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20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 BERNADETTE BLACKWOOD,
23 individually and as guardian ad litem for
24 K.B. and E.B., et al.,

25 Plaintiffs,

26 v.

27 MARY DE VRIES, individually and dba
28 N&M DAIRY (aka N&M DAIRY # 1
and N&M DAIRY # 2) and as trustee of
the NEIL AND MARY DE VRIES
FAMILY TRUST; et al.,

Defendants.

Case No.: ED CV 14-00395 JGB SPx

**PLAINTIFFS' OBJECTIONS TO
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

DATE: JULY 21, 2014
TIME: 9:00 A.M.
**COURTROOM 1; HON. JESUS G.
BERNAL**

COMPLAINT FILED: MARCH 5, 2014
TRIAL DATE: NONE SET

1 Pursuant to the provisions of Federal Rules of Evidence, Rule 201, Plaintiffs
2 object to Defendants’ request for judicial notice, offered by Defendants in support
3 of their motion to dismiss, in the following respects and on the following grounds:

4 **1. Exhibit C, “Justin Ervin Comments to Draft Settlement**
5 **Agreement 9/12/2013.”**

6 The Court only may judicially notice a fact that is not subject to reasonable
7 dispute because it is generally known within the Court’s territorial jurisdiction or
8 because it can be “accurately and readily determined from sources whose accuracy
9 cannot reasonably be questioned.” FED. R. EVID. 201.

10 The comments of a man named Justin Ervin (not a plaintiff or a defendant in
11 the pending matter), purportedly found in an email in the Regional Water Board’s
12 records, is not properly the subject of judicial notice because their accuracy cannot
13 be readily determined and their veracity and significance are disputed. *See Lee v.*
14 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (district court may not take
15 judicial notice of a disputed fact in a public record).

16 Furthermore, the district court “may not, on the basis of evidence outside of
17 the Complaint, take judicial notice of facts favorable to Defendants that could
18 reasonably be disputed.” *U.S. v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir.
19 2011)(citing to *Lee, supra*).

20 Justin Ervin is not a party, it is unclear who he is, and the document is not
21 signed by him nor by any representative of the Water Board. The document is
22 unreliable and unauthenticated, and it would thus be unfair to admit it.

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