

1 DENNIS J. HERRERA, State Bar # 139669
 City Attorney
 2 WAYNE SNODGRASS, State Bar # 148137
 JON GIVNER, State Bar # 208000
 3 ANDREW SHEN, State Bar # 232499
 MOLLIE LEE, State Bar # 251404
 4 Deputy City Attorneys
 One Dr. Carlton B. Goodlett Place
 5 City Hall, Room 234
 San Francisco, California 94102-4682
 6 Telephone: (415) 554-4705
 Facsimile: (415) 554-4745
 7 E-Mail: mollie.lee@sfgov.org

8 Attorneys for Defendants
 Department of Elections - City and County of San Francisco and
 9 Dennis J. Herrera, City Attorney for the City and County of San Francisco

10 (Additional Counsel on next page)

11
 12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA
 14 SACRAMENTO DIVISION

<p>15 ProtectMarriage.com, et al., 16 Plaintiffs, 17 vs. 18 Debra Bowen, et al., 19 Defendants. 20</p>	<p>Case No. 2:09-CV-00058-MCE-DAD</p> <p>MOTION TO MODIFY SCHEDULING ORDER TO EXTEND DEADLINES; POINTS AND AUTHORITIES IN SUPPORT THEREOF</p>
---	--

21
 22
 23
 24
 25
 26
 27
 28

1 EDMUND G. BROWN JR., State Bar # 37100
Attorney General of California
2 ZACKERY P. MORAZZINI, State Bar # 204237
Supervising Deputy Attorney General
1300 I Street, Suite 125
3 P. O. Box 944255
Sacramento, CA 94244-2550
4 Telephone: (916) 445-8226
Facsimile: (916) 324-5567
5 Zackery.Morazzini@doj.ca.gov

6 *Counsel for Defendants Debra Bowen, California Secretary of State, and Edmund G. Brown, Jr.,*
7 *California Attorney General*

8 SCOTT HALLABRIN, State Bar # 76662
General Counsel
9 LAWRENCE T. WOODLOCK, State Bar # 137676
Senior Commission Counsel
Fair Political Practices Commission
10 428 J Street, Suite 620
Sacramento, CA 95814
11 Telephone: (916) 322-55660
Facsimile: (916) 327-2026
12 Lwoodlock@fppc.ca.gov

13 *Counsel for Defendants Members of the Fair Political Practices Commission*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Defendants California Secretary of State Debra Bowen, California Attorney General Edmund
2 G. Brown, Jr., and the members of the Fair Political Practices Commission (“State Defendants”), along
3 with City and County of San Francisco and San Francisco City Attorney Dennis J. Herrera (“San
4 Francisco Defendants”) hereby move the Court to modify its May 15, 2009 pretrial scheduling order to
5 extend all deadlines by 60 days, and state in support thereof:

6 On May 15, 2009, the Court issued a Pretrial Scheduling Order setting deadlines for discovery,
7 dispositive motions and trial in this matter. The Court’s order provided that all non-expert discovery
8 must be complete by May 14, 2010. Since the Court issued its order, the parties have proceeded with
9 discovery, but Defendants are now unable to complete necessary discovery before May 14, largely
10 because of Plaintiffs’ inadequate responses to past requests and Plaintiffs’ inability to produce crucial
11 witnesses for depositions. Defendants seek a limited modification of the Court’s scheduling order
12 extending deadlines by 60 days to allow the parties to complete discovery. Defendants have not
13 previously sought any modifications of the Court’s scheduling order. Defendants have good cause for
14 this request, and no party would be prejudiced by the extension.

15 **I. There Is Good Cause To Extend Deadlines By Sixty Days.**

16 Defendants seek to modify the scheduling order for two reasons: (1) an ongoing dispute
17 regarding Plaintiffs’ inadequate responses to Defendants’ past discovery requests, and (2) Plaintiffs’
18 professed inability to make critical witnesses available for depositions before non-expert discovery
19 closes.

