

In the Supreme Court of the State of California

MICHAEL McCLAIN, et al.,

Plaintiffs and Appellants,

v.

SAV-ON DRUGS, et al.,

Defendants and Respondents.

Case No. S241471

**SUPREME COURT
FILED**

DEC 13 2017

Jorge Navarrete Clerk

Second Appellate District, Div. Eight, Case Nos. B265011 and B265029 Deputy
Los Angeles County Superior Court, Case Nos. BC325272 and BC327216
John Shepard Wiley, Judge

**RESPONDENT CALIFORNIA DEPARTMENT
OF TAX AND FEE ADMINISTRATION'S
MOTION FOR JUDICIAL NOTICE**

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
DIANE S. SHAW
Senior Assistant Attorney General
LISA W. CHAO
Supervising Deputy Attorney General

MAX CARTER-OBERSTONE
Assoc. Deputy Solicitor General
State Bar No. 304752
*NHAN T. VU
Deputy Attorney General
State Bar No. 189508
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 897-2484
Nhan.Vu@doj.ca.gov
*Attorneys for Defendant and Respondent
California Department of Tax and Fee
Administration*

**TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE
OF CALIFORNIA:**

Pursuant to Rule 8.252, subdivision (a) of the California Rules of Court, defendant and respondent the California Department of Tax and Fee Administration hereby requests that the Court take judicial notice of the legislative histories of Senate Bill No. 2049 (1995-1996 Reg. Sess.) and of Assembly Bill No. 1916 (2001-2002 Reg. Sess.). These bills proposed to expand existing statutory sales tax exemptions to include glucose testing strips and lancets, but they did not become law.

The legislative history of Senate Bill No. 2049 is available at <http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_2049&sess=9596&house=B&author=senators_leslie,_ayala,_craven,_and_mello> [as of Dec. 12, 2017].

The legislative history of Assembly Bill No. 1916 is available at <http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_1916&sess=0102&house=B&author=matthews> [as of Dec. 12, 2017].

Pursuant to Evidence Code sections 452 and 459, the Court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments ... of any state of the United States.” (Evid. Code, § 452, subd. (c).) Statutes are the Legislature’s official acts. Legislative committee reports and analysis are also proper subjects of judicial notice. (*In re J.W.* (2002) 29 Cal.4th 200, 211 [legislative committee analysis are subject to judicial notice]; *Acer v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484 [same])


These legislative histories were not in their entirety presented to the trial court or the Court of Appeal, and do not relate to any proceeding

below that occurred after judgment was entered in this case.¹ However, they may be relevant and helpful to the Court's understanding of the Department's and Legislature's actions concerning exemptions for lancets and test strips.

For these reasons, the California Department of Tax and Fee Administration respectfully requests that the Court take judicial notice of the histories of the above-listed bills, should it determine that they are relevant to the disposition of this matter.

Dated: December 13, 2017 Respectfully submitted,

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
DIANE S. SHAW
Senior Assistant Attorney General
LISA W. CHAO
Supervising Deputy Attorney General
MAX CARTER-OBERSTONE
Associate Deputy Solicitor General


NHAN T. VU
Deputy Attorney General
*Attorneys for Defendant and Respondent
California Department of Tax and Fee
Administration*

¹ Some of the legislative history for Assembly Bill 1916 is in the Appellants' Appendix. (See 2 AA 464-471.)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Michael McClain, et al. v. Sav-On Drugs, et al.**
Case No.: S241471

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 13, 2017, I served the attached **ANSWER BRIEF ON THE MERITS, MOTION FOR JUDICIAL NOTICE and PROPOSED ORDER** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Taras P. Kick, Esq.
James Strenio, Esq.
THE KICK LAW FIRM, APC
201 Wilshire Blvd., Ste. 350
Santa Monica, CA 90401
*Attorneys for Plaintiffs and Appellants
Michael McClain, Avi Feigenblatt and
Gregory Fisher*

Bruce R. Macleod, Esq.
Shawna L. Ballard, Esq.
MCKOOL SMITH HENNIGAN P.C.
255 Shoreline Drive, Suite 510
Redwood Shores, CA 94065
*Attorneys for Plaintiffs and Appellants
Michael McClain, Avi Feigenblatt and
Gregory Fisher*

Robert P. Berry, Esq.
Carol M. Silberberg, Esq.
BERRY, SILBERBERG & STOKES LLC
16150 Main Circle Drive, Suite 120
St. Louis, MO 63017
*Attorneys for Defendant and Respondent
Wal-Mart Stores, Inc.*

Douglas C. Rawles, Esq.
James C. Martin, Esq.
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
*Attorneys for Defendants and Respondents
Walgreen Co. and Rite Aid Corporation*

Joseph Duffy, Esq.
Joseph Bias, Esq.
MORGAN LEWIS & BOCKIUS LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071
*Attorneys for Defendants and Respondents
Rite-Aid Corporation and Walgreen Co.*

Phillip J. Eskenazi, Esq.
Kirk A. Hornbeck, Esq.
HUNTON & WILLIAMS LLP
550 S. Hope Street, Suite 2000
Los Angeles, CA 90071
*Attorneys for Defendants and Respondents
Albertson's, Inc. and Sav-On Drugs*

David F. McDowell, Esq.
Miriam A. Vogel, Esq.
MORRISON & FOERSTER, LLP
707 Wilshire Boulevard, Suite 6000
Los Angeles, CA 90017
*Attorneys for Defendant and Respondent
Target Corporation*

Theodore Keith Bell, Esq.
SAFEWAY, INC.
5918 Stoneridge Mall Road
Pleasanton, CA 94588
*Attorney for Defendants and Respondents
The Vons Companies, Inc. and Vons Food
Services, Inc.*

Superior Court of California
County of Los Angeles
600 South Commonwealth Avenue
Los Angeles, CA 90005

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 13, 2017, at San Francisco, California.

M. Campos
Declarant

Richard T. Williams, Esq.
Shelley Hurwitz, Esq.
HOLLAND & KNIGHT LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
*Attorneys for Defendants and Respondents
CVS Caremark Corporation, Longs Drug
Stores Corporation and Longs Drug Stores
California, Inc.*

Court of Appeal of California
Second Appellate District, Division Two
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

M. Campos
Signature