IN THE THIRD JUDICIAL DISTRICT OF KANSAS
DIVISION 6

JOHN DOE, *Plaintiff,* v. KIRK THOMPSON, DIRECTOR OF THE KANSAS BUREAU OF INVESTIGATION, AND FRANK DENNING, JOHNSON COUNTY, KANSAS SHERIFF, *Defendants.*	Case No. 12-C-168

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO STRIKE

I. The declarations submitted with the Plaintiff's motion for summary judgment should remain intact.

The Defendants' objections regarding the propriety of statements contained in Mr. and Mrs. Doe's affidavits should be overruled. The Defendants' assertions that affidavit statements are not based on personal knowledge distort the rules regarding the propriety of lay opinions and inferences and speak to the Defendants' perception of the weight of the evidence, not its admissibility. Most of what the Defendants challenge as hearsay is not. That which is hearsay is admissible because it can be reduced to admissible evidence at trial. And the Defendants' best evidence objections frequently miss the mark, both because the content of writings is not being offered and because the best evidence rule does not apply at summary judgment—especially given that the Defendants do not dispute the

content of anything challenged on that basis. The Defendants' motion to strike affidavit content on these grounds should be denied.

A. The statements in the affidavits are based on personal knowledge.

The declarations submitted by the Plaintiff and his wife are based on personal knowledge and experience. Mr. Doe could have provided more detail about his personal observations, but his already-lengthy declaration is sufficient to establish the uncontroverted facts asserted therein. This is especially true given that the Defendants do not assert that the allegations are untrue, but only that they should be stricken from the summary judgment record.

The Defendants make an example of Mr. Doe's account of the source of schoolchildren's teasing, asserting that Mr. Doe lacks a sufficient basis to assert the source or extent of parents' knowledge about him. But Mr. Doe knows that he has had no personal interaction with the teasing children's parents and he knows that his registry information is widely available on the Internet. Thus, he makes the reasonable inference that the source of the comments is information gleaned directly or indirectly from the Offender Registry. *See, e.g., Fenje v. Feld*, 301 F. Supp. 2d 781, 814 (N.D. Ill. 2003) ("[A] witness may testify to conclusions he or she infers from the underlying facts. A summary judgment affidavit may include inferences and opinions as long as they are based on underlying facts of which the affiant has personal knowledge."); *Big Hat Books v.*

Prosecutors: Adams, et. al., 565 F. Supp. 2d 981, 986 (S.D. Ind. 2008) (Overruling defendants' objection "that several of the factual allegations in Plaintiffs' affidavits are 'merely speculative' and not within Plaintiffs' personal knowledge" because Fed. R. Evid. 701 allows testimony of a lay witness about "'opinions or inferences which are . . . rationally based on the perception of the witness.'"). The Court should not ignore the fact that the registry does what it is supposed to do—broadly disseminate registrants' criminal histories and identifiers. Mr. Doe's inference merely accepts that the registry operates as contemplated. The Court should make the same logical inference.

Descriptions in the Plaintiff's affidavit regarding how the KORA affects him as a registrant are proper. His use of terms like "punishment" and "shaming" do not transform his lay opinions into improper legal conclusions. The context of a legal dispute does not necessarily morph simple lay terminology into legal jargon. *See Harman v. Regional Federal Credit Union*, Case No. 2:09-CV-366, 2010 U.S. Dist. LEXIS 123317 (N.D. Ind. November 18, 2010) (attached) (denying the defendant's motion to strike the plaintiff's affidavit statements that she "presented" certificates of deposit and "demanded" payment and noting, "Simply because 'demand' and 'presented' are legal terms does not mean that an individual cannot use these terms to describe actions within her personal knowledge."). Nor does the fact that Mr. Doe's opinion testimony "embraces the ultimate issue or issues to be decided by the trier of the fact" render them objectionable. K.S.A. § 60-456(d).

While there is no need to strike the declarations and require the Plaintiff to submit new declarations, Mr. Doe is willing to accept some of the Defendants' criticism and, if the Court should answer the Defendants' prayer for relief, he will submit declarations that include additional details about personal observations and experiences that serve as foundation for inferences and opinions therein.

B. The Defendants' hearsay objections miss the mark.

The Defendants' hearsay objections miss the mark on two points. First, the majority of the statements the Defendants have labeled hearsay are not offered for the truth of the matter asserted. For example, the Plaintiff certainly does not offer children's statements that he is a "bad man," pervert," or "pedophile" for the truth of the matter asserted, i.e. that the Plaintiff is a bad man, pervert, or pedophile. Statements like these are offered to show that the Plaintiff's children suffer from the registry's dissemination of information about Mr. Doe and his criminal history. While it is true that the Plaintiff cannot precisely isolate the registry as the source of each of the comments by the children, the alternative would be the unlikely culling of court files. It is possible that someone discovered Mr. Doe's criminal history in a source other than the registry. But the registry is designed to broadly disseminate information about offenders to children's parents. Mr. Doe simply infers that it accomplishes this task. After all, the constitutionality of the law requires that the registry advance the non-punitive purpose of public safety by "alerting the public to

the danger of sex offenders in their community." *Smith v. Doe*, 538 U.S. 84, 183 (2003). By virtue of disseminating his information to the public, the registry necessarily causes Mr. Doe and his family to suffer incidents just like those described in Mr. Doe's affidavit.

Second, the court can consider hearsay statements in ruling on summary judgment motions. Summary judgment affidavits serve the purpose of demonstrating what evidence exists, not to produce the best evidence. They "set out facts that would be admissible in evidence," K.S.A. § 60-256(e), and permit the judge to predict what would be offered into evidence at trial. This standard does not require that information be submitted in a *form* that would be admissible at trial. *Stewart v. Horizon Building Corp.*, 279 P.3d 147, 2012 Kan. App. Unpub. LEXIS 540, *16 (Kan. App. June 19, 2012) (attached) ("evidence provided for summary judgment purposes does not have to be in the form required to be admissible at trial"); *see, e.g., Brazil v. Bd. of Comm'rs*, 803 P.2d 1060; 1991 Kan. App. LEXIS 3, *7 (Kan. App. January 11, 1991) (attached) (ruling that trial counsel's affidavit was proper even though counsel would not be permitted to testify as a witness at trial).

Courts can consider hearsay statements contained within an affidavit on summary judgment if there is a showing, or at least a possibility, that the statement would be submitted in admissible form at trial. *See, e.g., Jones v. Nobilt*, 260 P.3d 1249, 2011 Kan. App. Unpub. LEXIS 816, *21 (Kan. App. October 7, 2011) (attached) (holding affidavits recounting a meeting and describing out-of-court statements to "contain admissible

evidence"); *see also Camarota v. Mayfair Org.*, Case No. 05-CV-2359, 2008 U.S. Dist. LEXIS 74963, fn. 4 (D.N.J. September 29, 2008) (attached) ("The general rule in the Third Circuit is that evidence capable of being admissible at trial can be considered on a motion for summary judgment. . . . For example, hearsay evidence could be produced in a motion for summary judgment if the out-of-court declarant could later present that evidence through direct testimony, which is an admissible form for trial.") (citations omitted); *Kenawell v. DuBois Bus. College, Inc.*, No. 3:2005-429, 2008 U.S. Dist. LEXIS 26730, *23-24 (W.D. Pa. March 20, 2008) (attached) (considering hearsay statements in granting the defendant's motion for summary judgement, noting that the hearsay issue could be cleared at trial by the declarant's testimony); *Cutrona v. Sun Health Corp.*, No. CV 06-2184-PHX-MHM, 2008 U.S. Dist. LEXIS 83318, at *14 (D. Ariz. September 26, 2008) (attached)("'[H]earsay evidence produced in an affidavit . . . may be considered if the out-of-court declarant could later present that evidence through direct testimony, i.e. in a form that would be admissible at trial.'") (citing *J.F. Feeser, Inc. v. Serv-A-Portion, Inc.*, 909 F.2d 1524, 1542 (3rd Cir. 1990); *Williams v. Borough of W. Chester*, 891 F.2d 458, 465 n.12 (3rd Cir. 1989)).

C. The Defendants' best evidence objections should be overruled.

The Plaintiff can produce admissible evidence at trial, both in the form of witness testimony and documents, showing that numerous websites and cellular phone applications disseminate KORA registry information. The Defendants do not dispute that

this is true. Instead, they argue that the court should not consider readily proven facts because of the best evidence rule, codified at K.S.A. § 60-467. The argument fails on multiple levels.

For the same reason that courts can consider hearsay at summary judgment, courts can consider evidence that is not presented in "best evidence" form. *Alvarez v. T-Mobile USA, Inc.*, Case No. 2:10-2373-WBS-GGH, 2011 U.S. Dist. LEXIS 146757, *10 (E.D. Cal. Dec. 21, 2011) (attached) ("Similarly, at the summary judgment stage the court does not 'focus on the admissibility of the evidence's form,' but rather 'focus[es] on the admissibility of its contents.' Objections on the basis of a failure to comply with the technicalities of authentication requirements or the best evidence rule are, therefore, inappropriate.") (citations omitted); *see, e.g., Fraser v. Goodale*, 342 F.3d 1032, 1037 (9th Cir. 2003) ("Because the diary's contents could be presented in an admissible form at trial, we may consider the diary's contents in the Bank's summary judgment motion."). This general premise is underscored when there is no factual dispute related to the documents. *See, e.g., Hillery v. Allstate Indem. Co.*, 705 F. Supp. 2d 1343, 1350 (S.D. Ala. 2010) ("It would be different if, for example, plaintiffs contended that the transcripts of the recorded statements were inaccurate in some material way. In that circumstance, it may be appropriate for the parties to submit a copy of the recording as a summary judgment exhibit so the Court could hear for itself. Here, however, Hillery and Jones do not insinuate that the transcripts are

inaccurate or distorted, but simply attempt to parlay their own misreading of the best evidence rule into an exclusion of important, relevant exhibits on summary judgment.").

The best evidence rule applies when there is a dispute about the content of a document and that document is "closely related" to controlling issues in the case. "It should be remembered that the best evidence rule is not an inflexible rule of exclusion but rather a preferential rule." *State v. Lovelace,* 227 Kan. 348, Syl. ¶ 5 (1980). "[T]he rule applies to exclude secondary evidence only when the terms of the writing itself are at issue." *State v. Woolridge,* 2 Kan. App. 2d 449, 449 (1978). When the content of the writing is not closely related to the controlling issues and it would be inexpedient to require its production, the best evidence rule does not apply. K.S.A. § 60-467(a)(2)(D). In addition, if the document is lost or has been destroyed without fraudulent intent, the rule does not apply. K.S.A. § 60-467(a)(2)(A). The Defendants lodged an objection every time a document, or even a website, was mentioned—and often when nothing written was mentioned. They did so without disputing the content. Their strategy appears to be an "attempt to parlay their own misreading of the best evidence rule into an exclusion of important, relevant exhibits on summary judgment." *Hillery,* 705 F. Supp. 2d at 1350. Their objections should be overruled.

Citations to websites and affidavit references to website content are sufficient for summary judgment. A printed copy of website content is sufficient to overcome best

evidence objections at trial. *See, e.g., Telewizja Polska USA, Inc. v. Echostar Satellite Corp.*, 2004 U.S. Dist. LEXIS 20845 (N.D. Ill. October 14, 2004) (attached) (citing *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F. Supp. 2d 1146, 1155 (C.D.Cal. 2002) for the proposition that "printouts of the website are admissible pursuant to the best evidence rule."). Printed copies are attached to this response brief as Exhibits 38 - 43 (for the websites that were not printer friendly, screen captures are supplied).

Furthermore, the best evidence rule does not apply because the content of the websites is not at issue. The sites are being offered only to demonstrate that the registry information is being republished, sometimes in a format that allows viewer comments. *See, e.g., RN Expertise, Inc. v. United States*, 97 Fed. Cl. 460, 473 (Fed. Cl. 2011) ("In this case, the contents of the solicitation amendment are not in dispute. The Government is only seeking to prove that the amended solicitation was posted to the website, and therefore, does not need to produce the original document. Thus, the Court finds that the contract specialist's declaration is admissible as evidence that the Government provided public notice of the solicitation amendment.").

D. Specific objections refuted

Specific responses to each of the Defendants' objections in Tables A and B can be found at the end of the brief.

II. The court may consider the websites and articles cited in the Plaintiff's summary judgment brief.

A. The best evidence rule does not apply to the websites and cellular phone applications cited in the Plaintiff's brief.

The best evidence rule is no more applicable to the websites and cellular phone applications referenced in the Plaintiff's brief than it is to the websites referenced in the Plaintiff's sworn declaration. As the sites and applications are offered only to demonstrate that registry information is republished, sometimes in a format that allows viewer comments, their contents are not at issue. The preferential best evidence rule does not command the Court to exclude readily proven facts, the veracity of which the Defendants do not challenge. However, printed copies of web material are attached to this response brief as Exhibits 38-43.

B. The Court should consider the well-established matters addressed in the articles, reports, and studies cited by the Plaintiff.

1. The Defendants' selective objections did not address a majority of the appendix materials cited and supplied by the Plaintiff. By failing to object, the Defendants waived any objection to the Court's consideration of these materials.

