

MAR 31 2011

No. S189476

FILED _____
DOCKETED _____ DATE _____ INITIAL _____

IN THE SUPREME COURT OF CALIFORNIA

KRISTIN M. PERRY et al., Plaintiffs and Respondents,

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff, Intervenor and Respondent,

v.

ARNOLD SCHWARZENEGGER, as Governor, etc. et al., Defendants,

DENNIS HOLLINGSWORTH et al., Defendants, Intervenors and Appellants.

Question Certified from the U.S. Court of Appeals for the Ninth Circuit
The Honorable Stephen R. Reinhardt, Michael Daly Hawkins,
and N. Randy Smith, Circuit Judges, Presiding
Ninth Circuit Case No. 10-16696

**MOTION FOR *PRO HAC VICE* ADMISSION FOR DAVID BOIES AND
MATTHEW D. MCGILL; MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION; AND DECLARATIONS OF
DAVID BOIES AND MATTHEW D. MCGILL**

JEREMY M. GOLDMAN, SBN 218888
THEODORE H. UNO, SBN 248603
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
(914) 749-8200

THEODORE B. OLSON, SBN 38137
Counsel of Record
AMIR C. TAYRANI, SBN 229609
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

THEODORE J. BOUTROUS, JR., SBN 132099
CHRISTOPHER D. DUSSEAULT, SBN 177557
ENRIQUE A. MONAGAS, SBN 239087
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

Attorneys for Plaintiffs-Respondents
Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarrillo

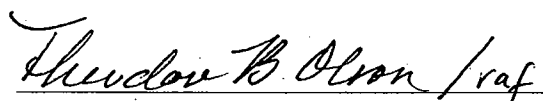
MOTION

Pursuant to Rule 8.54 and Rule 9.40 of the California Rules of Court, Plaintiffs and Respondents Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarrillo (“Plaintiffs”) hereby move this Court for an order granting permission for David Boies, of the firm Boies, Schiller & Flexner, LLP, and Matthew D. McGill, of the firm Gibson, Dunn & Crutcher, LLP (each, an “Out-of-State Attorney” and together the “Out-of-State Attorneys”), to appear as counsel *pro hac vice* in this proceeding.

This motion is based on the memorandum of points and authorities and the accompanying declarations of each Out-of-State Attorney. This motion is made on the grounds that each Out-of-State Attorney fulfills the requirements of Rule 9.40, California Rules of Court, and that each Out-of-State Attorney is knowledgeable about the facts and legal principles at issue in this appeal because the Out-of-State Attorneys serve as counsel to Plaintiffs in this action in the federal courts. Thus, their participation as counsel in this proceeding will assist in the representation of Plaintiffs.

Dated: March 30, 2011

GIBSON, DUNN & CRUTCHER, LLP



Theodore B. Olson
Attorney of Record for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

David Boies, a member of the law firm of Boies, Schiller & Flexner, LLP, and Matthew D. McGill, a member of the law firm of Gibson, Dunn & Crutcher, LLP, seek admission to appear as counsel *pro hac vice* in this proceeding. Each of these Out-of-State Attorneys is counsel for Plaintiffs in the federal proceedings underlying this action; therefore, they are knowledgeable about the facts and legal principles at issue in this

certification. Their participation will be valuable to Plaintiffs in connection with this appeal.

Rule 9.40 of the California Rules of Court sets forth the procedure by which an attorney who is not a member of the State Bar of California may, in the discretion of the Court, be admitted to appear as counsel *pro hac vice*.

Specifically, Rule 9.40(a) provides that a person who is not a member of the State Bar of California, but who is a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state of the United States and who has been retained to appear in a particular cause pending in a court of this state, may be permitted to appear as counsel *pro hac vice* as long as that person (1) is not a resident of the State of California, (2) is not regularly employed in the State of California, and (3) is not regularly engaged in substantial business, professional or other activities in the State of California. As reflected in the

accompanying declarations, each Out-of-State Attorney meets these requirements.

