

Exhibit I

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 17 MARK A. JANSSON, and PROTECTMARRIAGE.COM – YES ON 8, A
 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 FRANK SCHU-
 BERT 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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* Admitted *pro hac vice*

1 I, Frank Schubert, make the following declaration pursuant to 28 U.S.C. § 1746:

2 1. I am a resident of the State of California over 18 years of age, and my statements here-
3 in are based upon personal knowledge and experience and upon my personal review of the docu-
4 ment requests served by Plaintiffs on Defendant-Intervenors in this case.

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

7 3. I am the President of Schubert Flint Public Affairs, a full-service, public affairs and
8 communications consulting firm based in Sacramento, California, with clients across the United
9 States. I have twice been named the country's most valuable public affairs professional by the
10 American Association of Political Consultants (AAPC). I am the only person in the association's
11 history to have won this prestigious award twice. I have served on the AAPC Board of Directors
12 for over ten years. On three occasions, the AAPC has honored me for assembling and managing
13 the Pubic Affairs Team of the Year, including last year for my management of the Yes on Proposi-
14 tion 8 campaign. I have received the Lifetime Achievement Award from the International Associ-
15 ation of Business Communicators (Sacramento Chapter). I have over 30 years of experience in
16 this field. I have managed 34 statewide ballot initiative campaigns in nine states including acting
17 as Campaign Manager for Protect Marriage.com in the Proposition 8 campaign in 2008.

18 4. I and my firm were hired by Protect Marriage.com in June 2008 to serve as Campaign
19 Manager. I worked with the volunteer chairman of Protect Marriage.com, Ron Prentice, and with
20 an ad hoc executive committee. My responsibilities included, subject to approval of the executive
21 committee, developing the campaign's strategy, selecting vendors to work on the campaign,
22 developing messages for delivery to voters, overseeing voter and issue research, developing and
23 overseeing a grassroots plan, developing advertisements and other communications to voters, and
24 working with donors, volunteers, supporters, and the press, among other duties.

1 5. I am submitting this Declaration in Support of the Proposition 8 Proponents' Motion
2 for a Protective Order because I know, based on personal experience, the harm that will result if
3 Protect Marriage.com's, its volunteers', donors', members', vendors', consultants', etc., and/or the
4 Proposition 8 official proponents', personal, non-public communications are found to be an appro-
5 priate subject of discovery in this matter. It is my professional opinion that if the Protective Order
6 is not granted, the Court will thrust not a dagger, but a sword, into the People's precious right of
7 initiative and referendum. The harms that would flow from requiring these communications—
8 which reflect political views and opinions, moral views and opinions, religious beliefs, legislative
9 and political strategy, political speech, and associational activity—to be produced in discovery are
10 several-fold.

12 6. First, a significant and real threat exists that individuals identified in these communica-
13 tions, their families and associates, and/or their businesses will be targeted for retaliation by
14 groups and persons who disagree with the views being expressed therein. Throughout the Proposi-
15 tion 8 campaign, I and my company were personally subject to severe harassment and attempts at
16 intimidation because of our involvement in the Yes on 8 Campaign. For example:

