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12 *Attorneys for Plaintiff*
13 AURORA REGINO

14 **IN THE UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

16 **AURORA REGINO,**

17 **Plaintiff,**

18 vs.

19 **SUPERINTENDENT KELLY STALEY, in**
20 **her official capacity; CAITLIN DALBY, in**
21 **her official capacity; REBECCA KONKIN, in**
22 **his official capacity; TOM LANDO, in**
23 **her official capacity; and MATT**
24 **TENNIS, in his official capacity,**

25 **Defendants.**

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

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE

Hearing Date: June 27, 2023

Time: 1:30 p.m.

Ctrm: 6

Judge: Hon. John A. Mendez

Complaint Filed: January 6, 2023

Trial Date: Not Yet Set

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1 Plaintiff Aurora Regino hereby submits this Opposition to Defendant’s Request for
2 Judicial Notice (“RJN”) (Dkt. 51), which Defendant (the “District”) filed in support of its Rule
3 12(b)(6) Motion to Dismiss Ms. Regino’s First Amended Complaint (Dkt. 50). For the reasons
4 set forth below, the Court should deny the District’s request to take judicial notice of the WPATH
5 Guidelines (Dkt 51-4).

6 **INTRODUCTION**

7 The RJN asks the Court to take judicial notice of four exhibits, one of which—the World
8 Professional Association for Transgender Health Guidelines, Version 8 (the “WPATH
9 Guidelines” or the “Guidelines”)—is not subject to judicial notice under Rule 201 of the Federal
10 Rules of Evidence. Moreover, the WPATH Guidelines are not attached to, or referenced in, Ms.
11 Regino’s First Amended Complaint, and the success of her claims do not depend on the contents
12 of that document. The Court should therefore deny the District’s RJN with respect to the WPATH
13 Guidelines and refrain from considering that document in ruling on the District’s Motion to
14 Dismiss.

15 **ARGUMENT**

16 When ruling on a Rule 12(b)(6) motion, the Court generally “may not consider any
17 material beyond the pleadings.” *Applied Underwriters Inc. v. Lichtenegger*, No. 2:15-cv-02445-
18 TLN-CKD, 2017 WL 2881517, at *2 (E.D. Cal. July 6, 2017) (cleaned up). The only exceptions
19 to this rule are (1) “for matters subject to judicial notice pursuant to Federal Rule of Evidence
20 201” and (2) “for material attached to the complaint or referred to in the complaint if the complaint
21 necessarily relies on that material and its authenticity and relevance are not disputed.” *Id.* (citation
22 omitted). The WPATH Guidelines do not satisfy either of these exceptions.

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

24 The District asks the Court to take judicial notice of the definition of “transition” set forth
25 in the WPATH Guidelines. (RJN at 2; *see also* Def’s Mot. to Dismiss at 9 n.1 (quoting WPATH
26 Guidelines at S253).) But because this definition is “subject to reasonable dispute,” the Guidelines
27 are not subject to judicial notice. Fed. R. Civ. Evid. 201(b).
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1 The Court may only take judicial notice of a fact that is “not subject to reasonable dispute
2 because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be
3 accurately and readily determined from sources whose accuracy cannot reasonably be
4 questioned.” Fed. R. Evid. 201(b). The Court “cannot take judicial notice of the contents of
5 documents for the truth of the matters asserted therein when the facts are disputed.” *Rollins v.*
6 *Dignity Health*, 338 F. Supp. 3d 1025, 1031 (N.D. Cal. 2018) (citation omitted). Further, the Court
7 may not take judicial notice of a document “when the substance of the [document] is subject to
8 varying interpretations, and there is a reasonable dispute as to what the [document] establishes.”
9 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1000 (9th Cir. 2018) (cleaned up). It is also
10 improper to take judicial notice of documents when they contradict “facts stated in a well-pleaded
11 complaint.” *Cottle v. Plaid, Inc.*, 536 F. Supp. 3d 461, 477 (N.D. Cal. 2021) (cleaned up).

12 The District argues that the Court should take judicial notice of the Guidelines’ definition
13 of “transition” because dictionary definitions are the proper subject of a request for judicial notice.
14 (RJN at 2.) But the Guidelines are not a dictionary. Instead, “WPATH is an international,
15 multidisciplinary, professional association whose mission is to promote evidence-based care,
16 education, research, public policy, and respect in transgender health.” (WPATH Guidelines at
17 S5.) And unlike a dictionary, whose function is to set forth the common usage of words and
18 phrases, the WPATH Guidelines are a self-proclaimed “standards of care” manual designed to
19 provide “recommendations for health care professionals who provide care and treatment for
20 [transgender and gender diverse] people.” (WPATH Guidelines at S3.) The District makes no
21 effort whatsoever to demonstrate the Guidelines’ definition of “transition” is either “generally
22 known” or that its “accuracy cannot reasonably be questioned” for purposes of Rule 201.

