

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 ROBIN DASENBROCK,

12 Plaintiff,

13 vs.

14 A. ENENMOH, et al.,

15 Defendants.  
16  
17  
18  
19  
20  
21  
22  
23

1:11-cv-01884-DAD-GSA-PC

**ORDER GRANTING DEFENDANT  
PAGE'S MOTION TO STRIKE  
(ECF No. 255.)**

**ORDER STRIKING PLAINTIFF'S  
OPPOSITION TO DEFENDANT  
PAGE'S MOTION FOR SUMMARY  
JUDGMENT FOR EXCEEDING PAGE  
LIMITS  
(ECF No. 251.)**

**ORDER GRANTING PLAINTIFF  
THIRTY DAYS IN WHICH TO FILE A  
NEW OPPOSITION NOT EXCEEDING  
25 PAGES**

**THIRTY-DAY DEADLINE**

24 **I. BACKGROUND**

25 Robin Dasenbrock ("Plaintiff") is a state prisoner proceeding *pro se* with this civil  
26 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
27 action on November 14, 2011. (ECF No. 1.) This case now proceeds with Plaintiff's Second  
28 Amended Complaint filed on September 8, 2015, against defendants Dr. A. Enenmoh,

1 Correctional Officer Perez-Hernandez, Nurse Page, and Nurse Adair, on Plaintiff’s claims for  
2 violation of the Eighth Amendment and related negligence. (ECF No. 140.)

3 On June 23, 2017, defendant Page (“Defendant”) filed a motion to strike Plaintiff’s  
4 opposition to Defendant’s motion for summary judgment. (ECF No. 255.) On July 12, 2017,  
5 Plaintiff filed an opposition to the motion to strike. (ECF No. 257.) On July 18, 2017,  
6 Defendant filed a reply to the opposition. (ECF No. 259.) Defendant’s motion to strike is now  
7 before the court.

## 8 **II. MOTION TO STRIKE**

9 “It is well established that “[d]istrict courts have inherent power to control their  
10 docket.” Atchison, Topeka & Santa Fe Ry. v. Hercules, Inc., 146 F.3d 1071, 1074 (9th Cir.  
11 1998) (alteration in original) (quoting Hernandez v. City of El Monte, 138 F.3d 393, 398 (9th  
12 Cir. 1998)); accord Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010).  
13 This includes the power to strike items from the docket as a sanction for litigation conduct.  
14 Ibrahim v. U.S. Dep’t of Homeland Sec., 835 F.3d 1048, 1065 (9th Cir. 2016) (citing Ready  
15 Transp., Inc., 627 F.3d at 404 (9th Cir. 2010); see, e.g., Lazy Y Ranch Ltd. v. Behrens, 546  
16 F.3d 580, 586–87, 588 (9th Cir. 2008) (discussing, but declining to rule on, the ability of a  
17 district court to strike documents submitted as exhibits to a motion); Hambleton Bros. Lumber  
18 Co. v. Balkin Enters., Inc., 397 F.3d 1217, 1224–26 (9th Cir. 2005) (upholding a district court’s  
19 grant of a motion to strike deposition corrections and a declaration as a sanction when a party  
20 had violated Fed. R. Civ. P. 30(e)); cf. Carrigan v. Cal. State Legislature, 263 F.2d 560, 564  
21 (9th Cir. 1959) (discussing an appellate court’s inherent power to strike briefs and pleadings  
22 “as either scandalous, impertinent, scurrilous, and/or without relevancy”).

23 Defendant Page moves to strike Plaintiff’s opposition to her [Page’s] motion for  
24 summary judgment on several grounds, including, *inter alia*, that it exceeds the 25-page  
25 limitation of the court’s “Standing Procedures;” it refers to matters and claims not related to the  
26 motion or the pending complaint; Plaintiff’s exhibits are not authenticated; and Plaintiff’s  
27 “evidence” is an extended discussion consisting of legal arguments, inadmissible lay opinions,  
28 and references to purported facts for which Plaintiff lacks foundation to testify. (Feher Decl.,

1 ECF No. 255 ¶¶3, 4.) Plaintiff’s opposition to the motion for summary judgment is 158 pages  
2 long, with an additional 132 pages of exhibits. (Id. ¶2.) Defendant states that there are only  
3 two causes of action alleged against her, based on one incident that occurred on one day,  
4 February 12, 2010, when she examined Plaintiff one time and triaged him for medical  
5 complaints. (Id. ¶5.) Plaintiff claims in his Second Amended Complaint that, based on his  
6 presenting symptoms, he should have been referred for immediate examination by a physician  
7 rather than waiting a few days to be examined by a physician at a regularly scheduled  
8 appointment. (Id. ¶5.) Defendant contends that these issues can more than adequately be  
9 addressed in 25 pages or less. (Id.)

10 Defendant notes that District Court Judge Dale A. Drozd’s “Standard Procedures” limit  
11 opposition briefs to 25 pages and state that “[f]or good cause shown, the court may grant an  
12 application to extend these page limitations” and “[b]riefs that exceed the page limitations or  
13 are filed without leave of court may not be considered.” (ECF No. 255, Exh. A.) Defendant  
14 requests that the court grant the motion to strike, decline consideration of Plaintiff’s opposition  
15 based on the excess pages, and grant Defendant’s motion for summary judgment. In the event  
16 that Defendant’s motion to strike is denied, Defendant requests an extension of time of twenty  
17 days from the date the court rules on the motion to strike, in which to file her reply to Plaintiff’s  
18 opposition.

