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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

14)
15 **LARRY CALDWELL,**)
16 **Plaintiff,**)

17 **vs.**)

18)
19 **ROSEVILLE JOINT UNION HIGH**)
20 **SCHOOL DISTRICT; JAMES**)
21 **JOINER; R. JAN PINNEY; TONY**)
22 **MONETTI; STEVEN LAWRENCE;**)
23 **DONALD GENASCI; RONALD**)
24 **SEVERSON,**)

25 **Defendants.**)

)Case No.: 2:05-CV-00061-FCD-JFM

)
)**PLAINTIFF'S MEMORANDUM OF POINTS**
)**AND AUTHORITIES IN SUPPORT OF**
)**MOTION TO STRIKE DEFENDANTS'**
)**STATEMENTS OF UNDISPUTED FACTS IN**
)**SUPPORT OF FIRST AND SECOND MOTIONS**
)**FOR SUMMARY JUDGMENT**

)**[Local Rule 56-260]**
)

)
)**DATE: Sept. 1, 2006**
)**TIME: 10:00AM**
)**CTRM: 2**
)**JUDGE: Hon. Frank C. Damrell, Jr.**
)**TRIAL DATE: None set**
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 The Defendants’ filed two Separate Statements of Undisputed Facts (SUFs) in support of
4 their motions for summary adjudication. The text of both statements are identical. In both of
5 their motions for summary adjudication, Defendants combined the (1) notice of motion, (2)
6 points and authorities, (3) SUF, and the (4) declaration of James Carr into one document.
7 Plaintiff moves to specifically strike (1) the portion of Document 40, beginning at page 31
8 through page 46 entitled STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
9 DEFENDANTS’ FIRST MOTION FOR SUMMARY ADJUDICATION OF ISSUES and (2)
10 Document 41, beginning at page 32 through page 47 entitled STATEMENT OF UNDISPUTED
11 FACTS IN SUPPORT OF DEFENDANTS’ SECOND MOTION FOR SUMMARY
12 ADJUDICATION OF ISSUES.

13 Rule 1 of the Federal Rules of Civil Procedure provides that the rules “shall be construed
14 and administered to secure the just, speedy, and inexpensive determination of every action.”
15 Defendants have intentionally defied this spirit in their attempts to burden Plaintiff and the Court
16 with paperwork, slow down the administration of justice, and increase litigation costs. A court
17 has the authority to impose whatever sanctions it deems appropriate for violation of local rules
18 including denial of summary judgment motion. *Engrahm v. County of Colusa*, 2005 WL
19 3440025 (E.D.Cal. 2005); *Jin v. Hense*, 2005 WL 1561516 (E.D.Cal. 2005).

21 The Defendants’ SUFs in support of their first and second motions for summary
22 adjudication are a prime example of this defiance. A statement of undisputed facts properly
23 consists of a relevant fact verified by a clearly marked exhibit or declaration. Defendants’ SUFs
24 are, however, far from typical. They contain facts that are immaterial including such things as
25 the names of attorneys. Moreover, Defendants’ SUF is dominated by legal conclusions rather

1 than intelligible facts. Finally, Defendants’ SUFs reference the exhibits in a way that is
2 completely irresponsible, at times pointing to at least twenty (20) exhibits covering hundreds of
3 pages for a single fact but not using line numbers, or even page numbers, to locate the evidence
4 in support of the fact. The referenced exhibits consist of hundreds of pages of material that is in
5 no way relevant to this lawsuit. As a result, Defendants’ SUFs are so inconsistent with the very
6 purpose of having a separate statement that the motion to strike should be granted.
7

8 **II. Facts**

9
10 A parent, Larry Caldwell (Caldwell), attempted to improve science education in a school
11 district by using three public processes. As a result of their religious animus, Defendants
12 engaged in policies and practices calculated to prevent Plaintiff from enjoying statutory rights in
13 violation of the First and Fourteenth Amendments.
14

15 **III. Local Rule 56-260: Rules for Motions for Summary Judgment**

16 A statement of facts can be stricken for violation of a local rule. *Operating Eng’rs*
17 *Health & Welfare Trust Fund v. The Mega Life & Health Ins. Co.*, 2003 WL 22416395
18 (N.D.Cal.). Section (a) of Local Rule 56-260 (LR) states that the statement of undisputed facts
19 “shall enumerate discretely each of the specific material facts relied upon in support of the
20 motion and cite the particular portions of any ... document relied upon to establish that fact.”
21 The Defendants’ SUF does not enumerate discretely its facts or cite the documents they wish to
22 rely on in support with particularity. A plain reading of rule 56-260 requires a party to clearly
23 point to the exact place that is relied upon to establish the proffered fact. Defendants do not do
24 this.
25

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2 **a) Statements do not comply with Rule 56-260**

3 A conclusion of law cannot be used as a fact in the SUF. *U.S. v. Forbes*, 2006 WL
4 1409741 (E.D.Cal., 2006). Despite this obvious prohibition, over half of the “facts” are actually
5 conclusions of law.

