

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

In the Matter of

**CITY OF SAN DIEGO,
*Petitioner,***

v.

**CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,
*Respondent,***

**SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION;
DEPUTY CITY ATTORNEYS ASSOCIATION; AMERICAN
FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO LOCAL 127; SAN DIEGO CITY
FIREFIGHTERS LOCAL 145, IAFF, AFL-CIO,
*Real Parties in Interest,***

**REAL PARTY IN INTEREST SAN DIEGO MUNICIPAL
EMPLOYEES ASSOCIATION'S
REQUEST FOR JUDICIAL NOTICE AND [PROPOSED] ORDER**

Of an Order Summarily Denying a Petition for Writ of Mandate
and Application for Stay of the
Court of Appeal, Fourth Appellate District, Division One
Case No. D062090

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Association

MOTION REQUESTING JUDICIAL NOTICE

Pursuant to California Rules of Court, Rule 8.252(a) and Evidence Code section 452 and 459, Real Party in Interest San Diego Municipal Employees Association (MEA) hereby moves this Court to take judicial notice of the entire record in MEA's Writ Case, D061724, which was heard and decided by the Fourth Appellate District, Division One, by opinion filed on June 19, 2012, as follows:

1. MEA's Petition for Writ of Mandate filed on April 11, 2012, together with 12 Volumes of Petitioner's Exhibits which included 134 Exhibits totaling 3,234 pages, as well as a Motion Requesting Judicial Notice of Volumes 9 through 12, constituting the administrative proceedings before PERB in MEA's UPC Case No. LA-CE-746-M.
2. City of San Diego's Informal Response to MEA's Writ Petition filed on April 23, 2012;
3. PERB's Informal Response to MEA's Writ Petition filed on April 23, 2012;
4. Two-page cover letter accompanying a bound "Opposition of Interested Parties (Petitioners here), Catherine A. Boling, T.J. Zane and Stephen B. Williams to Petition for Writ of Mandate," citing California Rules of Court, Rule 8.385 (applicable to *Petitions for Writs of Habeas Corpus*) for the proposition that they are entitled to be heard in opposition to MEA's Writ Petition as "an interested person."

5. MEA's Reply to City's Informal Response filed on April 24, 2012;
6. MEA's Response to *Boling, et al.*'s Opposition and cover letter filed April 24, 2012;
7. City's Sur-Reply to MEA's Reply;
8. City's Return by Answer filed on May 21, 2012;
9. MEA's Reply to City's Return filed on May 29, 2012;
10. Opinion filed June 19, 2012;
11. City's Petition for Re-Hearing filed June 28, 2012.

MEA also requests that this Court take judicial notice of all Orders filed by the Fourth Appellate District in connection with its processing of MEA's Writ Petition, D061724, including its Order Granting MEA's Request for Judicial Notice of the above-referenced Petitioner's Exhibits, Volumes 9 through 12 related to PERB's administrative proceedings.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STANDARDS FOR JUDICIAL NOTICE

California Rules of Court, Rule 8.252(a) permits a party to seek judicial notice by a reviewing court under section 459 by serving and filing a separate motion with a proposed order.

Under section 459, subdivision (a), a reviewing court may take judicial notice of any matter specified in section 452.

Section 452, subdivision (c) permits a court to take judicial notice of “[o]fficial acts of the . . . judicial departments of . . . any state of the United States.” In addition, section 452, subdivision (h), permits a 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.”

California Rules of Court, Rule 8.252(a) also requires a motion requesting judicial notice to demonstrate why the matter to be noticed is relevant.

II. ARGUMENT

As shown in MEA’s contemporaneously-filed ANSWER TO PETITION FOR REVIEW, the “basis jurisdictional issues” which Petitioner raises when seeking remand to the Fourth District Court of Appeal have already been answered by that court in the companion MEA Writ Case, D061724. The entire record related to the disposition of that Writ is thus relevant to show (1) why Petitioners have failed to present this Court with a full and fair accounting of the matter on which they seek this Court’s extraordinary intervention; (2) why Petitioners have failed to comply with California Rules of Court Rule 8.504, subdivision (b) in that they have not presented this Court with a nonargumentative statement of the issues for review; and (3) why review should be denied because no justifiable grounds under Rule 8.500 are available.

III. IT IS NOT PRACTICABLE TO ATTACH COPIES OF THIS ENTIRE RECORD FOR WHICH JUDICIAL NOTICE IS SOUGHT

MEA has not provided copies of the entire record in MEA Writ Case D061724 for which judicial notice is being requested as generally required under Rule 8.252 **because it is not practicable to do so in light of the** voluminous scope of the entire record.

MEA respectfully requests that this Court order the record in Writ Case D061724 from the Fourth Appellate District. This would be in addition to the very meager record directly related to the City's Writ in D062090 on which the Boling Petitioners seek review.

In the interim, MEA has attached as Exhibit A to this Motion Requesting Judicial Notice, a true and correct copy of the Indices which were included in MEA's twelve volumes of Petitioner's Exhibits in order to provide this Court with an overview of their contents. By a separate filing on June 26, 2012, Respondent PERB filed a Notice of Related Cases with this Court which included a copy of the Fourth Appellate District's published opinion in the MEA Writ Case which was filed on June 19, 2012.

CONCLUSION

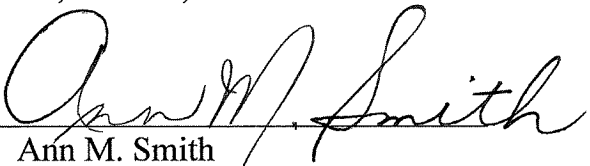
As shown above, all the requirements have been met for an Order Taking Judicial Notice of the entire record in MEA's Writ Case, D061724, which was heard and decided by the Fourth Appellate District by opinion filed on June 19, 2012, after an Order to Show Cause had been issued, the

matter had been fully briefed, and the court had conducted oral argument on June 13, 2012.

For all of the foregoing reasons, MEA respectfully requests that its Request for Judicial Notice be GRANTED.

Dated: July 3, 2012

TOSDAL, SMITH, STEINER & WAX

By: 
Ann M. Smith
Attorneys for Real Party In
Interest San Diego Municipal
Employees Association

[PROPOSED] ORDER

Good cause appearing, IT IS HEREBY ORDERED that Petitioner MEA's Request for Judicial Notice of the entire record in MEA's Writ Case, D061724, heard and decided by the Fourth Appellate District by opinion filed on June 19, 2012, is GRANTED.

Dated: _____
Justice of the California Supreme Court

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Re: City of San Diego v. California Public Employment Relations Board;
San Diego Municipal Employees Association; et al.
Supreme Court Case No. S203478

PROOF OF SERVICE

I, the undersigned, hereby declare and state:

I am over the age of eighteen years, employed in the city of San Diego, California, and not a party to the within action. My business address is 401 West "A" Street, Suite 320, San Diego, California, 92101.

On July 3, 2012, I served the within document described as:

**REAL PARTY IN INTEREST SAN DIEGO MUNICIPAL
EMPLOYEES ASSOCIATION'S REQUEST FOR JUDICIAL
NOTICE AND [PROPOSED] ORDER**

via the method indicated:

Party

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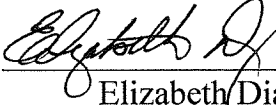
Office of the Clerk
California Fourth District
Court of Appeals, Division One
750 B Street, Suite 300
San Diego, CA 92101

First Class Mail

///

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

Executed on July 3, 2012, at San Diego, California.


Elizabeth Diaz