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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO DIVISION

11
12 PROTECTMARRIAGE.COM – YES ON 8, A
13 PROJECT OF CALIFORNIA RENEWAL,

14 Plaintiff,

15 v.

16 COURAGE CAMPAIGN; COURAGE
17 CAMPAIGN INSTITUTE,

18 Defendants.

No. 2:10-cv-00132-LKK-DAD

**DEFENDANTS’ OPPOSITION TO
PLAINTIFF’S EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

19 **I. INTRODUCTION**

20 Defendants Courage Campaign and Courage Campaign Institute submit this opposition to
21 Plaintiff ProtectMarriage.com’s Motion for Temporary Restraining Order and Preliminary
22 Injunction. ProtectMarriage.com, a vehement opponent of same sex marriage, has used a logo
23 that depicts the silhouette of a man, a woman, and two children in connection with its opposition
24 to same sex marriage. Courage Campaign Institute, a strong supporter of same sex marriage and
25 frequent adversary of ProtectMarriage.com, created a logo that depicts the silhouette of two
26 women with two children, parodying the ProtectMarriage.com logo. ProtectMarriage.com has
27 applied to the Court to enjoin Courage Campaign from its use of the parodic logo.
28 ProtectMarriage.com is not entitled to any relief because all of its claims fail as a matter of law,

1 and because it cannot show any urgency or risk of irreparable harm sufficient to justify a
2 temporary restraining order or preliminary injunction.

3 II. RELEVANT BACKGROUND

4 Courage Campaign and Courage Campaign Institute are nonprofit organizations based in
5 Los Angeles, CA. (Declaration of Richard Jacobs in Support of Opp. to Pl.’s *Ex Parte* Motion for
6 Temporary Restraining Order and Preliminary Injunction (“Jacobs Decl.”) ¶ 2). Both are
7 progressive organizing networks that work with grassroots and netroots activists to push for
8 progressive change and equality in California and across the country. *Id.* One of Courage
9 Campaign Institute’s key present focuses is the *Perry v. Schwarzenegger* trial pending in the
10 Northern District of California, often abbreviated to “the Prop 8 trial.” *Id.* ¶ 3. The plaintiffs in
11 *Perry* are challenging the constitutional validity of California Proposition 8, an amendment to the
12 California State Constitution that outlaws same-sex marriages performed after November 4, 2008.
13 *Id.* Courage Campaign Institute has been involved in a variety of efforts to publicize the issues
14 integral to the Prop 8 trial and educate the public on the same. *Id.* ¶ 4. For example, Courage
15 Campaign Institute gathered 138,248 signatures on a petition asking Judge Vaughn Walker to
16 allow the Prop 8 trial to be televised. *Id.*

17 ProtectMarriage.com is a coalition focused on opposing same sex marriage. *Id.* ¶ 5. Its
18 legal team is currently defending Proposition 8 in the Prop 8 trial. *Id.* ProtectMarriage.com and
19 Courage Campaign Institute are direct adversaries with respect to the issue of same sex marriage
20 and are, not surprisingly, often in opposition to each other on specific actions each takes
21 involving the Prop 8 trial. *Id.* ¶ 6. For example, ProtectMarriage.com opposed Courage
22 Campaign Institute’s attempt to allow the Prop 8 trial to be televised. *Id.*

23 On January 11, 2010, Courage Campaign Institute launched a website entitled “Prop 8
24 Trial Tracker” to provide updates and commentary on the Prop 8 Trial and the efforts of pro-Prop
25 8 groups such as ProtectMarriage.com, Yes on Prop 8, and the National Organization for
26 Marriage and Focus on the Family. *Id.* ¶ 7. To serve as the logo for its Prop 8 Trial Tracker
27 website, Courage Campaign Institute created a logo that turns the ProtectMarriage.com logo on
28 its head, depicting the silhouette of two women and two children. *Id.* ¶ 8. This logo was intended

1 to be a parody of the ProtectMarriage.com logo, using a subtle comical change to graphically
2 represent the key difference between the viewpoint of Courage Campaign Institute and
3 ProtectMarriage.com's viewpoint. *Id.*

4 The Prop 8 Trial Tracker logo has been effective in communicating Courage Campaign
5 Institute's cause to people in the public who would not have been interested in or drawn to its
6 cause through the dissemination of serious arguments alone. *Id.* ¶ 9. It has also been effective in
7 showing that the individuals whose constitutional rights hang in the balance of the Prop 8 Trial
8 are everyday people with senses of humor who deserve all the same rights as heterosexuals. *Id.*

9 On January 12, 2010, counsel for ProtectMarriage.com sent a letter to Courage Campaign
10 demanding that it stop all use of the Prop 8 Trial Tracker logo by no later than January 14, 2010.
11 *Id.* ¶ 16. Courage Campaign and Courage Campaign Institute engaged counsel and responded to
12 ProtectMarriage.com that they would consider the issues in ProtectMarriage.com's letter and
13 respond fully by early the next week. Counsel for ProtectMarriage.com insisted via telephone
14 and e-mail that this was too late. As justification for the urgency, Plaintiff's counsel stated that
15 the blogging community was making fun of his client, and the trial tracker may not be active for
16 much longer, as the trial is going to end soon. Given ProtectMarriage.com's insistence, Courage
17 Campaign Institute's counsel responded promptly on January 14, 2010 with a letter explaining
18 why the Prop 8 Trial Tracker logo is a parody in an attempt to discourage frivolous litigation.
19 Two court days later, ProtectMarriage.com filed the present action.

20 III. ARGUMENT

21 ProtectMarriage.com is not entitled to any relief, particularly not in the form of a
22 temporary restraining order, as there is no urgency or risk of irreparable harm in this case.¹

23 _____
24 ¹ As a preliminary note, Plaintiff's choice of this forum is a clear attempt at forum
25 shopping with no rational basis. Both parties are located in the Central District of California.
26 The Prop 8 Trial Tracker logo is being used on a website commenting on a trial pending in the
27 Northern District of California. Plaintiff's justifications for this venue are that (1) "the property .
28 . . . is situated in this District," a nonsensical claim given that the property at issue is intellectual
property and is not "situated" anywhere, and (2) "Defendants advertise in this District," despite
Plaintiff's alleging no facts suggesting that Defendants have directed any advertising at the
Eastern District of California. (*See* Compl. ¶ 5).

1 Courage Campaign’s logo is a clear parody that imitates the ProtectMarriage.com logo for
2 pointed comic effect. Because it is a clear parody, ProtectMarriage.com will not be able to show
3 that there is a likelihood of confusion, particularly when the logo is viewed in context given the
4 vastly different messages of the parties’ respective websites and their clear opposition to each
5 other. Without a likelihood of confusion, there can be no trademark infringement or unfair
6 competition.

7 **A. Courage Campaign’s Logo is Parody and Protected Free Speech**
8 **Under the First Amendment**

9 A parody is a literary or artistic work that imitates the work of another for comic effect or
10 ridicule. *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 801 (9th Cir. 2003). Parody is a
11 centuries-old form of criticism, a way to express ideas about controversial issues through humor
12 and thus attract discussion from people who might not otherwise be interested or affected by the
13 critical discussion. Parody dates back to Jonathan Swift, and even further to Hegemon of Thasos,
14 who Aristotle claimed invented a kind of parody by slightly altering the wording in well-known
15 poems to transform the sublime into the ridiculous. In this country, parody has historically been
16 protected as a form of criticism with “socially significant value as free speech” under the First
17 Amendment. *Id.* (internal citation omitted).

18 Thus, in the *Mattel* case, when an artist released a series of photographs parodying Barbie
19 in a way that was “ripe for social comment,” the court found that the artist “created the sort of
20 social criticism and parodic speech protected by the First Amendment.” *Id.* at 802-03. The Ninth
21 Circuit affirmed a holding of summary judgment against Mattel on claims of copyright,
22 trademark, and trade dress infringement and dilution, as well as state law claims on the grounds
23 that the complained-of photographs were protected speech. *Id.* at 816. Moreover, the Ninth
24 Circuit acknowledged that a groundless or unreasonable trademark infringement claim against
25 expression protected by policy interests in free speech may even be an “exceptional case”
26 justifying an award of fees and remanded the case to the district court for a determination of
27 attorney’s fees. *Id.* On remand, the district court agreed that it was unreasonable of Mattel to
28 make a claim against the defendant’s parodic work under both the Copyright Act and the Lanham

1 Act, and awarded the defendant its attorneys' fees and costs. *Mattel, Inc. v. Walking Mountain*
2 *Prods.*, 2004 U.S. Dist. LEXIS 12469, at *3-11 (C.D. Cal. June 21, 2004).

3 This state of the law is echoed by courts throughout the country. For example, GTFM,
4 LLC, a clothing company, sold clothing under the "FUBU (For Us By Us)" mark, meant to
5 promote youth empowerment and leadership. It filed suit against Universal Studios, Inc. after
6 Universal released the movie *How High*, in which a character wears clothing bearing the mark
7 "BUFU," explained as standing for "By Us F*** You." Universal's motion for summary
8 judgment was granted as to all counts of the Complaint, "pursuant to the substantial body of case
9 law establishing 'safe harbors' for this form of comical expression. Parodies of trademarks
10 necessarily incorporate the original mark's likeness in order for consumers to get the joke."
11 *GTFM, LLC v. Universal Studios, Inc.*, 2006 U.S. Dist. LEXIS 30192, at *5-6 (S.D.N.Y. May 16,
12 2006).

13 Similarly, when the World Wrestling Federation ("WWF") filed suit against Big Dog
14 Holdings, Inc. for the latter's use of phrases such as "Open up a Can of Woof-A**," take-offs of
15 WWF trademarks such as "Open up a Can of Whoop A**," the court held that this "obvious
16 joke" was parody protected by the First Amendment, and there was no likelihood of confusion.
17 Judgment was entered against WWF. *World Wrestling Fed'n Entm't Inc. v. Big Dog Holdings,*
18 *Inc.*, 280 F. Supp. 2d 413, 435-36, 446-47 (W.D. Pa. 2003). Furthermore, it is not necessary for a
19 parody to "state the obvious" – it is only necessary for a parodic element to "reasonably be
20 perceived." *Mastercard Int'l Inc. v. Nader 2000 Primary Comm., Inc.*, 2004 U.S. Dist. LEXIS
21 3644, at *28-29, *40 (S.D.N.Y. Mar. 8, 2004) (granting motion for summary judgment against
22 claims of trademark and copyright infringement in their entirety and holding that "political
23 speech" was communicative message and non-commercial).

24 In this case, Courage Campaign is using a parody of the ProtectMarriage.com logo to
25 provide commentary on the *Perry v. Schwarzenegger* trial and the viewpoint of
26 ProtectMarriage.com, which Courage Campaign diametrically opposes. This difference between
27 Courage Campaign's parodic logo and ProtectMarriage.com's logo is a graphical representation
28 of the core difference between Courage Campaign's views and ProtectMarriage.com's views.

1 This comical distinction has not been lost on the public, which has overwhelmingly seen the Prop
2 8 Trial Tracker logo for what it is – a biting parody of the ProtectMarriage.com logo. *See* Jacobs
3 Decl., Ex. A (“The organization behind the Protect Marriage Web site objects to a parody of their
4 logo, which features a loving family of stick figures with not one, but two moms!”), Ex. B (“Note
5 the logo which is a parody of the Yes on 8 campaign”), Ex. C (“Anti Gay Marriage Group
6 Threatens Site Making Fun Of Them With Lawsuit”), Ex. D (“[Defendants] decided to have a
7 little fun with Protect Marriage by redesigning their ‘Yes on 8 – Protect Marriage’ logo.”), Ex. E
8 (“The Courage Campaign this week launched their a [sic] live blog covering the trial, designed
9 with a touch of parody, mocking the Prop 8 logo, made up of a man, a woman and two children”).
10 Courage Campaign turned it into a lesbian couple with two children.” Perhaps even more telling
11 are the comments on the website using the parody logo itself – for example, “i think the logo
12 parody is BRILLIANT,” “HA! That is great!”, and “In my non-legal mind, you can’t confuse the
13 two and the second one is obviously a parody of the original.” *See Id.*, Ex. F.

14 Plaintiff’s papers make it clear that Plaintiff does not find anything amusing in the parody
15 logo, making conclusory statements such as, “[W]ithout question, it is clear that Defendants’ logo
16 is not a parody,” “poking fun at a trademark is no joke,” and “there is nothing to suggest any
17 ‘poking fun’ in using Plaintiff’s Trademark.” (Pl.’s Memo in Support of *Ex Parte* Motion for
18 Temporary Restraining Order and Preliminary Injunction (“Pl.’s Mem.”) at 9). Plaintiff’s entire
19 factual argument on parody appears to be that Defendants’ logo is not a parody because it is not
20 funny: “there is no joke, no cartoon and no comic relief . . . not humorous or comedic, nor is the
21 title of their website; in fact, both are rather straightforward. As such, Defendants’ logo is not a
22 parody in any way.” (Pl.’s Mem. at 10).

