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

20 KRISTIN M. PERRY, *et al.*,  
 21 Plaintiffs,  
 and  
 22 CITY AND COUNTY OF SAN FRANCISCO,  
 23 Plaintiff-Intervenor,  
 v.  
 24 ARNOLD SCHWARZENEGGER, *et al.*,  
 25 Defendants,  
 and  
 26 PROPOSITION 8 OFFICIAL PROPONENTS  
 27 DENNIS HOLLINGSWORTH, *et al.*,  
 28 Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' MOTION TO SHORTEN  
 TIME FOR PLAINTIFFS' MOTION TO  
 EXCLUDE TESTIMONY OF FRANK  
 SCHUBERT**

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

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** that pursuant to Local Rule 6-3 Plaintiffs will and hereby do move this Court for an Order shortening the time within which the Court may hear Plaintiffs' Motion to Exclude Testimony of Frank Schubert.

This motion is based on this notice, the memorandum accompanying this notice, the accompanying Declaration of Amir C. Tayrani, all other papers on file with the Court, oral argument, and such other matters as may be presented in connection with the hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

At 8:24 a.m. on January 24, 2010, Proponents notified Plaintiffs of their intention to call Frank Schubert as a trial witness on Tuesday, January 26. *See* E-mail from Nicole J. Moss to Enrique A. Monagas (Jan. 24, 2010), attached as Ex. A to the Declaration of Amir C. Tayrani in Support of Motion to Exclude Testimony of Frank Schubert. Later that day, Plaintiffs filed a Motion to Exclude Mr. Schubert's testimony. Because Mr. Schubert is scheduled to testify on January 26, the Court should consider and decide Plaintiffs' Motion to Exclude Testimony of Frank Schubert on an expedited basis.

**I. Substantial Prejudice Will Occur If Mr. Schubert Is Permitted To Testify.**

Federal Rule of Civil Procedure 6(c) allows the court to order a motion to be heard on an accelerated basis "for good cause." Fed. R. Civ. P. 6(c)(1)(C). Moreover, Civil Local Rule 6-3(a)(3) provides that a court may shorten time if "substantial harm or prejudice . . . would occur if the Court did not change the time . . . ."

Proponents did not notify Plaintiffs of their intention to call Mr. Schubert as a trial witness until the morning of January 24, 2010. That same day, Plaintiffs promptly filed their Motion to Exclude Testimony of Frank Schubert. As explained in that motion, Plaintiffs will be prejudiced if Mr. Schubert is permitted to testify because Plaintiffs have not had a meaningful opportunity to depose Mr. Schubert on the only topic on which he has been disclosed to testify. During his deposition, Mr. Schubert's counsel directed him on 76 separate occasions not to answer questions about the "genesis, strategy, and execution of the 'Yes on 8' campaign"—the only subject for which

1 he has been disclosed. Plaintiffs therefore have little information regarding the content of Mr.  
2 Schubert's potential testimony and will be unable to meaningfully prepare to cross-examine him.

3 Given Mr. Schubert's impending testimony, Plaintiffs request that the Court issue an order on  
4 Plaintiffs' Motion to Exclude Testimony of Frank Schubert as soon as practicable.

5 Respectfully submitted,

6 DATED: January 24, 2010

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11 By: \_\_\_\_\_ /s/  
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