

No. S219567

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHERRITY WHEATHERFORD,

Plaintiff/Appellant/Petitioner,

vs.

CITY OF SAN RAFAEL, et al.

Defendants/Respondents.

SUPREME COURT
FILED

FEB 20 2015

Frank A. McGuire Clerk

Deputy

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

On Review of the Published Decision of the Court of Appeal, First District,
Division One, *Wheatherford v. City of San Rafael* (May 22, 2014) 226
Cal.App.4th 460 [Petition for Rehearing Denied June 16, 2012]
Appellate Case No. A138949

On Appeal from the Judgment of the Superior Court of the State of California,
County of Marin, the Honorable Roy Chernus, Judge, Presiding
Superior Court Case No. CIV 1300112

RENEE GIACOMINI BREWER, Deputy (SBN 173012)
VALORIE R. BOUGHEY, Deputy (SBN 267424)
ELLEN OBSTLER, Deputy (SBN 147479)
MARIN COUNTY COUNSEL
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903
Telephone: (415) 473-6117
Attorneys for Respondent
COUNTY OF MARIN

**RESPONDENT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
RESPONDENT'S BRIEF; PROPOSED ORDER**

TO PETITIONER AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to California Rules of Court, rule 8.252, Respondent County of Marin (the County) hereby moves the California Supreme Court to take judicial notice of various materials that support Respondent's Brief.

This motion is made on the following grounds:

- 1) Evidence Code section 452, subdivisions (a), (c) and (h) authorize this Court to take judicial notice of the material offered by the County; and
- 2) The materials offered by the County are relevant to the issues raised in the petitions and addressed in the County's brief.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the attached exhibits, and such other matters as may properly come before this court.

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

I. INTRODUCTION

Pursuant to California Rules of Court, rule 8.252, the County hereby requests that this Court take judicial notice of materials relied upon by Respondent in drafting Respondent's Brief.

The materials include:

- Senate Bill No. 924, adopted in 1909 and added to the California Code of Civil Procedure as section 526a.
- An Act for the Protection of Taxpayers, adopted in 1881 by the State of New York.

II. THE EVIDENCE CODE AND THE RULES OF COURT PERMIT THIS COURT TO TAKE JUDICIAL NOTICE OF CERTAIN MATTERS REQUESTED BY RESPONDENT

California Rules, of Court, rule 8.252 authorizes a reviewing court to take judicial notice of matters utilizing Evidence Code section 459. (Cal. Rules of Court, rule 8.252.) Evidence Code section 459 authorizes appellate courts to take judicial notice of any matter subject to discretionary judicial notice by the trial court under Evidence Code section 452. (Evid. Code, § 459.) “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.” (*Herrera v. Deutsche Bank Nat. Trust Co.* (2011) 196 Cal.App.4th 1366, 1374, quoting *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) “Judicial notice may not be taken of any matter unless authorized or required by law.” (Evid. Code, § 450.)

The Evidence Code provides that judicial notice may be taken of various matters, including: “[t]he decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state[.]” “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any State of the United States[.]” and “[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.” (Evid. Code, § 452, subs. (a), (c) and (h).) The matters that the County seeks to have judicially noticed are a Senate Bill adopted by this state’s legislature in 1909 and ultimately codified as Code of Civil Procedure section 526a, as well as a law adopted by the State of New York in 1881 addressing taxpayer standing.

The matter was dismissed at the trial court level pursuant to a stipulation between all parties prior to the County filing any response. As such, the matters to be noticed were not presented to the trial court, but do directly relate to the proceedings on appeal.

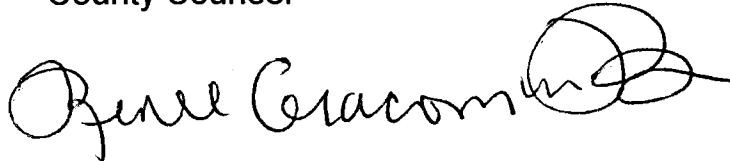


III. CONCLUSION

Respondent respectfully requests this reviewing court to take judicial notice of Exhibits A and B, as they relate directly to the historical course of taxpayer standing as it developed throughout this state and others.

Dated: February 20, 2015

STEVEN M. WOODSIDE
County Counsel

A handwritten signature in black ink, appearing to read "Renee Giacomini Brewer". The signature is written in a cursive style with a large, stylized initial "R" and "G".

RENEE GIACOMINI BREWER
Deputy County Counsel

PROPOSED ORDER

IT IS HEREBY ORDERED that Respondent's request to take judicial notice of Senate Bill No. 924, adopted in 1909 and added to the California Code of Civil Procedure as section 526a (Exhibit A) and an act for the protection of taxpayers, adopted in 1881 by the State of New York (Exhibit B) is granted.

Dated: _____.

Presiding Justice

INTRODUCED BY SENATOR WOLFE,

FEBRUARY 8, 1909.

REFERRED TO COMMITTEE ON JUDICIARY.

