

SUPREME COURT COPY

No. S194861

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, ET AL., SUPREME COURT
Petitioners, FILED

v.

ANA MATOSANTOS, ET AL.,
Respondents.

SEP 23 2011

Frederick K. Ohlrich Clerk

Deputy

PETITIONERS' PARTIAL OPPOSITION TO
RESPONDENT MATOSANTOS' REQUEST FOR
JUDICIAL NOTICE

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INTRODUCTION

Respondent Matosantos has requested the Court to take judicial notice of several documents, including “an excerpt from the Preliminary [Offering] Statement, dated September 6, 2011 for \$5,400,000,000 State of California 2011-12 Revenue Anticipation Notes, Series A-1 and Series A-2, Introduction, page A-15.” Matosantos Request for Judicial Notice (“RJN”) at 1.

Petitioners do not oppose Matosantos’ other requests for judicial notice, but her request to notice this document (Exhibit C) should be denied.

ARGUMENT

I.

EXHIBIT C IS NOT RELEVANT TO ANY ISSUE BEFORE THE COURT.

Irrelevant documents are not subject to judicial notice. *People v. Young*, 34 Cal. 4th 1149, 1171 n.3 (2005) (judicial notice “cannot be taken of any matter that is irrelevant”) (citation and internal quotation marks omitted). The Preliminary Official Statement is irrelevant because it does not tend to prove or disprove any material fact at issue in the Petition or the State’s Return. EVID. CODE §210.

Matosantos relies on this document to show that: (a) the State will derive a fiscal benefit from ABX1 26; and (b) the Legislature therefore would have enacted that statute by itself had it known that ABX1 27 would be declared invalid. *See* DOF Br. 23-24, 30 & n.14. But this document was prepared on September 6, 2011—almost three months after AB1X 26 and 27 were passed—and therefore could not have been relied upon by the Legislature in deciding whether to pass AB1X 26 and 27. Accordingly, it provides no evidence of legislative intent. *In re Marriage of Pendleton & Fireman*, 24 Cal. 4th 39, 47 n.6 (2000) (New Jersey statute was enacted after enactment of California statute and therefore was not relevant to Legislature’s intent in passing California statute). Indeed, nothing in the legislative record of either bill suggests that

the Legislature received *any* information regarding the fiscal impact of passing ABX1 26 alone.

II.

**JUDICIAL NOTICE CANNOT BE TAKEN OF
THE TRUTH OF THE STATEMENTS MADE IN
EXHIBIT C.**

Even if the Court could take judicial notice of Exhibit C, that would not encompass judicial notice of the truth of the statements made therein—in particular, the statements in the Preliminary Official Statement regarding the fiscal impact of ABX1 26. Even when a court takes judicial notice of an official act, it “do[es] not take judicial notice of the truth of all matters stated therein. [T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom” *People v. Castillo*, 49 Cal. 4th 145, 157 (2010) (citation and internal quotation marks omitted); *Arce v. Kaiser Found. Health Plan, Inc.*, 181 Cal. App. 4th 471, 482 (2010) (while courts “may take judicial notice of . . . official acts of state agencies, the truth of matters asserted in such documents is not subject to judicial notice”) (citation omitted). Accordingly, the conclusory statement in the Preliminary Official Statement concerning the purported fiscal impact of ABX1 26 is not subject to judicial notice.

CONCLUSION

Respondent's request for judicial notice of the Preliminary Official Statement should be denied.

DATED: September 23, 2011.

Respectfully,

STEVEN L. MAYER
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By 
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W03 092311-112080007/L12/1658755/F

PROOF OF SERVICE

I, Myrna M. Da Cunha, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On September 23, 2011, I served the following document(s) described as:

PETITIONERS' PARTIAL OPPOSITION TO RESPONDENT MATOSANTOS' REQUEST FOR JUDICIAL NOTICE

- BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- BY ELECTRONIC MAIL:** by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.
- BY FEDERAL EXPRESS:** by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- BY MESSENGER:** I served the documents described above on the parties listed below by causing them to be delivered by hand to the person(s) at the address(es) set forth below.

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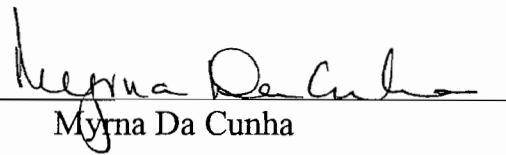
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I am readily familiar with the practice for collection and processing of documents for delivery by overnight service by Federal Express of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, and that practice is that the document(s) are deposited with a regularly maintained Federal Express facility in an envelope or package designated by Federal Express fully prepaid the same day as the day of collection in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on September 23, 2011.


Myrna Da Cunha