

2. Plaintiffs have submitted the evidence from the preliminary injunction under Rule 65 (a) (2) of the Federal Rules of Civil Procedure, providing that previous evidence from a preliminary injunction “which would be admissible upon the trial on the merits becomes part of the record on the trial....” Rule 65 (a) (2) does not provide that previous evidence, unattached to a summary judgment response, may be used in considering summary judgment. In addition, Rule 65 (a) (2) only admits evidence that would be admissible at trial on the merits. Furthermore, whether or not the evidence was objected to at the time is irrelevant. Evidence in preliminary injunction hearings do not need to conform to the stricter standards of summary judgment, and a party may not rely on Rule 65 (a) (2), claiming that the evidence is already a part of the record, for summary judgment purposes. *Home Oil Co. v. Sam’s East, Inc.*, 252 F. Supp. 2d 1302, 1307 ((M.D. Ala., 2003) citing *Flynt Distrib. Co. V. Harvey*, 734 F. 2d 1389, 1394 (9th Cir. 1984). Additionally, Plaintiffs are not allowed to create evidence that would otherwise be inadmissible for purposes of summary judgment and trial “simply by making statements under the more relaxed evidentiary standards of a preliminary injunction hearing.” *Id.*, citing *Sierra Club, Lone Star Chapter v. F.D.IC.*, 992 F. 2d 545, 551 (5th Cir. 1993); 11A Charles Alan Wright et. al., Federal Practice and Procedure § 2949, at 216-217 (2d ed. 1995). Defendants therefore object on the basis of Rule 56 (c) and (e) to all documents that were not filed as exhibits to Plaintiffs’ Response to Summary Judgment, and further object to evidence from the preliminary injunction hearing that is not admissible at a trial on the merits.

3. Defendants renew and incorporate by reference the objections filed with their Reply Brief in Support of Defendants’ Motion for Summary Judgment, and further, make the following specific objections to the evidence referenced in Plaintiff’s Motion for Summary Judgment.

Defendants have raised their objection to specific evidence only once, but intend that the objection to specific evidence will apply each time the evidence is referenced by Plaintiffs.

4. Defendants object to 1.R.76, the affidavit of Reuben Hernandez, paragraph 4, as not based on personal knowledge.

5. Defendants object to PI TR. p. 64, ll. 12-16, 22-25, p. 65, ll. 7-16 as hearsay and not based on personal knowledge.

6. Defendants object to 1.R. 78, the affidavit of Reuben Hernandez, paragraph 8, as not based on personal knowledge.

7. Defendants object to SJ Opp. Exhibits 6, 7, 9, 15, 21, and 22, referenced at page 5 of Plaintiffs' Motion for Summary Judgment. These are references to multi-page exhibits with no cited portions indicating the evidence on which Plaintiffs are relying. These exhibits contain evidence based on hearsay, not based on personal knowledge, and likely contain myriad additional objectionable statements that Defendants would object to if the evidentiary references were clear. With no references to page numbers, Defendants are prejudiced in making their objections, and request that the Court hold that this reference, and the other references to entire multi-page exhibits, are inadmissible as summary judgment evidence because they fail to give Defendants proper notice of the evidence upon which Plaintiffs rely.

8. In moving for summary judgment, the movant bears "the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believe[d] demonstrate[d] the absence of a genuine issue of material fact." *Skotak v. Tenneco Resins, Inc.* 953 F.2d 909, 912-913 (5th Cir. 1992), *quoting Celotex Corp.*

v. *Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, (1986). Plaintiffs have failed with regard to these exhibits to identify the portions of the depositions and other documents that demonstrate Plaintiffs' entitlement to summary judgment. Instead, Plaintiffs have left both the Court and the Defendants the task of attempting to divine those portions of these documents on which Plaintiffs rely. For this reason, this evidence should be excluded. In addition, with respect to a nonmovant's summary judgment evidence, a court has no duty to sift through summary judgment evidence in search of support for a party's contentions. *Skotak* at 915, n. 7. There is no reason why this rule should not apply as well to a movant for summary judgment. *Celotex* clearly puts a duty on the movant to identify his evidence, and there is therefore no duty on the court to identify it for him.

9. Plaintiffs have repeated this practice throughout their Cross-Motion, as noted below. Defendants ask that in each of these instances, the evidence be excluded. Defendants further ask these exhibits and others like them referenced throughout Plaintiffs' Cross-Motion for Summary Judgment be excluded for all purposes.

10. Defendants object to the reference at page 5 of Plaintiffs' Motion for Summary Judgment to Exhibits 13, 14, and 15 introduced at the Preliminary Injunction hearing. These exhibits are comprised of depositions that were offered in their entirety at the Preliminary Injunction hearing, and they consist of 27, 40, and 39 page, respectively. The Exhibits contain no cited portions on which Plaintiffs are relying. Defendants object that the exhibits contain hearsay and are not relevant.

11. Defendants object to 1.R.77, the affidavit of Reuben Hernandez, paragraph 6, as not based on personal knowledge.

12. Defendants object to 1.R.76, the affidavit of Reuben Hernandez, paragraph 2, as hearsay and as not based on personal knowledge.

13. Defendants object to 1.R.78, the affidavit of Reuben Hernandez, paragraph 9, as inadmissible opinion testimony and as not based on personal knowledge.

14. Defendants object to App. Exhibit 3 as containing hearsay. Defendants do not object to this Exhibit to the extent that it is offered only to show that Plaintiff Robinson was questioned by the Office of the Attorney General.

