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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAY 05 2010

John A. Clark, Executive Officer/Clerk

By *Glorianna Robinson*, Deputy
GLORIETTA ROBINSON

9 SUPERIOR COURT, STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12 AMERICAN FREEDOM ALLIANCE, a
13 nonprofit corporation,

14 Plaintiff,

15 v.

16 CALIFORNIA SCIENCE CENTER, a legal
17 entity of the State of California; CALIFORNIA
18 SCIENCE CENTER FOUNDATION, a
19 nonprofit corporation; JEFFREY RUDOLPH, an
20 individual; and DOES 1 through 50, inclusive;

21 Defendants.

CASE NO. BC 423687

**DEFENDANTS CALIFORNIA SCIENCE
CENTER FOUNDATION'S AND JEFFREY
RUDOLPH'S OPPOSITION TO
PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE RE: PLAINTIFF'S OPPOSITION
TO DEMURRER**

DATE OF FILING
OF COMPLAINT: October 14, 2009

DATE OF FILING
FIRST AMENDED
COMPLAINT: November 19, 2009

TRIAL DATE: February 14, 2011

Hearing Date: May 12, 2010

Hearing Time: 8:45 a.m.

Hearing Location: Dept. 14

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff American Freedom Alliance ("Plaintiff") attempts to introduce in Exhibit A to its
4 Request for Judicial Notice ("Request") evidence obtained from Defendants through discovery in an
5 improper attempt to seek judicial notice.¹ Plaintiff's Request constitutes a blatant attempt to
6 circumvent the general rule barring extrinsic evidence from being considered in a demurrer. (*See Ion*
7 *Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) The subject matter of Exhibit A is
8 disputed by the parties and constitutes inadmissible hearsay. Plaintiff has also improperly submitted
9 extrinsic evidence for the truth of the matters contained within the documents. Finally, Plaintiff has
10 provided no information in its Request that would be sufficient for the Court to determine any proper
11 purpose for Exhibit A of the Request. Therefore, the Court should deny judicial notice to Plaintiff's
12 Request based on the improper purposes for which it is offered.

13 II. ARGUMENT

14 A. **Judicial Notice Should Be Denied Because Plaintiff Has Provided No Information For**
15 **The Court To Evaluate The Propriety Of Judicial Notice**

16 Judicial notice should be denied because Plaintiff has provided no information to support its
17 Request. Section 453(b) of the California Evidence Code states that a court shall take judicial notice
18 only when the requesting party "[f]urnishes the court with sufficient information to enable it to take
19 judicial notice of the matter." (Cal. Evid. Code. § 453(b).) A court may deny a request for judicial
20 notice made without support. (*Willis v. State of California* (1994) 22 Cal.App.4th 287, 291 [denying
21 a request for judicial notice where request was made "without appending any information
22 whatsoever"].)

23 Here, Plaintiff's Request includes no supporting documentation beyond a cursory reference to
24 § 452(d) of the Evidence Code. Plaintiff provides no indication as to the nature or scope of judicial
25

26 _____
27 ¹ Plaintiff also requests judicial notice as Exhibit B to the Declaration of Jeffrey N. Rudolph
28 submitted in support of the Defendant California Science Center Foundation's Opposition to the
Emergency Relief Request by American Freedom Alliance. Defendants do not object to the
Court taking judicial notice of this exhibit.

1 notice being requested. Likewise, Plaintiff provides no legal justification for the Court to base its
2 decision on the Request. As in *Willis*, Plaintiff's request is so deficient in supporting information that
3 it must be denied. (*See Willis, supra*, 22 Cal.App.4th at p. 291.)

4 **B. Judicial Notice Should Be Denied Because Proffered Document Is Disputed And**
5 **Constitutes Inadmissible Hearsay**

6 Judicial notice should be denied because the proffered document is disputed and constitutes
7 inadmissible hearsay. "A matter ordinarily is subject to judicial notice *only* if the matter is
8 reasonably beyond dispute." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148
9 Cal.App.4th 97, 113, emphasis added.) Likewise, a "court *cannot* take judicial notice of *hearsay*
10 *allegations* as being true, just because they are part of a court record or file."² (*Bach v. McNelis*
11 (1989) 207 Cal.App.3d 852, 865, emphasis in original; *Mangini v. R.J. Reynolds* (1994) 7 Cal.4th
12 1057, 1063 ["While courts may notice official acts and public records, we do not take judicial notice
13 of the truth of all matters stated therein"].)

14 Here, because Plaintiff does not specify its purpose for the Request, Defendants must assume
15 Plaintiff intends to use Exhibit A consistent with Plaintiff's Opposition to Demurrer of California
16 Science Center Foundation and Jeffrey Rudolph (the "Opposition"). In the Opposition, Plaintiff
17 directly quotes Exhibit A to bolster its allegations against Defendants. (Opposition at p. 16.) Thus, it
18 is reasonable to assume that Plaintiff's Request is that judicial notice be given to the statements
19 contained in Exhibit A.

20 "Although the *existence* of a document may be judicially noticeable, the truth of the
21 statements contained in the document and its proper interpretation are not subject to judicial notice if
22 those matters are reasonably disputable." (*Fremont Indemnity, supra*, 148 Cal.App.4th at p. 113,
23 emphasis in original.) The e-mail communications in Exhibit A are out-of-court statements. Judicial
24 notice regarding their contents would constitute an improper admission of hearsay evidence.

25
26
27 ² In contrast, a court may take judicial notice of a plaintiff's earlier pleadings or affidavits "to the
28 extent they contradict the complaint." (*See Bockrath v. Aldrich Chem. Co., Inc.* (1999) 21 Cal.4th
71, 83.)

1 Additionally, Plaintiff insinuates that these statements support its legal claims, an argument that
2 Defendants dispute in its entirety.

3 Further, out-of-court statements may not be admitted in a request for judicial notice simply
4 because these statements have been previously filed with the Court:

5 What is meant by taking judicial notice of court records? There exists a mistaken
6 notion that this means taking judicial notice of the existence of facts asserted in *every*
7 *document* of a court file, including *pleadings* and *affidavits*. However, a court *cannot*
8 take judicial notice of *hearsay allegations* as being true, just because they are part of
9 a court record or file. A court may take judicial notice of the *existence* of each
10 document in a court file, but can only take judicial notice of the *truth* of facts asserted
11 in documents such as orders, findings of fact and conclusions of law, and judgments.
12 (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1568, emphasis in original [quoting 2 *Jefferson's*
13 *California Evidence Benchbook* (2d ed. 1982) § 47.2, p. 1757].) Because Plaintiff has submitted
14 these hearsay statements for no purpose other than to take judicial notice of the truth of the facts
15 stated in the document, then judicial notice should be denied.

16 III. CONCLUSION

17 Judicial notice as to Exhibit A of Plaintiff's Request should be denied. Plaintiff has failed to
18 provide any information to support its Request as required by § 453 of the Evidence Code.
19 Additionally, Plaintiff's use of the material in its Opposition indicates that judicial notice would be
20 improper because the subject matter constitutes inadmissible hearsay and is disputed by the parties.

21 DATED: May 5, 2010

GIBSON, DUNN & CRUTCHER LLP

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23 By: 

Patrick W. Dennis

24 Attorneys for Defendants,
25 CALIFORNIA SCIENCE CENTER FOUNDATION, a
26 nonprofit corporation, and JEFFREY RUDOLPH in his
27 official capacity as President of the California Science
28 Center Foundation

100861818_1 (Opposition to AFA_s Request for Judicial Notice) (2).DOC