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12
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) CONSOLIDATED MOTION FOR
State of Arizona, et al,) ADMISSION OF TRIAL EXHIBITS
18)
Defendants.) (Assigned to the
19) Honorable Roslyn O. Silver)
20)
21)
22)

NOW COME Gonzalez Plaintiffs and file their Consolidated Motion for

1 Admission of Trial Exhibits.¹ In support of their Motion, Gonzalez Plaintiffs show the
2 following:

3
4 **I. THE ADMISSION OF EXHIBITS THE COURT ALLOWED IN ITS**
5 **ORDER DENYING DEFENDANTS' MOTION TO STRIKE IN**
6 **PART IS APPROPRIATE.**

7 On July 9, 2008, the Court denied in part Defendants' Motion to Strike Gonzalez
8 Plaintiffs' Factual Submissions in Response to Motion for Summary Judgment. *See* Dkt.
9 Entry No. 938. The Court overruled Defendants' Motion on the following trial
10 exhibits:²

11 24-29, 37-39, 42, 43, 45, 53, 54, 56, 60, 63, 65, 70, 71, 91, 95, 96, 100, 101, 108, 114,
12 117, 131, 133, 177, 191-193, 203, 204, 210, 214-216, 218, 219, 221, 223, 225, 236, 241,
13 243, 245-247, 249, 252, 257-258, 263-266, 270, 271, 274, 276, 280-284, 292, 294, 311,
14 316, 322, 335, 337, 395, 404, 405, 410, 413, 417, 436, 445-447, 472, 500, 502, 511, 515,
15 518, 528-530, 562, 582, 584-586, 588, 597, 607, 610, 611, 620, 630, 631, 632, 635, 646,
16 647, 670, 671, 700-702, 705, 713, 715, 718, 720, 960, 961

17 Because the Court only rules on admissible evidence in considering a Motion for

18

¹ On July 17, 2008, Gonzalez Plaintiffs filed a motion to withdraw their previous motions to admit trial exhibits
19 into evidence in order to file this consolidated motion for the Court's ease of reference. *See* Docs. 960, 965, 966,
20 970, 973, and 974. Gonzalez Plaintiffs have also created a chart briefly summarizing their arguments, attached as
21 Exhibit 1, with a column for Defendants' use in their Response. In Gonzalez Plaintiffs' chart, State and County
22 Defendants' objections are noted, and it is also noted by asterisk which exhibits, if admitted, should be admitted
under seal or with redactions.

² The numbering for Gonzalez Plaintiffs' Response to Motion for Summary Judgment differs from the numbering
on their Trial Exhibit List. Gonzalez Plaintiffs have converted the Summary Judgment exhibit numbers to trial
exhibit numbers for the Court's reference.

1 Summary Judgment, the objections that the Court overruled in its Order relate to
2 admissible trial exhibits and Gonzalez Plaintiffs therefore respectfully request that the
3 Court admit these trial exhibits into evidence. *See* FED. R. CIV. P. 56(e); *Hollingsworth*
4 *Sorderless Terminal Co. v. Turley*, 622 F.2d 1324, 1335 n.9 (9th Cir. 1980) (citations
5 omitted).

6 In addition to the trial exhibits listed above, Defendants did not object to the
7 following exhibits in their Motion to Strike. *See* Dkt. Entry No. 851. Gonzalez
8 Plaintiffs therefore respectfully request that they be admitted into evidence: 4, 8, 10, 17,
9 20, 21, 23, 102, 107, 115, 116, 118, 123, 138, 147, 152, 189, 190, 194, 220, 291, 304,
10 305, 309, 312, 317, 319, 333, 338, 339, 344, 350, 357, 358, 359, 360-364, 367,
11 368, 374, 376, 378, 380-384, 484, 521, 526, 575, 576, 580, 581, 590-594, 634, 661-663,
12 665, 667, 668, 672, 674, 675-678, 690-692, 695, 706, 708, 711, 719, 722.

13 **II. EXHIBITS STIPULATED BY PARTIES ARE ADMISSIBLE.**

14
15 On July 9, 2008, the County Defendants filed Gonzalez Plaintiffs' and Twelve
16 County Defendants' Stipulation Re Authenticity and Withdrawal of Subpoenas. *See*
17 Dkt. Entry No. 933. Parties stipulated that the exhibits are authentic, have foundation
18 and do not contain first generation hearsay. Defendants reserved objections to other
19 objections, such as hearsay within hearsay that the testimony of a County Defendant
20 could not remedy. *See* Dkt. Entry No. 933. The trial exhibits are: 143, 144, 204, 207,
21 208-210, 214, 216, 217, 220, 222-225, 227-232, 234-239, 242, 243, 247, 255, 259, 261-
22 265, 269-271, 273-277, 280, 287-290, 324-329, 331-334, 336, 338-340, 343-345, 348,

1 399-402, 407, 408, 410, 411, 413, 415, 417, 418, 421-426, 438, 440, 441, 449, 455,
2 457-462, 467-485, 488, 490-493, 495, 497, 512, 513, 516-519, 524, 525, 527-531, 573,
3 577-579, 628-630, 632, 637, 639, 641-644, 648-652, 900, 914, 915, 959.

