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8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
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12 KRISTIN M. PERRY, SANDRA B. STIER,
PAUL R. KATAMI, and JEFFREY J.
13 ZARRILLO,
14 Plaintiffs,

15 v.

16 ARNOLD SCHWARTZENEGGER, in his
official capacity as Governor of California;
17 EDMUND G. BROWN, JR. in his official
capacity as Attorney General of California;
18 MARK B. HORTON, in his official capacity
as Director of the California Department of
19 Public Health and State Registrar of Vital
Statistics; LINETTE SCOTT, in her official
20 capacity as Deputy Director of Health
Information and Strategic Planning for the
21 California Department of Public Health;
22 PATRICK O'CONNELL in his official
capacity as Clerk-Recorder for the County
23 of Alameda; and DEAN C. LOGAN, in his
official capacity as Registrar-
24 Recorder/County Clerk for the County of
Los Angeles,
25 Defendants.

Case No.: CV 09 2292 VRW

**TRIAL MEMORANDUM OF
DEFENDANT PATRICK
O'CONNELL, CLERK-RECORDER
OF THE COUNTY OF ALAMEDA**

Trial Date: January 11, 2010

Action Filed: May 27, 2009

27 As stated in the answer of Defendant Patrick O'Connell, Alameda County Clerk-

28 Recorder ("Clerk-Recorder"), the Clerk-Recorder has a ministerial duty to carry out

1 the law. As of yet, no court has determined that Proposition 8 is invalid, and the
2 California Supreme Court has upheld the validity of Proposition 8 against an attack
3 on grounds not before this Court. Should this action result in a determination that
4 Proposition 8 is invalid, the Clerk-Recorder, following his ministerial duty, shall
5 cease to carry out the provisions of Proposition 8.

6 Other than providing any necessary defense of his actions in abiding by
7 Proposition 8 upon passage, the Clerk-Recorder, takes no position on the merits of
8 the case with respect to the validity of Proposition 8. The Clerk-Recorder does not
9 foresee presenting any evidence or arguments on the merits, but reserves the right
10 to provide a defense as to any asserted wrongdoing as a result of his obeying
11 Proposition 8 once it became effective.

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13 Respectfully submitted,

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15 DATED: December 4, 2009

RICHARD E. WINNIE, County
Counsel in and for the County of
Alameda, State of California

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19 By:



Claude F. Kolm
Deputy County Counsel

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22 Attorneys for Patrick O'Connell,
Clerk Recorder for the County of
23 Alameda
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CERTIFICATE OF SERVICE

PERRY, et al. v. SCHWARZENEGGER, et al.
 United States District Court, Northern District, Case No. CV 09 2292 VRW

I, the undersigned, say:

I am employed in the County of Alameda, State of California, over the age of 18 years and not a party to the within cause. My business address is 1221 Oak Street, Suite 450, Oakland, CA 94612-4296.

On the date listed below, I served a true and accurate copy of the documents entitled:

1. TRIAL MEMORANDUM OF DEFENDANT PATRICK O'CONNELL, CLERK-RECORDEE OF THE COUNTY OF ALAMEDA; and
2. CERTIFICATE OF SERVICE.

on the party in this action as indicated as follows:

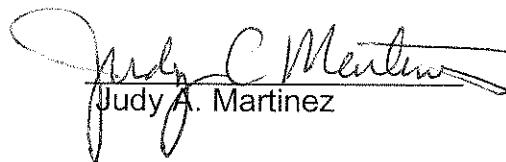
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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Theodore Boustrous, Jr., Esq. Theane Evangelis Kapur, Esq. Christopher Dusseault, Esq. Gibson Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071 | Ted Olson, Esq. Matthew McGill, Esq. Amir Tayrani, Esq. Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306 |
| Cooper & Kirk PLLC 1523 New Hampshire Avenue N.W. Washington, D.C. 20036 | City of San Francisco San Francisco City Attorney's Office 1390 Market Street, Seventh Floor San Francisco, CA 94102 |
| Deputy Attorney General Government Law Section California Department of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 | Ethan Dettmer, Esq. Enrique Monagas, Esq. Gibson, Dunn & Crutcher LLP 555 Mission Street, Suite 3000 San Francisco, CA 94105 |
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5 (X) BY MAIL: I caused such envelope with postage thereon fully prepaid and to be
6 placed in the United States mail, in the City of Oakland, California.

7 (X) BY ECF: I caused a copy/s of such document/s to be sent via ECF transmission
8 to the office/s of the addressee/s.

9 I declare under penalty of perjury that the foregoing is true and correct and that
10 this declaration was executed at Oakland, California, on December 4, 2009.

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12 Judy A. Martinez
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