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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 JEANNE E. CALDWELL,

16 Plaintiff,

17 v.

18 ROY L. CALDWELL, Ph.D., in his official
capacity as Director of the University of
19 California Museum of Paleontology; DAVID
LINDBERG, in his official capacity as Chair
20 of the Integrative Biology Department of the
University of California-Berkeley; and
21 MICHAEL D. PIBURN, in his official
capacity as Program Director for the National
22 Science Foundation,

23 Defendants.

Case No. C05-04166

**DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
REQUEST FOR JUDICIAL NOTICE**

Date: February 8, 2006
Time: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton

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25 Plaintiff has filed objections to defendants' request that the court take judicial notice of
26 the UC Berkeley Museum of Paleontology website, [http://www.ucmp.berkeley.edu/
27 museum/museum.php](http://www.ucmp.berkeley.edu/museum/museum.php), including that portion of the site entitled "Understanding Evolution."
28 <http://evolution.berkeley.edu/>. Specifically, plaintiff objects on the grounds that the materials

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1 cited by defendants lack relevance because they are beyond the “four corners of the complaint.”
2 Plaintiff further objects that the materials are “cumulative” and that consideration of them would
3 be “confusing,” again, because the Court need not look beyond the “four corners” of the
4 complaint.¹

5 The foregoing objections are fully met by reference to the authorities recognizing that a
6 court may, in considering a motion to dismiss under Rule 12(b)(6), consider not only the “four
7 corners of the complaint,” but also any matters which are properly the subject of judicial notice.
8 *See e.g. United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

9 Plaintiff does not object to defendants’ request on the ground that UE website is not
10 properly the subject of judicial notice under Rule 201 of the Federal Rules of Evidence. Nor has
11 she distinguished the cases cited by defendants in their Request, establishing that publicly
12 accessible websites maintained on the World Wide Web are “capable of accurate and ready
13 determination by resort to sources whose accuracy cannot reasonably be questioned” within the
14 meaning of Rule 201(b). *See, e.g., Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965 (C.D.
15 Cal. 2005) (taking judicial notice of Amazon.com web pages and pages of the website of the
16 American Academy of Allergy Asthma & Immunology); *Hendrickson v. EBay, Inc.*, 165 F. Supp.
17 2d 1082, 1084 (C.D. Cal. 2001) (taking judicial notice of EBay.com website). Accordingly,
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24 ¹ Plaintiff’s objections specify that she does **not** object to the Court taking judicial notice
25 of the website for the purpose of establishing that the “website has been changed since the filing
26 of the complaint” and that it is “not a ‘static display.’” Plaintiff does not specify any of the
27 changes to which she refers, and does not suggest how any changes are in any way relevant or
28 material to the issues raised in defendants’ motion to dismiss. Defendants are not aware of any
such material changes, nor are they aware of any changes that have been prompted by this
lawsuit. In any event, because plaintiff’s claim here is for injunctive relief, what is relevant is the
website as it is currently constituted.

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1 judicial notice is proper.²

5 DATED: January 25, 2006

MORGENSTEIN & JUBELIRER LLP

By 

William J. Carroll
Attorneys for Defendants
ROY L. CALDWELL, Ph.D.,
and DAVID LINDBERG

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21 _____
22 ² As discussed in defendants’ briefing in support of their motion to dismiss, the Court may
23 properly consider the UE website in any event, because plaintiff’s complaint “refers extensively
24 to the document” and because it “forms the basis of the plaintiff’s claim.” *Ritchie, supra*, 342
25 F.3d at 908; *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994) overruled on other grounds in
26 *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (a court may consider
27 “documents whose contents are alleged in a complaint and whose authenticity no party questions,
28 but which are not physically attached to the pleading . . . in ruling on a Rule 12(b)(6) motion to
dismiss.”); *Pension Benefit Guaranty Corp. v. White Consolidated Indus., Inc.*, 998 F.2d 1192,
1196-97 (3d Cir. 1993); *Venture Associates Corp. v. Zenith Data Systems Corp.*, 987 F.2d 429,
431-32 (7th Cir. 1993); *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir. 1991);
Ed Miniat, Inc. v. Globe Life Ins. Group, Inc., 805 F.2d 732, 739 (7th Cir. 1986) (documents
proffered by defendant in support of motion to dismiss are considered part of the pleadings if they
are referred to in the plaintiff’s complaint and are central to plaintiff’s claim).