

Fourth Civil Number D079215

**In the Court of Appeal
of the State of California**
FOURTH APPELLATE DISTRICT
DIVISION ONE

UL CHULA TWO LLC,

Plaintiff and Appellant,

v.

CITY OF CHULA VISTA,

Defendant and Respondent.

Appeal from the Superior Court of the State of California
For the County of San Diego
Case No. 37-2020-00041554-CU-WM-CTL
The Honorable Richard E. L. Strauss, Dept. 75

APPELLANT'S MOTION FOR JUDICIAL NOTICE

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COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: D079215
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Lann G. McIntyre (SBN 106067); Gary K. Brucker, Jr. (SBN 238644) FIRM NAME: Lewis Brisbois Bisgaard & Smith LLP STREET ADDRESS: 550 West C Street, Suite 1700 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: (619) 233-1006 FAX NO.: (619) 233-8627 E-MAIL ADDRESS: lann.mcintyre@lewisbrisbois.com; gary.brucker@lewisbrisbois.com ATTORNEY FOR (name): Petitioner and Plaintiff UL Chula Two LLC	SUPERIOR COURT CASE NUMBER: 37-2020-00041554-CU-MC-CTL
APPELLANT/ PETITIONER: UL CHULA TWO LLC RESPONDENT/ REAL PARTY IN INTEREST: CITY OF CHULA VISTA, ET AL.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): **Petitioner and Plaintiff UL Chula Two LLC**

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☒ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) UL Holdings, Inc.	Ownership interest
(2) Will Senn	Ownership interest
(3) CVC Holding LLC	Ownership interest
(4) Chetan Abrol	Ownership interest
(5)	
<input type="checkbox"/> Continued on attachment 2.	

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 7, 2022

Lann G. McIntyre
(TYPE OR PRINT NAME)

 /s/ Lann G. McIntyre
(SIGNATURE OF APPELLANT OR ATTORNEY)

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Appeal from the Superior Court of the State of California
For the County of San Diego
Case No. 37-2020-00041554-CU-WM-CTL
The Honorable Richard E. L. Strauss, Dept. 75

MOTION FOR JUDICIAL NOTICE

Pursuant to Rules of Court, rules 8.252(a) and 8.54 and Evidence Code sections 452, 453, and 459, petitioner and appellant UL Chula Two LLC (“UL Chula”) requests that this court take judicial notice of the following described documents present in UL Chula’s appellant’s appendix:

Description	Grounds for Judicial Notice	Appellant's Appendix Citation
City of Chula Vista Published List of Cannabis Business Applicants, dated February 16, 2021, downloaded from chulavista.gov	Evid. Code, § 452, subd. (c).	1 AA 603
Secretary of State file- stamped Articles of Incorporation of Holistic Café, downloaded from businesssearch.sos.ca.gov	Evid. Code., § 452, subd. (c).	1 AA 605
San Diego Municipal Code	Evid. Code, § 452, subd. (c).	1 AA 607–628
San Diego City Ordinance	Evid. Code, § 452, subd. (c).	1 AA 630–665
Amendment to Judgment in <i>Holistic Café</i>	Evid. Code, § 452, subd. (d).	1 AA 667–668
City of Chula Vista Meeting Minutes	Evid. Code, § 452, subd. (c).	1 AA 670–690

City of Chula Vista Notices of Decision and Findings and Statement of Decisions on Appeal	Evid. Code, § 452, subd. (c).	1 AA 692–797
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This motion is based upon the attached memorandum of points and authorities and such further documents as this court might consider in ruling on this motion for judicial notice.

Dated: April 7, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By: /s/ Lann G. McIntyre

Lann G. McIntyre

Gary K. Brucker, Jr.

Anastasiya Menshikova

Attorneys for *Plaintiff and*
Appellant

UL CHULA TWO LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This motion seeks judicial notice of the above mentioned subject documents that clarify the procedural history of this appeal. The trial court denied UL Chula's request for judicial notice of the subject documents during the below proceedings. UL Chula now respectfully requests that this court remedy the trial court's error and take judicial notice of them.

The subject documents are judicially noticeable by the appellate court pursuant to Evidence Code sections 452 and 459. They are also relevant to this appeal because they demonstrate that the City of Chula Vista ("the City") did not provide UL Chula with a fair opportunity to challenge the City's order for an application denying its application for a commercial cannabis license.

II. Authority for Judicial Notice.

Evidence Code section 459 permits the reviewing court to take judicial notice of any matter specified in Evidence Code section 452. The Court of Appeal has the same power as the trial court to take judicial notice of matters properly subject to judicial notice. (Evid. Code, § 459; see also Rules of Court, rule 8.252(a).) The documents that are the subject of this motion for judicial notice were presented to the trial court for judicial notice, but the trial court erroneously denied the request. The subject documents are the proper subject of judicial notice in this proceeding.

Evidence Code section 452, subdivision (c), states that judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Additionally, section 452, subdivision (d) provides “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States” are the proper subject of judicial notice. Further, pursuant to Evidence Code section 453, this court must take judicial of such matters provided a proper request is made.

Here, judicial notice is the appropriate procedure for bringing the subject documents before this court. They constitute official acts taken by the City and the City of San Diego as well as publicly available records of the San Diego Superior Court. Judicial notice is therefore proper pursuant to Evidence Code section 452. (*Foundation for San Francisco’s Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 906, fn. 8 [taking judicial notice of a city’s official act; *San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 642, fn. 1 [same].)

III. The Subject Documents are Relevant to the Issues on Appeal.

UL Chula sought judicial notice of the subject documents from the trial court, but the trial court denied UL Chula’s request. The trial court described the subject documents as “outside the administrative record,” without further explanation.

