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Department of Elections - City and County of San Francisco and

Dennis J. Herrera, City Attorney for the City and County of San Francisco

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

**ProtectMarriage.com - Yes on 8, a Project of California Renewal; National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage, John Doe #1**, an individual, and as a representative of the **Class of Major Donors**,

Plaintiffs,

vs.

**Debra Bowen**, Secretary of State for the State of California, in her official capacity; **Edmund G. Brown, Jr.**, Attorney General for the State of California, in his official capacity; **Dean C. Logan**, Registrar-Recorder of Los Angeles County, California, in his official capacity; **Department of Elections - City and County of San Francisco; Jan Scully**, District Attorney for Sacramento County, California, in her official capacity and as a representative of the Class of District Attorneys in the State of California; **Dennis J. Herrera**, City Attorney for the City and County of San Francisco, California, in his official capacity and as a representative of the Class of Elected City Attorneys in the State of California; **Ross Johnson, Timothy Hodson, Eugene Huguenin, Jr., Robert Leidigh**, and **Ray**

Case No. 2:09-CV-00058-MCE-DAD

**DECLARATION OF MOLLIE M. LEE IN SUPPORT OF SAN FRANCISCO DEFENDANTS' NOTICE OF JOINDER IN STATE DEFENDANTS' RULE 56(F) MOTION**

Dated: July 16, 2009

Time: 2:00 p.m.

Courtroom: 7, 14th Floor

The Honorable Morrison C. England, Jr.

Trial Date: March 14, 2011

Action Filed: January 7, 2009

1 **Remy**, members of the California Fair Political  
2 Practices Commission, in their official  
3 capacities,  
4 Defendants.

5 I, Mollie M. Lee, declare as follows:

6 1. I am an attorney at law licensed to practice in the State of California. I am an attorney  
7 at the Office of the San Francisco City Attorney. I have personal knowledge of the facts set forth in  
8 this declaration, and if called as a witness, I can and would testify competently thereto.

9 2. After reviewing Plaintiffs' Memorandum in Support of Motion for Summary  
10 Judgment ("Motion"), I believe that, absent a denial of the Motion or continuance thereof,  
11 Defendants City and County of San Francisco and City Attorney Dennis J. Herrera ("San Francisco  
12 Defendants") will be deprived of a fair and adequate opportunity to obtain and present facts in  
13 support of their opposition to Plaintiffs' Motion.

14 3. The parties exchanged initial disclosures on April 1, 2009. Since that date, the parties  
15 have not taken any discovery.

16 4. On May 18, 2009, the Court issued a pretrial scheduling order establishing a discovery  
17 cut-off date of May 14, 2010.

18 5. Plaintiffs argue that they are entitled to an exemption from disclosure requirements  
19 because there is a reasonable probability that disclosure will result in threats, harassment or reprisals.  
20 In support of this allegation, Plaintiffs filed nine redacted declarations in support of their motion for  
21 preliminary injunction and an additional 49 redacted declarations in support of their motion for  
22 summary judgment.

23 6. In each such declaration served on Defendants, Plaintiffs have redacted the name of  
24 the declarant. In many of the declarations, Plaintiffs have also redacted other details, such as the  
25 amount of a contribution, the name of a group or institution with which the declarant is affiliated, or  
26 the date or location of a relevant event.

27 7. Because of the redactions, Defendants do not know the identities of the declarants and,  
28 in some instances, details of the facts alleged in the declarations. Without this information,

1 Defendants cannot assess whether Plaintiffs' assertions have evidentiary support and cannot  
2 adequately plan discovery.

3 8. For example, Plaintiffs allege that contributions to the pro-Proposition 8 campaign  
4 leads to a risk of retaliatory harassment. But without knowing the identities of the declarants,  
5 Defendants cannot investigate whether the declarants who claim to have been harassed took public  
6 or vocal positions in support of Proposition 8 in addition to making political contributions.

7 9. Similarly, Plaintiffs claim that the harassment experienced by supporters of  
8 Proposition 8 has chilled those supporters' willingness to contribute to the campaign. Without  
9 identifying information, Defendants cannot test this assertion by reviewing Plaintiffs' campaign  
10 filings to determine whether declarants continued to contribute to the campaign after alleged  
11 incidents of harassment.

12 10. Defendants cannot verify the most basic information in the declarations, including  
13 whether the declarants made *any* contributions to support Proposition 8.

14 11. San Francisco Defendants are seeking to obtain unredacted versions of the declarations  
15 for review by counsel. On Wednesday, June 10, I discussed San Francisco Defendants' need for the  
16 redacted information with Plaintiffs' counsel Scott Bieniek. If San Francisco Defendants are unable  
17 to resolve this issue through informal discussions with Plaintiffs' counsel or a stipulation, they  
18 intend to seek a modified protective order from the Court that would permit counsel to review  
19 unredacted declarations, subject to the condition that these declarations are not disclosed to the  
20 public.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing  
22 is true and correct.

23 Dated: June 11, 2009

24 By: \_\_\_\_\_/s/  
25 MOLLIE LEE

26 Attorneys for Defendants  
27 DEFENDANTS DEPARTMENT OF ELECTIONS –  
28 CITY AND COUNTY OF SAN FRANCISCO AND  
DENNIS J. HERRERA