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5
6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **IN AND FOR THE COUNTY OF**
8

9) Case No.:
10)
11) Motion To Take Judicial Notice;
12) Points and Authorities
13) [Evid 452, 453]
14)
15) Date:
16) Time:
17) Dept:
18) Action filed:
19) Trial Date:
20)
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23)
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28)

29 TO THE HONORABLE _____ JUDGE OF THE ABOVE ENTITLED COURT:

30 Petitioner, under the provisions of Evidence Code Sections 452 and
31 453, requests that this court take judicial notice of the papers and
32 pleadings filed in this case, and certain historical documents from the
33 legislative history of CCP 366.3, attached as Exhibit A and B, to wit, the
34 Senate Judiciary Committee's Analysis of AB 1491 of 2000 and the State Bar
35 Estate Planning, Trust and Probate Law Section Legislative Proposal re:
36 Contracts to make Wills or Trusts, approved 7/10/1999.

37 This request is based on the following Points and Authorities.

38 Dated:

Attorney for Petitioner

POINTS AND AUTHORITIES

Table of Contents

Page

I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE LEGISLATIVE HISTORY OF AB 1491 OF 2000.....	3
A. <u>The Law of Judicial Notice for Legislative Documents</u>	3
B. <u>Legislative History of CCP 366.3</u>	6
II. CONCLUSION.....	9

Table of Statutes

Code of Civil Procedure Section 1859.....	5
Evidence Code Section 452(c).....	4

Table of Cases

<i>Alch v. Superior Court (Time Warner Entertainment)</i> (2004) 122 Cal.App.4 th 339, 364 fn.11 and 12.....	5
<i>American Financial Services Assn. V. City of Oakland</i> (2005) 34 Cal.4 th 1239, 1257.....	7
<i>BGJ Associates v. Superior Court</i> (1999) 75 Cal.App.4 th 952, 955.....	8
<i>California Teacher's Assn. V. Governing Board of Rialto United School District</i> (1997) 14 Cal.4 th 627.....	5
<i>Colapinto v. County of Riverside</i> (1991) 230 Cal.App.3d 147,151.....	9
<i>Conservatorship of Davidson</i> 47 Cal.3d 456,465.....	8
<i>In Re J.W.</i> (2002) 29 Cal.4 th 200, 211.....	7
<i>Delany v. Baker</i> (1999) 20 Cal.4 th 23, 30.....	4
<i>Drouet v. Superior Court (Broustis)</i> (2003) 31 Cal.4 th 583, 598.....	5
<i>Four Star Electric, Inc. v. F & H Construction</i> (1992) 7 Cal.App.4 th 1375, 1379.....	4
<i>Hutnick v. U.S. Fidelity and Guaranty Co.</i> (1988).....	7
<i>Kaufman & Broad Communities Inc. v. Performance Plastering, Inc.</i> (2005) 133 Cal.App.4 th 26, 31.....	6
<i>Ketchum v. Moses</i> (2001) 24 Cal.4 th 1122, 1136 fn.1.....	5, 8
<i>Mangini v. R.J. Reynolds Tobacco Co.</i> (1994) 7 Cal.4 th 1057, 1063-1065.....	5

<i>Parnell v. Adventist Health System/West</i> (2005) 35 Cal.4 th 595, 604.....	7
<i>People v. Connor</i> (2004) 115 Cal.App.4 th 669,681.....	5
<i>People v. Ledesma</i> (1997) 16 Cal.4 th 90, 98 - 100.....	7
<i>People v. Snyder</i> (2000) 22 Cal.4 th 304, 315 fn.5.....	4
<i>Post v. Prati</i> (1979) 90 Cal.App.3d 626, 634.....	4
<i>Quelimane Company Inc. v. Stewart Title Guaranty Co.</i> (1998) 19 Cal.4 th 26, 46, fn.9.....	4
<i>Sharon S. v. Superior Court</i> (Annette F.) (2003) 31 Cal.4 th 417, 440 fn.18.....	4
<i>Smith v. Rae-Venter Law Group</i> (2002) 29 Cal.4 th 345,359 fn.7.....	7
<i>Whaley v. Sony Computer America, Inc.</i> (2004) 121 Cal.App.4 th 479,487.....	5
<i>Woodman v. Superior Court</i> (1987) 196 Cal.App.3d 407, 414.....	8

