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**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

**REDONDO BEACH DEFENDANTS'
OBJECTIONS TO PLAINTIFF'S
TWO REQUESTS FOR JUDICIAL
NOTICE; REQUEST FOR HEARING
(Fed. R. Evid. 201(e))**

Date: March 20, 2012
Time: 10:00 a.m.
Location: Courtroom 23 3rd 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") hereby object to and request a hearing on plaintiff's two
separate Requests for Judicial Notice in support of his Opposition to Redondo
Beach Defendants' Motion to Dismiss pursuant to Federal Rule of Evidence
201(e).

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I. INTRODUCTION

Plaintiff Charles Nichols filed this case 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 then filed, among other things, his Opposition thereto, a Notice of Lodging, a Request for Judicial Notice on February 8, 2012, and a Second Request for Judicial Notice on February 10, 2012.

The two separate Requests for Judicial Notice (Docket Entry Nos. 17 & 24) are the subject of these objections.

II. OBJECTIONS TO PLAINTIFF'S FEBRUARY 8, 2012 REQUEST FOR JUDICIAL NOTICE

“[T]he consequences of taking judicial notice are significant. Where the trial court has taken judicial notice of a fact, the jury must be instructed to accept that fact as conclusive. Judicial notice also precludes either party from introducing evidence to disprove that fact. *The Ninth Circuit has accordingly urged the district courts to be cautious in taking judicial notice and to do so only when the matter is beyond controversy.*” *Metro. Creditors' Trust v. Pricewaterhousecoopers, LLP*, 463 F. Supp. 2d 1193, 1197 (E.D. Wash. 2006) (internal citations and quotation marks omitted) (discussing Fed. R. Evid. 201(g) and *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1151 (9th Cir.2005)) (emphasis added).

Under Federal Rule of Evidence 201, the Court may take judicial notice of a fact only if it is: “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

As to all of the documents for which plaintiff seeks judicial notice, neither of

1 the reasons for judicially noticing them have been shown.

2 Further, within the requests plaintiff has impermissibly advanced additional
3 substantive arguments. The documents requested to be noticed should not be and
4 the request itself should be stricken as improper argument regarding the merits of
5 the underlying Motion to Dismiss.

6 **A. Objections to Exhibits A & B.**

7 Redondo Beach Defendants hereby object to plaintiff's February 8 Request
8 for Judicial Notice of Exhibits A and B on the following grounds:

9 **1. Relevance.** The order granting rehearing en banc in *Nordyke v.*
10 *King*, No. 07-15763 (9th Cir., Nov. 28, 2011) and the orders/calendar notice(s)
11 regarding the setting of oral arguments in *Peterson v. Garcia (LaCabe)*, No. 11-
12 1149 (10th Cir., *appeal docketed*, Apr. 11, 2011), are irrelevant to the issues at
13 hand in this case, i.e., whether plaintiff's Complaint makes allegations "sufficient
14 to state a federal civil rights claim against defendant[s]."¹ See Fed. R. Evid. 401.

15 The procedural status of the *Nordyke* and *Peterson* cases have no relevance
16 to the sufficiency of plaintiff's pleading, and plaintiff does not set forth a legally-
17 cognizable basis to establish the relevance of the procedural status of either
18 unrelated matter.

19 **2. Improper Legal Argument.** Despite being *pro se*, plaintiff is
20 nonetheless required to be familiar with the Federal Rules of Civil Procedure and
21 Central District of California Local Rules. Although given some leniency, *pro se*
22 litigants are still subject to the rules of civil procedure. See *King v. Atiyeh*, 814
23 F.2d 565, 567 (9th Cir.1987). And, like the *pro se* defendants in *United States v.*
24 *Molen*, No. 10-cv-02591, 2011 WL 1810449, *6-*7 (E.D. Cal. May 9, 2011), who

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26 ¹ *Curry v. County of Los Angeles*, No. 07-cv-07802, 2009 WL 1684578, *6-
27 *8 (C.D. Cal. June 16, 2009); see also *Clarke v. Okafor*, No. 10-cv-02915, 2011
28 WL 665354 (C.D. Cal. Jan. 19, 2011), *1, report and recommendation adopted,
No.10-cv-02915, 2011 WL 662706 (C.D. Cal. Jan. 31, 2011).

1 filed various motions styled as requests for judicial notice, plaintiff's "Request for
 2 Judicial Notice" is not really a request for judicial notice at all, but rather an
 3 attempt to circumvent the rules of governing length and requirements for moving
 4 papers. *See* Fed. R. Evid. 201(c)(2) (party requesting judicial notice must supply
 5 *necessary information* to guide court's determination of whether facts are subject
 6 to judicial notice). As such, plaintiff's request should be treated as an improper
 7 "supplemental legal argument in opposition to the motion to dismiss," and should
 8 therefore be dismissed. *Flores v. Avenal State Prison, Warden*, No. 07-cv-01620,
 9 2009 WL 302297, *1 (E.D. Cal. Feb. 6, 2009), report and recommendation
 10 adopted, No. 07-cv-01620, 2009 WL 605375 (E.D. Cal. Mar. 9, 2009); *see also*
 11 *King v. Sisto*, No. 07-cv-00846, 2010 WL 444888, *1 (E.D. Cal. Feb. 2, 2010)
 12 (noting that, "With his opposition, plaintiff filed a document styled as a motion for
 13 judicial notice. The motion contains legal argument and case citations, which are
 14 not properly the subject of judicial notice. Plaintiff's motion will be denied.").

