

(MLGx), CLOSED, DISCOVERY, RELATED-G

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF  
CALIFORNIA (Southern Division – Santa Ana)  
CIVIL DOCKET FOR CASE #: 8:09-cv-00286-DOC-MLG**

Arthur Smelt et al v. United States of America et al  
Assigned to: Judge David O. Carter  
Referred to: Magistrate Judge Marc L. Goldman  
Related Case: 8:04-cv-01042-DOC-MLG  
Case in other court: Orange County Superior Court, 00116748  
Cause: 28:1441 Notice of Removal

Date Filed: 03/09/2009  
Date Terminated: 08/24/2009  
Jury Demand: None  
Nature of Suit: 950 Constitutional – State  
Statute  
Jurisdiction: Federal Question

**Plaintiff**

**Arthur Smelt**

represented by **Richard C Gilbert**  
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714-667-1038  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Christopher Hammer**

represented by **Richard C Gilbert**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**United States of America**

represented by **W Scott Simpson**  
U.S. Department of Justice  
Civil Division – Federal Programs Branch  
Post Office Box 883  
Rm 7210  
Washington, DC 20044  
202-514-3495  
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Email: [scott.simpson@usdoj.gov](mailto:scott.simpson@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**State of California**  
*TERMINATED: 07/15/2009*

represented by **Mark R Beckington**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Does**  
*1 through 1,000*

V.

**Intervenor Defendant**

**Dennis Hollingsworth**  
*Proposition 8 Official Proponent*

represented by **Andrew P Pugno**  
Law Offices of Andrew P Pugno  
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**James A Campbell**  
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**Michael Louis Parker**  
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**LEAD ATTORNEY**  
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**Sam Kim**  
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Fax: 714 736 9901  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Intervenor Defendant**

**Gail J Knight**  
*Proposition 8 Official Proponent*

represented by **Andrew P Pugno**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Brian W Raum**  
(See above for address)  
**LEAD ATTORNEY**

*PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**James A Campbell**  
(See above for address)  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Michael Louis Parker**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Sam Kim**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Intervenor Defendant**

**Martin F Gutierrez**  
*Proposition 8 Official Proponent*

represented by **Andrew P Pugno**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Brian W Raum**  
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**James A Campbell**  
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ATTORNEY TO BE NOTICED*

**Michael Louis Parker**  
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*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Sam Kim**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Intervenor Defendant**

**Hak-Shing William Tam**  
*Proposition 8 Official Proponent*

represented by **Andrew P Pugno**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Brian W Raum**  
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**James A Campbell**  
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**Michael Louis Parker**  
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**Sam Kim**  
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*ATTORNEY TO BE NOTICED*

**Intervenor Defendant**

**Mark A Jansson**  
*Proposition 8 Official Proponent*

represented by **Andrew P Pugno**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Raum**  
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**James A Campbell**  
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**Michael Louis Parker**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Sam Kim**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Intervenor Defendant**

**ProtectMarriage.com—Yes on 8**  
*a Project of California Renewal*

represented by **Andrew P Pugno**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Raum**  
(See above for address)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**James A Campbell**  
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*PRO HAC VICE*  
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**Michael Louis Parker**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Sam Kim**  
(See above for address)

