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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ISAAC AVENDANO, et al.,

3:13-cv-00168-HDM-VPC

Plaintiffs,

v.

**ORDER**

SECURITY CONSULTANTS GROUP,

et al.,

Defendants.

13 Before the court is plaintiffs' motion to strike (#114) union defendants' show cause and  
14 supplemental briefs (#s 109 and 110). Union defendants filed these briefs as required by the court's  
15 order to show cause (#105). Union defendants timely opposed the motion to strike (#117), and  
16 plaintiffs replied (#119). This order follows.

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18 **I. FACTUAL AND PROCEDURAL BACKGROUND**

19 This case concerns the employment of plaintiffs Isaac Avendano and Rolando Duenas  
20 ("plaintiffs") as federal building security officers, and various federal and state law claims arising  
21 therefrom against their employer ("corporate defendants") and union ("union defendants").

22 On September 12, 2014, the court entered a show cause order against union defendants and  
23 their counsel, Robert B. Kapitan ("Kapitan") for a collection of misrepresentations Kapitan made at  
24 a January 10, 2014 hearing (#105) regarding the status of a complaint before the Disciplinary  
25 Counsel of the Ohio Supreme Court ("ODC") against plaintiffs' counsel, John. A Tucker Co., LPA  
26 ("Tucker"). Therein, the court excerpted Kapitan's statements, and ordered:  
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- 1 1. Within twenty-one days (21) of the date of this order, counsel for union  
2 defendants Robert B. Kapitan SHALL FILE a brief to show cause why he  
3 and/or union defendants should not be sanctioned pursuant to this court's  
4 inherent power for knowingly making repeated misrepresentations to this  
5 court.
- 6 2. Plaintiffs shall file their response, if any, within fourteen (14) days of the date  
7 of service of union defendants' brief.
- 8 3. All factual assertions in either brief shall be supported by affidavit or other  
9 authenticated exhibits.

10 (#105 at 5). Union defendants timely filed a show cause brief on October 3, 2014 (#109) and a  
11 supplemental brief on October 16 (#110). Plaintiffs timely responded on October 20 (#113).

12 Three days later, on October 23, 2014, plaintiffs moved to strike the briefs for their purported  
13 immateriality and/or non-compliance with the show cause order. The court has yet to issue a  
14 decision on sanctions. However, the court first considers the motion to strike as it may necessarily  
15 narrow the evidence before the court when it assesses the merit of sanctions.

16 **II. LEGAL STANDARD**

17 This court has the inherent power to strike improper papers and filings in the docket. "The  
18 inherent powers of federal courts are those which are necessary to the exercise of all others."  
19 *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (internal quotation and citation omitted).  
20 Rather than a specific rule or statute, inherent powers arise from the need to protect "the due and  
21 orderly administration of justice" and the need to maintain the court's authority and dignity. *Id.* at  
22 764-65 (internal quotations and citations omitted). Accordingly, this court has specifically  
23 recognized that, in addition to the power to strike pleadings under Federal Rule 12(f), "a district  
24 court has the inherent power to strike a party's submissions other than pleadings." *Laghaei v. Fed.*  
25 *Home Loan Mortg. Corp.*, No. 3:12-cv-00307-MMD-VPC, 2012 WL 5398874, at \*1 (D. Nev. Nov.  
26 2, 2012) (citing *Metzger v. Hussman*, 682 F. Supp. 1109, 1110 (D. Nev. 1998); *Chambers v.*

1 NASCO, Inc., 501 U.S. 32, 44-45 (1991); *Spurlock v. F.B.I.*, 69 F.3d 1010, 1016 (9th Cir. 1995)); see  
2 also *Mazzeo v. Gibbons*, No. 2:08-cv-01387-RLH-PAL, 2010 WL 3910072 (D. Nev. Sept. 30,  
3 2010).

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5 In *Mazzeo v. Gibbons*, a Court in this District explained several proper bases for exercising  
6 the power to strike under Rule 12. 649 F. Supp. 2d 1182 (D. Nev. 2009).

