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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)

**DEFENDANTS' RESPONSE TO
GONZALEZ PLAINTIFFS'
MOTION FOR ADMISSION OF
TRIAL EXHIBITS**

(Assigned to the Honorable
Roslyn O. Silver)

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1 Defendants State of Arizona and Arizona Secretary of State Janice Brewer
2 (“State Defendants”) respond to Gonzalez Plaintiffs’ Consolidated Motion for
3 Admission of Trial Exhibits, dkt. 1001, by submitting the attached chart, which sets
4 forth State Defendants’ respective objections to the offered exhibits.

5 In addition, Defendants object to the admission of hundreds of exhibits for which
6 no testimony was introduced at trial to support or explain the relevancy of the
7 information contained in those exhibits. Plaintiffs’ “omnibus” motion to admit
8 hundreds of exhibits which were not the subject of testimony by any witness at trial
9 should be denied because the admission of such exhibits would be unfair and
10 prejudicial to Defendants. Presumably plaintiffs will seek to argue based on statements
11 contained in those exhibits without providing any context for those statements.

12 Although Defendants agreed not to challenge authenticity, foundation and single
13 hearsay for some of the exhibits, Defendants never stipulated or agreed to the relevancy
14 of those exhibits and never agreed to waive “hearsay within hearsay” objections.
15 Accordingly, in Defendants’ response, they have raised those objections where
16 appropriate. Defendants made available State and County witnesses to Gonzalez
17 plaintiffs to testify at trial. Plaintiffs chose not to call those witnesses or examine them
18 at trial about the contents of any of the purported exhibits that are the subject of their
19 motion. Instead, Gonzalez plaintiffs presumably intend to make up argument about
20 those documents, without Defendants’ having the opportunity to respond with any
21 evidence or cross-examination to respond to such evidence.

22 Defendants have not objected to documents from party defendants on the basis
23 of hearsay unless such documents contain “double hearsay.” For those exhibits, which
24 are specified in the attached chart, Defendants have objected based on hearsay where
25 the document itself contains a second level of hearsay therein to which no hearsay
26 exception has been established. For such documents, even if they could be considered
27 public records, that hearsay exception does not apply to hearsay within hearsay.

28 Regarding the “government websites” documents contained in Gonzalez
plaintiffs’ exhibits, the Court should deny the motion to admit. The Court heard
extensive testimony by plaintiff and defendant experts regarding the relevant census

1 data and charts. Indeed, the Court already admitted the charts that were the subject of
2 that expert testimony. Plaintiffs have laid no foundation for the relevancy of any
3 additional census charts and those exhibits therefore should not be admitted.

4 Finally, Defendants understand that the Court did not overrule at the summary
5 judgment stage Defendants' relevancy objections for *trial admissibility* purposes.
6 Under Fed. Rs. Evid. 401 through 403, Defendants may properly assert such objections.
7 In addition, Plaintiffs cite no authority for their argument that Defendants waived their
8 objections at trial merely because certain exhibits were not included in Defendants'
9 motion to strike.

10 Based on the objections set forth, the Court should deny Plaintiffs' motion with
11 regard to those exhibits to which Defendants have raised an objection.

12 RESPECTFULLY SUBMITTED this 21st day of July, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 21st day of July, 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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6 **COPY** served the 21st day of July, 2008, via U.S. mail, with Notice of Electronic
7 Filing, on:

8 The Honorable Roslyn O. Silver
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13 /s Elizabeth Stark

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