## Case4:09-cv-02306-CW Document251 Filed01/28/10 Page1 of 20

| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8                    | Michael G. Woods, # 58683 Timothy J. Buchanan, # 100409 Mandy L. Jeffcoach, #232313 McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP P.O. Box 28912 5 River Park Place East Fresno, CA 93720-1501 Telephone: (559) 433-1300 Facsimile: (559) 433-2300  Attorneys for Defendants COUNTY OF FRE FRESNO COUNTY IN-HOME SUPPORTIV SERVICES PUBLIC AUTHORITY | (SPACE BELOW FOR FILING STAMP ONLY)  SSNO and VE               |
|---|--|--|
| 9   | UNITED STAT  | ES DISTRICT COURT  |
| 10  | NORTHERN DIST  | TRICT OF CALIFORNIA  |
| 11  | SAN FRANCISCO  | O/OAKLAND DIVISION   |
| 12  |  |  |
| 13  | SIA CHUE YANG, et al.,   | Case No. C 09-02306 CW   |
| 14  | Plaintiffs,  | OBJECTIONS AND MOTION TO STRIKE CERTAIN DECLARATIONS FILED BY  |
| 15  | V.   | PLAINTIFFS IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION; |
| 16<br>17  | ARNOLD SCHWARZENEGGER, Governor of the State of California; JOHN A. WAGNER, Director of the California   | ORDER RE THE SAME  |
| 18  | Department of Social Services; DAVID MAXWELL-JOLLY, Director of the  | Date: SUBMITTED ON THE PAPERS                                  |
| 19  | California Department of Health Care<br>Services; JOHN CHIANG, California State  | Location: Courtroom 2, Fourth Floor                            |
| 20  | Controller; FRESNO COUNTY; and FRESNO COUNTY IN-HOME   |  |
| 21  | SUPPORTIVE SERVICES PUBLIC<br>AUTHORITY,   |  |
| 22  | Defendants.  |  |
| 23  | Defendants.  |  |
| 24  |  |  |
| 25  |  |  |
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| McCormick, Barstow,<br>Sheppard, Wayte &<br>Carruth LLP | ODJECTIONS AND MOTION T  | O STRIVE CERTAIN DECLARATIONS                                  |

OBJECTIONS AND MOTION TO STRIKE CERTAIN DECLARATIONS

CARRUTH LLP

5 RIVER PARK PLACE EAST FRESNO, CA 93720-1501

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5 River Park Place East Fresno, CA 93720-1501

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Defendants COUNTY OF FRESNO and FRESNO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY (collectively referred to as the "County") hereby files its Objections to Declarations filed by Plaintiffs in support of their Motion for Class Certification.

Initially, the moving party bears the burden of proving that class certification is appropriate. *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9<sup>th</sup> Cir. 2001). The court must rigorously analyze whether the class allegations meet the requirements of Federal Rule of Civil Procedure 23. *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982). The movant's burden is to produce evidence by affidavits, documents or testimony establishing each Rule 23 requirement. *Andrews Farms v. Calcot, Ltd.*, 258 F.R.D. 640, 651 (E.D. Cal. 2009).

When affidavits are filed, the affidavits must meet admissibility standards. *See Krzesniak* v. *Cendant Corp.*, 2007 U.S. Dist. LEXIS 47518, 14-15 (N.D. Cal., 2007) (hearsay); *Wang v. Chinese Daily News, Inc.*, 236 F.R.D. 485, 491 (C.D. Cal., 2006) (various objections ruled upon). In other words, if declarations contain hearsay or the proper foundation is not laid, then objections are properly sustained. *Id.* 

Based on the above, the County respectfully requests that the Court sustain the objections as set forth below and/or grant the Motion to Strike certain Declarations.

### MOTION TO STRIKE THE DECLARATION OF DEBORAH ROTH.

The County hereby requests that the Court strike the entire declaration of Ms. Roth on the ground that it contains statements that violate the hearsay rule as out of court statements cannot be introduced for the truth of the matter asserted. FRE Rule 801. Likewise, the purported statements made by the declarant lack foundation. *A.I. Credit Corp. v. Legion Ins. Co.*, 265 F.3d 630, 637 (7<sup>th</sup> Cir. 2001).

