IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SHAUNA WILLIAMS, et al., *Plaintiffs*, v. REPRESENTATIVE DESTIN HALL, in his official capacity as Chair of the House Standing Committee on Redistricting, et al., *Defendants*.	Civil Action No. 23 CV 1057
NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., *Plaintiffs*, v. PHILIP BERGER, in his official capacity as the President Pro Tempore of the North Carolina Senate, et al., *Defendants.*	Civil Action No. 23 CV 1104

PLAINTIFFS' UNOPPOSED MOTION FOR JUDICIAL NOTICE OF SCRIVENER'S ERROR IN THEIR COMPLAINT

The parties, North Carolina State Conference of the NAACP, Common Cause, Mitzi Reynolds Turner, Dawn Daly-Mack, Hollis Briggs, Corine Mack, Calvin Jones, Linda Sutton, and Syene Jasmin (together, "Plaintiffs"), by and through their undersigned counsel

and pursuant to Federal Rules of Evidence 201 and Federal Rule of Civil Procedure 7(b), respectfully submit this Unopposed Motion for Judicial Notice of the identified scrivener's error in their Complaint.

As grounds for this Motion, Plaintiffs state the following:

BACKGROUND

1. On December 19, 2023, Plaintiffs filed their Complaint in *N.C. State Conf. of the NAACP v. Berger*, challenging portions of North Carolina's 2023 House, Senate, and Congressional redistricting plans. Doc. 1, *N.C. State Conf. of the NAACP v. Berger*, No. 1:23-CV-1104 (M.D.N.C. Dec. 19, 2023) (the "Complaint").

2. On March 18, 2024, the Court granted Legislative Defendants' motion to consolidate the *NC NAACP* Plaintiffs' matter with the *Williams* Plaintiffs' challenge to the 2023 Congressional plan. *See* Doc. 34.

3. On May 22, 2024, this Court approved the parties' Amended Joint Rule 26(f) Report, setting November 4, 2024, as the deadline by which parties must complete discovery, with the exception of certain supplemental discovery arising out of the November 2024 general election. Doc. 48.

4. Plaintiffs served written discovery on Legislative Defendants on April 24, 2024, and on State Board Defendants on May 17, 2024. Legislative Defendants served written discovery on Plaintiffs on June 11, 2024.

5. In their responses to Legislative Defendants' First Set of Interrogatories and Requests for Production of Documents, Plaintiffs identified a scrivener's error in paragraph 273 of the Complaint. *See* Complaint at 81. The scrivener's error lies with the incorrect

reference to "House Districts 27 through 34" within Count 7 of the Complaint for malapportionment under the Fourteenth Amendment. *Id*. (alleging unconstitutional malapportionment in "House Districts 27 through 34, and House Districts 71, 72, 74, 75, and 91").

6. The complete and correct set of districts at issue in Plaintiffs' Malapportionment challenge to the 2023 House Plan are set forth in detail repeatedly in the body of the Complaint, and specifically:

a. Paragraph 175, Figure 7, and Table 2 on pages 55 through 57 (alleging harm in Wake County House Districts 11, 21, 33 through 41, 49, and 66); and

b. Paragraph 183, Figure 8, and Table 3 on pages 58 through 60 (alleging harm in Forsyth/Stokes Counties House Districts 71, 72, 74, 75, and 91).

7. Accordingly, paragraph 273's description of House districts intended to reference "House Districts 11, 21, 33 through 41, 49, and 66" instead of the scrivener's error "House Districts 27 through 34".

8. The typographical error in paragraph 273 was unintentional, and undersigned counsel takes full responsibility for the error and apologizes to the Court. Plaintiffs did not intend to reference the erroneously listed districts, as evidenced by the detailed allegations of harm of the 2023 House Plan in in the body of the Complaint, which repeatedly and correctly describe the specific House districts challenged by Plaintiffs. *See generally* Complaint at 51–61. As such, the body of the Complaint provided Defendants with notice of the correct districts being challenged in this action, notwithstanding the unintentional scrivener's error in paragraph 273.

9. Plaintiffs thus respectfully request the Court take notice that the reference to "House Districts 27 through 34" in Count 7 of the Complaint is a scrivener's error that intended to reference "House Districts 11, 21, 33 through 41, 49, and 66." Plaintiffs are not requesting the Court take any notice as to any underlying facts which would go to the merits of Plaintiffs' claims in this Motion, but only that the Court take judicial notice of Plaintiffs' intended allegations and enumerated claims, as referenced in the body of their Complaint, to correct that error.

