

Case Number S185827

Supreme Court Copy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ANTHONY KIRBY et al.

Plaintiffs and Appellants,

vs.

IMMOOS FIRE PROTECTION, INC.,

Defendant and Respondent.

SUPREME COURT

FILED

MAR 21 2011

Frederick K. Ohren Clerk

Deputy

Petition for Review of a Decision of the Court of Appeal

Third Appellate District Case Number C062306

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN SUPPORT
OF ANSWER BRIEF ON THE MERITS; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF JIMMIE E. JOHNSON IN SUPPORT
THEREOF; PROPOSED ORDER**

Robert L. Rediger, Esq. (CA State Bar No. 109392)

Laura C. McHugh, Esq. (CA State Bar No. 180930)

Jimmie E. Johnson, Esq. (CA State Bar No. 223344)

Rediger, McHugh & Owensby, LLP

555 Capitol Mall, Suite 1240

Sacramento, California 95814

Telephone: (916) 442-0033

Facsimile: (916) 498-1246

Attorneys for Respondent,
IMMOOS FIRE PROTECTION, INC.

Case Number S185827

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

ANTHONY KIRBY et al.

Plaintiffs and Appellants,

vs.

IMMOOS FIRE PROTECTION, INC.,

Defendant and Respondent.

Petition for Review of a Decision of the Court of Appeal

Third Appellate District Case Number C062306

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN SUPPORT
OF ANSWER BRIEF ON THE MERITS; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF JIMMIE E. JOHNSON IN SUPPORT
THEREOF; PROPOSED ORDER**

Robert L. Rediger, Esq. (CA State Bar No. 109392)
Laura C. McHugh, Esq. (CA State Bar No. 180930)
Jimmie E. Johnson, Esq. (CA State Bar No. 223344)
Rediger, McHugh & Owensby, LLP
555 Capitol Mall, Suite 1240
Sacramento, California 95814
Telephone: (916) 442-0033
Facsimile: (916) 498-1246

Attorneys for Respondent,
IMMOOS FIRE PROTECTION, INC.

TABLE OF CONTENTS

RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN
SUPPORT OF ANSWER BRIEF ON THE MERITS 1

MEMORANDUM OF POINTS AND AUTHORITIES 7

DECLARATION OF JIMMIE E. JOHNSON..... 22

PROPOSED ORDER..... 28

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN SUPPORT
OF ANSWER BRIEF ON THE MERITS; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF JIMMIE E. JOHNSON IN SUPPORT
THEREOF; PROPOSED ORDER**

**TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE; THE HONORABLE ASSOCIATE JUSTICES OF THE
CALIFORNIA SUPREME COURT; APPELLANTS AND THEIR
ATTORNEYS OF RECORD:**

Pursuant to California Evidence Code sections 450 et seq., and California Rules of Court, Rules 8.252 and 8.520, Respondent Immoos Fire Protection, Inc. ("Respondent Immoos") respectfully moves this Court to take judicial notice of the documents listed below. Said documents are relevant in determining the correct interpretations of Labor Code sections 218.5, 226.7, and 1194. The correct interpretations of these sections, in turn, are material to both of the issues under review in this case, namely: 1) Does Labor Code section 1194 apply to a cause of action alleging meal and rest period violations (Lab. Code, § 226.7) or may attorney's fees be awarded under Labor Code section 218.5; and 2) Is [this Court's] analysis affected by whether the claims for meal and rest periods are brought alone or are accompanied by claims for minimum wage and overtime.

Exhibit A¹: Introduced version of Assembly Bill 633 (1999), February 19, 1999 [first introduced version of Labor Code section 226.7]

Exhibit B: Amended version of Assembly Bill 1652 (1999), September 3, 1999 [second introduced version of Labor Code section 226.7]

Exhibit C: Amended version of Assembly Bill 1652 (1999), September 8, 1999 [removal of unilateral attorney's fee provision from Labor Code section 226.7]

¹ All documents at issue are attached hereto under the same expressed identifier.

- Exhibit D: Introduced version of Assembly Bill 2509 (2000), February 24, 2000 [third introduced version of Labor Code section 226.7]
- Exhibit E: Assembly Committee on Labor and Employment bill report of Assembly Bill 2509 (2000), April 12, 2000
- Exhibit F: Amended version of Assembly Bill 2509 (2000), August 25, 2000 [removal of unilateral attorney's fee provision from Labor Code section 226.7]
- Exhibit G: Statutes 2000, Chapter 876 [amendment of Section 218.5; enactment of Section 226.7]
- Exhibit H: Governor's Chaptered Bill File for Assembly Bill 2509 (2000): Enrolled Bill Report from Department of Industrial Relations, September 13, 2000
- Exhibit I: Senate Judiciary Committee bill report of Assembly Bill 2509 (2000), August 8, 2000
- Exhibit J: Statutes 1986, Chapter 1211 [enactment of Section 218.5]
- Exhibit K: Senate Committee on Judiciary bill report of Senate Bill 2570 (1986), 1986
- Exhibit L: Assembly Committee on Judiciary bill report of Senate Bill 2570 (1986), July 8, 1986
- Exhibit M: Senate Rules Committee bill report of Senate Bill 2570 (1986), May 6, 1986
- Exhibit N: Governor's Chaptered Bill File for Senate Bill 2570 (1986): Enrolled Bill Report from Department of Industrial Relations, August 26, 1986
- Exhibit O: CACI Jury Instruction No. 2701 (2011 edition)
- Exhibit P: Industrial Welfare Commission Publication MW-2007 (Official Notice of California Minimum Wage)

