

No. S271054

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

DEBRA TURNER,

Plaintiff and Appellant,

v.

LAURIE ANNE VICTORIA, et al.,

Defendants and Respondents.

After a Decision By the Court of Appeal, Fourth Appellate
District, Division One,
Case Nos. D076318, D076337

San Diego County Superior Court
Trial Case No. 37-2017-00009873-PR-TR-CTL
The Honorable Julia C. Kelety, Dept. 503
(Appeal No. D076318)

San Diego County Superior Court
Trial Case No. 37-2018-00038613-CU-MC-CTL
The Honorable Kenneth J. Medel, Dept. C-66
(Appeal No. D076337)

**RESPONDENT LAURIE ANNE VICTORIA'S OPPOSITION
TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

*Service on the Attorney General required by Prob. Code §§ 17200,
17203, Corps. Code §§ 5142, 5223, and 5233 and Rule of Court 8.29(a)*

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In connection with her Reply Brief, Appellant Debra Turner asks this Court to take judicial notice of the Attorney General's Objection to Third Account and Report of Trustee and Petition for: (1) Settlement of Account; (2) Ratification of Prior Acts by Trustee; and (3) Order Authorizing Trustee's Fees ("Exhibit A"), filed in a proceeding currently pending before the San Diego Superior Court involving Respondents Victoria and The Conrad Prebys Foundation. This Court should deny Appellant's request for at least three reasons.¹

First, Appellant did not introduce this document into the record before the Court of Appeal despite having "ample opportunity before, during and after [oral argument] to call the ... court's attention to this pleading for whatever evidentiary or legal persuasion it might have had on it." (*Doers v. Golden Gate Bridge, Highway & Transp. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 [denying request for judicial notice raised for the first time before the Court].) Exhibit A was filed on December 16, 2020. The case was not argued before the Court of Appeal until July 15, 2021, seven months later. Despite having approximately seven months to submit Exhibit A to the Court of Appeal, which did not issue its decision until August 17, 2021, Appellant did not do so.

Second, Appellant once again delayed submitting Exhibit A by failing to request judicial notice of it in connection with her Opening Brief. Appellant identifies no good reason why this Court

¹ Appellant's request also does not comply with California Rule of Court 8.252(a)'s requirement that "a party must serve and file a separate motion with a proposed order."

should exercise its discretion under Evidence Code sections 452 and 459 and grant Appellant’s eleventh-hour request to introduce new evidence into this appeal.

Third, Exhibit A is irrelevant to the issues on appeal—whether Appellant has standing under Corporations Code sections 5142, 5223, 5233, and 5710. “[A]ny matter to be judicially noticed must be relevant to a material issue.” (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) Appellant “present[s] no issue for which judicial notice of these items is necessary, helpful, or relevant.” (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6; see *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4 [denying request for judicial notice where “Plaintiffs fail[ed] to demonstrate the relevance of this material”]; *People v. Stoll* (1989) 49 Cal.3d 1136, 1144, fn. 5 [declining request for judicial notice where “material has no bearing on the limited legal question at hand”]; Cal. Rules of Court, rule 8.252(a)(2)(A).) If anything, the only relevance of Exhibit A is that the existence of adversarial litigation between Victoria and the Foundation concerning her eventual trustee’s fee demonstrates that the Foundation is capable of litigating on its own behalf when it decides it is appropriate to do so, without need for Appellant’s involvement.

Appellant claims that Exhibit A is relevant to establish that because Victoria seeks compensation in her role as Trustee of the Conrad Prebys Trust, she is somehow not a volunteer director of the Foundation. That is incorrect. Contrary to Appellant’s suggestion, Victoria’s dual roles as one of four volunteer directors,

as well as the (only) Trustee, have always been clear. (*Turner v. Victoria* (2021) 67 Cal.App.5th 1099, 1108 [Victoria “served both as a Foundation director and as the trustee of the Conrad Prebys Trust”].) While the former role was volunteer, the latter was not. (6 AA 1416; Prob. Code, § 15680.) However, Victoria has yet to receive any compensation for her many years of work as Trustee of a complex, \$1.5 billion trust—work that continues to this day. In any event, none of Appellant’s assertions of relevance have bearing on whether *Appellant*, who now has no affiliation with the Foundation since her terms in office expired and was accused by Eric Prebys of undue influence, has standing to pursue the Foundation’s claims.

Finally, to the extent Appellant seeks judicial notice of not only the *existence* of Exhibit A but also the *truth* of the allegations contained in it, there is no basis to grant such a request. Courts “can take judicial notice of the fact the pleadings were filed, but not of the truth of the statements contained in them.” (*Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, 1396; see *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, *overruled on other grounds by In re Tobacco Cases II* (2007) 41 Cal.4th 1257 [“While courts may notice official acts and public records, ‘we do not take judicial notice of the truth of all matters stated therein.’”]), quoting *Love v. Wolf* (1964) 226 Cal.App.2d 378, 403.)

The Court should deny Appellant’s Request for Judicial Notice. If the Request for Judicial Notice is granted, Victoria seeks leave to file a response of 1,000 words within 30 days so that there is a clear record for this Court concerning the dispute with the

Foundation concerning her compensation for work done as
Trustee.

DATED: June 28, 2022

Respectfully Submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Scott A. Edelman
Scott A. Edelman

Attorneys for Defendant and
Respondent Laurie Anne Victoria

PROOF OF SERVICE

I, Katherine A. Lysaght, declare as follows:

I am employed in the County of Santa Clara, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 1881 Page Mill Road, Palo Alto, California, 94304, in said County and State. On June 28, 2022, I served the following document(s):

RESPONDENT LAURIE ANNE VICTORIA'S OPPOSITION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE

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*Court of Appeal Case Nos.
D076318, D076337*

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San Diego County Superior Court
The Honorable Julia C. Kelety
1100 Union Street, Fifth Floor
Dept. SD-503
San Diego, CA 92101


Trial Court Case No.
37-2017-00009873-PR-TR-CTL

San Diego County Superior Court
The Honorable Kenneth J. Medel
330 W. Broadway, Dept. SD-66
San Diego, CA 92101

Trial Court Case No.
37-2018-00038613-CU-MC-CTL

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 28, 2022.


Katherine A. Lysaght

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **TURNER v.
VICTORIA**

Case Number: **S271054**

Lower Court Case Number: **D076318**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/28/2022

Date

/s/Scott Edelman

Signature

Edelman, Scott (116927)

Last Name, First Name (PNum)

Gibson, Dunn & Crutcher LLP

Law Firm