

S241825

IN THE
SUPREME COURT OF CALIFORNIA

VINCENT E. SCHOLES,
Plaintiff and Appellant,

v.

LAMBIRTH TRUCKING COMPANY,
Defendant and Respondent.

SUPREME COURT
FILED

DEC 15 2017

Jorge Navarrete Clerk

Deputy

AFTER A DECISION BY THE COURT OF APPEAL, THIRD APPELLATE DISTRICT
CASE No. C070770

MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF ROBERT H. WRIGHT;
[PROPOSED] ORDER

[Filed Concurrently with Application for Leave to File Amicus
Curiae Brief]

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**IN THE
SUPREME COURT OF CALIFORNIA**

VINCENT E. SHOLES,
Plaintiff and Appellant,

v.

LAMBIRTH TRUCKING COMPANY,
Defendant and Respondent.

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452, subdivision (c), 453, and 459, and rule 8.252(a) of the California Rules of Court, amicus curiae Pacific Gas and Electric Company (PG&E) requests that this Court take judicial notice of the documents, as specifically identified in the attached memorandum of points and authorities, that constitute the legislative history regarding:

- (1) Former Political Code section 3344, as enacted in 1872;
- (2) Former Civil Code section 3346, as enacted in 1872;
- (3) Assembly Bill No. 514 of 1905, enacting former Civil Code section 3346a;
- (4) Senate Bill No. 490 of 1931, enacting chapter 790 of the Statutes of 1931;

(5) Assembly Bill No. 1874 of 1953, enacting Health and Safety Code sections 13007, 13008, and 13009, and codifying in part chapter 790 of the Statutes of 1931; and

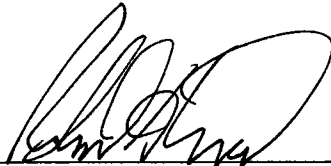
(6) Assembly Bill No. 2526 of 1957, repealing, amending, and reenacting Civil Code section 3346.

This motion is being filed concurrently with the application for leave to file amicus curiae brief by PG&E in support of defendant and respondent Lambirth Trucking Company. This motion is supported by the attached memorandum of points and authorities, the attached declaration of Robert H. Wright, the supporting exhibits filed concurrently with this motion, the proposed amicus curiae brief, and the record on appeal in this matter.

This legislative history, which neither party has fully put before this Court, is necessary to understand why treble damages for fire damage to timber are not permitted under law.

December 6, 2017

HORVITZ & LEVY LLP
ROBERT H. WRIGHT
JEREMY B. ROSEN

By: 

Robert H. Wright

Attorneys for Amicus Curiae
**PACIFIC GAS AND ELECTRIC
COMPANY**

MEMORANDUM OF POINTS AND AUTHORITIES

JUDICIAL NOTICE SHOULD BE TAKEN OF THE LEGISLATIVE HISTORY MATERIALS THAT ARE RELEVANT TO THIS COURT'S GRANT OF REVIEW AND CITED IN THE PROPOSED AMICUS CURIAE BRIEF.

- A. This Court has the authority to take judicial notice of legislative history materials relevant to this Court's grant of review.**

Under Evidence Code section 452, subdivision (c), judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (See also *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 279, fn. 9 (*Soukup*) [granting request for judicial notice of legislative history material].) Appellate courts have the same right, power, and duty to take judicial notice as trial courts. (Evid. Code, § 459.)¹

PG&E requests judicial notice of the documents cited in its proposed amicus curiae brief bearing on the question whether Civil Code section 3346 authorizes a damages multiplier for injury to trees from fire. PG&E thus seeks judicial notice of the relevant

¹ This Court has previously granted judicial notice requests by amicus curiae. (E.g., *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 317, fn. 10; *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1083, fn. 3.)

legislative history identified below regarding: the 1872 enactment of former Political Code section 3344 authorizing a multiplier for damage from fire that spreads to adjoining property; the 1905 enactment of former Civil Code section 3346a containing the same multiplier; the 1872 enactment of Civil Code section 3346 authorizing a separate trebling multiplier for other injuries to trees caused by trespass; the 1931 Act repealing the fire damage multiplier of both Political Code section 3344 and Civil Code section 3346a and replacing it with authority for only actual damages for fire; the 1953 enactment of Health and Safety Code sections 13007 and 13008 codifying, with minor changes, the 1931 Act; and the 1957 Act amending Civil Code section 3346 by adding a double damages provision for tree damage from casual or involuntary trespass. This statutory history evidences the Legislature's intent that only actual damage be awarded for injury to trees from fire.

