

SUPREME COURT COPY

No. S199119

SUPREME COURT
FILED

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MAR 13 2014

Frank A. McGuire Clerk

Deputy

GIL SANCHEZ,

Plaintiff and Respondent

vs.

VALENCIA HOLDING COMPANY, LLC,

Defendants and Appellant.

B228027

(Los Angeles County
Super. Ct. No. BC433634)

**PETITIONER'S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATIONS OF EDWARD L. XANDERS
AND ERIC C. FOSTER; PROPOSED ORDER**

California Court of Appeal, Second District, Division One
Case No. B228027
Los Angeles Superior Court Case No. BC433634
Honorable Rex Heeseman

**ATKINSON, ANDELSON, LOYA,
RUUD & ROMO**
Kellie S. Christianson (Bar No. 158599)

20 Pacifica, Suite 400
Irvine, California 92618
Telephone: (949) 453-4260
Facsimile: (949) 453-4262
Email: kchristianson@aalrr.com

**GREINES, MARTIN, STEIN &
RICHLAND LLP**

Robert A. Olson (Bar No. 109374)
Edward L. Xanders (Bar No. 145779)
David E. Hackett (Bar No. 271151)
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811
Facsimile: (310) 276-5261
Email: rolson@gmsr.com
Email: exanders@gmsr.com

Attorneys for Petitioner and Appellant
VALENCIA HOLDING COMPANY, LLC
d.b.a. Mercedes-Benz of Valencia

No. S199119

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

GIL SANCHEZ,

Plaintiff and Respondent

vs.

VALENCIA HOLDING COMPANY, LLC,

Defendants and Appellant.

B228027

(Los Angeles County
Super. Ct. No. BC433634)

**PETITIONER'S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATIONS OF EDWARD L. XANDERS
AND ERIC C. FOSTER; PROPOSED ORDER**

California Court of Appeal, Second District, Division One
Case No. B228027
Los Angeles Superior Court Case No. BC433634
Honorable Rex Heeseman

**ATKINSON, ANDELSON, LOYA,
RUUD & ROMO**
Kellie S. Christianson (Bar No. 158599)

20 Pacifica, Suite 400
Irvine, California 92618
Telephone: (949) 453-4260
Facsimile: (949) 453-4262
Email: kchristianson@aalrr.com

**GREINES, MARTIN, STEIN &
RICHLAND LLP**
Robert A. Olson (Bar No. 109374)
Edward L. Xanders (Bar No. 145779)
David E. Hackett (Bar No. 271151)
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811
Facsimile: (310) 276-5261
Email: rolson@gmsr.com
Email: exanders@gmsr.com

Attorneys for Petitioner and Appellant
VALENCIA HOLDING COMPANY, LLC
d.b.a. Mercedes-Benz of Valencia

PETITIONER’S REQUEST FOR JUDICIAL NOTICE

In connection with its concurrently-filed Supplemental Brief on the Merits, petitioner and appellant Valencia Holding Company, LLC requests that this Court take judicial notice of the concurrently-submitted legislative history materials for Civil Code section 1670.5. The materials are contained in the two-volume “Appendix to Petitioner’s Request for Judicial Notice” and were obtained from the Legislative Intent Service, Inc.’s internet site (www.legintent.com). (See Declaration of Eric C. Foster, ¶ 2.)

The materials in the Appendix are consecutively Bates-stamped with an “RJN” number in the lower right corner for ease of reference. The Appendix comprises all of the legislative history materials for Assembly Bill No. 510, the 1979 enactment of Civil Code section 1670.5.

This Request is based on Evidence Code sections 452, 453, 455, and 459, rule 8.252 of the California Rules of Court, the accompanying Memorandum of Points and Authorities and Declarations of Edward L. Xanders and Eric C. Foster, and the briefs filed in this appeal.

Dated: March 11, 2014 Respectfully submitted,

**ATKINSON, ANDELSON, LOYA,
RUUD & ROMO**

Kellie S. Christianson

**GREINES, MARTIN, STEIN &
RICHLAND LLP**

Robert A. Olson

Edward L. Xanders

David E. Hackett

By: Edward L. Xanders
Edward L. Xanders

Attorneys for Petitioner/Appellant Valencia Holding Company, LLC d.b.a. Mercedes-Benz of Valencia

MEMORANDUM OF POINTS AND AUTHORITIES

THIS COURT MAY TAKE JUDICIAL NOTICE OF THE LEGISLATIVE HISTORY OF CIVIL CODE SECTION 1670.5.

Under California Rules of Court, rule 8.252(a)(2), Petitioner requests judicial notice of the legislative history materials concurrently submitted in the two-volume Appendix to Petitioner's Request for Judicial Notice.

