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Attorney for Redondo Beach Defendants

**IN THE UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

CHARLES NICHOLS,  
 Plaintiff,  
 v.

EDMUND G. BROWN, JR., in his  
 official capacity as Governor of  
 California, KAMALA D. HARRIS,  
 Attorney General, in her official  
 capacity as Attorney General of  
 California, CITY OF REDONDO  
 BEACH, CITY OF REDONDO  
 BEACH POLICE DEPARTMENT,  
 CITY OF REDONDO BEACH  
 POLICE CHIEF JOSEPH  
 LEONARDI, and DOES 1 to 10,  
 Defendants.

**CASE NO: 2:11-cv-09916-SJO-SS**

**OBJECTIONS TO PLAINTIFF'S  
 NOTICE OF LODGING  
 (Fed. R. Evid. 103)**

Date: March 20, 2012  
 Time: 10:00 a.m.  
 Location: Courtroom 23 3<sup>rd</sup> Floor  
 Judge: Hon. Suzanne H. Segal  
 Date Action Filed: November 20, 2011

Defendants City of Redondo Beach, Redondo Beach Police Department, and  
 Redondo Beach Police Chief Joseph Leonardi (collectively "Redondo Beach  
 Defendants" or "the City"), pursuant to Federal Rule of Evidence 103, hereby  
 object to Plaintiff's Notice of Lodging of Computer Disc Containing Videos  
 Referenced as Exhibit 1-1 to 1-4 in support of Plaintiff's Opposition to the Motion  
 to Dismiss by Redondo Beach Defendants. (Docket Entry No. 20) (hereafter,  
 "Plaintiff's Notice of Lodging").

**I. INTRODUCTION**

Plaintiff Charles Nichols filed the instant action on November 20, 2011, alleging various claims under 42 U.S.C. § 1983. Redondo Beach Defendants filed a Motion to Dismiss the Complaint on January 30, 2012. Plaintiff filed, among other things, his Opposition thereto, a Notice of Lodging, a Request for Judicial Notice in support of his Opposition in response on February 8, 2012, and a Second Request for Judicial Notice on February 10, 2012. The Notice of Lodging is the subject of these objections.

**II. REASONS WHY LODGING IS OBJECTIONABLE**

It is understood that “[a]s a general rule, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (internal citation and quotation marks omitted).

Federal Rule of Civil Procedure 12(b)(6) provides that when “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Fed. R. Civ. P. 12(b)(6).

There are, however, two exceptions to the rule that the court’s consideration of extrinsic evidence converts a 12(b)(6) motion to a Rule 56 summary judgment motion: “First, a court may consider material which is properly submitted as part of the complaint on a motion to dismiss without converting the motion to dismiss into a motion for summary judgment.” *Id.*(internal citation and quotation marks omitted). And, “[s]econd, [that] under Fed.R.Evid. 201, a court may take judicial notice of matters of public record.” *Id.* at 688-689(internal citation and quotation marks omitted). Neither is the case here.

Plaintiff submitted two Requests for Judicial Notice. With this attempted lodging, Plaintiff seeks to have the court review lodged Exhibits 1-1 to 1-4 instead of requesting judicial notice of those items or attaching them as exhibits to

1 Plaintiff's Declaration (Docket Entry No. 21).

2 Converting the current Motion to Dismiss (or Plaintiff's Opposition thereto)  
3 into a Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure  
4 56 is not warranted. Plaintiff's Notice of Lodging should be stricken and/or the  
5 documents not relied upon by the Court in accordance with Federal Rule of  
6 Evidence 103.

7 **III. CONCLUSION**

8 For all the foregoing reasons, Plaintiff's Notice of Lodging should be  
9 stricken and/or the documents not relied upon by the Court in accordance with  
10 Federal Rule of Evidence 103.

11 Date: February 14, 2012

**REDONDO BEACH CITY  
ATTORNEY'S OFFICE**

13 / s /Michael W. Webb  
14 Michael W. Webb  
15 Counsel for Redondo Beach Defendants  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CHARLES NICHOLS,

Plaintiff,

v.

EDMUND G. BROWN, JR., in his  
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California, CITY OF REDONDO  
BEACH, CITY OF REDONDO  
BEACH POLICE DEPARTMENT,  
CITY OF REDONDO BEACH  
POLICE CHIEF JOSEPH  
LEONARDI, and DOES 1 to 10,

Defendants.

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**PROOF OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 415 Diamond Street, Redondo Beach, California 90277-0639.

I am not a party to the above-entitled action. I have caused service of:  
**OBJECTIONS TO PLAINTIFF'S NOTICE OF LODGING**  
**(Fed. R. Evid. 103)**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them. Electronically filed documents have also been served conventionally by the filer to:

Charles Nichols,  
P.O. Box 1302  
Redondo Beach, CA 90278  
Plaintiff In Pro Per

Edmund G. Brown, Governor  
Office of the Governor  
300 South Spring Street  
Los Angeles, CA 90013  
Defendant

Kamala D. Harris, Attorney General  
Office of the Attorney General  
Jonathan M. Eisenberg  
300 South Spring Street, 1702  
Los Angeles, CA 90013  
Defendant

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on February 14, 2012.

/s/ Jennifer Espinoza