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6 Attorneys for Defendants  
Arnold Schwarzenegger, in his official capacity as Governor of  
7 California, Mark B. Horton, in his official capacity as Director of the  
California Department of Public Health and State Registrar of Vital  
8 Statistics, and Linette Scott, in her official capacity as Deputy Director  
of Health Information & Strategic Planning for the California Department  
9 of Public Health

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 KRISTIN M. PERRY, SANDRA B. STIER, )  
14 PAUL T. KATAMI, and JEFFREY J. )  
ZARRILLO, )  
15 Plaintiffs, )

16 v. )

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

26 Defendants. )  
27 )  
28 )

Case No. 09-CV-02292 VRW

**THE ADMINISTRATION'S ANSWER TO  
COMPLAINT FOR DECLARATORY,  
INJUNCTIVE, OR OTHER RELIEF**

1 Defendants Arnold Schwarzenegger, Mark B. Horton, and Linette Scott  
2 (collectively “the Administration”), by and through counsel, answer Plaintiffs’ Complaint for  
3 Declaratory, Injunctive, or Other Relief as follows:

4 Plaintiffs’ Complaint presents important constitutional questions that require and  
5 warrant judicial determination. In a constitutional democracy, it is the role of the courts to  
6 determine and resolve such questions. To the extent that Plaintiffs have stated a justiciable  
7 controversy, setting forth federal constitutional challenges to Proposition 8, it is appropriate for  
8 the federal courts to determine and resolve those challenges. The Administration encourages the  
9 Court to resolve the merits of this action expeditiously.

10 In response to each of the specific allegations in Plaintiff’s Complaint, the  
11 Administration responds as follows:

12 1. In response to Paragraph 1 of the Complaint, the Administration admits  
13 that, in November 2008, California voters passed Proposition 8, and that Proposition 8 amended  
14 the California Constitution by adding a provision that states: “Only marriage between a man and  
15 a woman is valid or recognized in California.” Cal. Const. art. I, § 7.5. The Administration also  
16 admits that the California Family Code contains provisions that allow for the recognition of  
17 same-sex unions as domestic partnerships. The Administration also admits that the United States  
18 Supreme Court decided *Loving v. Virginia* in 1967, and the Supreme Court’s decision contains  
19 the language quoted in Paragraph 1 of Plaintiffs’ Complaint. As to the remaining allegations of  
20 Paragraph 1, the Administration notes that those remaining allegations state opinions and legal  
21 conclusions which require no answer. To the extent that the remaining allegations of  
22 Paragraph 1 contains allegations that require a response, the Administration responds by stating  
23 that it lacks knowledge or information sufficient to admit or deny those allegations.

24 2. In response to Paragraph 2 of the Complaint, the Administration admits  
25 that Plaintiffs have asked this Court to enjoin, preliminarily and permanently, enforcement of  
26 Proposition 8 (as set forth in the California Constitution, in article I, section 7.5) and certain  
27 California statutes. As to any remaining allegations of Paragraph 2, the Administration lacks  
28 knowledge or information sufficient to admit or deny those remaining allegations.

1           3.       The Administration admits that the Complaint presents a claim under 42  
2 U.S.C. section 1983, and that this Court has subject matter jurisdiction under 28 U.S.C. section  
3 1331.

4           4.       The allegations of Paragraph 4 of the Complaint consist of legal  
5 conclusions which require no answer. To the extent that Paragraph 4 contains an allegation that  
6 requires a response, the Administration lacks knowledge or information sufficient to admit or  
7 deny any such allegation.

8           5.       In response to Paragraph 5 of the Complaint, the Administration admits  
9 that Plaintiffs have brought an action pursuant to 42 U.S.C. section 1983 seeking the declarations  
10 and preliminary and permanent injunctions described by Plaintiffs in Paragraph 5. The  
11 Administration lacks knowledge or information sufficient to admit or deny the remaining  
12 allegations, if any, in Paragraph 5.

13           6.       In response to Paragraph 6 of the Complaint, the Administration admits  
14 that Plaintiffs have brought an action seeking the declarations and preliminary and permanent  
15 injunctions described by Plaintiffs in Paragraph 6 of the Complaint. The Administration lacks  
16 knowledge or information sufficient to admit or deny the remaining allegations, if any, in  
17 Paragraph 6.

18           7.       In response to Paragraph 7 of the Complaint, the Administration lacks  
19 knowledge or information sufficient to admit or deny these allegations.

