

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

ZULAY RODRÍGUEZ VÉLEZ, et al.

Plaintiffs,

v.

HON. PEDRO R. PIERLUISI URRUTIA,

Defendant.

CIVIL NO. 21-1366 (PAD)

RESPONSE TO PLAINTIFFS' MOTION FOR JUDICIAL KNOWLEDGE

TO THE HONORABLE COURT:

COMES NOW Hon. Pedro R. Pierluisi Urrutia, in his official capacity as Governor of the Commonwealth of Puerto Rico, through the undersigned counsel, without waiving any right, objection or defense arising from the Title III of Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), 48 U.S.C. §§2101 et seq., the Commonwealth’s Petition under said Title or under this case, and respectfully states and prays as follows:

INTRODUCTION

On October 2, 2021, in a last-ditch effort to provide allegations that were not part of the injunctive hearing, Plaintiffs filed a motion pursuant to Federal Rule of Evidence 201(b) for this Honorable Court to take judicial notice on sixty (60) supposedly facts that this Court may take judicial knowledge. (*See* Docket No. 92). On October 4, 2021, this Honorable Court ordered Defendant to respond to Plaintiffs’ Motion for Judicial Knowledge at Docket No. 92. (*See* Docket No. 95). Accordingly, in compliance with the Court’s Order Defendant hereby respond to Plaintiffs’ Motion for Judicial Knowledge.

DISCUSSION

Under Rule 201(b) of the Federal Rules of Evidence, a district court can take judicial notice of a fact not subject of reasonable dispute when it: “(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). The First Circuit has stringently applied Rule 201(b) because “accepting disputed evidence not tested in the crucible of trial is a sharp departure from standard practice. *Lussier v. Runyon*, 50 F.3d 1103, 1114 (1st Cir. 1995). Additionally, government documents may be subject to judicial notice, on the ground that information contained therein is ‘capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *Lussier v. Runyon*, 50 F.3d 1103, 1114 (1st Cir. 1995) The effect of judicial notice “is to deprive a party of the opportunity to use rebuttal evidence, cross-examination, and argument to attack contrary evidence” and thus a Court must be cautious when “determining that a fact is beyond controversy under Rule 201(b).” *Cruz-Acevedo v. Toledo-Davila*, 660 F. Supp. 2d 205 (D.P.R. 2009)

The mere fact that a statement appears on a web page does not mean that it is not reasonably subject to dispute under the judicial notice statute. *Scott v. JPMorgan Chase Bank, N.A.*, 214 Cal. App. 4th 743, 154 Cal. Rptr. 3d 394 (1st Dist. 2013) For example, where the web pages plaintiff consumers would have viewed during online transactions is subject to a "reasonable dispute," since the pages were changed, modified, and revised over time, screenshots of the web pages are not subject to judicial notice. *In re Easysaver Rewards Litigation*, 737 F. Supp. 2d 1159 (S.D. Cal. 2010) (applying federal law). Where the web address is provided but no information about who maintained the website or how information on the website was obtained, a court will not take judicial notice of the web page. *Estate of Fuller v. Maxfield & Oberton Holdings, LLC*, 906 F.

Supp. 2d 997 (N.D. Cal. 2012) (applying federal law). Judicial notice would not be taken, however, of information found on websites dedicated to the anthrax vaccine, as the court could not verify the information for accuracy or authenticity. *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968 (W.D. Mich. 2003), judgment aff'd, 388 F.3d 209, 2004 FED App. 0369P (6th Cir. 2004).

At the outset it is important to point out that Plaintiffs have asked the Court to take judicial notice of sixty purported facts that were not presented during the seven-day injunction hearing. As a result, defendant is being deprived of cross-examining evidence. On this fact alone, this Court must deny Plaintiffs belated request to cram ostensible information.

However, to comply with the Court's Order Defendant will address each request for judicial knowledge individually.

ANALYSIS

1. For purported judicial knowledge 1, the internet link provided by Plaintiffs does not reflect the information that is being requested to take judicial knowledge. Specifically, the CDC website does not provide ranking as to Doses Administered per 100k by State. The Court should not be put in a position to add and subtract from a website in order to verify the truth of the assertion. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

2. For purported judicial knowledge 2, the Court may take judicial knowledge as to the legal status of Palau in relation to the United States, however, no source is provided as to the rest of the paragraph. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

3. For purported judicial knowledge 3, the internet link provided by Plaintiffs does not reflect the information that is being requested to take judicial knowledge. Specifically, the

CDC website does not provide ranking as to Doses Administered per 100k by State. The Court should not be put in a position to add and subtract from a website in order to verify the truth of the assertion. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

