

POSTED ON WEBSITE

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 20-23457-A-7

ERNESTO PATACSIL and MARILYN EMBRY  
PATACSIL

Debtor.

JOSEPH CABARDO et al.,

Adv. No. 20-02167-A

Plaintiffs,

FEC-1

V.

ERNESTO PATACSIL et al.,

Defendants.

MEMORANDUM

(Request for Judicial Notice)

1 A court may take judicial notice of the "documents filed in other  
2 courts, again not for the truth of the matters asserted in the other  
3 litigation, but rather to establish the fact of such litigation and  
4 related filings." *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d  
5 Cir. 1991). Plaintiffs seek judicial notice of numerous filings in a  
6 related District Court action and unspecified "facts contained in  
7 these documents." May the court do so?

## 8 **I. FACTS**

9 Prior to the matters that are now before this court, eight former  
10 employees, acting under the Private Attorney General Act of 2004,  
11 brought an action against the defendants in District Court for wage  
12 and hours violations arising from their employment. *Cabardo v.*  
13 *Patacsil*, No. 2:12-cv-01705 (E.D. CA 2012) (the "District Court  
14 action"). The plaintiff employees prevailed at trial and the District  
15 Court awarded them damages of \$893,815 and attorneys' fees of  
16 \$1,077,218.

17 Defendants then filed a Chapter 7 bankruptcy.

18 Plaintiff employees and their attorneys in the underlying action  
19 filed this adversary proceeding to except the judgment from discharge.  
20 11 U.S.C. § 523(a)(6), (a)(7).

## 21 **II. PROCEDURE**

22 Plaintiffs request that the court to take judicial notice of the  
23 following documents and "the facts contained in these documents" in  
24 the District Court action: (1) judgment, Ex. B; (2) order granting in  
25 part plaintiff's motion for attorneys' fees, Ex. C; (3) eight verdict  
26 forms, Ex. K-R (one for each plaintiff); (4) Findings of Fact and  
27 Conclusions of Law, Ex. U. The plaintiff's also request that the  
28 court take judicial notice of a decision by the United States Tax

1 Court pertaining to the defendants. Memorandum, *Patacsil v.*  
2 *Commissioner of the Internal Revenue Service*, Docket No. 28715-154  
3 (Tax Court 2017). Request for Judicial Notice 2:20-3:14, ECF No. 118.

4 Defendants concede that the court may take judicial notice of the  
5 documents but contend that the court may not take "judicial notice of  
6 the truth of the matters stated within those findings." Opp'n 2:24-  
7 28, ECF No. 138.

### 8 **III. JURISDICTION**

9 This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);  
10 see also General Order No. 182 of the Eastern District of California.  
11 Jurisdiction is core. 28 U.S.C. § 157(b)(2)(I); *Carpenters Pension*  
12 *Trust Fund for Northern Calif. v. Moxley*, 734 F.3d 864, 868 (9th  
13 2013); *In re Kennedy*, 108 F.3d 1015, 1017 (9th Cir. 1997). Plaintiffs  
14 do not consent to the entry of final orders and judgments by this  
15 court; defendants do so consent. 28 U.S.C. § 157(b)(3); *Wellness*  
16 *Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 1945-46 (2015).  
17 Scheduling Order § 2.0, ECF No. 13.

### 18 **IV. LAW**

#### 19 **A. Section 523**

20 An action to except a debt from discharge has three elements: (1)  
21 a debt, *In re Dobos*, 303 B.R. 31, 39 (9th Cir. BAP 2019); *Northbay*  
22 *Wellness Group, Inc. v. Beyries*, 789 F.3d 956, 959 n. 3 (9th Cir.  
23 2015) (existence of a debt determined by state law); (2) at least one  
24 of the enumerated exceptions of § 523(a), i.e., 11 U.S.C. §  
25 523(a)(6), (a)(7); and (3) an amount of damages. *Dobos*, 303 B.R. at  
26 39. Affirmative defenses exist. *E.g.*, Fed. R. Bankr. P. 4007 (time  
27 limitations).  
28

**B. Rule 201**

In some instances, the court make take judicial notice of particular matters.