- Exhibit Q: Statutes 1913, Chapter 324 [enactment of Section 1194]
- Exhibit R: California Constitution as adopted May 7, 1879
- Exhibit S: Publication by Arthur Norman Holcombe, “The effects of the legal minimum wage for women” (1917)
- Exhibit T: Publication by Consumers’ League of New York State and Consumers’ League of the City of New York, “Women’s wages today: One reason for a legal minimum in New York State” (1920)
- Exhibit U: CACI Jury Instruction No. 2702 (2011 edition)
- Exhibit V: Statutes 1961, Chapter 408 [amendment of Section 1194]
- Exhibit W: Statutes 1936, Chapter 90 [codification of Section 1194]
- Exhibit X: Public Laws, 52 Statute, Chapter 676 [enactment of FLSA]
- Exhibit Y: Public Laws, 63 Statute, Chapter 352 [amendment of FLSA]
- Exhibit Z: Statutes 1972, Chapter 1122 [amendment of Section 1194]
- Exhibit AA: Governor’s Chapered Bill File for Assembly Bill 256 (1972): Enrolled Bill Report from Department of Finance, August 14, 1972
- Exhibit BB: Legislative Counsel’s Digest of Statutes 1972, Chapter 1122 [amendment of Section 1194]
- Exhibit CC: *McGann v. United Postal Service, Inc.* (Feb. 24, 2011, B221709) __ Cal.App.4th __ (Published Opinion)
- Exhibit DD: Statutes 1972, Chapter 1321 [enactment of Labor Code section 227.3]

Exhibit EE: Governor's Chaptered Bill File for Senate Bill 548 (1961): Memo from Department of Industrial Relations to Governor's Office, May 11, 1961

Exhibit FF: Senate Bill 363 (1872) [signed and enacting first Code of Civil Procedure on March 11, 1872, including Section 22 which provides original codified definition of "action"]

Exhibit GG: Statutes 1933, Chapter 742 [amendment of Code of Civil Procedure section 22]

Exhibits A through D, and F are true and correct copies of documents obtained by Respondent's counsel from the Office of the Legislative Counsel of California pertaining to Section 226.7; Assembly Bill 633 (1999), which included the first proposed version of Section 226.7; amended versions of Section 226.7 in Assembly Bill 1652 (1999), and the enacted version within Assembly Bill 2509 (2000).

Exhibits E, and G through I are true and correct copies of documents obtained by Respondent's counsel from the California State Archives pertaining to Section 226.7 and Assembly Bill 2509 (2000), which enacted Section 226.7 and amended Section 218.5.

Exhibits J through N are true and correct copies of documents obtained by Respondent's counsel from the California State Archives pertaining to Section 218.5 and Senate Bill 2570 (1986), which enacted Section 218.5.

Exhibits O and U are true and correct copies of documents obtained by Respondent's counsel from the official California Courts website at <http://www.courtinfo.ca.gov/jury/civiljuryinstructions/juryinst.htm>, pertaining to CACI Jury Instructions.

Exhibit P is a true and correct copy of a document obtained by Respondent's counsel from the official Industrial Wage Commission

website at <http://www.dir.ca.gov/iwc/minwage2007.pdf>, pertaining to official notices of the California Minimum Wage.

Exhibits Q, R, V, W, Z, AA, and EE are true and correct copies of documents obtained by Respondent's counsel from the California State Archives pertaining to Section 1194, and various amendments to said section.

Exhibits S and T are true and correct copies of documents obtained by Respondent's counsel from the Harvard Library system pertaining to the early-20th Century, common usage of the term "legal minimum wage."

Exhibits X and Y are true and correct copies of documents obtained by Respondent's counsel from LexisNexis pertaining to the employment of the term "overtime payments" within the federal Fair Labor Standards Act of 1938 ("FLSA").

Exhibit BB is a true and correct copy of a document obtained by Respondent's counsel from the Bernard E. Witkin State Law Library of California pertaining to Section 1194, and Statutes 1972, Chapter 1122, which amended said section.

Exhibit CC is a true and correct copy of a document obtained by Respondent's counsel from LexisNexis pertaining to the recent published opinion of *McGann v. United Postal Service, Inc.* (Feb. 24, 2011, B221709) ___ Cal.App.4th ___.

Exhibit DD is a true and correct copy of a document obtained by Respondent's counsel from the California State Archives pertaining to Labor Code section 227.3.

Exhibits FF and GG are true and correct copies of documents obtained by Respondent's counsel from the California State Archives pertaining to Code of Civil Procedure section 22, and the amendment of said section.


The documents are described, and indicated, under penalty of perjury to be true and correct copies of the originals in the declaration of Respondent's counsel, Jimmie E. Johnson, included herein. The documents were not presented to the trial court, nor do they relate to proceedings occurring after the order that is the subject of the appeal.

