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6 Attorneys for Non-Party,  
 MARION FOX

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT**

WADE ROBSON, an individual,  
 Plaintiff,  
 vs.  
 MJJ PRODUCTIONS, INC., a California  
 corporation; MJJ VENTURES, INC., a  
 California corporation; and DOES 4 to 50,  
 inclusive,  
 Defendants.

) Case No. BC508502  
 ) [Related to LASC Case No. BC545264]  
 )  
 ) *[Assigned to Hon. Mark A. Young]*  
 )  
 ) Unlimited Civil Case  
 ) Amount in excess of \$25,000  
 )  
 ) **NON-PARTY MARION FOX’S**  
 ) **EVIDENTIARY OBJECTIONS TO**  
 ) **DECLARATION OF COURTNEY**  
 ) **PENDRY, ESQ. IN SUPPORT OF**  
 ) **PLAINTIFF’S MOTION FOR**  
 ) **RECONSIDERATION**  
 )  
 ) Date: December 4, 2020  
 ) Time: 8:30 a.m.  
 ) Dept: M  
 ) Reservation ID: 561754203612  
 )  
 ) Action filed: May 10, 2013  
 ) Trial Date: June 14, 2021

1 Non-Party Marion Fox (“Fox”), through her attorney of record, respectfully submits the  
2 following evidentiary objections to the October 5, 2020 Declaration of Courtney Pendry, Esq.  
3 submitted in support of Plaintiff Wade Robson’s Motion for Reconsideration of Order Granting  
4 Nonparty Marion Fox’s Motion for Protective Order and Request for Sanctions, Pursuant to *C.C.P.* §  
5 1008.

6 **I.**

7 **SUMMARY OF APPLICABLE LAW**

8 **A. Affidavits And Declarations:**

9 “The true test of the sufficiency of an affidavit is whether it has been drawn in such a manner  
10 that perjury could be charged thereon if any material allegation contained therein is false.” People v.  
11 Thompson (1935) 5 Cal.App.2d 655, 664.

12 “Personal knowledge and competency must be shown in supporting the supporting and  
13 opposing affidavits and declarations.” Hayman v. Block (1986) 176 Cal. App. 3d 629, 639.

14 “The affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts.”  
15 Eisenberg v. Alameda Newspapers, Inc. (1990) 74 Cal. App. 4th 1359, 1390.

16 “Matters which would be excluded under the rules of evidence if proffered by a witness in a  
17 trial as hearsay, conclusions or impermissible opinions, must be disregarded in supporting  
18 affidavits.” Id.

19 “[A]n affidavit is not competent evidence, although made under oath, because it is hearsay.”  
20 Estate of Horman (1968) 265 Cal. App. 2d 796, 805.

21 “Affidavits are not in the nature of the best evidence by which to prove issuable facts. They  
22 rank on no higher plane for that purpose than hearsay evidence.” Lacrabere v. Wise (1904) 141 Cal.  
23 554, 556.

24 “Understandings” are ultimate conclusions by inference without evidentiary support. See,  
25 Eisenberg v. Alameda Newspapers, Inc. (1990) 74 Cal. App. 4th 1359, 1390.

26 **B. Documentary Evidence:**

27 “Authentication of a writing is required before it, or any secondary evidence of its content  
28 may be received in evidence.” California Evidence Code § 1401.

1 “Computer printouts are admissible and are presumed to be an accurate representation of the  
2 data in the computer. If offered for the truth, however, they must qualify under some hearsay  
3 exception . . . .” Aguimatang v. Cal. State Lottery (1991) 234 Cal. App. 3d 769, 797.

4 **II.**

5 **OBJECTIONS TO THE DECLARATION OF COURTNEY PENDRY, ESQ.**

6 **Objection No. 1:**

7 Fox hereby objects to, and moves to strike, that portion of Paragraph 3 of the Declaration of  
8 Courtney Pendry, Esq. (¶ 3, 1:10-12) that reads as follows:

9 “On or about August 17, 2017, my office and Mr. Sean M. Hardy exchanged meet  
10 and confer correspondence regarding Spence’s deposition. These efforts were  
11 ultimately unsuccessful, which led to counsel for Fox filing a Motion for Protective  
12 Order.

