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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE**

SULEIMAN ABDULLAH SALIM,  
MOHAMED AHMED BEN SOUD,  
OBAID ULLAH (as personal  
representative of GUL RAHMAN),

Plaintiffs,

vs.

JAMES ELMER MITCHELL and  
JOHN "BRUCE" JESSEN,

Defendants.

NO. 2:15-CV-286-JLQ

DEFENDANTS' MOTION TO TAKE  
JUDICIAL NOTICE

Without Oral Argument

June 21, 2017

Expedited Hearing Requested

DEFENDANTS' MOTION TO TAKE  
JUDICIAL NOTICE  
NO. 2:15-CV-286-JLQ

Betts  
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Mines  
One Convention Place  
Suite 1400  
701 Pike Street  
Seattle, Washington 98101-3927  
(206) 292-9988

1 Defendants Dr. James E. Mitchell and Dr. John “Bruce” Jessen  
2 (“Defendants”) move pursuant to FED. R. EVID. 201 for an Order taking judicial  
3 notice of the fact that (1) a terrorist attack occurred on September 11, 2001 at the  
4 World Trade Center in New York City, New York, the Pentagon in Arlington,  
5 Virginia and on Flight 93, which crashed near Shanksville, Pennsylvania (the  
6 “9/11 Attacks”); (2) the 9/11 Attacks were planned and carried out by the terrorist  
7 group al-Qaeda; and (3) 2,996 people were killed and over 5,000 people were  
8 injured as a result of the 9/11 Attacks.  
9

### 10 I. INTRODUCTION

11 The United States was shocked when, on the morning of September 11,  
12 2001, al-Qaeda and its operatives launched a sophisticated, coordinated and well-  
13 financed set of attacks intending to bring down the leading commercial, political  
14 and military institutions of the United States. The events of that date are well-  
15 documented and not subject to reasonable dispute. Although many bore personal  
16 witness to the 9/11 Attacks, few can attest to the details of three separate attacks,  
17 the parties responsible for the attacks, or the devastating human toll that resulted.  
18 As such, Defendants ask that the Court take judicial notice thereof, including that  
19 the attacks occurred, that al-Qaeda was responsible for those attacks and that  
20 2,996 died and over 5,000 people were injured as a result of the 9/11 Attacks.  
21

22 Defendants have asked that Plaintiffs would stipulate to these facts, but  
23 Plaintiffs have refused. *See* Decl. of Brian Paszamant at ¶¶ 3-4.  
24  
25

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## II. ARGUMENT

“Traditionally, judicial notice has been used to eliminate the need for formal proof by the introduction of evidence of certain matters which either are so universally known and accepted as to be beyond doubt or matters which, while not universally known, are so certain [] as to be beyond doubt.” 60 Am. Jur. Proof of Facts 3d 175 (2001). A Court may take judicial notice of adjudicative facts that are not subject to reasonable dispute where (1) they are generally known within the Court’s territorial jurisdiction; or (2) they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* FED. R. EVID. 201(a)-(b). The facts surrounding the 9/11 Attacks, including those about which Defendants seek judicial notice, meet the test enunciated in Rule of Evidence 201. *See In re Sept. 11 Litig.*, 751 F.3d 86, 90 (2d Cir. 2014) (taking judicial notice of the attacks of September 11, 2001 because they are “not subject to reasonable dispute,” are “generally known within the trial court’s territorial jurisdiction,” and “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned [here, the 9/11 Commission Report].”).

### 1. The 9/11 Attacks and Their Results are “Adjudicative Facts” Not Subject to Reasonable Dispute

An “adjudicative fact” – as opposed to a “judicial” one – is a fact “about the parties or the issues to which the law is applied, usually by the jury, in the trial of a case.” *Savage Logistics, LLC v. Savage Servs. Corp.*, No. CV-15-5015-EFS, 2015 WL 6141323, at \*1 (E.D. Wash. Oct. 19, 2015) (citing FED. R. EVID. 201(a), Adv. Comm. Note to 1972 amendment). “Legislative facts, by contrast, are facts

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1 which in some fashion relate to determination and interpretation of applicable  
2 law.” 60 Am. Jur. Proof of Facts 3d at 175. The 9/11 Attacks, including who was  
3 responsible therefor and the deaths and other casualties that resulted, are  
4 adjudicative facts; absent judicial notice, the jury would typically make a factual  
5 finding about these matters, to which the law would be applied.  
6

