

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

SUPREME COURT  
**FILED**

FEB 8 2019

Jorge Navarrete Clerk

—  
B.B., a Minor, etc., et al., *Plaintiffs, Respondents, and Petitioners,*  
v.  
COUNTY OF LOS ANGELES et al., *Defendants and Appellants.*

—  
T.E., a Minor, etc., et al., *Plaintiffs, Respondents, and Petitioners,*  
v.  
COUNTY OF LOS ANGELES et al., *Defendants and Appellants.*

Deputy

—  
D.B., a Minor, etc., et al., *Plaintiffs, Respondents, and Petitioners,*  
v.  
COUNTY OF LOS ANGELES et al., *Defendants and Appellants.*

—  
AFTER DECISION BY THE COURT OF APPEAL  
SECOND APPELLATE DISTRICT, DIVISION THREE  
CASE No. B264946

—  
APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES  
THE HONORABLE ROSS M. KLEIN  
CIVIL CASE No. TC027341, COMBINED WITH BC505918 & TC027438

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF  
POINTS AND AUTHORITIES; DECLARATION OF  
DIMITRI D. PORTNOI; PROPOSED ORDER**

—  
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*Attorneys for Defendants and Appellants*

**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE STATE OF  
CALIFORNIA:**

Pursuant to rule 8.252 of the California Rules of Court and Evidence Code sections 452 and 459, Defendants and Appellants County of Los Angeles and Deputy David Aviles move for judicial notice of Assembly Bill No. 4271 (1985–1986 Reg. Sess.) as introduced on February 21, 1986. A true and correct copy is attached as “Exhibit A” to the Declaration of Dimitri D. Portnoi. This Motion is based on the attached Memorandum of Points and Authorities.

Dated: February 7, 2019

SABRINA H. STRONG  
DIMITRI D. PORTNOI  
JEFFERSON J. HARWELL  
O’MELVENY & MYERS LLP

By: *Dimitri Portnoi*  
Dimitri D. Portnoi

*Attorneys for Defendants and  
Appellants County of Los Angeles  
and Deputy David Aviles*

## MEMORANDUM OF POINTS & AUTHORITIES

Defendants and Appellants County of Los Angeles and Deputy David Aviles (collectively, “Defendants”) respectfully request this Court to take judicial notice of Assembly Bill No. 4271 (1985–1986 Reg. Sess.) as introduced on February 21, 1986, which is attached as “Exhibit A” to the Declaration of Dimitri D. Portnoi.

This Court “may take judicial notice of any matter specified in [Evidence Code] Section 452.” (Evid. Code, § 459 subd. (a).) Under section 452, judicial notice is proper for “[o]fficial acts of the legislative . . . departments of the United States or of any state of the United States.” (Evid. Code, § 452, subd. (c).) It is well established that proposed legislation of the California legislature meets the requirements of section 452, subdivision (c). (See, e.g., *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 171 [granting request for judicial notice of proposed legislation]; *St. John’s Well Child & Fam. Ctr. v. Schwarzenegger* (2010) 50 Cal.4th 960, 969, fn. 9 [same]; *In re S.B.* (2004) 32 Cal.4th 1287, 1296, fn. 3 [same].)

Assembly Bill No. 4271 constitutes an official act of the California Assembly, and therefore qualifies for judicial notice under section 452, subdivision (c). This proposed legislation is relevant to Defendants’ Answer Brief on the Merits because it will aid this Court’s interpretation of Civil Code section 1431.2. Unlike Civil Code section 1431.2, Assembly Bill 4271 contains express language that excludes intentional tortfeasors from the apportionment of non-economic damages. Assembly Bill No. 4271 was not presented to the trial court below and does not relate to proceedings occurring after the judgment that is subject to this appeal was entered.

**CONCLUSION**

Based on the foregoing legal authority, Defendants respectfully request this Court to grant their Motion for Judicial Notice.

Dated: February 7, 2019

SABRINA H. STRONG  
DIMITRI D. PORTNOI  
JEFFERSON J. HARWELL  
O'MELVENY & MYERS LLP

By:   
Dimitri D. Portnoi

*Attorneys for Defendants and  
Appellants County of Los Angeles  
and Deputy David Aviles*

**DECLARATION OF DIMITRI D. PORTNOI IN SUPPORT OF  
MOTION FOR JUDICIAL NOTICE**

I, Dimitri D. Portnoi, declare:

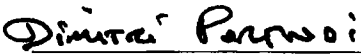
1. I am a partner with O'Melveny & Myers LLP located at 400 South Hope Street, Los Angeles, California, 90071, and am admitted to practice in the State of California. I represent Defendants and Appellants County of Los Angeles and Deputy David Aviles (collectively, "Defendants") in this matter.

2. This declaration is submitted in support of the Defendants' Motion for Judicial Notice and based upon my personal knowledge.

3. Attached hereto as "Exhibit A" is a true and correct copy of Assembly Bill No. 4271 (1985-1986 Reg. Sess.) as introduced on February 21, 1986.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I could competently testify thereto if called upon to do so.

Executed on this 7th day of February 2019, at Los Angeles,  
California.



Dimitri D. Portnoi

**PROPOSED ORDER**

The Motion for Judicial Notice filed by Defendants and Appellants County of Los Angeles and Deputy David Aviles is hereby granted. The Court takes judicial notice of Assembly Bill No. 4271 (1985–1986 Reg. Sess.) as introduced on February 21, 1986.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chief Justice of the Supreme Court

# **EXHIBIT A**



**ASSEMBLY BILL**

**No. 4271**

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Introduced by Assembly Member Filante

February 21, 1986

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An act to amend Sections 1431 and 1432 of, and to add Section 1431.1 to, the Civil Code, to amend Section 625 of, and to add Section 878.5 to, the Code of Civil Procedure, and to add Section 817 to, the Government Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 4271, as introduced, Filante. Joint and several liability.

Under existing law, in an action based upon negligence or product liability against multiple tortfeasors for an indivisible injury, the tortfeasors are jointly and severally liable for all compensable damages attributable to that injury except that they are not liable for damages attributable to the negligence of the plaintiff. However, tortfeasors may seek equitable indemnity from other tortfeasors.

This bill would provide that in an action for personal injury, property damage, or death, where an indivisible injury was caused by 2 or more persons, the damages shall be equitably apportioned among them by the trier of fact. Each tortfeasor other than a public entity or public employee, as to economic damages, would remain jointly and severally liable for such damages. However, each tortfeasor, as to noneconomic damages, and a public entity or public employee as to all damages, would be liable for the percentage of such damages allocated to that person, and liability would be several and not joint. The apportionment of damages would be made without regard to any immunity, but the apportionment would not affect any immunity. The allocation of damages would not apply to intentional injuries, as specified.

The bill would enact related provisions.

Existing case law, involving multiple tortfeasors, provides that a negligent tortfeasor is jointly and severally liable for all damage of which his or her negligence is a proximate cause. Existing case law has held that in the event a plaintiff settles a claim against one of several defendants and subsequently obtains a judgment against the other defendants, the plaintiff's recovery from the nonsettling defendants should be diminished only by the amount that the plaintiff has actually recovered, rather than by an amount measured by the settling defendants's comparative responsibility.

This bill would provide that where a defendant or prospective defendant has settled his or her liability based on a tort before judgment is rendered, the settled amount shall be the total amount that the plaintiff would receive in compensation for damages attributable to the comparative fault of that defendant. The remaining defendants would only be liable for damages attributable to their comparative fault, as specified. In reaching a verdict, the damages attributable to the comparative fault of the settling defendant would be subtracted from the total damages, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1431 of the Civil Code is  
2 amended to read:

3 1431. ~~An~~ *Except as provided in Section 1431.1, and*  
4 *except in the special cases mentioned in this title, an*  
5 *obligation imposed upon several persons, or a right*  
6 *created in favor of several persons, is presumed to be*  
7 *joint, and not several; ~~except in the special cases~~*  
8 *mentioned in the Title on the Interpretation of*  
9 ~~Contracts~~. This presumption, in the case of a right, can be  
10 overcome only by express words to the contrary.

