

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RONALD COLLINS,

Case No.: 3:16-cv-00111-MMD-WGC

Plaintiff

Order

V.

Re: ECF Nos. 210, 211, 212, 213

JOSHUA COLLINS, et. al.

Defendants

9 Before the court are four motions to strike filed by Defendants. (ECF Nos. 210, 211, 212,
10 213.) Defendants seek to strike Plaintiff's declaration and exhibits filed at ECF Nos. 195, 196
11 197, 198. Plaintiff filed a response to each of the motions to strike. (ECF Nos. 215, 216, 217,
12 218.) Defendants did not file reply briefs.

13 Preliminarily, the court points out that Defendants' argument directly contradicts the
14 argument made in their response to Plaintiff's own motion to strike. There, Defendants fervently
15 argue that a motion to strike only applies to a pleading and since Plaintiff did not seek to strike a
16 pleading, the court could not grant him the relief he sought. (*See* ECF No. 166.) Here, in their
17 own motions to strike, Defendants casually acknowledge that Rule 12 applies to pleadings, but
18 then argue that courts have stricken documents other than pleadings. So it is clear in the future,
19 this is the court's position on motions to strike:

20 While Federal Rule of Civil Procedure 12(f) provides authority for the court to strike
21 "redundant, immaterial, impertinent, or scandalous matter" from a *pleading*, it does not authorize
22 the court to strike material contained in other documents filed with the court. *See Fed. R. Civ. P.*
23 12(f). Courts, however, have inherent powers to control their dockets, *see Ready Transp., Inc. v.*

1 *AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted), and to "achieve the orderly
2 and expeditious disposition of cases." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43 (1991). "This
3 includes the power to strike items from the docket as a sanction for litigation conduct." *Ready*,
4 627 F.3d at 404 (citations omitted); *see also Wallace v. U.S.A.A. Life General Agency, Inc.*, 862
5 F.Supp.2d 1062, 1068 (D. Nev. 2012) (citing *Ready*, 627 F.3d at 404). "Such power is
6 indispensable to the court's ability to enforce its orders, manage its docket, and regulate
7 insubordinate...conduct." *Id.* (citing *Mazzeo v. Gibbons*, No. 2:08-cv-01387-RLH-PAL, 2010
8 WL 3910072, at * 2 (D. Nev. Sept. 30, 2010)).

9 In fact, specific local rules authorize the court to strike filings other than pleadings. *See*
10 *e.g.* LR 7-2(g) ("The judge may strike supplemental filings made without leave of court.").

11 Next, Defendants argue that Plaintiff's filings, which Plaintiff describes as declarations
12 and exhibits supporting claims one to four, are standalone filings without points and authorities
13 not attached to any motion and are not part of any briefing cycle. Defendants call the filings
14 fugitive documents unauthorized by any court order or rule. This argument is
15 disingenuous.

16 Defendants filed their motion for partial summary judgment on November 29, 2018.
17 (ECF No. 181.) On December 3, 2018, Plaintiff filed a motion for an extension of time to file his
18 response. (ECF No. 187.) The court granted his motion, and gave him until January 25, 2019 to
19 file his response. (ECF No. 189.) Despite having until January 25, 2019, Plaintiff filed his
20 response to the motion on December 11, 2018. (ECF No. 193.) That *very same day* he filed ECF
21 Nos. 195-198—the declarations and exhibits Defendants seek to strike. The very first page of
22 each of Plaintiff's filings states that because of the high volume of exhibits in this case, Plaintiff
23 filed the declarations and exhibits in support of each claim separately so as not to create

1 confusion among the claims. It is abundantly clear that these declarations and exhibits are filed in
2 connection with his response to their motion for partial summary judgment.

3 A motion for summary judgment is limited to 30 pages, but this is *exclusive of exhibits*;
4 therefore, Local Rule 7-3(a) would not prohibit Plaintiff's filing of the exhibits and declarations.
5 General Order No. 2012-01 permanently adopted a program for the electronic submission of
6 documents in prisoner section 1983 actions. This is currently in operation at NNCC and LCC.
7 Plaintiff is housed at NNCC. The program enables NNCC staff to scan to PDF and email the
8 court all documents presented by prisoners for filing with the court in section 1983 cases. The
9 court receives and files the prisoner's documents electronically into CM/ECF.

10 LR IC 2-2 provides that all filed documents with exhibits or attachments must not be
11 filed as part of the base document and must be attached as separate files. LR IC 2-2(3)(A).
12 Typically, an electronically filed document such as a declaration, must be linked to the document
13 to which it pertains in the electronic filing system. LR IC 2-2(d). For example, the exhibits filed
14 along with Defendants' motion for summary judgment (ECF No. 181) are linked as
15 ECF No. 181-1, etc. In the case of prisoners that are electronically filing documents through
16 General Order 2012-01, the NNCC law librarian scans the document received from the inmate
17 and it is emailed to the court and the docket clerk (not the inmate or law librarian) will docket the
18 document on CM/ECF. Here, the declarations and exhibits in ECF Nos. 195-198 were not linked
19 to Plaintiff's response to the motion for partial summary judgment; however, this is because
20 Plaintiff made them separate groupings due to their size, and so they were docketed into
21 CM/ECF as separate documents instead of linked documents. This is not Plaintiff's shortcoming,
22 but simply how the system operates, which the court views overall as providing a significant
23 benefit to the court, the inmate, the prison, as well as the Attorney General's Office.

Finally, Defendants argue that if Plaintiff was attempting to file a sur-reply, the document is untimely and sought without leave. It is unclear how Plaintiff could be filing a sur-reply when the documents were filed on the same date as his response to their motion for partial summary judgment, and when Defendants had not yet filed their reply brief.

5 For these reasons, Defendants' motions to strike (ECF Nos. 210, 211, 212, 213) are

6 | DENIED.

7 | IT IS SO ORDERED.

8 | Dated: April 26, 2019

Walter G. Cobb

William G. Cobb
United States Magistrate Judge