COOPER AND KIRK, PLLC
Charles J. Cooper (DC Bar No. 248070)*
ccooper@cooperkirk.com
David H. Thompson (DC Bar No. 450503)*
dthompson@cooperkirk.com
Howard C. Nielson, Jr. (DC Bar No. 473018)*
hnielson@cooperkirk.com
Nicole J. Moss (DC Bar No. 472424)*
nmoss@cooperkirk.com
Jesse Panuccio (DC Bar No. 981634)*
jpanuccio@cooperkirk.com
Peter A. Patterson (OH Bar No. 0080840)*
ppatterson@cooperkirk.com
1523 New Hampshire Ave. N.W., Washington, D.C. 20036
Telephone: (202) 220-9600, Facsimile: (202) 220-9601

LAW OFFICES OF ANDREW P. PUGNO
Andrew P. Pugno (CA Bar No. 206587)
andrew@pugnolaw.com
101 Parkshore Drive, Suite 100, Folsom, California 95630
Telephone: (916) 608-3065, Facsimile: (916) 608-3066

ALLIANCE DEFENSE FUND
Brian W. Raum (NY Bar No. 2856102)*
braum@telladf.org
James A. Campbell (OH Bar No. 0081501)*
jcampbell@telladf.org
15100 North 90th Street, Scottsdale, Arizona 85260
Telephone: (480) 444-0020, Facsimile: (480) 444-0028

ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, MARK A. JANSSON, and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, CITY AND COUNTY OF SAN FRANCISCO, Plaintiff-Intervenor, v. ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California; EDMUND G.	CASE NO. 09-CV-2292 VRW **DEFENDANT-INTERVENORS' RESPONSE SECOND SI ADMISSIO**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case number: 3:09-cv-02292-VRW

PLTF EXHIBIT NO. PX0708

Date admitted: _____

By: _____

COOPER AND KIRK, PLLC
Charles J. Cooper (DC Bar No. 248070)*
ccooper@cooperkirk.com
David H. Thompson (DC Bar No. 450503)*
dthompson@cooperkirk.com
Howard C. Nielson, Jr. (DC Bar No. 473018)*
hnielson@cooperkirk.com
Nicole J. Moss (DC Bar No. 472424)*
nmoss@cooperkirk.com
Jesse Panuccio (DC Bar No. 981634)*
jpanuccio@cooperkirk.com
Peter A. Patterson (OH Bar No. 0080840)*
ppatterson@cooperkirk.com
1523 New Hampshire Ave. N.W., Washington, D.C. 20036
Telephone: (202) 220-9600, Facsimile: (202) 220-9601

LAW OFFICES OF ANDREW P. PUGNO
Andrew P. Pugno (CA Bar No. 206587)
andrew@pugnolaw.com
101 Parkshore Drive, Suite 100, Folsom, California 95630
Telephone: (916) 608-3065, Facsimile: (916) 608-3066

ALLIANCE DEFENSE FUND
Brian W. Raum (NY Bar No. 2856102)*
braum@telladf.org
James A. Campbell (OH Bar No. 0081501)*
jcampbell@telladf.org
15100 North 90th Street, Scottsdale, Arizona 85260
Telephone: (480) 444-0020, Facsimile: (480) 444-0028

ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, MARK A. JANSSON, and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, CITY AND COUNTY OF SAN FRANCISCO, Plaintiff-Intervenor, v. ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California; EDMUND G.	CASE NO. 09-CV-2292 VRW **DEFENDANT-INTERVENORS' RESPONSE TO PLAINTIFFS' SECOND SET OF REQUESTS FOR ADMISSION**

BROWN, JR., in his official capacity as Attorney General of California; MARK B. HORTON, in his 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; PATRICK O'CONNELL, in his official capacity as Clerk-Recorder for the County of Alameda; and DEAN C. LOGAN, in his official capacity as Registrar-Recorder/County Clerk for the County of Los Angeles,

Defendants,

and

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

Defendant-Intervenors.

