

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EMCYTE CORP., a Florida
Corporation,

Plaintiff,

v.

Case No: 2:19-cv-769-JES-NPM

XLMEDICA, INC., a Florida
Corporation, ANNA STAHL, an
individual,

Defendants.

XLMEDICA, INC., a Florida
Corporation, and ANNA STAHL,
an individual,

Counterclaim
Plaintiffs,

v.

EMCYTE CORP., a Florida
Corporation and PATRICK
PENNE,

Counterclaim
Defendants.

OPINION AND ORDER

This matter comes before the Court on Counterclaim Defendants' Motion to Take Judicial Notice (Doc. #320) filed on February 15, 2024. A Response in Opposition (Doc. #327) was filed on February 29, 2024.

A district court may take judicial notice of an adjudicative fact that is both "not subject to reasonable dispute" and either (1) "generally known within the trial court's territorial jurisdiction" or (2) "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "Since the effect of taking judicial notice under Rule 201 is to preclude a party from introducing contrary evidence and in effect, directing a verdict against him as to the fact noticed, the fact must be one that only an unreasonable person would insist on disputing." United States v. Jones, 29 F.3d 1549, 1553 (11th Cir. 1994). A district court may take judicial notice of public records, but "[s]uch documents should be considered only for the purpose of determining what statements the documents contain, not to prove the truth of the documents' contents." Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1277 (11th Cir. 1999) (alteration in original) (quoting Lovelace v. Software Spectrum Inc., 78 F.3d 1015, 1018 (5th Cir. 1996)) (explaining that "[w]hen SEC documents are relevant only to determine what statements or disclosures are actually contained therein, there can be little question as to authenticity, nor can the fact that such statements or disclosures were thus publicly filed be reasonably questioned."). "In a civil case, the court must instruct the jury to accept the noticed fact as conclusive." Fed. R. Evid. 201(f).

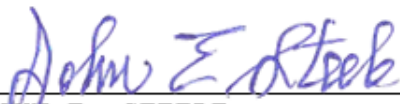
The Court therefore takes judicial notice that the two documents were contained on the FDA website and that they contain the statements actually set forth in each exhibit. This is essentially limited to recognizing the existence of the documents and the contents of each. It is for the trier of fact to determine any additional facts which may be supported by these exhibits.

Accordingly, it is now

ORDERED:

Counterclaim Defendants' Motion to Take Judicial Notice (Doc. #320) is **GRANTED** to the limited extent set forth above.

DONE and ORDERED at Fort Myers, Florida, this 22nd day of May, 2024.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record