

1 H. Dean Steward, SBN 85317
2 107 Avenida Miramar, Ste. C
3 San Clemente, CA 92672
4 Tel (949) 481-4900
5 Fax (949) 497-6753

6 Attorney for Defendant
7 MICHAEL JOHN AVENATTI

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 MICHAEL JOHN AVENATTI,

14 Defendant.

SA CR No. 19-061-JVS

DEFENDANT’S REPLY IN SUPPORT OF
DEFENDANT’S MOTION TO STRIKE
AND OBJECTIONS TO PORTIONS OF
AUSA BRETT SAGEL’S
DECLARATION SUBMITTED IN
SUPPORT OF THE GOVERNMENT’S
MOTION TO TERMINATE AND NOT
FURTHER EXTEND DEFENDANT’S
TEMPORARY RELEASE

15
16
17 Defendant MICHAEL JOHN AVENATTI (“Mr. Avenatti”) by and through his
18 counsel of record, H. Dean Steward, hereby files his Reply in Support of Defendant’s
19 Motion to Strike and Objections To Portions of AUSA Brett Sagel’s Declaration
20 Submitted in Support of the Government’s Motion to Terminate and Not Further Extend
21 Defendant Michael John Avenatti’s Temporary Release [Docket No. 267].

22
23
24 Dated: September 11, 2020

Respectfully submitted,

25 /s/ H. Dean Steward
26 H. DEAN STEWARD

27 Attorney for Defendant
28 MICHAEL JOHN AVENATTI

1 alleged “significant health protocols” are documented, if anywhere, or how
2 they have been implemented, how they supposedly “know” that SAJ has
3 had “zero” infected inmates for much of the last five months (an incredible
4 claim under the circumstances) and, most importantly, *what degree of*
5 *testing is being performed at SJA and MCC*. As has been fully established
6 since the pandemic began, and recognized universally, if you do not widely
7 and regularly test all individuals in a given situation (i.e. all inmates at an
8 institution), you cannot legitimately claim a low infection rate, nor can you
9 claim that you “have no cases” or that you “only have X cases” and
10 therefore the risk to an inmate is low. You don’t find what you don’t look
11 for. Further, this and other factors have been shown to be consistent
12 problems when jails and prisons make claims about alleged low numbers of
13 COVID-19 cases at their facilities, as a simple google search will reveal.

14 [Docket No. 267, p. 2](emphasis in original).

15 The defense went on to argue: “Accordingly, the statements in the Sagel Declaration and
16 the corresponding statements in the government’s submission are unreliable,
17 inadmissible and should be stricken and not considered by the Court.” *Id.*

18 The government failed to address any of this, let alone attempt to overcome it.
19 Accordingly, those objections and arguments should be deemed uncontested and
20 conceded. *See, e.g., Sportscore of America, P.C. v. Multiplan, Inc.*, No. 2:10–4414,
21 2011 WL 589955, at *1 (D.N.J. Feb. 10, 2011) (“In most circumstances, failure to
22 respond in an opposition brief to an argument put forward in an opening brief constitutes
23 waiver or abandonment in regard to the uncontested issue.”); *Scott v. City of Phoenix*,
24 No. CV–09–0875–PHX–JAT, 2011 WL 3159166, at *10 (D.Ariz. Jul. 26, 2011) (failure
25 to oppose statute of limitations argument constituted waiver); *Foster v. City of Fresno*,
26 392 F.Supp.2d 1140, 1147 n. 7 (E.D.Cal.2005) (“At any rate, failure of a party to address
27 a claim in an opposition to a motion for summary judgment may constitute a waiver of
28 that claim.”); *In re Online DVD Rental Antitrust Litig.*, No. 09–2029 PJH, 2011 WL
5883772, at *12 (N.D.Cal. Nov. 23, 2011) (absent unusual circumstances, failure to

1 respond to argument on merits “viewed as grounds for waiver or concession of the
2 argument”).

3
4 **II. CONCLUSION**

5 For each of the above-detailed reasons, Mr. Avenatti respectfully requests that the
6 Court not consider page 1, paragraph 2, lines 12-24 of the Sagel Declaration, together
7 with their corresponding statements in the government’s Memorandum of Points and
8 Authorities (page 23, lines 18-28 and page 24, lines 1-5). The statements are unreliable
9 and inadmissible, and the defense’s unopposed objections should be sustained.

10
11 Dated: September 11, 2020

Respectfully submitted,

12
13 /s/ H. Dean Steward
14 H. DEAN STEWARD

15 Attorney for Defendant
16 MICHAEL JOHN AVENATTI
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, H. Dean Steward, am a citizen of the United States, and am at least 18 years of age. My business address is 107 Avenida Miramar, Ste. C, San Clemente, CA 92672. I am not a party to the above-entitled action. I have caused, on September 11, 2020, service of the:

DEFENDANT’S REPLY IN SUPPORT OF DEFENDANT’S MOTION TO STRIKE AND OBJECTIONS TO PORTIONS OF AUSA BRETT SAGEL’S DECLARATION SUBMITTED IN SUPPORT OF THE GOVERNMENT’S MOTION TO TERMINATE AND NOT FURTHER EXTEND DEFENDANT’S TEMPORARY RELEASE [DOCKET NO. 262]

on the following party, using the Court’s ECF system:

AUSA BRETT SAGEL AND AUSA JULIAN ANDRE

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 11, 2020

/s/ H. Dean Steward

H. Dean Steward