

Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JOB'S DAUGHTERS INTERNATIONAL,

Plaintiff,

v.

HEIDI YOAST,

Defendant; *and*

HEIDI YOAST,

Counterclaim Plaintiff,

v.

JOB'S DAUGHTERS INTERNATIONAL, ROD  
REID, an individual

Counterclaim Defendant

NO. 16-CV-01573-RSL

**COUNTERCLAIM PLAINTIFF'S  
SURREPLY TO COUNTERCLAIM  
DEFENDANT'S REPLY PURSUANT  
TO LOCAL RULE 7(g) - OPPOSITION  
TO THE MOTION(S) TO STRIKE**

**NOTING DATE: MARCH 30, 2018**

1           **I. OPPOSITION TO MOTION TO STRIKE OPPOSITION/SEPARATE STATEMENT**

2           Job’s Daughters International (“JDI”) and Rod Reid (collectively, “JDI”) cite no authority in support  
3 of a Motion to Strike *entire* filings. LCR 7(e)(3), (6), (f), and (g) state only that “briefs in opposition...shall  
4 not exceed twenty-four pages...” and “[c]aptions, tables of contents, tables of authorities, signature blocks,  
5 and certificates of service need not be included in the page limit.” Counterclaim Plaintiff’s (hereinafter  
6 “Yoast”) brief at Dkt #55 spans 21 pages. It is unclear why JDI would move to strike the document in its  
7 entirety, and Yoast requests this motion be denied. JDI also moves to strike Yoast’s Separate Statement (Dkt.  
8 #55-1) (hereinafter “SS”). Yoast reiterates her argument at Dkt. #67 p.9 ln. 26, p.10 ln. 1-19 and respectfully  
9 requests this Court utilize her SS as an index to evidence and deny JDI’s Motion to Strike.

10                           **II. JDI’S MOTION TO STRIKE PARAGRAPHS IN YOAST’S SS**

11           JDI also moves to strike ¶¶ 4, 5, 10, 12, 16-17, 19-27, and 28 from Yoast’s SS. Yoast respectfully  
12 requests the Court to deny the motion for the following reasons:<sup>1</sup>

- 13           a. Paragraph 4: Yoast need not “be mentioned by name...to recover damages...” *Whiton v. Or. Labor*  
14 *Press Publ’g Co.*, No. 21254-4-II, 1998 Wash. App. LEXIS 880, at \*31 (Ct. App. June 5, 1998).
- 15           b. Paragraph 5: This is an improper objection, but to respond: “A [claimant] need only show that the  
16 statement is substantially true or that the gist of the story, the portion that carries the ‘sting’, is true.”  
*Mohr v. Grant*, 153 Wn.2d 812, 825, (2005) citing *Mark v. Seattle Times*, 96 Wn.2d 473 at 494  
(1981).
- 17           c. Paragraph 10: Ms. Yoast’s declaration is not a “sham.” The only errors in Yoast’s profit and loss  
involved the expenses—JDI has never alleged errors in her gross revenue figures.
- 18           d. Paragraph 12: See response to request to strike ¶5, *infra*.
- 19           e. Paragraphs 16-17: This relates to Ms. Hoglund’s statement, and its admissibility under the “catch all”  
20 exception to the hearsay rule, or as an admission of a party opponent (*see* Dkt. #55 p. 14-19).
- 21           f. Paragraphs 19-21: The evidence submitted as part of Ms. Forman’s declaration is based upon  
information published by JDI itself, confirmed by Cole in her deposition, at Dkt. 56-1, p.10 ln. 10-11.
- 22           g. Paragraphs 22-27: See response to Paragraphs 16-17, *infra*.
- 23           h. Paragraph 28: Declarants have decades of involvement in JDI. JDI is free to offer evidence that  
another Past Grand Bethel Honored Queen of Washington that designs and prints hoodies exists.
- 24           i. Paragraph 35: Ms. Reardon’s reaction falls under the “present sense impression” and “excited  
25 utterance” exceptions under *Fed. R. Civ. P.* 803.

26           <sup>1</sup> In order to adequately respond to JDIs’ Motion to Strike, Counterclaim Plaintiff is mirroring single spacing  
where found in JDI’s brief. (Dkt. 66 p. 2-4).

- 1 j. Paragraph 43: Ms. Ferlet may testify as to her opinion and feelings regarding her experience.
- 2 k. Paragraph 45: Ms. Ferlet is a Past Grand Guardian and represents many years of experience and knowledge of the JDI universe and players therein.
- 3 l. Paragraph 54-56: Mr. Woodward was in the room with Ms. Yoast, who overheard the conversation. Dkt. #57 p. 3 ¶15
- 4 m. Paragraphs 59-63: Statements show Yoast’s reputation within Masonic organizations. “Defamation is concerned with compensating the injured party for damage to reputation.” *Corey v. Pierce Cty.*, 154 Wn. App. 752, 761, 225 (2010) citing *Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466, 471 (1986).
- 5 n. Paragraphs 66-77: This provides background to the inadvertent mistakes in Yoast’s “expenses” of her financial statements, and includes information exchanged between counsels of record-not hearsay.
- 6 o. Paragraph 78: Fact confirmed by Cole, Supreme Guardian, in her Deposition, at Dkt. 56-1 p. 33-34.
- 7 p. Paragraph 82: Ms. Hoglund’s statements are admissible as stated, *infra*, at III(e).
- 8 q. Paragraph 83: This statement goes to the notice JDI received regarding Ms. Hoglund’s statements.
- 9 r. Paragraph 84: The gross revenue information used in Ms. Yoast’s damages calculations match her gross revenue reporting, consistent across all of Ms. Yoast’s documents.
- 10 s. Paragraph 91: This statement refers to the testimony by Ms. Goolsby as to statements made to the JDI Board of Trustees and others, and made by Mr. Reid prior to the initiation of this litigation, not to any statements made by Mr. Reid during his deposition.
- 11 t. Paragraphs 92-93: JDI designated a person most knowledgeable (“PMK”) to testify on behalf of JDI “concerning the subject matter described in JDI’s Complaint...” (Dkt. #65 p. 103). JDI’s PMK should have knowledge as to *why* the trademark infringement claim was brought by JDI against Yoast and what that action was based upon.
- 12 u. Paragraph 96-97: The information provided was sourced from JDI’s official webpages. JDI is a party to this litigation.
- 13 v. Paragraph 98: Expert testimony is not required in support of Ms. Yoast’s statements.

