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14 **UNITED STATES DISTRICT COURT OF CALIFORNIA**
15 **EASTERN DISTRICT - SACRAMENTO**

16 Joy Garner, individually and on behalf of The
17 Control Group; Joy Elisse Garner, individually
18 and as parent of J.S. and F.G.; Evan Glasco,
19 individually and as parent of F.G.; Traci Music,
20 individually and as parent of K.M. and J.S.,
21 Michael Harris, individually and as parent of S.H.,
22 Nicole Harris, individually and as parent of S.H.,

23 Petitioners,

24 v.

25 PRESIDENT OF THE UNITED STATES OF
26 AMERICA in his official capacity,

27 Respondent.

28 **Case No.: 2:20-CV-02470-WBS-JDP**

PETITIONERS' RESPONSE TO
RESPONDENT'S OBJECTION TO
EVIDENCE SUBMITTED IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION

Date: February 22, 2021
Time: 1:30 PM
Courtroom: 5
Judge: William B. Shubb

1 **Introduction**

2 The extraordinary weight of the authoritative documents for judicial notice focus this case
3 with an authoritative record. As detailed in the requests, Petitioners request judicial notice for one
4 or the other reason:

5 **(1) Truth.** Certain exhibits are offered for “truth” of the matter stated, such as vital statistics
6 from the CDC about disease rates and vaccine uptake in the United States.

7 * When a statement is offered for truth, the request always says so explicitly as the
8 preface to the statement or fact, such as PRJN2-25B, “For the truth of the matter
9 stated, Petitioners request judicial notice that ‘the CDC buys and sells vaccines every
10 year.’”

11 **(2) Proof The Statement Was Made.** Most exhibits are simply offered for the fact the
12 statement was made in a publication relied upon by public health authorities. Petitioners
13 intend to offer these authoritative exhibits during pre-trial motions and at trial to evidence
14 the current state of public health in America, including the often blatant cognitive
15 dissonance of public health authorities on the subject of vaccination (i.e., where they say
16 “safe” and “unsafe” simultaneously).

17 * When an exhibit is offered for proof the statement was made, the request says so,
18 such as PRJN2-9B, “For recognition of a commonly known fact to public health
19 officials familiar with the matter, Petitioners request judicial notice of the following
20 description of “statistical significance” published by the National Institutes of
21 Health:...”

22 **Response to Objection No. 1:**

23 Respondent’s general objection to “all scientific articles...” is firstly ironic. Why would
24 Respondent try to prevent this Court from examining scientific statements relied upon by public
25 health authorities?

26 In any case, Respondent’s two cited authorities are insufficient to overcome Petitioners’
27 scores of authorities in the moving papers. Petitioners concur with Respondent’s citation to “*Ass’n*
28 *of Irrigated Residents v. Fred Schakel Dairy*, No. 1:05-cv-00707-OWW-SMS, 2008 WL 850136, at

1 *4 n.4 (E.D. Cal. March 28, 2008) (rejecting request for judicial notice of draft government report
2 and scientific articles because such matters were subject to dispute).”

3 However, because most of these exhibits are offered solely for proof the statement was made
4 in a publication relied upon by public health authorities, Respondent cannot reasonably dispute that
5 fact. Indeed, the Requests for Judicial Notice were carefully prepared so that every exhibit comes
6 from a published scientific consensus document (i.e., top medical journals and dictionaries, the
7 official authoritative records of American public health agencies, and the public records (e.g.,
8 census data, national health data) relied upon by those public health agencies in setting public health
9 policy).

10 Respondent cites no authority for his contention that a scientific consensus document for
11 judicial notice requires a foundation beyond its publication. Regardless, each of Petitioners’ expert
12 declarations states the expert reviewed the requests for judicial notice as part of their analysis.

13 **Response to Objection No. 2:**

14 Petitioners concur with Respondent’s initial statement, “With respect to items that are
15 published on federal government websites, Defendant does not object to taking judicial notice of
16 the fact that they were published on such websites....”

17 But Petitioners dispute the Respondent’s remaining conclusion, “... but objects to drawing
18 any conclusions therefrom by judicial notice.”

19 Even if it were possible to delineate Respondent’s meaning of the phrase “conclusions
20 therefrom,” it does not matter. The documents say what they say, period. Expert witnesses
21 reviewing the documents are entitled to draw conclusions therefrom.

22 **Response to Objection No. 3:**

23 Petitioner Joy Garner’s eye witness testimony is admissible. Respondent’s attempt to silence
24 this litigant must fail, because:

25 **A. Direct Fact Witness; Hearsay Exception.** Joy is a direct fact witness reporting her pilot
26 survey results gathered for this litigation. Her observations are admissible. Indeed, a significant
27 portion of Joy’s declaration is devoted to describing her method of collecting the survey results as
28 admissible evidence for this litigation. For supporting authorities, see Petitioner’s Motion for

1 Preliminary Injunction, ECF 16-1, marked page 17 of 29, lines 6-7 (“Pilot surveys are routinely
2 admitted into evidence and recognized by trial courts for proof of matters to a claim. [citations in
3 main brief]”). And for factual confirmation of the hearsay exceptions, *see* the Garner Declaration,
4 ECF 16-7, paragraph 18A-F, carefully describing the business records of then-existing physical
5 conditions (i.e., medical diagnoses, age) and then-existing mental state (i.e., confidence rating).

6 **B. Obvious Observations, Simple Analysis.** Regarding analysis and conclusions, Joy is
7 also an uncontradicted expert (as Respondent produced no expert on surveying unvaccinated
8 people, because the government admits it has never conducted a survey of unvaccinated
9 people). Moreover, as Joy wrote in her declaration, “All of the math can easily be replicated for
10 verification, and much of it is no more complex than the math most people learned (or should have
11 learned) in the 5th grade.... Because *none* of our institutions have been willing to apply the *most*
12 fundamental, actually the most critical and only relevant scientific method required to numerically
13 determine the risks associated with vaccine exposure (which absolutely requires a comparison of
14 health outcomes between *entirely unexposed* ‘controls’ and the vaccinated ‘herd’) it was necessary
15 for a private Citizen to take up the task in order to arrive at the correct answers.” Garner
16 Declaration, ECF 16-7, ¶¶ 7 and 10. Even if this Court finds that Joy is not an expert, her analysis
17 still stands for its description of her survey methods.

18 **C. Supported by Experts.** Joy is supported by over five PhD and doctor experts who have
19 provided detailed declarations citing and approving her work. One of those experts is a PhD with
20 expertise in the subject of surveys, whose declaration is a 'survey validation' declaration devoted to
21 Joy's evidence and analysis. Accordingly, even if this Court finds that Joy is not an expert, her
22 survey data and write up are still admissible as litigation survey information normally relied upon
23 by experts.

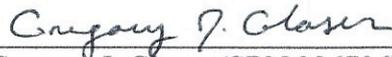
24 **D. Independently Validated.** Joy's data and analysis was also independently validated by a
25 professional statistician, who reached the same results using two separate statistical methods
26 (frequentist and Bayesian). This is documented with a 60-page scientific report in Petitioner’s Offer
27 of Proof (ECF 31-1) filed February 15, 2021. This further supports the reliability and admissibility
28 of the evidence.

1 **Conclusion**

2 Based on the foregoing, Petitioners respectfully request this Court admit the evidence for the
3 specific purposes stated.

4 Dated: February 18, 2021

5
6 Respectfully submitted

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