11 SEC. 2. Section 1431.1 is added to the Civil Code, to  
12 read:

13 1431.1. (a) In an action for personal injury, property  
14 damages, or wrongful death, where an indivisible injury  
15 has been sustained by the plaintiff as a proximate result

1 of the wrongful conduct of two or more persons, the total  
2 damages sustained by the plaintiff and to which the  
3 conduct of all of those persons has contributed shall be  
4 equitably apportioned among them by the trier of fact,  
5 based upon the degree of fault, if any, of the persons and  
6 upon the degree to which the conduct of each  
7 contributed to causing the compensable damages. The  
8 amount so apportioned shall be stated as a percentage  
9 which shall aggregate 100 percent with respect to all of  
10 those persons. The apportionment shall be made without  
11 regard to any immunity from liability of any one or more  
12 of the persons for conduct normally imposing liability  
13 such as the immunity of an employer from liability to an  
14 employee covered by workers' compensation or the  
15 immunity from liability of a governmental entity.  
16 Nothing in this section shall affect that immunity.

17 (b) The trier of fact shall determine the total amount  
18 of damages, if any, sustained by the plaintiff and shall  
19 divide the total amount of damages into economic and  
20 noneconomic categories. The division of damages shall be  
21 stated as dollar amounts which shall aggregate 100  
22 percent of the plaintiff's damages. For purposes of this  
23 section, the term "economic damages" means objectively  
24 verifiable pecuniary losses including, but not limited to,  
25 burial costs, medical expenses, loss of earnings, loss of use  
26 of property, costs of repair or replacement, costs of  
27 obtaining substitute domestic services, loss of  
28 employment, and loss of business or employment  
29 opportunities. For the purposes of this section, the term  
30 "noneconomic damages" means subjective,  
31 nonpecuniary losses including, but not limited to, pain,  
32 suffering, inconvenience, mental suffering, emotional  
33 distress, loss of society and companionship, loss of  
34 consortium, injury to reputation, and humiliation.

35 (c) (1) Except as provided by Section 817 of the  
36 Government Code, the liability of the multiple  
37 tortfeasors for economic damages shall be joint and  
38 several.

39 (2) The liability of each tortfeasor for noneconomic  
40 damages shall be several only and shall not be joint.

1 (3) Each tortfeasor shall be liable only for the  
2 percentage of damages determined pursuant to  
3 subdivision (a) and allocated to that person from the total  
4 compensable noneconomic damages, and a separate  
5 judgment shall be rendered against the person for that  
6 amount.

7 (d) The allocation provided for by this section shall  
8 not apply to any person who intentionally injures  
9 another. That person shall be liable for all damages  
10 inflicted and compensable under the law. However, an  
11 apportionment shall be made under this section with  
12 respect to any other persons liable and not guilty of  
13 intentional conduct, including for that purpose an  
14 allocation to the intentional actor. Any person so liable  
15 shall have a right of indemnification against the  
16 intentional actor.

17 (e) If one person is vicariously liable for the conduct  
18 of another, they shall be treated as one person for the  
19 purposes of this section and the same percentage  
20 allocated to each for which they shall be jointly liable, and  
21 this section shall not affect whatever right of  
22 indemnification or contribution may exist between them.

23 (f) Nothing in this section shall invalidate rights to  
24 indemnification or contribution which are provided for  
25 by contract.

26 (g) Nothing in this section shall affect an action based  
27 upon a product liability claim in which the liability of the  
28 defendants has been determined not upon their  
29 individual conduct but upon their share of the market for  
30 that product.

31 SEC. 3. Section 1432 of the Civil Code is amended to  
32 read:

33 1432. *A Except as provided in Section 1431.1, a party*  
34 *to a joint, or joint and several obligation, who satisfies*  
35 *more than his or her share of the claim against all, may*  
36 *require a proportionate contribution from all the parties*  
37 *joined with him or her.*

38 SEC. 4. Section 625 of the Code of Civil Procedure is  
39 amended to read:

40 625. (a) In all cases the court may direct the jury to

1 find a special verdict in writing, upon all, or any of the  
2 issues, and in all cases may instruct them, if they render  
3 a general verdict, to find upon particular questions of  
4 fact, to be stated in writing, and may direct a written  
5 finding thereon. In all cases in which the issue of punitive  
6 damages is presented to the jury the court shall direct the  
7 jury to find a special verdict in writing separating  
8 punitive damages from compensatory damages. The  
9 special verdict or finding ~~must~~ shall be filed with the  
10 clerk and entered upon the minutes. ~~Where~~ If a special  
11 finding of facts is inconsistent with the general verdict,  
12 the former controls the latter, and the court ~~must~~ shall  
13 give judgment accordingly.