The materials are the proper subject of judicial notice. It is well settled that appellate courts may take judicial notice of a statute's legislative history pursuant to Evidence Code sections 452, 453, 455 and 459. (*People v. Superior Court* (1996) 13 Cal.4th 497, 504, fn. 1 [Supreme Court granting request for judicial notice of bill's legislative history]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72, fn. 3 [Court of Appeal, on own motion, taking judicial notice of legislative history]; Cal. Rules of Court, rule 8.252(a)(2)(C).) This includes legislative history supplied by the Legislative Intent Service, Inc. (*Knighten v. Sam's Parking Valet* (1988) 206 Cal.App.3d 69, 77, fn. 2.) The concurrently-submitted legislative history materials were obtained from the Internet site for the Legislative Intent Service, Inc.. (See Declaration of Eric C. Foster.)

The materials are relevant to this Court's order requesting supplemental briefing on the proper standard for substantive unconscionability. As explained in the attached Declaration of Edward L. Xanders, the concurrently-submitted legislative history materials are relevant to this Court's February 19, 2014 order and to petitioner's concurrently-submitted Supplemental Brief on the Merits. The Court's

Order asked the parties and amici to submit supplemental briefing on the proper standard for determining substantive unconscionability. The concurrently-submitted appendix comprises the legislative history for Civil Code section 1670.5, California's statutory unconscionability standard. As petitioner's Supplemental Brief explains, the legislative history describes the Legislature's approach to the definition of unconscionability and to then-existing case law regarding unconscionability. (See Cal. Rules of Court, rule 8.252(a)(2)(A), (D).) The materials therefore will be of assistance to the Court as it considers the substantive unconscionability issues raised in its February 19, 2014 order and in the parties' supplemental briefs.

These materials were not presented to the trial court. This is the first time these materials have been submitted to any court in this case. Petitioner submits them in response to this Court's order requesting supplemental briefing. (See Cal. Rules of Court, rule 8.252(a)(2)(B), (D).)

Dated: March 11, 2014 Respectfully submitted,

**ATKINSON, ANDELSON, LOYA,
RUUD & ROMO**
Kellie S. Christianson

**GREINES, MARTIN, STEIN &
RICHLAND LLP**
Robert A. Olson
Edward L. Xanders
David E. Hackett

By: Edward L. Xanders
Edward L. Xanders

Attorneys for Petitioner/Appellant Valencia
Holding Company, LLC d.b.a. Mercedes-Benz
of Valencia

DECLARATION OF EDWARD L. XANDERS

I, Edward L. Xanders, declare:

1. I am an attorney licensed to practice law in the state of California and a partner in the law firm of Greines, Martin, Stein & Richland LLP. The firm represents petitioner Valencia Holding Company, LLC. Robert Olson and I are the attorneys primarily responsible for preparing petitioner's Supplemental Brief on the Merits.

2. The legislative history materials concurrently submitted in the two-volume Appendix to Petitioner's Request for Judicial Notice are relevant to the issues addressed in that Supplemental Brief and in this Court's February 19, 2014 order. That Order requested supplemental briefing on the correct formulation to be used in describing the test for substantive unconscionability. The submitted legislative history materials regard Civil Code section 1670.5, which is the statutory embodiment of California's unconscionability doctrine. The materials therefore will be of assistance to the Court as it considers the issues raised in its Order and in the parties' supplemental briefs.

3. This request for judicial notice is made in good faith.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on March 11, 2014, at Los Angeles, California.



Edward L. Xanders

DECLARATION OF ERIC C. FOSTER

I, Eric C. Foster, declare:

1. I am an attorney licensed to practice law in the state of California and an employee of the law firm of Greines, Martin, Stein & Richland LLP. The firm represents petitioner Valencia Holding Company, LLC.

2. On January 25, 2012, I obtained the legislative history materials concurrently filed in the two-volume Appendix to Petitioner's Request for Judicial Notice from the Internet site of the Legislative Intent Service, Inc. That site is located at <http://www.legintent.com>. The materials consist of all of the status reports, bill history, bill text and legislative analyses that the site provides for Assembly Bill No. 510, the 1979 legislation enacting Civil Code section 1670.5.

3. This request for judicial notice is made in good faith.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on March 11, 2014, at Los Angeles, California.


Eric C. Foster

No. S199119

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

GIL SANCHEZ,

Plaintiff and Respondent

vs.

VALENCIA HOLDING COMPANY, LLC,

Defendants and Appellant.

B228027

(Los Angeles County
Super. Ct. No. BC433634)

California Court of Appeal, Second District, Division One
Case No. B228027
Los Angeles Superior Court Case No. BC433634
Honorable Rex Heeseman

[PROPOSED] ORDER

Good cause appearing, the Petitioner's Request for Judicial Notice is granted.

DATED: _____

_____, Justice

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.


On March 12, 2014, I served the foregoing document described as: **PETITIONER'S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF EDWARD L. XANDERS AND ERIC C. FOSTER; PROPOSED ORDER** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on March 12, 2014, at Los Angeles, California.

