

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

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

**Plaintiffs,**

**Case No. 3:23-cv-127-HEH**

**v.**

**VIRGINIA DEPARTMENT OF  
CORRECTIONS, *et al.*,**

**Defendants.**

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

Plaintiffs submit this reply in support of their motion *in limine* to preclude Defendants from introducing into evidence “grievance reports” that purport to summarize Plaintiffs’ administrative grievances.

## ARGUMENT

### **I. The Grievance Reports Cannot Be Admitted Under Federal Rule of Evidence 1006 Because They Are Not Accurate.**

Defendant offers no argument against Plaintiffs’ assertion that the grievance reports are not the best evidence of Plaintiffs’ grievances under Federal Rule of Evidence 1002. Rather, Defendant argues that that these records are admissible as summaries of voluminous evidence pursuant to Federal Rule of Evidence 1006. Without legal support or argument, Defendant incorrectly asserts that “[t]o 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.”

Defendant misstates the law. The right to introduce summaries of voluminous evidence pursuant to Rule 1006 “should not be conflated with some right to introduce *inaccurate summaries* of otherwise admissible evidence under Rule 1006, thereby skirting the rules of evidence.” *Su v. E. Penn Mfg. Co.*, No. CV 18-1194, 2023 WL 2796120, at \*4 (E.D. Pa. Apr. 5, 2023) (emphasis in original). Rather, the proponent of a summary has a “burden to show that the summation . . . is accurate” and, if the proponent fails to meet that burden, “the summary is excludable on this basis.” *Id.*; *Olmetti v. Kent Cnty.*, No. 1:20-CV-395, 2022 WL 4011034, at \*3 (W.D. Mich. Sept. 3, 2022) (citing *United States v. Bray*, 139 F.3d 1104, 1110 (6th Cir. 1998)) (“The document . . . is an inaccurate summary and thus inadmissible under Rule 1006.”). The

appropriate analysis thus turns on whether or not the grievance reports are accurate. As noted in part III below, they are not.

**II. The Grievance Reports Cannot Be Admitted As Business Records Because Defendant Has Not Laid The Proper Foundation.**

Defendant does not dispute that the grievance reports contain hearsay. Rather, it asserts that the Court should still admit them into evidence pursuant to an exception to hearsay as “records of a regularly conducted activity” pursuant to Federal Rule of Evidence 803(6) (the so-called “business records” exception to hearsay).

Defendant’s sole argument here, as with Rule 1006, is that the records should be presented to the jury regardless of the concerns Plaintiffs have raised about their inaccuracy. As with Rule 1006, this misstates the law. Rule 803(6) itself specifically allows the evidence to be introduced only if “the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.” Fed. R. Evid. 803(6)(E). As noted in Part III below, Plaintiffs have demonstrated that these records and their preparation lack trustworthiness.

**III. The Grievance Reports Are Inaccurate And Incomplete.**

The grievance reports are sufficiently inaccurate and incomplete that they do not merit inclusion under either Rule 1006 or 803(6). They are inaccurate for two separate reasons.

First, the document “summary/addendum” section inaccurately describes the underlying grievances. The unnamed VDOC officials who prepared the summary/addendum would routinely cut off portions of Plaintiffs’ grievances and omit critical statements in those grievances. To have the jury rely on the VDOC officials’ characterization of Plaintiffs’ language rather than Plaintiffs’ language itself is prejudicial.

Second, the grievance summaries are incomplete. Plaintiffs have filed grievances that are not reflected in the summaries produced by Defendant. Because Defendant seems to intend to argue that Plaintiffs failed to grieve certain issues based on the absence of those issues from the listed summaries of grievances in these documents, these omissions are hugely problematic. The jury would be presented with an inaccurate and unreliable piece of evidence that would directly prejudice Plaintiffs' case. Because neither Rule 1006 nor Rule 803(6) allow such evidence to reach the jury, the Court should preclude Defendant from offering it.

### CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' Motion in *Limine* to preclude Defendants from introducing into evidence "grievance reports" that purport to summarize Plaintiffs' administrative grievances.

Dated: May 13, 2024

Respectfully submitted,

/s/ Eve L. Hill

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of May 2024, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to the following:

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