

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

ANTONIO FIDELIS VALIENTE)
on behalf of Himself and All Others)
Similarly Situated)
Plaintiffs,)
)
v.)
)
DINEEQUITY, INC., et al.,)
)
Defendants.)
_____)

CIVIL ACTION

No. 08-2416-KHV

MEMORANDUM AND ORDER

This matter comes before the Court on Defendants’ Request For Judicial Notice In Support Of Their Motion To Dismiss On Grounds Of Federal Preemption (Doc. #53) filed February 27, 2009. Pursuant to Federal Rule of Evidence 201(b), DineEquity, Inc., Applebee’s International, Inc. and Weight Watchers International, Inc. ask the Court to take judicial notice of the following documents referenced in Defendants’ Motion To Dismiss No. 1: Motion To Dismiss Complaint On Grounds Of Federal Preemption (Doc. #51) filed February 27, 2009:

- H.R. Rep. No. 101-538 (1990), reprinted in 1990 U.S.C.C.A.N. 3336 (“Exhibit A”).
- U.S. Food and Drug Administration’s Industry Guidance, A Labeling Guide for Restaurants and Other Retail Establishments Selling Away-From-Home Foods (April 2008) (“Exhibit B”).

Defendants’ motion is unopposed.

Analysis

Under Fed. R. Evid. 201(b), a judicially noticed fact must be one not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably

be questioned. See Fed. R. Evid. 201(b); see also United States v. Schaefer, 501 F.3d 1197, 1201, n.8 (10th Cir. 2007). Courts often take judicial notice of various public records, including legislative committee reports and publications made by various administrative agencies. See, e.g., Territory of Alaska v. Am. Can Co., 358 U.S. 224, 227 (1959) (taking judicial notice of legislative history); N. Pacifica, LLC. v. City of Pacifica, 234 F. Supp.2d 1053, 1058 (N.D. Cal. 2002) (taking judicial notice of relevant legislative documents); U.S. ex rel. J. Camillo v. Ancilla Sys., Inc., No. 03 CV 0024 DRH 2005 WL 1926559, at *3, n.5 (S.D. Ill. 2005) (taking judicial notice of Health Care Financing Administration's publication).

Here, both Exhibit A and Exhibit B qualify as public records and their accuracy cannot reasonably be questioned.

IT IS THEREFORE ORDERED that Defendants' Request For Judicial Notice In Support Of Their Motion To Dismiss On Grounds Of Federal Preemption (Doc. #53) filed February 27, 2009 be and hereby is **SUSTAINED**.

Dated this 1st day of May, 2009 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Court