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KIARA ROBLES

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIARA ROBLES, Plaintiff, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, BERKELEY, et al. Defendants.	Case No.: 4:17-cv-04864 **PLAINTIFF'S OPPOSITION TO MOTION TO REVOKE PRO HAC VICE ADMISSION OF LARRY KLAYMAN** Date: November 14, 2017 Time: 2:30 p.m. Crtrm: TBD

Plaintiff Kiara Robles ("Plaintiff"), through her counsel Mr. Larry Klayman ("Mr. Klayman") hereby submit the following in opposition to the City of Berkeley's ("Defendant Berkeley") Motion to Revoke Mr. Klayman's *pro hac vice* status in this matter.

MEMORANDUM OF LAW

I. INTRODUCTION

Defendant Berkeley brings this motion before this Court, and the Honorable Claudia Wilken ("Judge Wilken") only because they believe that Judge Wilken will favor them and grant it. They likely only reach this conclusion because likely Judge Wilken attended UC Berkeley's Boalt Hall School of Law and taught there for six years, which is underscored by the fact that Defendant Berkeley is the party making this motion. Plaintiff filed this instant matter in the San Francisco Courthouse after significantly reshaping the Complaint because the allegations set forth in the instant matter primary arise out of San Francisco and its ANTIFA chapter and therefore felt that San Francisco was the appropriate venue. In this regard, Plaintiff is still concerned about this apparent conflict of interest raised in the prior recusal motion, but is nonetheless confident that this Court can put aside any perceived biases and rule impartially. In any event, Mr. Klayman commits to fully obeying all court orders and treating this Court and all parties with dignity and respect, while at the same time, zealously advocating for the rights of his client.

It is undisputable that Mr. Klayman truthfully and candidly answered the questions set forth in the *pro hac vice* application for the Northern District of California and was properly granted *pro hac vice* status. There should therefore be a strong presumption against revocation. Furthermore, nothing raised in Defendant Berkeley's motion changes this simple fact: over the course of his forty plus year career as an attorney, Mr. Klayman has never been found by any bar association – whose function it is to govern attorney conduct – to have acted unethically or improperly for his conduct before any judge. Indeed, Mr. Klayman does specialize in highly-charged politically motivated cases where tensions often run high, such as the one at bar, but it is abundantly clear that an attorney's chosen specialization should not form the basis for denial or revocation of *pro hac vice* status. Neither should an attorney's litigation style, even when it is aggressive and zealous, but done in order to preserve his clients' rights and to ensure that every possible opportunity is given to the client to obtain the relief sought. In this regard, the Honorable Ronald M. Gould ("Judge Gould"), in his dissent in the Cliven Bundy matter, which Defendant Berkeley relies upon, recognizes this:

> It may be that Klayman is not an attorney whom all district court judges would favor making an appearance in their courtroom. It seems he has been, and may continue to be, a thorn in the side. Still, concerns about trial judge irritation pale in comparison to a criminal defendant's need for robust defense. In providing a full and fair defense to every criminal defendant, there will by necessity be occasions when the difficult nature of the case evokes sharply confrontational lawyering. **In tough cases with skilled prosecutors, aggressive positions by defense lawyers are sometimes an unavoidable part of strong advocacy, and contribute to making the proceeding an ultimately fair one for the defendant**.

Bundy v. United States Dist. Court (In re Bundy), 840 F.3d 1034, 1055-56 (9th Cir. 2016 (emphasis added).[1] Thus, this Court must follow the well-settled principles set forth by Judge Gould, and allow Plaintiff to have a full legal defense team that includes her counsel of choice, Mr. Klayman, as she pursues relief after having been severely assaulted and sprayed with bear mace for simply exercising her First Amendment rights. The other counsel for Plaintiff a California licensed attorney, entered the case only to serve in an advisory and secondary capacity.

