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**THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MESIKA MAGIC, a California
corporation, YIGAL MESIKA, an
individual

Plaintiffs,

vs.

PENGUIN MAGIC, INC., a Nevada
corporation, CRAIG PETTY, a resident
of the United Kingdom, DOES 1-10,
inclusive,

Defendants

Case No.: 2:25-cv-07943-MWF-(MBKx)

**Plaintiffs' Response in Opposition to
Defendant Craig Petty's Request for
Judicial Notice**

Date: June 10, 2026

Time: 10:00 A.M.

Judge: Hon. Michael W. Fitzgerald

Courtroom: 5A, 5th Floor

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs MESIKA MAGIC and YIGAL MESIKA (collectively, “Plaintiffs”) respectfully submit this Response in Opposition to “Defendant Craig Petty’s Request for Judicial Notice in Support of Defendant’s Motion to Dismiss Under Fed. R. Civ. P. 12(b)((6) and for Relief Under Cal. Code Civ. Proc. § 425.16, and Memorandum in Support,” (“RFJN”, Dkt. No. 51), filed on May 1, 2026. Plaintiffs submit this response pursuant to the time provided for under Federal Rule of Civil Procedure 6 and L.R. 7-9.

This response is based on the below memorandum of points and authorities, the pleadings and documents on file in this action, declarations, any permitted oral argument, and any other matter upon which this Court takes notice.

Defendant Craig Petty makes a series of requests for judicial notice, Dkt. No. 51. The materials submitted as Exhibits to Defendant’s RFJN are not documents that the Court may take judicial notice on, such as unauthenticated website prints, allegedly made at times not relevant to the issues at hand, such as the prevailing notoriety or public recognition of Plaintiffs at the times of the defamatory communications and other conduct described in the Second Amended Complaint.

According to Fed. R. Evid. 201, the adjudicative facts that may be judicially noticed are facts that are not subject to reasonable dispute because they:

- (1) Are generally known with this Court’s territorial jurisdiction; or
- (2) They can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.

II. DEFENDANT CONFLATES INCORPORATION BY REFERENCE WITH JUDICIAL NOTICE

PLAINTIFFS’ OPPOSITION TO DEFENDANT’S RFJN

1
2 The Defendant submitted a Request for Judicial Notice and combined it with
3 declarations. The doctrine of incorporation by reference is different from the doctrine
4 of judicial notice. See, *Gammel v. Hewlett Packard Co.*, 905 F.Supp. 2d 1052, 1061
5 (C.D. Cal. 2012) (“[a]lthough often conflated, the doctrine of incorporation by
6 reference is distinct from judicial notice.”). Incorporation by reference allows this
7 Court to consider materials attached to the Second Amended Complaint in deciding a
8 Rule 12(b)(6) motion to dismiss. See, *Hal Roach Studios, Inc. v. Richard Feiner &*
9 *Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1989). See, also. Fed. R. Civ. P. 10(c) (“[a]
10 copy of a written instrument that is an exhibit to a pleading is a part of the pleading
11 for all purposes.”).

12 Incorporation by reference has been used to allow a court deciding a motion to
13 dismiss under Rule 12(b)(6) to consider a document that is not attached to the Second
14 Amended Complaint (SAC) if the SAC “necessarily relies” on the document and “(1)
15 the complaint refers to the document; (2) the document is central to the plaintiff’s
16 claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6)
17 motion.” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). The Ninth Circuit stated
18 that the complaint must refer to such a document “extensively” or the document must
19 form the basis of the Plaintiff’s claim. *United States v. Ritchie*, 342 F.3d 903, 908 (9th
20 Cir. 2003). To qualify as “extensively” referenced, the Second Amended Complaint
21 must cite the document at least more than once or quote from it at length, while
22 merely mentioning the existence of a document is insufficient. *Khoja v. Orexigen*
Therapeutics, Inc., 899 F.3d 988, 1003 (9th Cir. 2018).

23 Here, Defendant Petty expands incorporation by reference by seeking to
24 convince this Court to consider materials that are neither attached to nor mentioned in
25 the SAC, when considering Defendant’s Rule 12(b)(6) motion. Defendant is not
permitted to rely on evidence under this expanded view of incorporation by

1 reference, which essentially is incorporation without reference. See, *Hsu v. Puma*
2 *Biotechnology, Inc.*, 213 F.Supp.3d 1275, 1281 (C.D. Cal. 2016) (“In this way, the
3 incorporation by reference doctrine has become the incorporation without reference
4 doctrine.”).