Additional Counsel for Defendant-Intervenors

ALLIANCE DEFENSE FUND
Timothy Chandler (CA Bar No. 234325)
tchandler@telladf.org
101 Parkshore Drive, Suite 100, Folsom, California 95630
Telephone: (916) 932-2850, Facsimile: (916) 932-2851

Jordan W. Lorence (DC Bar No. 385022)*
jlorence@telladf.org
Austin R. Nimocks (TX Bar No. 24002695)*
animocks@telladf.org
801 G Street NW, Suite 509, Washington, D.C. 20001
Telephone: (202) 393-8690, Facsimile: (202) 347-3622

* Admitted *pro hac vice*

Defendant-Intervenors (the "Proponents"), pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, file these responses to Plaintiffs' Second Set of Requests For Admission. Proponents generally reserve the right to supplement and/or amend these responses to the extent required and/or allowed by the Federal Rules of Civil Procedure. Nothing in these responses constitutes an admission that the subject matter of any or all of these requests is legally relevant. For each response asserting insufficient information as a reason for failing to admit or deny, Proponents have made a reasonable inquiry and the information they know or can readily obtain is insufficient to enable them to admit or deny.

GENERAL OBJECTIONS

Proponents object to the definitions and instructions to the extent they exceed the scope and requirements of Rule 36 of the Federal Rules of Civil Procedure.

RESPONSES

REQUEST FOR ADMISSION NO. 69:

Admit that to date, gay and lesbian marriage rights have been voted on at the state level at least 33 times, and in only one instance did the pro-gay position win.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "gay and lesbian marriage rights", "voted on at the state level", and "pro-gay position." Subject to those objections, Proponents deny Request for Admission No. 69.

REQUEST FOR ADMISSION NO. 70:

Admit that the initiative process has been used against gays and lesbians more than any other social group.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "used against gays and lesbians" and "any other social group." Proponents further respond that they lack information sufficient to admit or deny Request for Admission No. 70.

REQUEST FOR ADMISSION NO. 71:

Admit that in 1953, President Eisenhower issued an executive order requiring the discharge of homosexual employees from federal employment, civilian or military.

RESPONSE:

This Request calls for a legal conclusion and thus does not require a response.

REQUEST FO R ADMISSION NO. 72:

Admit that in 1952, Congress prohibited homosexuals from entering the country, including for the purpose of tourism.

RESPONSE:

This Request calls for a legal conclusion and thus does not require a response.

REQUEST FOR ADMISSION NO. 73:

Admit that in as many as 28 states, there is no statutory barrier to firing, refusing to hire, or demoting a person in private sector employment solely on the basis of his or her identity as a gay man or lesbian.

RESPONSE:

This Request calls for a legal conclusion and thus does not require a response.

REQUEST FOR ADMISSION NO. 74:

Admit that there are no congressional districts with a majority population of gay and lesbian Americans.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Admission No. 74.

REQUEST FOR ADMISSION NO. 75:

Admit that there have been only six openly gay members of Congress in history.

RESPONSE:

Proponents admit that the following individuals have been "openly gay" while serving in Congress: Gerry Studds, Barney Frank, Steve Gunderson, Jim Kolbe, Tammy Baldwin, and Jared Polis. Proponents lack information sufficient to admit or deny the remaining assertions in Request for Admission No. 75.

REQUEST FOR ADMISSION NO. 76:

Admit that four of the six openly gay members of Congress were initially elected to the U.S. House of Representatives without publicly disclosing their sexual orientation.

RESPONSE:

Proponents admit that Tammy Baldwin and Jared Polis publicly disclosed their sexual orientation before their initial election to Congress. Proponents lack information sufficient to admit or deny the remaining assertions in Request for Admission No. 76.

REQUEST FOR ADMISSION NO. 77:

Admit that according to the Federal Bureau of Investigation, there were 1,265 hate crimes on the basis of perceived sexual orientation in 2007.