12 **Grounds for Objection:**

- 13 1. Lack of foundation (Evid. Code, §403).
- 14 2. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App.  
15 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish  
16 cause of action and was “replete with hearsay, conclusions and personal  
17 opinion[.]”).
- 18 3. Hearsay (Evid. Code, §1200).
- 19 4. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106  
20 Cal.App.4th 1, 15).
- 21 5. Irrelevant (Evid. Code, §§ 210, 350-351).

22  
23 **Ruling on the Objection:**

24 Sustained: \_\_\_\_\_ Judge: \_\_\_\_\_

25 Overruled: \_\_\_\_\_

26 **Objection No. 2:**

27 Fox hereby objects to, and moves to strike, that portion of Paragraph 4 of the Declaration of  
28 Courtney Pendry, Esq. (¶ 4, 1: 13-16) that reads as follows:

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“In light of this matter being on-appeal during the pendency of these motions (actually, having been filed then removed from calendar pursuant to the appellate state), Plaintiff’s counsel could not have addressed this issue earlier, nor could have addressed it in briefing in 2017 (as the law did not even **exist** yet).”

**Grounds for Objection:**

1. Lack of foundation (Evid. Code, §403).
2. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App. 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish cause of action and was “replete with hearsay, conclusions and personal opinion[.]”).
3. Hearsay (Evid. Code, §1200).
4. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106 Cal.App.4th 1, 15).
5. Irrelevant (Evid. Code, §§ 210, 350-351).
6. Improper factual conclusion (People v. Superior Court of Los Angeles County (1967) 248 Cal.App.2d 276, 281 (A declaration that the conduct of plaintiff’s representatives "constitutes annoyance, embarrassment, harassment and a substantial interference with the vested contract relationship between these defendants and their customers" was nothing more than the conclusion of the declarant having no evidentiary value).
7. Violative of Code of Civil Procedure Section 1008(a). Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839 (“Courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory explanation for not having presented the new or different information earlier.”); *see also* In re Marriage of Drake (1997) 53 Cal.App.4th 1139, 1168 (“No credible explanation was offered concerning James’s failure to obtain this evidence earlier.”).
8. Improper opinion testimony. (Evid. Code, §§ 800, 801).

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**Ruling on the Objection:**

Sustained: \_\_\_\_\_ Judge: \_\_\_\_\_  
Overruled: \_\_\_\_\_

**Objection No. 3:**

Fox hereby objects to, and moves to strike, that portion of Paragraph 4 of the Declaration of Courtney Pendry, Esq. (¶ 4, 1:16-17) that reads as follows:

“Plaintiff’s counsel, however, attempted to raise the issue at the hearing on September 24, 2020 with respect to changes in §340.1,”

**Grounds for Objection:**

1. Lack of foundation (Evid. Code, §403).
2. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App. 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish cause of action and was “replete with hearsay, conclusions and personal opinion[.]”).
3. Hearsay (Evid. Code, §1200).
4. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106 Cal.App.4th 1, 15).
5. Irrelevant (Evid. Code, §§ 210, 350-351).

**Ruling on the Objection:**

Sustained: \_\_\_\_\_ Judge: \_\_\_\_\_  
Overruled: \_\_\_\_\_

**Objection No. 4:**

Fox hereby objects to, and moves to strike, that portion of Paragraph 5 of the Declaration of Courtney Pendry, Esq. (¶ 5, 1:19-21) that reads as follows:

“In 2017 when Fox filed her Motion for Protective Order and Plaintiff filed his Opposition, the language of *C.C.P.* § 340.1(d) **did not** provide for the issuance of treble damages related to a cover up.”

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**Grounds for Objection:**

- 1. Legal Conclusion (McClatchy Newspapers v. Superior Court of Sacramento County (1945) 26 Cal.2d 386, 396; Johnson v. Superior Court for Santa Barbara County (1968) 258 Cal.App.2d 829, 835; Lee v. Superior Court (2009) 177 Cal.App.4th 1108, 1129; Park v. First American Title Co. (2011) 201 Cal.App.4th 1418, 1427).
- 2. Lack of foundation (Evid. Code, §403).
- 3. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App. 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish cause of action and was “replete with hearsay, conclusions and personal opinion[.]”).
- 4. Hearsay (Evid. Code, §1200).
- 5. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106 Cal.App.4th 1, 15).
- 6. Irrelevant (Evid. Code, §§ 210, 350-351).
- 7. Improper opinion testimony. (Evid. Code, §§ 800, 801).

