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16 RAY SHELTON

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 RAY SHELTON,
20 Plaintiff(s),
21 vs.

CASE NO. 2:23-cv-10427-CBM-SSC

**PLAINTIFF’S OBJECTIONS TO
DEFENDANTS’ REQUEST FOR
JUDICIAL NOTICE**

22 GLENDALE UNIFIED SCHOOL
23 DISTRICT; BOARD OF EDUCATION
24 OF THE GLENDALE UNIFIED
25 SCHOOL DISTRICT; VIVIAN
26 EKCHIAN; DARNEIKA WATSON,
27 individually, and in her official capacity
28 as Chief Human Resources and
Operations Officer and Superintendent;
KATHLEEN CROSS, individually, and
in her official capacity as a Board of
Education member; INGRID
GUNNELL, individually, and in her
official capacity as a Board of Education
member; SHANT SAHAKIAN,
individually, and in his official capacity
as a Board of Education member;
JENNIFER FREEMON, individually,

Date: October 8, 2024
Time: 10:00 a.m.
Room: 8D

1 and in her official capacity as a Board of
2 Education member; NAYIRI
3 NAHABEDIAN, individually, and in
4 her official capacity as a Board of
5 Education member; KRISTINE
6 TONOLI,

Defendants.

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1 Plaintiff Ray Shelton (“Shelton”) hereby objects to Defendants’ Request for
2 Judicial Notice in support of their Motion to Dismiss and/or Strike Plaintiff’s Second
3 Amended Complaint pursuant to Federal Rule of Evidence 201(e).

4 **I. INTRODUCTION**

5 Plaintiff Ray Shelton filed the Second Amended Complaint in this case on July
6 26, 2024, alleging Violations of 42 U.S.C. § 1983 [First and Fourteenth Amendments]
7 and California Constitution, Article I, § 2. On September 3, 2024, Defendants filed,
8 among other things, their Notice of Motion to Dismiss, the Memorandum of Points and
9 Authorities and Declaration of John J. Manier attached thereto, and the Request for
10 Judicial Notice (“RJN”). Their separate Request for Judicial Notice (ECF 29-1) is the
11 subject of these objections.

12 **II. OBJECTIONS TO DEFENDANT’S REQUEST FOR JUDICIAL**
13 **NOTICE**

14 “[T]he consequences of taking judicial notice are significant. Where the trial
15 court has taken judicial notice of a fact, the jury must be instructed to accept that fact as
16 conclusive. Judicial notice also precludes either party from introducing evidence to
17 disprove that fact. *The Ninth Circuit has accordingly urged the district courts to be*
18 *cautious in taking judicial notice and to do so only when the matter is beyond*
19 *controversy.” Metro. Creditors’ Trust v. Pricewaterhousecoopers, LLP, 463 F.Supp.2d*
20 *1193, 1197 (E.D. Wash. 2006) (cleaned up) (emphasis added).*

21 Under Federal Rule of Evidence 201, the Court may take judicial notice of a fact
22 only if it is: “not subject to reasonable dispute in that it is either (1) generally
23 known within the territorial jurisdiction of the trial court or (2) capable of accurate
24 and ready determination by resort to sources whose accuracy cannot reasonably be
25 questioned.” Fed. R. Evid. 201(b).

1 Defendants’ Request for Judicial Notice, specifically Exhibits “D” and “E” do
2 not meet either of the required reasons for judicial notice. The documents requested to
3 be noticed should not be and the request itself should be stricken as improper.

4 **A. Objections to Exhibits D & E**

5 **1. Exhibits D and E are not generally known facts**

6 Exhibits D and E to Defendants’ Request for Judicial Notice are unauthenticated
7 letters purporting to be from a GUSD employee to Mr. Shelton. The lack of
8 authentication makes it impossible for the Court to take judicial notice of the contents
9 of these letters. See FRE 201. Further, these are not public records as they are addressed
10 directly to Plaintiff for his personnel file and not intended for public dissemination. See
11 *Versaci v. Superior Court*, 127 Cal.App.4th 805, 819-820 (2005) (public school
12 employees have a privacy interest in their personnel matters).

13 The facts that Defendants seek to notice in Exhibits D and E are also not
14 “generally known within the trial court’s territorial jurisdiction,” nor can they “be
15 accurately and readily determined from sources whose accuracy cannot be reasonably
16 questioned” as is required under Federal Rule of Evidence 201(b). See *Gray v.*
17 *Burtronics Business Systems*, 2016 WL 10987314, at *7 (C.D. Cal. 2016) (letters not
18 subject to judicial notice); *see also, In re LDK Solar Sec. Litig.*, 584 F. Supp. 2d 1230,
19 1239 n.1 (N.D. Cal. 2008) (“Ordinarily, evidentiary material, such as the emails
20 between Charley Situ and defendants, are not proper subjects of judicial notice.”).

21 Even if the Court were inclined to take judicial notice of Exhibits D or E, such
22 notice should be limited. “[C]ourts may take judicial notice of publications introduced
23 to indicate what was in the public realm at the time, *not whether the contents of those*
24 *articles were in fact true.*” *Von Saher v. Norton Simon Museum of Art at Pasadena*,
25 592 F.3d 954, 960 (9th Cir. 2010) (emphasis added).

1 notice or the incorporation-by-reference doctrine.” *Id.* at 999. The Court should strike
2 these documents as improper.

3 **3. The documents constitute inadmissible hearsay**

4 Defendants also attempt to introduce these letters for the truth of the matter
5 asserted. In doing so, Defendants attempt to circumvent hearsay rules which prohibit
6 the introduction of unreliable out-of-court statements. See Fed. R. Evid. 801(c). Thus,
7 they should be stricken for this additional reason.

8 **B. Objections to Paragraph 3 (Statements by Defendant Gunnell)**

9 **3. Defendants’ statement is inadmissible hearsay**

10 While the Court may take notice of videos from a school board meeting, the
11 Court cannot accept as true the statements made by the speaker. In other words, while
12 the Court may take notice that certain things were said, the Court cannot accept the
13 veracity of those statements. See Fed. R. Evid. 801(c).

14 **CONCLUSION**

15 For the reasons set forth above, this Court should deny Defendants’ Request
16 For Judicial Notice.

17
18 Dated: September 17, 2024

THE PIVTORAK LAW FIRM

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20 By: /s/ David Pivtorak
21 David Pivtorak
22 Attorney for Plaintiff,
23 RAY SHELTON
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