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 17 Stephanie Charles, and Meghan Watumull

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20	JILLIAN HALLMAN, an individual,	)	Case No. CV13-02139 ODW ISS
21	Plaintiff,)	
22	vs.	)	DEFENDANTS' OBJECTIONS TO
23		)	EVIDENCE SUBMITTED IN
24	ABERCROMBIE & FITCH CO., an	)	PLAINTIFF'S OPPOSITION TO
25	Ohio Corporation; STEPHANIE	)	DEFENDANTS' MOTION FOR
26	CHARLES, an individual; MEGHAN	)	SUMMARY JUDGMENT
27	WATUMULL, an individual; DOES	)	Judge: Hon. Otis D. Wright
28	1-25, Inclusive,	)	Courtroom: 11 - Spring St. Floor
	Defendants.	)	Date: September 23, 2013
		)	Time: 1:30 p.m.

1 Defendants Abercrombie & Fitch Stores, Inc., Stephanie Charles, and
2 Meghan Watumull (“Defendants”) hereby submit the following Objections to the
3 Evidence Submitted by Plaintiff Jillian Hallman (“Hallman”) in her Opposition to
4 Defendants’ Motion for Summary Judgment.

5 **DEFENDANTS’ OBJECTIONS TO HALLMAN’S RESPONSES TO**
6 **DEFENDANTS STATEMENT OF UNDISPUTED FACTS (“SUF”)**

7 **Hallman’s Response To SUF 2**

8 Defendants object to Hallman’s Response to SUF 2 on the ground that
9 Hallman’s Response does not cite any evidence that places SUF 2 in dispute and
10 contains only a boilerplate response that the fact is not a material fact necessary to
11 be litigated. Pursuant to the Court’s Order, Hallman’s response must be
12 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
13 5-6, 7.) Moreover, there is no evidence that places SUF 2 in dispute. Thus,
14 Hallman’s contention that SUF 2 is disputed should be disregarded for this reason
15 as well.

16 **Hallman’s Response To SUF 3**

17 Defendants object to Hallman’s Response to SUF 3 on the ground that
18 Hallman’s Response does not cite any evidence that places SUF 3 in dispute and
19 contains only a boilerplate response that the fact is not a material fact necessary to
20 be litigated. Pursuant to the Court’s Order, Hallman’s response must be
21 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
22 5-6, 7.) Moreover, there is no evidence that places SUF 3 in dispute. Thus,
23 Hallman’s contention that SUF 3 is disputed should be disregarded for this reason
24 as well.

25 **Hallman’s Response To SUF 4**

26 Defendants object to Hallman’s Response to SUF 4 on the ground that
27 Hallman’s Response does not cite any evidence that places SUF 4 in dispute and
28 contains only a boilerplate response that the fact is not a material fact necessary to

1 be litigated. Pursuant to the Court's Order, Hallman's response must be
2 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
3 5-6, 7.) Moreover, there is no evidence that places SUF 4 in dispute. Thus,
4 Hallman's contention that SUF 4 is disputed should be disregarded for this reason
5 as well.

6 **Hallman's Response to SUF 10**

7 Defendants object to Hallman's Response to SUF 10 to the extent that
8 Hallman's Response relies on the allegations in her complaint. Such allegations
9 are inadmissible evidence that Hallman cannot rely on to defeat Defendants'
10 motion for summary judgment. *John M. Floyd & Assocs. v. TAPCO Credit*
11 *Union*, No. 12-35307, 2013 U.S. App. LEXIS 17513, at *2 (9th Cir. Aug. 21,
12 2013) (“[A plaintiff] may not rely on the unverified allegations in its complaint to
13 defeat summary judgment”); *Githere v. Consol. Amusement Corp.*, 258 F.App'x
14 122, 124 (9th Cir. 2007) (allegations in complaint are insufficient to defeat a
15 motion for summary judgment).

16 Defendants further object to Hallman's Response on the ground that it is
17 irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman never informed
18 Watumull that she was being discriminated against or subject to harassment based
19 on her race. (SUF 99.) Hallman's alleged general complaint to Watumull that
20 things were difficult at work and that she was being harassed does not constitute
21 protected activity. *Day v. Sears Holdings Corp.*, No. CV-11-09068, 2013 U.S.
22 Dist. LEXIS 41052, at *71 (C.D. Cal. Mar. 13, 2013) (“Absent evidence that
23 [plaintiff] complained of discriminatory treatment *based on gender*, her statements
24 were not ‘protected activity’”); *Villasenor v. Sears, Roebuck & Co.*, No. CV-09-
25 9147, 2011 U.S. Dist. LEXIS 4301, at *9-10 (C.D. Cal. Jan. 18, 2011) (plaintiff's
26 repeated complaints that he was being treated unfairly but that never mentioned an
27 issue of age did not constitute protected activity); *Kaplan v. Dr. Reddy's Labs.,*
28 *Inc.*, No. CV-10-00675, 2010 U.S. Dist. LEXIS 104330, at *1 (C.D. Cal. Sept. 30,

1 2010) (plaintiff’s email that she was being treated unfairly and harshly was not
2 protected conduct). Thus, Hallman’s allegation that she made a general complaint
3 to Watumull is irrelevant.

4 Defendants further object to Hallman’s Response on the ground that her
5 contention that the fact is disputed is not supported by any evidence. The cited
6 evidence does not give Hallman any basis to dispute the fact stated in SUF 10.
7 Moreover, the cited evidence establishes that Hallman never reported to Watumull
8 that Charles was harassing her because of her race. The first time anyone at
9 Abercrombie learned that Hallman believed she had been subjected to racial
10 discrimination or harassment was on September 7, 2011 when Abercrombie’s
11 Benefits department noticed in Hallman’s leave paperwork that she claimed
12 “depression due to feeling targeted at work because of her race.” (SUF 94, 104.)

13 **Hallman’s Response To SUF 18**

14 Defendants object to Hallman’s Response to SUF 18 on the ground that
15 Hallman’s Response does not cite any evidence that places SUF 18 in dispute and
16 contains only a boilerplate response that the fact is not a material fact necessary to
17 be litigated. Pursuant to the Court’s Order, Hallman’s response must be
18 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
19 5-6, 7.) Moreover, there is no evidence that places SUF 18 in dispute. Thus,
20 Hallman’s contention that SUF 18 is disputed should be disregarded for this reason
21 as well.

22 **Hallman’s Response To SUF 19.**

23 Defendants object to Hallman’s Response to SUF 19 on the ground that
24 Hallman’s Response does not cite any evidence that places SUF 19 in dispute and
25 just contains a boilerplate response referring to Hallman’s Statement of Material
26 Facts (“SMF”). Pursuant to the Court’s Order, Hallman’s response must be
27 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
28 5-6, 7.) Moreover, Hallman’s SMF do not contain any evidence that give her a

1 basis to dispute SUF 19. Thus, Hallman’s contention that SUF 19 is disputed
2 should be disregarded for this reason as well.

3 **Hallman’s Response To SUF 21.**

4 Defendants object to Hallman’s Response to SUF 21 on the ground that
5 Hallman’s Response does not cite any evidence that places SUF 21 in dispute and
6 just contains a boilerplate response referring to Hallman’s Statement of Material
7 Facts (“SMF”). Pursuant to the Court’s Order, Hallman’s response must be
8 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
9 5-6, 7.) Moreover, Hallman’s SMF do not contain any evidence that give her a
10 basis to dispute SUF 21. Thus, Hallman’s contention that SUF 21 is disputed
11 should be disregarded for this reason as well.

12 **Hallman’s Response To SUF 22**

13 Defendants object to Hallman’s Response to SUF 22 on the ground that
14 Hallman’s Response does not cite any evidence that places SUF 22 in dispute and
15 contains only a boilerplate response that the fact is not a material fact necessary to
16 be litigated. Pursuant to the Court’s Order, Hallman’s response must be
17 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
18 5-6, 7.) Moreover, there is no evidence that places SUF 22 in dispute. Thus,
19 Hallman’s contention that SUF 22 is disputed should be disregarded for this reason
20 as well.

21 **Hallman’s Response To SUF 23**

22 Defendants object to Hallman’s Response to SUF 23 on the ground that
23 Hallman’s Response does not cite any evidence that places SUF 23 in dispute and
24 contains only a boilerplate response that the fact is not a material fact necessary to
25 be litigated. Pursuant to the Court’s Order, Hallman’s response must be
26 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
27 5-6, 7.) Moreover, there is no evidence that places SUF 23 in dispute. Thus,
28 Hallman’s contention that SUF 23 is disputed should be disregarded for this reason

1 as well.

2 **Hallman's Response To SUF 24**

3 Defendants object to Hallman's Response to SUF 24 on the ground that
4 Hallman's Response does not cite any evidence that places SUF 24 in dispute and
5 contains only a boilerplate response that the fact is not a material fact necessary to
6 be litigated and impermissible argument. Pursuant to the Court's Order, Hallman's
7 response must be disregarded and overruled. (Scheduling and Case Management
8 Order (Doc. 25) at 5-6, 7.) Moreover, there is no evidence that places SUF 24 in
9 dispute. Thus, Hallman's contention that SUF 24 is disputed should be
10 disregarded for this reason as well.

11 **Hallman's Response To SUF 25**

12 Defendants object to Hallman's Response to SUF 25 on the ground that
13 Hallman's Response does not cite any evidence that places SUF 25 in dispute and
14 contains only a boilerplate response that the fact is not a material fact necessary to
15 be litigated and impermissible argument. Pursuant to the Court's Order, Hallman's
16 response must be disregarded and overruled. (Scheduling and Case Management
17 Order (Doc. 25) at 5-6, 7.) Moreover, there is no evidence that places SUF 25 in
18 dispute. Thus, Hallman's contention that SUF 25 is disputed should be
19 disregarded for this reason as well.

20 **Hallman's Response To SUF 26**

21 Defendants object to Hallman's Response to SUF 26 on the ground that
22 Hallman's Response does not cite any evidence that places SUF 26 in dispute and
23 contains only a boilerplate response that the fact is not a material fact necessary to
24 be litigated and impermissible argument. Pursuant to the Court's Order, Hallman's
25 response must be disregarded and overruled. (Scheduling and Case Management
26 Order (Doc. 25) at 5-6, 7.) Moreover, there is no evidence that places SUF 26 in
27 dispute. Thus, Hallman's contention that SUF 26 is disputed should be
28 disregarded for this reason as well.

1 **Hallman’s Response To SUF 27**

2 Defendants object to Hallman’s Response to SUF 27 on the ground that
3 Hallman’s Response does not cite any evidence that places SUF 27 in dispute and
4 contains only a boilerplate response that the fact is not a material fact necessary to
5 be litigated and impermissible argument. Pursuant to the Court’s Order, Hallman’s
6 response must be disregarded and overruled. (Scheduling and Case Management
7 Order (Doc. 25) at 5-6, 7.) Moreover, there is no evidence that places SUF 27 in
8 dispute. Thus, Hallman’s contention that SUF 27 is disputed should be
9 disregarded for this reason as well.

10 **Hallman’s Response To SUF 29**

11 Defendants’ object to Hallman’s Response to SUF 29 on the ground that the
12 class action settlement Hallman relies upon is inadmissible evidence. Federal Rule
13 of Evidence 408 precludes Plaintiff from offering evidence of a settlement
14 agreement in the litigation styled for the purpose of proving liability or past
15 misconduct. *See e.g., Big Baboon Corp. v. Dell, Inc.*, 2010 U.S. Dist. LEXIS
16 108027, 13-14 (C.D. Cal. Oct. 8, 2010) (citing *Hudspeth v. C.I.R.*, 914 F.2d 1207,
17 1213-14 (9th Cir. 1990) (in excluding evidence of settlement, court noted that Fed.
18 R. Evid. 408(a) “prohibits the admission of compromises as evidence ‘when
19 offered to prove liability’.... According to the Ninth Circuit, ‘two principles
20 underlie Rule 408: (1) the evidence of compromise is irrelevant, since the offer
21 may be motivated by desire for peace rather than from any concession of weakness
22 of position; (2) a more consistently impressive ground is promotion of the public
23 policy favoring the compromise and settlement of disputes.’”); *Troutman v. Unum*
24 *Life Ins. Co. of Am.*, 2008 U.S. Dist. LEXIS 53756, 20-21 (N.D. Cal. July 14,
25 2008) (holding that settlement agreement was inadmissible as “evidence of past
26 misconduct” and noting that “settlement agreement expressly provides that it shall
27 not be offered by the parties thereto as "evidence of or an admission. . .or
28 concession of any liability or wrongdoing whatsoever."). Moreover, the class

1 action settlement specifically provides that it shall not be construed as an
2 admission or concession of any violations or failures to comply with any
3 applicable law and that it shall not be admissible as evidence in any action in any
4 manner whatsoever. (Doc. 1-22 at 15, Pageid #180.)

5 Defendants further object to Hallman’s Response on the ground that the
6 class action settlement Hallman relies upon is irrelevant. Fed. R. Evid. 401, 402.
7 The class action settlement Hallman cites related to an action for failure to provide
8 meal and rest breaks. Hallman has not asserted, and is in fact barred by release
9 from asserting, a claim for failure to provide meal and rest breaks. Thus, the class
10 action settlement has no relevance to Hallman’s claim.

11 Defendants further object to Hallman’s Response on the ground that it
12 contains impermissible argument that must be disregarded. (Scheduling and Case
13 Management Order (Doc. 25) at 5-6, 7.)

