

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

AMERICAN HOSPITAL ASSOCIATION and  
HEALTH FORUM LLC,

*Plaintiffs,*

v.

PATIENTRIGHTSADVOCATE.ORG, INC.

*Defendant.*

Case No. 1:25-cv-15137

Hon. Martha Pacold

**REPLY IN SUPPORT OF DEFENDANT’S MOTION FOR JUDICIAL NOTICE**

Plaintiffs do not seriously engage with PRA’s motion for judicial notice. Plaintiffs make no attempt to argue that any particular exhibit PRA presents is inadmissible under the standard for judicial notice, thereby forfeiting any concrete objections to them. Plaintiffs instead broadly assert that it is inappropriate to seek judicial notice of facts undermining a complaint’s allegations. But Plaintiffs’ categorical objection is both overbroad and incorrect. Many of the documents PRA seeks to notice supplement or flesh out facts alleged in the complaint rather than contradict them. And where properly noticeable exhibits contradict allegations in the complaint, it is the complaint that must yield, not the exhibits. All of this is a completely appropriate use of judicial notice, even at the motion to dismiss stage.

In any event, it is not hard to see why Plaintiffs have raised no concrete objections to the *specific* documents for which PRA requests judicial notice. Each of PRA’s exhibits is plainly noticeable on a motion to dismiss, and the facts for which PRA cites them are not genuinely disputed. Indeed, the cited exhibits consist of government documents, tax filings, and Plaintiffs’ own documents; Plaintiffs do not dispute the accuracy or authenticity of any of those documents. Finally, Plaintiffs vastly overstate the stakes of this motion for judicial notice. Although PRA’s exhibits properly support its case for dismissal, this Court can grant PRA’s motion to dismiss without relying on any of them.

I. Plaintiffs have forfeited any objection to PRA’s request for judicial notice of the 10 specific documents at issue. Parties must raise evidentiary objections with “specificity.” *United States v. Echols*, 104 F.4th 1023, 1029 (7th Cir. 2024). Judicial notice is no exception; a party that “fail[s] to use [its] opportunity” to raise concrete objections to a request for judicial notice forfeits those objections. *Goplin v. WeConnect, Inc.*, 893 F.3d 488, 491 (7th Cir. 2018) (Barrett, J.). That is the case here. Plaintiffs do not even mention the specific documents for which PRA seeks judicial notice, much less argue that each specific exhibit is not noticeable under the governing legal standard.

Plaintiffs instead generally attack the legitimacy of seeking judicial notice on a motion to dismiss. *See* MJN.Opp. (Doc.43) 2-4. But their attack badly misses the mark. In addition to the complaint, courts ruling on a motion to dismiss routinely consider documents subject to judicial notice, documents incorporated by reference into the complaint, and documents otherwise integral to the complaint. MJN (Doc.32) 1. There is no rule holding that otherwise noticeable documents cease to be noticeable when they contradict a complaint’s allegations. *See* MJN.Opp.2-4.

In fact, the opposite is true. “Although a district court, in a motion to dismiss, must take the plaintiff’s well-pleaded facts as true, when an exhibit ... ‘incontrovertibly contradicts the allegations in the complaint, the exhibit ordinarily controls, even when considering a motion to dismiss.’” *Esco v. City of Chicago*, 107 F.4th 673, 678-79 (7th Cir. 2024); *see also Radivojevic v. Daley*, 12 F. App’x 391, 392 (7th Cir. 2001) (affirming dismissal of complaint because “records ... of which the district court properly took judicial notice ... squarely contradict [the plaintiff’s] allegations”).

Plaintiffs repeatedly cite caselaw setting forth the general principle that a complaint’s allegations must be accepted as true on a motion to dismiss. *See* MJN.Opp.2-4. But they cite no authority undermining the legitimacy of the exception for properly noticeable exhibits. The proper question for this motion, then, is whether PRA’s exhibits are noticeable, not whether they contradict

the complaint. And on that point, Plaintiffs offer no concrete arguments, thereby forfeiting any challenge to the specific documents PRA cites.

