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22 **UNITED STATES DISTRICT COURT**

23 **NORTHERN DISTRICT OF CALIFORNIA (OAKLAND DIVISION)**

24 MICHAEL DRAGOVICH, MICHAEL
25 GAITLEY, ELIZABETH LITTERAL,
26 PATRICIA FITZSIMMONS, CAROLYN
27 LIGHT, CHERYL LIGHT, DAVID BEERS,
28 CHARLES COLE, RAFAEL V. DOMINGUEZ,
and JOSE G. HERMOSILLO, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE
TREASURY, TIMOTHY GEITHNER, in his
official capacity as Secretary of the Treasury,
United States Department of the Treasury,
INTERNAL REVENUE SERVICE, DOUGLAS
SHULMAN, in his official capacity as
Commissioner of the Internal Revenue Service,
BOARD OF ADMINISTRATION OF
CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, and ANNE
STAUSBOLL, in her official capacity as Chief
Executive Officer, CalPERS,

Defendants.

Case No. CV 4:10-01564-CW

JOINT ADMINISTRATIVE MOTION OF THE
PLAINTIFFS, THE FEDERAL DEFENDANTS,
AND INTERVENOR THE BILATERAL LEGAL
ADVISORY GROUP OF THE UNITED STATES
HOUSE OF REPRESENTATIVES FOR LEAVE
TO FILE OVERLENGTH BRIEFS RE:
MOTION(S) FOR SUMMARY JUDGMENT AND
ORDER

[Local Rules 7-2(b), 7-3(a), 7-3(c), 7-4(b)
and 7-11]

[Hon. Claudia Wilken]

1 Pursuant to Civil Local Rules 7-2(b), 7-3(a), 7-3(c), 7-4(b) and 7-11, the Plaintiffs, the
2 Federal Defendants, and Intervenor Bilateral Legal Advisory Group jointly request leave to file
3 overlength briefs with respect to the Motion(s) for Summary Judgment, as described herein.

4 This joint request is warranted based upon the complexity and number of issues which
5 must be reviewed. *See Bloom v. Calderon*, 72 F.3d 109 (9th Cir. 1995) (complexity of death
6 penalty case warranted increased pages); *Stutz Motor Car v. Reebok Intern.*, 909 F. Supp. 1353,
7 1359 (C.D. Cal. 1995) (“relatively complex” patent dispute justified increased pages).

8 The undersigned parties will set forth their arguments succinctly and concisely, and will
9 not submit papers that are “cumulative or prolix.” *See Stutz*, 909 F. Supp. at 1359 (permitting
10 longer briefs may be proper where the requesting party’s papers are not “cumulative or prolix.”).

11 No party opposes this administrative motion.

12 **Plaintiffs’ Request.**

13 The Plaintiffs respectfully request leave of the Court to file a motion for summary
14 judgment on January 19, 2012 of up to 35 pages (ten pages more than are provided under the
15 rules). The Plaintiffs also seek leave to file a combined opposition and reply brief on March 22,
16 2012 of up to 35 pages (ten pages more than are provided under the rules).

17 The Plaintiffs’ request is warranted given the myriad issues to be considered in their
18 motion for summary judgment, which encompass: (1) the procedural and legal history of this
19 matter, including the several state and federal laws implicated; (2) the undisputed facts relating
20 to the plaintiffs and class members and relating to the CalPERS Long-Term Care Program; (3)
21 the appropriate level of scrutiny to be applied to the Plaintiffs’ constitutional claims for
22 violations of equal protection and due process, pursuant to the factors set forth in *Carolene*
23 *Products* and in other Supreme Court and Ninth Circuit cases; and (4) an articulation of the equal
24 protection and due process claims of the plaintiff couples who were married in California during
25 the marriage equality window in 2008, and of the plaintiff couples who are registered domestic
26 partners but who were not married in 2008, which will include, *inter alia*: (a) a review of the
27 legislative history, meaning, and intent of the Defense of Marriage Act (DOMA), including its
28 expression of animus towards gays and lesbians and their relationships, and its prohibition of any

1 recognition under federal law of the relationships of gay and lesbian couples, regardless of state
2 law; (b) the disparate impact of the federal tax code as amended by the DOMA upon the lives of
3 the gay and lesbian couples who are plaintiffs and class members in this matter, and the
4 relevance of such impact under *Arlington Heights* and other federal precedents; and (c) the
5 continued disparate treatment by the federal government, enforcing the federal tax code as
6 amended by the DOMA, with respect to straight couples who are in state-recognized
7 relationships as compared to gay and lesbian couples who are in state-recognized relationships.

8 **Federal Defendants' Request.**

9 The Federal Defendants respectfully request leave of the Court to file a brief on January 19,
10 2012 in support of Plaintiffs' motion for summary judgment of up to 30 pages (five pages more than
11 are provided under the rules). The brief will set forth the position of the Department of Justice
12 regarding the appropriate level of scrutiny to be applied to review DOMA. The Department will
13 require up to 30 pages because examination of the factors traditionally applied by the Supreme Court
14 to make this determination is necessarily complex. The brief will also discuss the role the federal
15 government has played in the history of discrimination against gay and lesbian individuals. The
16 Federal Defendants further respectfully request leave of the Court to file a combined brief of up to
17 30 pages (five pages more than as provided under the rule) on February 21, 2012 in opposition to
18 Plaintiffs' motion for summary judgment and in cross moving for partial summary judgment.
19 Federal Defendants require the page extension for many of the same reasons explained above by
20 Plaintiffs. The combined brief will need to address Plaintiffs' substantive due process arguments,
21 among other things, and move for judgment regarding Plaintiffs' domestic partner claims.

22 **Request of the Intervenor Bilateral Legal Advisory Group of the United States House**
23 **of Representatives.**

24 Intervenor the Bipartisan Legal Advisory Group of the United States House of
25 Representatives ("the House") respectfully requests leave of the Court to file a combined brief of
26 up to 30 pages (five pages more than as provided under the rule) on February 21, 2012, in
27 opposition to Plaintiffs' motion for summary judgment and in cross moving for summary
28 judgment. The House will require that number of pages both to respond to plaintiffs' overlength

1 ORDER

2 The Plaintiffs are granted leave to file to file a motion for summary judgment on January
3 19, 2012 of up to 35 pages. The Plaintiffs are further granted leave to file a combined opposition
4 and reply brief on March 22, 2012 of up to 35 pages.

5 The Federal Defendants are granted leave to file a brief on January 19, 2012 in support of
6 Plaintiffs' motion for summary judgment of up to 30 pages. The Federal Defendants are further
7 granted leave to file a brief on February 21, 2012 of up to 30 pages in opposition to Plaintiffs'
8 motion for summary judgment and in cross moving for partial summary judgment.

9 Intervenor the Bilateral Legal Advisory Group of the U.S. House of Representatives is
10 granted leave to file a brief on February 21, 2012 of up to 30 pages in opposition to Plaintiffs'
11 motion for summary judgment and in cross moving for summary judgment.

12 It is so ordered.

13 1/6/2012

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Dated

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16 _____
17 UNITED STATES DISTRICT JUDGE
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