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9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 vs.

16 HUI FENG; LAW OFFICES OF FENG
 & ASSOCIATES P.C.,

17 Defendants.

CASE NO. 2:15-CV-09420-CBM-SS

**DEFENDANTS HUI FENG AND
 LAW OFFICES OF FENG &
 ASSOCIATES P.C.’S OBJECTIONS
 TO PLAINTIFF SECURITIES AND
 EXCHANGE COMMISSION’S
 REQUEST FOR JUDICIAL
 NOTICE**

Date: July 26, 2016
 Time: 10:00 a.m.
 Crtrm.: 2

Assigned to Hon. Consuelo B. Marshall

1 **OBJECTIONS TO PLAINTIFF SEC’S REQUEST FOR JUDICIAL NOTICE**

2 Defendants Hui Feng and Law Offices of Feng & Associates, P.C. (“Feng
3 Parties”) hereby object to the following evidence presented by Plaintiff Securities
4 and Exchange Commission (“SEC”) in connection with their Request for Judicial
5 Notice In Support of Plaintiff SEC’s Opposition To Defendants’ Motion for
6 Judgment on the Pleadings. Dkt. 44-1.

7 **A. Exhibits 18 and 20 Are Not Properly Subject To Judicial Notice**

8 The Feng Parties object to the entirety of **Exhibit 18** and **Exhibit 20**, which
9 the SEC purports to be (i) an Internet blog post titled “Beware of Unlicensed ‘Which
10 Regional Center’ Consultants” dated March 17, 2012; and (ii) an article titled “The
11 Relevance of U.S. Securities Laws to Immigrant Investors, EB-5 Regional Centers
12 and Their Advisors” dated 2009, respectively.

13 Unlike the articles attached to the Feng Parties’ Request for Judicial Notice,
14 which were offered only to prove the fact of their existence, the SEC seeks to use
15 these articles to suggest the truth of the matters asserted therein, as well as that the
16 Feng Parties had specific knowledge of them. The contents of these articles and
17 whether the Feng Parties were aware of them, however, are not the proper subjects
18 of judicial notice.

19 Courts only take judicial notice of adjudicative *facts* that are *not subject to*
20 *reasonable dispute*. Fed. R. Evid. 201(b). Courts may therefore only take judicial
21 notice of articles when the article presents facts “generally known within the
22 territorial jurisdiction of the trial court or [facts] capable of accurate and ready
23 determination by resort to sources whose accuracy cannot reasonably be questioned
24 as required under Rule 201(b) of the Federal Rules of Evidence.” *Hardison v.*
25 *Newland*, No. C984517CRB(PR), 2003 WL 23025432, at *15 (N.D. Cal. Dec. 17,
26 2003) (citation and internal quotation marks omitted). A “reporter’s opinion . . .
27 cannot be a ‘fact’ commonly known throughout the court’s territory, or one that is
28 capable of sufficient accurate and ready determination by other credible sources.”

1 *Id.* at *16 (emphasis in original). Here, the SEC purportedly introduces the blog
2 post and article to demonstrate the opinions of certain members of the public. But
3 these are opinions rather than facts whose accuracy cannot reasonably be
4 questioned. And to the extent the SEC seeks to introduce these exhibits to suggest
5 that the Feng Parties were aware of them, that too is not a fact that is “generally
6 known” or that “can be accurately and readily determined from sources whose
7 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Therefore, the
8 blog and article are not the proper subject of judicial notice for these purposes.

9 Even if the Court agrees to take judicial of the blog post, it should not take
10 judicial notice of the SEC’s assumption that this blog post was in fact written by the
11 former legal counsel for the Feng Parties, as the SEC presumes in its opposition.
12 *Opp.* at 17 n.5. The SEC has laid no foundation or cited any judicially noticeable
13 support for that proposition.

