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15 MARK A. JANSSON, and PROTECTMARRIAGE.COM – YES ON 8, A
PROJECT OF CALIFORNIA RENEWAL

16 * Admitted *pro hac vice*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

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

21 Plaintiffs,

22 CITY AND COUNTY OF SAN FRANCISCO,

23 Plaintiff-Intervenor,

24 v.

25 ARNOLD SCHWARZENEGGER, in his official
26 capacity as Governor of California; EDMUND G.
27 BROWN, JR., in his official capacity as Attorney
28 General of California; MARK B. HORTON, in his
official capacity as Director of the California
Department of Public Health and State Registrar of

CASE NO. 09-CV-2292 VRW

**ANSWER OF DEFENDANTS-
INTERVENORS PROPOSITION 8
PROPOSERS AND
PROTECTMARRIAGE.COM TO
COMPLAINT OF PLAINTIFF-
INTERVENOR CITY AND COUNTY
OF SAN FRANCISCO**

Date: None
Time: None
Location: None
Judge: Chief Judge Vaughn R. Walker
Trial Date: January 11, 2010

1 Vital Statistics; LINETTE SCOTT, in her official
2 capacity as Deputy Director of Health Information
3 & Strategic Planning for the California Department
4 of Public Health; PATRICK O'CONNELL, in his
5 official capacity as Clerk-Recorder for the County
6 of Alameda; and DEAN C. LOGAN, in his official
7 capacity as Registrar-Recorder/County Clerk for
8 the County of Los Angeles,

9 Defendants,

10 and

11 PROPOSITION 8 OFFICIAL PROPONENTS
12 DENNIS HOLLINGSWORTH, GAIL J.
13 KNIGHT, MARTIN F. GUTIERREZ, HAK-
14 SHING WILLIAM TAM, and MARK A.
15 JANSSON; and PROTECTMARRIAGE.COM –
16 YES ON 8, A PROJECT OF CALIFORNIA
17 RENEWAL,

18 Defendants-Intervenors.

19 Additional Counsel for Defendants-Intervenors

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* Admitted *pro hac vice*

1 Defendants-Intervenors Proposition 8 Proponents Dennis Hollingsworth, Gail J. Knight,
2 Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson (collectively referred to as
3 “Proponents”), and Proposition 8 Campaign Committee ProtectMarriage.com – Yes on 8, a Project
4 of California Renewal (the “Committee”), by and through counsel, answer Plaintiff-Intervenor City
5 and County of San Francisco’s Complaint in Intervention for Declaratory, Injunctive, or Other
6 Relief as follows:

7 1. Defendants-Intervenors deny the allegations in Paragraph 1 of Plaintiff-Intervenor’s
8 Complaint except to admit that before the enactment of Proposition 8, the California Supreme Court
9 in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), interpreted the California Constitution to
10 require the state government to issue marriage licenses to same-sex couples, and to admit that in
11 November 2008, the people of California approved Proposition 8, which amended the California
12 Constitution to state that “[o]nly a marriage between a man and a woman is valid or recognized in
13 California.” Cal. Const. art. I, § 7.5.

14 2. Paragraph 2 of Plaintiff-Intervenor’s Complaint is a request for relief that does not
15 require a response. To the extent that a response is required, Defendants-Intervenors deny that
16 Plaintiff-Intervenor is entitled to the relief requested.

17 3. Paragraph 3 of Plaintiff-Intervenor’s Complaint incorporates Paragraphs 3 and 4 of
18 Plaintiffs’ Complaint; thus, Defendants-Intervenors likewise incorporate their responses to
19 Paragraphs 3 and 4 of Plaintiffs’ Complaint.

20 4. Defendants-Intervenors acknowledge, as indicated in Paragraph 4 of Plaintiff-
21 Intervenor’s Complaint, that Plaintiff-Intervenor asserts claims for declaratory relief under the
22 Fourteenth Amendment to the United States Constitution, but deny that Plaintiff-Intervenor is
23 entitled to such relief.

24 5. Defendants-Intervenors acknowledge, as indicated in Paragraph 5 of Plaintiff-
25 Intervenor’s Complaint, that Plaintiff-Intervenor asserts claims against Proposition 8 for declaratory
26 and injunctive relief under the Fourteenth Amendment to the United States Constitution, but deny
27 that Plaintiff-Intervenor is entitled to such relief.

