

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>CAROL HURST,</b>	)	
	)	<b>CASE NO. 3:25-cv-00025</b>
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	
<b>WALGREENS OF THE U.S. VIRGIN ISLANDS, LLC,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

Before the Court is Plaintiff Carol Hurst’s (“Hurst”) motion [ECF 53] for leave to file corrected declaration. Defendant Walgreens of the U.S. Virgin Islands, LLC (“Walgreens”) opposes [ECF 55] the motion, with Hurst having filed a reply [ECF 58]. In her reply, Hurst attaches a copy of the proposed corrected declaration. *See* [ECF 58–1]. For the reasons to follow, Hurst’s motion shall be granted.

On October 3, 2025, Walgreens filed a motion [ECF 27] to compel arbitration and stay proceedings.<sup>1</sup> In response, Hurst filed an opposition [ECF 47 and 48]<sup>2</sup> that includes a declaration from Hurst in support of same. *See* [ECF 48–1]. Walgreens, in turn, challenged the declaration on the grounds that it does not comply with the formal requirements of 28 U.S.C. § 1746. [ECF 49] at 3–4. Section 1746 provides in pertinent part as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate,

<sup>1</sup> The motion [ECF 27] to compel arbitration and stay proceedings is currently pending before the Court.

<sup>2</sup> Hurst filed a response [ECF 47] and a separate memorandum [ECF 48].

verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

...

- (2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)”.

In its reply, Walgreens notes that Hurst’s declaration fails to declare that the contents therein are “true and correct.” A review of Hurst’s declaration [ECF 48–1] shows this to be true.<sup>3</sup>

The present motion seeks to rectify this nonconformity, which Hurst contends to be an inadvertent omission. *See generally* [ECF 53]. As for the proposed corrected declaration, it makes no substantive changes other than to provide the following revised certification:

I, Carol Hurst, under penalty of perjury, declare that the following is true and correct:<sup>4</sup>

[ECF 48–1]. Walgreens counters that it has previously provided the Court with numerous cases nationwide, including the Third Circuit, where such leave was denied and a noncompliant declaration was “correctly” excluded from consideration. *See* [ECF 55] at 1, citing to [ECF 49] at 4 and n. 3. None of the cases string-cited by Walgreens in its prior brief, however, reflect that the would-be declarants had sought leave to correct their respective declarations.<sup>5</sup> Indeed, in one of

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<sup>3</sup> Hurst’s declaration provides the following statement/certification: “I, Carol Hurst, under penalty of perjury, declare as follows:” *See* [ECF 48–1] at 1. The Court agrees with Walgreens that such a declaration does not comply with the requirements of 28 U.S.C. § 1746(2).

<sup>4</sup> In the proposed corrected declaration, Hurst italicizes the words “true and correct” to indicate that these words are to be added to the original declaration. The Court notes that the word “is,” which precedes the words “true and correct,” is also a new addition to the declaration.

<sup>5</sup> *See Phillis v. Harrisburg Sch. Dist.*, 430 F.App’x 118, 122 (3d Cir. 2011); *Jajeh v. Cnty. of Cook*, 678 F.3d 560, 568 (7th Cir. 2012); *Hewitt v. Bedford*, 652 Fed.Appx. 256, 258 (5th Cir. 2016); *Dooley v. Nevada Gold Mines, LLC*, 2025 WL 1110739, at \*3 (9th Cir. 2025); *U.S. v Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003); *Baldini v. Cnty. of Delaware*, 2025 WL 1186852, at \*5, n. 16 (E.D. Pa. Apr. 23, 2025); *Bogue v. Vaughn*, 1993 WL 497851, at \*12, n. 24 (E.D. Pa. Dec. 1, 1993).

the cases cited by Walgreens—*Bogue v. Vaughn*—the court, in declining to consider plaintiffs’ so-called affidavits, found that “plaintiffs have had ample time to correct this transgression, but failed to do so since defendant put them on notice in his reply memorandum in further support of his motion for summary judgment ....” *Bogue*, 1993 WL 497851, n. 24. In this instance, Hurst takes the very corrective step that the *Bogue* court noted was lacking in its matter.

The Court further finds the case cited by Hurst—*Lewis v. Bay Indus., Inc.*—to be persuasive. Similar to the matter at hand, after the two declarations submitted on behalf of the plaintiff were challenged for failure to comply with 28 U.S.C. § 1746(2), the plaintiff in *Lewis* sought leave to file compliant declarations. *Lewis v. Bay Indus., Inc.*, 51 F.Supp.3d 846, 852 (E.D. Wis. 2014).<sup>6</sup> In granting the request, the court found it appropriate to grant plaintiff leave to file the supplemental declarations, as striking the declarations would be an unduly harsh sanction. *Id.* The court further concluded that an “excusable neglect” analysis was not warranted, as the failure to comply with section 1746 was not a failure to comply with the Federal Rules of Civil Procedure. *Id.* This Court likewise finds that striking the Hurst declaration would be unduly harsh and further agrees that the Court need not conduct an excusable neglect analysis for the reasoning stated in *Lewis*.

As for Walgreens’ contention that it would be prejudiced if Hurst is allowed to correct her declaration so that it complies with section 1746, the Court is not persuaded. *See* [ECF 55] at 1. In the reply to its motion to compel arbitration, Walgreens provides argument should the Court consider Hurst’s declaration. [ECF 49] at 13–17. Thus, the Court finds that Walgreens suffered no prejudice, as its ability to respond to Hurst’s arguments has not been hindered. *See Lewis*, 51

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<sup>6</sup> *See also Adams v. Sears Roebuck & Co.*, 2014 WL 670630, at 1, n. 7 (D. Utah Feb. 20, 2014) (court permitted amended declaration where no new issues or facts were raised); *see also Foster v. Enenmoh*, 2013 WL 3991978, at \*3, n. 3 (E.D. Cal. Aug. 1, 2013) (court permitted leave to file amended declarations to include the words “that the foregoing is true and correct,” finding there to be no prejudice to plaintiff as the changes were not substantive).

F.Supp.3d at 852. As for Walgreens' arguments related to the timing of when the original Hurst declaration was prepared and/or executed and the fact that Hurst herself is an attorney, *see* [ECF 55] at 1–2, these are of no moment. Hurst was granted an extension to October 30, 2025 to file an opposition to Walgreens' motion to compel arbitration. *See* [ECF 46]. The Court simply need not delve into the realm of speculation as to when Hurst ultimately prepared and/or executed her declaration in order to arrive at its determination of the current motion.

The premises considered, it is hereby

**ORDERED** that Plaintiff Carol Hurst's motion [ECF 53] for leave to file corrected declaration is **GRANTED**; and it is further

**ORDERED** that Plaintiff Carol Hurst shall file her corrected declaration as set forth in [ECF 58–1] by no later than **February 27, 2026**.

ENTER:

Dated: February 16, 2026

/s/ G. Alan Teague  
G. ALAN TEAGUE  
U.S. MAGISTRATE JUDGE