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 Agricultural Association*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **B&L PRODUCTIONS, INC., d/b/a**  
 15 **CROSSROADS OF THE WEST, et**  
 16 **al.,**

17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM, in his official**  
 20 **capacity as Governor of the State of**  
 21 **California and in his personal**  
 22 **capacity et al.**

23 Defendants.

3:21-cv-01718 AJB-KSC

**STATE DEFENDANTS’  
 OPPOSITION TO PLAINTIFFS’  
 REQUEST FOR JUDICIAL  
 NOTICE OF EXHIBITS 1-5**

Date: May 19, 2022  
 Time: 2:00 p.m.  
 Dept.: 4A  
 Judge: The Honorable Anthony J.  
 Battaglia  
 Trial Date: TBD  
 Case Filed: 10/4/2021

1 Plaintiffs seek judicial notice of six exhibits in support of their Opposition to  
2 the Motion to Dismiss. Pls.’ Req. Judicial Notice (“Pls.’ RJN”) 2-4. The State  
3 Defendants oppose this request for **Exhibits 1 through 5**.

4 **Exhibit 1** is described as a “Report on Sources of Criminal Guns” (Pls.’ RJN  
5 2), but Plaintiffs fail to give the full title of the report: *Source and Use of Firearms*  
6 *Involved in Crimes: Survey of Prison Inmates, 2016*. Pls.’ RJN, Exh. 1. As  
7 suggested by the title, the report concerns the results of a survey in 2016 of only  
8 federal prisoners regarding their use of a firearm during a crime. *Id.* The report is  
9 thus from three years before AB 893 was signed into law, and it surveyed only  
10 federal prisoners, thereby excluding state prisoners, those on probation, and those  
11 who have completed their sentence and/or probation. Perhaps the biggest issue  
12 with this exhibit is that Plaintiffs fail to explain how it is relevant to the Motion to  
13 Dismiss. They do not cite it in their Opposition. Even if a document “would  
14 otherwise be the proper subject of judicial notice,” this Court “need not take notice  
15 of documents that do not provide any additional *relevant* information.” *Bryan v.*  
16 *City of Carlsbad*, 297 F. Supp. 3d 1107, 1115 (S.D. Cal. 2018) (italics added)  
17 (denying plaintiff’s request for judicial notice of several documents, including a  
18 statute, because they had “no bearing on” resolving the motion to dismiss before the  
19 court); *see also Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1410, n.2 (9th Cir.  
20 1990) (declining to take judicial notice of a separate lawsuit that was “not relevant”  
21 to the case at hand); *Neylon v. Cnty. of Inyo*, 2016 WL 6834097, at \*4 (E.D. Cal.  
22 Nov. 21, 2016) (“[I]f an exhibit is irrelevant or unnecessary to deciding the matters  
23 at issue, a request for judicial notice may be denied.”). Plaintiffs fail to explain  
24 how **Exhibit 1** provides any relevant information to this Court in resolving their  
25 challenge to AB 893 or the State Defendants’ Motion to Dismiss. The exhibit is  
26 thus not entitled to judicial notice.

27 **Exhibit 2** is a chart derived from a database maintained by the federal Centers  
28 for Disease Control and Prevention (“CDC”). The specific chart in **Exhibit 2** is not

1 maintained or immediately available at the CDC website hyperlink cited in  
2 Plaintiffs' Request for Judicial Notice (<http://wonder.cdc.gov/ucd-icd10.html>).  
3 Rather, the chart in **Exhibit 2** appears to have been created by Plaintiffs by  
4 selecting various search criteria within the CDC database. There are seven  
5 categories of options that one can choose from when selecting search criteria.  
6 Plaintiffs do not explain exactly which search criteria was selected to create the  
7 chart in **Exhibit 2**. Pls.' RJN 2. Without such an explanation, and without  
8 understanding the scope of data included in **Exhibit 2**, neither the State Defendants  
9 nor the Court can ascertain whether there is a reasonable dispute as to the exhibit.  
10 *See* Fed. R. Evid. 201(b) (permitting a court to judicially notice a fact "not subject  
11 to reasonable dispute"); *Abbit v. ING USA Annuity & Life Ins. Co.*, 999 F. Supp. 2d  
12 1189, 1195 (S.D. Cal. 2014) (declining to take judicial notice of a declarant's  
13 calculations at the motion to dismiss stage because there was not "proper support  
14 for the calculations"). This Court should therefore decline to take judicial notice of  
15 **Exhibit 2**.

16 **Exhibits 3 through 5**, like **Exhibit 1**, are not relevant to this case and do not  
17 provide any relevant information. **Exhibit 3** is an online news article and **Exhibits**  
18 **4 and 5** are letters from California Department of Food and Agriculture Secretary  
19 Karen Ross ("Secretary Ross"). The article and letters all concern the Ventura  
20 County Fairgrounds and the 31st District Agricultural Association's discussions  
21 regarding gun shows there. Pls.' RJN Exhs. 3-5. But the Complaint in this case  
22 concerns only AB 893 and its alleged impact on gun shows at the Del Mar  
23 Fairgrounds in San Diego County, which is overseen by the 22nd District  
24 Agricultural Association. **Exhibits 3 through 5** thus pertain to different  
25 fairgrounds in a different county governed by a different district agricultural  
26 association. These three exhibits do not once mention AB 893. They thus provide  
27 no relevant information in resolving the State Defendants' Motion to Dismiss and  
28 this Court should decline to take judicial notice of them. *See Neylon*, 2016 WL

1 6834097, at \*4 (declining to take judicial notice of a bench warrant because its  
2 relevance to the pending motion to dismiss was “unclear” and the warrant was  
3 unnecessary “to resolve the parties’ arguments in” the motion to dismiss); *see also*  
4 *Adriana Int’l Corp.*, 913 F.2d at 1410, n.2; *Bryan*, 297 F. Supp. 3d at 1115. That  
5 Governor Gavin Newsom is mentioned in **Exhibit 3** and that Secretary Ross wrote  
6 the letters in **Exhibits 4 and 5** does not, on its own, render these exhibits relevant.  
7 Otherwise, every document mentioning one of the State Defendants in the context  
8 of gun shows could be judicially noticed, regardless of the document’s relevance to  
9 Plaintiffs’ Complaint or the State Defendants’ Motion to Dismiss.

10 Another issue with **Exhibit 3** is that Plaintiffs seek judicial notice of facts  
11 within the online news article, specifically that a board member of the 31st District  
12 Agricultural Association wanted to seek Governor Newsom’s advice before  
13 reaching a decision about gun shows at the Ventura County Fairgrounds. Opp. 17-  
14 18. While a court “may generally take judicial notice of news articles. . . it may  
15 only do so to ‘indicate what was in the public realm at the time, not whether the  
16 contents of those articles were in fact true.’” *Nguyen v. Stephens Inst.*, 529 F. Supp.  
17 3d 1047, 1053 (N.D. Cal. 2021), quoting *Von Saher v. Norton Simon Museum of*  
18 *Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010). Judicial notice of the facts  
19 within **Exhibit 3**, as Plaintiffs request, is thus impermissible.

20 The State Defendants accordingly ask this Court to decline Plaintiffs’ request  
21 for judicial notice of **Exhibits 1 through 5**.

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Dated: March 17, 2022

Respectfully submitted,  
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*/s/Charles J. Sarosy*

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