5 Even if this Court would consider the Defendant’s Exhibits 1-42 for which he
6 requests judicial notice, or Exhibits A-D attached to his Motion, Plaintiffs do not
7 stipulate to the authenticity of any of these Exhibits. See, *Marder*, at 448, *supra*.

8 If the document is subject to varying interpretations, then no fact is “not subject
9 to reasonable dispute,” and the fact may not be subject to judicial notice. *Khoja v.*
10 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1000 (9th Cir. 2018).

11 One judge in the Central District of California described in 2016 a view of what
12 Defendant Petty attempts here:

13 “Nowadays, it seems more and more common to come across Rule 12(b)(6)
14 motions to dismiss filed with hundreds of pages of attachments,
15 authenticated through attorney declarations. These declarations will be
16 coupled with a request for judicial notice. That judicial notice will often
17 conflate judicial notice and incorporation by reference. Too often, these
18 mountainous motions make arguments more appropriate for a motion for
19 summary judgment or some other later stage of the case. Nonetheless, with
20 little to lose, too many defense attorneys are tempted by the puncher’s
21 chance offered by such a motion. At worst, they lose a generally inexpensive
22 motion. But at best, they can knock their opponent out cold, right at the
23 beginning of round one.” *Hsu v. Puma Biotechnology, Inc.*, 213 F.Supp.3d
24 1275, 1281 (C.D. Cal. 2016).

25 Defendant Petty has unloaded a large pile of irrelevant exhibits upon Plaintiffs
and this Court, without proper authentication, in support of a motion to dismiss under
Fed. R. Civ. P. 12(b)(6), expanding the 7,000-word briefing limit from L.R. 11-6.1 to

1 unfairly gain an advantage in briefing his Motion. It is noted that Petty's motion brief,
2 Dkt. No. 50 lacked the certificate of compliance required by L.R. 11-6.2, while Petty's
3 brief seems to have a word count of 7,246.

4 Defendant Petty should not be permitted to burden the parties and this Court
5 with excessive, irrelevant, unnecessary briefing and exhibits.

6
7 **III. THE RELEVANT TIME FOR CONSIDERING THE EXISTENCE**
8 **OF A MATTER OF PUBLIC INTEREST AND PUBLIC FIGURE**
9 **STATUS IN THE SECOND AMENDED COMPLAINT RELATE TO**
10 **TIME BEFORE THE FIRST PUBLICATIONS BY DEFENDANTS**

11 The videos at issue in the Second Amended Complaint (SAC) were initially
12 published on July 13, 2025; July 14, 2025; July 22, 2025; July 25, 2025; February 13,
13 2026; and February 14, 2026, regarding defamatory statements and expressed malice
14 contained in those videos.

15 References to the status of the discussed topics as matters of public interest and
16 whether Yigal Mesika was at the time a person known as a public figure cannot be
17 supported from exhibits created in April 2026 or May 2026. Such evidence is not
18 reasonably relevant after the lawsuit is filed to establish that an April 2026 screen
19 capture accurately reflects that Mr. Mesika was a public figure when Defendant Petty,
20 Defendant Penguin Magic, Inc., or any third party could have created or edited such
21 online material to falsely establish what was not evident at the relevant time of the
22 statements made by Defendants. See, e.g., *Hsu v. Puma Biotechnology, Inc.*, 213
23 F.Supp.3d 1275, 1283-84 (C.D. Cal. 2016) (noting that the relevant time period was
24 roughly from July 2015 through May 2015, while the webpages provided were captures
25 in November 2015). See, also *CYBERsitter, LLC v. P.R.C.*, 805 F. Supp. 2d 958, 964
(C.D. Cal. 2011) (“(See Forum Non Conveniens Order (‘FNC Order’), Doc. 88, at 4 n.

3, 2010 WL 4909958 (explaining that the Court takes judicial notice only of *relevant* facts).”). (Emphasis in original).

In *ATEN International Co. v. Uniclass Technology Co.*, 932 F.3d 1364, 1368 (Fed. Cir. 2019) the court found that material that was merely in the same year as the critical date could not support a jury verdict. See, *McFall v. Perrigo Co.*, 2021 WL 2327936, at *3 (C.D. Cal., April 15, 2021) (party “did not authenticate [material], and the court has no basis to find that this document was obtained from a government website or is what Defendants claim it to be”).

