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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12

13 **CALIFORNIA PARENTS FOR THE**  
14 **EQUALIZATION OF EDUCATIONAL**  
15 **MATERIALS,**

15 Plaintiff,

16 v.

17 **KENNETH NOONAN, RUTH BLOOM, ALAN**  
18 **BERSIN, YVONNE CHAN, DONALD G.**  
19 **FISHER, RUTH E. GREEN, JOE NUNEZ,**  
20 **JOHNATHAN WILLIAMS, and DAVID**  
21 **LOPEZ, all in their official capacities as**  
22 **Members of the California State Board of**  
23 **Education; and Tom Adams, in his official**  
24 **capacity as Director of the Curriculum**  
25 **Frameworks and Instructional Resources**  
26 **Division and Executive Director of the**  
27 **Curriculum Commission (of the California State**  
28 **Department of Education),**

Defendants.

2:06-CV-00532-FCD-KJM

**DEFENDANTS' OBJECTIONS**  
**TO CAPEEM'S EVIDENCE**  
**SUBMITTED IN OPPOSITION**  
**TO DEFENDANTS' MOTION**  
**FOR SUMMARY JUDGMENT**  
**OR PARTIAL SUMMARY**  
**JUDGMENT**

Date: March 7, 2008  
Time: 10:00 a.m.  
Dept: Courtroom 2

The Honorable Frank C. Damrell

Trial Date: November 4, 2008

Action Filed: March 14, 2006

26 When ruling on a motion for summary judgment, a trial court can only consider admissible  
27 evidence. Fed. R. Civ. P. 56(e); *Orr v. Bank of America, NT & SA*, 285 F.3d 765, 773 (9<sup>th</sup> Cir.  
28 2002). Likewise, documents must be authenticated or the Court will not consider them. *Orr*, 285

1 F.3d at 773; see also Fed. R. Evid. 901(a).

2 Accordingly, Defendants object to evidence submitted by Plaintiff CAPEEM in support of its  
3 opposition to the motion for summary judgment or partial summary judgment as follows:

4 • **Balasubramani Declaration in Support of CAPEEM's Opposition**

5 Defendants object to Balasubramani Declaration paragraphs 2, 3, and 4 (1:4-13) and, thus, to  
6 Exhibits A-J, L, and N<sup>1/</sup> referenced in these paragraphs, on the ground that the statements and the  
7 exhibits lack foundation and, thus, are not properly authenticated pursuant to Federal Rule of  
8 Evidence 901. *Beyene v. Coleman Security Servs., Inc.*, 854 F.2d 1179, 1182 (9<sup>th</sup> Cir. 1988) (for  
9 purposes of summary judgment, attaching upon mere assertion that they were "true and correct  
10 copies" of exhibits was insufficient to lay a foundation and authenticate the attached documents  
11 absent personal knowledge of the facts in the documents); see also *Orr*, 285 F.3d at 773-774, 777  
12 (affidavit must lay a foundation to authenticate discovery documents).

13 Here, paragraph 2 makes a bare assertion that the attached exhibits are genuine by stating that  
14 true and correct copies are attached of documents that were produced in response to subpoenas or  
15 discovery requests. (1:4-8.) The paragraph fails to lay a foundation because it does not provide the  
16 relevant underlying documents or other necessary information and, thus, fails to provide prima facie  
17 evidence of genuineness. Accordingly, this paragraph and Exhibits B-D, F-I, and L and N have not  
18 been authenticated and are inadmissible.

19 Similarly, paragraph 3 merely states that web pages were accessed on a specified date. (1:9-  
20 10.) Again, the declaration fails to lay a foundation by establishing that Mr. Balasubramani has  
21 personal knowledge of the web sites accessed or even the actual dates accessed. Indeed, Exhibit A  
22 itself suggests that it was accessed on 5/11/2007, not February 22, 2008. As with paragraph 2,  
23 paragraph 3 and Exhibits A and J lack the necessary indicia of authenticity and, thus, are  
24 inadmissible.

