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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF ARIZONA**

13 MARIA M. GONZALEZ, et al.,  
14 Plaintiffs,  
15 v.  
16 STATE OF ARIZONA, et al.  
17 Defendants.

No. CV06-01268 PHX ROS  
No. CV06-1362 PCT ROS (Cons)  
No. CV06-1575 PCT ROS (Cons)

**REPLY IN SUPPORT OF  
MOTION TO STRIKE  
GONZALEZ PLAINTIFFS'  
FACTUAL SUBMISSION IN  
RESPONSE TO MOTION FOR  
SUMMARY JUDGMENT BY  
DEFENDANTS STATE OF  
ARIZONA AND ARIZONA  
SECRETARY OF STATE**

(Assigned to the Honorable  
Roslyn O. Silver)

1           Gonzalez plaintiffs’ brief and declaration of counsel in response to Defendants’  
2 motion to strike contain serious and troubling misstatements to the Court and opposing  
3 counsel. Plaintiffs’ newest factual submission submits new and different exhibits and  
4 removes exhibits that had been included in plaintiffs’ initial submission. Plaintiffs fail to  
5 inform the Court or counsel of that fact, and instead leave it to the Court and counsel to  
6 “go figure it out” from plaintiffs’ thousands of pages of exhibits.

7           Plaintiffs submit a “Corrected Summary Judgment Exhibits” index, but never  
8 served an index for their initial exhibits. Thus, it is (again) very difficult to see how  
9 plaintiffs changed their initial submission. It appears that at least the following exhibits  
10 have been added to plaintiffs’ “corrected” submission: 532A, 536, 542, 544, 545, 548,  
11 549, 551, 553, 627, and 628. It appears that at least the following exhibits have been  
12 removed from plaintiffs’ initial submission: 525-531, 533, 535, 537-538, 540-541, 543,  
13 547, 550, and 552. In addition, plaintiffs’ initial submission contained exhibits  
14 numbered up to 578. The index for their new submission, however, reflects exhibits  
15 numbered up to 628, with approximately **83** exhibits all numbered as Exhibit 580.  
16 Because Defendants have not received those exhibits yet, it is impossible to know what  
17 is in plaintiffs’ new submission.

18           Plaintiffs’ substantive changes to their factual submission fly in the face of  
19 plaintiffs’ statements to the Court that:

20           “Defendants are not prejudiced by the filing of corrected  
21 documents that make no substantive changes.” [Pls.’ Mot. for Leave to  
22 File Corrected Documents, dkt. 860, at 4:9-10]

23           “Gonzalez Plaintiffs seek leave to file corrected documents which  
24 make no substantive changes to the Response but properly align the  
25 Response, Statement of Facts and exhibits.” [*Id.* at 3:17-18]

26           “Courts routinely grant leave to correct documents that contain  
27 clerical errors.” [*Id.* at 4:16]

28           “[I]n order to assist the Court and clarify the record, Gonzalez  
Plaintiffs seek leave to file their corrected documents.” [*Id.* at 4:13-15]

          “Gonzalez Plaintiffs move for leave to file corrected documents  
submitted in response to Defendants’ Motions for Summary Judgment

1 and for the sole purpose of correcting clerical errors in internal citations.”  
2 [Declaration of Nina Perales, dkt. 871, at ¶ 12]

3 The vast majority of plaintiffs’ submitted exhibits are hearsay and are therefore  
4 inadmissible. Plaintiffs’ response to Defendants’ motion to strike appears to confuse  
5 authenticity with admissibility. Defendants properly objected to all of plaintiffs’ factual  
6 submission because there was no authentication made for any of it. Apparently plaintiffs  
7 fault Defendants for not going through each exhibit and attempting to determine who, if  
8 any party to the litigation, produced it.

9 Apart from plaintiffs’ admitted failure to authenticate any of the documents upon  
10 which they rely, the vast majority of plaintiffs’ exhibits are hearsay. Plaintiffs argue that  
11 those items are admissible under the public records exception to hearsay inadmissibility.  
12 The problem with plaintiffs’ argument, however, is that there is no foundation anywhere  
13 in the record to establish the requirements for that hearsay exception. Plaintiffs offer no  
14 declarations or affidavits from knowledgeable individuals stating that any exhibit is a  
15 record, report, statement, or data compilation of a public office and setting forth the  
16 activities of the office or matters observed pursuant to duty imposed by law as to which  
17 matters there was a duty to report. *See* Fed. R. Evid. 803(8) (defining the hearsay  
18 exception for public records). Instead, plaintiffs merely assert in their brief that dozens  
19 or even hundreds of their exhibits meet that exception.

20 The same hearsay problem exists for plaintiffs’ expert reports. Plaintiffs make an  
21 eleventh-hour effort to shoe-horn their expert reports into admissible evidence by  
22 submitting cursory declarations of their experts. Those experts’ sworn statements about  
23 their reports, however, at most authenticate those reports but do not transform the reports  
24 into non-hearsay. The reports are inadmissible hearsay. The expert declarations  
25 untimely submitted by plaintiffs do nothing to change that fact. Neither do those  
26 declarations substantively address or oppose any material fact submitted by Defendants  
27 in their summary judgment submission. Accordingly, those declarations are irrelevant,  
28 in addition to being untimely.

Finally, plaintiffs’ argument that some of their exhibits are admissions of a party  
opponent lacks merit. Plaintiffs have offered no foundation to establish the criteria

1 under Fed. R. Evid. 801(d)(2).

2 **Relief Requested**

3 For the reasons stated in Defendants' motion to strike and this reply, the Court  
4 should strike all exhibits in plaintiffs' initial factual submission except exs. 522, 526,  
5 532, 537, 539, 524, 533, 541, 547, and 554B. With regard to exs. 524, 533, 541, 547,  
6 and 554B, the Court should strike the inadmissible portions as stated in section D of  
7 Defendants' motion to strike. In addition, because plaintiffs' new submission does not  
8 meaningfully correct any of the admissibility problems of their former submission, the  
9 Court should deny plaintiffs' request to submit untimely evidence for the summary  
10 judgment record.

11 In addition, the Court should strike plaintiffs' responses to Defendants'  
12 statements of fact because those facts are not supported by admissible evidence, and also  
13 should strike each of plaintiffs' "additional facts" that rely on such exhibits. Finally, the  
14 Court should strike as irrelevant those paragraphs from plaintiffs' statement of facts that  
15 are not cited in plaintiffs' response brief.

16 RESPECTFULLY SUBMITTED this 25th day of June, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 25th day of June, 2008, I electronically transmitted  
3 the attached document to the Clerk’s Office using the ECF System for filing, and  
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:  
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