This request is based upon the instant motion; and the memorandum of points and authorities and declaration of Respondent's counsel, Jimmie E. Johnson, included herein.

DATED: March 10, 2011.

**REDIGER, McHUGH &
OWENSBY, LLP**

By



JIMMIE E. JOHNSON
Attorneys for Respondent,
IMMOOS FIRE PROTECTION,
INC.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

Evidence Code section 459 provides reviewing courts the same power to take judicial notice of documents as trial courts under Evidence Code sections 450 *et seq.* (Evid. Code, § 459.) In tandem, California Rules of Court, Rules 8.252 and 8.520 provide that a court may take judicial notice of documents relevant to the issues under review. (Cal. Rules of Court, rules 8.252(a)(2)(A), 8.520(g).)

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1153 (“*Big Creek Lumber*”). In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927 (“*Hale*”).) The Court has granted review of two issues in the underlying matter: 1) Does Labor Code section 1194 apply to a cause of action alleging meal and rest period violations (Lab. Code, § 226.7) or may attorney’s fees be awarded under Labor Code section 218.5; and 2) Is [this Court’s] analysis affected by whether the claims for meal and rest periods are brought alone or are accompanied by claims for minimum wage and overtime. As evidenced by the question itself, resolution of the first issue requires an interpretation of Labor Code sections 218.5, 226.7 and 1194. In addition, resolution of the second issue is dependent upon interpreting the term “action” within Section 218.5.

The legislative histories of the respective sections are relevant to their interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) In addition, federal labor law provides guidance to the interpretation of state law employing parallel language. (*Building Material & Construction Teamsters’ Union v. Farrell* (1986) 41 Cal.3d 651, 658 (“*Farrell*”).) Accordingly, provisions of the FLSA employing the same language as the

aforementioned Labor Code sections are also relevant. (*Ibid.*) Finally, Evidence Code section 451 requires this Court take judicial notice of any relevant, public statutory laws or constitutional provisions of California and the United States. (Evid. Code, § 451, subd. (a).)

In addition to its text and legislative history, the natural and customary use of terms employed within a statute is relevant to said statute's interpretation. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 218-219 (“*Tiernan*”).) Evidence Code section 452, subdivision (h) empowers a court to take judicial notice of the existence of publications and the contents therein because said existence is not reasonably subject to dispute. (*Seelig v. Infinity Broadcasting Corp., et al.* (2002) 97 Cal.App.4th 798, 808, fn 5 (“*Seelig*”); see also Evid. Code, § 452, sbud. (h).) Accordingly, the existence of articles published at the time of a statute's enactment, and how such articles exemplify the manner in which certain terms were customarily employed at said time, are subject to judicial notice for the purpose of determining the natural and customary import of those terms.

In conclusion, the legal authority for this Court to grant judicial notice of each of the above-listed documents is as follows:

Exhibit A: Introduced version of Assembly Bill 633 (1999),
February 19, 1999

Legislative history, including previous drafts of a statute, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 250, fn. 7 (“*Cynthia D.*”) [previous drafts in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit A is a bill including a

previous draft of Section 226.7, the Court should take judicial notice of the document.

Exhibit B: Amended version of Assembly Bill 1652 (1999),
September 3, 1999

Legislative history, including previous drafts of a statute, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Cynthia D., supra*, 5 Cal.4th at p. 250, fn. 7 [previous drafts in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit B is a bill including a previous draft of Section 226.7, the Court should take judicial notice of the document.

Exhibit C: Amended version of Assembly Bill 1652 (1999),
September 8, 1999

Legislative history, including previous drafts of a statute, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Cynthia D., supra*, 5 Cal.4th at p. 250, fn. 7 [previous drafts in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit C is a bill including a previous draft of Section 226.7, the Court should take judicial notice of the document.

Exhibit D: Introduced version of Assembly Bill 2509 (2000),
February 24, 2000

Legislative history, including previous drafts of a statute, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Cynthia D., supra*, 5 Cal.4th at p. 250, fn. 7 [previous drafts in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials

underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit D is a bill including a previous draft of Section 226.7, the Court should take judicial notice of the document.

Exhibit E: Assembly Committee on Labor and Employment bill report of Assembly Bill 2509 (2000), April 12, 2000

Legislative history, including legislative committee bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Martin v. Szeto* (2004) 32 Cal.4th 445, 450 (“*Martin*”) [legislative committee bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit E is a true and correct copy of a legislative committee report concerning Assembly Bill 2509 (2000), the Court should take judicial notice of the document in this matter.

Exhibit F: Amended version of Assembly Bill 2509 (2000), August 25, 2000

Legislative history, including previous drafts of a statute, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Cynthia D., supra*, 5 Cal.4th at p. 250, fn. 7 [previous drafts in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit F is a bill including a previous draft of Section 226.7, the Court should take judicial notice of the document.

Exhibit G: Statutes 2000, Chapter 876 [amendment of Section 218.5; enactment of Section 226.7]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public

statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit G is a true and correct copy of a public statute amending Section 218.5 and enacting Section 226.7, the Court should take judicial notice of the document in this matter.