An opposing party's failure to object to material supporting a motion for summary judgment constitutes waiver of the objection. *Johnson v. United States Postal Service*, 64 F.3d 233, 237 (6th Cir. 1995); *Munoz v. Int'l Alliance of Theatrical Stage Employees*, 563 F.2d 205, 214 (1st Cir. 1997). "Nothing short of an objection at the time evidence is offered" satisfies the

requirement that objections to evidence be "timely interposed." *State v. Jones*, 267 Kan. 627, 637 (1999) (overruled on other grounds by *State v. Deal*, 293 Kan. 872, 885 (2012)). As the Defendants did not object to or move to strike the Plaintiff's Summary Judgment Motion Appendices E, and H through P in their joint response or their joint motion to strike, the Court may consider the appendices as substantive evidence.

2. **While the Court need not rely solely the articles, reports, and studies to reach the conclusions they support, it need not ignore or strike them either.**

Ultimately, there are numerous avenues by which the Court may reach the conclusions supported by the articles, reports, and studies cited by the Plaintiff. The Court may point to precedent from other jurisdictions as authority for the propositions the offender registries, which depend on broad public dissemination of criminal history information about the registrants to be effective, hurt employment and housing opportunity, cause public stigma and ostracism, and subject registrants to supervision comparable to probation and parole. The Court may look to the evolution of Kansas registration law, use its common sense and its familiarity with probation and parole, and take notice of relevant and undisputed matters. Sufficient information abounds from these sources to establish the punitive effects of the 2011 KORA.

However, the Court need not disregard the worthwhile articles, reports, and studies cited by the Plaintiff. The Court may choose to consider the fact that one of the sources

cited in the Plaintiff's brief was relied upon by the United States Supreme Court in *Smith v. Doe* and that the Alaska Supreme Court relied on reports penned by the same authors the Plaintiff cites. On that basis, it could find that the sources and authors are reliable authorities on the subjects, and that the studies would be admissible under the learned treatise hearsay exception. K.S.A. § 60-460(cc). Such a finding would allow the Court to consider, as admissible evidence, the entire content of the secondary sources offered by the Plaintiff. But such a finding is entirely unnecessary to consideration of the Plaintiff's citations to appendix materials because at issue are not adjudicative facts, but legislative facts, the determination of which is not limited by the rules of evidence.

a. **The propriety of judicial consideration of articles, reports, and studies, along with other relevant material, is evident from an examination of the *Smith v. Doe* opinion, offender registration decisions in other states, and Kansas Supreme Court decisions.**

The *Smith v. Doe* opinion demonstrates the propriety of combined consideration of the terms of the statute, a court's common-sense evaluation of the practical effects of such terms, outside precedent, and social-scientific reports in evaluating Ex Post Facto challenges to sex offender registration legislation. In *Smith v. Doe,* the United States Supreme Court majority, and dissenting Justices, relied on studies and articles in reaching their conclusions. The majority premised key portions of its ruling on such sources. For example, the majority opinion relied on a study not in evidence that was published by the

Department of Justice (similar to the Department of Justice publication offered by the Plaintiff: Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, U.S. Dept. of Justice, National Institute of Justice, Research in Brief (2000), to which the Defendants object), as the basis for the holding that the duration of reporting requirements were not excessive:

> The duration of the reporting requirements is not excessive. Empirical research on child molesters, for instance, has shown that, "contrary to conventional wisdom, most reoffenses do not occur within the first several years after release," but may occur "as late as 20 years following release." R. Prentky, R. Knight, and A. Lee, U.S. Dept. of Justice, National Institute of Justice, Child Sexual Molestation: Research Issues 14 (1997).

Smith v. Doe, 538 U.S. at 105. The majority also cited precedent that relied on two reports published by the Department of Justice, also not in evidence, as the basis for its conclusion the Alaska Legislature had a factual basis for finding that there was a high rate of recidivism among convicted sex offenders.

> The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is "frightening and high." *McKune v. Lile*, 536 U.S. 24, 34, 153 L. Ed. 2d 47, 122 S. Ct. 2017 (2002); see also id., at 33 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault") (citing U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997)).

Id. at 103.

The concurring and dissenting opinions took the same approach, citing secondary material and other courts' opinions in support of various conclusions. Justice Souter relied on opinions from the Second and Third Circuits for the proposition that "there is significant evidence of onerous practical effects of being listed on a sex offender registry." *Id.* at 109 (citing *Doe v. Pataki,* 120 F.3d 1263, 1279 (2nd Cir. 1997) and *E.B. v. Verniero,* 119 F.3d 1077, 1102 (3rd Cir. 1997)). This court can certainly take the same approach and look to findings by other courts for support of what seems to be an obvious, logical conclusion: the purpose of the registry—broad dissemination of criminal history information—leads to onerous practical effects for those included on the registry. The Court may also follow the approach taken by Justice Stevens, in his dissent. Justice Stevens used common sense and logic to conclude that "there can be no doubt that the 'widespread public access,' ante, at 12 (opinion in No. 01-729), to this personal and constantly updated information has a severe stigmatizing effect." *Id.* at 111. Justice Stevens even relied on the Amici brief of the Office of the Public Defender for the State of New Jersey for "examples of threats, assaults, loss of housing, and loss of jobs experienced by sex offenders after their registration information was made widely available." *Id.* at 112. This Court may do the same.

Courts routinely take notice of the well-known effects of being included on an offender registry. In *Doe v. Alaska,* for example, the Alaska Supreme Court cited numerous

studies and reports in support of its conclusions regarding *Mendoza-Martinez* factors—several of which were published by the same authors evaluating the same subjects of the articles submitted by the Plaintiff in this case. The court cited Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. Contemp. Crim. Just. 67, 75 (2005) in support of statements that "[o]utside Alaska, there have been reports of incidents of suicide by and vigilantism against offenders on state registries" and that "[t]here are published reports that offenders are sometimes subjected to protests and group actions designed to force them out of their jobs and homes." *Doe v. Alaska*, 189 P.3d 999, 1010-11 (Alaska 2008). This report by the same author on the same subject of an article to which the Defendants object (Richard Tewksbury & Elizabeth Ehrhardt Mustaine, *Stress and Collateral Consequences for Registered Sex Offenders*, 15(2) J. Pub. Mgmt. & Soc. Pol'y 215 (2009)) was considered to be probative of the collateral consequences of offender registries even though the study was not specific to Alaska's registrants (notably, the article offered by the Plaintiff discusses data collected from Kansas registered offenders). In support of the assertion regarding protests forcing registrants out of their homes and jobs, the court also cited an article published in Behavioral Sciences & the Law and penned by Richard G. Zevitz & Mary Ann Farkas, *id.* at 1011, the authors of the United States Department of Justice publication to which the Defendants object. These represent only a couple of the outside sources referenced by the court regarding the consequences of offender registration and

notification regimes, as the court cited a handful of journal articles and also bolstered its points with a smattering of newspaper articles recording anecdotal accounts of registrant experiences across the country.

In addition, the Alaska Supreme Court referenced precedent from out of state and employed its own familiarity with the criminal justice system to reach significant conclusions. The court cited the Kansas Supreme Court decision in *Myers* for the proposition that "[t]he practical effect of such unrestricted dissemination could make it impossible for the offender to find housing or employment." *Id* (citing *State v. Myers*, 260 Kan. 669, 696 (1996)). (The Kansas Supreme Court apparently reached that conclusion simply by exercising its collective common sense, as no citation follows its statement.) The Alaska Supreme Court also court used its familiarity with probation and parole, dissenting opinions in *Smith v. Doe*, and a law review comment to support its conclusion that the Alaska act's requirements were "comparable to supervised release or parole." *Id.* at 1012. This Court may do the same.

Though not in the context of sex offender registration, the Kansas Supreme Court has relied on studies, and other secondary material not admitted into evidence, for the basis of its holdings. For example, in *State v. Limon*, the Supreme Court considered studies offered in filed briefs and held that "[t]hese studies persuade us that the Romeo and Juliet statute presents one of those seemingly paradoxical situations where the classification is

both over- and under-inclusive." 280 Kan. 275, 299 (2005). Following this statement, the court went on to consider the findings of the studies and how they supported the conclusion that "the statute burdens a wider range of individuals than necessary for public health purposes." *Id.* This Court may do the same.

b. The articles and studies cited and quoted are not offered to prove "adjudicative facts," subject to the rules of evidence, but are relevant to "legislative facts." The rules of evidence do not apply to "legislative facts" and cannot act to exclude them from the record.

There is a long history of courts, including the Kansas Supreme Court (*see, e.g., State v. Limon,* 280 Kan. at 299), relying on studies, articles, and other sources of information not in evidence. This practice is known as taking notice of "legislative facts."

> They contrast with adjudicative facts, which are facts about "what the parties did, what the circumstances were, what the background conditions were." The most commonly cited examples of legislative facts are Louis Brandeis' recitation of opinions that working women needed special protection in his brief in *Muller v. Oregon,* and the social science appendix detailing the deleterious effects of segregation on black children in *Brown v. Board of Education.*

Ann Woolhandler, *Rethinking the Judicial Reception of Legislative Facts,* 41 Vand. L. Rev. 111, 111-12 (1988). Judicial notice of these "legislative facts," as opposed to "adjudicative facts" specific to a given case, are not governed by the rules of evidence:

> Judicial notice embraces at least three distinct subjects: (1) Judicial notice of adjudicative facts; (2) Judicial notice of legislative facts; and (3) Judicial notice of law. Only the first

> type - notice of adjudicative facts is a proper subject of the rules of evidence, and Federal Evidence Rule 201 governs only this type of Judicial notice. Judicial notice of legislative facts concerns a court's lawmaking function - the development of constitutional, statutory, and common law rules based on judicially accepted factual assumptions. Judicial notice of law concerns a court's law finding function.

Edward J. Imwinkelried, 2 Courtroom Criminal Evidence § 3001 (attached). Courts are free to consider such facts without being limited to the rules of evidence: "Requiring formal proof of legislative facts would be inhibiting, time-consuming, and expensive. Accordingly, courts make wide use of the judicial notice concept when interpreting and developing the law...." 1-201 Weinstein's Federal Evidence § 201.51[1]. There is no formal process for presenting "legislative facts" to a court, and courts sometimes receive an unbalanced presentation. Woolhandler, *supra*, at 118. But when a court, such as the United State Supreme Court in *Smith v. Doe*, takes notice of a legislative fact that is later cast into doubt, it can be expected that future litigants will challenge the premise of the earlier decision:

> But when lawyers perceive that a particular showing will affect the outcome in a case, they tend to make such a showing, which courts tend to receive. If the court relies on an imbalanced presentation in one case, attorneys with sufficient resources and sophistication are likely to respond in later cases with counter-presentations. Explicit judicial reliance on imbalanced information thus creates its own incentive for correction by showing attorneys what kinds of facts just might make a difference to the court. One cannot necessarily say that these presentations will change the prior legal rule, or that

> their effect might not have been different if presented before an earlier rule crystallized. But one can say that it is unlikely that over time a contestable scientific or social scientific study that is made the explicit basis of a court decision will remain unchallenged.

Id. As is typical and expected, Mr. Doe simply challenged a decision based on social scientific studies by presenting information of a similar format contesting the conclusions that formed the basis for the court's decision. That his challenge included social scientific data, rather than relying solely on information pertinent solely to himself and his circumstance, was entirely appropriate given the nature of the issue—a matter of legislative, rather than adjudicative, fact. The Defendants' objections, which inappropriately treat these matters as adjudicative facts, should be overruled.

C. **Specific objections refuted.**

Specific responses to each of Defendants' objections in Table C are set out below.

TABLE A – AFFIDAVIT OF JOHN DOE

¶¶	Language alleged to be objectionable	Basis for objection	Response
2	"As a result of my felony conviction, I understand that I will face discrimination on that basis alone, that I must forego certain civil rights, and that the jobs I can hold will be restricted."	Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegations and speculation as to whether he "will face discrimination"for being a felon, his potential jobs "will be restricted," or whether and what civil rights he might have to "forego" in the future.	Mr. Doe is simply acknowledging that a felony conviction itself causes problems. The balance of the objection goes to the weight of the evidence, not its admissibility, and could be addressed through cross-examination.
3	"However, the effects of registering as a sex offender extend far beyond the collateral effects associated with being a felon. The persistent and daily effects of my registration feel more akin to a continuation of punishment for my crime than merely collateral consequences."	Impermissible legal conclusion as to what constitutes"punishment." Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Vague and conclusory allegation about "persistent and daily effects" because insufficient specific facts about what Plaintiff alleges occurs "persistently" and "daily." - No admissible facts provided elsewhere that amount to	Mr. Doe is not offering a legal conclusion about what constitutes punishment under the Ex Post Facto Clause. Instead, he is explaining that, in his experience as a felon and registrant, the requirements of registration law are burdensome and feel like punishment. The balance of the objection goes to the weight of the evidence, not its admissibility, and could be addressed through cross-examination.

