

No. S283172

California State Bar case SBC-19-O-30700

**Supreme Court  
of the State of California**

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**In the Matter of Thomas John Spielbauer,  
SBN #78281 On Discipline**

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**MOTION AND REQUEST FOR  
JUDICIAL NOTICE**

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Petition for Review from the State Bar Court,  
Review Department  
Case No. SBC-19-O-30700  
Honorable Manjari Chawla, Hearing Department

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Respondent Spielbauer asks this Court to take judicial notice of the pleadings filed in the bankruptcy proceedings by Curtis Mitchell for the purpose of protecting the security in the deeds of trust ultimately sold to Spielbauer.

Judicial notice is proper pursuant to California Evidence Code §459. Respondent hereby files a Motion for Judicial Notice, including the pleadings.

These pleadings are public records for which judicial notice is permitted pursuant to California Evidence Code §§ 451-453. The documents are offered to establish that the Lender took actions to protect its security and was entitled to recover its attorney fees pursuant to the above provisions in the deeds of trust. As a result, Respondent was entitled to recover these fees in his payoff demand.

### **ACTIONS OF CURTIS MITCHELL**

A review of these pleadings establishes that Curtis Mitchell retained Benjamin Levinson, Esq. to represent him in one bankruptcy proceeding (2006). This was Bankruptcy Court case 06-50153. He then retained attorney Peter Brewer represent him in two subsequent bankruptcy proceedings (2009). These were Bankruptcy Court case 9-051654 and an adversarial proceeding of 09-05272.

Mr. Levinson prepare a 29 page Motion for Relief from Stay and five page notice of Hearing seeking to terminate the automatic stay and secure an Order of Adequate Protection on May 22 2006 [Case No RS#BRL-1., pages 4-36.] Mitchell also paid a filing fee of \$150]. The Court set the matter for a hearing and

Mr. Levinson was required to prepare for the hearing and appear at the hearing on July 6, 2006. Spielbauer estimates that Mr. Mitchell paid his attorney for about 40 hours to deal with these claims for Adequate Protection and Relief from Stay.

Mr. Brewer spent about 123 hours to protect the interest of Curtis Mitchell as the Lender on the deed of trust sold to Respondent. This includes bankruptcy matter 09-051654 and an adversarial proceeding of 09-05272 in that matter. This time included attending the meeting of creditors on May 8, 2009, submitting a 91 page motion for Relief from stay, Action RS #JMW-023 and paying the \$150.00 filing fee. [Pages 37-128.] Mr. Brewer appeared at two additional meetings of creditors, and filed Opposition to the debtor's Motion to Sell the Subject Property Free and Clear of the Mitchell loan that was sold to Respondent.

This Opposition was 12 pages and the hearing on the Motion was held August 12, 2009. [Pages 129-141.] Mr. Mitchell then filed a Motion to Expunge Lis pendens, with supporting exhibits and Declarations all prepared by counsel for Mitchell. [Pages 161-226.]

Counsel attended the formal hearing on the motions.

None of the time spent or attorney fees incurred pursuant to paragraph 8 and the Security Rider were introduced at the trial before the State Bar Court or the Superior Court in Santa Clara County. Respondent relied on erroneous legal advice from his state court trial attorney that he had no duty to introduce this evidence. The State Bar Court ruled that Respondent was

collaterally estopped from introducing evidence to support his payoff demand under California Civil Code §2943. Thus, the record contains an erroneous picture of the undisputed facts.

Based on the collateral estoppel ruling in the state bar trial department, Spielbauer was unable to introduce the evidence establishing that the Lender in fact initially retained Benjamin Levinson Esq. (see page 4-36) and then Peter Brewer to enter appearances and actively participated in the borrower's bankruptcy proceedings.

Thus, the current record contains the false impression that Spielbauer sought \$269,500 on a debt of less than \$7,500.

### **MEMORANDUM OF LAW**

Matters that cannot be brought before the appellate court or Supreme Court through the record on appeal (initially or by augmentation) may still be considered on appeal by judicial notice. [*Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 719, fn. 4; *Ragland v. U.S. Bank Nat'l Ass'n* (2012) 209 Cal.App.4th 182, 193.]

Upon a party's request (“motion,” or by the court on its own motion), the Supreme and the appellate courts have the same power as trial courts to take judicial notice of a matter properly subject to judicial notice. [California Evidence Code § 459; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.]

A reviewing the Supreme Court’s or the appellate court's authority to take judicial notice is prescribed by California Evidence Code § 459.

The Supreme Court and the appellate courts can take judicial notice of matters that were not before the trial court. [*Haworth v. Superior Court (Ossakow)* (2010) 50 Cal.4th 372, 379, fn. 2; *Brosterhous v. State Bar of Calif.* (1995) 12 Cal.4th 315, 325; see *Peart v. Ferro* (2004) 119 Cal.App.4th 60, 81.] Likewise, The Supreme Court and the appellate courts can take judicial notice even though the trial court was asked but refused to do so. [*Rogers v. Cady* (1894) 104 Cal. 288, 290; *Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1380.]

The Supreme Court and appellate courts have the same authority as the trial courts [California Evidence Code § 454] to consult any source of pertinent information, whether or not furnished by a party, in determining the propriety of taking judicial notice or the tenor of judicial notice. [California Evidence Code § 459(b).]

## **DISCUSSION**

This Request for Judicial Notice establishes the considerable, and estimated, attorney fees charged by the Peter Brewer Law Office and by Benjamin Levinson, Esq. and incurred by Curtis Mitchell. These documents are necessary to establish a more correct series of events which occurred during the three bankruptcy proceedings. Even then, the estimated costs incurred by Mr. Mitchell as articulated in the documents comprising the request for judicial notice may fall short of the actual costs Mr. Mitchell incurred since Benjamin Levinson, Esq. and the Peter Brewer Law office are not sharing their time sheets nor billing statements with Respondent.

