

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
4275 EXECUTIVE SQUARE, SUITE 700
LA JOLLA, CALIFORNIA 92037-1477
TELEPHONE: (858) 485-9526

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Law Corporation
2 Mark R. Bresee State Bar No. 167346
MBresee@aalrr.com
3 Amy W. Estrada State Bar No. 279969
AEstrada@aalrr.com
4 Alyssa Ruiz de Esparza State Bar No. 306542
ARuizdeEsparza@aalrr.com
5 4275 Executive Square, Suite 700
La Jolla, California 92037-1477
6 Telephone: (858) 485-9526

7 Attorneys for Defendants

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

12 JOHN DOE, an individual, et al.,
13 Plaintiffs,
14 v.
15 SAN DIEGO UNIFIED SCHOOL
DISTRICT, et al.,
16 Defendants.

Case No.: 3:21-cv-01809- LL-MDD

**OBJECTIONS TO EVIDENCE
SUBMITTED BY JEFFREY M.
TRISSELL, ESQ., IN SUPPORT OF
PLAINTIFFS' REPLY MOTION FOR A
PRELIMINARY INJUNCTION**

Judge: Hon. Linda Lopez
Courtroom: 2B
Hearing Date: June 15, 2022

**PER CHAMBERS RULES, NO ORAL
ARGUMENT UNLESS SEPARATELY
ORDERED BY THE COURT**

21 Defendants hereby submit these evidentiary objections to the evidence
22 submitted by Plaintiffs, in support of their Reply Memorandum in support of their
23 Motion for a Preliminary Injunction.

24 **GENERAL OBJECTION TO DECLARATION OF JEFFREY TRISSELL**

25 In general, the evidence—Exhibits 42 through 46—that Plaintiffs are seeking
26 to introduce through the Declaration of Jeffrey Trissell is inadmissible because
27 Plaintiffs' urging that the Court focus solely on their selectively-highlighted portions
28 of these documents runs afoul of the best evidence rule, which stands for the

1 proposition that the original, entire document speaks for itself and is the best
 2 evidence of the content of the document. (Fed. Rules Evid., §§ 1002, 1004.) This
 3 evidence should be excluded because Plaintiffs have presented it in a manner that is
 4 an improper summary to prove content, improper lay opinion testimony, and/or
 5 argumentative, calculated to confuse the issues and mislead this Court (Fed. R.
 6 Evid., §§ 701, 403; see *Nationwide Transport Finance v. Cass Information Systems,*
 7 *Inc.*, 523 F.3d 1051, 1059–60 (9th Cir. 2008) (“In general, ‘[t]estimony that simply
 8 tells the jury how to decide [or what result to reach] is not considered ‘helpful’ as
 9 lay opinion”); *In re Hanford Nuclear Reservation Litigation*, 534 F.3d 986, 1016
 10 (9th Cir. 2008) (“The district court has discretion to exclude evidence when its
 11 probative value is substantially outweighed by the danger of misleading the jury or
 12 confusing the issues. *See* Fed. R. Evid. 403”); *White Industries, Inc. v. Cessna*
 13 *Aircraft Co.*, 611 F.Supp. 1049, 1070 (D.C.Mo.,1985) (under Federal Evidence Rule
 14 1006, “it is obvious that a summary must be an *accurate* summarization of the
 15 underlying materials involved.”)

16 In this regard, it is notable that Plaintiffs’ highlighting of selected portions of
 17 the documents is a clear attempt to draw attention away from content in the
 18 documents that undermines the argumentative and selective highlighting. For
 19 example, in Plaintiffs effort to convince this Court that Defendants will definitely
 20 impose a vaccination requirement for in-person participation in July 2023, and that
 21 Defendants might very well do it very soon, Plaintiffs do not highlight the text of
 22 Exhibit 42 stating “if a vaccine mandate plan is implemented in July 2023 or after”
 23 (pg. 5 of 45); in Exhibit 43 Plaintiffs highlight ignore the reference to “any student
 24 vaccination mandate” (page 13 of 45), and the clear information that there may not
 25 ever be a vaccination requirement; in Exhibit 44 Plaintiffs ignore Susan Barndollar’s
 26 reference to implementation if the State implements a requirement, but no sooner
 27 than July, 2023 (pg. 17 of 45, 19 of 45 [see also pg. 20 of 45, highlighting language
 28 regarding postponement but not highlighting language implementation is dependent

