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14 Attorneys for Plaintiff  
 KAREN GOLINSKI

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN FRANCISCO DIVISION

19 KAREN GOLINSKI,  
 20 Plaintiff,  
 21 v.  
 22 UNITED STATES OFFICE OF PERSONNEL  
 23 MANAGEMENT, and JOHN BERRY, Director  
 of the United States Office of Personnel  
 24 Management, in his official capacity,  
 25 Defendants.

Case No. 3:10-cv-0257-JSW

**REQUEST FOR JUDICIAL  
 NOTICE IN SUPPORT OF  
 PLAINTIFF KAREN  
 GOLINSKI'S SUPPLEMENTAL  
 BRIEF PURSUANT TO  
 OCTOBER 15 ORDER**

Date: December 17, 2010  
 Time: 10:00 a.m.  
 Place: Courtroom 11, 19<sup>th</sup> Floor  
 450 Golden Gate Ave.  
 San Francisco, CA 94102

1 In support of her Supplemental Brief Pursuant to the Court's October 15 Order, plaintiff  
2 Karen Golinski requests that the Court take judicial notice of the attached Exhibits 1 and 2 under  
3 Federal Rule of Evidence 201.

4 Both exhibits are documents filed in proceedings before the Employment Dispute  
5 Resolution tribunal and the Judicial Council of the Ninth Circuit in *In the Matter of Karen*  
6 *Golinski*, No. 09-80173 (9th Cir.). The Court may take judicial notice of documents filed in  
7 another proceeding. *See Transmission Agency of N. California v. Sierra Pac. Power Co.*, 295  
8 F.3d 918, 924 n.3 (9th Cir. 2002) (taking judicial notice of the existence and contents of an order  
9 issued by an administrative law judge); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094,  
10 1124 n.29 (9th Cir. 2002) (taking judicial notice of complaint filed in another action); *United*  
11 *States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.  
12 1992) (taking judicial notice of "proceedings in other courts"). Therefore, plaintiff requests that  
13 the Court take judicial notice of the following, true and correct copies of which are attached:

14 Exhibit 1: Declaration Of Karen Golinski In Support Of Her October 2, 2008 EDR  
15 Complaint, executed November 3, 2008. [redacted for privacy] [Exhibits E  
16 and F only]

17 Exhibit 2: Declaration Of Kenneth Sogabe In Support Of Karen Golinski's October 2,  
18 2008 EDR Complaint, executed October 28, 2008.

19  
20 Dated: November 8, 2010

MORRISON & FOERSTER LLP  
LAMBDA LEGAL

21  
22  
23 By: /s/ Rita F. Lin  
Rita F. Lin

24 Attorneys for Plaintiff  
25 KAREN GOLINSKI

**EXHIBIT 1**

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**SUBMITTED UNDER THE PROCEDURES OF THE  
EMPLOYMENT DISPUTE RESOLUTION PLAN FOR THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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*In re Karen Golinski.*

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**DECLARATION OF KAREN GOLINSKI IN SUPPORT OF  
HER OCTOBER 2, 2008 EDR COMPLAINT**

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Hearing Date: Nov. 12, 2008  
Time: 8:30 a.m.  
Hearing Officer: Hon. Alex Kozinski

---

MORRISON & FOERSTER LLP  
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Attorneys for  
Karen Golinski

I, Karen Golinski, declare and state:

1. I am a Staff Attorney employed by the U.S. Court of Appeals for the Ninth Circuit, located at 95-Seventh Street in San Francisco, California 94103. I submit this declaration in support of my complaint filed on October 2, 2008, under the Employment Dispute Resolution Plan of the U.S. Court of Appeals for the Ninth Circuit. I have personal knowledge of the facts set forth herein, and if called upon to do so, could and would competently testify thereto.