Exhibit H: Governor's Chaptered Bill File for Assembly Bill 2509 (2000): Enrolled Bill Report from Department of Industrial Relations, September 13, 2000

Legislative history, including enrolled bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19 (“*Elsner*”) [enrolled bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit H is a true and correct copy of an enrolled bill report concerning Assembly Bill 2509 (2000), the Court should take judicial notice of the document in this matter.

Exhibit I: Senate Judiciary Committee bill report of Assembly Bill 2509 (2000), August 8, 2000

Legislative history, including legislative committee bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Martin, supra*, 32 Cal.4th at p. 450 [legislative committee bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit I is a true and correct copy of a legislative committee report concerning Assembly Bill 2509 (2000), the Court should take judicial notice of the document in this matter.

Exhibit J: Statutes 1986, Chapter 1211 [enactment of Section 218.5]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit J is a true and correct copy of a public statute enacting the original version of Section 218.5, the Court should take judicial notice of the document in this matter.

Exhibit K: Senate Committee on Judiciary Analysis of Senate Bill 2570 (1986)

Legislative history, including legislative committee bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Martin, supra*, 32 Cal.4th at p. 450 [legislative committee bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit K is a true and correct copy of a legislative committee report concerning Senate Bill 2570 (1986), the Court should take judicial notice of the document in this matter.

Exhibit L: Assembly Committee on Judiciary Analysis of Senate Bill 2570 (1986), July 8, 1986

Legislative history, including legislative committee bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Martin, supra*, 32 Cal.4th at p. 450 [legislative committee bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit L is a true and correct copy of a legislative committee report concerning Senate Bill 2570 (1986), the Court should take judicial notice of the document in this matter.

Exhibit M: Senate Rules Committee Analysis of Senate Bill 2570 (1986), May 6, 1986

Legislative history, including legislative committee bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Martin, supra*, 32 Cal.4th at p. 450 [legislative committee bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit M is a true and correct copy of a legislative committee report concerning Senate Bill 2570 (1986), the Court should take judicial notice of the document in this matter.

Exhibit N: Governor's Chaptered Bill File for Senate Bill 2570 (1986): Enrolled Bill Report from Department of Industrial Relations, August 26, 1986

Legislative history, including enrolled bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Elsner, supra*, 34 Cal.4th at p. 934, fn. 19 [enrolled bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit N is a true and correct copy of an enrolled bill report concerning Senate Bill 2570 (1986), the Court should take judicial notice of the document in this matter.

Exhibit O: CACI Jury Instruction No. 2701 (2011 edition)

The natural and customary usage of a term employed within a statute is relevant to said statute's interpretation. (*Tiernan, supra*, 33 Cal.3d at pp. 218-219.) Evidence Code section 452, subdivisions (b) and (c) provide that judicial notice may be taken of any "official act" of the legislative, executive, and judicial departments of California. (Evid. Code, § 452,

subds. (b),(c).) Whereas Exhibit O is a true and correct copy of an official act of the California Judicial Council, and exemplifies the natural and customary use of the term “minimum wage” also employed within Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit P: Industrial Welfare Commission Publication MW-2007 (Official Notice of California Minimum Wage)

The natural and customary usage of a term employed within a statute is relevant to said statute’s interpretation. (*Tiernan, supra*, 33 Cal.3d at pp. 218-219.) Evidence Code section 452, subdivisions (b) and (c) provide that judicial notice may be taken of any “official act,” including regulations and legislative enactments, of the legislative, executive, and judicial departments of California. (Evid. Code, § 452, subds. (b),(c).) Whereas Exhibit P is a true and correct copy of an official act of the Industrial Welfare Commission, and is relevant to the natural and customary use of term “minimum wage” employed within Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit Q: Statutes 1913, Chapter 324 [enactment of Section 1194]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit Q is a true and correct copy of a public statute enacting the original version of Section 1194 (at that time an uncodified provision), the Court should take judicial notice of the document in this matter.

Exhibit R: California Constitution as Adopted May 7, 1879

Article I, Section 24 of the California Constitution as it read in 1913 set forth that any subject not embraced within an act’s title is void. (Cal. Const. art. I, § 24.) Evidence Code section 451, subdivision (a), requires

this Court to take judicial notice of relevant constitutional provisions of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit R is a true and correct copy of a constitutional provision as it read at the time Section 1194 was first enacted, the Court should take judicial notice of the document in this matter.

Exhibit S: Publication by Arthur Norman Holcombe, “The effects of the legal minimum wage for women” (1917)

The natural and customary usage of a term employed within a statute is relevant to said statute’s interpretation. (*Tiernan, supra*, 33 Cal.3d at pp. 218-219.) Evidence Code section 452, subdivision (h) empowers a court to take judicial notice of the existence of publications and the contents therein because said existence is not reasonably subject to dispute. (*Seelig, supra*, 97 Cal.App.4th at p. 808, fn 5.) Whereas Exhibit S is an article published in the same era Section 1194 was first enacted, and exemplifies the natural and customary use of the term “legal minimum wage” during said era, the Court should take judicial notice of the existence of the document and the contents therein.

