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

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

19 Plaintiffs,

20 v.

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

28 Defendants.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' NOTICE OF MOTION AND  
 MOTION FOR LEAVE TO REOPEN THE  
 DEPOSITION OF RONALD PRENTICE IN  
 HIS PERSONAL CAPACITY AND AS THE  
 RULE 30(b)(6) REPRESENTATIVE FOR  
 PROTECTMARRIAGE.COM**

Trial Date: January 11, 2010

Judge: Chief Judge Walker  
 Magistrate Judge Joseph C. Spero

Location: Courtroom 6, 17th Floor

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on January 19, 2010 at 9 a.m., or as soon thereafter as this  
 4 matter may be heard pursuant to the motion to shorten time filed concurrently herewith, Plaintiffs  
 5 will and hereby do move for an order re-opening the deposition of Ronald Prentice to allow Plaintiffs  
 6 to question this witness in his personal capacity and as the Rule 30(b)(6) representative of  
 7 ProtectMarriage.com concerning new documents that have been produced by Proponents in response  
 8 to this Court's January 8, 2010 Order. As this matter is currently in the second week of trial,  
 9 Plaintiffs request that this Court order Mr. Prentice to appear for a one-day, seven hour deposition in  
 10 San Francisco on January 21, 2010.

11 This motion is filed pursuant to Rule 30(a)(2)(A)(ii) of the Federal Rules of Civil Procedure,  
 12 this Court's January 8, 2010 Order, and this Court's rulings at the hearing held on January 6, 2010.

13 This motion is based on this notice, the memorandum accompanying this notice, all  
 14 documents attached to the accompanying Declaration as Exhibits, the accompanying motion to  
 15 shorten time, the accompanying motion to file under seal, all other papers on file with the Court, oral  
 16 argument, and such other matters as may be presented in connection with the hearing.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Plaintiffs file this motion to reopen the deposition of Mr. Ronald Prentice because Proponents  
 20 have produced documents in response to this Court's January 8, 2010 order that contain new  
 21 information that Plaintiffs were not aware of at the time Mr. Prentice<sup>1</sup> was originally deposed in  
 22 December 2009. On January 6, 2010 – at the hearing held before this Court issued its written order  
 23 on January 8 – Magistrate Judge Spero stated that if Plaintiffs' review of newly produced documents  
 24 reveals information Plaintiffs did not know previously, Plaintiffs may make an application to re-open  
 25 depositions. Jan. 6, 2009 Hr'g Tr. at 5:22-6:7. In accordance with these instructions and Rule

26  
 27 <sup>1</sup> Mr. Prentice was the Chairman of ProtectMarriage.com – Yes on 8, a project of California  
 28 Renewal (“ProtectMarriage.com”) and a member of the ProtectMarriage.com Executive  
 Committee. Justice Lazarus Decl. ¶ 2, Ex. A at 94:11-14, 96:25-97:4.

1 30(a)(2)(B) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request permission to  
 2 reopen the deposition of Mr. Prentice for one seven-hour day in order to question him in his personal  
 3 capacity and as the Rule 30(b)(6) representative of ProtectMarriage.com about the content of newly  
 4 produced documents.

5 Among other things, the newly produced documents shed considerable light on the  
 6 relationship between ProtectMarriage.com and various other groups and individuals who actively  
 7 campaigned for the passage of Prop 8.<sup>2</sup> In several instances, as discussed *infra*, these documents  
 8 appear to be inconsistent with Mr. Prentice's deposition testimony in which he repeatedly sought to  
 9 distance himself and ProtectMarriage.com from other groups and individuals who campaigned for  
 10 Prop. 8 and disseminated incendiary misinformation about California's gays and lesbians. As  
 11 Plaintiffs were previously deprived of the opportunity to depose Mr. Prentice about these very  
 12 recently produced, non-privileged documents, Plaintiffs seek leave to reopen his deposition.  
 13 Plaintiffs also believe that a further deposition of Mr. Prentice will enable them to further streamline  
 14 the testimony offered at trial in this case.