Plaintiffs fault PRA for seeking notice of “exhibits” rather than “facts,” MJN.Opp.5-6, but it is standard practice for litigants to request and courts to grant judicial notice of “documents” or “exhibits.” *See, e.g., Chavez-Deremer v. Miller*, 154 F.4th 516, 519 n.1 (7th Cir. 2025) (“we take judicial notice of the court documents in exhibits M and N”); *Tobey v. Chibucos*, 890 F.3d 634, 644 (7th Cir. 2018) (“judicial notice of ... exhibits” on a motion to dismiss); *Ayele v. Holder*, 564 F.3d 862, 872 (7th Cir. 2009) (granting request to “take judicial notice of the exhibits”); *Bernardo-De La Cruz v. Garland*, 114 F.4th 883, 891 n.5 (7th Cir. 2024) (“we may take judicial notice of agency documents”); *Fosnight v. Jones*, 41 F.4th 916, 922 (7th Cir. 2022) (“district courts can take judicial notice of public court documents”).

To be sure, not every fact in a document subject to judicial notice can be taken as true; a previous court decision, for instance, is noticeable, even if the factual findings in that decision are not treated as conclusive. *See Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1083 (7th Cir. 1997). But to the extent Plaintiffs believed that PRA in its motion to dismiss relied on disputable facts within noticeable documents, they had an opportunity to raise concrete objections to those specific facts. They did not.

Plaintiffs also repeatedly emphasize that PRA’s exhibits comprise “nearly 200 pages,” as though a page limit for judicially noticeable materials were hidden somewhere in the Federal Rules. MJN.Opp.1, 4. In reality, PRA’s motion to dismiss and reply cite only a small fraction of these pages. But for each exhibit cited, PRA was sure to include the full document (such as full tax filings) to avoid even the remote possibility of being accused of selective quotation or of prejudicing Plaintiffs by including only an excerpt. PRA’s commitment to fair play and completeness should not be held against it.

**II.** Plaintiffs avoid making concrete objections to PRA's 10 specific exhibits for good reason. They have none. Plaintiffs do not dispute the accuracy or authenticity of any of the cited documents, all of which consist of government documents, tax filings, and Plaintiffs' own publications. Even if Plaintiffs hadn't forfeited particularized objections to PRA's exhibits, they would all be properly subject to judicial notice.

**A.** The complaint directly quotes the *Manual Purchase Webpage* (Doc.31-5) and relies on it to tee up Plaintiffs' breach of contract claims. MJN.1-2. As a document "referred to in the plaintiff's complaint" and "central to [its] claim," the *Manual Purchase Webpage* must be "considered part of the pleadings" on a motion to dismiss. *Wright v. Associated Ins. Companies Inc.*, 29 F.3d 1244, 1248 (7th Cir. 1994). It is the paradigmatic example of an exhibit properly considered on a motion to dismiss. Yet, in opposing PRA's motion *in toto*, Plaintiffs characterize reliance on even this document as "an affront to the pleading standard," MJN.Opp.6, underscoring that Plaintiffs have not in any way tailored their objections to the specific materials and arguments PRA made in its motion for judicial notice.

**B.** Plaintiffs do not deny that they relied heavily on the NUBC Protocol (Doc.31-1) in drafting the complaint, or that the document is authentic and sets forth the rules and procedures governing the NUBC. MJN.2-3. This comes as no surprise, since every page of the document declares on the bottom, "Copyright 2009-2020 American Hospital Association." NUBC Protocol 1-15. As a document integral to the complaint, it too must be "considered part of the pleadings." *Wright*, 29 F.3d at 1248; MJN.2-3. And Plaintiffs' failure to dispute the authenticity of a document AHA itself has purported to author also makes it noticeable under the general judicial notice standard. *Goplin*, 893 F.3d at 491; MJN.3.

**C.** The tax-document exhibits are noticeable as public records obtained from government websites. MJN.4. Plaintiffs do not dispute that courts regularly take judicial notice of non-profits' publicly filed tax documents. MJN.4. PRA cites its own tax documents (Docs.31-7, 31-8) only to

establish that it is a 501(c)(3) non-profit. *See* MTD.8, 20. This fact is also evident from the attachments to Plaintiffs' complaint. *See* Doc.1-4 at 1. And Plaintiffs do not dispute this fact in their opposition to the motion to dismiss. *See* MTD.Opp. (Doc.42) 22. As for AHA's Form 990 (Doc.31-2), Plaintiffs do not and cannot dispute representations they themselves made to the IRS.

