

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

TROY SCHWARTZ, and ALVIN
YANTIS

Plaintiffs,

v.

ADAMS COUNTY, ET AL.,

Defendants.

No. CV-09-19-S-EJL

**MEMORANDUM DECISION
AND ORDER**

Before the Court is Plaintiffs' Motion to Strike Defendants' Reply's Statement of Material Facts (Docket No. 39). Having reviewed the Plaintiffs' Motion to Strike and the record hereing, the Court finds as follows.

Defendants filed a Reply in support of their Summary Judgment Motion. With their Reply, Defendants also filed a Statement of Material Facts and supporting evidence. Plaintiffs move to strike the Statement of Material Facts and attached exhibits. Plaintiffs argue that the Statement of Material Facts and exhibits are prohibited by the Court's scheduling order, Local Rule of Civil Procedure ("Local Rule") 7.1(b) and (c), and Rule 56(c). *See* Plaintiffs' Motion to Strike, at 2 (Docket No. 39-1). Plaintiffs argue that they are prejudiced by the additional filings because

they contain new facts that Plaintiffs have not had a chance to address. *See id.* at 3 – 4. Alternatively, Plaintiffs request permission to submit a responsive motion and evidence. *Id.* Defendants argue that the additional evidence is required to correct Plaintiffs’ misrepresentations and errors in their summary judgment response. *See* Defendants’ Response to Plaintiffs’ Motion to Strike, at 2 (Docket No. 41).

Local Rule 7.1 (b) describes motion practice for the moving party in the district courts of Idaho. *See* Dist. Idaho Loc. Civ. R. 7.1(b). Although Local Rule 7.1 does not explicitly prohibit a party from submitting additional evidence when filing a reply brief, the Local Rules clearly require a moving part to submit all evidence supporting the motion *with* the initial motion for summary judgment. *See id.* at 7.1(b)(1) – (2). The Court, however, has discretion when applying the local rules. *See Lance, Inc. v. Dewco Servs., Inc.*, 422 F.2d 778, 783 – 84 (9th Cir. 1970) (“Local Rules are promulgated by District Courts primarily to promote the efficiency of the Court, [which] has a large measure of discretion in interpreting and applying them.”).

The Court finds that Defendants have good reason to submit additional information because Defendants allege that Plaintiffs misrepresented facts in Plaintiffs’ Response to Defendants’ Motion for Summary Judgment. The Court further finds that allowing Defendants to submit this additional information will promote the efficiency of this Court by avoiding additional motions from Defendants

to correct the alleged error. *See id.* The Court therefore denies Plaintiffs' Motion to Strike. To avoid prejudicing Plaintiffs, however, the Court will also allow Plaintiffs to submit a sur-reply of no more than ten pages. Thereafter, the Court will take up the pending motions.

ORDER

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Strike (Docket No. 39) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs may file a sur-reply to Defendants' Reply (Docket No. 36) on or before **May 31, 2010** of no more than ten pages.



DATED: **May 17, 2010**

A handwritten signature in black ink, reading "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge