

ROBIN B. JOHANSEN, State Bar No. 79084
THOMAS A. WILLIS, State Bar No. 160989
KARI KROGSENG, State Bar No. 215263
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: rjohansen@rjp.com

Attorneys for Defendant
CARLOS A. GARCIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KEVIN M. HALL, an individual,

Plaintiff,

vs.

CARLOS A. GARCIA, in his official capacity as
Superintendent of the San Francisco Unified
School District,

Defendant.

) No.: C 10-03799 RS

) **OBJECTIONS TO EVIDENCE**

) Hearing:

) Date: January 6, 2011

) Time: 1:30 p.m.

) Crtrm.: 3

) (The Honorable Richard Seeborg)

1 All of the evidence that plaintiff Kevin M. Hall has submitted in support of his
 2 opposition to defendant Carlos A. Garcia's motion for judgment on the pleadings is inadmissible and
 3 must be stricken, because it is neither relevant nor incorporated by reference in the pleadings nor
 4 admissible under the doctrine of judicial notice. That evidence includes:

5 1. Exhibit A, an unsubstantiated and unauthenticated table entitled "California
 6 School Shootings 01/1979 to 06/2009," which includes a footnoted disclaimer which states, "Plaintiff
 7 does not purport this information to be complete, but effort has been made to be accurate with the
 8 given data sets."

9 2. Exhibit B, an unsubstantiated and unauthenticated graph entitled "California
 10 School Shootings Chart 1980-2009." Plaintiff states on page 4 of his opposition that "[w]hile
 11 determining the exact number of shootings within a given time period is likely to be impossible,
 12 websites schoolsecurity.org and columbine-angels.com have attempted to catalog this information,"
 13 before citing Exhibits A and B. Presumably, he personally extracted the data contained in Exhibits A
 14 and B from these websites, which are more fully cited in the table of authorities as
 15 http://www.schoolsecurity.org/trends/school_violence.html and [http://www/columbine-](http://www/columbine-angels.com/School_Violence.htm)
 16 [angels.com/School_Violence.htm](http://www/columbine-angels.com/School_Violence.htm).

17 3. Exhibit C, an unsubstantiated and unauthenticated map entitled "San Francisco
 18 Map (Circles indicate 1,000 foot school zone centered over school)," which includes a footnoted
 19 disclaimer which states, "Plaintiff does not claim this data is complete, but effort was made to be
 20 accurate." Page 10 of the opposition describes Exhibit C as "a map with a circle with 1,000 foot radius
 21 centered over every K-12 school Plaintiff was able to find within San Francisco," along with the
 22 unsubstantiated statement that "the circles of Exhibit C cover 32.3% of the total area of San Francisco,
 23 or roughly a third of the entire city."

24 4. Eric Bailey, "O.C. Legislator, Gun Lobby Duel Over School Violence," Los
 25 Angeles Times, August 29, 1994, an unauthenticated news article cited on page 3 of the opposition that
 26 was not attached nor filed by plaintiff.

27 5. Eugene Volokh, "*McDonald v. City of Chicago* and the Standard of Review for
 28 Gun Control Laws," <http://www.scotusblog.com/2010/06/mcdonald-v-city-of-chicago-and-the->

1 standard-of-review-for-gun-control-laws/, an unauthenticated blog post cited on page 5 of the
 2 opposition that was not attached nor filed by plaintiff.

3 6. The unsubstantiated statement on page 10 of the opposition that “[a]t 1,000 feet
 4 in size, a school with property dimensions of 200 feet by 200 feet would create a school zone
 5 encompassing over 3.98 million square feet.”

6 7. The unsubstantiated statement on page 10 of the opposition that “[s]ome
 7 handgun rounds have initial speeds of over 1,000 feet per second. . . .”

8 8. The unsubstantiated statements on pages 12-13 of the opposition that lists ten
 9 states that allow firearm license holders to enter school property, and 26 states that do not establish a
 10 gun-free school zone, with a footnoted disclaimer stating “[d]ue to the difficulty of proving something
 11 is not illegal, Plaintiff does not assert this list to be exhaustive.”

12 9. The unauthenticated report cited on page 15 of the opposition, California
 13 Attorney General, “Crime in California 2009,” [http://ag.ca.gov/cjsc/publications/candd/cd09/](http://ag.ca.gov/cjsc/publications/candd/cd09/preface.pdf)
 14 [preface.pdf](http://ag.ca.gov/cjsc/publications/candd/cd09/preface.pdf), that was not attached nor filed by plaintiff.

