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13 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

14 Maria M. Gonzalez, et al.,) No. CV-06-1268-PHX-ROS(Lead)
15) No. CV-06-1362-PCT-JAT(Cons.)
Plaintiffs,) No. CV-06-1575-PHX-EHC(Cons.)
16)
vs.) GONZALEZ PLAINTIFFS'
17) MOTION FOR
State of Arizona, et al,) RECONSIDERATION OF RULING
18) ON DEFENDANTS' MOTION TO
Defendants.) STRIKE AND MOTION TO ADMIT
19) EXHIBITS INTO EVIDENCE
20)
(Assigned to the
Honorable Roslyn O. Silver)

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1 **I. INTRODUCTION**

2 NOW COME Gonzalez Plaintiffs and file this Motion for Reconsideration of
3 Ruling on Defendants’ Motion to Strike and Motion to Admit Exhibits Into Evidence.

4 On June 20, 2008, Defendants filed their Motion to Strike Gonzalez Plaintiffs’
5 Factual Submissions in Response to Motion for Summary Judgment. *See* Dkt. Entry No.
6 851. Subsequently, Defendants a list detailing the specific bases of their objections as
7 per order of the Court. *See* Dkt. Entry No. 885. Gonzalez Plaintiffs then filed their
8 response. *See* Dkt. Entry No. 898. The Court ruled on Defendants’ Motion to Strike on
9 July 9, 2008, denying it in part and granting it in part. *See* Dkt. Entry No. 938.

10 In its July 9 Order, the Court sustained Defendants’ objections on a number of
11 exhibits. Gonzalez Plaintiffs respectfully request that the Court reconsider the
12 admissibility of certain exhibits for which Defendants’ objections were sustained.
13 Gonzalez Plaintiffs further request that the Court enter these exhibits into evidence at
14 trial. In support of their motion, Gonzalez Plaintiffs show the following:

15 **II. Exhibits Related to VRAZ are Relevant to how Defendants Changed or**
16 **Planned to Change Their Voter Registration System as a Result of Prop.**
17 **200**

18 The Court sustained a number of objections related to the “VRAZ” system on the
19 basis of relevancy. Craig Stender, the HAVA Project Manager of the Arizona Secretary
20 of State’s Office and a 30(b)(6) witness in this case, described the VRAZ system at
21 length in his deposition. *See* Stender Depo., attached as Exh. 1. VRAZ is Arizona’s
22 centralized electronic voter registration system and database that interfaces with the

1 counties and Arizona's Motor Vehicles Department, Bureau of Vital Statistics, and other
2 governmental entities. *See generally* Stender Depo., Ex. 1. Craig Stender is responsible
3 for the operation of the VRAZ system, which plays a significant role in the
4 administration of the voter requirements of Prop. 200. *See id.*

5 As Stender discusses extensively in his deposition, the State prepared many documents
6 in order to modify VRAZ following Prop. 200. *See* Stender Depo, Ex. 1. Changes to
7 the VRAZ system following Prop. 200 are central to the State's current use of the
8 Arizona Driver's License to confirm citizenship of voter registration applicants or flag
9 them for rejection if VRAZ cannot confirm citizenship. *See id.*

10 The following exhibits are records of the Secretary of State that show the
11 modifications VRAZ underwent after Prop. 200. They are examples of content that the
12 State prepared, or documents that they hired programmers or State agencies to prepare in
13 the operation of the VRAZ system:

14 126-129, 132, 137, 149-151, 152-155, 159-163, 165-179, 180-187, 197-199, 200-206,
15 306-307, 688.

16 Gonzalez Plaintiffs respectfully request that the Court overrule the objections to the
17 exhibits listed above, and enter them into evidence.

18
19 **III. Correspondence Regarding the Implementation of Prop. 200 is Either**
20 **Nonhearsay or Excepted From the Hearsay Rule.**

21 Many of the objections that the Court sustained related to electronic or written
22 correspondence composed by Defendants or their agents. These exhibits are public

1 records and excepted from the hearsay rule.

2 Federal Rule of Evidence 801(d)(2)(D) provides that a statement is not hearsay if
3 it is offered against a party and is a statement by the party's agent concerning a matter
4 within the scope of the agency or employment and is made during the existence of the
5 relationship. *See also Sea-Land Service, Inc. v. Lozen Intern, LLC.*, 285 F.3d 808 (9th
6 Cir. 2002). Emails written by a party opponent are admissions of a party opponent and
7 are admissible as non-hearsay. *See In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp.
8 2d 769, 781 (C.D. Cal. 2004); *Mbacke v. Transcon Cargo, Inc.*, 2008 U.S. Dist. LEXIS
9 5615 (E.D. Cal. Jan. 25, 2008).

