

No. S159120 - CAPITAL CASE

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
ALEX DEMOLLE,
Defendant and Appellant.

Alameda County Superior Court, Case No. 140729
The Honorable Larry J. Goodman, Judge

**OPPOSITION TO APPELLANT'S MOTION TO TAKE JUDICIAL
NOTICE**

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January 8, 2026

Respondent opposes appellant Alex Demolle's January 2, 2026, motion to take judicial notice on the ground that the material he identifies is not subject to judicial notice by the rules of evidence or any other legal authority.

In lieu of filing a stand-alone supplemental opening brief in response to this Court's October 29, 2025, order directing the parties to file simultaneous supplemental briefing on four questions arising under the Racial Justice Act (RJA), Demolle's January 2, 2026, supplemental opening brief addresses only the fourth question. In response to the Court's first three questions, Demolle has filed a motion asking the Court to take judicial notice of six briefs filed in *People v. Bankston* (S044739). These six briefs comprise approximately 223 pages of briefing, which Demolle attached as exhibits. Demolle also states in his supplemental opening brief addressing the Court's questions that he "joins in the arguments in Mr. Bankston's Fourth Supplemental Opening Brief, in response to the Court's first three questions of law." (Jan. 2, 2026, Supp. Opening Brief at 6.)

““Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.”” (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.) Judicial notice is an evidentiary tool, not a pleading tool. Respondent is aware of no mechanism by which a party can “join in” arguments made by a different party in an unrelated case, nor by which a court may assign to a party

an argument made by a different party in an unrelated case for purposes of adjudicating the merits of a legal claim.

Demolle cites Evidence Code sections 459, subdivision (a) and 452, subdivision (d) as the basis of his motion. (Mot. Jud. Notice at 1, 5.) Evidence Code section 459, subdivision (a) provides that a reviewing court “may take judicial notice of any matter specified in Section 452.” And Evidence Code section 452, subdivision (d) provides that judicial notice may be taken of “records” of any court of this state. However, the “records” for which judicial notice may be taken have been understood as limited to matters that are indisputably true, such as the existence of a document in a court file, as opposed to substantive arguments made in a brief. (See *Acre v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-483 [while a court may take judicial notice of court records, the truth of the matters asserted in such documents is not subject to judicial notice]; *Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, 1396 [“We can take judicial notice of the fact the pleadings were filed, but not of the truth of the statements contained in them”]; *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914 [court may take judicial notice of existence of each document in a court file, but only of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments].) Demolle fails to demonstrate that the briefing he is asking this Court to take judicial notice of is the sort of material that can be judicially noticed under the rules of evidence.

Demolle cites to two cases in which he asserts this Court has taken judicial notice of relevant pleadings, including amicus curiae briefs, under similar circumstances. (Mot. Jud. Notice at 5.) Both cases are distinguishable. In *Cortez v. Purolator Air Filtration Products* (2000) 23 Cal.4th 163, this Court granted a request by an amicus curiae to take judicial notice of a brief that *the same* amicus curiae had filed in a *companion* case. (*Id.* at p. 168, fn. 2.) Here, Demolle asks the Court to take judicial notice of briefs filed by *other parties* in a case that, while involving similar issues, is not a companion case. In *People v. Sanchez* (1995) 12 Cal.4th 1, this Court granted the People's request for judicial notice of an amicus curiae brief filed in another case by the California Appellate Project on the ground that the amicus brief was relevant to the defendant's contention that the California death penalty statute did not adequately narrow the field of death eligible murders because the brief represented the opinion of the California death penalty experts to the contrary. (*Id.* at p. 85, fn. 10.) Here, by contrast, Demolle has not identified any similar basis for judicial notice. Instead, his request is based only on the claim the that the amicus briefs contain "helpful information." (Mot. Jud. Notice at 4.)

Demolle supports his motion for judicial notice by asserting that he seeks to "conserve judicial resources" by adopting the arguments from Mr. Bankston's brief. (Mot. Jud. Notice at 4.) However, Demolle does not explain how taking judicial notice of over 200 pages of briefing from another case would conserve this Court's resources. To the contrary, it would conserve judicial

resources for Demolle to file one supplemental brief that addresses the Court’s questions by consolidating legal arguments made by other litigants and amicus curiae and then tailoring the arguments to the issues and procedural posture of his case.

Finally, Demolle characterizes the amicus curiae briefs for which he seeks judicial notice as containing “helpful information relevant to Mr. Demolle’s Second Supplemental Opening Brief and the Court’s resolution of his appeal.” (Mot. Jud. Notice at 4.) However, he does not describe the “helpful information,” nor does he explain whether he fully embraces all the assertions and arguments made in each of the amicus briefs, or only those the Court may deem “helpful” to his case.

For these reasons, Demolle’s request for judicial notice should be denied.

Respectfully submitted,

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/S/ LISA ASHLEY OTT

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Deputy Attorney General

Attorneys for Respondent

January 8, 2026

CERTIFICATE OF COMPLIANCE

I certify that the attached Opposition to Appellant's Motion to Take Judicial Notice uses a 13-point Century Schoolbook font and contains 955 words.

ROB BONTA
Attorney General of California

/S/ LISA ASHLEY OTT
LISA ASHLEY OTT
Deputy Attorney General
Attorneys for Respondent

January 8, 2026

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

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No.: **S159120**

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On January 8, 2026, I electronically served the attached **Opposition to Appellant's Motion to Take Judicial Notice** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on January 8, 2026, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 8, 2026, at San Francisco, California.

N. Bui
Declarant

/s/ N. Bui
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

Case Name: **PEOPLE v. DEMOLLE (ALEX)**

Case Number: **S159120**

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Date

/s/Nam Bui

Signature

Ott, Lisa (164811)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm