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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED; THE
15 SECOND AMENDMENT FOUNDATION;
GUN OWNERS OF AMERICA, INC.;
16 GUN OWNERS FOUNDATION; GUN
OWNERS OF CALIFORNIA, INC.;
17 ERICK VELASQUEZ, an individual;
CHARLES MESSEL, an individual;
18 BRIAN WEIMER, an individual;
CLARENCE RIGALI, an individual;
19 KEITH REEVES, an individual, CYNTHIA
GABALDON, an individual; and
20 STEPHEN HOOVER, an individual,

21 Plaintiffs,

22 v.

23 LOS ANGELES COUNTY SHERIFF’S
DEPARTMENT; SHERIFF ROBERT
24 LUNA, in his official capacity; LA VERNE
POLICE DEPARTMENT; LA VERNE
25 CHIEF OF POLICE COLLEEN FLORES,
in her official capacity; ROBERT BONTA,
26 in his official capacity as Attorney General
of the State of California and DOES 1-10,

27 Defendants.
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CASE NO: 8:23-cv-10169-SPG
(ADSx)

**EVIDENTIARY OBJECTIONS
TO DEFENDANT LOS
ANGELES COUNTY SHERIFF’S
DEPARTMENT’S AND SHERIFF
ROBERT LUNA’S SURVEY OF
HISTORICAL LICENSE
REQUIREMENTS AND
MOTION TO STRIKE OR DENY
JUDICIAL NOTICE OF SAME**

Hearing Date: March 13, 2024
Hearing Time: 1:30 p.m.
Courtroom: 5C
Judge: Hon. Sherilyn Peace Garnett

1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Under Federal Rules of Evidence 201, 401, 402, 403, 601, 602, 702, and
3 704, Plaintiffs California Rifle & Pistol Association, Incorporated, The Second
4 Amendment Foundation, Gun Owners of America, Inc., Gun Owners Foundation,
5 Gun Owners of California, Inc., Erick Velasquez, Charles Messel, Brian Weimer,
6 Clarence Rigali, Keith Reeves, Cynthia Gabaldon, and Stephen Hoover, hereby
7 jointly object to and move to strike:

- 8 (1) Defendants Los Angeles County Sheriff’s Department and Sheriff Robert
9 Luna’s Request for Judicial Notice in Support of Opposition to Plaintiffs’
10 Motion for Preliminary Injunction (ECF No. 27-8); and
11 (2) Defendants LASD and Sheriff Luna’s Survey of Historical License
12 Requirements (ECF No. 27-9),

13 Such objections and motion are made on the following grounds: The survey sought
14 to be judicially noticed is of unknown provenance and authorship and does not
15 contain facts that are readily known or that are not subject to dispute. To the
16 contrary, the survey document sought to be judicially noticed appears to have been
17 authored recently by Defendants’ counsel or consultant, and contains purported
18 summaries of historical laws where such summaries are slanted, lack context or
19 omit key provisions, or are otherwise described in a manner favorable to
20 Defendants’ arguments and which description is subject to significant dispute by
21 Plaintiffs. Defendants’ survey document, which amounts to little more than an
22 appendix of additional argument as to Defendants’ interpretation of the laws
23 identified, is not the proper subject of judicial notice.

24 Defendants purport that either the survey itself or its contents are judicially
25 noticeable because either the survey itself or the facts contained therein are “not
26 subject to reasonable dispute” due to either being “generally known within the
27 territorial jurisdiction of the trial court,” or “capable of accurate and ready
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1 determination by resort to sources whose accuracy cannot reasonably be
2 questioned.” *See* Defs.’ Req. for Judicial Notice in Supp. Of Opp. to Pla.’ Mot. for
3 Prelim. Inj. (“DRJN”) at 3:8-15. Defendants’ also apparently claim that the survey
4 document¹ is a public record that is “authentic and trustworthy” as enacted
5 legislation. *See id.* at 3:14-17. Defendants’ survey document (ECF No. 27-9) is
6 patently not a public record. It most certainly was authored by Defendants, their
7 counsel, or their consultant (i.e., “Defendants LASD and Sheriff Luna’s Survey. . .
8 .”) *See* Defs.’ LASD and Sheriff Luna’s Survey of Historical License Regulation,
9 *passim*. Therefore, it cannot be the subject of judicial notice under FRE as a public
10 record. (*See* DRJN at 3:14-17 (quoting *Gilbrook v. City of Westminster*, 177 F.3d
11 839, 858 (9th Cir. 1999)). Moreover, the survey is not properly admitted as a fact or
12 facts readily known or not in dispute because the survey does not purport to quote
13 verbatim legislative enactments. Had Defendants’ survey quoted fully and
14 accurately the laws identified, Defendants would have a colorable argument that
15 such a survey does set forth facts subject to judicial notice, and thus the Court
16 might admit and consider reliable such a survey.

17 Instead, Defendants’ summary of these laws is a self-serving interpretation
18 of historical laws; these summaries omit key phrasing and context, or outright
19 misrepresent the substance of the identified laws. *See United States v. Decker*,
20 1979, 600 F.2d 733, 738 n.9 (9th Cir. 1979) (*cert. denied* 444 U.S. 855) (denying
21 judicial notice of opinions of officer of regulatory body as to the correct legal
22 interpretation of that body’s regulation because such interpretation was in dispute).

