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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Maria M. Gonzalez, et al.,) No. CV-06-1268-PHX-ROS(Lead)
17) No. CV-06-1362-PCT-JAT(Cons.)
Plaintiffs,) No. CV-06-1575-PHX-EHC(Cons.)
18)
vs.) **GONZALEZ PLAINTIFFS'**
19) **RESPONSE TO DEFENDANTS'**
State of Arizona, et al,) **NOTICE OF SPECIFIC**
20) **OBJECTIONS TO PLAINTIFF**
Defendants.) **EXHIBITS AND STATEMENTS OF**
21) **ASSERTED FACT ON SUMMARY**
22) **JUDGMENT**

23 (Assigned to the
Honorable Roslyn O. Silver)

24 Pursuant to the Court's order dated June 27, 2008 (Dkt. Entry No. 881),
25 Gonzalez Plaintiffs hereby file this Response to Defendants' Notice of Their Specific
26

1 Objections to Plaintiffs' Exhibits in Opposition to Summary Judgment. Attached as
2 Tab 1 is a listing of Gonzalez Plaintiffs' responses to Defendants' specific objections.
3 In support of their responses, Plaintiffs state the following:

4 Defendants argue that a number of Gonzalez Plaintiffs' statements of fact should
5 be stricken from the summary judgment record because they either lack citation to
6 evidence or are not cited in Plaintiffs' response.¹ As Gonzalez Plaintiffs noted in their
7 motion for leave to file corrected documents, those deficiencies were the result of
8 clerical errors in Plaintiffs' initial submission to the Court and have been corrected in
9 Gonzalez Plaintiffs' Corrected Response.²

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12 **I. DEFENDANTS FAILED TO FOLLOW THE COURT'S DIRECTIVE**
13 **BECAUSE THEY DID NOT PROVIDE VALID OR SPECIFIC**
14 **OJECTIONS FOR MOST EXHIBITS.**

15 **A. Defendants' Objections Based on Clerical Errors are Unfounded**
16 **Because Plaintiffs Have Moved to File Corrected Materials With the**
17 **Court.**

18 Defendants argue that a number of Gonzalez Plaintiffs' statements of fact should
19 be stricken from the summary judgment record because they either lack citation to
20 evidence or are not cited in Plaintiffs' Response.³ As Gonzalez Plaintiffs noted in their
21 Motion for Leave to File Corrected Documents, those deficiencies were the result of

22 ¹ See Tab 1 to Defs.' Notice of Specific Objections to Plaintiff Exhibits and Statements
23 of Asserted Fact on Summary Judgment (Defs.' Notice), Dkt. Entry No. 885-2 – 885-3.

24 ² See Pls.' Motion for Leave to File Corrected Documents and Response to Defendants'
25 Motion to Strike Summary Judgment Evidence (Pls.' Mot. for Leave), Dkt. Entry No. 869.

26 ³ See Tab 1 to Defs.' Notice, Dkt. Entry No. 885-3, at 62-63.

1 clerical errors in Plaintiffs’ submission to the Court.⁴ Plaintiffs corrected those errors
2 by lodging proposed corrected documents in response to Defendants’ Motion for
3 Summary Judgment.⁵ As a result, Defendants’ objections on those bases are moot and
4 Gonzalez Plaintiffs urge the Court to overrule them.⁶

5
6 **B. Defendants Fail to Meet Their Burden Under Federal Rule of Civil
7 Procedure 56 by Objecting to Exhibits on the Basis of “Lack of
8 Foundation.”**

9 Defendants claim that a number of Plaintiffs’ exhibits “lack foundation” without
10 providing any further explanation as to how or why, effectively rendering Plaintiffs
11 unable to respond to their objections.⁷

12 Only admissible evidence will be considered by the Court on summary judgment.
13 FED.R.CIV.P. 56(e); *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324,
14 1335 n.9 (9th Cir.1980) (citation omitted). Defendants attempt to exclude Plaintiffs’
15 evidence because they hope to persuade the Court that there is no factual controversy in
16 this case. As described, *infra*, Plaintiffs’ exhibits are in fact admissible, factual
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18
19 ⁴ See Pls.’ Motion for Leave, Dkt. Entry No. 869.

20 ⁵ See *id.*

21 ⁶ Plaintiffs’ Responses to Defendants’ Objections on the basis of clerical errors are
22 marked as “Omission Result of Clerical Error” on the chart attached as Tab 1.

23 ⁷ The Ninth Circuit has held that in order “to give a document foundation, the proponent
24 need only make a showing of authenticity sufficient to allow a reasonable juror to find that the
25 matter in question is what its proponent claims.” See *United States v. Tank*, 200 F.3d 627, 630
26 (9th Cir.2000). For the purposes of the supplemental briefing ordered by the Court, however,
the Court directed parties to assume that all of Plaintiffs’ exhibits are authentic, so Defendants
presumably do not offer this objection on the basis of authenticity.

1 controversy does remain as to Plaintiffs' claims, and Defendants may therefore not
2 prevail on their summary judgment motion.

3 The Court instructed in its June 27 Order that Plaintiffs' exhibits should be
4 assumed authentic.⁸ In their new notice of objections, Defendants challenge many of
5 Gonzalez Plaintiffs' exhibits with the phrase "lack of foundation" but do not explain the
6 specific problem of foundation.⁹ "No rule of evidence requires 'foundation';
7 'foundation' is a loose term for preliminary questions designed to establish that
8 evidence is admissible." *A.I. Credit Corp. v. Legion Ins. Co.*, 265 F.3d 630, 637 (7th
9 Cir. 2001). There are many grounds for a foundation objection aside from authenticity,
10 such as relevance, personal knowledge, competence of affiant, and so on. *See, e.g., U.S.*
11 *v. Prude*, 489 F.3d 873 (7th Cir. 2007) (discussing objections based on foundation for
12 relevance); *McCoy v. Southwest Airlines Co.*, 208 F.R.D. 617 (C.D. Cal. 2002)
13 (discussing objections to a declaration on the grounds it lacks foundation and the
14 declarant lacks personal knowledge); *Recreational Developments of Phoenix, Inc. v.*
15 *City of Phoenix*, 220 F.Supp.2d 1054 (D. Ariz. 2002) (discussing objections that an
16 expert report lacked foundation because it was not reliable or relevant); *Hal Roach*
17 *Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542 (1990) (discussing
18 objections based on lack of personal knowledge).¹⁰

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23 ⁸ Order, June 27, 2008, Dkt. Entry No. 881.

24 ⁹ *See* Tab 1 to Defs.' Notice, Dkt. Entry No. 885-3, 885-4.

25 ¹⁰ To the extent that Defendants' objections may be construed as objections to form, "a
26 party does not necessarily have to produce evidence in a form that would be admissible at trial,
as long as the party satisfies the requirements of Federal Rule of Civil Procedure 56." *Block v.*

1 By failing to explain how each challenged exhibit lacks foundation apart from
2 authenticity, Defendants have not only disregarded the Court’s directive to provide
3 specific objections to the exhibits they challenge, but they fail to show how Plaintiffs’
4 exhibits are inadmissible. Plaintiffs should not be forced to first speculate as to the
5 specific grounds for the objections, and then respond to those speculations. For this
6 reason, Plaintiffs respectfully request that the Court overrule any objections made on
7 this basis.¹¹

9 **II. PLAINTIFFS’ EXHIBITS ARE ADMISSIBLE AT TRIAL AND**
10 **THEREFORE SUFFICIENT TO OVERCOME DEFENDANTS’**
11 **OBJECTIONS.**

12 **A. Plaintiffs’ Exhibits are Relevant to Material Issues on Summary**
13 **Judgment.**

14 All of the exhibits Plaintiffs cite in their motion are probative of facts relating to
15 material issues on summary judgment pursuant to Rules 401 and 402. This case is
16 complex. The parties include State Defendants, election officials from Arizona’s 15
17 counties, community-based organizations and affected individuals. The parties
18 conducted extensive motion practice regarding discovery, took 29 depositions and
19 exchanged tens of thousands of pages of exhibits. Important factual issues developed in
20 the case. Although Defendants claim that a large number of Plaintiffs’ exhibits are
21 irrelevant, they are probative of the following factual issues:

23 *City of L.A.*, 253 F.3d 410, 418-19 (9th Cir.2001); *see also Fraser v. Goodale*, 342 F.3d 1032,
24 1036 (9th Cir.2003) (“At the summary judgment stage, we do not focus on the admissibility of
the evidence's form. We instead focus on the admissibility of its contents.”).