Ms. Roth's Declaration contains a recitation of alleged conversations that she had with various individuals and what those individuals told her. Clearly, these statements are hearsay and are inadmissible. FRE Rule 801.

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| 1  | Sustained Denied   |
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| 2  |  |
| 3  | OD IECTIONS TO THE DECLADATION OF ANDVINGS   |
| 4  | OBJECTIONS TO THE DECLARATION OF ANDY MARTINEZ   |
| 5  | Paragraph 5  |
| 6  | Objection is made on the ground that Mr. Martinez's statements lack foundation. A.I.                 |
| 7  | Credit Corp., supra, 265 F.3d at 637. Mr. Martinez's statements amount to nothing more than          |
| 8  | speculation as to what may or may not happen. As a result, there are insufficient facts to establish |
| 9  | the basis for this opinion. Slevin v. Home Depot, 120 F. Supp 2d. 822, 835-836 (N.D. Cal. 2000)      |
| 10                                       | (stating that a declaration based on speculation is irrelevant and should not be considered).        |
| 11                                       | Moreover, the statements appear to be of the nature of expert testimony, and therefore are           |
| 12                                       | improperly before this court as there are no facts that would demonstrate that Mr. Martinez is       |
| 13                                       | qualified to provide expert testimony. FRE Rule 702; see also Sepulveda v. Wal-Mart Stores,          |
| 14                                       | Inc., 237 F.R.D. 229, 235 (C.D. Cal. 2006) (stating that the Court "must ensure that the basis of    |
| 15                                       | the expert opinion is not so flawed that it would be inadmissible as a matter of law.", quoting In   |
| 16                                       | re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124, 135 (2d Cir. 2001)).                       |
| 17                                       | Sustained Denied   |
| 18                                       | SustainedDefiled   |
| 19                                       |  |
| 20                                       | Paragraph 6  |
| 21                                       | Objection is made on the grounds that Mr. Martinez's statements lack foundation. A.I.                |
| 22                                       | Credit Corp., supra, 265 F.3d at 637. Mr. Martinez's statements amount to nothing more than          |
| 23                                       | speculation as to what may or may not happen. As a result, there are insufficient facts to establish |
| 24                                       | the basis for this opinion. Slevin, supra, 120 F. Supp 2d. at 835-836 (stating that a declaration    |
| 25                                       | based on speculation is irrelevant and should not be considered).                                    |
| 26                                       |  |
| 27                                       | Sustained Denied   |
| 28                                       |  |
| McCormick, Barstow,<br>Sheppard, Wayte & | 2  |
| CARRUTH LLP<br>5 River Park Place East   | OBJECTIONS AND MOTION TO STRIKE CERTAIN DECLARATIONS   |

| 1           | Paragraph 7   |
|-------------|---|
| 2           | Objection is made on the grounds that Mr. Martinez's statements lack foundation. A.I.                   |
| 3           | Credit Corp., supra, 265 F.3d at 637. Mr. Martinez's statements amount to nothing more than             |
| 4           | speculation as to what may or may not happen. As a result, there are insufficient facts to establish    |
| 5           | the basis for this opinion. <i>Slevin, supra</i> , 120 F. Supp 2d. at 835-836. Moreover, the statements |
| 6           | appear to be of the nature of expert testimony, and therefore are improperly before this court as       |
| 7           | there are no facts that would demonstrate that Mr. Martinez is qualified to provide expert              |
| 8           | testimony. FRE Rule 702; See also Sepulveda, supra, 237 F.R.D. at 235.                                  |
| 9           | Sustained Denied  |
| 10          | SustainedDenied   |
| 11          |   |
| 12          |   |
| 13          | OBJECTIONS TO THE DECLARATION OF HYUN NAM.  |
| 14          | Paragraphs 2 through 5 and 7 through 11   |
| 15          | Objection is made on the grounds that the statements contained in the aforementioned                    |
| 16          | paragraphs violate the hearsay rule, as out of court statements cannot be introduced for the truth      |
| 17          | of the matter asserted. FRE Rule 801. What Ms. Nam was allegedly told by various individuals            |
| 18          | is clearly hearsay and is inadmissible.   |
| 19          | Sustained Denied  |
| 20          | Sustained Defied  |
| 21          |   |
| 22          |   |
| 23          |   |
| 24          | DECLARATION OF SUSANNAH MCDEVITT  |
| 25          | Paragraph 3 and 4   |
| 26          | Objection is made on the grounds that Ms. McDevitt's statements lack foundation. A.I.                   |
| 27          | Credit Corp., supra, 265 F.3d at 637. A witnesses' testimony, whether it is live and/or in a            |
| 28<br>stow, | declaration, must be based on that individual's personal knowledge of the facts asserted. FRE           |