4. For purported judicial knowledge 4 through 12 it is objected because the numbers provided by Plaintiffs are not accurate to the referred source. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

5. For purported judicial knowledge 13 there is no access to the data in the internet link provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

6. For purported judicial knowledge 14 the Court may take judicial knowledge of the 5,930.5 # tests performed last 30 days per 100K as of September 28, 2021, Puerto Rico. The rest of the paragraph does not reflect the information that is being requested to take judicial knowledge. Specifically, the website does not provide rankings. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

7. There is no objection for purported judicial knowledge 15 through 22.

8. For purported judicial knowledge 23 there is no objection for the court taking judicial knowledge that for the 7dMA of daily confirmed cases on August 14, 2021, there was 620 confirmed cases. The rest of the paragraph is objected because the numbers provided by Plaintiffs are not accurate to the referred source. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

9. For purported judicial knowledge 24 there is no objection for the court taking judicial knowledge that for the 7dMA of daily confirmed cases on August 14, 2021, was 620

confirmed cases, August 16, 2021, was 603.1 confirmed cases. The rest of the paragraph is objected because the numbers provided by Plaintiffs are not accurate to the referred source. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

10. For purported judicial knowledge 25 through 27 it is objected because the numbers provided by Plaintiffs are not accurate to the referred source. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

11. For purported judicial knowledge 28 the source provided does not include data for Puerto Rico. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

12. For purported judicial knowledge 29 through 32 the information may be available on the CDC website, but the internet link does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

13. For purported judicial knowledge 33 the referred source does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

14. There is no objection for purported judicial knowledge 34.

15. For purported judicial knowledge 35 the information may be available on the CDC website, but the internet link does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

16. For purported judicial knowledge 36 there is no objection for the court taking judicial knowledge that according to United States Census, Puerto Rico population in 2020 was 3,285,874. The rest of the paragraph is objected because the numbers provided by Plaintiffs are not accurate to the referred source. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

17. There is no objection for purported judicial knowledge 37 and 41.

18. For purported judicial knowledge 42 there is no objection for the court taking judicial knowledge of the first sentence. The second sentence is objected because the source provided does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

19. There is no objection for purported judicial knowledge 43.

20. For purported judicial knowledge 44 the information may be available on the HHS website, but the internet link does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

21. For purported judicial knowledge 45 the source provided does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

22. For purported judicial knowledge 46 the Court may take judicial knowledge that the New Yorker published the referred article.

23. There is no objection for purported judicial knowledge 47.

24. For purported judicial knowledge 48 the information may be available on the CDC website, but the internet link does not reflect the information provided by Plaintiffs. As a result, it

does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

25. For purported judicial knowledge 49 the source provided does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

26. For purported judicial knowledge 50 the source provided does not reflect the information provided by Plaintiffs. Specifically, the source does not include information for Puerto Rico. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

27. From purported judicial knowledge 51 the court may take judicial notice that as of September 28, 2021, the 7dMA of daily deaths in 2020 was on December 12, 2020, with 16.7 deaths. The rest of paragraph is objected because the source provided does not reflect the information provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

28. For purported judicial knowledge 52 the internet link could not be loaded. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

29. For purported judicial knowledge 53 the Court may take judicial knowledge that the Website for the Scientific Report provided Plaintiffs' quote.

30. For purported judicial knowledge 54 is objected because the quotation provided by Plaintiffs does not exist in the internet link provided by Plaintiffs. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

31. There is no objection for purported judicial knowledge 55 and 56.

32. For purported judicial knowledge 57, the internet link provided by Plaintiffs does not reflect the information that is being requested to take judicial knowledge. Specifically, the Our World in Data website does not provide ranking. As a result, it does not comply with Fed. R. Evid. 201(b) because its accuracy cannot be accurately and readily determined.

33. For purported judicial knowledge 58 the Court may take judicial knowledge of the content in the VAERS system but should be warned that anyone can report events to VAERS, (www.vaers.hhs.gov/reportevent.html), with a disclaimer on the website of the Centers for Disease Control and Prevention (CDC) saying: “The reports may contain information that is incomplete, inaccurate, coincidental, or unverifiable”. (<https://wonder.cdc.gov/wonder/help/vaers.html>).

34. There is no objection for purported judicial knowledge 59 and 60.

WHEREFORE, it is respectfully requested that this Honorable Court take notice of the above stated and deem Defendant in compliance with Court Order at Docket 95.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on October 8, 2021.

DOMINGO EMANUELLI-HERNÁNDEZ
Secretary of Justice

SUSANA I. PEÑAGARÍCANO-BROWN
Deputy Secretary in Charge of Litigation

IDZA DÍAZ RIVERA
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