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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

The Reporters Committee For F
Plaintiff/Petitioner(s)

VS.

The Regents of the Universi
Defendant/Respondent(s)
(Abbreviated Title)

No. RG14750683

Order

Demurrer to Complaint
Overruled

The Demurrer to Complaint was set for hearing on 02/24/2015 at 01:30 PM in Department 14 before the Honorable Evelio Grillo. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Demurrer of Respondent The Regents of the University of California ("Respondent") to Petition for Writ of Mandate by Petitioners The Reporters Committee for Freedom of the Press and Stephen Bloom ("Petitioners"), is ruled on as follows:

PETITIONERS' REQUEST FOR JUDICIAL NOTICE

Petitioners ask that the court take judicial notice of the Executive Order issued by then-Governor of California Earl Warren dated November 1, 1947. Petitioners' request for judicial notice is **GRANTED**, as the court finds that it may properly take judicial notice of this order pursuant to Evidence Code section 452(c).

Petitioners also ask that the court take judicial notice, pursuant to Evidence Code section 452(h), of the following: (1) a copy of a printout of Rare Book Collections from the Bancroft Library website, (2) a copy of a printout of Latin Americana Reference Works in the Bancroft Reading Room, (3) a copy of a printout of Frequently Asked Questions from the website of the Bancroft Library, and (4) a copy of a printout of Currently on Exhibit from the website of the Bancroft Library. Petitioners contend that these printouts help define what Respondent classifies as "reference" and "exhibit" materials in the Bancroft Library, and also directly contradict any claim by Respondent that the records at issue here are solely reference or exhibition materials. These printouts however, do not appear to be facts not reasonably subject to dispute and capable of immediate and accurate verification by resort to sources of reasonably indisputable accuracy. (See Evid. Code sec. 452(h).) Therefore, Petitioners' request for judicial notice as to these printouts, is **DENIED**.

RESPONDENT'S DEMURRER

Respondent demurs that Petitioners The Reporters Committee for Freedom of the Press and Stephen Bloom ("Petitioners") fail to state a claim because the requested records are not "public records" under Government Code section 6252(e), and moreover, even if they are, the records are exempt from disclosure under Government Code section 6254(j).

Government Code section 6252(e) defines "public records" as including "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any

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state or local agency regardless of physical form or characteristics." "Public records" in the custody of, or maintained by, the Governor's office are any writing prepared on or after January 6, 1975. (Gov. Code sec. 6252(e).)

"As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be." (Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.) A pleading valid on its face may still be subject to demurrer though, when matters judicially noticeable by the court render the complaint meritless. (Id.)

Here, Petitioners allege that the records sought here are public records because they concern the conduct of the people's business and consist of the writings of public officials and/or agencies, and therefore constitute "public records" that Petitioners should have access to inspect. (See e.g. Petition paras. 31-33, 35-38, 41-46.) Thus, for purposes of this demurrer, the court accepts these allegations as true and finds that Petitioners have sufficiently alleged facts in support of these claims. The court cannot determine on the face of the allegations or from matters that the court has taken judicial notice, whether these records, in fact, are "public records" as defined under section 6252(e).

Moreover, Respondent also demurs that even if these records constitute public records, these records are exempt under Government Code section 6254(j). Section 6254(j) provides an exemption from disclosure of "[l]ibrary circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes." Once again, this argument fails because the court cannot determine from the allegations in the Complaint or from matters that the court has taken judicial notice, that this exemption, in fact, applies.

Respondent's Demurrer is therefore **OVERRULED**. Respondent shall have until March 24, 2015 to file an Answer to the Petition.

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Dated: 02/24/2015



Facsimile

Judge Evelio Grillo

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG14750683
Order After Hearing Re: of 02/24/2015

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 03/13/2015.

Leah T. Wilson Executive Officer / Clerk of the Superior Court

By Edward Whittington
Deputy Clerk

SHORT TITLE:

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ADDITIONAL ADDRESSEES

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