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Exh. A: Sen. Floor, analysis of Sen. Bill No. 384 (2011–2012 Reg. Sess.) as amended Sept. 9, 2011).

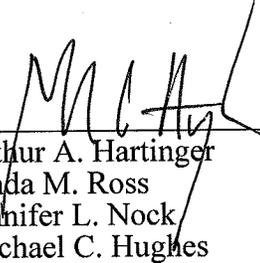
Exhibit A is a true and correct copy of the Senate Floor Analysis. This analysis was printed from the State of California’s Official California Legislative Information website on March 5, 2013 (www.leginfo.ca.gov).

Exhibit A is properly subject to judicial notice as legislative history. Cal. Evid. Code §452(a), (b), (c); *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 31-32 (2005).

For these reasons, the City respectfully requests that the Court take judicial notice of the above-listed document.

DATED: March 5, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

By:   
\_\_\_\_\_  
Arthur A. Hartinger  
Linda M. Ross  
Jennifer L. Nock  
Michael C. Hughes  
Attorneys for Defendant and Cross-Complainant  
City of San José

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# EXHIBIT A

BILL ANALYSIS

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|SENATE RULES COMMITTEE | SB 384|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|{(916) 651-1520 | Fax: (916) |
|327-4478 |
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UNFINISHED BUSINESS

Bill No: SB 384  
 Author: Evans (D)  
 Amended: 9/1/11  
 Vote: 21

SENATE JUDICIARY COMMITTEE : 5-0, 05/03/11  
 AYES: Evans, Harman, Blakeslee, Corbett, Leno

SENATE APPROPRIATIONS COMMITTEE : 9-0, 05/26/11  
 AYES: Kehoe, Walters, Alquist, Emmerson, Lieu, Pavley,  
 Price, Runner, Steinberg

SENATE FLOOR : 39-0, 06/02/11 (Consent)  
 AYES: Alquist, Anderson, Berryhill, Blakeslee, Calderon,  
 Cannella, Corbett, Correa, De León, DeSaulnier, Dutton,  
 Emmerson, Evans, Fuller, Gaines, Hancock, Harman,  
 Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu,  
 Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio,  
 Simitian, Steinberg, Strickland, Vargas, Walters, Wolk,  
 Wright, Wyland, Yee  
 NO VOTE RECORDED: Runner

ASSEMBLY FLOOR : 78-0, 09/08/11 - See last page for vote

SUBJECT : Civil actions

SOURCE : Consumer Attorneys of California  
 California Defense Counsel

DIGEST : This bill, until January 1, 2015, allows a  
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SB 384  
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motion for summary adjudication of a legal issue or claim for damages (other than punitive damages) that does not completely dispose of a cause of action, affirmative defense, or an issue of duty, upon the stipulation of the parties and a prior determination by the court that the motion will further the interests of judicial economy by reducing the time required for trial or significantly increasing the ability of the parties to settle. The bill would also set forth procedures for filing of the stipulation. This bill clarifies that existing law requires the payment of a single complex case fee on behalf of all plaintiffs, as specified, and make other conforming changes.

Assembly Amendments : (1) provide that a "demand for money" provided by an attorney to a building owner or tenant containing a construction-related accessibility claim, which must include a written advisory of the owner's or tenant's rights and obligations, is defined as such whether or not the attorney intends to file a complaint and whether or not the attorney eventually files a complaint in state of federal court, (2) provide that a violation of an attorney's requirement to include a written advisory to a defendant of the defendant's rights and obligations, when providing a written demand for money or serving a complaint on the defendant for a construction-related accessibility claim, constitutes cause for the imposition of discipline on the attorney, (3) require, among other things, that before a motion for summary adjudication of a legal issue or a claim of damages that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty, can be filed, the court must order that the motion will further interests of judicial economy, as specified. Establish related procedures for the filing of the motion, including a provision that allows the court to extend the time period for making the order if the court has good cause.