1 on the State proceeding, and in no case before July 2023)]; in Exhibits 45 and 46
 2 Plaintiffs highlight the word “postpone” and ignore the language limiting
 3 reimplementaion to occur in alignment with the State and no sooner than July 2023
 4 (pg. 37 of 45; pg. 45 of 45).

5 Sustained: _____

6 Overruled: _____

7
 8 **SPECIFIC OBJECTIONS TO DECLARATION OF JEFFREY TRISSELL**

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
1.	Declaration of Jeffrey Trissell, Esq., in Support of Plaintiffs’ Reply Motion for a Preliminary Injunction (“Trissel Decl.”) Exhibit 42 (agenda item), pg. 2 of 45, ¶¶ 7-9.	<u>Fed. R. Evid. 403, 701, 1002, 1006.</u> Evidence, highlighted portions of a document already in evidence, is not the original writing; is an improper summary; improper lay opinion; and is misleading and unfairly prejudicial.	Sustained: _____ Overruled: _____
2.	Trissel Decl., Exhibit 43 (slideshow presentation), pg. 2 of 45, ¶¶ 10-14.	<u>Fed. R. Evid. 403, 701, 1002, 1006.</u> Evidence, highlighted portions of a document already in evidence, is not the original writing; is an improper summary; improper lay opinion; and is misleading and unfairly prejudicial.	Sustained: _____ Overruled: _____

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
3.	Trissel Decl., Exhibit 44 (transcript), pg. 2 of 45, ¶¶ 15-18.	<p><u>Fed. R. Evid. 403, 701, 1002, 1004, 1006.</u></p> <p>Evidence (a transcript) is not the original recording, which is required in order to prove its content. The best evidence of the District’s May 24, 2022 Board Meeting is the YouTube recording of the meeting itself. <i>U.S. v. Workinger</i>, 90 F.3d 1409, 1415 (9th Cir. 1996). Evidence, highlighted portions of this document, is an improper summary, is an improper lay opinion, and is misleading and unfairly prejudicial.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
4.	Trissel Decl., Exhibit 45 (webpage printout), pg. 2 of 45, ¶¶ 19-21.	<p><u>Fed. R. Evid. 403, 701, 1002, 1006.</u></p> <p>Evidence, highlighted portions of a document, is not the original writing; is an improper summary; improper lay opinion; and is misleading and unfairly prejudicial.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
5.	Trissel Decl., Exhibit 46 (webpage printout), pg. 3 of 45, ¶¶ 1-3.	<p><u>Fed. R. Evid. 403, 701, 1002, 1006.</u></p> <p>Evidence, highlighted portions of a document, is not the original writing; is an improper summary; improper lay opinion; and is misleading and unfairly prejudicial.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: _____

Hon. Linda Lopez
U.S. District Judge

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
ATTORNEYS FOR DEFENDANTS

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
4275 EXECUTIVE SQUARE, SUITE 700
LA JOLLA, CALIFORNIA 92037-1477
TELEPHONE: (858) 485-9526

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Law Corporation
2 Mark R. Bresee State Bar No. 167346
MBresee@aalrr.com
3 Amy W. Estrada State Bar No. 279969
AEstrada@aalrr.com
4 Alyssa Ruiz de Esparza State Bar No. 306542
ARuizdeEsparza@aalrr.com
5 4275 Executive Square, Suite 700
La Jolla, California 92037-1477
6 Telephone: (858) 485-9526

7 Attorneys for Defendants

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

12 JOHN DOE, an individual, et al.,

13 Plaintiffs,

14 v.

