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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

A.B.O. COMIX, KENNETH ROBERTS, ZACHARY GREENBERG, RUBEN GONZALEZ-MAGALLANES, DOMINGO AGUILAR, KEVIN PRASAD, MALTI PRASAD, and WUMI OLADIPO,

Plaintiffs,

v.

COUNTY OF SAN MATEO and CHRISTINA CORPUS, in her official capacity as Sheriff of San Mateo County,

Defendants.

Case No.: 23-CIV-01075

PLAINTIFFS' OPPOSITION TO DEFENDANTS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Judge: Hon. V. Raymond Swope
Hearing: December 4, 2023
Time: 2:00 pm
Dept.: 23

Action Filed: March 9, 2023
Trial Date: None Set

INTRODUCTION

Plaintiffs object to Defendants' Supplemental Request for Judicial Notice in Support of Reply in Support of Defendants' Motion for Judgment on the Pleadings filed on October 13, 2023 ("Supp. RJN"), which requests judicial notice of, among other things, twenty-nine grievances that Plaintiff Zachary Greenberg filed while he was incarcerated in the County's jail. (Supp. RJN at 3.) The Court should deny the request for three reasons. First, Defendants' request is untimely, as it should have been made with their motion, not their reply brief. Second, Defendants' request is improper because the question of whether Mr. Greenberg grieved the mail policy is legally irrelevant, as explained in Plaintiffs' opposition to Defendants' motion for judgment on the pleadings, (Pls.' MJP Opp'n 10). Finally, Defendants' request is improper because it is an inappropriate attempt to resolve a factual issue that is at best disputed at the pleading stage. Specifically, Defendants' ask the Court to infer from the submitted grievances that Mr. Greenberg did not challenge the County's mail policy. But Plaintiffs' Amended Complaint ("AC") alleges that Mr. Greenberg did indeed do so—and Plaintiffs have evidence of that fact, attached as Exhibit 1 to the accompanying Declaration of Cara Gagliano ("Gagliano Decl.") in Support of Plaintiffs' Opposition to Defendants' Supplemental Request for Judicial Notice.

I. Defendants' request for judicial notice is untimely.

The Court should reject Defendants' request for judicial notice because it is untimely. Defendants should have raised the factual claim they seek to establish through their request for judicial notice—that Mr. Greenberg did not challenge the County's mail policy—in their Motion for Judgment on the Pleadings, not their reply brief. The rule governing motions for judgment on the pleadings provides that the "matter of which the court may take judicial notice . . . shall be specified in the *notice of motion, or in the supporting points and authorities*, except as the court may otherwise permit." (Code Civ. Proc., § 438, subd. (d), emphasis added; *see also Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321.) Here, without any explanation for their delay, Defendants attempt to raise the matter in their reply brief, even though they concede that the matter was raised in Plaintiffs' Amended Complaint. (Supp. RJN 3 [stating that the "Amended Complaint

make[s] the representation that Mr. Greenberg filed 'formal grievances protesting the mail policy'"].) Their request for judicial notice of the submitted grievances is therefore procedurally improper.

II. The grievances attached to Defendants' request are not subject to judicial notice because they are not relevant to the motion for judgment on the pleadings.

Defendants' request for judicial notice is also improper because the grievances are not relevant to the Motion for Judgment on the Pleadings. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 fn. 2 ["[A]ny matter to be judicially noticed must be relevant to a material issue."]; *see also Aquila, Inc. v. Superior Ct.* (2007) 148 Cal.App.4th 556, 569 ["Although a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed." (alterations in original; internal quotation marks omitted)].) Defendants request that the court take judicial notice of the twenty-nine grievances in support of their claim that Mr. Greenberg did not grieve the County's mail policy. But as explained in Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings, whether or not any of the Plaintiffs grieved the mail policy is irrelevant because administrative exhaustion is not required here. The County's own grievance policy expressly prohibits grievances "if they are challenging the rules and policies themselves," and thus Plaintiffs had no administrative avenue of relief to exhaust before challenging the mail policy in court. (Pls.' MJP Opp'n 10.)

III. Defendants' request for judicial notice is improper because it attempts to resolve a factual issue at the pleading stage.

Even if the question of whether Mr. Greenberg grieved the mail policy were legally relevant, Defendants' request for judicial notice would be improper because it is an inappropriate attempt to resolve a factual question—that is at best disputed—at the pleading stage. (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145–147 [noting that courts may not take judicial notice of "matters [that] are reasonably subject to dispute and therefore require formal proof"].) Plaintiffs' complaint alleges that Mr. Greenberg grieved the mail policy. (AC ¶ 82.) And Plaintiffs have evidence of that fact and intend to introduce it at the appropriate stage of these proceedings. Indeed, Plaintiffs have the carbon-copy receipt of Mr. Greenberg's grievance, which is marked as having

been received by San Mateo County staff, and they have attached a scan of that receipt to the accompanying Declaration. If the Court ultimately determines that administrative exhaustion was required, then it can, at the appropriate point, resolve the apparent factual dispute between the parties over whether Mr. Greenberg's grievance is authentic. But until that time, it is inappropriate for Defendants to short-circuit whatever fact-finding may be necessary to resolve their factual dispute.

Since filing their Supplemental Request for Judicial Notice, Defendants have acknowledged that they can neither confirm nor deny that Mr. Greenberg filed a grievance challenging the mail policy and have taken the position that the parties have a factual dispute on this issue. This acknowledgment fatally undermines their basis for asking the Court to take judicial notice of twenty-nine *other* grievances that Mr. Greenberg filed. They sought judicial notice of those other grievances to establish that Mr. Greenberg did not file one challenging the mail policy. (Supp. RJN 3 [requesting judicial notice of "*the* twenty-nine formal grievances Mr. Greenberg filed while he was incarcerated in the County's jail" (emphasis added)]; Defs.' MJP Reply 15 ["*None of his 28 grievances or one appeal challenged the [mail] policy.*" (emphasis in original)].) But given Defendants' acknowlegment, their request is plainly incorrect in claiming that the twenty-nine grievances are subject to judicial notice because they are "[f]acts and propositions that are not reasonably subject to dispute and are [in]capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Supp. RJN 2, quoting Evid. Code § 452(h).) "Although the *existence* of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable." (*Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 113, emphasis in original.) Defendants' interpretation of the 29 grievances—that Mr. Greenberg never grieved the mail policy because that grievance is not among them—is at best reasonably disputable, which Defendants themselves have now acknowledged.

CONCLUSION

The Court should deny Defendants' Supplemental Request for Judicial Notice.

DATED: October 31, 2023

Respectfully submitted,

/s/ Cara Gagliano

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