10. The parties have conferred about the need for judicial notice requested below, and both the State Board Defendants and Legislative Defendants indicate they do not oppose this Motion.

MEMORANDUM OF LAW

Federal Rule of Evidence 201 permits courts, at any point in the proceedings, to take notice of adjudicative facts that are "not subject to reasonable dispute." Fed. R. Evid. 201(b), (d). Furthermore, a court must take judicial notice when a party makes a proper request and supplies necessary information substantiating it. Fed. R. Evid. 201(c). The Fourth Circuit has recognized the applicability of judicial notice, particularly for court records, when a fact "may not be reasonably disputed and is 'relevant and critical to the matter.'" *United States v. Townsend*, 886 F.3d 441, 444 (4th Cir. 2018) (quoting *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989)). While the truth of allegations or facts within a Complaint are typically not appropriate for judicial notice, the existence of a Complaint is sufficiently "indisputable" for judicial notice. *See Nolte v. Cap. One Fin. Corp*., 390 F.3d 311, 317 (4th Cir. 2004).

The Fourth Circuit has suggested that judicial notice is more likely appropriate when the information is offered for context or clarification than when it is offered in support of an assertion made by a party. *See Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 558 (4th Cir. 2013), *abrogated on other grounds by Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015).

Under similar circumstances, federal courts have taken notice of scrivener's errors in complaints and deemed this sufficient to correct the error. *See, e.g.*, *N. Brevard Hosp. Dist. v. McKesson Techs., Inc.*, No. 6:16-cv-637-Orl-40DCI, 2017 U.S. Dist. LEXIS 236540, at *18–24 (M.D. Fla. Oct. 10, 2017) (taking notice of a scrivener's error in statute cited in complaint because allegations in the body of complaint supported the mis-cited statue was a scrivener's error and "taking notice of the scrivener's error will not prejudice Defendant"); Order, *Starkey Lab. v. Gulf Atl.*, No. 04-cv-14264 (S.D. Fla. Mar. 9, 2005) (docketed Mar. 11, 2005) (granting plaintiff's motion to accept notice of a scrivener's error in the complaint that mistakenly alleged obligations under contract by "Plaintiffs" when intended to allege obligations by "Defendants'") (Order appended as Exhibit A and Motion appended for context as Exhibit B). *See also*, Order, *Charles Sweeney, Jr. v. Danny Mitchell*, No. 22-02004 (7th Cir. July 06, 2022) (granting motion for judicial notice of scrivener's error in the appellee named in the matter) (appended as Exhibit C); Order, *Contimortgage Corp. v. Ostrowski*, No. 00-cv-00108 (N.D. Ill. Jan 07, 2000) (granting motion to correct scrivener's error across the record of correct legal description of real property) (appended as Exhibit D).

In this matter, Plaintiffs request notice only of the fact of the scrivener's error identified above in paragraph 273 and the fact of Plaintiffs' intended allegations, which is directly relevant to the matter at hand. Plaintiffs' do not request the Court to speak substantively on the merits of Plaintiffs' claims, but rather to make clear for the record the 2023 House Districts challenged by Plaintiffs in service of judicial economy and to clarify and streamline resolution of the issues presented in this litigation. Furthermore, as indicated by Defendants' lack of opposition to this Motion, Defendants do not dispute this correction and will experience no prejudice from the Court's Notice, further supporting Plaintiffs' motion.

In light of the above, Plaintiffs respectfully request that this Court take judicial notice of the scrivener's error identified above. A proposed order is appended to this Motion.

Dated: July 17, 2024

Respectfully submitted,

/s/ Hilary Harris Klein
Hilary Harris Klein

HOGAN LOVELLS US LLP

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*Appearing in this matter by Special Appearance pursuant to L-R 83.1(d)

mitchellbrown@scsj.org

NAACP

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4805 Mt. Hope Drive
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Tel: (410) 580-5777
jlouard@naacpnet.org

CERTIFICATE OF SERVICE

I certify that on July 17, 2024, I electronically filed the foregoing Motion and its exhibits with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Hilary Harris Klein
Hilary Harris Klein

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 04-14264-CIV-MOORE
U.S. Magistrate Judge Lynch

STARKEY LABORATORIES, INC,

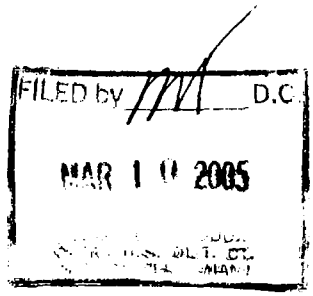
Plaintiff,

vs.