4 On July 2, 2008 Gonzalez Plaintiffs entered into and filed a stipulation with
5 Coconino and Navajo Counties agreeing to the authenticity and admissibility of
6 Gonzalez Plaintiffs' Trial Exhibits that were produced by these respective counties. *See*
7 Docket Nos. 902 and 903.

8 The Gonzalez Plaintiffs' Trial Exhibits that were produced by Coconino and
9 Navajo Counties are as follows: 8, 123, 226, 241, 248, 251, 252, 253, 278, 303, 317,
10 318, 319, 320, 321, 404, 405, 442, 443, 444, 445, 446, 447, 450, 451, 452, 453, 454,
11 600-627, 645-647, 723, 724, 761-763, 330, 406, 419, 486, 218, 240, 245 and 246.

12 . Gonzalez Plaintiffs respectfully request that the above stipulated exhibits be
13 admitted into evidence.

14
15 **IV. GONZALEZ PLAINTIFFS RESPECTFULLY REQUEST THAT**
16 **THE COURT RECONSIDER ITS RULING ON DEFENDANTS'**
17 **MOTION TO STRIKE AND MOTION TO ADMIT EXHIBITS**
18 **INTO EVIDENCE.**

19 On June 20, 2008, Defendants filed their Motion to Strike Gonzalez Plaintiffs'
20 Factual Submissions in Response to Motion for Summary Judgment. *See* Dkt. Entry No.
21 851. Subsequently, Defendants submitted a list detailing the specific bases of their
22 objections as per order of this Court. *See* Dkt. Entry No. 885. Gonzalez Plaintiffs then
filed their response. *See* Dkt. Entry No. 898. The Court ruled on Defendants' Motion

1 to Strike on July 9, 2008, denying it in part and granting it in part. *See* Dkt. Entry No.
2 938.

3 In its July 9 Order, the Court sustained Defendants’ objections on a number of
4 exhibits. *See id.* Gonzalez Plaintiffs respectfully request that the Court reconsider the
5 admissibility of certain exhibits for which Defendants’ objections were sustained.

6
7 **A. EXHIBITS RELATED TO VRAZ ARE RELEVANT TO HOW DEFENDANTS**
8 **CHANGED OR PLANNED TO CHANGE THEIR VOTER RESGISTRATION**
9 **SYSTEM AS A RESULT OF PROPOSITION 200**

10 The Court sustained a number of objections related to the “VRAZ” system on the
11 basis of relevancy. There are also a number of trial exhibits that were not included in the
12 summary judgment response which are also related to VRAZ.³ Gonzalez Plaintiffs
13 claim that VRAZ is relevant to their claims because the State’s modifications of the
14 system after Prop. 200 created a burden on naturalized citizens’ ability to register to
15 vote.

16 VRAZ is the statewide electronic voter registration database in Arizona.
17 Defendants use VRAZ to gather and transmit voter registration information as well as
18 compare it with other databases such as the Arizona Motor Vehicles Division,
19 Department of Health Services, and court records.

20 The VRAZ system plays a central role in the way that Defendants implement the

21 ³ For example, many of Gonzalez Plaintiffs’ Trial Exhibits are documents that were issued, received or created by
22 Craig Stender, the HAVA Project Manager of the Arizona Secretary of State’s Office and a 30(b)(6) witness in this
case. *See Generally* Stender Dep., 1/11/08. Craig Stender is responsible for the operation of the VRAZ system,
which plays a significant role in the administration of the voter requirements of Prop. 200. *See id.* As Mr. Stender
discusses extensively in his deposition, the State prepared many documents in order to modify VRAZ following
Prop. 200. *See id.*

1 voter registration requirements of Proposition 200. Defendants modified the system to
2 comport with the proposition's requirements, and it now includes protocols that reflect
3 this adjustment. For example, any potential voter registrant who has an Arizona Type F
4 driver's license- issued to noncitizens- is automatically rejected by VRAZ. This process
5 fails to account for the subsequent naturalization of many Type F license holders, and
6 Defendants concede that qualified U.S. citizen voter registration applicants are rejected
7 by the system. Thus, changes to the VRAZ system following Prop. 200 are central to
8 the State's current use of the Arizona Driver's License to confirm citizenship of voter
9 registration applicants or flag them for rejection if VRAZ cannot confirm citizenship.
10 *See id.*

11 The following exhibits are records of the Secretary of State that show the
12 modifications VRAZ underwent after Prop. 200. They are examples of content that the
13 State prepared, or documents that they hired programmers or State agencies to prepare in
14 the operation of the VRAZ system: 162, 160, 306, 165, 161, 159, 151, 137, 126, 175,
15 176, 178, 206, 307, and 133.