All of this legislative history is contained in the exhibits filed concurrently with this request, and consists of documents that were obtained from Legislative Intent Service. Citations to the legislative history are to the consecutively-paginated exhibits to this motion.

PG&E seeks judicial notice of only the documents cited in its proposed amicus curiae brief and identified below. However, to provide the context of the specific documents for which judicial notice is sought, the exhibits accompanying this motion include the entire sets of legislative history documents received from Legislative Intent Service. (See generally *Drouet v. Superior Court* (2003) 31 Cal.4th 583, 598 [criticizing reliance on "isolated

fragments” of legislative history]; *People v. Valenzuela* (2001) 92 Cal.App.4th 768, 776, fn. 4 [“The entire legislative history should have been submitted to us”].)

B. This Court should take judicial notice of the legislative history materials cited in the proposed amicus curiae brief.

The specific documents that are cited in PG&E’s proposed amicus curiae brief and for which PG&E seeks judicial notice are:

1. Legislative history regarding former Political Code section 3344, as enacted in 1872:

- Revised Laws of the State of California, Political Code (1872). (1 MJN 10-21.)²
- 1 Annotated Political Code (1st ed. 1872, Haymond & Burch, Commrs.-annotators). (1 MJN 22-34.)

2. Legislative history regarding former Civil Code section 3346, as enacted in 1872:

- 2 Annotated Civil Code (1st ed. 1872, Haymond & Burch, Commrs.-annotators). (1 MJN 61-83.)

3. Legislative history regarding Assembly Bill No. 514 of 1905, enacting former Civil Code section 3346a:

- Assembly Bill No. 514 (1905 Reg. Sess.) as introduced January 18, 1905, chapter CDLXIV. (1 MJN 225-226.)

² Citations to the legislative history are to the consecutively-paginated exhibits to this motion.

- Assembly Final History (1905 Reg. Sess.). (1 MJN 227-228.)
 - Assembly Journal (1905 Reg. Sess.). (1 MJN 234-241.)
 - Revised Civil Code by the Commission for the Revision and Reform of the Law (1898). (1 MJN 242-248.)
4. Legislative history regarding Senate Bill No. 490 of 1931, enacting chapter 790 of the Statutes of 1931:
- Statutes 1931, chapter 790. (2 MJN 332.)
 - Senate Final History (1931 Reg. Sess.). (2 MJN 333-334.)
5. Legislative history regarding Assembly Bill No. 1874 of 1953, enacting Health and Safety Code sections 13007, 13008, and 13009, and codifying in part chapter 790 of the Statutes of 1931:
- Statutes 1953, chapter 48. (2 MJN 383.)
 - Assembly Final History (1953 Reg. Sess.). (2 MJN 384-385.)
 - California Code Commission letter to Governor Earl Warren regarding Assembly Bill No. 1874 (1953 Reg. Sess.) March 27, 1953. (2 MJN 397.)
 - Office of California Attorney General letter to Governor Earl Warren regarding Assembly Bill No. 1874 (1953 Reg. Sess.) March 27, 1953. (2 MJN 398.)
6. Legislative history regarding Assembly Bill No. 2526 of 1957, repealing, amending, and reenacting Civil Code section 3346:
- Statutes 1957, chapter 2346. (2 MJN 411.)
 - Assembly Final History (1957 Reg. Sess.). (2 MJN 412-413.)

- G. Kelton Steele, letter to Assemblyman Frank Belotti, February 12, 1957. (2 MJN 427-429.)
- BLM Area Administrator James Doyle, letter to Assemblyman Frank Belotti, July 26, 1957. (2 MJN 460.)
- BLM State Supervisor R.R. Beal, letter to Assemblyman Frank Belotti, July 31, 1957. (2 MJN 465.)

C. Courts have routinely taken judicial notice of the types of legislative history materials cited by amicus curiae.

Appellate courts regularly have taken judicial notice of these types of legislative documents. For example, appellate courts routinely take judicial notice of the various versions of legislation. (*Soukup, supra*, 39 Cal.4th at p. 279, fn. 9 [taking notice of “various versions of the legislation . . . , all of which are indisputably proper subjects of judicial notice”].) Assembly and Senate Final Histories and Journals are also routinely considered when courts are addressing the background and purpose of specific bills and statutes. (See, e.g., *People v. DeLeon* (2017) 3 Cal.5th 640, 653, fn. 8 [citing Assembly Daily Journal]; *Warne v. Harkness* (1963) 60 Cal.2d 579, 587, fn. 6 [citing Assembly Final History]; *Bullard v. California State Automobile Assn.* (2005) 129 Cal.App.4th 211, 219 [citing Senate Final History].)

