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9 **ATTORNEYS FOR** Defendants
10 **UNITED AIR LINES, INC.,**
11 **UAL CORPORATION and DAVID NEVINS**

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 RAHINAH IBRAHIM, an individual,
15
16 Plaintiff,

17 vs.

18 DEPARTMENT OF HOMELAND
19 SECURITY; et al.,
20 Defendants.

No. C 06-0545 WHA

UNITED AIR LINES DEFENDANTS'
OBJECTION TO PLAINTIFF'S
REQUEST FOR JUDICIAL NOTICE IN
OPPOSITION TO MOTIONS TO
DISMISS [FRCP 12(b)(1); 12(b)(6)]

Date: July 20, 2006
Time: 8:00 a.m.
Courtroom: 9 – 19th Floor

Honorable William H. Alsup
United States District Judge

21 Defendants UNITED AIR LINES, INC. (erroneously sued as “United Airlines”), UAL
22 CORPORATION and DAVID NEVINS (herein collectively referred to as “the United defendants”)
23 respectfully submit the following objection to the “Request for Judicial Notice in Support of
24 Opposition of Rahinah Ibrahim to Motions to Dismiss of United Defendants, John Bondanella and
25 Federal Defendants.” For the following reasons, plaintiff’s Request for Judicial Notice should be
26 stricken.

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I.

INTRODUCTION

In opposition to the defendants’ motions to dismiss, the plaintiff has submitted a request for judicial notice. It is not altogether clear, though, for what purpose and to what extent the plaintiff seeks judicial notice. That is because rather than requesting judicial notice of any particular adjudicative facts (as permitted where appropriate under Rule 201 of the Federal Rules of Evidence), plaintiff instead suggests the “Court may take judicial notice of the documents” which she attached to her request. The documents are 17 in number and consist of a varied collection of pages printed from the internet, a police report, plaintiff’s own government tort claims and correspondence to and from the plaintiff. Because plaintiff seeks to have the Court judicially notice documents which are not the proper subject of such a request, the request should be denied and stricken.

II.

ARGUMENT

Although materials outside of the pleadings ordinarily are not considered on a motion to dismiss, a court may consider matters properly subject to judicial notice. See *Ramirez v. United Airlines, Inc.*, 416 F.Supp.2d 792, 795 (N.D. Cal. 2005); *Adibi v. Cal. State Bd. of Pharmacy*, 393 F.Supp.2d 999, 1003 (N.D. Cal. 2005). Under Rule 201 of the Federal Rules of Evidence, a court may take judicial notice of any fact “not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” The scope of Rule 201, however, is limited to adjudicative facts. *In re Immune Response Securities Litigation*, 375 F.Supp.2d 983, 996 (S.D. Cal. 2005) (“Courts may only take judicial notice of adjudicative facts that are not subject to reasonable dispute.”)

Here, plaintiff’s request seems to stray well beyond a plea for the Court judicially to notice mere adjudicative facts. Rather, she has asked the Court to take judicial notice of a police incident report (Exhibit A); a letter apparently written by the plaintiff herself (Exhibit B); pages from websites (Exhibits C-F and Q); a single page from a Department of Homeland Security report of unknown and unidentified length (Exhibit G); a legal memorandum filed in another case in another

1 Court (Exhibit H); two pages of a GAO report of unknown and unidentified length (Exhibit I);
2 plaintiff's own government tort claims (Exhibits J-N); a letter the signature on which is illegible but
3 purporting to be written on behalf of the TSA's Office of Transportation Security Redress (Exhibit
4 O); and a chart of certain federal agencies, the source of which is neither identified by plaintiff nor
5 known to these defendants (Exhibit P).

6 A party requesting judicial notice bears the burden of persuading the trial judge that the fact
7 is a proper matter for judicial notice. *In re Tyrone F. Conner Corp., Inc.*, 140 B.R. 771, 781
8 (Bkrcty. E.D. Cal. 1992). This is a burden plaintiff has not met. The source and authenticity of
9 many of the documents is uncertain. Many constitute hearsay or multiple layers of hearsay. They
10 are not properly the subject for judicial notice.

11 The case of *Zivkovich v. Vatican Bank*, 242 F.Supp.2d 659 (N.D. Cal. 2002) is instructive.
12 There, a World War II survivor brought an action against a religious order for conversion, unjust
13 enrichment, restitution and violations of international law. In opposition to a motion to dismiss, the
14 plaintiff sought to have the Court take judicial notice of various documents obtained through the
15 Freedom of Information Act from a variety of official archives. Judge Jenkins not only concluded
16 that the documents were not appropriate for judicial notice,¹ but also expressed "serious concerns
17 about the admissibility of the documents" in view of questions of authentication and multiple
18 hearsay to which there were no applicable exceptions.² (*Id.* at 664 n.7).

19 Even where it is appropriate to take judicial notice of documents (i.e., when they are part of
20 the public record), the Court "does not adopt their factual findings or holdings; it simply
21 acknowledges their existence and contents." *California ex rel. Lockyer v. Mirant Corp.*, 266
22 F.Supp.2d 1046, 1053 (N.D. Cal. 2003), *aff'd*, 375 F.3d 831 (9th Cir. 2004), *cert. denied*, 544 U.S.
23 974, 125 S.Ct. 1836, 161 L.Ed.2d 724 (2005). Thus, when judicial notice is taken of public and
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25 ¹This was because they were neither generally known within the territorial jurisdiction of the
26 Court nor capable of accurate and ready determination by resort to sources whose accuracy could not
27 reasonably be questioned. (242 F.Supp.2d at 664).

28 ²It was not necessary, however, for the Court to rule on the defendants' objections based upon
authentication and hearsay and the Court did not do so.

1 quasi public documents (which may be limited in this instance to Exhibits G and I), notice should
2 not extend beyond the existence and authenticity of the documents. *Del Puerto Water Dist. v. U.S.*
3 *Bureau of Reclamation*, 271 F.Supp.2d 1224, 1233-1234 (E.D. Cal. 2003). Certainly, to the extent
4 their contents are in dispute, such matters of controversy are not appropriate subjects for judicial
5 notice. (*Id.*)

6 For these reasons, the United defendants (a) object to plaintiff's sweeping request for judicial
7 notice of the diverse collection of documents attached to her request and (b) ask that they be stricken
8 and not considered by the Court.

9 Dated: June 29, 2006

Respectfully submitted,

CODDINGTON, HICKS & DANFORTH

/s/

By _____
Richard G. Grotch
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United Air Lines, Inc., UAL Corporation and
David Nevins

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