10 As mentioned above, Craig Stender is a 30(b)(6) witness and an agent of the
11 State. The emails he composed in the course of his work for the State, including those
12 he wrote as part of implementing the VRAZ system, qualify as the admission of a party
13 opponent.

14 The exhibits that fall into this category are:

15 14, 40, 59, 61, 64, 68, 84, 188, 196,

16 Other correspondence from Defendants and their agents, such as County Election
17 Recorders and Directors, falls into this category as well. They include:

18 85, 86, 87, 88-90, 92-94, 148, 689

19 These exhibits are also public records that are excepted from the hearsay rule.
20 FED. R. EVID. 803(8) excepts "[r]ecords, reports, statements, or data compilations, in any
21 form, of public offices or agencies, setting forth. . .the activities of the office or agency"
22 from the hearsay rule. Federal courts have extended this exception to emails. *See, e.g.*,

1 *Lester v. Natsios*, 290 F. Supp. 2d 11, 26 (D.D.C. 2003). Any emails that Stender or any
2 other 30(b)(6) witness received are records of a public agency and related to his business
3 duties as an agent of the State. *See* Stender Depo, Ex. 1.

4 These include:

5 62, 9, 679-682

6 Gonzalez Plaintiffs respectfully request that the Court overrule the objections to
7 the exhibits listed above, and enter them into evidence.

8
9 **IV. Public Documents Drawn From Government Websites are Admissible.**

10 The Court excluded a number of official publications drawn from federal and state
11 websites. As such, these exhibits are public records and properly admissible before the
12 court. They are:

13 693

14 653-655, 658 (identifiable on their face as being United States Census Bureau
15 documents)

16 656 (downloaded in PDF form from the Federal Census website at
17 <http://www.census.gov/population/socdemo/voting/p20-383/tab16.pdf>)

18 657 (downloaded in PDF form from the Federal Census website at
19 <http://www.census.gov/population/socdemo/voting/p20-370/tab05.pdf>)

20 659 (downloaded in PDF form from the Federal Census website at
21 <http://www.census.gov/population/socdemo/voting/p20-405/tab02.pdf>)

22 660 (downloaded in PDF form from the Federal Census website at

1 <http://www.census.gov/population/socdemo/voting/p20-414/tab04.pdf>)

2 Gonzalez Plaintiffs respectfully request that the Court overrule the objections to the
3 exhibits listed above, and enter them into evidence.

4 **V. Documents Produce by Public Agencies are Public Records That are**
5 **Excepted From the Hearsay Rule and Admissions of Party Opponents**
6 **that are Nonhearsay.**

7 The Court sustained objections to exhibits that are either identifiable on their face as
8 having been produced by a public agencies such as the Secretary of State (or “SOS”) and
9 the Arizona Motor Vehicle Division (“MVD”), or were identified as such in the course
10 of deposition.

11 These documents are therefore public records and nonhearsay admissions of party
12 opponents¹.

13 These exhibits are:
14 97, 98, 314, 420

15 Gonzalez Plaintiffs respectfully request that the Court overrule the objections to
16 the exhibits listed above, and enter them into evidence.

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18 **VI. CONCLUSION**

19 Because the above listed exhibits are admissible at trial, Gonzalez Plaintiffs
20 respectfully urge the Court to overrule the objections made by the State and enter these
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22 ¹ Although the MVD is not a party in this case, the agency was acting as an agent of the Defendants in assisting their implementation of Prop. 200.

1 exhibits into evidence at trial.

2 **RESPECTFULLY SUBMITTED** this 16th day of July, 2008

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By: s/Nina Perales
Nina Perales

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Counsel for Plaintiffs
Gonzalez, et al.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2008, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

COPY of the foregoing filed electronically this 16th day of July, 2008.

COPY of the foregoing mailed with Notice of Electronic Filing this 16th day of July, 2008 to:

The Honorable Roslyn O. Silver
United States District Court
Sandra Day O’Connor U.S. Courthouse, Suite 624
401 West Washington Street, SPC 59
Phoenix, AZ 85003-2158

s/Nina Perales
Nina Perales