II. THE LAW

The Supreme Court has expressly recognized a strong presumption in favor of granting applications to appear *pro hac vice*. "We do not question that the practice of courts in most States is to allow an out-of-state lawyer the privilege of appearing upon motion, especially when he is associated with a member of the local bar. In view of the high mobility of the bar, and also the trend toward specialization, perhaps this is a practice to be encouraged." *Leis v. Flynt*, 439 U.S. 438, 441-442 (U.S. 1979). As set forth previously, Mr. Klayman's specialization is in highly-charged, politically motivated cases such as this one, and he has associated with a member of the local bar, Mr. Michael Kolodzi ("Mr. Kolodzi"). This is, therefore, the exact type of case that the Supreme Court in *Leis* has expressly held to justify *pro hac vice* admission. Furthermore, it is fundamentally ingrained in the Sixth Amendment to the Constitution that a criminal defendant is guaranteed the right to counsel of choice, including *pro hac vice* counsel. *See Powell v. Ala.*, 287 U.S. 45, 53 (U.S. 1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice.") "A

[1] Although *Bundy* involves a criminal defense matter, the same general principle set forth by Judge Gould applies here. Strong advocacy should not be grounds for denial and/or revocation of *pro hac vice* status.

defendant's right to counsel of choice includes the right to have an out-of-state lawyer admitted *pro hac vice*." *United States v. Ries*, 100 F.3d 1469, 1471 (9th Cir. Cal. 1996). This fundamental principle is so strong that the California Supreme Court has recognized this right in civil cases, such as the one at bar. "Ultimately, disqualification motions involve a conflict between the client's right to counsel of their choice...." *City and County of San Francisco v. Cobra Solutions Inc.*, 38 Cal. 4th 839, 846 (Cal. 2006); See also *Khani v. Ford Motor Co*., 215 Cal.App.4th 916, 920 (Cal. App. 2d Dist. 2013). Federal courts have also adopted this fundamental principle. "The substantial relationship test balances the new client's right to counsel of choice and the former client's right to confidentiality." *N.L.A. v. Cty. of L.A*, 2016 U.S. Dist. LEXIS 134953, at *6 (C.D. Cal. Sep. 29, 2016). Based solely on the case law set forth above, this Court should summarily deny Defendant Berkeley's motion to revoke Mr. Klayman's *pro hac vice* status, given the fundamental importance of the right to a party's counsel of choice. Even more, as set forth below, the matters cited by Defendant Berkeley, which take place over a lengthy forty year legal career, simply do not rise anywhere near the level that should be required to even consider revoking Mr. Klayman's *pro hac vice* status.

A. The *Bundy* Case and the District of Columbia Bar Proceeding

Defendant Berkeley relies upon the *Bundy* case, where the Honorable Gloria M. Navarro ("Judge Navarro") of the U.S. District Court for the District of Nevada improperly, arbitrarily, and capriciously denied Mr. Klayman's *pro hac vice* application in the criminal trial of Cliven Bundy. Like this instant matter, the *Bundy* case is also a politically motivated case, where Cliven Bundy and his supporters peacefully and successfully exercised their constitutional rights in a stand-off with federal agents who were attempting to seize Cliven Bundy's land and property. First and foremost, Mr. Klayman truthfully and candidly presented all the information required in the *Bundy pro hac vice* application, just as he has done here. Judge Gould recognized this in his forceful dissent, stating, "after submitting a compliant response to the questions in the pro hac vice application, he had no greater duty to disclose any possible blemish on his career or reputation beyond responding to the district court's further direct requests." *Bundy*, 840 F.3d at 1055 (emphasis added).