14 Defendants further object to the argument in Hallman’s Response that she
15 “was written up after she complained for not being allowed to take rest and meal
16 breaks” and that she “was retaliated against for her complaints when she was
17 reprimanded for failing to take her breaks and meal periods” on the ground that it
18 is irrelevant and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor
19 Code § 1102.5 protects an employee from retaliation only for complaints *to a*
20 *government or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The
21 California Supreme Court has made clear that Section 1102.5 only protects
22 employees who report their concerns to public agencies. This statute does not
23 concern employees who only report their suspicions directly to their own
24 employer.” *Boyd v. AutoZone, Inc.*, No. C-11-00776, 2012 U.S. Dist. LEXIS
25 138552, at *32 (N.D. Cal. Sept. 26, 2012). Thus, Hallman’s allegation that she
26 was retaliated against for complaining *to Defendants* about not receiving meal and
27 rest breaks is irrelevant and cannot support her retaliation for engaging in protected
28 activity claim under California Labor Code § 1102.5.

1 Defendants further object to Hallman’s Response on the ground that
2 Hallman’s contention that SUF 29 is disputed is not supported by any evidence.
3 The very evidence Hallman cites (Exhibit 6 – Write-up for Failing to Take Breaks
4 and Meal Periods) establishes that SUF 29 is undisputed.

5 Defendants further object to the argument in Hallman’s Response that she
6 “was written up after she complained for not being allowed to take rest and meal
7 breaks” and that she “was retaliated against for her complaints when she was
8 reprimanded for failing to take her breaks and meal periods” on the ground that it
9 is not supported by any evidence. The undisputed evidence establishes that
10 Hallman was written up for failing to take breaks and she subsequently complained
11 to Human Resources (“HR”) about not receiving breaks. (SUF 29, 30.)

12 Defendants further object to the argument in Hallman’s Response that she
13 “was regularly denied meal and rest periods, due to A&F’s failure to schedule
14 sufficient employees per shift” on the ground that it is not supported by evidence.
15 As Hallman admits, as a manager, she was required to understand Abercrombie’s
16 break policy and she was responsible for taking her own breaks. (SUF 28.)
17 Moreover, Hallman was informed by Charles that she needed to take her breaks in
18 accordance with the policy. (SUF 34.) The cited evidence does not support
19 Hallman’s contention that she was regularly denied breaks.

20 Defendants further object to the argument in Hallman’s Response that she
21 “complained to ... Meghan Watumull, Regional Manager at A&F regarding the
22 company’s failure to provide meal and rest breaks” on the ground that it is not
23 supported by any evidence and the cited evidence does not support Hallman’s
24 contention.

25 **Hallman’s Response To SUF 30**

26 Defendants’ object to Hallman’s Response to SUF 30 on the ground that the
27 class action settlement Hallman relies upon is inadmissible evidence. Federal Rule
28 of Evidence 408 precludes Plaintiff from offering evidence of a settlement

1 agreement in the litigation styled for the purpose of proving liability or past
2 misconduct. *See e.g., Big Baboon Corp.*, 2010 U.S. Dist. LEXIS 108027, at *13-
3 14; *Troutman*, 2008 U.S. Dist. LEXIS 53756, at *20-21. Moreover, the class
4 action settlement specifically provides that it shall not be construed as an
5 admission or concession of any violations or failures to comply with any
6 applicable law and that it shall not be admissible as evidence in any action in any
7 manner whatsoever. (Doc. 1-22 at 15, Pageid #180.)

8 Defendants further object to Hallman’s Response on the ground that the
9 class action settlement Hallman relies upon is irrelevant. Fed. R. Evid. 401, 402.
10 The class action settlement Hallman cites related to an action for failure to provide
11 meal and rest breaks. Hallman has not asserted, and is in fact barred by release
12 from asserting, a claim for failure to provide meal and rest breaks. Thus, the class
13 action settlement has no relevance to Hallman’s claim.

14 Defendants further object to Hallman’s Response on the ground that it
15 contains impermissible argument that must be disregarded. (Scheduling and Case
16 Management Order (Doc. 25) at 5-6, 7.)

17 Defendants further object to the argument in Hallman’s Response that she
18 “was written up after she complained for not being allowed to take rest and meal
19 breaks” and that she “was retaliated against for her complaints when she was
20 reprimanded for failing to take her breaks and meal periods” on the ground that it
21 is irrelevant and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor
22 Code § 1102.5 protects an employee from retaliation only for complaints *to a*
23 *government or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The
24 California Supreme Court has made clear that Section 1102.5 only protects
25 employees who report their concerns to public agencies. This statute does not
26 concern employees who only report their suspicions directly to their own
27 employer.” *Boyd*, 2012 U.S. Dist. LEXIS 138552, at *32. Thus, Hallman’s
28 allegations that she was retaliated against for complaining *to Defendants* about not

1 receiving meal and rest breaks is irrelevant and cannot support her retaliation for
2 engaging in protected activity claim under California Labor Code § 1102.5.

3 Defendants further object to Hallman's Response on the ground that
4 Hallman's contention that SUF 30 is disputed is not supported by any evidence.
5 The undisputed evidence establishes that Hallman complained to HR about not
6 receiving breaks after she was written up by Marsh for not receiving breaks.

7 Defendants further object to the argument in Hallman's Response that she
8 "was written up after she complained for not being allowed to take rest and meal
9 breaks" and that she "was retaliated against for her complaints when she was
10 reprimanded for failing to take her breaks and meal periods" on the ground that it
11 is not supported by any evidence. The undisputed evidence establishes that
12 Hallman was written up for failing to take breaks and she subsequently complained
13 to HR about not receiving breaks. (SUF 29, 30.)

14 Defendants further object to the argument in Hallman's Response that she
15 "was regularly denied meal and rest periods, due to A&F's failure to schedule
16 sufficient employees per shift." As Hallman admits, as a manager, she was
17 required to understand Abercrombie's break policy and she was responsible for
18 taking her own breaks. (SUF 28.) Moreover, Hallman was informed by Charles
19 that she needed to take her breaks in accordance with the policy. (SUF 34.) The
20 cited evidence does not support Hallman's contention that she was regularly denied
21 breaks.

22 Defendants further object to the argument in Hallman's Response that she
23 "complained to ... Meghan Watumull, Regional Manager at A&F regarding the
24 company's failure to provide meal and rest breaks" on the ground that it is not
25 supported by any evidence and the cited evidence does not support Hallman's
26 contention.

27 **Hallman's Response To SUF 32**

28 Defendants' object to Hallman's Response to SUF 30 on the ground that the

1 class action settlement Hallman relies upon is inadmissible evidence. Federal Rule
2 of Evidence 408 precludes Plaintiff from offering evidence of a settlement
3 agreement in the litigation styled for the purpose of proving liability or past
4 misconduct. *See e.g., Big Baboon Corp.*, 2010 U.S. Dist. LEXIS 108027, at *13-
5 14; *Troutman*, 2008 U.S. Dist. LEXIS 53756, at *20-21. Moreover, the class
6 action settlement specifically provides that it shall not be construed as an
7 admission or concession of any violations or failures to comply with any
8 applicable law and that it shall not be admissible as evidence in any action in any
9 manner whatsoever. (Doc. 1-22 at 15, Pageid #180.)

10 Defendants further object to Hallman’s Response on the ground that the
11 class action settlement Hallman relies upon is irrelevant. Fed. R. Evid. 401, 402.
12 The class action settlement Hallman cites related to an action for failure to provide
13 meal and rest breaks. Hallman has not asserted, and is in fact barred by release
14 from asserting, a claim for failure to provide meal and rest breaks. Thus, the class
15 action settlement has no relevance to Hallman’s claim.

16 Defendants further object to Hallman’s Response on the ground that it
17 contains impermissible argument that must be disregarded. (Scheduling and Case
18 Management Order (Doc. 25) at 5-6, 7.)

19 Defendants further object to the argument in Hallman’s Response that she
20 “was written up after she complained for not being allowed to take rest and meal
21 breaks” and that she “was retaliated against for her complaints when she was
22 reprimanded for failing to take her breaks and meal periods” on the ground that it
23 is irrelevant and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor
24 Code § 1102.5 protects an employee from retaliation only for complaints *to a*
25 *government or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The
26 California Supreme Court has made clear that Section 1102.5 only protects
27 employees who report their concerns to public agencies. This statute does not
28 concern employees who only report their suspicions directly to their own

1 employer.” *Boyd*, 2012 U.S. Dist. LEXIS 138552, at *32. Thus, Hallman’s
2 allegations that she was retaliated against for complaining to *Defendants* about not
3 receiving meal and rest breaks is irrelevant and cannot support her retaliation for
4 engaging in protected activity claim under California Labor Code § 1102.5.

5 Defendants further object to Hallman’s Response on the ground that
6 Hallman’s claim that SUF 32 is disputed is not supported by any evidence. The
7 undisputed evidence establishes that Marsh did not retaliate against Hallman in any
8 way after Hallman complained to HR about not receiving breaks.

9 Defendants further object to the argument in Hallman’s Response that she
10 “was written up after she complained for not being allowed to take rest and meal
11 breaks” and that she “was retaliated against for her complaints when she was
12 reprimanded for failing to take her breaks and meal periods” on the ground that it
13 is not supported by any evidence. The undisputed evidence establishes that
14 Hallman was written up for failing to take breaks and she subsequently complained
15 to HR about not receiving breaks. (SUF 29, 30.)

16 Defendants further object to the argument in Hallman’s Response that she
17 “was regularly denied meal and rest periods, due to A&F’s failure to schedule
18 sufficient employees per shift.” As Hallman admits, as a manager, she was
19 required to understand Abercrombie’s break policy and she was responsible for
20 taking her own breaks. (SUF 28.) Moreover, Hallman was informed by Charles
21 that she needed to take her breaks in accordance with the policy. (SUF 34.) The
22 cited evidence does not support Hallman’s contention that she was regularly denied
23 breaks.

24 Defendants further object to the argument in Hallman’s Response that she
25 “complained to ... Meghan Watumull, Regional Manager at A&F regarding the
26 company’s failure to provide meal and rest breaks” on the ground that it is not
27 supported by any evidence and the cited evidence does not support Hallman’s
28 contention.

1 **Hallman’s Response To SUF 33**

2 Defendants further object to Hallman’s Response to SUF 33 on the ground
3 that it contains impermissible argument that must be disregarded. (Scheduling and
4 Case Management Order (Doc. 25) at 5-6, 7.)

5 **Hallman’s Response To SUF 34**

6 Defendants object to Hallman’s Response to SUF 34 on the ground that the
7 cited evidence does not support Hallman’s contention that SUF 34 is disputed.
8 Moreover, as Hallman admits, as a manager, she was required to understand
9 Abercrombie’s break policy and she was responsible for taking her own breaks.
10 (SUF 28.)

11 **Hallman’s Response To SUF 35**

12 Defendants object to Hallman’s Response to SUF 35 on the ground that the
13 cited evidence does not support Hallman’s contention that SUF 35 is disputed.
14 Moreover, as Hallman admits, as a manager, she was required to understand
15 Abercrombie’s break policy and she was responsible for taking her own breaks.
16 (SUF 28.)

17 **Hallman’s Response To SUF 36**

18 Defendants object to Hallman’s Response to SUF 36 on the ground that
19 Hallman’s Response is not supported by any evidence that puts SUF 36 in dispute
20 and just contains a boilerplate response referring to Hallman’s SMF. Pursuant to
21 the Court’s Order, Hallman’s response must be disregarded and overruled.
22 (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.) Moreover,
23 Hallman’s SMF do not contain any evidence that give her a basis to dispute SUF
24 36. Thus, Hallman’s contention that SUF 36 is disputed should be disregarded for
25 this reason as well.

26 **Hallman’s Response To SUF 37**

27 Defendants object to Hallman’s Response to SUF 37 on the ground that
28 Hallman’s contention that the woman in the picture was not African-American is

1 not supported by the evidence. The cited evidence establishes that Hallman
2 testified that the woman in the photo was a “black girl” and also an “African-
3 American woman mixed with something else.”

4 **Hallman’s Response To SUF 39**

5 Defendants object to Hallman’s Response to SUF 39 on the ground that
6 Hallman’s does not cite any evidence that places SUF 39 in dispute and contains
7 only a boilerplate response that the fact is not a material fact necessary to be
8 litigated. Pursuant to the Court’s Order, Hallman’s response must be disregarded
9 and overruled. (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.)
10 Moreover, there is no evidence that places SUF 39 in dispute. Thus, Hallman’s
11 contention that SUF 39 is disputed should be disregarded for this reason as well.

12 **Hallman’s Response To SUF 42-45, 47**

13 Defendants object to Hallman’s Response to SUF 42-45 and 47 on the
14 ground that Hallman’s claimed dispute is immaterial to resolving Defendants’
15 motion for summary judgment. For purposes of Defendants’ motion for summary
16 judgment, Defendants have accepted as true that Charles attended a management
17 meeting at the Northridge Store and stated that “Yeah, we’re looking for people
18 who have curly hair.”

19 **Hallman’s Response To SUF 48**

20 Defendants object to Hallman’s Response to SUF 48 on the ground that the
21 cited evidence (Exhibits 7-10) is inadmissible. It is well established that Fed. R.
22 Evid. 408 precludes Plaintiff from offering evidence of a consent decree for the
23 purpose of proving liability or past misconduct. *See e.g., Iorio v. Allianz Life Ins.*
24 *Co. of N. Am.*, 2008 U.S. Dist. LEXIS 118344, 13-14 (S.D. Cal. July 8, 2008)
25 (holding that Fed. R. Evid. 408(a)(1) precludes evidence of defendant’s prior
26 agreement with the California Department of Insurance where plaintiffs offered the
27 document for the purpose of proving liability); *United States v. Gilbert*, 668 F.2d
28 94, 97 (2d Cir. 1981) (holding that civil consent decrees are governed by Fed. R.

