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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

NATHAN ECHEVERRIA, *et al.*,

Plaintiffs,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:14-cv-00320-MMD-WGC

ORDER

**I. SUMMARY**

Plaintiffs, who are current and former guards and other employees at Nevada state prisons, sued the State of Nevada, *ex rel.* the Nevada Department of Corrections (“NDOC”) in this collective action primarily brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) to recover compensation for time spent allegedly preparing for, or wrapping up, their work shifts. (ECF No. 95.) There are a number of motions pending before the Court (ECF Nos. 343, 345, 346, 349, 350, 351, 353, 354, 355, 356, 365, 374, 377, 382), but this order only addresses the pending motions the Court views as procedural (ECF Nos. 345, 349, 353, 356, 365, 374, 377, 382)<sup>1</sup> in order to lay the groundwork for resolving the pending motions the Court views as more substantive (ECF Nos. 343, 346, 350, 351, 354, 355) in the coming months. As further explained below, the Court denies NDOC’s motions to seal without prejudice and orders Plaintiffs to weigh in on each motion once NDOC refiles them, denies NDOC’s motion for

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<sup>1</sup>Plaintiffs did not file any responses to NDOC’s pending motions to seal (ECF Nos. 345, 353, 356, 365, 374, 377), so those motions are unopposed. Similarly, Plaintiffs did not file a response to NDOC’s motion for leave to file excess pages. (ECF No. 349.) NDOC opposes Plaintiffs’ motion for leave to file supplemental authority. (ECF Nos. 382, 388, 389.)

1 leave to file excess pages without prejudice to refileing a LR 7-3 compliant motion  
2 regarding Plaintiffs' survey, and grants Plaintiffs' motion for leave to file supplemental  
3 authority.

## 4 **II. DISCUSSION**

5 To start, the Court notes NDOC's apparent noncompliance with Local Rule LR 7-  
6 3(a) ("Parties must not circumvent this rule by filing multiple motions.") in filing multiple  
7 overlapping motions that total many pages over the page limit for motions for summary  
8 judgment. (ECF Nos. 343, 351, 354, 355.) The Court has previously warned NDOC  
9 about this approach (ECF No. 321 at 1 n.1), but NDOC has not heeded the Court's  
10 warning. The Court admonishes NDOC to review and comply with the Court's Local  
11 Rules and Standing Order going forward. However, the Court will not deny NDOC's  
12 pending substantive motions for noncompliance LR 7-3(a) because the Court wishes to  
13 begin addressing the merits of this case after years of justified delay from appeals and  
14 certification. See LR IA 1-4 ("The court may sua sponte or on motion change, dispense  
15 with, or waive any of these rules if the interests of justice so require."). With that said, the  
16 Court next addresses NDOC's pending motions to seal, then NDOC's motion for leave to  
17 file excess pages, and then Plaintiffs' motion for leave to file supplemental authority.

### 18 **A. Motions to Seal**

19 NDOC filed six motions to seal that generally seek to file under seal exhibits  
20 accompanying its briefing on the pending substantive motions. (ECF Nos. 345, 353, 356,  
21 365, 374, 377.) The motions to seal are all similar and share the same flaws. Taking the  
22 first-filed motion (ECF No. 345) as a representative example, NDOC relies on the  
23 Nevada state-court rule governing sealing. (*Id.* at 2.) Then, after stating that the parties  
24 have entered into a protective order and that information must be kept confidential for  
25 public safety, NDOC proceeds to assert, "[t]he following exhibits are deemed to be  
26 confidential and subject to the Stipulated Protective Order and therefore, are entitled to  
27 be filed under seal." (*Id.* at 3.) NDOC follows that assertion with a table listing the titles of  
28 exhibits it seeks to file under seal. (*Id.* at 3-4.) Notably, NDOC does not provide any

1 argument or description particularized to any of the exhibits in the table as to why each  
2 document should be filed under seal.

3 The Court already warned NDOC about this approach. (ECF No. 192 at 5 n.4.)  
4 But again, NDOC has not heeded the Court's warning. More importantly, however,  
5 NDOC does not discuss or apply the governing legal standard in its pending motions to  
6 seal. The mere existence of a stipulated protective order and either party's designation  
7 of a document as confidential, alone, are insufficient grounds to seal a document. See  
8 *Heath v. Tristar Prod., Inc.*, Case No. 2:17-cv-02869-GMN-PAL, 2019 WL 12311995, at  
9 \*2 (D. Nev. Apr. 17, 2019). To overcome the strong presumption in favor of public  
10 access, NDOC must make a particularized showing as to why each exhibit should be  
11 sealed and provide compelling reasons, supported by specific factual assertions, for its  
12 request. See *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006);  
13 *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010). It is difficult for the  
14 Court to assess whether to grant NDOC's pending motions to seal because NDOC does  
15 not even mention, much less apply, the governing legal standards described in  
16 *Kamakana* and *Pintos*.

17 What's more, NDOC's pending motions to seal consist of nothing more than a  
18 blanket statement purportedly applicable to a table full of exhibits. This is not the  
19 particularized showing required by *Kamakana*, *Pintos*, and similar cases. NDOC's  
20 pending motions to seal leave the Court unable to determine whether each individual  
21 exhibit should remain under seal because NDOC offers no information specific to each  
22 exhibit.

23 Finally, while normally an opposing party's failure to respond to a motion makes it  
24 easy to conclude the motion can be granted, see LR 7-2(d), Plaintiffs' failure to respond  
25 to the pending motions to seal further adds to the Court's difficulty in evaluating them.  
26 NDOC seems to suggest that it seeks to file certain exhibits under seal because they  
27 contain Plaintiffs' personal information or Plaintiffs designated them confidential under  
28

1 the stipulated protective order. It would be helpful to hear from Plaintiffs as to whether  
2 this is the case regarding any or all of the pertinent exhibits.

3 The Court accordingly denies the pending motions to seal without prejudice and  
4 directs NDOC to file revised motions to seal compliant with the governing legal  
5 standards within 10 days. The Court further orders Plaintiffs to respond to NDOC's  
6 revised motions to seal within another 10 days. The Court notes that absent a  
7 particularized showing of compelling reasons to support sealing to overcome the  
8 presumption of public access, the Court will deny sealing.

9 **B. Motion for Leave to File Excess Pages**

10 NDOC filed a motion for leave to file excess pages (ECF No. 349) either shortly  
11 before or contemporaneously with filing its motion to exclude all evidence from Plaintiffs'  
12 experts (ECF No. 351). "The [C]ourt looks with disfavor on motions to exceed page  
13 limits, so permission to do so will not be routinely granted." LR 7-3(c). "A motion to file a  
14 brief that exceeds these page limits will be granted only upon a showing of good cause."  
15 *Id.*

16 NDOC proffers the following as its good cause:

17 This is a complex collective action, and there are at least six distinct  
18 challenges to the Plaintiffs' expert opinions. The factual discussion alone  
19 constitutes approximately 18 pages. NDOC has been unable to include all  
20 necessary legal and factual analysis for its Motion within the 24-page limit.

21 (ECF No. 349 at 3.) The Court is unpersuaded this constitutes good cause under LR 7-  
22 3(c).

23 First, simply stating that the factual discussion is 18 pages long says nothing  
24 about why it must be 18 pages long. Second, having reviewed the motion, the factual  
25 background and argument sections appear largely redundant to the Court, meaning  
26 NDOC could combine the two into an integrated discussion of the facts and the law.  
27 Third, and as previously mentioned, NDOC filed several motions when it could have filed  
28 fewer despite the Court's prior warning about filing a flurry of motions to circumvent the

1 Local Rules' page limits. Fourth, the fact that this is a "complex collective action" does  
2 not excuse compliance with the Court's Local Rules.

3 In sum, NDOC has not shown good cause to exceed the applicable page limits in  
4 its pending motion. (*Id.*) The motion is accordingly denied. And because NDOC's motion  
5 to exclude all evidence from Plaintiffs' experts (ECF No. 351) admittedly exceeds the  
6 applicable page limit, see LR 7-3(b), that motion is denied without prejudice to refileing a  
7 new version of the motion that complies with the page limit. NDOC must file its within-  
8 page-limit motion within 10 days, and then the normal briefing schedule will apply to any  
9 response and reply the parties wish to file.

10 **C. Motion for Leave to File Supplemental Authority**

11 Plaintiffs urge the Court to consider a written decision from a Nevada state court  
12 in *Haines v. NDOC*. (ECF No. 382.) Plaintiffs referenced the same ruling in their reply in  
13 support of their motion for leave to reassert claims for failure to pay overtime in violation  
14 of NRS 284.180, but a written version was apparently not yet available. (ECF No. 371 at  
15 4 n.4.) Plaintiffs accordingly argue that the Court should consider the written version of  
16 the ruling instead of Plaintiffs' counsel's representation as to its substance based on  
17 counsel's understanding from the pertinent court proceedings. (ECF No. 382 at 2-3.)  
18 NDOC counters that the Court should deny the motion for leave to file supplemental  
19 authority because *Haines* does not have any precedential effect on this case, *Haines* is  
20 not a named Plaintiff in this case, and *Haines* supports NDOC's position as pertinent to  
21 Plaintiffs' motion to reassert their NRS 284.180 claim in any event. (ECF No. 388.) The  
22 Court agrees with Plaintiffs in pertinent part.