		"persistent" or "daily" experiences related to KORA. Examples are nearly all hearsay, not based on personal knowledge, and speculation.	
4	"When local police come to my home to conduct compliance checks, my children become confused and anxious."	Plaintiff is not competent to testify as to feelings of children: - No specific facts provided to establish foundation or basis for opinion testimony about another person's state of mind. - Plaintiff lacks personal knowledge of what other people feel. - No specific facts provided to establish any basis to assert observed "confusion." Hearsay if children's statements about feelings are offered for truth of children's feelings.	Mr. Doe, a parent, is more than qualified to testify that his children appear to be confused and anxious when police conduct compliance checks. Mr. Doe need not offer a detailed list of observations that support the conclusion that the children are anxious before asserting that his children become anxious. Like many of the defendants' objections, whether Mr. Doe can accurately surmise that his children are anxious goes to the weight of the evidence, not its admissibility, and could be addressed through cross-examination. This phrase will not be repeated in full in response to each of the many objections.
4	"They ask me why the police need to come to the house when I have not done anything wrong."	Hearsay if children's statements that Plaintiff has not done anything wrong are offered for either (1) the truth of Plaintiff not	The children's questions are not being offered for the truth of the matter asserted. Questions, by definition, are not assertions and,

		having done anything wrong, or (2) the truth of children believing that Plaintiff has not done anything wrong.	thus, are not limited by the rules of hearsay. *5-801 Weinstein's Federal Evidence § 801.11(2).* The children's questions are being offered as evidence of registration's impact on Mr. Doe's children and as an illustration of the confusion asserted in the prior sentence.
5	"Because of my inclusion on the registry, my children have been teased by their schoolmates and prevented from forming lasting relationships with other children whose parents instruct them not to associate with my family."	Plaintiff is not competent to testify to psychological state of children "forming lasting relationships" or to testify to the cause of being "prevented from forming lasting relationships": - No specific facts provided to establish foundation or basis for opinion testimony about another person's state of mind or the causes for that state. - Plaintiff lacks personal knowledge of other people's state of mind. - No basis provided for expert psychological opinion about Plaintiff's children. Improper conclusory allegation about the cause of Plaintiff's	As Mr. Doe details in the next line, his children have been told by other kids that that their father is a "bad man", a "pervert," or a "pedophile." Also detailed in the next line, he has witnessed his children cry about the same. Mr. Doe is permitted to offer his lay opinion, under K.S.A. § 60-456, that this teasing has caused problems for his children's relationships at school. Mr. Doe is not offering any expert psychological opinion. He is a father, sharing observations of his children's troubles. To the extent that the Defendants believe that he cannot accurately determine how his children react to teasing at school, they would be allowed to cross-

		children's psychological condition. No basis provided to establish how Plaintiff would have personal knowledge of (1) any "instructions" given by other schoolchildren's parents; (2) any statements by other schoolchildren to "tease" Plaintiff's children. Hearsay if Plaintiff's children's statements are offered for truth of (1) being teased at school; (2) what the teasing is about; (3) teasing on this subject affecting Plaintiffs children's relationships with other students. Double hearsay if schoolchildren's statements to Plaintiffs children about schoolchildren's parents' instructions are offered for truth of schoolchildren receiving parents' instructions. Triple hearsay if parents' instructions made to	examine at trial. There are no proper hearsay objections. No out-of-court declaration is even mentioned. The statement that "my children are teased" is not repeating any declaration, much less offering that declaration for the truth of the matter asserted.

		schoolchildren that schoolchildren then tell Plaintiff's children are offered for truth of parents' beliefs about Plaintiff's family or the truth of parents' reasons for not allowing schoolchildren to "associate with" Plaintiff's family.	
6	"My children have come home from school crying because children at school told them their father is a 'bad man,' 'pervert,' or 'pedophile.'"	No basis provided to establish how Plaintiff would have personal knowledge of any statements by other schoolchildren to Plaintiff's children. Hearsay if Plaintiff's children's statements about (1) what they are told at school; (2) why they are crying are offered for truth of (1) what they are told at school; or (2) why they are crying. Double hearsay if schoolchildren' s statements to Plaintiffs children are offered for truth of schoolchildren's belief that Plaintiff is bad.	The out-of-court declaration that Mr. Doe is a "bad man", a "pervert," or a "pedophile" is not offered for the truth of the matter asserted. It is offered to show the trauma to Mr. Doe's children. Mr. Doe has personally observed his children cry. Mr. Doe is permitted to draw a reasonable inference, even offer his lay opinion, with respect to whether the crying relates to other children's teasing. He need not offer specific details about whether the children began crying while they were telling him about the teasing, or if the crying began shortly thereafter, etc. Defendants would be allowed to cross-examine if they believe Mr. Doe is not capable of determining whether the crying and statements are related.

6	"My children's schoolmates are repeating what they hear from their own parents, people who know nothing about me except what they can view on the Offender Registry."	No basis provided to establish how Plaintiff would have personal knowledge of (1) any statements by other schoolchildren to Plaintiff's children; (2) any statements by parents of other schoolchildren to those other schoolchildren; (3) what parents of other schoolchildren know or don't know. Hearsay if Plaintiff's children's statements about what schoolchildren said at school are offered for truth of what schoolchildren said. Double hearsay if schoolchildren's statements to Plaintiff's children about what their parents' said are offered for truth of what parents' said. Triple hearsay if schoolchildren's parents' statements to schoolchildren that are then told to	Mr. Doe can permissibly testify that his children are upset by teasing at school. He can also offer his lay opinion, and indeed make reasonable inferences, that the source of information about his criminal record is attributable to the registry. Indeed, it would be counterproductive for defendants to deny this – the argument in support of the registry is premised on advancing the non-punitive purpose of public safety by "alerting the public to the danger of sex offenders in their community." *Smith v. Doe*, 538 U.S. at 102.

		Plaintiff's children are offered for truth of what parents know about Plaintiff.	
7	"Unfortunately, due to the popular belief that the Kansas Offender Registry is for 'violent sex offenders' and 'sexual predators,' I am rarely afforded such an opportunity."	Vague and speculative as to identity of specific persons that hold this "belief." Plaintiff is not competent to testify as to "popular belief" or to reasons why parents won't give "opportunity" to have discussions with Plaintiff: - Lack of foundation or basis for opinion testimony about popular beliefs. - Plaintiff lacks personal knowledge of what other people believe. If Plaintiff is basing this on statements of other people, then hearsay if people's statements about beliefs offered for truth of what other people believe.	Candidly, the statement is not terribly relevant to the *Mendoza-Martinez* factors being evaluated by the court. For what it is worth, Mr. Doe would be competent to testify at trial that parents of other children at school are not terribly interested in engaging him. He would be competent to testify that he often receives the cold shoulder from those who know that he is a registered offender. He would not be able to testify about what is or is not a "popular belief" in Kansas. The inclusion of this statement in the affidavit, however, does not prejudice the Defendants.
8	"But they [Plaintiffs children] are paying a huge price that will have lasting negative emotional and social	Plaintiff is not competent to testify as to any "price" (psychological effects) experienced by Plaintiff's	Mr. Doe is more than qualified to testify that his children are teased at school. He is qualified to testify that

	outcomes throughout their lives."	children: - Lack of foundation or basis for opinion testimony about psychological effects on children. - Plaintiff lacks personal knowledge of what other people believe. - No basis provided for expert psychological opinion about Plaintiffs children. Plaintiff is not competent to testify as to "lasting emotional and social outcomes": - Lack of foundation or basis for opinion testimony about future psychological and social effects on children's lives. Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegations and speculation as to current effects ("price") or future effects ("lasting ... outcomes"). - Conclusory allocations and	his family is shunned by those who know he is a registered offender. He is qualified to testify that his children are upset by both. The depth of the impact on the children when they are adults is something that is terribly upsetting to Mr. Doe, but the Plaintiff admits that he cannot attempt to quantify or qualify that impact. An affidavit for summary judgment is not offered as if it is the script of live testimony at trial. As the Court can tell, Plaintiff's counsel does not simply write affidavits for his clients to sign. Mr. Doe wrote the affidavit with guidance about what he should address. His written words would not always be admissible verbatim on the witness stand. That does not, however, mean that the affidavit fails to accomplish its purpose for summary judgment – outlining the material facts that support summary judgment.

		speculation about whether any psychological effects are attributable to registration rather than underlying conviction. If Plaintiff is basing this on statements of his children, then hearsay if children's statements about feelings offered for truth of what children feel.	
9	"However, I was terminated once my presence on the Offender Registry was brought to the attention of my employer."	Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegations about the reason for employer's decision to fire Plaintiff. - No basis established for personal knowledge of whether any information was "brought to the attention" of employer before being fired. - No basis established for personal knowledge of details of employer's decision-making on Plaintiff's employment.	The objection goes to the weight of the evidence, not its admissibility, and could be addressed through cross-examination.
10	"Someone who saw my profile on the registry website informed my manager	Vague and speculative as to identity of "someone" that	Mr. Doe is competent to testify that he was told that the reason he was

	that I was listed as a sex offender. I was then summoned to my manager's office, terminated, and escorted from the building."	allegedly informed manager. Plaintiff is not competent to testify to the events described: - Lack of foundation for how Plaintiff could know about the observations and actions of "someone." - Plaintiff lacks personal knowledge of "someone" observing registry. - Plaintiff lacks personal knowledge of "someone" informing manager. Hearsay if statements of "someone" are offered for truth of "someone" observing registry. Hearsay if statements of manager are offered for truth of "someone" informing manager of registry information. Double hearsay if statements of manager are offered for truth of statements by "someone" to manager that "someone" observed	being fired was that someone informed his manager that he was a registered sex offender. That out-of-court declaration is not offered for the truth of the matter asserted, i.e. "I was told by someone that you are a registered sex offender." The Plaintiff does not care whether or not the manager was "tipped off." Instead, it is offered as the explanation for why the manager did what he did next (fired Mr. Doe). *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay."); *see, e.g., Lindsey v. Prive Corp.*, 161 F.3d 886, 895 (5th Cir. 1998) (manager's testimony referred to information he had received from other managers, but it was admissible to explain manager's motive and state of mind when terminating employee).

		registry.	
10	"My manager told me that other employees working for the company had felony convictions."	Hearsay if statements of manager are offered for truth that company employed other felons.	The statement is not offered for the truth of the matter asserted, that other felons worked for the company. Instead, it is offered as explanation for why the manager fired Mr. Doe.
10	"However, he said that my listing on the Offender Registry would expose the company to public relations liabilities and issues related to employees' concerns for workplace safety."	Hearsay if statements of manager are offered for truth that Plaintiff's status would expose company to public relations and safety issues.	The statement is not offered to prove that the company would be exposed to liability. It is offered to show that the manager fired Mr. Doe because he was a registered sex offender.
11	"Subsequently, I attempted to gain employment commensurate with my education, skills and abilities, but I was rejected as soon as I disclosed my registration status to prospective employers."	Inadmissible evidence lacking specific supporting facts. - No details of attempts to find jobs, such as how many attempts, over what period of time, and which employers.	Mr. Doe's lengthy affidavit does not detail all of his job applications. The objection goes to the weight of the evidence, not its admissibility, and could be addressed through cross-examination.
11	"I was told several times that I would only be able to find low-paying, temporary labor jobs. Some prospective employers even told me to come back when I was 'off the list.'"	Vague and speculative as to identity of who told him about temporary jobs and identity of "some prospective employers." Hearsay if statements of are offered for truth that Plaintiff would only find certain jobs or would be allowed to reapply after	Not offered to prove that Mr. Doe would only be able to find low-paying, temporary jobs or that he would in fact be allowed to reapply. Instead, offered to explain why he was not offered employment. As to the "vague" objection, defense counsel could certainly cross-examine at trial.

		not being on registry.	
12	"With no place to turn in the job market ... "	Inadmissible evidence lacking specific supporting facts. - Based only on conclusory allegations about no job opportunities.	The fact asserted is that Mr. Doe decided to become self-employed because he could not find a job. He could so testify at trial.
12	"I have spoken with other registered offenders who have also turned to self-employment when public disclosure of their registration precluded other job opportunities."	Vague and speculative as to identity of"other registered offenders." Hearsay if statements of "other registered offenders" are offered for truth of "other registered offenders" job situation and job decisions.	The hearsay objection is valid. Counsel should have notice it and instructed Mr. Doe to delete it.
13	"My registration has a limiting effect on my business."	Inadmissible evidence lacking specific supporting facts. - Conclusory allegations about effect of registration.	The balance of the paragraph, to which the Defendants do not object, indicates that Mr. Doe is in constant fear of losing business because of his registration status and, to minimize the risk, conducts most of his business outside of Kansas. The next paragraph elaborates further on how registration affects Mr. Doe's decisions regarding potential expansion of his business.

15	"attorneys representing the town home complex where my family and I lived sent me a letter stating that my lease would not be renewed. They provided no reasons"	Testimony about content of letter not admissible without judicial finding of an exception to K.S.A. §60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided. K.S.A. § 60-256(e) requires that affidavits describing contents of a writing attach a certified copy of the writing. Hearsay if statements in attorneys' letter are offered for truth of attorneys not providing any reasons for terminating lease.	The best evidence rule does not apply at the summary judgment stage. *Alvarez v. T-Mobile USA, Inc.*, Case No. 2:10-2373-WBS-GGH, 2011 U.S. Dist. LEXIS 146757, *10 (E.D. Cal. Dec. 21, 2011) ("Similarly, at the summary judgment stage the court does not 'focus on the admissibility of the evidence's form,' but rather 'focus[es] on the admissibility of its contents.' Objections on the basis of a failure to comply with the technicalities of authentication requirements or the best evidence rule are, therefore, inappropriate.") (citations omitted); *see, e.g., Fraser v. Goodale*, 342 F.3d 1032, 1037 (9th Cir. 2003) ("Because the diary's contents could be presented in an admissible form at trial, we may consider the diary's contents in the Bank's summary judgment motion."). If this "best evidence" objection were to be made at trial, Mr. Doe would provide additional testimony to establish that the he did not keep the letter provided to him nearly a

			decade ago, that he would have discarded it, and that he certainly did not have any fraudulent intent when doing so. He would then be able to testify about the content of the letter pursuant to K.S.A. § 60-467(2)(B). With respect to the hearsay objection, there is no out-of-court declaration being repeated. The fact that no explanation was provided is not a hearsay statement.
15	"Moreover, this was not systematic. That is, only my lease was terminated; none of my neighbors experienced the same."	Plaintiff is not competent to testify to these events: - No foundation for how Plaintiff could know about whether townhome complex terminated any other leases at the same time as Plaintiff's. - Plaintiff lacks personal knowledge of townhome complex management's leasing decisions. - Plaintiff lacks personal knowledge of whether every other neighbor's lease was renewed. - Plaintiff lacks personal knowledge of what neighbors "experienced."	Mr. Doe is qualified to testify that his neighbors did not have their lease terminated (i.e. that they continued to reside at the same location). The objection goes to the weight of the evidence, not admissibility, and defense counsel could cross-examine Mr. Doe about the sufficiency of his personal observations concerning the neighbors' continued residency.