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| 1    | Rule 602; Jones, Rosen, Wegner & Jones, Rutter Group Practice Guide; Federal Civil Trial &                   |
|------|--|
| 2    | Evidence, ¶ 8:231, at 657 (TRG 2008). A witness cannot simply state conclusions without any                  |
| 3    | evidentiary basis. FRE Rule 602; see also Carmen v. San Francisco Unified School District, 237               |
| 4    | F.3d 1026, 1028 (9 <sup>th</sup> Cir. 2001) ("It is not enough for a witness to tell all she knows; she must |
| 5    | know all she tells.").   |
| 6    | Here, Ms. McDevitt has no personal knowledge as to what actions were taken by the                            |
| 7    | Board of Supervisors for Mendocino and Napa County on May 19, 2009 because she admittedly                    |
| 8    | did not attend those board meeting. (See Paragraphs 3 and 4.) Further, her declaration is void of            |
| 9    | any facts that would demonstrate her personal knowledge as to these facts. Therefore, the County             |
| 10   | respectfully requests that its objections be sustained.  |
| 11   | Supraimed Deviced  |
| 12   | Sustained Denied   |
| 13   |  |
| 14   | Paragraph 5  |
| 15   | Objection is made on the ground that the statements contained in this paragraph violate                      |
| 16   | the hearsay rule, as out of court statements cannot be introduced for the truth of the matter                |
| 17   | asserted. FRE Rule 801. Here, Ms. McDevitt attempts to attest to what she was told by an                     |
| 18   | unidentified person at Solano County. Clearly, these statements are hearsay and are inadmissible.            |
| 19   | FRE Rule 801.  |
| 20   | Sustained Denied   |
| 21   | SustainedDefiled   |
| 22   |  |
| 23   |  |
| 24   | Paragraph 6  |
| 25   | An objection is made on the grounds that Ms. McDevitt's statements lack foundation. A.I.                     |
| 26   |  |
| 27   | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts to substantiate the             |
| 28   | conclusions rendered by Ms. McDevitt, thereby making such statements pure speculation and                    |
| ·~ 1 | 1 A  |

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| 1   | inadmissible. Slevin, supra, 120 F.Supp 2d at 835-836. Furthermore, the statements appear to be               |
|-----|---|
| 2   | in the nature of expert testimony, and therefore have improperly been brought before this Court as            |
| 3   | there is no foundation as to Ms. McDevitt's expertise. FRE Rule 702; Daubert v. Merrell Dow                   |
| 4   | Pharmaceuticals, Inc., 509 U.S. 579, 595 (1993); Sepulveda, supra, 237 F.R.D. at 235.                         |
| 5   | Sustained Denied  |
| 6   |   |
| 7   |   |
| 8   | <u>DECLARATION OF DONNA BROWN</u>   |
| 9   | Paragraph 6   |
| 10  | Objection is made on the grounds that the statements contained in this paragraph violate                      |
| 11  | the hearsay rule as out of court statements cannot be introduced for the truth of the matter                  |
| 12  | asserted. FRE Rule 801. Here, Ms. Brown attempts to attest to what she was told by unidentified               |
| 13  | IHSS providers. Clearly, these statements are hearsay and are inadmissible.                                   |
| 14  | Sustained Denied  |
| 15  |   |
| 16  | Objection to the Entire Declaration   |
| 17  | The County hereby objects to the entirety of Ms. Brown's declaration on the grounds that                      |
| 18  | the evidence contained in the declaration is irrelevant and inadmissible as to the County.                    |
| 19  | Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is "Evidence               |
| 20  | having any tendency to make the existence of any fact that is of consequence to the determination             |
| 21  | of an action more probable or less probable than it would be without the evidence." FRE Rule                  |
| 22  | 401; United States v. Boulware, 384 F.3d 794, 805 (9 <sup>th</sup> Cir. 2004). Ms. Brown is not a resident of |
| 23  | Fresno County, thereby making her entire declaration irrelevant to the claims asserted against the            |
| 24  | County.   |
| 25  |   |
| 26  | Sustained Denied  |
| 27  |   |
| 28  | 5   |
| ow, |   |