[2 Appellant’s Appendix (“AA”) 1138.] The court’s decision to not consider the subject documents is incorrect.

The subject documents are relevant and admissible pursuant to Code of Civil Procedure section 1094, subdivision (e). (*Fairfield v. Superior Court of Solano County* (1975) 14 Cal.3d 768, 771–772 [extra-record evidence may be introduced if that evidence could not with reasonable diligence have been presented at the administrative hearing]; see also *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575, fn. 5.) The Published List of Cannabis Business Applicants identifies the real parties in interest in the case. [1 AA 603.] The municipal codes describe the zoning laws that are at issue in this appeal. [1 AA 607–628.]

Further, the documents relating to the Holistic Café explain how the City’s improper and untimely notice hampered UL Chula’s ability to prepare for the administrative hearing regarding the application for a retail commercial cannabis license. [1 AA 605, 667–668.] The City of Chula Vista Meeting Minutes demonstrate that the City Attorney’s Office improperly served UL Chula with notice of the hearing. [1 AA 670–690.] Such evidence demonstrating procedural unfairness may be considered by a trial court in a mandate proceeding. (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 485; *Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 788 [“. . . a party claiming that an administrative hearing is unfair may present new evidence in a mandate proceeding.”].)

Finally, UL Chula submitted the notices of decisions and statements of decisions to demonstrate that the City failed to exercise its discretion when it denied UL Chula's application. [1 AA 692–797.] Particularly, the notices and statements the City issued after UL Chula's hearing are squarely within the court's discretion to consider. [1 AA 692–700, 707–710, 728–737, 744–754; *Fort Mojave Indian Tribe v. Department of Health Services* (1985) 38 Cal.App.4th 1574, 1585 (“it reasonably may be inferred that [the Legislature] meant to authorize the receipt of evidence of events which took place after the administrative hearing”).]

This court should thus take judicial notice of the subject documents because the foregoing context is relevant to the procedural background of this appeal and issues raised by UL Chula in its challenge to the judgment entered against it.

IV. CONCLUSION

For the foregoing reasons, plaintiff UL Chula respectfully requests that this court grant this motion for judicial notice.

Dated: April 7, 2022

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By: /s/ Lann G. McIntyre

Lann G. McIntyre

Gary K. Brucker, Jr.

Anastasiya Menshikova

Attorneys for *Plaintiff and*
Appellant

UL CHULA TWO LLC

**[PROPOSED] ORDER GRANTING MOTION FOR
JUDICIAL NOTICE**

Madlangbayan v. AG Laguna Hills, LLC, et al.
Fourth Civil Number G060961

IT IS HEREBY ORDERED THAT the motion for judicial notice submitted by plaintiff and appellant, UL CHULA TWO LLC, is hereby GRANTED.

Document	Grant	Deny
City of Chula Vista Published List of Cannabis Business Applicants, dated February 16, 2021, downloaded from chulavista.gov		
Secretary of State file- stamped Articles of Incorporation of Holistic Café, downloaded from businesssearch.sos.ca.gov.		
San Diego Municipal Code		
San Diego City Ordinance		
Amendment to Judgment		

in <i>Holistic Café</i>		
City of Chula Vista Meeting Minutes		
City of Chula Vista Notices of Decision and Findings and Statement of Decisions on Appeal		

IT IS SO ORDERED.

DATED: _____

PRESIDING JUSTICE

CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, the undersigned, Lann G. McIntyre, declare that:

1. I am an associate in the firm of Lewis, Brisbois, Bisgaard & Smith LLP, counsel of record for plaintiff and appellant UL Chula Two LLC.
2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.
3. This brief was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The brief contains 1,112 words, including footnotes.

I declare under penalty of perjury under the April 7, 2022.

/s/ Lann G. McIntyre

Lann G. McIntyre

PROOF OF SERVICE
UL Chula Two LLC v. City of Chula Vista
Fourth Civil Number D079215

I, Lynn Sylvestre, state:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 West C Street, Suite 1700, San Diego, California 92101.

On April 7, 2022, I served the following document described as **APPELLANT'S MOTION FOR JUDICIAL NOTICE** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the electronic service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

On April 7, 2022, I served the following document described as **APPELLANT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy enclosed in a sealed envelope addressed as stated on the attached service list. I am readily familiar with the firm's practice for collection and processing correspondence for regular and overnight mailing. Under that practice, this document will be deposited with the Overnight Mail provider and/or U.S. Postal Service on this date with postage thereon fully

prepaid at San Diego, California to addresses listed below in the ordinary course of business.

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

Executed on April 7, 2022, at San Diego, California.

/s/ Lynn Sylvestre
Lynn Sylvestre

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UL Chula Two LLC v. City of Chula Vista
Fourth Civil Number D079215

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STATE OF CALIFORNIA
California Court of Appeal, Fourth
Appellate District Division 1

PROOF OF SERVICE

STATE OF CALIFORNIA
California Court of Appeal, Fourth
Appellate District Division 1

Case Name: **UL Chula Two LLC v. City of Chula Vista et al.**

Case Number: **D079215**

Lower Court Case Number: **37-2020-00041554-CU-WM-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **lann.mcintyre@lewisbrisbois.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION - MOTION (WITH ONE TIME RESPONSIVE FEE)	UL Chula Two - Motion for Judicial Notice - Final

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/7/2022

Date

/s/Lynn Sylvestre

Signature

McIntyre, Lann (106067)

Last Name, First Name (PNum)

Lewis Brisbois Bisgaard & Smith, LLP

Law Firm