



Stradley Ronon Stevens & Young, LLP

1037 Raymond Blvd

Suite 920

Newark, NJ 07102

Telephone 862.682.7244

Fax 862.682.7263

www.stradley.com

Andrew I. Hamelsky

Jenifer A. Scarcella

ahamelsky@stradley.com

jscarcella@stradley.com

862.682.7246

March 11, 2023

Via ECF

Hon. Esther Salas
United States District Court
District of New Jersey
Martin Luther King Building &
U.S. Courthouse
970 Broad Street
Newark, New Jersey

**Re: Kaul v. Horizon Blue Cross Blue Shield and Robert A. Marino
23-cv-00518 (ES)(AME)**

Dear Judge Salas:

This firm represents Defendants, Horizon Blue Cross Blue Shield and Robert A. Marino, in the above-captioned action. Please accept this letter in response to Plaintiff's May 9, 2023 letter to the Court. (ECF Doc. 15) For the reasons set forth below, we ask the Court to deny Plaintiff's request for judicial notice pursuant to F.R.E. 201.

Plaintiff asks the Court to take judicial notice of an affidavit submitted by Robin Brooks in an unrelated action pending in the United States District Court for the District of Columbia, *Neil Anand v. U.S. Dep't. of Health and Human Services, et al.*, 21-cv-1635 (CKK). According to the affidavit, Ms. Brooks is a government employee. The affidavit addresses the government's response to a Freedom of Information Act request submitted by the plaintiff in that case, Neil Anand, which sought "all reports from Blue Cross Blue Shield corporation to OIG concerning improper prescribing of opiates by specific physicians."

F.R.E. 201 permits the Court to take judicial notice of facts that are self-evident. The affidavit submitted by Plaintiff does not fall within F.R.E. 201 as it is an affidavit and does not contain generally known facts. Even if the Court chooses to take judicial notice of the submission

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of the affidavit itself, the contents of the affidavit are hearsay and are not of the type which fall under F.R.E. 201. *See e.g. Ernst v. Child & Youth Servs. of Chester Cnty.*, 108 F.3d 486, 499 (3d Cir. 1997)(finding that district court was not required to take judicial notice of affidavit).

Moreover, the affidavit concerns issues pertaining to matters regarding opioid usage, which is not an issue set forth in Plaintiff's complaint in this case. As such, the affidavit is not only inappropriate for judicial notice under F.R.E. 201, but it is irrelevant to the issues in this case.

Defendants therefore respectfully request that the Court deny Plaintiff's request for judicial notice of the affidavit. We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s Andrew I. Hamelsky

Andrew I. Hamelsky
Jenifer A. Scarcella

Cc: *Via ECF and UPS*

Richard Arjun Kaul, MD
24 Washington Valley Road
Morristown, New Jersey 07960
Pro Se Plaintiff