

Supreme Court No. \_\_\_\_\_

**In the Supreme Court  
of the  
State of California**

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STEPHEN K. DAVIS,  
*Plaintiff/Appellant*  
vs.

FRESNO UNIFIED SCHOOL DISTRICT, et al.  
*Defendant/Respondent and Petitioner*

After Opinion in the Court of Appeal  
Fifth District, Civil Case No. F068477

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**MOTION FOR JUDICIAL NOTICE  
IN SUPPORT OF PETITION FOR REVIEW;  
PROPOSED ORDER  
(EXHIBITS A-L SEPARATELY SUBMITTED IN  
THREE VOLUMES)**

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FRESNO UNIFIED SCHOOL DISTRICT

## MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452(a), (d)(2), and 459, and rule 8.252 of the California Rules of Court, petitioner Fresno Unified School District hereby moves the Court to take judicial notice of the following documents in support of its petition for review:

1. July 7, 2015 article from The Fresno Bee, "*Fresno School Board to Consider Low Bid as Legal Case Looms.*" A true and correct copy of the article is submitted herewith as Exhibit A.

2. Opinion, filed January 23, 2015, in *James D. McGee v. Torrance Unified School District et al.*, Second Appellate District Court of Appeal, No. B25270. A true and correct copy of the opinion is submitted herewith as Exhibit B.

3. First Amended Complaint, filed June 4, 2013, in *James D. McGee v. Torrance Unified School District et al.*, Superior Court of California, County of Los Angeles, Case No. YC068686. A true and correct copy of the First Amended Complaint is submitted herewith as Exhibit C.

4. Complaint, filed June 14, 2012, in *Los Alamitos Unified School District v. All Persons Interested in the Matter*, Superior Court of California, County of Orange, Case No. 30-2012 00576703. A true and correct copy of the Complaint is submitted herewith as Exhibit D.

5. Judgment of Dismissal After Sustaining Demurrers to First Amended Complaint Without Leave to Amend, filed October 18, 2013, in *James D. McGee v. Torrance Unified School District et al.*, Superior Court of California, County of Los Angeles, Case No. YC068686. A true and correct copy of the Judgment is submitted herewith as Exhibit E.

6. Appellant's Opening Brief, filed on or about November 25, 2013, in *James D. McGee v. Torrance Unified School District et al.*, Second Appellate District Court of Appeal, No. B25270. A true and correct copy of the brief is submitted herewith as Exhibit F.

7. Respondent's Brief, filed on or about July 29, 2014, in *James D. McGee v. Torrance Unified School District et al.*, Second Appellate District Court of Appeal, No. B25270. A true and correct copy of the brief is submitted herewith as Exhibit G.

8. Appellant's Reply Brief, filed on or about October 10, 2014, in *James D. McGee v. Torrance Unified School District et al.*, Second Appellate District Court of Appeal, No. B25270. A true and correct copy of the brief is submitted herewith as Exhibit H.

9. Application for Leave to File Amicus Curiae Brief of California's Coalition for Adequate School Housing, with Amicus Curiae Brief, filed on or about October 24, 2014, in *James D. McGee v. Torrance Unified School District et al.*, Second Appellate District Court of Appeal,

No. B25270. A true and correct copy of the application and brief are submitted herewith as Exhibit I.

10. The Legislative Counsel's Digest for Assembly Bill No. 1059, California Legislature, 2013-2014 Regular Session, including History Actions, printed directly from the "Bill Documents" available online at the Official California Legislative Website maintained by the Legislative Counsel of California, which is located at [www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov). True and correct copies are submitted herewith as Exhibit J.

11. Portions of the Legislative History for Assembly Bill No. 3285, 1989-1990 Regular Session, regarding the enactment of Public Contract Code section 10365.5 (added Stats 1990 ch 344 § 1). True and correct copies are submitted herewith as Exhibit K.

12. July 10, 2015 Opinion by Dan Walters, "*School Building Laws Being Awarded*," from The Fresno Bee. A true and correct copy of the Opinion is submitted herewith as Exhibit L.

Reference is made to these documents in the petition for review, and they are relevant to the issues presented for this Court's consideration.

Dated: July 10, 2015

DOWLING AARON INCORPORATED

By: 

Lynne Thaxter Brown  
Attorneys for Petitioner  
Fresno Unified School District

## MEMORANDUM OF POINTS AND AUTHORITIES

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

### Newspaper Articles (Exhibits A and L)

Judicial notice of newspaper articles is proper under Evidence Code section 452, subdivision (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. (*People v. Hardy* (1992) 2 Cal.4th 86, 174, fn. 24, see also *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408 [judicial notice of controversy as evidenced by articles in the press].)

