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 16 and PROTECTMARRIAGE.COM – YES ON 8, A
 PROJECT OF CALIFORNIA RENEWAL

17 * Admitted *pro hac vice*

18 **UNITED STATES DISTRICT COURT**
 19 **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.
 BROWN, JR., in his official capacity as Attorney
 28 General of California; MARK B. HORTON, in his

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS
 DENNIS HOLLINGSWORTH, GAIL
 J. KNIGHT, MARTIN F. GUTIERREZ,
 MARK A. JANSSON,
 AND PROTECTMARRIAGE.COM'S
 ADMINISTRATIVE MOTION FOR A
 SEALING ORDER**

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

11
12 Defendants,

13 and

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

22
23 Defendant-Intervenors.
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Additional Counsel for Defendant-Intervenors

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NOTICE OF MOTION AND MOTION

Pursuant to Northern District of California Civil Local Rules 7-11 and 79-5, Defendant-Intervenors Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com (“Proponents”) hereby move for an administrative order sealing: (1) portions of exhibits consisting of documents produced by No on Proposition 8, Campaign for Marriage Equality: A Project of the American Civil Liberties Union of Northern California (“ACLU”) and Equality California, and (2) a version of our amended motion to supplement the record tracking changes made to our initial motion.

Background. On May 5, we sought leave of court to submit under seal our motion to supplement the evidentiary record and the exhibits to which that motion refers. The exhibits consist of documents that the ACLU and Equality California designated “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the terms of the protective order governing this case. *See Doc # 655.*¹ At the time we filed our motion to seal, we were “in the midst of ... conferring with the ACLU and Equality California regarding their designations.” *Id.* at 4. We have now reached agreements with the ACLU and Equality California that the exhibits we continue to offer may be placed on the public record in the form described in this motion.² The exhibits fall into two categories: those that may be placed on the public record without restriction and those that may be placed on the public record in redacted form.

Attachment 1 to this motion contains a complete list of the exhibits we seek to have admitted to supplement the evidentiary record. This list reflects the exhibits we are no longer proffering, certain substitute exhibits, and corrections to certain of the exhibit numbers we misidentified in our original motion. In addition, as described below, we are lodging with the Court a copy of each of these exhibits in the form in which it may be placed on the public record.

¹ On May 7, we lodged five corrected exhibits with the Court. *See Doc # 663.*

² There are two exhibits that are not part of our agreements, and we hereby withdraw our proffer of them: DIX3156 and DIX3506. We also lodged three exhibits with the Court that were not part of our proffer: DIX3104, DIX3111, and DIX3130. We hereby withdraw our submission of those exhibits.

In addition, there are nine exhibits described in our initial proffer that we neglected to lodge with the Court. The exhibits are labeled DIX3189, DIX3508, DIX3513, DIX3518, DIX3544, DIX3553, DIX3601, DIX3602, and DIX3603, and they are included in the agreements and the submission of exhibits to the Court described in this motion.

1 *Agreements.* First, the ACLU and Equality California have agreed that certain exhibits may be
 2 placed on the public record without restriction. Attachment 2 lists the exhibits that fall into this
 3 category. Included in this category are seven exhibits for which we have agreed to use substitutes
 4 that Equality California produced to us without a confidentiality designation. The substitute exhibits
 5 are substantively equivalent to the exhibits they replace.³ Proponents are sending copies of the
 6 exhibits described in this category—consisting of twenty in the form currently lodged with the Court
 7 and seven substitutes—overnight via Federal Express to the clerk for lodging tomorrow.

8 Second, for exhibits that the ACLU and Equality California have agreed may be placed on the
 9 public record only in redacted form, we must ask this Court for an order sealing the redacted
 10 portions of those exhibits as those portions remain subject to the groups' confidentiality
 11 designations. *See* Doc # 425 at 12; Civ. L.R. 79-5(c); *cf.* Civ. L.R. 79-5(d). The exhibits that fall
 12 into this category are listed in Attachment 3. Pursuant to the local rules, we are lodging with the
 13 clerk under seal copies of those exhibits with the agreed-upon redactions highlighted as well as
 14 redacted versions of the exhibits that may be placed on the public record if the Court grants the
 15 sealing order. *See* Civ. L.R. 79-5(c)(3)-(5).⁴ All copies of these exhibits just referenced are being
 16 sent overnight via Federal Express to the clerk for lodging tomorrow.

17 *Amended motion to supplement the record.* We have also attached to this motion an amended
 18 motion to supplement the evidentiary record that may be placed on the public record without
 19 restriction. We have amended our initial motion by removing information (for example, names of
 20 third-party individuals) that remains subject to confidentiality designations. We also have corrected
 21 clerical errors in our initial submission that we discovered while preparing this motion.⁵ The

22 ³ Following the agreement to use substitute documents produced without a
 23 confidentiality designation, Proponents are withdrawing their request to move DIX3156 in
 24 evidence as the substitute document for this exhibit is identical to the substitute document
 that is now DIX3167.

25 ⁴ We are serving copies of the materials we are lodging with the Court on Plaintiffs
 and Plaintiff-Intervenor. We will provide a copy of the sealed submission to any other
 26 party that represents that it desires a copy and that it will adhere to the provisions of the
 protective order governing this case, *see* Doc # 425, and we will provide copies of the
 public documents to any other party that represents that it desires them.

27 ⁵ In addition to correcting information such as page citations and dates, our
 28 amended motion also correctly refers to the following exhibits that we identified by the
 wrong exhibit number in our original motion: DIX3502, DIX3503, DIX3519, DIX3601,
 (Continued)

1 substance of our proffer has not changed. For the convenience of the Court and the parties, we are
2 including with our sealed submission a document tracking the changes we have made in our
3 amended motion. We have lodged this document under seal because it contains information that
4 remains subject to confidentiality designations.

5 For these reasons, Proponents respectfully request an order sealing (1) the redacted portions of
6 the exhibits ACLU and Equality California have agreed may be placed on the public record with
7 redactions, as indicated in Attachment 3, and (2) a version of our amended motion to supplement the
8 record tracking changes made to our initial motion. The remaining exhibits, listed in Attachment 2,
9 may be placed on the public record without restriction as detailed in this motion.

10 Dated: June 2, 2010

11
12 COOPER AND KIRK, PLLC
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14 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,
15 MARTIN F. GUTIERREZ, MARK A. JANSSON, and
16 PROTECTMARRIAGE.COM – YES ON 8, A PROJECT
17 OF CALIFORNIA RENEWAL

18
19 By: /s/Charles J. Cooper
20 Charles J. Cooper
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27 (Cont'd)
28 DIX3602, and DIX3603. It also conforms to our withdrawal of DIX3156 and DIX3506.