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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO
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14 DAVID GENTRY, JAMES PARKER,
15 MARK MIDLAM, JAMES BASS, and
16 CALGUNS SHOOTING SPORTS
17 ASSOCIATION,

18 Plaintiffs and Petitioners,
19 vs.

20 KAMALA HARRIS, in Her Official
21 Capacity as Attorney General for the State
22 of California; STEPHEN LINDLEY, in His
23 Official Capacity as Acting Chief for the
24 California Department of Justice, BETTY
25 YEE, in Her Official Capacity as State
26 Controller for the State of California, and
27 DOES 1-10.

28 Defendants and Respondents.

CASE NO. 34-2013-80001667

**PLAINTIFFS' EVIDENTIARY
OBJECTIONS TO THE DECLARATIONS
OF DAVID HARPER AND STEPHEN
LINDLEY IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTIONS TO COMPEL**

Date: 10/28/16
Time: 9:00 a.m.
Dept.: 31
Action filed: 10/16/2013

22 The declarations of David Harper and Stephen Lindley are, in large part, inadmissible.
23 Those declarations are not proper evidence to the extent they are neither based on personal
24 knowledge nor offer non-speculative factual assertions. (See *Park v. First American Title Co.*
25 (2011) 201 Cal.App.4th 1418, 1427 [citing Evidence Code section 702, subdivision (a), and
26 holding that declaration was inadmissible because it was not based on personal knowledge];
27 *People v. Thorton* (2007) 41 Cal.4 th 391, 429 [quoting Evidence code section 800, subdivision
28 (b), and affirming trial court's determination that speculative testimony was inadmissible because

1 it would not be “[h]elpful to a clear understanding of [the witness’] testimony.”) Accordingly, as
 2 discussed below, the following portions of the aforementioned declarations are inadmissible and
 3 should be disregarded by the Court.

Statements	Basis for Objection	Ruling
<u>Declaration of David Harper</u>		
6 ¶ 2) “the contents of 7 14 the document <i>suggest</i> a DOJ 8 employee within the Budget Office 9 staff wrote it. Any recipients of the 10 document are unknown, but the 11 document <i>appears to be</i> an internal 12 document prepared for the Director of 13 Administration, who oversees the 14 Budget Office, and the Executive 15 Office. <i>Its contents indicate</i> that it was 16 written in support of the executive 17 decision making process regarding the 18 DOJ Budget. <i>The document looks like</i> 19 it is in draft form, as opposed to any 20 final or formalized form. The 21 document is not dated but <i>its contents</i> 22 <i>suggest</i> it was created in 2007 or 23 20 2008.” (Italics added.)	Evid. Code, §§ 702, subd. (a), 800, subd. (b). Clearly, the Declarant has no relevant personal knowledge as to creation of the document, and his speculation will not aid the Court. Accordingly, these statements are inadmissible and should be ignored.	Sustained ___ Overruled ___

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<p>(¶ 4) “The reference to ‘DOJ Finance Letter Concepts’ in privilege log item 15, and <i>the contents of the document, indicate that</i> the document reflects internal departmental deliberations regarding the content of an intended Finance Letter by DOJ to DOF following a January budget proposal.” (Italics added.)</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). As above, this statement is inadmissible because it is neither based on personal knowledge nor will it assist the Court.</p>	<p>Sustained ___ Overruled ___</p>
<p>(¶4) “Among other things, the document summarizes data from various DOJ programs identified in the document; reflects the budgetary needs and requests of those programs; discusses possible amendments or modifications to a January budget proposal; and generally concerns DOJ’s budget development process.”</p>	<p>Evid. Code, § 800, subd. (b). The Declarant provides no basis for this statement other than the document itself, which means it is speculation that is inadmissible per Evidence Code section 800, subdivision (b).</p>	<p>Sustained ___ Overruled ___</p>
<p>(¶ 5) “In other words, item 16 reflects budget advice to the Executive Office regarding the development, priorities, and decisions to be made regarding the DOJ budget.</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). As discussed above regarding paragraph 2, this statement is inadmissible because it is neither based on personal knowledge nor will it assist the Court.</p>	<p>Sustained ___ Overruled ___</p>

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<p>(¶ 6) “Like all of the documents addressed in this declaration, I am informed and believe that items 15 and 16 were located on an internal, secured departmental hard-drive housing a variety of documents.”</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). Use of the phrase “informed and believe” proves the Declarant does not have the personal knowledge to make this statement. Inasmuch as someone within the Department obviously located the relevant documents so they could be provided for in camera review, there is no reason for this court to rely on an inadmissible statement concerning the origin of these documents.</p>	<p>Sustained ___ Overruled ___</p>
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<p>(¶ 6) “I am also informed and believe that documents 15 and 16, like all of the documents addresses herein, were created in confidence by government employees within the scope of their employment for a variety of reasons that include briefing superiors, discussing issues, making recommendations, and providing advice; that all were communicated in confidence, to the extent they were communicated at all; that all were intended to be maintained as confidential; and that none of documents has been disclosed publicly.</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). This statement is replete with speculation. The declarant plainly does not have the personal knowledge to state that the relevant documents have been kept confidential. The Court does not need speculation to assist it in evaluating the relevant documents, and thus this inadmissible statement should be given no weight.</p>	<p>Sustained ____ Overruled ____</p>
<p>(¶ 7) “The author of the document is not known, but <i>its contents suggest</i> it was jointly authored by DOF staff and DOJ Budget Office staff. <i>The nature of the document also suggests</i> that the document, or at least some of its contents, was exchanged between DOF staff and DOJ Budget Office staff.” (Italics added.)</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). As discussed above regarding paragraph 2, this statement is inadmissible because it is neither based on personal knowledge nor will it assist the Court.</p>	<p>Sustained ____ Overruled ____</p>