### Court Records (Exhibits B-I)

Judicial notice of court records from the Superior Courts and Courts of Appeal in the cases of *Los Alamitos Unified School District v. All Persons Interested in the Matter* and *James D. McGee v. Torrance Unified School District et al.* is proper under Evidence Code section 452, subdivision (d) [“Records of any court of this state”] (*Taus v. Loftus* (2007) 40 Cal.4th 683, 726; *In re Marquez* (2003) 30 Cal.4th 14, 18, n.2 [judicial notice of court records in appeals].) Further, judicial notice shall be taken of the Second District Court of Appeal’s opinion in *James D. McGee v.*

*Torrance Unified School District et al.* under Evidence Code section 451(a) ["The decisional ... law of this state"].

The records from these cases are relevant because they demonstrate the prevalence and statewide importance of the issues presented in the petition, as well as the different treatment courts have given to the issues.

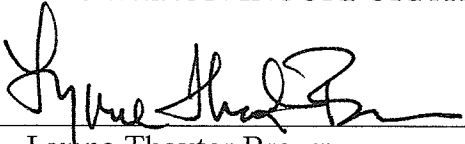
Legislative History (Exhibits J and K)

This Court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments ... of any state" under Evidence Code section 452, subdivision (c). (*People v. Snyder* (2002) 22 Cal.4th 304, 309, n.5.)

The Legislative Histories submitted herewith for AB 1059 (California Legislature, 2013-2014 Regular Session) and AB 3285 (California Legislature, 1989-1990 Regular Session) are relevant because they show, contrary to the Court of Appeal's holding in this case, that the Legislature intended that Government Code section 1090 does not extend to consultants and independent contractors.

Dated: July 10, 2015

DOWLING AARON INCORPORATED

By:   
Lynne Thaxter Brown  
Attorneys for Petitioner  
Fresno Unified School District

**ORDER**

For good cause shown, petitioner Fresno Unified School District's motion for judicial notice is granted. The Court takes judicial notice of the matters described in the motion.

Dated: July \_\_\_\_, 2015

By: \_\_\_\_\_  
Chief Justice

**PROOF OF SERVICE**

STATE OF CALIFORNIA    )  
                                          ) SS  
COUNTY OF FRESNO    )

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen (18) years and not a party to the within-entitled action. My business address is 8080 North Palm Avenue, Third Floor, Fresno, CA 93711. On July 13, 2015, I served the within document(s):

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF  
PETITION FOR REVIEW; PROPOSED ORDER; (EXHIBITS  
A – L SEPARATELY SUBMITTED IN THREE VOLUMES)**

**BY MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as set forth below.

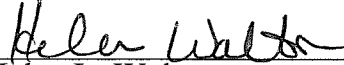
<p>Kevin R. Carlin, Esq. SBN 185701 Carlin Law Group, APC 4452 Park Boulevard, Suite 310 San Diego, CA 92116 Telephone: (619) 615-5325</p> <p><b>Attorney for Plaintiff/Respondent Stephen K. Davis</b></p>	<p>Martin A. Hom and Jennifer Cantrell Atkinson, Andelson, Loya, Ruud &amp; Romo 5260 N Palm Ave # 300 Fresno, CA 93704 (559) 225-6700</p> <p><b>Attorneys for Defendant and Respondent Fresno Unified School District</b></p>
<p>Frank Joseph Lozoya, IV Lozoya &amp; Lozoya 15060 Ventura Blvd., # 211 Sherman Oaks, CA 91403 Tel. (818) 789-7150</p> <p><b>Attorneys for Defendant/Respondent Harris Construction</b></p>	<p>Ryan Keats Sean M. SeLegue Arnold &amp; Porter LLP Three Embarcadero Center Tenth Floor San Francisco, CA 94111 Telephone: (415) 471-3370</p> <p><b>Attorneys for Defendant/Respondent Harris Construction</b></p>



<p>Anthony N. Kim Cory J. Briggs Mekaela M. Gladden Briggs Law Corporation 99 East "C" Street, Ste. 111 Upland, CA 91786 (909) 949-7115</p> <p><b>Attorneys for Kern County Taxpayers Association as Amicus Curiae on behalf of Plaintiff and Appellant</b></p>	<p>James Richard Traber Fagen Friedman &amp; Fulfro 520 Capitol Mall Suite 400 Sacramento, CA 95814 (916) 443-0000</p> <p><b>Attorneys for California's Coalition for Adequate School Housing: Amicus Curiae for Respondent</b></p>
<p>Hon. Donald S. Black Fresno County Superior Court Department 502 1130 O Street Fresno, CA 93724</p>	<p>Court of Appeal Fifth Appellate District</p> <p><i>(via e-service pursuant to California Rules of Court, Rule 8.212, by e-submission to Court of Appeal, Fifth District)</i></p>

I am readily familiar with the firm's practices of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 13, 2015, at Fresno, California.

  
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 Helen L. Walton