**III. DECLARATIONS OF MS. HOFFMAN, LEEPER, AND FERLET**

14 During discovery, Ms. Yoast listed “all JDI members and volunteers present at the meeting...”  
 15 (Forman Decl. ¶1) in response to JDI’s demand for “all known witnesses to the statement [by Shelly Cole].”  
 16 Yoast was unaware that Ms. Ferlet and Ms. Hoffman were present at Supreme Session 2016. (Dkt. 57 p.3  
 17 ¶11-12). Upon discovery, Ms. Yoast disclosed this information to JDI (Dkt. #56-1 p. 78). Ms. Leeper’s  
 18 statement was submitted to show that Ms. Hoglund’s messages fall within an exception to the hearsay rule,  
 19 or, alternatively, are admissions of a party opponent. As briefed, *infra*, (at ¶¶ III(g), (h), (i), (k), and (p)),  
 20 these declarations do not lack foundation or contain irrelevant information/inadmissible hearsay.  
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1 **IV. DECLARATION OF PATRICIA FORMAN**

2 Paragraphs 3-6, 11-21, 24 and their exhibits do not constitute inadmissible hearsay. Further, JDI's  
3 Motion to Strike here is redundant, as JDI moved to strike this information in the SS. Paragraphs 3-6 are  
4 addressed herein at Paragraph III(f), ¶¶ 11-21, 24 are addressed herein at Paragraph III(n).

5 JDI alleges ¶¶3 and 26 lack foundation. Paragraph 3 is supported by Ms. Hoglund's LinkedIn page  
6 and HIKE Fund, Inc.'s published list of directors at ¶¶ 4-5 (Dkt. #56 p. 2). Paragraph 26 is a restatement of  
7 JDI's claims made in this litigation. (Dkt. #56 p. 5). JDI also complains that ¶¶ 11-19, 21-22, and 26 contain  
8 "irrelevant statements." Paragraphs 11-19 are addressed herein at ¶ III(n), and ¶¶ 21-22 go to the issue of  
9 "notice" of the possibility of an award of attorneys' fees. Paragraph 26 is addressed at ¶ III(u). Statements  
10 regarding the content of settlement offers are not inadmissible under Fed. R. Evid. 408 when not used to  
11 "prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement  
12 or a contradiction." This information is submitted to show JDI was on notice that an award of attorneys' fees  
13 would be sought under *Sunearth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179, 1181 (9th Cir. 2016).

14 **V. DECLARATION OF HEIDI YOAST / CONCLUSION**

15 Ms. Yoast's declaration is admissible. Paragraphs 8-9 relate to when/from whom Yoast received  
16 information on statements made at Supreme Session-by party opponents. Ms. Reardon is a member of JDI's  
17 Board of Trustees, and Ms. Oberdorfer was an elected officer within JDI. Information at ¶¶ 15-16 was  
18 overheard by Ms. Yoast. Paragraph 24 is an admission by a party opponent. Finally, Ms. Yoast's statement  
19 that she is the only Past Grand Bethel Honored Queen from Washington that custom designs and prints  
20 hoodies is what Ms. Yoast knows. Her own personal knowledge needs no further "foundation" or support.

21 Ms. Yoast's declaration also contains relevant evidence as to her reputation in Masonic-affiliated  
22 organizations (¶6, 18-21), when and how she became aware of the information known by Ms. Ferlet and Ms.  
23 Hoffman (¶11-12, 23), the contents of her financial disclosures (¶22), and whether or not it is possible for an  
24 uninvited guest to visit her property (¶28). Every one of these admissible facts is relevant to elements at issue  
25 in the counterclaim, and Ms. Yoast's declaration is not a "sham," as briefed within, *infra* at III(c). For all of  
26 the foregoing reasons, Yoast respectfully requests that this Court deny JDI's Motions to Strike.

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Respectfully submitted,

DATED this 4th day of April, 2018.

By /s/ Patricia I. Forman, Esq.

Patricia I. Forman, Esq. California Bar No. 245108,  
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**CERTIFICATE OF SERVICE**

The undersigned declares and states as follows:

I am a citizen of the United States, over the age of 18 years, not a party to the above-referenced matter, and am competent to be a witness.

On April 4, 2018, I electronically filed the following document(s):

**COUNTERCLAIM PLAINTIFF’S SURREPLY**

with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all associated counsel of record.

I also served said documents in the manner set forth below on the following parties:

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- Via Email by USDC Western District EM/ECF Filing System*
- Via Hand-Delivery*

*Attorneys for Plaintiff Job’s Daughters International*

I declare under penalty of perjury according to the laws of the State of Washington that the above statements are true and correct.

SIGNED at Burbank, California this 4th day of April, 2018.

/s/ Patricia Forman  
Printed name: Patricia Forman