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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF CONTRA COSTA**

11 Mark S., by and through his guardian ad litem,
12 Anna S., Rosa T., by and through her guardian
ad litem Sofia L., and Jessica Black, Michell
13 Redfoot, and Dr. Nefertari Royston, as
taxpayers,

14 Plaintiffs and Petitioners,

15 v.

16 STATE OF CALIFORNIA; TONY
THURMOND, in his official capacity as STATE
17 SUPERINTENDENT OF PUBLIC
INSTRUCTION; STATE BOARD OF
18 EDUCATION; CALIFORNIA DEPARTMENT
OF EDUCATION; and PITTSBURG UNIFIED
19 SCHOOL DISTRICT, DOES 1-100,
INCLUSIVE

20 Defendants and Respondents.

Case No. N21-1755

UNLIMITED JURISDICTION

**PLAINTIFFS' RESPONSE TO
DEFENDANTS CALIFORNIA
DEPARTMENT OF EDUCATION,
STATE BOARD OF EDUCATION,
STATE SUPERINTENDENT TONY
THURMOND AND JOINED BY
DEFENDANT STATE OF
CALIFORNIA'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO STAY**

Judge Edward G. Weil
Department 39
Time: 9:00 A.M.
Date: February 24, 2022

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1 **INTRODUCTION**

2 Student Plaintiffs Mark S. and Rosa T., by and through their guardians ad litem, Anna S.
3 and Sofia L., and Taxpayer Plaintiffs Jessica Black, Michell Redfoot, and Dr. Nefertari Royston
4 (collectively, “Plaintiffs”), respectfully request that this Court deny the Request for Judicial
5 Notice of Exhibits 3 and 4 in support of Defendants State Board of Education, California
6 Department of Education (“CDE”), and State Superintendent of Public Instruction Tony
7 Thurmond’s Motion to Stay in which they are joined by Defendant State of California
8 (collectively, “State Defendants”). Exhibit 3 is a copy of the California State Board of Education
9 November 2021 Agenda Item 18, which proposes new targets CDE purportedly intends to use to
10 monitor school districts’ compliance with the Individuals with Disabilities Education Act
11 (“IDEA”). Exhibit 4 is a discovery request from Plaintiffs to Defendant CDE. Neither document
12 meets the requirements of the Evidence Code, and the Court should deny judicial notice.¹

13 **ARGUMENT**

14 California Evidence Code section 451 specifies certain matters about which a court must
15 take judicial notice, such as the decisional and statutory law of this state. Under Evidence Code
16 section 452, a court “may” take judicial notice of additional specified matters. The only
17 discretionary categories possibly relevant to proffered Exhibits 3 and 4 are:

18 Official acts of the legislative, executive, and judicial departments
19 of the United States and of any state of the United States.

20 Records of (1) any court of this state or (2) any court of record of
21 the United States or of any state of the United States.

22 Facts and propositions that are of such common knowledge within
23 the territorial jurisdiction of the court that they cannot reasonably be
24 the subject of dispute.

24 Facts and propositions that are not reasonably subject to dispute and
25 are capable of immediate and accurate determination by resort to
26 sources of reasonably indisputable accuracy.

26 Cal. Evid. Code § 452(c)-(d), (g), (h). “A matter ordinarily is subject to judicial notice only if the
27 matter is reasonably beyond dispute. Although the **existence** of a document may be judicially
28

¹ Plaintiffs do not oppose State Defendants’ requests for judicial notice of Exhibits 1 and 2.

1 noticeable, the truth of statements contained in the document and its proper interpretation are not
2 subject to judicial notice if those matters are reasonably disputable.” *Fremont Indem. Co. v.*
3 *Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 113 (2007) (citation omitted) (emphasis in original);
4 *accord Arce v. Kaiser Found. Health Plan, Inc.*, 181 Cal. App. 4th 471, 482 (2010) (“While we
5 may take judicial notice of court records and official acts of state agencies, the truth of matters
6 asserted in such documents is not subject to judicial notice.”) (citations omitted). Here, Exhibits
7 3 and 4 do not fall into any of the categories permitted to be judicially noticed by section 452 of
8 the Evidence Code,² and the State Defendants’ request should be denied.³

9 **I. Exhibit 3 Is Not Subject to Judicial Notice Pursuant to Evidence Code Section 452**