23 It is not surprising that the object of a parody would find it unamusing, but even beyond
24 the fact that the public clearly disagrees with Plaintiff and perceives the comedic element as set
25 out above, Plaintiff’s position is legally wrong. Whether a parody is funny or not is irrelevant to
26 its status under the First Amendment. *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 583 (1994)
27 (threshold question in parody case is not whether parody is funny, but whether “parodic character
28 may reasonably be perceived” (citing *Yankee Publ’g Inc. v. News America Publ’g, Inc.*, 809 F.

1 Supp. 267, 280 (S.D.N.Y. 1992) (“First Amendment protections do not apply only to those who
2 speak clearly, whose jokes are funny, and whose parodies succeed.”)) The photographs of Barbie
3 in *Mattel* were not funny or accompanied by jokes, cartoons, or comic relief. By contrast, they
4 depicted carefully positioned, nude Barbies in sexually suggestive contexts, about to be destroyed
5 or harmed by domestic life. *Mattel*, 353 F.3d at 802. Nevertheless, the Ninth Circuit held that
6 “whether his methods are powerful or banal – his photographs parody Barbie and everything
7 *Mattel*’s doll has come to signify.” *Id.*

8 Despite Plaintiff’s heavy burden seeking a temporary restraining order, it does not cite a
9 single case from this Circuit to support its argument against parody. Moreover, none of the cases
10 cited by Plaintiff involve the use of parody to communicate social commentary. (*See, e.g.*, Pl.’s
11 Mem. at 9 (citing *Mutual of Omaha Ins. Co. v. Novak*, 648 F. Supp. 905, 910 (D. Neb. 1986)
12 (MUTANT OF OMAHA and related design not a parody of MUTUAL OF OMAHA; true parody
13 decreases likelihood of confusion as it creates distinction in viewer’s mind); *Nabisco Brands, Inc.*
14 *v. Kaye*, 760 F. Supp. 25, 26, 29 (D. Conn. 1991) (“A.2” steak sauce infringement of “A.1” steak
15 sauce; term “parody” does not even appear in opinion); *Gucci Shops, Inc. v. R.H. Macy & Co.*,
16 446 F. Supp. 838, 838-39, 841 (S.D.N.Y. 1977) (“Gucchi Goo” and related design likely
17 infringement of “Gucci” marks; term “parody” does not even appear in opinion)).

18 In one case cited by Plaintiff where a court rejected a parody defense asserted by a
19 graphics company that was selling a line of HARD RAIN merchandise, the court’s reasoning
20 distinguishes the facts in that case from this case and even cites cases cutting against Plaintiff:
21 stating, “Courts have also found no likelihood of confusion on the basis of parody where the
22 subject matter concerns social commentary. *That is not the case here.*” *Hard Rock Café*
23 *Licensing Corp. v. Pacific Graphics, Inc.*, 776 F. Supp. at 1462 & n.2 (W.D. Wash. 1991)
24 (emphasis added) (citing series of counterexamples, including *Cliffs Notes v. Bantam Doubleday*
25 *Dell Pub. Group*, 886 F.2d 490 (2d Cir. 1989) (parody deserves freedom as form of social
26 criticism; risk of confusion outweighed by First Amendment rights)).

27 Unlike the cases cited by Plaintiff, this case does not involve a commercial competitor
28 imitating a mark with a minor revision unrelated to any communicative intent or social

1 commentary. This case involves a group supporting civil rights for same sex couples using a logo
2 that highlights the key difference between it and its diametric opponent, the defendant in the Prop
3 8 Trial on which the civil rights group's website is commenting. The response from the public
4 cited above demonstrates that the commentary in Courage Campaign Institute's parodic logo has
5 been recognized. The resulting ridicule may make ProtectMarriage.com uncomfortable, but it is
6 protected communicative speech, protected by the First Amendment, and not actionable under
7 trademark law. As a result, ProtectMarriage.com's request for a temporary restraining order
8 should be denied.

