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16 ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH,
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 17 PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

18 * Admitted *pro hac vice*

19 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

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

22 Plaintiffs,

23 CITY AND COUNTY OF SAN FRANCISCO,

24 Plaintiff-Intervenor,

25 v.

26 ARNOLD SCHWARZENEGGER, in his official
 27 capacity as Governor of California; EDMUND G.
 28 BROWN, JR., in his official capacity as Attorney

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS
 PROPOSITION 8 PROPONENTS
 AND PROTECTMARRIAGE.COM'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR LEAVE TO REOPEN
 THE DEPOSITION OF RONALD
 PRENTICE**

Trial Date: January 11, 2010
 Location: Courtroom 6, 17th Floor
 Judge: Chief Judge Vaughn R. Walker

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

12 Defendants,

13 and

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

21 Defendant-Intervenors.

22 Additional Counsel for Defendant-Intervenors

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1 Having already deposed Ronald Prentice, the Chairman of ProtectMarriage.com, for 14 hours,
2 Plaintiffs now request to depose Mr. Prentice for an additional seven hours on the eve of calling him
3 as a witness at trial. Defendant-Intervenors (“Proponents”) respectfully submit that Plaintiffs’ request
4 should be denied because it (1) is unnecessary and unduly burdensome, and (2) with one minor
5 exception mischaracterizes Mr. Prentice’s previous deposition testimony in an effort to create apparent
6 inconsistencies between his testimony and several recently produced documents.

7 ARGUMENT

8 Mr. Prentice was deposed for seven hours on December 17, 2009 and another seven hours the
9 following day both in his personal capacity and in his capacity as the Rule 30(b)(6) representative for
10 ProtectMarriage.com. During those depositions, Mr. Prentice was questioned extensively about the
11 management of the ProtectMarriage.com campaign and the extent of its involvement with other
12 organizations.¹ Plaintiffs have now identified approximately 25 recently-produced documents which
13 are purportedly inconsistent with Mr. Prentice’s testimony on these issues, and they are asking this
14 Court for leave to depose Mr. Prentice about these documents for an additional seven hours. So
15 Plaintiffs are not merely asking this Court to reopen Mr. Prentice’s deposition; they are effectively
16 asking this Court to *double* the amount of time allowed for depositions under the Federal Rules. *See*
17 FED. R. CIV. P. 30(d)(1) (“Unless otherwise stipulated or ordered by the court, a deposition is limited
18 to 1 day of 7 hours.”).

19 When considering whether to allow someone to be deposed for more than seven hours, courts
20 “should begin with the presumption that the seven-hour limit was carefully chosen and that extensions
21 of that limit should be the exception, not the rule.” *Roberson v. Bair*, 242 F.R.D. 130, 138 (D.D.C.
22 2007); *accord Graebner v. James River Corp.*, 130 F.R.D. 440, 441 (N.D. Cal. 1989) (noting that
23 “repeat depositions are disfavored, except in certain circumstances”). Rule 30(d)(2) allows such
24 extensions of time only when consistent with Rule 26, which requires courts to limit the use of any

25 _____
26 ¹ Specific, highly-selective portions of the deposition transcripts addressing these topics were
27 attached as Exhibits A and B to Rebecca Justice Lazarus’ declaration filed in support of
28 Plaintiffs’ Motion for Leave to Reopen the Deposition of Ronald Prentice. Additional excerpts
providing the full context and breadth of Mr. Prentice’s testimony are attached as Exhibits A to D
to Nicole Moss’s declaration filed in support of Defendant-Intervenors’ Opposition to Plaintiffs’
Motion.

1 discovery method if (1) the method is unreasonably cumulative or duplicative; (2) the party seeking
2 discovery has had ample opportunity to obtain the information by discovery in the action; or (3) the
3 burden or expense of the proposed discovery outweighs its likely benefit. *See* FED. R. CIV. P.
4 26(b)(2)(C).

5 Requiring Mr. Prentice to prepare for and participate in a third full-day deposition would impose
6 a far greater burden on Mr. Prentice than any benefit the Plaintiffs might gain through the deposition.
7 Plaintiffs contend that allowing them to depose Mr. Prentice for another full day would allow them to
8 “further streamline the testimony offered at trial in this case.” Doc. #479, p. 2. But there is simply no
9 reason that Plaintiffs cannot question Mr. Prentice about this small collection of documents at trial.
10 Indeed, the parties agreed – at this Court’s suggestion – to a similar procedure with regard to
11 Defendant-Intervenors’ First Amendment objections raised during depositions. *See* Jan. 6, 2010 Hr’g
12 Tr. [Doc. #363], at 80:25-85:16. Plaintiffs have not offered any reason to treat this situation any
13 differently.

14 By contrast, the burden on Mr. Prentice and the Proponents would be substantial. Plaintiffs seek
15 to depose Mr. Prentice on Thursday, January 21, 2010—the day before Plaintiffs are expected to call
16 Mr. Prentice as a witness in trial. Requiring Mr. Prentice to prepare for and participate in a third
17 seven-hour deposition at such a late date would severely limit his and correspondingly his counsel’s
18 ability to prepare for his appearance as a witness in this case. Under Rule 26, this undue burden on Mr.
19 Prentice is, by itself, a sufficient basis for denying Plaintiffs’ motion.

20 The burden of this requested, seven-hour deposition is even more unjustified because, with the
21 one exception that Mr. Prentice explains in his attached declaration, the testimony he gave at his
22 deposition is not inconsistent with the documents Plaintiffs have attached in support of their motion.
23 Plaintiffs have relied on highly selective excerpts of testimony that fail to provide the full context and
24 breadth of testimony on many of the issues contained in the documents attached to their Motion.
25 Moreover, Plaintiffs fail entirely to credit the fact that additional information on some of the topics
26 referenced in their Motion was objected to on First Amendment grounds. Mr. Prentice,
27 understandably and at the direction of counsel, did not provide certain information that was not known
28 to be publicly available when responding to questioning from Plaintiffs’ counsel. To the extent

1 Plaintiffs now wish to delve further into these matters, over Proponents' standing-objection, they can
2 do so on the stand as was agreed to at the hearing on January 6, 2010. *See* Jan. 6, 2010 Hr'g Tr. [Doc.
3 #363], at 80:25-85:16.

4
5 **CONCLUSION**

6 In conclusion, the Proponents request that Plaintiffs' motion be denied. If the Court is inclined to
7 allow Plaintiffs to further depose Mr. Prentice, Proponents request that the Plaintiffs receive no more
8 than one hour to do so. This limitation would be proper in light of the small number of documents
9 involved and to minimize the potential interference any such deposition would have on Mr. Prentice's
10 trial preparation.

11 Dated: January 20, 2010

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