ANALYSIS : Existing law provides that, in addition to the first appearance fee, a complex case fee shall be paid to the clerk at the time of the filing of the first paper if the case is designated as complex pursuant to the California Rules of Court. However, the total complex fees collected from all plaintiffs appearing in a complex case

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SB 384  
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shall not exceed \$10,000. (Gov. Code Sec. 70616(a).)

Existing law provides that, in addition to the first appearance fee, a complex case fee shall be paid on behalf of each defendant, intervenor, respondent, or adverse party, whether filing separately or jointly, at the time that party files its first paper in a case if the case is designated or counterdesignated as complex pursuant to the California Rules of Court. That additional complex fee shall be charged to each defendant, intervenor, respondent, or adverse party appearing in the case, but the total complex fees collected for all of those parties shall not exceed \$10,000. (Gov. Code Sec. 70616(b).)

This bill requires the payment of a single complex case fee on behalf of all plaintiffs, as specified, and would make other conforming changes.

This bill provides that the above changes do not constitute a change in, but are declaratory of, existing law.

Existing law requires an attorney to provide a written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim, as specified.

This bill clarifies that the requirement to provide the written advisory applies whether or not the attorney intends to file a complaint or eventually files a complaint in state or federal court, and provides that a violation of this requirement may also subject the attorney to disciplinary action.

Existing law provides that a party may move for summary adjudication in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. (Code Civ. Proc. Sec. 437c(f).)

Existing law provides that a motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc. Sec. 437c(f).)

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SB 384  
Page

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This bill authorizes a motion for summary adjudication of a legal issue or a claim of damages other than punitive damages that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty, if brought upon stipulation of all the parties whose claims or defenses are put at issue by the motion, and if the court determines that the motion will further interests of judicial economy, as specified.

The bill enacts related procedures for the filing of the motion.

This bill contains provisions from both the plaintiffs and defense bar relating to court efficiency. This provision, sponsored by the California Defense Counsel, seeks to permit a motion for summary adjudication of a legal issue or a claim for damages (other than punitive damages) that does not completely dispose of a cause of action, affirmative defense, or an issue of duty. That motion may only be brought upon stipulation by all parties whose claims or defenses are put at issue by a motion, and where the court has previously determined that the motion will further interests of judicial economy. This provision is identical to AB 2961 (Wayne, 2002), prior to amendments to strip the bill down to intent language.

This bill specifies that "Demand for money" means a written document that is provided to a building owner or tenant, or an agent or employee of a building owner or tenant, that contains a request for money on the basis of one or more construction-related accessibility claims whether or not the attorney intends to file a complaint or eventually files a complaint in state or federal court.

Background

This bill seeks to enact provisions on behalf of both the plaintiffs and defense bar related to court efficiency.

The first provision, on behalf of the California Defense Counsel, seeks to enact summary adjudication procedures that are identical to those proposed by AB 2961 (Wayne, 2002). That bill sought to allow parties to move for the

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SB 384  
Page

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summary adjudication of an issue that does not completely dispose of the cause of action, affirmative defense, or issue of duty. AB 2961 required that all parties whose claims or defenses would be put at issue by the motion agree to summary adjudication, and specified that the court must determine that the motion will further increase judicial economy. This bill enacts the summary adjudication procedures contained in AB 2961; that bill was not taken up on the Senate Floor in 2002.

The second provision, on behalf of the Consumer Attorneys of California, seeks to address issues relating to complex case fees. As background, the Judicial Council sent a memorandum in 2004 to all presiding judges and executive officers of the superior courts to clarify existing law relating to complex case fees. That memorandum noted that, as applied to plaintiffs, each plaintiff or group of plaintiffs appearing together must pay a single complex fee. Despite that memorandum, some courts have imposed multiple complex fees on plaintiffs in the above circumstance. The second proposal, would clarify that only a single complex filing fee is required on behalf of all plaintiffs, whether filing separately or jointly.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2011-12</u>	<u>2012-13</u>
<u>2013-14 Fund</u>		
Loss of complex case potential fee revenue loss		Unknown; General*
fee revenue of \$100 to \$200 annually		
Summary of judgement any, costs to the courts motions		Minor, if General*

\*Trial Court Trust Fund

SUPPORT : (Verified 9/1/11)

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SB 384  
Page

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Consumer Attorneys of California (co-source)  
California Defense Counsel (co-source)

ARGUMENTS IN SUPPORT : According to the author's office, this compromise court efficiency bill seeks to enact provisions mutually agreed upon by both the plaintiff and defense bar. The bill currently contains one provision from the Consumer Attorneys of California to clarify the complex case fee that must be paid by plaintiffs, and one provision from the California Defense Counsel to provide for the summary adjudication of a legal issue or claim if all parties and the court consent.

