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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 DENNIS RUTHERFORD, et al.,
13

14 Plaintiffs,
15

16 vs.
17

17 SHERMAN BLOCK, et al.,
18

18 Defendants.
19

Case No. CV 75-04111 DDP

Honorable Dean D. Pregerson

**DEFENDANTS' EVIDENTIARY
OBJECTIONS TO PLAINTIFFS'
REQUEST FOR JUDICIAL
NOTICE AND DECLARATION OF
MARY TIEDEMAN**

20
21 TO THE COURT, ALL INTERESTED PARTIES AND THEIR
22 ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE Defendants Sherman Block, et. al. (hereinafter
24 "Defendants") in connection with their portions of the Joint Stipulation regarding
25 Plaintiffs' Motion to Compel Responses to the First Set of Requests for
26 Production of Documents, hereby object to and move to strike the following
27 evidence submitted by Plaintiffs based upon the following grounds:

28 ///

1 **DECLARATION OF MARY TIEDEMAN**

2 Entire declaration: lacks foundation, improper lay witness opinion,
3 inadmissible hearsay, irrelevant.

4 Paragraph 5, Mary Tiedeman declares, "LASD has made the [Custody
5 Division Manual] available to outside entities, including contractors."

6 Defendants object to paragraph 5 of this declaration as lacking foundation
7 and containing information about which the declarant has no personal knowledge.
8 Further, this paragraph is vague and ambiguous especially as to "outside entities".
9

10 **EXHIBIT 14 TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE**

11 Exhibit 14 is the September 25, 2009 Custody Operations and Correctional
12 Services Divisions Biennial Inspection Report.

13 Defendants object to the introduction of documentary evidence that is not
14 authenticated. Plaintiffs are required to produce, as a condition precedent to
15 admissibility, evidence sufficient to support a finding that the document in
16 question is what its proponent claims. Fed.R.Evid. Rule 901(a). Plaintiffs have
17 not produced any evidence, by declaration or otherwise, that this exhibit actually
18 is an Inspection Report. Nor have Plaintiffs followed the example given by
19 Fed.R.Evid. Rule 901(b)(7) for public records, which states that a writing
20 authorized by law filed in a public office may be authenticated by evidence that it
21 is from the public office where items of this nature are kept. Nor does this
22 document meet any of the "self-authentication" requirements found in
23 Fed.R.Evid. Rule 902. For example, certified public records are self-
24 authenticating, but this Exhibit is not certified.

25 Plaintiffs, as the party requesting judicial notice, must supply the Court
26 with information sufficient to enable the Court to ascertain that the matter is not
27 subject to reasonable dispute. *See, Nieves v. University of Puerto Rico*, 7 F.3d
28 270, 276 fn. 9 (1st Cir. 1993). The Court may refuse to take judicial notice if the

1 requesting party fails to do this. *Id.* **Simply attaching a document to a Request**
2 **for Judicial Notice does not authenticate the document**, even if the document
3 appears on its face to have originated from some governmental agency and the
4 affiant is a government official. *United States v. Dibble*, 429 F.2d 598, 602 (9th
5 Cir. 1970). Since Plaintiffs have failed to provide any evidence that Exhibit 14 is
6 what it purports to be, this Court should not take judicial notice. *See also*,
7 *Madeja v. Olympic Packers, LLC*, 310 F.3d 628, 639 (9th Cir. 2002) (no abuse of
8 discretion in refusal to take judicial notice of documents that had not been
9 authenticated).

10 Defendants object to this exhibit on the grounds that it contains hearsay.
11 The first page of the exhibit indicates that the report is based on “staff/inmate
12 interviews” and that the authors “interviewed over 50 administrators, managers,
13 supervisory and line staff associated with the facilities.” Ex. 16 at 1. Thus, it is
14 hearsay as to content based on these interviews. Fed.R.Evid. Rule 802.

15 Defendants further object on the grounds that this document does not meet
16 the requirements for judicial notice set out in Fed.R.Evid. Rule 201. Specifically,
17 the contents of this exhibit are not generally known in the community, nor is it
18 capable of accurate and ready determination by resort to sources whose accuracy
19 cannot be reasonably questioned. *See* Fed.R.Evid. Rule 201(b).

20 21 **EXHIBIT 15 TO PLAINTIFFS’ REQUEST FOR JUDICIAL NOTICE**

22 Exhibit 15 is the Declaration of George Sullivan, dated October 15, 2009,
23 and filed in *Dion Starr v. County of Los Angeles, et al.* Case No. CV 08-00508
24 GW (SHx).

25 Defendants object to Plaintiffs’ request to take judicial notice of anything
26 beyond the existence of the document. Although a court may take judicial notice
27 of the existence and content of the court files in another court, it cannot take
28 judicial notice of factual findings made by that court. They are not facts “not

1 subject to reasonable dispute.” *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 830
2 (5th Cir. 1998). Put another way, **judicial notice is limited to the fact that**
3 **declarations were filed and the averments were made.** The veracity of the
4 allegations is not judicially noticeable. *FDIC v. O’Flahaven*, 857 F.Supp. 154,
5 157-8 (D. NH. 1994) (affidavits from a state court case).