- 18 • I received hundreds of hate emails and telephone calls, many with threatening overtones—
19 including suggestions that the world would be better off if I were dead.
- 20 • Activists descended upon my office with camera crews in tow in an effort to publicly con-
21 front me over my position on Proposition 8.
- 22 • A distant gay relative posted on Facebook an “apology” to the homosexual community that
23 her relative was managing the Proposition 8 campaign, and offered to provide my home
24 address to anyone who wanted it. One No-on-Prop-8 supporter publicly asked for the in-
25 formation.
26 • I was the subject of continuous taunting, insults, and harassment on countless blogs.
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- 1 • My address and those of thousands of other supporters of Prop 8 were posted on the Inter-
2 net through a “Google map” that allowed people to type in an address and see all the con-
3 tributors to ProtectMarriage in their area (including a contributor’s name, address, profes-
4 sion, employer, and donation level). A sampling of the maps available on that website
5 (<http://www.eightmaps.com>) is attached as an exhibit to this declaration. That website is
6 still functional and publically accessible as of today. The message is unmistakable: “here’s
7 where they live. Go get them.”
- 8
- 9 • The open house for our office in southern California became a cause célèbre for activists
10 who organized an elaborate attempt to infiltrate the reception and not only confront me, but
11 also our clients to inform them that our firm was allegedly bigoted and discriminatory.
- 12
- 13 • Because of this harassment, the campaign was forced to provide security at our offices for
14 several weeks in order to protect our staff and ensure that activists were not allowed to en-
15 ter the office and cause harm to me or my staff. Protect Marriage was also forced to pay
16 for private security for a two-week bus tour throughout California. The committee contin-
17 ues to provide security for me and members of the legal team in high profile appearances,
18 including when they appear before this Court.
- 19
- 20 • To this day, I continue to receive hate email and threats because of the positions I advo-
21 cated.

22 7. I am also aware of many other instances of harassment, retaliation, and threats against
23 supporters of the Yes on 8 Campaign. I know from both experience and interaction with these
24 supporters that they will be much less willing to contribute to and/or participate in a campaign in
25 the future. During the campaign there was a noticeable decline in some donors’ willingness to
26 donate to, and some volunteers’ willingness to continue participating in, the campaign after they
27 were subjected to threats and harassment. Certain vendors would no longer work on the campaign
28

1 because of the retaliation against them by activists. Even now, some of our larger contributors
2 continue to face calls for boycotts and economic sanctions. I know of several donors who had
3 their businesses boycotted and protested, their employees harassed, and who received hundreds of
4 threatening emails and phone calls. I am personally aware of at least two supporters who were
5 physically assaulted because of their position on Proposition 8. I have witnessed video footage of
6 roaming bands of thieves stealing hundreds of our signs and then displaying them as if they were a
7 trophy. I have seen photos of our supporters' homes and automobiles defaced. One supporter had
8 his automobile keyed with a swastika and the words, "gay sex is love," scratched into the paint
9 down to the raw metal. Another supporter had a van parked in front of his home painted with the
10 words, "bigots live here." I know of many churches that were defaced. Several of our supporters
11 were forced from their jobs when demonstrators decided to target their place of employment. I
12 know of donors to Protect Marriage whose employers were called to ask about the employer's
13 non-discrimination policy and to inform them that they had an alleged bigot in their employ.

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16 8. These are not isolated incidents. The harassment of supporters of Proposition 8 was in-
17 cessant, continuous, and organized. To this day, several websites exist specifically for the purpose
18 of harassing supporters of traditional marriage, including the so-called "Californians Against
19 Hate," which continues to promote boycotts and reprisals against supporters of Proposition 8 and
20 traditional marriage. The harassment is also not limited to fringe groups or over-zealous suppor-
21 ters of same-sex marriage. One major national group that petitioned the Court for permission to
22 intervene in this case (National Center for Lesbian Rights), recently issued a press statement
23 condemning the California Bar Association's decision to host a meeting at a business associated
24 with one of Proposition 8's supporters.

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26 9. Second, an equally serious and real threat exists that the disclosure of the non-public
27 communications of the Yes on 8 campaign—whether those communications are between volun-
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1 teers of Protect Marriage and their consultants, contractors, and vendors (such as Schubert Flint),
2 or between Schubert Flint as campaign manager and donors, supporters, vendors, etc.—will
3 significantly suppress the future participation in, and course of, initiative and referendum cam-
4 paigns. Personally, speaking on behalf of Schubert Flint, I can state with certainty that I and my
5 firm will change the way we engage in political speech and campaigning if the broad discovery
6 demanded in this case is permitted. Further, based on my experience working on 34 statewide
7 ballot initiative campaigns like the Proposition 8 campaign, I believe that if involvement with a
8 contentious ballot initiative causes supporters, donors, volunteers, vendors, consultants, etc., to run
9 the risk that not only their identities, but also their personal, non-public communications, might be
10 subject to discovery, it will be significantly harder to recruit supporters, volunteers, donors, etc. It
11 will be significantly harder to get vendors to agree to work on the campaign for fear that their
12 involvement will hurt them professionally. As importantly, the risk that internal communications
13 regarding such things as political strategy and political or religious views might be disclosed will
14 mean there will be significantly less of this type of speech and activity in the future. Campaign
15 strategists, volunteers, and voters will avoid candid associational speech, as well as candid speech
16 about political views and strategy, in an effort to avoid later exposure or mischaracterization in a
17 lawsuit over which they have no control.

