

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
STATE OF CALIFORNIA, et al.,  
Defendants.

No. 2:18-cv-490-JAM-KJN

**ORDER RE REQUESTS FOR JUDICIAL  
NOTICE**

In support of and opposition to Plaintiff's pending Motion for Preliminary Injunction, ECF No. 2, and Defendants' Motion to Dismiss, ECF No. 77, the parties each submitted a Request for Judicial Notice, ECF Nos. 78 & 173. Neither party has opposed judicial notice of any of the exhibits. This Order sets forth the Court's decision on each exhibit for which judicial notice has been requested.

I. LEGAL STANDARD

Under the Federal Rules of Evidence, the Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial

1 court's territorial jurisdiction; or (2) can be accurately and  
2 readily determined from sources whose accuracy cannot reasonably  
3 be questioned. Fed. R. Evid. 201. The rule governs judicial  
4 notice of adjudicative, rather than legislative, facts.

5 Even when a court takes judicial notice of a party's  
6 exhibits—such as legislative history and government documents—the  
7 findings and statements within those documents frequently contain  
8 facts that may be disputed and conclusions that involve  
9 interpretation, opinion, and judgment. See In re Easysaver  
10 Rewards Litigation, 737 F. Supp. 2d 1159, 1171 (S.D. Cal. 2010).  
11 The Court may not take judicial notice of disputed facts stated  
12 in public records. Lee v. City of Los Angeles, 250 F.3d 668, 690  
13 (9th Cir. 2001). The Court's reliance on any exhibits it deems  
14 to be proper subjects of judicial notice, therefore, will be  
15 constrained by this rule.

## 17 II. PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE

### 18 A. News Articles and Press Release

19 Plaintiff requests judicial notice of various news articles,  
20 Pl. RFJN, Exhs. 1, 5, & 7, and a Press Release from  
21 Assemblymember Chiu, id., Exh. 4. The contents of the articles  
22 and press release are not facts that can be accurately and  
23 readily determined from sources whose accuracy cannot reasonably  
24 be questioned. While the Court might take notice of such  
25 publications to "indicate what was in the public realm at the  
26 time," it cannot take notice of their contents as being true.  
27 See Gerritsen v. Warner Bros. Entm't Inc., 112 F. Supp. 3d 1011,  
28 1029 (C.D. Cal. 2015). Because the question of what information

1 was available in the public realm is irrelevant to this dispute,  
2 the Court declines to take judicial notice of these publications.

3 B. Legislative History

4 Plaintiff requests judicial notice of two legislative  
5 hearings on the proposed bills, Pl. RFJN, Exhs. 2 & 3, and two  
6 reports issued by the California Committee on the Judiciary, id.  
7 Exhs. 13 & 14. "Legislative history is properly a subject of  
8 judicial notice." Anderson v. Holder, 673 F.3d 1089, 1094 n.1  
9 (9th Cir. 2012); see Ramos v. Capital One, N.A., No. 17-CV-00435-  
10 BLF, 2017 WL 3232488, at \*3 (N.D. Cal. July 27, 2017) (taking  
11 judicial notice of senate committee hearing notes). The Court  
12 takes judicial notice of these exhibits.

13 C. Government Statistics and Reports

14 Plaintiff requests judicial notice of statistics published  
15 by the Bureau of Justice Statistics and the California Department  
16 of Corrections and Rehabilitation, contained in Exhibits 8 and 9.  
17 Pl. RFJN. Statistics published by the government, which no party  
18 disputes, are properly subject to judicial notice. See United  
19 States v. Orozco-Acosta, 607 F.3d 1156, 1164 n.5 (9th Cir. 2010);  
20 Castro v. ABM Indus. Inc., No. 14-CV-05359-YGR, 2015 WL 1520666,  
21 at \*1 n.1 (N.D. Cal. Apr. 2, 2015). Further, as explained below,  
22 these publicly available reports published by government entities  
23 are proper subjects of judicial notice. The Court thus takes  
24 judicial notice of Exhibits 8 and 9.

25 D. Publicly Available Government Documents

26 Finally, Plaintiff seeks judicial notice of the California  
27 Department of Justice's published and publicly available  
28 memoranda and press releases, Pl. RFJN, Exhs. 6, 10, 11, 12, 15,

1 & 17, and an ICE policy document, id., Exh. 16. The Court may  
2 take judicial notice of records and reports of government  
3 entities, including when that information is posted on a  
4 government webpage. Anderson, 673 F.3d at 1094 n.1; Daniels-Hall  
5 v. National Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010)  
6 (taking judicial notice of information made publicly available by  
7 a government entity on its website). Accordingly, the Court  
8 takes judicial notice of these exhibits.

9  
10 III. DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

11 A. News Articles

12 Defendants ask the Court to take judicial notice of news  
13 articles from various publications throughout California. Def.  
14 RFJN, Exh. L. As explained above, although the Court might take  
15 notice of such publications to "indicate what was in the public  
16 realm at the time," it cannot take notice of their contents as  
17 being true. See Gerritsen v. Warner Bros. Entertainment Inc.,  
18 112 F. Supp. 3d 1011, 1029 (C.D. Cal. 2015). The facts in these  
19 articles are not proper subjects for judicial notice and the  
20 Court declines to take judicial notice of Defendants' Exhibit L.

21 B. Legislative History

22 Defendants request judicial notice of several legislative  
23 reports made available by the California Legislature. Def. RFJN,  
24 Exhs. F, G, I, & J. Because "[l]egislative history is properly a  
25 subject of judicial notice," Anderson, 673 F.3d at 1094 n.1, the  
26 Court takes judicial notice of these exhibits.

27 C. Publicly Available Government Documents

28 Like Plaintiff, Defendants seek judicial notice of a number

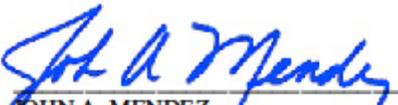
1 of publicly available government documents released by the United  
2 States Department of Homeland Security and the California  
3 Department of Justice. Def. RFJN, Exhs. A, B, C, D, E, H, & K.  
4 The Court takes judicial notice of these documents. See  
5 Anderson, 673 F.3d at 1094 n.1 (“We may take judicial notice of  
6 records and reports of administrative bodies.”); Daniels-Hall v.  
7 National Educ. Ass’n, 629 F.3d 992, 998 (9th Cir. 2010) (taking  
8 judicial notice of information made publicly available by a  
9 government entity).

10  
11 IV. ORDER

12 For the reasons set forth above, the Court takes judicial  
13 notice of Plaintiff’s Exhibits 2, 3, 6, 8, 9, 10, 11, 12, 13, 14,  
14 15, 16, and 17 attached to its Request for Judicial Notice. The  
15 Court also takes judicial notice of Defendants’ Exhibits A, B, C,  
16 D, E, F, G, H, I, J, and K. The Court declines to take judicial  
17 notice of Plaintiff’s Exhibits 1, 4, 5, and 7, and Defendants’  
18 Exhibit L.

19 IT IS SO ORDERED.

20 Dated: June 15, 2018

21  
22   
23 JOHN A. MENDEZ,  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28