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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, et al.,**

Plaintiffs,

vs.

Case No. 2:09-CV-00058-MCEDAD

**STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

**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., Lynn Montgomery, and Ronald Rotunda**, members of the California Fair Political Practices Commission, in their official capacities,

Defendants.

1           Upon the consent of the parties to this action, as evidenced by their signatures below, it is  
2 hereby ordered that:

3           1.       The term “Documents” as used in this Order shall mean all written, recorded (including  
4 electronically recorded), or graphic matter whatsoever. Such materials shall include, but not be limited  
5 to: interrogatory answers; responses to requests for admissions; responses to requests for production of  
6 documents; documents produced or served by any party or non-party in this action, whether pursuant  
7 to any rule, subpoena, or agreement; deposition transcripts and exhibits, physical objects or things as  
8 may be appropriate for the implementation of the purposes of this Order; and any papers, including  
9 court papers, which quote from, summarize, or refer to any of the foregoing.

10          2.       A producing entity may designate as “Confidential” any Document or any portion  
11 thereof that contains or reflects trade secrets or other sensitive non-public information, including  
12 information for which the producing entity reasonably believes confidentiality is necessary to protect a  
13 party or person from embarrassment, oppression, undue burden or expense, threats, harassment, or  
14 reprisals (“Confidential Document”). An entire Document shall not be designed as “Confidential” if  
15 only a reasonably segregable portion thereof contains information that the producing entity reasonably  
16 believes should be kept confidential.

17          3.       All Confidential Documents produced in the course of the proceedings herein, and all  
18 information derived therefrom – including, but not limited to, extracts, summaries, memoranda, and  
19 correspondence quoting or containing information from Confidential Documents – (collectively  
20 “Confidential Information”) may be used only for the purpose of preparing for and conducting  
21 discovery and pre-trial proceedings, and for no other purpose. If a Document contains both  
22 Confidential Information and non-Confidential Information, this restriction shall apply only to the  
23 Confidential Information in the Confidential Document.

24          4.       Except as otherwise provided in this Order, no person shall be permitted to have access  
25 to Confidential Information, nor shall any person be informed of the substance of the Confidential  
26 Information, by any person permitted to have access thereto, except as provided in this Order, or  
27 otherwise agreed upon by the entity producing such material, or by order of the Court.

1           5.       Confidential Information shall not be disclosed or distributed to any person or entity  
2 other than the following:

3               a.       the parties and the attorneys for the parties in this action (including their  
4 paralegals, clerical, and other assistants) who have a clear need therefore in connection with this  
5 action; and outside contractors hired to copy, image, index, sort, or otherwise manage the storage and  
6 retrieval of case materials;

7               b.       persons retained by a party or outside counsel to serve as expert witnesses or  
8 otherwise to provide advice to counsel in connection with this action (referred to as “consultants”),  
9 provided such persons have signed a declaration under penalty of perjury in the form annexed hereto  
10 attesting to the fact that they have read this Order and agree to be bound by its terms;

11              c.       stenographers engaged to transcribe depositions conducted in this action; and

12              d.       the Court and its support personnel.

13       6.       If a Party files with the Court a document that quotes from or refers to specific  
14 identifying information another party has designated as Confidential Information, that portion of the  
15 filed document shall be treated as Confidential Information. If a party files with the Court a document  
16 that summarizes or aggregates information another party has identified as Confidential Information,  
17 the filing party may seek written consent from the producing party or a ruling from the Court that the  
18 summary or discussion of aggregated information is not Confidential Information. Until there is such  
19 written consent or a Court Order, the summary or aggregated information shall be treated as  
20 Confidential Information.

21       7.       During any deposition noticed in connection with this case, any counsel may indicate  
22 on the record that a question calls for Confidential Information, or that an answer has disclosed  
23 Confidential Information. Such Information must be so designated during the deposition, in which  
24 case the transcript of the designated testimony shall be bound in a separate volume and marked  
25 “Confidential Information.” When such designation is made during a deposition, upon the request of  
26 counsel, all persons, except persons entitled to receive the Confidential Information pursuant to this  
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Order, shall leave the room where the deposition is proceeding until completion of the answer or answers containing Confidential Information.

8. Persons described in paragraph five (5) above shall be restricted to using Confidential Information only for purposes directly related to this action and not for any other litigation, proceeding, business, commercial, competitive, personal, or other purpose. Photocopies of documents containing such information shall be made only to the extent necessary to facilitate the permitted use hereunder.