15 10. The unauthenticated report cited on page 15 of the opposition, California
 16 Attorney General, “Homicide in California 2008,” [http://ag.ca.gov/cjsc/publications/homicide/hm08/](http://ag.ca.gov/cjsc/publications/homicide/hm08/preface.pdf)
 17 [preface.pdf](http://ag.ca.gov/cjsc/publications/homicide/hm08/preface.pdf), that was not attached nor filed by plaintiff.

18 **A. Evidence Outside the Pleadings Cannot Be Considered On a Motion For Judgment On**
 19 **the Pleadings**

20 The factual evidence submitted by plaintiff is fundamentally inadmissible in opposition
 21 to defendant’s motion for judgment on the pleadings, because Rule 12(c) motions must be decided on
 22 the facts alleged in the pleadings, not additional facts or evidence. “If, on a motion under Rule
 23 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the
 24 motion must be treated as one for summary judgment under Rule 56.” Fed. R. Civ. P. 12(d). If this is
 25 the case, “[a]ll parties must be given a reasonable opportunity to present all the material that is
 26 pertinent to the motion.” *Id.* The only materials that a court may consider without converting the
 27 motion for judgment on the pleadings into a motion for summary judgment are documents physically
 28 attached to the complaint, documents incorporated by reference in the complaint, or matters that may

1 be judicially noticed. *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). None of these exceptions
2 applies here.

3 For the purposes of Rule 12(c) motions, a document that is not attached to a complaint
4 may only “be incorporated by reference into a complaint if the plaintiff refers extensively to the
5 document or the document forms the basis of the plaintiff’s claim.” *Ritchie*, 342 F.3d at 908. Because
6 none of the above documents or statistics presented in the opposition were referred to nor relied upon
7 in the complaint, they may not be incorporated by reference.

8 The Superintendent’s motion must—and can—be decided on the face of the complaint
9 under Rule 12(c). Not only are school shootings statistics (Nos. 1, 2), approximated school zones on a
10 map in San Francisco (No. 3), mathematical approximations regarding the size of the school zones
11 (No. 6), the speed of particular handgun rounds (No. 7), and other gun violence statistics (Nos. 9, 10)
12 improperly submitted on a motion for judgment on the pleadings, they are irrelevant to the issue posed
13 by the Superintendent’s motion: whether, as a matter of law, the Superintendent’s denial of Mr. Hall’s
14 request for an exemption to the Gun-Free School Zone Act of 1995 violates the Second and Fourteenth
15 Amendments to the United States Constitution. No such statistics are necessary for this Court to
16 determine the scope of the Supreme Court’s decision in *Dist. of Columbia v. Heller*, 554 U.S. 570
17 (2008), nor whether *Heller* has foreclosed a Second Amendment challenge to a “sensitive place” like a
18 school zone. See *U.S. v. Lewis*, Crim. No. 2008-45, 2008 WL 5412013, *2 (D.V.I. Dec. 24, 2008)
19 (“*Heller* unambiguously forecloses a Second Amendment challenge” to a conviction under the federal
20 Gun-Free School Zone Act).

21 **B. The Evidence Is Not Subject To Judicial Notice**

22 Courts may only take judicial notice of facts that are “not subject to reasonable
23 dispute.” Fed. R. Evid. 201(b). “Facts are indisputable, and thus subject to judicial notice, only if they
24 are either generally known under Rule 201(b)(1) or capable of accurate and ready determination by
25 resort to sources whose accuracy cannot be reasonably questioned under Rule 201(b)(2).” *Ritchie*, 342
26 F.3d at 909. Rule 201 does not apply to the unsubstantiated and unauthenticated statistics presented in
27 the opposition. Even if plaintiff had properly authenticated the documents referenced in the
28 opposition—and properly requested judicial notice—the only documents that might be judicially

As presented, much of the above evidence lacks foundation, assumes facts not in evidence, and constitutes hearsay. The statistics regarding school shootings lack foundation, assume facts not in evidence, and are inadmissible hearsay. Nos. 1 and 2. The map of San Francisco school zones likewise lacks foundation, assumes facts not in evidence, and constitutes hearsay. No. 3. The Los Angeles Times article is likewise inadmissible hearsay. No. 4. The Volokh blog post lacks foundation. No. 5. The vague assertions calculating the square footage of school zones (No. 6) and the statement regarding the speeds of handgun rounds (No. 7) also lack foundation, assume facts not in evidence, and constitute hearsay. The vague reference to other state laws lacks foundation. No. 8. Finally, as currently presented, the crime statistics cited in the Attorney General reports lack foundation, assume facts not in evidence, and are hearsay. Nos. 9 and 10.

Plaintiff's evidence is inadmissible, irrelevant to the motion currently pending before this Court, and does not fall under either the doctrines of incorporation or judicial notice. Accordingly, the evidence should be stricken.

Respectfully submitted,

By: /s/ Robin B. Johansen

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