Under Rule 9.40(d), each application must state: (1) the applicant's residence and office address; (2) the courts to which the applicant has been admitted to practice and the dates of admission; (3) that the applicant is a member in good standing in those courts; (4) that the applicant is not currently suspended or disbarred in any court; (5) the title of court and cause in which the applicant has filed an application to appear as counsel *pro hac vice* in this state in the preceding two years, the date of each application, and whether or not it was granted; and (6) the name, address, and telephone number of the active member of the State Bar of California who is attorney of record. (Rule 9.40(d), Cal. Rules of Court.)

The attached declaration of each Out-of-State Attorney provides all of the information required by Rule 9.40(d) and has been served on all parties to this action and upon the State Bar of California at its San Francisco office (along with the \$50 fee to the State Bar for each Out-of-State Attorney as required by Rule 9.40(e)).

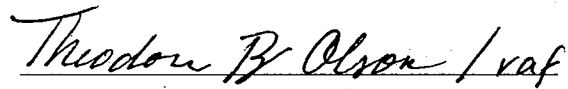
Finally, as set forth in their declarations, the Out-of-State Attorneys are aware and understand that “[a] person permitted to appear as counsel *pro hac vice* under this rule is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California,” as provided

in Rule 9.40(f). And as required under Rule 9.40(f), they have familiarized themselves and shall comply with the standards of professional conduct required of members of the State Bar of California.

Accordingly, Plaintiffs respectfully request that this Court grant the Out-of-State Attorneys permission to appear as counsel *pro hac vice* in this action.

Dated: March 30, 2011

GIBSON, DUNN & CRUTCHER, LLP

Theodore B. Olson / raf

Theodore B. Olson
Attorney of Record for Plaintiffs

DECLARATION OF DAVID BOIES

I, David Boies, declare as follows:

1. My residential address is 2 Middle Patent Road, Armonk, New York, 10504. My office address is Boies, Schiller & Flexner LLP, 333 Main Street, Armonk, New York 10504.
2. I am admitted to practice law before the following courts:

<u>COURT</u>	<u>ADMITTED</u>
<i>State of New York</i>	<i>March 27, 1967</i>
<i>United States Supreme Court</i>	<i>October 29, 1974</i>
<i>United States District Court, Eastern District of New York</i>	<i>June 5, 1981</i>
<i>United States District Court, Southern District of New York</i>	<i>September 6, 1991</i>
<i>United States District Court, District of Colorado</i>	<i>September 1, 2000</i>
<i>United States Court of Appeals, First Circuit</i>	<i>July 7, 2006</i>
<i>United States Court of Appeals, Second Circuit</i>	<i>April 17, 1967</i>
<i>United States Court of Appeals, Third Circuit</i>	<i>September 8, 1995</i>
<i>United States Court of Appeals, Fourth Circuit</i>	<i>January 16, 2001</i>
<i>United States Court of Appeals, Fifth Circuit</i>	<i>January 20, 2009</i>
<i>United States Court of Appeals, Sixth Circuit</i>	<i>August 26, 2003</i>
<i>United States Court of Appeals, Seventh Circuit</i>	<i>March 22, 2002</i>

<i>United States Court of Appeals, Ninth Circuit</i>	<i>November 13, 1972</i>
<i>United States Court of Appeals, Tenth Circuit</i>	<i>November 20, 1973</i>
<i>United States Court of Appeals, Eleventh Circuit</i>	<i>April 8, 2009</i>
<i>United States Court of Appeals, Federal Circuit</i>	<i>February 9, 2001</i>
<i>United States Court of Appeals, D.C. Circuit</i>	<i>February 6, 1985</i>
<i>United States Court of International Trade</i>	<i>January 5, 1982</i>

3. I am presently a member in good standing in the above-listed courts.
4. I am not currently suspended or disbarred in any court.
5. Within the preceding two years of this application I have made an application to appear as counsel *pro hac vice* in the State of California as follows:

<u>Court</u>	<u>Case Title and Number</u>	<u>Date of Application</u>	<u>Granted</u>
United States District Court for the Northern District of California	<i>Perry v. Schwarzenegger, Case No. CV-09-02292</i>	May 26, 2009	June 1, 2009
United States District Court for the Central District of California	<i>Terri N. White, et al. v. Experian Information Solutions Inc., Case No. CV-05-01070 DOC (MLGx)</i>	June 16, 2009	June 17, 2009

United States District Court for the Central District of California Carly E. Simon v. Starbucks Corporation Case No. CV-09-09074 GW (PLAx) March 23, 2010 March 26, 2010

Superior Court of the State of California County of Los Angeles *In re Marriage of Jamie McCourt & Frank H. McCourt, Jr. Case No. BD 514 309* April 1, 2010 April 8, 2010

6. Theodore B. Olson (California Bar No. 38137), of Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Avenue., NW, Washington, DC 20036, (202) 955-8500, is attorney of record for Plaintiffs in this matter, is an active member of the State Bar of California, and will be associated with me in this matter.

