Exhibit 6

No. 14-56615 [D.C. 2:13-cv-02605]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SIGITAS RAULINAITIS

Plaintiff-Appellant

v.

VENTURA COUNTY SHERIFF'S DEPARTMENT

Defendant-Appellee

DECLARATION OF MARINA PORCHE

On Appeal from the United States District Court
For the Central District of California
Hon. Margaret A. Nagle

LEROY SMITH, CSB 107702
County Counsel, County of Ventura
MARINA PORCHE, CSB 162809
Assistant County Counsel
800 South Victoria Avenue, L/C #1830
Ventura, California 93009
Telephone: (805) 654-2583
Fax: (805) 654-2185
E-mail: marina.porche@ventura.org
Attorney for Defendant-Appellee
Ventura County Sheriff's Department

I, Marina Porche, declare:

1. I am an attorney duly licensed to practice law before all the courts in the State of California as well as before the United States District Court for the Central District and Northern District of California and the United States Court of Appeals for the Ninth Circuit. I am employed as an Assistant County Counsel with the County of Ventura and represent Defendant-Appellee the Ventura County Sheriff's Department ("the Sheriff") in the above-captioned matter.

2. On May 11, 2016, I sent Jonathan Birdt, Esq., counsel for Plaintiff-Appellee Sigitas Raulianaitis ("Appellee"), an e-mail inquiry regarding Appellee's position on the Sheriff's anticipated motion to take judicial notice of legislative history, and on May 12, 2016, Mr. Birdt replied via e-mail that Appellee would oppose the Sheriff's motion. A true and correct copy of our email exchange is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 17, 2016

/s/ Marina Porche
Marina Porche

Exhibit A

Porche, Marina

From: Jonathan Birdt <jon@jonbirdt.com>
Sent: Thursday, May 12, 2016 8:30 AM
To: Porche, Marina
Subject: Re: Raulinatis v. Ventura County Sheriff's Department; United States Court of Appeals, Ninth Circuit/14-56615

I will oppose the motion as I think you are simply seeking to augment a record in an untimely fashion unless you can provide the briefing to justify that, in which case I would withdraw my opposition and stipulate to your request.

Jonathan Birdt, Esq.
Law Office of Jonathan W. Birdt
18252 Bermuda Street
Porter Ranch, CA 91326
Phone: 818-400-4485
Fax: 818-428-1384
www.jonbirdt.com

Peer Review & Client Ratings

On May 11, 2016, at 3:02 PM, Porche, Marina <Marina.Porche@ventura.org> wrote:

Jon,

I am writing to meet and confer with you regarding Defendant-Appellee Ventura County Sheriff Department ("the Sheriff") filing of a motion for judicial notice of the following legislative history documents cited by the district court in its summary judgment orders:

Exhibit 1: Enrolled Bill Memorandum to Governor for Senate Bill 1272, dated August 20, 1969/

Exhibit 2: California Bill Analysis, A.B. 2022, amended Sen. August 19, 1998.

Exhibit 3: Memorandum dated August 11, 1969 from Thomas C. Lynch, California Attorney General, and Charles A. Barrett, Assistant Attorney General to California Governor Ronald Reagan.

Exhibit 4: Letter dated August 8, 1969 from D. Lowell Jensen, the District Attorney of Alameda County by Carl W. Anderson, Deputy District Attorney, to California Governor Ronald Reagan behalf of the California Peace Officers' Association and the District Attorneys' Association.

Please excuse the length of this email, but I want to provide you with the comprehensive legal basis for the Sheriff's motion, so that you can fully understand the authorities in support.

Because "[t]he court may take judicial notice at any stage of the proceeding" (Fed. R. Evid. § 201(d)), judicial notice may be taken for the first time on appeal. Matters not otherwise included in the record on appeal, may be considered by the appellate court, and appellate courts have the same power as trial courts to take judicial notice of a matter properly subject to such notice. (*Aramark Facility Servs. v. SEIU, Local 1877* (9th Cir. 2008) 530 F.3d 817, 826, n 4. ("*Aramark*") [noting that both the parties and amicus cite various agency and legislative materials that were not part of the record, and treating such citations as requests for judicial notice, and granting the requests].)