10 State Defendants request judicial notice of Exhibit 3, an agenda item from a CDE
11 meeting, to establish that the CDE has proposed new targets it intends to use to monitor school
12 districts’ compliance with the IDEA. *See* Defs.’ CDE, Tony Thurmond, and SBE’s Req. for
13 Judicial Notice in Supp. Of Defs.’ Mot. to Stay 1 (“RJN ISO Mot. to Stay”) Mem. Of P&A in
14 Supp. Of Defs.’ CDE, Tony Thurmond, and SBE’s Mot. to Stay 2 n.2, 6 (“MPA ISO Mot. to
15 Stay”). The Court should deny the request. State Defendants have not shown how this
16 information “is ‘not reasonably subject to dispute’ and . . . is ‘capable of immediate and accurate
17 determination by resort to sources of reasonably indisputable accuracy’” as required by section
18 452, subdivision (h). *Duronslet v. Kamps*, 203 Cal. App. 4th 717, 737 (2012) (citation omitted).
19 The document cannot demonstrate that CDE intends to or will use these targets to monitor school
20 districts, as this is subject to reasonable dispute. The exhibit is contradicted by allegations in the
21 Complaint that question whether the State Defendants supervise the California public education
22 system to ensure students receive equal educational opportunity and whether they in fact analyze
23 data using its stated methods, and the propriety of those methods for identifying underlying
24 constitutional issues in school districts. The Complaint alleges that the State Defendants’
25 monitoring mechanism fails to sufficiently analyze policies, procedures, and practices at the
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27 ² Unless otherwise noted, all section references hereafter are to the California Evidence Code.

28 ³ The State Defendants’ Request for Judicial Notice fails to provide any reasoning to support its
request for judicial notice. Rather, State Defendants leave it up to Plaintiffs and this Court to
determine whether any of these matters need to be judicially noticed.

1 school level to identify the underlying issues that cause **constitutional violations**, which are
2 central to the case. Compl. ¶¶ 97-98. The Complaint further alleges that State Defendants’
3 “monitoring and intervention system also more generally fails to capture low-performing school
4 districts like Pittsburg Unified and effectively remedy their systemic deficiencies” and that such
5 failures allow school districts to institute policies, procedures, and practices that are
6 discriminatory. ¶ 98. As a result, the Complaint alleges, State Defendants’ monitoring of
7 Pittsburg Unified School District’s special education program has been ineffective. ¶¶ 97-98.

8 Although the Court may take judicial notice of official acts of any state, county, or
9 federal legislative, executive, or judicial department, *see* Cal. Evid. Code. § 452(c), Exhibit 3 is
10 not an official act that is not subject to dispute, *see, e.g., Cruz v. County of Los Angeles*, 173 Cal.
11 App. 3d 1131, 1134 (1985) (citation omitted) (“the official acts of a governmental entity does not
12 in and of itself require acceptance of the truth of factual matters which might be deduced
13 therefrom, since in many instances what is being noticed, and thereby established, is no more
14 than the existence of such acts and not, without supporting evidence, what might factually be
15 associated with or flow therefrom”). Additionally, judicial notice at the demurrer stage is not a
16 substitute for or alternative to presenting evidence to the trial court. *Unruh-Haxton v. Regents of*
17 *Univ. of California*, 162 Cal. App. 4th 343, 365 (2008), *as modified* (May 15, 2008) (“[J]udicial
18 notice of matters upon demurrer will be dispositive only in those instances where there is not or
19 cannot be a factual dispute concerning that which is sought to be judicially noticed.”) (internal
20 citation omitted). Therefore, this Court should deny State Defendants’ Request for Judicial
21 Notice as to Exhibit 3.

22 **II. Exhibit 4 Is Not Subject to Judicial Notice Pursuant to Evidence Code Section 452**

23 State Defendants request judicial notice of Exhibit 4, a discovery request, to establish that
24 Plaintiffs are targeting their discovery to determine CDE’s compliance with the Individuals with
25 Disabilities Education Act. RJN ISO Mot. to Stay 1; MPA ISO Mot. to Stay 5-6. The Court
26 should deny the request because Plaintiffs’ discovery request is immaterial to the question
27 presented in State Defendants’ Motion to Stay: whether this case meets the standards required for
28 the Court to issue a stay. *See Weaver v. Superior Court*, 224 Cal. App. 4th 746, 749 n.2 (2014)

1 (denying District Attorney’s request for judicial notice of plaintiff’s discovery request as
2 duplicative “because that document is immaterial to our disposition of this case.”). Moreover,
3 State Defendants put forth for judicial notice an interpretation of Plaintiffs’ discovery requests
4 instead of facts that are “not reasonably subject to dispute.” *Duronslet v. Kamps*, 203 Cal. App.
5 4th 717, 737 (2012). Plaintiffs dispute State Defendants’ narrow interpretation of the purpose of
6 Plaintiffs’ discovery requests. Therefore, this Court should deny State Defendants’ Request for
7 Judicial Notice as to Exhibit 4.

8 For these reasons, Plaintiffs respectfully request that this Court deny State Defendants’
9 requests to take judicial notice of Exhibits 3 and 4.

10 Date: February 1, 2022



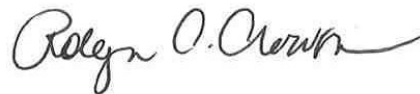
11 Malhar Shah
12 Claudia Center
13 DISABILITY RIGHTS EDUCATION AND
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