| 1  |  |
|--|--|
| 2  | DECLARATION OF LISA BROWN  |
| 3  | Paragraph 12   |
| 4  | Objection is made on the grounds that Ms. Brown's statements lack foundation. A.I.                 |
| 5  | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 6  | conclusions rendered by Ms. Brown, thereby making such statements pure speculation and             |
| 7  | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 8  |  |
| 9  | Sustained Denied   |
| 10                                       |  |
| 11                                       | Paragraph 13   |
| 12                                       | Objection is made on the grounds that Ms. Brown's statements lack foundation. A.I.                 |
| 13                                       | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 14                                       | conclusions rendered by Ms. Brown, thereby making such statements pure speculation and             |
| 15                                       | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 16                                       |  |
| 17                                       | Sustained Denied   |
| 18                                       |  |
| 19                                       |  |
| 20                                       | DECLARATION OF LYDIA DOMINGUEZ   |
| 21                                       | Paragraph 6  |
| 22                                       | Objection is made on the grounds that Ms. Dominguez's statements lack foundation. A.I.             |
| 23                                       | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 24                                       | conclusions rendered by Ms. Dominguez, thereby making such statements pure speculation and         |
| 25                                       | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 26                                       |  |
| 27                                       | Sustained Denied   |
| 28``                                     |  |
| McCormick, Barstow,<br>Sheppard, Wayte & | 6  |
| CARRUTH LLP<br>5 RIVER PARK PLACE EAST   | OBJECTIONS AND MOTION TO STRIKE CERTAIN DECLARATIONS   |

| 1  | Objection to the Entire Declaration  |
|----|--|
| 2  | The County hereby objects to the entirety of Ms. Dominguez's declaration on the grounds            |
| 3  | that the evidence contained in the declaration is irrelevant and inadmissible as to the County     |
| 4  | Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is "Evidence    |
| 5  | having any tendency to make the existence of any fact that is of consequence to the determination  |
| 6  | of an action more probable or less probable than it would be without the evidence." FRE Rule       |
| 7  | 401; United States v. Boulware, supra, 384 F.3d at 805. Ms. Dominguez is not a resident of         |
| 8  | Fresno County, thereby making her entire declaration irrelevant to the claims asserted against the |
| 9  | County.  |
| 10 | System of Donied   |
| 11 | SustainedDenied  |
| 12 |  |
| 13 | DECLADATION OF DATEV MILLED  |
| 14 | Declaration of Patsy Miller  Declaration of Patsy Miller   |
| 15 | Paragraph 7  |
| 16 | Objection is made on the grounds that Ms. Miller's statements lack foundation. A.I. Credit         |
| 17 | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the        |
| 18 | conclusions rendered by Ms. Miller, thereby making such statements pure speculation and            |
| 19 | inadmissible. <i>Slevin</i> , <i>supra</i> , 120 F.Supp.2d at 835-836.                             |
| 20 | Sustained Denied   |
| 21 |  |
| 22 |  |
| 23 |  |
| 24 | Paragraph 8  |
| 25 | Objection is made on the grounds that Ms. Miller's statements lack foundation. A.I. Credit         |
| 26 | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the        |
| 27 | conclusions rendered by Ms. Miller, thereby making such statements pure speculation and            |
| 28 | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |

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| 1     | Sustained Denied  |
|-------|---|
| 2     |   |
| 3     |   |
| 4     | <u>DECLARATION OF SIA CHUE YANG</u>   |
| 5     | Paragraph 6   |
| 6     | Objection is made on the grounds that Ms. Yang's statements lack foundation. A.I. Credit    |
| 7     | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 8     | conclusions rendered by Ms. Yang, thereby making such statements pure speculation and       |
| 9     | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.                                      |
| 10    | Sustained Denied  |
| 11    | SustainedDefiled  |
| 12    |   |
| 13    |   |
| 14    | Paragraph 7   |
| 15    | Objection is made on the grounds that Ms. Yang's statements lack foundation. A.I. Credit    |
| 16    | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 17    | conclusions rendered by Ms. Yang, thereby making such statements pure speculation and       |
| 18    | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.                                      |
| 19    | Sustained Denied  |
| 20    | BustamedBenied  |
| 21    | ·   |
| 22    |   |
| 23    |   |
| 24    | Paragraph 8   |
| 25    | Objection is made on the grounds that Ms. Yang's statements lack foundation. A.I. Credit    |
| 26    | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 27    | conclusions rendered by Ms. Yang, thereby making such statements pure speculation and       |
| 28    | inadmissible. <i>Slevin</i> , <i>supra</i> , 120 F.Supp.2d at 835-836.                      |
| STOW, | 8   |

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| 1          | Sustained Denied  |
|------------|---|
| 2          | Sustained Defied  |
| 3          |   |
| 4          |   |
| 5          | Paragraph 9   |
| 6          | Objection is made on the grounds that Ms. Yang's statements lack foundation. A.I. Credit            |
| 7          | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the         |
| 8          | conclusions rendered by Ms. Yang, thereby making such statements pure speculation and               |
| 9          | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |
| 10         | Sustained Denied  |
| 11         |   |
| 12         |   |
| 13         |   |
| 14         | DECLARATION OF JULIE WEISSMAN-STEINBAUGH  |
| 15         | Objection to the Entire Declaration   |
| 16         | The County hereby objects to the entirety of Ms. Weissman-Steinbaugh's declaration on               |
| 17         | the grounds that the evidence contained in the declaration is irrelevant and inadmissible as to the |
| 18         | County. Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is       |
| 19         | "evidence having any tendency to make the existence of any fact that is of consequence to the       |
| 20         | determination of an action more probable or less probable than it would be without the evidence."   |
| 21         | FRE Rule 401; United States Boulware, supra, 384 F.3d at 805. Ms. Weissman-Steinbaugh is not        |
| 22         | a resident of Fresno County, thereby making her entire declaration irrelevant to the claims         |
| 23         | asserted against the County.  |
| 24         | Sustained Denied  |
| 25         |   |
| 26         |   |
| 27         |   |
| 28         |   |
| row,<br>≣& | 9   |

MCCORMICK, BARSTOW SHEPPARD, WAYTE & CARRUTH LLP 5 RIVER PARK PLACE EAST

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| 1          | Paragraph 6  |
|------------|--|
| 2          | Objection is made on the grounds that Ms. Weissman-Steinbaugh's statements lack                        |
| 3          | foundation. A.I. Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that     |
| 4          | substantiate the conclusions rendered by Ms. Weissman-Steinbaugh, thereby making such                  |
| 5          | statements pure speculation and inadmissible. <i>Slevin</i> , <i>supra</i> , 120 F.Supp.2d at 835-836. |
| 6          |  |
| 7          | Sustained Denied   |
| 8          |  |
| 9          | Paragraph 7  |
| 10         | Objection is made on the grounds that Ms. Weissman-Steinbaugh's statements lack                        |
| 11         | foundation. A.I. Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that     |
| 12         | substantiate the conclusions rendered by Ms. Weissman-Steinbaugh, thereby making such                  |
| 13         | statements pure speculation and inadmissible. <i>Slevin</i> , <i>supra</i> , 120 F.Supp.2d at 835-836. |
| 14         |  |
| 15         | Sustained Denied   |
| 16         |  |
| 17         | Paragraph 8  |
| 18         | Objection is made on the grounds that Ms. Weissman-Steinbaugh's statements lack                        |
| 19         | foundation. A.I. Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that     |
| 20         | substantiate the conclusions rendered by Ms. Weissman-Steinbaugh, thereby making such                  |
| 21         | statements pure speculation and inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.                 |
| 22  <br>23 | Sustained Denied   |
| 24         | SustainedDefied  |
| 25         |  |
| 26         | <u>DECLARATION OF LESLIE GORDON</u>  |
| 27         | Objection to the Entire Declaration  |
| 28         | The County hereby objects to the entirety of Ms. Gordon's declaration on the grounds that              |
| TOW,       | 10   |