20           8.       The Administration admits that Plaintiffs have brought an action seeking  
21 the declarations and preliminary and permanent injunctions described by Plaintiffs in Paragraph 8  
22 of the Complaint, and that Plaintiffs seek to recover attorneys' fees, costs, and expenses incurred  
23 in this action and any other relief that this Court may order. The Administration lacks knowledge  
24 or information sufficient to admit or deny the remaining allegations of Paragraph 8, if any.

25           9.       The Administration lacks knowledge or information sufficient to admit or  
26 deny the allegations of Paragraph 9 of the Complaint.

27           10.      The Administration lacks knowledge or information sufficient to admit or  
28 deny the allegations of Paragraph 10 of the Complaint.

1           11.     The Administration lacks knowledge or information sufficient to admit or  
2 deny the allegations of Paragraph 11 of the Complaint.

3           12.     The Administration lacks knowledge or information sufficient to admit or  
4 deny the allegations of Paragraph 12 of the Complaint.

5           13.     The Administration admits the allegations in Paragraph 13 of the  
6 Complaint.

7           14.     The Administration admits the allegations in Paragraph 14 of the  
8 Complaint.

9           15.     The Administration admits the allegations in Paragraph 15 of the  
10 Complaint.

11          16.     The Administration admits the allegations in Paragraph 16 of the  
12 Complaint.

13          17.     The Administration lacks knowledge or information sufficient to admit or  
14 deny the allegations of Paragraph 17 of the Complaint.

15          18.     The Administration lacks knowledge or information sufficient to admit or  
16 deny the allegations of Paragraph 18 of the Complaint.

17          19.     In response to Paragraph 19 of the Complaint, the Administration admits  
18 that the California Supreme Court has held that, under California law, county clerks and county  
19 recorders have a mandatory ministerial duty to enforce marriage laws and generally do not have  
20 the authority, in the absence of a judicial determination of unconstitutionality, to refuse to  
21 enforce such laws on the basis of a belief that they are unconstitutional. *Lockyer v. City &*  
22 *County of San Francisco*, 33 Cal. 4th 1055, 1082 (2004); *see also* Cal. Fam. Code § 350  
23 (marriage requires applicant to obtain license from county clerk); Cal. Health & Safety Code  
24 § 102285 (county recorder is local registrar of marriages). The Administration further admits  
25 that the Director of Public Health, who is designated as the State Registrar of Vital Statistics, is  
26 required to prescribe and furnish forms for use in registering marriages and to supervise local  
27 officials in the use of those forms (Cal. Health & Safety Code §§ 102175, 102100, 102180,  
28 102200), and that the Deputy Director of Health Information and Strategic Planning assists the

1 Director of Public Health in the fulfillment of his responsibilities. The Administration admits  
2 that the Governor has a duty to ensure that the laws are uniformly enforced. Cal. Const., art. V,  
3 sec. 1. As to the remaining allegations of Paragraph 19 of the Complaint, the Administration  
4 lacks knowledge or information sufficient to admit or deny any such remaining allegations.

5           20. The Administration lacks knowledge or information sufficient to admit or  
6 deny the allegations of Paragraph 20 of the Complaint.

7           21. In response to Paragraph 21 of the Complaint, the Administration admits  
8 that, in 1977, the California Legislature enacted legislation amending Civil Code section 4100,  
9 now codified at California Family Code section 300, and that section 300 defined marriage using  
10 the language quoted in Paragraph 21 of the Complaint. As to the remaining allegations of  
11 Paragraph 21 of the Complaint, the Administration lacks knowledge or information sufficient to  
12 admit or deny those remaining allegations.

13           22. In response to Paragraph 22 of the Complaint, the Administration admits  
14 that in 1999 the California Legislature adopted a domestic partnership law codified at California  
15 Family Code sections 297-299.6, that the law defines domestic partners using the language  
16 quoted in Paragraph 22 of the Complaint, and that the domestic partnership law sets forth certain  
17 requirements for persons who seek to enter into a domestic partnership (at Family Code section  
18 297(b)), including the requirements described in Paragraph 22 of the Complaint. As to the  
19 remaining allegations of Paragraph 22 of the Complaint, the Administration lacks knowledge or  
20 information sufficient to admit or deny those remaining allegations.

21           23. The allegations of Paragraph 23 of the Complaint contain legal  
22 conclusions which require no answer. To the extent that the allegations of Paragraph 23 require a  
23 response, the Administration responds by stating that it lacks knowledge or information sufficient  
24 to admit or deny those allegations.

