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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **EASTERN DIVISION – RIVERSIDE**

18 FAOUR ABDALLAH FRAIHAT, *et al.*,
19 Plaintiffs,
20 v.
21 U.S. IMMIGRATION AND CUSTOMS
22 ENFORCEMENT, *et al.*,
23 Defendants.

Case No.: 19-cv-01546-JGB(SHKx)

**PLAINTIFFS’ RESPONSE TO
DEFENDANTS’ EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF KEREN
ZWICK**

Date: April 8, 2020

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1 Plaintiffs hereby respond to Defendants’ Evidentiary Objections to the
2 Declaration of Keren Zwick, ECF No. 95-20, filed April 3, 2020. As a general
3 response, Plaintiffs note that, in ruling on a motion for preliminary injunction, the
4 Court may consider inadmissible evidence “when to do so serves the purpose of
5 preventing irreparable harm before trial.” *Flynt Distrib. Co. v. Harvey*, 734 F.2d
6 1389, 1394 (9th Cir. 1984). In addition, Plaintiffs respond to Defendants’ specific
7 evidentiary objections as follows:

8 **1. MATERIAL OBJECTED TO:**

9 Across the board, NIJC clients express a palpable fear at the vulnerability
10 they face while remaining in detention during the COVID-19 pandemic. They are
11 worried not only for themselves but for their families with whom they have
12 difficulty communicating outside the detention centers. This fear is exacerbated by
13 a universal perception that little to nothing has changed in the operation of the
14 detention centers where they are housed since the onset of the pandemic. Our
15 clients also universally report that neither ICE nor facility staff have provided them
16 with meaningful information or education about the pandemic, leaving them to
17 manage their anxieties—and medical issues—with little or no reliable information
18 about what precautionary measures they could be taking. Declaration of Keren
19 Zwick (“Zwick Decl.”) ¶ 8.

20 **OBJECTION(S):**

21 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
22 speculation.

23 FRE 802: Hearsay.

24 **RESPONSE:**

25 Ms. Zwick has gained personal knowledge through her role as Director of
26 Litigation at the National Immigrant Justice Center (“NIJC”). Zwick Decl. ¶ 1.
27 She has personal knowledge of the information relating to the conditions facing
28 migrants in immigration detention centers based on her work as a litigator and

1 direct service provider focusing on asylum and protection-based claims for
2 individuals in immigration detention. *Id.* at ¶¶ 1-2. Ms. Zwick’s statement is not
3 based on speculation but rather personal knowledge of the conditions NIJC’s
4 clients are subjected to while detained in Defendant’s custody.

5 A district court may consider hearsay in deciding whether to issue a
6 preliminary injunction. *See, e.g., Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th
7 Cir. 2009); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir.
8 1988) (en banc). Even assuming *arguendo* the Court was not permitted to consider
9 hearsay in deciding Plaintiffs’ motions, Ms. Zwick’s statements are subject to a
10 hearsay exception. In light of the unique circumstances presented by this case, the
11 residual exception to the hearsay rule would apply. *See* FRE 807. Plaintiffs are
12 detained with extremely limited access to counsel, and this matter is progressing
13 rapidly in light of the COVID-19 pandemic. The ability of Plaintiffs’ counsel to
14 obtain declarations from the individuals with whom Ms. Zwick spoke is hindered
15 by the fact that the declarants are detained in the custody of Defendants. Requiring
16 Plaintiffs’ counsel to obtain declarations from all of the individuals with whom Ms.
17 Zwick spoke would be impractical and unreasonable. Ms. Zwick has sworn under
18 oath that the details in her declaration are “true and correct.” Zwick Decl. p.
19 5. Her statements are therefore sufficiently reliable and trustworthy under
20 FRE 807.

21 **2. MATERIAL OBJECTED TO:**

22 Not one NIJC client in detention reports receiving reliable information or
23 training about what COVID-19 is and precautionary measures that might be taken
24 to halt its spread. Most clients reported that they received no information
25 whatsoever from ICE or facility staff, much less medical staff, about the virus, and
26 were learning what they knew almost exclusively from watching television.