RESPONSE:

Proponents admit that according to the Federal Bureau of Investigation, in the year 2007 law enforcement agencies reported 1,265 incidents motivated by bias based on sexual orientation. *See* http://www.fbi.gov/ucr/hc2007/table_01.htm. Proponents lack information sufficient to admit or deny any remaining assertions in Request for Admission No. 77.

REQUEST FOR ADMISSION NO. 78:

Admit that in terms of single groups, only African Americans endured more instances of hate crimes in 2007 than gays and lesbians.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "single groups", to the extent that it does not identify the jurisdiction to which the request refers, and its implication that gays and lesbians constitute a "single group[]." Proponents further respond that they lack information sufficient to admit or deny Request for Admission No. 78.

REQUEST FOR ADMISSION NO. 79:

Admit that allowing marriage for same-sex couples will not affect the individual personalities of members of any given different-sex married couple.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "any given different-sex married couple" and "affect the individual personalities." Proponents further respond that they lack information sufficient to admit or deny Request for Admission No. 79.

REQUEST FOR ADMISSION NO. 80:

Admit that allowing marriage for same-sex couples will not affect any given different-sex married couple's communication styles and ways of handling conflict with each other.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "any given different-sex married couple", "communication styles", and "ways of handling conflict with each other." Proponents further respond that they lack information sufficient to admit or deny Request for Admission No. 80.

REQUEST FOR ADMISSION NO. 81:

Admit that allowing marriage for same-sex couples will not affect the stress a different-sex married couple experiences.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "affect the stress." Proponents further respond that they lack information sufficient to admit or deny Request for Admission No. 81.

REQUEST FOR ADMISSION NO. 82:

Admit that allowing marriage for same-sex couples will not affect the social support and resources available to any given different-sex married couple.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "social support" and "any given different-sex married couple." Subject to that objection, Proponents deny Request for Admission No. 82.

REQUEST FOR ADMISSION NO. 83:

Admit that the marriage rate, divorce rate, and nonmarital birth rate in the Netherlands

were not affected by permitting same-sex couples to marry beginning in 2001.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 84:

Admit that marriage is associated with enhanced psychological well-being, including less anxiety and depression and greater happiness and satisfaction with life.

RESPONSE:

Proponents admit that opposite-sex couples who are married experience, on average, less anxiety and depression and greater happiness and satisfaction with life than do non-married opposite-sex couples or persons not involved in an intimate relationship. Proponents lack information sufficient to admit or deny any remaining assertions in Request for Admission No. 84.

REQUEST FOR ADMISSION NO. 85:

Admit that social support and integration are central to the institution of marriage, and that marital relationships are typically affirmed in the presence of family members, friends, and civil or religious authorities.

RESPONSE:

Proponents object to this Request on the ground that it is compound. Proponents further object to this request on the ground that it is vague and ambiguous, particularly with respect to the use of "social support", "integration", and "affirmed." Subject to those objections, Proponents admit that societal support is central to the institution of marriage, and that marital relationships are typically entered in the presence of family members, friends, and civil or religious authorities.

REQUEST FOR ADMISSION NO. 86:

Admit that domestic partnerships do not provide the same meaningful social approval as marriage.

RESPONSE:

Proponents admit that marriage and domestic partnerships do not have identical social meaning. Proponents deny any implication that domestic partnerships do not provide meaningful

social approval.

REQUEST FOR ADMISSION NO. 87:

Admit that by creating barriers and constraints on dissolving the relationship, marriage can be a source of relationship stability and commitment.

RESPONSE:

Proponents admit that marriage between a man and a woman can be a source of relationship stability and commitment, including by creating barriers and constraints on dissolving the relationship. Proponents lack information sufficient to admit or deny any remaining assertions in Request for Admission No. 87.