25           24. The Administration admits that, in 2000, California voters approved  
26 Proposition 22 (codified at California Family Code section 308.5), which provided: “Only  
27 marriage between a man and a woman is valid or recognized in California.” The Administration  
28 also admits that, in 2004, the California Supreme Court decided *Lockyer v. City & County of San*

1 *Francisco*. That decision speaks for itself. As for any remaining allegations of Paragraph 24 of  
2 the Complaint, the Administration lacks knowledge or information sufficient to admit or deny  
3 those remaining allegations.

4           25.     The Administration admits that Proposition 8's proponents submitted  
5 petitions with enough signatures to place Proposition 8 on the ballot for the November 2008  
6 election. As for the remaining allegations of Paragraph 25, the Administration lacks knowledge  
7 or information sufficient to admit or deny those remaining allegations.

8           26.     The Administration admits the allegations in Paragraph 26 of the  
9 Complaint.

10           27.     The Administration admits that on June 2, 2009, the California Secretary  
11 of State certified that Proposition 8 qualified for placement on the ballot for the November 2008  
12 election. The Administration admits that the General Election Voter Information Guide,  
13 prepared by the Attorney General, stated, among other things, that Proposition 8 "Changes the  
14 California Constitution to eliminate the right of same-sex couples to marry in California." As for  
15 the remaining allegations of Paragraph 27 of the Complaint, the Administration lacks knowledge  
16 or information sufficient to admit or deny those remaining allegations.

17           28.     The Administration admits the allegations in Paragraph 28 of the  
18 Complaint.

19           29.     In response to Paragraph 29 of the Complaint, the Administration admits  
20 that, since Proposition 8 took effect, California law precludes the issuance of marriage licenses to  
21 same-sex couples.

22           30.     The allegations of Paragraph 30 of the Complaint contain legal  
23 conclusions which require no answer. To the extent that Paragraph 30 of the Complaint contains  
24 allegations that require a response, the Administration responds by stating that it lacks  
25 knowledge or information sufficient to admit or deny those allegations.

26           31.     The allegations of Paragraph 31 of the Complaint contain legal  
27 conclusions which require no answer. To the extent that Paragraph 31 of the Complaint contains  
28

1 allegations that require a response, the Administration responds by stating that it lacks  
2 knowledge or information sufficient to admit or deny those allegations.

3           32.     The Administration lacks knowledge or information sufficient to admit or  
4 deny the allegations of Paragraph 32 of the Complaint.

5           33.     The Administration lacks knowledge or information sufficient to admit or  
6 deny the allegations of Paragraph 33 of the Complaint.

7           34.     The allegations of Paragraph 34 of the Complaint contain legal  
8 conclusions which require no answer. To the extent that Paragraph 34 of the Complaint contains  
9 allegations that require a response, the Administration responds by stating that it lacks  
10 knowledge or information sufficient to admit or deny those allegations.

11           35.     In response to Paragraph 35 of the Complaint, the Administration admits  
12 that the United States Supreme Court decided *Loving v. Virginia* in 1967, and the Supreme  
13 Court's decision contains the language quoted in Paragraph 35 of Plaintiffs' Complaint. As to  
14 the remaining allegations of Paragraph 35, the Administration notes that those remaining  
15 allegations state opinions and legal conclusions which require no answer. To the extent that the  
16 remaining allegations of Paragraph 35 contain allegations that require a response, the  
17 Administration responds by stating that it lacks knowledge or information sufficient to admit or  
18 deny those allegations.

19           36.     In response to Paragraph 36 of the Complaint, the Administration admits  
20 that, in the absence of an injunction barring the enforcement of Proposition 8 or a final judicial  
21 determination that Proposition 8 is unconstitutional, California law provides that "Only marriage  
22 between a man and a woman is valid or recognized in California." As for the remaining  
23 allegations of Paragraph 36, those remaining allegations state opinions and legal conclusions  
24 which require no answer. To the extent that the remaining allegations of Paragraph 36 require a  
25 response, the Administration responds by stating that it lacks knowledge or information sufficient  
26 to admit or deny those allegations.

27           37.     In response to Paragraph 37 of the Complaint, the Administration  
28 incorporates by reference its answers to paragraphs 1 through 36 as if fully set forth herein.

1           38.     The allegations of Paragraph 38 of the Complaint contain legal  
2 conclusions which require no answer. To the extent Paragraph 38 contains allegations that  
3 require a response, the Administration responds by stating that it lacks knowledge or information  
4 sufficient to admit or deny those allegations.

