

Case No. S249895

**IN THE SUPREME COURT OF CALIFORNIA**

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ABBOTT LABORATORIES; ABBVIE INC.; TEVA PHARMACEUTICALS USA,  
INC.; BARR PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS,  
INC.; AND DURAMED PHARMACEUTICAL SALES CORP.,

*Petitioners,*

*vs.*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

*Respondent,*

PEOPLE OF THE STATE OF CALIFORNIA EX REL. ORANGE COUNTY  
DISTRICT ATTORNEY TONY RACKAUCKAS,

*Real Party in Interest.*

SUPREME COURT  
**FILED**

NOV 26 2018

Jorge Navarrete Clerk

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Deputy

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After a Decision by the Court of Appeal for the Fourth District, Division One  
Case No. D072577

Issuing a Writ of Mandate to Vacate an  
Order of the Superior Court of Orange County  
Superior Court Case No. 30-2016-00879117-CU-BT-CXC  
Hon. Kim Dunning

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**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS'  
ANSWERING BRIEF ON THE MERITS;  
DECLARATION OF MICHAEL SHIPLEY**

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## REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rules of court 8.520(g) and 8.252(a) and Evidence Code sections 452, subdivision (c) and 459, subdivision (a), Defendants Abbott Laboratories; Abbvie Inc.; Teva Pharmaceuticals USA, Inc.; Barr Pharmaceuticals, Inc.; Duramed Pharmaceuticals, Inc.; and Duramed Pharmaceutical Sales Corp (“Defendants”) hereby request that this Court take judicial notice of legislative history materials in connection with Defendants’ Answering Brief on the Merits.

Defendants request that the Court take judicial notice of legislative history materials regarding the enactments making up the California Unfair Competition Law, codified in California Business & Professions Code sections 17200 *et seq.* These materials are more particularly listed in, and attached to, the Declaration of Michael Shipley as Exhibits 1 through 28. And index of them is attached as Appendix 1 to the Shipley Declaration.

Defendants also request that the Court take judicial notice legislative history materials regarding 1980 Statutes, chapter 1096, which was enacted as Senate Bill 1890 in 1980. The materials are attached as Exhibit 29 to the Shipley Declaration. They include: (1) a Senate Judiciary Committee report (pp. 2055-2058); (2) an Assembly Criminal Justice Committee report (pp. 2059-2061); (3) an analysis of the Bill from the Legislative Analyst (pp. 2062-2063); a staff analysis from the Assembly Ways and Means Committee (p. 2064); (4) a letter to Governor Edmund Brown from Senator Omer Rains, who sponsored the bill (p. 2065); (5) an enrolled bill report from the Department of Finance

(p. 2066); (6) a letter to Governor Brown from the Legislative Counsel (p. 2067); (7) a letter to Governor Brown from California Attorneys for Criminal Justice (p. 2068); and (8) final bill text (pp. 2069-2071).

The materials are relevant to the pending Appeal before the Court because they (1) demonstrate that there is nothing in the legislative history of the UCL to indicate that the legislature intended to give plenary power to district attorneys to bring civil enforcement actions based on conduct occurring outside of the geographic jurisdiction; and (2) rebut an argument that S.B. 1890's amendment to Government Code section 26500 was intended by the Legislature to have broad-reaching significance regarding the authority of district attorneys to commence civil litigation.

Notice of these materials was not sought before the trial court or Court of Appeal. As to the UCL history materials, the briefing schedule in the Court of Appeal afforded insufficient time to compile a complete legislative history of the UCL, which comprises 28 different enactments over more than eighty years. As to 1980 amendment to Government Code section 26500, the argument in the Opening Brief to which Defendants are responding was not made in the trial court or the Court of Appeal and thus Defendants had no occasion to seek notice of these materials.

This Court routinely takes judicial notice of legislative history documents under the authority of Evidence Code sections 452, subdivision (c) and 459, subdivision (a). (See, e.g., *Heckart v.*

*A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749, 767 fn. 8; *White v. Davis* (2003) 30 Cal.4th 528, 553 fn. 11.) The Court will generally grant requests to notice legislative history documents, meaning we will at least *consider* them, even if [may] ultimately find some to be of little or no help in ascertaining legislative intent.” *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1172 fn. 6, emphasis original.) Moreover, when a party, like the District Attorney here, makes arguments that diverge from settled law in substantial or radical ways, the Court has considered an absence of support for such arguments in the Legislative history to be relevant. (*Id.* at p. 11693; *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 163.)