7 Under Rule 12(f)[,] a “court may strike from a pleading . . . any redundant, immaterial,  
8 impertinent, or scandalous matter.” Matter is “immaterial” if it has no bearing on the  
9 controversy before the court. Allegations are “impertinent” if they are not responsive  
10 to the issues that arise in the action and that are admissible as evidence. “Scandalous”  
11 matter is that which casts a cruelly derogatory light on a party or other person.  
12 *Id.* at 1201-02 (internal citations omitted). Although the court did not apply these particular bases  
13 under its inherent power, courts in this district have reasoned that the inherent power to strike may  
14 be exercised against motions and affidavits that fail to comply with the Federal Rules of Evidence  
15 and Civil Procedure. *USF Ins. Co. v. Smith’s Food and Drug Ctr.*, No. 2:10-cv-0513-RLH-LRL,  
16 2011 WL 1326008, at \*2 (D. Nev. Apr. 6, 2011). Accordingly, even where a paper is not a  
17 “pleading” for the purposes of Rule 12(f), the court may exercise its inherent power to strike  
18 redundant, immaterial, impertinent, or scandalous filings when administration of justice so requires.

19 **III. ANALYSIS**

20 Applying these standards to the instant case, the court grants in part and denies in part  
21 plaintiffs’ motion to strike.

22 Sullivan Affidavit and Email Correspondence (#s 109-1 and 109-2). The court denies the  
23 motion to strike these papers, except as to paragraph four of the affidavit and the email  
24 correspondence. The court agrees with plaintiffs that the affidavit is largely immaterial. However, it  
25 is not prejudicial and provides background that, at minimum, is mildly relevant to the events that  
26 gave rise to the court’s show cause order.  
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1 Paragraph four and the email exhibit, however, relate only to union defendants' apparent  
2 reasons for terminating their prior representation by the Tucker firm. Those reasons are entirely  
3 immaterial and impertinent to the court's show cause order. The show cause order concerns a  
4 narrow matter: the representations made about the status of the ODC complaint in October 2013.  
5 Accordingly, even if the contentions made in the email about the termination of the Tucker firm are  
6 true, they have no bearing on whether the January 10, 2014 representations were false. Because the  
7 email is immaterial, the court may strike it. *Mazzeo*, 649 F. Supp. 2d at 1201-02. Accordingly, the  
8 court strikes the email (#109-2) and paragraph four of the affidavit (#109-1), which incorporates the  
9 email by reference.  
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12 Kapitan Affidavit and Email to the ODC (#s 109-3 and 109-4). The court denies the motion  
13 to strike. As with the Sullivan affidavit, the Kapitan affidavit presents background material that is  
14 only somewhat relevant. Much of the information is altogether unresponsive to the particular issue  
15 at the heart of the order to show cause. Nevertheless, to the extent the affidavit is irrelevant, it is not  
16 prejudicial and the court concludes the administration of justice in this case does not necessitate the  
17 striking of Kapitan's affidavit.  
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19 Supplemental Brief (#110). The court denies the motion to strike the supplemental brief.  
20 The brief merely explains the absence of an exhibit to the Sullivan affidavit due to the ODC's  
21 confidentiality rules.  
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23 Union defendants should take notice, however, that the contents of the grievances filed  
24 against Tucker by union defendants in 2013 have no relation to the particular issue before the court  
25 in the show cause order. Stated differently, the content of union defendants' professional complaints  
26 against Tucker in June 2013 have no bearing on whether Kapitan misrepresented the status of the  
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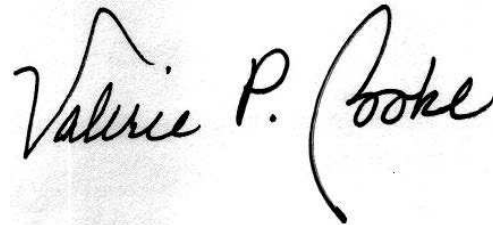
1 that union defendants' briefs, affidavits, and exhibits may have a "significant impact . . . on the  
2 Plaintiffs and their Counsel" should they remain in the public record (#119 at 3). This order cannot  
3 seal the stricken items, for no proper motion to seal is before the court. If plaintiffs or counsel  
4 believe a removal of the stricken items is appropriate, plaintiffs must file a properly-supported  
5 motion to seal, which the court will consider in due course.  
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7 For the reasons articulated herein, the court **GRANTS AND DENIES IN PART** the motion  
8 to strike (#114), as follows:

- 9 (1) The court **STRIKES** paragraph four of the Sullivan affidavit (#109-1).  
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11 (2) The court **STRIKES** in its entirety the Sullivan affidavit's email exhibit (#109-2).  
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13 (3) Aside from these exceptions, the court **DENIES** the motion to strike (#114).

14 **IT IS SO ORDERED.**

15 **DATED:** November 19, 2014.



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18 **UNITED STATES MAGISTRATE JUDGE**  
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