16	"landlords that reviewed my applications told me that they had no issues with my felony conviction. They said they did not want to rent to me because of my registration. Many explained that, when the map on the Offender Registry website indicates that a sex offender lives on their property, current tenants will leave and potential tenants will avoid the area."	Hearsay if landlords' statements are offered for truth of: 1. Landlords had "no issues" with Plaintiffs felony conviction; 2. Landlords not wanting to rent to Plaintiff "because of [Plaintiff's] registration; 3. Landlords belief that "current tenants will leave and potential tenants will avoid the area."	Half of the paragraph is objectionable hearsay (indicated below with strike-out). The balance is not offered for the truth of the matter asserted. "landlords that reviewed my applications ~~told me that they had no issues with my felony conviction. They said they did not want to rent to me because of my registration.~~ Many explained that, when the map on the Offender Registry website indicates that a sex offender lives on their property, current tenants will leave and potential tenants will avoid the area." The out-of-court declarations about how maps function and that current tentants would leave are not offered for the truth of the matter asserted. The landlords could have been wrong. Instead, the statements are offered to show why the landlords refused to rent to Mr. Doe. *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming

			the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.").
17	"It was the only way I found to circumvent the rental discrimination I faced."	Inadmissible evidence lacking specific supporting facts. - Conclusory allegations about "discrimination" because the supporting testimony in ¶¶ 15-17 is inadmissible hearsay.	The way Mr. Doe responded to landlords not renting to him for fear of losing tenants was to buy a home. The objection fails along with the objection to paragraph 16.
18	"my neighbors have told me they fear they are less likely to sell their homes for true market value because the close proximity of a registered sex offender (me) will make their houses less desirable to prospective buyers."	Hearsay if neighbors' statements are offered for truth of neighbors' "fear" about market value and prospective buyers' reactions. Neighbor's generalized fear is speculative, and therefore improper for summary judgment proceedings. Neither Plaintiff nor the unidentified neighbors he refers to are competent to testify as to property valuation: - Lack of foundation or basis for opinion testimony about how real	Mr. Doe can testify that neighbors have told him that "the close proximity of a registered sex offender will make their houses less desirable to prospective buyers." While the neighbors are no doubt correct, their statements are not offered for the truth of the matter asserted – that their houses will be less desirable. Instead, the statement are offered to show that his neighbors are not happy to have a registered offender live nearby. *5-801 Weinstein's Federal Evidence § 801.11(5)(c)* (Words or conduct offered as evidence of another's beliefs or thoughts are not

		estate is valued, what current property value is, and what future property value might be.	statements under the rule against hearsay because they are not offered to prove the truth of the matter asserted.)
19	"interest of preserving value in my own property"	Plaintiff is not competent to testify as to property valuation: - Lack of foundation or basis for opinion testimony about how real estate is valued, what current property value is, and what future property value might be.	Mr. Doe can certainly testify as to his motivation for doing something. "In the interest of preserving value in my property" expresses why he did something. The phrase is not an expert opinion on property valuation.
19	"I have been advised to establish residency and register at my new address prior to listing my home for sale."	Vague and speculative as to identity of specific persons that "advised" Plaintiff. Hearsay if statements of unidentified persons offered for truth of what those persons believe that Plaintiff should do regarding his registration or for truth of what those persons believe is good real estate advice.	Mr. Doe can certainly indicate that he has a concern about listing his home while the address is on the offender registry. The manner that he did so in the affidavit is not the best, but he can raise the concern and allow the Court to take it for what it is – a practical concern about his ability to market a residence occupied by a registered sex offender. If Mr. Doe responded to a question about his residence by repeating a statement that someone told him, an objection would be sustained if the statement was offered to prove the

			truth of the matter asserted (and it would not be so offered), but it would be overruled to the extent that the statement was offered merely to indicate that the issue was brought to Mr. Doe's attention and now is a concern of his (whether valid or not).
21	"Over the past nine years since my conviction, I have worked diligently to ensure that the behaviors that led to my crime were addressed and that I could be fully rehabilitated."	Improper expert opinion about mental health of Plaintiff. Plaintiff is not competent to testify as to a mental health evaluation that he has been "fully rehabilitated": - Lack of foundation or basis for opinion testimony about mental health evaluations or rehabilitation. Plaintiff is not competent to testify to lay opinion about Plaintiffs being "fully rehabilitated": - Lack of foundation or basis for opinion testimony about Plaintiffs rehabilitation. - No specific facts provided to support opinion about Plaintiff's rehabilitation.	Mr. Doe is more than competent to assert that he has worked diligently to ensure that he does not re-offend. That is not an expert opinion. Many of the Defendants' objections go to portions of the affidavit that are not relevant to the *Mendoza-Martinez* analysis. This is an example. An individual's success at rehabilitation is not a factor. Counsel did not ask Mr. Doe to strip out all of the statements that were of limited relevance.
21	"My success in addressing those	Improper expert opinion about	Mr. Doe can certainly give his

	behaviors provides me with confidence that I do not pose a threat to the community."	mental health of Plaintiff. Plaintiff is not competent to testify as to a mental health evaluation that he is not "a threat to the community" and has been fully rehabilitated: - Lack of foundation or basis for opinion testimony about mental health evaluations or rehabilitation. Plaintiff is not competent to testify to lay opinion about Plaintiff's being "threat to the community": - Lack of foundation or basis for opinion testimony about Plaintiffs threat. - No specific facts provided to support opinion about Plaintiff's threat.	opinion that he has been successful at treatment and that he does not pose an threat to the community. The objection goes to weight, not admissibility.
21	"encountering people who know me only by the information displayed on the Offender Registry"	Vague and speculative as to identity of "people." Plaintiff is not competent to testify to what "people" know: - Lack of foundation for what "people" know. - Plaintiff lacks personal knowledge of what other persons	Mr. Doe can certainly testify that he encounters people that he does not personally know, but who know about him based on the registry. He could testify about the nature of those encounters and how they make him feel. If defense counsel believe that it is a good cross-examination to challenge whether Mr. Does can say

		know. Hearsay if statements of "people" offered for truth of what "people" know.	what these people really "know," [illegible] [illegible] y [illegible] out-of-court statement. Hearsay objections are not properly raised when no out-of-court declaration has been repeated.
22	"I was required by the State of Kansas to follow the KSORA as punishment for my crime." and "I was required to register and be faced with the shaming of notification for 10 years." and "I was on notice that I would be penalized for my crime in that manner." and	Impermissible legal conclusion as to what constitutes "punishment," "shaming of notification," being "penalized," or "public shaming."	[illegible] mon [illegible] The [illegible] *Union*, Case No. 2:09-CV-366, 2010 U.S. Dist. LEXIS 123317 (N.D. Ind. November 18, 2010) (denying the defendant's motion to strike the plaintiff's affidavit statements that she "presented" certificates of deposit and "demanded" payment and noting, "Simply because 'demand' and 'presented' are legal terms does not mean that an individual cannot use these terms to describe actions within her personal knowledge").

	"extend my punishment" and "enduring this public shaming"		Furthermore, Mr. Doe is permitted to give a lay opinion under K.S.A. § 60-456, such as the opinion that the requirements are punishment, in the common sense of the word (as opposed to legal conclusion based on the *Mendoza-Martinez* factors).
22	"I was not on notice that the State would arbitrarily extend my punishment an additional 15 years."	Impermissible legal conclusion as to whether change in duration of registration period was "arbitrary."	Agreed that the use of the word "arbitrary" was unnecessary. Counsel is confident that the Court will not rely on it in reaching a decision on the summary judgment motion.
22	"no regard for my actual risk to the community"	Impermissible legal conclusion as to whether existing statutory classifications account for "actual risk."	Mr. Doe has apparently perceived a fact that many courts have considered quite significant when evaluating the *Mendoza-Martinez* factors – Kansas law does not include any individualized assessment of risk. He may certainly testify that no one has evaluated him as part of the registration process.
23	"I question the zealousness of the police department in pursing justice against the perpetrator of the crime against my home."	Improper speculative, conclusory allegations that lack specific supporting facts about the "zealousness" of the police.	Agreed that the sentence is unnecessary and irrelevant. This is the byproduct of counsel's approach of having Mr. Doe client write his

			own declaration and not writing it for him. Counsel should probably have directed that it be removed. That being said, there is no prejudice to the defendants from the Court being exposed to Mr. Doe's opinion.
24	"Information on the Offender Registry is now disseminated by services, such as http://www.sexoffenderin.com."	Testimony about content of webpages not admissible without judicial finding of an exception to K.S.A. §60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided. K.S.A. §60-256(e) requires that affidavits describing contents of a writing attach a certified copy of the writing. Hearsay if statements on website about the information coming from offender registries are offered for truth of the source of the	The best evidence rule does not apply at the summary judgment stage. *Alvarez v. T-Mobile USA, Inc.*, Case No. 2:10-2373-WBS-GGH, 2011 U.S. Dist. LEXIS 146757, *10 (E.D. Cal. Dec. 21, 2011) ("Similarly, at the summary judgment stage the court does not 'focus on the admissibility of the evidence's form,' but rather 'focus[es] on the admissibility of its contents.' Objections on the basis of a failure to comply with the technicalities of authentication requirements or the best evidence rule are, therefore, inappropriate.") (citations omitted); *see, e.g., Fraser v. Goodale*, 342 F.3d 1032, 1037 (9th Cir. 2003) ("Because the diary's contents could be presented in an admissible form at trial, we may consider the diary's contents in the Bank's summary judgment motion.").

		website information.	In addition, Mr. Doe's statement is not about the specific content of any web page. He merely points out the well-known fact that offender registry information is republished by a multitude of entities on the internet.
24	"[websites] have no obligation to warn users that seeking vigilante justice against registrants is criminal"	Plaintiff is not competent to testify to legal opinion about the legal obligations of "services, such as http://www.sexoffenderin.com": - Lack of foundation or basis for legal opinion testimony.	Testimony about "obligation" is probably inappropriate. Mr. Doe could testify about his experience looking at these sites, or "services," and how there are no warnings. Given the limited relevance of whether or not there are such warnings, counsel would probably just ask whether Mr. Doe is concerned about vigilante justice. He would then explain that he is and offer information about the crimes perpetrated against him thus far.
24	"This increases the chance that someone may believe it is permissible to harm me or my family, and, in turn, increases my anxiety about my family's vulnerability."	Improper speculative, conclusory allegations that lack specific supporting facts about "the chance that someone may believe it is permissible" to violate the law and harm another person.	Mr. Doe could testify at trial that he is concerned for the safety of his family. He could testify that he experiences anxiety. Both are relevant. Whether the absence of a warning increases the odds of "vigilante justice" is irrelevant and counsel would not elicit such testimony at trial. Counsel

			should probably have directed that the sentence be rephrased. That being said, there is no prejudice to the Defendants from the Court being exposed to Mr. Doe's opinion.
25	"my discussions with the local police, these compliance checks are performed at the request of the Johnson County Sheriff's Office."	Hearsay if statements of "local police" offered for truth that the Johnson County Sheriff's Office has requested "compliance checks."	Mr. Doe can testify that he encounters "compliance checks" by police. Why the compliance checks are conducted is not important and counsel would not elicit such testimony at trial.
26	"The police visits have a chilling effect on my neighbors and my children."	Vague and speculative as to what a "chilling effect" is, and the identity of "neighbors" Plaintiff is not competent to testify as to feelings of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Plaintiff lacks personal knowledge of what other people feel. Hearsay if "neighbors" and Plaintiffs children's statements about feelings are offered for truth of feelings.	Mr. Doe can competently testify about his perceptions of the impact of the compliance checks on his children and neighbors. At trial, defense counsel would be free to cross-examine on whether Mr. Doe has made sufficient observations to accurately characterize the impact on his children and neighbors as well as the phrase "chilling effect" and its meaning.

		Impermissible legal conclusion as what is a "chilling effect." Plaintiff is not competent to testify to legal opinion about "chilling effect": - Lack of foundation or basis for legal opinion testimony.	
26	"my neighbors question the trust I have been working to build with them."	Vague and speculative as to identity of "neighbors." Plaintiff is not competent to testify as to thoughts of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Plaintiff lacks personal knowledge of what other people think. Hearsay if "neighbors" statements about feelings are offered for truth of any "question[ing]" of trust. Inadmissible evidence lacking specific supporting facts. - Conclusory allegations and speculation as to neighbors' thoughts.	Mr. Doe is competent to testify about the effect of the compliance checks on relationships with his neighbors. Defense counsel could cross-examine, asking for identities of neighbors, examples of illustrative interactions, and about whether Mr. Doe really knows what his neighbors are thinking.