AN ACT

TO ADD A NEW SECTION TO THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA TO BE KNOWN AND NUMBERED AS SECTION 526A, RELATING TO ACTIONS BY TAXPAYERS AGAINST OFFICERS AND AGENTS OF ANY COUNTY, TOWN, CITY OR CITY AND COUNTY IN SAID STATE:

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. A new section is hereby added to the Code of
2 Civil Procedure of the State of California, to be known and
3 designated as section 526a, and to read as follows, to wit:
4 526a. An action to obtain a judgment, restraining and pre-
5 venting any illegal expenditure of, waste of, or injury to, the
6 estate, funds, or other property of a county, town, city or city
7 and county of the state, may be maintained against any officer
8 thereof, or any agent, or other person, acting in its behalf, either
9 by a citizen resident therein, or by a corporation, who is assessed
10 for and is liable to pay, or, within one year before the com-
11 mencement of the action, has paid, a tax therein. This section
12 does not affect any right of action in favor of a county, city,
13 town, or city and county, or any public officer.

SEC. 2. This act shall take effect and be in force from and
2 after its passage.

Amended in Senate, February 24, 1909.

SENATE BILL.

No. 924

INTRODUCED BY SENATOR WOLFE,

FEBRUARY 8, 1909.

REFERRED TO COMMITTEE ON JUDICIARY.

AN ACT

TO ADD A NEW SECTION TO THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA TO BE KNOWN AND NUMBERED AS SECTION 526A, RELATING TO ACTIONS BY TAXPAYERS AGAINST OFFICERS AND AGENTS OF ANY COUNTY, TOWN, CITY OR CITY AND COUNTY IN SAID STATE.

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2 Civil Procedure of the State of California, to be known and
3 designated as section 526a, and to read as follows, to wit:
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5 venting any illegal expenditure of, waste of, or injury to, the
6 estate, funds, or other property of a county, town, city or city
7 and county of the state, may be maintained against any officer
8 thereof, or any agent, or other person, acting in its behalf, either
9 by a citizen resident therein, or by a corporation, who is assessed
10 for and is liable to pay, or, within one year before the com-
11 mencement of the action, has paid, a tax therein. This section
12 does not affect any right of action in favor of a county, city,
13 town, or city and county, or any public officer.

THE
STATUTES OF CALIFORNIA

AND

AMENDMENTS TO THE CODES

PASSED AT THE

THIRTY-EIGHTH SESSION OF THE LEGISLATURE

1909

BEGAN ON MONDAY, JANUARY FOURTH, AND ENDED ON WEDNESDAY, MARCH TWENTY-FOURTH,
NINETEEN HUNDRED AND NINE



SACRAMENTO:

W. W. SHANNON, - - - SUPERINTENDENT STATE PRINTING
1909.

CHAPTER 348.

An act to add a new section to the Code of Civil Procedure of the State of California to be known and numbered as section 526a, relating to actions by taxpayers against officers and agents of any county, town, city or city and county in said state.

[Approved March 20, 1909.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. A new section is hereby added to the Code of Civil Procedure of the State of California, to be known and designated as section 526a, and to read as follows, to wit:

Right of
action
against
public
officer.

526a. An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer.

CHAPTER 349.

An act to authorize the State of California to release and convey to the United States such portions of the sixteenth and thirty-sixth sections of land contained in the Cleveland national forest, formerly San Jacinto forest reserve (and referred to in that certain act entitled "An act to authorize the settlement of an existing controversy between the United States of America and the State of California, and making an appropriation to carry out the provisions of said act," approved March 21, 1907) as may remain after the settlement referred to in said act has been consummated, for the purpose of reimbursing the United States for lands surrendered to it by the state and which said lands so surrendered were thereafter sold and patented by said state.

[Approved March 20, 1909.]

The people of the State of California, represented in senate and assembly, do enact as follows:

Sections
reserved
from sale
by state.

SECTION 1. For the purpose of enabling the State of California to reimburse the United States for lands surrendered to it by the state and which said lands so surrendered were thereafter sold and patented by the state, there is hereby withheld from sale, or other disposition, all such portions of the six-

L A W S

OF THE

S T A T E O F N E W Y O R K

P A S S E D A T T H E

O N E H U N D R E E A N D F O U R T H S E S S I O N

O F T H E

L E G I S L A T U R E .

B E G U N J A N U A R Y F O U R T H A N D E N D E D J U L Y T W E N T Y - T H I R D , 1 8 8 1 ,
I N T H E C I T Y O F A L B A N Y .

V o l . I .



A L B A N Y :

W E E D , P A R S O N A N D C O M P A N Y , P R I N T E R S .

1 8 8 1 .

spective lot owners, if such lot owner can be found with reasonable diligence; in case any of the lot owners cannot be found with reasonable diligence, then removals may be made from any such lots after a notice of the intention of said trustees to make any such removal has been published in a newspaper published in said village for three successive weeks.

§ 5. The said cemetery shall be and hereby is declared exempt from all public taxes, rates or assessment, and shall not be liable to be sold on execution or be applied in payment of debts due from said village, so long as the same shall be held by said village.

Exempt from tax.

§ 6. This act shall take effect immediately.

