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 10 SAN FRANCISCO, SAN FRANCISCO
 DEPARTMENT OF ELECTIONS and SAN
 11 FRANCISCO ELECTIONS COMMISSION

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 RON DUDUM, MATTHEW SHERIDAN,
 16 ELIZABETH MURPHY, KATHERINE
 WEBSTER, MARINA FRANCO and
 17 DENNIS FLYNN,

Case No. CV 10-00504 SI

**DEFENDANTS' ANSWER TO PLAINTIFFS'
 COMPLAINT FOR INJUNCTIVE AND
 DECLARATORY RELIEF**

18 Plaintiffs,

19 vs.

20 JOHN ARNTZ, Director of Elections of the
 City and County of San Francisco; the CITY
 21 AND COUNTY OF SAN FRANCISCO, a
 municipal corporation; the SAN FRANCISCO
 22 DEPARTMENT OF ELECTIONS; the SAN
 FRANCISCO ELECTIONS COMMISSION;
 23 and DOES 1-20,

24 Defendants.

1 On behalf of themselves and no other persons or entities, defendants John Arntz - Director of
2 Elections, the City and County of San Francisco ("the City"), the San Francisco Department of
3 Elections, and the San Francisco Elections Commission (collectively "Defendants") hereby answer and
4 respond to Plaintiffs' Complaint for Injunctive and Declaratory Relief ("Complaint"), filed on February
5 4, 2010, as follows:

6 **INTRODUCTION**

7 1. Answering paragraph 1 of the Complaint, Defendants admit that Plaintiffs have filed an
8 action to pursue allegations of constitutional violations. Except as so admitted, Defendants deny the
9 allegations contained in paragraph 1.

10 2. Answering paragraph 2 of the Complaint, Defendants admit that the contents of San
11 Francisco Charter section 13.102 speak for themselves, and that Defendants began using instant runoff
12 voting, also referred to as ranked-choice voting, for municipal elections in 2004. Defendants lack
13 sufficient knowledge or information to form a belief as to the voting systems employed by other
14 jurisdictions – either in 2004 or at the current time, and deny the same on that basis. Except as so
15 admitted, Defendants deny the allegations contained in paragraph 2.

16 **GENERAL ALLEGATIONS**

17 3. Answering paragraph 3 of the Complaint, Defendants admit that San Francisco voters
18 adopted Proposition A in March 2002 to amend the City Charter to provide for instant runoff voting.
19 Defendants deny that the City's then-existing voting method, consisting of a general election in
20 November and a runoff election (if necessary, in December) was the "traditional" municipal election
21 system.

22 4. Answering paragraph 4 of the Complaint, Defendants deny that all voting for municipal
23 office using instant runoff voting "takes place on a single day," because the City's instant runoff voting
24 system permits voters to cast absentee ballots. Defendants deny that San Francisco Charter section
25 13.102 only allows voters "to rank a maximum of three candidates for each office."

26 5. Answering paragraph 5 of the Complaint, Defendants admit that the contents of San
27 Francisco Charter section 13.102 – enacted by Proposition A – speak for themselves, and that the
28 Director of Elections has limited the number of choices that voters may rank.

1 6. Answering paragraph 6 of the Complaint, Defendants admit that "[a]fter the ballots are
2 cast, an initial tally is conducted by the Elections Department." Except as so admitted, Defendants
3 deny the allegations contained in paragraph 6.

4 7. Defendants deny the allegations contained in paragraph 7.

5 8. Answering paragraph 8 of the Complaint, Defendants admit that the contents of San
6 Francisco Charter section 13.102 speak for themselves. Except as so admitted, Defendants deny the
7 allegations contained in paragraph 8.

8 9. Answering paragraph 9 of the Complaint, Defendants admit that Plaintiffs' "complaint
9 challenges only the three-candidate limitation" of the City's instant runoff voting system. Except as so
10 admitted, Defendants lack information sufficient to form a belief as to the truth of the allegations
11 contained in paragraph 9, and deny the same on that basis.