As most of the materials submitted in Defendant’s RFJN are outside the relevant time, they thus fail the test of relevance established by the Rule of Evidence under Ninth Circuit law. See, e.g., *United States v. Gonzalez-Flores*, 418 F.3d 1093, 1098-99 (9th Cir. 2005) (evidence presenting even a “modest likelihood of unfair prejudice” is “high enough to outweigh the . . . probative value” of marginally relevant evidence); *United States v. Hitt*, 981 F.2d 422, 424 (9th Cir. 1992) (“Where the evidence is of very slight (if any) probative value, it’s an abuse of discretion to admit it if there’s even a modest likelihood of unfair prejudice or a small risk of misleading the jury.”). Thus, these facts are not properly the subject of judicial notice.

IV. PRIVATE WEBSITES OR SOCIAL MEDIA POSTS ARE NOT DEPENDABLE SOURCES OF INFORMATION THAT CANNOT BE REASONABLY QUESTIONED

None of the exhibits to Defendant’s RFJN comprise government documents or government sources. Private websites, including websites in the control of codefendant Penguin Magic, Inc., are generally sources that can be reasonably questioned, especially when viewed or accessed after this lawsuit was initially filed on August 22, 2025.

See, *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F.Supp.3d 1011, 1030 (C.D.

Cal. 2015) (“Here, to the extent that Gerritsen asks the court to take judicial notice of information on [opposing party’s] website, she fails to demonstrate that the information is capable of ‘accurate and ready determination’ in the territorial jurisdiction of the court, such that it is a proper subject of judicial notice. Accordingly, the court declines to take judicial notice of information published on private websites, including information that appears on [opposing party’s] website.”). See, *Ruiz v. Gap, Inc.*, 540 F.Supp.2d 1121, 1124 (N.D. Cal. 2008)(denying judicial notice for websites, stating that “Neither of these documents contain information which is ‘generally known within the territorial jurisdiction of the trial court’ or ‘capable of accurate and ready determination.’ In short, these materials are not remotely akin to the type of facts which may be appropriately judicially noticed.”).

See, *Masimo Corp. v. Sotera Wireless*, Case No. 19-cv-01100-BAS-NLS, slip opinion, p. 7 (S.D. Cal., Dec 09, 2020)(“Similarly, regarding the webpage, the Court does not know who maintains the website or how information on the webpage is obtained. Thus, the facts contained therein are not from sources whose accuracy is beyond question. Therefore, judicial notice is inappropriate”).

A request for judicial notice should be denied when a party seeks to judicially notice “undated, unverified websites “without an accompanying declaration as to when, where, and how such images or statements were obtained.” *CYBERsitter, LLC v. P.R.C.*, 805 F. Supp. 2d 958, 963 (C.D. Cal. 2011).

RFJN/Exhibit No.	Description	URL?	Date?	Authentication Conceded?
1	Promotional Material	No	No	No
2	“Composite”	No,	No, partial	No

		partial		
RFJN/Exhibit No.	Description	URL?	Date?	Authentication Conceded?
3	Facebook post	No, incorrect	04/30/2026	No
4	Facebook video post	No, incorrect	04/30/2026	No
5	Defendant Penguin Magic Post	No, incorrect	04/30/2026	No
6	Highlight Reel	No, incorrect	4/30/2026	No
7	Article	No, incorrect	No	No
8	Nielsen Magic Article	No	5/1/2026	No
9	Still from video	No	4/30/2026	No
10	Still from video	No	4/30/2026	No
11	Penguin Magic Podcast Interview	No	4/30/2026	No
12	Magic Word Podcast Interview	No	4/30/2026	No
13	Podcast Interview	No	4/30/2026	No

PLAINTIFFS' OPPOSITION TO DEFENDANT'S RFJN

RFJN/Exhibit No.	Description	URL?	Date?	Authentication Conceded?
14	Vanish Magazine Cover	No	4/30/2026	No
15	Penguin Magic Magazine	No	No	No
16	Still from video	No	4/30/2026	No
17	Facebook Post	No	4/30/2026	No
18	YouTube Video Still	No	5/1/2026	No
19	YouTube Video Still	No	4/30/2026	No
20	Facebook Post	No	5/1/2026	No
21	Facebook Post	No	5/1/2026	No
22	Penguin Magic Website Composite	No	4/30/2026	No
23	Penguin Magic Website Composite	No	4/30/2026	No
24	Magic Shop Listing	No	4/30/2026	No
25	Magic Shop Listing	No	4/30/2026	No
26	Magic Duck YouTube	No	4/30/2026	No