19 In opposition to the motion to strike, Plaintiff asserts that he was not aware of the  
20 court’s 25-page limit for oppositions. Plaintiff states that he does not oppose an order granting  
21 Defendant additional pages to file a reply to Plaintiff’s opposition, and granting Plaintiff leave  
22 to file an oversized opposition, nunc pro tunc, up to 158 pages. Plaintiff argues that his exhibits  
23 are authenticated because the exhibits consist, in part, of documents that Plaintiff received from  
24 the Attorney General’s Office who obtained all of Plaintiff’s medical records from his prison  
25 medical file and sent them to Plaintiff. Plaintiff contends that Defendant Page has used the  
26 same evidence as Plaintiff has in support of Defendant’s motion for summary judgment.

27 Plaintiff disagrees that his claims against Defendant Page are based solely on the  
28 February 12, 2010, examination of Plaintiff because his claims concern an “ongoing tort.”

1 (ECF No. 257 at 4 ¶3.) Plaintiff claims that “this case challenges his entire course of treatment  
2 and series of adverse actions, before and after surgery,” as stated in the complaint. (Id.)  
3 Plaintiff alleges that Defendant Page, on three separate occasions, chose not to follow  
4 mandated actions after admitting that she must follow them. It is Plaintiff’s contention that  
5 even if the court focuses only on Defendant’s conduct on February 12, 2010, he must also  
6 apprise the court of circumstantial evidence of Defendant’s knowledge on two previous  
7 occasions that she was not providing the standard of care required.

### 8 **III. DISCUSSION**

9 On December 4, 2015, this case was reassigned from District Judge Anthony W. Ishii to  
10 District Judge Dale A. Drozd. (ECF No. 151.) For civil cases assigned to him, Judge Drozd  
11 has issued a standing order, available on the court’s public website, which provides in relevant  
12 part:

13 Unless prior leave of court is obtained, all moving and opposition briefs or legal  
14 memorandum must not exceed 25 pages. Reply briefs filed by moving parties  
15 must not exceed 15 pages. For good cause shown, the court may grant an  
16 application to extend these page limitations. Briefs that exceed the page  
17 limitations or are filed without leave of court may not be considered. Finally, no  
18 supplemental briefs may be filed without prior leave of court.

19 <http://www.caed.uscourts.gov/caednew/index.cfm/rules/standing-orders/>

20 Although the Court must construe pleadings by *pro se* petitioners liberally, “[p]ro se  
21 litigants must follow the same rules of procedure that govern other litigants.” King v. Atiyeh,  
22 814 F.2d 565, 567 (9th Cir. 1987). Here, Plaintiff’s status as a *pro se* litigant does not excuse  
23 him from complying with the page limits established by Judge Drozd’s standing order.  
24 Plaintiff has filed an opposition to defendant Page’s motion for summary judgment which is  
25 158 pages in length, with an additional 132 pages of exhibits, which unquestionably violates  
26 the requisite page limitations in the standing order. (ECF No. 251.) Therefore, the court shall  
27 strike<sup>1</sup> Plaintiff’s opposition and grant Plaintiff time to file a new opposition limited to 25  
28 pages, not including exhibits.

---

<sup>1</sup> When a document is stricken, it becomes a nullity and is not considered by the court for any purpose. (First Informational Order, ECF No. 2 at 4 n.1.)

1 In his new opposition, Plaintiff should focus on his medical and negligence claims  
2 against defendant Page arising from his allegations against her [Page] set forth on pages 20, 33-  
3 34, 52-54, and 117-124 of the Second Amended Complaint. Plaintiff's statement in the Second  
4 Amended Complaint that "this case challenges his entire course of treatment and series of  
5 adverse actions, before and after surgery" does not make his entire course of treatment relevant  
6 to defendant Page's motion. To defend against summary judgment, Plaintiff must set out facts  
7 and evidence contradicting the facts and evidence Defendant has presented in her motion, as  
8 discussed here:

9 When a party you are suing makes a motion for summary judgment that is  
10 properly supported by declarations (or other sworn testimony), you cannot  
11 simply rely on what your complaint says. Instead, you must set out specific  
12 facts in declarations, depositions, answers to interrogatories, or authenticated  
13 documents, as provided in Rule [56(c)], that contradict the facts shown in the  
14 defendant's declarations and documents and show that there is a genuine issue  
15 of material fact for trial. If you do not submit your own evidence in opposition,  
16 summary judgment, if appropriate, may be entered against you. If summary  
17 judgment is granted, your case will be dismissed and there will be no trial.

18 With respect to Defendant's objections to Plaintiff's evidence as not authenticated or  
19 otherwise inadmissible, these objections are more properly brought in Defendant's reply to  
20 Plaintiff's new opposition to the motion for summary judgment, if needed.

### 21 **III. CONCLUSION**

22 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 23 1. Defendant Page's motion to strike, filed on June 23, 2017, is GRANTED;
- 24 2. Plaintiff's opposition to Defendant Page's motion for summary judgment, filed  
25 on June 21, 2017, is STRICKEN from the record, with leave to file a new  
26 opposition not exceeding 25 pages, excluding exhibits;
- 27 3. Within thirty days from the date of service of this order, Plaintiff must file a new  
28 opposition to Defendant Page's motion for summary judgment not exceeding 25  
pages, excluding exhibits; and

///

///

///