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
03/09/2009	<u>1</u>	NOTICE OF REMOVAL from Orange County Superior Court, case number 00116748 with copy of summons and complaint. Case assigned to Judge Andrew J. Guilford, Discovery to Magistrate Judge Marc L. Goldman. (Filing fee \$ 350 paid), filed by plaintiff United States of America.(twdb) (lwag). (Entered: 03/10/2009)
03/11/2009	<u>2</u>	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 08-05 -Related Case- filed. Related Case No: SACV04-01042 DOC (MLGx). Case transferred from Judge Andrew J. Guilford to Judge David O. Carter for all further proceedings. The case number will now reflect the initials of the transferee Judge SACV09-00286 DOC (MLGx). Signed by Judge David O. Carter (ade) (Entered: 03/12/2009)
03/16/2009	<u>3</u>	Stipulation and Proposed Order Regarding Schedule filed by Defendant United States of America (Simpson, W) (Entered: 03/16/2009)
03/27/2009	<u>4</u>	CERTIFICATE OF SERVICE filed by Defendant United States of America, <i>file-stamped Notice of Removal, etc.</i> served on March 27, 2009. (Simpson, W) (Entered: 03/27/2009)
04/10/2009	<u>5</u>	ANSWER; filed by (Proposed) Intervenors Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com-Yes on 8.(rla) (Entered: 04/15/2009)
04/10/2009	<u>6</u>	NOTICE of Interested Parties filed by proposed intervenors Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com-Yes on 8, (rla) (Entered: 04/15/2009)
04/10/2009	<u>7</u>	NOTICE OF MOTION to Intervene; filed by intervenor defendants Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com-Yes on 8. Motion set for hearing on 5/11/2009 at 08:30 AM before Judge David O. Carter. (rla) (Entered: 04/17/2009)
04/16/2009	<u>8</u>	APPLICATION for attorney James A. Campbell to Appear Pro Hac Vice filed by Intervenor Defendants Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson and ProtectMarriage.com-Yes on 8. (lwag) (Entered: 04/20/2009)
04/16/2009	<u>9</u>	APPLICATION for attorney Brian W. Raum to Appear Pro Hac Vice filed by intervenors Dennis Hollingsworth, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com-Yes on 8. (ade) (Entered: 04/20/2009)
04/17/2009	<u>10</u>	ORDER by Judge David O. Carter granting <u>8</u> Application to Appear Pro Hac Vice by Attorney James A. Campbell on behalf of Intervenor Defendants, designating Michael L. Parker as local counsel. (ade) (Entered: 04/20/2009)
04/17/2009	<u>11</u>	ORDER by Judge David O. Carter granting <u>9</u> Application to Appear Pro Hac Vice by Attorney Brian W. Raum on behalf of Intervenor Defendants, designating Michael L. Parker as local counsel. (ade) (Entered: 04/20/2009)
04/27/2009	<u>12</u>	STATEMENT of Regarding MOTION to Intervene <u>7</u> by " <i>Proposition 8 Official Proponents and Campaign Committee</i> " filed by Defendant United States of America. (Simpson, W) (Entered: 04/27/2009)
04/27/2009	<u>13</u>	NOTICE OF NON-OPPOSITION to MOTION to Intervene <u>7</u> OF PROPOSITION 8 OFFICIAL PROPONENTS AND CAMPAIGN COMMITTEE [ <i>Cent. Dist. L.R. 7-9</i> ] filed by Defendant State of California. (Beckington, Mark) (Entered: 04/27/2009)
05/04/2009	<u>14</u>	Stipulation and Proposed Order Regarding Schedule filed by Plaintiffs Arthur Smelt, Christopher Hammer, Defendants United States of America, State of California (Simpson, W) (Entered: 05/04/2009)

05/05/2009	<u>15</u>	MINUTES (IN CHAMBERS): by Judge David O. Carter taking under advisement <u>7</u> Motion to Intervene. Before the Court is Motion to Intervene of Proposition 8 Official Proponents and Campaign Committee. Court finds matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set May 11, 2009 at 8:30 a.m. is removed from the calendar. Parties will be served with the Courts ruling. (ade) (Entered: 05/05/2009)
05/06/2009	<u>16</u>	REPLY in Support of MOTION to Intervene <u>7</u> filed by Intervenor Defendants Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com-Yes on 8. (Raum, Brian) (Entered: 05/06/2009)
05/06/2009	<u>17</u>	MINUTES (IN CHAMBERS) ORDER by Judge David O. Carter Granting <u>7</u> Motion to Intervene. (nbo) (Entered: 05/07/2009)
05/07/2009	<u>18</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Incorrect event selected RE: Miscellaneous Document <u>14</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (twdb) (Entered: 05/08/2009)
05/12/2009	<u>19</u>	ORDER SETTING SCHEDULING CONFERENCE by Judge David O. Carter, Set/Reset Deadlines/Hearings:( Scheduling Conference set for 8/3/2009 08:30 AM before Judge David O. Carter.) (dg) (Entered: 05/12/2009)
05/21/2009	<u>20</u>	ORDER ON STIPULATION REGARDING SCHEDULE by Judge David O. Carter: IT IS HEREBY ORDERED that the defendants United State of America and the State of California shall respond to plaintiff's Complaint herein no later than June 11, 2009. IT IS SO ORDERED. (lwag) (Entered: 05/21/2009)
06/11/2009	<u>21</u>	NOTICE OF MOTION AND MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> filed by defendant State of California. Motion set for hearing on 7/13/2009 at 08:30 AM before Judge David O. Carter. (Beckington, Mark) (Entered: 06/11/2009)
06/11/2009	<u>22</u>	MEMORANDUM in Support of MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> <u>21</u> filed by Defendant State of California. (Beckington, Mark) (Entered: 06/11/2009)
06/11/2009	<u>23</u>	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> <u>21</u> filed by defendant State of California. (Beckington, Mark) (Entered: 06/11/2009)
06/11/2009	<u>24</u>	APPLICATION to Exceed Page Limitation as to Motion to Dismiss filed by defendant United States of America. (Simpson, W) (Entered: 06/11/2009)
06/11/2009	<u>25</u>	NOTICE OF MOTION AND MOTION to Dismiss Case <i>and Memorandum of Points and Authorities in Support Thereof</i> filed by defendant United States of America. Motion set for hearing on 8/3/2009 at 08:30 AM before Judge David O. Carter. (Attachments: # <u>1</u> Fee Waiver Orders in State Court Action, # <u>2</u> Jurisdictional Statement, Baker v. Nelson)(Simpson, W) (Entered: 06/11/2009)
06/12/2009	<u>26</u>	NOTICE OF ERRATA filed by Defendant State of California. correcting Request for Judicial Notice, Request for Relief <u>23</u> (Beckington, Mark) (Entered: 06/12/2009)
06/12/2009	<u>27</u>	MINUTES OF IN CHAMBERS ORDER held before Judge David O. Carter: Court orders the Scheduling Conference, presently set August 3, 2009, CONTINUED to September 14, 2009 at 8:30 a.m. ( Scheduling Conference set for 9/14/2009 08:30 AM before Judge David O. Carter.) (ade) (Entered: 06/15/2009)
06/16/2009	<u>28</u>	MINUTES (IN CHAMBERS): ORDER by Judge David O. Carter, GRANTING APPLICATION FOR LEAVE TO EXCEED PAGELIMIT <u>24</u> : The Court hereby GRANTS the Application with the that the opposition brief, if any, is NOT TO EXCEED FORTY-TWO PAGES and the reply brief, if any, are NOT TO EXCEED FIFTEEN PAGES. The Clerk shall serve this minute order on all parties to the action. (rla) (Entered: 06/16/2009)