14 (b) *In an action for personal injury, property damage,*  
15 *or wrongful death, where an indivisible injury has been*  
16 *sustained by the plaintiff as a proximate result of the*  
17 *wrongful conduct of two or more persons, the court shall*  
18 *direct the jury to return a special verdict in writing*  
19 *incorporating the allocations required by subdivisions*  
20 *(a), (b), and (c) of Section 1431.1 of the Civil Code.*

21 SEC. 5. Section 878.5 is added to the Code of Civil  
22 Procedure, to read:

23 878.5. (a) When a defendant, or prospective  
24 defendant, has settled his or her liability based on a tort,  
25 whether or not an action has been filed in a court, before  
26 a judgment is rendered against the defendant, the agreed  
27 upon settlement amount shall be the total amount that  
28 the plaintiff receives in compensation for damages  
29 attributable to the comparative fault of that defendant.

30 (b) The remaining defendants shall only be liable for  
31 damages attributable to their comparative fault, and not  
32 for damages attributable to the comparative fault of the  
33 settling defendant. No judgment rendered against the  
34 remaining defendants shall include damages attributable  
35 to the comparative fault of a settling defendant. In  
36 determining the liability of the remaining defendants,  
37 the total damages shall be reduced by the damages  
38 attributable to the comparative fault of the settling  
39 defendant without regard to the amount of the  
40 settlement, regardless of whether the settlement amount

1 is greater than or less than the damages attributable to  
2 the comparative fault of the settling defendant.

3 (c) In reaching a verdict, the jury or court shall  
4 determine the comparative fault of the settling  
5 defendant and shall reduce the verdict by the amount of  
6 damages attributed to the comparative fault of that  
7 defendant and not by the amount of the settlement,  
8 regardless of whether the settlement amount is greater  
9 than or less than the amount of damages attributed to the  
10 comparative fault of the settling defendant.

11 SEC. 6. Section 817 is added to the Government  
12 Code, to read:

13 817. (a) Notwithstanding Section 1714 of the Civil  
14 Code, in an action for personal injury, property damage,  
15 or wrongful death, where an indivisible injury has been  
16 sustained by the plaintiff as a proximate result of the  
17 wrongful conduct of two or more persons, at least one of  
18 which is a public entity or public employee not immune  
19 from tort liability, the damages shall be apportioned in  
20 the manner provided by Section 1431.1 of the Civil Code  
21 except that for the public entity or public employee the  
22 apportionment shall be made for all damages including  
23 economic damages, the public employee and public  
24 entity shall be liable only for the percentage of the total  
25 compensable damages allocated to it, and a separate  
26 judgment shall be rendered against the public employee  
27 and public entity for that amount. The liability of the  
28 public entity or public employee shall be several only,  
29 and not joint.

30 (b) Section 878.5 of the Code of Civil Procedure shall  
31 be applicable to actions involving public entities or  
32 employees.

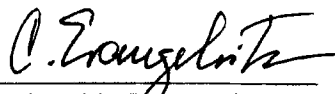
**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 400 South Hope Street, 18th Floor, Los Angeles, California 90071-2899. On February 7, 2019, I served the following document on the persons listed in the attached service list and in the manner indicated below:

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM  
OF POINTS AND AUTHORITIES; DECLARATION OF  
DIMITRI D. PORTNOI; PROPOSED ORDER**

**By U.S. Mail:** I placed the document(s) listed above in a sealed envelope with postage thereon fully prepaid in the United States mail in accordance with the firm's ordinary business practices and addressed as set forth below. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence from me would be processed on the same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 7, 2019, in Los Angeles, California.