20 10. Third, the scope of the discovery requests in this case opens the floodgates for Plain-
21 tiffs and their allies to learn not only the identity of donors, but also the identity of individual
22 volunteers and supporters, as well as the private reasons some such individuals might have for
23 getting involved in a campaign. Protect Marriage and Schubert Flint possess information on many
24 individual volunteers, including their names, addresses, and contact information. Protect Marriage
25 and Schubert Flint also possess communications to and from some of these volunteers about the
26 Proposition 8 campaign and the marriage issue generally. Based on my experience in this and
27
28

1 other campaigns, I know that individuals often have very private and personal reasons for getting
2 involved in an initiative campaign. They may feel passionately about an issue. They may fear the
3 consequences for themselves, their family, or society as a whole if an initiative passes or fails.
4 They may have an economic interest in the outcome of an initiative election. They may have
5 spiritual, political, personal, or familial reasons for their point of view. Whatever their personal,
6 subjective reasons for taking a position on an initiative, my experience demonstrates that if those
7 reasons are put on trial and/or exposed through compelled discovery there will be a very real risk
8 that future political participation will thereby be severely curbed.
9

10 11. The types of communications at issue in this case include all of the types of communi-
11 cations the exposure of which would lead to the types of chilling referenced above. For example,
12 one activity conducted by the campaign—for the purpose of planning and implementing a cam-
13 paign to petition the government and engaging in political speech—was to compile a database that
14 collected information on how voters in California intended to vote on Proposition 8. Plaintiffs’
15 broad discovery requests would seemingly require Protect Marriage to turn over this information
16 and thereby violate one of the most highly protected and deeply cherished First Amendment
17 rights—the right to a secret ballot. Protect Marriage and Schubert Flint also possess information
18 on the privately expressed position of over one million voters. If the Plaintiffs’ discovery requests
19 are allowed to proceed, the privately expressed opinions of over one million voters will become
20 public.
21
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23 12. Another specific example of communications that are implicated by Plaintiffs’ discov-
24 ery requests are all of the communications I or others at Schubert Flint have had with either offi-
25 cial Proponents or volunteers of Protect Marriage involving political and religious viewpoints.
26 Even to the extent that it is public information, for example, that major backing for the Yes on 8
27 campaign came from certain religiously affiliated groups, the private religious views expressed by
28

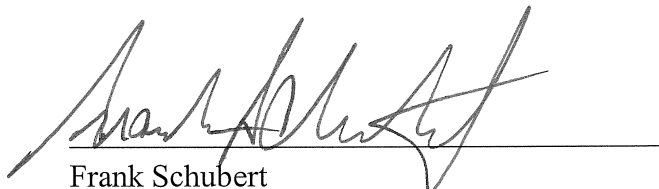
1 those groups or their members in communications with the campaign is not publically known and
2 would be revealed if the Motion for Protective Order is not granted.

3 13. As noted above, the harm from disclosure has not subsided simply because the election
4 on Proposition 8 is over. For one thing, prior disclosed affiliation with or support for the Yes on 8
5 campaign is still resulting in harassment, reprisal, and other repercussions. Moreover, the debate
6 over the marriage issue is far from settled. Multiple groups have attempted or are attempting to
7 place another ballot initiative on this issue before the electorate of California. If sweeping discov-
8 ery into the private communications of participants in the last such ballot effort is allowed here, I
9 believe, based on my professional experience and my experience specifically in the Proposition 8
10 campaign, that participants in future such efforts will alter their associational and political behav-
11 ior to account for the likelihood of disclosure in later lawsuits.