06/29/2009	<u>29</u>	RESPONSE IN SUPPORT of MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> <u>21</u> filed by Intervenor Defendants Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com—Yes on 8. (Raum, Brian) (Entered: 06/29/2009)
07/06/2009	<u>30</u>	STATEMENT Regarding Hearing on Motion to Dismiss by State of California filed by Defendant United States of America re: MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> <u>21</u> . (Simpson, W) (Entered: 07/06/2009)
07/09/2009	<u>31</u>	Opposition re: MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> <u>21</u> filed by Plaintiff Arthur Smelt. (Gilbert, Richard) (Entered: 07/09/2009)
07/09/2009	<u>32</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Case number is incorrect RE: Objection/Opposition (Motion related) <u>31</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (rrp) (Entered: 07/09/2009)
07/09/2009	<u>33</u>	AMENDED OPPOSITION re: MOTION to Dismiss Case <i>Action Against Defendant State of California for Failure to State a Claim</i> <u>21</u> filed by Plaintiff Arthur Smelt. (Gilbert, Richard) (Entered: 07/09/2009)
07/10/2009	<u>34</u>	REPLY Support of Motion to Dismiss Action Against Defendant State of California for Failure to State a Claim MOTION to Dismiss Case <i>and Memorandum of Points and Authorities in Support Thereof</i> <u>25</u> filed by Defendant State of California. (Beckington, Mark) (Entered: 07/10/2009)
07/13/2009	<u>35</u>	MINUTES (IN CHAMBERS) ORDER by Judge David O. Carter taking under advisement <u>21</u> Motion by Defendant State of California to Dismiss Case for Failure to State a Claim. (ade) (Entered: 07/13/2009)
07/15/2009	<u>36</u>	MINUTES (IN CHAMBERS): ORDER by Judge David O. Carter: GRANTING MOTION TO DISMISS <u>21</u> : (See document for details.) For the foregoing reasons, the Motion is GRANTED and the State of California is HEREBY DISMISSED WITHOUT PREJUDICE. The Clerk shall serve this minute order on all parties to the action. (rla) (Entered: 07/16/2009)
07/17/2009	<u>37</u>	Stipulation and Proposed Order Regarding Schedule filed by Defendant United States of America re: MOTION to Dismiss Case <i>and Memorandum of Points and Authorities in Support Thereof</i> <u>25</u> (Simpson, W) (Entered: 07/17/2009)
07/20/2009	<u>38</u>	NOTICE OF LODGING filed re Miscellaneous Document <u>37</u> (Attachments: # <u>1</u> Proposed Order)(Simpson, W) (Entered: 07/20/2009)
07/20/2009	<u>39</u>	ORDER by Judge David O. Carter on Stipulation Regarding Schedule <u>37</u> . Plaintiff's response to the United States' Motion to Dismiss shall be filed no later than 07/27/09. The United States' reply shall be filed no later than 08/17/09. The hearing on the Motion to Dismiss will be heard on 8/24/2009 at 08:30 AM before Judge David O. Carter. (nbo) (Entered: 07/22/2009)
07/27/2009	<u>40</u>	OPPOSITION to MOTION to Dismiss Case <i>and Memorandum of Points and Authorities in Support Thereof</i> <u>25</u> RESPONSE filed by Plaintiff Arthur Smelt. (Gilbert, Richard) (Entered: 07/27/2009)
07/27/2009	<u>41</u>	NOTICE OF MOTION AND First MOTION for Order for FILE COMPLAINT NUNC PRO TUNC filed by PLAINTIFF Arthur Smelt. Motion set for hearing on 8/24/2010 at 08:00 AM before Judge David O. Carter. (Gilbert, Richard) (Entered: 07/27/2009)
07/27/2009	<u>42</u>	RESPONSE IN SUPPORT of MOTION to Dismiss Case <i>and Memorandum of Points and Authorities in Support Thereof</i> <u>25</u> <i>Intervenors' Memorandum of Points and Authorities In Support of United States of America's Motion to Dismiss</i> filed by Intervenor Defendants Dennis Hollingsworth, Gail J Knight, Martin F Gutierrez, Hak-Shing William Tam, Mark A Jansson, ProtectMarriage.com—Yes on 8. (Raum, Brian) (Entered: 07/27/2009)

