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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BARON BEMENT,

Plaintiff,

v.

JAMES G. COX, an individual, GREG
SMITH, an individual, STATE OF
NEVADA *ex rel.* its DEPARTMENT OF
CORRECTIONS, a governmental entity,
DOES I-V,

Defendants.

Case No. 3:12-cv-00475-MMD-WGC

ORDER

Before the Court is Plaintiff Baron Bement's Motion to Strike or Summarily Deny Defendant's Motion for Summary Judgment ("Motion to Strike") (ECF No. 92). The Court has reviewed Defendant State of Nevada Department of Corrections' ("NDOC") response (ECF No. 94) and Plaintiff's reply (ECF No. 95).

Plaintiff argues that this Court should strike Defendant's second Motion for Summary Judgment (ECF No. 90) because Defendant does not assert that there has been an intervening change in controlling law, new evidence or an expanded factual record, or a need to correct clear error or prevent manifest injustice. (ECF No. 92 at 3 (citing *Brazill v. Cal. Northstate Coll. of Pharm., LLC*, No. CIV. 2:12-12-18 WBS GGH, 2013 WL 4500667, at *1 (E.D. Cal. Aug. 22, 2013)).

Defendant argues (1) that the Court has previously authorized the parties to file dispositive motions; (2) that Plaintiff's Motion to Strike is not permitted under Fed. R. Civ. P. 12(f); (3) that Plaintiff's cited authority is distinguishable and contrary to Plaintiff's


1 claims; and (4) that Defendant's Motion for Summary Judgment is neither frivolous nor
2 repetitive and manifest injustice will result if Defendant is foreclosed from seeking
3 summary judgment. (ECF No. 94 at 5-9.)

4 "[D]istrict courts have discretion to entertain successive motions for summary
5 judgment" *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010). Moreover,
6 Fed R. Civ. P. 12(f) only allows courts to strike redundant, immaterial, impertinent, or
7 scandalous matter from *pleadings*. *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885
8 (9th Cir. 1983). Motions are not pleadings. *Id.*; *see also* Fed. R. Civ. P. 7(a) (listing
9 pleadings). Accordingly, the Court will deny Plaintiff's Motion to Strike. In addition, the
10 Court will deny Plaintiff's alternative request to summarily deny summary judgment
11 because Defendant's Motion for Summary Judgment is neither frivolous or repetitive.

12 The Court notes that the parties made several arguments and cited to several cases
13 not discussed above. The Court has reviewed these arguments and cases and determines
14 that they do not warrant discussion as they do not affect the outcome of the motion before
15 the Court.

16 It is therefore ordered that Plaintiff's Motion to Strike (ECF No. 92) is denied.

17 DATED THIS 8th day of May 2018.

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22 MIRANDA M. DU
23 UNITED STATES DISTRICT JUDGE
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