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201(a)-(b).

Rule 201 deals only with adjudicative, and not legislative facts. The difference is critical:

Rule 201 governs only the judicial notice of "adjudicative facts." Fed.R.Evid. 201(a). The advisory committee notes to Rule 201 distinguish between "adjudicative facts" and "legislative facts." See *id.*, adv. ctte. notes (citing 2 Kenneth Davis, *Administrative Law Treatise* at 353 (1958)). *Adjudicative facts* are "facts that normally go to the jury in a jury case. They relate to the parties, their activities, their properties, their businesses." *Id.*; see also *U.S. v. Gould*, 536 F.2d 216, 219 (8th Cir.1976) (stating that *adjudicative facts* concern "who did what, where, when, how and with what motive or intent.") (quoting 2 Kenneth Davis, *Administrative Law Treatise* § 15.03 at 353 (1958)). By contrast, "[l]egislative facts do not relate specifically to the activities or characteristics of the litigants. A court generally relies upon legislative facts when it purports to develop a particular law or policy and thus considers material wholly unrelated to the activities of the parties." *Gould*, 536 F.2d at 220.

*Qualley v. Clo-Tex Int'l, Inc.*, 212 F.3d 1123, 1128 (8th Cir. 2000) (emphasis added).

Adjudicative facts are a substitute for evidence that would otherwise be submitted to the trier of fact. *Wesley-Jessen Div. of Schering Corp. v. Bausch & Lomb Inc.*, 698 F.2d 862, 864 (7<sup>th</sup> Cir. 1983).

1        There are limitations as to those facts. Judicially noticed  
2 facts must be relevant. Fed. R. Evid. 402; *Vallot v. Central Gulf*  
3 *Lines, Inc.*, 641 F.2d 347, 350 (5th Cir. 1981) (per curiam); *1-800-*  
4 *411-Pain Referral Service, LLC v. Otto*, 744 F.3d 1045, 1063, fn. 13  
5 (8th Cir. 2014). The party seeking to admit the fact must lay a  
6 proper foundation. *1-800-411-Pain Referral Service, LLC*, 744 F.3d at  
7 1063, fn. 13. A fact, particularly one offered in the form of a  
8 document, must not contain inadmissible hearsay. *1-800-411-Pain*  
9 *Referral Service, LLC*, 744 F.3d at 1063, fn. 13; *Daniel v. Cook*  
10 *County*, 833 F.3d 728, 742 (7th Cir. 2016).

#### 11        **V.        DISCUSSION**

12        Among the facts of which judicial notice may be taken are  
13 documents filed in a collateral federal or state case, e.g.,  
14 judgments, orders and other submissions. *ReadyLink Healthcare, Inc.*  
15 *v. State Compensation Ins. Fund*, 754 F.3d 754, 756, fn. 1 (9th Cir.  
16 2014) (state court proceeding); *In re WorldCom, Inc.*, (2nd Cir. 2013)  
17 708 F.3d 327, 339, fn. 63 (2nd Cir. 2013). Where the parties engaged in  
18 prior litigation that relates to the case now before the court  
19 judicial notice is frequently employed.

20        Judicial notice is particularly appropriate for court  
21 records (including the court's own records) in prior  
22 litigation related to the case before it. [*Amphibious*  
23 *Partners, LLC v. Redman* (10th Cir. 2008) 534 F.3d 1357,  
24 1361-1362—district court entitled to take judicial notice  
25 of its memorandum of order and judgment from previous case  
26 involving same parties; *Panera, LLC v. Dobson* (8th Cir.  
27 2021) 999 F.3d 1154, 1157, fn. 1—judicial notice of  
28 proceedings in state court that related directly to matter  
at issue; *Fowler Packing Co., Inc. v. Lanier* (9th Cir.  
2016) 844 F.3d 809, 813, fn. 2—Ninth Circuit took judicial  
notice of fact that related case was filed in district  
court and of claim alleged; *Clark v. Stone* (6th Cir. 2021)  
998 F.3d 287, 297 & fn. 4—court may take judicial notice of  
proceedings of other courts of record....