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25 ¹ As part of their request for judicial notice, Defendants also seek to
26 judicially notice the contents of reprintings of historical laws, which were submitted
27 as ECF No. 27-10. Reprintings or copies of the laws themselves are properly the
28 subject of judicial notice under FRE 201. Plaintiffs’ objection is only to the attempt
to introduce additional argument via judicial notice of a survey document that is
neither a public record nor otherwise judicially noticeable.

1 As but one example, on page 10 of their survey, Defendants characterize an 1876
2 Sacramento law as:

3 Allowing police to issue a license to carry a concealed weapon to a
4 “peaceable person, whose profession or occupation may require him to
5 be out at late hours of the night, to carry concealed deadly weapons for
6 his protection.”

7 Defendants’ summary in their survey omits the full text of the law, which
8 exempts from its ambit any “traveler.” *See* ECF No. 27-10 at pp. 146-47 (reprinting
9 of full text of Sacramento law). Travelers through the city could carry concealed
10 without any permit, but nothing within Defendants’ summary in their survey
11 suggests or implies this broad exception.

12 By summarizing this particular law in their survey to disregard the traveler’s
13 exception, Defendants improperly expand the ambit of the law to support the
14 argument that there is a robust historical tradition of regulating carry for self-
15 defense by banning all concealed carry in this particular jurisdiction except by
16 permit. Defendants’ survey summary attempts to lead this Court to believe that the
17 police power of permitting was so expansive that no person was lawfully walking
18 the streets of Sacramento in 1876 with a concealed firearm unless they carried a
19 permit. The actual text of the law evidences it is not nearly as sweeping as
20 Defendant’s survey alleges it was. This is merely one example of where
21 Defendants do not accurately or fully describe a law in its survey. *See* Rebuttal
22 Decl. of Clayton Cramer in Supp. of Pls.’ Mot. for Prelim. Inj., *passim*, and Ex. 4.
23 (describing the inaccuracies in Defendants’ characterizations of historical laws).

24 By asking the Court to judicially notice a biased, incomplete, and inaccurate
25 document, Defendants are improperly asking this Court to treat their disputed
26 interpretation of these laws as settled fact, and to bypass the Court’s own required
27 analysis of these laws. While Defendants can properly advocate that their
28 interpretation of a particular law is the correct one, they cannot improperly claim

1 that such interpretation is a settled and undisputed fact subject to judicial notice.
2 Judicial notice of Defendants' survey is not supported under FRE 201, and it should
3 be denied and the survey (ECF No. 27-9) disregarded.

4 Without any indicia of reliability, authorship, or the method by which it was
5 compiled, there is insufficient foundation for entry of the survey into evidence. *See*
6 Fed R. Evid. 401 (evidence is relevant if tends to make a fact of consequence more
7 or less probable), 601 & 602 (the competency and personal knowledge of the author
8 of the survey's opinions must be established). No attempt is made to explain the
9 evidentiary relevance of what amounts to the opinion of Defendants, their counsel,
10 and/or their consultant as to the interpretation of historical laws. *See id.* R. 401 &
11 402; and *see id.* R. 701 (proper foundation for lay opinion must be established), 702
12 (expert opinion properly admitted if a foundation is laid for such opinion and it is
13 helpful to trier of fact), and 704 (opinion as to ultimate issue admissible if helpful to
14 trier of fact). They further provide no explanation as to why such a misleading
15 summary is not impermissible argument in the guise of fact, the consideration of
16 which bypasses the word limits on briefing and wastes the Court's and the parties'
17 time. *See id.* R. 403; and Cal. C.D. L. R. 11-7 (appendices shall not include matters
18 which properly belong in the brief).

19 Defendants' survey is properly advanced as argument or admissible opinion,
20 not as judicially noticeable fact evidence. Because there is no evidentiary basis for
21 admitting the survey, Plaintiffs' objection to its admission on any grounds should
22 be sustained.

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1 Respectfully submitted,

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3 Dated: February 28, 2024

MICHEL & ASSOCIATES, P.C.

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/s/ C.D. Michel

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C.D. Michel

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Counsel for Plaintiffs

7 Dated: February 28, 2024

LAW OFFICES OF DON KILMER

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/s/ Don Kilmer

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Don Kilmer

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Counsel for Plaintiff The Second Amendment
Foundation

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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *California Rifle and Pistol Association, et al., v. Los Angeles County Sheriff's Dept., et al.*

Case No.: 8:23-cv-10169-SPG (ADSx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

EVIDENTIARY OBJECTIONS TO DEFENDANT LOS ANGELES COUNTY SHERIFF'S DEPARTMENT'S AND SHERIFF ROBERT LUNA'S SURVEY OF HISTORICAL LICENSE REQUIREMENTS AND MOTION TO STRIKE OR DENY JUDICIAL NOTICE OF SAME

on the following parties, as follows:

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by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed February 28, 2024


Christina Castron