GULF ATLANTIC HEARING AID CENTER, INC., THOMAS W. LYONS INC., and THOMAS W. LYONS,

Defendants.
_____/

ORDER



THIS CAUSE came before the Court upon Plaintiff's Motion for Court to Accept Notice of Scrivener's Error, or in the Alternative, for the Court to Permit Plaintiff to File a Second Amended Complaint (DE #24).

UPON CONSIDERATION of the motion and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that Plaintiff's Motion for Court to Accept Notice of Scrivener's Error (DE #24) is GRANTED. Plaintiff's Alternative Motion to File a Second Amended Complaint is DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of March, 2005.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

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EXHIBIT B

FILED by ELECTRONIC D.C.
Feb 24 2005
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 04-14264-Civ-MOORE/LYNCH

STARKEY LABORATORIES, INC.,
a Minnesota corporation,

Plaintiffs,

v.

GULF ATLANTIC HEARING AID CENTER, INC., a Florida corporation, THOMAS W. LYONS INC., a Florida corporation, and THOMAS W. LYONS, an individual,

Defendants.
_____/

MOTION FOR COURT TO ACCEPT NOTICE OF SCRIVENER'S ERROR, OR, IN THE ALTERNATIVE, FOR THE COURT TO PERMIT PLAINTIFF TO FILE A SECOND AMENDED COMPLAINT

COMES NOW PLAINTIFF, STARKEY LABORATORIES, INC. ("Starkey"), by and through undersigned counsel and pursuant to Local Rule 7.1, and files this motion requesting the following relief:

1. Starkey requests that the Court either accept the simultaneously filed Notice of Scrivener's Error as sufficient to correct the error noted at Paragraph 17 of Starkey's Amended Complaint, or, in the alternative, that the Court permit Starkey to file a Second Amended Complaint for the sole purpose of correcting the scrivener's error contained at Paragraph 17.

2. As indicated in the Notice of Scrivener's Error, Paragraph 17 of the Amended Complaint contains the following sentence: "Paragraph 8 also provides that **Plaintiffs'** obligations under the Loyalty Agreement may not be assigned without Nu-Ear's prior written consent." However, Paragraph 17 should read as follows: "Paragraph 8 also provides that **Defendants'** obligations under the Loyalty Agreement may not be assigned without Nu-Ear's prior written consent."

WHEREFORE, Plaintiff Starkey Laboratories, Inc., requests that this Court enter an Order either deeming the Notice of Scrivener's Error sufficient to correct the error noted at Paragraph 17 of the Amended Complaint, or, in the alternative, permitting Starkey to file a Second Amended Complaint for the sole purpose of correcting this error.

MEMORANDUM OF LAW

It is appropriate for the Court to allow for the correction of scrivener's errors in a pleading. *See, e.g., Sheinberg v. Princess Cruise Lines, Ltd.*, 269 F.Supp.2d 1349 (S.D. Fla. 2003*); Bozich v. Internal Revenue Service*, 212 B.R. 354 (Bkrtcy.D.Ariz. 1997). In this case, no prejudice will result to Defendants if the Court deems the Notice of Scrivener's Error sufficient to correct the error as noted. Similarly, if the Court determines it is necessary for Starkey to file a Second Amended Complaint to correct the error at Paragraph 17, to allow such an amendment would not prejudice Defendants.

WHEREFORE, Plaintiff Starkey Laboratories, Inc., requests that this Court enter an Order either deeming the Notice of Scrivener's Error sufficient to correct the error noted at Paragraph 17 of the Amended Complaint, or, in the alternative, permitting Starkey to file a Second Amended Complaint for the sole purpose of correcting this error.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on the 24th day of February, 2005, via U.S. Mail to: Michael R. Riemenschneider, Esq., 1686 W. Hibiscus Blvd., Melbourne, FL 32901-2631.