7 Furthermore, the three attacks carried out on September 11, 2001 are not  
8 subject to reasonable dispute. Millions of Americans, and perhaps billions  
9 worldwide, witnessed the events of September 11, 2001. The subsequent claims  
10 of responsibility by Usama bin Laden and the radical terrorist group al-Qaeda  
11 have been the subject of significant news coverage and were corroborated in the  
12 9/11 Commission’s Report on those attacks. Finally, the death toll and the extent  
13 of the casualties resulting from the events has been well-documented. Thus, these  
14 facts are amenable to judicial notice pursuant to FED. R. EVID. 201.  
15

16 **2. The 9/11 Attacks and Their Results are Generally Known**  
17 **Within the Court’s Territorial Jurisdiction**

18 That the 9/11 Attacks occurred is known world-wide. They are a matter of  
19 common-knowledge; often referred to in shorthand. As a global news event, the  
20 9/11 Attacks are generally known within the State of Washington, including its  
21 Eastern District. In addition, it is generally known within this jurisdiction that al-  
22 Qaeda has claimed responsibility for the attacks and that the death toll and injury  
23 figures from the attacks numbered into the many thousands. Thus, the Court is  
24 authorized to take judicial notice of these facts, none of which are subject to  
25 reasonable dispute.

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1           **3. The 9/11 Attacks and Their Results Can Be Accurately and**  
2           **Readily Determined from Sources Whose Accuracy Cannot**  
3           **Reasonably Be Questioned**

4           Each of the three facts about which Defendants ask the Court to take  
5           judicial notice are well-documented by credible sources whose accuracy cannot  
6           reasonably be questioned. First, the National Commission on Terrorist Attacks  
7           Upon the United States (also known as the 9/11 Commission)—an independent,  
8           bipartisan commission created by Congress in 2002, *see* Public Law 107-306,  
9           November 27, 2002—published “The 9/11 Commission Report.” *See*  
10          govinfo.library.unt.edu /911/report/911Report.pdf. This report examined the  
11          events leading up to, the lasting effects of and the parties responsible for the 9/11  
12          Attacks. It concluded that al-Qaeda, led by Usama bin Laden, was responsible  
13          for the attacks. Courts have recognized the reliability of the 9/11 Commission  
14          Report, and have taken judicial notice of its contents. *See, e.g., In re September*  
15          *11 Litigation*, 931 F.Supp.2d 496, 512 (S.D. N.Y. Mar. 20, 2013). Other Courts  
16          have called the 9/11 Attacks “acts of war against the United States,” and have  
17          named al-Qaeda responsible for the attacks. *Id.*; *see also Hamdi v. Rumsfeld*, 542  
18          U.S. 507 (2004); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

19          Separately, the Washington Post and CNN have each reported the total  
20          number of fatalities resulting from the 9/11 Attacks as 2,996. *See* Brad Plumer,  
21          *Nine Facts About Terrorism in the United States Since 9/11*, Washington Post,  
22          (Sep. 11, 2013), [www.washingtonpost.com/news/wonk/wp/2013/09/11/nine-](http://www.washingtonpost.com/news/wonk/wp/2013/09/11/nine-facts-about-terrorism-in-the-united-states-since-911/?utm_term=.4d6b6ba58ee7)  
23          *facts-about-terrorism-in-the-united-states-since-911/?utm\_term=.4d6b6ba58ee7*;  
24          25

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1 *see also* CNN Library, *September 11, 2001: Background and Timeline of the*  
 2 *Attacks*, CNN (Sep. 8, 2016), [www.cnn.com/2013/07/27/us/september-11-](http://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/)  
 3 [anniversary-fast-facts/](http://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/). Myriad other sources have reported the casualty figures  
 4 as well. *See e.g.*, [www.legacy.com/Sept11/Home.aspx](http://www.legacy.com/Sept11/Home.aspx) (listing names of victims  
 5 of 9/11). CNN also reports that more than 7,400 individuals applied for relief  
 6 from the 9/11 Victim Compensation Fund, of whom 5,560 received awards. *See*  
 7 [www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/](http://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/); *see also*  
 8 [www.claims.vcf.gov/home/deathclaimsnotifications](http://www.claims.vcf.gov/home/deathclaimsnotifications) (listing claimants to the  
 9 September 11<sup>th</sup> Victim Compensation Fund). The 9/11 Attacks, including the  
 10 group responsible and the resulting casualties are each well-documented, and find  
 11 authority in multiple sources whose accuracy cannot be reasonably questioned.  
 12 Thus, this Court is permitted, pursuant to FED. R. EVID. 201, to take judicial  
 13 notice of these facts.  
 14

### 15 **III. CONCLUSION**

16 Defendants' motion should be granted, and the Court should take judicial  
 17 notice of the 9/11 Attacks, that al-Qaeda was responsible therefor and that 2,996  
 18 deaths and over 5,000 injuries resulted therefrom pursuant to FED. R. EVID. 201.  
 19

20 DATED this 22nd day of May, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of May, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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