**Ruling on the Objection:**

Sustained: \_\_\_\_\_ Judge: \_\_\_\_\_

Overruled: \_\_\_\_\_

**Objection No. 5:**

Fox hereby objects to, and moves to strike, that portion of Paragraph 5 of the Declaration of Courtney Pendry, Esq. (¶ 5, 1:21-23) that reads as follows:

“As such, the Plaintiff’s arguments regarding his entitlement to treble damages pursuant to C.C.P. §340.1(d) for the Defendant’s coverup of the Plaintiff’s sexual abuse could not have been previously made.”

**Grounds for Objection:**

- 1. Legal Conclusion (McClatchy Newspapers v. Superior Court of Sacramento

1                    County (1945) 26 Cal.2d 386, 396; Johnson v. Superior Court for Santa Barbara  
2                    County (1968) 258 Cal.App.2d 829, 835; Lee v. Superior Court (2009) 177  
3                    Cal.App.4th 1108, 1129; Park v. First American Title Co. (2011) 201 Cal.App.4th  
4                    1418, 1427).

- 5                    2.        Lack of foundation (Evid. Code, §403).
- 6                    3.        Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App.  
7                    2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish  
8                    cause of action and was “replete with hearsay, conclusions and personal  
9                    opinion[.]”).
- 10                    4.        Hearsay (Evid. Code, §1200).
- 11                    5.        Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106  
12                    Cal.App.4th 1, 15).
- 13                    6.        Irrelevant (Evid. Code, §§ 210, 350-351).
- 14                    7.        Improper factual conclusion (People v. Superior Court of Los Angeles County (1967)  
15                    248 Cal.App.2d 276, 281 (A declaration that the conduct of plaintiff's representatives  
16                    "constitutes annoyance, embarrassment, harassment and a substantial interference  
17                    with the vested contract relationship between these defendants and their customers"  
18                    was nothing more than the conclusion of the declarant having no evidentiary value).
- 19                    8.        Violative of Code of Civil Procedure Section 1008(a). Even Zohar Construction &  
20                    Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839 (“Courts  
21                    have construed section 1008 to require a party filing an application for  
22                    reconsideration or a renewed application to show diligence with a satisfactory  
23                    explanation for not having presented the new or different information earlier.”); *see*  
24                    *also* In re Marriage of Drake (1997) 53 Cal.App.4th 1139, 1168 (“No  
25                    credible explanation was offered concerning James's failure to obtain this evidence  
26                    earlier.”).
- 27                    9.        Improper opinion testimony. (Evid. Code, §§ 800, 801).

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**Ruling on the Objection:**

Sustained: \_\_\_\_\_

Judge: \_\_\_\_\_

Overruled: \_\_\_\_\_

**Objection No. 6:**

Fox hereby objects to, and moves to strike, that portion of Paragraph 5 of the Declaration of Courtney Pendry, Esq. (§ 5, 1:23-25) that reads as follows:

“Accordingly, the Plaintiff has fulfilled its diligence requirements in filing the instant Motion for Reconsideration pursuant to the enactment of new law, which came into effect only at the beginning of this year.”

**Grounds for Objection:**

1. Legal Conclusion (McClatchy Newspapers v. Superior Court of Sacramento County (1945) 26 Cal.2d 386, 396; Johnson v. Superior Court for Santa Barbara County (1968) 258 Cal.App.2d 829, 835; Lee v. Superior Court (2009) 177 Cal.App.4th 1108, 1129; Park v. First American Title Co. (2011) 201 Cal.App.4th 1418, 1427).
2. Lack of foundation (Evid. Code, §403).
3. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App. 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish cause of action and was “replete with hearsay, conclusions and personal opinion[.]”).
4. Hearsay (Evid. Code, §1200).
5. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106 Cal.App.4th 1, 15).
6. Irrelevant (Evid. Code, §§ 210, 350-351).
7. Improper factual conclusion (People v. Superior Court of Los Angeles County (1967) 248 Cal.App.2d 276, 281 (A declaration that the conduct of plaintiff's representatives "constitutes annoyance, embarrassment, harassment and a substantial interference



1 with the vested contract relationship between these defendants and their customers"  
2 was nothing more than the conclusion of the declarant having no evidentiary value).

