

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOB'S DAUGHTERS INTERNATIONAL,

Plaintiff,

v.

HEIDI YOAST,

Defendant.

NO. 16-cv-1573-RSL

PLAINTIFF'S SUR-REPLY IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

NOTE ON CALENDAR: March 30, 2018

HEIDI YOAST,

Counterclaim-Plaintiff,

v.

JOB'S DAUGHTERS INTERNATIONAL,
ROD REID, an individual,

Counterclaim-Defendants.

In her Reply, Defendant, Heidi Yoast improperly attempts to offer additional evidence into the record in support of her Motion for Summary Judgment. Pursuant to LCR 7(g), Job's Daughters International ("JDI") objects to the untimely submission and moves to strike the Declaration of Patricia Forman in Support of Defendant's Reply to Plaintiff's Opposition to the

SUR-REPLY IN OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT - 1
(16-cv-1573-RSL)

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1 Motion for Summary Judgment. Dkt. #68.

2 First, the Declaration should be struck as it is untimely. Defendant initiated the pending
3 Motion for Summary Judgment and had the opportunity to include any evidence that was
4 necessary to establish the same. The timely submission of evidence provides the responding
5 party (JDI), the opportunity to respond. The untimely submission does not allow JDI that
6 opportunity. The Ninth Circuit has long held that it is unfair and improper to allow a moving
7 party to present new evidence with their reply brief without allowing the opposing party to
8 respond. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996); *United States v. Bohn*, 956 F.2d
9 208, 209 (9th Cir. 1992) (noting courts generally decline to consider arguments raised for the first
10 time in a reply brief). The untimely Declaration of Ms. Forman should be struck.
11

12 In addition to being untimely, the Declaration of Forman should be struck as the language
13 contains improper argument as to what the documents say and/or describe. *See* Dkt #68, ¶ 3. In
14 addition, the exhibits attached to the Declaration contain inadmissible hearsay, lack foundation
15 and have not been properly authenticated. Admissible Declarations or affidavit must be based on
16 personal knowledge, must set forth facts that would be admissible at trial, and must show that the
17 declarant or affiant is competent to testify as to the facts at issue. *See* Fed.R.Civ.P. 56(e).
18 Counsel for Defendant was not a party to any of the email exchanges she seeks to introduce, has
19 no idea as to where the emails originated, the status of the individuals in the communications
20 (i.e., whether they are members of a JDI Bethel or a third party vendor), the context of the
21 communications, or the reason the communications may have been sent. As such, even if the
22 Declaration had been timely submitted, it nonetheless is inadmissible and should be struck.
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DATED this 4th day of April, 2018

s/ Rodney L. Umberger, Jr.
s/ Daniel J. Velloth
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Attorneys for Plaintiff/Counterclaim-Defendant
Job's Daughters International

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2018, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following:

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Tracey v. Munger tracey@groveslawoffices.com

DATED this 4th day of April, 2018.

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s/ Daniel J. Velloth
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