## 15 II. PROCEDURAL BACKGROUND

16 On August 19, 2009, Plaintiffs propounded their first set of requests for documents on  
 17 Proponents seeking campaign materials relating to Prop. 8. Doc #187-3. In both the district and  
 18 appellate courts, Proponents have opposed Plaintiffs' efforts to obtain *any* discovery into documents  
 19 or communications concerning Prop. 8, except to the extent the Proponents themselves had chosen to  
 20 make a communication available to the general public. *See, e.g.*, Doc #375. As a result of these  
 21 discovery disputes and the January 11, 2010 trial date, Plaintiffs were forced to proceed with  
 22 depositions of witnesses without access to many documents that had been requested in discovery.

23 At Proponents' request, the Fed. R. Civ. Proc. 30(b)(6) deposition of ProtectMarriage.com  
 24 and the deposition of Mr. Prentice were combined into one deposition that lasted two days. Justice  
 25 Lazarus Decl. at ¶ 2, Exh. A at 12:21-13:11. On December 17 and 19, 2009, Mr. Prentice was

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 27 <sup>2</sup> Plaintiffs are filing this motion under seal because Proponents designated several of the newly  
 28 produced documents that are at issue in this motion as for "Attorneys' Eyes Only."

1   deposed both in his personal capacity and as the “person most knowledgeable” for  
2   ProtectMarriage.com. *Id.*

3           On January 4, 2010, the Ninth Circuit issued an amended opinion regarding the proper scope  
4   of the Proponents’ claimed First Amendment privilege over campaign related material. *Perry v.*  
5   *Schwarzenegger*, No. 09-17241, amended slip op. (9th Cir. Jan. 4, 2010). On January 6, the parties  
6   appeared before Magistrate Judge Spero to discuss the implementation of the Ninth Circuit’s  
7   amended opinion. *See* Jan. 6, 2009 Hr’g Tr. at 8. Proponents were ordered at that hearing to begin  
8   their production of responsive, non-privileged documents on January 10 and to complete their  
9   production on January 17. *Id.* at 126:23-127:1. Additionally, Magistrate Judge Spero acknowledged  
10   at the hearing that Plaintiffs may need to reopen depositions based on the newly produced documents:  
11   “if you review the documents and based on those you think that you now have information you didn’t  
12   know [before], you can make an appropriate application [to reopen depositions].” *Id.* at 6:3-6:7. On  
13   January 8, Magistrate Judge Spero issued a written order memorializing the Court’s oral rulings at the  
14   January 6 hearing. Doc #372.

15           On January 10, 2010, Proponents produced 1,489 pages of documents to Plaintiffs. Justice  
16   Lazarus Decl. at ¶ 4. On January 13, Proponents produced 5,007 pages of documents on behalf of  
17   Dr. Tam’s counsel. *Id.* On January 14, Proponents produced 5,741 pages of documents in three  
18   separate productions. *Id.* On January 15, Proponents produced 1,255 pages of documents. *Id.* On  
19   January 16 beginning at approximately 11:22 p.m. and continuing over the next twelve hours, counsel  
20   for Proponents notified counsel for Plaintiffs that it had produced over 9,000 pages of documents on  
21   behalf of themselves and Dr. Tam. *Id.* Plaintiffs’ counsel has diligently reviewed these documents  
22   produced by Proponents on a rolling basis. *Id.* at ¶ 5. Over the weekend since Friday, January, 15,  
23   Plaintiffs’ team of approximately eight lawyers spent a substantial portion of the weekend reviewing  
24   over 15,000 pages of documents produced since January 14. *Id.* at ¶ 6.

25           To date, Plaintiffs’ counsel has identified from these supplemental productions about 398  
26   documents of interest that mention Mr. Prentice. Justice Lazarus at ¶ 7. Plaintiffs are in the process  
27   of selecting approximately 25 of these documents that merit additional deposition questioning of Mr.  
28   Prentice. *Id.* at ¶ 8.

### III. ARGUMENT

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2 This Court has the authority to reopen the deposition of a witness. *See* Fed. R. Civ. Proc.  
3 30(d)(2) (“If a person impedes, delays, or frustrates the fair examination of the deponent, the court  
4 may impose an appropriate sanction”); *see also Antonino-Garcia v. Shadrin*, 208 F.R.D. 298, 300 (D.  
5 Or. 2002) (permitting renewal deposition after deponent refused to answer question and brought  
6 along a “supporter” who disrupted the proceedings). Indeed, Magistrate Judge Spero expressly stated  
7 in the January 6, 2010 hearing that Plaintiffs may make an application to reopen depositions based on  
8 newly produced documents. Jan. 6, 2009 Hr’g Tr. at 5:22-6:7.

