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 SCHOOL DISTRICT  
 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10

11 MARGARET REYES,

Case No. C11-04628 YGR

12 Plaintiff,

**OBJECTIONS TO PLAINTIFF'S  
 EVIDENCE IN SUPPORT OF  
 OPPOSITION TO DEFENDANTS'  
 MOTION FOR SUMMARY JUDGMENT  
 OR, IN THE ALTERNATIVE, PARTIAL  
 SUMMARY JUDGMENT**

13 v.

14 SAN FRANCISCO UNIFIED SCHOOL  
 15 DISTRICT,

16 Defendant.  
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1 Objections:

2 Lacks foundation. Fed.R.Evid. 901. Speculation/Lack of Personal Knowledge.  
3 Fed.R.Evid. 602. Improper opinion. Fed.R.Evid. 701. Best Evidence. Fed.R.Evid. 1001/1002.  
4 Plaintiff fails to demonstrate that she has personal knowledge that Zapien actually authored the  
5 documents or that she is aware of facts supporting her conclusions about the intent of the  
6 documents. A declaration made in opposition to a motion for summary judgment must be based  
7 on the declarant's personal knowledge. *Love v. Commerce Bank, N.A.*, 37 F.3d 1295, 1296 (8th  
8 Cir. 1994). Plaintiff opines that the letters were not official and not designated to go into her  
9 employee file but introduces no facts explaining how this opinion is rationally based on Plaintiff's  
10 perceptions. Therefore, this statement is not admissible. *Gagne v. Northwestern Nat'l Ins. Co.*,  
11 881 F.2d 309, 315-16 (6th Cir. 1989) (holding that opinions in affidavits that are not based on  
12 personal observation do not contain admissible evidence for summary judgment purposes)  
13 *overruled on other grounds by Wright v. Murray Guard, Inc.*, 455 F.3d 702 (6th Cir. 2006);  
14 *O'Shea v. Detroit News*, 887 F.2d 683, 687-88 (6th Cir. 1989) (holding that a non-moving party's  
15 opinions are not sufficient evidence to oppose a motion for summary judgment). Plaintiff  
16 impermissibly summarizes the contents of unidentified "letters and memoranda" that have not  
17 been admitted into evidence or properly authenticated. Plaintiff's recollection of the contents of  
18 the documents does not satisfy the best evidence rule. The documents themselves should be  
19 presented as evidence.

20 Sustained: as to the last phrase, beginning with "nor designated" Overruled: \_\_\_\_\_

21 **EVIDENTIARY OBJECTION NO. 2**

22 Paragraph 5, lines 13-16

23 *"I also saw an email string in my personnel file that included an email about me from a*  
24 *School District attorney, Mike Quinn, wherein he says I was making life hell at another school. A*  
25 *copy is attached hereto as Exhibit 2. This demonstrates that Mr. Quinn and Mr. Zapien were*  
26 *talking about me."*

27 Objections:

1 Lacks foundation. Fed.R.Evid. 901. Speculation/Lack of Personal Knowledge.  
2 Fed.R.Evid. 602. Plaintiff's conclusion that Quinn and Zapien were talking about her is  
3 speculation and not based on Plaintiff's personal knowledge, and in fact, Zapien is not mentioned  
4 or named in the discussed "email chain." *Love*, 37 F.3d at 1296 (a declaration made in opposition  
5 to a motion for summary judgment must be based on personal knowledge); *Gagne*, 881 F.2d at  
6 315-16 (conclusions that are not based on personal observation are not admissible evidence for  
7 summary judgment purposes).

8 Sustained: as to the last sentence

Overruled: \_\_\_\_\_

9 **EVIDENTIARY OBJECTION NO. 3**

10 Paragraph 6, lines 17-18

11 *"The first time I heard that was when I saw the PAR referral, after this litigation started."*

12 Objections:

13 Improper authentication and identification. Fed.R.Evid. 901. Best Evidence. Fed.R.Evid.  
14 1001/1002. Plaintiff impermissibly summarizes the contents of the referenced document.