26	"The community naturally perceives police visits as indicators that something is wrong."	Vague and speculative as to identity of "community," and no specific facts as to any specific persons that ever observed a "police visit." Plaintiff is not competent to testify as to perceptions of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Plaintiff lacks personal knowledge of what other people perceive. Hearsay if statements by "community" about perceptions are offered for truth of perceptions.	Agreed that Mr. Doe would not be able to testify about perceptions of members of the community. That being said, the Court can certainly take note of the fact that police cars at a neighbor's home often causes raised eyebrows and stirs up gossip. Mr. Doe appears to be attempting to convey this.
27	"The Lieutenant was positive that Kansas's registration statutes authorized police visits to my home."	Vague and speculative as to identity of "Lieutenant." Hearsay if statements of "Lieutenant" are offered for truth of what the "Lieutenant" believed.	The statement would only be hearsay if it were offered to prove the truth of the matter declared, that Kansas registration statutes authorize police compliance checks. The statutes do not so authorize and, thus, it the declaration is not offered for the truth of the matter asserted. Defense counsel would be free to cross-examine Mr. Doe about which

			Lieutenant was at his home.
27	"He was corrected later by the Assistant City Attorney, who advised him that there is no statutory authority to conduct these visits."	Vague and speculative as to identity of "Lieutenant" and "Assistant City Attorney." Hearsay if statements of "Lieutenant" are offered for truth of what the "Assistant City Attorney" told the "Lieutenant." Double hearsay if statements to "Lieutenant" by "Assistant City Attorney" are offered for the truth of"no statutory authority."	This statement is probably hearsay, but the Court need not rely upon the declaration of the Assistant City Attorney to take note that there is no such statutory authorization.
27	"The Assistant City Attorney told him that they are being conducted under the Supreme Court's ruling that a 'knock and talk' using access available to the public is authorized."	Vague and speculative as to identity of "Lieutenant" and "Assistant City Attorney." Hearsay if statements of "Lieutenant" are offered for truth of what the "Assistant City Attorney" told the "Lieutenant." Double hearsay if statements to "Lieutenant" by "Assistant City Attorney" are offered for the truth of which procedures are	There is limited relevance to what authority was offered as justification for the intrusions, but the declaration that the intrusions are legally justified as "knock and talks" is not being offered for the truth of the matter asserted (that the intrusions are legal "knock and talks").

		"authorized." Plaintiff is not competent to testify to policies of "local police": - No foundation for how Plaintiff could know local police policies. - Plaintiff not authorized to testify on behalf of local police as to policies and procedures. - Plaintiff lacks personal knowledge of local police policy decisions. Testimony about content of local police policies and procedures, if written, not admissible without judicial finding of an exception to K.S.A. § 60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided.	
29	"These policies apply only because I am a registered offender; they are not	Vague and speculative as to identity of "school."	Mr. Doe is competent to testify about the impact of registration on his

	applicable to all individuals with felony convictions."	Plaintiff is not competent to testify to policies of unidentified "school": - No foundation for how Plaintiff could know school policies. - Plaintiff not authorized to testify on behalf of school as to policies and procedures. - Plaintiff lacks personal knowledge of school policy decisions. Testimony about content of school policies and procedures, if written, not admissible without judicial finding of an exception to K.S.A. §60- 467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided.	ability to go to and participate at his children's school. He may testify that he is required to contact the school principal whenever he wants to go on school property and that he is barred from volunteer opportunities at the school. He may also testify that these restrictions are in place "because I am a registered sex offender." The defendants did not object to that portion (paragraph 28). Mr. Doe need not specifically identify the school in his declaration, although Mr. Doe is willing to provide that information and would do so on cross-examination. Mr. Doe has not identified any specific policy or writing. Instead, he explained his understanding of the policy. If he is wrong, the defendants may certainly cross-examine, call their own witnesses, and even admit a copy of the policy, if a written policy does exist. This objection is good illustration of

			the Defendants' strategy. They do not dispute that policy restricts the Plaintiff's access to his children's school. Instead, they attempt to block consideration of uncontroverted facts with lengthy evidentiary objections that lack merit. The strategy misses the purpose of summary judgment. The Plaintiff articulates the facts about which Plaintiff can admit competent evidence at trial, and the Defendants can point to no evidence to controvert the facts.
29	"The school principal told me that I will no longer be required to take these steps when my registration period expires."	Vague and speculative as to identity of"school principal." Plaintiff is not competent to testify to policies of unidentified "school": - No foundation for how Plaintiff could know school policies. - Plaintiff not authorized to testify on behalf of school as to policies and procedures. - Plaintiff lacks personal knowledge of school policy decisions. Testimony about content of school	Mr. Doe cannot offer the principal's statement for the truth of the matter asserted, but he can testify about the application of school policy to him and his experiences as a registered offender with children in school.

		policies and procedures, if written, not admissible without judicial finding of an exception to K.S.A. §60- 467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided. Hearsay if statements of "school principal" are offered for the truth of what the school or school principal will do after Plaintiff's registration period ends.	
30	"the new principal contacted me and requested that I serve on the school's site council."	Vague and speculative as to identity of "new principal." Hearsay if statements of "new principal" are offered for the truth of the "new principal" requesting Plaintiff serve on the site council.	Defense counsel can cross-examine about the principal's name. That is not requisite foundation. The out-of-court question, "Mr. Doe, would you be willing to serve on the school's site counsel?" is not a statement being offered for the truth of the matter asserted. A question is by nature not a declaration and not

			subject to the hearsay rules. *5-801 Weinstein's Federal Evidence § 801.11(2).*
30	"Based on conversations with several people who informed him of the work I do with various charitable organizations, he thought I would be a valuable addition to the council."	Vague and speculative as to identity of "new principal" and "several people." Plaintiff is not competent to testify as to thoughts of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Plaintiff lacks personal knowledge of what "new principal" thought about adding Plaintiff to council. Hearsay if statements of "new principal" are offered for the truth of what "new principal" thought. Hearsay if statements of "new principal" about what unidentified "other people" said to "new principal" are offered for the truth about what unidentified "other people" said.	Defense counsel could cross-examine about the identity of principal and the people he consulted. It is not requisite foundation. Mr. Doe is not testifying about the mental impressions of others, he is merely conveying that the principal had a reason to invite him to join the council. The statement, "I talked to various folks who you've worked with on charitable organizations, and I believe you would be a valuable addition to the council" is not offered for the truth of the matters asserted - i.e. that the principal actually talked to people, or that Mr. Doe would be a valuable addition. Instead, it is offered to explain why the principal invited Mr. Doe to join the council. Thus, it is not hearsay. *Trimble v. Trani,* Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals'

		Double hearsay if statements of unidentified "other people" to "new principal" are being offered for the truth about unidentified "other people" having information about "the work I do with various charitable organizations."	holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.")
31	"At the meeting, he informed me that several parents objected to my inclusion on the site council."	Vague and speculative as to identity of "new principal" and "several parents." Hearsay if statements of "new principal" are offered for the truth of "several parents" objecting.	Defense counsel could cross-examine about the identity of principal and the parents; it is not requisite foundation. The out-of-court declaration, "several parents objected to your inclusion in the site council" is not offered for the truth of the matter asserted, i.e. that several parents objected, but it is offered as the explanation given (whether based in truth or not) for refusing to allow Mr. Doe to participate. It simply provides context for why Mr. Was subsequently asked not to participate. Thus, it is not hearsay. *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court

			of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.")
31	"He said they demanded my removal and threatened to make the entire school community aware that a school official had invited a registered sex offender to serve if I was permitted to remain on the council."	Vague and speculative as to identity of"new principal" and "parents." Hearsay if statements of "new principal" about what unidentified "parents" said to "new principal" are offered for the truth about what unidentified "several parents" said. Double hearsay if statements of unidentified "parents" to "new principal" are being offered for the truth about unidentified "several parents" intentions to "make the entire school community aware" of Plaintiff being on council.	Defense counsel could cross-examine about the identity of principal and the parents; it is not requisite foundation. The threat that parents would make the "entire school community aware" is not offered for the truth of the matter asserted, i.e. that parents made the threat or intended to do so, but it is offered as the explanation given (whether based in truth or not) for refusing to allow Mr. Doe to participate. It is offered to provide context. Thus, it is not hearsay. *Trimble v. Trani,* Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not

			hearsay.")
31	"He asked the parents to provide me the opportunity to address their concerns,"	Vague and speculative as to identity of"new principal" and "parents." Hearsay if statements of "new principal" about what he asked unidentified "parents" are offered for the truth about what "new principal" actually asked.	Defense counsel could cross-examine about the identity of principal and the parents; it is not requisite foundation. The out-of-court declaration—"I asked them to please let you have the opportunity to address your concerns"—is not being offered for the truth of the matter asserted, but is being offered as the explanation given (whether based in truth or not) for refusing to allow Mr. Doe to participate. It simply provides context. Thus, it is not hearsay. *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.")
31	"but they all refused"	Vague and speculative as to	Defense counsel could cross-examine

		identity of "new principal" and "parents." Hearsay if statements of "new principal" about what unidentified "parents" said to "new principal" are offered for the truth about unidentified "parents" refusing.	about the identity of principal and the parents; it is not requisite foundation. The out-of-court declaration "they all refused" is not being offered for the truth of the matter asserted, but is being offered as the explanation given (whether based in truth or not) for refusing to allow Mr. Doe to participate. It simply provides context. Thus, it is not hearsay. *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.")
31	"He stated he was unprepared for the intense anger the parents expressed, and it made him fearful for the safety and welfare of my children. He also stated that he was surprised that people with no information other than my registry listing had such a strong desire	Vague and speculative as to identity of "new principal" and "parents." Plaintiff is not competent to testify as to thoughts of other people: - Lack of foundation or basis for	Agreed that this is objectionable hearsay. Fortunately, the principal's opinions are not relevant to evaluation of the *Mendoza-Martinez* factors.

	to harm me."	opinion testimony about state of mind. - Plaintiff lacks personal knowledge of "new principal" being "unprepared," "fearful," or "surprised." Hearsay if statements of "new principal" about what unidentified "parents" said to "new principal" are offered for the truth about what the unidentified "parents" stated they knew about Plaintiff. Double hearsay if statements of unidentified "parents" to "new principal" are being offered for the truth about unidentified "parents" having "no information."	
31	"He relayed that they had no inclination to listen his positive experiences with me and seemed to have no desire to learn what risk I actually pose." [sic]	Vague and speculative as to identity of"new principal" and "parents." Plaintiff is not competent to testify as to thoughts of other people: - Lack of foundation or basis for opinion testimony about state of	Agreed that this is objectionable hearsay. Fortunately, the principal's evaluation of the parents (probably accurate) are not relevant to evaluation of the *Mendoza-Martinez* factors.

		mind. - Plaintiff lacks personal knowledge of whether unidentified "parents" have "no inclination to listen" or "no desire to learn." - Plaintiff lacks personal knowledge of what unidentified "parents" know about Plaintiffs risk. Hearsay if statements of"new principal" about what unidentified "parents" said to "new principal" are offered for the truth about what the unidentified "parents" stated about feelings and knowledge. Double hearsay if statements of unidentified "parents" to "new principal" are being offered for the truth about what unidentified "parents" actually felt and knew.	
32	"The principal said he was sick that he had to submit to the hysterics of a few people whose only information came from the registry website."	Vague and speculative as to identity of"new principal" and "few people."	Defense counsel could cross-examine about the identity of principal and the parents; it is not requisite foundation.

		Plaintiff is not competent to testify as to thoughts of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Plaintiff lacks personal knowledge of whether "new principal" was "sick." - Plaintiff lacks personal knowledge of what unidentified "parents" know about Plaintiff or the registry. Hearsay if statements of "new principal" are offered for the truth about unidentified "people" having "hysterics" or about what unidentified "people" said. Double hearsay if statements of unidentified "people" to "new principal" are being offered for the truth about the unidentified "people" having certain information.	The out-of-court declaration "I'm sick about submitting to the hysterics . . ." is not being offered for the truth of the matter asserted, but is being offered as the explanation given for refusing to allow Mr. Doe to participate. It simply provides context. Thus, it is not hearsay. *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.")
32	"He informed me that, to ensure the safety and welfare of my family, I would no longer be permitted to serve	Vague and speculative as to identity of"new principal."	Defense counsel could cross-examine about the identity of principal; it is not requisite foundation.

	on the site council."	Plaintiff is not competent to testify as to beliefs of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Plaintiff lacks personal knowledge of whether "new principal" believed "safety and welfare" needed to be protected. Hearsay if statements of "new principal" about not permitting Plaintiff to serve on council are offered for the truth about why Plaintiff was not being permitted to serve.	The out-of-court declaration "to ensure the safety and welfare of your family" is not being offered for the truth of the matter asserted, but is being offered as the explanation given for refusing to allow Mr. Doe to participate. It is not hearsay. *Trimble v. Trani*, Case No. 09-CV-01943-REB, 2011 U.S. Dist. LEXIS 86563, *36-38 (D. Colo. August 5, 2011) (Affirming the Colorado Court of Appeals' holding that "[a] statement offered to provide context for subsequent events and not for the truth of the matter asserted is not hearsay.")
32	"Once again, the Offender Registry caused me to be ostracized from my community."	Plaintiff is not competent to testify as to status in community based on objectionable testimony in ¶¶ 28-32: - Lack of foundation or basis for opinion testimony about being "ostracized." - This testimony is based entirely on the objectionable testimony in ¶¶ 28-32, and therefore is conclusory and speculative.	Mr. Doe was not permitted to participate on the school council. The explanation given (whether the real reason or not) was his inclusion on the Offender Registry. This made Mr. Doe feel ostracized from the community based on his registration status. He is not offering expert testimony about "community status." He is expressing how he felt.