Exhibit T: Publication by Consumers’ League of New Your State and Consumers’ League of the City of New York, “Women’s wages today: One reason for a legal minimum in New York State” (1920)

The natural and customary usage of a term employed within a statute is relevant to said statute’s interpretation. (*Tiernan, supra*, 33 Cal.3d at pp. 218-219.) Evidence Code section 452, subdivision (h) empowers a court to take judicial notice of the existence of publications and the contents therein because said existence is not reasonably subject to dispute. (*Seelig, supra*, 97 Cal.App.4th at p. 808, fn 5.) Whereas Exhibit T is an article published in the same era Section 1194 was first enacted, and exemplifies the natural and customary use of the term “legal minimum wage” during said era, the

Court should take judicial notice of the existence of the document and the contents therein.

Exhibit U: CACI Jury Instruction No. 2702 (2011 edition)

The natural and customary usage of a term employed within a statute is relevant to said statute's interpretation. (*Tiernan, supra*, 33 Cal.3d at pp. 218-219.) Evidence Code section 452, subdivisions (b) and (c) provide that judicial notice may be taken of any "official act" of the legislative, executive, and judicial departments of California. (Evid. Code, § 452, subs. (b),(c).) Whereas Exhibit U is a true and correct copy of an official act of the California Judicial Council, and exemplifies the natural and customary use of the term "overtime" also employed within Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit V: Statutes 1961, Chapter 408 [amendment of Section 1194]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit V is a true and correct copy of a public statute amending Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit W: Statutes 1936, Chapter 90 [codification of Section 1194]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit W is a true and correct copy of a public statute codifying Section 1194, which

sets forth the powers of the Industrial Welfare Commission, the Court should take judicial notice of the document in this matter.

Exhibit X: Public Laws, 52 Statutes, Chapter 676 [enactment of FLSA]

Federal labor law provides guidance to the interpretation of California labor law employing parallel language. (*Farrell, supra*, 41 Cal.3d at p. 658.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of the United States. (Evid. Code, § 451, subd. (a).) Whereas Exhibit X is a true and correct copy of a public statute enacting federal labor law employing terms also used within Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit Y: Public Laws, 63 Statutes, Chapter 352 [amendment of FLSA]

Federal labor law provides guidance to the interpretation of California labor law employing parallel language. (*Farrell, supra*, 41 Cal.3d at p. 658.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of the United States. (Evid. Code, § 451, subd. (a).) Whereas Exhibit Y is a true and correct copy of a public statute enacting federal labor law employing terms also used within Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit Z: Statutes 1972, Chapter 1122 [amendment of Section 1194]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit Z is

a true and correct copy of a public statute amending Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit AA: Governor's Chaptered Bill File for Assembly Bill 256 (1972): Enrolled Bill Report from Department of Finance, August 14, 1972

Legislative history, including enrolled bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Elsner, supra*, 34 Cal.4th at p. 934, fn. 19 [enrolled bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit AA is a true and correct copy of an enrolled bill report concerning Assembly Bill 256 (1972), the Court should take judicial notice of the document in this matter.

Exhibit BB: Legislative Counsel's Digest of Statutes 1972, Chapter 1122 [amendment of Section 1194]

Legislative history, including Legislative Counsel Digests, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153 [legislative history in general]; *Pacific Gas & Electric Co. v. Department of Water Resources* (2003) 112 Cal.App.4th 477, 482-483 [Legislative Counsel's Digests in particular]; *People v. Allen* (2001) 88 Cal.App.4th 986, 995 [same]; *People v. Harper* (2000) 82 Cal.App.4th 1413, 1418 [same].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit BB is a true and correct copy of the Legislative Counsel Digest for Statutes 1972, Chapter 1122, the Court should take judicial notice of the document in this matter.

Exhibit CC: *McGann v. United Postal Service, Inc.* (Feb. 24, 2011, B221709) ___ Cal.App.4th ___ (Published Opinion)

McGann v. United Postal Service, Inc. (Feb. 24, 2011, B221709) ___ Cal.App.4th ___ is a published decision which addressed the same questions under review in the instant matter. Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant judicial decisions of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit CC is a true and correct copy of a published decision addressing the same issues under review, the Court should take judicial notice of the document in this matter.

Exhibit DD: Statutes 1972, Chapter 1321 [enactment of Labor Code section 227.3]

Absent evidence of inconsistency by the Legislature, a word or phrase, or its derivatives, accorded a particular meaning in one part or portion of a code, should be accorded the same meaning in other parts or portions of the code. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 641-643.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit DD is a true and correct copy of a public statute enacted prior to Section 226.7, located within the same Labor Code Article as Section 226.7, and employs the same term “wage” as Section 226.7, this statute is relevant to the statutory interpretation of the term “wage” within Section 226.7 and the Court should take judicial notice of the document in this matter.

Exhibit EE: Governor’s Chaptered Bill File for Senate Bill 548 (1961): Memo from Department of Industrial Relations to Governor’s Office

Legislative history, including enrolled bill reports, is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153

[legislative history in general]; *Elsner, supra*, 34 Cal.4th at p. 934, fn. 19 [enrolled bill reports in particular].) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*Hale, supra*, 86 Cal.App.4th at p. 927.) Whereas Exhibit EE is a true and correct copy of an enrolled bill report concerning Senate Bill 548 (1961), which amended Section 1194, the Court should take judicial notice of the document in this matter.

