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22 **Pro Hac Vice* Application forthcoming

23 **UNITED STATES DISTRICT COURT**
24 **EASTERN DISTRICT OF CALIFORNIA**
25 **SACRAMENTO DIVISION**

26) Case No.: _____
27)
28 ProtectMarriage.com – Yes on 8, a Project of)
California Renewal,) **COMPLAINT FOR DAMAGES AND**
Plaintiff,) **EQUITABLE RELIEF**
v.) **DEMAND FOR JURY TRIAL**
Courage Campaign; Courage Campaign)
Institute,)
Defendants.)

1 Plaintiff ProtectMarriage.com – Yes on 8, a Project of California Renewal, for its claim against
2 Defendants Courage Campaign and Courage Campaign Institute, states as follows:

3 **PARTIES**

4 1. Plaintiff ProtectMarriage.com is a non-profit corporation organized under the laws of
5 the state of California having a principal place of business located at P.O. Box 20012, Riverside,
6 California, 92516.

7 2. Upon information and belief, Defendant Courage Campaign is a corporation organized
8 under the laws of the state of California having a principal place of business located at 7119 West
9 Sunset Boulevard, No. 195, Los Angeles, California, 90046 and transacts business in this District.

10 3. Upon information and belief, Defendant Courage Campaign Institute is a corporation
11 organized under the laws of the state of California having a principal place of business located at 7119
12 West Sunset Boulevard, No. 195, Los Angeles, California, 90046 and transacts business in this
13 District.

14 **JURISDICTION AND VENUE**

15 4. Jurisdiction is founded on a federal question under the Lanham Act. The Court has
16 subject matter jurisdiction over the trademark infringement, false designation of origin, and unfair
17 competition claims pursuant to the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1332 and
18 1338(a) & (b). The Court has supplemental jurisdiction over the claims arising under state law
19 pursuant to 28 U.S.C. § 1367(a). The Court has personal jurisdiction over Defendants because, *inter*
20 *alia*, Defendants do business in this District.

21 5. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial portion
22 of the property that is the subject of this action (ProtectMarriage's trademarks, etc.) is situated in this
23 District and Defendants advertise in this District.

24 **FIRST CLAIM FOR RELIEF**

25 **(False Designation of Origin, Unfair Competition Under §43(a) of the Lanham Act;**
26 **15 U.S.C. § 1125(a))**

27 6. Plaintiff re-alleges and incorporates by reference the allegations contained in
28 Paragraphs 1 through 5 above as if fully rewritten herein.

1 7. Plaintiff is a non-profit corporation representing a broad-based coalition of California
2 families, community leaders, religious leaders, pro-family organizations and individuals from all
3 walks of life who have joined together to defend and restore the definition of marriage as between a
4 man and a woman. Well over 150,000 Californians have become active in supporting traditional
5 marriage through Plaintiff. Plaintiff is defending traditional marriage in the courts, through activism
6 and advocacy, and through public education and academic research.

7 8. Plaintiff operates a website at www.protectmarriage.com, which is accessed by
8 individuals all over the United States and all over the world.

9 9. Plaintiff advertises and uses a trademark logo (“ProtectMarriage Trademark”) as set
10 forth below, including variations thereof:



18 A copy of the Protect Marriage Trademark is attached as Exhibit 1 to this Complaint.

19 10. Plaintiff’s use of the ProtectMarriage Trademark is set forth on its website.

20 11. Plaintiff has extensively used the ProtectMarriage Trademark throughout its website
21 and the United States of America.

22 12. Plaintiff adopted the ProtectMarriage Trademark at least as early as January 2008 and
23 has continuously used it in interstate commerce in association with, *inter alia*, providing information
24 and support of traditional marriage.

25 13. Over the years, Plaintiff has spent a considerable amount of money in establishing the
26 ProtectMarriage Trademark in the minds of customers as a source of conservative views and
27 traditional family values.

