

S208130

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

JUN 20 2013

ANTONIO and JANIS CORDOVA,
Petitioners and Appellants

Frank A. McGuire Clerk

Deputy

v.

CITY OF LOS ANGELES
Defendant and Respondent.

After a Published Decision by the Court of Appeal,
Second Appellate District, Division One
Court of Appeal No. B236195
Los Angeles Superior Court Nos. BC442048, BC444004, BC443948
Hon. William F. Fahey

**REQUEST FOR JUDICIAL NOTICE OF COLOR PHOTOGRAPHS THAT
WERE EXHIBITS FILED IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF SARA UGAZ; [PROPOSED] ORDER**

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Pursuant to Rule 8.252 of the California Rules of Court, and to California Evidence Code Sections 452(d)(1), 453 and 459, Respondent City of Los Angeles (“City” or “Respondent”), through its counsel, requests this Court to take judicial notice of the color photographs attached as Exhibits A, B, and C to the Declaration of Felix Padilla in support of the City’s Motion for Summary Judgment (hereinafter referred to as “Exhibits A-C”), which were included in Volume 1 of Appellants’ Appendix, AA 090, 092, 094. The City seeks judicial notice to confirm that the Court has color copies of the photographs, rather than black and white.

This request for judicial notice is based on the following points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

California Rules of Court Rule 8.252 provides the means for judicial notice on appeal. The rule provides in subdivision (a)(2) that the motion must state:

(A) Why the matter to be noticed is relevant to the appeal; (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and (C) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).)

A. The City Requests Judicial Notice Be Taken Of Exhibits A-C, Which Depict in Color The Alleged Dangerous Condition of Pubic Property That Is At Issue

The Supreme Court granted petition to review a single issue: May a government entity be held liable if a dangerous condition of public property existed and caused the injuries that plaintiffs suffered but did not cause the third party conduct that led to the accident? Here, Plaintiffs allege that a magnolia tree constitutes a dangerous condition of public property, which is at issue in this Court's review. Exhibits A, B, and C are color photographs taken by the LAPD on August 27, 2008, at the accident scene where the Cordova vehicle collided with the magnolia tree. (1 AA 086-094.) Exhibits A-C were filed in color with the trial court, however it is unclear whether this court has these color photographs, as opposed to black and white copies. Exhibits A-C are instructive on responding to the Supreme Court's inquiry because color photographs provide visual clarity of the magnolia tree, the physical characteristics of the street, and the Plaintiffs' car collision with the magnolia tree.

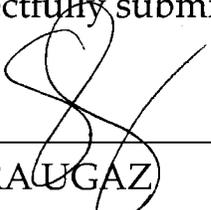
A court properly takes judicial notice of records of any court of this state pursuant to California Evidence Code sections 452(d)(1). Accordingly, the City requests that this Court take judicial notice of Exhibits A through C to the Declaration of Felix Padilla in support of the City's Motion for Summary Judgment, which was part of the record of this case in the Los Angeles Superior Court and Court of Appeal, respectively.

B. The Matter To Be Judicially Noticed Was Presented To The Trial Court And the Court of Appeal, And Pertains To An Issue For Review

Exhibits A-C were presented to the Los Angeles Superior Court as color exhibits to the Declaration of Felix Padilla in support of the City's Motion for Summary Judgment. The Plaintiffs' objections to these exhibits were overruled by the trial court. (3 AA 640-641.) Exhibits A-C were also part of the record of the Court of Appeals, as it affirmed the Trial Court's grant of summary judgment in favor of the City. The City respectfully requests judicial notice of Exhibits A-C because the clerk for the Supreme Court was unable to confirm that they had the original color copies of the photographs. Because the color photographs provide visual clarity of the accident scene, the physical layout of the road, and magnolia tree at issue here, judicial notice is property requested here and at this time.