Robert E. Jones, *Federal Civil Trials and Evidence* § 8:875 (Rutter Group June 2022).

Even so, the truth of the judicial record is not noticeable.

A court may take judicial notice of a document filed in another court “not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.” [*Kramer v. Time Warner Inc.* (2nd Cir. 1991) 937 F2d 767, 774; *Opoka v. I.N.S.* (7th Cir. 1996) 94 F3d 392, 395; *Taylor v. Charter Med. Corp.* (5th Cir. 1998) 162 F3d 827, 829-830]

*Federal Civil Trials and Evidence* at § 8:876 et seq.

The line between permissible and impermissible use of another court’s findings is difficult to draw.

In all these cases involving notice of any aspect of court records or proceedings, *there is a difference between taking notice of the existence, content, and operative effect of any item and using the item as proof of whatever acts, events, or conditions in the world that the words in the item describe*—in short, making hearsay use of the item. The fact that a judgment exists, and that its effect is to create an obligation on the part of the defendant toward the plaintiff in a certain sum, is clearly appropriate for judicial notice, but underlying findings or conclusions (even those that are essential to a judgment), such as a finding that the defendant signed a promissory note in the sum awarded by the court, are not appropriate for judicial notice.

1 *Mueller & Kirkpatrick*, *Federal Evidence* § 2:5 (4th ed. July 2022).

#### **A. Judgment**

Foundational facts have been laid. That a judgment exists between the parties is relevant to the existence and amount of a debt by the defendants to the plaintiffs. 11 U.S.C. § 523(a) (requiring a “debt”). Any objection to the authenticity of the document has been waived. Am. Pretrial Order §§ 1.0, 8.0, ECF No. 95 (setting deadline for evidentiary objections). Finally, the judgment is not hearsay. Fed. R. Evid. 801(c); *U.S. v. Boulware*, 384 F.3d 794, 805-806 (9th 2004) (“A prior judgment is not hearsay, however, to the extent it is

1 offered as legally operative verbal conduct that determined the rights  
2 and duties of the parties"); *U.S. v. Sine*, 493 F.3d 1021, 1036 (9th  
3 2007).

4 Judicial notice is proper to prove the existence of a debt, 11  
5 U.S.C. § 523, between the parties. *Conopco, Inc. v. Roll Intern.*, 231  
6 F.3d 82, 86 n. 3 (2nd 2000); *Gabbanelli Accordions & Imports, L.L.C.*  
7 *v. Gabbanelli*, 575 F.3d 693, 696 (7th Cir. 2009) (foreign judgment;  
8 *Thompson v. R.J. Reynolds Tobacco Co.*, 760 F.3d 913, 918 (8th Cir.  
9 2014); *Amphibious Partners, LLC v. Redman*, 534 F.3d 1357, 1361-1362  
10 (10th Cir. 2008); Mueller & Kirkpatrick, *Federal Evidence* at § 2:5.

11 As one commentator thoughtfully articulated the matter.

12 Where the doctrines of res judicata, collateral estoppel,  
13 or claim or issue preclusion make the determinations in the  
14 first case binding in the second, a judgment in the first  
15 case is not only admissible in the second, but it is  
16 conclusive against the party as a matter of substantive  
law. Historically, the courts were often unwilling to admit  
judgments in previous cases if neither res judicata nor  
collateral estoppel applied under the theory they were  
hearsay.

17 2 *McCormick on Evidence* § 298 (8th July 2022).