6 By way of example, Fact No. 10 in each of Defendants’ SUFs state in pertinent part, as
7 follows: “The Plaintiff has no standing to seek prospective injunctive and/or declaratory
8 relief....” (pg. 3, lines 10-13). This is not a “fact” but rather a legal conclusion. Defendants’
9 SUF is dominated by such legal conclusions. Plaintiff does not wish to burden the Court with
10 every instance of when this occurs. However, several additional examples are provided to
11 illustrate the problem. For example: “The Plaintiff has not suffered any violations of his federal
12 constitutional rights by any of the Defendants.” (Fact No. 12 of Defendants’ SUFs, pg. 3, lines
13 24-25) “The Board Policies did not violation (*sic*) Mr. Caldwell’s right to practice his religion in
14 the past, present or future, ... as a matter of law.” (Fact No. 46 of Defendants’ SUFs, pg. 11,
15 lines 8-10) “The claims for prospective relief only raise political questions and the Court should
16 decline to hear said questions.” (Fact No. 21 of Defendants’ SUFs, pg. 5, lines 18-19) All told,
17 of the fifty-six (56) purported “facts” in the SUFs, there are thirty-five (35) such instances of
18 legal conclusions masquerading as “facts.” These include Facts Nos. 9-23, 30, 36-54, and 56 in
19 both SUFs. If the Court is disinclined to strike Defendants’ SUF in its entirety, Plaintiff requests
20 that the aforementioned conclusions of law be stricken.
21
22

23 In addition to the more than thirty (30) improper legal conclusions, there are nine (9)
24 facts (2-5, 31-35) that are completely irrelevant or redundant. For example, in facts Nos. 2 and 3
25 of the SUFs the Defendant simply states that Plaintiff is pro se and names his attorneys. This

1 information is in the caption of Plaintiff's pleadings and is obviously undisputed. Further, Fact
2 No. 31 of the SUFs says that Mr. Caldwell "requested a copy of a video transcript of [a] ...
3 Board Meeting." This does not serve the purpose of a proper statement of facts: to narrow the
4 issues in dispute. Assuming for argument's sake that these facts are true, they are not relevant to
5 show the absence of an element of any cause of action, nor do they tend to substantiate an
6 affirmative defense. If the Court does not strike the Defendants' SUFs in their entirety, then in
7 the alternative, Plaintiff requests that the aforementioned irrelevant facts be stricken.
8

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10 **b) Exhibits are improperly marked and referenced**

11 The statements are not the only defect in Defendants' SUFs. The exhibits are also poorly
12 labeled. Exhibits are first labeled A through Y. Next, exhibits are marked 1 through 7. After
13 this comes AA and BB. Then, mysteriously, the Exhibits are labeled A through F again. This
14 means that there are two Exhibit A's, two B's, all the way through F. Moreover, documents are
15 not marked with an exhibit number or letter in a footer or header and they are not consistently
16 paginated. To add to the confusion, some of the electronically filed exhibits are described as,
17 "More Additional Exhibits" or "Additional Exhibits" or "More Exhibits" or "Further Exhibits" or
18 "Exhibit pages 24-68." The text of the exhibits omit a letter or number to enable the reader to
19 identify the document. This incoherent presentation of the exhibits makes a response
20 problematic at best.
21

22 This is not the only problem with the exhibits. For many of the "facts" in the SUFs,
23 Defendants list numerous exhibits covering hundred of pages. Support for No. 46 quoted above,
24 for example, includes every exhibit on record except Exhibit 1 which thus totals one-thousand
25 one-hundred eighty-five pages (1185).

1 Another problem is that some of the exhibits cited in the SUFs have no known nexus to
2 the “facts” asserted. By way of example, Exhibit M is a transcript of a board meeting which is
3 devoid of any scintilla of relevance to the subject matter of this lawsuit. In the SUFs, Defendants
4 cite this irrelevant exhibit *in its entirety* as their evidence in support of several “facts” including
5 Nos. 11-13, 19-22, 38-51 (excluding 41), and 53-55. Plaintiff cannot intelligently respond to
6 these voluminous exhibits in their current condition.

