

# Exhibit G

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 PROJECT OF CALIFORNIA RENEWAL

18 \* Admitted *pro hac vice*

19  
 20 **UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

21 KRISTIN M. PERRY, SANDRA B. STIER,  
 22 PAUL T. KATAMI, and JEFFREY J.  
 ZARRILLO,

23 Plaintiffs,

24 v.

25 ARNOLD SCHWARZENEGGER, in his offi-  
 26 cial capacity as Governor of California; ED-  
 27 MUND G. BROWN, JR., in his official capacity  
 as Attorney General of California; MARK B.

CASE NO. 09-CV-2292 VRW

**DECLARATION OF NICOLE JO  
 MOSS IN SUPPORT OF DEFEN-  
 DANT-INTERVENORS' MOTION  
 FOR A PROTECTIVE ORDER**

Date: September 25, 2009  
 Time: 10:00 a.m.  
 Judge: Chief Judge Vaughn R. Walker  
 Location: Courtroom 6, 17th Floor

1 HORTON, in his official capacity as Director of  
2 the California Department of Public Health and  
3 State Registrar of Vital Statistics; LINETTE  
4 SCOTT, in her official capacity as Deputy Di-  
5 rector of Health Information & Strategic Plan-  
6 ning for the California Department of Public  
7 Health; PATRICK O'CONNELL, in his official  
8 capacity as Clerk-Recorder for the County of  
9 Alameda; and DEAN C. LOGAN, in his official  
10 capacity as Registrar-Recorder/County Clerk for  
11 the County of Los Angeles,

12 Defendants,

13 and

14 PROPOSITION 8 OFFICIAL PROPONENTS  
15 DENNIS HOLLINGSWORTH, GAIL J.  
16 KNIGHT, MARTIN F. GUTIERREZ, HAK-  
17 SHING WILLIAM TAM, and MARK A.  
18 JANSSON; and PROTECTMARRIAGE.COM  
19 – YES ON 8, A PROJECT OF CALIFORNIA  
20 RENEWAL,

21 Defendant-Intervenors.

22 Additional Counsel for Defendant-Intervenors

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I, Nicole J. Moss, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of North Carolina over 18 years of age, and my statements herein are based on personal knowledge.

1           2. This declaration is made in support of Defendant-Intervenors' motion for a protective  
2 order.

3           3. I am an attorney representing Defendant-Intervenors in this matter. I have been coor-  
4 dinating Defendant-Intervenors' discovery requests and responses and, in that capacity, have  
5 communicated with Plaintiffs' counsel regarding various discovery issues.

6           4. On August 21, 2009, Plaintiffs propounded to Defendant-Intervenors a First Set of Re-  
7 quests for Production. Defendant Intervenors believe that, on their face, the Requests seek material  
8 that is both irrelevant and privileged under the First Amendment. On August 27, 2009, Defendant  
9 Intervenors transmitted to Plaintiffs a letter stating that we were reading the requests not to seek  
10 such irrelevant and/or privileged material. On August 31, 2009, Plaintiffs responded with a letter  
11 rejecting, for the most part, our reading of their requests.  
12

13           5. In an attempt to resolve the dispute, counsel for Plaintiffs and Defendant-Intervenors  
14 met and conferred by telephone on two occasions. Below, I describe, to the best of my recollec-  
15 tion, the positions adopted by the parties on those calls. To the extent Defendant-Intervenors have  
16 misunderstood or misremembered Plaintiffs' position—or to the extent Plaintiffs' position has  
17 changed—Defendant-Intervenors welcome clarification.  
18

19           6. The first meet and confer was on September 4, 2009. On that call, counsel for Defen-  
20 dant-Intervenors explained: (i) that in the August 30 letter, Plaintiffs stated that they “do[] not seek  
21 internal communications among and between [Defendant-Intervenors] regarding Proposition 8 and  
22 the related political campaign, except to the extent that you deem such communications responsive  
23 to Requests Nos. 9, 10, 13, 14, or 15”; (ii) that Requests Nos. 9, 10, 13, and 14 seek “[a]ll docu-  
24 ments that tend to support or refute” the claims, denials, assertions, arguments, or responses made  
25 in Defendant Intervenors Answer (Doc. # 9), Memorandum in Opposition to Motion for Prelimi-  
26