Appellate courts “have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage

and before signing, instructive on matters of legislative intent.” (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19.)

Correspondence with a bill’s sponsor has also been considered in determining legislative intent. (See *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246, 1257-1258 [relying on letters from bill’s sponsor to interpret legislative intent]; *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 916-917, 926; *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219 [relying on documents from the bill sponsor’s file].) Here, PG&E seeks judicial notice of the same three items of correspondence with the sponsor of Assembly Bill No. 2526 of 1957 that were cited in *Fulle v. Kanani* (2017) 7 Cal.App.5th 1305, 1315, fn. 6.

The exhibits here also include portions of California’s Political and Civil Codes from 1872, including the Code Commissioners’ Notes, and the Revised Civil Code from 1898. Judicial notice is not necessary of “readily available published materials.” (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 577, fn. 13.) PG&E includes these materials because codes from 1872 and 1898 may not be readily available and because they are important to the issue of legislative intent here. The headings for chapters, articles, and sections from these codes are considered “parts of the statute limiting and defining the sections to which they refer.” (*Sharon v. Sharon* (1888) 75 Cal. 1, 16; see also *Bettencourt v. Sheehy* (1910) 157 Cal. 698, 702; *Keyes v. Cyrus* (1893) 100 Cal. 322, 325.) Substantial weight is also accorded to the Code

Commissioners' Notes. (See *People v. Chun* (2009) 45 Cal.4th 1172, 1187; *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 817 & fn. 10.)

Moreover, the Court may consider the request for judicial notice as a "citation to those materials that are published." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn. 9.)³

CONCLUSION

For the foregoing reasons, amicus curiae PG&E respectfully requests that this Court take judicial notice of the legislative history materials.

December 6, 2017

HORVITZ & LEVY LLP
ROBERT H. WRIGHT
JEREMY B. ROSEN

By: _____



Robert H. Wright

Attorneys for Amicus Curiae
**PACIFIC GAS AND ELECTRIC
COMPANY**

³ PG&E does not believe that the matters for which judicial notice is sought were presented to the trial court in this case. (See Cal. Rules of Court, rule 8.252(a)(2)(B).) None of the items submitted with this motion relate to proceedings occurring after the judgment that is the subject of this appeal. (See Cal. Rules of Court, rule 8.252(a)(2)(D).)

DECLARATION OF ROBERT H. WRIGHT

I, Robert H. Wright, declare as follows:

1. I am an attorney admitted to practice law in California. I am a partner in the law firm of Horvitz & Levy LLP, which is appellate counsel for amicus curiae Pacific Gas and Electric Company (PG&E). I am the attorney principally responsible for preparing PG&E's proposed amicus curiae brief.

2. Accompanying this request are two volumes of exhibits containing true and correct copies of all documents obtained from Legislative Intent Service, Inc. pertaining to: (1) former Political Code section 3344, as enacted in 1872; (2) former Civil Code section 3346, as enacted in 1872; (3) Assembly Bill No. 514 of 1905, enacting former Civil Code section 3346a; (4) Senate Bill No. 490 of 1931, enacting chapter 790 of the Statutes of 1931; (5) Assembly Bill No. 1874 of 1953, enacting Health and Safety Code sections 13007, 13008, and 13009, and codifying in part chapter 790 of the Statutes of 1931; and (6) Assembly Bill No. 2526 of 1957, repealing, amending, and reenacting Civil Code section 3346.

3. These documents are also described and authenticated in the attached declarations of Maria A. Sanders, Dorothy H. Thomson, and Filomena M. Yeroshek, and each document specifically listed in the memorandum of points and authorities is cross-referenced below to the appropriate item in these declarations for ready reference by the Court.

Legislative history regarding former Political Code section 3344, as enacted in 1872:

4. Attached is a true and correct copy of the Revised Laws of the State of California, Political Code (1872). (1 MJN 10-21; see Declaration of Filomena M. Yeroshek ¶ 3; 1 MJN 1.)

5. Attached is a true and correct copy of 1 Annotated Political Code (1st ed. 1872, Haymond & Burch, Commrs.-annotators). (1 MJN 22-34; see Yeroshek Decl. ¶ 4; 1 MJN 1.)

Legislative history regarding former Civil Code section 3346, as enacted in 1872:

6. Attached is a true and correct copy of 2 Annotated Civil Code (1st ed. 1872, Haymond & Burch, Commrs.-annotators). (1 MJN 61-83; see Declaration of Maria A. Sanders ¶ 2; 1 MJN 55.)