1 Evid. 408, which “bars evidence of a compromise to prove liability for the
2 claim.”); *Bowers v. NCAA*, 563 F. Supp. 2d 508, 536 (D.N.J. 2008) (holding that
3 Fed. R. Evid. 408's exclusionary provision applies to civil consent decrees between
4 private parties and government agencies and precludes plaintiff from using consent
5 decree as evidence of defendant’s liability). Moreover, multiple courts have
6 granted Abercrombie’s motions to exclude evidence regarding this Consent Decree
7 in previous cases on the grounds that the Consent Decree is irrelevant and
8 admission of evidence regarding the Consent Decree would be unduly prejudicial
9 to Abercrombie and violate Section IX.A of the Consent Decree, which
10 specifically provides that it “shall not be deemed to be a finding or determination
11 by the Court, nor an admission by any party, regarding the merits, validity or
12 accuracy of any of the allegations, claims or defenses” and that the decree “shall
13 not be discoverable, admissible or used as evidence of liability or non-liability for
14 unlawful discrimination in any proceeding.” *See E.E.O.C. v. Abercrombie & Fitch*
15 *Stores, Inc., et al.*, No. 4:08-1470 (E.D. Mo. filed Sept. 25, 2008) (Dock. Nos. 67,
16 68); *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, No. 4:09-cv-00602-GKF-FHM
17 (N.D. Ok. Filed Sept. 16, 2009) (Dock. No. 125). Last, it is well established that
18 evidence of the consent decree is inadmissible pursuant to Fed. R. Evid. 402 and
19 403 because the consent decree is irrelevant to the claims at issue and evidence of
20 the consent decree would be unfairly prejudicial. *See e.g., Gribben v. UPS*, 528
21 F.3d 1166, 1172 (9th Cir. 2008) (United States Court of Appeals for the Ninth
22 Circuit upholding trial court’s exclusion of prior consent decree with the EEOC on
23 the ground that its probative value was outweighed by its potential for prejudice
24 pursuant to Fed. R. Evid. 402 and 403.); *Kramas v. Security Gas & Oil, Inc.*, 672
25 F.2d 766, 772 (9th Cir. 1982) (affirming district court's refusal to admit evidence
26 of a consent decree entered in a prior SEC enforcement proceeding); *Allen v. City*
27 *of L.A.*, 2012 U.S. Dist. LEXIS 65775, 5-6 (C.D. Cal. May 7, 2012) (court
28 excluding evidence relating to prior consent decree as unduly prejudicial pursuant

1 to Fed. R. Evid. 403.); *Johnson v. Hugo's Skateway*, 974 F.2d 1408, 1438-1439
2 (4th Cir. 1992) (reversing trial court's decision admitting evidence of prior consent
3 decree between the defendant and the United States Department of Justice
4 "because the prejudicial effect of admitting the decree is readily apparent and the
5 probative value is slight."); *Ross v. Am. Red Cross*, 2012 U.S. Dist. LEXIS 77475,
6 9-11 (S.D. Ohio June 5, 2012) (holding "that evidence regarding the [prior consent
7 decree] is inadmissible under Fed. R. Evid. 402 and 403").

8 Defendants further object to Hallman's Response to the extent it relies on
9 the allegations in the complaint of the prior lawsuit. Allegations contained in a
10 prior complaint do not constitute competent evidence that may be considered under
11 F.R.C.P 56(e). *See e.g., Rosales v. Career Sys. Dev. Corp.*, 2009 U.S. Dist. LEXIS
12 101808, 17-18 (E.D. Cal. Nov. 1, 2009) (holding that facts alleged in complaint
13 from a different lawsuit "do not constitute competent evidence for purposes of
14 summary judgment" and excluding such evidence for the purpose of defendant's
15 motion for summary judgment); *Thomas v. Chrysler Fin., LLC*, 278 F. Supp. 2d
16 922, 926 (N.D. Ill. 2003) ("Thomas cites only allegations in a complaint in another
17 lawsuit against Chrysler--clearly not evidence that may be considered under Rule
18 56(e).").

19 Defendants further object to Hallman's Response on the ground that
20 Hallman's contention that the fact is disputed and allegation that "Defendants were
21 looking to recruit minorities with Caucasian features" is not supported by any
22 evidence.

23 **Hallman's Response To SUF 49**

24 Defendants object to Hallman's Response to SUF 49 on the ground that
25 Hallman's Response is not supported by any evidence and just contains a
26 boilerplate response referring to Hallman's SMF. Pursuant to the Court's Order,
27 Hallman's response must be disregarded and overruled. (Scheduling and Case
28 Management Order (Doc. 25) at 5-6, 7.) Moreover, Hallman's SMF do not contain

1 any evidence that give her a basis to dispute SUF 49. Thus, Hallman's contention
2 that SUF 49 is disputed should be disregarded for this reason as well.

3 **Hallman's Response To SUF 50**

4 Defendants object to Hallman's Response to SUF 50 on the ground that
5 Hallman's Response is not supported by any evidence and just contains a
6 boilerplate response referring to Hallman's SMF. Pursuant to the Court's Order,
7 Hallman's response must be disregarded and overruled. (Scheduling and Case
8 Management Order (Doc. 25) at 5-6, 7.) Moreover, Hallman's SMF do not contain
9 any evidence that give her a basis to dispute SUF 50. Thus, Hallman's contention
10 that SUF 50 is disputed should be disregarded for this reason as well.

11 **Hallman's Response To SUF 52**

12 Defendants object to Hallman's Response to SUF 52 on the ground that it is
13 immaterial and irrelevant and inadmissible. Fed. R. Evid. 401, 402. As Hallman
14 admits, Charles did not say anything about Hallman's race during this alleged
15 incident and there was nothing about the incident that was racially motivated.
16 (SUF 53-54.) As such, this alleged incident cannot support Hallman's
17 discrimination or harassment claims.

18 **Hallman's Response To SUF 54**

19 Defendants object to Hallman's Response to SUF 54 on the ground that
20 Hallman's contention that SUF 54 is disputed is not supported by any evidence.
21 The cited evidence establishes that Hallman could not identify anything about the
22 alleged event that was racially motivated. Thus, Hallman's contention that SUF 54
23 is disputed is baseless.

24 **Hallman's Response To SUF 55**

25 Defendants object to Hallman's Response to SUF 55 on the ground that
26 Hallman's Response is not supported by any evidence and just contains a
27 boilerplate response referring to Hallman's SMF. Pursuant to the Court's Order,
28 Hallman's response must be disregarded and overruled. (Scheduling and Case

1 Management Order (Doc. 25) at 5-6, 7.) Moreover, Hallman's SMF do not contain
2 any evidence that give her a basis to dispute SUF 55. Thus, Hallman's contention
3 that SUF 55 is disputed should be disregarded for this reason as well.

4 **Hallman's Response To SUF 56**

5 Defendants object to Hallman's Response to SUF 56 on the ground that
6 Hallman's contention that SUF 56 is disputed is not supported by the cited
7 evidence. Although Plaintiff may have been approved to leave her shift 15
8 minutes early, the evidence establishes she left her shift two hours early.

9 Defendants further object to Hallman's Response on the ground that it is
10 immaterial whether SUF 56 is disputed. Hallman was not disciplined for leaving
11 her shift early and it does not form the basis of any of her claims.

12 **Hallman's Response To SUF 57**

13 Defendants object to Hallman's Response to SUF 57 on the ground that
14 Hallman's does not cite any evidence that places SUF 57 in dispute and contains
15 only a boilerplate response that the fact is not a material fact necessary to be
16 litigated. Pursuant to the Court's Order, Hallman's response must be disregarded
17 and overruled. (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.)
18 Moreover, there is no evidence that places SUF 57 in dispute. Thus, Hallman's
19 contention that SUF 57 is disputed should be disregarded for this reason as well.

20 **Hallman's Response To SUF 58**

21 Defendants object to Hallman's Response to SUF 58 on the ground that
22 Hallman's does not cite any evidence that places SUF 58 in dispute and contains
23 only a boilerplate response that the fact is not a material fact necessary to be
24 litigated. Pursuant to the Court's Order, Hallman's response must be disregarded
25 and overruled. (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.)
26 Moreover, there is no evidence that places SUF 58 in dispute. Thus, Hallman's
27 contention that SUF 58 is disputed should be disregarded for this reason as well.
28

1 **Hallman’s Response To SUF 59**

2 Defendants object to Hallman’s Response to SUF 59 on the ground that
3 Hallman’s does not cite any evidence that places SUF 59 in dispute and contains
4 only a boilerplate response that the fact is not a material fact necessary to be
5 litigated. Pursuant to the Court’s Order, Hallman’s response must be disregarded
6 and overruled. (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.)
7 Moreover, there is no evidence that places SUF 59 in dispute. Thus, Hallman’s
8 contention that SUF 59 is disputed should be disregarded for this reason as well.

9 **Hallman’s Response To SUF 60**

10 Defendants object to Hallman’s Response to SUF 60 on the ground that it
11 relies on documents (Exhibit 13) that have not been authenticated and are therefore
12 inadmissible and cannot be considered in deciding Defendants’ motion for
13 summary judgment. Fed. R. Evid. 901; *Cristobal v. Siegel*, 26 F.3d 1488, 1494
14 (9th Cir. 1994) (“This court has consistently held that documents which have not
15 had a proper foundation laid to authenticate them cannot support a motion for
16 summary judgment”); *L.A. Printex Indus. v. Lia Lee, Inc.*, No. CV08-1836, 2009
17 U.S. Dist. LEXIS 28477, at *7 (C.D. Cal. Mar. 23, 2009) (“It is well-established
18 that unauthenticated documents cannot be considered in a motion for summary
19 judgment”).

20 Defendants further object to Hallman’s Response on the ground that it
21 contains impermissible argument that must be disregarded. (Scheduling and Case
22 Management Order (Doc. 25) at 5-6, 7.)

23 Defendants further object to Hallman’s response on the ground that the cited
24 evidence does not place SUF 60 in dispute. Hallman admits she called Noah and
25 Charles testified that she overheard the call. None of the cited evidence is to the
26 contrary.

27 Defendants’ further object to Hallman’s argument in her Response that
28 “Charles used stereotypical African-American hand gestures as she told Ms.

1 Hallman that she ‘put him [Noah] on blast,’ (a stereotypical slang phrase)” and that
2 “as Charles made this comment, she waved her hand around, and shook her neck
3 while she spoke, depicting the movements of a stereotyped black female in an
4 attempt to characterize how Ms. Hallman allegedly spoke” on the ground that it is
5 not supported by any evidence. There is no evidence that Charles used a
6 stereotypical African-American hand gesture or depicted the movements of a
7 stereotyped black female in an attempt to characterize how Hallman spoke.
8 Hallman testified she does not know what “put him on blast” means and did not
9 testify that it was discriminatory. Hallman testified only that Charles snapped her
10 fingers and shook her head. Charles did not say anything about Hallman’s race
11 during this incident.

12 **Hallman’s Response To SUF 61**

13 Defendants object to Hallman’s Response to SUF 61 on the ground that it
14 relies on documents (Exhibit 13) that have not been authenticated and are therefore
15 inadmissible and cannot be considered in deciding Defendants’ motion for
16 summary judgment. Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex*
17 *Indus.*, 2009 U.S. Dist. LEXIS 28477, at *7.

18 Defendants further object to Hallman’s Response on the ground that it
19 contains impermissible argument that must be disregarded. (Scheduling and Case
20 Management Order (Doc. 25) at 5-6, 7.)

21 Defendants further object to Hallman’s response on the ground that the cited
22 evidence does not place SUF 61 in dispute. The evidence establishes that Charles
23 met with Hallman to discuss her the conversation she overheard Hallman have with
24 Noah.

25 Defendants’ further object to Hallman’s argument in her Response that
26 “Charles used stereotypical African-American hand gestures as she told Ms.
27 Hallman that she ‘put him [Noah] on blast,’ (a stereotypical slang phrase)” and that
28 “as Charles made this comment, she waved her hand around, and shook her neck

1 while she spoke, depicting the movements of a stereotyped black female in an
2 attempt to characterize how Ms. Hallman allegedly spoke” on the ground that it is
3 not supported by any evidence. There is no evidence that Charles used a
4 stereotypical African-American hand gesture or depicted the movements of a
5 stereotyped black female in an attempt to characterize how Hallman spoke.
6 Hallman testified she does not know what “put him on blast” means and did not
7 testify that it was discriminatory. Hallman testified only that Charles snapped her
8 fingers and shook her head. Charles did not say anything about Hallman’s race
9 during this incident.

10 **Hallman’s Response To SUF 62**

11 Defendants object to Hallman’s Response to SUF 62 on the ground that it
12 contains impermissible argument that must be disregarded. (Scheduling and Case
13 Management Order (Doc. 25) at 5-6, 7.)

14 Defendants further object to Hallman’s response on the ground that the cited
15 evidence does not place SUF 62 in dispute. The cited evidence establishes that
16 Hallman claims that during Charles’ conversation with her Charles snapped her
17 fingers and told Hallman “you put him on blast.”

18 Defendants’ further object to Hallman’s argument in her Response that
19 “Charles used stereotypical African-American hand gestures as she told Ms.
20 Hallman that she ‘put him [Noah] on blast,’ (a stereotypical slang phrase)” and that
21 “as Charles made this comment, she waved her hand around, and shook her neck
22 while she spoke, depicting the movements of a stereotyped black female in an
23 attempt to characterize how Ms. Hallman allegedly spoke” on the ground that it is
24 not supported by any evidence. There is no evidence that Charles used a
25 stereotypical African-American hand gesture or depicted the movements of a
26 stereotyped black female in an attempt to characterize how Hallman spoke.
27 Hallman testified she does not know what “put him on blast” means and did not
28 testify that it was discriminatory. Hallman testified only that Charles snapped her

1 fingers and shook her head. Charles did not say anything about Hallman’s race
2 during this incident.

3 **Hallman’s Response To SUF 64**

4 Defendants object to Hallman’s Response to SUF 64 on the ground that it
5 contains impermissible argument that must be disregarded. (Scheduling and Case
6 Management Order (Doc. 25) at 5-6, 7.)

7 Defendants further object to Hallman’s response on the ground that the cited
8 evidence does not place SUF 64 in dispute. The cited evidence establishes that
9 Charles said nothing about Hallman’s race on this occasion.

10 Defendants’ further object to Hallman’s argument in her Response that
11 “Charles used stereotypical African-American hand gestures as she told Ms.
12 Hallman that she ‘put him [Noah] on blast,’ (a stereotypical slang phrase)” and that
13 “as Charles made this comment, she waved her hand around, and shook her neck
14 while she spoke, depicting the movements of a stereotyped black female in an
15 attempt to characterize how Ms. Hallman allegedly spoke” on the ground that it is
16 not supported by any evidence. There is no evidence that Charles used a
17 stereotypical African-American hand gesture or depicted the movements of a
18 stereotyped black female in an attempt to characterize how Hallman spoke.
19 Hallman testified she does not know what “put him on blast” means and did not
20 testify that it was discriminatory. Hallman testified only that Charles snapped her
21 fingers and shook her head. Charles did not say anything about Hallman’s race
22 during this incident.

23 **Hallman’s Response To SUF 65**

24 Defendants object to Hallman’s Response to SUF 65 on the ground that it
25 contains impermissible argument that must be disregarded. (Scheduling and Case
26 Management Order (Doc. 25) at 5-6, 7.)

27 Defendants further object to Hallman’s response on the ground that the cited
28 evidence does not place SUF 65 in dispute. The cited evidence establishes that

1 Hallman claims Charles’ actions were discriminatory only because she snapped her
2 fingers and said “you put him on blast.”

3 Defendants’ further object to Hallman’s argument in her Response that
4 “Charles used stereotypical African-American hand gestures as she told Ms.
5 Hallman that she ‘put him [Noah] on blast,’ (a stereotypical slang phrase)” and that
6 “as Charles made this comment, she waved her hand around, and shook her neck
7 while she spoke, depicting the movements of a stereotyped black female in an
8 attempt to characterize how Ms. Hallman allegedly spoke” on the ground that it is
9 not supported by any evidence. There is no evidence that Charles used a
10 stereotypical African-American hand gesture or depicted the movements of a
11 stereotyped black female in an attempt to characterize how Hallman spoke.
12 Hallman testified she does not know what “put him on blast” means and did not
13 testify that it was discriminatory. Hallman testified only that Charles snapped her
14 fingers and shook her head. Charles did not say anything about Hallman’s race
15 during this incident.

16 **Hallman’s Response To SUF 66**

17 Defendants object to Hallman’s Response to SUF 66 on the ground that it
18 contains impermissible argument that must be disregarded. (Scheduling and Case
19 Management Order (Doc. 25) at 5-6, 7.)

20 Defendants further object to Hallman’s response on the ground that the cited
21 evidence does not place SUF 66 in dispute. The cited evidence establishes that
22 Hallman cannot explain why Charles’ alleged actions or use of the phrase “put him
23 on blast” were discriminatory.

24 Defendants’ further object to Hallman’s argument in her Response that
25 “Charles used stereotypical African-American hand gestures as she told Ms.
26 Hallman that she ‘put him [Noah] on blast,’ (a stereotypical slang phrase)” and that
27 “as Charles made this comment, she waved her hand around, and shook her neck
28 while she spoke, depicting the movements of a stereotyped black female in an

1 attempt to characterize how Ms. Hallman allegedly spoke” on the ground that it is
2 not supported by any evidence. There is no evidence that Charles used a
3 stereotypical African-American hand gesture or depicted the movements of a
4 stereotyped black female in an attempt to characterize how Hallman spoke.
5 Hallman testified she does not know what “put him on blast” means and did not
6 testify that it was discriminatory. Hallman testified only that Charles snapped her
7 fingers and shook her head. Charles did not say anything about Hallman’s race
8 during this incident.

9 **Hallman’s Response To SUF 67**

10 Defendants object to Hallman’s Response to SUF 67 on the ground that
11 Hallman’s Response does not cite any evidence that places SUF 68 in dispute and
12 just contains a boilerplate response referring to Hallman’s SMF. Pursuant to the
13 Court’s Order, Hallman’s response must be disregarded and overruled.
14 (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.) Moreover,
15 Hallman’s SMF do not contain any evidence that give her a basis to dispute SUF
16 67. Thus, Hallman’s contention that SUF 67 is disputed should be disregarded for
17 this reason as well.

18 **Hallman’s Response To SUF 68**

19 Defendants object to Hallman’s Response to SUF 68 on the ground that
20 Hallman’s Response does not cite any evidence that places SUF 68 in dispute and
21 contains only a boilerplate response that the fact is not a material fact necessary to
22 be litigated. Pursuant to the Court’s Order, Hallman’s response must be
23 disregarded and overruled. (Scheduling and Case Management Order (Doc. 25) at
24 5-6, 7.) Moreover, there is no evidence that places SUF 68 in dispute. Thus,
25 Hallman’s contention that SUF 68 is disputed should be disregarded for this reason
26 as well.

27 **Hallman’s Response To SUF 69**

28 Defendants object to Hallman’s Response to SUF 69 on the ground that

1 Hallman's does not cite any evidence that places SUF 69 in dispute and contains
2 only a boilerplate response that the fact is not a material fact necessary to be
3 litigated. Pursuant to the Court's Order, Hallman's response must be disregarded
4 and overruled. (Scheduling and Case Management Order (Doc. 25) at 5-6, 7.)
5 Moreover, there is no evidence that places SUF 69 in dispute. Thus, Hallman's
6 contention that SUF 69 is disputed should be disregarded for this reason as well.

7 **Hallman's Response To SUF 72**

8 Defendants object to Hallman's Response to SUF 72 on the ground that it
9 relies on documents (Exhibit 15) that have not been authenticated and are therefore
10 inadmissible and cannot be considered in deciding Defendants' motion for
11 summary judgment. Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex*
12 *Indus.*, 2009 U.S. Dist. LEXIS 28477, at *7.

13 Defendants' further object to Hallman's Response on the ground that her
14 contention that SUF 72 is in dispute is not supported by any evidence. There is
15 nothing in Exhibit 15 establishing that Charles stated she made multiple changes to
16 Plaintiff's schedule. The undisputed evidence establishes that DMs do not write or
17 make changes to the schedule.

18 **Hallman's Response To SUF 73**

19 Defendants object to Hallman's Response to SUF 73 on the ground that it
20 contains impermissible argument that must be disregarded. (Scheduling and Case
21 Management Order (Doc. 25) at 5-6, 7.)

22 Defendants further object to Hallman's Response on the ground that the
23 cited evidence (Exhibit 15) has not been authenticated and therefore cannot be
24 considered in deciding Defendants' Motion for Summary Judgment. Fed. R. Evid.
25 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS
26 28477, at *7.

27 Defendants further object to Hallman's Response on the ground that it relies
28 on the allegations in Hallman's complaint. A plaintiff cannot rely on allegations in

1 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
2 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

3 Defendants further object to the evidence in Hallman’s Response on the
4 ground that the statements made by third parties to Hallman are inadmissible
5 hearsay that cannot be considered in deciding Defendants’ Motion for Summary
6 Judgment. Fed. R. Evid. 801, 802; *Jim v. County of Hawaii*, 33 F.App’x 857, 858
7 (9th Cir. 2002) (trial court properly refused to consider hearsay in ruling on motion
8 for summary judgment); *Frederick v. City of Portland*, No. 95-35389, 1996 U.S.
9 App. LEXIS 26700, at *7 (9th Cir. Oct. 10, 1996) (“When ruling on a motion for
10 summary judgment, the court should not consider hearsay statements”); *Alcala v.*
11 *Best Buy Stores, LP*, No. EDCV-11-00798, 2012 U.S. Dist. LEXIS 181892, at *30
12 (C.D. Cal. Nov. 7, 2012) (court does not consider inadmissible hearsay on a
13 motion for summary judgment).

14 Defendants further object to the statement in Hallman’s Response that
15 “Apparently, Charles handled the managers’ work schedule and was responsible
16 for any changes to it” on the ground that it is pure speculation, unsupported by any
17 evidence, and, in fact, directly contradicted by the evidence.

18 Defendants further object to Hallman’s Response on the ground that the
19 cited evidence does not place SUF 73 in dispute. The undisputed evidence
20 establishes that Hallman knew what days of the week and times she was supposed
21 to work under the mandatory schedule.

22 **Hallman’s Response To SUF 75**

23 Defendants object to Hallman’s Response to SUF 75 on the ground that it
24 contains impermissible argument that must be disregarded. (Scheduling and Case
25 Management Order (Doc. 25) at 5-6, 7.)

26 Defendants object to Hallman’s Response on the ground that the cited
27 evidence (Exhibit 15) has not been authenticated and therefore cannot be
28 considered in deciding Defendants’ Motion for Summary Judgment. Fed. R. Evid.

1 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS
2 28477, at *7.

3 Defendants further object to Hallman’s Response on the ground that it relies
4 on the allegations in Hallman’s complaint. A plaintiff cannot rely on allegations in
5 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
6 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

7 Defendants further object to the evidence in Hallman’s Response on the
8 ground that the statements made by third parties to Hallman are inadmissible
9 hearsay that cannot be considered in deciding Defendants’ Motion for Summary
10 Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App’x at 858; *Frederick*, 1996 U.S.
11 App. LEXIS 26700, at *7 ; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

12 Defendants further object to the statement in Hallman’s Response that
13 “Apparently, Charles handled the managers’ work schedule and was responsible
14 for any changes to it” on the ground that it is pure speculation, unsupported by any
15 evidence, and, in fact, directly contradicted by the evidence.

16 Defendants further object to Hallman’s Response on the ground that the
17 cited evidence does not place SUF 75 in dispute. The cited evidence is consistent
18 with the statement in SUF 75.

19 **Hallman’s Response To SUF 76**

20 Defendants object to Hallman’s Response to SUF 76 on the ground that it
21 contains impermissible argument that must be disregarded. (Scheduling and Case
22 Management Order (Doc. 25) at 5-6, 7.)

23 Defendants object to Hallman’s Response on the ground that the cited
24 evidence (Exhibit 15) has not been authenticated and therefore cannot be
25 considered in deciding Defendants’ Motion for Summary Judgment. Fed. R. Evid.
26 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS
27 28477, at *7.

28 Defendants further object to Hallman’s Response on the ground that it relies

1 on the allegations in Hallman’s complaint. A plaintiff cannot rely on allegations in
2 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
3 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

4 Defendants further object to the evidence in Hallman’s Response on the
5 ground that the statements made by third parties to Hallman are inadmissible
6 hearsay that cannot be considered in deciding Defendants’ Motion for Summary
7 Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App’x at 858; *Frederick*, 1996 U.S.
8 App. LEXIS 26700, at *7 ; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

9 Defendants further object to the statement in Hallman’s Response that
10 “Apparently, Charles handled the managers’ work schedule and was responsible
11 for any changes to it” on the ground that it is pure speculation, unsupported by any
12 evidence, and, in fact, directly contradicted by the evidence.

13 Defendants further object to Hallman’s Response on the ground that the
14 cited evidence does not place SUF 76 in dispute. The undisputed evidence
15 establishes that upon realizing her schedule had been returned to the mandatory
16 schedule, she texted Charles to ask what to do.

17 **Hallman’s Response To SUF 77**

18 Defendants object to Hallman’s Response to SUF 76 on the ground that it
19 contains impermissible argument that must be disregarded. (Scheduling and Case
20 Management Order (Doc. 25) at 5-6, 7.)

21 Defendants object to Hallman’s Response on the ground that the cited
22 evidence (Exhibit 15) has not been authenticated and therefore cannot be
23 considered in deciding Defendants’ Motion for Summary Judgment. Fed. R. Evid.
24 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS
25 28477, at *7.

26 Defendants further object to Hallman’s Response on the ground that it relies
27 on the allegations in Hallman’s complaint. A plaintiff cannot rely on allegations in
28 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,

1 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

2 Defendants further object to the evidence in Hallman’s Response on the
3 ground that the statements made by third parties to Hallman are inadmissible
4 hearsay that cannot be considered in deciding Defendants’ Motion for Summary
5 Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App’x at 858; *Frederick*, 1996 U.S.
6 App. LEXIS 26700, at *7 ; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

7 Defendants further object to the statement in Hallman’s Response that
8 “Apparently, Charles handled the managers’ work schedule and was responsible
9 for any changes to it” on the ground that it is pure speculation, unsupported by any
10 evidence, and, in fact, directly contradicted by the evidence.

11 Defendants further object to Hallman’s Response on the ground that the
12 cited evidence does not place SUF 77 in dispute. The undisputed evidence
13 establishes that when Hallman texted Charles, Charles told her to abide be the
14 mandatory schedule.

15 **Hallman’s Response To SUF 78**

16 Defendants object to Hallman’s Response to SUF 78 on the ground that it
17 contains impermissible argument that must be disregarded. (Scheduling and Case
18 Management Order (Doc. 25) at 5-6, 7.)

19 Defendants object to Hallman’s Response on the ground that the cited
20 evidence (Exhibit 15) has not been authenticated and therefore cannot be
21 considered in deciding Defendants’ Motion for Summary Judgment. Fed. R. Evid.
22 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS
23 28477, at *7.

24 Defendants further object to Hallman’s Response on the ground that it relies
25 on the allegations in Hallman’s complaint. A plaintiff cannot rely on allegations in
26 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
27 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

28 Defendants further object to the evidence in Hallman’s Response on the

1 ground that the statements made by third parties to Hallman are inadmissible
2 hearsay that cannot be considered in deciding Defendants' Motion for Summary
3 Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App'x at 858; *Frederick*, 1996 U.S.
4 App. LEXIS 26700, at *7 ; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

5 Defendants further object to the statement in Hallman's Response that
6 "Apparently, Charles handled the managers' work schedule and was responsible
7 for any changes to it" on the ground that it is pure speculation, unsupported by any
8 evidence, and, in fact, directly contradicted by the evidence.

9 Defendants further object to Hallman's Response on the ground that the
10 cited evidence does not place SUF 78 in dispute. The undisputed evidence
11 establishes that Charles did not write, change, or access Hallman's schedule at any
12 time.

