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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – UNLIMITED CIVIL**

14 [REDACTED]
15 an individual; on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 MELISSA BACELAR, an individual;
20 WAGMOR PETS, a California non-profit
21 corporation; WYLDER’S HOLISTIC PET
22 CENTER, INC. *dba* THE WAGMOR, a
23 Delaware corporation; and Does 1 through 10,
24 inclusive,

25 Defendants.

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/14/2023 3:07 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Thomas, Deputy Clerk

Case No.: 22STCV20771

**PLAINTIFFS’ EVIDENTIARY
OBJECTIONS TO DEFENDANTS’
DEMURRER TO FIRST AMENDED
CLASS COMPLAINT**

DATE: May 1, 2023

TIME: 10:30 a.m.

DEPT: 1, Spring Street Courthouse

JUDGE: Hon. Stuart M. Rice



1 [REDACTED]
2 [REDACTED] (together “Plaintiffs”) object to the Request for Judicial Notice and
3 extrinsic information submitted by defendants Melissa Bacelar (“Bacelar”); Wagmor Pets, a
4 California Non-Profit Corporation (“Wagmor Pets Non-Profit”); and Wylder’s Holistic Pet Center,
5 Inc. d/b/a the Wagmor (“The Wagmor”) (together “Defendants”) in support of their Demurrer to the
6 First Amended Complaint (“FAC”). Specifically, Defendants ask the Court to take notice of
7 Defendant’s Exhibit 1 (2007 California Assembly Bill 1347). However, Defendants improperly
8 appear to request that the Court to take notice of such document for its truth, rather than its existence.
9 Defendants also challenge the well-plead allegations in the FAC by inserting improper extrinsic
10 information in its Demurrer. Thus, Defendant’s Exhibit 1 should not be considered on the present
11 Demurrer.

12 *First*, Defendants do not properly request judicial notice of their Exhibit 1. “Evidence Code
13 section 452, subdivision (d) authorizes judicial notice of court records.” *Richtek USA, Inc. v. uPI*
14 *Semiconductor Corp.*, 242 Cal. App. 4th 651, 653-54 (2015). “The court may in its discretion take
15 judicial notice of any court record in the United States. This includes any orders, findings of facts
16 and conclusions of law, and judgments within court records.” *Id.* (internal quotations and citations
17 omitted). Defendants cite an inapplicable section of the Evidence Code in seeking Judicial Notice of
18 Exhibit 1. Indeed, an Assembly Bill is not an order, finding of fact, conclusion of law, nor a
19 judgment. As a result, the Court should deny Defendants’ request.

20 Even if, *arguendo*, the Court could take judicial notice of Defendants’ Exhibit 1, the Court is
21 limited to noticing the mere existence of the document and may not consider it for the truth of what
22 it asserts. *See C.R. v. Tenet Healthcare Corp.*, 169 Cal. App. 4th 1094, 1103-04 (2009);
23 *Beckley v. Reclamation Board*, 205 Cal.App.2d 734, 741 (1962). In other words, the Court may not
24 accept the truth of the document’s contents (or the requesting party’s proposed interpretation of the
25 documents) when the truth or interpretation of the judicially noticed documents are in dispute. *See*
26 *C.R.*, 169 Cal. App. 4th at 1103-04 (noting that the truth of a document’s contents will not be
27 considered except in narrow circumstances, but “the general rule is that the truthfulness and
28

1 interpretation of a document’s contents are disputable”); *People v. Castillo*, 49 Cal. 4th 145, 157
2 (2010) (a court may take judicial notice of a public record when it does not consider the record for
3 the truth of matters stated therein); *see also*, *Joslin v. H.A.S. Ins. Brokerage*, 184 Cal. App. 3d 369,
4 374 (1986) (“Taking judicial notice of a document is not the same as accepting the truth of its
5 contents or accepting a particular interpretation of its meaning.”). It is improper to rely on judicially
6 noticed documents to prove disputed facts because judicial notice, by definition, applies solely to
7 undisputed facts. *See, e.g., StorMedia Inc. v. Superior Court*, 20 Cal. 4th 449, 456 n.9 (1999) (“When
8 judicial notice is taken of a document, however, the truthfulness and proper interpretation of the
9 document are disputable.”); *see also*, *Richtek USA, Inc.*, 242 Cal. App. 4th at 653-54 (“Utilizing
10 judicially noticed documents in ruling on a demurrer is only proper when the documents are not used
11 to determine disputed factual issues.”); *Fremont Indem. Co. v. Fremont Gen. Corp.*, 148 Cal. App.
12 4th 97, 115 (2007) (noting “a court cannot by means of judicial notice convert a demurrer into an
13 incomplete evidentiary hearing in which the demurring party can present documentary evidence and
14 the opposing party is bound by what that evidence appears to show.”).

15 *Second*, extrinsic evidence and information may generally not be considered on a demurrer,
16 as a demurrer tests the legal sufficiency of the complaint. *See McHugh v. Howard*, 165 Cal. App. 2d
17 169, 173-74, 331 P.2d 674, 677 (1958) (“The purpose of a demurrer is to test the legal sufficiency
18 of a pleading, not to test the evidence or other extrinsic matters.”); *Lambert v. Carneghi*, 158 Cal.
19 App. 4th 1120, 1126 (2008) (“We cannot, and do not, consider the declaration of respondent Dailey
20 that was submitted to the trial court in connection with his demurrer, because the limited role of the
21 demurrer is to test the legal sufficiency of the complaint.”) citing *Donabedian v. Mercury Ins. Co.*,
22 116 Cal.App.4th 968, 994 (2004). Defendant cites extraneous information (which purported
23 evidence the Plaintiffs dispute) in an attempt to rebut the allegations in the FAC, which is not
24 permitted on a demurrer which is designed to test the sufficiency of the pleadings. For instance, in
25 footnote 2 of the Demurrer, Defendants offer extrinsic information regarding Defendants’ purported
26 business operations. That information should not be considered by the Court on the present demurrer,
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1 as this is not a motion for summary judgment. The same is true for footnotes 6 and 7, which again
2 improperly invite the Court to look beyond the pleadings.

3 Therefore, the Court should disregard Defendants' Exhibits 1 as well as the extraneous
4 information introduced by Defendants to seek to contradict the factual allegations in the FAC
5 when considering the Demurrer. In sum, any request by Defendants for the Court to take judicial
6 notice of their Exhibit 1 should be denied.

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Respectfully submitted,

Dated: April 14, 2023

KAZEROUNI LAW GROUP, APC

By: /s/ Pamela E. Prescott, Esq.

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