I

THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE LEGISLATIVE HISTORY OF AB 1491 OF 2000

The following Points and Authorities deal briefly with the law of Judicial Notice of Legislative Documents and specifically with two Analyses of AB 1491 of 2000, the bill which added CCP Section 366.3. A full Points and Authorities on Judicial Notice of Legislative Documents is beyond the scope of this motion, but is available online at the Legislative Intent Service (LIS) website: www.legintent.com/pointsauthorities.php, and is incorporated herein by this reference.

A. The Law of Judicial Notice for Legislative Documents.

1. Discretionary Judicial Notice. Judicial notice may be taken of "official acts of the legislative, executive and judicial departments of the United States, or any state of the United States. Evidence Code Section 452 (c); *People v. Snyder* (2000) 22 Cal.4th 304, 315 fn.5; *Delany v. Baker* (1999) 20 Cal.4th 23, 30; *Post v. Prati* (1979) 90 Cal.App.3d 626, 634.

1 2. Discretionary Judicial Notice made Mandatory. Under Evidence
2 Code Section 452(c) a court has discretion to take judicial notice.
3 Evidence Code Section 453 provides the means to make judicial notice
4 mandatory. For mandatory status a party must give "each adverse party
5 sufficient notice of the requests, through the pleadings or otherwise, to
6 enable such adverse party to prepare to meet the request;..." See *Four*
7 *Star Electric, Inc. v. F & H Construction* (1992) 7 Cal.App.4th 1375, 1379.

8 This request is made _____ days prior to the hearing on the Request.
9 This amount of time should provide Respondents' counsel with more than
10 sufficient time to "prepare to meet the request." Petitioner, therefore,
11 requests that the court consider their response to this Request to take
12 Judicial Notice as mandatory.

13 3. No Judicial Notice Needed for Published Documents. Despite, or
14 perhaps as a result of, the general statutory rule and the magnitude of
15 case law support for judicial notice of legislative documents, several
16 recent decisions of the California Supreme Court have found formal judicial
17 notice unnecessary for certain types of documents. For these documents,
18 known as "published" legislative documents, a simple citation is sufficient
19 to bring them to a court's attention. *Sharon S. v. Superior Court* (Annette
20 F.) (2003) 31 Cal.4th 417, 440 fn.18; *Quelimane Company Inc. v. Stewart*
21 *Title Guaranty Co.* (1998) 19 Cal.4th 26, 46 fn.9

22 "Published" legislative history appears to include several common
23 types of documents publicized by the Legislature in book format or on the
24 web. One of the documents subject to this motion is of this common type,
25 the Senate Judiciary Committee Analysis of AB 1491 of 2000. This analysis
26 is also available on the official California Legislature website:
27 www.leginfo.ca.gov.
28

1 4. The Judicial Function. Whether the judicial notice is formal or
2 informal, the court's mission is the same. Under CCP 1859, "In the
3 construction of a statute the intention of the Legislature...is to be
4 pursued, if possible. Or, as the California Supreme Court has stated it,
5 the "touchstone of statutory interpretation" is the "probable intent of the
6 Legislature....It cannot be too often repeated that due respect for the
7 political branches of our government requires us to interpret the laws in
8 accordance with the expressed intention of the Legislature." *California*
9 *Teacher's Assn. V. Governing Board of Rialto United School District* (1997)
10 14 Cal.4th 627, 632 - 633.

