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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PASTOR STEVE
SMOTHERMON,**

Plaintiff,

v.

KEITH HODGE, an individual;
KEVIN HODGE, an individual;
HODGETWINS, LLC, a Nevada
limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

**PLAINTIFF'S MOTION TO
STRIKE DEFENDANTS' NOTICE
OF ERRATA (ECF NO. 71) AND
THE ATTACHED DECLARATION
OF STEPHEN PARKER**

Plaintiff Pastor Steve Smothermon respectfully moves, under Local Rule 7-2(g), to strike Defendants' Notice of Errata (ECF No. 71) and the Declaration of Stephen Parker attached to it or, in the alternative, for leave to respond to that declaration. Through the "errata," Defendants added to the record a non-party's sworn declaration — the declaration of counsel for Nathan Hughes and DiamondHands, LLC d/b/a Bigly — as evidence on Plaintiff's Motion to Modify the Scheduling Order (ECF No. 67), without leave of Court as Local Rule 7-2(g) requires. The filing is not an errata. It is a supplemental submission of new evidence. It should be stricken.

I. BACKGROUND

On August 24, 2026, Defendants filed their Opposition to Plaintiff's Motion to Modify the Scheduling Order. ECF No. 70. The Opposition was supported by the Declaration of Ronald D. Green and eight exhibits. ECF Nos. 70-1 through 70-9. The Parker Declaration was not among those attachments.

Later the same day, Defendants filed a "Notice of Errata" to that Opposition. ECF No. 71. The only attachment is "Exhibit A — Declaration of Stephen Parker." ECF No. 71-1. The Notice states that "[t]he Opposition cites to the Declaration of Stephen Parker, but the filed Opposition did not include Mr. Parker's declaration," and that Defendants "wish to correct this error." ECF No. 71 at 1. They did not move for leave to supplement. Mr. Parker executed the declaration on August 21, 2026 — three days before the Opposition was filed. ECF No. 71-1 at 3.

Mr. Parker is not a party. He is counsel for Nathan Hughes and DiamondHands, LLC d/b/a Bigly. He states that he is "authorized to speak for Mr. Hughes and Bigly with respect to the scheduling of Mr. Hughes deposition." ECF No. 71-1 ¶ 4. The declaration then goes further. Paragraphs 5 through 9 offer testimony about subpoena service, the August 26 date, a court reporter, and whether a Rule 30(b)(6) deposition of Bigly was requested. Paragraph 10 states that "Mr. Hughes and Bigly have complied with all requests by Ms. Westbrook." ECF No. 71-1 ¶¶ 5–10. That compliance assertion is contested. It is not a typographical correction to the Opposition.

Plaintiff files this Motion so the Court will not treat the Parker Declaration as part of the opposition record.

II. LEGAL STANDARD

Local Rule 7-2(g) is controlling and is quoted here as this Court has quoted it:

A party may not file supplemental pleadings, briefs, authorities, or evidence without leave of court granted for

1 good cause. The judge may strike supplemental filings
2 made without leave of court.

3 LR 7-2(g); *see, e.g., Williams v. Rashid*, No. 2:21-cv-01676-APG-MDC, 2026 WL
4 1679286, at *5 (D. Nev. June 9, 2026) (Gordon, C.J.) (striking errata and amended
5 briefs filed without leave because they were “new briefs with new authorities,” not
6 clerical corrections); *Armstrong as Tr. of R.J. Armstrong Living Tr. v. Holmes*, No.
7 3:22-cv-00375-ART-CSD, 2024 WL 1744513, at *3–4, *6 (D. Nev. Apr. 22, 2024)
8 (striking a filing captioned as an “errata” that “does not contain any corrections” and
9 instead attached a declaration and supplemental briefing); *1600 E. Newlands Drive,*
10 *LLC v. Amazon.com.NVDC, LLC*, No. 3:17-cv-00566-RCJ-WGC, 2020 WL
11 7319412, at *2 (D. Nev. Dec. 11, 2020) (striking evidence and a new argument first
12 offered in a reply, where the opposing party had no opportunity to respond). Local
13 rules “have the force of federal law.” *In re Corrinet*, 645 F.3d 1141, 1146 (9th Cir.
14 2011); *see also Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010).

15 A notice of errata “must explain the changes made to the corrected document.”
16 LR IC 2-2(h). An errata “should only correct ministerial errors made in a previously
17 filed document that is pending before the Court.” *ATLP ex rel. Taylor v. CoreCivic,*
18 *Inc.*, No. 2:21-cv-02072-JCM-EJY, 2023 WL 9232967, at *2 (D. Nev. Dec. 5, 2023).
19 “Notices of errata to clarify clerical errors are substantively different from attempts
20 to file supplemental briefs unauthorized by local rules.” *Bias v. Moynihan*, 508 F.3d
21 1212, 1224 (9th Cir. 2007).