13 **Hallman's Response To SUF 79**

14 Defendants object to Hallman's Response to SUF 79 on the ground that it
15 relies on documents (Exhibit 15) that have not been authenticated and are therefore
16 inadmissible and cannot be considered in deciding Defendants' motion for
17 summary judgment. Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex*
18 *Indus.*, 2009 U.S. Dist. LEXIS 28477, at *7.

19 Defendants' further object to Hallman's Response on the ground that her
20 contention that SUF 79 is disputed is not supported by the cited evidence. There
21 is nothing in Exhibit 15 establishing that Charles admitted to making changes to
22 Plaintiff's schedule. The undisputed evidence establishes that Charles did not
23 make changes to Hallman's work schedule.

24 **Hallman's Response To SUF 80**

25 Defendants object to Hallman's Response to SUF 80 on the ground that
26 Hallman's Response is not supported by any evidence and just contains a
27 boilerplate response referring to Hallman's SMF. Pursuant to the Court's Order,
28 Hallman's response must be disregarded and overruled. (Scheduling and Case

1 Management Order (Doc. 25) at 5-6, 7.) Moreover, Hallman's SMF do not contain
2 any evidence that give her a basis to dispute SUF 80. Thus, Hallman's contention
3 that SUF 80 is disputed should be disregarded for this reason as well.

4 **Hallman's Response To SUF 81**

5 Defendants object to Hallman's Response to SUF 81 on the ground that
6 Hallman's Response is not supported by any evidence and just contains a
7 boilerplate response referring to Hallman's SMF. Pursuant to the Court's Order,
8 Hallman's response must be disregarded and overruled. (Scheduling and Case
9 Management Order (Doc. 25) at 5-6, 7.) Moreover, Hallman's SMF do not contain
10 any evidence that give her a basis to dispute SUF 81. Thus, Hallman's contention
11 that SUF 81 is disputed should be disregarded for this reason as well.

12 **Hallman's Response To SUF 82**

13 Defendants object to Hallman's Response to SUF 82 on the ground that
14 Hallman's Response is not supported by any evidence and just contains a
15 boilerplate response referring to Hallman's SMF. Pursuant to the Court's Order,
16 Hallman's response must be disregarded and overruled. (Scheduling and Case
17 Management Order (Doc. 25) at 5-6, 7.) Moreover, Hallman's SMF do not contain
18 any evidence that give her a basis to dispute SUF 82. Thus, Hallman's contention
19 that SUF 82 is disputed should be disregarded for this reason as well.

20 **Hallman's Response To SUF 84**

21 Defendants object to Hallman's Response to SUF 84 on the ground that it
22 contains impermissible argument that must be disregarded. (Scheduling and Case
23 Management Order (Doc. 25) at 5-6, 7.)

24 Defendants further object to Hallman's Response on the ground that the
25 statements made by third parties to Hallman are inadmissible hearsay that cannot
26 be considered in deciding Defendants' Motion for Summary Judgment. Fed. R.
27 Evid. 801, 802; *Jim*, 33 F.App'x at 858; *Frederick*, 1996 U.S. App. LEXIS 26700,
28 at *7; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

1 Defendants further object to Hallman's Response on the ground that it relies
2 on the allegations in Hallman's complaint. A plaintiff cannot rely on allegations in
3 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
4 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

5 Defendants further object to Hallman's Response on the ground that the
6 cited evidence does not place SUF 84 in dispute. The undisputed evidence
7 establishes Hallman gave no notice that she was experiencing stress or that she
8 would be taking leave.

9 Defendants further object to the argument in Hallman's Response on the
10 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
11 never informed Watumull that she was being discriminated against or subject to
12 harassment based on her race. (SUF 99.) Hallman's alleged general complaint to
13 Watumull that things were difficult at work and that she was being harassed does
14 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
15 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
16 104330, at *1. Thus, Hallman's allegation that she made a general complaint to
17 Watumull is irrelevant.

18 **Hallman's Response To SUF 90**

19 Defendants object to Hallman's Response to SUF 90 on the ground that it
20 contains impermissible argument that must be disregarded. (Scheduling and Case
21 Management Order (Doc. 25) at 5-6, 7.)

22 Defendants also object to Hallman's Response on the ground that the
23 statements made by third parties to Hallman are inadmissible hearsay that cannot
24 be considered in deciding Defendants' Motion for Summary Judgment. Fed. R.
25 Evid. 801, 802; *Jim*, 33 F.App'x at 858; *Frederick*, 1996 U.S. App. LEXIS 26700,
26 at *7; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

27 Defendants further object to Hallman's Response on the ground that the
28 cited evidence (Exhibits 16, 18, 22, and 23) have not been authenticated, and are

1 therefore inadmissible and cannot be considered in deciding Defendants’ Motion
2 for Summary Judgment. Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A.*
3 *Printex Indus.*, 2009 U.S. Dist. LEXIS 28477, at *7.

4 Defendants further object to Hallman’s Response on the ground that the
5 cited evidence does not place SUF 90 in dispute. The undisputed evidence
6 establishes that Hallman did not return to work at the expiration of her twelve
7 week leave period.

8 Defendants further object to the argument in Hallman’s Response on the
9 ground that it is irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402.
10 Sedgwick’s handling of Hallman’s short-term disability claim has no bearing on
11 whether she was properly terminated in compliance with the FMLA. Under the
12 FMLA, an employee is entitled to only twelve weeks of leave. 29 U.S.C. §
13 2612(a); 29 C.F.R. § 825.200(a); *Maharaj v. California Bank & Trust*, No. 2:11-
14 cv-00315, 2012 U.S. Dist. LEXIS 163684, at *23 (E.D. Cal. Nov. 15, 2012). If an
15 employee receives twelve weeks of leave and fails to return to work at the end of
16 that leave, the employer is permitted to terminate her. *See Fiatoa v. Keala*, 191
17 F.App’x 551, 553 (9th Cir. 2006) (summary judgment on FMLA claim because
18 employee had no right to reinstatement when she took longer than twelve weeks of
19 leave); *Jackson v. Simon Property Group, Inc.*, 795 F.Supp.2d 949, 964-65 (N.D.
20 Cal. 2011) (summary judgment on FMLA claim where it was undisputed that
21 plaintiff received twelve weeks of leave); *Shaaban v. Covenant Aviation Sec.*, No.
22 CV 08-03339, 2009 U.S. Dist. LEXIS 104996 (N.D. Cal. Nov. 10, 2009)
23 (summary judgment on FMLA claim because employee failed to return after
24 twelve weeks of leave). Similarly, “an employer does not violate the FMLA when
25 it terminates an employee who is indisputably unable to return to work at the
26 conclusion of the 12-week period of statutory leave.” *Maharaj*, 2012 U.S. Dist.
27 LEXIS 163684, at *23-24 (E.D. Cal. Nov. 15, 2012). *See also Fiatoa*, 191
28 F.App’x at 553 (summary judgment on FMLA claim when employee was unable

1 to return to work after her twelve weeks of FMLA leave expired). It is undisputed
2 that Hallman failed to return to work after receiving more than twelve weeks of
3 leave and that, according to her doctor, she was unable to return to work after
4 receiving more than twelve weeks of leave. Thus, Hallman was lawfully
5 terminated.

6 **Hallman's Response To SUF 94**

7 Defendants object to Hallman's Response to SUF 94 on the ground that it
8 contains impermissible argument that must be disregarded. (Scheduling and Case
9 Management Order (Doc. 25) at 5-6, 7.)

10 Defendants further object to Hallman's Response on the ground that it relies
11 on the allegations in Hallman's complaint. A plaintiff cannot rely on allegations in
12 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
13 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

14 Defendants further object to Hallman's Response on the ground that the
15 cited evidence does not place SUF 94 in dispute. The undisputed evidence
16 establishes that the first time Abercrombie learned that Hallman believed that she
17 was subjected to racial discrimination or harassment was on September 7, 2011
18 while reviewing her request for leave. None of the cited evidence establishes that
19 Hallman informed Defendants that she believed she was subjected to racial
20 discrimination or harassment prior to that time.

21 Defendants further object to the argument in Hallman's Response on the
22 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
23 never informed Watumull that she was being discriminated against or subject to
24 harassment based on her race. (SUF 99.) Hallman's alleged general complaint to
25 Watumull that things were difficult at work and that she was being harassed does
26 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
27 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
28 104330, at *1. Thus, Hallman's allegation that she made a general complaint to

1 Watumull is irrelevant.

2 **Hallman's Response To SUF 95**

3 Defendants object to Hallman's Response to SUF 95 on the ground that it
4 contains impermissible argument that must be disregarded. (Scheduling and Case
5 Management Order (Doc. 25) at 5-6, 7.)

6 Defendants further object to Hallman's Response on the ground that it relies
7 on the allegations in Hallman's complaint. A plaintiff cannot rely on allegations in
8 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
9 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

10 Defendants further object to Hallman's Response on the ground that the
11 cited evidence does not place SUF 95 in dispute. The undisputed evidence
12 establishes that Hallman never informed either of her DMs that she felt she was
13 being discriminated against or harassed because of her race. None of the cited
14 evidence is to the contrary.

15 Defendants further object to the argument in Hallman's Response on the
16 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
17 never informed Watumull that she was being discriminated against or subject to
18 harassment based on her race. (SUF 99.) Hallman's alleged general complaint to
19 Watumull that things were difficult at work and that she was being harassed does
20 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
21 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
22 104330, at *1. Thus, Hallman's allegation that she made a general complaint to
23 Watumull is irrelevant.

24 **Hallman's Response To SUF 98**

25 Defendants object to Hallman's Response to SUF 98 on the ground that it
26 contains impermissible argument that must be disregarded. (Scheduling and Case
27 Management Order (Doc. 25) at 5-6, 7.)

28 Defendants further object to Hallman's Response on the ground that it relies

1 on the allegations in Hallman’s complaint. A plaintiff cannot rely on allegations in
2 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
3 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

4 Defendants further object to Hallman’s Response on the ground that the
5 cited evidence does not place SUF 98 in dispute. The undisputed evidence
6 establishes that on July 29, two days before she took leave, she mentioned as
7 Watumull was leaving the Northridge Store and in a voicemail that “things were
8 difficult in the store” and she felt like she was being harassed. None of the cited
9 evidence is to the contrary.

10 Defendants further object to the argument in Hallman’s Response on the
11 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
12 never informed Watumull that she was being discriminated against or subject to
13 harassment based on her race. (SUF 99.) Hallman’s alleged general complaint to
14 Watumull that things were difficult at work and that she was being harassed does
15 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
16 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
17 104330, at *1. Thus, Hallman’s allegation that she made a general complaint to
18 Watumull is irrelevant.

19 **Hallman’s Response To SUF 99**

20 Defendants object to Hallman’s Response to SUF 99 on the ground that it
21 contains impermissible argument that must be disregarded. (Scheduling and Case
22 Management Order (Doc. 25) at 5-6, 7.)

23 Defendants further object to Hallman’s Response on the ground that it relies
24 on the allegations in Hallman’s complaint. A plaintiff cannot rely on allegations in
25 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
26 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

27 Defendants further object to Hallman’s Response on the ground that the
28 cited evidence does not place SUF 99 in dispute. The undisputed evidence

1 establishes that Hallman did not mention race to Watumull. None of the cited
2 evidence is to the contrary.

3 Defendants further object to the argument in Hallman's Response on the
4 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
5 never informed Watumull that she was being discriminated against or subject to
6 harassment based on her race. (SUF 99.) Hallman's alleged general complaint to
7 Watumull that things were difficult at work and that she was being harassed does
8 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
9 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
10 104330, at *1. Thus, Hallman's allegation that she made a general complaint to
11 Watumull is irrelevant.

12 **Hallman's Response To SUF 100**

13 Defendants object to Hallman's Response to SUF 100 on the ground that it
14 contains impermissible argument that must be disregarded. (Scheduling and Case
15 Management Order (Doc. 25) at 5-6, 7.)

16 Defendants further object to Hallman's Response on the ground that it relies
17 on the allegations in Hallman's complaint. A plaintiff cannot rely on allegations in
18 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
19 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

20 Defendants further object to Hallman's Response on the ground that the
21 cited evidence does not place SUF 100 in dispute. The undisputed evidence
22 establishes that Hallman never informed HR that she was being discriminated
23 against or harassed. The cited evidence is not to the contrary.

24 Defendants further object to the argument in Hallman's Response on the
25 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
26 never informed Watumull that she was being discriminated against or subject to
27 harassment based on her race. (SUF 99.) Hallman's alleged general complaint to
28 Watumull that things were difficult at work and that she was being harassed does

1 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
2 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
3 104330, at *1. Thus, Hallman's allegation that she made a general complaint to
4 Watumull is irrelevant.

5 **Hallman's Response To SUF 101**

6 Defendants object to Hallman's Response to SUF 101 on the ground that it
7 contains impermissible argument that must be disregarded. (Scheduling and Case
8 Management Order (Doc. 25) at 5-6, 7.)

9 Defendants further object to Hallman's Response on the ground that it relies
10 on the allegations in Hallman's complaint. A plaintiff cannot rely on allegations in
11 a complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
12 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

13 Defendants further object to Hallman's Response on the ground that the
14 cited evidence does not place SUF 101 in dispute. The undisputed evidence
15 establishes that the only time Hallman contacted HR about harassment was in July
16 2011 when she called to ask questions about what to do if she felt like she was
17 being harassed. The cited evidence is not to the contrary.

18 Defendants further object to the argument in Hallman's Response on the
19 ground that it is irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman
20 never informed Watumull that she was being discriminated against or subject to
21 harassment based on her race. (SUF 99.) Hallman's alleged general complaint to
22 Watumull that things were difficult at work and that she was being harassed does
23 not constitute protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71;
24 *Villasenor*, 2011 U.S. Dist. LEXIS 4301, at *9-11; *Kaplan*, 2010 U.S. Dist. LEXIS
25 104330, at *1. Thus, Hallman's allegation that she made a general complaint to
26 Watumull is irrelevant.