25 Paragraph 4 and Exhibit E are likewise inadmissible on the ground that the statements and the  
26

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27 1. Defendants concede that they produced all of the documents Bates Number Noonan ##.  
28 These include part of Exhibit I, and all of Exhibits K and M. Therefore, Defendants do not contest  
the admissibility of these Exhibits, in part or in whole.

1 exhibits lack foundation. (1:11-13.) Here, the declaration cannot establish Mr. Balasubramani's  
2 personal knowledge as he is neither the sender nor the recipient of the referenced email exchange.  
3 Accordingly, he cannot properly authenticate Exhibit E. Defendants further object to Exhibit E on  
4 the ground that it constitutes inadmissible hearsay pursuant to Federal Rule of Evidence 802 in that  
5 it is offered for the truth of the matters asserted in it. *Orr*, 285 F.3d at 778-779; *Blair Foods, Inc.*  
6 *v. Ranchers Cotton Oil*, 610 F.2d 665, 667 (9th Cir.1980).

7 Defendants further object to Exhibits A-J, L, and N on the ground that they constitute  
8 inadmissible hearsay pursuant to Federal Rule of Evidence 802 in that their contents are offered for  
9 the truth (or circumstantial evidence) of the matters asserted in them. *Orr*, 285 F.3d at 778-779;  
10 *Blair Foods*, 610 F.2d at 667.

11 Finally, Defendants object to CAPEEM's citation of Exhibits A-N in its Memorandum in  
12 Opposition on the ground that it fails to cite to the page and line numbers in each exhibit where the  
13 referenced information may be located.<sup>2/</sup> "This defect alone warrants exclusion of the evidence. See  
14 *Huey v. UPS, Inc.*, 165 F.3d 1084, 1085 (7<sup>th</sup> Cir. 1999) ('[J]udges need not paw over the files  
15 without assistance from the parties')." *Orr*, 285 F.3d at 775.

16 • **Declaration of Arvind Kumar in Support of CAPEEM's Opposition**

17 Defendants object to paragraph 6 of the Kumar Declaration (3:1-6) on the ground that it sets  
18 forth either an improper lay opinion or an inadmissible expert opinion without establishing this  
19 witness's expertise. Fed. R. Evid. 701, 702.

20 Defendants also object to Exhibit A attached to the Kumar Declaration on the grounds that it  
21 is not properly authenticated in that (1) the exhibit purports to be a compilation of materials that are  
22 not attached to the Kumar Declaration and (2) the exhibit does not accurately quote the materials  
23 selected to be represented. (Kumar Dec. at 3:3-4.) As such, Mr. Kumar has failed the establish the  
24 reliability and, thus, authenticity of Exhibit A's content. Fed. R. Evid. 901.

25 Additionally, Defendants object to CAPEEM's citation of the Kumar declaration in paragraph  
26 14 of the Statement Re Disputed Facts and to the citation of Kumar Exhibit A in its Memorandum

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27  
28 2. This is particularly problematic in footnote 1 of the Memorandum because the referenced  
information does not appear to exist in Exhibit A as cited.

1 in Opposition on the ground that it fails to cite to the page and line numbers or to the paragraph  
2 number in the declaration where the referenced information may be located. “This defect alone  
3 warrants exclusion of the evidence. See *Huey v. UPS, Inc.*, 165 F.3d 1084, 1085 (7<sup>th</sup> Cir. 1999)  
4 (‘[J]udges need not paw over the files without assistance from the parties.’)” *Orr*, 285 F.3d at 775.

5 • **Declaration of Deborah Caplan in Support of CAPEEM’s Opposition**

6 Defendants object to paragraphs 5, 6, and 7 of the Caplan Declaration (2:17-28) on the grounds  
7 that (1) there is no foundation for these statements in that Ms. Caplan lacks personal knowledge to  
8 make them and (2) they constitute inadmissible hearsay pursuant to Federal Rule of Evidence 802  
9 in that they are offered for the truth of the matters asserted. *Orr*, 285 F.3d at 778-779; *Blair Foods*,  
10 610 F.2d at 667.

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12 At the hearing on the motion, Defendants will respectfully request that the Court sustain the  
13 above objections and strike the evidence referenced above.

14  
15 Dated: February 29, 2008

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