22 New evidence filed without leave is improper where it deprives the opposing
23 party of a chance to respond. *See 1600 E. Newlands Drive*, 2020 WL 7319412, at
24 *2; *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993) (striking extra-
25 record statistics and a counsel affidavit first offered in an appellate reply). If such
26 evidence is to be considered at all, the other side must have an opportunity to answer
27 it. *See Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (district court erred

1 by using new reply evidence without considering the non-movant’s rebuttal). The
 2 Court also has inherent authority to strike noncompliant papers from its docket. *See*
 3 *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404–05 (9th Cir. 2010) (district
 4 courts have inherent power to strike items from the docket; whether to exercise that
 5 power is discretionary).

6 **III. ARGUMENT**

7 **A. *ECF No. 71 is not an errata. It is a supplemental filing of new evidence.***

8 An errata “is a document that contains corrections.” *Armstrong*, 2024 WL
 9 1744513, at *3. Citing a declaration in a brief and then filing the declaration later is
 10 not a correction to the brief. It is the late addition of evidence. ECF No. 71 does not
 11 mark a change to the text of ECF No. 70. It attaches a new ten-paragraph affidavit
 12 from a non-party’s lawyer and offers that affidavit as evidence on a pending motion.
 13 That is a supplement and the caption does not change the function.

14 This Court has drawn that line. Filings “do not merely fix clerical errors like
 15 a typical errata” when they add “new briefs with new authorities.” *Williams*, 2026
 16 WL 1679286, at *5. The Court struck those papers under Local Rule 7-2(g) because
 17 leave had not been granted. *Id.* The same rule reaches new evidence. LR 7-2(g)
 18 (prohibiting “supplemental pleadings, briefs, authorities, or *evidence*” without leave)
 19 (emphasis added).

20 Judge Denney applied the same distinction to a filing that, like this one, was
 21 styled as an errata and attached a declaration. The “errata” “does not contain any
 22 corrections, instead it consists of ... supplemental briefing, along with a
 23 declaration.” *Armstrong*, 2024 WL 1744513, at *3. The party “did not seek leave of
 24 court before filing her supplemental brief, incorrectly titled as an ‘errata.’” *Id.* at *4.
 25 The court struck it. *Id.* at *4, *6.

26 That is this record. Defendants filed a complete opposition on August 24,
 27 2026, ECF No. 70, with a supporting declaration and eight exhibits. They had Mr.

Parker’s declaration in hand when they did so; he signed it on August 21. Later, under a separate ECF, they filed that declaration under an errata event. Local Rule IC 2-2(h) required them to “explain the changes made to the corrected document.” Naming a missing attachment is not a change to ECF No. 70. It is the addition of evidence to the opposition record. An “improper ‘Errata’” that supplies omitted substance is not an errata. *ATLP*, 2023 WL 9232967, at *1–2.

B. Defendants did not seek leave. Local Rule 7-2(g) authorizes a strike.

The rule is not discretionary in its prohibition. A party “may not file” supplemental evidence without leave granted for good cause. LR 7-2(g). Defendants did not ask. They did not attempt the showing the rule requires. The Court “may strike supplemental filings made without leave of court.” *Id.*; *Williams*, 2026 WL 1679286, at *5; *Armstrong*, 2024 WL 1744513, at *4, *6; *1600 E. Newlands Drive*, 2020 WL 7319412, at *2.

The prejudice Local Rule 7-2(g) is written to prevent is present. The Parker Declaration is new sworn testimony, including that Hughes and Bigly “have complied with all requests by Ms. Westbrook.” ECF No. 71-1 ¶ 10. Plaintiff had no opportunity to test or answer that statement in the Opposition, because the declaration was not part of the Opposition. A court “cannot consider new evidence ... when the other party does not have an opportunity to respond to the evidence.” *1600 E. Newlands Drive*, 2020 WL 7319412, at *2 (citing *Provenz*, 102 F.3d at 1483). That is the reason to strike, not a reason to treat the declaration as if it had been filed with ECF No. 70.

Defendants will say this is *Weinfeld v. Minor*, No. 3:14-cv-00513-RJC-WGC, 2019 WL 13211833 (D. Nev. Jan. 14, 2019), because the Notice asserts that the Opposition cites to the Parker Declaration. ECF No. 71 at 1. Even taking that assertion as true, *Weinfeld* does not authorize what they filed. In *Weinfeld*, the errata supplied billing records the opening brief had already quoted by figure. *Id.* at *1–2.

1 The court still did not treat the late paper as established. It declined to strike and
 2 gave fourteen days to respond. *Id.* at *2. Parker is not an invoice stack. It is a new
 3 sworn statement of non-party counsel, signed three days before the Opposition,
 4 containing contested testimony that Hughes and Bigly “have complied with all
 5 requests.” ECF No. 71-1 ¶ 10. Citing a declaration and omitting it does not convert
 6 that testimony into a ministerial correction, and it does not excuse Local Rule 7-2(g).
 7 If the Court follows *Weinfeld* at all, the holding is the fallback this Motion separately
 8 requests — a short period to respond — not a ruling that the declaration was part of
 9 ECF No. 70 all along.