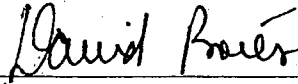
7. I am aware that a person permitted to appear *pro hac vice* is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California. I have familiarized myself and will comply with the standards of professional conduct required of members of the State Bar of California.

8. I have been retained to represent Plaintiffs in this action and served as one of the counsel in the underlying action in the United States District

Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit.

9. I am not a resident of the State of California; I am not regularly employed in the State of California; and (except for the cases in which pro hac vice status has been granted), I have not regularly engaged in substantial business, professional, or other activities in the State of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 16 day of March, 2011 at Armonk, New York.



David Boies

DECLARATION OF MATTHEW D. MCGILL

I, Matthew D. McGill, declare as follows:

1. My residential address is 528 N. Columbus Street, Alexandria, Virginia 22314. My office address is Gibson Dunn & Crutcher, LLP, 1050 Connecticut Avenue., NW, Washington, DC 20036.
2. I am admitted to practice law before the following courts:

<u>COURT</u>	<u>ADMITTED</u>
United States District Court, Southern District of New York	February 5, 2002
United States Court of Appeals, Fifth Circuit	January 27, 2003
United States Court of Appeals, D.C. Circuit	May 20, 2004
United States Court of Appeals, First Circuit	November 30, 2004
United States Supreme Court	December 7, 2004
United States Court of Appeals, Eleventh Circuit	February 17, 2006
United States Court of Appeals, Second Circuit	October 18, 2006
United States Court of Appeals, Ninth Circuit	June 21, 2007
United States Court of Appeals, Federal Circuit	July 2, 2007

3. I am presently a member in good standing in the above-listed courts.
4. I am not currently suspended or disbarred in any court.
5. Within the preceding two years of this application I have made an application to appear as counsel *pro hac vice* in the State of California as follows:

<u>Court</u>	<u>Case Title and Number</u>	<u>Date of Application</u>	<u>Granted</u>
United States District Court for the Northern District of California	<i>Perry v. Schwarzenegger</i> , Case No. CV-09-02292	May 2009	Yes
United States District Court for the Southern District of California	<i>Lucent Technologies, Inc. v. Gateway, Inc.</i> No. 3:07-CV-02000	October 2010	No*

6. Theodore B. Olson (California Bar No. 38137), of Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Avenue., NW, Washington, DC 20036, (202) 955-8500, is attorney of record for Plaintiffs in this matter, is an

* *Pro hac vice* admission was denied based on law firm's imputed disqualification.

active member of the State Bar of California, and will be associated with me in this matter.

7. I am aware that a person permitted to appear *pro hac vice* is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California. I have familiarized myself and will comply with the standards of professional conduct required of members of the State Bar of California.

8. I have been retained to represent Plaintiffs in this action and served as one of the counsel in the underlying action in the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit.

9. I am not a resident of the State of California; I am not regularly employed in the State of California; and (putting aside my *pro hac vice* status in this action in the federal courts), I have not regularly engaged in substantial business, professional, or other activities in the State of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 30th day of March, 2011 at Carlisle Bay, Antigua.


Matthew D. McGill

CERTIFICATE OF SERVICE

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above-entitled action. I am employed in the City and County of San Francisco. My business address is 555 Mission Street, Suite 3000, San Francisco, California 94105. On March 30, 2011, I caused to be served the following documents:

MOTION FOR *PRO HAC VICE* ADMISSION FOR DAVID BOIES AND MATTHEW D. MCGILL

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown, in the following manner:

SEE SERVICE LIST BELOW

- BY MAIL:** I placed a true copy in a sealed envelope for deposit in the U.S. Postal Service through the regular mail collection process at Gibson, Dunn & Crutcher LLP on the date indicated above. I am familiar with the firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. It is deposited with the U.S. Postal Service with postage prepaid on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing in the declaration.

