

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

February 19, 2021

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2020A00063
)	
PSYCHOSOMATIC FITNESS LLC;)	
PSYCHOSOMATIC FITNESS)	
PHOENIX LLC d/b/a)	
PSYCHOSOMATIC TRANSFORMATION)	
CENTER,)	
Respondents.)	
)	

ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT MOTION FOR
OFFICIAL NOTICE

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 27, 2020, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondents, Psychosomatic Fitness, LLC, and Psychosomatic Fitness Phoenix, LLC, doing business as Psychosomatic Transformation Center, violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Respondent, by way of its Answer, does not contest the facts which give rise to the allegations. Respondent does contest the amount of the fine.

On December 14, 2020, Respondent filed a “Motion for Judicial Notice Regarding Complainant United States Motion for Summary Decision” (“Motion for Official Notice”).¹ Consistent with

¹ The regulations which govern cases in this forum, “Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-Related Practices, and Document Fraud” can be found at 28 C.F.R. Part 68. The regulations utilize the term “official notice” and not “judicial notice.” 28 C.F.R. § 68.41. For clarity, the Respondent Motion will be referred to by the shortened title above and the Court, in its analysis, shall use the term “official notice” as it is the proper verbiage to describe the legal concept at issue.

the provisions of 28 C.F.R. § 68.11(b), Complainant was provided with ten days to file a response to the “Motion for Official Notice”, and elected not to do so.

II. RESPONDENT’S REQUEST FOR OFFICIAL NOTICE

The Respondent characterizes its request for “judicial notice” as a request to take notice of “certain Executive Orders issued by the Arizona governor, the Arizona Department of Health Services, and the Maricopa County Superior Court as described below.” Mot. for Official Notice 1. Following this characterization, the Respondent then proceeds to list ten “facts” presumably gleaned from the above referenced Orders and judicial decisions. Respondent provides attachments in support of its request.

III. DISCUSSION & ANALYSIS

Cases arising under 8 U.S.C. § 1324a are governed by the practice and procedures outlined in the regulations at 28 C.F.R. § 68. Germane to this request, 28 C.F.R. § 68.41 provides guidance on proper execution of “Official Notice,” stating:

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge’s decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

Official notice is legally equivalent to judicial notice, thus, the Court will analyze Respondent’s “Motion for Official Notice” consistent with applicable law and regulation concerning judicial notice.

The Federal Rules of Evidence at Rule 201 provide the mechanism by which courts may take judicial notice of “adjudicative facts.” Fed. R. Evid. 201. Specifically, the rule states that courts may take notice of facts “not subject to reasonable dispute because [the fact] is generally known within the trial court’s territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

From a procedural standpoint, the Court may take judicial notice at any stage in the proceeding, and the nonmoving party must be provided an opportunity to be heard. Fed. R. Evid. 201(d) and Fed. R. Evid. 201(e). The Complainant, the nonmoving party, has been provided the requisite amount of time annotated in the regulation, and elected not to provide a response.

Factual accuracy “is only part of the inquiry under Rule 201(b). A court must also consider – and identify – which fact or facts it is noticing from [an applicable document]. Just because the

document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth.” *Khoja v. Orexigen*, 899 F.3d 988, 999 (9th Cir. 2018).

It is generally appropriate for courts to take judicial notice of some public records; however, judicial notice is inappropriate when the substance of a document at issue is “subject to varying interpretations, and there is a reasonable dispute as to what the [document] establishes.” *Khoja* at 1000; citing *Reina-Rodriguez v. United States*, 655 F.3d 1182, 1193 (9th Cir. 2011).

In adopting the rationale of the 9th Circuit, the Court determines the propriety of a grant of official notice of a fact turns on accuracy, specificity, and an emphasis on conservative application of the legal principle.

Additionally, a decision to reject a request to officially notice a particular fact does not render that fact inadmissible, as admissibility is a completely separate analysis. Such “rejected” facts or evidence, if asserted in other pleadings or at hearing, are consequently subject to the same relevance, credibility, and weight scrutiny generally applied to all evidentiary assertions made by the parties.

With these standards in mind, the Court now turns to the request at issue. Respondent, at page two of its Motion lists ten facts for which it requests official notice. The Court will take official notice of only the following facts.

1. On March 19, 2020, Arizona Governor Douglas Ducey issued Executive Order 2020-09.
2. On May 12, 2020, Arizona Governor Douglas Ducey issued Executive Order 2020-36.
3. On June 29, 2020, Arizona Governor Douglas Ducey issued Executive Order 2020-43.
4. On July 23, 2020, Arizona Governor Douglas Ducey issued Executive Order 2020-52.
5. On August 10, 2020, Arizona Department of Health Services issued Emergency Measure 2020-02.
6. On August 10, 2020, Arizona Department of Health Service released public health-oriented information by way of a twelve page document entitled “Requirements for Indoor Gyms and Fitness Clubs/ Centers.”

The Court rejects all remaining facts and legal conclusions presented for its consideration based on the following rationale.

The Court finds that the Respondent’s summation of the contents or conclusory language used to describe the contents of various Executive Orders issued by the Arizona Governor runs afoul of the “subject to varying interpretations” rationale outlined in *Khoja*.

To the extent supporting information supplied by way of exhibit is undated, the Court cannot consider that information to be “readily determined” as is required by the principles of Federal

Rule of Evidence 201. Similar rationale applies to the assertions related to “fact” seven in the pleadings pertaining to a decision made in Arizona state court.

In that instance, the supporting documentation in the exhibit is illegible and the identity of a state judge, or the fact that a state judge may have issued “a” decision in state court is facially irrelevant to these proceedings.

Because the analysis for official notice is distinct from an analysis related to admissibility, the “rejected” facts and related evidence from this request will be subject to the general evidentiary analysis executed in this forum should these facts or evidence appear in other pleadings.

To the extent the Court takes official notice of the six facts outlined above, the Motion for Judicial Notice Regarding Complainant United States Motion for Summary Decision is GRANTED, in part. To the extent the Court declines a grant of official notice for the remainder of assertions made in the Motion for Judicial Notice Regarding Complainant United States Motion for Summary Decision, the Motion is DENIED, in part.

SO ORDERED.

Dated and entered on February 19, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge