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

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ZB, N.A. and ZIONS BANCORPORATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO,

Respondent;

KALETHIA LAWSON,

Real Party in Interest.

SUPREME COURT  
**FILED**

JUL 9 2018

Jorge Navarrete Clerk

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Deputy

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After a Decision by the Court of Appeal  
Fourth Appellate District, Division One

Case Nos. D071279 & D071376 (Consolidated)

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**REAL PARTY IN INTEREST KALETHIA LAWSON'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF ANSWERING BRIEF;  
DECLARATION OF KRISTIN M. GARCÍA; PROPOSED ORDER**

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**REAL PARTY IN INTEREST KALETHIA LAWSON'S  
REQUEST FOR JUDICIAL NOTICE**

Pursuant to Rules 8.520(g) and 8.252(a) of the California Rules of Court and Evidence Code §§ 451, 452, 453, and 459, Real Party in Interest Kalethia Lawson moves for judicial notice of Exhibits 1 through 6 of the accompanying Declaration of Kristin M. García.

Under Evidence Code §459, reviewing courts, including the Supreme Court, have the same power as trial courts to take judicial notice of matters that are properly the subject of judicial notice. (*Aguilar v. Atlantic Ritchfield Co.* (2001) 25 Cal.4th 826, 842 n.3.) Evidence Code §459(a) requires a reviewing court to take judicial notice of any matter that the trial court would have been required to notice under Sections 451 or 453 and permits a reviewing court to take judicial notice of any matter specified in Section 452. Evidence Code §452(c) permits the court to take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Evidence Code §452(h) permits the court to take judicial notice of “[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.” Evidence Code §453 provides that such judicial notice is mandatory under the circumstances presented here: “The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable

such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.”

As explained below, Exhibits 1 through 6 to the García Declaration are judicially noticeable under these provisions. Real Party in Interest Lawson respectfully requests this Court to take judicial notice of these documents because they will assist the Court in resolving the issues of statutory interpretation presented in this case. The trial court and the Court of Appeal were not asked to take judicial notice of these materials.

Exhibits 1 and 2 to the García Declaration are true and correct copies of excerpts from the 1999 Regular Session Governor’s Chaptered Bill File for Chapter 134 (AB 60) and are “[o]fficial act[s]” under Evidence Code §452(c). The Governor’s Chaptered Bill Files are maintained by the Governor’s Office for each legislative bill signed into law. (See “Legislative Resources,” California Secretary of State, *available at* <http://www.sos.ca.gov/archives/collections/-legislative-resources> (García Decl. ¶4, Ex. 3).) The Governor’s Chaptered Bill File for Chapter 134 (AB 60) comprises a portion of the legislative history of Chapter 134, and, relevant here, Section 558 of the Labor Code.

The Governor’s Chaptered Bill Files are routinely the subject of judicial notice. (See, e.g., *Newark Unified Sch. Dist. v. Superior Ct.* (2015) 245 Cal.App.4th 887, 901 & n.5; *In re Ramon A.* (1995) 40 Cal.App.4th 935, 940 & n.1.) These Exhibits will assist the Court in understanding the legislative history

of Section 558 of the Labor Code, and as true and correct copies of Enrolled Bill Reports prepared by the Departments of Finance and the Industrial Relations, these Exhibits are comparable to other legislative history materials that this Court has found instructive regarding legislative purpose and the contemporaneous construction of a statute as it was understood at the time of passage. (See, e.g., *In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1218 n.3; *Lolley v. Campbell* (2002) 28 Cal.4th 367, 375-76.)

Exhibit 3 to the García Declaration is a true and correct copy of the “Legislative Resources” page of the California Secretary of State’s website, available at <http://www.sos.ca.gov/archives/collections/legislative-resources/>. The publication of that document is both an “[o]fficial act” under Evidence Code §452(c) and a “[f]act[] and proposition[] that [is] not reasonably subject to dispute and [is] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy” under Evidence Code §452(h). (See, e.g., *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163, 180 [judicial notice properly taken of assessor’s handbook, published by county assessor’s office]; *White v. State of California* (1971) 21 Cal.App.3d 738, 742-43 & n.1 [judicial notice properly taken of U.S. Army Corps of Engineers publication entitled, “Water Resources Development in California”]; see also *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1573 n.2 [taking judicial notice of documents from website]; *Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 821

n.1 [taking judicial notice of information posted on website]; *Smith v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 117, 122 n.3 [taking judicial notice of records of administrative agency].) Exhibit 3 will assist the Court in resolving the issues presented in this case because it provides basic information about the resources available to research the legislative history of California Labor Code §558, whose interpretation is a central question in this case. Real Party in Interest Lawson requests the Court to take judicial notice of the publication of Exhibit 3 and of the facts set forth therein.

Exhibits 4 through 6 to the García Declaration are true and correct copies of manuals and a memorandum produced by state agencies: excerpts of a 2002 manual of the California Division of Labor Standards Enforcement (DLSE), a memorandum written by the State Labor Commissioner to DLSE employees after passage of AB 60, and an excerpt from the California Department of Finance Manual of State Funds. These publications are “[o]fficial act[s]” of California administrative departments under Evidence Code §452(c), and the DLSE manual and other such documents have previously been subjects of judicial notice. (See, e.g., *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 956 n.1 [taking judicial notice of “DLSE’s Interpretation and Enforcement Manual”]; *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1044 n.9 [taking judicial notice of an IWC Manual and opinion letter].) Exhibits 4 and 5 will assist the Court in resolving the issues presented in this case by providing further

understanding of the legislative history and purpose behind Section 558 as well as the procedures applied to the Labor Commissioner's enforcement actions under Section 558. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1388 ["The contemporaneous construction of a new enactment by the administrative agency charged with its enforcement, although not controlling, is entitled to great weight."].) Exhibit 6 provides similar information about the California Department of Finance's interpretation of Labor Code §96.7, which governs the State's recovery of unpaid wages and is also relevant to this case. (See *Prof'l Eng'rs in Calif. Gov't v. Brown* (2014) 229 Cal.App.4th 861, 867 n.3 [taking judicial notice of publications by California's Department of Finance].)

For these reasons, Real Party in Interest respectfully requests that the Court take judicial notice of the documents discussed above.

Dated: July 9, 2018

Respectfully submitted,

Edwin Aiwazian  
Arby Aiwazian  
Joanna Ghosh  
LAWYERS *for* JUSTICE PC

Michael Rubin  
Kristin M. Garcia  
ALTSHULER BERZON LLP



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Michael Rubin

Attorneys for Plaintiff and Real Party in Interest  
KALETHIA LAWSON

## DECLARATION OF KRISTIN M. GARCÍA

I, Kristin M. García, declare as follows:

1. I am a member in good standing of the California State Bar and the bar of this Court, and am co-counsel for Plaintiff and Real Party in Interest Kalethia Lawson. I make this declaration based upon my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of excerpts of the Regular Session Governor's Chaptered Bill File for Chapter 134 (AB 60), which include the cover page for the Chaptered Bill File and the California Department of Finance bill analysis of AB 60.

a. This copy of the Governor's Chaptered Bill File was accessed at the University of California Hastings Law Library on June 6, 2018. The file is stored on microfilm that corresponds to the 1999 Regular Session and the particular file for Chapter 134. Exhibits 1 and 2 are excerpts of the portions of the Governor's Chaptered Bill File for Chapter 134.

3. Attached as Exhibit 2 is a true and correct copy of excerpts of the Regular Session Governor's Chaptered Bill File for Chapter 134 (AB 60), which include the cover page for the Chaptered Bill File and the California Department of Industrial Relations bill analysis of AB 60.

4. Attached hereto as Exhibit 3 is a true and correct copy of the "Legislative Resources" page of the California Secretary of State's website.

Exhibit 3 contains the California Secretary of State's description of the contents of the Governor's Chaptered Bill File. The California Secretary of State's website is publicly available and can be accessed at <http://www.sos.ca.gov/archives/collections/legislative-resources/>. I accessed this website on July 6, 2018.

