

S241812

SUPREME COURT
FILED

FEB 16 2018

Jorge Navarrete Clerk

Deputy

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

BRETT VORIS
Plaintiff & Appellant,

vs.

GREG LAMPERT
Defendant & Respondent.

AFTER AN UNPUBLISHED DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE, APPEAL NO. B265747
ON APPEAL FROM JUDGMENT OF LOS ANGELES SUPERIOR COURT
CASE NO. BC 408562, HONORABLE MICHAEL L. STERN, TRIAL JUDGE

**RESPONDENT'S OPPOSITION TO
APPELLANT'S MOTION FOR
JUDICIAL NOTICE**

Robert Cooper (SBN: 209641)
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
555 S. Flower Street, 29th Floor
Los Angeles, CA 90071
Tel: (213) 443-5100
Fax: (213) 443-5101
robert.cooper@wilsonelser.com

Attorney for Defendant & Respondent
GREG LAMPERT

S241812

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

BRETT VORIS
Plaintiff & Appellant,

vs.

GREG LAMPERT
Defendant & Respondent.

AFTER AN UNPUBLISHED DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE, APPEAL NO. B265747
ON APPEAL FROM JUDGMENT OF LOS ANGELES SUPERIOR COURT
CASE NO. BC 408562, HONORABLE MICHAEL L. STERN, TRIAL JUDGE

**RESPONDENT'S OPPOSITION TO
APPELLANT'S MOTION FOR
JUDICIAL NOTICE**

Robert Cooper (SBN: 209641)
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
555 S. Flower Street, 29th Floor
Los Angeles, CA 90071
Tel: (213) 443-5100
Fax: (213) 443-5101
robert.cooper@wilsonelser.com

Attorney for Defendant & Respondent
GREG LAMPERT

OPPOSITION TO JUDICIAL NOTICE MOTION

The Court should summarily deny appellant's request for judicial notice of the three articles submitted by appellant with his reply brief.

With respect to the first two newspaper articles (Exhibits D and E), “[t]he truth of the content of the articles is not a proper matter for judicial notice[.]” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1141, fn. 6; see also *Rains v. Belshe* (1995) 32 Cal.App.4th 157, 183, fn. 6 [no judicial notice of “sensational suggestions in popular news articles which are ... lacking evidentiary foundation”].)

With respect to Exhibit F, this exhibit is irrelevant because it does not answer the narrow question presented: whether California should recognize a cause of action for conversion. While the author is a legal organization “advocating for the employment and labor rights of low-wage and unemployed workers” (Ex. F, preface) – thus raising some questions about its objectivity – the main problem with this exhibit is that it is irrelevant here. Although this exhibit discusses problems with enforcing judgments against some employers based on multiple levels of hearsay, the logical flaw in relying on this document is much more basic: if an employer is in fact judgment-proof or otherwise evades collections, the labels attached to the causes of action reflected in the judgment are totally irrelevant. Whether the judgment is for conversion or for Labor Code violations, the employee cannot collect either way in this scenario. Therefore, the article is irrelevant.

Seeking to bypass the rules governing judicial notice, appellant has also cited Exhibit F in his reply brief. (RBOM 21.) Rather than burdening the Court with filing a separate motion to strike these portions of the reply

brief, respondent objects to this tactic. (Cf. *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1450 [even a law review article is not a proper subject of judicial notice].) But even if appellant had submitted these materials to the trial court (another ground for excluding them), Exhibit F is particularly questionable because – as far as we can tell – it is based on “interviews of 50 low-wage workers in California who have attempted to collect their unpaid wages[.]” (Ex. F, p. 5.) That is not exactly a representative sample of the tens of millions of employees and employers throughout California.

In addition, all three exhibits should be rejected because appellant has failed to furnish the Court with information sufficient to show the content of these exhibits are capable of “immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h)); *Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 737.) The materials are also flawed because they rely on multiple levels of hearsay; e.g., in discussing DLSE statistics. (See *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1700 [hearsay reports of conversations with Division of Labor Standards employees and unauthenticated internal documents of the Division were not “sources of reasonably indisputable accuracy”].)

Finally, to the extent these materials discuss problems encountered by construction workers in collecting their wages (Ex. D, p. 4; Ex. F, p. 1 [anecdotal, anonymous quote] & pp. 4, 9), they raise serious questions about the legal competence of the authors. Under California law, an unpaid construction worker can recover his unpaid wages by filing a claim with his employer’s license bond company. (See Bus. & Prof. Code, § 7071.5, subd. (d) [“An employee of the licensee damaged by the licensee’s failure to pay wages” is an obligee under the contractor’s license bond].) Because the


license bond is a mandatory precondition for having a valid contractor's license (*id.*, § 7071.6) – unlike discretionary payment/performance bonds – the entire premise of these articles are flawed as to such workers.

Accordingly, the Court should deny the entire judicial notice motion.

Respectfully submitted,

DATED: February 15, 2018

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

By  _____
Robert Cooper
Attorneys for Defendant & Respondent
GREG LAMPERT

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18. I am not a party to this action. My business address is 555 S. Flower Street, Suite 2900, Los Angeles, CA 90071.

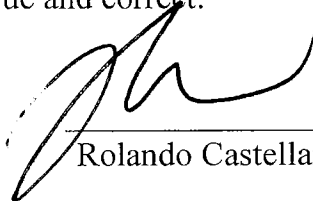
On **February 15, 2018**, the foregoing document described as **RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR JUDICIAL NOTICE** is being served on the interested parties in this action by true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- (BY OVERNIGHT DELIVERY)** The attached document is being filed and served by delivery to a common carrier promising overnight delivery as shown on the carrier's receipt pursuant to CRC 8.25.
- BY MAIL** - As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on **February 15, 2018** at Los Angeles, California.

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



Rolando Castellanos

SERVICE LIST

Brett Voris v. Greg Lampert
Supreme Court of California, Case No. S241812

<p>Edward M. Anderson Regina Yeh Anderson Yeh, PC 401 Wilshire Boulevard, 12th Floor Santa Monica, California 90401 Telephone: (310) 496-4270 Facsimile: (888) 744-0317 edward@andersonyehlaw.com regina@andersonyehlaw.com <i>One copy</i> Served by Fed Ex</p>	<p>Attorneys for Plaintiff and Appellant, BRETT VORIS</p>
<p>Office of the Clerk CALIFORNIA SUPREME COURT 350 McAllister Street San Francisco, CA 94102-4797 Telephone: 415-865-7000 <i>Original and eight copies</i> Sent by Fed Ex</p>	<p>Case No. S241812</p>