6 Defendants object on the grounds that this declaration is unauthenticated
7 and lacks foundation: there is no testimony or evidence establishing that this an
8 actual copy of the declaration made in that case. As discussed above, Plaintiffs
9 have not met their burden of supplying the court with information sufficient to
10 enable the court to ascertain that the documents is what it purports to be.

11 Defendants object on the grounds that this evidence is irrelevant. The
12 Declaration contains testimony of an expert in an unrelated case involving
13 dissimilar facts (a prisoner allegedly assaulted by a deputy at Men’s Central Jail).
14 This is irrelevant to the provision of mental health care at Men’s Central Jail.

15 Defendants object on the grounds that this declaration contains information
16 about which the declarant has no personal knowledge.

17 Finally, Defendants object on the grounds that this document does not meet
18 the requirements for judicial notice set out in Fed.R.Evid. Rule 201. Specifically,
19 the contents of this exhibit are not generally known in the community, nor is it
20 capable of accurate and ready determination by resort to sources whose accuracy
21 cannot be reasonably questioned. *See* Fed.R.Evid. Rule 201(b).

22 Defendants further object to this Exhibit as the declarant was not disclosed to
23 Defendants pursuant to Federal Rules of Civil Procedure Rule 26 (a)(2)which
24 states in pertinent part:

25 [A] party shall disclose to other parties the identity of any person
26 who may be used at trial to present evidence under Rules 702,
27 703, or 705 of the Federal Rules of Evidence. [¶] . . . [T]his
28 disclosure shall, with respect to a witness who is retained or

1 specially employed to provide expert testimony in the case . . . ,
2 be accompanied by a written report prepared and signed by the
3 witness. **The report shall contain a complete statement of all**
4 **opinions to be expressed and the basis and reasons therefore;**
5 the data or other information considered by the witness in forming
6 the opinions; any exhibits to be used as a summary of or support
7 for the opinions; the qualifications of the witness, including a list
8 of all publications authored by the witness within the preceding
9 ten years, the compensation to be paid for the study and
10 testimony; and a listing of any other cases in which the witness
11 has testified as an expert at trial or by deposition within the
12 preceding four years.

13 (Emphasis added.)

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16 **EXHIBIT 16 TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE**

17 Exhibit 16 is an order issued in *Alvarado v. Bratton et al.* Case No. 06-
18 7812-PA (RCx).

19 Defendants object on the grounds that this evidence is irrelevant. Any
20 matter to be judicially noticed must be relevant to the issues in the case,
21 regardless of whether it is no reasonable disputable. *Vallot v. Central Gulf Lines,*
22 *Inc.*, 641 F.2d 347, 350 (5th Cir. 1981). This Exhibit is an order in an entirely
23 different case, in which a magistrate judge rules against "County Defendants" on
24 a motion to compel production of documents. The order contains a long
25 recitation of facts, which are not the proper subject of judicial notice (as discussed
26 above). The Court may only notice that the order contains a recitation of the facts
27 of *Alvarado v. Bratton, et al.* Then the order contains an extensive discussion of
28 the law regarding motions to compel production. Since the court may not take

1 judicial notice of the law, this section is also irrelevant. *See, Taylor v. Charter*
2 *Med. Corp.* 162 F.3d 827, 830 (5th Cir. 1998) (courts may not take judicial notice
3 of legal determinations made by other courts). The magistrate in *Alvarado* then
4 rules against the County. The fact that the County and the Sheriff's Department
5 once lost a motion to compel may be judicially noticeable, but it is irrelevant.

6 Like Exhibit 15, the court may take judicial notice of the fact that an order
7 was issued, and that the order compelled the "County Defendants" to produce
8 documents, but any factual matter discussed by the court in *Alvarado* was subject
9 to dispute, and the Court may not take judicial notice of a matter that is subject to
10 dispute. *See, In re Mora*, 199F.3d 1024, 1026, fn.3 (9th Cir. 1999).

11 Defendants further object on the grounds that this evidence is
12 unauthenticated. As discussed above, Plaintiffs have not met their burden of
13 supplying the court with information sufficient to enable the court to ascertain
14 that the documents is what it purports to be.

15 Finally, Defendants object on the grounds that this document does not meet
16 the requirements for judicial notice set out in Fed.R.Evid. Rule 201. Specifically,
17 the contents of this exhibit are not generally known in the community, nor is it
18 capable of accurate and ready determination by resort to sources whose accuracy
19 cannot be reasonably questioned. *See* Fed.R.Evid. Rule 201(b).

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21 Dated: October 6, 2010

LAWRENCE BEACH ALLEN & CHOI, PC

22
23 By /s/ Matthew P. Allen

24 Matthew P. Allen

25 Attorney for Defendants

26 Defendants Sherman Block, et al.
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