9 This Court should reopen the deposition of Mr. Prentice so that he can be questioned about  
10 recently produced documents that contain new information not previously known to Plaintiffs. In his  
11 December deposition testimony before these documents had been produced, Mr. Prentice repeatedly  
12 sought to distance himself and ProtectMarriage.com from the campaign messages of various other  
13 individuals and groups. Thus, for example, Mr. Prentice testified in deposition that  
14 ProtectMarriage.com was a “coalition . . . to the extent that people aligned with a generally directed  
15 purpose” and described the coalition as “loosely formed.” Justice Lazarus Decl. ¶ 2, Ex. A at 58:4-5;  
16 60:2-4. He further denied the existence of an “organization” “joined together” to support Prop. 8.  
17 Justice Lazarus Decl. ¶ 2, Ex. A at 226:19-227:3.

18 But contrary to Mr. Prentice’s deposition testimony, the newly produced documents  
19 convincingly show that ProtectMarriage.com worked hand-in-hand with various individuals and  
20 groups in formulating one another’s messages in the Prop. 8 campaign. When asked in deposition  
21 about ProtectMarriage.com’s relationship with specific individuals and groups who actively  
22 campaigned for the passage of Prop. 8, Mr. Prentice repeatedly denied that ProtectMarriage.com  
23 directed, worked with, or had knowledge about the activities of these individuals and groups.  
24 Because of these denials, Plaintiffs did not pursue further lines of questioning that they otherwise  
25 would have. Now, many newly produced documents cast doubt on – and in many cases appear to  
26 directly contradict – Mr. Prentice’s deposition testimony. For this Court’s reference, examples of  
27 some of these newly produced documents are attached as Exhibits C to H to the Declaration of  
28 Rebecca Justice Lazarus, filed concurrently herewith.

1 By way of example only,<sup>3</sup> the following are instances in which newly produced documents  
2 appear to be inconsistent with the testimony given by Mr. Prentice at his December deposition:

3 (1) Mr. Prentice testified in deposition that there was never a steering committee for  
4 ProtectMarriage.com. Justice Lazarus Decl. ¶ 3, Ex. B at 97:4-13.

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10 (2) Mr. Prentice testified in deposition that the Family Research Council was not part of the  
11 ProtectMarriage.com coalition. Justice Lazarus Decl. ¶ 2, Ex. A at 267:25-268:8. Based on newly  
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17 (3) Mr. Prentice testified in deposition that the leadership in the LDS Church “endorsed”  
18 Prop 8 but repeatedly “took issue” with questions regarding whether the LDS Church took an active  
19 role in campaign activities. Justice Lazarus Decl. ¶ 2, Ex. A at 172:17-21, 173:17-22.  
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24 (4) Mr. Prentice testified in deposition that he had limited knowledge about James (“Jim”)  
25 Garlow’s grassroots campaign. Justice Lazarus Decl. ¶ 2, Ex. A at 176:17-177:6.

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27 <sup>3</sup> Plaintiffs have not listed all – or even most – of the instances in which newly produced  
28 documents appear to be inconsistent with Mr. Prentice’s prior deposition testimony. If this  
Court wishes to see additional examples, Plaintiffs are ready and able to do so upon request.

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(5) Mr. Prentice testified in deposition that the content of the website iProtectMarriage.com was created without the approval or supervision of ProtectMarriage.com. Justice Lazarus Decl. ¶ 2, Ex. A at 99:6-11, 99:15-100:1

In each of the aforementioned examples, Proponents' failure to produce the non-privileged documents prior to Mr. Prentice's December deposition has deprived Plaintiffs of the ability of question Mr. Prentice about those documents and to explore additional lines of inquiry that are relevant to the official Prop. 8 campaign.

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<sup>4</sup> A simulcast refers to programs or events broadcast across more than one medium, or more than one service on the same medium, at the same time.