28 6. Defendants-Intervenors acknowledge, as indicated in Paragraph 6 of Plaintiff-

1 Intervenor's Complaint, that Plaintiff-Intervenor asserts claims against California Family Code
2 Sections 300, 301, 308.5 for declaratory and injunctive relief under the Fourteenth Amendment to
3 the United States Constitution, but deny that Plaintiff-Intervenor is entitled to such relief.

4 7. Defendants-Intervenors deny the allegations in Paragraph 7 of Plaintiff-Intervenor's
5 Complaint except to admit that Plaintiff-Intervenor is a unit of local government with the
6 responsibility to issue civil marriage licenses.

7 8. Defendants-Intervenors acknowledge, as indicated in Paragraph 8 of Plaintiff-
8 Intervenor's Complaint, that Plaintiff-Intervenor asserts claims against Proposition 8 for declaratory
9 and injunctive relief under the United States Constitution, but deny that Plaintiff-Intervenor is
10 entitled to such relief. Defendants-Intervenors also acknowledge that Plaintiff-Intervenor requests
11 attorneys' fees, costs, and expenses, but deny that Plaintiff-Intervenor is entitled to such relief.

12 9. Defendants-Intervenors admit the allegations in Paragraph 9 of Plaintiff-Intervenor's
13 Complaint except that Defendants-Intervenors lack sufficient knowledge or information concerning
14 whether Governor Arnold Schwarzenegger maintains an office in San Francisco.

15 10. Defendants-Intervenors admit the allegations in Paragraph 10 of Plaintiff-
16 Intervenor's Complaint except that Defendants-Intervenors lack sufficient knowledge or
17 information concerning whether Attorney General Edmund G. Brown maintains offices in Oakland
18 and San Francisco.

19 11. Defendants-Intervenors admit the allegations in Paragraph 11 of Plaintiff-
20 Intervenor's Complaint except that Defendants-Intervenors lack sufficient knowledge or
21 information concerning Public Health Director Mark B. Horton's job responsibilities.

22 12. Defendants-Intervenors admit the allegations in Paragraph 12 of Plaintiff-
23 Intervenor's Complaint except that Defendants-Intervenors lack sufficient knowledge or
24 information concerning Deputy Director Linette Scott's job responsibilities.

25 13. Defendants-Intervenors admit the allegations in Paragraph 13 of Plaintiff-
26 Intervenor's Complaint.

27 14. Defendants-Intervenors admit the allegations in Paragraph 14 of Plaintiff-
28 Intervenor's Complaint.

1 15. Paragraph 15 of Plaintiff-Intervenor's Complaint purports to incorporate Paragraphs
2 20-36 of Plaintiffs' Complaint. Defendants-Intervenors object to the extent that Plaintiff-
3 Intervenors' purport to incorporate allegations beyond the scope of the limited intervention
4 permitted by the Court. In the alternative, Defendants-Intervenors likewise incorporate their
5 responses to Paragraphs 20-36 of Plaintiffs' Complaint.

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

9 17. Defendants-Intervenors deny the allegations in Paragraph 17 of Plaintiff-Intervenor's
10 Complaint.

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

16 19. Defendants-Intervenors lack sufficient knowledge or information to respond to the
17 allegations in the first sentence of Paragraph 19 of Plaintiff-Intervenor's Complaint; accordingly
18 those allegations are deemed denied. Defendants-Intervenors deny the remaining allegations in
19 Paragraph 19 of Plaintiff-Intervenor's Complaint.

20 20. Defendants-Intervenors deny the allegations in Paragraph 20 of Plaintiff-Intervenor's
21 Complaint.

22 21. Defendants-Intervenors deny the allegations in Paragraph 21 of Plaintiff-Intervenor's
23 Complaint.

24 22. Defendants-Intervenors lack sufficient knowledge or information to respond to the
25 allegations in Paragraph 22 of Plaintiff-Intervenor's Complaint; thus those allegations are deemed
26 denied.

27 23. Defendants-Intervenors lack sufficient knowledge or information to respond to the
28 allegations in Paragraph 23 of Plaintiff-Intervenor's Complaint; thus those allegations are deemed

1 denied.

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

5 25. Defendants-Intervenors object to the allegations in Paragraph 25 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, Defendants-Intervenors deny these allegations.

8 26. Defendants-Intervenors object to the allegations in Paragraph 26 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, Defendants-Intervenors deny these allegations.

11 27. Defendants-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, Defendants-Intervenors deny these allegations.

