

In the Supreme Court of the State of California

JANIS S. MCLEAN,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA, ET AL.,

**Defendants and
Respondents**

Case No. S221554

**SUPREME COURT
FILED**

MAY 26 2015

Frank A. McGuire Clerk

Court of Appeal, Third Appellate District, Case No. C074515
Superior Court of California, County of Sacramento,
Case No. 34-2012-00119161-CU-OE-GDS
Honorable Raymond M. Cadei

Deputy

**DEFENDANT'S MOTION REQUESTING JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF REQUEST FOR JUDICIAL NOTICE**

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MOTION REQUESTING JUDICIAL NOTICE

Pursuant to Evidence Code sections 452, 453, and 459, Government Code section 9080, and Rule 8.252(a) of the California Rules of Court, Defendant the State of California moves this Court to take judicial notice of certain legislative materials cited in Defendant's Reply Brief on the Merits.

This motion is made on the grounds that the legislative history materials set forth in this motion are relevant to the issues in the appeal and that this Court is authorized to take judicial notice of the materials set forth in this motion based upon Government Code section 9080, Rule 8.252 of the California Rules of Court, and Evidence Code sections 452, 453, and 459.

This motion is based on this Motion and its accompanying Memorandum of Points and Authorities, and upon the Declarations of William T. Darden and Joel Tochtermann, filed herewith, the concurrently filed Reply Brief on the Merits, and the record on appeal in this case.

Dated: May 22, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
SUSAN SLAGER
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FIEL D. TIGNO
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WILLIAM T. DARDEN
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California*

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT’S REQUEST FOR JUDICIAL
NOTICE**

INTRODUCTION

The State of California respectfully requests that the Court take judicial notice of relevant legislative history materials relating to the Legislature’s passage of Assembly Bill (“A.B.”) 2410 (1999-2000 Reg. Sess.), which amended Labor Code section 220 and thereby made certain of the prompt payment provisions of the Labor Code, including sections 201 through 203, applicable for the first time to state employees and their state employers. (Stats.2000, c.885 (A.B. 2410) §1.)¹ While, as set forth below, Defendant asks the Court to take judicial notice of only a limited number of relevant legislative history documents regarding A.B. 2410, it nevertheless also attaches, for the Court’s convenience, the complete legislative history of that assembly bill, should this Court require it.

In the case at bar, Defendant below (the State of California acting by and through the State Controller) asked the trial court to take judicial notice of a limited number of relevant documents from the legislative history of A.B. 1684, a different bill, enacted in 2002. Those materials were relevant to Defendant’s argument regarding a “retiree” not being a person who had “quit” or was “discharged” for purposes of section 203. McLean, in her Answer Brief on the Merits, filed April 3, 2015, asks this Court to consider language from one such A.B. 1684 document, an enrolled bill report, as evidence of the Legislature’s intent, in a *different* measure, A.B. 2410, which had been enacted several years earlier. McLean asserts that the A.B. 1684 report demonstrates that the Legislature intended, in A.B. 2410, to

¹ Section 201 through 203 had previously applied only to the private sector. (Stats.1937, c.90, p.200, §220.)

impose liability under section 203 on a unified “State of California” employer instead of upon the individual state employee’s appointing power. (Answer Brief, at p.12.) Defendant believes, however, that the actual legislative history documents that directly relate to A.B. 2410 will demonstrate to this Court that the opposite is true, and that the Legislature understood that the appointing power was the “employer” that would be responsible for compliance with sections 201 through 203.

This Court’s resolution of the issues upon which it granted review may well hinge on issues of statutory construction and interpretation of the relevant statutes, which include section 201, 202, 203 and 220. The documents submitted herewith are relevant to that issue, are properly subject to judicial notice, and will be helpful to the Court in properly and correctly resolving the issues before it. (Gov. Code § 9080; Evid.Code, §§ 452, 459; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45 & fn. 9 [courts will take judicial notice of statutory legislative history in order to ascertain purpose and meaning of ambiguous statute]; *Larson v. State Personnel Bd.* (1994) 28 Cal.App.4th 265, 270 & fn. 2 [appellate courts have discretion to take judicial notice of any matter specified in Evidence Code section 452, including official acts of the legislative and executive departments].)

Accordingly, Defendant respectfully requests that its request be granted.