15 Sustained: \_\_\_\_\_

Overruled: XX

16 **EVIDENTIARY OBJECTION NO. 4**

17 Paragraph 7, lines 19-21

18 *"Ms. Palomares told me that the „satisfactory“ performance evaluation was a*  
19 *collaborative effort between Mr. Zapien and her."*

20 Objections:

21 Hearsay. Fed.R.Evid. 802. Plaintiff's recitation of the alleged statement by Ms.  
22 Palomares is inadmissible hearsay. *Hartsel v. Keys*, 87 F.3d 795, 803 (6th Cir. 1996) (affirming  
23 the district court's grant of summary judgment to the defendants because the plaintiff filed a  
24 declaration consisting of inadmissible hearsay with her opposition).

25 Sustained: to the extent the statement is offered for its truth

Overruled: \_\_\_\_\_

26 **EVIDENTIARY OBJECTION NO. 5**

27 Paragraph 8, lines 22-24



1 Sustained: XX

Overruled: \_\_\_\_\_

2 **EVIDENTIARY OBJECTION NO. 7**

3 Paragraph 11, lines 3-4

4 *“Ms. Levin never observed me teaching or managing my class. When she was there she*  
5 *was managing the class and providing the lesson.”*

6 Objections:

7 Lacks foundation. Fed.R.Evid. 104. Speculation/Lack of Personal Knowledge.  
8 Fed.R.Evid. 602. Improper opinion. Fed.R.Evid. 701. Plaintiff has not demonstrated that she has  
9 personal knowledge of everything Ms. Levin had an opportunity to observe or do in Plaintiff’s  
10 classroom. *Love*, 37 F.3d at 1296 (declarations in opposition to a motion for summary judgment  
11 must be based on the declarant’s personal knowledge); *O’Shea*, 887 F.2d at 687-88 (a non-  
12 moving party’s opinions are not sufficient evidence to oppose a motion for summary judgment).

13 Sustained: \_\_\_\_\_

Overruled: XX

14 **EVIDENTIARY OBJECTION NO. 8**

15 Paragraph 12, lines 10-12

16 *“His harassment of me was continuous, humiliating, and distressing to the point that it*  
17 *interfered with my teaching and lead to a breakdown when I could not stop crying and had to be*  
18 *driven to the hospital.”*

19 Objections:

20 Lacks foundation. Fed.R.Evid. 104. Improper opinion testimony. Fed.R.Evid. 701.  
21 Plaintiff fails to establish any foundation that she is competent to opine that Zapiens’ alleged  
22 actions caused her to suffer a “breakdown” and required her to be driven to the hospital. *O’Shea*,  
23 887 F.2d at 687-88 (a non-moving party’s opinions are not sufficient evidence to oppose a motion  
24 for summary judgment).

25 Sustained: \_\_\_\_\_

Overruled: XX

26 **EVIDENTIARY OBJECTION NO. 9**

27 Paragraph 13, lines 13-16

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1           *"I taught Second Grade, successfully, both before and after Hillcrest. I do not lack those*  
2 *skills. I successfully taught Second Grade at Hillcrest for three years. For the first two years my*  
3 *students scored well above school average in the California Achievement Tests."*

4 Objections:

5           Lacks foundation. Fed.R.Evid. 104. Improper opinion. Fed.R.Evid. 701. Improper  
6 authentication and identification. Fed.R.Evid. 901. Best Evidence. Fed.R.Evid. 1001/1002.  
7 Plaintiff repeatedly gives impermissible lay person opinions on her own success at teaching  
8 without offering any facts to support her conclusions. *O'Shea*, 887 F.2d at 687-88 (a non-moving  
9 party's opinions are not sufficient evidence to oppose a motion for summary judgment). She fails  
10 to establish any foundation for her assertion that her students scored well above school average in  
11 the California Achievement Tests.