\* \* \*

Defendants thus respectfully request that the Court grant this Request for Judicial Notice.

Respectfully Submitted,

Dated: November 21, 2018 KIRKLAND & ELLIS LLP

By: \_\_\_\_\_

Michael Shipley

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Jay P. Lefkowitz (*phv forthcoming*)  
Yosef Mahmood (SBN 295976)

*Attorneys for Teva Pharmaceuticals  
USA, Inc.; Duramed  
Pharmaceuticals, Inc.; Duramed  
Pharmaceuticals Sales Corp., and  
Barr Pharmaceuticals Inc.*

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*Attorneys for Petitioners AbbVie Inc.  
and Abbott Laboratories*

**DECLARATION OF MICHAEL SHIPLEY IN SUPPORT OF  
PETITIONERS' REQUEST FOR JUDICIAL NOTICE**

I, Michael Shipley, declare:

1. I am an attorney admitted to practice before the courts of the State of California, and I am counsel for Petitioners/Defendants Teva Pharmaceuticals USA, Inc.; Duramed Pharmaceuticals, Inc.; Duramed Pharmaceuticals Sales Corp., and Barr Pharmaceuticals Inc. I have personal knowledge of the facts stated herein, and I could and would competently testify to them if called as a witness.

2. I submit this declaration in support of Defendants' Request for Judicial Notice in Support of Answering Brief on the Merits, and concurrently filed Answering Brief on the Merits.

3. Defendants' Answering Brief argues that there is an absence of support for the District Attorney's arguments in any of the legislative history of the Unfair Competition Law. Because that requires proof of negative, Defendants have compiled the legislative history of 28 different enactments, which constitute the full history of the UCL. This compiled history is extremely voluminous. To avoid burdening the Court with an unwieldy large paper filing, the exhibits to this declaration (Exhibits 1A through 29) have been submitted herewith in electronic media containing a bookmarked appendix .pdf. Defendants will also submit an electronic copy of the document with the Court's e-filing provider. Defendants will file a paper copy of the exhibits if the Court would find it useful.

3. Exhibits 1A through 28AC are true and correct copies of the legislative history documents related to each enactment

making up the Unfair Competition Law. A detailed index of the exhibits is attached as Appendix 1 to this declaration.

4. These documents were gathered at my firm's request by Legislative History & Intent, a legislative history search firm that conducts research and gathers historical materials related to legislative enactments. I am informed and believe that they procured the above documents by searching publically available Senate and Assembly committee bill files, author bill files, and the Governor's chaptered bill file, as well as bill books, books of annual statutes, and Assembly and Senate Journals as all of those sources are maintained in the regular course of the State's business.

5. Exhibit 29 is a true and correct copy of legislative history documents related to the enactment of Statutes 1980, chapter 1094.

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

Executed on November 21, 2018, at Los Angeles, California.