25 ¹¹ Plaintiffs’ Responses to Defendants’ Objections on the basis of “Lack of Foundation”
26 are marked as “Objection Lacks Specificity” on the chart attached as Tab 1.

- 1 1. How Arizona has implemented Prop 200’s documentary proof of
2 citizenship requirement through the statewide voter registration
3 computer system (relevant to Plaintiffs’ Equal Protection, Section 2,
4 and First Amendment claims);¹²
- 5 2. How Arizona has implemented Prop 200’s documentary proof of
6 citizenship requirements through its Division of Motor Vehicles
7 (relevant to Plaintiffs’ Equal Protection, Section 2, and First
8 Amendment claims);¹³
- 9 3. How Arizona’s 15 counties have implemented Prop 200’s voting
10 provisions at the Recorder’s offices and at the polls (relevant to
11 Plaintiffs’ Equal Protection, Section 2, and First Amendment claims);¹⁴
- 12 4. How the State of Arizona has implemented Prop 200’s voter
13 identification and registration provisions (relevant to Plaintiffs’ Equal
14 Protection, Section 2, and First Amendment claims);¹⁵
- 15 5. The receipt of federal funds by the State of Arizona (relevant to
16 Plaintiffs’ Title VI claim);¹⁶

17 ¹² Plaintiffs’ Responses to Defendants’ Objections to exhibits which are relevant to this
18 issue are labeled as “VRAZ” on the chart attached as Tab 1.

19 ¹³ Plaintiffs’ Responses to Defendants’ Objections to exhibits which are relevant to this
20 issue are labeled as “MVD” on the chart attached as Tab 1.

21 ¹⁴ Plaintiffs’ Responses to Defendants’ Objections to exhibits which are relevant to this
22 issue are labeled as “County Voter ID and Reg.” on the chart attached as Tab 1.

23 ¹⁵ Plaintiffs’ Responses to Defendants’ Objections to exhibits which are relevant to this
24 issue are labeled as “State Voter ID and Reg.” on the chart attached as Tab 1.

1 testifying at the trial or hearing, offered in evidence to prove the truth of the matter
2 asserted.” FED. R. EVID. 801, 802.

3 Hearsay is inadmissible unless it is defined as non-hearsay under Federal Rule of
4 Evidence 801(d) or falls within a hearsay exception under Rules 803, 804 or 807. *See*
5 FED. R. EVID. 802; 30B FEDERAL PRACTICE & PROCEDURE: EVIDENCE § 7031 at 279.

6 The exhibits to which Defendants object on hearsay grounds are either nonhearsay as
7 the admission of party opponents, or excepted as public records or business records.²⁰

8
9 *i. Gonzalez Exhibits that Contain Admissions of Party Opponents are*
10 *not Hearsay.*

11 *a. a statement by the party's agent or servant concerning a*
12 *matter within the scope of the agency or employment is not*
13 *hearsay*

14 Federal Rule of Evidence 801(d)(2)(D) provides that a statement is not hearsay if
15 it is offered against a party and is a statement by the party's agent or servant concerning
16 a matter within the scope of the agency or employment and is made during the existence
17 of the relationship. Admissible evidence in this category includes statements of
18 Defendants as well as designated representatives and employees of Defendants'
19 agencies. *See Sea-Land Service, Inc. v. Lozen Intern., LLC.*, 285 F.3d 808 (9th Cir.
20 2002). Moreover, emails written by a party opponent are admissions of a party
21 opponent and are admissible as non-hearsay. *See In re Homestore.com, Inc. Sec. Litig.*,

22
23 ²⁰ In addition, Gonzalez Plaintiffs' exhibits 313-315 are not statements and thus
24 not hearsay, Gonzalez Plaintiffs' exhibits 104, 235, 500 and 611 are naturalization certificates
25 that are excepted from the hearsay rule, and Gonzalez Plaintiffs' exhibit 60 is not offered for
26 the truth of the matter asserted and is therefore not hearsay. *See* FED. R. EVID. 803 (8) and (9).