27 **Hallman's Response To SUF 106**

28 Defendants object to Hallman's Response to SUF 106 on the ground that

1 Hallman’s contention that SUF 106 is in dispute is not supported by any evidence
2 and just contains a boilerplate response referring to Hallman’s Statement of
3 Material Facts (“SMF”). Pursuant to the Court’s Order, Hallman’s response must
4 be disregarded and overruled. (Scheduling and Case Management Order (Doc. 25)
5 at 5-6, 7.) Moreover, Hallman’s SMF do not contain any evidence that give her a
6 basis to dispute SUF 106. Thus, Hallman’s contention that SUF 106 is disputed
7 should be disregarded for this reason as well.

8 **Hallman’s Response To SUF 107**

9 Defendants object to Hallman’s Response to SUF 107 on the ground that the
10 cited evidence does not place SUF 107 in dispute. The cited evidence establishes
11 merely that Hallman does not recall receiving a phone call from Hunt. Hallman
12 testified that she does not deny it happened; just that she does not recall. The
13 undisputed evidence establishes that Hunt attempted on multiple occasions to
14 contact Hallman, but Hallman never returned her calls.

15 **Hallman’s Response To SUF 108**

16 Defendants object to Hallman’s Response to SUF 108 on the ground that the
17 cited evidence does not place SUF 108 in dispute. The cited evidence establishes
18 merely that Hallman does not recall receiving a phone call from Hunt. Hallman
19 testified that she does not deny it happened; just that she does not recall. The
20 undisputed evidence establishes that after Hallman refused to speak with Hunt,
21 Hunt closed her investigation.

22 **Hallman’s Response to SUF 110**

23 Defendants object to Hallman’s Response to SUF 110 on the ground that it
24 contains impermissible argument that must be disregarded. (Scheduling and Case
25 Management Order (Doc. 25) at 5-6, 7.)

26 Defendants further object to Hallman’s Response on the ground that
27 Hallman’s contention that SUF 110 is in dispute is not supported by any evidence
28 and just contains a boilerplate response referring to Hallman’s Statement of

1 Material Facts (“SMF”). Pursuant to the Court’s Order, Hallman’s response must
2 be disregarded and overruled. (Scheduling and Case Management Order (Doc. 25)
3 at 5-6, 7.) Moreover, Hallman’s SMF do not contain any evidence that give her a
4 basis to dispute SUF 110. Thus, her contention that this fact is disputed must be
5 disregarded.

6 Defendants’ further object to the argument in Hallman’s Response that
7 “Hallman was terminated because of her race, complaints about discrimination and
8 harassment, and complaints about labor code violations” on the ground that it is
9 not supported by any evidence. The undisputed evidence establishes that Hallman
10 was terminated because she failed to return to work after exhausting her leave.

11 **Hallman’s Response to SUF 111**

12 Defendants object to Hallman’s Response to SUF 111 on the ground that it
13 contains impermissible argument that must be disregarded. (Scheduling and Case
14 Management Order (Doc. 25) at 5-6, 7.)

15 Defendants further object to Hallman’s Response on the ground that
16 Hallman’s contention that SUF 111 is in dispute is not supported by any evidence
17 and just contains a boilerplate response referring to Hallman’s Statement of
18 Material Facts (“SMF”). Pursuant to the Court’s Order, Hallman’s response must
19 be disregarded and overruled. (Scheduling and Case Management Order (Doc. 25)
20 at 5-6, 7.) Moreover, Hallman’s SMF do not contain any evidence that give her a
21 basis to dispute SUF 111. There is simply no evidence establishing Hallman
22 attempted to return to work or to inform Abercrombie that she wished to come
23 back to work. Thus, her contention that this fact is disputed must be disregarded.

24 Defendants further object to the argument in Hallman’s Response that
25 “Defendants terminated her employment for unlawful based and retaliatory
26 reasons” on the ground that there is no evidence to support it. There is simply no
27 evidence establishing Defendants terminated Hallman for unlawful race based and
28 retaliatory reasons.

1 Defendants further object to the evidence Hallman’s Response on the ground
2 that it is irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. Whether
3 Plaintiff intended to return to work after she received more than twelve weeks of
4 leave is irrelevant to whether she was terminated in compliance with the FMLA.
5 Under the FMLA, an employee is entitled to only twelve weeks of leave. 29
6 U.S.C. § 2612(a); 29 C.F.R. § 825.200(a); *Maharaj*, 2012 U.S. Dist. LEXIS
7 163684, at *23. If an employee receives twelve weeks of leave and fails to return
8 to work at the end of that leave, the employer is permitted to terminate her. *See*
9 *Fiatoa*, 191 F.App’x at 553; *Jackson*, 795 F.Supp.2d at 964-65; *Shaaban*, 2009
10 U.S. Dist. LEXIS 104996. Similarly, “an employer does not violate the FMLA
11 when it terminates an employee who is indisputably unable to return to work at the
12 conclusion of the 12-week period of statutory leave.” *Maharaj*, 2012 U.S. Dist.
13 LEXIS 163684, at *23-24 (E.D. Cal. Nov. 15, 2012). *See also Fiatoa*, 191
14 F.App’x at 553. It is undisputed that Hallman failed to return to work after
15 receiving more than twelve weeks of leave and that, according to her doctor, she
16 was unable to return to work after receiving more than twelve weeks of leave.
17 Thus, she was lawfully terminated.

18 **Hallman’s Response to SUF 112**

19 Defendants object to Hallman’s Response to SUF 111 on the ground that it
20 contains impermissible argument that must be disregarded. (Scheduling and Case
21 Management Order (Doc. 25) at 5-6, 7.)

22 Defendants further object to Hallman’s Response on the ground that the
23 statements allegedly made by third parties to Hallman are inadmissible hearsay that
24 cannot be considered in deciding Defendants’ Motion for Summary Judgment.
25 Fed. R. Evid. 801, 802; *Jim*, 33 F.App’x at 858; *Frederick*, 1996 U.S. App. LEXIS
26 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

27 Defendants further object to Hallman’s Response on the ground that
28 Hallman’s contention that SUF 112 is in dispute is not supported by any evidence

1 and just contains a boilerplate response referring to Hallman's Statement of
2 Material Facts ("SMF"). Pursuant to the Court's Order, Hallman's response must
3 be disregarded and overruled. (Scheduling and Case Management Order (Doc. 25)
4 at 5-6, 7.) Moreover, Hallman's SMF do not contain any evidence that give her a
5 basis to dispute SUF 112. There is simply no evidence establishing Charles was
6 involved in the decision to terminate Hallman's employment. Thus, Hallman's
7 contention that this fact is in dispute must be disregarded.

8 Defendants further object to the argument in Hallman's Response on the
9 ground that there is no evidence to support it. There is simply no evidence
10 establishing that Charles harassed Hallman throughout her employment on the
11 basis of her race and retaliated against Hallman. Likewise, there is no admissible
12 evidence establishing that Charles made her intentions of terminating Hallman
13 know to other store staff who advised Plaintiff of same.

14 **Hallman's Response to SUF 119**

15 Defendants object to Hallman's Response to SUF 119 on the ground that
16 Hallman's contention that SUF 119 is in dispute is not supported by any evidence
17 and just contains a boilerplate response referring to Hallman's Statement of
18 Material Facts ("SMF"). Pursuant to the Court's Order, Hallman's response must
19 be disregarded and overruled. (Scheduling and Case Management Order (Doc. 25)
20 at 5-6, 7.)

21 **Hallman's Response to SUF 124**

22 Defendants object to Hallman's Response to SUF 124 on the ground that
23 Hallman's contention that SUF 124 is in dispute is not supported by any evidence
24 and just contains a boilerplate response referring to Hallman's Statement of
25 Material Facts ("SMF"). Pursuant to the Court's Order, Hallman's response must
26 be disregarded and overruled. (Scheduling and Case Management Order (Doc. 25)
27 at 5-6, 7.)
28

1 **DEFENDANTS’ OBJECTIONS TO HALLMAN’S STAMENT OF**
2 **MATERIAL FACTS (“SMF”)**

3 **Hallman’s SMF 1**

4 Defendants object to Exhibit 2 cited in Hallman’s SMF 1 on the ground that
5 the documents have not been authenticated, and are therefore inadmissible and
6 cannot be considered in deciding Defendants’ Motion for Summary Judgment.
7 Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist.
8 LEXIS 28477, at *7.

9 **Hallman’s SMF 2**

10 Defendants object to Hallman’s SMF 2 on the ground that the statement is
11 hearsay and the document has not been authenticated, and the evidence is therefore
12 inadmissible and cannot be considered in deciding Defendants’ Motion for
13 Summary Judgment. Fed. R. Evid. 801, 802, 901; *Jim*, 33 F.App’x at 858;
14 *Frederick*, 1996 U.S. App. LEXIS 26700, at *7 ; *Alcala*, 2012 U.S. Dist. LEXIS
15 181892, at *30; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist.
16 LEXIS 28477, at *7.

17 **Hallman’s SMF 3**

18 Defendants’ object to Hallman’s SMF 3 on the ground that the class action
19 settlement Hallman relies upon is inadmissible evidence. Federal Rule of
20 Evidence 408 precludes Plaintiff from offering evidence of a settlement agreement
21 in the litigation styled for the purpose of proving liability or past misconduct. *See*
22 *e.g.*, *Big Baboon Corp.*, 2010 U.S. Dist. LEXIS 108027, at *13-14; *Troutman*,
23 2008 U.S. Dist. LEXIS 53756, at *20-21. Moreover, the class action settlement
24 specifically provides that it shall not be construed as an admission or concession of
25 any violations or failures to comply with any applicable law and that it shall not be
26 admissible as evidence in any action in any manner whatsoever. (Doc. 1-22 at 15,
27 Pageid #180.)

28 Defendants further object to Hallman’s Statement on the ground that the

1 class action settlement Hallman relies upon is irrelevant. Fed. R. Evid. 401, 402.
2 The class action settlement Hallman cites related to an action for failure to provide
3 meal and rest breaks. Hallman has not asserted, and is in fact barred by release
4 from asserting, a claim for failure to provide meal and rest breaks. Thus, the class
5 action settlement has no relevance to Hallman’s claim.

6 **Hallman’s SMF 4**

7 Defendants object to the evidence Hallman’s SMF 4 on the ground that it is
8 irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. Hallman has not,
9 and is in fact barred, from asserting a claim for failure to provide meal and rest
10 breaks. Thus, her allegation that she was regularly denied meal and rest periods is
11 irrelevant to this action.

12 **Hallman’s SMF 5**

13 Defendants object to Hallman’s SMF 5 on the ground that it is irrelevant,
14 and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor Code §
15 1102.5 protects an employee from retaliation only for complaints *to a government*
16 *or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The California
17 Supreme Court has made clear that Section 1102.5 only protects employees who
18 report their concerns to public agencies. This statute does not concern employees
19 who only report their suspicions directly to their own employer.” *Boyd*, 2012 U.S.
20 Dist. LEXIS 138552, at *32. Thus, Hallman’s claim that she complained about
21 meal and rest breaks *to Defendants* cannot support her retaliation for engaging in
22 protected activity claim under California Labor Code § 1102.5.

23 **Hallman’s SMF 6**

24 Defendants object to Hallman’s SMF 6 on the ground that it is irrelevant,
25 and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor Code §
26 1102.5 protects an employee from retaliation only for complaints *to a government*
27 *or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The California
28 Supreme Court has made clear that Section 1102.5 only protects employees who

1 report their concerns to public agencies. This statute does not concern employees
2 who only report their suspicions directly to their own employer.” *Boyd*, 2012 U.S.
3 Dist. LEXIS 138552, at *32. Thus, Hallman’s claim that she complained about
4 meal and rest breaks to Marsh and Charles knew about it cannot support her
5 retaliation for engaging in protected activity claim under California Labor Code §
6 1102.5.

7 **Hallman’s SMF 7**

8 Defendants object to Hallman’s SMF 7 on the ground that it is irrelevant,
9 and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor Code §
10 1102.5 protects an employee from retaliation only for complaints *to a government*
11 *or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The California
12 Supreme Court has made clear that Section 1102.5 only protects employees who
13 report their concerns to public agencies. This statute does not concern employees
14 who only report their suspicions directly to their own employer.” *Boyd*, 2012 U.S.
15 Dist. LEXIS 138552, at *32. Thus, Hallman’s claim that she complained about
16 meal and rest breaks to Marsh and Charles knew about it cannot support her
17 retaliation for engaging in protected activity claim under California Labor Code §
18 1102.5.

19 **Hallman’s SMF 8**

20 Defendants object to Hallman’s SMF 8 on the ground that it is irrelevant,
21 and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor Code §
22 1102.5 protects an employee from retaliation only for complaints *to a government*
23 *or law enforcement agency*. Cal. Labor Code § 1102.5(b). “The California
24 Supreme Court has made clear that Section 1102.5 only protects employees who
25 report their concerns to public agencies. This statute does not concern employees
26 who only report their suspicions directly to their own employer.” *Boyd*, 2012 U.S.
27 Dist. LEXIS 138552, at *32. Thus, Hallman’s claim that she was retaliated against
28 for her complaints *to Defendants* about meal and rest breaks cannot support her

1 retaliation for engaging in protected activity claim under California Labor Code §
2 1102.5.

3 **Hallman's SMF 9**

4 Defendants object to Hallman's SMF 9 on the ground that the cited evidence
5 is inadmissible. Allegations from a complaint in a prior lawsuit do not constitute
6 competent evidence that may be considered under F.R.C.P 56(e). *See e.g.,*
7 *Rosales*, 2009 U.S. Dist. LEXIS 101808, at *17-18; *Thomas*, 278 F. Supp. 2d at
8 926 (N.D. Ill. 2003).