Exhibit FF: Senate Bill 363 (1872) [signed and enacting first Code of Civil Procedure on March 11, 1872, including Section 22 which provides original codified definition of “action”]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit FF is a true and correct copy of a public statute enacting the definition of “action” within Code of Civil Procedure, section 22, the Court should take judicial notice of the document in this matter.

Exhibit GG: Statutes 1933, Chapter 742 [amendment of Code of Civil Procedure section 22]

Legislative history is relevant to statutory interpretation. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1153.) Evidence Code section 451, subdivision (a), requires this Court to take judicial notice of relevant public statutes of this State. (Evid. Code, § 451, subd. (a).) Whereas Exhibit GG is a true and correct copy of a public statute amending the definition of “action” as set forth in Code of Civil Procedure section 22, the Court should take judicial notice of the document in this matter.

///

Conclusion


For the reasons set forth above, this Court should grant judicial notice of each of the exhibits listed above.

DATED: March ^{1st}/₀, 2011.

Respectfully submitted,

**REDIGER, McHUGH &
OWENSBY, LLP**

By



JIMMIE E. JOHNSON
Attorneys for Respondent,
IMMOOS FIRE PROTECTION,
INC.

**DECLARATION OF JIMMIE E. JOHNSON IN SUPPORT OF
RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

I, JIMMIE E. JOHNSON, declare:

1. I am an attorney admitted to practice in the State of California, and am one of the attorneys of record representing the Respondent, IMMOOS FIRE PROTECTION, INC., in this matter.

2. I make this declaration in support of the instant motion for judicial notice.

3. On or about November 24, 2009, I traveled to the California State Archives located at 1020 O Street, Sacramento, California 95814 (hereinafter "the Archives"). At the Archives, I reviewed the legislative history of Labor Code section 218.5 ("Section 218.5").

4. The following documents are true and correct copies of the original documents I researched concerning Section 218.5:

Exhibit G: Statutes 2000, Chapter 876 [amendment of Section 218.5; enactment of Section 226.7]

Exhibit J: Statutes 1986, Chapter 1211 [enactment of Section 218.5]

Exhibit K: Senate Committee on Judiciary bill report of Senate Bill 2570 (1986)

Exhibit L: Assembly Committee on Judiciary bill report of Senate Bill 2570 (1986)

Exhibit M: Senate Rules Committee bill report of Senate Bill 2570 (1986)

Exhibit N: Governor's Chaptered Bill File for Senate Bill 2570 (1986): Enrolled Bill Report from Department of Industrial Relations

7. At the Archives, on or about February 4, 2011, I reviewed the legislative history of Labor Code section 1194.

8. The following documents are true and correct copies of the original documents I researched concerning Labor Code section 1194 (“Section 1194”):

Exhibit Q: Statutes 1913, Chapter 324 [enactment of Section 1194]

Exhibit R: California Constitution as adopted May 7, 1879

Exhibit V: Statutes 1961, Chapter 408 [amendment of Section 1194]

Exhibit W: Statutes 1936, Chapter 90 [codification of Section 1194 and Labor Code section 1173]

Exhibit Z: Statutes 1972, Chapter 1122 [amendment of Section 1194]

Exhibit AA : Governor’s Chaptered Bill File for Assembly Bill 256 (1972): Enrolled Bill Report from Department of Finance

9. At the Archives, on or about February 24, 2011, I again reviewed the legislative history of Section 1194.

10. The following document is a true and correct copy of the original document I researched concerning Labor Code section 1194 (“Section 1194”):

Exhibit EE: Governor’s Chaptered Bill File for Senate Bill 548 (1961): Memo from Department of Industrial Relations to Governor’s Office

11. That same day, on or about February 24, 2011, I traveled to the Bernard E. Witkin State Law Library of California located at 900 N Street, Sacramento, California 95814 (hereinafter “the State Law Library”). At the State Law Library, I reviewed the legislative history of Section 1194.

12. The following document is a true and correct copy of the original document I researched concerning Section 1194:

Exhibit BB: Legislative Counsel's Digest of Statutes 1972, Chapter 1122 [amendment of Section 1194]

13. In researching Labor Code section 1194, I did not discover any discussion or analysis within the legislative history of Assembly Bill 256 (1972) regarding an intent for the term "legal overtime compensation" (first included within Section 1194 by the enactment of said bill) to have a substantively different meaning than the term "overtime compensation" (which had been previously employed within the section.) In fact, I did not find any analysis or discussion within the legislative history of Assembly Bill 256 (1972) regarding the change in terminology.

14. On or about February 3, 2011, I reviewed the legislative history of the federal Fair Labor Standards Act ("FLSA") employing a LexisNexis on-line database found at <http://www.lexis.com>.

15. The following documents are true and correct copies of the electronic documents I researched concerning the FLSA:

Exhibit X: Public Laws, 52 Statutes, Chapter 676 [enactment of FLSA]

Exhibit Y: Public Laws, 63 Statutes, Chapter 352 [amendment of FLSA]

16. At the Archives, on or about February 11, 2011, I reviewed the legislative history of Labor Code section 226.7 ("Section 226.7").

