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15 Attorneys for Plaintiff Public.Resource.Org

16
 17 IN THE UNITED STATES DISTRICT COURT
 18 THE NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

20
 21 PUBLIC.RESOURCE.ORG., a California non-)
 profit organization,)

22 Plaintiff,

23 v.

24 UNITED STATES INTERNAL REVENUE)
 25 SERVICE,)

26 Defendant.

) Case No. 3:13-CV-02789-WHO

) **DECLARATION OF THOMAS R.**
) **BURKE IN SUPPORT OF MOTION FOR**
) **EXTENSION OF TIME TO MOVE TO**
) **RECOVER ATTORNEYS' FEES AND**
) **COSTS**

) **[Local Rule 6-3]**

) [Motion for Extension of Time to Move to
) Recover Attorneys' Fees and Costs and
) [Proposed] Order concurrently submitted]

1 I, Thomas R. Burke, declare as follows:

2 1. I am an attorney admitted to practice before all the courts in the State of California
3 and before this Court. I am a partner in the law firm of Davis Wright Tremaine LLP (“DWT”) and
4 one of the attorneys representing Plaintiff Public.Resource.Org (“Public.Resource”) in this matter.
5 The matters stated herein are true of my own personal knowledge and I could competently testify
6 to them if called as a witness. I make this Declaration in support of Plaintiff’s Motion for an
7 Extension of Time to Move to Recover Attorneys’ Fees and Costs.

8 2. On January 29, 2015, this Court granted Public.Resource’s Motion for Summary
9 Judgment and denied the Motion for Summary Judgment of Defendant United States Internal
10 Revenue Service (“IRS”), and entered Judgment in favor of Public.Resource.

11 3. The same day that the Court ruled and entered Judgment, January 29, 2015, I sent
12 an email to the IRS’ counsel, Christopher W. Sanders, and informed him that Public.Resource
13 would be seeking to recover its attorneys’ fees and costs pursuant to the fee-shifting provision of
14 the Freedom of Information Act (“FOIA”). I asked Mr. Sanders if the IRS would be willing to
15 resolve the issue informally, or if Public.Resource would be required to file a motion. Mr.
16 Sanders responded on January 30, 2015, that the government was still considering its position on a
17 possible resolution of Public.Resource’s fee request, and it did not yet have an answer.

18 4. Consequently, the parties stipulated to extend Public.Resource’s deadline to file a
19 motion to recover its attorneys’ fees and costs from the original deadline of February 12, 2015,
20 until March 16, 2015, in order to facilitate a potential resolution that would not require a motion.
21 The Court approved the stipulation on February 10, 2015.

22 5. Mr. Sanders and I corresponded further in early March, and decided that the parties
23 required additional time to determine if an informal resolution of the fee issue was possible. We
24 submitted a second stipulation on March 9, 2015, to extend Public.Resource’s deadline to file a
25 fee motion until April 15, 2015, which this Court approved that same day.

26 6. On March 20, 2015, pursuant to the parties’ settlement discussions, I provided Mr.
27 Sanders with detailed information about Public.Resource’s fees and costs. Mr. Sanders responded
28 to me that the government was still determining its position both with respect to Public.Resource’s

1 fee request, and whether the IRS would pursue an appeal of the Court's ruling. Consequently, on
2 March 27, 2015, the parties filed a third stipulation to extend Public.Resource's deadline to file a
3 fee motion and the IRS' deadline to produce the records at issue in this case until May 5, 2015.
4 The Court entered an order approving the stipulation on March 30, 2015.

5 7. I contacted Mr. Sanders several times during the month of April to inquire about
6 the IRS' position on Public.Resource's fee request. Mr. Sanders told me that the IRS still did not
7 have an answer. Therefore, on April 22, 2015, the parties submitted a fourth stipulation extending
8 Public.Resource's deadline to file a fee motion to the current deadline of June 5, 2015. This Court
9 entered an order approving the stipulation on April 23, 2015.

10 8. On May 27, 2015, I contacted Mr. Sanders to ask if the government had an update
11 as to its position on either Public.Resource's fee request or the IRS' appeal of this Court's ruling.
12 Mr. Sanders replied on May 28, 2015, that the Solicitor General's Office was still determining
13 whether to pursue the appeal, and "[w]ith respect to attorney's fees, I am pushing for an answer
14 for you there as well, but nothing yet. The person whose approval I would need for another
15 extension is out until Monday, 6/1, so I likely won't be able to answer you until then."

16 9. Public.Resource will be forced to incur substantial additional expense (which may
17 prove to be wholly unnecessary) to prepare a fees motion on shortened time without relief from
18 the Court as Public.Resource's counsel does not have sufficient time to prepare its moving papers
19 because of the timing of the IRS' decision on whether to agree to an informal resolution of the fee
20 issue. Because the IRS has indicated that it will not be able to provide its position on a further
21 extension request until June 1, 2015, and Public.Resource's fee motion is currently due on June 5,
22 2015, Public.Resource is bringing this Motion for an extension of time pursuant to Local Rule 6-3.
23 It is hoped that a further extension of 60 days should provide the parties with sufficient time to
24 determine if the fee issue can be resolved or if a motion will be necessary.

25 I declare under penalty of perjury under the laws of the United States of America that the
26 foregoing is true and correct and that this declaration was executed this 28th day of May, 2015 at
27 San Francisco, California.

28 /s/ Thomas R. Burke
Thomas R. Burke