1 347 F. Supp. 2d 769, 781 (C.D. Cal. 2004); *Mbacke v. Transcon Cargo, Inc.*, 2008 U.S.
2 Dist. LEXIS 5615 (E.D. Cal. Jan. 25, 2008). Courts have found that an internal
3 company e-mail may be admitted into evidence if it terminates with an electronic
4 signature, the sender was an employee or agent of the office from which the e-mail
5 came, and the e-mail concerns a matter within the scope of the sender’s employment.
6
7 *See Sea-Land Serv. v. Lozen Int’l, LLC*, 285 F.3d at 821.

8 In addition, documents “that bear . . . trade names, logos, and trademarks are
9 statements by [the party] itself, and are admissible as admissions by a party opponent
10 under Rule 801(d)(2). *See MGM Studios, Inc. v. Grokster, Ltd.*, 454 F. Supp. 2d 966,
11 974 (C.D. Cal. 2006). Such documents “include, but are not limited to, PowerPoint
12 presentations and business plans.” *See id.* Likewise, other documents that do not
13 contain identifying insignias or marks, “but were created by . . . employees are
14 admissible as vicarious admissions under Rule 801(d)(2)(D).” *See id.*

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17 b. a statement of which the party has manifested an adoption or
18 belief in its truth is not hearsay

19 Additionally, a statement of which the party has manifested an adoption or belief
20 in its truth is also not hearsay. A party adopts a written statement if the party uses the
21 statement or takes action in compliance with the statement.” *See Sea-Land Serv. v.*
22 *Lozen Int’l, LLC*, 285 F.3d at 821 (quoting 5 JACK B. WEINSTEIN & MARGARET A.
23 BERGER, WEINSTEIN'S FEDERAL EVIDENCE § 801.31[3][b], at 801-56); *see also MGM*
24 *Studios, Inc. v. Grokster, Ltd.*, 454 F. Supp. 2d 966, 973 (C.D. Cal. 2006) (“If content
25
26

1 created by individuals other than the creator of an email is incorporated into the email,
2 the incorporated content is also admissible non-hearsay under Rule 801(d)(2)(B).”).
3 Employees or agents are also deemed to have incorporated and adopted the contents of
4 an original message by forwarding it to others. *See Sea-Land Serv. v. Lozen Int'l, LLC*,
5 285 F.3d at 821; *United States v. Safavian*, 435 F. Supp. 2d 36, 43 (D.D.C. 2006).

6
7 Indisputably, there are numerous exhibits that are admissions by a party
8 opponent and thus not hearsay. As demonstrated in Plaintiffs’ attached chart,
9 Defendants have launched hearsay objections to their own emails, official notices,
10 power-point demonstrations, official testimony, signed letters, website pages, and
11 multiple other documents that contain statements made by their own officials or by their
12 employees on their behalf. *See* Chart attached as Tab 1.

13
14 These exhibits were statements issued by the Defendants’ agents during the
15 scope of their employment and concerned a matter related to their employment.
16 Further, there are multiple exhibits containing statements which the Defendants or their
17 agents believed were true and which Defendants or their agents adopted as their own
18 statement or policy. These exhibits are admissible under Federal Rule of Evidence
19 801(d)(2) as nonhearsay.

20
21 *ii. Exhibits that are Expert Reports or Sworn Statements are Not*
22 *Excluded Hearsay.*

23
24 Gonzalez Plaintiffs’ exhibits that are comprised of their expert reports are
25 admissible at summary judgment and are not excluded hearsay. *See Fonseca v. Sysco*
26 *Food Services of Arizona, Inc.*, 374 F.3d 840 (9th Cir. 2004) (declarations that do

1 contain hearsay are admissible for summary judgment purposes because they “could be
2 presented in an admissible form at trial.”) (quoting *Fraser v. Goodale*, 342 F.3d 1032,
3 1037 (9th Cir. 2003), cert. denied sub nom. *U.S. Bancorp v. Fraser*, --- U.S. ----, 124
4 S.Ct. 1663, 158 L.Ed.2d 358 (2004)); see also *Hughes v. United States*, 953 F.2d 531,
5 543 (9th Cir.1992) (“Rule 56 permits the use of affidavits in evaluating a motion for
6 summary judgment. While the facts underlying the affidavit must be of a type that
7 would be admissible as evidence . . . the affidavit itself does not have to be in a form
8 that would be admissible at trial.”) (citing *Celotex*, 477 U.S. at 324).²¹