17. In addition to reviewing Statutes 2000, Chapter 876 [amendment of Section 218.5, enactment of Section 226.7] a second time, the following documents are true and correct copies of the original documents I researched concerning Section 226.7:

Exhibit A: Introduced version of Assembly Bill 633 (1999) [first introduced version of Labor Code section 226.7]

Exhibit B: Amended version of Assembly Bill 1652 (1999)
[second introduced version of Labor Code section 226.7]

Exhibit C: Amended version of Assembly Bill 1652 (1999)
[removal of unilateral attorney's fee provision from Labor Code section 226.7]

Exhibit D: Introduced version of Assembly Bill 2509 (2000)
[third introduced version of Labor Code section 226.7]

Exhibit F: Amended version of Assembly Bill 2509 (2000)
[removal of unilateral attorney's fee provision from Labor Code section 226.7]

18. On or about February 4, 2011, I reviewed articles published in the early twentieth century concerning the nationwide movement towards minimum wage laws employing a Harvard Library on-line database found at <http://pds.lib.harvard.edu>.

19. The following documents are true and correct copies of the electronic documents I researched concerning the FLSA:

Exhibit S: Publication by Arthur Norman Holcombe, "The effects of the legal minimum wage for women" (1917)
[located at <http://pds.lib.harvard.edu/pds/view/3928820>]

Exhibit T: Publication by Consumers' League of New Your State and Consumers' League of the City of New York, "Women's wages today: One reason for a legal minimum in New York State" (1920) [located at <http://pds.lib.harvard.edu/pds/view/2575320>]

20. At the Archives, on or about February 24, 2011, I again reviewed the legislative history of Section 226.7.

21. The following documents are true and correct copies of the original documents I researched concerning Section 226.7:

Exhibit E: Assembly Committee on Labor and Employment bill report of Assembly Bill 2509 (2000)

Exhibit H: Governor's Chaptered Bill File for Assembly Bill 2509 (2000): Enrolled Bill Report from Department of Industrial Relations, September 13, 2000

Exhibit I: Senate Judiciary Committee bill report of Assembly Bill 2509 (2000)

22. On that same day at the Archives, on or about February 24, 2011, I also reviewed the legislative history of Labor Code section 227.3.

23. The following document is a true and correct copy of the original document I researched concerning Labor Code section 227.3:

Exhibit DD: Statutes 1972, Chapter 1321 [enactment of Labor Code section 227.3]

24. On that same day at the Archives, on or about February 24, 2011, I also reviewed the legislative history of Code of Civil Procedure section 22.

25. The following documents are true and correct copies of the original documents I researched concerning Code of Civil Procedure section 22:

Exhibit FF: Senate Bill 363 (1872) [signed and enacting first Code of Civil Procedure on March 11, 1872, including Section 22 which provides original codified definition of "action"]

Exhibit GG: Statutes 1933, Chapter 742 [amendment of Code of Civil Procedure section 22]

26. On or about March 1, 2011, I reviewed the recently published case *McGann v. United Postal Service, Inc.* (Feb. 24, 2011, B221709) __ Cal.App.4th __ employing a LexisNexis on-line database found at <http://www.lexis.com>.

27. The following document is a true and correct copy of the electronic document I researched concerning the new case:

Exhibit CC: *McGann v. United Postal Service, Inc.* (Feb. 24, 2011, B221709) __ Cal.App.4th __

28. On or about March 18, 2011, I reviewed CACI Jury Instructions published by the California Judicial Council employing the California Courts' official website at <http://www.courtinfo.ca.gov/jury/civiljuryinstructions/juryinst.htm>.

29. The following documents are true and correct copies of the electronic documents I researched concerning the CACI Jury Instructions:

Exhibit O: CACI Jury Instruction No. 2701 (2011 edition)

Exhibit U: CACI Jury Instruction No. 2702 (2011 edition)

30. On that same day, on or about March 18, 2011, I reviewed Industrial Welfare Commission publications employing the Industrial Welfare Commission's official website at <http://www.dir.ca.gov/iwc/minwage2007.pdf>.

31. The following document is a true and correct copy of the electronic document I researched concerning the Industrial Welfare Commission's publications:

Exhibit P: Industrial Welfare Commission Publication MW-2007 (Official Notice of California Minimum Wage)

I declare under penalty of perjury that the foregoing is true and correct and that I could competently testify thereto if called upon to do so.

Executed this 16th day of March 2011, at Sacramento, California.



