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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 EMMA C., by and through her Guardian Ad
16 Litem, et al., each one individually and on
17 behalf of all other similarly situated children,

18 Plaintiffs,

19 v.

20 DELAINE EASTIN, individually and in her
21 official capacity as Superintendent of Public
22 Instructions for the State of California, et al.,

23 Defendants.
24
25

Case No.: C-96-4179 (TEH)

**PLAINTIFFS' OPPOSITION TO CDE'S
REQUEST FOR JUDICIAL NOTICE AND
NON-OPPOSITION TO INCLUSION OF
WRITINGS SUBJECT TO HEARSAY
EXCEPTION IN SUPPORT OF CDE'S
MOTION OBJECTING TO, AND
SEEKING TO SET ASIDE, THE COURT
MONITOR'S JANUARY 9, 2014 REPORT**

Date: June 23, 2014
Time: 10:00 a.m.
Courtroom: Courtroom 2, 17th Floor
Judge: Hon. Thelton E. Henderson

1 **I. INTRODUCTION**

2 On April 16, 2014, the California Department of Education (“CDE”) filed a Request for
3 Judicial Notice (“RJN”) of a list of documents issued by the United States Department of
4 Education (“USDOE”), in support of its concurrently filed “Motion Objecting to, and Seeking to
5 Set Aside, the Monitor’s January 9, 2014 Report.” ECF No. 1917; *see also* ECF No. 1911.

6 Plaintiffs oppose the CDE’s RJN request because CDE failed to meet its burden, including by
7 improperly failing to state a clear basis for its request. Without explanation, CDE incorrectly
8 asserted that under Federal Rule of Evidence 201(b) (“Fed.R.Evid.”), the Court can take judicial
9 notice of these documents. As explained below, the Court cannot take judicial notice of *any* of
10 these documents for the truth of their content. Plaintiffs do not oppose CDE’s hearsay exception
11 request.
12

13 **II. ARGUMENT**

14 **A. Legal Standard**

15 Judicial notice may be taken of a fact that is “not subject to reasonable dispute because it
16 (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and
17 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed.R.Evid.
18 201(b). The Ninth Circuit has noted that because “the effect of judicial notice is to deprive a
19 party of an opportunity to use rebuttal evidence, cross-examination, and argument to attack
20 contrary evidence, caution must be used in determining that a fact is beyond controversy under
21 Rule 201(b).” *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1151 (9th Cir. 2005) (*citing Wright*
22 *v. Brooke Group Ltd.*, 114 F. Supp. 2d 797, 816 (N.D. Iowa 2000)). *See also, Korematsu v. U.S.*,
23 584 F. Supp. 1406, 1414 (D.C.Cal. 1984) (“Judicial notice of adjudicative facts dispenses with
24

25 **PLAINTIFFS’ OPPOSITION TO CDE’S RJN IN SUPPORT OF ITS MOTION OBJECTING
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1 the need to present other evidence or for the factfinder to make findings as to those particular
2 facts.”) Thus, a court may take judicial notice of matters of public record but not facts subject to
3 reasonable dispute. *Beckway v. DeShong*, 717 F.Supp.2d 908 (N.D. Cal. 2010).

4 Pursuant to Federal Rule of Evidence 201, the Court will take judicial notice of the
5 *existence* of these documents as “matters of public record.” *Lee v. City of Los Angeles*,
6 250 F.3d 668, 689 (9th Cir. 2001). Since it would be inappropriate to “take judicial
7 notice of a fact that is ‘subject to reasonable dispute,’” *id.* (quoting Fed.R.Evid. 201(b)),
8 the Court does not accept as true the facts alleged in the documents. *Id.* at n 1.

9 The party requesting judicial notice bears the burden of persuading the trial judge that the
10 fact is a proper matter for judicial notice and not reasonably subject to dispute. *See Jasso v.*
11 *Citizens Telecomms. Co. of Cal, Inc.*, 2007 WL 97036, at *2-3 (E.D.Cal. Jan 9, 2007) (denying
12 request for judicial notice where party seeking judicial notice failed to provide an adequate basis
13 for the court to take judicial notice of any of the materials submitted in their requests). Even
14 where it is appropriate to take judicial notice of matters of public record, the Court “does not
15 adopt their factual findings or holdings; it simply acknowledges their existence and contents.”
16 *California ex rel. Lockyer v. Mirant Corp.*, 266 F.Supp.2d 1046, 1053 (N.D.Cal. 2003). “A court
17 may not take judicial notice of one party’s opinion of how a matter of public record should be
18 interpreted.” *United States v. S. Cal. Edison Co.*, 300 F.Supp.2d 964, 974 (E.D.Cal. 2004).

19 **B. CDE’s Request Must Be Denied Because CDE Fails to Meet its Burden and Disputed
20 Matters Are Not Judicially Noticeable**

21 CDE’s RJN request is fundamentally flawed because it failed to state the specific purpose
22 for which RJN is sought. *Barbera v. WMC Mortg. Corp.*, 2006 WL 167632 at *3 (N.D.Cal. Jan.
23 19, 2006) (denying request for judicial notice where purpose for request unclear); *Jasso v.*
24 *Citizens*, 2007 WL 97036, at *2-3 (denying request for judicial notice for lack of adequate basis).
25 CDE failed to address, much less meet, its burden of showing that the documents in question are

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1 a proper matter for judicial notice. CDE made no particularized demonstration that each of the
 2 documents and its contents is entitled to judicial notice. CDE merely asserted that “[t]he records
 3 and reports of an administrative body, [...] are matters of judicial notice.” ECF No. 1917 at 3.
 4 CDE’s argument, citing *United States v. Ritchie*, 342 F.3d 903, 908-09 (9th Cir. 2003) and
 5 *Walker v. Woodford*, 454 F.Supp.2d 1007, 1022 (S.D. Cal. 2006), misrepresents those cases, and
 6 must be rejected. *Id.* *Ritchie* holds that public records *are not necessarily* judicially noticeable.
 7 *Ritchie*, 342 F.3d at 909 (denying judicial notice). The Magistrate in *Walker* noted that
 8 documents that are part of the public record may be judicially noticed for the purpose of
 9 demonstrating that a proceeding occurred, not for the facts contained within the document.
 10 *Walker*, 454 F.Supp.2d at 1022.

11 Plaintiffs do not object to judicial notice of the documents themselves as public records
 12 but object to judicial notice of any facts contained therein as determinative of matters in dispute,
 13 if that is CDE’s intention. *Bergman v. Bank of America*, 2013 WL 5863057 at *13-14 (N.D. Cal.
 14 Oct. 23, 2013) (taking judicial notice of documents only as public records); *Beckway v.*
 15 *DeShong*, 717 F.Supp.2d 908 at n.1 (same).

17 III. CONCLUSION

18 For the reasons explained above, CDE’s request for RJN should be denied.

19 May 14, 2014

Respectfully submitted,

21 By: /s/ Larisa Cummings .

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