CHAP. 531.

AN ACT for the protection of tax payers.

PASSED June 15, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. All officers, agents, commissioners and other persons acting for and on behalf of any county, town, village or municipal corporation in this state, and each and every one of them, may be prosecuted and an action or actions may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to any property, funds or estate of such county, town, village or municipal corporation by any person whose assessment, or by any number of persons jointly the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes upon such assessment or assessments in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon an assessment or assessments of the above-named amount within one year previous to the commencement of any such action or actions. Such person or persons, upon the commencement of such action, shall furnish a bond to the defendant therein, to be approved by a justice of the supreme court or the county judge of the county in which the action is brought, in such penalty as the justice or judge approving the same shall direct, but not less than two hundred and fifty dollars, and to be executed by any two of the plaintiffs, if there be more than one party plaintiff, provided said two parties plaintiff shall severally justify in the sum of five thousand dollars. Said bond shall be approved by said justice or judge and be conditioned to pay all costs that may be awarded the defendant in such action if the court shall finally determine the same in favor of the defendant. The court shall require when the plaintiffs shall not justify as above mentioned, and in any case may require two more sufficient sureties to execute the bond above provided for. Such bond shall be filed in the office of the county clerk of the county in which the action is brought, and a copy shall be served with the summons in such action. If an injunction is obtained as herein provided for, the same bond may also provide for the payment of the damages arising therefrom to the party entitled to the money, the auditing, allowing or paying of which was enjoined, if

By whom action may be maintained to restrain unlawful official acts

Bond to be given.

When the court may prohibit payment of claims, etc

the court shall finally determine that the plaintiff is not entitled to such injunction. In case the waste or injury complained of consists in any board, officer or agent of any county, town, village or municipal corporation, by collusion, or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands or expenses, or any item or part thereof against or by such county, town, village or municipal corporation, or by permitting a judgment or judgments to be recovered against such county, town, village or municipal corporation, or against himself in his official capacity, either by default or without the interposition and proper presentation of any existing legal or equitable defenses, the court may in its discretion prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part, or may enforce the restitution thereof if heretofore or hereafter paid or collected, by the person or party heretofore or hereafter receiving the same, and also may in its discretion adjudge and declare the colluding official personally responsible therefor, and out of his property provide for the collection or repayment thereof, so as to indemnify and save harmless the said county, town, village or municipal corporation from a part or the whole thereof; and in the case of a judgment, the court may in its discretion vacate, set aside and open said judgment, with leave and direction for the defendant therein to interpose and enforce any existing legal or equitable defense therein, under the direction of such person as the court may, in its judgment or order, designate and appoint. All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on behalf of any county, town, village or municipal corporation in this state are hereby declared to be public records and shall be open, subject to reasonable regulations to be prescribed by the officer having the custody thereof, to the inspection of any tax payer. This section shall not be so construed as to take away any right of action from any county, town, village or municipal corporation, or from any public officer, but any recovery under the provisions of this act shall be for the benefit of, and shall be paid to the officer entitled by law to hold and disburse the public moneys of such county, town, village or municipal corporation, and shall, to the amount thereof, be credited the defendant in determining his liability in the action by the county, town, village, municipal corporation or public officer.

§ 2. Chapter four hundred and thirty-five of the laws of eighteen hundred and eighty is hereby repealed.

§ 3. This act shall take effect immediately.

Books,
etc., de-
clared to
be public
records.

Not to
take away
right of
action
from
municipal
corporations, or
public
officers

CHAP. 532.

AN ACT to amend section one thousand and forty-one of the Code of Civil Procedure.

PASSED JUNE 16, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one thousand and forty-one of the Code of Civil Procedure is hereby amended so as to read as follows:

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Marin County Counsel, 3501 Civic Center Dr., Room 275 San Rafael, CA 94903. On February 20, 2015, I served the within document(s):

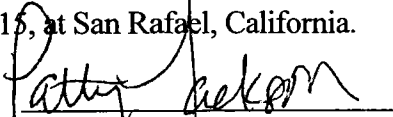
RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

- X by placing the document(s) listed above in a sealed envelope for collection and mailing on that date following ordinary business practices. I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

Clerk of the California Supreme Court Earl Warren Building 350 McAllister Street San Francisco, CA 94102 1 original, & 8 copies (courier delivery) 1 e-file	Counsel for Respondent <u>City of San Rafael</u> Richard W. Osman Bertrand, Fox & Elliott 2749 Hyde Street San Francisco, CA 94109
<u>Counsel for Appellant</u> Mark T. Clausen 769 Carr Avenue Santa Rosa, CA 95404	<u>Via Inter-Office Mail:</u> Marin County Superior Court, Hall of Justice Judge Roy O. Chernus c/o Appeals Clerk, Room 112 Civic Center, San Rafael, CA 94903
Clerk-Court of Appeal First Appellate District, Div. One 350 McAllister Street San Francisco, CA 94102	Attorney General of California 1515 Clay Street P.O. Box 70550 Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 20, 2015, at San Rafael, California.


Patty Jackson