23 Moreover, the Guidelines’ definition of “transition” is inapplicable in this case. That
24 definition is a general definition that applies to *any* transition of a person’s gender identity—
25 including the use of “hormones and/or surgeries to alter the physical body” (WPATH Guidelines
26 at 253)—in *any* setting. This case, however, involves *social* transitioning in the *school setting*.
27 Ms. Regino’s First Amended Complaint contains a specific definition of “social transitioning”
28 applicable in the school context. (First Am. Compl. (Dkt. 42) ¶ 2.) Accordingly, the Guidelines’

1 definition is subject to “reasonable dispute” and “varying interpretations” on the facts here. *Khoja*,
2 899 F.3d at 1000. At this stage in the proceedings, the Court must accept the truth of Ms. Regino’s
3 allegations and not the WPATH Guidelines’ definition of “transition.” *Cottle*, 536 F. Supp. 3d at
4 477.¹

5 Further, the District attached the entire 260-page Guidelines as an Exhibit to its RJN. As
6 a result, it appears that the District is asking the Court to consider the *entire* document simply to
7 take notice of *one definition* contained therein. Even if the Court were to take notice of the
8 definition of “transition” (and it should not), the Court should not take notice of the *entire*
9 Guidelines. *Khoja*, 899 F.3d at 999 (“Just because [a] document itself is susceptible to judicial
10 notice does not mean that every assertion of fact within that document is judicially noticeable for
11 its truth.”). As with the definition of “transition,” the District makes no effort to demonstrate the
12 entire Guidelines are either “generally known” or that their “accuracy cannot reasonably be
13 questioned.” Indeed, the Guidelines were just published in September of 2022, and it remains to
14 be seen how they will be received by the mental-health community beyond members of WPATH.
15 Accordingly, the Court may not consider the WPATH Guidelines generally for the “truth of the
16 matters asserted therein.” *Rollins*, 338 F. Supp. 3d at 1031.

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

18 The Court may only consider facts in a document extrinsic to the complaint when the
19 success of a claim alleged therein necessarily “depends on the contents of [the] document.”
20 *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Considering documents that were not
21 attached to the complaint, referenced in the complaint, or upon which the complaint relies is
22 “nothing more than another way of disputing the factual allegations in the complaint.” *Khoja*, 899
23 F.3d at 1003. This is inconsistent “with the prohibition against resolving factual disputes at the
24 pleading stage.” *Id.* (citing *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016) (“At the
25

26 ¹The definition of “transition” contained in the WPATH Guidelines does not undermine Ms.
27 Regino’s claims in any way. That definition is simply overbroad and imprecise for purposes of
28 this case.

1 motion to dismiss phase, the trial court must accept as true all facts alleged in the complaint and
2 draw all reasonable inferences in favor of the plaintiff.”).

3 The WPATH Guidelines are not attached to the First Amended Complaint, the First
4 Amended Complaint does not reference the Guidelines, and the First Amended Complaint does
5 not necessarily rely on the Guidelines’ definition of “transition” or the content of the Guidelines
6 more generally. While the Guidelines discuss some of the same subject matter set forth in the
7 First Amended Complaint—such as the fact that social transitioning is a form of psychological
8 treatment, the necessity of parental involvement when children are socially transitioned, and the
9 fact the Parental Secrecy Policy is a “one-size-fits-all” approach that fails to account for the
10 broader issues the child is facing—the contents of the Guidelines are not necessary for Ms.
11 Regino’s claims to succeed. *See Belin v. Starz Ent., LLC*, No. CV 21-09586-FWS-PLA, 2022 WL
12 2192999, at *5 (C.D. Cal. June 17, 2022) (holding claims did not necessarily rely on a document
13 even when the complaint included “specific reference” to general subject matter at issue in the
14 document). Indeed, Ms. Regino’s claims can—and should—succeed without the Court ever
15 considering the Guidelines. The Court should thus reject the District’s efforts to invoke the
16 Guidelines’ definition of “transition” or any of its other provisions. *See Khoja*, 899 F.3d at 1003
17 (observing incorporation by reference “is not a tool for defendants to short-circuit the resolution
18 of a well-pleaded claim”).

19 **CONCLUSION**

20 For the forgoing reasons, the Court should deny the District’s Request for Judicial Notice
21 of the WPATH Guidelines’ definition of “transition” or the Guidelines more generally, strike all
22 references to the Guidelines in the District’s Motion to Dismiss, and not consider the Guidelines
23 in ruling on that Motion.

24 [SIGNATURE PAGE FOLLOWS]
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Respectfully submitted,

Dated: May 9, 2023

**DHILLON LAW GROUP INC.
CENTER FOR AMERICAN LIBERTY**

/s/ Harmeet K. Dhillon

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AURORA REGINO

PROOF OF SERVICE

I, Harmeet K. Dhillon, hereby certify that on May 9, 2023, I electronically filed the above documents with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel.

By: /s/ Harmeet K. Dhillon

Harmeet K. Dhillon

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