

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY CROSS,

Plaintiff,

v.

RON JAEGER, et. al.,

Defendants.

Case No. 3:13-cv-00433-MMD-WGC

ORDER

Re: ECF No. 238

Before the court are: (1) Plaintiff's Motion to Strike Documents in Support of Defendant's Motion for Opposition to Plaintiff's Motion for Summary Judgment (Electronic Case Filing (ECF) No. 237); and (2) Plaintiff's Motion to Strike Documents in Support of Defendant's Motion for Summary Judgment. (ECF No. 238.) Defendant Jaeger has opposed the motions. (ECF Nos. 246, 247.) Plaintiff filed a reply (ECF No. 257), as well as supplemental authorities in support of his motion to strike (ECF No. 280).

Plaintiff filed supplemental points and authorities in support of his motion to strike. (ECF No. 280.) The Local Rules contemplate the filing of a motion, response and reply brief. LR 7-2. Supplemental briefing is not permitted without leave of court. Plaintiff did not seek leave of court to file his supplemental briefing; therefore, the court will not consider it.

I. STANDARD

While Federal Rule of Civil Procedure 12(f) provides authority for the court to strike "redundant, immaterial, impertinent, or scandalous matter" from a pleading, it does not authorize the court to strike material contained in other documents filed with the court. See Fed. R. Civ. P. 12(f). Courts, however, have inherent powers to control their dockets, see *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted), and to "achieve the orderly and expeditious disposition of cases." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43 (1991). "This

1 includes the power to strike items from the docket as a sanction for litigation conduct." Ready,
2 627 F.3d at 404 (citations omitted); see also Wallace v. U.S.A.A. Life General Agency, Inc., 862
3 F.Supp.2d 1062, 1068 (D. Nev. 2012) (citing Ready, 627 F.3d at 404). "Such power is
4 indispensable to the court's ability to enforce its orders, manage its docket, and regulate
5 insubordinate...conduct." Id. (citing Mazzeo v. Gibbons, No. 2:08-cv-01387-RLH-PAL, 2010
6 WL 3910072, at * 2 (D. Nev. Sept. 30, 2010)).

7 II. DISCUSSION

8 **A. Exhibits G and K**

9 Plaintiff seeks to strike Exhibits G and K filed in support of Jaeger's response to
10 Plaintiff's motion for summary judgment and Jaeger's motion for summary judgment. (ECF Nos.
11 237, 238.) Exhibit G is the declaration of SDCC Associate Warden Minor Adams, filed in
12 support of Jaeger's own motion for summary judgment as well as his response to Plaintiff's
13 motion for summary judgment. (ECF Nos. 231-7, 234-7). Exhibit K is the declaration of Ely
14 State Prison Warden Harold M. Byrne filed in support of Jaeger's response to Plaintiff's motion
15 for summary judgment. (ECF No. 234-11.)

16 Plaintiff seeks to strike them on the basis that they are purely conclusory as they fail to
17 cite any facts to support their assertions. (ECF No. 237 at 2; ECF No. 238 at 2.) In particular, he
18 contends that neither references NDOC, SDCC or ESP authorities demonstrating that an
19 administrative segregation unit sergeant is the shift supervisor with authority to answer an
20 emergency grievance. (Id.)

21 Jaeger argues that a disagreement with the statements made in the declarations of
22 Mr. Adams and Mr. Byrne is not a basis to strike the documents. (ECF No. 246 at 2; ECF No.
23 247 at 2.)

24 The court agrees with Jaeger that Plaintiff's objection to these declarations is not a proper
25 basis to strike the documents from the record. Instead, his arguments concerning the declarations
26 are (and were in fact) appropriately asserted in response to Jaeger's motion for summary
27 judgment, and in Plaintiff reply in support of his own motion. Therefore, to the extent he seeks to
28 strike Exhibits G and K, these motions (ECF Nos. 237 and 238) are **DENIED**.

1 **B. Exhibit F**

2 Plaintiff also seeks to strike Exhibit F, filed in support of Jaeger's response to Plaintiff's
3 motion for summary judgment and Jaeger's motion for summary judgment. (ECF Nos. 237,
4 238.) Exhibit F is Southern Desert Correctional Center (SDCC) Operational Procedure (OP) 740,
5 effective October 1, 2011, which governs how emergency grievances are handled at SDCC.
6 (ECF Nos. 231-6; 234-6.) Plaintiff seeks to strike Exhibit F on the basis that the events at issue in
7 this case occurred on September 30, 2011, and an OP with an effective date after September 30,
8 2011 is immaterial to this action.

9 Jaeger acknowledges that counsel inadvertently filed the wrong version of Exhibit F in
10 support of both Jaeger's motion for summary judgment and response to Plaintiff's motion (ECF
11 No. 246 at 2; ECF No. 247 at 2); however, an errata was filed substituting the version of the OP
12 that was in effect on September 30, 2011. (See ECF Nos. 248, 249.)

13 In Plaintiff's reply, he asserts that he noted his objection to SDCC OP #740 with the
14 effective date of October 1, 2011, and asked Jaeger to provide him with a copy of the version in
15 effect on September 30, 2011. (ECF No. 257 at 1.) He contends that Jaeger did not give him a
16 copy, and the court advised Plaintiff discovery was completed (citing ECF No. 220); therefore,
17 Plaintiff contends the late presentation of this version of OP 740 violates the court's order. (ECF
18 No. 257 at 1-2.) Plaintiff also asserts that the document filed does not indicate it was effective
19 September 30, 2011. (Id. at 2.)

20 Plaintiff's motions to strike Exhibit F (ECF Nos. 237, 238) are **DENIED**, as the court has
21 already resolved Plaintiff's objection to the submission of the October 1, 2011 version of SDCC
22 OP 740.

23 The court previously ordered Jaeger to file under seal the version of SDCC OP 740 that
24 was in effect on September 30, 2011, and to make it available for Plaintiff to review. (ECF No.
25 253.) Jaeger did in fact file the document with the court, and mailed a copy to Plaintiff on
26 October 28, 2015. (ECF Nos. 254, 254-1.) It was not deemed confidential; therefore, it was not
27 filed under seal. (ECF No. 254 at 1.) This is the same document that was filed as the errata to
28

1 Exhibit F in connection with the pending dispositive motions. (See ECF Nos. 248-1, 249-1, 254-
2 1.)

3 This topic was also raised in one of Plaintiff's motions to reopen discovery. (ECF No.
4 266.) In reviewing that motion, the court determined it needed additional information from
5 Jaeger about SDCC OP 740 insofar as there appeared to be two different (albeit similar) versions
6 of this OP, and the court sought to clarify when the relevant version of SDCC OP 740 was
7 provided to Plaintiff. (Id. at 5.) The court sought additional briefing from Plaintiff on this subject
8 as well, including a statement regarding whether there is any substantive distinction between the
9 two versions of the OP, and a discussion outlining any discovery Plaintiff sought to take with
10 respect to the OP. (Id. at 6.)

11 Jaeger clarified that the correct version of the OP was produced in the errata filed on
12 October 23, 2015 (ECF No. 271.) Jaeger indicated he did not oppose giving Plaintiff additional
13 time to supplement his opposition to Jaeger's motion for summary judgment or Plaintiff's reply
14 in support of his own motion in light of the oversight (even though the documents were
15 substantively the same). (ECF No. 271.) He maintained that additional discovery was not
16 necessary. (Id.)

17 In his briefing, Plaintiff asserted, inter alia, that the document produced by Jaeger does
18 not indicate it was in effect on September 30, 2011. (ECF No. 272 at 3.) Plaintiff acknowledged,
19 however, that there is "no significant distinction" between the two versions of the OP. (Id.)

20 After reviewing the briefing, the court concluded there was no distinction between the
21 differing versions of OP 740, and denied Plaintiff's request to reopen discovery. (ECF No. 274.)

22 Insofar as the present motion to strike is concerned, it is reiterated that the portion of
23 SDCC OP 740 that governs emergency grievances is identical in both versions of Exhibit F, as
24 well as the version subsequently filed by Jaeger. (See ECF Nos. 231-6 at 4; 234-6 at 4, 248-1 at
25 4; 249-1 at 4; 254-1 at 4.) Therefore, there is no prejudice to Plaintiff as a result of the
26 production of this version of OP 740 at this juncture. As for Plaintiff's contention that there is no
27 indication the subsequently produced version was in effect on September 30, 2011, the document
28 states that it "supersedes: IP #7.40 May 1, 2003," and the court accepts defense counsel's

1 representation, as an officer of the court, that the errata is the version of OP 740 that was in effect
2 on September 30, 2011.

3 In light of Jaeger's submission of the errata (ECF Nos. 248-1 and 249-1) as well as the
4 additional production of SDCC OP 7.40 in effect on September 30, 2011 (ECF No. 254-1),
5 Plaintiff's motions to strike Exhibit F are **DENIED**.

6 **IT IS SO ORDERED.**¹

7 DATED: April 18, 2016.

8 
9

WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 ¹ The court had intended to enter this order contemporaneously with the entry of the Report and Recommendation
27 (ECF No. 298), but inadvertently overlooked doing so. The filing of this order on this date does not affect the court's Report
28 and Recommendation. However, the deadline to file any objection to this order commences fourteen (14) days after Plaintiff
is served with a copy of this order. 28 U.S.C. § 636(b)(1).