3 8. Violative of Code of Civil Procedure Section 1008(a). Even Zohar Construction &  
4 Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839 (“Courts  
5 have construed section 1008 to require a party filing an application for  
6 reconsideration or a renewed application to show diligence with a satisfactory  
7 explanation for not having presented the new or different information earlier.”); *see*  
8 *also In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1168 (“No  
9 credible explanation was offered concerning James's failure to obtain this evidence  
10 earlier.”).

11 9. Improper opinion testimony. (Evid. Code, §§ 800, 801).

12 **Ruling on the Objection:**

13 Sustained: \_\_\_\_\_ Judge: \_\_\_\_\_

14 Overruled: \_\_\_\_\_

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16 **Objection No. 7:**

17 Fox hereby objects to, and moves to strike, that the entirety of Paragraph 8 of, and Exhibit “3” to, the  
18 Declaration of Courtney Pendry, Esq. (¶ 8, 2: 3-5) that reads as follows:

19 “Attached as Exhibit ‘3’ is a true and correct copy of Marion Fox’s November 23,  
20 1993 statement to Los Angeles Police Department. This document was marked as  
21 ‘Confidential’ pursuant to the terms of the Stipulated Protective Order, therefore, is  
being filed under seal.”

22 **Grounds for Objection:**

- 23 1. Lack of foundation (Evid. Code, §403).  
24 2. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App.  
25 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish  
26 cause of action and was “replete with hearsay, conclusions and personal  
27 opinion[.]”).  
28 3. Hearsay (Evid. Code, §1200); DiCola v. White Bros. Performance Prods., Inc. (2008)

1 158 Cal. App. 4th 666, 681-82 (2008) (attorney declaration reciting hearsay document  
2 is inadmissible double hearsay); Tri-State Mfg. Co. v. Superior Court for Los Angeles  
3 County (1964) 224 Cal.App.2d 442, 444–445 (“It appears throughout the statement  
4 that Mr. Baker did not have, or pretend to have, personal knowledge of the material  
5 facts necessary to be shown by affidavit. Upon the contrary, he merely examined the  
6 office file and drew his conclusions from the material which he found in the file.”);  
7 People v. Wimberly (1992) 5 Cal.App.4th 439, 445 (reversible error to receive, over  
8 objection, testimony of statements in police report that recounted what percipient  
9 declarant had said); People v. Hernandez (1997) 55 Cal.App.4th 225, 240 (crime  
10 analyst's testimony concerning data contained in police sex crimes database  
11 identifying crimes with modus operandi matching defendant's was improperly  
12 admitted, because data were **based on police reports containing observations by**  
13 **persons with no official duty to observe and report relevant facts**); People v.  
14 Baeske (1976) 58 Cal. App. 3d 775, 780 (public employee's report not sufficiently  
15 trustworthy to be admissible where based not on own observations but information  
16 obtained from non-public employees); Behr v. Santa Cruz County (1959) 172 Cal.  
17 App. 2d 697, 704 (fire ranger's investigation report not admissible as official record);  
18 MacLean v. City and County of San Francisco (1957) 151 Cal. App. 2d 133, 142–43  
19 (investigating officer's accident report properly excluded where not based on officer's  
20 own observations).

- 21 4. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106  
22 Cal.App.4th 1, 15).
- 23 5. Irrelevant (Evid. Code, §§ 210, 350-351).
- 24 6. Violative of Code of Civil Procedure Section 1008(a). Even Zohar Construction &  
25 Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839 (“Courts  
26 have construed section 1008 to require a party filing an application for  
27 reconsideration or a renewed application to show diligence with a satisfactory  
28 explanation for not having presented the new or different information earlier.”); *see*

1            *also In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1168 (“No  
2            credible explanation was offered concerning James's failure to obtain this evidence  
3            earlier.”).

