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ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH,
 GAIL J. KNIGHT, MARTIN F. GUTIERREZ, MARK A. JANSSON, and
 PROTECTMARRIAGE.COM – YES ON 8, A
 PROJECT OF CALIFORNIA RENEWAL

* Admitted *pro hac vice*

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

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

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his official
 capacity as Governor of California; EDMUND
 G. BROWN, JR., in his official capacity as
 Attorney General of California; MARK B.
 HORTON, in his official capacity as Director of
 the California Department of Public Health and

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS
 DENNIS HOLLINGSWORTH, GAIL
 KNIGHT, MARTIN GUTIERREZ,
 MARK JANSSON, AND
 PROTECTMARRIAGE.COM'S
 ADMINISTRATIVE MOTION FOR
 SEALING ORDER PURSUANT TO
 CIVIL LOCAL RULES 7-11 AND 79-
 5(D)**

Trial Date: January 11, 2010
 Judge: Chief Judge Vaughn R. Walker
 Location: Courtroom 6, 17th Floor

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

10 Defendants,

11 and

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

19 Defendant-Intervenors.

20 Additional Counsel for Defendant-Intervenors

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3 **NOTICE OF MOTION AND MOTION**

4 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

5 PLEASE TAKE NOTICE that pursuant to Northern District of California Civil Local Rules
6 (“Civil Local Rules”) 7-11 and 79-5(d), Defendant-Intervenors, through counsel, hereby move for
7 administrative relief to file under seal the privilege log entitled “Defendant-Intervenors’ “Revised
8 Privilege Log,” which is submitted in connection with the documents Defendant-Intervenors have
9 produced, in a rolling production, as outlined in the Order of January 8, 2010 (Doc # 372) (“January 8
10 Order”).
11

12 Since receiving the January 8 Order, Defendant-Intervenors’ counsel have reviewed tens of
13 thousands of documents in order to comply with the directive to produce “all [non-privileged]
14 documents responsive to requests 1, 6 and 8 that contain, refer or relate to any arguments for or against
15 Proposition 8” Doc # 372, at 5. Under the January 8 Order, Documents reflecting
16 communications between the core group members¹ were protected from disclosure and, while not
17 subject to production, were to be identified and listed on a privilege log to be filed with the Court. *Id.*²
18 The Revised Privilege Log contains the names of several individuals within the “core group” whose
19 identities were not disclosed in the January 8 Order but which the Court instead identified only by
20 reference to the sealed January 7, 2010 Declaration of Ronald Prentice. Unless the Revised Privilege
21 Log is sealed, those names would be publically revealed. The Log also contains the names of several
22 attorneys (non-trial lawyers) to whom the attorney-client privilege attaches but who have not been
23
24

25 ¹ The term “core group” for First Amendment privilege purposes, was originally defined
26 in the January 8 Order, Doc #372 at 4, and amended to include one additional person in an order
dated January 20, 2010, Doc #499 at 2.

27 ² By stipulation of counsel reached on January 20, 2010, Defendants-Intervenors privilege
28 log “need only list those assertedly privileged documents that are responsive to requests 1, 6, and
(Continued)

1 publically involved in the campaign.

2 The issue to be decided is: Is there good cause for the Court to seal the Revised Privilege Log
3 when it is filed in the Court's records?

4 **ARGUMENT**

5 Defendant-Intervenors are now in position to file the Revised Privilege Log with the Court.
6 However, this Log identifies, by name, the authors and recipients of the written communications
7 claimed to be privileged, and also describes in some detail the reasons for withholding these
8 documents. Given that the sensitive information that appears on the Revised Privilege Log is protected
9 from public disclosure by the First Amendment, it would be proper for this Court to exercise its
10 discretion to seal the Revised Privilege Log.
11

12 This Court has the discretion to seal anything that is filed in this action and has done so on
13 several occasions in the past. *E.g.*, Order Granting Defendant-Intervenors' Motion to Seal Portions of
14 Declaration of Ronald Prentice dated January 14, 2010 (Doc # 459); Order Granting Defendant-
15 Intervenors' Motion to Seal Portions of the Declaration of Ronald Prentice dated January 21, 2010
16 (Dec # 508). There are both compelling reasons, and good cause, for this Court to again exercise its
17 discretion to seal a document containing highly sensitive information. *See Pintos v. Pacific Creditors*
18 *Assoc., et al.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (must have either a "compelling reason" or "good
19 cause" to seal court records). The Revised Privilege Log contains the names of persons who comprise
20 the "core group" (as defined by this Court, for First Amendment privilege purposes) but whose names
21 have not been publicly disclosed. It also contains the names of attorneys (including non-trial counsel)
22 whose identities have not been disclosed during this litigation and who did not participate publicly in
23 the campaign. Given the passionate feelings that have surrounded this matter – which have sometimes
24 resulted in harassment against those who supported Proposition 8 – and the lack of any reason for a
25

26 (Cont'd)
27 8."
28

1 public disclosure, good cause exists for a sealing order.
2

3 **CONCLUSION**

4 For the foregoing reasons, Defendant-Intervenors request that the Court enter the Proposed
5 Order Sealing Defendant-Intervenors' Revised Privilege Log, provided herewith.
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7

8 Dated: January 24, 2010.

9 COOPER AND KIRK, PLLC
10 ATTORNEYS FOR DEFENDANTS-INTERVENORS
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By: /s/ Charles J. Cooper
Charles J. Cooper