

MINUTES OF PROCEEDINGS

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prisoner's I-File and the IG file, which are prohibited by NDOC policies. However, after reviewing the entirety of the documents, the court finds only a select few of the documents contain confidential information. Furthermore, it appears to the court there are a fair amount of documents that have already been produced in this matter unsealed as a result of a previous motion for summary judgment filed by Defendants.

Therefore, Defendant's Motion for Leave to File Under Seal, Documents Produced Pursuant to Court Order (#108) (Doc. # 111) is **GRANTED in part** and **DENIED in part**. Page numbers 0050, 0051, 0053, 0079, 0080 and 0081 in Doc. # 112-1 shall remain sealed. The remaining documents shall be unsealed by the clerk. As to documents 0079-0081 extracted from Plaintiff's I-File, Defendant is directed to clarify and notify the court no later than **Tuesday, April 8, 2014**, whether these documents were previously provided to Plaintiff. If the documents were produced to Plaintiff at some prior point in time, Defendant agrees to reproduce the documents to Plaintiff for his possession and that sealing of those documents would be unnecessary.

The court notes Defendant's supplemental production (Doc. # 110) was not made before Plaintiff had to file his Opposition to Defendant's Motion for Summary Judgment (Doc. # 106). It further appears certain components of Defendant's document production (e.g. document 0078, the audio disc and transcription of a recorded telephone conversation) were utilized by Defendant in his reply memorandum (Doc. # 109). The court expresses its concern Plaintiff has not had an opportunity to address the documents utilized by Defendant in his reply brief for the motion for summary judgment.

The court determines Plaintiff should ultimately have available to him the universe of documents relating to the April 5, 2010 incident in order to be able to adequately oppose Defendant's Motion for Summary Judgment (Doc. # 101) and/or to support his own Motion for Summary Judgment (Doc. # 99). However, because Plaintiff did not have the opportunity to utilize certain of these documents in his original opposition to Defendant's Motion for Summary Judgment (Doc. # 106), the court will allow Plaintiff leave to file a sur-reply to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment (Doc. # 109).

Therefore, Plaintiff's Objection and Motion to Strike Defendant's Reply (#109) (Doc. # 114) is **GRANTED in part** and **DENIED in part**. Plaintiff shall have up to and including **Wednesday, April 30, 2014**, to file his sur-reply. To the extent Plaintiff seeks a court order to strike Defendant's reply to his motion for summary judgment, such is **DENIED**.

Plaintiff makes an oral request for production of transcripts at Defendant's expense regarding this hearing and two previous hearings held on November 8, 2013 (Doc. # 90) and