10 For the same reason, Gonzalez Plaintiffs’ summary judgment exhibits that are
11 sworn statements of affected voters, voter registration applicants and Plaintiff
12 organizations are admissible at the summary judgment phase of the case. *See id.*²²

13
14 *iii. Exhibits that Contain Public Records are Excepted from the
Hearsay Rule.*

15 FED. R. EVID. 803(8) excepts “[r]ecords, reports, statements, or data
16 compilations, in any form, of public offices or agencies, setting forth...the activities of
17 the office or agency” from the hearsay rule, “unless the sources of information or other
18 circumstances indicate lack of trustworthiness.” FED. R. EVID. 803(8). Public records

20 ²¹ To the extent that any expert reports were initially not in the form of an affidavit or
21 sworn statement, those deficiencies were cured with Pls.’ Mot. for Leave, Dkt. Entry No. 869.
22 *See, e.g., Straus v. DVC Worldwide, Inc.*, 484 F.Supp.2d 620, 633-34 (S.D.Tex. 2007) (finding
that while an unsworn expert report did not constitute admissible summary judgment evidence,
the deficiency was cured by the filing of a sworn declaration).

23 ²² In a summary judgment proceeding, the trial court may consider exhibits made a part
24 of a deposition record. *See, e.g., Colan v. Cutler-Hammer, Inc.*, 812 F.2d 357, 365 n. 14 (7th
25 Cir.), cert. denied, 484 U.S. 820 (1987). Thus, Gonzalez Plaintiffs have also noted in their
26 responses those exhibits which are part of the deposition record. Plaintiffs’s exhibits that are a
part of the deposition record are marked as “Deposition Exhibit” in the chart attached at Tab 1.

1 and government documents are generally considered “not to be subject to reasonable
2 dispute.” *Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir.1999). “Documents
3 falling under the public records exception are presumed to be trustworthy, and the
4 burden is on the party challenging the records to establish untrustworthiness.” *See*
5 *United States v. Ocegerra-Aguirre*, 70 F. App’x 473, 478 (9th Cir. 2003) (citing
6 *United States v. Loyola-Dominguez*, 125 F.3d 1315, 1318 (9th Cir.1997)).

8 This hearsay exception includes public records and government documents
9 available from reliable sources on the Internet. *See, e.g., Grimes v. Navigant*
10 *Consulting, Inc.*, 185 F.Supp.2d 906, 913 (N.D.Ill.2002) (taking judicial notice of stock
11 prices posted on a website); *Cali v. E. Coast Aviation Servs., Ltd.*, 178 F.Supp.2d 276,
12 287 (E.D.N.Y.2001) (taking judicial notice of documents from Pennsylvania state
13 agencies and Federal Aviation Administration). Federal courts have also extended this
14 exception to emails. *See, e.g., Lester v. Natsios*, 290 F. Supp. 2d 11, 26 (D.D.C. 2003)
15 (admitting plaintiff’s e-mails over hearsay objections because plaintiff’s argument was
16 “strictly procedural, as she provides no basis to challenge the trustworthiness of the
17 evidence[.]”). Under Rule 803(8), records of public agencies, including emails, are
18 generally admissible. *See id.*

20 Here, Defendants have objected to numerous records, reports, statements, emails,
21 and compilations of data that were generated in public offices or agencies. Defendants
22 make no argument that these exhibits lack trustworthiness, and for this reason Plaintiffs
23 respectfully request that the Court overrule Defendants’ objections.

24
25 *iv. Exhibits that Contain Business Records are Excepted from the*
26 *Hearsay Rule.*

1 A document is excluded from hearsay rules if it is a business record, or a
2 “record[] of regularly conducted activity.” FED. R. EVID. 803(6). The Federal Rules
3 define a business record as:
4

5 a memorandum, report, record, or data compilation, in any form, of acts, events,
6 conditions, opinions, or diagnoses, made at or near the time by, or from
7 information transmitted by, a person with knowledge, if kept in the course of a
8 regularly conducted business activity, and if it was the regular practice of that
9 business activity to make the memorandum, report, record or data compilation. . .
unless the source of information or the method or circumstances of preparation
indicate lack of trustworthiness.