12 Sustained: \_\_\_\_\_

Overruled: XX

13 **EVIDENTIARY OBJECTION NO. 10**

14 Paragraph 13, lines 16-17

15           *"The third year I was directed by Mr. Zapien and Ms. Levin to abandon the District*  
16 *sanctioned reading curriculum."*

17 Objections:

18           Objection. Speculation/Lack of Personal Knowledge. Fed.R.Evid. 602. Improper  
19 opinion. Fed.R.Evid. 701. Plaintiff does not state what Zapien and Levin allegedly  
20 communicated to her. Plaintiff's statement is conclusory and without foundation. *O'Shea*, 887  
21 F.2d at 687-88 (a non-moving party's conclusions are not sufficient evidence to oppose a motion  
22 for summary judgment). Further, Plaintiff does not establish she is competent to opine that, if she  
23 had complied with whatever Zapien and Levin communicated to her, she would have abandoned  
24 the District sanctioned reading curriculum.

25 Sustained: \_\_\_\_\_

Overruled: XX

26 **EVIDENTIARY OBJECTION NO. 11**

27 Paragraph 13, lines 17-18

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1           *“My students performed significantly lower on the California Achievement Tests in the*  
2 *third year.”*

3 Objections:

4           Lacks foundation. Fed.R.Evid. 104. Improper opinion. Fed.R.Evid. 701. Improper  
5 authentication and identification. Fed.R.Evid. 901. Best Evidence. Fed.R.Evid. 1001/1002.  
6 Plaintiff fails to establish any foundation for her assertion that her students performed  
7 significantly lower on the California Achievement Tests in the third year.

8 Sustained: \_\_\_\_\_

Overruled: XX

9 **EVIDENTIARY OBJECTION NO. 12**

10 Paragraph 13, lines 18-20

11           *“I received „highly satisfactory” dassroom evaluations in the 2009-2010 school year and*  
12 *a „satisfactory” overall evaluation.”*

13 Objections:

14           Lacks foundation. Fed.R.Evid. 104. Speculation/Lack of Personal Knowledge.  
15 Fed.R.Evid. 602. Improper authentication and identification. Fed.R.Evid. 901. Best Evidence.  
16 Fed.R.Evid. 1001/1002. To the extent the Plaintiff is reciting her recollection of the contents of  
17 documents, this does not satisfy the best evidence rule. The documents themselves should be  
18 presented as evidence.

19 Sustained: \_\_\_\_\_

Overruled: XX

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22           **II. OBJECTIONS TO THE DECLARATION OF RICHARD M. ROGERS**

23 **EVIDENTIARY OBJECTION NO. 1**

24 Paragraph 2, lines 3-5

25           *“When the seniority date and sick leave provisions of the Settlement Agreement were not*  
26 *performed, I starting [sic] making demands through Julius Turman, the Defendant’s attorney in*  
27 *the prior litigation.”*

1 Objections:

2 Improper opinion. Fed.R.Evid. 701. Plaintiff’s counsel gives the opinion that whatever  
3 he did constituted “making demands,” but he does not state what he did. *Gagne*, 881 F.2d at 315-  
4 16 (opinions that are not based on personal observation are not admissible evidence for summary  
5 judgment purposes).

6 Sustained: \_\_\_\_\_

Overruled: XX

7 **EVIDENTIARY OBJECTION NO. 2**

8 Paragraph 2, lines 8-9

9 “*Since defense counsel has represented to the Court that Mr. Turman (“Julius”) was no*  
10 *longer Defendant’s attorney, there was no reason to communicate with him other than in*  
11 *response to his inquiry, provoked by me.”*

12 Objections:

13 Improper opinion. Fed.R.Evid. 701. Lacks foundation. Fed.R.Evid. 104.  
14 Speculation/Lack of Personal Knowledge. Fed.R.Evid. 602. Plaintiff’s counsel fails to establish  
15 he is competent to opine whether there was a reason for him to communicate with Mr. Turman.  
16 Plaintiff’s counsel speculates that he provoked Mr. Turman’s alleged communication with  
17 Plaintiff’s counsel. *Sellers v. M.C. Floor Crafters, Inc.*, 842 F.2d 639, 643 (2nd Cir. 1988) (an  
18 attorney’s declaration may only be admitted into evidence if it contains facts that are within the  
19 attorney’s personal knowledge).