REQUEST FOR ADMISSION NO. 88:

Admit that the long-term nature of marriage encourages spouses to increase household efficiency by dividing their labor in ways that increase the family's productivity in producing goods and services for family members.

RESPONSE:

Proponents admit that marriage between a man and a woman encourages spouses to increase household efficiency, including by dividing their labor in ways that increase the family's productivity in producing goods and services for family members. Proponents deny any remaining assertions in Request for Admission No. 88.

REQUEST FOR ADMISSION NO. 89:

Admit that there are lower legal, social, and economic barriers to dissolution of domestic partnerships than there are to dissolution of marriage.

RESPONSE:

Whether or not there are lower legal barriers to dissolution of domestic partnerships than there are to dissolution of marriage calls for a legal conclusion and thus does not require a response. Proponents lack information sufficient to admit or deny the remaining assertions in Request for Admission No. 89.

REQUEST FOR ADMISSION NO. 90:

Admit that same-sex couples are deprived of Social Security benefits for spouses and

surviving spouses even though they must pay into the Social Security program at the same rates as individuals in married couples.

RESPONSE:

This Request calls for a legal conclusion and thus does not require a response.

REQUEST FOR ADMISSION NO. 91:

Admit that marriage-based households are the principal vehicles for organizing sustenance and care for dependents (whether young, old, or disabled) who cannot labor to support themselves.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "principal vehicles for organizing sustenance and care." Subject to that objection, Proponents admit that a critical purpose of marriage is to encourage couples engaged in naturally procreative sexual relationships to care for their children until their children are able to support themselves, and that households headed by a married couple often provide support for dependents. Proponents lack information sufficient to admit or deny any remaining assertions in Request for Admission No. 91.

REQUEST FOR ADMISSION NO. 92:

Admit that California is the State with the highest percentage of same-sex couples.

RESPONSE:

Proponents admit that the Census Bureau has reported that the 2000 Census showed that same-sex unmarried partners in California made up a higher percentage of the State's coupled households than same-sex unmarried partners in any other state. *See* http://www.census.gov/prod/2003pubs/censr-5.pdf. Proponents lack information sufficient to admit or deny any remaining assertions in Request for Admission No. 92.

REQUEST FOR ADMISSION NO. 93:

Admit that approximately 18 percent of the people in same-sex couples in California are raising approximately 37,300 children under the age of 18.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Admission No. 93.

REQUEST FOR ADMISSION NO. 94:

Admit that both different-sex married couples and same-sex couples with their own children have, on average, two children.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous. In particular, it does not identify the jurisdiction or geographical region to which it refers. Subject to that objection, Proponents deny Request for Admission No. 94.

REQUEST FOR ADMISSION NO. 95:

Admit that one in ten of California's adopted children live with a lesbian or gay parent.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Admission No. 95.

REQUEST FOR ADMISSION NO. 96:

Admit that same-sex couples raising children have on average fewer economic resources to provide for their children, partly as a result of the financial disadvantages of not being permitted to marry.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Admission No. 96.

REQUEST FOR ADMISSION NO. 97:

Admit that the household income of same-sex couples with children is on average $7,300 lower than the income of different-sex married couples with children.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Admission No. 97.

REQUEST FOR ADMISSION NO. 98:

Admit that only 5.3% of same-sex couples in California registered a domestic partnership in 2000.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Information No. 98.

REQUEST FOR ADMISSION NO. 99:

Admit that from 2004 through 2008, 64 percent on in-state same-sex couples in Massachusetts married.

RESPONSE:

Proponents lack information sufficient to admit or deny Request for Admission No. 99.

REQUEST FOR ADMISSION NO. 100:

Admit that, for each year that marriage and domestic partnership were available in the Netherlands, more same-sex couples married than entered registered domestic partnerships.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 101:

Admit that the ability or willingness of married couples to produce progeny has never been necessary for marriage validity in American law.

RESPONSE:

This Request calls for a legal conclusion and thus does not require a response.