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| 1           | the evidence contained in the declaration is irrelevant and inadmissible as to the County.         |
|-------------|--|
| 2           | Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is "evidence    |
| 3           | having any tendency to make the existence of any fact that is of consequence to the determination  |
| 4           | of an action more probable or less probable than it would be without the evidence." FRE Rule       |
| 5           | 401; United States, supra, 384 F.3d at 805. As Ms. Gordon is not a resident of Fresno County,      |
| 6           | her entire declaration is irrelevant to the claims asserted against the County.                    |
| 7           | Sustained Denied   |
| 8           | SustainedDefiled   |
| 9           |  |
| 10          | Paragraph 5  |
| 11          | Objection is made on the grounds that Ms. Gordon's statements lack foundation. A.I.                |
| 12          | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 13          | conclusions rendered by Ms. Gordon, thereby making such statements pure speculation and            |
| 14          | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 15          | Sustained Denied   |
| 16          |  |
| 17          |  |
| 18          | Paragraph 6  |
| 19          | Objection is made on the grounds that Ms. Gordon's statements lack foundation. A.I.                |
| 20          | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |
| 21          | conclusions rendered by Ms. Gordon, thereby making such statements pure speculation and            |
| 22          | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 23          | Sustained Denied   |
| 24          |  |
| 25          |  |
| 26          | Paragraph 7  |
| 27          | Objection is made on the grounds that Ms. Gordon's statements lack foundation. A.I.                |
| 20          |  |
| 28<br>stow, | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the |

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| 1           | conclusions rendered by Ms. Gordon, thereby making such statements pure speculation and  |
|-------------|--|
| 2           | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 3<br>4<br>5 | Sustained Denied   |
|             |  |
| 6 7         | DECLADATION OF CHADLENE AVEDS  |
| 8           | DECLARATION OF CHARLENE AYERS  Objection to the Entire Declaration   |
| 9           | Objection to the Entire Declaration.  The Country hardy chiests to the outinety of Ma. Around declaration on the arrow do that |
|             | The County hereby objects to the entirety of Ms. Ayers' declaration on the grounds that  |
| 0           | the evidence contained in the declaration is irrelevant and inadmissible as to the County.                                     |
| 11          | Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is "evidence                                |
| 12          | having any tendency to make the existence of any fact that is of consequence to the determination                              |
| 13          | of an action more probable or less probable than it would be without the evidence." FRE Rule                                   |
| 14          | 401; United States v. Boulware, supra, 384 F.3d at 805. Ms. Ayers is not a resident of Fresno                                  |
| 15          | County, thereby making her entire declaration irrelevant to the claims asserted against the                                    |
| 16          | County. Thus, the declaration should be stricken in its entirety.  |
| 17          | Sustained Denied   |
| 18          |  |
| 19          |  |
| 20          |  |
| 21          | Paragraph 5  |
| 22          | Objection is made on the grounds that Ms. Ayers' statements lack foundation. A.I. Credit                                       |
| 23          | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the                                    |
| 24          | conclusions rendered by Ms. Ayer, thereby making such statements pure speculation and  |
| 25<br>26    | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.   |
| 27          | Sustained Denied   |
| 28          |  |
| ow,<br>&    | 12   |