DISCUSSION

I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE REQUESTED LEGISLATIVE HISTORY MATERIALS

The legislative history materials that are the subject of this motion are relevant to the appeal because they provide important evidence regarding the Legislature’s intent in making the prompt payment laws, found in Labor Code sections 201, 202 and 203 applicable to state agencies,

which is one of the two issues upon which the Court granted review. (Cal. Rules of Court, rule 8.252(a)(2)(A).) As to that issue, this Court will review whether the Legislature, in making Labor Code sections 202 and 203 applicable to state agencies (Stats.2000, c.885 (A.B. 2410), § 1) intended to extend “employer” liability for violations of section 203 to individual employing state agencies, as contended by Defendant, or alternatively, whether, as McLean contends, it intended the “employer” to be the entire “State of California” consisting of every employing agency, department, board, commission, and other appointing power in all branches of state government.

In this case, Defendant below (the State of California acting by and through the State Controller) asked the trial court to take judicial notice of a limited number of relevant documents from the legislative history of A.B. 1684 (a bill enacted in 2002) that were relevant to Defendant’s argument regarding a “retiree” not being a person who had “quit” or was “discharged” for purposes of section 203. (AA000028-000029, and note 5; AA000042-000066.) In her Answer Brief on the Merits filed with this Court, McLean contends that one of those documents, an Enrolled Bill Report drafted by the Department of Personnel Administration in connection with separate legislation (Stats.2002, c.40 (A.B. 1684), § 7) several years later (AA000057-000062), demonstrates that the Legislature, when it enacted A.B. 2410 two years *earlier*, intended for liability to run against a unified state employer entity, and not against the appointing power. (Answer Brief on the Merits, at p.12.)

In its Reply Brief on the Merits submitted herewith, Defendant contends that McLean’s assertion about A.B. 2410 in her Answer Brief is incorrect. Instead, Defendant asserts that the full legislative history regarding A.B. 2410 itself demonstrates that the Legislature in fact understood that the wage payment liability being extended to state

employers was intended to run against the state employee's employing agency, often referred to as an "appointing power." (Reply Brief on the Merits, at pp.6-7.)

Although the documents upon which Defendant seeks judicial notice were not submitted to the trial court (Rule 8.252(a)(2)(B)) and are being submitted here in response to an assertion in McLean's Answer Brief on the Merits,² they are nevertheless subject to judicial notice on appeal under Evidence Code section 452. (Rule 8.252(a)(2)(c).) (See Evid. Code, § 459 [reviewing courts may take notice of any matter specified in Evidence Code section 452].) Evidence Code section 452 authorizes judicial notice of official acts of the Legislature. (Evid. Code, § 452, subd. (c).) Thus, courts have often taken judicial notice of legislative history materials, as long as the materials are relevant to an issue in the case. (See, e.g., *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929-934, fn. 10, fn. 19 [assembly floor analysis and enrolled bill report] ; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1 [granting request for judicial notice of legislative history materials because they "are relevant to a material issue in this case"].) Judicial notice of relevant legislative history may be taken "to resolve ambiguities and uncertainties concerning the purpose and meaning of a statute." (*People v. Connor* (2004) 115 Cal.App.4th 669, 682, fn. 3.)

While Defendant submits, for the Court's convenience, the non-voluminous, complete legislative history of A.B 2410 (attached as Exhibit

² While Defendant has opposed McLean's attempts, in connection with her Answer Brief, to obtain judicial notice by this Court of facts contained in a collective bargaining agreement and in a W-2 issued to her, it respectfully submits that, unlike the extrinsic materials submitted by McLean, which do not shed light on Legislative intent, the legislative history materials it submits to this Court will be helpful in assisting this Court to determine the intent of the Legislature regarding the statutes under examination in this case.

A to the Declaration of Joel Tochterman In Support of Defendant's Request for Judicial Notice ["Tochterman Decl."]) it requests, for the reasons set forth below, that this Court take judicial notice of the following excerpted documents from that legislative history (attached as Exhibits A-H to the Declaration of William T. Darden In Support of Defendant's Request for Judicial Notice ["Darden Decl."]).³

**A. Governor's Chaptered Bill File on A.B. 2410;
Department of Personnel Administration,
Enrolled Bill Report, September 27, 2000.**

This document (attached as Exhibit A to the Darden Decl., and also located at pp. 109-112 of the Tochterman Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The enrolled bill report, prepared by the Department of Personnel Administration, recognizes that, by subjecting the "State, as an employer," to the prompt payment laws, it would require the Division of Labor Enforcement "to seek penalties against *other State departments* for wage payment violations." (emphasis added.) It notes that the scenario where