12 10. Answering paragraph 10 of the Complaint, Defendants admit that they implemented
13 instant runoff voting – as the voters approved in Proposition A – in 2004. Defendants admit that the
14 past election results speak for themselves. Except as so admitted, Defendants lack sufficient
15 knowledge or information to form a belief as to the number of "exhausted" ballots in past instant
16 runoff elections, and deny the same on that basis.

17 11. Answering paragraph 11 of the Complaint, Defendants admit that the 2004
18 supervisorial election results for Districts 5, 1, and 11 speak for themselves. Except as so admitted,
19 Defendants deny Plaintiffs' characterization of those results and the remaining allegations contained in
20 paragraph 11.

21 12. Answering paragraph 12 of the Complaint, Defendants admit that the 2006
22 supervisorial election results for Districts 4 and 6 speak for themselves. Except as so admitted,
23 Defendants deny Plaintiffs' characterization of those results.

24 13. Answering paragraph 13 of the Complaint, Defendants admit that the 2008
25 supervisorial election results for Districts 11 and 3 speak for themselves, and that 4,291 ballots –
26 14.26% of the ballots cast in District 3 – were exhausted by the seventh round of tabulation. Except as
27 so admitted, Defendants deny Plaintiffs' characterization of the results for District 11.

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1 themselves. Except as so admitted, Defendants lack information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 22, and deny the same on that basis.

3 23. Answering paragraph 23 of the Complaint, Defendants lack information sufficient to
4 form a belief as to the truth of the allegations contained in paragraph 23, and deny the same on that
5 basis.

6 24. Answering paragraph 24 of the Complaint, Defendants admit that, as of February 4,
7 2010, twenty candidates have filed a FPPC Form 501 "Candidate Intention Statement" with the San
8 Francisco Ethics Commission, stating their intention to be a candidate for Supervisor representing
9 District 6 for the November 2010 election. Except as so admitted, Defendants lack information
10 sufficient to form a belief as to the truth of the allegations contained in paragraph 24, and deny the
11 same on that basis.

12 25. Answering paragraph 25 of the Complaint, Defendants admit that, as of February 4,
13 2010, five candidates have filed a FPPC Form 501 "Candidate Intention Statement" with the San
14 Francisco Ethics Commission, stating their intention to be a candidate for Supervisor representing
15 District 8 for the November 2010 election. Except as so admitted, Defendants lack information
16 sufficient to form a belief as to the truth of the allegations contained in paragraph 25, and deny the
17 same on that basis.

18 26. Answering paragraph 26 of the Complaint, Defendants admit that, as of February 4,
19 2010, ten candidates have filed a FPPC Form 501 "Candidate Intention Statement" with the San
20 Francisco Ethics Commission, stating their intention to be a candidate for Supervisor representing
21 District 10 for the November 2010 election. Except as so admitted, Defendants lack information
22 sufficient to form a belief as to the truth of the allegations contained in paragraph 26, and deny the
23 same on that basis.

24 27. Answering paragraph 27 of the Complaint, Defendants admit that, as of February 4,
25 2010, three candidates have filed a FPPC Form 501 "Candidate Intention Statement" with the San
26 Francisco Ethics Commission, stating their intention to be a candidate for mayor for the November
27 2011 election. Defendants admit that term limits preclude Mayor Newsom from seeking an additional
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1 term for the office of Mayor. Except as so admitted, Defendants lack information sufficient to form a
2 belief as to the truth of the allegations contained in paragraph 27, and deny the same on that basis.

3 28. Answering paragraph 28 of the Complaint, Defendants admit that defendant John Artanz
4 is the Director of Elections, and that San Francisco Charter Section 13.102 speaks for itself. Except as
5 so admitted, Defendants deny the remaining allegations contained in paragraph 28.

6 29. Defendants admit the allegations contained in paragraph 29.

7 30. Answering paragraph 30 of the Complaint, Defendants admit that the Department of
8 Elections is a City agency, and that San Francisco Charter Section 13.104 speaks for itself. Except as
9 so admitted, Defendants deny the remaining allegations contained in paragraph 30.