15 SAN DIEGO UNIFIED SCHOOL
DISTRICT, et al.,

16 Defendants.

Case No.: 3:21-cv-01809- LL-MDD

**OBJECTIONS TO REBUTTAL
EVIDENCE SUBMITTED BY
RICHARD SCOTT FRENCH, M.D., IN
SUPPORT OF PLAINTIFFS' REPLY
MOTION FOR A PRELIMINARY
INJUNCTION**

Judge: Hon. Linda Lopez
Courtroom: 2B
Hearing Date: June 15, 2022

**PER CHAMBERS RULES, NO ORAL
ARGUMENT UNLESS SEPARATELY
ORDERED BY THE COURT**

21
22 **EVIDENTIARY OBJECTIONS**

23 Defendant San Diego Unified School District hereby submits these
24 evidentiary objections to the evidence submitted by Plaintiffs John Doe, et al., in
25 support of their Reply Memorandum in support of their Motion for a Preliminary
26 Injunction.

**OBJECTIONS TO REBUTTAL DECLARATION OF RICHARD SCOTT
FRENCH, M.D.**

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
1.	Rebuttal Declaration of Richard Scott French, M.D. in Support of Plaintiffs’ Motion for a Preliminary Injunction (“French Rebut. Decl.”) 3:9-12	<u>Fed. R. Evid. 401, 402, 403, 702, 703</u> Evidence is an argumentative, improper expert opinion on witness credibility; will not help the trier of fact and lacks foundation; and is unfairly prejudicial. ¹	Sustained: _____ Overruled: _____
2.	French Rebut. Decl. 3:22-4:7.	<u>Fed. R. Evid. 401, 402, 403, 702, 703.</u> Evidence is an argumentative, improper expert opinion on witness credibility; will not help the trier of fact and lacks foundation; and is unfairly prejudicial. ²	Sustained: _____ Overruled: _____

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
ATTORNEYS FOR DEFENDANTS

¹ See *Nimely v. City of New York*, 414 F.3d 381, 398 (2nd Cir. 2005) (“this court, echoed by our sister circuits, has consistently held that expert opinions that constitute evaluations of witness credibility, even when such evaluations are rooted in scientific or technical expertise, are inadmissible under Rule 702”); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1321, fn. 17 (9th Cir. 1995) (“Federal judges must therefore exclude proffered scientific evidence under Rules 702 and 403 unless they are convinced that it speaks clearly and directly to an issue in dispute in the case, and that it will not mislead the jury”); *Boyd v. City and Cnty. of San Francisco*, 576 F.3d 938, 945 (9th Cir. 2009) (“It is the trial judge's responsibility to ensure ‘that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.’”)

² *Ibid.*

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
3.	French Rebut. Decl. 4:8-11	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is an improper expert opinion on witness credibility; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.³</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
4.	French Rebut Decl. 4:12-5:12	<p><u>Fed. R. Evid. 403, 702, 703, 1002, 1004, 1006.</u></p> <p>Evidence, references to a transcript of the District’s May 24, 2022 Board meeting, is not the type upon which experts in the field typically rely and is not the original recording. The best evidence is the YouTube recording of the meeting itself.⁴</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
5.	French Rebut. Decl. 5:13-20	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is an improper expert opinion on witness credibility; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.⁵</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

³ *Ibid.*

⁴ *C/f Spurlin v. Air & Liquid Systems Corporation*, 537 F.Supp.3d 1162, 1169 (S.D.Cal., 2021) (“While formal authentication may be lacking, the drawings appear to be obtained from naval archives and are documents upon which experts in naval asbestos cases typically rely. ‘If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.’ Fed. R. Evid. 703.”)

