

1 ADVOCATES FOR FAITH AND FREEDOM  
2 Robert H. Tyler (CA Bar No. 179572)  
3 rtyler@faith-freedom.com  
4 \*Jennifer L. Monk (CA Bar No. 245512)  
5 jmonk@faith-freedom.com  
6 24910 Las Brisas Road, Suite 110  
7 Murrieta, California 92562  
8 Telephone:951-304-7583; Facsimile: 951-600-4996

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.

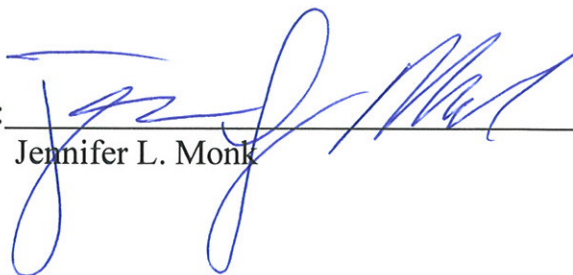
6 **First Affirmative Defense**

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:

Kenneth C. Mennemeier  
 Andrew W. Stroud  
 MENNEMEIER, GLASSMAN & STROUD  
 LLP  
 980 9th Street, Suite 1700  
 Sacramento, CA 95814-2736  
[kcm@mgslaw.com](mailto:kcm@mgslaw.com)  
[gosling@mgslaw.com](mailto:gosling@mgslaw.com)  
[aknight@mgslaw.com](mailto:aknight@mgslaw.com)  
[stroud@mgslaw.com](mailto:stroud@mgslaw.com)  
[lbailey@mgslaw.com](mailto:lbailey@mgslaw.com)

Gordon Burns  
 Tamar Pachter  
 OFFICE OF THE ATTORNEY GENERAL  
 1300 I Street, Suite 125  
 P.O Box. 944255  
 Sacramento, CA 94244-2550  
[Gordon.Burns@doj.ca.gov](mailto:Gordon.Burns@doj.ca.gov)  
[Tamar.Pachter@doj.ca.gov](mailto:Tamar.Pachter@doj.ca.gov)

*Attorneys for Defendant Attorney General  
Edmund G. Brown, Jr.*

*Attorneys for the Administration Defendants*

Dennis J. Herrera  
 Therese M. Stewart  
 OFFICE OF THE CITY ATTORNEY  
 City Hall, Room 234  
 One Dr. Carlton B. Goodlett Place  
 San Francisco, California 94102-4682  
[therese.stewart@sfgov.org](mailto:therese.stewart@sfgov.org)  
[erin.bernstein@sfgov.org](mailto:erin.bernstein@sfgov.org)  
[vince.chhabria@sfgov.org](mailto:vince.chhabria@sfgov.org)  
[danny.chou@sfgov.org](mailto:danny.chou@sfgov.org)

Elizabeth M. Cortez  
 Judy W. Whitehursts  
 THE OFFICE OF CITY COUNSEL  
 648 Kenneth Hahn Hall of Administration  
 500 West Temple Street  
 Los Angeles, CA 90012-2713  
[jwhitehurst@counsel.lacounty.gov](mailto:jwhitehurst@counsel.lacounty.gov)

*Attorneys for Defendant Dean C. Logan  
Registrar-Recorder/County Clerk, County*

1 [ronald.flynn@sfgov.org](mailto:ronald.flynn@sfgov.org)

*of Los Angeles*

2 [mollie.lee@sfgov.org](mailto:mollie.lee@sfgov.org)

3 [Christine.van.aken@sfgov.org](mailto:Christine.van.aken@sfgov.org)

4 [catheryn.daly@sfgov.org](mailto:catheryn.daly@sfgov.org)

5 *Attorneys for Plaintiff-Intervenor City and  
County of San Francisco*

6 Richard E. Winnie

Ted Olson

7 Brian E. Washington

Matthew McGill

8 Claude F. Kolm

Amir Tayrani

9 Manuel F. Martinez

GIBSON, DUNN & CRUTCHER LLP

10 THE OFFICE OF CITY COUNSEL

1050 Connecticut Avenue, N.W.

11 1221 Oak Street, Suite 450

Washington, DC 20036-5306

12 Oakland, California 94612

T: (202) 955-8500

13 [Brian.washington@acgov.org](mailto:Brian.washington@acgov.org)

F: (202) 467-0539

14 [Claude.kolm@acgov.org](mailto:Claude.kolm@acgov.org)

[TOlson@gibsondunn.com](mailto:TOlson@gibsondunn.com)

15 [Manuel.martinez@acgov.org](mailto:Manuel.martinez@acgov.org)

[MMcGill@gibsondunn.com](mailto:MMcGill@gibsondunn.com)

16 [Judith.martinez@acgov.org](mailto:Judith.martinez@acgov.org)

[ATayrani@gibsondunn.com](mailto:ATayrani@gibsondunn.com)

17 *Attorneys for Defendant Patrick O'Connell  
Clerk Recorder of the County of Alameda*

Theodore Boustrous, Jr.

Christopher Dusseault

Theane Kapur

GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

Los Angeles, CA 90072-1512

T: (213) 229-7000

F: (213) 229-7520

[TBoutrous@gibsondunn.com](mailto:TBoutrous@gibsondunn.com)

[CDusseault@gibsondunn.com](mailto:CDusseault@gibsondunn.com)

[TKapur@gibsondunn.com](mailto:TKapur@gibsondunn.com)

[SMalzahn@gibsondunn.com](mailto:SMalzahn@gibsondunn.com)

Ethan Dettmer

Enrique Monagas

GIBSON, DUNN & CRUTCHER LLP

555 Mission Street, Suite 3000

San Francisco, CA 94105

T: (415) 393-8200

F: (415) 393-8306

[EDettmer@gibsondunn.com](mailto:EDettmer@gibsondunn.com)

[SPiepmeier@gibsondunn.com](mailto:SPiepmeier@gibsondunn.com)

[EMonagas@gibsondunn.com](mailto:EMonagas@gibsondunn.com)

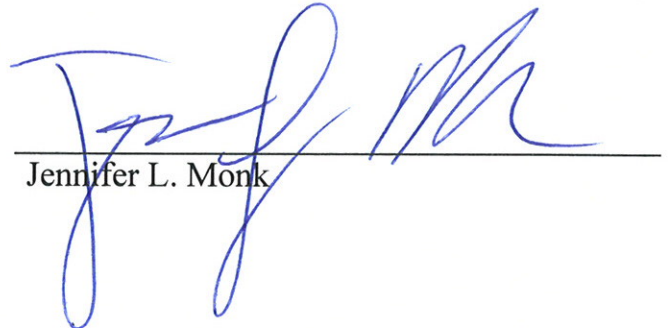
[RJustice@gibsondunn.com](mailto:RJustice@gibsondunn.com)  
[MJanky@gibsondunn.com](mailto:MJanky@gibsondunn.com)

Theodore Uno  
BOIES, SCHILLER & FLEXNER LLP  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
T: (510) 874-1000  
F: (510) 874-1460  
[jgoldman@bsflp.com](mailto:jgoldman@bsflp.com)  
[tuno@bsflp.com](mailto:tuno@bsflp.com)  
[brichardson@bsflp.com](mailto:brichardson@bsflp.com)  
[rbettan@bsflp.com](mailto:rbettan@bsflp.com)  
[jischiller@bsflp.com](mailto:jischiller@bsflp.com)

*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