16 Gonzalez Plaintiffs urge the Court to overrule any previous objections to the
17 exhibits listed above, and to enter them into evidence.

18
19 **B. 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 it
3 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 Plaintiffs' trial exhibits that fall into this category are: 14, 40, 59, 61, 64, 68, 84,
15 188, 196. Other correspondence from Defendants and their agents, such as County
16 Election Records and Directors, falls into this category as well. They include exhibits:
17 85, 86, 87, 88-90, 92-94, 148, 689.

18 These exhibits are also public records that are excepted from the hearsay rule.
19 FED. R. EVID. 803(8) excepts "[r]ecords, reports, statements, or data compilations, in
20 any form, of public offices or agencies, setting forth. . .the activities of the office or
21 agency" from the hearsay rule. Federal courts have extended this exception to emails.
22 *See, e.g., Lester v. Natsios*, 290 F. Supp. 2d 11, 26 (D.D.C. 2003). Any emails that

1 Stender or any other 30(b)(6) witness received are records of a public agency and related
2 to his business duties as an agent of the State. *See* Stender Depo, Ex. 1.
3 These include exhibits: 62, 9, 679-682.

4 Gonzalez Plaintiffs urge the Court to overrule the objections to the exhibits listed
5 above, and enter them into evidence.

6
7 **C. PUBLIC DOCUMENTS DRAWN FROM GOVERNMENT WEBSITES
8 ARE ADMISSIBLE.**

9 The Court excluded a number of official publications drawn from federal and state
10 websites. As such, these exhibits are public records and properly admissible before the
11 court. They are: 693,653-655, 658 (identifiable on their face as being United States
12 Census Bureau documents) 656 (downloaded in PDF form from the Federal Census
13 website at <http://www.census.gov/population/socdemo/voting/p20-383/tab16.pdf>)
14 657 (downloaded in PDF form from the Federal Census website at
15 <http://www.census.gov/population/socdemo/voting/p20-370/tab05.pdf>)
16 659 (downloaded in PDF form from the Federal Census website at
17 <http://www.census.gov/population/socdemo/voting/p20-405/tab02.pdf>)
18 660 (downloaded in PDF form from the Federal Census website at
19 <http://www.census.gov/population/socdemo/voting/p20-414/tab04.pdf>).

20 Gonzalez Plaintiffs urge the Court to overrule the objections to the exhibits listed
21 above, and enter them into evidence.

1 **D. DOCUMENTS PRODUCED BY PUBLIC AGENCIES ARE PUBLIC RECORDS THAT ARE**
2 **EXCEPTED FROM THE HEARSAY RULE AND ADMISSIONS OF PARTY OPPONENTS**
3 **THAT ARE NONHEARSAY.**

4 The Court sustained objections to exhibits that are either identifiable on their face
5 as having been produced by a public agencies such as the Secretary of State (or “SOS”)
6 and the Arizona Motor Vehicle Division (“MVD”), or were identified as such in the
7 course of deposition. These documents are therefore public records and nonhearsay
8 admissions of party opponents.⁴ These exhibits are: 97, 98, 314, and 420.

9 Gonzalez Plaintiffs urge the Court to overrule the objections to the exhibits listed
10 above, and enter them into evidence.

11 **V. GONZALEZ PLAINTIFFS RESPECTFULLY REQUEST THAT**
12 **THE COURT ADMIT OTHER PUBLIC RECORD EXHIBITS INTO**
13 **EVIDENCE.**

14 Gonzalez Plaintiffs have proposed various trial exhibits that are authentic and
15 meet the public record exception of Fed. R. Evid. 803. Gonzalez Plaintiffs Trial
16 Exhibits that meet these criteria are the following:

17 7, 12, 13, 15, 16, 18, 22, 26, 27, 28, 41, 46, 47, 48, 49, 50, 57, 58, 61, 64, 68, 72, 74, 75,
18 84, 85, 88, 90, 93, 94, 97, 98, 122, 124, 130, 136, 139, 140, 141, 142, 144, 156, 157,
19 158, 174, 211, 212, 213, 233, 254, 256, 260, 267, 296, 297, 298, 299, 300, 301, 302,
20 303, 306, 310, 323, 342, 349, 352, 354, 355, 356, 359, 365, 369, 370, 371, 375, 379,
21 385, 388, 396, 397, 409, 414, 414, 416, 427, 428, 429, 439, 431, 432, 434, 435, 437,

22 ⁴ 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.