18 As a result, the judgment and its contents are proper subjects of  
19 judicial notice because it is not reasonably subject to dispute and  
20 goes to the "existence, content, and operative effect" of the District  
21 Court's resolution of the dispute between the parties. *Federal*  
22 *Evidence* at § 2:5. As to the judgment, the request will be granted.

### 23 **B. Order Granting Attorney's Fees**

24 Foundational facts have been laid. The order is relevant to the  
25 existence and amount of a debt by the defendants to the plaintiffs.  
26 11 U.S.C. § 523(a) (requiring a "debt"). Any objection to the  
27 authenticity of the document has been waived. Am. Pretrial Order §§  
28 1.0, 8.0, ECF No. 95 (setting deadline for evidentiary objections).

1 Finally, the order is not hearsay. Fed. R. Evid. 801(c); *Boulware*,  
2 384 F.3d at 805-806 (9th 2004) (judgments not hearsay as "legally  
3 operative verbal conduct"); *Sine*, 493 F.3d at 1036.

4 Orders are properly subjects of judicial notice. "[A] court may  
5 take notice of another court's order only for the limited purpose of  
6 recognizing the "judicial act" that the order represents or the  
7 subject matter of the litigation." *United States v. Jones*, 29 F.3d  
8 1549, 1553 (11th Cir. 1994), citing *United States v. Garland*, 991 F.2d  
9 328, 332 (6th Cir.1993) (citation omitted); *Colonial Leasing Co. v.*  
10 *Logistics Control Group Int'l*, 762 F.2d 454, 459 (5th Cir. 1985); *St.*  
11 *Louis Baptist Temple, Inc. v. Federal Deposit Ins. Corp.*, 605 F.2d  
12 1169, 1172-73 (10th Cir.1979).

13 As a result, the court will take judicial notice of the existence  
14 of an order awarding the plaintiff's attorney fees of \$1,077,218.62  
15 because it is not reasonably subject to dispute and goes to the  
16 "existence, content, and operative effect" of the District Court's  
17 resolution of the dispute between the parties. *Federal Evidence* at §  
18 2:5. However, the District Court's findings therein do not enjoy the  
19 same admissibility. Circuit law is well-established that "findings of  
20 fact" contained within a memorandum decision are almost never proper  
21 subjects of judicial notice. *United States v. Jones*, 29 F.3d 1549,  
22 1553 (11th Cir. 1994); *Wyatt v. Terhune*, 315 F.3d 1108, 1114 (9th  
23 Cir.. 2003) (overruled on other grounds by *Albino v. Baca*, 747 F.3d  
24 1162, 1168-1169) (9th Cir. 2014). As to the order, the request will  
25 be granted in part and denied in part.

### 26 C. Plaintiffs' Verdict Forms

27 Federal courts may obtain jury verdicts in three ways:

28 [1] General verdict, whereby the jury decides all issues in



1 favor of one party or the other; [2] Special verdict,  
2 whereby the jury makes factual findings from which the  
3 court draws legal conclusions and renders judgment based  
4 thereon; or [3] General verdict with answers to written  
5 questions, whereby, in addition to the verdict itself, the  
6 jury is asked to answer certain questions designed to test  
7 the validity of the verdict.

8 *Federal Civil Trials and Evidence* at § 18:1 (explaining Fed. R. Civ.  
9 P. 49) (citations omitted).

10 In resolving the dispute, the District Court employed the special  
11 verdict method of resolution, and the plaintiffs seek to judicial  
12 notice of those verdict. Exs. K-R.

13 Foundational facts have been laid. That verdict form is relevant  
14 as to the existence and amount of a debt by the defendants to the  
15 plaintiffs, 11 U.S.C. § 523(a) (requiring a "debt"), and as to the  
16 intent element, 11 U.S.C. § 523(a)(6) ("willful and malicious").