4            **Ruling on the Objection:**

5            Sustained: \_\_\_\_\_ Judge: \_\_\_\_\_

6            Overruled: \_\_\_\_\_

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8            **Objection No. 8:**

9            Fox hereby objects to, and moves to strike, the entirety of Paragraph 9 of, and Exhibit ‘4’ to, the  
10           Declaration of Courtney Pendry, Esq. (¶ 9, 2: 6-9) that reads as follows:

11           “Attached as Exhibit ‘4’ is a true and correct copy former employee of Orieta  
12           Murdock’s, September 4, 1993 statement to Los Angeles Police Department. This  
13           document was marked as ‘Confidential’ pursuant to the terms of the Stipulated  
14           Protective Order, therefore, is being filed under seal.”

15           **Grounds for Objection:**

- 16           1.        Lack of foundation (Evid. Code, §403).
- 17           2.        Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App.  
18           2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish  
19           cause of action and was “replete with hearsay, conclusions and personal  
20           opinion[.]”).
- 21           3.        Hearsay (Evid. Code, §1200); DiCola v. White Bros. Performance Prods., Inc. (2008)  
22           158 Cal. App. 4th 666, 681-82 (2008) (attorney declaration reciting hearsay document  
23           is inadmissible double hearsay); Tri-State Mfg. Co. v. Superior Court for Los Angeles  
24           County (1964) 224 Cal.App.2d 442, 444–445 (“It appears throughout the statement  
25           that Mr. Baker did not have, or pretend to have, personal knowledge of the material  
26           facts necessary to be shown by affidavit. Upon the contrary, he merely examined the  
27           office file and drew his conclusions from the material which he found in the file.”);  
28           People v. Wimberly (1992) 5 Cal.App.4th 439, 445 (reversible error to receive, over

objection, testimony of statements in police report that recounted what percipient declarant had said); People v. Hernandez (1997) 55 Cal.App.4th 225, 240 (crime analyst's testimony concerning data contained in police sex crimes database identifying crimes with modus operandi matching defendant's was improperly admitted, because data were **based on police reports containing observations by persons with no official duty to observe and report relevant facts**); People v. Baeske (1976) 58 Cal. App. 3d 775, 780 (public employee's report not sufficiently trustworthy to be admissible where based not on own observations but information obtained from non-public employees); Behr v. Santa Cruz County (1959) 172 Cal. App. 2d 697, 704 (fire ranger's investigation report not admissible as official record); MacLean v. City and County of San Francisco (1957) 151 Cal. App. 2d 133, 142-43 (investigating officer's accident report properly excluded where not based on officer's own observations).

4. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106 Cal.App.4th 1, 15).
5. Irrelevant (Evid. Code, §§ 210, 350-351).
6. Violative of Code of Civil Procedure Section 1008(a). Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839 (“Courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory explanation for not having presented the new or different information earlier.”); *see also* In re Marriage of Drake (1997) 53 Cal.App.4th 1139, 1168 (“No credible explanation was offered concerning James's failure to obtain this evidence earlier.”).

**Ruling on the Objection:**

Sustained: \_\_\_\_\_

Judge: \_\_\_\_\_

Overruled: \_\_\_\_\_

1 **Objection No. 9:**

2 Fox hereby objects to, and moves to strike, the entirety of Paragraph 10 of, and Exhibit ‘5’ to, the  
3 Declaration of Courtney Pendry, Esq. (¶ 10, 2: 10-13) that reads as follows:

4 “Attached as Exhibit ‘5’ is a true and correct copy former employee of Jonathan  
5 Spence’s September 21, 1993 statement to Los Angeles Police Department. This  
6 document was marked as ‘Confidential’ pursuant to the terms of the Stipulated  
7 Protective Order, therefore, is being filed under seal.”