Respondent relied on erroneous legal advice from his state court trial attorney that he had no duty to introduce this evidence. The State Bar Court ruled that Respondent was collaterally estopped from introducing evidence to support his payoff demand under California Civil Code §2943. Thus, the record contains an erroneous picture of the undisputed facts. This needs to be corrected.

**PRAYER**

Respondent requests that this Supreme Court take judicial notice of the 245 pages of documents which accompany this motion and request.

Dated: November 12, 2024

Respectfully submitted

/s/ Glen Moss  
Glen L. Moss, Esq.

## DECLARATION OF THOMAS SPIELBAUER

I, Thomas Spielbauer, do hereby declare:

I have gone through the documents which are being furnished to this Court through the Motion and Request for Judicial Notice. The documents are true and accurate copies of the documents which were filed in the bankruptcies of Dennis Spielbauer, those bankruptcies being 06-50153, and subsequently 09-051654 and an adversarial proceeding of 09-05272. I downloaded the documents from Pacer.gov.

Additionally, I prepared the documents commencing from pages 240-245 based on my recollection and based the entry of the Court dockets for 06-50153, 09-051654, and 09-05272.

However, the estimated costs incurred by Mr. Mitchell as articulated in the documents comprising the request for judicial notice may fall short of the actual costs Mr. Mitchell incurred since Benjamin Levinson, Esq. and the Peter Brewer Law office are not sharing their time sheets nor billing statements with Respondent.

I declare under penalty of perjury under the laws of the State of California that to the best of my knowledge, information and belief, the foregoing is true and correct. Executed in Northern California this November 12, 2024.



/s/ Thomas Spielbauer  
Thomas Spielbauer, Esq.

## **WORD COUNT CERTIFICATE**

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the total word count of this Motion/Request for Judicial Notice, excluding covers, table of contents, table of authorities, certificate of compliance, and certificate of service is 1,326 words as calculated by Microsoft Word 365.

Dated: November 12, 2024

/s/ Glen Moss  
Glen L. Moss, Esq.

*In re Thomas Spielbauer, Respondent*  
California Supreme Court case S283172  
California State Bar Case SBC-19-O-30700

## **CERTIFICATE OF SERVICE**

I, Thomas Spielbauer, declare:

I am now, and at all times herein mentioned was, over the age of eighteen years. My business address is the Spielbauer Law Office, 3130 Balfour Road D #231, Brentwood, CA 94513. My electronic email addresses are thomas@spielbauer.com and thomas.spielbauer@aol.com.

On November 13, 2024, I caused to be served a copy of the following documents: Motion/Request for Judicial Notice, Declaration in Support of Motion, Documents Comprising the Judicial Notice Request, and Proposed Order. This was done through electronic service by True Filing and at the time that these documents were uploaded to TrueFiling for filing with this Court, and as permitted by California Rule of Court, Rule 2.251.

True Filing reflects that a true and accurate copy of this Petition was electronically sent to the following individuals at their respective email addresses:

Senior OCTC Counsel Alex J. Hackett  
alex.hackert@calbar.ca.gov

OCTC Counsel Brady Richard Dewar  
Brady.dewar@calbar.ca.gov

Honorable Manjari Chawla  
ctroom1@statebarcourt.ca.gov

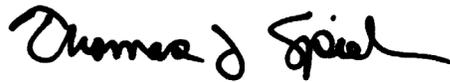
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Michelle Crampton  
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Lawyers Mutual Insurance Company (as Amicus Curiae)  
athompson@lawyersmutual.com

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed in Northern California on November 13, 2024.

A handwritten signature in black ink that reads "Thomas J Spielbauer". The signature is written in a cursive style with a long horizontal flourish at the end.

/s/ Thomas Spielbauer  
Thomas Spielbauer, Esq.

No. S283172

California State Bar case SBC-19-O-30700

**Supreme Court  
of the State of California**

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**In the Matter of Thomas John Spielbauer,  
SBN #78281 On Discipline**

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**[PROPOSED] ORDER RE MOTION FOR  
JUDICIAL NOTICE**

Petition for Review from the State Bar Court,  
Review Department  
Case No. SBC-19-O-30700  
Honorable Manjari Chawla, Hearing Department

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Attorney for Thomas Spielbauer

Respondent's Request for Judicial Notice is granted in full.  
This Court shall take judicial notice of the 245 page document  
which accompanies the motion.

IT IS SO ORDERED.

Dated:

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Chief Justice Patricia Guerrero

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **SPIELBAUER (THOMAS JOHN), IN  
RE**

Case Number: **S283172**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **thomas@spielbauer.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REQUEST FOR JUDICIAL NOTICE	MOTION for Judicial Notice
ADDITIONAL DOCUMENTS	EXHIBITS to Motion for Judicial Notice
ADDITIONAL DOCUMENTS	PROPOSED Order Granting Judicial Notice

Service Recipients:

Person Served	Email Address	Type	Date / Time
Rachel Grunberg State Bar of California, Office of the Chief Counsel	rachel.grunberg@calbar.ca.gov	e-Serve	11/13/2024 12:32:37 PM
Glen Moss Moss & Murphy 44307	m-m@pacbell.net	e-Serve	11/13/2024 12:32:37 PM
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

11/13/2024

---

Date

/s/Thomas Spielbauer

---

Signature

Spielbauer, Thomas (78281)

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Last Name, First Name (PNum)

Spielbauer Law Office

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Law Firm