14 Moreover, the introduction of Exhibits 18 and 20 is even more inappropriate
15 because the subjective opinions of random members of the public are irrelevant to
16 the issue in this Motion. The Court must decide whether a “person of ordinary
17 intelligence” in the Feng Parties’ position would have had a reasonable opportunity
18 to know what is prohibited under the circumstances of the case. *See Rojas-Garcia v.*
19 *Ashcroft*, 339 F.3d 814, 822 (9th Cir. 2003). As Exhibits 18 and 20 are irrelevant to
20 resolving the issues in this lawsuit, they are inadmissible. Fed. R. Evid. 402; *United*
21 *States v. Castro-Cabrera*, 534 F. Supp. 2d 1156, 1162 (C.D. Cal. 2008).

22 **B. Exhibit 19 Is Not Properly Subject To Judicial Notice**

23 The Feng Parties also object to the entirety of **Exhibit 19**, which the SEC
24 purports to be portions of Defendant Hui Feng’s investigative testimony before the
25 SEC, in 2014 and 2015. However, the Ninth Circuit has squarely held that the
26 contents of such sworn testimony are not a clearly established “fact” and are
27 therefore inappropriate for judicial notice. *In re Oravle Corp. Securities Litigation*,
28 627 F.3d 376, 386 n. 1 (9th Cir. 2010) (declining to take judicial notice of

1 deposition transcript excerpts); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir.
2 2007) (same); *Roach v. Snook*, No. 1:14-CV-00583-PA, 2014 WL 7467000, at *2
3 (D. Or. Jan. 5, 2014) (declining to take judicial notice of sworn testimony on Rule
4 12(b)(6) motion); *Parent v. Millercoors LLC*, No. 3:15-CV-1204-GPC-WVG, 2016
5 WL 3348818, at *4 (S.D. Cal. June 16, 2016) (same); *Five Points Hotel P'ship v.*
6 *Pinsonneault*, 835 F. Supp. 2d 753, 757 (D. Ariz. 2011) (same).

7 Furthermore, judicial notice of Exhibit 19 is even more inappropriate because
8 the subjective opinions of the defendant are irrelevant to the issue in this Motion.
9 As discussed, the Court must decide whether a “person of ordinary intelligence”
10 would have had a reasonable opportunity to know what is prohibited under the
11 circumstances of the case. *See Rojas-Garcia*, 339 F.3d at 822. However, the
12 subjective opinions expressed by a defendant are not relevant to this inquiry. *See*
13 *Bowie v. City of Columbia*, 378 U.S. 347, 355 (1964) (“The determination whether a
14 criminal statute provides fair warning of its prohibitions must be made on the basis
15 of the statute itself and the other pertinent law, rather than on the basis of an ad hoc
16 appraisal of the subjective expectations of particular defendants.”). Taking judicial
17 notice of Exhibit 19 is therefore improper for this independent reason.

18 For the foregoing reasons, the Feng Parties respectfully request that the Court
19 deny Plaintiff SEC’s request for judicial notice as to Exhibits 18, 19, and 20, in their
20 entirety.

21 DATED: July 12, 2016

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25 By: /s/ David H. Chao

26 David H. Chao
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Miscellaneous Filings (Other Documents)

[2:15-cv-09420-CBM-SS](#)
[Securities and Exchange](#)
[Commission v. Hui Feng et al](#)

ACCO,(SSx),DISCOVERY

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Neuman, Ariel on 7/12/2016 at 11:12 PM PDT and filed on 7/12/2016

Case Name: Securities and Exchange Commission v. Hui Feng et al

Case Number: [2:15-cv-09420-CBM-SS](#)

Filer: Hui Feng
Law Offices of Feng and Associates PC

Document Number: [48](#)

Docket Text:

[OBJECTIONS to Objection/Opposition \(Motion related\),, \[44\] to Plaintiff Securities and Exchange Commission's Request for Judicial Notice filed by Defendants Hui Feng, Law Offices of Feng and Associates PC. \(Neuman, Ariel\)](#)

2:15-cv-09420-CBM-SS Notice has been electronically mailed to:

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a85217dbce939ddde5af1d102324806084ff52f75ec0ac4e990def1eec7c5]]