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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 TERESA MACCLELLAND, *et al.*,  
14 for Themselves, as Private Attorneys General, and on  
15 Behalf of All Others Similarly Situated,  
16 Plaintiffs,

17 v.

18 CELLCO PARTNERSHIP D/B/A VERIZON  
19 WIRELESS; and VERIZON COMMUNICATIONS  
INC.,

20 Defendants.

21 ALLISON HAYWARD, PETER HEINECKE,  
22 LAWRENCE PRINCE, and WILL YEATMAN, for  
23 themselves and on behalf of all others similarly  
situated,

24 Intervenors/Cross-Plaintiffs,

25 v.

26 HATTIS LAW PLLC D/B/A HATTIS & LUKACS,  
27 *et al.*,

28 Cross-Defendants.

Case No. 3:21-cv-08592-EMC  
Hon. Edward M. Chen, Courtroom 5

OBJECTION TO NEW SUR-REPLY  
ARGUMENTS AND HEARSAY IN STATUS  
REPORT FILED APRIL 12 (Dkt. 109)

(Motion to Intervene)  
DATE: April 17, 2024  
TIME: 10:00 a.m.

(Motion for Equitable Redistribution)  
DATE: May 9, 2024  
TIME: 1:30 p.m.

1 The Hayward Intervenors object to the “Status Report” (Dkt. 109) to the extent it serves as an  
2 impermissible sur-reply making new (and repeating old) arguments; and based on its use of unsworn hearsay  
3 as evidence. The Court can certainly take judicial notice of the transcript of the March 22 hearing in *Esposito*—  
4 though there is nothing in that transcript relevant to the pending intervention motion for the reasons stated in  
5 Hayward’s briefs. But anything beyond the authentication of the transcript in class counsel’s filing violates the  
6 local rules or the Federal Rules of Evidence.

7 The Hayward intervenors moved to intervene February 23, alleging that class members had a cause of  
8 action against class counsel for breach of fiduciary duty for filing a new action in New Jersey state court to  
9 extract attorneys’ fees above and beyond what they’d be entitled to in a settlement of a class action in this  
10 Court. Dkt. 89. Class counsel and Verizon opposed on March 8, making hypothetical arguments for why they  
11 would choose to multiply proceedings with a fifth lawsuit in a new court with no familiarity with the case. The  
12 only reason given in sworn testimony was that “The *Esposito* case was filed in order to achieve a nationwide  
13 settlement without prejudicing the plaintiffs’ and class members’ ability to continue pursuing their earlier-filed  
14 class actions against Verizon in the event that the settlement agreement was not ultimately approved.” Hattis  
15 Decl. ¶ 24, Dkt. 100 at 8. And the parties argued that New Jersey was an appropriate venue as the “center of  
16 gravity” because the second-, third-, and fourth-filed class actions were filed in state and federal courts in New  
17 Jersey. Dkt. 98 at 3-4; Dkt. 96 at 2. Hayward replied on March 15, pointing out at length that these excuses  
18 were absurd, and didn’t explain filing a *new* action. Dkt. 106 at 4-9.

19 With the benefit of knowing what Hayward said in a reply, and with an additional two weeks to think  
20 of new excuses, the settling parties at the March 22 *Esposito* hearing gave new reasons for bringing and settling  
21 a fifth class action in a new court, and class counsel then uses its so-called “Status Report” to introduce these  
22 new arguments for the first time a few days before the hearing. Dkt. 109 at 6-7. This is impermissible sur-reply.  
23 N.D. Cal. Loc. R. 7-3(d). Furthermore, it is an impermissible attempt to use unsworn hearsay evidence for the  
24 truth of the matter asserted. Fed. R. Evid. 801(c)(2), 802. The self-serving hearsay is especially unreliable to the  
25 extent it makes new arguments inconsistent with the March 8 sworn testimony and filings. To the extent that  
26 class counsel wishes to create a new factual dispute beyond what they said in their March 8 papers, Hayward  
27 requests the opportunity to take discovery.

28 The Status Report also makes the new argument that *Esposito* objector Hoang somehow binds

1 Hayward. This argument is not just forfeited by its omission in the March 8 responses, but incorrect. Hoang  
2 as an objector does not speak for other class members, much less Hayward's proposed class. The Hayward  
3 Intervenor's are not in privity with Hoang; Hoang is not suing counsel under California law. *See generally*  
4 Dkt. 105 at 10-13; *cf. also Smith v. Bayer Corp.*, 564 U.S. 299, 308-12 (2011). In any event, Hoang thought his  
5 repetition of the Hayward argument made as an afterthought on page 62 of his objection so unimportant that  
6 he didn't mention it once in 35 minutes of filibustering at the fairness hearing. Tr. 60:16-19.

7  
8 Dated: April 15, 2024

Respectfully submitted,

9 /s/ Theodore H. Frank

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PROOF OF SERVICE

I hereby certify that on this day I electronically filed this Reply Memorandum in support of Intervention using the CM/ECF filing system thus effectuating service of such filing on all ECF registered attorneys in this case.

DATED this 15th of April, 2024.

/s/ Theodore H. Frank

Theodore H. Frank