9 Defendants further object to Hallman's Statement on the ground that the
10 allegations from the *Gonzalez* litigation are irrelevant to this lawsuit. The
11 *Gonzalez* lawsuit was filed in 2003 and pertained to conduct that occurred prior to
12 that date. Hallman worked for Abercrombie in 2010 and 2011. The alleged
13 wrongful conduct that occurred prior to 2003 therefore has no bearing on whether
14 she was subjected to racial discrimination or harassment. Thus, the allegations
15 from the *Gonzalez* litigation are irrelevant and inadmissible in this lawsuit. Fed. R.
16 Evid. 401, 402.

17 **Hallman's SMF 10**

18 Defendants object to Hallman's SMF 10 on the ground that the cited
19 evidence is inadmissible. Allegations from a complaint in a prior lawsuit do not
20 constitute competent evidence that may be considered under F.R.C.P 56(e). *See*
21 *e.g., Rosales*, 2009 U.S. Dist. LEXIS 101808, at *17-18; *Thomas*, 278 F. Supp. 2d
22 at 926 (N.D. Ill. 2003).

23 Defendants further object to Hallman's Statement on the ground that the
24 allegations from the *Gonzalez* litigation are irrelevant to this lawsuit. The
25 *Gonzalez* lawsuit was filed in 2003 and pertained to conduct that occurred prior to
26 that date. Hallman worked for Abercrombie in 2010 and 2011. The alleged
27 wrongful conduct that occurred prior to 2003 therefore has no bearing on whether
28 she was subjected to racial discrimination or harassment. Thus, the allegations

1 from the *Gonzalez* litigation are irrelevant and inadmissible in this lawsuit. Fed. R.
2 Evid. 401, 402.

3 **Hallman's SMF 11**

4 Defendants object to Hallman's SMF 11 on the ground that the cited
5 evidence is inadmissible. Allegations from a complaint in a prior lawsuit do not
6 constitute competent evidence that may be considered under F.R.C.P 56(e). *See*
7 *e.g., Rosales*, 2009 U.S. Dist. LEXIS 101808, at *17-18; *Thomas*, 278 F. Supp. 2d
8 at 926 (N.D. Ill. 2003).

9 Defendants further object to Hallman's Statement on the ground that the
10 allegations from the *Gonzalez* litigation are irrelevant to this lawsuit. The
11 *Gonzalez* lawsuit was filed in 2003 and pertained to conduct that occurred prior to
12 that date. Hallman worked for Abercrombie in 2010 and 2011. The alleged
13 wrongful conduct that occurred prior to 2003 therefore has no bearing on whether
14 she was subjected to racial discrimination or harassment. Thus, the allegations
15 from the *Gonzalez* litigation are irrelevant and inadmissible in this lawsuit. Fed. R.
16 Evid. 401, 402.

17 **Hallman's SMF 12**

18 Defendants object to Hallman's SMF 12 on the ground that the cited
19 evidence is inadmissible. It is well established that Fed. R. Evid. 408 precludes
20 Plaintiff from offering evidence of a consent decree for the purpose of proving
21 liability or past misconduct. *See e.g., Iorio*, 2008 U.S. Dist. LEXIS 118344, at
22 *13-14; *Gilbert*, 668 F.2d at 97; *Bowers*, 563 F. Supp. 2d at 536 (D.N.J. 2008).
23 Moreover, multiple courts have granted Abercrombie's motions to exclude
24 evidence regarding this Consent Decree in previous cases on the grounds that the
25 Consent Decree is irrelevant and admission of evidence regarding the Consent
26 Decree would be unduly prejudicial to Abercrombie and violate Section IX.A of
27 the Consent Decree, which specifically provides that it "shall not be deemed to be
28 a finding or determination by the Court, nor an admission by any party, regarding

1 the merits, validity or accuracy of any of the allegations, claims or defenses” and
2 that the decree “shall not be discoverable, admissible or used as evidence of
3 liability or non-liability for unlawful discrimination in any proceeding.” *See*
4 *E.E.O.C. v. Abercrombie & Fitch Stores, Inc., et al.*, No. 4:08-1470 (E.D. Mo. filed
5 Sept. 25, 2008) (Dock. Nos. 67, 68); *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*,
6 No. 4:09-cv-00602-GKF-FHM (N.D. Ok. Filed Sept. 16, 2009) (Dock. No. 125).
7 Last, it is well established that evidence of the consent decree is inadmissible
8 pursuant to Fed. R. Evid. 402 and 403 because the consent decree is irrelevant to
9 the claims at issue and evidence of the consent decree would be unfairly
10 prejudicial. *See e.g., Gribben*, 528 F.3d at 1172; *Allen*, 2012 U.S. Dist. LEXIS
11 65775, at *5-6; *Kramas*, 672 F.2d at 772; *Johnson*, 974 F.2d at 1438-1439; *Ross*,
12 2012 U.S. Dist. LEXIS 77475, at *9-11.

13 **Hallman’s SMF 13**

14 Defendants object to Hallman’s SMF 13 on the ground that the cited
15 evidence is inadmissible. It is well established that Fed. R. Evid. 408 precludes
16 Plaintiff from offering evidence of a consent decree for the purpose of proving
17 liability or past misconduct. *See e.g., Iorio*, 2008 U.S. Dist. LEXIS 118344, at
18 *13-14; *Gilbert*, 668 F.2d at 97; *Bowers*, 563 F. Supp. 2d at 536 (D.N.J. 2008).
19 Moreover, multiple courts have granted Abercrombie’s motions to exclude
20 evidence regarding this Consent Decree in previous cases on the grounds that the
21 Consent Decree is irrelevant and admission of evidence regarding the Consent
22 Decree would be unduly prejudicial to Abercrombie and violate Section IX.A of
23 the Consent Decree, which specifically provides that it “shall not be deemed to be
24 a finding or determination by the Court, nor an admission by any party, regarding
25 the merits, validity or accuracy of any of the allegations, claims or defenses” and
26 that the decree “shall not be discoverable, admissible or used as evidence of
27 liability or non-liability for unlawful discrimination in any proceeding.” *See*
28 *E.E.O.C. v. Abercrombie & Fitch Stores, Inc., et al.*, No. 4:08-1470 (E.D. Mo. filed

1 Sept. 25, 2008) (Dock. Nos. 67, 68); *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*,
2 No. 4:09-cv-00602-GKF-FHM (N.D. Ok. Filed Sept. 16, 2009) (Dock. No. 125).
3 Last, it is well established that evidence of the consent decree is inadmissible
4 pursuant to Fed. R. Evid. 402 and 403 because the consent decree is irrelevant to
5 the claims at issue and evidence of the consent decree would be unfairly
6 prejudicial. *See e.g., Gribben*, 528 F.3d at 1172; *Allen*, 2012 U.S. Dist. LEXIS
7 65775, at *5-6; *Kramas*, 672 F.2d at 772; *Johnson*, 974 F.2d at 1438-1439; *Ross*,
8 2012 U.S. Dist. LEXIS 77475, at *9-11.

9 **Hallman's SMF 14**

10 Defendants object to Hallman's SMF 14 on the ground that the cited
11 evidence is inadmissible. It is well established that Fed. R. Evid. 408 precludes
12 Plaintiff from offering evidence of a consent decree for the purpose of proving
13 liability or past misconduct. *See e.g., Iorio*, 2008 U.S. Dist. LEXIS 118344, at
14 *13-14; *Gilbert*, 668 F.2d at 97; *Bowers*, 563 F. Supp. 2d at 536 (D.N.J. 2008).
15 Moreover, multiple courts have granted Abercrombie's motions to exclude
16 evidence regarding this Consent Decree in previous cases on the grounds that the
17 Consent Decree is irrelevant and admission of evidence regarding the Consent
18 Decree would be unduly prejudicial to Abercrombie and violate Section IX.A of
19 the Consent Decree, which specifically provides that it "shall not be deemed to be
20 a finding or determination by the Court, nor an admission by any party, regarding
21 the merits, validity or accuracy of any of the allegations, claims or defenses" and
22 that the decree "shall not be discoverable, admissible or used as evidence of
23 liability or non-liability for unlawful discrimination in any proceeding." *See*
24 *E.E.O.C. v. Abercrombie & Fitch Stores, Inc., et al.*, No. 4:08-1470 (E.D. Mo. filed
25 Sept. 25, 2008) (Dock. Nos. 67, 68); *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*,
26 No. 4:09-cv-00602-GKF-FHM (N.D. Ok. Filed Sept. 16, 2009) (Dock. No. 125).
27 Last, it is well established that evidence of the consent decree is inadmissible
28 pursuant to Fed. R. Evid. 402 and 403 because the consent decree is irrelevant to

1 the claims at issue and evidence of the consent decree would be unfairly
2 prejudicial. *See e.g., Gribben*, 528 F.3d at 1172; *Allen*, 2012 U.S. Dist. LEXIS
3 65775, at *5-6; *Kramas*, 672 F.2d at 772; *Johnson*, 974 F.2d at 1438-1439; *Ross*,
4 2012 U.S. Dist. LEXIS 77475, at *9-11.

5 **Hallman’s SMF 15**

6 Defendants object to Hallman’s SMF 15 on the ground that it is irrelevant,
7 and therefore inadmissible. Fed. R. Evid. 401, 402. Ms. Hallman’s Store
8 Manager, Cornelius Harrell, is of Filipino and Egyptian decent, and Hallman does
9 not claim that he discriminated, harassed, or retaliated against her. Thus, his
10 alleged comment is irrelevant to Hallman’s claims.

11 **Hallman’s SMF 17**

12 Defendants object to Hallman’s SMF 17 on the ground that it is not
13 supported by admissible evidence. A plaintiff cannot rely on allegations in a
14 complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
15 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App’x at 124.

16 **Hallman’s SMF 18**

17 Defendants object to Hallman’s SMF 18 on the ground that the statements
18 are hearsay and the documentary evidence has not been authenticated, and the
19 evidence is therefore inadmissible and cannot be considered in deciding
20 Defendants’ Motion for Summary Judgment. Fed. R. Evid. 801, 802, 901; *Jim*, 33
21 F.App’x at 858; *Frederick*, 1996 U.S. App. LEXIS 26700, at *7; *Alcala*, 2012 U.S.
22 Dist. LEXIS 181892, at *30; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009
23 U.S. Dist. LEXIS 28477, at *7.

24 **Hallman’s SMF 19**

25 Defendants object to the evidence in Hallman’s SMF No. 19 on the ground
26 that the statements allegedly made by “Noah” are inadmissible hearsay that cannot
27 be considered in deciding Defendants’ Motion for Summary Judgment. Fed. R.
28 Evid. 801, 802; *Jim*, 33 F.App’x at 858; *Frederick*, 1996 U.S. App. LEXIS 26700,

1 at *7; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30.

2 **Hallman's SMF 22**

3 Defendants object to the evidence in Hallman's SMF 22 on the ground that
4 the document has not been authenticated and the statements in the document are
5 hearsay. Fed. R. Evid. 802, 901. The evidence is therefore inadmissible and
6 cannot be considered in deciding Defendants' Motion for Summary Judgment.
7 Fed. R. Evid. 801, 802, 901; *Jim*, 33 F.App'x at 858; *Frederick*, 1996 U.S. App.
8 LEXIS 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS 181892, at *30; *Cristobal*, 26
9 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS 28477, at *7.

10 **Hallman's SMF 25**

11 Defendants object to Hallman's SMF 25 on the ground that it is not
12 supported by admissible evidence. A plaintiff cannot rely on allegations in a
13 complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
14 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

15 **Hallman's SMF 26**

16 Defendants object to the evidence in Hallman's SMF No. 26 on the ground
17 that it is inadmissible hearsay that cannot be considered in deciding Defendants'
18 Motion for Summary Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App'x at 858;
19 *Frederick*, 1996 U.S. App. LEXIS 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS
20 181892, at *30.

21 **Hallman's SMF 27**

22 Defendants object to Hallman's SMF 27 to the extent it relies on allegations
23 in the complaint because a plaintiff cannot rely on allegations in a complaint to
24 defeat a motion for summary judgment. *John M. Floyd & Assocs.*, 2013 U.S. App.
25 LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

26 Defendants further object to Hallman's SMF on the ground that it is
27 irrelevant and inadmissible. Fed. Evid. R. 401, 402. Hallman never informed
28 Watumull that she was being discriminated against or subject to harassment based

1 on her race. (SUF 99.) Hallman's alleged general complaint to Watumull that
2 things were difficult at work and that she was being harassed does not constitute
3 protected activity. *Day*, 2013 U.S. Dist. LEXIS 41052, at *71; *Villasenor*, 2011
4 U.S. Dist. LEXIS 4301, at *9-10; *Kaplan*, 2010 U.S. Dist. LEXIS 104330, at *1.
5 Thus, Hallman's allegation that she made a general complaint to Watumull is
6 irrelevant.

7 **Hallman's SMF 30**

8 Defendants object to the documentary evidence in Hallman's SMF 3 on the
9 ground that the document has not been authenticated, and is therefore inadmissible
10 and cannot be considered in deciding Defendants' Motion for Summary Judgment.
11 Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist.
12 LEXIS 28477, at *7.

13 **Hallman's SMF 31**

14 Defendants object to the evidence in Hallman's SMF 31 on the ground that it
15 is inadmissible hearsay that cannot be considered in deciding Defendants' Motion
16 for Summary Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App'x at 858;
17 *Frederick*, 1996 U.S. App. LEXIS 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS
18 181892, at *30.

19 **Hallman's SMF 33**

20 Defendants object to the documentary evidence in Hallman's SMF 33 on the
21 ground that the document has not been authenticated, and is therefore inadmissible
22 and cannot be considered in deciding Defendants' Motion for Summary Judgment.
23 Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist.
24 LEXIS 28477, at *7.

25 **Hallman's SMF 35**

26 Defendants object to the evidence in Hallman's SMF 35 on the ground that it
27 is inadmissible hearsay that cannot be considered in deciding Defendants' Motion
28 for Summary Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App'x at 858;

1 *Frederick*, 1996 U.S. App. LEXIS 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS
2 181892, at *30.

