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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA;
XIUHTEZCATL TONATIUH M., through his
Guardian Tamara Roske-Martinez; et al.

Plaintiffs,

v.

The UNITED STATES OF AMERICA;
DONALD TRUMP, in his official capacity as
President of the United States; et al.,

Defendants.

Case No.: 6:15-cv-01517-TC

PLAINTIFFS' MOTION *IN LIMINE*
SEEKING JUDICIAL NOTICE OF
FEDERAL GOVERNMENT
DOCUMENTS

**PLAINTIFFS' MOTION *IN LIMINE* SEEKING JUDICIAL NOTICE OF FEDERAL
GOVERNMENT DOCUMENTS**

INTRODUCTION

Plaintiffs respectfully request that the Court take judicial notice of the federal government documents introduced by Plaintiffs in support of their Response in Opposition to Defendants' Motion for Summary Judgment and identified in Appendix 1-9. This Motion for Judicial Notice is supported by the attached Declaration of Julia A. Olson ("Olson Decl."). These documents are official government reports and data that were obtained from the federal government, including Defendants in this case, and thus rely on sources of information the accuracy of which cannot reasonably be questioned by the agencies that produced them.

Prior to filing this Motion, counsel for the parties met and conferred on this procedure. The questions discussed in the parties' meet and confer concerned the following issues in connection with Plaintiffs' response to Defendants' Motion for Summary Judgment: (i) Plaintiffs' ability to rely upon Federal Government records that have yet to be authenticated, but which Plaintiffs wish to rely upon in their response; and (ii) declarations from Plaintiffs' experts who have prepared expert reports but are not available to separately prepare declarations by June 28, when Plaintiffs' response is due. As a result of these meet and confer efforts, the parties agreed: (a) Plaintiffs will attach and submit government records that they will Bates stamp and that they rely upon in their response coupled with a request that the Court take judicial notice of those records; and (b) Plaintiffs will submit short declarations from their experts attaching and authenticating their expert reports. Olson Decl. ¶ 3.

Therefore, the federal government documents and data identified herein are appropriate subjects for judicial notice. Fed. R. Evid. 201(b).

ARGUMENT

The Federal Rules of Evidence provide that judicial notice may be taken of “a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Judicial notice is proper only when the matter is “beyond reasonable controversy.” *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1151 (9th Cir. 2005) (quoting advisory committee’s note to Fed. R. Evid. 201).

Government documents that are public records are appropriate subjects for judicial notice. *See, e.g., Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm’y v. California*, 547 F.3d 962, 968 n.4 (9th Cir. 2008) (government documents on government website); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (same); *Greeson v. Imperial Irr. Dist.*, 59 F.2d 529, 531 (9th Cir. 1932) (“[T]he court is bound to take notice of public facts . . . [and] public documents . . .”). Courts have authority to, and often do, take judicial notice of government reports such as those submitted by Plaintiffs. *Coppola v. Smith*, 935 F.Supp.2d 993, 1013 (E.D. Cal. 2013) (taking judicial notice of EPA documents containing test results of groundwater); *Maloney v. Ryan*, No. CV 13-00314-PHX-RCB, 2013 WL 3945921, at *6 n.9, n.10 (D. Ariz. July 31, 2013), *aff’d*, 711 F. App’x 372 (9th Cir. 2017) (taking judicial notice of data from the Arizona Department of Corrections website and recommendations of daily caloric intake from a federal government report); *Mobil Oil Corp. v. Tennessee Val. Auth.*, 387 F.Supp. 498, 500 n.1 (N.D. Ala. 1974) (taking judicial notice of Tennessee Valley Authority reports); *see also United States ex rel. Dingle v. BioPort Corp.*, 270 F.Supp.2d 968, 972 (W.D. Mich. 2003) (“[G]overnment documents are generally considered not to be subject to reasonable dispute This includes public records and government documents

available from reliable sources on the Internet.”) (citation and internal quotation marks omitted); *In re Hyperion Found., Inc.*, No. 08-51288-NPO, 2009 WL 2477392, at *3 n.7 (Bankr. S.D. Miss. Aug. 11, 2009) (recognizing that courts may take “judicial notice of information contained in official government Internet web sites under Rule 201 of the Federal Rules of Evidence.”). That same logic applies here where judicial notice is sought with respect to government publications and data produced by Defendants themselves.

Similarly, statistics and data from official government reports are generally subject to judicial notice. *See Seely v. Cumberland Packing Corp.*, No. 10-CV-02019-LHK, 2010 WL 5300923, at *7 n.5 (N.D. Cal. Dec. 20, 2010). In *Seely*, evidence was presented that litigation proceeded more slowly in the Eastern District of New York than in the Northern District of California, based on statistics published by the Administrative Office for United States Courts. *Id.* The district court took judicial notice of the statistics because they were an official report of the United States government, and as such they were “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Id.* (quoting Fed. R. Evid. 201(b)); *see also Trundle v. Astrue*, No. 09-CV-02058-JLT, 2010 WL 5421418, at *11 n.10 (E.D. Cal. Dec. 20, 2010) (“[T]he Internet website for the United States Department of Labor, and facts included therein, are subject to judicial notice.”).

Even if Defendants argued that the contents of their own documents were “subject to . . . dispute,” this Court may nevertheless take judicial notice of the existence of the documents. *Cf. Brown v. Lippard*, 472 F.3d 384, 387 (5th Cir. 2006) (finding that a court could take judicial notice of the existence of testimony even if the truthfulness of the testimony was disputed). To the extent that Defendants seek to call into question the substance of the

documents, this does not change the fact that taking judicial notice of the documents themselves is appropriate here.

As set forth in the Declaration of Julia A. Olson, since the commencement of this litigation, counsel for Plaintiffs have been engaged in extensive informal discovery concerning documents available as public records from federal government sources. Olson Decl. ¶ 2. Counsel for Plaintiffs have conducted a significant amount of research from Presidential libraries, government archives, governmental websites, and other government sources. *Id.* The documents obtained through this process are relevant to the issues in this case and are properly subject to judicial notice. *Id.*

Attached hereto as **Appendix 1-9** are tables containing publicly available federal government documents and webpages. Each table has seven columns containing the following information: (1) Exhibit number; (2) Title of the referenced document; (3) Date of the referenced document; (4) Bates number(s) given by Plaintiffs to the referenced document; (5) Source/Author of the referenced document; (6) The website url for the referenced document; and (7) The date the referenced document was accessed by Plaintiffs. True and correct copies of all documents listed in each of the tables that Plaintiffs seek to have judicially noticed are attached to the Olson Declaration as **Exhibits 1-385**.

CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request this Court take judicial notice of the documents described in **Appendix 1-9** hereto and attached as **Exhibits 1-385** to the Olson Declaration filed herewith.

DATED this 28th day of June, 2018.

Respectfully submitted,

/s/ Andrea K. Rodgers
Andrea K. Rodgers, OR Bar 041029