

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

No. S262634

**Robert Zolly, Ray McFadden,
and Stephen Clayton**
Plaintiffs and Appellants,

vs.

City of Oakland
Defendant and Respondent

**Opposition to Request for Judicial Notice
of the Legislature of the State of California**

After a Published Decision from the Court of Appeal
First Appellate District, Division One, Appeal No. A154986
Alameda County Superior Court Case No. RG16821376

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LEGAL DISCUSSION

This court should not consider the California Legislature’s request for judicial notice. California Rules of Court, rule 8.520(g) provides, “To obtain judicial notice by the Supreme Court under Evidence Code section 459, a *party* must comply with rule 8.252(a).” (Italics added.) And the California Legislature is an amicus curiae, not a party. (See Cal. Rules of Court, rule 8.520(a) & (f) [differentiating between briefs by parties versus amici curiae].) Thus, the Legislature is not authorized to file a request for judicial notice.

This limitation coincides with the basic principle that “[i]n civil litigation a nonparty who has not formally intervened ordinarily cannot make a motion (*Difani v. Riverside County Oil. Co.* (1927) 201 Cal. 210, 214; *Marshank v. Superior Court* (1960) 180 Cal.App.2d 602, 605; see generally 6 Witkin, Cal. Procedure (5th ed. 2008) Proceedings Without

Trial, § 4, p. 430.)” (*People v. Martinez* (2009) 47 Cal.4th 399, 419, fn. 2.) A request for judicial notice is one such type of motion that is off-limits to nonparties. (See Cal. Rules of Court, rule 8.252(a) [describing the “motion” procedures a “party” must follow “[t]o obtain judicial notice by a reviewing court”].)

CONCLUSION

Because the California Legislature is not a party, this court should deny the Legislature’s request for judicial notice.

Respectfully submitted,
Katz Appellate Law PC

Dated: April 5, 2021

By _____ /s/ _____

Paul Katz
Attorney for Appellants

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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OAKLAND**

Case Number: **S262634**

Lower Court Case Number: **A154986**

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