Legislative history regarding Assembly Bill No. 514 of 1905, enacting former Civil Code section 3346a:

7. Attached is a true and correct copy of Assembly Bill No. 514 (1905 Reg. Sess.) as introduced January 18, 1905, chapter CDLXIV. (1 MJN 225-226; see Yeroshek Decl. ¶ 2; 1 MJN 223.)

8. Attached is a true and correct copy of Assembly Final History (1905 Reg. Sess.). (1 MJN 227-228; see Yeroshek Decl. ¶ 3; 1 MJN 223.)

9. Attached is a true and correct copy of Assembly Journal (1905 Reg. Sess.). (1 MJN 234-241; see Yeroshek Decl. ¶ 4; 1 MJN 223.)

10. Attached is a true and correct copy of the Revised Civil Code by the Commission for the Revision and Reform of the Law (1898). (1 MJN 242-248; see Yeroshek Decl. ¶ 5; 1 MJN 223.)

Legislative history regarding Senate Bill No. 490 of 1931, enacting chapter 790 of the Statutes of 1931:

11. Attached is a true and correct copy of Statutes 1931, chapter 790. (2 MJN 332; see Declaration of Dorothy H. Thomson ¶ 1; 2 MJN 319.)

12. Attached is a true and correct copy of Senate Final History (1931 Reg. Sess.). (2 MJN 333-334; see Thomson Decl. ¶ 2; 2 MJN 319.)

Legislative history regarding Assembly Bill No. 1874 of 1953, enacting Health and Safety Code sections 13007, 13008, and 13009, and codifying in part chapter 790 of the Statutes of 1931:

13. Attached is a true and correct copy of Statutes 1953, chapter 48. (2 MJN 383; see Thomson Decl. ¶ 1; 2 MJN 376.)

14. Attached is a true and correct copy of Assembly Final History (1953 Reg. Sess.). (2 MJN 384-385; see Thomson Decl. ¶ 2; 2 MJN 376.)

15. Attached is a true and correct copy of California Code Commission, letter regarding Assembly Bill No. 1874 (1953 Reg. Sess.) March 27, 1953. (2 MJN 397; see Thomson Decl. ¶ 6; 2 MJN 376.)

16. Attached is a true and correct copy of Office of California Attorney General, letter to Governor Earl Warren regarding Assembly Bill. No. 1874 (1953 Reg. Sess.) March 27, 1953. (2 MJN 398; see Thomson Decl. ¶ 6; 2 MJN 376.)

Legislative history regarding Assembly Bill No. 2526 of 1957, repealing, amending, and reenacting Civil Code section 3346:

17. Attached is a true and correct copy of Statutes 1957, chapter 2346. (2 MJN 411; see Sanders Decl. ¶ 1; 2 MJN 402.)

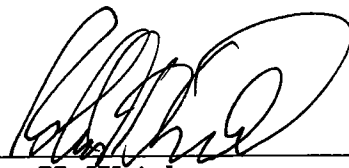
18. Attached is a true and correct copy of Assembly Final History (1957 Reg. Sess.). (2 MJN 412-413; see Sanders Decl. ¶ 2; 2 MJN 402.)

19. Attached is a true and correct copy of G. Kelton Steele, letter to Assemblyman Frank Belotti, February 12, 1957. (2 MJN 427-429; see Sanders Decl. ¶ 6; 2 MJN 402.)

20. Attached is a true and correct copy of BLM Area Administrator James Doyle, letter to Assemblyman Frank Belotti, July 26, 1957. (2 MJN 460; see Sanders Decl. ¶ 6; 2 MJN 402.)

21. Attached is a true and correct copy of BLM State Supervisor R.R. Beal, letter to Assemblyman Frank Belotti, July 31, 1957. (2 MJN 465; see Sanders Decl. ¶ 6; 2 MJN 402.)

I declare under penalty of perjury under the law of California that the foregoing is true and correct and that this declaration was executed on December 6, 2017, at Burbank, California.



Robert H. Wright

**IN THE
SUPREME COURT OF CALIFORNIA**

VINCENT E. SHOLES,
Plaintiff and Appellant,

v.

LAMBIRTH TRUCKING COMPANY,
Defendant and Respondent.

[PROPOSED] ORDER

IT IS HEREBY ORDERED that judicial notice is taken of the materials identified in the motion for judicial notice submitted by amicus curiae Pacific Gas and Electric Company.

DATED: _____

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

On December 6, 2017, I served true copies of the following document(s) described as **MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBERT H. WRIGHT; [PROPOSED] ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached 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 December 6, 2017, at Burbank, California.



Connie Christopher

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S241825

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