2. I have worked as a Staff Attorney for the U.S. Court of Appeals for the Ninth Circuit for 16 years. Prior to becoming a Staff Attorney, I worked as a Litigation Associate at the law firm of Howard Rice Nemerovski Canady Falk & Rabkin for two years. In November of 1990, I joined the Criminal Motions Unit of the U.S. Court of Appeals for the Ninth Circuit for five years, serving as a supervisor for the unit from January 1993 through December 1995. In March of 1996, I worked briefly in the San Francisco City Attorney's Office and then volunteered with a number of nonprofit organizations. In March of 1997, I returned to work for the U.S. Court of Appeals for the Ninth Circuit as a Motions Attorney. In July of 1999, I became a trainer for the Motions Unit and have continued to work in that capacity to this date. I have consistently received strong performance evaluations and positive feedback from my supervisors for my work

in the unit and the court. A true and correct copy of my 2007 Performance Evaluation is attached hereto as Exhibit A.

3. My spouse's name is Amy Cunninghis. Amy and I have been together for almost 19 years. We have joint bank accounts and have owned a house together in San Francisco for ten years. We are also listed as each other's beneficiaries under our life insurance policies. Amy and I registered as domestic partners with the City and County of San Francisco on October 6, 1995. We also registered as domestic partners with the Secretary of State for the State of California on July 19, 2003. Most recently, Amy and I were married under the laws of the State of California on August 21, 2008. We have a <sup>RED</sup><sub>ACT</sub>-year-old son, REDACTED, whom we adopted together.

4. I have paid for family coverage under the Blue Cross and Blue Shield Service Benefit Plan ("Blue Cross/Blue Shield") to cover Daniel's health insurance since his birth on March 18, 2003. After Amy and I were married, I submitted a "Health Benefits Election Form" to the Human Resources Department and attempted to add Amy as my spouse under my existing family coverage plan on September 2, 2008. A true and current copy of my Health Benefits Election Form is attached hereto as Exhibit B.

5. On September 11, 2008, I received an email from Ms. Renee Reynolds, a Human Resources Generalist for the United States Court of Appeals

for the Ninth Circuit. This email included an email exchange between Ms. Reynolds and Ms. Lynda Hamke, Human Resources Assistant with the Administrative Office of the U.S. Courts, stating that Amy would not be eligible for coverage under my family coverage plan. A true and correct copy of Ms. Reynolds's email is attached hereto as Exhibit C.

6. However, because my application had not been officially processed, it was subsequently resubmitted. On October 21, 2008, I received an email from Ms. Reynolds stating that my request to add Amy as my spouse under my family coverage plan would not be processed by the Administrative Office of the U.S. Courts because Amy and I are of the same gender. A true and correct copy of Ms. Reynolds's email is attached hereto as Exhibit D.

7. The rejection of my request has had a substantial negative financial impact on me and my family. I have been paying the full family coverage rate, but have not been receiving coverage for my entire family, as I would if Amy were a man. The monthly premium for my family coverage plan is currently \$183.32 (two non-postal, bi-weekly payments of \$91.66). In 2009, the monthly premium will go up to \$199.82 for the same family coverage. A true and current copy of my 2008 and 2009 Blue Cross and Blue Shield Service Benefit Plan rate information is attached hereto as Exhibit E.

8. Ms. Reynolds, a Human Resources Generalist for the United States Court of Appeals for the Ninth Circuit, has told me via email that if Amy were a man, I could add Amy to my existing family coverage for no additional charge. Moreover, I understand from Ms. Reynolds's email that it would not cost the government any additional money for me to add Amy to my existing family coverage plan. Under the government's current contract with Blue Cross/Blue Shield, the government pays the same amount regardless of how many dependent family members I have under the family coverage plan. A true and correct copy of Ms. Reynolds's email response is attached hereto as Exhibit F.

9. Because I cannot cover Amy under my health insurance plan, we have had to purchase separate, private individual health insurance for Amy at a significant cost. Amy is a Licensed Clinical Social Worker and is employed as a part-time contract employee for Adoption Connection of Jewish Family and Children's Services, a nonprofit organization, where she has worked since August 1, 2005. Amy has no medical coverage through her employment at Adoption Connection. As a result, we obtained a private individual health insurance plan for Amy with Blue Shield of California in October of 2003. The current monthly premium on this policy is approximately \$366.00. A true and correct copy of the most recent Blue Shield of California statement is attached hereto as Exhibit G.