10 FED. R. EVID. 803(6).

11 In the Ninth Circuit, a business record is admissible when (1) it is made or based
12 on information transmitted by a person with knowledge at or near the time of the
13 transaction; (2) in the ordinary course of business; and (3) is trustworthy, with neither
14 the source of information nor method or circumstances of preparation indicating a lack
15 of trustworthiness. *See United States v. Bonallo*, 858 F.2d 1427, 1435 (9th Cir. 1988);
16 *Monotype Corp. PLC v. International Typeface Corp.*, 43 F.3d 443, 450 (9th Cir. Wash.
17 1994).

18
19 Federal courts have held that conventional letters, memos, or notes are
20 admissible under the business records exception if they are regularly made in
21 furtherance of the employer's needs and not for the personal purposes of the employee
22 who made them. *See, e.g., Broadcast Music, Inc. v. Xanthas, Inc.*, 855 F.2d 233, 238
23 (5th Cir.1988); *Robinson*, 700 F.2d at 209-10. Courts have applied a similar approach
24 to emails. A party may introduce an email made by an employee about a business
25
26

1 matter under Rule 803(6) where it is the business duty of an employee to make and
2 maintain emails as part of his job duties and where the employee routinely sent or
3 received and maintained the emails. *See DirecTV, Inc. v. Murray*, 307 F.Supp.2d 764,
4 772-73 (D.S.C.2004) (finding that sales records contained in emails were admissible
5 under the business records hearsay exception when the sales orders were regularly
6 received by email and the emails were retained as records of each order); *see also New*
7 *York v. Microsoft*, No. CIV A. 98-1233(CKK), 2002 WL 649951, at *2 (D.D.C. Apr.12,
8 2002); *Piere v. RBC Liberty Life Ins.*, Civil Action No. 05-1042-C, 2007 WL 2071829,
9 at *2 (M.D.La. July 13, 2007) (finding that emails fell within Rule 803(6) because they
10 were prepared by employees “during the ordinary course of business”).
11

12 Here, a number of the exhibits objected to by Defendants contain memoranda,
13 reports, records, data compilations, or emails created and circulated by Defendants and
14 their agents charged with implementing Prop 200. Although the “Business Records”
15 exception under Rule 803(6) provides that a business record meeting the requirements
16 of Rule 803(6) must be accompanied by the “testimony of the custodian or other
17 qualified witness or by certification that complies with Rule 902(11), Rule 902(12), or a
18 statute permitting certification. . . .” such testimony would necessarily have to come
19 from Defendants or their agents, and they are not available to Gonzalez Plaintiffs until
20 trial.²³ Moreover, state law already requires Defendants to maintain and preserve their
21
22

23
24 ²³ For the purposes of the Business Records Exception, the custodian of the record is
25 not the only witness who may testify as to the proffered evidence. A witness is a "qualified
26 witness" if he or she has knowledge of how the records at issue are kept, and can testify that
they are kept in the ordinary course of business activity. *United States v. Childs*, 5 F.3d 1328
(9th Cir. 1993); *United States v. Ray*, 930 F.2d 1368, 1370 (9th Cir.1990); *see also* 5

1 work-related emails. *See* A.R.S. § 39-101; *see also* A.R.S. Tit. 44 Ch. 26; A.R.S. Tit.
2 41 Ch. 8 Art. 3.

3 Because it is impossible for Plaintiffs to secure affidavits from Defendants before
4 trial, and because state law establishes that Defendants must retain their work emails in
5 the ordinary course of business, these exhibits are admissible and Defendants'
6 objections lack merit.
7

8 III. CONCLUSION

9 For the foregoing reasons, Gonzalez Plaintiffs respectfully request that the Court
10 deny Defendants' Motion to Strike as improperly filed and without merit.
11

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13
14 DATED this 2nd day of July , 2008.

Respectfully submitted,

15 By: s/Nina Perales
16 Nina Perales

17 Counsel for Plaintiffs
18 Gonzalez, et al.
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24 WEINSTEIN'S FEDERAL EVIDENCE § 803.08[8][a] ("The phrase 'other qualified witness' is given
25 a very broad interpretation. The witness need only have enough familiarity with the record-
26 keeping system of the business in question to explain how the record came into existence in the
ordinary course of business.").

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd 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 2nd day of July, 2008.

s/Nina Perales
Nina Perales