1 456, 464, 465, 466, 496, 498, 499, 501, 503, 504, 505, 507, 508, 509, 520, 523, 574,
2 596, 617, 618, 619, 636, 638, 640, 653, 654, 655, 656, 657, 658, 659, 660, 664, 672,
3 679-687, 689, 693, 694, 698, 699, 701, 774, 796, 814, 820, 954, 955, 956, 962.

4 Because the above exhibits are firmly excepted from the hearsay rule, Gonzalez
5 Plaintiffs respectfully urge the Court to admit them into evidence.

6
7 **VI. REMAINING EXHIBITS ARE PUBLIC RECORDS OR HAVE HAD**
8 **FOUNDATION ESTABLISHED**

9 Gonzalez Plaintiffs have proposed various trial exhibits that are public records or
10 have had foundation established that the Court has not previously considered.

11 Specifically, Gonzalez Plaintiffs request that the Court admit Gonzalez Plaintiffs' Trial
12 Exhibits 494, 430, 403, 146, 957, 134, 293, 403 into evidence.

13 **A. TRIAL EXHIBITS THAT CONTAIN PUBLIC RECORDS ARE EXCEPTED FROM THE**
14 **HEARSAY RULE AND THEREFORE ADMISSIBLE AT TRIAL.**

15 Gonzalez Plaintiffs' Trial Exhibit 494 is a pamphlet entitled "Acceptable Forms
16 of Identification Could Include." It also features the Graham County seal and Graham
17 County Recorder contact information which make the exhibit identifiable on its face as a
18 public record under Rule 803(8).

19 Similarly, Gonzalez Plaintiffs' Trial Exhibits 430 and 403 are documents entitled
20 "Poll Worker Training Manual September 12, 2006 and November 7, 2006, Gila
21 County, Arizona" and "Voters Identification at the Polls," respectively, and are
22 identifiable as Gila County documents. These documents are also public records
excepted from the hearsay rule.

1 Finally, the public record hearsay exception includes public records and
2 government documents available from reliable sources on the internet. *See, e.g., Grimes*
3 *v. Navigant Consulting, Inc.*, 185 F.Supp.2d 906, 913 (N.D. Ill. 2002) (taking judicial
4 notice of stock prices posted on a website); *Cali v. E. Coast Aviation Servs., Ltd.*, 178
5 F.Supp.2d 276, 287 (E.D.N.Y. 2001). Exhibit 146 is a printout of the page "How to
6 Register to Vote in Arizona" and posted on the Arizona Secretary of State website.
7 Similarly, Exhibit 957, a printout from United States Citizenship and Immigration
8 Services (USCIS) website entitled "Immigration Forms," is a government document
9 maintained on a government website. Exhibit 957 shows the costs associated with
10 replacing a Certificate of Naturalization, one of the forms of documentary proof of
11 citizenship under Prop. 200.

12 Because the listed exhibits are authentic public records firmly excepted from the
13 hearsay rule, Gonzalez Plaintiffs respectfully urge the Court to admit them into
14 evidence.

15 **B. PROPER FOUNDATION HAS BEEN LAID FOR EXHIBITS THAT WERE**
16 **IDENTIFIED IN PREVIOUS PORTIONS OF THE TRIAL RECORD.**

17 Gonzalez Plaintiffs' Trial Exhibit 134 and 293 are trial exhibits that had proper
18 foundation established in deposition testimony that is already a part of the Court's
19 record. Trial Exhibit 134 is a Table entitled EZ Voter Statistics. This exhibit is already a
20 part of the trial record, because it is attached as Exhibit 4 to Craig Stender's January 11,
21 2008 Deposition. Craig Stender is the HAVA Project Manager of the Arizona Secretary
22 of State's Office and a 30(b)(6) witness in this case. He identified Exhibit 134 as a

1 report of statewide electronic voter registrations. Thus foundation has been laid for this
2 exhibit, and it is admissible evidence at trial.

3 Gonzalez Plaintiffs' Trial Exhibit 293 was identified by F. Ann Rodriguez, the
4 Pima County Recorder, in her August 20, 2006 deposition as Exhibit 4. This exhibit is a
5 table entitled "Authorized Presence Document/License Expiration Date," and Ms.
6 Rodriguez describes it as a letter that Pima County sends to potential voter registrants
7 after an unsuccessful attempt to vote.

8

9 **VII. CONCLUSION**

10 For the above reasons, Gonzalez Plaintiffs respectfully request that the Court admit
11 the above listed trial exhibits into evidence.

12

13 RESPECTFULLY SUBMITTED this 18th day of July, 2008

14

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 18th 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 18th day of July, 2008.

COPY of the foregoing mailed with Notice of Electronic Filing this 18th 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