8 **Grounds for Objection:**

- 9 1. Lack of foundation (Evid. Code, §403).
- 10 2. Lack of personal knowledge (Evid. Code, § 702(a)), Maltby v. Shook, 131 Cal. App.  
11 2d 349, 353-54 (1955) (attorney declaration was not competent evidence to establish  
12 cause of action and was “replete with hearsay, conclusions and personal  
13 opinion[.]”).
- 14 3. Hearsay (Evid. Code, §1200); DiCola v. White Bros. Performance Prods., Inc. (2008)  
15 158 Cal. App. 4th 666, 681-82 (2008) (attorney declaration reciting hearsay document  
16 is inadmissible double hearsay); Tri-State Mfg. Co. v. Superior Court for Los Angeles  
17 County (1964) 224 Cal.App.2d 442, 444–445(“It appears throughout the statement  
18 that Mr. Baker did not have, or pretend to have, personal knowledge of the material  
19 facts necessary to be shown by affidavit. Upon the contrary, he merely examined the  
20 office file and drew his conclusions from the material which he found in the file.”);  
21 People v. Wimberly (1992) 5 Cal.App.4th 439, 445 (reversible error to receive, over  
22 objection, testimony of statements in police report that recounted what percipient  
23 declarant had said); People v. Hernandez (1997) 55 Cal.App.4th 225, 240 (crime  
24 analyst's testimony concerning data contained in police sex crimes database  
25 identifying crimes with modus operandi matching defendant's was improperly  
26 admitted, because data were **based on police reports containing observations by**  
27 **persons with no official duty to observe and report relevant facts**); People v.  
28 Baeske (1976) 58 Cal. App. 3d 775, 780 (public employee's report not sufficiently

1 trustworthy to be admissible where based not on own observations but information  
2 obtained from non-public employees); Behr v. Santa Cruz County (1959) 172 Cal.  
3 App. 2d 697, 704 (fire ranger's investigation report not admissible as official record);  
4 MacLean v. City and County of San Francisco (1957) 151 Cal. App. 2d 133, 142-43  
5 (investigating officer's accident report properly excluded where not based on officer's  
6 own observations).

- 7 4. Speculation (Wiz Technology, Inc. v. Coopers & Lybrand LLP (2003) 106  
8 Cal.App.4th 1, 15).
- 9 5. Irrelevant (Evid. Code, §§ 210, 350-351).
- 10 6. Violative of Code of Civil Procedure Section 1008(a). Even Zohar Construction &  
11 Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839 (“Courts  
12 have construed section 1008 to require a party filing an application for  
13 reconsideration or a renewed application to show diligence with a satisfactory  
14 explanation for not having presented the new or different information earlier.”); *see*  
15 *also* In re Marriage of Drake (1997) 53 Cal.App.4th 1139, 1168 (“No  
16 credible explanation was offered concerning James's failure to obtain this evidence  
17 earlier.”).

18 **Ruling on the Objection:**

19 Sustained: \_\_\_\_\_

Judge: \_\_\_\_\_

20 Overruled: \_\_\_\_\_

21  
22 Dated: November 19, 2020

FREEDMAN+TAITELMAN, LLP

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25 \_\_\_\_\_  
26 Bryan J. Freedman, Esq.  
27 Sean M. Hardy, Esq.  
28 *Attorneys for Non-Party Marion Fox*

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA** |  
3 | **ss.**  
4 **COUNTY OF LOS ANGELES** |

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
6 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 500, Los  
7 Angeles, California 90067.

8 On **November 19, 2020** I served the foregoing document(s) described as: **NON-PARTY  
9 MARION FOX’S EVIDENTIARY OBJECTIONS TO DECLARATION OF COURTNEY  
10 PENDRY, ESQ. IN SUPPORT OF PLAINTIFF’S MOTION FOR RECONSIDERATION** on  
11 the interested parties in this action as follows:

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29  **By Overnight Delivery:** by placing the document(s) listed above in a sealed **Federal Express**  
30 envelope and affixing a pre-paid air bill and causing the envelope to be delivered to a Federal  
31 Express agent for next business day delivery to the address(es) listed above.

32  **By E-Mail Or E-Service:** (Code Civ. Proc. § 1010.6, Cal. Rules of Court, rule 2.251) by  
33 transmitting via electronic mail the document(s) listed above to the addresses set forth above on  
34 this date from [cpuello@ftllp.com](mailto:cpuello@ftllp.com).

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**State.** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **November 19, 2020** at Los Angeles, California.



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Christina Puello