In fact, any "issue" concerning Mr. Klayman's candidness was only put forth by Judge Navarro after the U.S. Court of Appeals for the Ninth Circuit pressed her for a reason for her arbitrary denial of Mr. Klayman's *pro hac vice* application. It was only then that Judge Navarro cited the ongoing District of Columbia Bar Proceeding, which is still pending. Compelling evidence of this lies in the fact that Judge Navarro denied Mr. Klayman's *pro hac vice* application without prejudice only until he could prove that the District of Columbia Bar Proceeding had been resolved in his favor, thereby improperly assuming the role of the District of Columbia Bar and presuming Mr. Klayman guilty until proven innocent. Indeed, had the denial been on other grounds, there would have been no need to deny Mr. Klayman's *pro hac vice* application without prejudice.

In Mr. Klayman's first *pro hac vice* application, attached hereto as Exhibit A, he truthfully answers the question presented regarding disciplinary proceedings, stating that, "[t]here is a disciplinary proceeding pending before the District of Columbia Board of Professional Responsibility that was filed almost 8 years ago…." Mr. Klayman properly opines that "[t]he matter is likely to be resolved in my favor" and points out that "…there has been no disciplinary action." Exhibit A. As Judge Gould found, "Klayman properly disclosed the ongoing disciplinary proceeding in his initial application for pro hac vice admission, saying that the proceeding had not yet been resolved. This disclosure was accurate." *Bundy*, 840 F.3d at 1054.

Regarding the District of Columbia Bar Proceeding, which Defendant Berkeley strongly and incorrectly relies upon, it is crucial to note that this matter is still pending and Mr. Klayman has never been actually found to have acted unethically in this matter. Any assertion that Mr. Klayman's Affidavit of Negotiated Discipline is dispositive is patently false. As Mr. Klayman explained to the *Bundy* court, and admitted by the District Court, the prior attempted negotiated discipline never entered into effect because Mr. Klayman chose to withdraw it after having thought the better of having signed the affidavit and agreeing to negotiated discipline since he felt strongly that he acted ethically at all times. Mr. Klayman further cleared up any misunderstanding, saying that he had continued to negotiate with the counsel for the D.C. Bar after it had rejected the initial Affidavit of Negotiated Discipline, but ultimately did decide to withdraw from negotiations. In

sum, there has been no definitive finding by the District of Columbia Bar that Mr. Klayman ever acted improperly or unethically, and, respectfully, it is not the role of this Court or Defendant Berkeley to assume the function of the District of Columbia Bar and prematurely presume Mr. Klayman guilty until proven innocent. And, this matter will not resolved for years, pending any appeals.

B. The Florida Bar

The Florida Bar proceeding, Case No. SC11-247, has absolutely no bearing on Mr. Klayman's current ability to practice law before this Court, as it stemmed from a personal financial dispute with a former client, and was entirely unrelated to his conduct in any courtroom. The Florida Bar proceeding stemmed from a criminal defense client who had paid Mr. Klayman a non-refundable retainer. After Mr. Klayman had used up the retainer in the course of providing legal services, the client wanted to switch attorneys and demanded a refund of the retainer. Despite the fact that Mr. Klayman believed the client was not entitled to a refund, he settled the matter in order to just move past the dispute. After Mr. Klayman had paid back half of the settlement amount, he encountered a period of financial difficulty and was unable to timely pay back the second half. He then agreed to a public reprimand, and eventually remitted full payment. As such, the fact that Mr. Klayman went through a tough financial period has absolutely no bearing on his current ability to practice law, now many years later. There was never a finding that Mr. Klayman acted dishonestly, and as such, this matter should not bear upon the revocation of Mr. Klayman's *pro hac vice* status. In fact, even the former client's new attorney told Mr. Klayman that he did not believe that Mr. Klayman was under any obligation to repay the retainer.

C. The Other Matters Do Not Justify Revocation of *Pro Hac Vice*

While zealously representing his clients, Mr. Klayman has conflicted with certain judges. The fact of the matter remains, however, that Mr. Klayman has never once been found by any bar association to have acted unethically or improperly before any judge. Indeed, judges have the luxury of writing opinions, whereas attorneys do not. It is a fallacy to presume that judges never go after attorneys that they do not like, or whose positions that they do not agree with. This is particularly true for attorneys like Mr. Klayman who often take on highly-charged and politically

motivated cases.