20 Sustained: \_\_\_\_\_

Overruled: XX

21 **EVIDENTIARY OBJECTION NO. 3**

22 Paragraph 3, lines 13-16

23 “*The administrative complaint, referring to the failure to grant sick leave, was filed on*  
24 *June 1, 2011 . . . [t]he sick leave was not granted until February, 2012. In my experience that is*  
25 *too much notice to credit an explanation of negligence.”*

26 Lacks foundation. Fed.R.Evid. 104. Speculation/Lack of Personal Knowledge.  
27



1 Fed.R.Evid. 602. Improper opinion. Fed.R.Evid. 701. Plaintiff's counsel's speculation on the  
2 reasons for the timing of the grant of sick leave is impermissible speculation and improper lay  
3 opinion. Plaintiff's counsel does not establish he is competent to opine on whether there was too  
4 much notice to credit an explanation of negligence. *Gagne*, 881 F.2d at 315-16 (conclusions that  
5 are not based on personal observation are not admissible evidence for summary judgment  
6 purposes).

7 Sustained: XX

Overruled: \_\_\_\_\_

8 **EVIDENTIARY OBJECTION NO. 4**

9 **Paragraph 4, lines 17-21**

10 *“Attached hereto as Exhibits 2 and 3 are copies of Defendant’s responses to discovery,*  
11 *verified by David George. The Response to No. 1 is mistaken; the settlement amount was*  
12 *published. The Response to Interrogatory No. 5 is mistaken; Defendant now asserts that only two*  
13 *employees accessed the personnel file. Mr. George apparently signs documents in place before*  
14 *him without making any inquiry whatsoever.”*

15 Objection. Speculation/Lack of Personal Knowledge. Fed.R.Evid. 602. Improper  
16 opinion. Fed.R.Evid. 701. Plaintiff's concludes that Defendant's discovery responses are  
17 “mistaken,” but introduces no facts showing that this opinion is rationally based on Plaintiff's  
18 perceptions and/or show that Plaintiff's opinion is based on personal knowledge. *Gagne*, 881  
19 F.2d at 315-16 (opinions that are not based on personal observation are not admissible evidence  
20 for summary judgment purposes). Additionally, Plaintiff's counsel's speculation regarding Mr.  
21 George's actions is impermissible speculation and opinion. *Sellers*, 842 F.2d 639, 643 (an  
22 attorney's declaration may only be admitted into evidence if it contains facts that are within the  
23 attorney's personal knowledge).

24 Sustained: XX

Overruled: \_\_\_\_\_

25 **III. OBJECTIONS TO PLAINTIFF'S RESPONSE TO DEFENDANT'S AMENDED**  
26 **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF**  
27 **MOTION FOR SUMMARY JUDGMENT**

1 The Court’s “Standing Order in Civil Case” memorandum expressly states that “[t]he  
2 Supporting and Responsive Separate Statement each **must be signed** by counsel . . . who has  
3 reviewed each document and can attest as follows:

4 *‘I attest that the evidence cited herein fairly and accurately supports [or disputes] the*  
5 **facts as asserted.**’” (emphasis and bold in original)

6 Plaintiff’s response to Defendant’s separate statement does not include this required  
7 attestation. Accordingly, Defendant objects to Plaintiff’s entire separate statement response as  
8 Plaintiff’s counsel has not attested to the fairness and accuracy of the facts asserted in Plaintiff’s  
9 response.

10 Sustained: \_\_\_\_\_

Overruled: XX

11 Date: August 14, 2012

Respectfully submitted,

JACKSON LEWIS LLP

14 By: /s/ Kathleen Maylin \_\_\_\_\_

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DISTRICT

18 4831-8989-8000