07/31/2009	<u>43</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Proposed Document was not submitted as separate attachment RE: First MOTION for Order for FILE COMPLAINT NUNC PRO TUNC <u>41</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (twdb) (Entered: 07/31/2009)
08/17/2009	<u>44</u>	REPLY in Support of MOTION to Dismiss Case <i>and Memorandum of Points and Authorities in Support Thereof</i> <u>25</u> filed by Defendant United States of America. (Attachments: # <u>1</u> Declaration of W. Scott Simpson)(Simpson, W) (Entered: 08/17/2009)
08/17/2009	<u>45</u>	MEMORANDUM in Opposition to First MOTION for Order for FILE COMPLAINT NUNC PRO TUNC <u>41</u> filed by Defendant United States of America. (Attachments: # <u>1</u> Declaration of W. Scott Simpson)(Simpson, W) (Entered: 08/17/2009)
08/17/2009	<u>46</u>	REPLY in support First MOTION for Order for FILE COMPLAINT NUNC PRO TUNC <u>41</u> filed by Plaintiff Arthur Smelt. (Gilbert, Richard) (Entered: 08/17/2009)
08/24/2009	<u>47</u>	MINUTES (IN CHAMBERS): ORDER by Judge David O. Carter: GRANTING DEFENDANT'S MOTION TO DISMISS <u>25</u> : (See document for details.) For the foregoing reasons, the Motion is GRANTED and the present case is hereby DISMISSED, IN ITS ENTIRETY, WITHOUT PREJUDICE. IT IS SO ORDERED.( MD JS-6. Case Terminated ) (rla) (Entered: 08/24/2009)
08/24/2009	<u>48</u>	MINUTES OF Motion Hearing held before Judge David O. Carter re Motion by Defendant United States of America to Dismiss <u>25</u> and Motion by Plaintiffs to Deem the Complaint Filed Nunc Pro Tunc and Fee Waiver Granted <u>41</u> . Argument by counsel. Motion to Dismiss is granted. Court Reporter: Deborah Parker. (db) (Entered: 09/01/2009)
10/01/2009	<u>49</u>	TRANSCRIPT for proceedings held on 08-24-09, 8:30 a.m. Court Reporter: Deborah D. Parker, phone number (714) 542-8409. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through d.parker@ix.netcom.com or PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 10/22/2009. Redacted Transcript Deadline set for 11/1/2009. Release of Transcript Restriction set for 12/30/2009. (Parker, Deborah) (Entered: 10/01/2009)
10/01/2009	<u>50</u>	NOTICE OF FILING TRANSCRIPT filed for proceedings 08-24-09, 8:30 a.m. (Parker, Deborah) (Entered: 10/01/2009)