"It is nonsense to suppose that [the court of appeals is] so cabined that [it] cannot exercise the ordinary power of any court to take notice of facts that are beyond dispute . . [A]n appeals court could not function if it had to depend on proof in the record of facts 'capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.'" (*Singh v. Ashcroft* (9th Cir. 2004) 393 F.3d 903, 905-906 ("*Singh*") [taking judicial notice on appeal of existence of intelligence agency situated in the Office of India's Prime Minister, notwithstanding lack of corroborative evidence regarding such agency in administrative record of Board of Immigration Appeals based on: (1) Lexis search by court of appeals revealing over 1,500 articles regarding intelligence unit from reputable international media sources, (2) information contained in Encyclopeaedia Britannica reviewed by court of appeals, and (3) Congressional testimony reviewed by court of appeals, "The ties are so well established. . . that had evidence of the relationship not been presented to the magistrate, judicial notice would have been appropriate."]. "Judicial notice is appropriate in exactly this circumstance to ensure that administrative or judicial ignorance is not

insulated from review through hyper-technical application of the general rule that the court can consider only evidence considered by the Board." (*Singh*, supra 393 F.3d at p. 907. See also *Eneh v. Holder* (9th Cir. 2006) 601 F.3d 943, 947 [court of appeals took judicial notice of existence of Nigeria Decree 33, although Appellant's documentary evidence did explicitly address Decree 33]; *McCormack v. Hiedeman*(9th Cir. 2012) 694 F.3d 1004, 1008, n. 1 [court of appeal took judicial notice of approximate 138-mile distance distance between Bannock County, Idaho and Salt Lake City Utah, based on Google map and satellite image as a source whose accuracy cannot be reasonably questioned; *Lowry v. Barhardt* (9thCir. 2003) 329 F.3d 1019, 1024 [noting that court of appeals may take judicial notice]; *Papai v. Harbor Tug and Barge Co.* (9th Cir. 1995) 67 F.3d 203, 207, n. 5 [noting that judicial notice may be taken at any stage of the proceeding including on appeal], rev'd on other grounds by *Harbor Tug and Barge Co. v. Papai*, (2007) 520 U.S. 548, 553 [117 S.Ct. 1537, 137 L.Ed.2d 800].)

Similarly, in *Trigueros v. Adams* (9th Cir. 2011) 658 F.3d 983, 987, the court of appeals took judicial notice of state court records that had not been lodged with district court, and in *U.S. v. Camp* (9th Cir. 1984) 723 F.2d 741, 743-744 the court of appeals took judicial notice of a belatedly submitted Attorney General Order No. 934-81 that had not been presented to the trial court.

The district court's operative summary judgment order, dated September 30, 2014 discussed the legislative history documents set forth in Exhibits 1 through 4 (ER 156-158), as did the district court's earlier summary judgment order dated December 31, 2013 (SER 21-23) which stated in pertinent part: "Neither party addressesd the legislative history of Section 26150 in their briefing. The Court has conducted its own research on this issue, and copies of the legislative history documents for Senate Bill 1272 discussed herein were obtained by the Court from the California State Archives." (SER 23, n. 10.) The same legislative history documents were also referenced and quoted by the Sheriff in its subsequent summary judgment briefing dated June 3, 2014. (ER 36-38.) In addition, Plaintiff-Appellant quoted Exhibit 3 to the district court in its subsequent briefing dated June 3, 2014. (ER 130.) At no time did Plaintiff-Appellant dispute the accuracy of the cited legislative history materials. Finally, these same

legislative history materials are also referenced and quoted by the Sheriff in its responding brief to the Ninth Circuit at pages 25 through 28.

