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 17 CITY AND COUNTY OF SAN FRANCISCO

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

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

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' AND PLAINTIFF-
 INTERVENOR'S MOTION TO
 ENLARGE TIME**

[Declaration of Enrique A. Monagas
 in Support and Proposed Order Filed
 Concurrently Herewith]

1 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:** PLEASE TAKE
2 NOTICE that pursuant to Civil Local Rule 6-3 Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T.
3 Katami, and Jeffrey J. Zarrillo (“Plaintiffs”) and Plaintiff-Intervenor City and County of San
4 Francisco (“Plaintiff-Intervenor”) hereby move this Court to enlarge the time to file a motion for
5 attorney’s fees and related expenses until 30 days after all appeals become final.

6 Federal Rule of Civil Procedure 54(d)(2)(B)(i) provides that unless a court order mandates
7 otherwise, a motion for attorney’s fees and related expenses must be “filed no later than 14 days after
8 the entry of judgment.” In a case such as this one, however, where the parties expended significant
9 resources on pre-trial motions, discovery, a three-week trial, and post-trial briefing and argument, the
10 preparation of a motion for attorney’s fees and related expenses—and any opposition thereto—is
11 likely to be unusually time consuming.

12 On August 16, 2010, the United States Court of Appeals for the Ninth Circuit ordered that
13 Proponents’ appeal from this Court’s decision be expedited pursuant to Federal Rule of Appellate
14 Procedure 2 and entered the following briefing schedule: the opening brief is due September 17,
15 2010; the answering brief is due October 18, 2010; and the reply brief is due November 1, 2010.
16 Under the current schedule, any motion for attorney’s fees and related expenses must be prepared and
17 submitted at the same time that the expedited appeal on the merits is proceeding.

18 Enlarging the time to file a motion for attorney’s fees and related expenses would enable the
19 parties to commit their full litigation resources to the appeal at this time and would allow any motion
20 for fees and related expenses to proceed only at such time as the prevailing party has been finally
21 determined. This enlargement would allow the Court to rule on all fee issues at the conclusion of the
22 case, including fees incurred on appeal, rather than in piecemeal fashion and would thus promote
23 judicial economy. Other courts have granted similar extensions. *See, e.g., Planned Parenthood of*
24 *Cent. N.J. v. Attorney Gen. of N.J.*, 297 F.3d 253, 258 (3d Cir. 2002) (observing that “the District
25 Court entered an order extending the time to file for attorneys’ fees until 30 days after the conclusion
26 of all appeals in the case.”). And the Court does not lose jurisdiction by deferring motions for
27 attorney’s fees and related expenses until after the appeals. *See Fed. R. Civ. P. 54* advisory
28

1 committee’s note to 1993 amendments; *see also Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 957
2 (9th Cir. 1983).

3 “One purpose of [the 14-day timeline] is to assure that the opposing party is informed of the
4 claim [for attorney’s fees] before the time for appeal has elapsed.” Fed. R. Civ. P. 54 advisory
5 committee’s note to 1993 amendments. Where, as here, Defendant-Intervenors have already filed
6 their notice of appeal, the 14-day timeline is unnecessary and Proponents will not be prejudiced by an
7 enlargement of time.

8 Plaintiffs’ counsel has met and conferred with all parties via electronic mail. Defendants
9 Arnold Schwarzenegger, Edmund G. Brown, Jr., Mark B. Horton, Linette Scott, Patrick O’Connell,
10 and Dean C. Logan have all agreed to enlarging the time as outlined above. Monagas Decl., Exs. A,
11 B, C, and D. Counsel for Hak-Shing William Tam did not respond to Plaintiffs’ counsel’s inquiry.
12 Only Defendant-Intervenors Proposition 8 Official Proponents Dennis Hollingsworth, Gail J. Knight,
13 Martin F. Gutierrez, and Mark A. Jansson; and ProtectMarriage.com – Yes on 8, A Project of
14 California Renewal (“Defendant-Intervenors”) have not agreed to the extension. Monagas Decl.,
15 Ex. E. The Defendant-Intervenors offered no explanation whatsoever for their opposition.

16 Because enlarging the time to file a motion for attorney’s fees and related expenses will not
17 prejudice any party and will indeed avoid unnecessary burden to the parties and the Court while the
18 parties address the appeal on the merits and promote judicial economy, and because all parties—save
19 Defendant-Intervenors—have agreed to the extension of time, Plaintiffs and Plaintiff-Intervenor
20 respectfully request that the Court grant their motion to enlarge the time to file a motion for
21 attorney’s fees and related expenses until 30 days after all appeals become final.

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1 In the event the Court does not grant Plaintiffs' and Plaintiff-Intervenor's request for motion
2 to enlarge time until 30 days after all appeals become final, Plaintiffs and Plaintiff-Intervenor
3 respectfully request the following modest, alternative extension of time:

- 4 1. The movant(s) shall file a motion for attorney's fees and related expenses within
5 45 days of the later of: (A) the entry of an order resolving the instant motion, or
6 (B) the entry of judgment by this Court;
- 7 2. Those seeking to oppose the motion for attorney's fees and related expenses shall have
8 45 days after the motion is filed to do so; and
- 9 3. The movant(s) shall then have 30 days to reply to the opposition.

10 Respectfully submitted,

11 DATED: August 17, 2010

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17 By: _____ /s/
18 Theodore B. Olson

19 and

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1 **ATTESTATION PURSUANT TO GENERAL ORDER NO. 45**

2 Pursuant to General Order No. 45 of the Northern District of California, I attest that
3 concurrence in the filing of the document has been obtained from each of the other signatories to this
4 document.

5 By: _____ /s/
6 Enrique A. Monagas

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