3 **Hallman’s SMF 36**

4 Defendants object to the evidence in Hallman’s SMF 36 on the ground that it
5 is inadmissible hearsay that cannot be considered in deciding Defendants’ Motion
6 for Summary Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App’x at 858;
7 *Frederick*, 1996 U.S. App. LEXIS 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS
8 181892, at *30.

9 **Hallman’s SMF 37**

10 Defendants object to Hallman’s SMF 37 on the ground that the document
11 has not been authenticated, and is therefore inadmissible and cannot be considered
12 in deciding Defendants’ Motion for Summary Judgment. Fed. R. Evid. 901;
13 *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS 28477, at
14 *7.

15 **Hallman’s SMF 38**

16 Defendants object to Hallman’s SMF 38 on the ground that it is irrelevant, and
17 therefore inadmissible. Fed. R. Evid. 401, 402. Sedgwick’s handling of Hallman’s
18 short-term disability claim is irrelevant to whether she was properly terminated in
19 compliance with the FMLA. Under the FMLA, an employee is entitled to only
20 twelve weeks of leave. 29 U.S.C. § 2612(a); 29 C.F.R. § 825.200(a); *Maharaj*,
21 2012 U.S. Dist. LEXIS 163684, at *23. If an employee receives twelve weeks of
22 leave and fails to return to work at the end of that leave, the employer is permitted
23 to terminate her. *See Fiatoa*, 191 F.App’x at 553; *Jackson*, 795 F.Supp.2d at 964-
24 65; *Shaaban*, 2009 U.S. Dist. LEXIS 104996. Similarly, “an employer does not
25 violate the FMLA when it terminates an employee who is indisputably unable to
26 return to work at the conclusion of the 12-week period of statutory leave.”
27 *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23-24 (E.D. Cal. Nov. 15, 2012).
28 *See also Fiatoa*, 191 F.App’x at 553. It is undisputed that Hallman failed to return

1 to work after receiving more than twelve weeks of leave and that, according to her
2 doctor, she was unable to return to work after receiving more than twelve weeks of
3 leave. Thus, Hallman was lawfully terminated.

4 **Hallman's SMF 39**

5 Defendants object to Hallman's SMF 39 on the ground that it is irrelevant,
6 and therefore inadmissible. Fed. R. Evid. 401, 402. Sedgwick's handling of
7 Hallman's short-term disability claim is irrelevant to whether she was properly
8 terminated in compliance with the FMLA. Under the FMLA, an employee is
9 entitled to only twelve weeks of leave. 29 U.S.C. § 2612(a); 29 C.F.R. §
10 825.200(a); *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23. If an employee
11 receives twelve weeks of leave and fails to return to work at the end of that leave,
12 the employer is permitted to terminate her. *See Fiatoa*, 191 F.App'x at 553;
13 *Jackson*, 795 F.Supp.2d at 964-65; *Shaaban*, 2009 U.S. Dist. LEXIS 104996.
14 Similarly, "an employer does not violate the FMLA when it terminates an
15 employee who is indisputably unable to return to work at the conclusion of the 12-
16 week period of statutory leave." *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23-
17 24. *See also Fiatoa*, 191 F.App'x at 553. It is undisputed that Hallman failed to
18 return to work after receiving more than twelve weeks of leave and that, according
19 to her doctor, she was unable to return to work after receiving more than twelve
20 weeks of leave. Thus, Hallman was lawfully terminated.

21 **Hallman's SMF 40**

22 Defendants object to the documentary evidence in Hallman's SMF 40 on the
23 ground that the document has not been authenticated, and is therefore inadmissible
24 and cannot be considered in deciding Defendants' Motion for Summary Judgment.
25 Fed. R. Evid. 901; *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist.
26 LEXIS 28477, at *7.

27 Defendants further object to Hallman's Statement to the extent it relies on
28 allegations in the complaint because a plaintiff cannot rely on allegations in a

1 complaint to defeat a motion for summary judgment. *John M. Floyd & Assocs.*,
2 2013 U.S. App. LEXIS 17513, at *2; *Githere*, 258 F.App'x at 124.

3 Defendants further object to Hallman's statement on the ground that it is
4 irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. Sedgwick's
5 handling of Hallman's short-term disability claim is irrelevant to whether she was
6 properly terminated in compliance with the FMLA. Under the FMLA, an
7 employee is entitled to only twelve weeks of leave. 29 U.S.C. § 2612(a); 29
8 C.F.R. § 825.200(a); *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23. If an
9 employee receives twelve weeks of leave and fails to return to work at the end of
10 that leave, the employer is permitted to terminate her. *See Fiatoa*, 191 F.App'x at
11 553; *Jackson*, 795 F.Supp.2d at 964-65; *Shaaban*, 2009 U.S. Dist. LEXIS 104996.
12 Similarly, "an employer does not violate the FMLA when it terminates an
13 employee who is indisputably unable to return to work at the conclusion of the 12-
14 week period of statutory leave." *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23-
15 24. *See also Fiatoa*, 191 F.App'x at 553. It is undisputed that Hallman failed to
16 return to work after receiving more than twelve weeks of leave and that, according
17 to her doctor, she was unable to return to work after receiving more than twelve
18 weeks of leave. Thus, Hallman was lawfully terminated.

19 **Hallman's SMF 41**

20 Defendants object to Hallman's SMF 41 on the ground that the document
21 has not been authenticated, and is therefore inadmissible and cannot be considered
22 in deciding Defendants' Motion for Summary Judgment. Fed. R. Evid. 901;
23 *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS 28477, at
24 *7.

25 Defendants further object to Hallman's Statement on the ground that it is
26 irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. Sedgwick's
27 handling of Hallman's short-term disability claim is irrelevant to whether she was
28 properly terminated in compliance with the FMLA. Under the FMLA, an

1 employee is entitled to only twelve weeks of leave. 29 U.S.C. § 2612(a); 29
2 C.F.R. § 825.200(a); *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23. If an
3 employee receives twelve weeks of leave and fails to return to work at the end of
4 that leave, the employer is permitted to terminate her. *See Fiatoa*, 191 F.App'x at
5 553; *Jackson*, 795 F.Supp.2d at 964-65; *Shaaban*, 2009 U.S. Dist. LEXIS 104996.
6 Similarly, “an employer does not violate the FMLA when it terminates an
7 employee who is indisputably unable to return to work at the conclusion of the 12-
8 week period of statutory leave.” *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23-
9 24. *See also Fiatoa*, 191 F.App'x at 553. It is undisputed that Hallman failed to
10 return to work after receiving more than twelve weeks of leave and that, according
11 to her doctor, she was unable to return to work after receiving more than twelve
12 weeks of leave. Thus, Hallman was lawfully terminated.

13 **Hallman's SMF 42**

14 Defendants object to Hallman's SMF 42 on the ground that the document
15 has not been authenticated, and is therefore inadmissible and cannot be considered
16 in deciding Defendants' Motion for Summary Judgment. Fed. R. Evid. 901;
17 *Cristobal*, 26 F.3d at 1494; *L.A. Printex Indus.*, 2009 U.S. Dist. LEXIS 28477, at
18 *7.

19 Defendants further object to Hallman's Statement on the ground that it is
20 irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. Sedgwick's
21 handling of Hallman's short-term disability claim is irrelevant to whether she was
22 properly terminated in compliance with the FMLA. Under the FMLA, an
23 employee is entitled to only twelve weeks of leave. 29 U.S.C. § 2612(a); 29
24 C.F.R. § 825.200(a); *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23. If an
25 employee receives twelve weeks of leave and fails to return to work at the end of
26 that leave, the employer is permitted to terminate her. *See Fiatoa*, 191 F.App'x at
27 553; *Jackson*, 795 F.Supp.2d at 964-65; *Shaaban*, 2009 U.S. Dist. LEXIS 104996.
28 Similarly, “an employer does not violate the FMLA when it terminates an

1 employee who is indisputably unable to return to work at the conclusion of the 12-
2 week period of statutory leave.” *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23-
3 24. *See also Fiatoa*, 191 F.App’x at 553. It is undisputed that Hallman failed to
4 return to work after receiving more than twelve weeks of leave and that, according
5 to her doctor, she was unable to return to work after receiving more than twelve
6 weeks of leave. Thus, Hallman was lawfully terminated.

7 **Hallman’s SMF 43**

8 Defendants object to Hallman’s SMF 43 on the ground that it is irrelevant,
9 and therefore inadmissible. Fed. R. Evid. 401, 402. Sedgwick’s handling of
10 Hallman’s short-term disability claim is irrelevant to whether she was properly
11 terminated in compliance with the FMLA. Under the FMLA, an employee is
12 entitled to only twelve weeks of leave. 29 U.S.C. § 2612(a); 29 C.F.R. §
13 825.200(a); *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23. If an employee
14 receives twelve weeks of leave and fails to return to work at the end of that leave,
15 the employer is permitted to terminate her. *See Fiatoa*, 191 F.App’x at 553;
16 *Jackson*, 795 F.Supp.2d at 964-65; *Shaaban*, 2009 U.S. Dist. LEXIS 104996.
17 Similarly, “an employer does not violate the FMLA when it terminates an
18 employee who is indisputably unable to return to work at the conclusion of the 12-
19 week period of statutory leave.” *Maharaj*, 2012 U.S. Dist. LEXIS 163684, at *23-
20 24. *See also Fiatoa*, 191 F.App’x at 553. It is undisputed that Hallman failed to
21 return to work after receiving more than twelve weeks of leave and that, according
22 to her doctor, she was unable to return to work after receiving more than twelve
23 weeks of leave. Thus, Hallman was lawfully terminated.

24 **Hallman’s SMF 44**

25 Defendants object to the evidence in Hallman’s SMF 44 regarding the
26 statements that “Cornelius” made on the ground that they are irrelevant, and
27 therefore inadmissible. Fed. R. Evid. 401, 402. Ms. Hallman’s Store Manager,
28 Cornelius Harrell, is of Filipino and Egyptian decent, and Hallman does not claim

1 that he discriminated, harassed, or retaliated against her. Thus, his alleged
2 comment is irrelevant to Hallman's claims.

3 **Hallman's SMF 47**

4 Defendants object to the evidence in Hallman's SMF 47 on the ground that it
5 is inadmissible hearsay that cannot be considered in deciding Defendants' Motion
6 for Summary Judgment. Fed. R. Evid. 801, 802; *Jim*, 33 F.App'x at 858;
7 *Frederick*, 1996 U.S. App. LEXIS 26700, at *7; *Alcala*, 2012 U.S. Dist. LEXIS
8 181892, at *30.

9 **Hallman's SMF 49**

10 Defendants object to the evidence in Hallman's SMF 49 on the ground that it
11 is irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor
12 Code § 1102.5 protects an employee from retaliation only for complaints *to a*
13 *government or law enforcement agency*. Cal. Labor Code § 1102.5(b). "The
14 California Supreme Court has made clear that Section 1102.5 only protects
15 employees who report their concerns to public agencies. This statute does not
16 concern employees who only report their suspicions directly to their own
17 employer." *Boyd*, 2012 U.S. Dist. LEXIS 138552, at *32. Thus, Hallman's claim
18 that she complained about meal and rest breaks *to Defendants* cannot support her
19 retaliation for engaging in protected activity claim under California Labor Code §
20 1102.5.

21 **Hallman's SMF 50**

22 Defendants object to the evidence in Hallman's SMF 50 on the ground that it
23 is irrelevant, and therefore inadmissible. Fed. R. Evid. 401, 402. California Labor
24 Code § 1102.5 protects an employee from retaliation only for complaints *to a*
25 *government or law enforcement agency*. Cal. Labor Code § 1102.5(b). "The
26 California Supreme Court has made clear that Section 1102.5 only protects
27 employees who report their concerns to public agencies. This statute does not
28 concern employees who only report their suspicions directly to their own

1 employer.” *Boyd*, 2012 U.S. Dist. LEXIS 138552, at *32. Thus, Hallman’s claim
2 that Marsh was upset with her because she complained *to Defendants* about meal
3 and rest breaks cannot support her retaliation for engaging in protected activity
4 claim under California Labor Code § 1102.5.

5 **Hallman’s SMF 51**

6 Defendants object to Hallman’s SMF 51 on the ground that it is irrelevant,
7 and therefore inadmissible. Fed. R. Evid. 401, 402. Hallman cannot establish that
8 Defendants engaged in conduct that would support an emotional distress claim.

9 *See Black v. Baxter Healthcare Corp.*, No. 96-55749, 1997 U.S. App. LEXIS
10 30422, at *13-14 (9th Cir. 1997) (summary judgment on emotional distress claims
11 where plaintiff failed to establish discrimination); *Pleasant v. Autozone, Inc.*, No.
12 CV-12-07293, 2013 U.S. Dist. LEXIS 86360, at *27-28 (C.D. Cal. June 19, 2013)
13 (summary judgment on emotional distress claim where termination was for
14 legitimate, nondiscriminatory reasons); *Casagrande v. Allied Blending &*
15 *Ingredients, Inc.*, No. CV-12-00498, 2013 U.S. Dist. LEXIS 4796, at *6-7 (C.D.
16 Cal. Jan. 10, 2013) (emotional distress claim failed where plaintiff did not
17 establish discrimination); *Mondares v. Kaiser Found. Hosp.*, No. 10-cv-02676,
18 2013 U.S. Dist. LEXIS 975, *20-21 (S.D. Cal. Jan. 3, 2013) (summary judgment
19 on emotional distress claims where there was no unlawful discrimination)
20

21 Dated: September 9, 2013 CAROTHERS DISANTE & FREUDENBERGER LLP and
22 VORYS, SATER, SEYMOUR AND PEASE LLP

23 /s/ Tyler B. Pensyl
24 Tyler B. Pensyl

25
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27 Stores, Inc., Stephanie Charles, and Meghan
28 Watumull