JIMMIE E. JOHNSON

[PROPOSED ORDER]

Good cause appearing, therefore,

IT IS HEREBY ORDERED that the Supreme Court will take judicial notice of the following documents:

- Exhibit A: Introduced version of Assembly Bill 633 (1999), February 19, 1999 [first introduced version of Labor Code section 226.7]
- Exhibit B: Amended version of Assembly Bill 1652 (1999), September 3, 1999 [second introduced version of Labor Code section 226.7]
- Exhibit C: Amended version of Assembly Bill 1652 (1999), September 8, 1999 [removal of unilateral attorney's fee provision from Labor Code section 226.7]
- Exhibit D: Introduced version of Assembly Bill 2509 (2000), February 24, 2000 [third introduced version of Labor Code section 226.7]
- Exhibit E: Assembly Committee on Labor and Employment bill report of Assembly Bill 2509 (2000), April 12, 2000
- Exhibit F: Amended version of Assembly Bill 2509 (2000), August 25, 2000 [removal of unilateral attorney's fee provision from Labor Code section 226.7]
- Exhibit G: Statutes 2000, Chapter 876 [amendment of Section 218.5; enactment of Section 226.7]
- Exhibit H: Governor's Chaptered Bill File for Assembly Bill 2509 (2000): Enrolled Bill Report from Department of Industrial Relations, September 13, 2000
- Exhibit I: Senate Judiciary Committee bill report of Assembly Bill 2509 (2000), August 8, 2000
- Exhibit J: Statutes 1986, Chapter 1211 [enactment of Section 218.5]

- Exhibit K: Senate Committee on Judiciary bill report of Senate Bill 2570 (1986), 1986
- Exhibit L: Assembly Committee on Judiciary bill report of Senate Bill 2570 (1986), July 8, 1986
- Exhibit M: Senate Rules Committee bill report of Senate Bill 2570 (1986), May 6, 1986
- Exhibit N: Governor's Chaptered Bill File for Senate Bill 2570 (1986): Enrolled Bill Report from Department of Industrial Relations, August 26, 1986
- Exhibit O: CACI Jury Instruction No. 2701 (2011 edition)
- Exhibit P: Industrial Welfare Commission Publication MW-2007 (Official Notice of California Minimum Wage)
- Exhibit Q: Statutes 1913, Chapter 324 [enactment of Section 1194]
- Exhibit R: California Constitution as adopted May 7, 1879
- Exhibit S: Publication by Arthur Norman Holcombe, "The effects of the legal minimum wage for women" (1917)
- Exhibit T: Publication by Consumers' League of New York State and Consumers' League of the City of New York, "Women's wages today: One reason for a legal minimum in New York State" (1920)
- Exhibit U: CACI Jury Instruction No. 2702 (2011 edition)
- Exhibit V: Statutes 1961, Chapter 408 [amendment of Section 1194]
- Exhibit W: Statutes 1936, Chapter 90 [codification of Section 1194]
- Exhibit X: Public Laws, 52 Statute, Chapter 676 [enactment of FLSA]

- Exhibit Y: Public Laws, 63 Statute, Chapter 352 [amendment of FLSA]
- Exhibit Z: Statutes 1972, Chapter 1122 [amendment of Section 1194]
- Exhibit AA: Governor's Chaptered Bill File for Assembly Bill 256 (1972): Enrolled Bill Report from Department of Finance, August 14, 1972
- Exhibit BB: Legislative Counsel's Digest of Statutes 1972, Chapter 1122 [amendment of Section 1194]
- Exhibit CC: *McGann v. United Postal Service, Inc.* (Feb. 24, 2011, B221709) __ Cal.App.4th __ (Published Opinion)
- Exhibit DD: Statutes 1972, Chapter 1321 [enactment of Labor Code section 227.3]
- Exhibit EE: Governor's Chaptered Bill File for Senate Bill 548 (1961): Memo from Department of Industrial Relations to Governor's Office, May 11, 1961
- Exhibit FF: Senate Bill 363 (1872) [signed and enacting first Code of Civil Procedure on March 11, 1872, including Section 22 which provides original codified definition of "action"]
- Exhibit GG: Statutes 1933, Chapter 742 [amendment of Code of Civil Procedure section 22]

Dated: _____.

 The Honorable Chief Justice or
 Associate Justice of the California
 Supreme Court

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 555 Capitol Mall, Suite 1240, Sacramento, California 95814.

On March 18, 2011, I served the within **RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF ANSWER BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF JIMMIE E. JOHNSON IN SUPPORT THEREOF; PROPOSED ORDER** in *Anthony Kirby et al. v. Immoos Fire Protection, Inc*; California Supreme Court Case Number S185827 [Third Appellate District Court of Appeal Case Number C062306] by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Ellyn Moscowitz, Esq.	Attorneys for Plaintiffs and
Jennifer Lai, Esq.	Appellants, ANTHONY
Law Offices of Ellyn Moscowitz, P.C.	KIRBY and RICK LEECH, JR.
1629 Telegraph Avenue, Fourth Floor	
Oakland, CA 94612	

Scot D. Bernstein, Esq.	Attorneys for Plaintiffs and
Law Offices of Scot D. Bernstein	Appellants, ANTHONY
101 Parkshore Drive, Suite 100	KIRBY and RICK LEECH, JR.
Folsom, CA 95630	

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

Appellate Coordinator
Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013

Clerk
Third Appellate District Court of Appeal
621 Capitol Mall, 10th Floor
Sacramento, CA 95814

XXXX by placing a true copy thereof in a Federal Express envelope/box for overnight delivery in the receptacle located at 555 Capitol Mall, Sacramento, California 95814.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of March 2011, at Sacramento, California.


LORRAINE L. RENPROE