As a result, the legislative history materials to be noticed in Exhibits 1 through 4 are directly relevant to this appeal and were explicitly considered by the court below. The Sheriff's motion for judicial notice does not expand upon the arguments presented to, or considered by, the district court.

As you are aware, Exhibits 1 through 4 that were discussed in the district court's summary judgment orders (ER 156-158, SER 21-23), and obtained by the district court from the California State Archives were not actually filed with the district court, and are not included in the excerpt of record or supplemental excerpt of record.

Accordingly, the Sheriff is filing the instant motion for judicial notice in order to provide the underlying legislative history materials in Exhibits 1 through 4 to the Ninth Circuit should any member of the Ninth Circuit wish to review source material for Sheriff, Appellant or district court citations of legislative history. The Sheriff only requests judicial notice of those specific portions of Exhibits 1 through 4 that were explicitly referenced or quoted by the Sheriff, Appellant, or district court in the record of the below proceedings. (ER 36-38, 130, 156-158, SER 21-23.)

The Ninth Circuit has held that legislative history is properly a subject of judicial notice. (*Arce v. Douglas* (2015) 793 F.3d 968, 973, n. 4 [taking judicial notice of state legislative history materials pursuant to Fed. Rul. Evid. 201(b)]; *Anderson v. Holder* (9th Cir. 2015) 673 F.3d 1089 [granting judicial notice of excerpts of a Senate Report]; *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, 1223, n. 8 [granting judicial notice of the legislative history of California Penal Code section 148.6, citing Fed. R. Evid. 201(b)].) A court may observe the existence of legislative facts because of their relevant to the court's "legal reasoning" and interpretation of the "lawmaking process." (*Sachs v. Republic of Austria* (9th Cir. 2013) 737 F.3d 584, 596, n. 10, reversed on other grounds by *OBB Personenenverkehr AG v. Sachs* (2015) 136 S.Ct. 390, 397 [___ S.Ct. ____, 193 L.Ed.2d 296]; *Aramark, supra* 530 F.3d at p. 826, n 4.)

Moreover, the court of appeals may take judicial notice of official information posted on a governmental Web site, the accuracy of which is undisputed. (*Arizona Libertarian Party v. Reagan* (9th Cir. 2015) 798 F.3d 723, 727, n. 3 [court of appeals took judicial notice of online voter registration application]; *Dudum v. Arntz* (9th Cir. 2011) 640 F.3d 1098, n. 6. [court of appeals took judicial notice of City's official election results]; *Daniels-Hall v. Nat'l Educ. Ass'n* (9th Cir. 2010) 629 F.3d 992, 998-99 [court of appeals took judicial notice of school district website lists of approved vendors].)

No federal rule of evidence prohibits judicial notice of legislative facts. According to the Notes of Advisory Committee on Proposed Rules for Fed. R. Evid. 201 (a) ("Notes of Advisory Committee"): "[Rule 201] is the only evidence rule on the subject of judicial notice. It deals only with judicial notice of 'adjudicative facts.' No rule deals with judicial notice of 'legislative facts. . . Legislative facts . . . are those which have relevance to the legal reasoning and lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." According to the Notes of Advisory Committee, "the view which should govern judicial access to legislative facts," "renders inappropriate any limitation in the form of indisputability, any formal requirements of notice other than those already inherent in affording opportunity to hear and be heard and exchanging briefs, and any requirement of formal findings at any level." (*Ibid.*)

Here the documents contained in Exhibits 1 through 4 were explicitly referenced by the district court in its summary judgment orders (ER 156-158, SER 21-23), and can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. (See Fed. R. Evid. 201(b)(2).)

Please let me know your position on the Sheriff's anticipated motion for judicial notice. I appreciate your review and consideration.

Marina Porche
Assistant County Counsel
800 South Victoria Avenue, L/C #1830
Ventura, CA 93009

Tel (805) 654-2583
Fax (805) 654-2185