11 5. Relevance of the Documents. Whether the judicial notice
12 requested is mandatory or discretionary, formal or informal, legislative
13 documents must be relevant to the construction of the statute. *Ketchum v.*
14 *Moses* (2001) 24 Cal.4th 1122, 1136 fn.1; *Mangini v. R.J. Reynolds Tobacco*
15 *Co.* (1994) 7 Cal.4th 1057, 1063-1065.

16 Petitioner discusses the general relevance of the two documents
17 below, and then treats them more specifically in its Points and Authorities
18 in Support of Summary Judgment.

19 6. Authentication. Although there is no requirement under judicial
20 notice for authentication as there is for authentication of writings
21 introduced into evidence, the Legislative Intent Service documents have
22 been authenticated by the Declaration of attorney Filomena Yeroshek. See
23 Exhibit C attached. Declarations of the attorneys of Legislative Intent
24 Service have been relied upon in the past for this purpose. See *People v.*
25 *Connor* (2004) 115 Cal.App.4th 669,681 fn.3; *Whaley v. Sony Computer America,*
26 *Inc.* (2004) 121 Cal.App.4th 479,487 fn.4.

27 7. Complete or Partial Histories. Courts differ on their preference
28 for complete or partial legislative histories. The California Supreme

1 Court and the Second District Court of Appeal appear to want entire
2 histories. *Drouet v. Superior Court (Broustis)* (2003) 31 Cal.4th 583, 598;
3 *Alch v. Superior Court (Time Warner Entertainment)* (2004) 122 Cal.App.4th
4 339, 364 fn.11 and 12. The Third District Court of Appeal, on the other
5 hand, in a recent case on this issue directed submission of individual
6 documents. *Kaufman & Broad Communities Inc. v. Performance Plastering,*
7 *Inc.* (2005) 133 Cal.App.4th 26, 31.

8 Petitioner in this case has attempted to satisfy both approaches:
9 Petitioner specifically asks judicial notice for the two documents it finds
10 most relevant, but makes the entire legislative history available for
11 review, download and judicial notice. However, because of the volume of
12 documents in the LIS collection (204 pages), and the variety of subject
13 matter and code sections discussed, Petitioner has not asked the court to
14 take judicial notice of the entire history.

15 To view the entire legislative history of AB 1491 take the following
16 steps: 1) Go to <http://store.legintext.com>; 2) Select "Login" under
17 "Account Manager"; 3) Enter your Email Address as the Username and _____
18 as the Password; 4) Click on "Submit"; 5) Opposite AB 1491 Left click on
19 "Proceed to Download Page"; 6) Left click on "[Download Complete Document]"
20 to view the documents, or right click on "[Download Complete Document]" to
21 download them to your hard drive. (This may take 30 seconds or more.)

22 **B. Legislative History of CCP 366.3**

23 1. AB 1491 of 2000. Section 366.3 was added to the Code of Civil
24 Procedure in 2000 through legislative passage of AB 1491 of that year. As
25 can be seen from the legislative documents attached to this Request, the
26 bill was introduced at the request of the State Bar Estate Planning, Trusts
27 and Probate Section. AB 1491 was an omnibus bill dealing with many
28 subjects of interest to the section. Only certain parts of the bill and

1 the analyses dealing with the bill deal with the proposed CCP section
2 366.3.

3 2. Section 366.3. The statute of limitations embodied in section
4 366.3 was a part of the AB 1491 as it was introduced on February 26, 1999.
5 Although the bill was amended 3 times during legislative consideration,
6 Section 366.3 was not changed. The Governor signed the bill on May 5,
7 2000. See the "published" Assembly Final History of AB 1491 (Document #2 in
8 the LIS Collection.)

9 3. Judicial Notice of Specific Documents. The two most detailed
10 analyses of Section 366.3 can be found in the Senate Judiciary Committee
11 Analysis of the bill and the State Bar Section Legislative Proposal found
12 in the Senate committee file. It is these documents which are attached to
13 this Request as Exhibits A and B, and which Petitioner submits are now
14 subject to mandatory Judicial Notice. There is ample case law authority
15 for the court to consider these documents.