  
\_\_\_\_\_  
Cynthia Evangelista

**SERVICE LIST**  
**B.B., et al. v. County of Los Angeles, et al.**  
**Supreme Court Case No. S250734**

<p>John E. Sweeney  THE SWEENEY FIRM  315 South Beverly Drive, Suite 305  Beverly Hills, California 90212  Telephone: (310) 277-9595  Facsimile: (310) 277-0177  jes@thesweeneyfirm.com</p>	<p><i>Attorneys for Plaintiffs B.B., a Minor, and B.B., a Minor, by and through their Guardian ad Litem Shanell Scott</i></p>
<p>Norman Pine  Scott Tillett  Stacey Tillett  Chaya M. Citrin  PINE TILLET PINE LLP  14156 Magnolia Blvd., Suite 200  Sherman Oaks, California 91423  Telephone: (818) 379-9710  npine@pineandpine.com  stillet@pineappeals.com</p>	<p><i>Attorneys for Plaintiffs B.B., a Minor, and B.B., a Minor, by and through their Guardian ad Litem Shanell Scott</i></p>
<p>Michael D. Seplow  Paul L. Hoffman  Aidan C. McGlaze  John Washington  SCHONBRUN SEFLOW HARRIS &amp;  HOFFMAN LLP  11543 W. Olympic Blvd.  Los Angeles, CA 90064  Telephone: (310)396-0731  mseplow@sshhlaw.com  hoffpaul@sshhlaw.com  acmcglaze@sshhlaw.com  jwashington@sshhlaw.com</p>	<p><i>Attorneys for Plaintiffs D.B., a Minor, and D.B., a Minor, by and through their Guardian ad Litem Terri Thomas, and Rhandi Thomas, and T.E., a Minor, by and through her Guardian ad Litem Akira Earl</i></p>
<p>Carl E. Douglas  Jamon Hicks  DOUGLAS/HICKS LAW  5120 W. Goldleaf Cir., Suite 140  Los Angeles, CA 90056  Telephone: (323) 655-6505  Facsimile: (323) 651-4990  carl@douglashicksllaw.com  jamon@douglashicksllaw.com</p>	<p><i>Attorneys for Plaintiffs D.B., a Minor, and D.B., a Minor, by and through their Guardian ad Litem Terri Thomas, and Rhandi Thomas, and T.E., a Minor, by and through her Guardian ad Litem Akira Earl</i></p>



<p>Drew R. Antablin, Esq.  ANTABLIN &amp; BRUCE, ALP  8484 Wilshire Boulevard, Suite 548  Beverly Hills, California 90211  Telephone: (323) 651-4490  Facsimile: (323) 651-4990  drew@antablinbruce.com</p>	<p><i>Attorneys for Plaintiffs D.B., a  Minor, and D.B., a Minor,  by and through their Guardian  ad Litem Terri Thomas, and  Rhandi Thomas, and T.E., a  Minor, by and through her  Guardian ad Litem Akira Earl</i></p>
<p>Olu K. Orange, Esq.  ORANGE LAW OFFICES, P.C.  3435 Wilshire Boulevard  Suite 2910  Los Angeles, California 90010  Telephone: (213) 736-9900, ext. 103  Facsimile: (213) 417-8800  oluorange@att.net</p>	<p><i>Attorneys for Plaintiffs D.B., a  Minor, and D.B., a Minor,  by and through their Guardian  ad Litem Terri Thomas, and  Rhandi Thomas, and T.E., a  Minor, by and through her  Guardian ad Litem Akira Earl</i></p>
<p>Eugene P. Ramirez  Julie Fleming  MANNING MARDER KASS ELLROD  &amp; RAMIREZ  801 S. Figueroa Street, 15th Fl.  Los Angeles, CA 90017  Telephone: (213) 624-6900  epr@manningllp.com  jmf@manningllp.com</p>	<p><i>Attorneys for County of Los  Angeles, David Aviles, and Paul  Beserra</i></p>
<p>Ted W. Pelletier  KAZAN, MCCLAIN, SATTERLEY &amp;  GREENWOOD PLC  Jack London Market  55 Harrison Street, Suite 400  Oakland, CA 94607  Telephone: (510) 302-1000  tpelletier@kazanlaw.com</p>	
<p>Clerk, Second District Court of Appeal  Ronald Reagan State Building  300 South Spring Street  2nd Floor, North Tower  Los Angeles, CA 90013</p>	
<p>Clerk, Hon. Ross M. Klein  Los Angeles County Superior Court  Gov. George Deukmejian Courthouse  275 Magnolia Ave.  Long Beach, CA 90802</p>	
<p>Attorney General  Office of the Attorney General  300 South Spring Street  Los Angeles, CA 90013-1230</p>	