15 **B. Objections to Exhibits C, D, & E.**

16 Redondo Beach Defendants objects to plaintiff's Request for Judicial Notice
 17 of Exhibits C, D, and E on the following grounds:

18 **1. Exhibits C, D, & E Are Not Generally Known Facts.**

19 The facts that plaintiff seeks to notice in Exhibits C-E are not "generally
 20 known within the trial court's territorial jurisdiction," nor can they "be accurately
 21 and readily determined from sources whose accuracy cannot be reasonably
 22 questioned" as is required under Federal Rule of Evidence 201(b). Like the *New*
 23 *York Times* report that the court denied judicial notice of in *Alabama Aircraft*
 24 *Indus., Inc.-Birmingham v. United States*, No. 08-470C, 2008 WL 2973952, 82
 25 Fed.Cl. 757, 765 (Fed. Cl. July 31, 2008), none of the articles set forth in Exhibits
 26 C-E are "necessarily 'indisputable,' nor would [they] state facts 'whose accuracy
 27 cannot be questioned.'" Defamation cases are routinely filled with claims of quotes
 28 taken out of context, etc., so these articles cannot be "indisputable," and their

1 accuracy, as they relate to an individual who is not even a party to this action, can
2 most certainly “be questioned.”

3 Even if the Court were inclined to take judicial notice of Exhibits C, D, or E,
4 such notice should be limited.

5 “[C]ourts may take judicial notice of publications introduced to
6 indicate what was in the public realm at the time, *not whether the*
7 *contents of those articles were in fact true.*” *Von Saher v. Norton*
8 *Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir.2010)
9 (emphasis added). “[T]he Court can only take judicial notice of the
10 fact that the pages were published; *the Court cannot take judicial*
11 *notice of the contents of the article.* As such, the Court will take
12 judicial notice only of the fact that the pages that were submitted to
13 the Court were published.” *Lack v. Rustick*, No. 06-cv-02204, 2008
14 WL 268712, *4 (D. Ariz. Jan. 28, 2008) (emphasis added).

15 **2. Hearsay.** Plaintiff’s Request for Judicial Notice improperly
16 attempts to submit statements by Defendants’ *counsel*, Redondo Beach City
17 Attorney Michael Webb - who is not a party to this matter - for the truth of the
18 matter asserted. Plaintiff appears to be seeking judicial notice Exhibits C-E to get
19 around hearsay rules which prohibit the introduction of out-of-court statements
20 offered for the truth of the matter asserted. *See* Fed. R. Evid. 801(c).

21 **3. Improper Legal Argument.** As noted above with regard to
22 Defendants’ Objections to Exhibits A & B, despite being *pro se*, plaintiff is still
23 required to be familiar with the Federal Rules of Civil Procedure and Central
24 District of California Local Rules. Plaintiff’s “Request for Judicial Notice” is not
25 really a request for judicial notice at all, but an attempt to circumvent the rules of
26 governing length and requirements for moving papers. *See* Fed. R. Evid. 201(c)(2)
27 Therefore, it should be treated as an improper supplemental legal argument in
28 opposition to the motion to dismiss and should therefore be denied.

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III. OBJECTIONS TO PLAINTIFF'S FEBRUARY 10, 2012 REQUEST FOR JUDICIAL NOTICE

1. **Improper Legal Argument.** As noted above under section II A 2 and I B 3, plaintiff's February 10 "Request for Judicial Notice" is similarly not really a request for judicial notice at all, but an attempt to circumvent the rules governing length and requirements for moving and opposition papers. *See* Fed. R. Evid. 201(c)(2) It should be treated as an improper supplemental legal argument in opposition to the motion to dismiss and therefore denied.

Even if this court were inclined to grant judicial notice of the *Perry* opinion, "[o]n a Rule 12(b)(6) motion to dismiss, when a court takes judicial notice of another court's opinion, it may do so not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (internal citation and quotation marks omitted).

IV. CONCLUSION

For the reasons set forth above, this Court should either deny plaintiffs' Request For Judicial Notice in its entirety, or pursuant to Federal Rule of Evidence 201(a), allow Redondo Beach Defendants' objections to the request, as set forth above, to be heard at or before the hearing set on this matter.

Date: February 14, 2012

**REDONDO BEACH CITY
ATTORNEY'S OFFICE**

/ s /Michael W. Webb
Michael W. Webb
Counsel for Redondo Beach Defendants

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 CHARLES NICHOLS,) CASE NO: 2:11-cv-09916-SJO-SS
4 Plaintiff,) PROOF OF SERVICE
5 v.)
6 EDMUND G. BROWN, JR., in his)
7 official capacity as Governor of)
8 California, KAMALA D. HARRIS,)
9 Attorney General, in her official)
10 capacity as Attorney General of)
11 California, CITY OF REDONDO)
12 BEACH, CITY OF REDONDO)
13 BEACH POLICE DEPARTMENT,)
14 CITY OF REDONDO BEACH)
15 POLICE CHIEF JOSEPH)
16 LEONARDI, and DOES 1 to 10,)
17 Defendants.)

18 IT IS HEREBY CERTIFIED THAT:

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

22 I am not a party to the above-entitled action. I have caused service of:

23 **REDONDO BEACH DEFENDANTS' OBJECTIONS TO PLAINTIFF'S**
24 **TWO REQUESTS FOR JUDICIAL NOTICE; REQUEST FOR HEARING**
25 **(Fed. R. Evid. 201(e))**

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

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

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

33 Kamala D. Harris, Attorney General Defendant
34 Office of the Attorney General
35 Jonathan M. Eisenberg
36 300 South Spring Street, 1702
37 Los Angeles, CA 90013

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

/s/ Jennifer Espinoza