14 28. Defendants-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, Defendants-Intervenors deny these allegations except to
17 admit that in 1999, the California Legislature passed domestic-partnership legislation, that in
18 subsequent years the California Legislature expanded the rights and responsibilities of domestic
19 partners, that in 2000, Californian voters enacted the statutory initiative known as Proposition 22,
20 *see* Cal. Fam. Code § 308.5, that in May 2008, the California Supreme Court found Proposition 22
21 to be invalid under the California Constitution, *see In re Marriage Cases*, 183 P.3d 384 (Cal. 2008),
22 and that in November 2008, Californian voters enacted Proposition 8 and thereby amended the
23 California Constitution.

24 29. Defendants-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, Defendants-Intervenors deny these allegations.

27 30. Defendants-Intervenors object to the allegations in Paragraph 30 of Plaintiff-
28 Intervenor’s Complaint on the ground that they go beyond the limited scope of intervention

1 permitted by the Court. In the alternative, Defendants-Intervenors deny these allegations.

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

7 32. Defendants-Intervenors object to the allegations in Paragraph 32 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, Defendants-Intervenors deny these allegations.

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

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

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23 35. Defendants-Intervenors object to the allegations in Paragraph 35 of Plaintiff-
24 Intervenor’s Complaint on the ground that they go beyond the limited scope of intervention
25 permitted by the Court. In the alternative, Defendants-Intervenors deny these allegations.

26 36. Defendants-Intervenors object to the allegations in Paragraph 36 of Plaintiff-
27 Intervenor’s Complaint on the ground that they go beyond the limited scope of intervention
28 permitted by the Court. In the alternative, Defendants-Intervenors lack sufficient knowledge or

1 information to respond to these allegations; thus they are deemed denied.

2 37. Defendants-Intervenors object to the allegations in Paragraph 37 of Plaintiff-
3 Intervenor’s Complaint on the ground that they go beyond the limited scope of intervention
4 permitted by the Court. In the alternative, Defendants-Intervenors deny these allegations.

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

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

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

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

23 42. Defendants-Intervenors object to the allegations in Paragraph 42 of Plaintiff-
24 Intervenor’s Complaint on the ground that they go beyond the limited scope of intervention
25 permitted by the Court. In the alternative, Defendants-Intervenors admit that the qualifications for
26 entering into or dissolving a domestic partnership differ in certain respects from the qualifications
27 for entering into or dissolving a marriage, and that there are certain minor differences between the
28 rights and benefits associated with marriage and those associated with domestic partnership.

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

10 44. Defendants-Intervenors incorporate their responses to Paragraphs 1 through 43 of
11 Plaintiff-Intervenor’s Complaint as if fully set forth here.

12 45. Defendants-Intervenors deny the allegations in Paragraph 45 of Plaintiff-Intervenor’s
13 Complaint.

14 46. Defendants-Intervenors deny the allegations in Paragraph 46 of Plaintiff-Intervenor’s
15 Complaint.

16 47. Defendants-Intervenors deny the allegations in Paragraph 47 of Plaintiff-Intervenor’s
17 Complaint.

18 48. Defendants-Intervenors incorporate their responses to Paragraphs 1 through 47 of
19 Plaintiff-Intervenor’s Complaint as if fully set forth here.

20 49. Defendants-Intervenors deny the allegations in Paragraph 49 of Plaintiff-Intervenor’s
21 Complaint.

22 50. Defendants-Intervenors admit that there is a symbolic difference between the
23 designation “marriage,” which enjoys a long history and uniform recognition, and any other type of
24 designation for an intimate relationship. Defendants-Intervenors deny the remaining allegations in
25 Paragraph 50 of Plaintiff-Intervenor’s Complaint.

26 51. Defendants-Intervenors deny the allegations in Paragraph 51 of Plaintiff-Intervenor’s
27 Complaint.

28 52. The remainder of Plaintiff-Intervenor’s Complaint is a Prayer for Relief that does not

1 require a response. To the extent that a response is required, Defendants-Intervenors deny that
2 Plaintiff-Intervenor is entitled to the relief requested.

3 **First Affirmative Defense**

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

5 **Second Affirmative Defense**

6 Plaintiff-Intervenor lacks standing to assert the claims in its Complaint.

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

11 Dated: August 28, 2009

12 COOPER AND KIRK, PLLC
13 ATTORNEYS FOR DEFENDANTS-INTERVENORS
14 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,
15 MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM,
16 MARK A. JANSSON, AND PROTECTMARRIAGE.COM –
17 YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

18 By: s/Charles J. Cooper _____
19 Charles J. Cooper
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