9. Confidential Information shall not be disclosed to any person or persons under subparagraph 5(b), unless and until such person has been shown this Protective Order and has agreed in writing to be bound by its terms, by subscribing to a document in the form of the “Acknowledgement” attached hereto as Appendix A. A copy of each executed Acknowledgement shall be kept by counsel for the party on behalf of which disclosure is made pursuant to paragraph 5 until thirty days after the termination of this action, including appeals.

10. All Confidential Information that is filed with the Court, and any pleadings, motions, exhibits, or other papers filed with the Court disclosing Confidential Information, shall be filed under seal and kept under seal until further order of the Court. The parties agree, where practicable, to designate only the confidential portions of filings with the Court to be filed under seal. The parties shall file, on the public ECF system, redacted versions of any pleadings, motions, exhibits, or other papers filed with the Court, removing any and all Confidential Information. Counsel shall also file, under seal, a reference list, containing all of the redacted Confidential Information. To facilitate compliance with this Order by the Clerk’s office, the reference list shall be contained in a sealed envelope bearing the designation “Confidential” on its front face. In addition, the envelope shall bear the caption of the case, shall contain a concise description of the document to which the reference list relates for docketing purposes that does not disclose the sensitive information, and shall state thereon that it is filed under the terms of this Order.

11. Reference lists and any other Confidential Information filed under seal with the Court shall be served on each counsel of record at the same time it is filed with the Court. Reference lists

1 and any other Confidential Information filed under seal before the effective date of this Order shall be  
2 served on each counsel of record within three days of the issuance of this order.

3 12. This Order shall not preclude any party from seeking a ruling from the Court regarding  
4 the validity or propriety of any claim of confidentiality asserted by a producing entity.

5 a. In the event that the party to whom information is disclosed or produced objects  
6 to the designation by the producing entity of any document or discovery materials as "Confidential,"  
7 that party's counsel shall advise counsel for the producing entity in writing of the objection and  
8 identify the document or material with sufficient specificity to permit the other to identify it.

9 b. Within three (3) business days of receiving this written objection, the producing  
10 entity shall advise in writing whether the "Confidential" designation will be removed. If the producing  
11 entity continues to assert the "Confidential" designation, the parties shall meet and confer at 2:00 PM  
12 eastern time on the second business day following service of the response of the objections to the  
13 designation, unless otherwise agreed by all counsel designated as Points of Contact.

14 c. If the appropriate designation cannot be resolved, then the dispute may be  
15 presented to the Court by motion or otherwise. Any motion to remove a "Confidential" designation  
16 shall be served within three business days of the meet and confer, any opposition within three business  
17 days of service of the motion to compel, and any reply within two business days of service of  
18 opposition papers. During the pendency of any such dispute, the designated document or material shall  
19 continue to be treated as Confidential Information subject to the provisions of this Order.

20 d. If the briefing schedule or other timing considerations do not leave adequate  
21 time for a party to follow the steps outlined at (a) through (c), above, any party may proceed to Court  
22 after making an attempt to meet and confer with the producing party.

23 13. This Order shall govern the production and disclosure of Confidential Information by  
24 or on behalf of any party through the discovery and all pretrial processes. This Order is not intended  
25 to govern at trial. Should this matter proceed to trial, the parties shall meet and confer regarding use of  
26 Confidential Information during trial and file any proposed modifications to the Protective Order no  
27 later than January 6, 2011.

1           14.     Within sixty (60) days of the resolution of this action by settlement or final judgment,  
2 and the termination of any appeal therefrom, all Confidential Documents, and any copies thereof, shall  
3 be promptly destroyed, provided that the party to whom Confidential Information is disclosed or  
4 produced certifies in writing that all designated documents and materials have been destroyed. If  
5 defendants, defendants' counsel, or their employing agency are requested to disclose publicly any  
6 Confidential Information pursuant to the California Public Records Act, Cal. Gov't Code § 6250 et  
7 seq., or any similar state or local law, or otherwise, before doing so they will attempt to notify counsel  
8 for the producing entity in sufficient time to allow that entity a reasonable opportunity to object to, or  
9 to take legal action to prevent such disclosure. The termination of this litigation shall not relieve any  
10 person or party provided Confidential Information of his, her, or its obligations under this Order.

11           15.     The inadvertent production of documents containing information protected by the  
12 attorney-client privilege, work product doctrine, or other privileges recognized by law shall not be  
13 deemed a waiver, in whole or in part, of a party's claim of privilege as to either the document or  
14 information disclosed, or to related documents or information.