10. The coverage for which Amy and I pay an additional \$366.00 per month is not as good as the coverage Amy would receive under my health insurance. Under her current insurance, Amy's co-payments and deductibles are significantly higher than what I pay under my health insurance plan. For example, Amy is required to pay a \$45 co-payment for a doctor visit, while I am only required to pay \$20 for a primary care visit and \$30 for a visit with a specialist. Amy has a \$2,000 deductible, and I do not have a deductible on my health insurance plan. Amy also has to pay 30% of the fees for all non-emergency services, while many of the same services do not cost anything under my plan, including X-rays, mammograms, and MRIs. In the case of hospitalization, Amy is required to pay \$250 to be admitted, in addition to 30% of all service, doctor, and medical procedure fees, whereas I am only required to pay \$100 for inpatient or \$40 for outpatient services per day. Amy must also pay \$100 for any emergency room visits and 30% of the fees for all service and physician visits, whereas I only have to pay \$50 for emergency room care and \$30 for urgent care. A true and current copy of a summary of benefits under the Blue Cross and Blue Shield Service Benefit Plan (Karen Golinski's coverage) is attached hereto as Exhibit H and under Blue Shield of California (Amy Cunninghis's coverage) is attached hereto as Exhibit I.

11. The FEHB Handbook that governs the health benefits that I receive states under *Employing Office Responsibilities* that “[y]our employing office is responsible for making decisions about whether a family member is eligible for coverage . . . . The carrier must accept your employing office’s decision on your family member’s eligibility.” In addition, under *General Eligibility for Coverage*, that handbook also states that spouses from common law marriages are eligible for coverage. A true and correct copy of an excerpt from the FEHB Handbook is attached hereto as Exhibit J.

12. I also understand from my Human Resources Department that the United States Court of Appeals for the Ninth Circuit currently has approximately 666 employees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3<sup>rd</sup> day of November, 2008, in San Francisco, California.

  
\_\_\_\_\_  
Karen Golinski

**EXHIBIT E**

## 2008 Rate Information for the Blue Cross and Blue Shield Service Benefit Plan

**Non-Postal** rates apply to most non-Postal employees. If you are in a special enrollment category, refer to the *Guide to Federal Benefits* for that category or contact the agency that maintains your health benefits enrollment.

**Postal Category 1** rates apply to certain career non-law enforcement Postal Service employees. **Postal Category 2** rates apply to other career non-law enforcement Postal Service employees. *PostalEASE*, the employee self-service system used for FEHB enrollment, automatically provides the applicable premium to individual employees. Career non-law enforcement employees may also refer to the *Guide to Federal Benefits for United States Postal Service Employees, RI 70-2*, to determine their rates.

Different rates apply and a special Guide is published for Postal Service Inspectors and Office of Inspector General (OIG) employees (see RI 70-2IN).

For further assistance, Postal Service employees should call:

Human Resources Shared Service Center  
1-877-477-3273, Option 5  
TTY: 1-866-260-7507

Postal rates do not apply to non-career postal employees, postal retirees, or associate members of any postal employee organization who are not career postal employees. Refer to the applicable *Guide to Federal Benefits*.


Type Of Enrollment	Enrollment Code	<i>Non-Postal Premium Biweekly Government Share</i>	<i>Non-Postal Premium Biweekly Your Share</i>	<i>Non-Postal Premium Monthly Government Share</i>	<i>Non-Postal Premium Monthly Your Share</i>	<i>Postal Premium Category 1 Biweekly Your Share</i>	<i>Postal Premium Category 2 Biweekly Your Share</i>
Standard Option Self Only	104	\$145.04	\$62.15	\$314.25	\$134.66	\$37.97	\$35.96
Standard Option Self and Family	105	\$329.30	\$145.14	\$713.48	\$314.47	\$90.26	\$85.68
Basic Option Self Only	111	\$117.41	\$39.13	\$254.38	\$84.79	\$19.57	\$17.61
Basic Option Self and Family	112	\$275.00	\$91.66	\$595.82	\$198.61	\$45.83	\$41.25

