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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLVIA DARENSBURG, et al.,

No. C-05-01597 EDL

Plaintiffs,

**ORDER RE: DEFENDANT'S  
OBJECTIONS TO EVIDENCE**

v.

METROPOLITAN TRANSPORTATION  
COMMISSION,

Defendant.

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On May 1, 2009, Defendant filed a Motion for Attorneys' Fees following entry of judgment in this matter. On May 27, 2009, the Court denied Defendant's Motion, and on July 7, 2009 issued an Opinion on Defendant's Motion for Attorney's Fees.

On May 26, 2009, MTC filed objections to the declarations of Bill Gallegos and Deborah Johnson that were submitted with Plaintiffs' opposition to Defendant's Motion for Attorneys' Fees. The Court provided Plaintiffs with an opportunity to respond no later than June 10, 2009. Plaintiffs filed their response on June 10, 2009, along with amended declarations of Mr. Gallegos and Ms. Johnson. This Order addresses Defendant's objections.

MTC objects generally that it requested a "balance sheet, financial statement or similar documentation" from CBE and ATU 192, and that the request was ignored. However, Plaintiffs note that MTC did not request this information until April 23, 2009 and did not request any specific type of proof or indicate what kind of financial information it would find satisfactory. See Declaration of Margaret Hassleman ¶ 2. Plaintiffs offered to gather this information, and on April

1 30, 2009, orally conveyed the available information to MTC, which only then informed Plaintiffs  
2 that it sought specific documents. See id. ¶¶ 3-5.

3 **Gallegos Declaration**

4 MTC objects to paragraphs 5, 9, and 10 of Mr. Gallegos’s declaration regarding CBE’s  
5 financial condition on the mistaken ground that his testimony is not the best evidence of the  
6 information contained in the declaration, citing Federal Rule of Evidence 1002. MTC improperly  
7 relies on an unpublished Ninth Circuit case, Groppi v. Barham, 157 Fed. Appx. 10, 12 (9th Cir.  
8 2005), that the best evidence of CBE’s financial position is balance sheets, financial statements or  
9 similar documentation. Groppi is not citable pursuant to Ninth Circuit Rule 36-3(c). Rule 1002  
10 only requires an original writing to be produced when the issue being proven is the content of the  
11 writing itself. See also Fed. R. Evid. 1002, Advisory Committee Notes (“Thus an event may be  
12 proved by nondocumentary evidence, even though a written record of it was made. . . . Earnings  
13 may be proved without producing books of account in which they are entered”). Further, MTC  
14 argues that CBE has an obligation to produce its IRS Form 990 upon request, but did not do so here  
15 in response to MTC’s request. See 26 U.S.C. § 6104(d). MTC’s objection is overruled. Even  
16 though financial documents would further support Mr. Gallegos’s testimony, Mr. Gallegos’s  
17 amended declaration makes clear that, as the Executive Director, he is personally familiar with  
18 CBE’s finances. See Am. Declaration of Bill Gallegos ¶ 1. Moreover, MTC cited CBE’s IRS Form  
19 990 in its briefs, so it was not prejudiced by any failure of CBE to produce that document.

20 MTC objects to paragraphs 4, 10, 11, 12, and 13 of Mr. Gallegos’s declaration regarding  
21 CBE’s financial ability to pay a fee award based on lack of foundation and impermissible expert  
22 opinion. MTC’s objections are overruled. As stated above, as the Executive Director of CBE,  
23 statements of CBE’s current and future financial resources are within Mr. Gallagos’s personal  
24 knowledge. MTC has made no showing to the contrary. Further, Mr. Gallegos does not offer his  
25 expert opinion; rather, he testifies as a percipient witness on the issue of the financial condition of  
26 CBE. See Fed. R. Evid. 701 (“If the witness is not testifying as an expert, the witness’ testimony in  
27 the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally  
28 based on the perception of the witness, (b) helpful to a clear understanding of the witness’ testimony

1 or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized  
2 knowledge within the scope of Rule 702.”).

