

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

* **CIVIL ACTION NO. 23-772**

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* **SECTION “T”**

*

VERSUS

* **JUDGE GREG G. GUIDRY**

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**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE**

* **MAGISTRATE JUDGE
JANIS VAN MEERVELD**

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Defendant

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**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT’S
MOTION TO STRIKE PLAINTIFF’S SUMMARY JUDGMENT EVIDENCE**

Defendant, The State of Louisiana, through Department of Public Safety and Corrections, Office of State Police (“Defendant” or the “State Police”), respectfully submits this Reply Memorandum in Support of its Motion to Strike several of the exhibits Plaintiff submitted in support of his Opposition to the State Police’s Motion for Summary Judgment. As discussed in Defendant’s Memorandum in Support, Plaintiff attaches 36 documents which are not attached to or referenced in any affidavit, declaration, or other authenticating document, and which he makes no attempt to authenticate. As such, Defendant asserts that the following unauthenticated exhibits should be stricken: Rec. Doc. 128-14, 128-15, 128-17, 128-18, 128-19, 128-20, 128-21, 128-22, 128-23, 128-24, 128-25, 128-26, 128-27, 128-28, 128-29, 128-30, 128-31, 128-32, 128-33, 128-34, 128-35, 128-36, 128-40, 128-41, 128-42, 128-43, 128-44, 128-45, 128-46, 128-47, 128-48, 128-49, 128-50, 128-51, 128-52, and 128-53. Many of these documents are not only unsigned and unauthenticated but are also incomplete and contain inadmissible hearsay and statements lacking foundation.

LAW AND ARGUMENT

In claiming that Defendant has not provided sufficient analysis of why each of the challenged exhibits is improper summary judgment evidence, Plaintiff misconstrues the standard for proving the admissibility of summary judgment evidence. The Fifth Circuit has explicitly stated, “it is the burden of the party offering documentary evidence to provide proof of authenticity; it is not the burden of the opposing party to prove that the evidence is not authentic.”¹ Thus, it is not Defendant’s job to prove that the documents are not authentic. Rather, the burden is on Plaintiff to provide proof of authenticity. This can be done numerous ways, such as attaching the documents to affidavits, declarations, or depositions, all of which Plaintiff has failed to do.

Plaintiff references *United States v. Ceballos*; however, *Ceballos* is inapplicable to his argument for two reasons. First, that case discusses authentication and admissibility of evidence at trial rather than the types of evidence that may be properly considered on summary judgment. Second, the 36 exhibits attached to Plaintiff’s Opposition to the Motion for Summary which are the basis for Defendant’s Motion to Strike do not conform to the standard of admissibility laid out in that case. As recognized by Plaintiff, the Fifth Circuit in *Ceballos* stated that Federal Rule of Evidence 901(a) merely requires some evidence which is sufficient to support a finding that the evidence in question is what the proponent claims it to be, and that this may be in the form of testimony by a witness with knowledge of the item.² Despite Plaintiff’s claims in his brief that he himself is a witness with knowledge of the evidence he has produced, neither his Opposition to the Motion for Summary Judgment nor the Motion to Strike attach any testimony from Stelly which may serve to authenticate the exhibits at issue. Plaintiff also asserts that many of the

¹ *Haynes v. Pennzoil Co.*, 141 F.3d 1163, 1998 WL 197784 at *3 (5th Cir. 1998).

² *U.S. v. Ceballos*, 789 F.3d 607, 617-18 (5th Cir. 2015).

proposed exhibits are admissible summary judgment evidence because they are business records kept in the normal course of business; however, the exhibits as attached to Plaintiff's Opposition do not include any documentation or testimony verifying this. Namely, Plaintiff's Opposition does not indicate which of the documents sought to be introduced as exhibits were part of the EEOC record or were otherwise business records. Further, the fact that Plaintiff submitted various unverified documents to the EEOC prior to filing suit does not make those documents authentic public records.

Plaintiff claims the "absurdity" of Defendant's Motion to Strike is exemplified by its seeking to strike R. Doc. 128-19, which is the State Police's policy on promotions. While Plaintiff is correct that several deposed witnesses were asked about this document and testified regarding same, Plaintiff's Opposition failed to attach any of said testimony to authenticate the document and establish that it was the true and correct version. By contrast, when Defendant cited to P.O. 229 in support of its Motion for Summary Judgment, the document was included as an exhibit to the Corporate Deposition of the Louisiana State Police, thereby establishing its authenticity. This is likewise true for many of the other documents Plaintiff claims should not be stricken because they are portions of documents attached as exhibits to Defendant's Motion for Summary Judgment. Simply, Plaintiff is required to authenticate the documents he seeks to use in opposition to summary judgment. He has not done so.

Plaintiff's Opposition to the Motion to Strike provides nothing to establish the authenticity of many of the documents he seeks to offer as exhibits in order to defeat summary judgment. Plaintiff provides a Declaration wherein Stelly asserts that all documents submitted as exhibits are authentic. While a declaration would generally be sufficient to authenticate a document, this declaration contains only vague statements and does not specify which documents Stelly is

attesting to be true and complete to the best of his knowledge. This declaration also does not attach any documents which it is asserting to be authentic. Further, while Plaintiff now notes that some of the documents attached as exhibits to his Opposition were referenced or authenticated by other depositions, he does not dispute that his Opposition did not include this authenticating information.

Plaintiff also does not sufficiently address many of the other issues with his submitted exhibits that prevent them from being competent summary judgment evidence. As discussed in Defendant's Memorandum in Support, in addition to being unsigned and unauthenticated, many of the documents attached as exhibits to Plaintiff's Opposition to the Motion for Summary Judgment are incomplete and/or inadmissible hearsay. This Court has held that incomplete, unsigned documents are not reliable summary judgment evidence.³ As such, Defendant asserts that some of Plaintiff's submitted exhibits (R. Doc. 128-15, 128-18, 128-20, 128-40, 128-43) are inadmissible in part because they are incomplete portions of larger documents. Plaintiff does not dispute that these documents are incomplete, but instead asserts that complete versions of the documents are included elsewhere in the record.⁴ This does not make the documents attached as exhibits, which are the only documents that can be considered on summary judgment, complete and admissible.

Plaintiff also fails to sufficiently rebut Defendant's position that many of Plaintiff's submitted exhibits (R. Doc. 128-21, 128-27, 128-30, 128-32, 128-33, 128-49, 128-52, 128-53) contain inadmissible hearsay. In fact, Plaintiff provides no response to Defendant's argument that Stelly's journal entries, which contain references to comments and statements made by other individuals to Stelly, are unquestionably hearsay, and therefore inadmissible.

³ *Bradley v. Allstate Ins. Co.*, 2008 WL 2952974, at *2 (E.D. La. 2008).

⁴ *See* R. Doc. 145, at p. 5-7, 18.

The State Police requests that the Court strike the exhibits to Plaintiff's Opposition identified herein and in the Memorandum in Support as containing improper summary judgment evidence. Even to the extent that this Court finds some of these exhibits have been properly authenticated based on documents attached to Plaintiff's Opposition to the Motion to Strike, given the Opposition to the Motion for Summary Judgment did not contain any of these authenticating materials, Plaintiff's request for attorney fees and sanctions should be denied.

Respectfully submitted,

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