

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

* **CIVIL ACTION NO. 23-772**

*

* **SECTION “T”**

*

VERSUS

* **JUDGE GREG G. GUIDRY**

*

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE**

* **MAGISTRATE JUDGE**

* **JANIS VAN MEERVELD**

*

Defendant

*

* * * * *

**DEFENDANT’S MOTION TO STRIKE
PLAINTIFF’S SUMMARY JUDGMENT EVIDENCE**

Defendant, The State of Louisiana, through Department of Public Safety and Corrections, Office of State Police (“Defendant” or the “State Police”), respectfully requests that the Court strike exhibits Plaintiff submitted in support of his Opposition to the State Police’s Motion for Summary Judgment. [Rec. Doc. 128-14, 128-15, 128-17, 128-18, 128-19, 128-20, 128-21, 128-22, 128-23, 128-24, 128-25, 128-26, 128-27, 128-28, 128-29, 128-30, 128-31, 128-32, 128-33, 128-34, 128-35, 128-36, 128-40, 128-41, 128-42, 128-43, 128-44, 128-45, 128-46, 128-47, 128-48, 128-49, 128-50, 128-51, 128-52, and 128-53]. These exhibits should be stricken because they are unauthenticated and contain inadmissible hearsay and statements lacking foundation.

In addition to attaching depositions and other competent summary judgment evidence to his Opposition, Plaintiff, John R. Stelly, II (“Plaintiff” or “Stelly”), also attaches 36 documents which are not attached to or referenced in any affidavit, declaration, etc. and for which he makes no attempt to authenticate. Because all of these documents are unsigned and unauthenticated and many are also incomplete, the State Police requests this Court strike each of these documents as they are inadmissible on a motion for summary judgment.

WHEREFORE, the State Police requests the Court strike the exhibits filed in support of Plaintiff's Opposition to the State Police's Motion for Summary Judgment which contain improper and inadmissible summary judgment evidence.

Respectfully submitted,

LIZ MURRILL
ATTORNEY GENERAL

By: /s/ Emily E. Ross

Stephen L. Miles, 31263

Emily E. Ross, 34739

Pipes | Miles | Beckman, LLC

1100 Poydras Street, Suite 3300

New Orleans, LA 70163

Telephone: 504-322-7070

Facsimile: 504-322-7520

smiles@pipesmiles.com

eross@pipesmiles.com

*Counsel for Defendant, The State of
Louisiana, through Department of Public
Safety and Corrections, Office of State
Police*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

* **CIVIL ACTION NO. 23-772**

*

* **SECTION “T”**

*

VERSUS

* **JUDGE GREG G. GUIDRY**

*

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE**

* **MAGISTRATE JUDGE
JANIS VAN MEERVELD**

*

Defendant

*

* * * * *

**DEFENDANT’S MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PLAINTIFF’S SUMMARY JUDGMENT EVIDENCE**

Defendant, The State of Louisiana, through Department of Public Safety and Corrections, Office of State Police (“Defendant” or the “State Police”), respectfully submits this Memorandum in Support of its Motion to Strike several of the exhibits Plaintiff submitted in support of his Opposition to the State Police’s Motion for Summary Judgment. [Rec. Doc. 128-14, 128-15, 128-17, 128-18, 128-19, 128-20, 128-21, 128-22, 128-23, 128-24, 128-25, 128-26, 128-27, 128-28, 128-29, 128-30, 128-31, 128-32, 128-33, 128-34, 128-35, 128-36, 128-40, 128-41, 128-42, 128-43, 128-44, 128-45, 128-46, 128-47, 128-48, 128-49, 128-50, 128-51, 128-52, and 128-53]. These exhibits should be stricken because they are unauthenticated and contain inadmissible hearsay and statements lacking foundation.

In addition to attaching depositions and other competent summary judgment evidence to his Opposition, Plaintiff, John R. Stelly, II (“Plaintiff” or “Stelly”), also attaches 36 documents which are not attached to or referenced in any affidavit, declaration, etc. and for which he makes no attempt to authenticate. Because all of these documents are unsigned and unauthenticated and

many are also incomplete, the State Police requests this Court strike each of these documents as they are inadmissible on a motion for summary judgment.

Federal Rule of Civil Procedure 56 provides that a party asserting a fact that is genuinely disputed must support the assertion by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials.”¹ Further a party “may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”² The Fifth Circuit holds that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure.³ “[I]t is the burden of the party offering documentary evidence to provide proof of authenticity; it is not the burden of the opposing party to prove that the evidence is not authentic.”⁴ A motion to strike is the appropriate procedural vehicle to address improper summary judgment evidence.⁵

The State Police request the following exhibits to Plaintiff’s Opposition to the Motion for Summary Judgment be stricken for the reasons explained below:

- Demographics of LSP Captains on Jan 1 of Every Year [Rec. Doc. 128-14] – this document is not competent summary judgment evidence as it is unauthenticated.⁶

¹ Fed. R. Civ. Proc. 56(c)(1)(A).