  
\_\_\_\_\_  
Michael Shipley

## APPENDIX 1

### Appendix 1 to M. Shipley Declaration

<u>Exhibit</u>	<u>Document Title</u>	<u>Pages</u>
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<b>2.</b>	<b>1945 Statutes, Chapter 652, A.B. 429</b>	<b>74 - 103</b>
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I	Statutes of California, 1974 Chapters	188 - 190
J	Summary Digest of Statutes Enacted, California Legislature, 1973-74 Regular Session and 1973-74 Second Extraordinary Session	191 - 192
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M	Volume 11, Index to Journal of the Assembly	195 - 196
<b>6.</b>	<b>1976 Statutes, Chapter 837, A.B. 4079</b>	<b>197 - 220</b>
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<u>Exhibit</u>	<u>Document Title</u>	<u>Pages</u>
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D	Senate Committee of Judiciary Bill Digest	206 - 207
E	Collection of Bill Reports	208 - 215
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<u>Exhibit</u>	<u>Document Title</u>	<u>Pages</u>
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K	Summary Digest of Statutes Enacted, California Legislature, 1975-76 Regular Session	245 - 246
L	Collection of Memos and Letters Related to A.B. 3279	247 - 270
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<b>11.</b>	<b>1988 Statutes, Chapter 790, S.B. 2440</b>	<b>365 - 424</b>
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L	Summary Digest of Statutes Enacted, California Legislature, 1987-88 Regular Session	414 - 415
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O	Collection of Letters Re S.B. 1911	702 - 759
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B	Amendments to Senate Bill No. 1586	764 - 772
C	Collection of Letters Regarding S.B. 1586	773 - 786
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<b><u>Exhibit</u></b>	<b><u>Document Title</u></b>	<b><u>Pages</u></b>
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O	Enrolled Bill Report	822 - 828
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K	Department of Finance Bill Analysis	923 - 925
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<b>17.</b>	<b>1997 Statutes, Chapter 17, S.B. 947</b>	<b>976 - 1011</b>

<b>Exhibit</b>	<b>Document Title</b>	<b>Pages</b>
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G	Assembly Judiciary Committee's Background Information Worksheet	1189 - 1191
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<b>22.</b>	<b>February 24, 2005 Legislative Analyst Office's Review of Proposed Initiate Known as Cheaper Prescription Drugs for California Act</b>	<b>1385 - 1390</b>
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J	Text of 2004 Proposition 64 from Legislative File	1455 - 1456



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L	Enrolled Bill Report (Budget) - Consumer Affairs	1461 - 1462
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I	Assembly Judiciary Committee Analysis	1587 - 1588
J	Staff Analysis - Franchise Tax Board	1589
K	July 31, 2006 Letter from Department of Consumer Affairs to Senate Judiciary Committee	1590
L	Senate Rules Committee Floor Analysis	1591 - 1592
M	Chaptered Bill Text (Excerpted)	1593 - 1598
N	Legislative Counsel's Report on Legislation Necessary to Maintain the Codes (Excerpted)	1599 - 1603
O	2005-06 Assembly Journal Index	1604 - 1605
<b>25.</b>	<b>Stats. 2007, ch. 375, S.B. 376</b>	<b>1606 - 1679</b>
A	Complete Bill History	1606
B	Bill Text as Introduced	1607 - 1610
C	Senate Judiciary Committee Bill Information Request	1611 - 1613
D	Amended Bill Text	1614 - 1617
E	Compilation of Letters to Senate Judiciary Committee	1618 - 1626
F	Senate Judiciary Committee Analysis	1627 - 1630