DATED: June 19, 2013

Respectfully submitted,

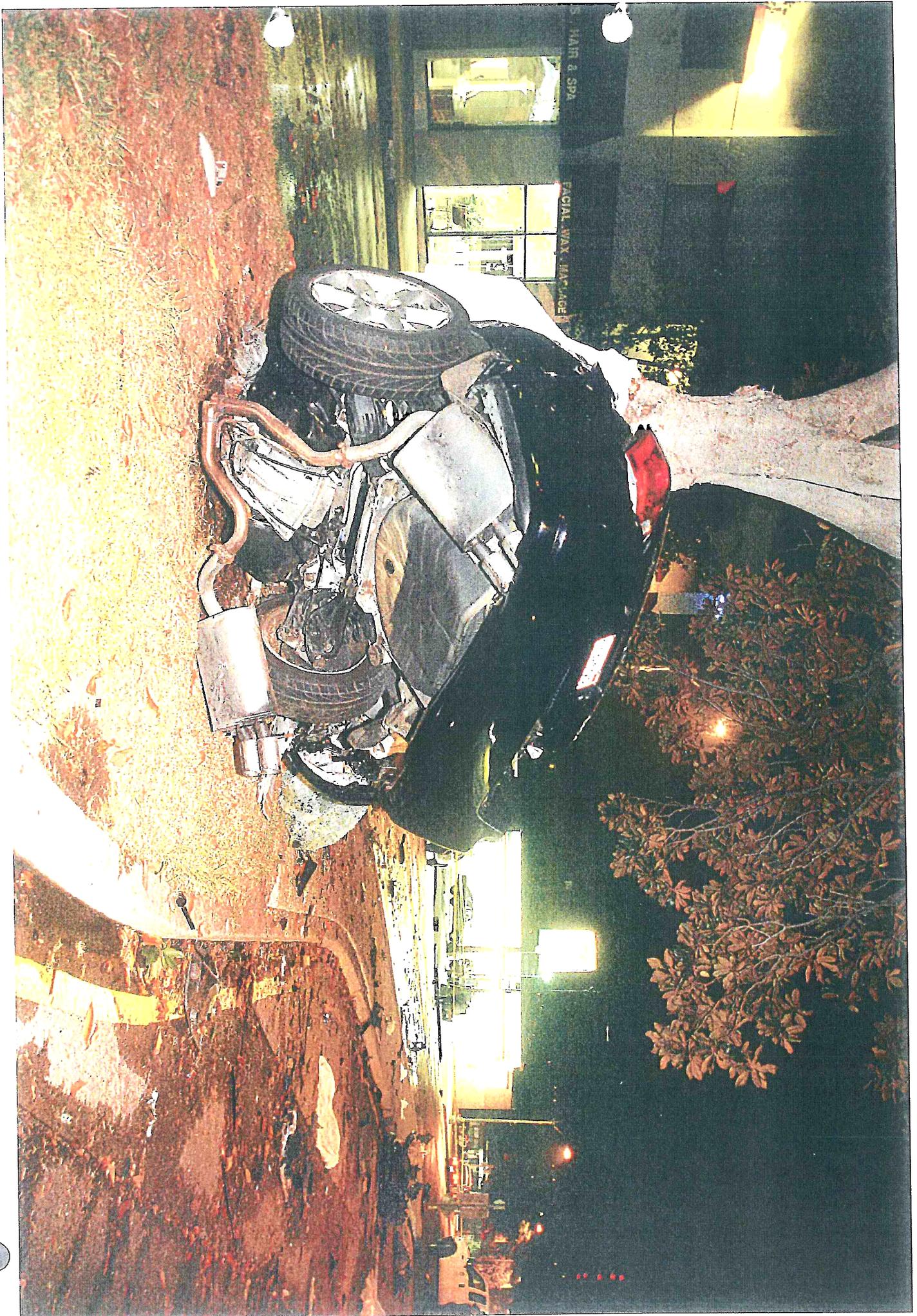


SARA UGAZ
Deputy City Attorney

Attorneys for Respondent
CITY OF LOS ANGELES







Declaration of Sara Ugaz

I, Sara Ugaz, declare:

1. I am an attorney at law licensed to practice before the Courts of the State of California and before this Court. I am a Deputy City Attorney for the City of Los Angeles. I could and would competently testify under oath to the matters contained in this declaration.
2. I filed the color photographs of the accident scene (Exhibits A-C to the Declaration of Felix Padilla) with the trial court in support of Defendant City of Los Angeles' Motion for Summary Judgment. These photographs are identified in Volume 1 of the Appellants' Appendix as AA-090, 092, 094.
3. I was unable to confirm that the Supreme Court obtained these photographs in color and may have only black and white copies.
4. These color photographs are particularly helpful in answering the issue presented by the Supreme Court because they depict the physical characteristics of the public property at the time of the deaths of the Cordova children. Therefore, I request that the Court take judicial notice of them.

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

Dated: June 19, 2013



Safa Ugaz, Declarant

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ANTONIO and JANIS CORDOVA,
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Defendant and Respondent.

[PROPOSED] ORDER

Good cause having been shown and pursuant to Rules of Court Rule 8.252(a), and Evidence Code sections 452, 453 and 459, this Court takes judicial notice of the colored photographs attached to Respondent City of Los Angeles' Request for Judicial Notice.

Chief Justice

Associate Justice

PROOF OF SERVICE BY MAIL

Re: Cordova, et al v. City of Los Angeles
Case No. B236195

At the time of service, I was over 18 years of age and not a party to this action. My business address is 200 North Main Street – Room 916, City Hall East, Los Angeles, California 90012, which is the County and State where this mailing occurred.

On June 19, 2013 I served a true copy of the documents(s) described as:

REQUEST FOR JUDICIAL NOTICE OF COLOR PHOTOGRAPHS THAT WERE EXHIBITS FILED IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SARA UGAZ; [PROPOSED] ORDER

on all interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT delivery - I served the documents by placing them in an envelope or package addressed to the persons listed above and providing them to UPS Courier for service.

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

Executed on June 19, 2013, at Los Angeles, California.


IRENE M. PEREZ

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