Non-Postal Premium Rates for the Federal Employees Health Benefits Program																
Fee-for-Service Plans (FFS)			2008 Total Biweekly Premium				2009 Biweekly premium rates				2008 Total Monthly Premium		2009 Monthly premium rates			
Plan - Option - Enrollment Code			2008 Total Biweekly Premium	2008 Total Biweekly Premium	Total Premium	Gov't Pays	Empl. Pays	Change in empl. payment	Total Premium	Gov't Pays	Empl. Pays	Change in empl. payment	Total Premium	Gov't Pays	Empl. Pays	Change in empl. payment
<b>APWU Health Plan</b>																
High Self	471		192.11	197.87	148.40	49.47	1.44		416.24	321.54	107.18	3.12	428.72	321.54	107.18	3.12
High Family	472		434.37	447.40	335.55	111.85	3.26		941.14	727.03	242.34	7.06	969.37	727.03	242.34	7.06
CDHP Self	474		155.40	155.40	116.55	38.85	.00		336.70	252.53	84.17	.00	336.70	252.53	84.17	.00
CDHP Family	475		349.60	349.60	262.20	87.40	.00		757.47	568.10	189.37	.00	757.47	568.10	189.37	.00
<b>Association Benefit Plan</b>																
High Self	421		203.15	212.30	155.66	56.64	-1.47		440.16	337.26	122.72	-3.19	459.98	337.26	122.72	-3.19
High Family	422		467.99	489.05	352.56	136.49	-2.20		1013.98	763.88	295.73	-4.77	1059.61	763.88	295.73	-4.77
<b>Blue Cross and Blue Shield Service Benefit Plan</b>																
Standard Self	104		207.19	225.84	155.66	70.18	8.03		448.91	337.26	152.06	17.40	489.32	337.26	152.06	17.40
Standard Family	105		474.44	517.14	352.56	164.58	19.44		1027.95	763.88	356.59	42.12	1120.47	763.88	356.59	42.12
<b>Blue Cross and Blue Shield Service Benefit Plan</b>																
Basic Self	111		156.54	170.66	128.00	42.66	3.53		339.17	277.32	92.44	7.65	369.76	277.32	92.44	7.65
Basic Family	112		366.66	399.66	299.75	99.91	8.25		794.43	649.45	216.48	17.87	865.93	649.45	216.48	17.87
<b>Foreign Service Benefit Plan</b>																
High Self	401		193.61	193.61	145.21	48.40	-.17		419.49	314.62	104.87	-.37	419.49	314.62	104.87	-.37
High Family	402		460.11	478.51	352.56	125.95	-4.86		996.91	763.88	272.89	-10.54	1036.77	763.88	272.89	-10.54
<b>GEHA Benefit Plan</b>																
High Self	311		236.51	247.15	155.66	91.49	.02		512.44	337.26	198.23	.04	535.49	337.26	198.23	.04
High Family	312		514.74	537.90	352.56	185.34	-.10		1115.27	763.88	401.57	-.22	1165.45	763.88	401.57	-.22
Standard Self	314		133.11	137.10	102.83	34.27	.99		288.41	222.79	74.26	2.16	297.05	222.79	74.26	2.16
Standard Family	315		302.49	311.58	233.69	77.89	2.27		655.40	506.32	168.77	4.92	675.09	506.32	168.77	4.92
<b>GEHA High Deductible Health Plan</b>																
HDHP Self	341		175.76	175.76	131.82	43.94	.00		380.81	285.61	95.20	.00	380.81	285.61	95.20	.00
HDHP Family	342		401.44	401.44	301.08	100.36	.00		869.79	652.34	217.45	.00	869.79	652.34	217.45	.00
<b>Mail Handlers Benefit Plan</b>																
Standard Self	454		197.27	215.52	155.66	59.86	7.63		427.42	337.26	129.70	16.53	466.96	337.26	129.70	16.53
Standard Family	455		440.47	481.22	352.56	128.66	17.49		954.35	763.88	278.76	37.89	1042.64	763.88	278.76	37.89
<b>Mail Handlers Benefit Plan Consumer Option</b>																
HDHP Self	481		135.22	139.28	104.46	34.82	1.02		292.98	226.33	75.44	2.20	301.77	226.33	75.44	2.20

**EXHIBIT F**



Renee  
Reynolds/CA09/09/USCOUR  
TS  
10/21/2008 04:00 PM

To :Karen Golinski/CA09/09/USCOURTS@USCOURTS  
cc  
bcc  
Subject Re: question 

History:

 This message has been replied to and forwarded.