5. Attached as Exhibit 4 is a true and correct copy of a December 23, 1999, memorandum from Miles E. Locker, Chief Counsel for the Labor Commissioner, and Marcy V. Saunders, State Labor Commissioner, to staff of the Division of Labor Standards Enforcement with the subject line: "Understanding AB 60: An In Depth Look at the Provisions of the "Eight Hour Day Restoration and Workplace Flexibility Act of 1999."

- a. This document is publicly available on the website of the California Department of Industrial Relations at the following address:  
<https://www.dir.ca.gov/dlse/AB60update.htm>. I accessed this document on June 4, 2018.

6. Attached as Exhibit 5 is a true and correct copy of excerpts of a DLSE document entitled "The 2002 Update of The DLSE Enforcement Policies and Interpretations Manual (Revised)." Portions of the Manual, including §9.1.12, were updated in December 2017.

- a. This document is publicly available on the website of the



State of California Department of Industrial Relations at the following address:

[https://www.dir.ca.gov/dlse/dlsemanual/DLSE\\_EnfcManual.pdf](https://www.dir.ca.gov/dlse/dlsemanual/DLSE_EnfcManual.pdf). I accessed this document on July 6, 2018.

7. Attached as Exhibit 6 is a true and correct copy of an excerpt of the California Department of Finance Manual of State Funds regarding the Industrial Relations Unpaid Wage Fund.

a. This document is publicly available on the website of the State of California Department of Finance at the following address:

[http://www.dof.ca.gov/budget/Manual\\_State\\_Funds/Find\\_a\\_Fund/documents/0913.pdf](http://www.dof.ca.gov/budget/Manual_State_Funds/Find_a_Fund/documents/0913.pdf). I accessed this document by going to the Department of Finance Manual of State Funds website at

[http://www.dof.ca.gov/budget/Manual\\_State\\_Funds/](http://www.dof.ca.gov/budget/Manual_State_Funds/),

clicking "Find a Fund" and choosing "0913 Industrial

Relations Unpaid Wage Fund." I accessed this document on July 6, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this July 9, 2018, at San Francisco, California.

  
Kristin M. Garcia

**[PROPOSED] ORDER GRANTING REQUEST FOR JUDICIAL NOTICE**

Pursuant to Rule 8.252(a) of the California Rules of Court and Evidence Code 459, Petitioner's Request for Judicial Notice in Support of Answering Brief filed on July 9, 2018 is GRANTED. The Court will take judicial notice of the matters designated in Petitioner's request and attached to the Declaration of Kristin M. García.

Date: \_\_\_\_\_ J.

**PROOF OF SERVICE**

**Case:** LAWSON v. ZB, N.A.

Fourth Appellate District, Division One, Case Nos. D071279 & D071376 (Consolidated)  
San Diego County Superior Court; 37-2016-00005578-CU-OE-CTL

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On July 9, 2018, I served the following document(s):

**REAL PARTY IN INTEREST KALETHIA LAWSON’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ANSWERING BRIEF; DECLARATION OF KRISTIN M. GARCÍA; PROPOSED ORDER**

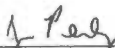
on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

By First Class Mail: I am readily familiar with the practice of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. I placed the envelope, sealed and with first-class postage fully prepaid, for collection and mailing following our ordinary business practices. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Mail Postal Service in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.

<b>ADDRESSEE</b>
James L. Morris Brian C. Sinclair Gerard M. Mooney 611 Anton Boulevard, Suite 1400 Costa Mesa, California 92626-1931  <i>Attorneys for Petitioners and Defendants ZB, N.A. and ZIONSBANCORPORATION</i>
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Clerk of the Court California Court of Appeal, Fourth Appellate District, Division 1 750 B Street, Suite 300 San Diego, California 92101

Office of the Clerk  
San Diego County Superior Court  
330 West Broadway  
San Diego, California 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this July 9, 2018, at San Francisco, California.

  
\_\_\_\_\_  
Jean Perley

# EXHIBIT 1

Assembly Bill No. 60

Chapter 134

Year 1999 Regular Session

Author Knox

Date Received July 9, 99

Last Day to Act July 21, 99

Action of Governor July 20, 99