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 and PROTECTMARRIAGE.COM – YES ON 8, A
 17 PROJECT OF CALIFORNIA RENEWAL

18 * Admitted *pro hac vice*

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

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

23 Plaintiffs,

24 v.

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

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS'
 MOTION TO SHORTEN TIME FOR
 RESPONSE TO AND HEARING OF
 MOTION TO AMEND JANUARY 8,
 2010 DISCOVERY ORDER**

Trial Date: January 11, 2010
 Judge: Chief Judge Vaughn R. Walker
 Magistrate Judge Joseph C. Spero
 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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* Admitted *pro hac vice*

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Local Rule 6-3 Defendant Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark A. Jansson, and ProtectMarriage.com (“Proponents”) will and hereby do move this Court for an Order shortening the time within which the Plaintiffs may respond and the Court may hear Proponents’ Motion to Amend January 8, 2010 Discovery Order to Add Additional Core Group Members. Proponents respectfully request that the Court order Plaintiffs to file a response to the Motion to Amend, if any, by 12:00 p.m. on January 19, 2010, and the Court hear the motion as soon as is practicable given the trial schedule.

Proponents have moved for an order to amend the January 8, 2010 Order (Doc # 372) in order to add four individuals to the “core group” defined in that Order. Proponents have so moved because these persons should be included in the “core group” but were omitted from the January 7, 2010 Declaration of Ronald Prentice (“January 7 Declaration”) from which the Court, in part, derived the list of names defining the core group.

This motion is based upon this Notice of Motion; the following Memorandum of Points and Authorities; the concurrently filed declaration of Jesse Panuccio in support; the complete files in these actions; the concurrently filed Motion to Amend and accompanying Declaration of Ronald Prentice; argument of counsel; and such other and further matters as this Court may consider.

MEMORANDUM AND POINTS OF AUTHORITIES

Plaintiffs’ discovery requests implicate fundamental First Amendment rights. The Court’s January 8 Order required a rolling production of documents not protected by the First Amendment privilege. Under that Order, documents protected by that privilege are determined in part by the identities of a Court-defined “core group” of persons who were involved with the “internal campaign communications concerning the formulation of strategy and messages.” Doc # 372, at 2 (quoting *Perry v. Hollingsworth*, 09-17241 Slip Op at 36 n.12 (9th Cir. January 4, 2010)) (emphasis omitted). In

1 order to determine which persons should be in the core group, the Court relied, in part, on the January 7
2 Declaration of Ronald Prentice, which provided a list of persons who Proponents argued met the
3 requirements for core-group status. However, as demonstrated in the Motion to Amend and the
4 concurrently filed Declaration of Ronald Prentice, some names of persons who fall within the core
5 group were omitted from the January 7 Declaration due to the extreme trial-preparation pressures on
6 Proponents and their counsel.
7

8 Because trial has already commenced, Proponents require immediate resolution of the Motion to
9 Amend so that documents falling within the First Amendment privilege are not produced as now
10 required by the January 8 Order and that valuable judicial and attorney time and resources are not
11 needlessly wasted dealing with documents that should not be produced or considered at trial.
12 Accordingly, Plaintiffs' counsel were notified by email on January 17, 2010, of Proponents' intention
13 to seek relief in the form of this motion to shorten time. *See* Decl. of Jesse Panuccio in Supp. of
14 Defendant-Intervenors' Mot. to Shorten Time.
15

16 **I. Substantial Prejudice Will Occur If The Time for A Hearing on the Motion to Amend Is**
17 **Not Shortened.**

18 Federal Rule of Civil Procedure 6(e) allows the Court to order a motion to be heard on an
19 accelerated basis "for good cause." Fed. R. Civ. P. 6(c)(1)(C). Moreover, N.D. Cal. Civ. L.R. 6-
20 3(a)(3) provides that a court may shorten time if "substantial harm or prejudice ... would occur if the
21 Court did not change the time"

22 The Motion to Amend seeks to protect fundamental First Amendment rights under the standards
23 defined by the Ninth Circuit and this Court. Given the current trial schedule and the Court's docket, if
24 the normal timeline for response and hearing on the Motion to Amend were not shortened the trial
25 would be over and the abridgment of the First Amendment privilege would have already occurred by
26 the time the Motion was heard. Given the narrow nature of the Motion to Amend and the familiarity of
27 legal counsel with the issue, no prejudice to Plaintiffs will occur if the motion to shorten time is
28

1 granted.

2 **CONCLUSION**

3 For the foregoing reasons, Proponents respectfully request that the Court grant this motion to
4 shorten time.

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6 Dated: January 18, 2010

7 COOPER AND KIRK, PLLC
8 ATTORNEYS FOR DEFENDANTS-INTERVENORS
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12 OF CALIFORNIA RENEWAL

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By: /s/ Charles J. Cooper
Charles J. Cooper