³ This case arose in the jurisdiction of the Third District Court of Appeal, which strongly cautions counsel to submit individual legislative documents, and not the entire legislative history. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 29 [counsel "must stop" submitting "every scrap of paper" generated in the legislative process, as gathered by professional legislative intent services].) However, this Court has on occasion questioned reliance by counsel upon "isolated fragments" of an Act's legislative history. (*Drouet v. Superior Court* (2003) 31 Cal.4th 583, 598 [counsel pointed the Court to a single paragraph in a Senate committee analysis]; *People v. Cole* (2006) 38 Cal.4th 964, 989 [performing "complete review" of "voluminous legislative history"].) Therefore, for the Court's convenience, Defendant submits its entire compiled history of A.B. 2410, in the event the Court desires to review it, although it also submits to this Court, and asks for notice to be taken only of individual documents it believes to be most relevant to the appeal.

“one State entity is prosecuting *another*” (i.e., another state entity) (emphasis added) is costly and unproductive. Judicial notice is appropriate, as the document demonstrates an awareness, communicated to the Governor in connection with the enrolled bill, that individual state departments would bear the responsibility for making prompt wage payments to their employees, and would be held accountable for any violations. (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may “be important in the subsequent interpretation of laws enacted in the Legislature”]; *Elsner v. Uveges*, 34 Cal.4th 915, 934, fn. 19 [taking judicial notice of enrolled bill report]; *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 377 [examining author’s letter to the Governor, various committee analyses of the bill, and an enrolled bill memorandum, and finding that they all consistently described the intent of the bill in the same way].)

B. Governor’s Chaptered Bill File on A.B. 2410; Enrolled Bill Memorandum, A.B. 2410, Dated September 16, 2000 and Department of Finance Enrolled Bill Report, September 15, 2000.

These documents (attached as Exhibit B to the Darden Decl., and also located at pp. 106, 113-114 of the Tochtermann Decl.) provide relevant information regarding legislative intent in enacting A.B. 2410. The enrolled bill memorandum, and the enrolled bill report prepared by the Department of Finance, recognize that the bill would require “state departments and agencies” to issue pay warrants within specified time periods after termination or resignation, subjecting the state to penalties and resulting in minor costs to “state agencies” to process payroll documents and to meet the time frames related to the payment of wages. The enrolled bill report recognizes that “[s]tate departments” do not always issue pay advances if a pay warrant is withheld. It also notes that the bill affords “State employees” some of the same protections as employees of “private

employers.” Judicial notice is appropriate, as the document demonstrates legislative awareness that departments bear responsibility for making prompt wage payments to their employees. It also demonstrates the legislative distinction being made between “state” and “private sector” employers when using terms like “state employer.” (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may “be important in the subsequent interpretation of laws enacted in the Legislature”]; *Elsner v. Uveges*, 34 Cal.4th 915, 934, fn. 19 [taking judicial notice of enrolled bill report]; *Lantzy v. Centex Homes*, 31 Cal.4th 363, 377 [examining author’s letter to the Governor, various committee analyses of the bill, and an enrolled bill memorandum, and finding that they all consistently described the intent of the bill in the same way].)

**C. Assembly Committee on Labor and Employment
File: Assembly Committee on Labor and
Employment Analysis, A.B. 2410, Hearing Date:
April 12, 2000; Background Information Request
and Background Information Sheet.**

This document (attached as Exhibit C to the Darden Decl., and also located at pp. 44-46, 54-57 of the Tochterman Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The Assembly Committee on Labor and Employment analysis and background information sheet notes that the reason for the bill includes the fact that state “departments” do not issue advances to employees if the regular payroll is late. It also notes that terminated and resigned employees are sometimes not paid immediately, and that since “private sector” employees are protected in such situations, state workers should be protected as well. The analysis further notes that another bill requiring timely payment of overtime wages requires such payment by the employee’s “state agency employer.” Judicial notice is appropriate, as the document demonstrates legislative awareness, by Assembly Committee on Labor and Employment,

during deliberations on the bill, that departments bear responsibility for prompt payments of wages to their employees. It also demonstrates the legislative distinction being made between “state” and “private sector” employers when using terms like “state employer.” (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may “be important in the subsequent interpretation of laws enacted in the Legislature”]; *People v. Ansell* (2001) 25 Cal.4th 868, 881-82 [relying upon analysis of Assembly Bill by Senate and Assembly Committee on Public Safety]; *Elsner v. Uveges*, 34 Cal.4th 915, 934, fn. 19 [relying on assembly floor analysis and enrolled bill report].)