27 Zwick Decl. ¶ 9.
28

1 **OBJECTION(S):**

2 FRE 802: Hearsay.

3 **RESPONSE:**

4 A district court may consider hearsay in deciding whether to issue a
5 preliminary injunction. *See, e.g., Johnson, 572 F.3d at 1083; Republic of the*
6 *Philippines, 862 F.2d at 1363.* Even assuming *arguendo* the Court was not
7 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
8 statements are subject to a hearsay exception. In light of the unique circumstances
9 presented by this case, the residual exception to the hearsay rule would apply.
10 *See* FRE 807. Plaintiffs are detained with extremely limited access to counsel, and
11 this matter is progressing rapidly in light of the COVID-19 pandemic. The ability
12 of Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
13 Zwick spoke is hindered by the fact that the declarants are detained in the custody
14 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
15 individuals with whom Ms. Zwick spoke would be impractical and
16 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
17 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
18 reliable and trustworthy under FRE 807.

19 **3. MATERIAL OBJECTED TO:**

20 Two clients detained at the Jerome Combs and another client detained at the
21 Aurora Contract Facility reported that no one at the facility had communicated
22 directly with them about the virus, but that they learned about the virus from the
23 news. Zwick Decl. ¶ 10.

24 **OBJECTION(S):**

25 FRE 802: Hearsay.

26 **RESPONSE:**

27 A district court may consider hearsay in deciding whether to issue a
28 preliminary injunction. *See, e.g., Johnson, 572 F.3d at 1083; Republic of the*

1 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
2 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
3 statements are subject to a hearsay exception. In light of the unique circumstances
4 presented by this case, the residual exception to the hearsay rule would apply. *See*
5 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
6 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
7 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
8 Zwick spoke is hindered by the fact that the declarants are detained in the custody
9 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
10 individuals with whom Ms. Zwick spoke would be impractical and
11 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
12 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
13 reliable and trustworthy under FRE 807.

14 **4. MATERIAL OBJECTED TO:**

15 Another client detained at McHenry reported that he knew about the virus
16 because visitation was cancelled, and an official told him that if one person in
17 detention got in contact with coronavirus, then everyone might be "down for a
18 minute," but if the detainees got sick they wouldn't let them go to the doctor.
19 Other clients at McHenry confirmed that they learned of the virus only through the
20 television, one noting he was concerned by news reports that people who are
21 incarcerated are at greater risk. Zwick Decl. ¶ 11.

22 **OBJECTION(S):**

23 FRE 802: Hearsay.

24 **RESPONSE:**

25 A district court may consider hearsay in deciding whether to issue a
26 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
27 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
28 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's

1 statements are subject to a hearsay exception. In light of the unique circumstances
2 presented by this case, the residual exception to the hearsay rule would apply.
3 *See* FRE 807. Plaintiffs are detained with extremely limited access to counsel, and
4 this matter is progressing rapidly in light of the COVID-19 pandemic. The ability
5 of Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
6 Zwick spoke is hindered by the fact that the declarants are detained in the custody
7 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
8 individuals with whom Ms. Zwick spoke would be impractical and
9 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
10 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
11 reliable and trustworthy under FRE 807.

12 **5. MATERIAL OBJECTED TO:**

13 One NIJC client at Pulaski did report that an ICE officer told them about the
14 virus, but this notification appeared to go no further than explaining that detainees
15 are at risk of getting the virus, and that there was a risk that they had already gotten
16 it. The officer, our client reported, told them not to panic. Zwick Decl. ¶ 12.

17 **OBJECTION(S):**

18 FRE 802: Hearsay.

19 **RESPONSE:**

20 A district court may consider hearsay in deciding whether to issue a
21 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
22 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
23 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
24 statements are subject to a hearsay exception. In light of the unique circumstances
25 presented by this case, the residual exception to the hearsay rule would apply. *See*
26 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
27 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
28 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.