12
13
14 14. Additionally, the harm that would come from revealing the types of communications at
15 issue here would not fall on supporters of Prop. 8 alone, or even on participants in the marriage
16 debate generally. Ballot initiatives have a long history in California and they occur during nearly
17 every election. If—in the absence of an allegation of fraud or other illegal tactic by a campaign—
18 sweeping discovery into the campaigns surrounding such ballot measures is permitted, such
19 campaigns will be conducted very differently. Volunteers and donors will be harder to recruit, as
20 will the services of vendors, strategists, and other contractors. Also, other associations that zeal-
21 ously protect their anonymity will be far less likely to join cause with a ballot measure campaign.

22
23 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND-
24 CORRECT.

25 Executed on 15 September 2009

26
27 
28 Frank Schubert

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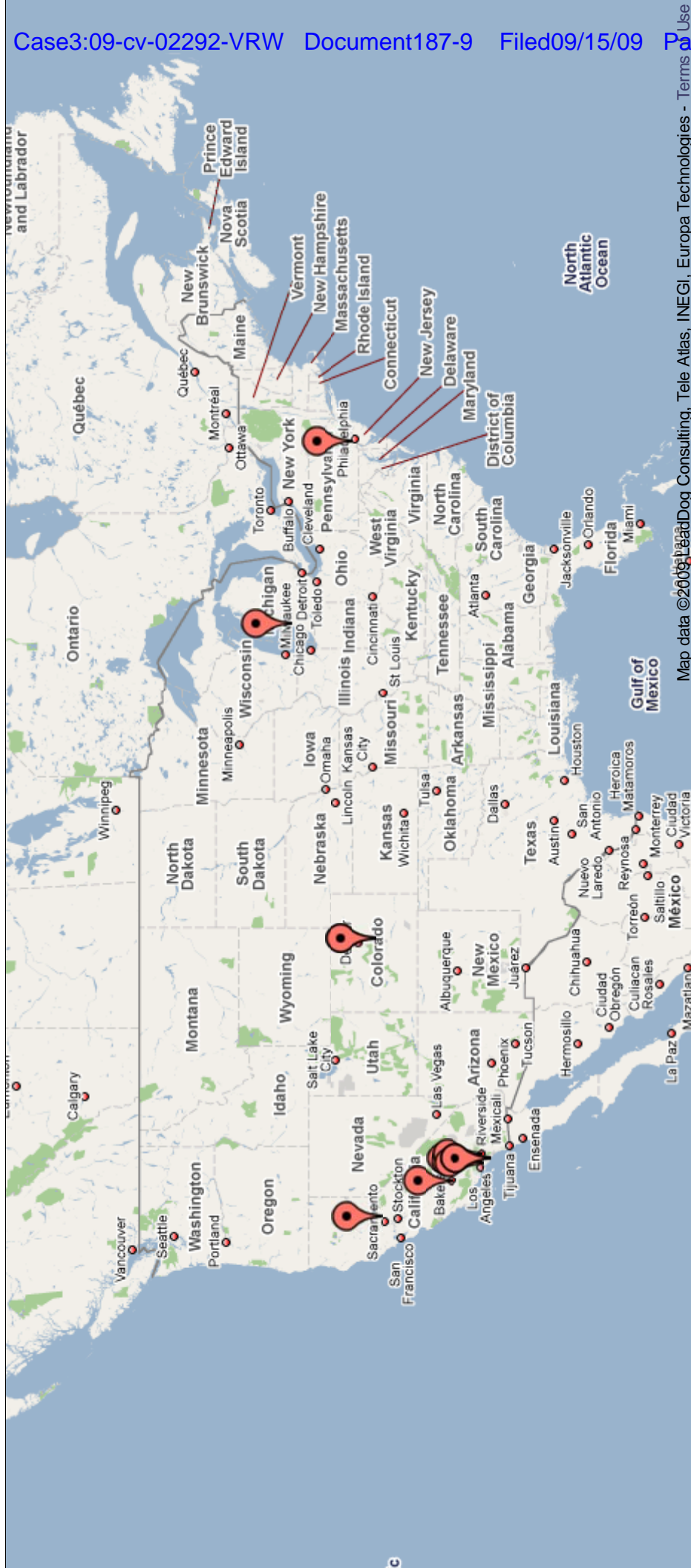
PROP 8 MAPS