3 MTC objects to paragraph 11 of Mr. Gallegos’s declaration pertaining to the financial  
4 condition of other foundations as hearsay without an exception. Because the Court did not rely on  
5 paragraph 11 in its Opinion and Order on Defendant’s Motion for Attorney’s Fees, the Court  
6 declines to rule on this objection.

7 MTC objects to paragraphs 10 and 11 of Mr. Gallegos’s declaration relating to CBE’s  
8 prospective revenue stream on the grounds that the statements are speculative and lack foundation.  
9 As Executive Director of CBE, Mr. Gallegos is in a position to testify about the organization’s  
10 revenue prospects in the near future. See also Gallegos Am. Decl. ¶ 1. MTC has made no showing  
11 to the contrary. MTC’s objections are overruled.

12 MTC objects to paragraph 12 of Mr. Gallagos’s declaration regarding the law governing the  
13 use of attorney’s fees recovered on the grounds that it lacks foundation and improperly states a legal  
14 conclusion. The objection is sustained as to the legal conclusion only. To the extent that paragraph  
15 12 describes CBE’s legal department control in fact over attorney’s fees, MTC’s objection is  
16 overruled. Mr. Gallegos, as the Executive Director, has knowledge of how CBE segregates its  
17 attorney’s fees and can competently attest to that as a lay opinion. See Fed. R. Evid. 701.

18 **Johnson Declaration**

19 MTC objects to paragraph 4 of Ms. Johnson’s declaration regarding ATU 192’s financial  
20 condition on the ground that her testimony is not the best evidence of ATU 192’s financial situation.  
21 For the reasons stated above in connection with this objection to Mr. Gallegos’s declaration, MTC’s  
22 objection is overruled. Further, even though a writing is not required as stated in the Advisory  
23 Committee Notes to Rule 1002, the amended declaration of Ms. Johnson sets forth ATU 192’s most  
24 recent Form LM-2, filed with the United States Department of Labor, stating ATU 192’s financial  
25 condition. See Am. Decl. of Deborah Johnson at ¶ 5, Ex. A.

26 MTC objects to paragraphs 4, 5, 6 and 7 of Ms. Johnson’s declaration regarding ATU 192’s  
27 financial ability to pay an attorney’s fees award on the grounds that they lack foundation and contain  
28 impermissible expert opinion. MTC’s objections are overruled for the same reasons stated above

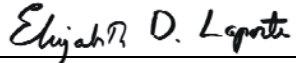
1 with respect to Mr. Gallegos's declaration. As the Financial Secretary of ATU 192, these statements  
2 of ATU 192's current and future financial resources are within Ms. Johnson's personal knowledge.  
3 MTC has made no showing to the contrary. In any event, Ms. Johnson's amended declaration  
4 makes clear that as the Financial Secretary, she is familiar with ATU 192's finances. See Johnson  
5 Am. Decl. ¶ 1.

6 MTC objects to paragraph 5 of Ms. Johnson's declaration pertaining to AC Transit's  
7 intended service cuts as hearsay without an exception. Because the Court did not rely on paragraph  
8 5 in its Opinion and Order on Defendant's Motion for Attorney's Fees, the Court declines to rule on  
9 this objection.

10 MTC objects to paragraph 5 of Ms. Johnson's declaration pertaining to ATU 192's future  
11 financial condition as speculative and lacking foundation. As ATU 192's Financial Secretary, Ms.  
12 Johnson is in a position to testify about the organization's near future revenue prospects. See  
13 Johnson Am. Decl. ¶ 1. MTC has made no showing to the contrary. MTC's objections are  
14 overruled as stated above with respect to paragraphs 10 and 11 of Mr. Gallegos's declaration.

15 **IT IS SO ORDERED.**

16 Dated: July 7, 2009

  
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ELIZABETH D. LAPORTE  
United States Magistrate Judge

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