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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Maria M. Gonzalez, et al.,	)	No. CV 06-1268-PHX-ROS
Plaintiffs,	)	<b>ORDER</b>
vs.	)	
State of Arizona, et al.,	)	
Defendants.	)	

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Before the Court are the briefings on Defendants’ Motions to Strike, and it appears that Defendants’ objections are well taken. (Docs. 851 & 854). Before a decisive ruling, however, Plaintiffs and the Court need notice of the precise objections Defendants are making to each exhibit. For purposes of providing this notice only, the parties are to assume that all exhibits were timely disclosed and are authentic.

Principles of evidence will govern the eventual rulings. At the preliminary injunction hearing, where the Court agreed to consider but did not rule on the admissibility of an exhibit, the final decision on the admissibility of that exhibit was reserved for summary judgment or trial on the merits. Under Federal Rule of Civil Procedure 65(a)(2), the Court has discretion to consider inadmissible evidence at a preliminary injunction hearing. See Flynt Dist. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984) (“The trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing

1 irreparable harm before trial.”); 11A Fed. Prac. & Proc. Civ. 2d § 2949 (“[I]t is not surprising  
2 that in practice affidavits usually are accepted on a preliminary injunction motion without  
3 regard to the strict standards of Rule 56(e), and that hearsay evidence also may be  
4 considered.”).

5 However, at the time of a decision on the merits, the Federal Rules of Evidence are  
6 strictly applied. Federal Rule of Civil Procedure 65(a)(2) provides that only “[evidence] that  
7 *would be admissible at trial*” becomes part of the record for trial purposes. (emphasis  
8 added). Hence, at this stage of the proceedings, only admissible evidence will be considered  
9 by the Court on summary judgment and at the injunction hearing.

10 In this regard, the Court notes (1) merely because a document was produced by the  
11 government, does not render it admissible under the public record exception to hearsay, see  
12 Fed. R. Evid. 803(8); and (2) expert reports are only admissible pursuant to Federal Rules  
13 of Evidence 702 and 703.

14 Accordingly,

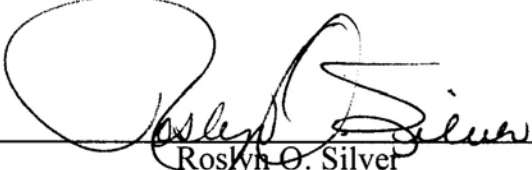
15 **IT IS ORDERED** Defendants shall file a list detailing the specific bases of its  
16 objections to Plaintiffs’ facts and exhibits by 12:00 p.m. on June 30, 2008. Plaintiffs shall  
17 file a response by 12:00 p.m. on July 2, 2008. Defendants shall file a reply by 12:00 p.m. on  
18 July 3, 2008. The Court’s decision on the motion for summary judgment will follow, and,  
19 assuming the motion is denied,

20 **IT IS FURTHER ORDERED** the trial will begin at 8:30 a.m. on July 8, 2008.

21 **IT IS FURTHER ORDERED** the Final Pretrial Conference, set for June 30, 2008,  
22 is **VACATED**, and will not be rescheduled.

23 DATED this 27th day of June, 2008.

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Roslyn O. Silver  
United States District Judge