⁵ *Supra*, fn. 1.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
6.	French Rebut. Decl. 6:1-6	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703, 704.</u></p> <p>Evidence is an improper expert opinion on witness credibility, and on an ultimate issue of fact without a reliable basis; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.⁶</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
7.	French Rebut. Decl. 6:21-24 ["...this case is about whether..."]	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703, 704.</u></p> <p>Evidence is an improper expert opinion on witness credibility, and on an ultimate issue of fact without a reliable basis; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.⁷</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

⁶ *Supra*, fn. 1; see also *Ennenga v. Starns*, 677 F.3d 766, 781 (7th Cir. 2012) (Expert opinion must not be “speculation” or a “naked conclusion” about an ultimate issue of fact); *U.S. v. Hall*, 93 F.3d 1337, 1343-44 (7th Cir. 1996) (“the opinion must be an *expert* opinion (that is, an opinion informed by the witness's expertise) rather than simply an opinion broached by a purported expert.’ Unless the expertise adds something, the expert at best is offering a gratuitous opinion, and at worst is exerting undue influence on the jury that would be subject to control under Rule 403. ... Even though experts are entitled to give their opinion on an ultimate issue in the case, see Rule 704(a), this does not mean that the opinion may be given divorced from the scientific, medical, or other expert basis that qualified the witness in the first place.” Internal citations omitted.)

⁷ *Supra*, fn. 1 and 6.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
8.	French Rebut. Decl. 7:14-17	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is an argumentative, improper expert opinion on witness credibility; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.⁸</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
9.	French Rebut. Decl. 7:20-8:2	<p><u>Fed. R. Evid. 403, 702, 703, 1002, 1004, 1006.</u></p> <p>Evidence, references to a transcript of the District’s May 24, 2022 Board meeting, is not the type upon which experts in the field typically rely and is not the original recording. The best evidence is the YouTube recording of the meeting itself. <i>U.S. v. Workinger</i>, 90 F.3d 1409, 1415 (9th Cir. 1996).⁹</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
10.	French Rebut. Decl. 8:8-14	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is irrelevant; an argumentative, improper expert opinion; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.¹⁰</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

⁸ *Supra*, fn. 1.
⁹ *Supra*, fn. 4.
¹⁰ *Supra*, fn. 1 and 6.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
11.	French Rebut. Decl. 8:15-23	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is irrelevant; an argumentative, improper expert opinion; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.¹¹</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
12.	French Rebut. Decl. 9:15-24	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is an argumentative, improper expert opinion; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.¹²</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
13.	French Rebut. Decl. 12:4-6	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is an argumentative, improper expert opinion on witness credibility, and is unfairly prejudicial.¹³</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
14.	French Rebut. Decl. 16:12-14 [“...This is the problem with...”]	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703.</u></p> <p>Evidence is an argumentative, improper expert opinion on witness credibility, and is unfairly prejudicial.¹⁴</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

¹¹ *Supra*, fn. 1 and 6.
¹² *Supra*, fn. 1 and 6.
¹³ *Supra*, fn. 1.
¹⁴ *Supra*, fn. 1.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
 A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW
 ATTORNEYS FOR DEFENDANTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Material Objected to:	Grounds for Objection:	Ruling on Objection:
15.	French Rebut. Decl. 16:27-17:4 [...The main problem with SDUSD’s mandate...”]	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703, 704.</u></p> <p>Evidence is an improper expert opinion on an ultimate issue of fact without a reliable basis; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.¹⁵</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
16.	French Rebut. Decl. 17:9-14 [...Dr. Taras keeps missing the point...”]	<p><u>Fed. R. Evid. 401, 402, 403, 702, 703, 704.</u></p> <p>Evidence is an improper expert opinion on witness credibility, and on an ultimate issue of fact without a reliable basis; will not help the trier of fact and lacks foundation; and is unfairly prejudicial.¹⁶</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

IT IS SO ORDERED.

Dated: _____

 Hon. Linda Lopez
 U.S. District Judge

¹⁵ *Supra*, fn. 1 and 6.

¹⁶ *Supra*, fn. 1 and 6.