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



Anita F. Cole

SANCHEZ
v.
VALENCIA HOLDING COMPANY, LLC
[California Supreme Court Case No. S199119;
Court of Appeal Case No. B228027;
Los Angeles Superior Court Case No. BC433634]

Hallen David Rosner
Christopher Patrick Barry
Angela Jean Patrick
Rosner & Mansfield, LLP
10085 Carroll Canyon Road, Suite 100
San Diego, California 92131
[Attorneys for plaintiff and respondent Gil Sanchez]

Jon David Universal
Universal Shannon & Wheeler LLP
2240 Douglas Boulevard, Suite 290
Roseville, California 95661
[Attorneys for defendant and appellant Mercedes-Benz USA, LLC]

Lisa Perrochet
John F. Querio
Felix Shafir
Horvitz & Levy LLP
15760 Ventura Boulevard, 18th Floor
Encino, California 91436-3000
[Attorneys for Amicus Curiae California New Car Dealers Association]

Richard M. Segal
Nathaniel R. Smith
Pillsbury Winthrop Shaw Pittman LLP
501 W. Broadway, Suite 1100
San Diego, California 92101-3575
[Attorneys for Amicus Curiae Nissan Motor Acceptance Corporation]

Henry D. Lederman
Alexa L. Woerner
Littler Mendelson, P.C.
1255 Treat Blvd., Suite 600
Walnut Creek, California 94597
[Attorneys for Amici Curiae Volt Management Corp. And Volt Information Sciences, Inc.]

Steve Borislav Mikhov
Romano Stancroff & Mikhov PC
640 S San Vicente Boulevard, Suite 350
Los Angeles, California 90048
[Attorneys for plaintiff and respondent Gil Sanchez]

Jan T. Chilton
Donald J. Querio
Severson & Werson
One Embarcadero Center, 26th Floor
San Francisco, California 94111
[Attorneys for depublication requestor American Financial Services Association; California Bankers Association; California Financial Services Association]

J. Alan Warfield
McKenna Long & Aldridge, LLP
300 South Grand Avenue, 14th Floor
Los Angeles, California 90071
[Attorneys for Amicus Curiae Association of Southern California Defense Counsel]

Deborah J. La Fetra
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
[Attorney for Amicus Curiae Pacific Legal Foundation]

Irina M. Nemirovsky
Simpson, Cameron, Medina & Autrey
2401 North Glassell Avenue
Orange, California 92865
[Attorneys for Amici Curiae Volt Management Corp. And Volt Information Sciences, Inc.]

Aimee Feinberg
California Supreme Court Clinic
University of California,
Davis School of Law
400 Mrak Hall Drive
Davis, California 95616-5201
**[Attorneys for Consumers for Auto
Reliability and Safety]**

Matthew Martin Sonne
Karin Dougan Vogel
Richard J. Simmons
Sheppard, Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626
[Attorneys for Employers Group]

Donald M. Falk
Mayer Brown, LLP
Two Palo Alto Square, Suite 300
Palo Alto, California 94306
**[Attorneys for the Chamber of Commerce
of the United States of America, the
Association of Global Automakers, Inc.
and the Alliance of Automobile
Manufacturers]**

Erika C. Frank, General Counsel
The California Chamber of Commerce
1215 K Street, Suite 1400
Sacramento, California 95814
**[Attorneys for Amici Curiae The Civil
Justice Association of California and
California Chamber of Commerce]**

Office of the District Attorney
Appellate Division
320 West Temple Street, Suite 540
Los Angeles, California 90012-3266
**[Served per Business & Professions Code
§ 17209 and California Rules of Court,
rule 8.29]**

Clerk to the
Hon. Rex Heeseman
Los Angeles County Superior Court
111 North Hill Street, Dept. 19
Los Angeles, California 90012
[LASC Case No. BC433634]

Anna S. Mclean
Sheppard, Mullin, Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
**[Attorneys for Amici Curiae Toyota Motor
Credit Corporation and General Motors
Financial Company, Inc.]**

Gretchen M. Nelson
Kreindler & Kreindler LLP
707 Wilshire Boulevard., Suite 4100
Los Angeles, California 90017
**[Attorneys for Amicus Curiae, Consumer
Attorneys of California]**

Fred J. Hiestand, General Counsel
The Civil Justice Association of California
2001 P Street, Suite 110
Sacramento, California 95811
**[Attorneys for Amici Curiae The Civil
Justice Association of California and
California Chamber of Commerce]**

Mark A. Chavez
Nance F. Becker
Chavez & Gertler LLP
42 Miller Avenue
Mill Valley, California 94941
**[Attorneys for Amicus Curiae Arthur
Lovett]**

Deputy Attorney General
State of California, Department of Justice
300 S. Spring Street, 5th Floor
Los Angeles, California 90013
**[Served per Business & Professions Code
§ 17209 and California Rules of Court,
rule 8.29]**

Clerk
California Court of Appeal
Second District, Division One
300 South Spring Street
Los Angeles, California 90013
[Court of Appeal Case No. B228027]