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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 JOY GARNER, et al.,
11 Plaintiffs,
12
13 v.
14 JOSEPH R. BIDEN, JR., in his
official capacity as the
15 President of the United States
of America,
16
17 Defendant.

CASE NO. 2:20-CV-02470-WBS-JDP
DEFENDANT'S OBJECTIONS TO EVIDENCE
SUBMITTED IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION
DATE: February 22, 2021
TIME: 1:30 p.m.
JUDGE: Hon. William B. Shubb
COURT: Courtroom 5

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1 Defendant Joseph R. Biden, Jr., sued in his official capacity as
2 the President of the United States, respectfully submits these
3 objections to the evidence submitted in support of plaintiffs motion
4 for a preliminary injunction.

5 **Objection No. 1:**

6 Defendant objects to the admission of all scientific articles,
7 journal articles, news articles, third party websites, books, book
8 chapters, and other publications submitted with plaintiffs' request
9 for judicial notice. This objection specifically applies to the
10 following exhibits attached as part of plaintiffs' request for
11 judicial notice: Exhibits 2-26, 29-31, 33-34, 36-40, 42, 44-46, 48,
12 50-51, 54-58, 60-63, 65-70, 72, 74-86, 88, 90, 95, 100, 102-103, 109,
13 111, 114, 116-121, 123-124, 126-131, 133, 135-139, 142, 144-150, 152-
14 154, 156-157, 159-166, 168-169, 171-174, 177-181, 183-184, 186, 188-
15 190, 192-199, 202, 204-215, 217-231, 234-278, 280-291, 293, 296-299,
16 304-312, 314-316, 318-320, 323-332, 334-336, 339-344, 348-352, 358,
17 361-363, 366, 368-369, 372-374, 376-377, 379-380, 383-385, 393, 398,
18 403, 405, 407-411, 413-418, 425-426, 428-450, 454-470, 471-474.

19 Each of these exhibits is inadmissible hearsay.

20 Plaintiffs have failed to establish a proper foundation for each
21 of these exhibits.

22 The matters for which plaintiffs submit these exhibits call for
23 expert testimony which has not been provided.

24 These items are not judicially noticeable. Federal Rule of
25 Evidence 201(b) allows judicial notice only for facts that are "not
26 subject to reasonable dispute" because they are "either (1) generally
27 known within the territorial jurisdiction of the trial court or (2)
28 capable of accurate and ready determination by resort to sources whose

1 accuracy cannot reasonably be questioned." Scientific articles,
 2 journal articles, news articles, third party websites, books, book
 3 chapters, and other publications do not meet that standard. See,
 4 e.g., *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, No. 1:05-cv-
 5 00707-OWW-SMS, 2008 WL 850136, at *4 n.4 (e.D. Cal. March 28, 2008)
 6 (rejecting request for judicial notice of draft government report and
 7 scientific articles because such matters were subject to dispute);
 8 *McDougall v. County of Ventura, Cal.*, -- F. Supp. 3d --, 2020 WL
 9 6532871, at *3 (C.D. Cal. Oct. 21, 2020) (declining "to take judicial
 10 notice of the truth of newspaper articles and scientific
 11 publications").

12
 13 _____ Sustained _____ Overruled

14 **Objection No. 2:**

15 With respect to items that are published on federal government
 16 websites, Defendant does not object to taking judicial notice of the
 17 fact that they were published on such websites, but objects to drawing
 18 any conclusions therefrom by judicial notice. Such conclusions call
 19 for expert opinions and are not a proper subject of judicial notice.
 20 This objection applies to the following exhibits: Exhibits 1, 27-28,
 21 32, 35, 41, 43, 47, 49, 52, 53, 59, 64, 71, 73, 87, 89, 91-94, 96-99,
 22 101, 104-108, 110, 112-113, 115, 122, 125, 132, 134, 140-141, 143,
 23 151, 155, 158, 167, 170, 175-176, 182, 185, 187, 191, 200-201, 203,
 24 216, 232-233, 279, 292-295, 300-303, 313, 317, 321-322, 333, 337-338,
 25 345-347, 353-357, 359-360, 364-365, 367, 370-371, 375, 378, 381-382,
 26 386-391, 394-397, 399-402, 404, 406, 412, 419-424, 427, 451-453.

27
 28 _____ Sustained _____ Overruled

1 **Objection No. 3:**

2 Defendant objects to the declaration of Joy Garner (ECF 16-7) and
3 Exhibits 471, 472, 473, and 474 as improper opinion testimony. Ms.
4 Garner's declaration describes how she conducted a survey of
5 unvaccinated individuals and conducted certain statistical
6 calculations. See, e.g., ECF 16-7 ¶ 20. The exhibits purport to be
7 summaries of that statistical analysis. Statistical analysis is a
8 matter that calls for expert testimony, and Ms. Garner has not shown
9 that she is qualified to perform such analyses or draw conclusions
10 from such analyses.

11
12 _____ Sustained _____ Overruled

13
14 Respectfully submitted,

15 Dated: February 15, 2021

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17 By: /s/ Philip A. Scarborough

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