**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

**KENNETH GOMEZ,**

Plaintiff,

**vs.** **No. 1:10-cv-594**

**ELEVENTH JUDICIAL DISTRICT COURT,**

Defendant.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR JUDICIAL NOTICE OF CRIMINAL ACTS**

Defendant, the Eleventh Judicial District Court, through counsel Robles, Rael & Anaya, P.C. (Luis Robles, Esq.), hereby respond to Plaintiff's Motion for Judicial Notice of Criminal Acts, *filed September 6, 2010 [Docket No. 51]* ("Judicial Notice Motion") and Plaintiff State's Memorandum Brief in Support of Motion for Judicial Notice of Criminal Acts, *filed September 6, 2010 [Docket No. 52]* ("Judicial Notice Brief").

Plaintiff has failed to establish that his legal arguments are judicially-noticeable adjudicative facts under Fed. R. Evid. 201.

**BACKGROUND**

Rule 201 allows this Court to take judicial notice of "adjudicative facts." Id. at (a). To take judicial notice of a fact, this Court must find that the fact is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Id. at (b). On a party's motion, judicial notice is mandatory if the Rule 201(b) standard is met and if the moving party supplies the necessary information. Id. at

(c). A court's judicial notice decision under Rule 201 is reviewed for abuse of discretion. See United States v. Wolny, 133 F.3d 758, 764-65 (10th Cir. 1998).

**ARGUMENT**

Gomez asks this court to take judicial notice of four "facts": (1) that no one validly holds New Mexico state office, (2) that four judges of this Court are holding office "under false pretenses" because in the past they supposedly falsely held themselves out as New Mexico officials and received emolument as such, (3) that the judges of this Court assigned to this case have issued orders while lacking jurisdiction, and (4) that Gomez is being held in involuntary servitude under the Thirteenth Amendment of the United States Constitution either because his case has been removed to federal court or because this Court generally requires that individuals admitted to its bar be licensed attorneys (it is unclear which). Judicial Notice Motion, § II, pp. 2-4; Judicial Notice Brief, § III, pp. 2-3.

This Court cannot take judicial notice of these "facts" because they are legal conclusions, not facts; because they are subject to reasonable dispute; and because they are wrong.

**I. Plaintiff's "Facts" Are Legal Conclusions.**

Rule 201 only allows judicial notice of "adjudicative" facts. "Rule 201 authorizes the court to take notice only of 'adjudicative facts,' not legal determinations." Taylor v. Charter Med. Corp., 162 F.3d 827, 831 (5th Cir. 1998). "Adjudicative facts" are "facts concerning the immediate parties-who did what, where, when, how, and with what motive or intent." Rule 201, Advisory Committee Notes, citing Kenneth Davis, 2 Administrative Law Treatise 353. But Plaintiff's so-called "facts" go beyond and ask this Court to make conclusions about the law as applied to this case—that the acts or omissions of the judges of the Eleventh Circuit Judicial District violate New Mexico bond laws and strip them of office; that the acts and omissions of

judges of this Court who were formerly New Mexico officials invalidate federal financial disclosure law; that this Court lacks jurisdiction; and that the Thirteenth Amendment has been violated. Thus, while this Court could probably take judicial notice, e.g., of this Court's requirements for admission to practice before it, or of New Mexico's licensure requirements for attorneys, Plaintiff has actually asked this Court to take "judicial notice" of the legal conclusion that these requirements supposedly violate the Thirteenth Amendment.

**II. Plaintiff's "Facts" Are Subject to Reasonable Dispute.**

This Court may only take notice of adjudicative facts if they are either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." It is safe to say that none of Plaintiff's facts meet these standards.

Plaintiff does not offer any evidence to suggest that the New Mexico public generally has any inkling of his theories about the complete invalidity of New Mexico office holding, criminal conspiracies that extend to this Court, and the hitherto unsuspected slavery component of attorney bar admissions. They are therefore not judicially noticeable under Rule 201(b)(1). Compare Cochran v. NYP Holdings, Inc., 58 F. Supp. 2d 1113, 1127 (C.D. Cal. 1998) (taking judicial notice of a fact because of its overall notoriety and widespread coverage), aff'd, 210 F.3d 1036 (9th Cir. 2000).

Neither has Plaintiff offered any unimpeachable sources for his allegations under Rule 201(b)(2). This prong is usually used, e.g., to take judicial notice of a statement on official websites, not *outré* legal theories. See O'Toole v. Northrop Grumman Corp., 499 F.3d 1218, 1224 (10th Cir. 2007) (holding that it was appropriate to take "judicial notice under Federal Rule of Evidence 201(b)(2)" of documents on a litigant's website).

Plaintiff does not refer this Court to any unimpeachable sources for his "facts." He does cite a number of cases in which Defendant was not a party, but it is generally established that inappropriate to use judicial notice to bind the parties to a case to findings of fact in other cases to which they may not have been parties. While courts can take judicial notice of the fact that other litigation has occurred, "courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are disputable and usually are disputed." General Electric Capital Corporation v. Lease Resolution Corporation, 128 F.3d 1074, 1082 n.6 (7th Cir. 1997).

