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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
 11

12 KRISTIN M. PERRY, SANDRA B. STIER,  
 13 PAUL R. KATAMI, and JEFFREY J.  
 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  
Perry v. Schwartzenegger et al, Case No. CV 09 2292  
 Trial Memorandum 1


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.

12  
13 Respectfully submitted,

14  
15 DATED: December 4, 2009

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

18  
19 By:   
20 Claude F. Kolm  
21 Deputy County Counsel

22 Attorneys for Patrick O'Connell,  
23 Clerk Recorder for the County of  
24 Alameda

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-RECORDER OF THE COUNTY OF ALAMEDA; and
2. CERTIFICATE OF SERVICE.

on the party in this action as indicated as follows:

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
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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
Theodore Hideyuki Uno, Esq. Bois, Schiller & Flexner LLP 1999 Harrison Street, Suite 900 Oakland, CA 94612	Kenneth C. Mennemeier, Esq. Andrew W. Stroud, Esq. Mennemeier Glass & Stroud LLP 980 9 <sup>th</sup> Street, Suite 1700 Sacramento, CA 95814

1 Office of the County Counsel  
2 Elizabeth M. Cortez, Esq.  
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4 648 Kenneth Hahn Hall of Admin.  
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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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