² *Id.* 56(c)(2).

³ *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994); *Duplantis v. Shell Offshore, Inc.*, 948 F.2d 187, 192 (5th Cir. 1991).

⁴ *Haynes v. Pennzoil Co.*, 141 F.3d 1163, 1998 WL 197784 at *3 (5th Cir. 1998).

⁵ *See, e.g., Thomas v. Atmos Energy Corp.*, 223 Fed. Appx. 369, 374 (5th Cir. 2007) (affirming the district court’s decision to grant a motion to strike portions of an affidavit that contained hearsay).

⁶ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

- August 3, 2022 Letter [Rec. Doc. 128-15] – this document is not competent summary judgment evidence as it is unauthenticated.⁷ It is also incomplete as the original document contained 28 pages, but only pages 1 and 16 are attached.⁸
- April 30, 2024 Letter [Rec. Doc. 128-17] – this document is not competent summary judgment evidence as it is unauthenticated.⁹
- Examination and Eligible Lists [Rec. Doc. 128-18] – this document is not competent summary judgment evidence as it is unauthenticated.¹⁰ It is also incomplete as it does not provide the proper context or source of this document.¹¹
- P.O. 229 Promotions [Rec. Doc. 128-19] – this document is not competent summary judgment evidence as it is unauthenticated.¹²
- Louisiana State Police Assessment Report [Rec. Doc. 128-20] – this document is not competent summary judgment evidence as it is unauthenticated.¹³ It is also incomplete as only the cover page and pages 88-94 are included.¹⁴

⁷ *Id.*

⁸ *Bradley v. Allstate Ins. Co.*, 2008 WL 2952974, at *2 (E.D. La. 2008) (providing “[t]he documents presented by Allstate from the Road Home Program are incomplete and unsigned and are not reliable summary judgment evidence.”).

⁹ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

¹⁰ *Id.*

¹¹ *Bradley*, 2008 WL 2952974, at *2 (providing “[t]he documents presented by Allstate from the Road Home Program are incomplete and unsigned and are not reliable summary judgment evidence.”).

¹² *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

¹³ *Id.*

¹⁴ *Bradley*, 2008 WL 2952974, at *2 (providing “[t]he documents presented by Allstate from the Road Home Program are incomplete and unsigned and are not reliable summary judgment evidence.”).

- [Rec. Doc. 128-21] – this document is not competent summary judgment evidence as it is unauthenticated.¹⁵ This document also contains inadmissible hearsay.¹⁶
- Captain Vacancy Announcement [Rec. Doc. 128-22] – this document is not competent summary judgment evidence as it is unauthenticated.¹⁷
- Louisiana State Police Study [Rec. Doc. 128-23] – this document is not competent summary judgment evidence as it is unauthenticated.¹⁸
- Captain Vacancy Announcement [Rec. Doc. 128-24] – this document is not competent summary judgment evidence as it is unauthenticated.¹⁹
- Attendance Roster [Rec. Doc. 128-25] – this document is not competent summary judgment evidence as it is unauthenticated.²⁰
- State Police Planning & Evaluation Form [Rec. Doc. 128-26] – this document is not competent summary judgment evidence as it is unauthenticated.²¹
- [Rec. Doc. 128-27] – this document is not competent summary judgment evidence as it is unauthenticated.²² This document also contains inadmissible hearsay.²³

¹⁵ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

¹⁶ FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

¹⁷ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

- June 13, 2017 Suspension Letter [Rec. Doc. 128-28] – this document is not competent summary judgment evidence as it is unauthenticated.²⁴
- Official Certification of Eligibles [Rec. Doc. 128-29] – this document is not competent summary judgment evidence as it is unauthenticated.²⁵
- [Rec. Doc. 128-30] – this document is not competent summary judgment evidence as it is unauthenticated.²⁶ This document also contains inadmissible hearsay.²⁷
- Notes [Rec. Doc. 128-31] – this document is not competent summary judgment evidence as it is unauthenticated.²⁸
- [Rec. Doc. 128-32] – this document is not competent summary judgment evidence as it is unauthenticated.²⁹ This document also contains inadmissible hearsay.³⁰
- [Rec. Doc. 128-33] – this document is not competent summary judgment evidence as it is unauthenticated.³¹ This document also contains inadmissible hearsay.³²

²⁴ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

²⁵ *Id.*

²⁶ *Id.*

²⁷ FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

²⁸ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

²⁹ *Id.*

³⁰ FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

³¹ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

³² FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

- Louisiana State Police Study [Rec. Doc. 128-34] – this document is not competent summary judgment evidence as it is unauthenticated.³³
- LSP Captain Promotion Data [Rec. Doc. 128-35] – this document is not competent summary judgment evidence as it is unauthenticated.³⁴
- August 3, 2022 Letter [Rec. Doc. 128-36] – this document is not competent summary judgment evidence as it is unauthenticated.³⁵
- [Rec. Doc. 128-40] – this document is not competent summary judgment evidence as it is unauthenticated.³⁶ It is also incomplete as the only page attached is labeled “Page 16 of 28.”³⁷
- State Police Planning & Evaluation Form [Rec. Doc. 128-41] – this document is not competent summary judgment evidence as it is unauthenticated.³⁸
- April 30, 2024 Letter [Rec. Doc. 128-42] – this document is not competent summary judgment evidence as it is unauthenticated.³⁹

³³ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Bradley v. Allstate Ins. Co.*, 2008 WL 2952974 (E.D. La. 2008) (providing “[t]he documents presented by Allstate from the Road Home Program are incomplete and unsigned and are not reliable summary judgment evidence.”).

³⁸ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

³⁹ *Id.*

- [Rec. Doc. 128-43] – this document is not competent summary judgment evidence as it is unauthenticated.⁴⁰ It is also incomplete as it appears to be a portion of a longer document.⁴¹
- P.O. 229 Promotions [Rec. Doc. 128-44] – this document is not competent summary judgment evidence as it is unauthenticated.⁴²
- Commissioned January 2005 [Rec. Doc. 128-45] – this document is not competent summary judgment evidence as it is unauthenticated.⁴³
- State Police Planning & Evaluation Form [Rec. Doc. 128-46] – this document is not competent summary judgment evidence as it is unauthenticated.⁴⁴
- June 13, 2017 Suspension Letter [Rec. Doc. 128-47] – this document is not competent summary judgment evidence as it is unauthenticated.⁴⁵
- LSP Training Academy Class Roster [Rec. Doc. 128-48] – this document is not competent summary judgment evidence as it is unauthenticated.⁴⁶
- [Rec. Doc. 128-49] – this document is not competent summary judgment evidence as it is unauthenticated.⁴⁷ This document also contains inadmissible hearsay.⁴⁸

⁴⁰ *Id.*

⁴¹ *Bradley v. Allstate Ins. Co.*, 2008 WL 2952974 (E.D. La. 2008) (providing “[t]he documents presented by Allstate from the Road Home Program are incomplete and unsigned and are not reliable summary judgment evidence.”).

⁴² *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

- Notes [Rec. Doc. 128-50] – this document is not competent summary judgment evidence as it is unauthenticated.⁴⁹
- January 9, 1998 Letter of Reprimand [Rec. Doc. 128-51] – this document is not competent summary judgment evidence as it is unauthenticated.⁵⁰
- [Rec. Doc. 128-52] – this document is not competent summary judgment evidence as it is unauthenticated.⁵¹ This document also contains inadmissible hearsay.⁵²
- [Rec. Doc. 128-53] – this document is not competent summary judgment evidence as it is unauthenticated.⁵³ This document also contains inadmissible hearsay.⁵⁴

The State Police requests that the Court strike the exhibits to Plaintiff’s Opposition identified herein as containing improper summary judgment evidence.

Respectfully submitted,

LIZ MURRILL
ATTORNEY GENERAL

By: /s/ Emily E. Ross

Stephen L. Miles, 31263
Emily E. Ross, 34739
Pipes | Miles | Beckman, LLC
1100 Poydras Street, Suite 3300
New Orleans, LA 70163
Telephone: 504-322-7070
Facsimile: 504-322-7520

⁴⁹ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

⁵³ *King*, 31 F.3d at 346 (holding that “[u]nauthenticated documents are improper summary judgment evidence” under the Federal Rules of Civil Procedure).

⁵⁴ FED. R. EVID. 802 (the rule against hearsay); FED. R. EVID. 801(c) (hearsay means a statement that “(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

smiles@pipesmiles.com
eross@pipesmiles.com

*Counsel for Defendant, The State of
Louisiana, through Department of Public
Safety and Corrections, Office of State
Police*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

* **CIVIL ACTION NO. 23-772**

*

* **SECTION "T"**

*

VERSUS

* **JUDGE GREG G. GUIDRY**

*

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE**

* **MAGISTRATE JUDGE**

* **JANIS VAN MEERVELD**

*

Defendant

*

* * * * *

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that the Motion to Strike Plaintiff’s Summary Judgment Evidence filed by Defendant, The State of Louisiana through Department of Public Safety and Corrections, Office of State Police, is hereby set for submission before the Honorable Greg G. Guidry, United States District court for the Eastern District of Louisiana, on Wednesday, July 17, 2024, at 10:00 a.m.

Respectfully submitted,

**LIZ MURRILL
ATTORNEY GENERAL**

By: /s/ Emily E. Ross
Stephen L. Miles, 31263
Emily E. Ross, 34739
PIPES | MILES | BECKMAN, LLC
1100 Poydras Street, Suite 3300
New Orleans, LA 70163
Telephone: 504-322-7070
Facsimile: 504-322-7520
smiles@pipesmiles.com
eross@pipesmiles.com

Counsel for Defendant, The State of Louisiana, through Department of Public Safety and Corrections, Office of State Police