**D.** Formally issued publications from the Centers for Medicare & Medicaid Services are also judicially noticeable public records. MJN.4. PRA cites two guidance documents (Docs.31-3, 31-4) to support the point that the 837I HIPAA standard and Medicare reimbursement regulations require the use of the *Manual* and its accompanying codes. *See* MTD.5-6, 11. Plaintiffs admit that both these facts are true. MTD.Opp.5, 11; *see also* Compl. (Doc.1) ¶¶33, 40.

PRA also cites two CMS transmittal notices (Docs.31-9, 31-10) communicating that the NUBC had adopted specific codes proposed by CMS. *See* MTD.14. Plaintiffs had an opportunity to dispute the authenticity or accuracy of these public records, but chose not to do so, *see* MTD.Opp.11-12, thereby forfeiting any objection to judicial notice, *Goplin*, 893 F.3d at 491.

**E.** AHA's *Updated Price Transparency Guidelines* (Doc.31-6), which are taken from its own website, are not subject to reasonable dispute. MJN.4-5. PRA cites this statement not for the truth of the matter but simply to note that the statement exists and that AHA made it. *See* MTD.8. Plaintiffs nowhere challenge its authenticity.

**III.** Finally, it is necessary to clarify the stakes of this motion for judicial notice. Plaintiffs repeatedly contend that PRA can make a case for dismissal only by “construct[ing] an alternative factual universe untethered to the complaint's allegations.” MJN.Opp.4; *see also* MTD.Opp.1. It is certainly true that PRA's exhibits support and strengthen its case for dismissal. And notice of them is particularly warranted given the complaint's effort to “evad[e] dismissal” by omitting or misrepresenting basic facts about the regulatory scheme of which the *Manual* is a part. *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012); *see, e.g.*, Compl. ¶30 (omitting federal

agencies from the NUBC's list of members); ¶70 (alleging that other NUBC members act "at the express direction and control" of AHA, when in fact each member has an equal vote). But this Court can grant PRA's motion to dismiss on *any* of its asserted grounds without relying on any of PRA's exhibits.

Start with PRA's three grounds for challenging the validity of Plaintiffs' asserted copyrights. PRA's *first* ground follows from the fact that the NUBC is a designated standard maintenance organization whose codes are used in HIPAA standards. MTD.10-11. Plaintiffs admit that the NUBC is a DSMO, and this fact is also clear from the *Federal Register*, whose "contents ... shall be judicially noticed," 44 U.S.C. §1507. *See* MTD.5; MTD.Opp.4. The *Federal Register* establishes that the 835 standard requires the NUBC's codes, MTD.5, and Plaintiffs admit that the 837I standard does as well, MTD.Opp.5, 11; *see also* Compl. ¶33. PRA's *second* ground follows from the fact that federal agencies are members of the NUBC and that the NUBC votes on every change to the *Manual*. MTD.11-14. Plaintiffs admit both these facts. MTD.Opp.5, 8-9, 12; Compl. ¶37. And the *Federal Register* establishes that federal agencies have been members of the NUBC from its inception. MTD.2-3. PRA's *third* ground follows from the fact that federal and state regulations incorporate the *Manual* by reference. MTD.15-19. The Court need only consult the text of federal and state regulations to confirm that this is so. *See* MTD.6 & nn. 2-3.

Fair use is similar. MTD.19-24. That the *Manual* has been incorporated into federal and state law suffices to show that the first three fair use factors strongly favor PRA and that the final factor is at most equivocal, and thus unable to overcome the first three. MTD.19-24. Additional facts from the documents for which PRA seeks judicial notice certainly bolster the case for fair use, but the fact of incorporation into law alone suffices to prove it. Finally, PRA's attacks on Plaintiffs' contract claims turn on the interpretation of the contracts and on their validity under federal and Illinois public policy.

Both these considerations are pure issues of law. *Hartnett v. Jackson Nat'l Life Ins. Co.*, 170 F.4th 605, 609 (7th Cir. 2026); *Rahimzadeh v. Ace Am. Ins. Co.*, 142 F.4th 972, 976 (7th Cir. 2025).

### CONCLUSION

Plaintiffs have forfeited any objection to the specific documents for which PRA seeks judicial notice, and their general objections to the use of judicial notice at the motion to dismiss stage are unavailing. This Court should grant the motion, take notice of the 10 exhibits attached to PRA's motion to dismiss, and consider them when ruling on that motion. Even if the Court denies this motion for judicial notice, it should still grant PRA's motion to dismiss.

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Respectfully submitted,

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