D. Senate Committee on Appropriations File on A.B. 2410: Appropriations Committee Fiscal Summary, A.B. 2410, as amended April 25, 2000, Hearing Date: August 23, 2000.

This document (attached as Exhibit D to the Darden Decl., and also located at p. 73 of the Tochtermann Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The fiscal summary explains that the bill grants “state employees” rights that are presently granted to “private sector employees.” Judicial notice is appropriate, as the document demonstrates the legislative distinction being made between “state” and “private sector” employees and employers when using terms like “state employee” and “state employer.” (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may “be important in the subsequent interpretation of laws enacted in the Legislature”]; *People v. Ansell*, 25 Cal.4th 868, 881-82 (2001) [relying upon analysis of Assembly Bill by Senate and Assembly Committee on Public Safety]; *Elsner v. Uveges*, 34 Cal.4th 915, 934, fn. 19 [relying on assembly floor analysis and enrolled bill report].)

**E. Senate Rules Committee File on A.B. 2410:
Department of Finance Bill Analysis, A.B. 2410, as
Amended April 25, 2000, Dated August 2, 2000.**

This document (attached as Exhibit E to the Darden Decl., and also located at pp. 93-95 of the Tochterman Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The Department of Finance analysis was prepared on August 2, 2000, and considered by a Legislative Committee, the Senate Rules Committee, while the bill was still under consideration. (See Tochterman Decl., Ex. A, at p. 26-27 [Assembly Final History, A.B. 2410, 1999-2000 Regular Session].) The analysis recognizes that while the bill deletes an exemption for “the State, as an employer” that the bill would by so doing, require “state departments and agencies to issue pay warrants within specified time periods after termination or resignation” and that “state agencies” would incur additional costs to process payroll documents and would put additional pressure on state agencies and departments to meet the time frames related to the payment of wages. It recognizes that by requiring the “State” to meet specific timeframes, the bill would result in significant costs to “all agencies.” Judicial notice is appropriate, as the document demonstrates legislative awareness that departments bear responsibility for making prompt wage payments to their employees. It also demonstrates the legislative distinction being made between “state” and “private sector” employers when using terms like “state employer.” (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may “be important in the subsequent interpretation of laws enacted in the Legislature”]; *People v. Superior Court (Mem'l Med. Ctr.)* (1991) 234 Cal. App.3d 363, 380 [report prepared by Legislative Service that was found in Senate Judiciary Committee files, demonstrated knowledge on the part of

the Legislature of the issues discussed in the report].) The analysis is also found in the author's bill file. (Tochterman Decl, Ex. A, at pp.131-134.)

F. Author's Bill File on A.B. 2410 (Assemblyman Mike Machado); Author's Letter to Assembly Rules Committee, Dated February 22, 2000.

This document (attached as Exhibit F to the Darden Decl., and also located at pp. 138-139 of the Tochterman Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The letter and attachment request permission from the Rules Committee to introduce the legislation, which was not included with the author's initial legislative package, and discusses the "issue to be addressed by the legislation." As to the intent of the bill, the letter expressed the need to extend to state employees the prompt payment protections that currently protect private sector employees, and discusses the failure of state "Departments" to advance employee wages if a regular pay warrant is withheld. Judicial notice is appropriate, as the document demonstrates legislative awareness that departments bear responsibility for making prompt wage payments to their employees. It also demonstrates the legislative distinction being made between "state" and "private sector" employers when using terms like "state employer." (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may "be important in the subsequent interpretation of laws enacted in the Legislature"]; *Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1373 ["[s]tatements by the sponsor of legislation may be instructive [citation]"; *Lantzy v. Centex Homes*, 31 Cal.4th 363, 377 [examining author's letter to the Governor, various committee analyses of the bill, and an enrolled bill memorandum, and finding that they all consistently described the intent of the bill in the same way].)

G. Author's Bill File on A.B. 2410 (Assemblyman Mike Machado); Author's Address to Assembly Labor Committee re: A.B. 2410.