In any case, the cases and authority Plaintiff cites does not establish the "facts" that he claims they do. Bowman Bank & Trust Co. v. First Nat. Bank of Albuquerque, 18 N.M. 589, 139 P. 148 (1914), and Bd. of Com'rs of Guadalupe County v. Dist. Court of Fourth Judicial Dist., 29 N.M. 244, 223 P. 516 (1924), did not state any facts concerning the current judges of the Eleventh Judicial District and any bonds they may have taken out. Orosco v. Cox, 75 N.M. 431, 405 P.2d 668 (1965) and the Ethics in Government Act, Pub. L. No. 95-521, 92 Stat. 1824, do not state that four judges of this Court are acting or have acted under false pretenses. Cohens v. State of Virginia, 19 U.S. 264, 5 L. Ed. 257 (1821), and 28 U.S.C. § 1446 do not specifically state that this Court lacks jurisdiction over the present case. The U.S. Const. amend XIII, 28 U.S.C. § 1446, 42 U.S.C. §§ 1988 and 1995, and the Peonage Cases, 123 F. 671 (M.D. Ala. 1903), do not state that Kenneth Gomez is being compelled to labor in a condition of involuntary servitude. Therefore, because the authorities Plaintiff cites do not establish the "facts" he wants judicially noticed, they cannot be judicially noticed under Rule 201(b)(1).

In addition, Plaintiff seems to believe that his own filings in this case are documents whose "accuracy cannot reasonably be questioned." Such is not the case. Plaintiff cannot

establish the adjudicative facts by pointing to his second amended complaint or to his Objection to Order Denying Objection to the Prejudicial Order Entered, the Untrustworthiness of Assigned Judges, and the Erroneous Caption of the Case, *filed August 23, 2010 [Docket No. 50]* ("Objection to Order Denying Objection"). Plaintiff assumes that because Defendant did not dispute the statements made in that document, the statements are indisputable. Plaintiff is wrong. Defendant did not respond to that document because it contained no request for relief and because it was addressed to the President and other persons, not Defendant. Defendant has no intention to participate in Plaintiff Gomez's silly loop of objecting to orders, objecting to orders that reject his objections, objecting to orders that reject his objections to the rejection of his objections, and so on. More fundamentally, whether Defendant disputed a particular fact in a particular filing is irrelevant for Rule 201 purposes. For this Court to take judicial notice of a fact, it must be not just undisputed, but indisputable. See Hennessy v. Penril Datacomm Networks, Inc., 69 F.3d 1344, 1354 (7th Cir.1995) (for a fact to be judicially noticed pursuant to Rule 201, "indisputability is a prerequisite"). The allegations in the Objection to Order Denying Objection are not.

**III. Plaintiff's "Facts" Are Wrong.**

Plaintiff's "facts" are far from indisputable. In fact, they are wrong, as Defendant has shown in multiple filings.

Plaintiff has attacked the integrity of this Court in other filings. Defendant have explained the defects in Plaintiff's attack in their responses to those filings and now adopt those explanations by reference. See Defendant's Amended Reply in Support of Removal, *filed July 16, 2010 [Docket No. 22]*, pp. 16-19, § III.B. Defendant has also upheld the jurisdiction of this Court. Id., *passim*.

To his usual litany, Plaintiff Gomez has now added that removal violates the Thirteenth Amendment or that attorney licensure violates the Thirteenth Amendment. These allegations are irrelevant to this case because they were never pled in any of Plaintiff's Complaints. Generalized references to civil rights are not adequate pleading because they neither state the legal basis (the Thirteenth Amendment) nor the factual basis (removal and attorney licensure) for Plaintiff's allegation. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007) (holding that complaints must include enough facts to make the claim plausible) and Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (same). The allegation should therefore be ignored.

Further, Gomez' Thirteenth Amendment allegations are completely unfounded as a matter of law. No case has ever held that the removal statute violates the Thirteenth Amendment. The Thirteenth Amendment only prohibits forced labor. United States v. Kozminski, 487 U.S. 931 (1988) (stating "we find that in every case in which this Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction"). Removal does not constitute forced labor because the Plaintiff is free to dismiss his case, fail to prosecute his case, or simply to not bring federal claims in state court in the first place. For the same reason, attorney licensure does not violate the Thirteenth Amendment because the citizen is not compelled to be admitted to a bar if he does not choose to practice law. Indeed, attorney licensure and other licensing requirements have been upheld against Thirteenth Amendment challenge. In Verner v. State of Colo., 533 F. Supp. 1109, (D. Colo. 1982) aff'd, 716 F.2d 1352 (10th Cir. 1983), the court stated that

> The plaintiff claims that the requirement that attorneys attend C.L.E. classes violates the thirteenth amendment prohibition against involuntary servitude. Even if attending C.L.E. classes could be considered "servitude," it is clearly not servitude that is compelled by law or force. No involuntary servitude exists where the claimant has an option not to serve.

Id. at 1118. See also Betancur v. Florida Dept. of Health, 296 F. App'x. 761, 764 (11th Cir. 2008) (the "argument that the refusal to license naturopaths deprives [plaintiff] of the opportunity to pursue her livelihood does not, as she contends, implicate the Thirteenth Amendment, which prohibits forced servitude").

**WHEREFORE**, Defendant respectfully requests that this Court enter an Order, which grants the following relief:

A. Denies Gomez' Plaintiff's Motion for for Judicial Notice of Criminal Acts, *filed September 6, 2010 [Docket No. 51]*

B. Awards Defendant its attorney's fees and costs; and

C. Orders all other relief this Court deems just and proper

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Luis Robles
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I hereby certify that on this 22nd day of September 2010, the foregoing was electronically served through the CM/ECF system to the following:

Kenneth Gomez
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Bloomfield, NM 87413

/s/ Luis Robles
Luis Robles