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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Hisrael Sanchez,

Plaintiff,

v.

Arizona Department of Corrections, et al.,

Defendants.

No. CV-14-01302-PHX-DJH (ESW)

ORDER

On June 15, 2015, Defendants Cortez and Vargas¹ filed a Motion for Summary Judgment (Doc. 28) and Statement of Facts (Doc. 29). The Court issued its Amended Order (Doc. 33) pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (en banc). The Court ordered the Plaintiff to file a response to Defendants’ Motion for Summary Judgment together with a separate statement of facts in accordance with Rule 56, Fed. R. Civ. P., and LRCiv 56.1(b), no later than July 29, 2015. The Court advised the Plaintiff that failure to file a response which conforms in all substantial respects with the requirements of Rule 56, Fed. R. Civ. P., LRCiv 56.1(b), (e), and LRCiv 7.2 may result in dismissal of the case.

On July 27, 2015, the Plaintiff filed a document which is a letter to Kelley J. Morrissey (Doc. 34) with a number of attachments (Doc. 34 at 4-20). In his letter Plaintiff relates that he fell while handcuffed due to standing water, followed policy

¹ By Report and Recommendation (Doc. 32) filed on June 26, 2015, the Magistrate Judge recommended dismissal without prejudice of Defendant Cardenas pursuant to Rule 4(m), Fed. R. Civ. P.

1 regarding a grievance, is taking medication for injuries he sustained, will need future
2 medical care upon his release from prison, and believes he has a strong case. Plaintiff's
3 letter does not comply in all substantial respects with Rule 56, Fed. R. Civ. P., or LRCiv
4 56.1(b), (e). Defendants subsequently filed their Motion for Clarification Re: Dkt. 34, or
5 in the Alternative, Motion to Strike Dkt. 34 (Doc. 36).

6 Though untitled, based upon the content and timing of Plaintiff's letter, the Court
7 finds that the document (Doc. 34) was most likely intended to be a response to
8 Defendants' Motion for Summary Judgment. The Clerk of Court docketed Doc. 34 as a
9 "Notice to Kelley Morrissey." The Court, however, deems Doc. 34 to be a response to
10 Defendants' Motion for Summary Judgment.

11 "A district court has discretion to adopt local rules." *Hollingsworth v. Perry*, 558
12 U.S. 183, 191 (2010) (citing *Frazier v. Heebe*, 482 U.S. 641, 645 (1987)). *See also* Rule
13 83, Fed. R. Civ. P.; 28 U.S.C. § 2071. A district court's local rules are not petty
14 requirements, but have "the force of law." *Hollingsworth*, 558 U.S. at 191 (quoting *Weil*
15 *v. Neary*, 278 U.S. 160, 169 (1929)). In addition, local rules are binding on the court and
16 the parties. *Professional Progame Group v. Dept. of Commerce*, 29 F.3d 1349, 1353 (9th
17 Cir. 1994) (citing *Martel v. Los Angeles*, 21 F.3d 940, 946-47 (9th Cir. 1994)). A district
18 court cannot depart from its local rules which affect "substantial rights." *Id.*

19 In this case, were the Court to depart from the local rules and allow Plaintiff's
20 response to stand, such departure would not affect substantial rights of the opposing party
21 and require reversal. *See Martel*, 21 F.3d at 946. Because Plaintiff's response (Doc. 34)
22 fails to comply with Rule 56, Fed. R. Civ. P., and LRCiv 56.1(a), (b), (e), the Defendants
23 ask the Court to strike Plaintiff's document (Doc. 34). LRCiv 7.2(m). However, "a
24 motion to strike may be filed only if it is authorized by statute or rule . . . or if it seeks to
25 strike any part of a filing or submission on the ground that it is prohibited (or not
26 authorized) by a statute, rule, or court order." *Id.* Defendants' Motion to Strike is not
27 authorized by Rule 56, Fed. R. Civ. P. In fact, the Court should liberally construe a civil
28 motion from a pro se inmate and avoid applying summary judgment rules strictly. *See*

1 *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010); *Frost v. Symington*, 197 F.3d
2 348, 352 (9th Cir. 1999).

3 Therefore, for the reasons set forth above,

4 **IT IS ORDERED** granting in part Defendants’ Motion for Clarification Re: Dkt.
5 34, or in the Alternative, Motion to Strike Dkt. 34 (Doc. 36).

6 **IT IS FURTHER ORDERED** that “Notice to Kelley Morrissey” (Doc. 34) is
7 deemed a response to Defendants’ Motion for Summary Judgment.

8 **IT IS FURTHER ORDERED** denying the alternative Motion to Strike.

9 **IT IS FURTHER ORDERED** that Defendants shall file their reply to Plaintiff’s
10 response (Doc. 34) no later than 15 days from the filing of this order.

11 Dated this 22nd day of September, 2015.

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16 Eileen S. Willett
17 United States Magistrate Judge
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