| 1  | Paragraph 7   |  |  |  |  |
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| 2  | Objection is made on the grounds that Ms. Ayers' statements lack foundation. A.I. Credi           |  |  |  |  |
| 3  | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate th        |  |  |  |  |
| 4  | conclusions rendered by Ms. Ayer, thereby making such statements pure speculation and             |  |  |  |  |
| 5  | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |  |  |  |  |
| 6  | Suprained Devied  |  |  |  |  |
| 7  | Sustained Denied  |  |  |  |  |
| 8  |   |  |  |  |  |
| 9  | Paragraph 8   |  |  |  |  |
| 10 | Objection is made on the grounds that Ms. Ayers' statements lack foundation. A.I. Credi           |  |  |  |  |
| 11 | Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the       |  |  |  |  |
| 12 | conclusions rendered by Ms. Ayer, thereby making such statements pure speculation and             |  |  |  |  |
| 13 | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |  |  |  |  |
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| 20 |   |  |  |  |  |
| 21 | <u>DECLARATION OF WILLIE BEATRICE SHEPPARD</u>  |  |  |  |  |
| 22 | Objection to the Entire Declaration   |  |  |  |  |
| 23 | The County hereby objects to the entirety of Mr. Sheppard's declaration on the grounds            |  |  |  |  |
| 24 | that the evidence contained in the declaration is irrelevant and inadmissible as to the County    |  |  |  |  |
| 25 | Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is "evidence   |  |  |  |  |
| 26 | having any tendency to make the existence of any fact that is of consequence to the determination |  |  |  |  |
| 27 | of an action more probable or less probable than it would be without the evidence." FRE Rule      |  |  |  |  |
| 28 | 401: United States v. Boulware, supra 384 F.3d at 805. Mr. Shennard is not a resident of Fresno   |  |  |  |  |

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| 1   | County, thereby making his entire declaration irrelevant to the claims asserted against the County. |  |  |  |  |  |
|---|---|--|--|--|--|--|
| 2   | Thus, the declaration should be stricken in its entirety.   |  |  |  |  |  |
| 3   |   |  |  |  |  |  |
| 4   | Sustained Denied  |  |  |  |  |  |
| Paragraph 5  Objection is made on the grounds that Mr. Sheppard's statements lack four  |   |  |  |  |  |  |
| 7   | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the  |  |  |  |  |  |
| 8 conclusions rendered by Mr. Sheppard, thereby making such statements pure speculation |   |  |  |  |  |  |
| 9   | inadmissible. <i>Slevin</i> , <i>supra</i> , 120 F.Supp.2d at 835-836.                              |  |  |  |  |  |
| 10  | mammission sterm, supras, 120 1 is appida at 035 050.   |  |  |  |  |  |
| 11  | Sustained Denied  |  |  |  |  |  |
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| 14  | Paragraph 6   |  |  |  |  |  |
| 15  | Objection is made on the grounds that Mr. Sheppard's statements lack foundation. A.I.               |  |  |  |  |  |
| 16  | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the  |  |  |  |  |  |
| 17  | conclusions rendered by Mr. Sheppard, thereby making such statements pure speculation and           |  |  |  |  |  |
| 18  | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |  |  |  |  |  |
| 19  | Sustained Denied  |  |  |  |  |  |
| 20  | Paragraph 8   |  |  |  |  |  |
| 21  | Objection is made on the grounds that Mr. Sheppard's statements lack foundation. A.I.               |  |  |  |  |  |
| 22  | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the  |  |  |  |  |  |
| 23  | conclusions rendered by Mr. Sheppard, thereby making such statements pure speculation and           |  |  |  |  |  |
| 24  | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |  |  |  |  |  |
| 25  | Sustained Denied  |  |  |  |  |  |
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| 1                                 | Paragraph 9   |  |  |  |  |  |
|-----------------------------------|---|--|--|--|--|--|
| 2                                 | Objection is made on the grounds that Mr. Sheppard's statements lack foundation. A.I.               |  |  |  |  |  |
| 3                                 | 3 Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate    |  |  |  |  |  |
| 4                                 | conclusions rendered by Mr. Sheppard, thereby making such statements pure speculation and           |  |  |  |  |  |
| 5                                 | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |  |  |  |  |  |
| 6                                 |   |  |  |  |  |  |
| 7                                 | SustainedDenied   |  |  |  |  |  |
| 8                                 | DECLARATION OF HERBERT M. MEYER   |  |  |  |  |  |
| 9                                 | Objection to the Entire Declaration.  |  |  |  |  |  |
| 10                                | The County hereby objects to the entirety of Mr. Meyer's declaration on the grounds that            |  |  |  |  |  |
| 11                                | the evidence contained in the declaration is irrelevant and inadmissible as to the County.          |  |  |  |  |  |
| 12                                | Evidence that is not relevant is not admissible. FRE Rule 402. "Relevant evidence" is "evidence     |  |  |  |  |  |
| 13                                | having any tendency to make the existence of any fact that is of consequence to the determination   |  |  |  |  |  |
| 14                                | of an action more probable or less probable than it would be without the evidence." FRE Rule        |  |  |  |  |  |
| 15                                | 401; United States v. Boulware, supra, 384 F.3d at 805. Mr. Meyer is not a resident of Fresno       |  |  |  |  |  |
| 16                                | County, thereby making his entire declaration irrelevant to the claims asserted against the County. |  |  |  |  |  |
| 17                                | Thus, the declaration should be stricken in its entirety.   |  |  |  |  |  |
| 18                                | Sustained Denied  |  |  |  |  |  |
| 19                                | Sustained Defined   |  |  |  |  |  |
| 20                                |   |  |  |  |  |  |
| 21                                | Paragraph 7   |  |  |  |  |  |
| 22                                | Objection is made on the grounds that Mr. Meyer's statements lack foundation. A.I.                  |  |  |  |  |  |
| 23                                | Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the  |  |  |  |  |  |
| 24                                | conclusions rendered by Mr. Meyer, thereby making such statements pure speculation and              |  |  |  |  |  |
| 25                                | inadmissible. Slevin, supra, 120 F.Supp.2d at 835-836.  |  |  |  |  |  |
| 26                                | Sustained Denied  |  |  |  |  |  |
| 27                                | Sustained Defied  |  |  |  |  |  |
| 28                                |   |  |  |  |  |  |
| , BARSTOW,<br>, WAYTE &<br>TH LLP | OBJECTIONS AND MOTION TO STRIKE CERTAIN DECLARATIONS  |  |  |  |  |  |

