

No. 21-15905

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Maged Labib Karas,

Plaintiff-Appellant,

v.

California Department of Corrections and Rehabilitation, et al.,

Defendants-Appellees.

**PLAINTIFF-APPELLANT MAGED LABIB KARAS'S OPPOSITION
TO DEFENDANTS-APPELLEES' MOTION FOR JUDICIAL NOTICE**

Brian Wolfman
GEORGETOWN LAW APPELLATE
COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6582

Pro Bono Counsel for Plaintiff-Appellant Maged Labib Karas

October 13, 2023

Defendants-appellees California Department of Corrections and Rehabilitation et al. (CDCR) have filed a Motion for Judicial Notice (MJN). Doc. 44 (June 27, 2023). Plaintiff-appellant Maged Labib Karas opposes that motion, which should be denied for these reasons:

1. CDCR asks this Court to take judicial notice of ten items attached to its motion. *See* MJN 4-5 (listing attachments). The first six items are court filings (and attachments thereto), judicial orders, and a docket sheet. This Court can take notice that these items exist—that is, that they are what they purport to be. *See United States v. Tejera*, 2022 WL 17412887 at *1 n.1 (9th Cir. Dec. 5, 2022). Thus, for instance, it appears that MJN 6 is a page from a petition filed by Karas in the Riverside County Superior Court, and this Court may take notice of the fact that the petition was filed and says what it says. But the legal significance of these six items is not (of course) something that CDCR can determine by fiat. It is this Court’s role to determine the meaning of those documents and their bearing, if any, on this appeal. *See* Fed. R. Evid. 201(a) & committee note thereto.

2. For the reasons more fully explained in Karas’s reply brief (at 10-12), this Court may not take judicial notice of the purported CDCR records contained in items 7 through 10. *See* MJN 5, 99-102. They are not public records, but rather purport to be parts of internal CDCR records pertaining to Karas, the completeness and accuracy of which are disputed in this litigation. *See* Reply Br. 11-12. Their contents are not “generally known within the trial court’s territorial jurisdiction,” nor have they been, on the

record before this Court, “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)-(2).

3. Moreover, as Karas’s reply brief discusses (at 10-11), this appeal comes to this Court from the district court’s dismissal of Karas’s amended complaint. ER-7. The facts pleaded in that complaint must be taken as true and construed in Karas’s favor, *Harper v. Nedd*, 71 F.4th 1181, 1184 (9th Cir. 2023), and CDCR is not free, at this stage, to rely on facts of its own making, *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). Karas did not plead the purported facts contained in items 7 through 10. Yet, CDCR seeks to conclusively establish them through judicial notice, without providing Karas any opportunity for discovery or the submission of counter-evidence. Karas has no idea, for instance, whether the documents that CDCR has put before this Court to establish his credit-earning status are all of the documents purporting to do so—or only some of them.

If, as this Court has held, a court “cannot take judicial notice of disputed facts contained in public records,” *Doe v. Regents of Univ. of Cal.*, 23 F.4th 930, 941 n.15 (9th Cir. 2022); *see also, e.g., Lee*, 250 F.3d at 690, it certainly cannot take judicial notice of *non*-public documents when the non-moving party has not even had an opportunity to interrogate them.

Conclusion

CDCR's Motion for Judicial Notice should be denied except to the limited extent discussed in paragraph one above.

Respectfully submitted,

s/ Brian Wolfman

Brian Wolfman

Georgetown Law Appellate

Courts Immersion Clinic

600 New Jersey Ave., NW

Suite 312

Washington, D.C. 20001

(202) 661-6582

Pro Bono Counsel for Plaintiff-Appellant Maged Labib Karas

October 13, 2023