17 Verdict No. 24 ("Was defendants' failure to pay federal overtime wages  
18 willful"). Any objection to the authenticity of the document has been  
19 waived. Am. Pretrial Order §§ 1.0, 8.0, ECF No. 95 (setting deadline  
20 for evidentiary objections). Finally, the verdict form itself is not  
21 hearsay. Fed. R. Evid. 801(c); *U.S. v. Boulware*, 384 F.3d 794, 805-  
22 806 (9th 2004) ("A prior judgment is not hearsay, however, to the  
23 extent it is offered as legally operative verbal conduct that  
24 determined the rights and duties of the parties"); *U.S. v. Sine*, 493  
25 F.3d 1021, 1036 (9th 2007).

26 The plaintiffs' request for judicial notice breaks neatly into  
27 two parts. First, whether the court may take judicial notice of the  
28 existence of a special verdict in the District Court's records. Such  
a fact is a proper subject of judicial notice. *United States v. Ross*,  
771 Fed.Appx. 345, 348 n. 1 (9th Cir. 2019); *Evanston Ins. Co. v.*  
*Windstar Properties, Inc.*, 857 Fed.Appx. 387, 388 n. 2 (9th Cir.

2021). Similarly, the ancillary legally operative facts that the plaintiffs and defendants litigated to conclusion the issue of the defendants' violation of wage and overtime laws and that the plaintiffs prevailed in that action. *Murphy v. Kmart Corp.*, 2010 WL 3703708 \* 3 (D. S.D. 2010) ("Rule 201 allow the court to take judicial notice of the existence of the ...special verdict forms") (emphasis original).

Second, whether the court may take judicial notice of the contents of those special verdict forms. Those facts are not properly the subject of judicial notice. Fed. R. Evid. 801-802 (hearsay); *United States v. Collier*, 68 Fed. Appx. 676, 683 (6th Cir.2003); *Taylor v. Washington Metro. Area Transit Auth.*, 922 F.Supp. 665, 675-76 (D.D.C. 1996). As one court thoughtfully observed:

Importantly, "[a] court may take judicial notice of a document filed in another court 'not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.' " *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir.1992) (finding district court erred in taking judicial notice of bankruptcy court order to establish facts asserted therein). "When offered to prove the facts stated, court records are hearsay; hence, they would be admissible as evidence only if they satisfied some hearsay exception such as the official records exception .... [A] court cannot take judicial notice of a fact that would be inadmissible if it were offered as evidence." (citation omitted).

Rule 201 allows the court to take judicial notice of the existence of the Hawkins special verdict forms. The fact that Kmart was a defendant in another age discrimination lawsuit is not subject to reasonable dispute. The fact that a jury entered a verdict in favor of Mr. Hawkins against Kmart is not subject to reasonable dispute. These are legally operative facts. *However, the findings of fact upon which the Hawkins verdict is based do not satisfy Rule 201(b)—the jury's findings are not generally known to the public, nor are they so indisputable that their accuracy cannot reasonably be questioned...*

*Murphy* at \* 3 (emphasis added).

1 For these reasons, the court will take judicial notice of  
2 existence of the verdict forms, that the parties previously litigated  
3 questions of the defendants' compliance with applicable state labor  
4 laws and that the plaintiffs prevailed on those questions. The court  
5 will decline to take judicial notice of all other purported facts in  
6 the special verdict.