16 4. Senate Judiciary Committee Analysis. Judging from the volume of
17 cases, Assembly and Senate committee analyses are probably the most
18 frequently judicially noticed legislative document. See for example just
19 the following **very short** list of California Supreme Court cases: *Smith v.*
20 *Rae-Venter Law Group* (2002) 29 Cal.4th 345,359 fn.7; *People v. Ledesma*
21 (1997) 16 Cal.4th 90, 98 - 100; *American Financial Services Assn. V. City of*
22 *Oakland* (2005) 34 Cal.4th 1239, 1257; *Parnell v. Adventist Health*
23 *System/West* (2005) 35 Cal.4th 595, 604.

24 A more complete list of over 100 California Supreme Court cases
25 relying on legislative committee analyses can be found in the Legislative
26 Intent Service, Inc. Points and Authorities found at
27 www.legintent.com/pointsauthorities.php.
28

1 Specifically as to the Senate Judiciary Committee Analysis, the
2 Supreme Court stated in *In re J.W.* (2002) 29 Cal.4th 200, 211:

3 "To determine the purpose of legislation, a court may
4 consult contemporary legislative committee analyses of that
5 legislation, which are subject to judicial notice. [Citations]
6 As this court has recognized,... these materials, including
7 analyses of both the Senate and Assembly committees on
8 Judiciary, show an intent to codify...."

9 Also instructive is the decision in *Hutnick v. U.S. Fidelity and*
10 *guaranty Co.* (1988) 47 Cal.3d 456,465, where the court stated:

11 "The Court of Appeal declined to consider this report,
12 (Assembly Committee on Judiciary) stating that 'the views of a
13 committee staff member are not appropriate legislative
14 history.' However it is well established that reports of
15 legislative committees and commissioners are part of a
16 statute's legislative history and may be considered when the
17 meaning of a statute is uncertain. [Citations]...The rationale
18 for considering committee reports when interpreting statutes is
19 similar to the rationale for considering voter materials when
20 construing an initiative measure. In both cases it is
21 reasonable to infer that those who actually voted on the
22 proposed measure read and considered the materials presented in
23 explanation of it, and that the materials therefore provide
24 some indication of how the measure was understood at the time
25 by those who voted to enact it."

26 5. State Bar Documents. Also of great interest to the courts has
27 been the bill Sponsor's position papers regarding the purpose of the
28 proposed statutory language, particularly when the sponsor is an
established public or quasi-public organization such as the California
State Bar.

29 An example of an appellate court decision citing and quoting from a
30 State Bar Estate Planning, Trust and Probate Law Section Legislative
31 Proposal can be found at *Conservatorship of Davidson* (2003) 113 Cal.App.4th
32 1035, 1050. There the court said, "the original proponent of the proposal
33 for the amendment was the Estate Planning Trust and Probate Law Section of
34 the State Bar of California in its annual omnibus bill. In a document
35 prepared by that Section discussing the proposed amendment, the 'Purpose'

1 of the amendment was described as...(Cal. State Bar Estate Planning, Trust &
2 Probate Law Section, Legislative Proposal, Assembly Bill No. 1172,
3 excerpted from Senate Com. on Judiciary legislative bill file)"

4 A partial list of additional decisions relying on State Bar documents
5 is as follows:

6 The California Supreme Court case, *Ketchum v. Moses*
7 (2001) 24 Cal.4th 1122, 1136 fn.1, and Second District Court of
8 Appeal cases, *BGJ Associates v. Superior Court* (1999) 75
9 Cal.App.4th 952, 955 and *Woodman v. Superior Court* (1987) 196
10 Cal.App.3d 407, 414.

11 II

12 CONCLUSION

13 Based on the above cited statutes and cases, Petitioner respectfully
14 requests the court to take judicial notice of the legislative documents
15 attached and to consider its actions to be mandatory.
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