28 14. Today, the ProtectMarriage Trademark has become associated in the minds of

1 individuals with Plaintiff. In fact, the ProtectMarriage Trademark has even acquired secondary
2 meaning in the minds of the conservative public.

3 15. On information and belief, from the Defendants' websites at www.pro8trialtracker.com
4 and www.couragecampaign.com, Defendants own and operate the aforementioned websites.

5 16. On information and belief, from the Defendants' websites, Defendants "mission is to
6 build a more progressive California and nation through innovative trainings, strategic research and
7 educational campaigns."

8 17. On information and belief, Defendants are supporters of non-traditional marriage and,
9 as such, their views are directly opposite that of Plaintiff.

10 18. On information and belief, Defendants' website www.pro8trialtracker.com is also
11 established to allow visitors to its site to follow the recent trial taking place in the Federal District
12 Court for the Northern District of California, captioned as *Perry v. Schwarzenegger*, which involves a
13 challenge to Proposition 8, the measure passed by California voters in November 2008 to define
14 marriage as one man and one woman.

15 19. Plaintiff was the official proponent of Proposition 8 and continues to defend it in legal
16 challenges.

17 20. Defendants' website is using the following image ("Infringing Logo") on
18 www.prop8trialtracker.com, a website established to provide commentary in favor of the *Perry*
19 plaintiffs' legal team and give regular updates on the *Perry v. Schwarzenegger* trial several times a
20 day:



27 A copy of the Infringing Logo is attached as Exhibit 2 to this Complaint.

28 21. Well after Plaintiff's adoption and first use of the ProtectMarriage Trademark,

1 Defendants commenced using the Infringing Logo, on or about January 11, 2010. Defendants' use of
2 the Infringing Logo is set forth in Exhibit A.

3 22. On information and belief, Defendants have visitors who access their websites from all
4 over the United States.

5 23. On January 12, 2010, Plaintiff sent a cease and desist letter to Defendants, placing
6 Defendants on actual notice of trademark and copyright infringement.

7 24. Defendants have refused to cease using the mark and have relied upon a defense of
8 parody.

9 25. Upon information and belief, Defendants have never utilized the Infringing Logo in any
10 way that would result in humor, a necessary requirement for a parody, among others. In fact
11 Defendants have used the Infringing Logo to promote a serious discussion of a trial of national
12 importance, and have further used the Infringing Logo in conjunction with seeking public
13 contributions to support the efforts of Defendants.

14 26. Defendants' use of the Infringing Logo in association with their websites, *inter alia*, is
15 an infringement of ProtectMarriage's ProtectMarriage Trademark and is likely to result in confusion,
16 mistake, or deception to visitors of their respective sites as to the source of origin of its services.

17 27. Visitors are likely to view Defendants' websites believing them to be in association
18 with ProtectMarriage's website, since Defendants use the ProtectMarriage Trademark, thereby
19 resulting in damage to ProtectMarriage.

20 28. Plaintiff has never allowed Defendants, and would not allow Defendants in the future,
21 to use the ProtectMarriage Trademark in association with Defendants' websites as it is currently in
22 use.

23 29. Defendants' uses of the Infringing Logo are infringements of the ProtectMarriage
24 Trademark and have caused confusion, mistake, and deception to the visitors of Defendants' websites
25 as to the source of origin of the services.

26 30. Defendants' use of the ProtectMarriage Trademark has resulted in the dilution of the
27 exclusive rights which Plaintiff formerly enjoyed in connection with its trademark, to the great
28 detriment of Plaintiff.

1 31. The infringement by Defendants is willful and deliberate, designed specifically to trade
2 upon the goodwill associated with the ProtectMarriage Trademark.

3 32. The goodwill associated with the ProtectMarriage Trademark is of great value, and
4 should the infringement be allowed to continue, Plaintiff will suffer irreparable harm and detriment to
5 its trade reputation and goodwill.

6 33. Defendants' use of the ProtectMarriage Trademark constitutes a false designation of
7 origin, which is likely to deceive and has deceived customers and prospective customers into believing
8 that Defendants' website and services they render thereupon are that of Plaintiff's—or, at the very
9 least, are authorized by Plaintiff—and are therefore likely to divert and have diverted customers away
10 from Plaintiff.