15. Defendants object to App. Exhibits 4 and 5, referenced on page 7 of Plaintiffs' Motion for Summary Judgment, which are comprised of entire depositions consisting of 24 and 41 pages, respectively. There are no cited portions that would inform Defendants of the evidence upon which Plaintiffs are relying. Defendants object to the depositions based on relevance and hearsay.

16. Defendants object to SJ Opp. Exhibit 16, referenced at page 9, as being a multi-page exhibits with no cite to the evidence upon which Plaintiffs depend. Defendants also object on the basis of hearsay and no personal knowledge.

17. Defendants object to App. Exhibit 6, referenced on page 8 of Plaintiffs' Motion for Summary Judgment, which are comprised of entire depositions consisting of 32 pages. There are no cited portions that would inform Defendants of the evidence upon which Plaintiffs are relying. Defendants object to the depositions based on relevance and hearsay.

18. Defendants object to PX 21-25 and 26 as speculative and not probative.

19. Defendants object to SJ Opp. Exhibits 7, 9, and 22, and App. Exhibit 7, referenced at page 10, which is a deposition excerpt consisting of 28 pages with no cite to a specific page number or line that would inform Defendants of the evidence upon which Plaintiffs are relying. Defendants object based on relevance and hearsay.

20. Defendant object to PI Exhibits 13 and 15, referenced on page 10. These again are entire depositions with no indication of the evidence upon which Plaintiffs are relying. Defendants object based on hearsay and relevance.

21. Defendants object to App. Exhibit 15, referenced on page 13. This exhibit is a 16 page transcript of an interview with Plaintiff Meeks and contains no cites to page or line numbers that inform Defendants of the evidence upon which Plaintiffs rely. Defendants object based on hearsay and relevance.

22. Defendants object to SJ Opp. Exhibit 6, p. 31, ll. -14, 17-18, 21, and 23 as hearsay, not based on personal knowledge, and containing inadmissible hearsay evidence.

23. Defendants object to 1.R.81, the affidavit of Reuben Hernandez, paragraph 14, as not based on personal knowledge, hearsay, and containing inadmissible opinion testimony.

24. Defendants object to 1.R.81-82, the affidavit of Reuben Hernandez, paragraphs 15-16, as not based on personal knowledge, hearsay, and containing inadmissible opinion testimony

25. Defendants object to 1.R.21, Plaintiffs' Original Complaint, paragraph 30 as not being competent summary judgment evidence. The allegations of paragraph 30 are unsworn and therefore inadmissible, they contain hearsay, and are not based on personal knowledge.

26. Defendants object to PI Tr. P. 88, ll. 1-6, 13-18, 23-25 as containing hearsay, not based on personal knowledge, and containing inadmissible opinion testimony.

27. Defendants object to PI Exhibit 14, p. 24, ll. 1-8; p. 26, ll 15-17; p. 26, l. 22– p. 27, l. 3; p. 27, l. 12- p. 28, l. 5; p. 28, l. 19– p. 29, l. 8; p. 29, l. 13-24; p. 30, l. 19; and p. 31, ll. 19-25 as hearsay and not based on personal knowledge.

28. Defendants object to PI Exhibit 15, p. 17, ll. 1-4, 24-25; p. 18, ll.3-4, 7-9, 18-25 as hearsay and not based on personal knowledge.

29. Defendants object to 1R.78-81, 82-83 the affidavit of Reuben Hernandez, paragraphs 10-14 and 17 as hearsay, not based on personal knowledge, and containing inadmissible opinion testimony.

30. Defendants object to SJ Opp. Exhibit 6, p. 38, ll. 1-16 as hearsay and as not based on personal knowledge.

31. Defendants object to SJ Opp. Exhibit 22, p. 14, ll. 1-12, p. 15, ll. 22-25, p. 16, l. 2- p. 18. l. 7, p. 19, ll, 7-15 as hearsay, not based on personal knowledge, and containing inadmissible opinion evidence.

32. Defendants object to SJ Opp. Exhibits 3 and 14, referenced in their entirety on page 21. Defendants are unable without a cite to determine the evidence on which Plaintiffs are relying.

33. Defendants object to SJ Opp. Exhibit 9, p. 15, ll. 7- 10, 22– p.16, l. 18, p. 17, ll. 1-3, p. 18, ll. 1-23, and p. 20, ll. 10-16 as hearsay and as not based on personal knowledge.

34. Defendants object to SJ Opp. Exhibit 21, p. 21, ll. 17-22 as hearsay and not based on personal knowledge.

35. Defendants object to SJ Opp. Exhibit 6, p. 18, l. 4– p. 21 l. 8, p. 22, .ll. 10-20, p. 24, l. 20– p. 25, l. 15 as hearsay and as not based on personal knowledge.

36. Defendants object to page 81 of the PI transcript , ll. 5-21, as hearsay and not based on personal knowledge.

37. Defendants object to page 25 of PI Exhibit 15, p. 25, l. 12, p. 26, ll. 10-21 as hearsay, not based on personal knowledge, and containing inadmissible opinion testimony.

38. Defendants object to PI Tr. P. 126, ll. 8-14 as hearsay.
39. Defendants object to PI Exhibit 15, p. 19, ll. 6-9 as hearsay.
40. Defendants object to App. Exhibit 2, p. 2 as hearsay, not based on personal knowledge, and containing inadmissible hearsay testimony.
41. Defendants object to App. Exhibits 1 and 2 as containing hearsay, not based on personal knowledge, and containing inadmissible opinion testimony.
42. Defendants object to SJ Opp. Exhibit 7, p. 10, ll. 3-5 as hearsay and as not based on personal knowledge.
43. Defendants object to SJ Opp. Exhibit 21, p. 18, 17-18 as containing inadmissible opinion testimony.

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CERTIFICATE OF SERVICE

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