7
8 Defendants are apparently expecting the Court and the Plaintiff to muck through
9 hundreds of pages of board meeting transcripts to possibly find something relevant to the case.
10 This is expressly forbidden in this district. In *Markay v. Yee*, 2005 WL 3555473 (E.D.Cal.
11 2005) , the court noted the purpose of LR when it said:

12 “A moving party's failure to cite to the evidence relied upon in support of each
13 specific fact makes a responding party's burden **unnecessarily more difficult**. In
14 fact-specific cases, the Court is disinclined to overlook the failure to comply with
15 the mandate of Local Rule 56-260(a). The responding party and the Court should
16 be able to quickly ascertain what facts offered by Plaintiff are to be contested and
17 what evidence is relied upon in support of each fact.” (Emphasis added)

18 See also, *Nguon v. Clark*, 2005 WL 3406334 (E.D.Cal. 2005). In the case at bar,
19 Defendants’ SUF is so vague and voluminous as to make it impossible to ascertain what
20 facts are contested.

21 Defendants compound the problem by citing more than twenty (20) decisions,
22 with dates ranging from 1803 to 2005 in each of their SUFs, as “proof” to support
23 undisputed facts. Simply put, facts belong in the SUF and legal arguments with
24 corresponding citations belong in the points and authorities. The significant amount of
25 legal conclusions and irrelevant facts in the SUFs, coupled with improper references and

1 formatting of exhibits by Defendants, makes an intelligent response to Defendants' SUFs
2 impossible. As such, the Defendants' SUFs should be stricken.¹

3 4 **IV. Conclusion**

5 In view of the foregoing, Plaintiff asks the Court to grant the motion to strike both
6 of Defendants' Statements of Undisputed Facts in its entirety and to order Defendants to
7 file a proper Statement of Undisputed Facts for each of their Summary Judgment Motions
8 that contains only *relevant facts* supported by proper citations to evidence (i.e., specific
9 exhibits with references to page and line numbers), and that comply in all respects with
10 this court's local rules regarding statements of undisputed facts. Plaintiff requests that the
11 Court order Defendants to file and personally serve their proper Statements of
12 Undisputed Facts no later than three weeks in advance of the September 15, 2006 hearing
13 on Defendants' and Plaintiff's summary judgment motions (by August 25th), so that
14 Plaintiff will have time to file a timely response to Defendants' proper Statements of
15 Undisputed Facts at least two weeks in advance of the hearing. Plaintiff further requests
16 that the Court order Defendants not to file any new exhibits, declarations or other
17 evidence in support of their Summary Judgment Motions, since such new evidence would
18 be likely to deprive Plaintiff of adequate time to prepare a timely opposition to
19 Defendants' Summary Judgment Motions.
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22 In the alternative, Plaintiff requests that those items in Defendants' SUFs that are
23 legal conclusions, Nos.: 9-23, 30, 36-54, and 56, be ordered stricken. Plaintiff further
24

25 ¹ It is ironic that the Defendants have filed such confusing and voluminous motions for summary
adjudication in a case in which they previously moved to strike Plaintiff's complaint for failure
to comply with the short and plain statement rule that was granted by this Court.

1 requests that the irrelevant facts in Defendants' SUFs, Nos. 2-5, 31-35, be ordered
2 stricken. Moreover, Plaintiff requests, in the alternative, that the Defendants be ordered
3 to re-file the *remaining* statement of material facts (1, 6-8, 24-29, and 55) with proper
4 citations (i.e., specific exhibits with references to page and line numbers).

5 Plaintiff plans to ask the court to hear this Motion to Strike on an expedited basis
6 (either by Stipulation and Order, or by Ex Parte Application). In the event this Court
7 does not hear and grant this Motion in time to order the requested relief at least three
8 weeks in advance of the September 15, 2006 hearing date on defendants' Motions for
9 Summary Judgment, Plaintiff further respectfully requests that the Court order
10 continuance of the hearing date on Defendants' Summary Judgment Motions, on
11 Defendants' related Motion for Sanctions, and on Plaintiffs' planned Summary Judgment
12 Motions to the first date on the Court's law and motion calendar that is at least three
13 weeks after the date on which Defendants are ordered to re-filed and serve proper
14 Statements of Undisputed Facts.
15

16
17 Dated: July 21, 2006.
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19

20 _____
21 /s/
22 Kevin T. Snider
23 Attorney for Plaintiff
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