33	"Last year, my neighbors' three-month old baby girl died due to SIDS."	Vague and speculative as to identity of "neighbors." Hearsay if statements of "neighbors" about death of baby girl are offered for the truth about the cause of death.	Defense counsel may cross-examine about the neighbor's identity. This is offered as an explanation of why Mr. Doe went to the hospital, nothing more. The cause of death is of no significance. No statement was repeated.
33	"During their time of grief, my neighbors requested that my wife and I come to the hospital."	Vague and speculative as to identity of "neighbors." Hearsay if statements of "neighbors" about requesting Plaintiff come to hospital are offered for the truth about neighbors actually requesting Plaintiff's presence.	Defense counsel may cross-examine about the neighbor's identity. This is offered as an explanation of why Mr. Doe went to the hospital, nothing more. There is no out-of-court declaration being repeated for it to be hearsay. There is no significance to whether the neighbors."actually request[ed] Plaintiff's presence." The point is that he went to the hospital.
33	"The guard said that, because I was a registered sex offender, the hospital could not accommodate my visit."	Vague and speculative as to identity of "guard." Plaintiff is not competent to testify to policies of Children's Mercy Hospital: - No foundation for how Plaintiff could know hospital policies.	Defense counsel may cross-examine about the guard's identity. Mr. Doe was refused entrance to the hospital and the reason given was his registry status. Whether Children's Mercy policy was properly followed in refusing entrance is not at issue.

		- Plaintiff not authorized to testify on behalf of hospital as to policies and procedures. - Plaintiff lacks personal knowledge of hospital policy decisions. Testimony about content of hospital policies and procedures, if written, not admissible without judicial finding of an exception to K.S.A. §60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided. Hearsay if statements of "guard" are offered for the truth of hospital's basis for not allowing Plaintiff's visit.	The guard's statement is not offered to prove the content of Children's Mercy Hospital policy. It is offered as one of several examples of Mr. Doe being denied access or participation and the reason offered is his registration status. Mr. Doe can describe these experiences and how they made him feel. If the Defendants believe that the guard was wrong and that policy allows registered offenders into the hospital, they may cross-examine Mr. Doe, call their own witnesses, or seek to admit the policy (whether by business record subpoena or production of a witness from the hospital).
33	"I was only barred from entering because I was listed on the Offender Registry, not because of my crime."	Plaintiff is not competent to testify to policies of Children's Mercy Hospital:	Mr. Doe can properly testify as to the explanation given for barring his entrance –it was his registry status,

		- No foundation for how Plaintiff could know hospital policies. - Plaintiff not authorized to testify on behalf of hospital as to policies and procedures. - Plaintiff lacks personal knowledge of hospital policy decisions. Plaintiff is not competent to testify as to an alleged sole reason for being barred from the hospital based on objectionable testimony in ¶33: - Lack of foundation or basis for opinion testimony about basis for being barred from hospital. - This testimony is based entirely on the objectionable testimony in ¶33, and therefore is conclusory and speculative.	not the felony conviction. If the Defendants believe that the guard was wrong and that policy allows registered offenders into the hospital, they may cross-examine Mr. Doe, call their own witnesses, or seek to admit the policy (whether by business record subpoena or production of a witness from the hospital).
35	"Each May, I receive a letter from the D MV stating that I am required to get a new driver's license."	Testimony about content of DMV letter not admissible without judicial finding of an exception to K.S.A. §60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless	Mr. Doe is not testifying as to the specific content of the letters, but generally that they come from DMV each May and indicate that he must get a new license. If this "best evidence" objection were

		judicial finding that exceptions satisfied. - No justification for any exceptions provided. K.S.A. §60-256(e) requires that affidavits describing contents of a writing attach a certified copy of the writing. Hearsay if statements in letter are offered for truth of licensing requirements.	to be made at trial, Mr. Doe would provide additional testimony to establish that the he does not keep the form letters, that he discards them, and that he certainly did not have any fraudulent intent when doing so. He would then be able to testify about the content of the letter pursuant to K.S.A. § 60-467(2)(B). Also, objections based on best evidence rule are inappropriate at the summary judgment stage. *Alvarez v. T-Mobile USA, Inc.*, Case No. 2:10-2373-WBS-GGH, 2011 U.S. Dist. LEXIS 146757, *10 (E.D. Cal. Dec. 21, 2011) ("Similarly, at the summary judgment stage the court does not 'focus on the admissibility of the evidence's form,' but rather 'focus[es] on the admissibility of its contents.' Objections on the basis of a failure to comply with the technicalities of authentication requirements or the best evidence rule are, therefore, inappropriate.").
37	I provide my driver's license often during the course of my daily life. I	Inadmissible evidence lacking specific supporting facts.	Mr. Doe can testify that he uses his driver's license during daily life for

	present it at banks, stores, hotels, restaurants, airports, and many other places that require government-issued identification." and "Whenever I present my ID, I am concerned that people who view the registered offender number on it will deny me services and discriminate against me."	- No details provided about alleged "daily" use of driver's license, which is unsupported by the Plaintiff's other testimony. - By Plaintiffs own admission, he is self employed and works out of his own home. - No supporting facts for idea that Plaintiff is denied services or discriminated against as a customer. - Conclusory allegations and speculation as to possible future denial of services or discrimination.	identification. He can testify about how it makes him feel to use his license for identification when the license includes an offender registry number. As for the Defendants' objections that Mr. Doe did not provide enough details, they could cross-examine. However, the Plaintiff's statement that he works from home does not indicate that the Plaintiff never leaves home. The Plaintiff actually stated that he travels often for work. John Doe Affidavit, ¶ 13. As for their "objection" that Mr. Doe has not proven that he has ever actually been denied service or faced discrimination from businesses (other than being denied entrance to Children's Mercy Hospital), the Defendants could cross-examine about whether it is reasonable to be concerned about displaying a driver's license with an offender registry number on its face.
43	"If I had known that the registration period would increase to 25 years and include the more burdensome current requirements, I would likely not have	Inadmissible evidence lacking specific supporting facts. - Plaintiff voluntarily visited police station to admit his crime to	The statement is proper. Defense counsel could cross-examine if they doubt the veracity of the statement.

	agreed to plead as charged."	a detective (see Defendant's Summary Judgment Exhibit D, Olathe Police Department file, page 3 of 5 (first paragraph of Narrative Report)), and Plaintiff has never claimed this was not voluntary. - Plaintiffs admission of the crime occurred before he was charged, virtually guaranteeing conviction. - In any event, it is mere speculation as to what Plaintiff might have decided under different circumstances.	
44	"and be faced with the shame of registration and notification"	Impermissible legal conclusion as to whether registration and notification constitutes "shame."	[illegible] of a legal dispute does not necessarily morph simple lay terminology into legal jargon. *See Harman v. Regional Federal Credit Union*, Case No. 2:09-CV-366, 2010 U.S. Dist. LEXIS 123317 (N.D. Ind. November 18, 2010) (denying the defendant's motion to strike the plaintiff's affidavit statements that she "presented" certificates of deposit and "demanded" payment and noting, "Simply because 'demand' and

			'presented' are legal terms does not mean that an individual cannot use these terms to describe actions within her personal knowledge").

TABLE B – AFFIDAVIT OF JANE DOE

¶¶	Language alleged to be objectionable	Basis for objection	Response
1	"The registration and notification requirements with which my husband must comply have substantial recurring consequences for the rest of his family."	Inadmissable evidence not based personal knowledge and lacking specific supporting facts. - Conclusory allegations about "substantial" recurring consequences." - No admissible facts provided elsewhere that amount to "persistent" or "daily" experiences related to KORA. Examples are nearly all hearsay , not based on personal knowledge, and speculation.	Mrs. Doe can testify that in her personal experience Mr. Doe and her family experience consequences from registration, and that they are reoccurring. She may give her lay opinion that the consequences are substantial. The consequences are detailed throughout the affidavit. Defense counsel could cross-examine about her choice of words and observations that support the testimony.
2	"Because I believe it is important to understand the context of my statements, I want to note that, from the very beginning of our relationship, my husband has been forthcoming about his	Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about Plaintiff being "forthcoming" and taking "accountability and	All of these objections are material for cross-examination, not proper evidentiary objections. That being said, should the Court grant the Defendants' motion, the Plaintiff

	crime and has taken full accountability and responsibility for his actions."	responsibility" over an unspecified period of time. (Jane Doe provided no testimony about how long she has known Plaintiff.) - No specific details provided to support exactly how Plaintiffs has behaved "from the beginning" of relationship with Jane Doe to present.	would be happy to provide an augmented affidavit with more details. Much of this is of marginal relevance. Mrs. Doe believes in her husband and wanted to express as much. Mr. Doe's individual risk assessment is not terribly relevant to the *Mendoza-Martinez* factors. In fact, the opposite is true – the most important fact is that an individualized risk assessment is not taken into consideration by the KORA.
4	"I witnessed and was a part of many aspects of my husband's restoration over the years since his crime."	Jane Doe is not competent to testify as to psychological state of other people: - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal knowledge of Plaintiff's mental state. Improper expert opinion about mental health of Plaintiff. Jane Doe is not competent to testify as to a	Mrs. Doe is not offering an expert psychological opinion. She is testifying that she has personal knowledge of his "restoration," or rehabilitation. As to the meaning of the word, the defense could cross-examine.

		mental health evaluation about Plaintiffs "restoration": - Lack of foundation or basis for opinion testimony about mental health evaluations or rehabilitation. Jane Doe is not competent to testify to lay opinion about Plaintiff's "restoration": -Lack of foundation or basis for opinion testimony about Plaintiff's "restoration." -No specific facts provided to support opinion about Plaintiff's "restoration."	
4	"As a result of this with confirmation from mental health professionals who have evaluated my husband, I firmly believe that my husband does not present a safety danger to anyone in the community."	Vague and speculative as to identity of "mental health professionals." Improper expert opinion about mental health of Plaintiff. Jane Doe is not competent to testify to a mental health evaluation that Plaintiff "does not present a safety danger": - Lack of foundation or basis for opinion testimony about mental	Mrs. Doe is competent to testify that, based on her personal experience as Mr. Doe's wife, she believes that he is not a danger. Defense counsel could take the tack that she is biased, is not trained in who does or does not pose a threat, may not have a good basis to know the opinions of the mentioned mental health professionals, etc. Those are not proper evidentiary objections.

		health evaluation's or rehabilitation. Jane Doe is not competent to testify to lay opinion about Plaintiff's "danger": - Lack of foundation or basis for opinion testimony about Plaintiff's "danger." - No specific facts provided to support opinion about Plaintiff's "danger." Hearsay if statements of unidentified "mental health professionals" about Plaintiff are offered for truth of Plaintiff not presenting "a safety danger." Jane Doe is not competent to testify as to thoughts and opinions of unidentified "mental health professionals" about danger to community presented by Plaintiff: - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal	

		knowledge of thoughts and opinions of others.	
6	"Because we are confident that he does not pose a risk to anyone"	Improper expert opinion about mental health of Plaintiff. Jane Doe is not competent to testify to a mental health evaluation that Plaintiff "does not pose a risk": - Lack of foundation or basis for opinion testimony about mental health evaluations or rehabilitation. Jane Doe is not competent to testify to lay opinion about Plaintiff's "risk": - Lack of foundation or basis for opinion testimony about Plaintiff's rehabilitation. - No specific facts provided to support opinion about Plaintiff's rehabilitation.	Mrs. Doe is competent to give such an opinion. The relevance to the issue before the court is limited.
7	"The issues my family faces because of my husband's registration"	Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegation about	Mrs. Doe is competent to testify about the difficulties her family encounters as a result of Mr. Doe's registration. Defense counsel could cross examine

		"issues." - No admissible facts elsewhere that provide any detailed explanation of "issues" related to KORA. Examples are all hearsay, not based on personal knowledge, and speculation.	about the sentence fragment, including the use of the word "issues" and whether Mrs. Doe can articulate what "issues" she has encountered, although they apparently reference the hardship detailed in the remainder of Mrs. Doe's affidavit.
7	"this frightening circumstance is what people think of when they hear that my husband is a registered sex offender."	Vague and speculative as to identity of"people." Jane Doe is not competent to testify to thoughts of unidentified "people" about Plaintiff: - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal knowledge of what other people think. Hearsay if statements of unidentified "people" are offered for truth of what "people" think about when they are told about Plaintiff.	This is Mrs. Doe's opinion. It is not admissible to prove what people actually think. It is admissible to explain how she feels when interacting with people who have learned that Mr. Doe is on the registry.

