

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-03530-RBJ

ACA INTERNATIONAL and FRESNO CREDIT BUREAU,

Plaintiffs,

v.

ADMINISTRATOR OF THE UNIFORM CONSUMER CREDIT CODE, MARTHA
FULFORD, in her official capacity, ATTORNEY GENERAL OF COLORADO, PHILIP
WEISER, in his official capacity,

Defendants.

RESPONSE IN OPPOSITION TO PLAINTIFFS’ REQUEST FOR JUDICIAL NOTICE

Defendants Colorado Uniform Consumer Credit Code Administrator Martha Fulford (“the Administrator”) and Attorney General Philip Weiser (“the Attorney General”) (collectively, “Defendants”) respectfully submit this response in opposition to Plaintiffs’ Request for Judicial Notice.

A written “request” asking the court to issue an order is a motion. Fed. R. Civ. P. 7(b)(1). Despite submitting a motion to this court, Plaintiffs did not confer beforehand with Defendants as required by D.C.COLO.LCivR 7.1(a).

INTRODUCTION

Plaintiffs’ request for judicial notice should be denied. First, the video is not an appropriate subject of judicial notice under Federal Rule of Evidence 201 because its meaning is subject to reasonable dispute, unlike the narrow categories of indisputable facts courts routinely notice. Plaintiffs also had every opportunity to plead any allegations tied to the video—twice—after it was posted. They chose not to, and cannot now bypass the Rules of Civil Procedure and Evidence

by attempting to introduce interpretive material through judicial notice. In any event, as explained in Defendants' Reply in Support of their Motion to Dismiss in Part, filed concurrently herewith, the Facebook video Plaintiffs offer is irrelevant and does not establish that their claims against the Attorney General fall within the *Ex parte Young* exception to sovereign immunity. Plaintiffs' request is improper in substance, procedurally unsound, and incompatible with Rule 201. It should be denied.

I. Judicial Notice Is Improper Because the Video's Meaning Is Subject to Reasonable Dispute.

Judicial notice allows the court "to accept a matter as proved without requiring the party to offer evidence of it." *Fuqua v. Santa Fe Cnty. Sheriff's Off.*, 157 F.4th 1288, 1298 (10th Cir. 2025) (quoting *United States v. Estep*, 760 F.2d 1060, 1063 (10th Cir. 1985)). When a court takes judicial notice, it "preclude[s] a party from introducing contrary evidence and, in effect, direct[s] a verdict against him as to the fact noticed." *Id.* (quoting *United States v. Boyd*, 289 F.3d 1254, 1258 (10th Cir. 2002)). Under Federal Rule of Evidence 201, judicial notice is limited to facts "not subject to reasonable dispute" because they are either (1) generally known within the court's territorial jurisdiction or (2) capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned. Plaintiffs' submission fails these requirements.

While the Facebook post may be publicly accessible, its meaning and significance are plainly subject to reasonable dispute. For example, Plaintiffs ask this Court to interpret statements such as "We will fight for these protections" (Dkt. 40 at 8 (citing Dkt. 39)) to mean that the Attorney General could plausibly bring an enforcement action against credit reporting agencies that violate the Colorado Consumer Credit Reporting Act. But in context, that statement could be

equally understood as directed at national political developments, expressing opposition to efforts by the current Presidential Administration to weaken consumer protections.

Plaintiffs do not offer the video merely to establish its existence, but to draw interpretive conclusions about its meaning and as evidence of enforcement intent. This is not an appropriate application of judicial notice. *The Est. of Lockett by & through Lockett v. Fallin*, 841 F.3d 1098, 1111 (10th Cir. 2016) (news articles not appropriate for judicial notice as notice should only be taken of what is “publically [*sic*] known, not for the truth” of its contents).

Determining the video’s meaning requires interpreting context, assessing speaker intent, and weighing competing interpretations. This is exactly what Rule 201 forbids. As the Tenth Circuit explained in *Fuqua*, judicial notice is improper when a submission is “subject to reasonable dispute” or when consideration would require the court to “weigh evidence and make factual findings.” 157 F.4th at 1299. In *Fuqua*, three police officer defendants to an excessive force claim sought to use judicial notice to introduce body camera footage. *Id.* at 1298. The court rejected the attempt. *Id.* at 1299. “[I]f the district court had considered the videos, it would have had to weigh evidence and make factual findings—such as whether the officers saw [the victim] drop his BB gun, or whether [the victim] ran toward the occupied car.” *Id.* This was inappropriate at the motion to dismiss stage. “[T]he court’s function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff’s complaint alone is legally sufficient to state a claim for which relief may be granted.” *Id.* The same is true here. Plaintiffs’ motion should be denied.

Plaintiffs’ request bears no resemblance to the narrow circumstances in which judicial notice is appropriate. Courts typically use judicial notice for indisputable facts, such as the

existence of a statute or regulation, the filing date of a court document, or basic geographic or scientific facts. *See Fuqua*, 157 F.4th at 1298. The Facebook video is none of those. It is subject to varying interpretations, context-dependent, and plainly the subject of reasonable dispute, making it unsuitable for judicial notice and improper to admit as an indisputable fact.

II. Plaintiffs Could and Should Have Pleaded Any Allegations Relating to the Video in Their Complaint but Did Not, and Having Amended Twice, They Cannot Circumvent the Rules Now.

The Second Amended Complaint is the operative pleading before the Court. Plaintiffs have already amended their complaint twice, and the Facebook video predated both amendments. The Facebook video was posted in November 2025, well before both amendments. Plaintiffs therefore had ample opportunity to allege anything they now claim the video establishes, yet they did not. These litigation choices define the record at the Rule 12 stage, not extrinsic material they declined to include.

The Federal Rules of Civil Procedure require parties to present factual allegations in their complaint, supported by well-pleaded facts. And Rule 12(b) governs what the Court may consider when evaluating a motion to dismiss. Plaintiffs' attempt to introduce extrinsic material through judicial notice is an effort to circumvent those rules and supplement their pleadings after the fact. *See Fuqua*, 157 F.4th at 1299 (extrinsic material introduced through judicial notice to alter pleading allegations is improper). Parties are not permitted to avoid pleading requirements by presenting outside evidence under the guise of judicial notice. Plaintiffs' procedural posture underscores why this maneuver is improper: they had multiple opportunities to plead allegations related to the video, they chose not to, and judicial notice cannot be used now to repair those omissions or reshape the Second Amended Complaint.

Courts evaluating Rule 12 motions may consider the complaint, documents referenced therein, and indisputable matters of public record. *Equal Emp. Opportunity Comm'n v. 'Murica, LLC*, 694 F. Supp. 3d 1356, 1365 (D. Colo. 2023). Plaintiffs are attempting to use judicial notice to support an argument at the motion-to-dismiss stage, even though the evidence is extrinsic, disputed, and not referenced in the complaint. This is improper. Plaintiffs' attempt to supplement their pleadings through judicial notice should be rejected outright.

CONCLUSION

Because the Facebook video is not an appropriate subject for judicial notice and lies outside the pleadings, the Court should deny Plaintiffs' Request for Judicial Notice.

DATED this 28th day of August, 2026.

PHILIP J. WEISER
Attorney General, State of Colorado

/s/ Kevin J. Burns
Kevin J. Burns, Senior Assistant Attorney General
Talia Kraemer, Senior Assistant Attorney General
1300 Broadway, 9th Floor
Denver, CO 80203
720-508-6000
Kevin.Burns@coag.gov
Talia.Kraemer@coag.gov