

1 Deter Mend (SBN 077)  
2 League, Ell, Bee, Vers, LLP  
3 5459 Excel Ant, Suite 805  
4 Capa City, California 95342  
5 Attorney for Appellant

6 COURT OF APPEAL, STATE OF CALIFORNIA  
7 THIRD APPELLATE DISTRICT

8 The People of the State of California,  
9 Plaintiff-Respondents

Case No. A099876

10 vs.

11 Larry Hitter,  
12 Defendant-Appellant,

MOTION TO TAKE JUDICIAL  
NOTICE OF DOCUMENTS  
PURSUANT TO EVIDENCE  
CODE SECTION 459, RULE  
8.252, CALIFORNIA RULE OF  
COURT

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14 \_\_\_\_\_/  
15 Pursuant to Evidence Code section 459 and Rule 8.252, California Rules of Court, appellant  
16 hereby moves the Court to take judicial notice of documents listed below.

17 Exhibits A through H are true and correct copies of the documents obtained by counsel for  
18 appellant from Legislative Intent Service (“LIS”) of Woodland, California, which pertain to  
19 Government Code section 65852.6 as enacted by Assembly Bill 3109, Chapter 329, Statutes of 1990.  
20 The documents are described, and indicated, under penalty of perjury to be true and correct copies of  
21 the originals in the declaration of Dorothy H. Thomson, attorney for LIS. Appellant is requesting the  
22 Court to take judicial notice of these documents pursuant to Evidence Code section 459. Each  
23 document listed is cross-referenced to the appropriate Thomson declaration for ready reference by the  
24 Court.

25 Exhibit A: Assembly Bill 3109 as introduced on February 22, 1990 and as  
26 amended April 16, May 3, and May 25, 1990 and enacted as Chapter  
27 329 on July 17, 1990  
28 (Thomson declaration: LIS-1a through LIS-1c).

1 Exhibit B: Analysis of Assembly Bill 3109 as proposed to be amended prepared  
2 by the Assembly Committee on Water, Parks and Wildlife, for hearing  
3 date April 24, 1990 (*id.*, LIS-3).

4 Exhibit C: Analysis of Assembly Bill 3109 as amended on April 16, 1990  
5 prepared by the Department of Food and Agriculture on May 10, 1990  
6 from the bill file of the Assembly Republican Caucus (*id.*, LIS-4,  
7 document ARC-3).

8 Exhibit D: Analysis of Assembly Bill 3109 as amended May 25, 1990, for  
9 Hearing June 27, 1990 prepared by the Senate Committee on Local  
10 Government (*id.*, LIS-6).

11 Exhibit E: Third Reading Analysis of Assembly Bill 3109 as amended May 25,  
12 1990, prepared by the Senate Rules Committee Office of Senate Floor  
13 Analyses (*id.*, LIS-8).

14 Exhibit F: July 9, 1990 letter from Assembly member Trice Harvey to Governor  
15 George Deukmejian requesting signature of Assembly Bill 3109 as  
16 passed by the Legislature (*id.*, LIS-10, document A-1).

17 Exhibit G: Bill Analysis Worksheet for Assembly Bill 3109 prepared by the staff  
18 of Assembly member Harvey at request of the Assembly Committee on  
19 Agriculture (*id.*, LIS-10, document A-17 and A-18).

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21 This motion is based upon the declaration of Dorothy H. Thomson, attached hereto and upon  
22 the supporting memorandum of points and authorities.

23 Dated: September 22, 2007

24 \_\_\_\_\_  
25 Deter Mend

## 26 MEMORANDUM OF POINTS AND AUTHORITIES

27 Pursuant to Evidence Code section 459 and Rule 8.252, California Rules of Court, appellant  
28 moves the Court to take judicial notice of the documents contained in Exhibits A through G to the  
motion. The documents are portions of the legislative history of Assembly Bill 3109, Chapter 329,  
Statutes of 1990 enacting Government Code section 65852.6. These documents were obtained from

1 the Legislative Intent Service in Woodland California (“LIS”) and submitted under the declaration of  
2 Dorothy H. Thomson, as true and correct copies of the originals.

3 1. Under Evidence Code section 459 appellate courts have the same right and power to  
4 take judicial notice as do the trial courts. “In an effort to discern legislative intent, an appellate court  
5 is entitled to take judicial notice of the various legislative materials, including committee reports,  
6 underlying the enactment of a statute.” (*Hale v. Southern California IPA Medical Group, Inc.* (2001,  
7 Second District Division 3) 86 Cal.App.4<sup>th</sup> 919, 927) “The Court of Appeal granted RVLG’s request  
8 for judicial notice of documents bearing on the legislative history of section . . . We have likewise  
9 granted RVLG’s request in this court to take judicial notice of these same legislative history  
10 materials.” (*Smith v. Rae-Venter Law Group* (2002) 29 Cal.4<sup>th</sup> 345, 359, fn.7)

11 2. Documents supplied by LIS have consistently been utilized by the Supreme Court and  
12 the Courts of appeal, either when proffered by the litigants or on their own motion, and LIS has often  
13 been mentioned in appellate opinions as the source of the documents. (See, e.g., *People v. Sanchez*  
14 (2001) 24 Cal.4<sup>th</sup> 983, 992, fn.4; *People v. Brown* (1993) 6 Cal.4<sup>th</sup> 322, 334; and *People v. Connor*  
15 (2004, Sixth District) 115 Cal.App.4<sup>th</sup> 669, 681, fn.3)

16 3. The declaration of a Legislative Intent Service attorney to the effect that the copies  
17 provided are true and correct copies of the originals is sufficient to authenticate the materials.  
18 *People v. Connor* (2004, Sixth District) 115 Cal.App.4<sup>th</sup> 669, 681; *Whaley v. Sony Computer*  
19 *America, Inc.* (2004, Fourth District, Division 1) 121 Cal.App.4<sup>th</sup> 479, 487

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**Courts Have Taken Judicial Notice  
of The Types of Documents In This Motion**

Courts have taken judicial notice of the same types of legislative documents listed in  
appellant’s motion for judicial notice set forth as Exhibits A through G, as follows:

**Exhibit A:** Various versions of a legislative bill. (*Alford v. Superior Court (People)* (2003)  
29 Cal.4<sup>th</sup> 1033, 1040-1041; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4<sup>th</sup> 828, 844)

**Exhibits B and D:** Committee analyses. (*In re J.W.* (2002) 29 Cal.4<sup>th</sup> 200, 211-212; *El  
Dorado Palm Springs, Ltd. v. City of Palm Springs et al.* (2002, Fourth District Division 2) 96  
Cal.App.4<sup>th</sup> 1155, 1170)

**Exhibits E:** Third Reading Analysis prepared by Office of Senate Floor Analyses. (*Sharon S.  
v. Superior Court (Annette F)* (2003) 31 Cal.4<sup>th</sup> 417, 459; *People v. Broussard* (1993) 5 Cal.4<sup>th</sup> 1067,  
1075)