15           16.     Nothing in this Order shall prevent any entity from using or disclosing its own  
16 documents or other information.

17           17.     Nothing in this Order shall affect the right of any person to seek further provisions  
18 enhancing or limiting confidentiality as may be appropriate.

19           18.     The provisions of this Order restricting the use and disclosure of Confidential  
20 Information shall not apply to documents or other information which were, are, or become public  
21 knowledge not in violation of this Agreed Protective Order.

22           19.     Notwithstanding anything to the contrary that may be set forth herein, the Court shall  
23 retain the authority to modify this Order upon good cause shown.

24           20.     This Order shall take effect immediately as between signatories to this Order, and shall  
25 apply only as between signatories to this Order. This Order imposes no obligations on parties who  
26 have not stipulated to this Order. Parties who have not stipulated to this Order remain subject to the  
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1 Court's Order on January 14, 2009, (Order, Doc. 29, Jan. 14, 2009,) and renewed on January 30, 2009.  
2 (Mem. & Order, Doc. 88, Jan. 30, 2009.)

3 Dated: July 9, 2009

DENNIS J. HERRERA  
City Attorney  
WAYNE SNODGRASS  
MOLLIE LEE  
Deputy City Attorneys

7 By: /s/ Mollie Lee  
MOLLIE LEE

8 Attorneys for Defendants  
9 DEFENDANTS CITY AND COUNTY OF SAN  
10 FRANCISCO AND DENNIS HERRERA

11 Dated: July 8, 2009

JAMES BOPP, JR.  
BARRY A. BOSTROM  
SARAH E. TROUPIS  
SCOTT F. BIENIEK  
BENJAMIN W. BULL  
TIMOTHY D. CHANDLER  
ALLIANCE DEFENSE FUND

15 By: /s/ Scott F. Bieniek  
16 SCOTT F. BIENIEK

17 Counsel for All Plaintiffs

18 Dated: July 10, 2009

TERENCE J. CASSIDY  
KRISTINA M. HALL  
PORTER & SCOTT

21 By: /s/ Terrence J. Hall  
22 TERENCE J. CASSIDY

23 Counsel for Defendant Jan Scully, in her official capacity  
24  
25  
26  
27  
28

1 Dated: July 9, 2009

EDMUND G. BROWN, JR.  
DOUGLAS J. WOODS  
ZACKERY P. MORAZZINI  
OFFICE OF THE ATTORNEY

3  
4 By: /s/ Zackery P. Morazzini  
ZACKERY P. MORAZZINI

5 Counsel for Defendants Debra Bowen, California  
6 Secretary of State, and Edmund G. Brown, Jr.,  
California Attorney General

7  
8 Dated: July \_\_\_\_, 2009

ELIZABETH M. CORTEZ  
JUDY W. WHITEHURST

9  
10 By: \_\_\_\_\_  
JUDY W. WHITEHURST

11 Counsel for Defendant Dean C. Logan, Los Angeles  
12 County Registrar-Recorder/County Clerk

13 Dated: July 9, 2009

SCOTT HALLABRIN  
LAWRENCE T. WOODLOCK  
FAIR PRACTICES POLITICAL COMMISSION

14  
15  
16 By: /s/ Lawrence T. Woodlock  
LAWRENCE T. WOODLOCK

17 Counsel for Defendants Members of the Fair  
18 Political Practices Commission

19 So ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

20  
21  
22 \_\_\_\_\_  
23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE



EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

**ProtectMarriage.com, et al.,**

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.**, **Lynn Montgomery**, and **Ronald Rotunda**, members of the California Fair Political Practices Commission, in their official capacities,

Defendants.

Case No. 2:09-CV-00058-MCEDAD

**DECLARATION**

Judge Morrison C. England, Jr.

1 The undersigned hereby declares under penalty of perjury that he (she) has read the Agreed  
2 Protective Order (the "Order") entered in the United States District Court for the Eastern District of  
3 California in the above captioned action, understands its terms, and agrees to be bound by each of  
4 those terms. Specifically, and without limitation, the undersigned agrees not to use or disclose any  
5 confidential information made available to him (her) other than in strict compliance with the Order.  
6 The undersigned acknowledges that his (her) duties under the Order shall survive the termination of  
7 this case and are permanently binding, and that failure to comply with the terms of the Order may  
8 result in the imposition of sanctions by the Court.

9  
10 Dated: \_\_\_\_\_

11  
12 By: \_\_\_\_\_  
13 (Type or Print Name)

Signed: \_\_\_\_\_