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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 KRISTIN M. PERRY, SANDRA B. STIER,
18 PAUL T. KATAMI, and JEFFREY J.
ZARRILLO,

19 Plaintiffs,

20 v.

21 ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND
22 G. BROWN, JR., in his official capacity as
Attorney General of California; MARK B.
23 HORTON, in his official capacity as Director of
the California Department of Public Health and
State Registrar of Vital Statistics; LINETTE
24 SCOTT, in her official capacity as Deputy
Director of Health Information & Strategic
25 Planning for the California Department of Public
Health; PATRICK O'CONNELL, in his official
26 capacity as Clerk-Recorder for the County of
Alameda; and DEAN C. LOGAN, in his official
27 capacity as Registrar-Recorder/County Clerk for
the County of Los Angeles,

28 Defendants.

CASE NO. 09-CV-2292 VRW

**DECLARATION OF CHRISTOPHER D.
DUSSEAULT IN SUPPORT OF
PLAINTIFFS' AND PLAINTIFF-
INTERVENOR'S JOINT OPPOSITION TO
DEFENDANT-INTERVENORS' MOTION
FOR A STAY PENDING APPEAL AND/OR
PETITION FOR WRIT OF MANDAMUS**

Date: January 7, 2010
Time: 10:00 a.m.
Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor

1 I, Christopher D. Dusseault, declare as follows:

2 1. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, and I am one of the
3 attorneys of record for Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J.
4 Zarrillo (“Plaintiffs”) in this action. I make this declaration in support of Plaintiffs’ and Plaintiff-
5 Intervenor’s Joint Opposition to Defendant-Intervenors’ Motion for a Stay Pending Appeal and/or
6 Petition for Writ of Mandamus. I have personal knowledge of the facts set forth herein, and if called
7 as a witness, I could and would competently testify hereto.

8 2. On October 8, 2009, counsel for Defendant-Intervenors, Jesse Panuccio, requested by
9 e-mail that Plaintiffs stipulate to an expedited briefing schedule for this Motion. Mr. Panuccio’s
10 original proposal was that Plaintiffs respond to the Motion by Tuesday, October 13, just two business
11 days after filing of the Motion, and it made no mention of any reply brief. On that same day, I
12 responded to Mr. Panuccio’s e-mail and stated that, while Plaintiffs were amenable to such an
13 expedited schedule, they wanted to be certain that the Court could, if desired, address the issues
14 raised by the Motion in the October 14, 2009 hearing on Defendant-Intervenors’ Motion for
15 Summary Judgment. Accordingly, I sought to confirm that the briefing on Plaintiffs’ Motion be
16 limited to the Motion and Plaintiffs’ opposition.

17 3. Defendant-Intervenors sought to reserve the right to file a reply after October 13, 2009
18 or, alternatively, to shorten even further Plaintiffs’ already shortened time to reply to Defendant-
19 Intervenors’ Motion. While the parties were not able to agree on a specific briefing schedule, both
20 parties agreed that the matter should be resolved as promptly as possible. A true and correct copy of
21 the October 8, 2009 e-mail exchange between Mr. Panuccio and I reflecting these negotiations is
22 attached hereto as Exhibit A.

23 4. Plaintiffs have submitted their Opposition to Plaintiffs’ Motion as early as practicable.

24 5. Defendant-Intervenors have not yet offered to Plaintiffs any draft language for any
25 protective order that could be applied to documents produced in this case.

26 6. Plaintiffs’ efforts at obtaining information through third party discovery of
27 information related to the strategy underlying the Prop. 8 campaign have been blocked as a result of
28 Defendant-Intervenors’ appeal because third parties such as Schubert Flint Public Affairs have

1 incorporated by reference Defendant-Intervenors' First Amendment privilege defense (and
2 Defendant-Intervenors' interlocutory appeal of the order rejecting that defense as presented). A true
3 and correct copy of Schubert Flint's Responses and Objections to Plaintiffs' Subpoena to Produce
4 Documents is attached as Exhibit B.

5 7. On September 1, 2009, Defendant-Intervenors served a subpoena seeking
6 communications substantially similar to those they seek to protect here from Fred Karger, founder of
7 Californians Against Hate, as part of their discovery in *ProtectMarriage.com v. Bowen* (E.D. Cal.
8 Case No. 2:09-cv-00058-MCE-DAD). A true and correct copy of this subpoena is attached hereto as
9 Exhibit C.

10 8. Defendant-Intervenors have not disclosed the identities of three members of the ad hoc
11 executive committee who provided the executive direction to the campaign or whether such
12 individuals have evidence relevant to this case.

13 I declare, under penalty of perjury under the laws of the United States, that these facts
14 are true and correct and that this Declaration is executed this 13th day of October 2009 at
15 Los Angeles, California.

16
17 /s/ Christopher D. Dusseault
18 Christopher D. Dusseault
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ATTESTATION PURSUANT TO GENERAL ORDER NO. 45

Pursuant to General Order No. 45 of the Northern District of California, I attest that concurrence in the filing of the document has been obtained from each of the other signatories to this document.

By: /s/ Theodore B. Olson
Theodore B. Olson

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