23 "LR 7-2(g) requires parties to acquire leave of court before filing supplemental  
24 briefs." *Alps Prop. & Cas. Ins. Co. v. Kalicki Collier, LLP*, 526 F. Supp. 3d 805, 812 (D.  
25 Nev. 2021) (quoting *Ra Se. Land Co. LLC v. First Am. Title Ins. Co.*, Case No. 2:14-cv-  
26 01621-MMD-NJK, 2016 WL 4591740, at \*2 (D. Nev. Sept. 2, 2016)). "A court may grant  
27 such a request for good cause." *Id.* (citation omitted). "Good cause may exist either  
28 when the proffered supplemental authority controls the outcome of the litigation, or when

1 the proffered supplemental authority is precedential, or particularly persuasive or  
2 helpful.” *Id.* (citation omitted).

3 The Court finds good cause exists to grant Plaintiffs’ motion for leave to file  
4 supplemental authority because the written decision in *Haines* will be more helpful than  
5 counsel’s description of the oral ruling in the same case. Moreover, NDOC does not  
6 directly respond to Plaintiffs’ argument as to why the Court should grant the motion for  
7 leave to file supplemental authority, instead arguing why *Haines* should not change the  
8 Court’s analysis of Plaintiffs’ motion for leave to reassert their NRS 284.180 claim. The  
9 Court may well agree with NDOC when it rules on Plaintiffs’ motion for leave to reassert  
10 their NRS 284.180 claim—but that has no real bearing on whether the Court should  
11 consider the written decision instead of Plaintiffs’ counsel’s representations regarding the  
12 oral version of the same ruling. In sum, for good cause shown, the Court grants Plaintiffs’  
13 motion for leave to file supplemental authority.

### 14 **III. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several  
16 cases not discussed above. The Court has reviewed these arguments and cases and  
17 determines that they do not warrant discussion as they do not affect the outcome of the  
18 issues before the Court.

19 It is therefore ordered that the pending motions to seal (ECF Nos. 345, 353, 356,  
20 365, 374, 377) are denied without prejudice. However, the requested sealed exhibits will  
21 remain under seal pending the Court’s ruling on NDOC’s renewed motions to seal.  
22 These exhibits will be unsealed if NDOC elects not to file renewed motions to seal.

23 It is further ordered that NDOC must refile each of the pending motions to seal  
24 (ECF Nos. 345, 353, 356, 365, 374, 377) applying the correct legal standards and  
25 including discussion specific to each document it seeks to file under seal as to why that  
26 document should be filed under seal within 10 days of the date of entry of this order.  
27 NDOC may refile its motions to seal as one combined motion regardless of any  
28 applicable page limits.

1 It is further ordered that Plaintiffs must respond to NDOC's refiled motion or  
2 motions to seal within another 10 days after it or they are filed, as one combined  
3 response if NDOC chooses to file a combined motion, taking a position supported by  
4 pertinent legal authority on each and every document that NDOC seeks to file under  
5 seal.

6 It is further ordered that NDOC's motion for leave to file excess pages (ECF No.  
7 349) is denied.

8 It is further ordered that NDOC's motion to exclude all evidence from Plaintiffs'  
9 experts (ECF No. 351) is denied without prejudice to refile as further specified below.

10 It is further ordered that NDOC may refile a version of its motion to exclude all  
11 evidence from Plaintiffs' experts (ECF No. 351) that complies with the applicable page  
12 limits under the Local Rules within 10 days of the date of entry of this order. The normal  
13 briefing schedule will then apply to any responses and replies the parties wish to file to  
14 NDOC's refiled motion to exclude all evidence from Plaintiffs' experts.

15 It is further ordered that Plaintiffs' motion for leave to file supplemental authority  
16 (ECF No. 382) is granted. The Court will consider Plaintiffs' proffered supplemental  
17 authority when it rules on Plaintiffs' motion to reassert their claims for failure to pay  
18 overtime in violation of NRS § 284.180 (ECF No. 350).

19 DATED THIS 6<sup>th</sup> Day of April 2022.



22 MIRANDA M. DU  
23 CHIEF UNITED STATES DISTRICT JUDGE

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