ASSEMBLY FLOOR : 78-0, 09/08/11  
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford,

Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Conway, Cook, Davis, Dickinson, Donnelly, Eng, Feuer, Fletcher, Fong, Fuentes, Furutani, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Grove, Hagman, Halderman, Hall, Harkey, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Norby, Olsen, Pan, Perea, V. Manuel Pérez, Portantino, Silva, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez  
NO VOTE RECORDED: Gorell, Nielsen

RJG:nl 9/9/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am  
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,  
Suite 1500, Oakland, CA 94607.

5 On March 5, 2013, I served true copies of the following documents described as:

6 **DEFENDANT AND CROSS-COMPLAINANT CITY OF SAN JOSE'S REQUEST**  
7 **FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO SAPIEN, HARRIS, AND**  
8 **MUKHAR PLAINTIFFS' MOTION TO STRIKE AND/OR DISMISS CITY OF SAN**  
**JOSE'S MOTION FOR SUMMARY ADJUDICATION**

9 on the interested parties in this action as follows:

10 **SEE ATTACHED SERVICE LIST**

11 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the  
12 persons at the addresses listed in the Service List and placed the envelope for collection and  
13 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,  
14 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On  
the same day that the correspondence is placed for collection and mailing, it is deposited in the  
ordinary course of business with the United States Postal Service, in a sealed envelope with  
postage fully prepaid.

15 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the  
16 document(s) to be sent from e-mail address [jfoley@meyersnave.com](mailto:jfoley@meyersnave.com) to the persons at the e-mail  
17 addresses listed in the Service List. I did not receive, within a reasonable time after the  
transmission, any electronic message or other indication that the transmission was unsuccessful.

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

20 Executed on March 5, 2013, at Oakland, California.

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23 JILALA H. FOLEY  
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**SERVICE LIST**

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<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN &amp; RENNER 2125 Canoas Garden Ave, Suite 120 San Jose, CA 95125</p> <p><u>E-MAIL:</u></p> <p>jmcbride@wmpirlaw.com cplatten@wmpirlaw.com mrenner@wmpirlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK &amp; MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p> <p><u>E-MAIL:</u></p> <p>gadam@cbmlaw.com jyank@cbmlaw.com gmartinez@cbmlaw.com jstoughton@cbmlaw.com awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>Teague P. Paterson Vishtap M. Soroushian BEESON, TAYER &amp; BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4051</p> <p><u>E-MAIL:</u></p> <p>tpaterson@beesontayer.com; vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101 (Santa Clara Superior Court Case No. 112CV227864)</p>

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Harvey L. Leiderman  
REED SMITH, LLP  
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E-MAIL:  
hleiderman@reedsmith.com;

Attorneys for Defendant, CITY OF SAN JOSE,  
BOARD OF ADMINISTRATION FOR POLICE AND  
FIRE DEPARTMENT RETIREMENT PLAN OF  
CITY OF SAN JOSE  
(Santa Clara Superior Court Case No. 112CV225926)

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE 1961 SAN JOSE  
POLICE AND FIRE DEPARTMENT RETIREMENT  
PLAN  
(Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE 1975 FEDERATED  
CITY EMPLOYEES' RETIREMENT PLAN  
(Santa Clara Superior Court Case Nos. 112CV226570  
and 112CV226574 )

AND

Necessary Party in Interest, THE BOARD OF  
ADMINISTRATION FOR THE FEDERATED CITY  
EMPLOYEES RETIREMENT PLAN  
(Santa Clara Superior Court Case No. 112CV227864)

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