

No. S241812

SUPREME COURT
FILED

FEB 05 2018

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

Jorge Navarrete Clerk

Deputy

BRETT VORIS,
Plaintiff and Appellant,

v.

GREG LAMPERT,
Defendant and Respondent.

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B265747

Appeal from the Superior Court for the County of Los Angeles, Case
No. BC408562, The Honorable Michael L. Stern Presiding

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF REPLY BRIEF; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF REGINA YEH;
PROPOSED ORDER**

ANDERSON YEH PC
EDWARD M. ANDERSON (SBN 198183)
REGINA YEH (SBN 266019)
401 Wilshire Boulevard, 12th Floor
Santa Monica, CA 90401
(310) 496-4270
edward@andersonyehlaw.com
regina@andersonyehlaw.com

Attorneys for Plaintiff and Appellant

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

BRETT VORIS,
Plaintiff and Appellant,

v.

GREG LAMPERT,
Defendant and Respondent.

**TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that, pursuant to California Evidence Code sections 452 and 459, California Rule of Court 8.252, and supporting case law, Plaintiff and Appellant Brett Voris (“Voriss”) hereby respectfully requests that the Court take judicial notice of the following materials cited in the Reply Brief on the Merits (“Reply Brief”), relevant to the issues presented for review:

- Fracassa, *Why wage theft is a serious problem in California*, S.F. CHRONICLE (May 26, 2017), <http://www.sfchronicle.com/business/article/Wage-theft-costs-low-paid-California-workers-2-11177052.php>;
- Galvin, *How to Get Paid What You're Owed, in Three Easy Steps. (Okay, Maybe Not so Easy.)*, WASH. POST (Sept. 6, 2015), [- 2 -](https://www.washingtonpost.com/blogs/monkey-</div><div data-bbox=)

cage/wp/2015/09/06/how-to-get-paid-what-youre-owed-in-three-easy-steps-okay-maybe-not-so-easy/.

- Cho, et al., Nat'l Emp't Law Project, *Hollow Victories: The Crisis In Collecting Unpaid Wages For California's Workers* (2013), <http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/HollowVictories.pdf>.

This request is based on this Notice, the accompanying Memorandum of Points and Authorities, and the Declaration of Regina Yeh.

Dated: February 2, 2018

Respectfully submitted,

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

By: _____


Regina Yeh

*Attorneys for Plaintiff and Appellant
Brett Voris*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Voris respectfully requests that this Court take judicial notice of the following materials cited in his Reply Brief. True and correct copies of these materials are attached as Exhibits D through F to the Declaration of Regina Yeh:

- Fracassa, *Why wage theft is a serious problem in California*, S.F. CHRONICLE (May 26, 2017), <http://www.sfchronicle.com/business/article/Wage-theft-costs-low-paid-California-workers-2-11177052.php>;
- Galvin, *How to Get Paid What You're Owed, in Three Easy Steps. (Okay, Maybe Not so Easy.)*, WASH. POST (Sept. 6, 2015), <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/09/06/how-to-get-paid-what-youre-owed-in-three-easy-steps-okay-maybe-not-so-easy/>.
- Cho, et al., Nat'l Emp't Law Project, *Hollow Victories: The Crisis In Collecting Unpaid Wages For California's Workers* (2013), <http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/HollowVictories.pdf>.

Under California Rule of Court 8.252(a)(2)(C) and Evidence Code section 459, a reviewing court may take notice of anything that would be noticeable by a trial court under Evidence Code section 452. All of the materials cited above fall under that provision. They are also relevant to the issues presented in this matter for the reasons

stated below and in the Reply Brief. This Court should therefore grant Voris's request.

II. ARGUMENT

This Court may properly take judicial notice of items that meet the requirements of Evidence Code section 452. (*See* Evid. Code, § 459.)

A. News Articles May be Judicially Noticed

Judicial notice of news articles is proper under Evidence Code section 452. Evidence Code section 452 states in pertinent part: "Judicial notice may be taken of the following matters ... (h) "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (*See People v. Hardy* (1992) 2 Cal.4th 86, 174 fn. 24 [judicial notice of articles]; *see also Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408 [judicial notice of controversy as evidenced by articles in the press].)

The articles submitted under Exhibits D and E both discuss the problem of wage theft in California and the United States, as well as the difficulties employees face on collecting on judgments. That these news articles address and discuss wage theft as a wide-ranging issue is a fact "not reasonably subject to dispute and [is] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Code Civ. Proc., § 452, subd. (h); *see also Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808 [taking judicial notice of news articles because the fact that news articles discussed certain topics relevant to the case were

published was not reasonably subject to dispute]; *Schweitzer v. Westminster Invests.* (2007) 157 Cal.App.4th 1195, 1203 [taking judicial notice of various articles published by the California Association of Realtors for limited purpose of demonstrating what advice had been given in those articles].)

These articles under Exhibit D and E are relevant to the issues presented in the Reply Brief (as well as the Opening Brief). The recognition of the problem of wage theft in California and beyond, and the difficulty employees face in recovering from wage theft, is potentially relevant to this Court's policy considerations of worker's wage protections in California, in connection with whether to recognize and approve of a wage conversion claim.

