

Case No. 218400

IN THE SUPREME COURT OF CALIFORNIA

In Re TRANSIENT OCCUPANCY TAX CASES

CITY OF SAN DIEGO, CALIFORNIA

Petitioner,

v.

HOTELS.COM, L.P., et al.

Respondents.

After an Opinion by the Court of Appeal, Second Appellate District,
Division Two, Case No. B243800

On Appeal from the Superior Court of
the State of California for the County of Los Angeles
The Hon. Elihu Berle, Judge of the Superior Court, Department 323
Los Angeles County Superior Court Case No. JCCP 4472

**OPPOSITION TO PETITIONER CITY OF SAN DIEGO'S
REQUEST FOR JUDICIAL NOTICE OF EXHIBIT I**

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OPPOSITION TO REQUEST TO TAKE JUDICIAL NOTICE AS TO EXHIBIT I

Appellant City of San Diego (“San Diego”) requests that this Court take judicial notice of Exhibit I, a compilation of transient occupancy tax (“TOT”) ordinances organized by counsel for San Diego into categories in a purportedly “neutral” manner. San Diego fails to explain how this list falls within the scope of materials of which a court may take judicial notice, and it is not the proper subject of judicial notice.

California Evidence Codes sections 451 and 452 allow a court to take judicial notice of the “decisional, constitutional and public statutory law” of California, the United States, and other states within the United States. Although the text of the ordinances themselves could be the proper subject of judicial notice (assuming copies of the codes in which they appear were provided, as required), that is not what San Diego has done. Instead, San Diego has manufactured a list of the ordinances and has organized that list in an argumentative manner. San Diego’s list is not itself “decisional, constitutional or public statutory law” subject to judicial notice under Evidence Code sections 451 and 452, and San Diego does not identify any other provision of sections 451 or 452 that might otherwise apply. Thus, San Diego offers no explanation for why its compilation is the proper subject of judicial notice.

And although San Diego claims the list contains no argument (Request for Judicial Notice at p. 5), the compilation includes counsel’s characterizations of the scope and content of the ordinances, which does constitute argument. Moreover, to the extent San Diego requests that this Court take judicial notice of San Diego’s interpretation of the TOT ordinances as a fact in this case, then its request plainly is improper. Instead, to the extent San Diego believed any of these ordinances were relevant, San Diego should have cited to and included the relevant

ordinances in its brief, rather than improperly requesting this Court to take judicial notice of them. *Mangini v. R. J. Reynolds Tobacco Co.*, 7 Cal. 4th 1057, 1064-65 (1994) (“Asking that authority be judicially noticed instead of citing and discussing it in a brief gives the parties no orderly opportunity to argue the relevance of that authority or to distinguish it.”), *partially overruled on other grounds by In Re Tobacco Cases II*, 41 Cal. 4th 1257 (Cal. 2007).

Because Exhibit I is not material that is properly the subject of judicial notice, this Court should deny San Diego’s request for judicial notice as to Exhibit I.

Dated: May 27, 2014

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LLC

Dated: May 27, 2014

JONES DAY

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Dated: May 27, 2014

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INTERNETWORK PUBLISHING
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Dated: May 27, 2014

K&L GATES LLP

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SITE59.COM, LLC

PROOF 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 300 South Grand Avenue, Suite 3300, Los Angeles, California 90071.

On May 27, 2014, I served the foregoing document described as:

**OPPOSITION TO PETITIONER CITY OF SAN DIEGO'S
REQUEST FOR JUDICIAL NOTICE OF EXHIBIT I**

on the interested parties in this action addressed as follows:

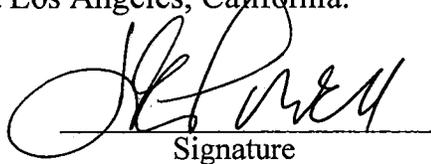
SEE ATTACHED SERVICE LIST

(BY US MAIL) I am readily familiar with the firms' practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

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

Executed on May 27, 2014, at Los Angeles, California.

Jon E. Powell
Type or Print Name


Signature

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<p>California Courts of Appeal Second Appellate District 300 S. Spring St. Los Angeles, CA 90013</p>	