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<p>(¶ 9) “The author of the documents is likely a DOJ Budget Analyst who is no longer employed by the Budget Office. Bureau of Firearms staff also may have contributed to the documents, which reflect a series of notes in the form of questions (likely from the Budget Office) and answers (likely from the Bureau) regarding a concept paper being developed in support of a possible BCP. In other words, items 18 and 19 are internal documents that reflect DOJ’s deliberations prior to the BCP process and regarding the development of its budget.”</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). This passage is replete with speculation, especially that the author of this document is likely no longer employed with the Department. Had the Declarant explained the steps taken to reach this determination, his statement might be admissible on this point. But as written, this entire passage is inadmissible.</p>	<p>Sustained ___ Overruled ___</p>
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<p>(¶ 11) “The author of the document is unknown, but it most likely reflects the comments and thinking of the Legislative Analyst's Office (LAO) or a legislative staffer, and DOJ Budget Office staff. Item 21 concerns a BCP that DOJ submitted to DOF and documents a series of questions (likely by DOF or legislative staff) and answers (likely by DO] Budget Office staff) regarding that BCP. Item 21 is a document that reflects DOJ’s deliberations regarding the development of its budget. The document was likely created internally at DOJ[.]”</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). The repeated use of the word “likely” proves that this passage is based on speculation, not personal knowledge. Accordingly, the Court should this passage inadmissible.</p>	<p>Sustained ___ Overruled ___</p>
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<p>(¶ 12) “The author of the document is unknown, but it most likely reflects the comments and thinking of the Legislative Analyst’s Office (LAO) or a legislative staffer, and DOJ Budget Office staff. Item 21 concerns a BCP that DOJ submitted to DOF and documents a series of questions (likely by DOF or legislative staff) and answers (likely by DOJ Budget Office staff) regarding that BCP. Item 21 is a document that reflects DOJ’s deliberations regarding the development of its budget. The document was likely created internally at DOJ.”</p>	<p>Evid. Code, §§ 702, subd. (a), 800, subd. (b). The repeated use of the word “likely” proves that this passage is based on speculation, not personal knowledge. Accordingly, the Court should rule this passage inadmissible.</p>	<p>Sustained ___ Overruled ___</p>
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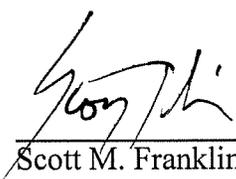
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<u>Declaration of Stephen Lindley</u>		
<p>(¶ 10) “Disclosure of the confidential details of Bureau of Firearms law enforcement operations, such as the ones referenced in plaintiffs’ Special Interrogatory Nos. 29 and 30, will serve to compromise the safety, security, integrity, and efficacy of those operations. Disclosure will also threaten law enforcement officer safety, the safety of the public, and the security of law enforcement databases.”</p>	<p>Evidence Code section 403, subdivision (a), requires the proponent of proffered evidence, here statements, to produce evidence of preliminary facts upon which the proffered evidence is based. In this instance, the supposed preliminary fact is the information sought by Special Interrogatory Nos. 29 and 30 constitutes “confidential details of . . . law enforcement operations[.]”</p> <p>This assertion is untrue and, more to the point, unsupported. Similarly, Defendants have failed to produce evidence on the preliminary fact as to how disclosure “threatens . . . officer safety, the safety of the public, and the security of law enforcement databases.”</p> <p>Accordingly, these assertions are inadmissible and should be ignored by the Court. And because the Declarant does not provide the relevant preliminary facts, his statement is inadmissible speculation per Evidence Code section 800, subdivision (b).</p>	<p>Sustained ____</p> <p>Overruled ____</p>

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Dated: October 21, 2016

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin, Attorney for Plaintiffs

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
6 business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On October 21, 2016, the foregoing document(s) described as

8 **PLAINTIFFS' EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF**
9 **DAVID HARPER AND STEPHEN LINDLEY IN SUPPORT OF DEFENDANTS'**
10 **OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL**

11 on the interested parties in this action by placing

12 the original

13 a true and correct copy

14 thereof enclosed in sealed envelope(s) addressed as follows:

15 Anthony Hakl, Deputy Attorney General
16 Kamala D. Harris, Attorney General of California
17 Office of the Attorney General
18 1300 I Street, Suite 1101
19 Sacramento, CA 95814

20 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
21 processing correspondence for mailing. Under the practice it would be deposited with the
22 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
23 California, in the ordinary course of business. I am aware that on motion of the party
24 served, service is presumed invalid if postal cancellation date is more than one day after
25 date of deposit for mailing an affidavit.

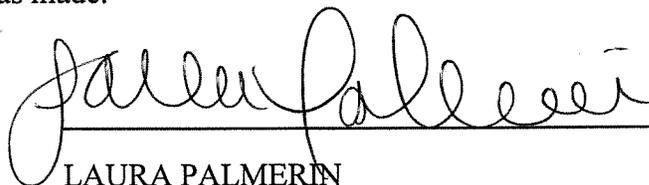
26 Executed on October _____, 2016, at Long Beach, California.

27 X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
28 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
receipt on the same day in the ordinary course of business. Such envelope was sealed and
placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for
in accordance with ordinary business practices.

Executed on October 21, 2016, at Long Beach, California.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

 (FEDERAL) I declare that I am employed in the office of the member of the bar of this
court at whose direction the service was made.

29 
LAURA PALMERIN