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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' SECOND MOTION *IN***  
***LIMINE* SEEKING JUDICIAL NOTICE**  
**OF PUBLICLY AVAILABLE**  
**DOCUMENTS**

**PLAINTIFFS' SECOND MOTION *IN LIMINE* SEEKING JUDICIAL NOTICE OF**  
**PUBLICLY AVAILABLE DOCUMENTS**

## INTRODUCTION

Plaintiffs respectfully request that the Court take judicial notice of publicly available documents that Plaintiffs intend to use in their case in chief at trial and identified in **Appendix A**. This second Motion for Judicial Notice is supported by the attached Declaration of Andrea K. Rodgers (“Rodgers Decl.”). These documents include official government reports and data that were obtained from the government or other verifiable sources, including but not limited to the Defendants in this case. Therefore, these documents contain information the accuracy of which cannot reasonably be questioned and are appropriate subjects for judicial notice. Fed. R. Evid. 201(b). The parties have conferred about this motion during their last meet and confer on August 15 and again on August 23, and Defendants took no position on this motion until they are able to review the documents for which Plaintiffs request judicial notice. *See* LR 7-1(a).

## 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). Attached hereto as **Appendix A** is a table containing publicly available documents and webpages for which the Plaintiffs seek judicial notice. The Plaintiffs seek judicial notice of the following categories of documents: (1) documents produced and maintained by government entities; (2) National Academy of Sciences and National Research Board reports maintained or made public via university libraries; (3) articles from newspapers of record; and (4) court filings from other cases.

Documents Produced and Maintained by Government Entities

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); *Interstate Nat. Gas Co. v. Southern California Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (“[The court] may take judicial notice of records and reports of administrative bodies.”); *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. *Interstate Nat. Gas Co.*, 209 F.2d at 385 (taking judicial notice of Federal Power Commission Reports containing specifics of natural gas pipeline operation contract); *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.”). Taking judicial notice is similarly appropriate here with respect to government publications and data produced by Defendants themselves as well as other government entities.

Statistics and data from official government reports are also 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.”).

#### National Academy of Sciences & National Research Board Reports

Courts have taken judicial notice of National Research Council<sup>1</sup> documents in several cases. For example, in *United States v. W.R. Grace*, the Ninth Circuit took judicial notice of a

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<sup>1</sup> The National Research Council is an arm of the National Academy of Sciences designed “to bring into cooperation government, educational, industrial, and other research organizations with the object of encouraging the investigation of natural phenomena, and increased use of scientific research in the development of American industries, the employment of scientific methods in strengthening the national defense, and such other applications of science as will promote the national security and welfare.” *The Organization of the National Research Council*, National

National Research Council report and expressed that they “have discretion to take judicial notice under Rule 201 of the existence and content of published articles.” 504 F.3d 745, 766 (9th Cir. 2007). In another case, the court took judicial notice of reports by a committee established by the National Research Council to study the effects of radiation exposure. *Nat’l Ass’n of Radiation Survivors v. Derwinski*, 782 F. Supp. 1392, 1398 (N.D. Cal. 1992), *rev’d on other grounds*, 994 F.2d 583 (9th Cir. 1992). Much of the committee’s work had been corroborated by experts from both parties, so the Court took “judicial notice of [the committee’s report] and considered the discourses contained in the [committee’s] reports entered into evidence or judicially noticed in th[e] case.” *Id.* Courts have also taken judicial notice of reports from the overarching National Academy of Sciences. *See, e.g., Greenberg v. Target Corp.*, No. 17-CV-01862-RS, 2017 WL 9853748, at \*1 (N.D. Cal. Aug. 28, 2017) (taking judicial notice of the contents of a National Academy of Sciences report).

#### Articles from Newspapers of Record

The Ninth Circuit has held that courts may take judicial notice that a fact is generally known to the public if it is widespread in that region’s news media. *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458–59 (9th Cir. 1995). “Courts may take judicial notice of publications introduced to ‘indicate what was in the public realm at the time, not whether the contents of those articles were in fact true.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (citation omitted); *see, e.g., United States v. Pickard*, 100 F. Supp. 3d 981, 989 (E.D. Cal. 2015) (“The court takes judicial notice of the fact that the U.S. Surgeon General, during a televised interview on ‘CBS This Morning’ on February 4, 2015, made a statement about marijuana’s efficacy for some medical conditions and symptoms.”). Courts have

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Academy of Sciences, <http://www.nasonline.org/about-nas/history/archives/milestones-in-NAS-history/organization-of-the-nrc.html> (last visited Aug. 1, 2018).

even taken judicial notice of the veracity of statements made in news reports beyond simply acknowledging that the statement was made. *Cty. of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1209 (N.D. Cal. 2017) (“I take judicial notice of Attorney General [Jeff] Sessions’ statements in his op-ed as the veracity of these statements ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’ Fed. R. Evid. § 201(b)(2).”).

### Court Documents

The Ninth Circuit has recognized that “[w]e may take judicial notice of court filings and other matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (granting motion to take judicial notice of pleadings filed in related state court action).

Even if Defendants argued that the contents of these documents were “subject to . . . dispute,” this Court may nevertheless take judicial notice of the existence of the documents. *Cf. Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (finding that a court may take judicial notice of the existence of another court’s opinion); *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.

Each table on **Appendix A** 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/document location 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 Rodgers Declaration as **Exhibits 1-609**.

**CONCLUSION**

For the aforementioned reasons, Plaintiffs respectfully request this Court take judicial notice of the documents described in **Appendix A** hereto and attached as **Exhibits 1-609** to the Rodgers Declaration filed herewith.

DATED this 24th day of August, 2018.

Respectfully submitted,

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