8	"Many people are so filled with fear by stories of these tragic events that any rational discussion of my husband's risk is impossible."	Vague and speculative as to identity of "many people." Jane Doe is not competent to testify to fears, thoughts, and state of mind of unidentified "people": - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal knowledge of what other people fear or think, or the ability of unidentified "people" to have "rational discussion." Hearsay if statements of unidentified "people" are offered for truth of what "people" fear or their ability to have "rational discussion." Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about "fear" felt by "many people." - No detailed explanation of when, where, or with whom Jane Doe attempted "rational	This is Mrs. Doe's opinion. It is not admissible to prove what people actually think. It is admissible to explain how she feels when interacting with people who have learned that Mr. Doe is on the registry.

		discussion."	
8	"In my experience , a vast majority of people believe that the registry list is based on risk and that people on the list pose a risk to the community."	Vague and speculative as to identity of "a vast majority of people." Jane Doe is not competent to testify to beliefs and state of mind of unidentified "people": - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal knowledge of what other people believe. Hearsay if statements of unidentified "people" are offered for truth of what "people" actually believe. Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about what "a vast majority of people believe." - No details provided for how Jane Doe would acquire personal knowledge about the belief of	This is Mrs. Doe's opinion. It is not admissible to prove what people actually think. It is admissible to explain how she feels when interacting with people who have learned that Mr. Doe is on the registry.

		these unidentified persons.	
9	"Because members of the community have emotionally-charged and fearful responses to my husband's presence on the Sex Offender Registry, I am repeatedly refused the opportunity to address concerns."	Vague and speculative as to identity of "members of the community." Jane Doe is not competent to testify to beliefs and state of mind of unidentified "members of the community": - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal knowledge of the basis for other people's responses to Jane Doe. Hearsay if statements of unidentified "members of the community" are offered for truth of what "members of the community" actually feel or the truth of the reasons the "members of the community" refuse to talk with Jane Doe. Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about	Mrs. Doe can testify about her experiences when others learn that Mr. Doe is a registered offender, including the experience that she is "repeatedly refused the opportunity to address concerns" and her observation that those with whom she speaks react in an "emotionally-charged" manner. Her explanation of why she is refused this opportunity is admissible to explain how she feels in these situations. It is not offered to prove what others are actually thinking. The balance of the Defendants' objections go to the weight of the evidence, not its admissibility, and could be addressed through cross-examination.

		unidentified "community members" feelings and Jane Doe being "refused" opportunities. - No details provided for how Jane Doe would acquire personal knowledge about the feelings of these unidentified persons. - No details provided for when, where, and with whom Jane Doe is "refused."	
10	"My family is shunned by members of our community."	Vague and speculative as to identity of "members of our community." Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about actions of unidentified "community members." - No details provided for who in Plaintiff's family is shunned. - No details provided for when, where, and by whom anyone in Plaintiff's family is shunned.	The objection goes to the weight of the evidence, not its admissibility, and could be addressed through cross examination.
10	"Regardless of our attempts to provide meaningful information on the person my husband is today,"	Vague and speculative as to identity of persons that Jane Doe spoke with.	Reading the full sentence, Mrs. Doe is expressing that her family lives "under the sex offender label" despite

		Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about "attempts." - No details provided for when, where, and with whom Jane Doe "attempts" to discuss Plaintiff.	efforts to tell others that Mr. Doe is not a danger. Mrs. Doe certainly may testify that she feels that her family is living "under the sex offender label" when interacting with others in the community. Defense counsel could cross-examine about the matters framed as objections.
	"my entire family lives under the 'sex offender' label."	Inadmissible evidence lacking specific supporting facts. - Conclusory allegations and argument about a "label" applied to entire family. - No details provided for who is applying "label" and circumstances describing those events. - No details provided for how Jane Doe would acquire personal knowledge about whether unidentified persons applying "label" did so based solely on Plaintiffs registration rather than conviction.	See above.
11	"Because of others' emotionally charged reactions to my husband's registration"	Vague and speculative as to identity of persons that Jane Doe observed.	Mrs. Doe may testify that she is fearful because of the "emotionally charged reactions" of others. She has observed these reactions.

		Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about feelings of unidentified persons. - No details provided for when and where people are having reactions to Plaintiff and who these people are. - No details provided for how Jane Doe would acquire personal knowledge about whether unidentified persons' reaction was based solely on Plaintiff's registration rather than conviction.	
12	"My husband's registration impacts and punishes my children in ways that will undoubtedly have lasting emotional consequences."	Jane Doe is not competent to testify as to "lasting emotional consequences" on her children: - Lack of foundation or basis for opinion testimony about future psychological effects on children's lives. Speculative as to future outcomes throughout other people's lives; Plaintiff lacks personal knowledge for this testimony.	Mrs. Doe can give a lay opinion that the consequences of registration hurt her children. She gives details of those consequences in her affidavit. She is not attempting to qualify or quantify that impact.
13	"On multiple occasions, parents who	Vague and speculative as to	Mrs. Doe need not identify each

	have seen my husband's information on the Sex Offender Registry have instructed their children to not associate with our children."	identity of "parents." Hearsay if statements of unidentified "parents" are offered for truth of whether "parents" have seen Plaintiffs information on registry.	parent by name in the affidavit. The Defendants could cross-examine. The Defendants' hearsay objection is limited to whether the parents have seen the Plaintiff's information on the registry. The Defendants do <u>not</u> object to whether the parents "instructed their children to not associate with our children." With respect to the former, there is no out-of-court declaration being made about whether the parents have seen plaintiff's information on the registry. The out-of-court declaration, if there is one at all, would be the instruction to not associate with the Plaintiff's children.
13	"Often this is done [by parents] in a way such that the child has an opportunity to use the information against our children."	Vague and speculative as to identity of parents and children. Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegation about what unidentified parents do. - No details provided for when, where, and who is doing	Mrs. Doe need not identify each parent and child by name in the affidavit. The Defendants could cross-examine. The sentence is an introduction – the following sentence explains the method that allows use against her children. Specifically, the parents use the words "pervert" and "pedophile."

		instructing. - No details provided for how Jane Doe would acquire personal knowledge about whether parents' knowledge of Plaintiff is based solely on offender registry or about how those parents "instruct" their children.	The objection that Mrs. Doe lacks personal knowledge about the parents' source of the information is not appropriate to the sentence challenged – that is the method that parents use to instruct their children to not associate with the Doe family. If the objection were made with respect to the prior sentence (and it was not), it would be permissible for Mrs. Doe to infer that the source of information comes from the registry when she does not know the parents. Indeed, it would be counterproductive for the Defendants to deny this. The argument in support of the registry is premised on advancing the non-punitive purpose of public safety by "alerting the public to the danger of sex offenders in their community." *Smith v. Doe,* 538 U.S. at 102.
13	"Our children have been told that their father is a 'pervert' and a 'pedophile' by	Vague and speculative as to identity of "children" talking to	The affidavit need not identify each child. Defense counsel could cross-

	children who do not the intellectual capacity to understand those words."	Jane Doe's children. Hearsay if statements of Jane Doe's children are offered for the truth of what they are told by others about Plaintiff. Jane Doe is not competent to testify to the understanding and "intellectual capacity" of unidentified "children" talking to Jane Doe's children: - Lack of foundation or basis for opinion testimony about state of mind. - Jane Doe lacks personal knowledge of other people's understanding.	examine. There is no out-of-court statement offered, so there is no hearsay. If calling Mr. Doe a "pervert" or "pedophile" is alleged to be an out-of-court declaration, it is not offered for the truth of the matter asserted. Ms. Doe can certainly give her lay opinion that her children and their peers do not have the capactity to understand the labels being applied to Mr. Doe.
13	"Our children have come home from school very upset from being teased about their father."	Hearsay if statements of Jane Doe's children are offered for truth of why they are upset and whether they are being "teased" and the basis for being "teased."	It is not hearsay for Mrs. Doe to testify that her children return home from school upset and crying. It is not hearsay to testify that her children told her that "the kids at school said dad is a pedophile" because it is not offered for the truth of the matter asserted, but for explanation of why the children are upset and crying. To the extent that

			defense counsel want to challenge whether Mrs. Doe really knows what happened at school, they could cross-examine.
14	"In other cases, children have excluded our children from social activities, making them feel isolated."	Vague and speculative as to identity of children. Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegation about what other children do. - No details provided for when, where, how, and why excluding is occurring and by whom. - No details provided for how Jane Doe would acquire personal knowledge about why other children are excluding Plaintiff's children.	The objections go to the weight of the evidence, not admissibility and defense counsel could cross-examine.
14	"The fears and anxiety that these transactions cause are a constant part of their therapy sessions."	Jane Doe is not competent to testify as to the cause of any "fears and anxiety" by her children: - Lack of foundation or basis for opinion testimony about psychological effects of certain her children's interactions.	Mrs. Doe can testify as to what happens in the therapy sessions because she is a participant. For sessions where she does not participate, she can testify as to the subject of the sessions (if she knows) because she is not offering any

		Hearsay if statements of Jane Doe's children or their therapist are offered for truth of what happens in therapy sessions or the truth of what the children feel.	specific out-of-court declaration for the truth of the matter asserted.
16	"The public's reaction to my husband's presence on the Offender Registry"	Vague and speculative as to identity of"public." Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegation about public reaction. - No details provided for any alleged "reaction." - No details provided for how Jane Doe would acquire personal knowledge about why certain unidentified persons are reacting to Plaintiff.	Mrs. Doe can testify about her personal observation of how members of the public react when learning that Mr. Doe is a registered offender. The Defendants' objections go to the weight of the evidence, not admissibility, and they could cross-examine.
16	"Without any regard for my husband's actual risk, the notification process not only stigmatizes him; it also casts a wide net over our entire family."	Impermissible legal conclusion as to whether notification process accounts for Plaintiff's risk based on his offense. Improper expert opinion about mental health of Plaintiff. Jane Doe	Mrs. Doe is apparently aware that the KORA does not take into consideration any individual evaluation of risk. The court need not rely on Mrs. Doe's affidavit for the state of the law.

		is not competent to testify to a mental health evaluation about Plaintiff's "actual risk": - Lack of foundation or basis for opinion testimony about mental health evaluations Jane Doe is not competent to testify to lay opinion about Plaintiff's "risk": - Lack of foundation or basis for opinion testimony about Plaintiff's risk or rehabilitation - No specific facts provided to support opinion about Plaintiff's risk or rehabilitation Inadmissible evidence not based on personal knowledge and lacking specific supporting facts. - Conclusory allegation about "stigma" on Plaintiff and his family. - No admissible facts provided elsewhere that amount to "stigma" related to KORA. Examples are nearly all hearsay, not based on personal knowledge, and	The facts set out in the affidavit support Mrs. Doe's lay opinion that the KORA causes Mr. Doe to be stigmatized. It is intended to do so. The Defendants surely do not intend to suggest that the KORA does not serve its purpose of widely disseminating information about Mr. Doe and his criminal history. The facts set out in the affidavit support Mrs. Doe's lay opinion that the KORA casts a wide net over the entire Doe family.

		speculation.	
18	"I have witnessed the enormous relief of wives whose husbands' registration periods have expired. They no longer have to deal with the retribution associated with registration. They no longer have to deal with the despair and depression suffered by their husbands as they prepare to reregister at the Sheriff's office or renew their drivers' licenses. They no longer have to deal with the fear of or actual damage to property. They no longer have to deal with the police corning to their homes and asking unprofessional and intrusive questions. They no longer have to deal with others' children, neighbors, and strangers emboldened to speak in any manner they desire."	Vague and speculative as to identity of "wives whose husbands' registration periods have ended." Hearsay if statements of unidentified "wives" are offered for the truth of what wives "no longer have to deal with." Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about unidentified wives' lives. - No details provided for how Jane Doe would acquire personal knowledge about the experiences of these unidentified persons.	Mrs. Doe can testify that she has personally observed expressions of relief by spouses of men whose registration periods have expired. Defense counsel could cross-examine about identity and whether Mrs. Doe can accurately say that the wives are relieved. Mrs. Doe, as the spouse of a registered offender, can testify about the impact of registration on a registrant, specifically what Mr. Doe goes through – despair and depression when preparing to register with the Sheriff or get a driver's license, fear of damage to property, compliance checks, and others being emboldened to speak "in any manner they desire." Mrs. Doe can make the inference that all registered offenders deal with these issues. To the extent that all registered offenders may not deal with the same issues, that goes to the weight of the evidence, not its

			admissibility.
19	" I know families whose lives and opportunities were restored to them by completing the registration requirements and being removed from the registration system."	Vague and speculative as to identity of "families." Hearsay if statements of unidentified "families" are offered for the truth of "families" having "lives and opportunities" "restored." Inadmissible evidence lacking specific supporting facts. - Conclusory allegation about unidentified families lives. - No details provided for how Jane Doe would acquire personal knowledge about the experiences of these unidentified persons.	Mrs. Doe can testify that she has personally seen families' quality of life improve and opportunities restored, after being relieved of the burdens of registration. Defense counsel could cross-examine about identity and whether Mrs. Doe can accurately say that the families had "their lives and opportunities restored." The objections go to the weight of the evidence, not admissibility. There is no out-of-court declaration being repeated and, thus, no hearsay.

TABLE C – MEMORANDUM TEXT

Page(s)	Language alleged to be objectionable	Basis for objection	Response
34	Facts, ¶41	Contains inadmissible and unsupported factual assertions based on objectionable material	Response in Table A incorporated by reference.

		from ¶¶10-11 of Plaintiff's affidavit.	
35	Facts, ¶42	Contains inadmissible and unsupported factual assertions based on objectionable material from ¶¶15-16 of Plaintiff's affidavit.	Response in Table A incorporated by reference.
36	Facts, ¶45	Contains inadmissible and unsupported factual assertions based on objectionable material from ¶¶31-32 of Plaintiff's affidavit.	Response in Table A incorporated by reference.
36	Facts, ¶46	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶33 of Plaintiff's affidavit.	Response in Table A incorporated by reference.
36	Facts, ¶47	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶25-27 of Plaintiff's affidavit.	Response in Table A incorporated by reference.
37	Facts, ¶48	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶21 of Plaintiff's affidavit.	Response in Table A incorporated by reference.

