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 CITY AND COUNTY OF SAN FRANCISCO

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 KRISTIN M. PERRY, SANDRA B. STIER,
 15 PAUL T. KATAMI, and JEFFREY J.
 ZARRILLO,

16 Plaintiffs,

17 vs.

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

27 Defendants.

Case No. 09-CV-2292 VRW (JCS)

**PLAINTIFF-INTERVENOR'S EMERGENCY
 MOTION TO CORRECT PROTECTIVE
 ORDER [DOCKET NO. 361]**

Hearing Date: Jan. 6, 2010
 Hearing Judge: Honorable J.C. Spero

Trial Date: Jan. 11, 2010

1 and

2 PROPOSITION 8 OFFICIAL PROPONENTS
3 DENNIS HOLLINGSWORTH, GAIL J.
4 KNIGHT, MARTIN F. GUTIERREZ, HAK-
5 SHING WILLIAM TAM, and MARK A.
6 JANSSON; and PROTECTMARRIAGE.COM –
7 YES ON 8, A PROJECT OF CALIFORNIA
8 RENEWAL,

9 Defendant-Intervenors.

10 PROPOSITION 8 OFFICIAL PROPONENTS
11 DENNIS HOLLINGSWORTH, GAIL J.
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13 SHING WILLIAM TAM, and MARK A.
14 JANSSON; and PROTECTMARRIAGE.COM –
15 YES ON 8, A PROJECT OF CALIFORNIA
16 RENEWAL,

17 Defendant-Intervenors.

18 CITY AND COUNTY OF SAN FRANCISCO,

19 Plaintiff-Intervenor

20 vs.

21 ARNOLD SCHWARZENEGGER, in his official
22 capacity as Governor of California; EDMUND G.
23 BROWN JR., in his official capacity as Attorney
24 General of California; MARK B. HORTON, in
25 his official capacity as Director of the California
26 Department of Public Health and State Registrar
27 of Vital Statistics; and LINETTE SCOTT, in her
28 official capacity as Deputy Director of Health
Information & Strategic Planning for the
California Department of Public Health,

Defendants.

1 Plaintiff-Intervenor City and County of San Francisco hereby submits this motion to correct the
2 protective order issued in this matter [Doc. # 361] to conform to the Court's oral ruling on that
3 protective order at the hearing on January 6, 2010. Specifically, San Francisco seeks to correct
4 paragraph 7.3(a) to allow San Francisco and any other government office to identify attorneys and
5 individuals that will have access to documents marked "Highly Confidential – Attorneys' Eyes Only"
6 by changing the term "Receiving Party's Outside Counsel of record in this action" to "Receiving
7 Party's Counsel of record in this action." The restriction to *outside* counsel would categorically
8 exclude government attorneys, who necessarily work for the government entity they represent.

9 San Francisco raised this issue on December 3, 2009, when it wrote the Court and requested
10 the change from "outside counsel" to "counsel" in the then-proposed protective order submitted by
11 Plaintiff's. [Doc. # 273.] While Defendant-Intervenor Proposition 8 Proponents sought to exclude
12 any access to such documents by San Francisco, San Francisco requested the change to allow
13 attorneys in the San Francisco City Attorneys' Office who are working on the matter and otherwise
14 meet the criteria as set out the protective order to gain access to the documents in this matter. [*Id.*]
15 Plaintiff joined in the request. [*Id.* at 2.]

16 The Court held a hearing on January 6, 2010 to discuss, among other things, the terms the
17 protective order. On this specific issue (access to documents marked "Highly Confidential –
18 Attorneys' Eyes Only"), the Court provided additional protection by requiring that as to any attorney
19 or employee to whom such documents would be provided under paragraph 7.3(a), that "notice of all
20 such attorneys and employees to whom highly confidential attorney's eyes only information will be
21 disclosed shall be given not less than 24 hours in advance of the disclosure to give the other parties the
22 opportunity to object to the disclosure on grounds specific to the designated employee or attorney."
23 [Exhibit A, Transcript at 100:7-101:9.] Plaintiffs agreed to that extra protection. [*Id.* at 101:10-11.]
24 Plaintiffs then specifically raised the issue of access to such documents by San Francisco. [*Id.* at 101:
25 11-14] The Court denied Defendant-Intervenor Proposition 8 Proponents' request that the City
26 Attorneys' Office be categorically denied access to the documents, and indicated that the City
27 Attorney's office should follow the same confidentiality procedures established for the other parties.
28 [*Id.* at 101:15-102:5.] Defendant-Intervenors submitted to the order. [*Id.* at 102:16-19.]

1 To conform paragraph 7.3 (a) to the Court’s express ruling at the hearing, San Francisco
2 requests that the Court amend paragraph 7.3(a) as follows:

3 the Receiving Party’s Counsel of record in this action, as well as employees of
4 said Counsel to whom it is reasonably necessary to disclose the information for
5 this litigation and who have signed the “Agreement to Be Bound by Protective
6 Order” that is attached hereto as Exhibit A, provided that it shall not be
7 provided to any Counsel or employee who held an “official position” in any
8 primarily formed ballot committee related to Proposition 8 (see [http://cal-
9 access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007](http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007)) or
10 now holds an official position in a similar committee that is now circulating
11 petitions for a 2010 ballot initiative to repeal Proposition 8. For purposes of this
12 sections 7.3 and 7.5 an “official position” is defined as one which authorizes the
13 holder of said position to contractually bind (either solely or in conjunction with
14 others) the primarily formed ballot committee (or similar committee circulating
15 petitions to place an initiative on the 2010 ballot) with respect to matters
16 relating to communications disseminated by the committee or otherwise to
17 spend funds exceeding \$1,000 on behalf of the committee, provided however,
18 that notice of all such attorneys and employees to whom HIGHLY
19 CONFIDENTIAL - ATTORNEY'S EYES ONLY information will be disclosed
20 shall be given not less than 24 hours in advance of the disclosure to give the
21 other parties the opportunity to object to the disclosure on and seek relief from
22 the court on grounds specific to the designated attorney or employee;

14 Because the Court’s order contemplated that San Francisco would provide notice the names of
15 individuals to whom information will be disclosed, and in order to avoid any delay, San Francisco is
16 doing so in anticipation of an amended order being entered.

17 San Francisco circulated a copy of a draft of this motion, with Exhibit A, to the parties on the
18 morning of January 8, 2010. Plaintiffs and the Attorney General support the request. The Alameda
19 County Clerk-Recorder, the County of Los Angeles, and Administration Defendants have stated that
20 they have position on the request. Defendant-Intervenors have not provided their position.

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Dated: January 8, 2010

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By: _____ /s/ _____
RONALD P. FLYNN

Attorneys for Proposed Intervenor
CITY AND COUNTY OF SAN FRANCISCO