Counsel

Charles J. Cooper
David H. Thompson
Howard C. Nielson, Jr.
Peter A. Patterson
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
ccooper@cooperkirk.com
dthompson@cooperkirk.com

Andrew P. Pugno
Law Offices of Andrew P. Pugno
101 Parkshore Drive, Suite 100
Folsom, CA 95630
andrew@pugnolaw.com

Attorneys For

Attorneys for Defendants-Intervenors-
Appellants

Attorneys for Defendants-Intervenors-
Appellants

Brian W. Raum
James A. Campbell
Alliance Defense Fund
15100 North 90th Street
Scottsdale, AZ 85260
braum@telladf.org
jcampbell@telladf.org

Attorneys for Defendants-Intervenors-
Appellants

Dennis J. Herrera
Therese Stewart
Christine Van Aken
San Francisco City Attorney's Office
City Hall 234
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
therese.stewart@sfgov.org
christine.van.aken@sfgov.org

Attorneys for Plaintiff-Intervenor-Appellee
City and County of San Francisco

Tamar Pachter
Daniel Powell
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
tamar.pachter@doj.ca.gov

Attorneys for Defendant Edmund G. Brown,
Jr., in his official capacity as Attorney
General of California

Kenneth C. Mennemeier, Jr
Andrew W. Stroud
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814
kcm@mgslaw.com
stroud@mgslaw.com

Attorneys for Defendants Arnold
Schwarzenegger, in his official capacity as
Governor of California; Mark B. Horton, in
his official capacity as Director of the
California Department of Public Health &
State Registrar of Vital Statistics; and
Linette Scott, in her official capacity as
Deputy Director of Health Information &
Strategic Planning for the California
Department of Public Health (the
"Administration Defendants")

Claude Franklin Kolm
Office of County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612-4296
claud.kolm@acgov.org

Attorneys for Defendant Patrick O'Connell,
in his official capacity as Clerk-Recorder for
the County of Alameda

Judy W. Whitehurst
Principal Deputy County Counsel
Los Angeles County Counsel
648 Kenneth Hahn Hall of
Administration
500 West Temple Street, 6th Floor
Los Angeles, CA 90012-2713
jwhitehurst@counsel.lacounty.gov

Attorneys for Defendant Dean C. Logan, in
his official capacity as
Registrar-Recorder/County Clerk for the
County of Los Angeles

Office of the Governor
Attn: Legal Department
State Capitol Building
Sacramento, CA 95814

Attorneys for the Governor
Edmund G. Brown, Jr.

Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Attorneys for the Attorney General
Kamala D. Harris

The State Bar of California
Office of Admissions
180 Howard Street
San Francisco, CA 94105

Sent to the State Bar of California with \$100
fee pursuant to Rule 9.40 of the California
Rules of Court

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on March 30, 2011, at San Francisco, California.

Carol J. Dickerson

No. S189476

IN THE SUPREME COURT OF CALIFORNIA

KRISTIN M. PERRY et al., Plaintiffs and Respondents,
CITY AND COUNTY OF SAN FRANCISCO, Plaintiff, Intervenor and Respondent,

v.

ARNOLD SCHWARZENEGGER, as Governor, etc. et al., Defendants,
DENNIS HOLLINGSWORTH et al., Defendants, Intervenors and Appellants.

Question Certified from the U.S. Court of Appeals for the Ninth Circuit
The Honorable Stephen R. Reinhardt, Michael Daly Hawkins,
and N. Randy Smith, Circuit Judges, Presiding
Ninth Circuit Case No. 10-16696

AMENDED PROOF OF SERVICE

JEREMY M. GOLDMAN, SBN 218888
THEODORE H. UNO, SBN 248603
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
(914) 749-8200

THEODORE B. OLSON, SBN 38137
Counsel of Record
AMIR C. TAYRANI, SBN 229609
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

THEODORE J. BOUTROUS, JR., SBN 132099
CHRISTOPHER D. DUSSEAULT, SBN 177557
ENRIQUE A. MONAGAS, SBN 239087
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

Attorneys for Plaintiffs-Respondents
Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarrillo

AMENDED CERTIFICATE OF SERVICE

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above-entitled action. I am employed in the City and County of San Francisco. My business address is 555 Mission Street, Suite 3000, San Francisco, California 94105. On March 30, 2011, I caused to be served the following documents:

**MOTION FOR *PRO HAC VICE* ADMISSION FOR
DAVID BOIES AND MATTHEW D. MCGILL**

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown, in the following manner:

SEE SERVICE LIST BELOW

- BY MAIL:** I placed a true copy in a sealed envelope for deposit in the U.S. Postal Service through the regular mail collection process at Gibson, Dunn & Crutcher LLP on the date indicated above. I am familiar with the firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. It is deposited with the U.S. Postal Service with postage prepaid on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing in the declaration.

Counsel

Charles J. Cooper
David H. Thompson
Howard C. Nielson, Jr.
Peter A. Patterson
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
ccooper@cooperkirk.com
dthompson@cooperkirk.com

Andrew P. Pugno
Law Offices of Andrew P. Pugno
101 Parkshore Drive, Suite 100
Folsom, CA 95630
andrew@pugnowlaw.com

Attorneys For

Attorneys for Defendants-Intervenors-
Appellants

Attorneys for Defendants-Intervenors-
Appellants

Brian W. Raum
James A. Campbell
Alliance Defense Fund
15100 North 90th Street
Scottsdale, AZ 85260
braum@telladf.org
jcampbell@telladf.org

Attorneys for Defendants-Intervenors-
Appellants

Dennis J. Herrera
Therese Stewart
Christine Van Aken
San Francisco City Attorney's Office
City Hall 234
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
therese.stewart@sfgov.org
christine.van.aken@sfgov.org

Attorneys for Plaintiff-Intervenor-Appellee
City and County of San Francisco

Tamar Pachter
Daniel Powell
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
tamar.pachter@doj.ca.gov

Attorneys for Defendant Edmund G. Brown,
Jr., in his official capacity as Attorney
General of California

Kenneth C. Mennemeier, Jr
Andrew W. Stroud
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814
kcm@mgsllaw.com
stroud@mgsllaw.com

Attorneys for Defendants Arnold
Schwarzenegger, in his official capacity as
Governor of California; Mark B. Horton, in
his official capacity as Director of the
California Department of Public Health &
State Registrar of Vital Statistics; and
Linette Scott, in her official capacity as
Deputy Director of Health Information &
Strategic Planning for the California
Department of Public Health (the
"Administration Defendants")

Claude Franklin Kolm
Office of County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612-4296
claud.kolm@acgov.org

Attorneys for Defendant Patrick O'Connell,
in his official capacity as Clerk-Recorder for
the County of Alameda

Judy W. Whitehurst
Principal Deputy County Counsel
Los Angeles County Counsel
648 Kenneth Hahn Hall of
Administration
500 West Temple Street, 6th Floor
Los Angeles, CA 90012-2713
jwhitehurst@counsel.lacounty.gov

Attorneys for Defendant Dean C. Logan, in
his official capacity as
Registrar-Recorder/County Clerk for the
County of Los Angeles

Office of the Governor
Attn: Legal Department
State Capitol Building
Sacramento, CA 95814

Attorneys for the Governor
Edmund G. Brown, Jr.

Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Attorneys for the Attorney General
Kamala D. Harris

The State Bar of California
Office of Admissions
180 Howard Street
San Francisco, CA 94105

Sent to the State Bar of California with \$100
fee pursuant to Rule 9.40 of the California
Rules of Court

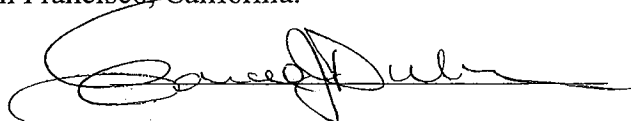
Terry L. Thompson
Law Office of Terry L. Thompson
P.O. Box 1346
Alamo, CA 94507

Attorneys for Defendant-Intervenor
Hak-Shing William Tam

Ms. Molly C. Dwyer
Clerk of the Court
United States Court of Appeals
for the Ninth Circuit
James Browning Courthouse
95 7th Street
San Francisco, CA 94103

United States Court of Appeals for the Ninth
Circuit

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on March 30, 2011, at San Francisco, California.



Carol J. Dickerson