

No. S207313

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

SUPREME COURT
FILED

OCT - 2 2013

ROSEMARY VERDUGO, mother,)
successor and heir of MARY ANN)
VERDUGO, Decedent; and)
MICHAEL VERDUGO, brother of)
Decedent,)

Plaintiffs/Appellants,)

vs)

TARGET STORES, a division of)
TARGET CORPORATION, a)
Minnesota corporation,)

Defendant/Appellee.)

Frank A. McGuire Clerk

Deputy

**RESPONSE TO RESPONDENT'S
REQUEST FOR JUDICIAL NOTICE**

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RESPONSE TO RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

Plaintiffs and appellants Rosemary Verdugo and Michael Verdugo hereby submit their Response to respondent Target Corporation's pending Request for Judicial Notice. This Response raises authorities similar to those presented by Target in response to the Verdugo's pending judicial notice motion.

Target's first two requests seek notice of legislative materials. Such requests are proper only as to published materials, and the judicial notice should be denied to the extent the materials present unpublished materials. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46 n.9.)

The Verdugos hereby object to Target's request for judicial notice of a variety of statistics, scientific papers, and reports. (Target Requests nos. 3-19.) Target has improperly asserted the truth of these cherry-picked materials in extensive portions of their Answer Brief on the Merits, even though they were never presented in the trial court. (See ABM 44-50.) The 'truth' of the assertions in these documents is not admissible, as the materials are not "embraced by both parties as accurate," and the asserted "facts" they contain are "reasonably

subject to dispute.” (Evid. Code § 452(h); *People v. Jennings* (2010)
50 Cal.4th 616, 685 n.34; *Mangini v. R. J Reynolds Tobacco Co.*
(1994) 7 Cal.4th 1057, 1063.)

Date: October 2, 2013

Respectfully Submitted,
LAW OFFICES OF DAVID EISENSTEIN
TARKINGTON, O’NEILL, BARRACK
& CHONG

A handwritten signature in black ink that reads "Robert Roth". The signature is written in a cursive style with a large initial "R".

By: ROBERT A. ROTH
Attorneys for Rosemary Verdugo
and Michael Verdugo

PROOF OF SERVICE

I declare that I am a citizen of the United States, that I have attained the age of majority, and that I am not a party to this action. My business address is 2711 Alcatraz Avenue, Suite 3, Berkeley, CA 94705-2726. I am familiar with this firm's practice of collection and processing of correspondence to be deposited for delivery via the U.S. Postal Service as well as other methods used for delivery of correspondence. On the below stated date, in the manner indicated, I caused the within document(s) entitled:

- RESPONSE TO RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

To be served on the party(ies) or their (its) attorney(s) of record in this action:

Via Mail: I cause each envelope (with postage affixed thereto) to be placed in the U.S. mail at Berkeley, California.

Via Personal Service: I instructed each envelope to be hand-delivered via professional messenger service to the address listed below.

Via Overnight Courier: I caused each envelope to be delivered via professional overnight delivery service.

Via Facsimile: I instructed such to be transmitted via facsimile to the office(s) of the addressee(s).

addressed as follows:

Richard Caldarone
Mayer Brown LLP
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[counsel for Target Corporation]

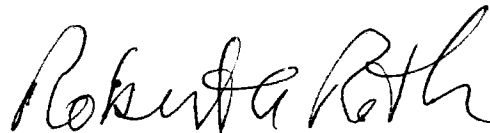
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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Date: October 2, 2013



Robert A. Roth