their choice; and that, as the California
25 Supreme Court found in *In re Marriage Cases*, 43 Cal.4th at 782, the inability to marry the
26 person of their choice denies gays and lesbians, as well as their families, the personal and public
27 affirmation that accompanies state-sanctioned civil marriage. Except as specifically admitted
28 herein, the Attorney General denies the allegations of paragraph 30 of the Complaint.

1 Constitution on its face. The Attorney General lacks knowledge or information sufficient to form
2 a belief as to the truth of the remaining allegations of paragraph 38 of the Complaint, and on that
3 basis denies them.

4 39. In response to paragraph 39 of the Complaint, the Attorney General admits that, to the
5 extent that Proposition 8 took from Plaintiffs their previously held fundamental right to marry, the
6 measure violates the Due Process clause of the Fourteenth Amendment to the United States
7 Constitution on its face; and that by denying civil marriage to gay and lesbian same-sex couples
8 that it affords to heterosexual opposite-sex couples, the California Constitution denies gay and
9 lesbian couples and their families the same dignity, respect, and stature afforded families headed
10 by a married couple. *See In re Marriage Cases*, 43 Cal.4th at 846-47.

11 **CLAIM TWO: EQUAL PROTECTION**

12 40. In response to paragraph 40 of the Complaint, the Attorney General incorporates here
13 by reference paragraphs 1 through 39 of this Answer as if fully set forth herein.

14 41. In response to paragraph 41 of the Complaint, and in light of the state constitutional
15 rights confirmed by the California Supreme Court in *In re Marriage Cases*, the Attorney General
16 admits that the passage of Proposition 8 violates the Equal Protection Clause of the Fourteenth
17 Amendment to the United States Constitution on its face. The Attorney General lacks knowledge
18 or information sufficient to form a belief as to the truth of the remaining allegations of paragraph
19 41 of the Complaint, and on that basis denies them.

20 42. In response to paragraph 42 of the Complaint, the Attorney General admits that
21 Proposition 8 restricts civil marriage in California to opposite-sex couples; that gays and lesbians
22 are therefore unable to enter into a civil marriage with the person of their choice; that the
23 California Constitution treats similarly-situated persons differently by providing civil marriage to
24 opposite-sex couples, but denying it to same-sex couples; that domestic partnership under
25 California law is available to same-sex couples, but is not the equivalent of civil marriage; that
26 even if domestic partnership were the substantive equivalent to civil marriage, it would still be
27 unequal to deny civil marriage to same-sex couples because, as recognized by the California
28 Supreme Court in *In re Marriage Cases*, domestic partnership would carry with it a stigma of

1 inequality and second-class citizenship; that under the California Constitution, gay and lesbian
2 same sex couples are unequal to heterosexual opposite sex couples; and that article I, section 7.5
3 of the California Constitution discriminates on the basis of sexual orientation. The Attorney
4 General lacks knowledge or information sufficient to form a belief as to the truth of the remaining
5 allegations of paragraph 42 of the Complaint, and on that basis denies them.

6 43. In response to paragraph 43 of the Complaint, the Attorney General admits that article
7 I, section 7.5 of the California Constitution was passed as a result of disapproval of or animus by
8 the majority of voters against same-sex marriages; that Proposition 8 took away from gays and
9 lesbians and their families rights that the California Supreme Court previously recognized to exist
10 in the California Constitution (see *In re Marriage Cases*, 43 Cal.4th at 853-54); that in doing so,
11 Proposition 8 imposed a special disability on gays and lesbians alone; and that as a result,
12 Proposition 8 violates the Equal Protection Clause of the Fourteenth Amendment to the United
13 States Constitution. The Attorney General lacks knowledge or information sufficient to form a
14 belief as to the truth of the remaining allegations of paragraph 43 of the Complaint, and on that
15 basis denies them.

16 **CLAIM THREE: VIOLATION OF 42 U.S.C. § 1983**

17 44. In response to paragraph 44 of the Complaint, the Attorney General incorporates here
18 by reference paragraphs 1 through 43 of this Answer as if fully set forth herein.

19 45. The Attorney General lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of paragraph 45 of the Complaint, and on that basis denies them.

21 **IRREPARABLE INJURY**

22 47. In response to paragraph 47 of the Complaint, the Attorney General incorporates here
23 by reference paragraphs 1 through 46 of this Answer as if fully set forth herein.

24 48. The Attorney General lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations of paragraph 48 of the Complaint, and on that basis denies them.

26 49. The Attorney General lacks knowledge or information sufficient to form a belief as to
27 the truth of the allegations of 49 of the Complaint, and on that basis denies them.

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Dated: June 12, 2009

Respectfully submitted,

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