5           39.     The allegations of Paragraph 39 of the Complaint contain legal  
6 conclusions which require no answer. To the extent Paragraph 39 contains allegations that  
7 require a response, the Administration responds by stating that it lacks knowledge or information  
8 sufficient to admit or deny those allegations.

9           40.     In response to Paragraph 40 of the Complaint, the Administration  
10 incorporates by reference its answers to paragraphs 1 through 39 as if fully set forth herein.

11           41.     The allegations of Paragraph 41 of the Complaint contain legal  
12 conclusions which require no answer. To the extent Paragraph 41 contains allegations that  
13 require a response, the Administration responds by stating that it lacks knowledge or information  
14 sufficient to admit or deny those allegations.

15           42.     The allegations of Paragraph 42 of the Complaint contain legal  
16 conclusions which require no answer. To the extent Paragraph 42 contains allegations that  
17 require a response, the Administration responds by stating that it lacks knowledge or information  
18 sufficient to admit or deny those allegations.

19           43.     The allegations of Paragraph 43 of the Complaint contain legal  
20 conclusions which require no answer. To the extent Paragraph 43 contains allegations that  
21 require a response, the Administration responds by stating that it lacks knowledge or information  
22 sufficient to admit or deny those allegations.

23           44.     The allegations of Paragraph 44 of the Complaint contain legal  
24 conclusions which require no answer. To the extent that Paragraph 44 contains allegations that  
25 require a response, the Administration lacks knowledge or information sufficient to admit or  
26 deny the remaining allegations.

27           45.     In response to Paragraph 45 of the Complaint, the Administration  
28 incorporates by reference its answers to paragraphs 1 through 44 as if fully set forth herein.

1           46.     The allegations of Paragraph 46 of the Complaint contain legal  
2 conclusions which require no answer. To the extent Paragraph 46 contains allegations that  
3 require a response, the Administration responds by stating that it lacks knowledge or information  
4 sufficient to admit or deny those allegations.

5           47.     In response to Paragraph 47 of the Complaint, the Administration  
6 incorporates by reference its answers to paragraphs 1 through 46 as if fully set forth herein.

7           48.     The allegations of Paragraph 48 of the Complaint contain legal  
8 conclusions which require no answer. To the extent Paragraph 48 contains allegations that  
9 require a response, the Administration responds by stating that it lacks knowledge or information  
10 sufficient to admit or deny those allegations.

11           49.     The Administration admits that Proposition 8, as embodied in the  
12 California Constitution, is presently in effect in California. The Administration also admits that  
13 the Complaint presents important legal issues that require and warrant a judicial determination.  
14 As for the remaining allegations of Paragraph 49, if any, the Administration lacks knowledge or  
15 information sufficient to admit or deny the remaining allegations.

16           WHEREFORE, the Administration respectfully requests that this Court grant any  
17 and all relief the Court determines to be just and proper.

18 Dated: June 16, 2009

MENNEMEIER, GLASSMAN & STROUD LLP  
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21 By: *Kenneth C. Mennemeier*  
22 Kenneth C. Mennemeier  
23 Attorneys for Defendants Arnold Schwarzenegger,  
24 Mark B. Horton, and Linette Scott  
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26  
27  
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1 Case Name: *Perry, et al. v. Schwarzenegger, et al.*;  
Case No: US District Court, Northern District, Case No. 3:09-cv-09-2292 VRW

2  
3 **CERTIFICATE OF SERVICE**

4 I declare as follows:

5 I am a resident of the State of California and over the age of eighteen years, and  
not a party to the within action; my business address is 980 9th Street, Suite 1700, Sacramento,  
6 California 95814. On June 16, 2009, I served the within documents:

7 **THE ADMINISTRATION'S ANSWER TO COMPLAINT FOR DECLARATORY,  
INJUNCTIVE, OR OTHER RELIEF**

8

9 by placing the document(s) listed above in a sealed Federal Express  
envelope and affixing a pre-paid air bill, and delivering to a Federal  
Express agent for delivery.

10  
11

12 by placing the document(s) listed above in a sealed envelope, with postage  
thereon fully prepared, in the United States mail at Sacramento, California  
addressed as set forth below.

13 **SEE ATTACHED SERVICE LIST**

14 I am readily familiar with the firm's practice of collection and processing  
15 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal  
Service on that same day with postage thereon fully prepared in the ordinary course of business.

16 I declare that I am employed in the office of a member of the bar of this Court at  
17 whose direction this service was made.

18 Executed on June 16, 2009, at Sacramento, California.

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20 \_\_\_\_\_  
Angela Knight

**SERVICE LIST**

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