11 34. By their unauthorized use of the ProtectMarriage Trademark, Defendants have falsely
12 designated the origin of their services and have competed unfairly with Plaintiff in violation of
13 U.S.C. § 1125(a).

14 35. The acts of Defendants described above have caused injury and damages to Plaintiff,
15 have caused injury to Plaintiff's goodwill and reputation, and, unless enjoined, will cause further
16 irreparable injury, for which Plaintiff will have no adequate remedy at law.

17 **SECOND CLAIM FOR RELIEF**
18 **(Common Law Trademark Infringement)**

19 36. Plaintiff re-alleges and incorporates by reference the allegations contained in
20 Paragraphs 1 through 35 above as if fully rewritten herein.

21 37. Plaintiff owns and uses the ProtectMarriage Trademark in connection with at least
22 those services as set forth within its website, i.e., to promote traditional marriage.

23 38. Plaintiff owns and enjoys common law rights in California and throughout the United
24 States in and to the ProtectMarriage Trademark, and which are superior to any rights which
25 Defendants may claim in and to the Infringing Logo trademark, in any form or style.

26 39. Defendants' use of the ProtectMarriage Trademark in the State of California and
27 elsewhere in the United States is likely to cause and has caused confusion as to the source of
28 Defendants' services, in that visitors thereof will be likely to associate or have associated such services

1 with and as originating from Plaintiff, all to the detriment of Plaintiff.

2 40. Defendants' willful and deliberate acts described above have caused injury and
3 damages to Plaintiff, have caused injury to Plaintiff's goodwill and reputation, and, unless enjoined,
4 will cause further irreparable injury, for which Plaintiff will have no adequate remedy at law.

5 **THIRD CLAIM FOR RELIEF**
6 **(Unfair Competition)**

7 41. Plaintiff re-alleges and incorporates by reference the allegations contained in
8 Paragraphs 1 through 40 above as if fully rewritten herein.

9 42. This claim is for unfair competition under California law.

10 43. Defendants' conduct described above constitutes unfair competition pursuant to the
11 common law of California.

12 44. As a result of Defendants' intentional and wrongful acts described above, Defendants
13 have infringed the distinctive features in Plaintiff's mark in a manner that tends to confuse, in the
14 public mind, others' services and advertising with Plaintiff's services and advertising. Defendants'
15 conduct has caused, and will continue to cause, damage to Plaintiff, and is causing irreparable injury to
16 Plaintiff in a manner that may not be adequately compensated by money damages. Unless enjoined,
17 Defendants' actions will cause further injury to Plaintiff for which Plaintiff shall have no adequate
18 remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ProtectMarriage.com prays for judgment as follows:

A. Judgment against Defendants Courage Campaign and Courage Campaign Institute for temporary, preliminary, and permanent injunctions granted pursuant to 15 U.S.C. § 1116, enjoining Defendants and their affiliates, partners, representatives, servants, employees, attorneys, and all persons in active concert, privity, or participation with Defendants, from using the ProtectMarriage Trademark (and the Infringing Logo), and from otherwise infringing Plaintiff's trademarks; from competing unfairly with Plaintiff; from falsely designating the origin of the Defendants' services; from diluting the distinctive quality of Plaintiff's trademarks; from engaging in deceptive trade practices in violation of 15 U.S.C. § 1051 et seq. and California law; and further specifically from:

(i) using in any manner ProtectMarriage's ProtectMarriage Trademark, any mark or name confusingly similar to the ProtectMarriage Trademark, or any other mark which so resembles the ProtectMarriage Trademark as to be likely to cause confusion, deception, or mistake, in connection with marriage or conservative values;

