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PROJECT OF CALIFORNIA RENEWAL

16 * Admitted *pro hac vice*

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

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

21 Plaintiffs,

22 v.

23 ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND G.
24 BROWN, JR., in his official capacity as Attorney
General of California; MARK B. HORTON, in his
25 official capacity as Director of the California
Department of Public Health and State Registrar of
26 Vital Statistics; LINETTE SCOTT, in her official
27 capacity as Deputy Director of Health Information
& Strategic Planning for the California Department
28 of Public Health; PATRICK O'CONNELL, in his

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENOR
PROPOSITION 8 PROPONENTS'
OPPOSITION TO MOTION TO
SHORTEN TIME**

Date: None
Time: None
Judge: Chief Judge Vaughn R. Walker
Location: None

1 official capacity as Clerk-Recorder for the County
2 of Alameda; and DEAN C. LOGAN, in his official
3 capacity as Registrar-Recorder/County Clerk for
4 the County of Los Angeles,

5 Defendants,

6 and

7 PROPOSITION 8 OFFICIAL PROPONENTS
8 DENNIS HOLLINGSWORTH, GAIL J.
9 KNIGHT, MARTIN F. GUTIERREZ, HAK-
10 SHING WILLIAM TAM, and MARK A.
11 JANSSON; and PROTECTMARRIAGE.COM –
12 YES ON 8, A PROJECT OF CALIFORNIA
13 RENEWAL,

14 Defendant-Intervenors.

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ARGUMENT

1
2 Proposed-Intervenors Our Family Coalition, Lavender Seniors of the East Bay, and Parents,
3 Families, and Friends of Lesbians and Gays (“PFLAG”) (collectively referred to as “Proposed
4 Intervenors”) present this Court with an unreasonable request to shorten the briefing and hearing
5 schedule for their Motion to Intervene. Their counsel—which includes the ACLU Foundation of
6 Northern California, Lambda Legal Defense and Education Fund, Inc., and the National Center for
7 Lesbian Rights—have unnecessarily delayed in filing their Motion to Intervene. And, now, to
8 avoid the consequences of that delay, they ask this Court to impose a schedule that unduly
9 prejudices the parties.

10 This Court will grant an order shortening time only when the moving party (or proposed
11 party) shows that the standard motion timeline will cause a “substantial harm or prejudice” to that
12 party. *See* Local Civil Rule 6-3(a)(3). But such harm is typically lacking where that party has not
13 moved expediently. *See, e.g., People v. Tahoe Reg’l Planning Agency*, 766 F.2d 1316, 1318 (9th
14 Cir. 1985) (upholding the district court’s refusal to shorten time on a motion to intervene because,
15 *inter alia*, the restraining order it sought to challenge had already been in place for over a month).
16 Because Proposed Intervenors have inexplicably delayed in filing their Motion to Intervene, they
17 cannot satisfy the “substantial harm or prejudice” requirement.

18 Both Proposed Intervenors and their counsel knew about this highly publicized case when it
19 commenced, yet they chose not to file their Motion to Intervene until more than six weeks after it
20 began. Indeed, their counsel previously filed an *amicus* brief in support of Plaintiffs’ Motion for
21 Preliminary Injunction. By filing an *amicus* brief, counsel for Proposed Intervenors consciously
22 decided to rely on the adequacy of the representation by plaintiffs’ counsel. (*See* Doc. # 62.) Now,
23 apparently having reconsidered that initial decision, they seek to unduly prejudice the parties with
24 an onerous and unreasonable briefing schedule.

25 Counsel for Proposed Intervenors seek to excuse their delay by suggesting that they were
26 not prompted to intervene until they learned of “the possible need” to address “certain factual
27 issues.” (Doc. # 85 at 3.) But, as organizations with admitted experience litigating these types of
28 cases, they are familiar with the relevant legal questions and, thus, the possible need to present

1 evidence on certain issues. Their delay, therefore, is not justified under these circumstances.

2 Proposed Intervenors further allege that denying their Motion to Shorten Time will cause
3 them prejudice, by preventing their “participat[ion] in the parties’ joint case management
4 conference statement and in the second case management conference scheduled for August 19,
5 2009.” (Doc. # 85 at 3.) But that argument rests on the unsupportable assumption that Plaintiffs’
6 counsel will inadequately represent Proposed Intervenors’ interests in preparing the joint case-
7 management statement. Proposed Intervenors, however, have not asserted any basis for that
8 assumption; thus, they have failed to satisfy their burden of demonstrating that they will suffer
9 “substantial prejudice” if their Motion to Shorten Time is not granted. *See* Local Civil Rule 6-
10 3(a)(3).

11 While Proposed Intervenors, as nonparties to this case, assert that they will be prejudiced if
12 their Motion to Intervene is not expedited, they fail to acknowledge the direct prejudice that their
13 request will impose on the parties. Currently, the parties are devoting all their energy to preparing
14 the joint case-management statement, which is due on August 7, 2009. Compiling that statement
15 requires, first and foremost, that the parties determine their overall litigation strategy—which
16 includes, among other things, extensive legal research and factual investigation. In addition, the
17 parties must confer about the intricacies of the relevant legal and factual questions, determine which
18 issues can be agreed upon, and decide how best to address the disputed questions. In short, the
19 parties have much to do between now and August 7, 2009, and granting the Motion to Shorten
20 Time unnecessarily adds to their immediate tasks and detracts from the substantive work at hand.

21 It is clear that some of the parties will oppose the Motion to Intervene; indeed, the
22 Proposition 8 Proponents certainly intend to do so. But Proposed Intervenors have proffered an
23 unreasonable briefing schedule that would require the parties to respond by July 14, 2009. (Doc. #
24 85 at 4.) This would give the parties only a few days to respond to that motion, which is wholly
25 inadequate under the circumstances, considering that they are already engaged in substantial work
26 compiling the joint case-management statement. Thus, requiring the parties to respond to the
27 Motion to Intervene in the next few days unduly prejudices their ability to oppose it.

28 As for plaintiffs’ suggestion that the Court establish a deadline for all intervention motions

1 and consider all such motions at the August 19 case management conference, we endorse that
2 proposal.

3 **CONCLUSION**

4 In sum, Proposed Intervenors have not satisfied their burden of showing that they will suffer
5 “substantial harm or prejudice” if the Court does not grant their Motion to Shorten Time. Simply
6 put, they have unnecessarily delayed in filing their Motion to Intervene and have not shown any
7 harm flowing from continued reliance on plaintiffs’ counsel to represent their interests during the
8 pendency of their motion. As a result, the Court should deny Proposed Intervenors’ Motion to
9 Shorten Time.

10 Dated: July 10, 2009

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17 By: s/Charles J. Cooper
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