PLAINTIFFS' OPPOSITION TO DEFENDANT'S RFJN

RFJN/Exhibit No.	Description	URL?	Date?	Authentication Conceded?
27	Penguin Magic Website Composite	No	5/1/2026	No
28	Zorbi YouTube	No	4/30/2026	No
29	Composite of YouTube Stills	No	4/30/2026	No
30	Composite of YouTube Stills	No	4/30/2026	No
31	Composite of YouTube Stills	No	5/1/2026	No
32	Composite of YouTube Stills	No	4/30/2026	No
33	Composite of YouTube Stills	No	4/30/2026	No
34	Composite of YouTube Stills	No	4/30/2026	No
35	Composite of YouTube Stills	No	4/30/2026	No
36	Facebook Post	No	No	No
37	Facebook Post	No	No	No
38	Facebook Post	No	No	No
39	Facebook Post	No	No	No
40	Online Article	No	5/1/2026	No
41	YouTube Still	No	5/1/2026	No

PLAINTIFFS' OPPOSITION TO DEFENDANT'S RFJN

RFJN/Exhibit No.	Description	URL?	Date?	Authentication Conceded?
42	Online Article	No	5/1/2026	No

Exhibit 2 is described in Paragraph 3 of the Declaration of Alex. J. Shepard (Dkt. No. 51-43). No assertion that Exhibit 2 is a true and correct copy of what Declaration purports it to be. The alleged screenshot is purported to be a screenshot of a YouTube video available at <https://www.youtube.com/watch?v=EC5T0OC-pxU>, from May 1, 2026. At least on May 17, 2026, this video is not available. See Declaration of Frederic M. Douglas, filed concurrently paragraph 3, Exhibit A.

Exhibits 3, 4, 6 list the same URL as https://www.awesomescreenshot.com/my_items, which does not lead to the documents Defendant attached as Exhibits 3, 4, 6. See Declaration of Frederic M. Douglas, filed concurrently, paragraph 4.

Exhibits, 5, 11, 15, 22, 23, and 27 originate from co-defendant Penguin Magic, not an unbiased source, especially not on April 30, 2026 or May 1, 2026.

The Declaration of Alex J. Shepard makes no assertion that Exhibit 7 is a true and correct copy of what it purports it to be. The Declaration does state at the end that “I declare under penalty of perjury that the foregoing is true and correct,” which does not make clear that this sentence applies to anything more than the statements above, leaving unstated as to the true and correct nature of the exhibits.

The Declaration of Casey Spring (Dkt. No. 51-44) makes no assertion that any of the Exhibits referenced – Exhibits 3-6, 8-36, 40-42 are true and correct copies of what the Declaration purports it them to be. The Declaration does state at the end that “I declare under penalty of perjury that the foregoing is true and correct,” which does not make clear that this sentence applies to anything more than the statements above, leaving unstated as to the true and correct nature of the exhibits.

1 None of the URLs provided in Paragraph 21 of the Declaration of Casey Spring,
2 referring to Exhibit 22, at least on May 17, 2026, lead to any available result. See
3 Declaration of Frederic M. Douglas, filed concurrently, paragraph 5, Exhibit B, thereto.

4 The first URL
5 ([https://www.penguinmagic.com/timemachine/2010/10/03/?srsltid=AfmBOoqgmr](https://www.penguinmagic.com/timemachine/2010/10/03/?srsltid=AfmBOoqgmrT38aEqdv6aWT8gpBd1EQxGxp9DiOBrL0QedQOqaWCixl)
6 [T38aEqdv6aWT8gpBd1EQxGxp9DiOBrL0QedQOqaWCixl](https://www.penguinmagic.com/timemachine/2010/10/03/?srsltid=AfmBOoqgmrT38aEqdv6aWT8gpBd1EQxGxp9DiOBrL0QedQOqaWCixl)) provided in
7 Paragraph 22 of the Declaration of Casey Spring, referring to Exhibit 23, at least on
8 May 17, 2026, does not lead to the image provided. See Declaration of Frederic M.
9 Douglas, filed concurrently, paragraph 6, and Exhibit C thereto.

10 **V. CONCLUSION**

11 For all the foregoing reasons, the Court should:

12 DENY judicial notice for Exhibits 1-42.

13
14 May 20, 2026

Respectfully submitted,

15
16
17 /s/ Frederic M. Douglas

18 Frederic M. Douglas
19 Attorney for Plaintiffs
20 MESIKA MAGIC and YIGAL MESIKA

21 The undersigned counsel of record for Plaintiffs certifies that this brief
22 contains 2,477 words, which complies with the word limit of L.R. 11-6.1.

23 /s/ Frederic M. Douglas

24 Frederic M. Douglas
25 Attorney for Plaintiff
MESIKA MAGIC and YIGAL MESIKA
May 19, 2026

PLAINTIFFS' OPPOSITION TO DEFENDANT'S RFJN