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January 5, 2010

Direct Dial
(415) 393-8292Fax No.
(415) 374-8444Client Matter No.
T 36330-00001The Honorable Joseph C. Spero
United States Magistrate Judge
United States District Court for the
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102Re: *Perry v. Schwarzenegger*, Case No. C 09-2292 VRW

Dear Magistrate Judge Spero:

I write pursuant to the Court's Orders of December 30, Doc #332, and earlier today, Doc #343, and pursuant to this Court's Local Rule 7-3(d), to bring the Court's attention to the amended opinion issued in this matter by the Ninth Circuit Court of Appeals yesterday.

Footnote 12 of the amended opinion states that the Court's First Amendment holding is

limited to *private, internal communications regarding formulation of strategy and messages*. It certainly does not apply to document or messages conveyed to the electorate at large, discrete groups of voters or individual voters for purposes such as persuasion, recruitment or motivation – activities beyond the formulation of strategy and messages. Similarly, communications soliciting active support from actual or potential Proposition 8 supporters are unrelated to the formulation of strategy and messages.

Perry v. Schwarzenegger, No. 09-17241, amended slip op. at n.12 (9th Cir. Jan. 4, 2010) (emphasis in the original). The Court offered a specific example of this limitation on its holding “[b]y way of illustration”:

Plaintiffs produced at oral argument a letter from Bill Tam, one of Proposition 8's official proponents, urging “friends” to “really work to pass Prop 8.” A copy of

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the letter is appended to this opinion. Mr. Tam's letter is plainly not a private, internal formulation of strategy or message and is thus far afield from the kinds of communications the First Amendment privilege protects.

Id. A true and correct copy of the Ninth Circuit's amended opinion, and the appendix to that opinion, are attached to this letter for the Court's convenience.

Respectfully submitted,

/s/ Ethan D. Dettmer
Ethan D. Dettmer
Counsel for Plaintiffs

cc: All Counsel