

CASE NO. S202828

IN THE SUPREME COURT  
STATE OF CALIFORNIA

SUPREME COURT  
FILED

NEIGHBORS FOR SMART RAIL,  
A Non-Profit California Corporation,  
*Petitioner and Appellant,*

OCT 22 2012

Frank A. McGuire Clerk

vs.

Deputy

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY;  
EXPOSITION METRO LINE CONSTRUCTION AUTHORITY BOARD,  
*Respondents,*

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION  
AUTHORITY; LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY BOARD,  
*Real Parties in Interest and Respondents.*

Second District of the Court of Appeal, Division 8 (No. B232655)  
Certified for Partial Publication

Affirming a Judgment and Order by the Superior Court of the State of  
California for the County of Los Angeles (No. BS125233)  
Honorable Thomas I. McKnew, Jr.

**OPPOSITION OF  
EXPOSITION METRO LINE CONSTRUCTION AUTHORITY  
AND LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY  
TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR STAY FILED BY PETITIONER AND APPELLANT**

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AUTHORITY; LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY BOARD

## **I. INTRODUCTION**

The Exposition Metro Line Construction Authority and the Exposition Metro Line Construction Authority Board (“Authority”), along with the Los Angeles County Metropolitan Transportation Authority and the Los Angeles County Metropolitan Transportation Authority Board, oppose the Request for Judicial Notice (“RJN”) filed by Appellant Neighbors for Smart Rail (“NFSR”). NFSR seeks to introduce evidence of certain facts through the RJN. While the Court may take judicial notice of the existence of the documents, the RJN does not establish the truth of factual matters discussed in the documents.

## **II. JUDICIAL NOTICE EXTENDS TO ONLY TO THE EXISTENCE OF THE DOCUMENTS, NOT THE TRUTH OF THE FACTUAL MATTERS IN THE DOCUMENTS.**

The Court may only grant judicial notice of the existence of the documents submitted by NFSR , not the truth of factual matters that may be deduced from those documents.

“[T]he taking of judicial notice of the official acts of a government entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom.”

*(People v. Mangini* (1994) 7 Cal.4th 1057, 1063-1064, quoting *Cruz v.*

*County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1133-1134.)

NFSR requests that the Court take judicial notice of seventeen documents comprised of staff reports, newsletters, construction notices and press releases issued by the Authority. Through the RJN, NFSR seeks to prove that construction of the Exposition Corridor Light Rail Transit Project Phase 2 (“Project”) is causing irreparable harm. (See RJN, p. 3.) The documents subject to the RJN at most show that construction in certain

portions of the Project alignment has commenced. The RJN documents do not provide evidence that the ongoing construction will cause irreparable harm and the Court may not accept any statements in the RJN documents as establishing that ongoing construction will cause irreparable harm. Plaintiffs are required to demonstrate through other competent evidence that ongoing construction is causing irreparable harm, but Plaintiffs have failed to do so.

**III. CONCLUSION:**

The Court should deny NFSR's Request for Judicial Notice.

Dated: October 19, 2012

Nossaman LLP

By: 

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EXPOSITION METRO LINE  
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COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY and  
LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION  
AUTHORITY BOARD

Case No. S202828, Court of Appeal, Second Appellate District, Division  
Eight, Case No. B232655

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

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NEIGHBORS FOR SMART RAIL,  
*Petitioner and Appellant*

v.

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY, ET AL.,  
*Respondents,*

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION,  
*et al., Real Parties-in-Interest and Respondents.*

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**[PROPOSED] ORDER**

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For good cause appearing, the Request for Judicial Notice is  
DENIED.

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Chief Justice

## PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Orange County, State of California. I am over the age of 18 and am not a party to the within action; my business address is Nossaman LLP, 18101 Von Karman Avenue, Suite 1800, Irvine, CA 94612.

On October 19, 2012, I served the foregoing **RESPONDENT'S OPPOSITION TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR STAY FILED BY PETITIONER AND APPELLANT; [PROPOSED] ORDER** on parties to the within action as follows:

- (By U.S. Mail) On the same date, at my said place of business, an original enclosed in a sealed envelope, addressed as shown on the attached service list was placed for collection and mailing following the usual business practice of my said employer. I am readily familiar with my said employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and, pursuant to that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, on the same date at Irvine, California.
- (**By Overnight Service**) I served a true and correct copy by common carrier promising overnight delivery as shown on the carrier's receipt for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the common carrier; deposited in a facility regularly maintained by the common carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

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

Executed on October 19, 2012.

  
Leanne Boucher

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