REQUEST FOR ADMISSION NO. 102:

Admit that "nontraditional family forms" – those families that do not consist of a breadwinning father and a stay-at-home mother, married to each other and raising their biological children – constitute the vast majority of families in the United States.

RESPONSE:

Proponents admit that the Census Bureau reported in 2004 that 23.2% of married-couple family groups with children under 15 included a mother who was out of the labor force for all 52 weeks of the previous year to care for home and family while her spouse was in the labor force for all 52 weeks of that year. *See* http://www.census.gov/prod/2004pubs/p20-553.pdf. Proponents lack sufficient information to admit or deny any remaining assertions in Request for Admission No. 102.

REQUEST FOR ADMISSION NO. 103:

Admit that members of married, different-sex couples may earn similar or the same

incomes.

RESPONSE:

Proponents admit that it is possible for a married man and woman to earn a similar or the same income.

REQUEST FOR ADMISSION NO. 104:

Admit that multiple organizations representing mental health and child welfare professionals have issued statements confirming that same-sex parents are as effective as different-sex parents in raising well-adjusted children and adolescents, including the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the American Psychiatric Association, the American Psychological Association, the American Psychoanalytic Association, the National Association of Social Workers, the Child Welfare League of America, and the North American Council on Adoptable Children.

RESPONSE:

Proponents object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "well-adjusted children and adolescents." Subject to that objection, Proponents admit that multiple organizations, including those listed in this Request, have issued statements addressing parenting by same-sex couples. Those statements speak for themselves, and Proponents deny Request for Admission No. 104 to the extent that Plaintiffs mischaracterize those statements. Proponents deny any remaining assertions in Request for Admission No. 104.

REQUEST FOR ADMISSION NO. 105:

Admit that sexual orientation is not merely a personal characteristic that can be defined in isolation, but defines the universe of persons with whom one is likely to find the satisfying and fulfilling relationships that comprise an essential component of personal identity.

RESPONSE:

Proponents object to this Request on the ground that it is compound. Proponents further object to this Request on the ground that it is vague and ambiguous, particularly with respect to the use of "essential component of personal identity" and "the satisfying and fulfilling

relationships." Subject to those objections, Proponents admit that sexual orientation is a vague and amorphous construct that is defined in various ways. Proponents deny any remaining assertions in Request for Admission No. 105.

REQUEST FOR ADMISSION NO. 106:

Admit that loving relationships between persons of the same sex are equal in worth and dignity to loving relationships between persons of the opposite sex.

RESPONSE:

Admitted, except that because of their naturally procreative potential, sexual relationships between persons of the opposite sex can and do benefit and harm society in ways that same-sex relationships do not.

REQUEST FOR ADMISSION NO. 107:

Admit that the universal definition of marriage, as defined by Dr. Katherine Young, is not limited to one man and one woman.

RESPONSE:

Proponents admit that, in her expert report, Dr. Young identifies universal functions and features of marriage. Dr. Young's expert report speaks for itself, and Proponents deny Request for Admission No. 107 to the extent that it mischaracterizes that report. Dr. Young's report states that the universal functions of marriage are "(1) complementing nature with culture; (2) providing children with at least one parent of each sex whenever possible; (3) providing them with their biological parents whenever possible; (4) bringing men and women together for both practical and symbolic purposes; and (5) providing men with a stake in the family and society." It states that the universal features of marriage are that marriage "is supported by authority and incentives; it recognizes the interdependence of maleness and femaleness; it has a public dimension; it defines eligible partners; it encourages procreation under specific conditions; it provides mutual support not only between men and women but also between men and women and their children (the sharing of resources, apart from anything else, or transmission of property), and it emphasizes durable parental relationships (at least until the children reach maturity; because of the long time that it takes for infants to mature, cooperation is necessary to ensure their survival)."

Dated: November 30, 2009

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

By: /s/Charles J. Cooper
Charles J. Cooper