10 31. Answering paragraph 31 of the Complaint, Defendants admit that the Elections
11 Commission is a City agency, and that San Francisco Charter Section 13.103.5 speaks for itself.
12 Except as so admitted, Defendants deny the remaining allegations contained in paragraph 31.

13 32. Defendants lack information sufficient to form a belief as to the truth of the allegations
14 contained in paragraph 32, and deny the same on that basis.

15 JURISDICTION AND VENUE

16 33. Answering paragraph 33 of the Complaint, Defendants admit that this Court has federal
17 question jurisdiction over Plaintiffs' claims by virtue of 28 U.S.C. § 1331. Defendants admit that
18 Plaintiffs have alleged violation of their rights under the Fourteenth Amendment of the Constitution of
19 the United States of America and 42 U.S.C. § 1983 – but Defendants deny the truth of those
20 allegations.

21 34. Defendants admit the allegations contained in paragraph 34.

22 FIRST CLAIM FOR RELIEF

23 35. Defendants reallege and incorporate by reference paragraphs 1 through 34 above.

24 36. Defendants deny the allegations contained in paragraph 36.

25 37. Defendants deny the allegations contained in paragraph 37.

26 38. Defendants deny the allegations contained in paragraph 38.

27 SECOND CLAIM FOR RELIEF

28 39. Defendants reallege and incorporate by reference paragraphs 1 through 38 above.

1 40. Defendants deny the allegations contained in paragraph 40.

2 41. Defendants deny the allegations contained in paragraph 41.

3 42. Defendants deny the allegations contained in paragraph 42.

4 **THIRD CLAIM FOR RELIEF**

5 43. Defendants reallege and incorporate by reference paragraphs 1 through 42 above.

6 44. Defendants deny the allegations contained in paragraph 44.

7 45. Defendants deny the allegations contained in paragraph 45.

8 46. Defendants deny the allegations contained in paragraph 46.

9 47. Defendants assert that any allegation of the Complaint not expressly admitted above is
10 hereby denied or is denied on the basis that Defendants lack sufficient information with which to
11 admit or deny any such allegation.

12 **RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF**

13 1. Answering the allegations contained in the entirety of Plaintiffs' prayer for relief,
14 Defendants deny that Plaintiffs are entitled to the relief sought, or to any relief.

15 **SEPARATE AND DISTINCT AFFIRMATIVE DEFENSES**

16 1. The Complaint fails to state facts sufficient to constitute any claim upon which relief
17 can be granted against Defendants, or any of them.

18 2. Defendants, and each of them, did not deprive any of the plaintiffs any right or
19 privilege guaranteed by the Constitution or laws of the United States or California.

20 3. The Complaint does not present a case or controversy.

21 4. The Complaint is not ripe for adjudication by this Court.

22 5. Some or all of Plaintiffs lack standing to maintain this action.

23 6. The Complaint is barred by all applicable statutes of limitation.

24 7. The Complaint is barred by the doctrine of laches.

25 8. The Complaint is barred by the doctrine of waiver.

26 9. Defendants' investigation into the issues raised in the Complaint is at its preliminary
27 stages, and therefore Defendants reserve the right to amend this Answer to add further affirmative
28 defenses when they are discovered.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants pray that

- 1. Plaintiffs take nothing by way of this action;
- 2. The Complaint be dismissed with prejudice and judgment entered in favor of

Defendants;

- 3. Defendants be awarded costs of suit, attorneys' fees and any other relief which the Court deems proper.

Dated: February 25, 2010

DENNIS J. HERRERA
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 JONATHAN GIVNER
 ANDREW SHEN
 MOLLIE LEE
 Deputy City Attorneys

By: _____ /s/
 ANDREW SHEN

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 COUNTY OF SAN FRANCISCO, SAN FRANCISCO
 DEPARTMENT OF ELECTIONS and SAN
 FRANCISCO ELECTIONS COMMISSION

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