

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

NATIONAL FEDERATION OF THE BLIND, *et al.*,

Plaintiffs,

v.

Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS,

Defendant.

**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE  
DEFENDANT FROM INTRODUCING  
EVIDENCE OF GRIEVANCE REPORTS AT TRIAL**

The Virginia Department of Corrections (“VDOC” or “Defendant”), by counsel, submits the following Response in Opposition to Plaintiffs’ Motion *In Limine* to Preclude Defendant from Introducing Evidence of Grievance Reports at Trial. (ECF Nos. 319, 320.)

**ARGUMENT**

Plaintiffs have filed a Motion *In Limine* wherein they request that the Court prevent the Defendant from putting the Plaintiffs’ VDOC Grievance Reports into evidence at trial. Plaintiffs allege that the Grievance Reports violate the best evidence rule and are hearsay. Plaintiffs are incorrect. The Plaintiffs’ Grievance Reports are summaries of voluminous records under Federal Rule of Evidence 1006 and fall within the business records exception of the hearsay rule.

The Plaintiffs’ argument that the best evidence rule prohibits the introduction of the Grievance Reports is misplaced. The Grievance Reports are not offered as substitutes for the Plaintiffs grievance documents, and therefore the best evidence rule is inapplicable. VDOC has produced copies of the Plaintiffs’ grievances in this case. The Grievance Reports are not offered as substitutes for the grievances but as a summary under Federal Rule of Evidence 1006. Under

Federal Rule of Evidence 1006, a Party

may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Fed. R. Ev. 1006.

Here, the Plaintiffs' Grievance Reports are a summary of the Informal/Written Complaints, accepted Regular Grievances, and appeals of those grievances that the Plaintiffs have filed at their respective VDOC institutions. Pursuant to Federal Rule of Evidence 1006, these Reports are admissible.

Further, the Plaintiffs' Grievance Reports constitute a business record, an exception to the rule against hearsay. Fed. R. Ev. 803(6). The Plaintiffs' Grievance Reports are a record made by VDOC employees who input the information from an inmates' Informal/Written Complaint, accepted Regular Grievance, and appeals, and is made in the regular course of VDOC as required by VDOC Operating Procedure 866.1. The Plaintiffs' Grievance Reports fall within the business record exception to hearsay under Rule 803(6).

To the extent that the Plaintiffs argue that the Grievance Reports are incomplete or inaccurate simply because the Reports do not reflect grievances that the Plaintiffs allege that they filed, that goes to the weight of the evidence for the jury to determine but does not make the Grievance Reports inadmissible at trial.

#### CONCLUSION

For these reasons and the reasons detailed herein, VDOC respectfully requests that the Court deny the Plaintiffs' Motion to Preclude Defendant from Introducing Evidence of Grievance Reports at Trial.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of May, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record for the Plaintiff.

    /s/ Timothy E. Davis

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