7 **D. Findings of Fact and Conclusions of Law**

8 Plaintiffs seek to admit the District Court's findings of fact  
9 and conclusions of law.

10 Foundational facts have been laid. That "Findings of Fact and  
11 Conclusions of Law" rendered by the District Court is relevant as to  
12 the existence and amount of a debt by the defendants to the  
13 plaintiffs, 11 U.S.C. § 523(a) (requiring a "debt"), and as to the  
14 intent element, 11 U.S.C. § 523(a)(6) ("willful and malicious").  
15 Findings of Fact pp. 8-14 (civil penalties based on willful conduct).  
16 Any objection to the authenticity of the document has been waived.  
17 Am. Pretrial Order §§ 1.0, 8.0, ECF No. 95 (setting deadline for  
18 evidentiary objections). Finally, the Findings of Fact and  
19 Conclusions of Law itself is not hearsay. Fed. R. Evid. 801(c); *U.S.*  
20 *v. Boulware*, 384 F.3d 794, 805-806 (9th 2004) ("A prior judgment is  
21 not hearsay, however, to the extent it is offered as legally operative  
22 verbal conduct that determined the rights and duties of the parties");  
23 *U.S. v. Sine*, 493 F.3d 1021, 1036 (9th 2007).

24 The plaintiffs' request for judicial notice breaks neatly into  
25 two parts. First, whether the court may take judicial notice of the  
26 existence of the "Findings of Fact and Conclusions of Law" in the  
27 District Court's records. Such a fact is a proper subject of judicial  
28 notice. *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994)

1 ("Accordingly, a court may take notice of another court's order only  
2 for the limited purpose of recognizing the "judicial act" that the  
3 order represents or the subject matter of the litigation.").

4 Second, whether the court may take judicial notice of the  
5 contents, e.g., findings of fact in that memorandum. Those facts are  
6 not properly the subject of judicial notice. Fed. R. Evid. 801-802  
7 (hearsay); *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir.  
8 1994); *Wyatt v. Terhune*, 315 F.3d 1108, 1114 (9th Cir. 2003)  
9 (overruled on other grounds by *Albino v. Baca*, 747 F.3d 1162, 1168-  
10 1169 (9th Cir. 2014)).

11 For these reasons, the court will take judicial notice of  
12 existence of the "Findings of Fact and Conclusions of Law." The court  
13 will decline to take judicial notice of all findings therein.

14 **E. Memorandum of the United States Tax Court**

15 Plaintiffs ask this court to take judicial notice of a 40-page  
16 memorandum of the United States Tax Court.

17 The court will not take judicial notice of the memorandum or of  
18 its contents. First, there has not been a showing of relevance. Fed.  
19 R. Evid. 402. "Evidence is relevant if: (a) it has any tendency to  
20 make a fact more or less probable than it would be without the  
21 evidence; and (b) the fact is of consequence in determining the  
22 action." This is an action to except a debt from discharge. 11  
23 U.S.C. § 523(a)(6), (7). The court is unable to comprehend how this  
24 document makes the existence of a "debt," 11 U.S.C. § 523(a)(6), (a)(7)  
25 more or less probable. And the plaintiffs have offered no argument as  
26 to this issue.


27 Second, even if it were relevant, it runs afoul of the  
28 prohibition against taking judicial notice of findings of fact by

1 other tribunals. Fed. R. Evid. 801-802 (hearsay); *United States v.*  
2 *Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994); *Wyatt v. Terhune*, 315 F.3d  
3 1108, 1114 (9th Cir. 2003) (overruled on other grounds by *Albino v.*  
4 *Baca*, 747 F.3d 1162, 1168-1169 (9th Cir. 2014). For these reasons,  
5 the court declines to take judicial notice of the memorandum from the  
6 United States Court or its contents.

7 **VI. CONCLUSION**

8 The request for judicial notice will be granted and denied as  
9 provided herein. An order will issue from chambers.

10 **Dated:** February 28, 2023

11   
12 \_\_\_\_\_  
13 **Fredrick E. Clement**  
14 **United States Bankruptcy Judge**

# Instructions to Clerk of Court

## Service List - Not Part of Order/Judgment

**The Clerk of Court is instructed to** send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked \_\_\_\_, via the U.S. mail.

Attorneys for the Plaintiff(s)	Attorneys for the Defendant(s)
Bankruptcy Trustee (if appointed in the case)	<b>Office of the U.S. Trustee</b> Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814