337	Facts, ¶49	No precise references to portion of the record relied upon, in violation of SCR 141(a)(2). Relies on inadmissible and unsupported factual assertions based on objectionable material throughout Ex. 29, Jane Doe's affidavit.	Response in Table B incorporated by reference.
37	Facts, ¶50	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶9-10 of Jane Doe's affidavit.	Response in Table A incorporated by reference.
37	Facts, ¶51	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶11 of Jane Doe's affidavit.	Response in Table A incorporated by reference.
37-38	Facts, ¶52	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶4-8 of Plaintiff's affidavit and ¶¶12-14, 16 of Jane Doe's affidavit.	Response in Table A incorporated by reference.
47-48	"For example, on July 23, 2012, the Topeka Capital Journal Online published a slide show of all registered Offenders	Testimony about content of webpages not admissible without judicial finding of an exception to	The best evidence rule does not apply at the summary judgment stage. *Alvarez v. T-Mobile USA, Inc.,*

	in Shawnee County. *Registered Sex Offenders in Shawnee County,* Topeka Capital Journal Online , July 23, 2012, available at http://cjonline.com/sliders/registered-sex-offenders-shawnee county%2523slide%DOslide=0. The slideshow included a link to the Capital Journal's own searchable database of offenders. Immediately underneath the offenders' information, the Journal offered readers the opportunity to comment. Some readers expressed concern that public disclosure of this information was unnecessary or unhelpful, but many maligned the registrants-some simply criticizing their looks and addresses and others — vociferously insisting that the list was primarily composed of dangerous pedophiles likely to reoffend. *Id.*"	K.S.A. § 60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided. Hearsay if comment section on newspaper website offered for truth of what commenter's think or believe about the "primar[y] compos[ition]" of the offender registry.	Case No. 2:10-2373-WBS-GGH, 2011 U.S. Dist. LEXIS 146757, *10 (E.D. Cal. Dec. 21, 2011) ("Similarly, at the summary judgment stage the court does not 'focus on the admissibility of the evidence's form,' but rather 'focus[es] on the admissibility of its contents.' Objections on the basis of a failure to comply with the technicalities of authentication requirements or the best evidence rule are, therefore, inappropriate.") (citations omitted); *see, e.g., Fraser v. Goodale,* 342 F.3d 1032, 1037 (9th Cir. 2003) ("Because the diary's contents could be presented in an admissible form at trial, we may consider the diary's contents in the Bank's summary judgment motion."). What comments may have been made are not offered for the truth of the matter asserted. The point is that comments can be made by anyone.
48	"A myriad of web sites operated by private entities are now dedicated to promulgating registry information originally published by the	Testimony about content of webpages not admissible without judicial finding of an exception to K.S.A. § 60-467 (Original document	The Plaintiff's response regarding the applicability of the best evidence rule, in Parts I.C. and II.A. of the text of his response, are incorporated

	Defendants and their counterparts in other states. *See, e.g.,* www.sexoffenderin.com. www.offendex.com, www.familywatchdog.us."	required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided.	herein as if fully set out.
48-49	"The effects of such unrestricted dissemination are substantial. In fact, the adverse collateral effects experienced by registered sex offenders are 'greater and more intense' than those suffered by felons generally. Richard Tewksbury & Matthew Lees, *Consequences of Sex Offender Registration: Collateral Consequences and Community Experiences,* 26 Soc. Spectrum 309,309 (2006), attached as Appendix A. In a study of registered sex offenders located in Kansas and Oklahoma, the most commonly reported collateral consequences were employment difficulties, challenges to obtaining housing, and social stigmatization. Richard Tewksbury & Elizabeth Ehrhardt Mustaine, *Stress and Collateral Consequences for Registered Sex Offenders,*	No admissible evidence submitted as support for these statements. Journal articles are not competent evidence of the "effects" that unidentified "registered sex offenders" experience. No expert opinion testimony has been offered to support the opinions that "effects of such unrestricted dissemination are substantial" or that any "effects" are "greater or more intense" than those experienced by unidentified other persons.	The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.

	15(2) J. Pub. Mgmt. & Soc. Pol'y 215, 226 (2009), attached as Appendix B."		
49	"Obtaining and maintaining employment is more difficult for registered sex offenders than for other felons. *See* Tewksbury & Lees, *supra,* at 319-21."	No admissible evidence submitted as support for these statements. Journal articles are not competent evidence of the "effects" that unidentified "registered sex offenders" experience. No expert opinion testimony has been offered to support the opinions that "[o]btaining and maintaining employment is more difficult for registered sex offenders than for other felons."	The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.
49	"Mr. Doe has personally experienced employment discrimination as a result of his registration After Mr. Doe had a profile on the Offender Registry website, Mr. Doe was promptly terminated. While his employer acknowledged that other employees had felony convictions, Mr. Doe's employer informed him that his offender registration was a public relations liability and a cause of	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶9-13of Plaintiff's affidavit.	Response in Table A incorporated by reference.

	workplace safety concern for other employees. Attempts to secure employment after registration were unavailing; Mr. Doe was repeatedly refused employment whenever prospective employers learned of his registration status."		
49	"In addition, registered sex offenders like Mr. Doe experience difficulty obtaining housing. *See* Tewksbury & Mustaine, *supra.*"	No admissible evidence submitted as support for this statement. Journal articles are not competent evidence of the experiences of unidentified "registered sex offenders." No expert opinion testimony has been offered to support the opinions about the experiences of unidentified "registered sex offenders."	The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.
49-50	"Thereafter, several landlords from whom Mr. Doe sought to obtain housing rejected him because of his registration status. They acknowledged that his felony conviction was not the issue; landlords are primarily concerned that they will lose other tenants who will avoid the area once they discover the	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶15-16 of Plaintiff's affidavit. Although ¶17 of Plaintiff's affidavit is cited, it is not the basis	Response in Table A incorporated by reference.

	proximity of a registered sex offender by searching one of the numerous registry web sites at their disposal. Ex. 5, John Doe Affidavit, at ¶¶15-17."	for the objectionable text in the motion.	
50	"Mr. Doe's experiences are not uncommon. *See, e.g.*, Richard G. Zevitz & Mmy Ann Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, U.S. Dept. of Justice, National Institute of Justice, Research in Brief 1 0 (2000), attached as Appendix C ("Expanded notification has created enormous obstacles in locating housing resources for returning sex offenders.")."	No admissible evidence submitted as support for this statement. Journal articles are not competent evidence of the experiences of unidentified "registered sex offenders." No expert opinion testimony has been offered to support the opinions about the experiences of unidentified "registered sex offenders."	The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.
50	"Unrestricted public access to registry information subjects registered offenders, including Mr. Doe, to considerable public stigma and ostracism. *See* Tewksbmy & Lees, *supra*, at 325-30; Jill S. Levenson & Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, 21 J. Contemp. Crim. Just. 49, 52 (2005), attached as Appendix D. In addition	No admissible evidence submitted as support for this statement. Journal articles are not competent evidence of the experiences of unidentified "registered sex offenders" such as stigma, ostracism, or harassment. Journal articles also not competent evidence of what Plaintiff : experiences.	The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.

	to the persistent feeling that they are unaccepted by the public, registered sex offenders report that they are harassed when community members find their information on the registry. *Id.*"	No expert opinion testimony has been offered to support the opinions about the experiences of unidentified "registered sex offenders." Additionally, no competent evidence has been offered to support what unidentified "registered sex offenders" feel.	
50-51	"The stigma affects Mr. Doe's family on a daily basis, as Mr. Doe's children's peers are often prevented from associating with Mr. Doe's children when their parents learn of his registration. Ex. 5, John Doe Affidavit, at ¶5."	All evidence cited to support "stigma" in this sentence is objectionable testimony in ¶5 of Plaintiff's affidavit.	Response in Table A incorporated by reference.
51	"Community members aware of Mr. Doe's registration rarely afford him the opportunity to explain his situation and the steps he has taken to ensure that he will not re-offend. Ex.5, John Doe Affidavit, at ¶7 ."	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶7 of Plaintiffs affidavit. Furthermore, text in motion that certain "community members [are] aware of Mr. Doe's registration" does not even refer to ¶7 material, and is unsupported hearsay and	Response in Table A incorporated by reference.

		speculation about what unidentified "community members" know about Plaintiff and the reasons for not talking with Plaintiff.	
51	"Rather, they actively work to prevent him from participating in the community. *See* Ex. 5, John Doe Affidavit, at ¶¶30-32."	Relies on inadmissible and unsupported factual assertions based on objectionable material from ¶¶30-32 of Plaintiff's affidavit.	Response in Table A incorporated by reference.
57	"While not necessarily endorsed by the Defendants, there are 'applications' for cellular phones and tablets, including Apple's iPhone and iPad, which allow access to Kansas registry information in an interactive format. *See* http://techcrunch.com/2009 /07 /25/the-iphones-latest -hit -app-a-sex-offender-locator. Anyone can buy the 'Sex Offender Tracker' from Apple's web site at http://itunes. apple.com/us/app/sexoffendertracker/id3 96745515?mt=8."	No admissible evidence submitted as support for this statement about the availability and functionality of the electronic "applications." Testimony about content of webpages not admissible without judicial finding of an exception to K.S.A. § 60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any	The Plaintiff's response regarding the applicability of the best evidence rule, in Parts I.C. and II.A. of the text of his response, is incorporated herein as if fully set out.

		exceptions provided.	
57-58	"There are now a number of websites that encourage users to post comments about offenders. For example, on www.sexoffenderin.com a user may comment on mug shots by filling out a 'comment' section, providing 'your name or nickname,' and listing an email address that is not verified. The web site www.offendex.com requests comments on individual offenders, saying the following: ... If your record is not removed your application fee will be refunded." (entire passage from beginning to end)	No admissible evidence submitted as support for this statement about the availability and functionality of the "websites." Testimony about content of webpages not admissible without judicial finding of an exception to K.S.A. §60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided.	The Plaintiff's response regarding the applicability of the best evidence rule, in Parts I.C. and II.A. of the text of his response, is incorporated herein as if fully set out.
58	"As previously described, the local newspaper, the Topeka Capital Journal, recently published a slideshow of all registered offenders in Shawnee County and allowed readers to comment underneath the offenders' inforn1ation.	No admissible evidence submitted as support for this statement about the "websites." Testimony about content of webpages not admissible without	The Plaintiff's response regarding the applicability of the best evidence rule, in Parts I.C. and II.A. of the text of his response, is incorporated herein as if fully set out.

	Registered Sex Offenders in Shawnee County, Topeka Capital Journal Online, July 23,2012, *available at* http://cjonline.com/sliders/registered-sex-offenders-shawnee-county%2523slide%3DOslide=0. While these sites are not maintained by the Defendants, they function only with information supplied by the Defendants."	judicial finding of an exception to K.S.A. §60-467 (Original document required as evidence): - Content of writing must be proved with writing itself, unless judicial finding that exceptions satisfied. - No justification for any exceptions provided.	
59	"The Plaintiff presents evidence that clearly demonstrates, both with respect to Mr. Doe and other registered offenders, that the law leads to substantial occupational, housing, and social disadvantages that would not otherwise occur. *See supra* III.A.; *see generally* Ex 5, John Doe Affidavit."	Improperly asserts that objectionable material listed above (journal articles) and objectionable material from Plaintiff's affidavit is competent evidence to support this statement.	Response in Table A incorporated by reference. The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.
61	"In fact, most sex offenders do not recidivate ... Recidivism rates are conspicuously linked to identifiable risk factors like the gender of the victim, past sexual history of the perpetrator, and the age of the offender. Harris & Hanson, *supra.*" (entire passage from beginning to	No admissible evidence submitted as support for this statement of "fact." Journal articles are not competent evidence. No expert opinion testimony has been offered to support the	The Plaintiff's response regarding the propriety of considering challenged journal articles, in Part II.B. of the text of his response, is incorporated herein as if fully set out.

	end)	opinions about recidivism.	
84	"and despite the fact that mental health professionals consider him to be no threat to the community,"	Violates SCR 141 by asserting facts not supported by evidence in the record. No expert opinion testimony has been offered to support any mental health evaluation of Plaintiff as to his "threat." Relies on inadmissible and unsupported factual assertions based on objectionable material regarding unidentified "mental health professionals" and unspecified mental health assessments from ¶21 of Plaintiffs affidavit and ¶4 of Jane Doe's affidavit.	It is permissible, in the argument section, to offer Mr. Doe as an example of the problem with applying registration periods without making any individualized determination of risk. In fact, there is (uncontroverted) evidence that Mr. Doe does not present a risk to the community. Even if the evidence is not expert testimony, but lay opinion, the evidence exists. More importantly, the objection entirely misses the point – that there needs to be a discussion about whether Mr. Doe, or any other offender, poses a risk. If they do not, they should have a shorter registration period. If they pose a significant risk, they should have a longer registration period. The absence of this consideration when setting registration periods is damning to the KORA registration scheme.

Respectfully submitted,

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Certificate of Service

I certify that on January 4, 2013, true and correct copy of this response brief, and accompanying exhibits were hand-delivered to:

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