1 Zwick spoke is hindered by the fact that the declarants are detained in the custody
2 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
3 individuals with whom Ms. Zwick spoke would be impractical and
4 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
5 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
6 reliable and trustworthy under FRE 807.

7 **6. MATERIAL OBJECTED TO:**

8 Two clients in Dodge similarly reported receiving no information about the
9 virus other than through posted signs or what they see on the news. Zwick Decl. ¶
10 13.

11 **OBJECTION(S):**

12 FRE 802: Hearsay.

13 **RESPONSE:**

14 A district court may consider hearsay in deciding whether to issue a
15 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
16 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
17 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
18 statements are subject to a hearsay exception. In light of the unique circumstances
19 presented by this case, the residual exception to the hearsay rule would apply. *See*
20 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
21 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
22 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
23 Zwick spoke is hindered by the fact that the declarants are detained in the custody
24 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
25 individuals with whom Ms. Zwick spoke would be impractical and
26 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
27 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
28 reliable and trustworthy under FRE 807.

1 **7. MATERIAL OBJECTED TO:**

2 Learning of the pandemic through the television and correspondence with
3 family and friends on the outside, but without reliable information or training on
4 precautionary measures from staff, leaves our clients in detention with more
5 questions than answers as to how to protect themselves and not others. One of the
6 men detained at the Jerome Combs who learned of the virus through the news
7 explained that “everyone is anxious” because they have been watching the news
8 and seeing recommendations that people not cluster in groups of 10 or more
9 people, which is impossible at that facility because it houses 48 people per block.
10 Zwick Decl. ¶ 14.

11 **OBJECTION(S):**

12 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
13 speculation.

14 FRE 802: Hearsay.

15 **RESPONSE:**

16 Ms. Zwick has gained personal knowledge through her role as Director of
17 Litigation at NIJC. Zwick Decl. ¶ 1. She has personal knowledge of the
18 information relating to the conditions facing migrants in immigration detention
19 centers based on her work as a litigator and direct service provider focusing on
20 asylum and protection-based claims for individuals in immigration detention. *Id.*
21 at ¶¶ 1-2. Ms. Zwick’s statement is not based on speculation but rather personal
22 knowledge of the conditions NIJC’s clients are subjected to while detained in
23 Defendant’s custody.

24 A district court may consider hearsay in deciding whether to issue a
25 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
26 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
27 permitted to consider hearsay in deciding Plaintiffs’ motions, Ms. Zwick’s
28 statements are subject to a hearsay exception. In light of the unique circumstances

1 presented by this case, the residual exception to the hearsay rule would apply. *See*
2 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
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4 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
5 Zwick spoke is hindered by the fact that the declarants are detained in the custody
6 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
7 individuals with whom Ms. Zwick spoke would be impractical and
8 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
9 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
10 reliable and trustworthy under FRE 807.

11 **8. MATERIAL OBJECTED TO:**

12 NIJC clients all report that little to nothing has changed since the onset of
13 the COVID-19 pandemic with regard to their access to supplies that would allow
14 them to take precautionary measures to protect their health and the health of others
15 detained with them, such as soap, hand sanitizer, or other cleaning supplies. Zwick
16 Decl. ¶ 15.

17 **OBJECTION(S):**

18 FRE 802: Hearsay.

19 **RESPONSE:**

20 A district court may consider hearsay in deciding whether to issue a
21 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
22 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
23 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
24 statements are subject to a hearsay exception. In light of the unique circumstances
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26 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
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28 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.

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2 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
3 individuals with whom Ms. Zwick spoke would be impractical and
4 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
5 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
6 reliable and trustworthy under FRE 807.

7 **9. MATERIAL OBJECTED TO:**

8 One NIJC client at Jerome Combs meets the CDC definition of a person of
9 higher risk for COVID-19 because he suffers from diabetes and high blood
10 pressure. Yet he reports that the facility has not "done much of anything" in
11 response to COVID-19. As far as he has observed, there is no additional presence
12 of medical personnel at the facility, and the staff has not asked him about
13 symptoms at all. He additionally noted that he and other immigrants in detention
14 do not have access to any extra cleaning supplies to keep their living areas
15 sanitized. Zwick Decl. ¶ 16.

