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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TACUMA J. M’WANZA,)
)
 Plaintiff,)
)
 vs.)
)
 DEPUTY DIRECTOR FOSTER, *et al.*,)
)
 Defendants.)

3:14-cv-00331-MMD-WGC

ORDER

Re: ECF No. 103

Before the court is Defendants’ Motion to Strike the Affidavit of Kenny Richard. (ECF Nos. 103, 103-1 to 103-7.) Plaintiff has not filed a response.¹

Defendants filed their motion for summary judgment on March 16, 2017. (ECF Nos. 86, 86-1 to 86-13.) Plaintiff filed his response on April 17, 2017. (ECF No. 92.)

Defendants then sought an extension of time to file their reply brief. (ECF No. 95.) The court granted this motion, ordering the reply brief to be filed by May 4, 2017. (ECF No. 96.) Defendants never filed a reply brief.

On May 22, 2017, Plaintiff filed a request for leave to submit the affidavit of Kenny Richard² as an exhibit to his response to the pending dispositive motion. (ECF Nos. 100, 100-1.) The court granted

¹

Local Rule 7-2(d) provides that the failure to file a response to a motion constitutes consent to grant the motion; however, this does not apply to a response to a motion filed under Rule 56. Defendants move to strike a document filed in connection with a response to a motion for summary judgment; therefore, the court will not apply Local Rule 7-2(d), and will consider the merits of the motion to strike.

²

According to Defendants, the inmate’s correct name is Richard R. Kenny, although they acknowledge that the inmate “inconsistently interchanges his surname with his given name.” (ECF No. 103 at 2 n. 2.) The court will refer to him as Mr. Richard, since that is how he is identified in Plaintiff’s motion and the affidavit.

1 the request. (ECF No. 101.)

2 The affidavit provides a description of events in October of 2013, which corroborate Plaintiff's
3 version of events supporting his Fourth Amendment claim in Count III of his Second Amended
4 Complaint. (ECF No. 100-1.)

5 In addition to not filing a reply brief in support of their dispositive motion, Defendants did not
6 seek reconsideration of the court's order granting Plaintiff leave to file the affidavit of Mr. Richard.
7 Instead, they waited three months and filed a motion to strike the affidavit on August 29, 2017.
8 (ECF Nos. 103, 103-1 to 103-7.)

9 Defense counsel asserts that after the motion for leave and the affidavit were reviewed, counsel
10 questioned the authenticity of the affidavit and its veracity because the handwriting resembles Plaintiff's,
11 and the signature on the affidavit does not match the signature provided by Mr. Richard in other
12 documentation submitted within the prison. Defense counsel attempted to schedule a telephone
13 conference with the inmate, but Mr. Richard refused to participate. Defendants state they are not
14 handwriting analysts and cannot confirm whether Plaintiff or Mr. Richard signed the affidavit, and did
15 not have a procedural vehicle to question Mr. Richard about its authenticity because Plaintiff did not
16 identify him as a witness. Therefore, Defendants ask the court to strike the affidavit on the grounds that
17 it appears to be forged and because it was submitted after briefing was closed. Alternatively, Defendants
18 request the court to conduct an evidentiary hearing requiring Plaintiff to establish the affidavit's
19 authenticity.

20 While Federal Rule of Civil Procedure 12(f) provides authority for the court to strike "redundant,
21 immaterial, impertinent, or scandalous matter" from a *pleading*, it does not authorize the court to strike
22 material contained in other documents filed with the court. *See* Fed. R. Civ. P. 12(f). Courts, however,
23 have inherent powers to control their dockets, *see Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402,
24 404 (9th Cir. 2010) (citations omitted), and to "achieve the orderly and expeditious disposition of cases."
25 *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43 (1991). "This includes the power to strike items from the
26 docket as a sanction for litigation conduct." *Ready*, 627 F.3d at 404 (citations omitted); *see also Wallace*
27 *v. U.S.A.A. Life General Agency, Inc.*, 862 F.Supp.2d 1062, 1068 (D. Nev. 2012) (citing *Ready*, 627 F.3d
28 at 404). "Such power is indispensable to the court's ability to enforce its orders, manage its docket, and