/s/ Usher L. Brown
USHER L. BROWN, ESQUIRE
Fla. Bar No. 321461
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Attorneys for Plaintiff

EXHIBIT C

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

July 6, 2022

By the Court:

No. 22-2004	CHARLES E. SWEENEY, JR., Petitioner - Appellant v. DANNY MITCHELL, Warden, Respondent - Appellee

Originating Case Information:
District Court No: 2:20-cv-00463-JPH-DLP Southern District of Indiana, Terre Haute Division District Judge James P. Hanlon

The following is before the court: **MOTION FOR JUDICIAL NOTICE OF SCRIVENER'S ERROR**, filed on July 5, 2022, by the pro se appellant.

This court's docket reflects that the proper appellee in this matter is Warden Danny Mitchell. Further, the court notes that the appellant named the wrong appellee in his prior filings. The appellant is reminded that any future filings should reflect that the appellee in this matter is is Warden Danny Mitchell.

form name: **c7_Order_BTC** (form ID: **178**)

EXHIBIT D

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 108	DATE	7/13/2000
CASE TITLE	Contimortgage Corp. vs. Ostrowski, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Plaintiff's motion to correct Scrivener's error is granted. Enter Order.

(11) ■ [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.
	No notices required.
	Notices mailed by judge's staff.
	Notified counsel by telephone.
✓	Docketing to mail notices.
	Mail AO 450 form.
	Copy to judge/magistrate judge.

RO — courtroom deputy's initials

Date/time received in central Clerk's Office

number of notices

JUL 14 2000 — date docketed

docketing deputy initials

JUL 14 2000 — date mailed notice

mailing deputy initials

Document Number 8

FISHER AND FISHER
FILE NO. 41797

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Contimortgage Corporation,	)	
	)	
Plaintiff,	)	
	)	**No. 00 C 0108**
vs.	)	**Judge Castillo**
	)	
Evan N. Ostrowski and Susan E. Ostrowski, , et al.,	)	
	)	
	)	
Defendants.	)	

DOCKETED
JUL 14 2000

ORDER

This matter coming to be heard on Motion of the Plaintiff for the entry of an Order to Correct Scrivener's Error, the Court being fully advised;

IT IS ORDERED that Plaintiff's Motion to Correct Scrivener's Error is hereby granted, that such amendment shall be effective nunc pro tunc to January 7, 2000 and that such amendment shall be spread of record including any and all notices and publications. The correct legal description is as follows:

Lot 15 in Block 5 in Green Valley Addition to Wheaton, being a Subdivision of part of the South 1/2 of the North 1/2 of Section 21, Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof Recorded November 5, 1926 as Document 224415 and Certificate of Correction Recorded June 3, 1927 as

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Document 236887, in DuPage County, Illinois.

C/k/a 1203 S. Campbell Avenue, Wheaton, IL 60187

Tax ID#05-21-208-008

Dated: 7-13-00 **ENTER:**

JUDGE

FISHER AND FISHER
ATTORNEYS AT LAW, P.C.
120 NORTH LASALLE STREET
SUITE 2520
CHICAGO, ILLINOIS 60602
(773) 854-8055

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

SHAUNA WILLIAMS, et al., *Plaintiffs*, v. REPRESENTATIVE DESTIN HALL, in his official capacity as Chair of the House Standing Committee on Redistricting, et al., *Defendants*.	Civil Action No. 23 CV 1057
NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., *Plaintiffs*, v. PHILIP BERGER, in his official capacity as the President Pro Tempore of the North Carolina Senate, et al., *Defendants.*	Civil Action No. 23 CV 1104

[PROPOSED] ORDER GRANTING MOTION TO TAKE JUDICIAL NOTICE OF SCRIVENER'S ERROR

The Court GRANTS the "Unopposed Motion for Judicial Notice of a Scrivener's Error in the NAACP Plaintiffs' Complaint, Dkt. 1, *N.C. State Conf. of the NAACP v. Berger*, No. 1:23-cv-1104 (M.D.N.C. Dec. 19, 2023), consolidated in the above-captioned matter.

The Court takes notice that Plaintiffs' reference to "House Districts 27 through 34" in paragraph 273 of the NAACP Complaint is a scrivener's error in which NAACP Plaintiffs intended to reference "House Districts 11, 21, 33 through 41, 49, and 66," and that this Notice is sufficient to correct the error.

SO ORDERED and SIGNED this ___ day of _____, 2024.

_____
UNITED STATES DISTRICT JUDGE