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November 16, 2009

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T 36330-00001

The Honorable Vaughn R. Walker
Chief Judge of the United States District Court
for the Northern District of California
450 Golden Gate Ave.
San Francisco, California 94102

Re: *Perry v. Schwarzenegger*, Case No. C-09-2292 VRW

Dear Chief Judge Walker:

I write pursuant to this Court's standing orders to request that the Court direct immediate production of those documents and categories of documents found to be relevant, responsive and non-privileged in the Court's Order of November 11. Doc #252.

As the Court is aware, Proponents objected to producing certain documents requested by Plaintiffs relating to their campaign and messaging strategy, despite the fact that their principal campaign strategists have repeatedly and publicly boasted about those strategies. Doc #191-2; <http://www.youtube.com/watch?v=ngbAPVVVD5k> (F. Schubert discussing campaign strategy). After months of litigation over these objections, the Court ordered production of a subset of the disputed documents—those having to do with Proponents' messaging strategies in the Proposition 8 campaign—which the Court specified following its *in camera* review of documents submitted by Proponents. Doc #252 (identifying document numbers 3-4, 6-7, 9, 11-12, 17, 27-29, 30, 48-51, 53, 55-56, 58, and 60 as responsive to Plaintiffs' discovery request). In ordering production, the Court "look[ed] to the parties' able counsel to work out a production schedule." Doc #252 at 9.

But after issuance of this Order, counsel for Proponents made clear that "[w]hile there is a possibility of a stay, we must respectfully decline to produce any documents over which we are asserting a claim of privilege." Nov. 13, 2009 email from N. Moss to E. Dettmer (attached hereto as Exh. A). Proponents did not seek expedited treatment of the stay request they filed with the Ninth Circuit this past Friday. See Doc. #7129821 filed Nov. 13, 2009 (Case No.09-

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17241 (9th Cir.) Thus, with less than two months remaining before the scheduled trial date in this matter, briefing in the Ninth Circuit over Proponents' stay request will not be completed until December 3, 2009 (*see* Fed. R. App. P. 27(a)), much less ruled upon. Even if the Ninth Circuit denies the requested stay, and the Supreme Court denies the anticipated stay request from Proponents, no documents will have been produced to the Plaintiffs in time for use during discovery, and perhaps not even at trial.

In light of the foregoing, Plaintiffs ask the Court to enter an order directing Proponents to produce the documents and categories of documents that the Court found to be relevant, responsive and non-privileged in the November 11 Order, and that such production occur within three days of issuance of the order compelling production.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ethan D. Dettmer", with a long horizontal line extending to the right.

Ethan D. Dettmer

Counsel for Plaintiffs

cc: All Counsel