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17 *Attorneys for Plaintiff*
18 AURORA REGINO

19 **IN THE UNITED STATES DISTRICT COURT**
20 **EASTERN DISTRICT OF CALIFORNIA**

21 **AURORA REGINO,**

22 **Plaintiff,**

23 vs.

24 **SUPERINTENDENT KELLY STALEY, in**
25 **her official capacity; CAITLIN DALBY, in**
26 **her official capacity; REBECCA KONKIN,**
27 **in her official capacity; TOM LANDO, in**
28 **his official capacity; EILEEN ROBINSON,**
in her official capacity; and MATT
TENNIS, in his official capacity,

Defendants.

Case No.: 2:23-cv-00032-JAM-DMC

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE

1 Plaintiff Aurora Regino, by and through her undersigned counsel, submits the following
2 Opposition to Defendants’ Request for Judicial Notice (“RJN”) (Dkt. 40-1.) Defendants filed the
3 RJN in connection with, and in support of, their Rule 12(b)(6) Motion to Dismiss Ms. Regino’s
4 Complaint. (Dkt. 40.) Ms. Regino has now filed a First Amended Complaint, which she is entitled
5 to do of right under Rule 15(a)(1)(B). The First Amended Complaint moots both the Motion to
6 Dismiss and the RJN. *See, e.g., Doe v. Lassen Community College Dist.*, No. CV 07-1521 LEW,
7 WL 2904219, *1 (E.D. Cal. Oct. 3, 2007) (denying defendant’s RJN as moot upon plaintiff’s
8 filing of first amended complaint). Ms. Regino files this Opposition to the RJN out of an
9 abundance of caution in the event the Court concludes the RJN is not moot.

10 **INTRODUCTION**

11 In support of their Motion to Dismiss, Defendants filed the RJN, which asked the Court
12 to take judicial notice of six exhibits. (Dkt. 40-5–40-10.) One of the exhibits—the World
13 Professional Association For Transgender Health Guidelines, Version 8 (the “WPATH
14 Guidelines” or the “Guidelines”) (Dkt. 40-6)—improperly presents new facts to the Court that are
15 not subject to judicial notice under Rule 201 of the Federal Rules of Evidence. Moreover, the
16 WPATH Guidelines are not attached to, or referenced in, Ms. Regino’s First Amended Complaint,
17 and the success of her claims do not depend on the contents of that document. The Court should
18 therefore disregard this document at this time.

19 **ARGUMENT**

20 When ruling on a Rule 12(b)(6) motion, the Court generally “may not consider any
21 material beyond the pleadings.” *Applied Underwriters Inc. v. Lichtenegger*, No. 2:15-cv-02445-
22 TLN-CKD, 2017 WL 2881517, at *2 (E.D. Cal. July 6, 2017) (cleaned up). The only exceptions
23 to this general rule are (1) “for matters subject to judicial notice pursuant to Federal Rule of
24 Evidence 201” and (2) “for material attached to the complaint or referred to in the complaint if
25 the complaint necessarily relies on that material and its authenticity and relevance are not
26 disputed.” *Id.* (citation omitted). Under the first exception, the adjudicative fact must “not [be]
27 subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial
28

1 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot
2 reasonably be questioned.” Fed. R. Evid. 201(b).

3 Here, the WPATH Guidelines do not satisfy either one of these exceptions.

4 **I. The WPATH Guidelines are not Subject to Judicial Notice**

5 Defendants ask the Court to take judicial notice of the definition of “social transition” set
6 forth in the WPATH Guidelines. (Dkt. 40-1 at 2:13-23.) But because the WPATH definition is
7 “subject to reasonable dispute,” the Guidelines are not subject to judicial notice. Fed. R. Civ.
8 Evid. 201(b).

9 The Court “cannot take judicial notice of the contents of documents for the truth of the
10 matters asserted therein when the facts are disputed.” *Rollins v. Dignity Health*, 338 F. Supp. 3d
11 1025, 1031 (N.D. Cal. 2018) (citation omitted). Further, it is improper to take judicial notice of a
12 document “when the substance of the [document] is subject to varying interpretations, and there
13 is a reasonable dispute as to what the [document] establishes.” *Khoja v. Orexigen Therapeutics,*
14 *Inc.*, 899 F.3d 988, 1000 (9th Cir. 2018) (cleaned up). It is also improper to take judicial notice
15 documents when they contradict “facts stated in a well-pleaded complaint.” *Cottle v. Plaid, Inc.*,
16 536 F. Supp. 3d 461, 477 (N.D. Cal. 2021) (cleaned up).

