

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LÉONE MEYER,

Plaintiff,

-against-

THE BOARD OF REGENTS OF THE UNIVERSITY OF
OKLAHOMA, DAVID L. BOREN IN HIS INDIVIDUAL
CAPACITY, DAVID L. BOREN IN HIS CAPACITY AS THE
PRESIDENT OF THE UNIVERSITY OF OKLAHOMA, THE
UNIVERSITY OF OKLAHOMA FOUNDATION, INC., DAVID
FINDLAY GALLERIES, INC., WALLY FINDLAY
GALLERIES (NEW YORK), INC., WALLY FINDLAY
GALLERIES INTERNATIONAL DEVELOPMENT CORP.,
DFG ART CORP. FINDLAY ART CONSIGNMENTS, INC.,
FINDLAY GALLERIES, INC., THE AMERICAN ALLIANCE
OF MUSEUMS, THE ASSOCIATION OF ART MUSEUM
DIRECTORS,

Defendants.

No. 13 Civ. 3128 (CM)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDICIAL NOTICE OF
DOCUMENTS AND FACTS IN SUPPORT OF RENEWED MOTION TO DISMISS**

Pursuant to Rule 201(b)(2) of the Federal Rules of Evidence, Defendants the Board of Regents of the University of Oklahoma, David L. Boren in his individual and official capacity as the President of the University of Oklahoma and the University of Oklahoma Foundation, Inc. (collectively the “Oklahoma Parties”) hereby submit the following Memorandum of Law in Support of their Motion for Judicial Notice of Documents and Facts.

**I. THE COURT MAY TAKE JUDICIAL NOTICE OF FACTS THAT ARE NOT
SUBJECT TO REASONABLE DISPUTE WHERE THEIR ACCURACY CAN BE
DETERMINED BY RELIABLE SOURCES**

Pursuant to Rule 201(b)(2) of the Federal Rules of Evidence, courts may take judicial notice of facts that are not subject to reasonable dispute and are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Where a

Court is supplied with the necessary information, taking judicial notice is mandatory. *See* Fed. R. Evid. 201(d).

II. COURT RECORDS ARE SUBJECT TO JUDICIAL NOTICE

Pleadings and court filings are just the kind of documents that are not subject to reasonable dispute and are capable of accurate and ready determination under Rule 201(b)(2) of the Federal Rules of Evidence. Accordingly, it is proper for courts to take judicial notice of the existence of such documents. *See Roe v. Johnson*, 334 F. Supp. 2d 415, 419-20 (S.D.N.Y. 2004) (recognizing that a court, pursuant to Rule 201(b), may take notice of the public record, including complaints and court opinions); *see also A.I. Trade Finance, Inc. v. Centro Internationale Handelsbank AG*, 926 F. Supp. 378, 387 (S.D.N.Y. 1996) (in taking judicial notice of a judgment in Vienna, Austria, the court pointed out that “[t]he Second Circuit has noted that Rule 201 permits a court to take judicial notice of a foreign judgment”).

Through its accompanying Motion, the Oklahoma Parties request the Court to take judicial notice of the existence of the specific court filing identified below which Plaintiff references the existence of in paragraph 57 of her Amended Complaint. There is no dispute regarding the existence of these documents. *See* 21B Wright & Graham, Federal Practice and Procedure: Evidence 2d § 5106.4 (noting that, in contrast to facts discussed within court documents, it is proper to take judicial notice of the fact that the court documents exist). Moreover, because Plaintiff references this document in her Complaint, the Court may deem it incorporated as part of the Complaint. *See Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir. 1991) (“[T]he complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference.”). Additionally, “[c]onsideration of documents subject to judicial notice does not necessarily convert a motion to dismiss into a motion for summary judgment.” *Weston Funding, LLC v. Consorcio G Grupo Dina, S.A. de C.V.*, 451 F. Supp. 2d 585, 588 (S.D.N.Y. 2006).

Based on the foregoing, the Oklahoma Parties request that the Court take judicial notice of the existence of the Timeline and Judgment in the case of *Raoul Meyer v. Dr. Christoph*

Bernoulli, (1953), publically available at the State Archives of Basel, Court Archive A 740, 514-528, and certified English translation thereof, attached as Exhibit A to the Declaration of Laurie A. Stein filed concurrently in support hereof.

III. CONCLUSION

For the reasons set forth above, the Oklahoma Parties respectfully request that the Court grant, in its entirety, the Oklahoma Parties' Motion for Judicial Notice of Documents and Facts.

Dated: February 7, 2014

Respectfully Submitted,

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