16 **OBJECTION(S):**

17 FRE 602: Lack of personal knowledge, failure to lay proper foundation,
18 speculation.

19 FRE 802: Hearsay.

20 **RESPONSE:**

21 Ms. Zwick has gained personal knowledge through her role as Director of
22 Litigation at NIJC. Zwick Decl. ¶ 1. She has personal knowledge of the
23 information relating to the conditions facing migrants in immigration detention
24 centers based on her work as a litigator and direct service provider focusing on
25 asylum and protection-based claims for individuals in immigration detention. *Id.*
26 at ¶¶ 1-2. Ms. Zwick's statement is not based on speculation but rather personal
27 knowledge of the conditions NIJC's clients are subjected to while detained in
28 Defendant's custody.

1 A district court may consider hearsay in deciding whether to issue a
2 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
3 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
4 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
5 statements are subject to a hearsay exception. In light of the unique circumstances
6 presented by this case, the residual exception to the hearsay rule would apply. *See*
7 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
8 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
9 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
10 Zwick spoke is hindered by the fact that the declarants are detained in the custody
11 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
12 individuals with whom Ms. Zwick spoke would be impractical and
13 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
14 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
15 reliable and trustworthy under FRE 807.

16 **10.MATERIAL OBJECTED TO:**

17 Across all facilities where NIJC clients are detained, our clients report that
18 they lack ready access to soap and hand sanitizer. Two NIJC clients at McHenry
19 report that they and others in detention do not have access to hand sanitizer or
20 cleaning supplies and can only access soap through the commissary, which is
21 unavailable for those lacking funds. Zwick Decl. ¶ 17.

22 **OBJECTION(S):**

23 FRE 802: Hearsay.

24 **RESPONSE:**

25 A district court may consider hearsay in deciding whether to issue a
26 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
27 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
28 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's

1 statements are subject to a hearsay exception. In light of the unique circumstances
2 presented by this case, the residual exception to the hearsay rule would apply. *See*
3 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
4 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
5 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.
6 Zwick spoke is hindered by the fact that the declarants are detained in the custody
7 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
8 individuals with whom Ms. Zwick spoke would be impractical and
9 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
10 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
11 reliable and trustworthy under FRE 807.

12 **11. MATERIAL OBJECTED TO:**

13 Another NIJC client at Otay Mesa, noted that while he and other immigrants
14 in detention have access to soap they do not always have access to clean water, and
15 have no access to disinfectant or other cleaning supplies even though their living
16 spaces are very dirty. Zwick Decl. ¶ 18.

17 **OBJECTION(S):**

18 FRE 802: Hearsay.

19 **RESPONSE:**

20 A district court may consider hearsay in deciding whether to issue a
21 preliminary injunction. *See, e.g., Johnson*, 572 F.3d at 1083; *Republic of the*
22 *Philippines*, 862 F.2d at 1363. Even assuming *arguendo* the Court was not
23 permitted to consider hearsay in deciding Plaintiffs' motions, Ms. Zwick's
24 statements are subject to a hearsay exception. In light of the unique circumstances
25 presented by this case, the residual exception to the hearsay rule would apply. *See*
26 FRE 807. Plaintiffs are detained with extremely limited access to counsel, and this
27 matter is progressing rapidly in light of the COVID-19 pandemic. The ability of
28 Plaintiffs' counsel to obtain declarations from the individuals with whom Ms.

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2 of Defendants. Requiring Plaintiffs' counsel to obtain declarations from all of the
3 individuals with whom Ms. Zwick spoke would be impractical and
4 unreasonable. Ms. Zwick has sworn under oath that the details in her declaration
5 are "true and correct." Zwick Decl. p. 5. Her statements are therefore sufficiently
6 reliable and trustworthy under FRE 807.

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1 DATED: April 8, 2020

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3 Respectfully Submitted,

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