

1 William C. McNeill III, State Bar No. 64392
Claudia Center, State Bar No. 158255
2 Elizabeth Kirsten, State Bar No. 218227
LEGAL AID SOCIETY-
EMPLOYMENT LAW CENTER
3 600 Harrison Street, Suite 120
San Francisco, CA 94107
4 Telephone: (415) 864-8848
Facsimile: (415) 864-8199
5 Email: wmcneill@las-elc.org; ccenter@las-elc.org;
ekristen@las-elc.org
6

7 Daniel S. Mason, State Bar No. 54065
Patrick Clayton, State Bar No. 240191
Zelle Hofmann Voelbel & Mason LLP
8 44 Montgomery St Ste 3400
San Francisco, CA 94104
9 Telephone: (415) 693-0700
Facsimile: (415) 693-0770
10 Email: pclayton@zelle.com

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

14 MICHAEL DRAGOVICH, MICHAEL GAITLEY,
ELIZABETH LITTERAL, PATRICIA
15 FITZSIMMONS, CAROLYN LIGHT, CHERYL
LIGHT, JOANNE SCHMIDT, REIDE GARNETT,
16 DAVID BEERS, and CHARLES COLE, on behalf of
themselves and all others similarly situated,

17 Plaintiffs,

18 v.

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

25 Defendants.
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Case No. CV 4:10-01564-CW

**STIPULATION AND [PROPOSED]
ORDER GRANTING PLAINTIFFS LEAVE
TO FILE SECOND AMENDED
COMPLAINT AND SETTING SCHEDULE
ON MOTION TO DISMISS**

1 WHEREAS, Plaintiffs filed this action as a putative class on April 13, 2010, alleging
2 constitutional claims on behalf of three gay and lesbian couples, all three of whom were married
3 in 2008, and two of whom were registered as domestic partners;

4 WHEREAS, following extensions granted by the Plaintiffs, the defendants Board of
5 Administration of CalPERS and Anne Stausboll (“the state defendants”) answered the
6 complaint on July 2, 2010;

7 WHEREAS, following an extension granted by the Plaintiffs, the defendants United
8 States Department of the Treasury, Timothy Geithner, the Internal Revenue Service, and
9 Douglas Shulman (“the federal defendants”) filed a motion to dismiss on July 2, 2010;

10 WHEREAS, the Plaintiffs opposed the motion to dismiss on August 12, 2010, and the
11 federal defendants filed their reply on August 26, 2010;

12 WHEREAS, on January 18, 2011, the Court issued an order denying the federal
13 defendants’ motion to dismiss;

14 WHEREAS, on March 1, 2011, the Court entered a stipulated order granting Plaintiffs
15 leave to file their First Amended Complaint, adding Plaintiffs Joanne Schmidt, Reide Garnett,
16 Charles Cole, and David Beers;

17 WHEREAS, on May 2, 2011, counsel for the Federal Defendants (United States
18 Department of the Treasury, Timothy Geithner, the Internal Revenue Service, and Douglas
19 Shulman) filed a motion to dismiss Plaintiffs’ First Amended Complaint with respect to its
20 claims on behalf of registered domestic partners under California law, with a hearing on the
21 motion set for June 23, 2011 (Docket No. 71);

22 WHEREAS, on May 26, 2011, counsel for the Plaintiffs filed an opposition to the
23 Federal Defendants’ motion to dismiss (Docket No. 81);

24 WHEREAS, on June 9, 2011, the Federal Defendants filed a reply to Plaintiffs’
25 opposition (Docket No. 84);

26 WHEREAS, on June 10, 2011, the Court entered an order granting the Bipartisan Legal
27 Advisory Group of the House of Representatives leave to intervene as follows: “The group may

1 intervene for the limited purpose of litigating--in the context of a motion or cross-motions for
2 summary judgment—the constitutionality of Section III of DOMA under the equal protection
3 component of the Fifth Amendment's Due Process Clause, and/or noticing an appeal from any
4 final judgment of this Court holding that DOMA is not constitutional under the equal protection
5 component of the Fifth Amendment's Due Process Clause.” (Docket No. 88);

6 WHEREAS, on June 20, 2011, counsel for the Federal Defendants obtained information
7 which she shared with counsel for the Plaintiffs which might have altered the standing analysis
8 for Plaintiffs Joanne Schmidt and Reide Garnett, whose claims were the basis for the motion to
9 dismiss scheduled for hearing;

10 WHEREAS, the parties then stipulated to postpone the hearing on the motion to
11 dismiss;

12 WHEREAS, the stipulation to postpone the hearing on the motion to dismiss indicated
13 that “counsel for the Plaintiffs are confirming the information and assessing its impact upon the
14 claims of Plaintiffs Schmidt and Garnett,” that “counsel for the Plaintiffs may seek to further
15 amend the complaint upon completion of this assessment to alter allegations or to add
16 plaintiffs,” that “if counsel for the Plaintiffs decide to move to amend the complaint, they will
17 do so within seventy-five (75) days,” and that “counsel for the Federal Defendants will re-notice
18 the motion as appropriate”;

19 WHEREAS, on June 21, 2011, the Court entered the stipulated order postponing the
20 hearing on the motion to dismiss;

21 WHEREAS, counsel for Plaintiffs seek to file a Second Amended Complaint, replacing
22 Plaintiffs Schmidt and Garnett with Plaintiffs Rafael V. Dominguez and Jose G. Hermosillo;

23 WHEREAS, counsel for Plaintiffs have circulated copies of this Second Amended
24 Complaint to counsel for the federal defendants and to counsel for the state defendants;

25 THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

26 Plaintiffs shall be granted leave to file their Second Amended Complaint, replacing
27 Plaintiffs Schmidt and Garnett with Plaintiffs Dominguez and Hermosillo;