McCormick, SHEPPARD, CARRUT 5 RIVER PARK PLACE EAST FRESNO, CA 93720-1501

#### 1 Paragraph 8 2 Objection is made on the grounds that Mr. Meyer's statements lack foundation. A.I. 3 Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the 4 conclusions rendered by Mr. Meyer, thereby making such statements pure speculation and 5 inadmissible. *Slevin*, *supra*, 120 F.Supp.2d at 835-836. 6 Sustained Denied 7 8 9 Paragraph 9 10 Objection is made on the grounds that Mr. Meyer's statements lack foundation. A.I. 11 Credit Corp., supra, 265 F.3d at 637. The declaration does not contain facts that substantiate the 12 conclusions rendered by Mr. Meyer, thereby making such statements pure speculation and 13 inadmissible. *Slevin*, *supra*, 120 F.Supp.2d at 835-836. 14 Denied Sustained 15 16 17 Paragraph 10 18 19

Objection is made on the grounds that Mr. Meyer's statements lack foundation. A.I. Credit Corp., supra, 265 F.3d at 637. Mr. Meyer's statements amount to nothing more than speculation as to what may or may not happen. As a result, there are insufficient facts to establish the basis for this opinion. Slevin, supra, 120 F. Supp 2d. at 835-836 (stating that a declaration based on speculation is irrelevant and should not be considered). Moreover, the statements appear to be of the nature of expert testimony, and therefore are improperly before this court as there are no facts that would demonstrate that Mr. Meyer is qualified to provide expert testimony. FRE Rule 702; see also Sepulveda, supra, 237 F.R.D. at 235 (stating that the Court "must ensure that the basis of the expert opinion is not so flawed that it would be inadmissible as a matter of law.", quoting In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d at 135.

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| 1     |                        | Sustained | Denied  |
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| 5     | Dated: January 28, 2   | 3010      | McCORMICK, BARSTOW, SHEPPARD, WAYTE & CABRUTH LLP   |
| 6     |                        |           | () in AX  |
| 7     |                        |           | By: Michael G. Woods  |
| 8     |                        |           | Michael G. Woods Timothy J. Buchanan Mandy L. Jeffcoach Attorneys for Defendant COUNTY OF FRESNO and FRESNO |
| 9     |                        |           | Attorneys for Defendant   |
| 10    |                        |           | COUNTY IN-HOME SUPPORTIVE<br>SERVICES PUBLIC AUTHORITY  |
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