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Electronically
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ON 11/13/2023
By /s/ Ashlee Nelson
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

A.B.O. COMIX, KENNETH ROBERTS, ZACHARY GREENBERG, RUBEN GONZALEZ-MAGALLANES, DOMINGO AGUILAR, KEVIN PRASAD, MALTI PRASAD, and WUMI OLADIPO,

Plaintiffs,

v.

COUNTY OF SAN MATEO and CHRISTINA CORPUS, in her official capacity as Sheriff of San Mateo County

Defendants.

(Exempt from Filing Fees pursuant to Government Code § 6103)

Case No. 23-CIV-01075

Assigned for All Purposes to:
Hon. V. Raymond Swope, Dept. 23

DEFENDANTS' OBJECTIONS TO THE CORRECTED DECLARATIONS OF CARA GAGLIANO IN SUPPORT OF PLAINTIFFS' SUR-OPPOSITION AND PLAINTIFFS' OBJECTION TO DEFENDANTS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE AND EXHIBITS THERETO

Date: December 4, 2023
Time: 2:00 PM
Dept.: 23

Action Filed: March 9, 2023
Trial Date: None Set

I. INTRODUCTION

Plaintiffs' Sur-Opposition (styled as a "Sur-Reply") claimed "[Mr.] Greenberg filed a grievance protesting Defendants' mail policy" and Defendants "falsely claim[ed] that he did not" do so.[1] Defendants objected to Plaintiffs' supporting declaration and exhibit, explaining, inter alia, that the declarant lacked foundation to authenticate the document. Purporting to correct their mistakes, Plaintiffs filed two nearly identical new declarations.[2] But rather than correcting these glaring deficiencies, the New Declarations *confirm* the declarant lacks personal knowledge.

II. THE DECLARANT STILL LACKS PERSONAL KNOWLEDGE

"Authentication of a writing is required before it may be received in evidence." Evid. Code § 1401 ("§ 1401"). "Declarations by … party's counsel as to essential facts are generally objectionable as hearsay ... except where the lawyer somehow has personal knowledge of the facts." Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2006) ¶ 9:61, p. 9(I)-34. For this reason, *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241 held a recording of a conversation was inadmissible because the attorney-declarant failed to satisfy § 1401. *Id.* at 250 (disapproved on other grounds by *Flanagan*, 27 Cal.4th at 776 fn. 4). The declaration stated the attorney "received the … tape from [ab] investigator" who the "attorney hired." *O'Laskey*, 224 Cal.App.3d at 244, 249. But it was inadmissible because "no foundation for the tape was laid" because the attorney-declarant was not present during the conversation and thus, the "attorney [could not] know the true and complete extent of the conversation." *Id.* at 250.

Plaintiffs claim Mr. Greenberg "filed a grievance protesting Defendants' mail policy on or about October 20, 2022." Sur-Opp'n at 2:2-3, 3:4-5. Plaintiffs' Original Declaration failed to

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[1] Plaintiffs' Sur-Reply to Defs' Motion for Judgment on the Pleadings ("Sur-Opp'n") at 2:1-7.

[2] *See generally* Corrected Decl. of Cara Gagliano in Support of Plaintiffs' Sur-Reply ("Sur-Reply Decl."); Corrected Decl. of Cara Gagliano in Support of Plaintiffs' Opposition to Defendants' Supplemental RJN ("RJN Decl") (collectively "New Declarations"). Other than the caption and the footer, the only difference between the New Declarations is that the Sur-Reply Decl. differs from the RJN Decl.: (1) in ¶ 9 because the word "soon" is in quotations marks, (2) in ¶ 10 the words "withdraw the argument and related exhibits" is replaced with "correct the misstatement" and (3) in ¶ 13 the words "motion for judgment on the pleadings" is replaced with "motion for judgement on the pleadings." *See* Decl. of Chad E. DeVeaux in Support of Defs' Objections to the Corrected Declarations of Cara Gagliano ("CED Decl. re: New Declarations") ¶ 3, Ex. D.

satisfy § 1401 because the attorney declarant states that "[Mr.] Greenberg provided [her] with an Inmate Grievance Form…."[3] As in *O'Laskey*, the declarant stated Mr. Greenberg merely "provided [her] with an Inmate Grievance Form…." Original Decl. ¶ 2. The declarant did not attest that she was present when he purportedly signed or filed the alleged grievance. *See id.*

After Defendants objected, Plaintiffs filed two nearly identical "Corrected Declaration[s]," which purport to correct these deficiencies. The declarant now attests "Mr. Greenberg provided [her] his copy of the [purported] grievance in early 2023, before the original complaint in this case was filed." New Declarations ¶ 3. But this actually *proves* that the declarant lacks the personal knowledge necessary to authenticate the grievance. The Original Declaration merely failed to state whether the declarant was present when Mr. Greenberg filed the grievance. *See* Original Decl. ¶ 2. The New Declarations definitively state that the declarant was *not* present by admitting that Mr. Greenberg first provided her with a "copy of [it] ***in early 2023***"—well after he purportedly filed it "***[o]n October 20, 2022***." New Declarations at ¶¶ 2-3 (emphasis added). Thus, the New Declarations prove that the declarant cannot satisfy § 1401's authentication requirements.

DATED: November 13, 2023

Respectfully submitted,

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By: _____
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[3] *See* Nov. 1, 2023 Declaration of Cara Gagliano in Support of Plaintiffs' Opposition to Defendants' Supplemental Request for Judicial Notice ("Original Decl.") ¶ 2.