10 ***C. Alternatively, Plaintiff should be permitted to respond before the Court relies***
 11 ***on the declaration.***

12 If the Court is not prepared to strike ECF No. 71, it should do what *Weinfeld*
 13 did when it declined to strike: refuse to treat the late paper as established, and give
 14 Plaintiff a short, date-certain period to respond to the Parker Declaration before the
 15 Court rules on ECF No. 67. *Weinfeld*, 2019 WL 13211833, at *2. Plaintiff asks for
 16 seven days from the Court’s order, or such other period as the Court sets. The
 17 alternative is not a request to keep the declaration in the record by default. It is the
 18 minimum process Local Rule 7-2(g) and *Provenz* require if the paper is going to be
 19 considered at all.

20 **IV. CONCLUSION**

21 The Court should strike Defendants’ Notice of Errata (ECF No. 71) and the
 22 attached Declaration of Stephen Parker as an unauthorized supplemental filing under
 23 Local Rule 7-2(g).
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 25
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 27

1 Respectfully submitted this 2nd day of September, 2026.

2
3 /s/ Nicole A. Westbrook

4 Nicole A. Westbrook

5 G. Michael Jackson Esq.

6 **JONES, DAVIS & JACKSON, P.C.**

7 *Attorneys for Pastor Steve*

8 *Smothermon*

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10 **CERTIFICATION OF CONFERRAL**

11 Counsel for Plaintiff certify that they have attempted in good faith to confer
12 with counsel for Defendants on this motion. Counsel for Plaintiff sent an email to
13 defense counsel on August 26 requesting both conferral on Plaintiff's forthcoming
14 motion to compel and the above-styled motion to strike. Telephonic conferral was
15 had August 28 and Defendants oppose the relief requested herein.

16
17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on September 2, 2026, I caused the foregoing
19 document to be electronically filed with the Clerk of the Court using CM/ECF. I
20 further certify that a true and correct copy of the foregoing document was served
21 on all counsel of record via transmission of Notices of Electronic Filing generated
22 by CM/ECF.

23
24 Marc J. Randazza, NV Bar No. 12265
25 Ronald D. Green, NV Bar No. 7360
26 Alex J. Shepard, NV Bar No. 13582
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4 /s/ Nicole A. Westbrook

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**DECLARATION OF NICOLE A.
WESTBROOK IN SUPPORT OF
PLAINTIFF'S MOTION TO
STRIKE DEFENDANTS' NOTICE
OF ERRATA**

I, Nicole A. Westbrook, declare as follows:

1. I am an attorney with Jones, Davis & Jackson, P.C., counsel for Plaintiff Pastor Steve Smothermon, and I am admitted to appear in this action *pro hac vice*. I have personal knowledge of the matters stated here and, if called, could and would testify to them.

2. I submit this Declaration in support of Plaintiff's Motion to Strike Defendants' Notice of Errata (ECF No. 71) and the attached Declaration of Stephen Parker.

3. On August 24, 2026, Defendants filed their Opposition to Plaintiff's Motion to Modify the Scheduling Order (ECF No. 70) and, the same day, a Notice of Errata (ECF No. 71) attaching the Declaration of Stephen Parker. The Opposition as filed did not include the Parker Declaration,

1 and Defendants did not seek leave of Court to file that declaration as supplemental evidence.
2 Plaintiff has not had an opportunity to respond to it.

3 4. Stephen Parker is counsel for non-parties Nathan Hughes and DiamondHands, LLC
4 d/b/a Bigly, and is not counsel for any party to this action. Parker Decl. at 2. His declaration asserts
5 that “Mr. Hughes and Bigly have complied with all requests by Ms. Westbrook.” Parker Decl. at
6 3.

7 5. That assertion is contested. Plaintiff served Rule 45 subpoenas on three Arkansas non-
8 parties — Nathan Hughes, Blake Rynders, and Kylie Howerton. In response, their counsel
9 (Stephen Parker) produced only a single email chain that Defendants’ counsel had already
10 produced in this action, re-served under the same Bates numbers (HODGE000136–000138); the
11 non-parties served no written objections and no privilege log. On August 19, 2026, I advised their
12 counsel that producing a single document obtained from Defendants’ counsel “is not a proper
13 response.”

14 6. Because the subpoenas command compliance in Arkansas, Plaintiff will file a motion to
15 compel the three non-parties’ compliance in the United States District Court for the Western
16 District of Arkansas, the court for the district where compliance is required.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct.

19 Executed on September 2, 2026.

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21 

22 _____
23 Nicole A. Westbrook
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