20 *First*, Plaintiffs have failed to respond to most of Defendants’ discovery requests, and after
21 several months of delays and objections by Plaintiffs, Defendants now are seeking relief from the
22 assigned magistrate judge. *See* Declaration of Mollie Lee (“Lee Decl.”) ¶ 7. State Defendants
23 propounded interrogatories and document requests on October 30, 2009 seeking a range of
24 information regarding alleged harassment against supporters of Proposition 8, as well as information
25 about Plaintiffs’ collection of that information, their communications with alleged victims, and the
26 impact of disclosure laws on Plaintiffs’ operations and finances. *See id.* ¶ 2. Plaintiffs initially
27 produced no responsive documents – or even a privilege log – and later agreed to produce responsive
28 documents by March 1, 2010. *See id.* Despite that agreement, Plaintiffs did not complete document

1 production until March 23, 2010 – *five months* after Defendants’ requests. *See id.* ¶ 3. And what
2 Plaintiffs ultimately produced was drastically incomplete, responding to only three of the 13 document
3 requests, and consisting almost entirely of fundraising communications, campaign advertisements,
4 public opinion surveys, and e-mails sent to Plaintiffs by opponents of Proposition 8. Plaintiffs
5 objected to most of Defendants’ requests based on a broad “First Amendment privilege” and otherwise
6 declined to produce any information that Plaintiffs considered “confidential.”

7 After attempting to resolve the dispute, Defendants now are in the process of asking the
8 assigned magistrate for an order compelling Plaintiffs to respond to Defendants’ requests. The parties
9 are finalizing a joint statement regarding the discovery disagreement, which Defendants hope to file as
10 soon as they receive proposed text from Plaintiffs’ counsel. *See id.* ¶ 7. If the Court grants
11 Defendants’ requested relief in that dispute, Defendants anticipate that they will need a few weeks to
12 review the new documents and complete any needed follow-up with Plaintiffs’ counsel. A 60-day
13 extension of the May 14 deadline would allow for a proper close of non-expert discovery.

14 *Second*, Plaintiffs’ counsel have indicated that they cannot make relevant witnesses available
15 for depositions before the close of non-expert discovery. After receiving and reviewing Plaintiffs’
16 limited document production on March 23, counsel for Defendants determined that they would need to
17 supplement the information Plaintiffs have produced by taking a limited number of depositions before
18 the end of the non-expert discovery period. Specifically, Defendants anticipate two days of
19 depositions – depositions of each Plaintiff organization under Federal Rule of Civil Procedure
20 30(b)(6), which would likely be combined with depositions of Plaintiff organizations’ chief executives
21 who have claimed personal knowledge of material information in this litigation. On April 12, counsel
22 for the San Francisco Defendants contacted Plaintiffs’ counsel to request any dates when those
23 witnesses would be available before the close of non-expert discovery. *See id.* ¶ 3. On April 20,
24 Plaintiffs’ counsel indicated that the witnesses would not be available at any point in the remaining
25 discovery period. *See id.* ¶ 5. Instead, Plaintiffs’ counsel offered to make the witnesses available on
26 May 27 and 28, after the discovery period closes. *See id.* But Plaintiffs were unwilling to stipulate to
27 any extension of the current discovery deadline. *See id.* ¶ 6.

1 Defendants seek a 60-day extension of deadlines for the purpose of taking these critical
2 depositions and following up as necessary. Plaintiffs are seeking to depose only two individual
3 witnesses and three 30(b)(6) witnesses, and those depositions are crucial. Because Plaintiffs'
4 documentary discovery responses have been so incomplete, Defendants anticipate that these
5 depositions will allow Defendants to discover the information that Plaintiffs have so far refused to
6 disclose. If these depositions can be scheduled at the end of May, as Plaintiffs have offered, then a 60-
7 day extension of the discovery period would allow sufficient time to take the depositions and to follow
8 up with targeted requests for any significant information newly disclosed by the witnesses' testimony.

9 **II. No Party Would Be Prejudiced By The Proposed Modification**

10 The proposed 60-day extension of deadlines would not prejudice any party to the litigation.
11 The Court's initial schedule anticipated a 26-month period from the filing of the complaint to the start
12 of trial, and Defendants' proposed modification would change that schedule by only two months.
13 Defendants are not aware of any harm that Plaintiffs would suffer as a result of this limited extension.

14 Moreover, as noted above, Defendants are seeking a modification of the scheduling order in
15 large part because of Plaintiffs' delays in responding to discovery requests. It would be inequitable to
16 allow Plaintiffs to run out the clock by delaying their discovery responses and then to object when
17 time finally runs out.

18 Therefore, for good cause shown, Defendants request that Court modify the May 15, 2009
19 scheduling order to provide the following amended deadlines:

- 20 • July 13, 2010: completion of non-expert discovery;
- 21 • September 13, 2010: expert witness disclosures;
- 22 • November 15, 2010: last date for hearing on dispositive motions;
- 23 • March 7, 2011: joint pretrial conference statement and pretrial motions due;

24 ///

25 ///

26 ///