The two other matters that Defendant Berkeley relies heavily upon – before the Honorable William D. Keller ("Judge Keller") and the Honorable Denny Chin ("Judge Chin") also do not rise anywhere near the level necessary to deprive Plaintiff of her right to her counsel of choice. In fact, both matters were reviewed by the proper bar associations and Mr. Klayman was never found to have acted unethically. Judge Gould also factored these instances into his forceful dissent and correctly pointed out that:

> The district court and the majority also point to the two instances of federal judges banning Klayman from their courtrooms. While serious punishments, these orders were issued 22 and 18 years ago. Two decades—half of Klayman's career—is enough time for the incidents to be relatively poor predictors of Klayman's likely behavior today.

Bundy, 840 F.3d at 1055 (emphasis added).

D. Defendant Berkeley's Assertions Pertaining to George Soros Must be Ignored

Defendant Berkeley also apparently argues that the fact that Mr. Klayman's *pro hac vice* status should be revoked simply because he and his clients have filed four lawsuits against former Defendant George Soros, including the previously dismissed related case. This outlandish assertion has no basis in law or in fact. Mr. Klayman has no control over George Soros' conduct, especially to the extent that it gives rise to certain causes of action.[2] It is equally nonsensical to argue that the mere fact that lawsuits have been brought against an individual should prevent further lawsuits from being brought against that same individual for different offending conduct.

Without doing a deep-dive into the merits of the cases brought against George Soros, which again should have no bearing on this motion, as it is not even being brought by George Soros and who is not even a party to this case, it is important to point out that none of the cases cited by Defendant Berkeley have been found to been frivolous. Mr. Klayman has never been sanctioned in any of these cases. In fact, in one of the cases cited by Defendant Berkeley, *Klayman v. Obama*,

[2] Mr. Klayman's litigation history with Mr. Soros is entirely irrelevant to this motion, which is brought by the city of Berkeley and entirely unrelated to Mr. Soros, as he is not a party to this action. In any event, the fact of the matter remains that Mr. Soros has funded many groups and organizations, such as ANTIFA and Black Lives Matter that have resorted to violence to achieve their means. This is actionable but not before this Court in any event.

3:16-cv-02010 (N.D. Tx.), one of the defendants, Deray McKesson moved for sanctions against Mr. Klayman, ECF No. 74, but the Court expressly denied Mr. McKesson's motion. ECF No. 145. Again, it is, respectfully, not this role of this Court or Defendant Berkeley to retroactively punish Mr. Klayman in cases where the actual courts in which they were brought have decided that sanctions were inappropriate.

III. CONCLUSION

Mr. Klayman, over his approximately forty-year legal career, has challenged certain judges in the process of zealously representing his clients. This should not and cannot be a valid basis for denying Plaintiff her right to counsel of choice by revoking his *pro hac vice* status. Despite the matters referred to by Defendant Berkeley, Mr. Klayman has never once, in over forty years, been found to have acted unethically before any judge by any bar association. Everything set forth by Defendant Berkeley has been intentionally overblown in order to misleadingly portray Mr. Klayman in a negative light. In fact, Mr. Klayman has been continuously a member in good standing before the District of Columbia and The Florida Bar for 37 and 40 years respectively. He clearly qualifies for *pro hac vice* admission based on the criteria in this Court's application. Moreover, Mr. Klayman will follow any obey all of this Court's orders, and give this Court the high level of respect that it deserves. In that same regard, Mr. Klayman will still aggressively and zealously pursue the claims set forth on behalf of Plaintiff, within the bounds of ethics and the law. As such, Defendant Berkeley's Motion to Revoke Mr. Klayman's *Pro Hac Vice* Status must be denied.

DATED: October 16, 2017

Respectfully submitted,

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