B. Scientific and Social Studies May Be Judicially Noticed

This Court may also take judicial notice of scientific and social statistics to assist it in fashioning just and equitable rules of law. (*See, e.g., Grinnell v. Charles Pfizer & Co.* (1969) 274 Cal.App.2d 424, 444 (court took limited judicial notice of technical report of the U.S. Surgeon General); *see also Rivera v. Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 589 [“[E]ven in the relatively strict precincts of judicial inquiry, published research material on social and economic conditions is habitually used without entering it into evidence, without putting the author under oath or cross-examining him”) (citing *Brown v. Board of Education* (1954) 347, U.S. 483, 494)].)

Exhibit F is a report or study conducted by the UCLA Labor Center and the National Employment Law Project, who analyzed

records released by the California Division of Labor Standards Enforcement from 2008 to 2011 and surveyed and interviewed fifty California workers in 2013 with unpaid wage claims. The study recognizes that the pervasiveness of wage theft in California as well as the difficulties employees face in collecting unpaid wages.

The existence of the study is likewise relevant to this Court's considerations of policy considerations of worker's wage protections in California, in connection with whether to recognize and approve of a wage conversion claim.

III. CONCLUSION

For the foregoing reasons, Voris respectfully requests that the Court take judicial notice of Exhibits D through F.

Dated: February 2, 2018

Respectfully submitted,

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

By: 

Regina Yeh

*Attorneys for Plaintiff and Appellant
Brett Voris*

DECLARATION OF REGINA YEH, ESQ.

I, REGINA YEH, declare as follows:

1. I am an attorney at the law firm of Anderson Yeh PC, counsel of record for Brett Voris. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and could and would testify competently to such facts under oath.

2. Attached hereto as Exhibit D is a true and correct copy of: Dominic Fracassa, *Why wage theft is a serious problem in California*, S.F. CHRONICLE (May 26, 2017), <http://www.sfchronicle.com/business/article/Wage-theft-costs-low-paid-California-workers-2-11177052.php>;

3. Attached hereto as Exhibit E is a true and correct copy of: Daniel J. Galvin, *How to Get Paid What You're Owed, in Three Easy Steps. (Okay, Maybe Not so Easy.)*, WASH. POST (Sept. 6, 2015), <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/09/06/how-to-get-paid-what-youre-owed-in-three-easy-steps-okay-maybe-not-so-easy/>.

4. Attached hereto as Exhibit F is a true and correct copy of: Eunice Hyunhye Cho, et al., Nat'l Emp't Law Project, *Hollow Victories: The Crisis In Collecting Unpaid Wages For California's Workers* (2013), <http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/HollowVictories.pdf>.

Executed on February 2, 2018 in Santa Monica, California.

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


Regina Yeh

Exhibit D



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Unlimited Reading. Unlimited Listening. Any Device.

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Wage theft costs low-paid California workers \$2 billion per year

By Dominic Fracassa | May 26, 2017 | Updated: May 26, 2017 7:47pm

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Photo: FREDERIC J. BROWN, AFP/Getty Images

Workers celebrate in 2016 outside the Ronald Reagan State Building in downtown Los Angeles, where California Governor Jerry Brown signed the bill that will raise the state's minimum wage to \$15 an hour by 2022. Despite hikes in

the state's minimum wage, wage theft remains a persistent problem for low-paid workers.

Each year, minimum-wage violations by California employers sap the state's workforce of nearly \$2 billion in earnings, increasing the financial vulnerability of already at-risk populations and creating a drag on the state's overall economic health, according to a [report](#) released this month by the Economic Policy Institute, a nonprofit think tank in Washington.



Employees who are supposed to be getting paid the minimum wage in California are, on average, losing \$64 per week and about \$3,300 annually — 22 percent of their earnings — from employers shortchanging their hourly workers.

Though the current state minimum wage of \$10.50 an hour translates to an annual salary of \$21,840, minimum-wage workers don't always have full-time work, so they collect only \$11,700 a year in wages on average. That forces them "to rely on public assistance programs to survive and provide for their families," the report's authors wrote.

Their findings suggest that, despite California's reputation as a bastion of worker-friendly labor laws, wage theft — a broad term that can be invoked any time an employer doesn't follow those laws — remains a pernicious problem.

And it's one that Julie Su, the state's labor commissioner, is keenly aware of and looking to combat.

Before she took office in April 2011, Su said, the labor commissioner's office worked to weed out wage theft largely through random workplace inspections, a tactic she called "a very

insufficient, inefficient way of pursuing enforcement” of the state’s labor laws.

Su has shifted her agency’s resources, taking a more focused approach to enforcement — relying on reports of workplace violations from employees on the inside before taking action. Su said that her agency has also become “much more aggressive” when it comes to reclaiming money employers owe workers when wage violations are uncovered.

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“We do in-depth inspections of workplaces where we suspect there are violations, and we go all the way to actually attacking the shell games employers play to hide their assets — going after individuals where appropriate, when they hide assets in their own bank accounts — to get the workers their money,” Su said.

Legislation that took effect in 2016 allows the state to recoup stolen wages from individuals, not just corporate accounts.

“If you as an individual caused these violations to occur, then you need to be held responsible, too,” said Carole Vigne, an attorney at Legal Aid at Work, a nonprofit agency that provides legal representation to low-wage workers. “The corporate shield isn’t going to protect you anymore.”

Su’s efforts to enforce the state’s labor laws rely on workers coming forward to report wage violations, which means raising awareness about wage theft and where employees can go to report it.

To do that, Su initiated a statewide multilingual campaign in 2014, “Wage Theft is a Crime,” designed to flush out violations at the source. The labor commission is renewing the campaign through 2018 and will focus on Bakersfield, Fresno and San Bernardino and Riverside counties,