Hi Karen -

Health insurance coverage has only two categories of coverage: self only and self and family. Both the government and the employee pays the same amount to cover an employee with one dependent on their plan or ten dependents. Every health plan agrees to cover "self and family" at the same rate no matter the number of dependents on the plan.

thanks for asking -

Renee

Karen Golinski/CA09/09/USCOURTS

Karen  
Golinski/CA09/09/USCOURT  
S  
10/21/2008 03:38 PM

To Renee Reynolds/CA09/09/USCOURTS@USCOURTS  
cc  
Subject question

Hi Renee,

I have a question that you may or may not be able to answer. I already have a family plan with Blue Cross/Blue Shield because my son has been insured through my plan for the past 5-1/2 years. So if I married a man and wanted to add my husband, I would be able to do so and it would not cost me any extra money. Does it cost the federal government extra money to add a spouse to an already existing family plan? Thanks for any information that you can provide.

Karen

**EXHIBIT 2**



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**SUBMITTED UNDER THE PROCEDURES OF THE  
EMPLOYMENT DISPUTE RESOLUTION PLAN FOR THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

---

*In re Karen Golinski*

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**DECLARATION OF KENNETH SOGABE IN SUPPORT OF KAREN  
GOLINSKI'S OCTOBER 2, 2008 EDR COMPLAINT**

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Hearing Date: Nov. 12, 2008  
Time: 8:30 a.m.  
Hearing Officer: Hon. Alex Kozinski

---

MORRISON & FOERSTER LLP  
JAMES R. MCGUIRE (CA SBN 189275)  
RITA F. LIN (CA SBN 236220)  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: 415.268.7000  
Facsimile: 415.268.7522

Attorneys for  
Karen Golinski

I, Kenneth Sogabe, declare and state:

1. I am a Staff Attorney employed by the U.S. Court of Appeals for the Ninth Circuit, located at 95 Seventh Street in San Francisco, CA 94103. I submit this declaration in support of Karen Golinski's complaint filed under the Employment Dispute Resolution Plan of the U.S. Court of Appeals for the Ninth Circuit on October 2, 2008. I have personal knowledge of the facts set forth herein, and if called upon to do so, could and would competently testify thereto.

2. I have been employed as a Staff Attorney in the Motions Unit of the Office of Staff Attorneys for approximately one year, since September 17, 2007. I work in the same unit and have the same title as the complainant, Karen Golinski. I graduated from law school in 2001. Prior to my current position, I worked for a British recruitment company in Tokyo, Japan for one and a half years. Before that, I worked as a prosecutor for the United States Department of Homeland Security in San Francisco, CA for four and a half years.

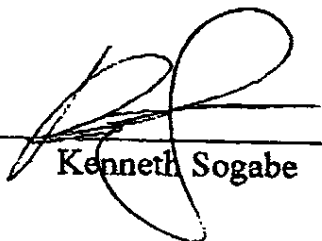
3. I have been married since November 17, 2000 and have a three-year old daughter with my spouse. My spouse and I are both 35 years of age and do not have any serious illnesses or disabilities that would affect our health insurance coverage or monthly premiums. My spouse is an Information Technology Contractor with Pacific, Gas & Electric Co. ("PG&E") and does not receive any health insurance coverage through her employer.

4. As soon as I began work for the United States Court of Appeals for the Ninth Circuit, I applied to have both my spouse and my daughter covered under a family coverage health insurance plan obtained through my employer. I completed the "Health Benefits Election Form," which stated that I wanted my wife and daughter to be covered under the plan, and provided their names, social security numbers, date of birth, sex, and a relationship code. I was not required to provide any additional information. Both my wife and daughter received coverage shortly thereafter on October 1, 2007.

4. Our family coverage plan has been through United Health Care (Pacific Care). Our plan includes medical, dental, and vision insurance for the three of us. My monthly premium is currently \$107.25 for full family coverage. The government pays \$321.76 per month for my family coverage plan. My co-payments are \$10 for regular doctor visits and \$30 for a visit with a specialist.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of October, 2008, in San Francisco, California.

  
\_\_\_\_\_  
Kenneth Sogabe