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SUPREME COURT
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Deputy

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff & Respondent,

v.

VICTOR M. MIRANDA-GUERRERO,

Defendant & Appellant.

CAPITAL CASE

Case No. S118147

Orange Co. Super. Ct. Case No. 00WF1146

RESPONSE TO REQUEST FOR JUDICIAL NOTICE

On May 31, 2013, Appellant Victor Miranda-Guerrero filed a request for judicial notice of two unpublished opinions issued by the California Court of Appeal, Fourth Appellate District Division Three, attached as Exhibit A to his request. As explained below, the People have no opposition to this Court taking judicial notice of the unpublished opinions pursuant to Evidence Code section 452, subdivision (d), for the limited purpose of showing that these unpublished opinions were a matter of

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public record at the time of appellant's trial when the prosecution called Dr. Israel P. Chambi to testify in appellant's trial.

Appellant contends these unpublished opinions are properly subject to judicial notice in his pending automatic appeal pursuant to Evidence Code section 452, subdivisions (d) and (f), as facts which are "'not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy' (Evid. Code, § 452, subd. (f)), the source being the record courts of this state (*id.*, subd. (d))." (Req. at p. 3.) Appellant's reference to subdivision (f) appears to be in error, as that particular subdivision references "the law of an organization of nations and foreign nations and public entities in foreign nations." Appellant quotes subdivisions (a), (d), (g), and (h) of section 452 as "relevant statutes" (Req. at p. 2), and subdivision (h) references "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Accordingly, it appears appellant is actually relying on subdivisions (d) and (h) in the pending request.

Appellant seeks judicial notice of these two unpublished opinions to support his assertion on appeal that if the prosecutor had undertaken to investigate Dr. Chambi before calling him to testify in appellant's criminal case, he would have discovered unpublished opinions pertaining to Dr. Chambi. He also requests judicial notice in order for this Court to "consider the existence of evidence that should have been considered by the trial court in ruling on the defense motion" for new trial. (Req. at 4.) The People do not oppose judicial notice, pursuant to section 452, subdivision (d), for the limited purpose of establishing that the information contained in the unpublished opinions was a matter of public record since the date of issuance of the opinions on April 23, 2002, and September 9, 2002, respectively. However, the People oppose judicial notice that

extends beyond the existence of the unpublished judicial opinions, as it is not a proper subject of judicial notice pursuant to any of the other subdivisions quoted in the application. The facts and propositions contained therein that could lend themselves to developing evidence for purposes of impeachment of Dr. Chambi cannot be transformed into such evidence for purposes of appellant's pending appeal simply by requesting judicial notice of unpublished opinions discussing disciplinary action and medical malpractice.

CONCLUSION

The People do not oppose this Court's taking judicial notice of the two unpublished opinions in Exhibit A of appellant's request for judicial notice pursuant to Evidence Code section 452, subdivision (d), for the limited purpose of showing the opinions were a matter of public record as of the date of issuance.

Dated: June 12, 2013

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Miranda-Guerrero***
No.: **S118147**

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 12, 2013, I served the attached **RESPONSE TO REQUEST FOR JUDICIAL NOTICE**, by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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OAKLAND, CA 94607

Attorney for Appellant
Victor M. Miranda-Guerrero
(2 Copies)

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 June 12, 2013, at San Diego, California.

STEPHEN MCGEE
Declarant

Signature

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