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 11 BRAVE NEW FILMS 501(c)(4)

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION
 15

16 BRAVE NEW FILMS 501(C)(4),

17 Plaintiff,

18 v.

19 MICHAEL WEINER aka MICHAEL SAVAGE,
 and ORIGINAL TALK RADIO NETWORK,
 20 INC.,

21 Defendants.

No. CV 08-04703 SI

**REQUEST FOR JUDICIAL NOTICE
 IN SUPPORT OF PLAINTIFF
 BRAVE NEW FILMS 501(C)(4)'S
 MOTION FOR PARTIAL
 SUMMARY JUDGMENT**

Date: April 3, 2009
 Time: 9:00 a.m.
 Place: Courtroom 10
 Judge: Honorable Susan Illston

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I. INTRODUCTION

Pursuant to Federal Rule of Evidence 201, Plaintiff Brave New Films 501(c)(4) respectfully requests that the Court take judicial notice of the following in support of its Motion for Partial Summary Judgment:

- **Exhibit A:** A true and correct copy of the Complaint filed by Michael Savage against Counsel on American-Islamic Relations, Inc. on December 3, 2007 in *Savage v. Council on American-Islamic Relations, Inc.*, No. 3:07-cv-06076-SI, Docket No. 1.
- **Exhibit B:** A true and correct copy of the Motion for Judgment on the Pleadings filed by Counsel on American-Islamic Relations, Inc. on January 30, 2008 in *Savage v. Council on American-Islamic Relations, Inc.*, No. 3:07-cv-06076-SI, Docket No. 12.
- **Exhibit C:** A true and correct copy of the Order Granting Defendants’ Motion for Judgment on the Pleadings in *Savage v. Council on American-Islamic Relations, Inc.*, No. 3:07-cv-06076-SI (N.D. Cal. July 25, 2008), Docket No. 38.
- **Exhibit D:** A true and correct copy of the Order of Dismissal dated August 15, 2008 in *Savage v. Council on American-Islamic Relations, Inc.*, No. 3:07-cv-06076-SI, Docket No. 40.
- **Exhibit E:** A true and correct copy of U.S. Copyright Office website registration record of the October 29, 2007 broadcast of “The Michael Savage Show.” The registration record was obtained from the United States Copyright Office online catalog, located on the Library of Congress website at:
[http://cocatalog.loc.gov/cgi-
bin/Pwebrecon.cgi?Search_Arg=michael+savage&Search_Code=TALL&PID=D
rhi9X4f8olbksiZmd0FTxrVSajq&SEQ=20090227125129&CNT=25&HIST=1](http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=michael+savage&Search_Code=TALL&PID=D
rhi9X4f8olbksiZmd0FTxrVSajq&SEQ=20090227125129&CNT=25&HIST=1).
- **Exhibit F:** A true and correct copy of a posting on CAIR’s website, www.cair.com, entitled “National Radio Host Goes on Anti-Muslim Tirade.”

1 The posting, dated November 1, 2007, is found at:

2 <http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=23608&&name=n&&currPage=2>.

- 4 • **Exhibit G:** A true and correct copy of four minutes and thirteen seconds of audio
5 excerpts from the October 29, 2007 broadcast of “The Michael Savage Show.”
6 The file “Savage 10.29.excerpt.wav” contains the above-referenced audio which
7 was accessed through a link on CAIR’s website, www.cair.com, at
8 <http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=23608&&name=n&&currPage=2>.

10 II. ARGUMENT

11 Federal Rule of Evidence 201 provides that a court may take judicial notice of a fact “not
12 subject to reasonable dispute [and] . . . capable of accurate and ready determination by resort to
13 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court may
14 take judicial notice “at any stage of the proceeding,” including in ruling on a motion for
15 summary judgment. Fed. R. Evid. 201(f); *see Hunt v. Check Recovery Sys.*, 478 F. Supp. 2d
16 1157, 1160-61 (N.D. Cal. 2007) (taking judicial notice on a motion for summary judgment).

17 A. Court Documents

18 The Court may take judicial notice of matters of the public record including pleadings,
19 decisions, orders and other documents filed in another court. *See Reyn’s Pasta Bella, LLC v.*
20 *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (a court may take judicial notice of court
21 filings and other matters of public record); *see also Kurtcu v. U.S. Parking Inc.*, No. 08-2113,
22 2008 U.S. Dist. LEXIS 51302, at *5 (N.D. Cal. Jun. 16, 2008) (a court may take judicial notice
23 of orders and decisions made by other courts and administrative agencies).

24 B. Websites

25 The Court may take judicial notice of a website maintained publicly on the World Wide
26 Web, the contents of which are readily ascertainable and widely disseminated. *See e.g., Rearden*
27 *LLC v. Rearden Commerce, Inc.*, --- F. Supp. 2d ---, No. 06-7367, 2009 WL 276099, at *17 n.3
28 (N.D. Cal., Jan. 27, 2009) (“The court takes judicial notice of contents of this website and other

1 websites cited herein pursuant to Federal Rule of Evidence 201.”); *Caldwell v. Caldwell*, 420 F.
2 Supp. 2d. 1102, 1105 n.3 (N.D. Cal. 2006) (granting judicial notice of the UC Berkeley Museum
3 of Paleontology website and a portion of that site), *aff’d*, 545 F.3d 1126 (9th Cir. 2008);
4 *Coremetrics Inc. v. Atomic Park.com, LLC*, 370 F. Supp. 2d 1013, 1021 (N.D. Cal. 2005) (taking
5 judicial notice of content on AtomicPark’s website); *Cairns v. Franklin Mint Co.*, 107 F. Supp.
6 2d 1212, 1216 (C.D. Cal. 2000) (taking judicial notice of pages on Warhol Museum’s website),
7 *aff’d*, 292 F.3d 1139 (9th Cir. 2000).

8 In addition, the Court may take judicial notice of an audio recording where there is no
9 reasonable dispute as to its accuracy. *See Twinde v. Threshold Pharms. Inc.*, No. 07-4972, 2008
10 U.S. Dist. LEXIS 58619, at *32 (N.D. Cal. July 11, 2008).

11 **III. CONCLUSION**

12 This Court may appropriately take judicial notice of the court filings and orders
13 designated above as Exhibit A, Exhibit B, Exhibit C, and Exhibit D. Likewise, because website
14 content is a proper subject for judicial notice, this Court may take judicial notice of the webpages
15 attached hereto as Exhibit E and Exhibit F, as well as the audio file taken from CAIR’s website
16 attached hereto on a CD as Exhibit G.

17 DATED: February 27, 2009

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19 Bingham McCutchen LLP

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21 By: /s/ William F. Abrams
22 William F. Abrams
23 Attorneys for Plaintiff
24 BRAVE NEW FILMS
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