This document (attached as Exhibit G to the Darden Decl., and also located at pp. 118 of the Tochterman Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The document is the author's address to the Assembly Labor Committee asking for approval of the bill. As with the other documents in the legislative history, the letter indicates an intent to hold the "state" accountable to the same "standards required of private employers." A handwritten notation, apparently by the author, indicates that "departments" often show no concern in ensuring that employees are timely paid. Judicial notice is appropriate, as the document demonstrates legislative awareness that departments bear responsibility for making prompt wage payments to their employees. It also demonstrates the legislative distinction being made between "state" and "private sector" employers when using terms like "state employer." (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may "be important in the subsequent interpretation of laws enacted in the Legislature"]; *In re Marriage of Siller* (1986) 187 Cal.App.3d 40, 46, fn. 6 [taking judicial notice of floor statements of sponsoring legislator]; *Quarterman v. Kefauver*, 55 Cal.App.4th 1366, 1373 ["[s]tatements by the sponsor of legislation may be instructive [citation]"]; *Lantzy v. Centex Homes*, 31 Cal.4th 363, 377 [examining author's letter to the Governor, various committee analyses of the bill, and an enrolled bill memorandum, and finding that they all consistently described the intent of the bill in the same way].)

H. Author's Bill File on A.B. 2410 (Assemblyman Mike Machado); Author's Letter to Governor Davis re: Enrolled Bill, Dated September 5, 2000.

This document (attached as Exhibit H to the Darden Decl., and also located at pp. 130 of the Tochterman Decl.) provides relevant information regarding legislative intent in enacting A.B. 2410. The document is the author's address letter to the Governor requesting signature after passage of the bill by the Legislature. It indicates that the intent of the bill is to apply the same standards to the state that private businesses are mandated to follow. It also indicates that state "departments" often show no concern in ensuring that employees are judiciously paid. Judicial notice is appropriate, as the document demonstrates legislative awareness, communicated to the Governor following passage of the bill by the bill's author, that departments bear responsibility for making prompt wage payments to their employees. It also demonstrates the legislative distinction being made between "state" and "private sector" employers when using terms like "state employer." (Gov. Code § 9080 [legislative records provide evidence of legislative intent that may "be important in the subsequent interpretation of laws enacted in the Legislature"]; *Lantzy v. Centex Homes*, 31 Cal.4th 363, 377 [examining author's letter to the Governor, various committee analyses of the bill, and an enrolled bill memorandum, and finding that they all consistently described the intent of the bill in the same way]; *Quarterman v. Kefauver*, 55 Cal.App.4th 1366, 1373 ["[s]tatements by the sponsor of legislation may be instructive [citation]".])

CONCLUSION

Based on the foregoing, the State of California respectfully requests that this Court grant the request for judicial notice of the documents attached as Exhibit A through H to the Declaration of William T. Darden.

Dated: May 22, 2015

Respectfully submitted,

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Acting Senior Assistant Attorney General
FIEL D. TIGNO
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WILLIAM T. DARDEN
Deputy Attorney General
Attorneys for Defendant State of California

CERTIFICATE OF COMPLIANCE

I certify that the attached DEFENDANT'S MOTION
REQUESTING JUDICIAL NOTICE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL
NOTICE uses a 13 point Times New Roman font and contains 3480 words.

Dated: May 22, 2015

KAMALA D. HARRIS
Attorney General of California
SUSAN SLAGER
Acting Senior Assistant Attorney General
FIEL D. TIGNO
Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read 'W. T. Darden', with a long horizontal line extending to the right.

WILLIAM T. DARDEN
Deputy Attorney General
Attorneys for Petitioner State of California

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: *Janis McLean v. State of California, et al.*

No.: County of Sacramento Superior Court, Case No. 34-2012-00119161-CU-OE-GDS
Court of Appeal, Third Appellate District, Case No. C074515
Supreme Court of the State of California, Case No. S221554

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550.

On May 26, 2015, I served the attached **DEFENDANT'S MOTION REQUESTING JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with **GOLDEN STATE OVERNIGHT**, addressed as follows:

William A. Kershaw
Kershaw, Cutter & Ratinoff LLP
401 Watt Avenue
Sacramento, CA 95864
Counsel for Plaintiff

Clerk
Superior Court of California
County of Sacramento
720 Ninth Street
Sacramento, CA 95814

Clerk
California Court of Appeal
Third Appellate District
914 Capital Mall
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 26, 2015, at Oakland, California.

Denise A. Geare
Declarant


Signature