<b><u>Exhibit</u></b>	<b><u>Document Title</u></b>	<b><u>Pages</u></b>
G	Correspondence from California Chamber of Commerce	1631 - 1634
H	Amended Bill Text	1635 - 1638
I	Senate Republican Office of Policy Analysis	1639 - 1640
J	Compilation of Correspondence to Assembly Judiciary Committee	1641 - 1644
K	Senate Judiciary Committee Analysis	1645 - 1646
L	Assembly Judiciary Committee Republican Bill Analysis	1647 - 1649
M	Assembly Judiciary Committee Bill Information Request	1650 - 1652
N	Assembly Judiciary Committee Analysis	1653 - 1655
O	California Chamber of Commerce Floor Alert	1656
P	Enrolled Bill Report - Finance	1657 - 1658
Q	Enrolled Bill Report - Planning & Research	1659 - 1664
R	Compilation of Letters to Governor	1665 - 1676
S	Chaptered Bill Text	1677 - 1679
<b>26.</b>	<b>Stats. 2008, ch. 179, S.B. 1498</b>	<b>1680 - 1740</b>
A	Complete Bill History	1680
B	Bill Text as Introduced (Excerpted)	1681 - 1690
C	Senate Judiciary Committee Analysis	1691 - 1692
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<b>Exhibit</b>	<b>Document Title</b>	<b>Pages</b>
E	Amended Bill Text	1695 - 1704
F	Assembly Judiciary Committee Analysis	1705 - 1706
G	Senate Rules Committee Floor Analysis	1707 - 1709
H	Senate Republican Office of Policy Analysis	1710
I	Enrolled Bill Report - Finance	1711
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K	Enrolled Bill Report - Planning & Research	1716 - 1719
L	Enrolled Bill Report - Education	1720 - 1723
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N	Legislative Counsel's Report to Governor	1728
O	Chaptered Bill Text (Excerpted)	1729 - 1735
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<b>27.</b>	<b>Stats. 2012, ch. 32, S.B. 1006</b>	<b>1741 - 1914</b>
A	Complete Bill History	1741
B	Bill Text as Introduced	1742
C	Senate Rules Committee Floor Analysis - Third Reading	1743
D	Amended Bill Text	1744 - 1839
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<b>Exhibit</b>	<b>Document Title</b>	<b>Pages</b>
F	Chaptered Bill Text	1845 - 1914
<b>28.</b>	<b>Stats. 2012, ch. 448, A.B. 2370</b>	<b>1915 - 2054</b>
A	Complete Bill History	1915 - 1916
B	Assembly Judiciary Committee - Republican Analysis	1917 - 1920
C	Report on Laura's Law	1921 - 1938
D	Compilation of Correspondence re Laura's Law from Legislative File	1939 - 1966
E	Bill Text as Introduced	1967 - 1969
F	Amended Bill Text	1970 - 1975
G	Assembly Judiciary Committee Bill Information Request	1976 - 1980
H	Assembly Judiciary Committee Analysis	1981 - 1983
I	Assembly Judiciary Committee Bill Information Request	1984 - 1988
J	Unsigned Drafting Instructions from Legislative File	1989
K	Bill Fact Sheets from Sponsor	1990 - 1992
L	Senate Health Committee Bill Information Request	1993 - 1996
M	Senate Health Committee Bill Information Request	1997 - 1998
N	Amended Bill Text (Excerpted)	1999 - 2004
O	Senate Health Committee Analysis	2005 - 2006

<u>Exhibit</u>	<u>Document Title</u>	<u>Pages</u>
P	Senate Health Committee Bill Information Request	2007 - 2008
Q	Senate Republican Office of Policy Analysis	2009 - 2011
R	Amended Bill Text (Excerpted)	2012 - 2017
S	Senate Floor Amendments Committee Analysis	2018
T	Amended Bill Text (Excerpted)	2019 - 2024
U	Senate Rules Committee Floor Analysis	2025 - 2028
V	Senate Rules Committee Floor Analysis - Third Reading	2029 - 2032
W	Senate Republican Office of Policy Analysis	2033 - 2035
X	Senate Floor Amendments Committee Analysis	2036
Y	Amended Bill Text (Excerpted)	2037 - 2042
Z	Senate Republican Office of Policy Analysis	2043 - 2045
AA	Senate Rules Committee Floor Analysis - Third Reading	2046 - 2049
AB	Assembly Health Committee Log	2050
AC	Chaptered Bill Text (Excerpted)	2051 - 2054
<b>29.</b>	<b>Senate Committee on Judiciary, Background Information, S.B. 1890</b>	<b>2055 - 2073</b>

**CERTIFICATE OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 333 South Hope Street, 29th Floor, Los Angeles, California 90071.

On November 23, 2018, I hereby certify that I served the foregoing **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' ANSWERING BRIEF ON THE MERITS; DECLARATION OF MICHAEL SHIPLEY** (w/Appendix of Exhibits on CD) on the following interested parties in this action in the manner set forth below:

**[X] FEDEX:** I placed the document(s) listed above in a sealed overnight courier envelope addressed to the Court below and routing the envelope for pick up by Federal Express on that same day in the ordinary course of business, which charges fully prepaid for next business day delivery.

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On November 23, 2018, I hereby certify that I served the foregoing **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' ANSWERING BRIEF ON THE MERITS; DECLARATION OF MICHAEL SHIPLEY** (without Appendix of Exhibits, which will be made available upon request) on the following interested parties in this action in the manner set forth below:

**[X] U.S. MAIL:** I also placed the document listed above in a sealed envelope in the United States mail to the addressees set forth below. Under the firm's practice of collection and processing of documents for mailing, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

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

Executed on November 23, 2018, at Los Angeles, California.

  
Keith Catuara