9 **B. There is No Likelihood of Confusion Between Courage Campaign's**
10 **Parodic Logo and ProtectMarriage.com's Logo**

11 The above-cited law on parody is sufficient by itself to defeat ProtectMarriage.com's
12 claims. However, even beyond parody, its trademark infringement and unfair competition claims
13 suffer from other fatal flaws. It is undisputed that trademark liability requires proof of likelihood
14 of confusion. *Two Pesos v. Taco Cabana*, 505 U.S. 763, 769 (1992). The hallmark of trademark
15 infringement is whether an alleged trademark infringer's use creates a likelihood that the
16 consuming public will be confused as to who makes what product. *Brother Records v. Jardine*,
17 318 F.3d 900, 908 (9th Cir. 2003); *Eldorado Stone, LLC v. Renaissance Stone, Inc.*, 2005 U.S.
18 Dist. LEXIS 45238, at *16 (S.D. Cal. May 31, 2005).

19 The Prop 8 Trial Tracker website is dedicated to presenting information on the Prop 8 trial
20 and arguing against ProtectMarriage.com and its viewpoint, often through the use of dry humor
21 and sarcasm. It is inconceivable that in this context, any member of the public would be confused
22 as to affiliation, connection, or sponsorship of Courage Campaign Institute or its website. *See*
23 *Bally Total Fitness Holding Corp. v. Faber*, 29 F. Supp. 2d 1161, 1163-64 (C.D. Cal. 1998) ("No
24 reasonable consumer comparing Bally's official website with [site declaring "Bally sucks"]
25 would assume Faber's site to come from the same source, or thought to be affiliated with,
26 connected with, or sponsored by, the trademark owner." Therefore, Bally's claim for trademark
27 infringement fails as a matter of law.")
28

1 It is undisputed that the respective parties here hold diametrically opposed viewpoints, as
2 do their respective supporters. Visitors to both parties' websites are well aware of this fact.
3 ProtectMarriage.com uses its logo on a website that prominently displays "ProtectMarriage.com"
4 and contains a multitude of clear statements pronouncing its position opposing same sex
5 marriage. In contrast, Courage Campaign uses its parodic logo in the banner of a website that
6 displays, "Perry v. Schwarzenegger: Holding the right-wing accountable" and "A Project of
7 Courage Campaign Institute," above text containing many blog posts pronouncing Courage
8 Campaign's position in favor of same sex marriage. There is no risk that existing or prospective
9 supporters of the parties will be confused about Courage Campaign's views, nor is there any
10 likelihood that prospective supporters of ProtectMarriage.com's campaign will accidentally visit
11 the Courage Campaign website or the Prop 8 Trial Tracker website and believe that they are
12 somehow affiliated with ProtectMarriage.com. Because there is no likelihood of confusion,
13 ProtectMarriage.com's claim of trademark infringement fails as a matter of law. *Two Pesos*, 505
14 U.S. at 769.

15 **C. ProtectMarriage.com Does Not Show Irreparable Injury**

16 ProtectMarriage.com is required to demonstrate that irreparable injury is likely absent
17 injunctive relief. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 375 (2008).
18 It fails to meet that standard. Instead, ProtectMarriage.com relies almost entirely on a
19 presumption of irreparable injury in trademark cases based on a showing of likelihood of success
20 on the merits. (Pl.'s Mem. at 10-11). Courts, however, have questioned whether the continued
21 use of this presumption is appropriate in trademark cases after the U.S. Supreme Court's decision
22 in *eBay v. MercExchange*, where the Supreme Court rejected a categorical rule that permanent
23 injunctions should issue once patent infringement is established. *eBay v. MercExchange L.L.C.*,
24 547 U.S. 388, 394 (2006) (decisions to grant or deny injunctive relief must be consistent with
25 rules of equity); *see, e.g., N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1227-28
26 (11th Cir. 2008) (holding that there was no reason that the *eBay* ruling did not apply to the
27 consideration of preliminary injunctions in trademark cases). ProtectMarriage.com does not
28 inform the Court that the continued application of the presumption of irreparable harm in

1 trademark cases has been questioned in light of the Supreme Court's decision in *eBay* and is an
2 open issue. Notably, the Ninth Circuit has not yet addressed the applicability of the Supreme
3 Court's reasoning in *eBay* to trademark cases.