A mash-up of [Google Maps](#) and [Prop 8 Donors](#).

Proposition 8 changed the California state constitution to prohibit same-sex marriage. These are the people who donated in order to pass it.

Location Search

Jump to [San Francisco](#), [Salt Lake City](#), or [Orange County](#).



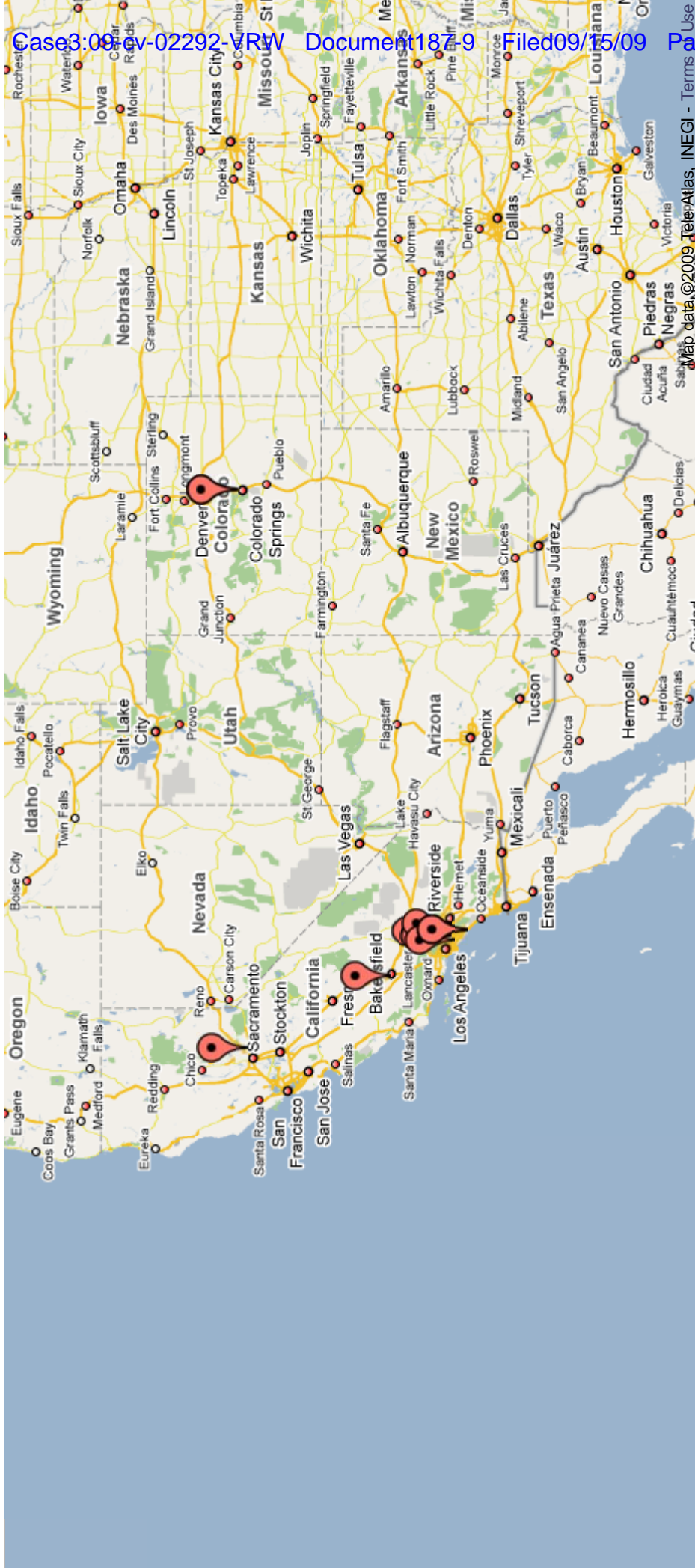
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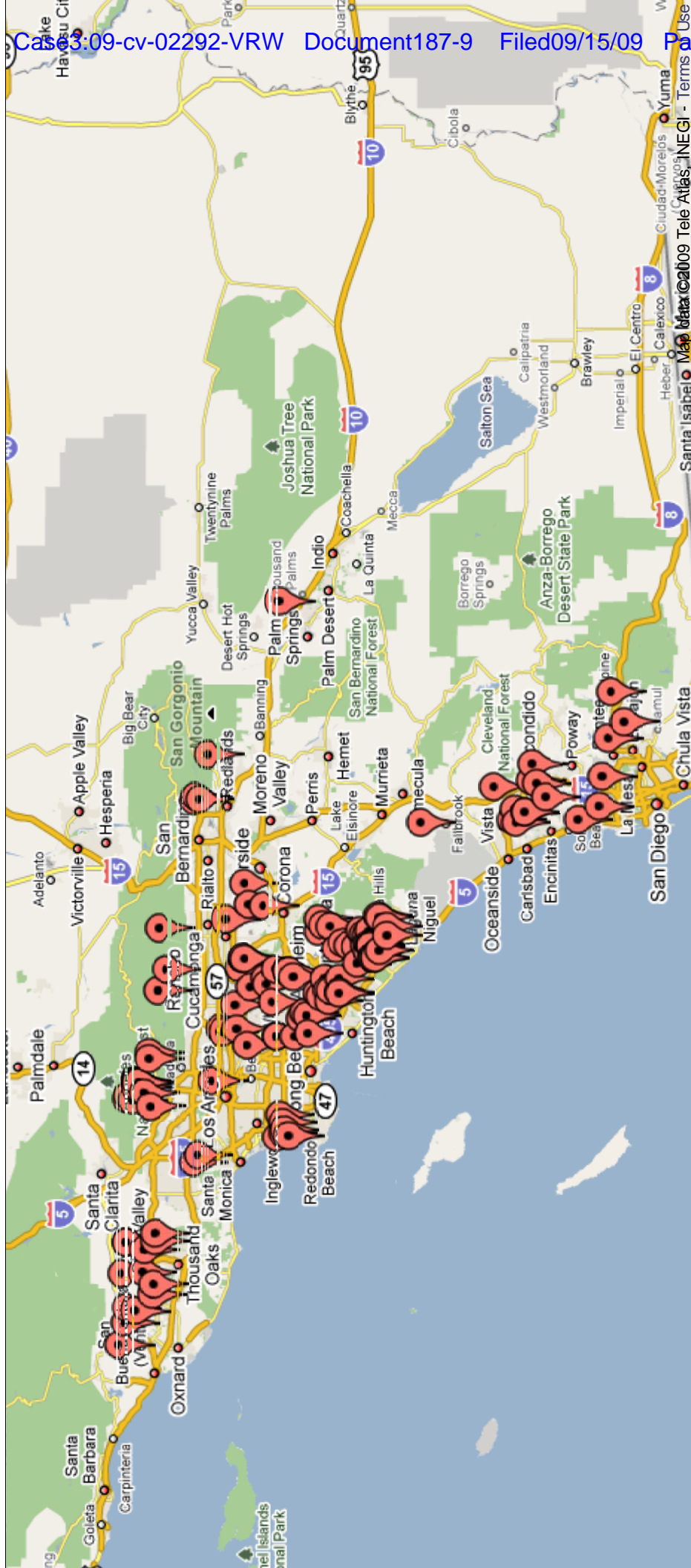
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