17 Here, Defendants seek judicial notice of the WPATH Guidelines’ definition of “social
18 transition.” Curiously, Defendants do not actually quote this definition either in the RJN or their
19 Motion to Dismiss. In any event, the First Amended Complaint already alleges a definition of
20 “social transitioning” in the school setting. (First Amended Complaint ¶ 2.) Accordingly, the
21 Guidelines’ definition is subject to “reasonable dispute” and “varying interpretations” on the facts
22 here. *Khoja*, 899 F.3d at 1000. At this stage in the proceedings, the Court must accept the truth of
23 Ms. Regino’s allegations and not the WPATH Guidelines’ definition. *Cottle*, 536 F. Supp. 3d at
24 477.

25 What is more, Defendants attached the entire 260-page WPATH Guidelines as an Exhibit
26 to their RJN. (Dkt. 40-6.) As a result, Defendants are effectively asking the Court to consider the
27 *entire* document simply to take notice of *one definition* contained therein. Even if the Court were
28 to take notice of the definition of “social transition” (and it should not), the Court should not take

1 notice of the entire document. *Khoja*, 899 F.3d at 999 (“Just because [a] document itself is
 2 susceptible to judicial notice does not mean that every assertion of fact within that document is
 3 judicially noticeable for its truth.”). Defendants have not shown that the WPATH Guidelines
 4 generally are not subject to reasonable dispute—which they are—and, thus, the Guidelines
 5 generally cannot be considered for the “truth of the matters asserted therein.” *Rollins*, 338 F. Supp.
 6 3d at 1031.¹

7 **II. The Complaint does not Necessarily Rely on the WPATH Guidelines**

8 The WPATH Guidelines are not attached to the First Amended Complaint, nor does the
 9 First Amended Complaint reference them. Moreover, the First Amended Complaint does not
 10 necessarily rely on the Guidelines’ definition of “social transition” or the content of the Guidelines
 11 more generally.

12 The Court may only consider an extrinsic document when the success of a claim
 13 necessarily “depends on the contents of a document.” *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th
 14 Cir. 2005). Considering documents that were not submitted with or referenced in the complaint
 15 is “nothing more than another way of disputing the factual allegations in the complaint.” *Khoja*,
 16 899 F.3d at 1003. Doing so is inconsistent “with the prohibition against resolving factual disputes
 17 at the pleading stage.” *Id.* (citing *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016)
 18 (“At the motion to dismiss phase, the trial court must accept as true all facts alleged in the
 19 complaint and draw all reasonable inferences in favor of the plaintiff.”)).

20 None of the claims in the First Amended Complaint necessarily rely on the Guidelines’
 21 definition of “social transition” or the content of the Guidelines more generally. While the
 22 allegations underlying those claims may touch on some of the same subject matter contained in
 23 the Guidelines—such as the nature of social transitioning as a form of psychological treatment—
 24 the contents of the Guidelines are not necessary for Ms. Regino’s claims to succeed. *See Belin v.*
 25

26
 27 ¹The definition of “social transition” contained in the WPATH Guidelines does not undermine Ms.
 28 Regino’s claims in any way. The Court should not, however, allow Defendants to use this single
 definition as an excuse to introduce the entire WPATH Guidelines to support their Motion to
 Dismiss.

1 *Starz Ent., LLC*, No. CV 21-09586-FWS-PLA, 2022 WL 2192999, at *5 (C.D. Cal. June 17,
2 2022) (holding claims did not necessarily rely on a document even when the complaint included
3 “specific reference” to general subject matter at issue in the document). Indeed, Ms. Regino’s
4 claims can—and should—succeed without the Court ever considering the Guidelines’ definition
5 of “social transition” or the other provisions of the Guidelines. The Court should thus reject
6 Defendants’ efforts to invoke the Guidelines’ definition of “social transition” or any of its other
7 provisions. *See Khoja*, 899 F.3d at 1003 (observing incorporation by reference “is not a tool for
8 defendants to short-circuit the resolution of a well-pleaded claim”).

9 In sum, the Court should deny Defendants’ request for judicial notice of the WPATH
10 Guidelines’ definition of “social transition” (and any other portion thereof), strike all references
11 to the Guidelines in Defendants’ Motion to Dismiss, and not consider them in ruling on
12 Defendants’ Motion to Dismiss.

13 **CONCLUSION**

14 For the forgoing reasons, the Court should deny Defendants’ Request for Judicial Notice
15 of the WPATH Guidelines’ definition of “social transition” or the Guidelines more generally.

16
17 Respectfully submitted,

18
19 Dated: April 10, 2023

DHILLON LAW GROUP INC.
CENTER FOR AMERICAN LIBERTY

20
21 */s/ Harmeet K. Dhillon* _____

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PROOF OF SERVICE

1 I, Harmeet K. Dhillon, hereby certify that on April 10, 2023, I electronically filed the above
2 documents with the Clerk of the Court using CM/ECF, which will send electronic notification of
3 such filing to all registered counsel.

4 By: /s/ Harmeet K. Dhillon
5 Harmeet K. Dhillon

6 Date: April 10, 2023
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