4 Even if the presumption of irreparable injury in trademark litigation survived *eBay*, which
5 Courage Campaign Institute submits is not the case, that presumption does not apply here. First,
6 as illustrated above, ProtectMarriage.com has failed to establish a likelihood of success on the
7 merits, a predicate finding that is required before the presumption can arise. *See Rodeo*
8 *Collection, Ltd. v. W. Seventh*, 812 F.2d 1215, 1220 (9th Cir. 1987) (finding that presumption
9 cannot apply where plaintiff failed to establish likelihood of confusion in motion for preliminary
10 injunction). Second, ProtectMarriage.com cites no facts that would establish or even suggest the
11 chance of irreparable injury. ProtectMarriage.com's only argument is that Prop 8 case being
12 discussed and commented on by the Courage Campaign Institute website will soon be over. This
13 is a ludicrous argument for irreparable injury, and is tantamount to a plaintiff claiming, "I believe
14 the defendant's actions will stop soon of his own accord, therefore the court should order him to
15 stop now before the matter is moot." The mere fact that Plaintiff believes any alleged
16 infringement will end soon does not establish irreparable injury.

17 Moreover, ProtectMarriage.com's conclusory assertion that "damages to trademarks are
18 'by their very nature, irreparable'" further betrays its misunderstanding of Courage Campaign
19 Institute's parody. The damage alleged by ProtectMarriage.com does not result from any harm to
20 ProtectMarriage.com "brand" or any confusion on the part of third parties. Rather, it stems solely
21 from Courage Campaign Institute's protected parody of ProtectMarriage.com's trademark, which
22 critiques ProtectMarriage.com's political position. The source of such damage is the core
23 expressive content of Courage Campaign Institute's parody, as argued above, not any alleged
24 confusion that may arise from that parody. In *SMJ Group, Inc. v. 417 Lafayette Rest. LLC*, the
25 Southern District of New York held that harm based on "the content of defendants' message, not
26 from defendants' use of plaintiffs' trademark" did not constitute irreparable injury. *SMJ Group,*
27 *Inc. v. 417 Lafayette Rest. LLC*, 439 F. Supp. 2d 281, 294-95 (S.D.N.Y. 2006) (rejecting
28 presumption of irreparable injury even though plaintiffs demonstrated likelihood of success on

1 the merits because harm “results from defendants’ criticism, not defendants’ use of plaintiffs’
2 mark” where defendants handed out leaflets displaying plaintiffs’ logo containing information
3 about plaintiffs’ employment practices). Therefore, ProtectMarriage.com has failed to establish
4 irreparable harm.

5 **D. The Balance of Equities Favors Courage Campaign Institute**

6 ProtectMarriage.com acknowledges that it must establish that the balance of equities tips
7 in its favor. (Pl.’s Mem. at 11). However, its only arguments addressing this burden are that
8 Courage Campaign Institute did not stop use of its parody logo upon receipt of the aggressive
9 cease and desist letter from ProtectMarriage.com campaign, and that Plaintiff “merely” seeks to
10 prevent Defendants from using that mark. *Id.*

11 ProtectMarriage.com ignores that obstruction of a First Amendment right is a harm unto
12 itself — so strong a harm that in the Ninth Circuit, a party seeking a preliminary injunction on a
13 First Amendment claim can establish irreparable injury sufficient to merit the grant of relief
14 simply by demonstrating the existence of a colorable First Amendment claim. *Sammartano v.*
15 *First Judicial Dist. Court*, 303 F.3d 959, 973-74 (9th Cir. 2002). ProtectMarriage.com’s
16 argument that it “merely” seeks to prevent Courage Campaign Institute from continuing to
17 communicate through the use of its parodic logo is thus an empty one. The parody logo used by
18 Courage Campaign Institute draws attention to its political views on same sex marriage and the
19 position taken by ProtectMarriage.com in the Prop 8 Trial. ProtectMarriage.com is attempting to
20 restrict the circulation of this message by stopping Courage Campaign Institute’s use of an
21 effective logo, simply because the blogging community is ridiculing ProtectMarriage.com — a
22 demonstration that the parody is effective. Shutting down that communicative message would be
23 a severe hardship, particularly as Courage Campaign Institute faces a constant challenge in
24 bringing into the public light the issue of same sex marriage, and any obstruction of speech
25 communicative of that point impedes the discussion.

26 **IV. CONCLUSION**

27 Because of the *ex parte* nature of ProtectMarriage.com’s request, Courage Campaign and
28 Courage Campaign Institute have not had a full opportunity to investigate, research, or brief the

1 issues raised by the present application, and for that reason specifically reserve all of their rights.
2 Nonetheless, it is apparent even on the record that has been presented that Courage Campaign
3 Institute's Prop 8 Trial Tracker logo is protected free speech. The request for provisional relief
4 should be denied.

5 Dated: January 19, 2010

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