(ii) passing off, inducing or enabling others to sell or pass off any goods or services as being rendered by Plaintiff, which goods or services are not in fact that of Plaintiff or belonging to Plaintiff, under the control, supervision and approval of ProtectMarriage, or for sale under the marks owned by Plaintiff, or any other mark which so resembles Plaintiff's mark so as to be likely to cause confusion, deception or mistake;

(iii) committing any acts, including use of the ProtectMarriage Trademark, calculated to cause purchasers to believe that Defendants' goods or services are those sold under the control and supervision of Plaintiff, or are sponsored or approved or connected with Plaintiff, are guaranteed by Plaintiff, or are rendered under the control and supervision of Plaintiff;

(iv) further diluting and infringing Plaintiff's ProtectMarriage Trademark and damaging its goodwill;

1 (v) selling or offering to sell any products or services, or otherwise accepting donations
2 pursuant to the use of, or under, the ProtectMarriage Trademark, or any other
3 distinctive design or trademark confusingly similar thereto.

4 B. Judgment against Defendants pursuant to the power granted to the Court under 15
5 U.S.C. §§ 1117 and 1118 that Defendants cease and desist any and all use of any and all products,
6 including labels, signs, packages, brochures, advertising matter, receptacles, sale and purchased
7 documents, letterhead, and other material in the possession of Defendants or under Defendants'
8 control which bear the ProtectMarriage Trademark or any other mark confusingly or substantially
9 similar to Plaintiff's trademarks, or which have been used in connection with the manufacturing,
10 advertising, offering for sale or sale of products bearing said ProtectMarriage Trademark which are not
11 Plaintiff's or made without the authorization or control of ProtectMarriage;

12 C. Ordering that Defendants be adjudged to have violated Sections 32, 43(a) and 43(c) of
13 the Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and 1125(c), and Unfair Competition under California
14 law.

15 D. Ordering an accounting of all gains, profits, savings, and advantages realized by
16 Defendants from its aforesaid acts of trademark infringement and dilution, false designation of origin
17 and unfair competition;

18 E. Awarding such damages as Plaintiff shall establish in consequence of Defendants'
19 aforesaid acts of trademark infringement and dilution, false designation of origin, and unfair
20 competition, together with appropriate interest thereon, including three times the amount found as
21 actual damages by the trier of fact to properly compensate Plaintiff for its damages, pursuant to 15
22 U.S.C. § 1117(a);

23 F. Ordering Defendants to recall from all chains of distribution all goods, services,
24 product packaging, promotional materials, advertisements, commercials, infomercials and other items,
25 the dissemination of which by Defendants would violate the injunction herein granted;

26 G. Ordering Defendants to deactivate all websites displaying the Infringing Logo until
27 such time that the Infringing Logo(s) is/are removed and deliver up for destruction any and all goods,
28 services, product packaging, promotional materials, advertisements, commercials, and other items in

1 the possession, custody or control of Defendants which, if sold, displayed or used, would violate the
2 injunction herein granted;

3 H. Awarding Plaintiff punitive and exemplary damages against Defendants and in favor of
4 ProtectMarriage by reason of Defendants' acts set forth herein, including, but not limited to, unfair
5 competition;

6 I. Awarding Plaintiff the costs of this action;

7 J. Declaring that this is an exceptional case, pursuant to 15 U.S.C. § 1117, and that
8 Plaintiff be awarded its reasonable attorneys' fees;

9 K. Judgment against Defendants indemnifying Plaintiff from any claims brought against
10 Plaintiff for negligence, debts, malpractice, or other breaches of any duty owed by Defendants to any
11 person who was confused as to some association between Plaintiff and Defendants as alleged in this
12 Complaint;

13 L. Judgment against Defendants for any and all claims, demands, or causes of action (now
14 or in the future) resulting from Defendants' actions alleged in the complaint; and

15 M. For such other and further relief as this Court deems just and equitable.

16
17 Dated this 19th day of January, 2010.

Respectfully submitted,

18 /s/David J. Hacker
19 David J. Hacker (CA Bar No. 249272)
20 ALLIANCE DEFENSE FUND
21 *Attorney for Plaintiff*
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