1 nary Injunction (Doc. # 36), responses to Plaintiffs' Interrogatories Nos. 1-3 and Requests for  
2 Admission Nos. 1-68 propounded on August 21, 2009; and (iii) that because Defendant-  
3 Intervenor's position is that all internal communications are legally irrelevant to any claim in this  
4 case, we "deem such communications" as "tend[ing] [neither] to support or refute" any claim or  
5 argument in this case. Plaintiffs counsel stated that he understood our position and appeared to  
6 accept this as a permissible interpretation of Plaintiffs' Requests.  
7

8 7. Also on the September 4 telephone call, counsel for Defendant-Intervenors asked  
9 whether Plaintiffs considered volunteers of Protect Marriage to be "internal" or third parties.  
10 Counsel for Plaintiffs responded that it depends on the volunteer; that they would resist an attempt  
11 to characterize all campaign supporters as internal and grassroots supporters are not to be consi-  
12 dered internal; that "officials" on an organizational chart would be considered internal; that com-  
13 munications to supporters and donors en masse are not to be considered internal; that one-on-one  
14 communications (such as from a volunteer to an "official") are not to be considered internal; and  
15 that Defendant-Intervenors are obligated to produce discovery on behalf of anyone they deem  
16 "internal."  
17

18 8. Also on the September 4 telephone call, counsel for Defendant-Intervenors asked  
19 whether, with respect to Request No. 7, Plaintiffs were seeking content from personal social  
20 networking accounts that a Defendant-Intervenor might have maintained (as opposed, for example,  
21 to an organization social-networking site open to anyone). Plaintiffs' counsel responded that to the  
22 extent any such content was responsive to a discovery request, Plaintiffs are requesting that content.  
23

24 9. Also on the September 4 telephone call, counsel for Defendant-Intervenors asked  
25 Plaintiffs' counsel to confirm that when read in combination, Plaintiffs' Request No. 8 (requesting  
26 "all versions of any ... communication[] relating to Proposition 8, between [a client] and any third  
27  
28

1 party”) and the letter of August 31 (requesting “communications between your clients and their  
2 agents, contractors, attorneys, donors, or others”) meant that Plaintiffs are seeking every communi-  
3 cation relating to Proposition 8 so long as it was not restricted solely to “internal” communications  
4 between Defendant-Intervenors, regardless of who the “third party” was. Plaintiffs’ counsel  
5 confirmed this to be the case (unless, per the August 31 letter, the communication was “subject to  
6 the attorney-client, work product, or other recognized legal privilege”).  
7

8 10. Also on the September 4 telephone call, counsel for Defendant-Intervenors asked  
9 Plaintiffs’ counsel to confirm that Plaintiffs are seeking all versions and drafts of documents,  
10 including those with internal comments never intended for public distribution and never actually  
11 distributed to the public. Plaintiffs’ counsel confirmed this to be the case.  
12

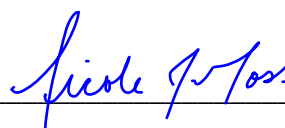
13 11. The second meet-and-confer occurred on September 10, 2009. On that call, Plaintiffs’  
14 counsel inquired as the nature of Defendant-Intervenors’ objections. Counsel for Defendant-  
15 Intervenors explained that our position is that we would object, on relevance and First Amendment  
16 grounds, to producing documents that were not available to the electorate at large. Although  
17 counsel for both parties engaged in somewhat lengthy discussions of various hypothetical catego-  
18 ries of documents, the end result of the call was that both parties agreed the Court would need to  
19 settle the dispute.  
20

21 12. Also on the September 10 telephone call Plaintiffs’ counsel inquired about Defendant-  
22 Intervenors’ discovery requests to third-parties, and about why we are seeking discovery when we  
23 have argued that such information is legally irrelevant. Counsel for Defendant-Intervenors ex-  
24 plained that the only discovery we are seeking from third-parties is that which falls outside the  
25 scope of our objections and is the same publicly disclosed information that we are willing to  
26 produce to Plaintiffs in response to their requests. Counsel for Defendant-Intervenors further  
27  
28

1 explained that we believe that the discovery from Defendant-Intervenors and third-party No-on-8  
2 groups should be symmetrical and that if the Court were to order Defendant-Intervenors to produce  
3 the objected-to information, we would amend our discovery requests to those groups accordingly.  
4

5  
6 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
7 CORRECT.

8 Executed on September 15, 2009

9  
10 

11 \_\_\_\_\_  
12 Nicole J. Moss