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Attorneys for Defendants
 Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

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

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

**DEFENDANTS' OPPOSITION TO
 PLAINTIFF'S MOTION TO STRIKE
 NOTICE OF ERRATA
 [ECF NO. 74]**

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC oppose Plaintiff's Motion to Strike Defendants' Notice of Errata and the Declaration of Stephen Parker. ECF No. 74. Defendants file a Countermotion for Attorneys' Fees under 28 U.S.C. § 1927 concurrently.

1.0 INTRODUCTION

Defendants' Opposition to Plaintiff's Motion to Modify the Scheduling Order cited the Declaration of Stephen Parker. ECF No. 70 at 4. Defendants' counsel made an honest mistake and neglected to attach the declaration to the Opposition. Within hours of filing Defendants' Opposition, Defendants' counsel caught the omission and filed Mr. Parker's declaration immediately as an erratum. ECF No. 71. This is the proper course of action. *See, e.g., Weinfeld v. Minor*, Case No. 3:14-cv-00513-RCJ-WGC, 2019 U.S. Dist. LEXIS 244825, at *4-5 (D. Nev. Jan. 14, 2019); *Slagowski v. Cent. Wash. Asphalt*, Case No. 2:11-cv-00142-MMD-VCF, 2013 U.S. Dist. LEXIS 94037, at *75-76 (D. Nev. July 2, 2013) (court considering an exhibit inadvertently omitted from a filing and subsequently attached to an errata).

1 Notably, the errata with Mr. Parker’s declaration was not even submitted late. It was
2 submitted on the day the Opposition was due. It was simply not attached to the same filing event
3 as the Opposition. Plaintiff was not prejudiced in the slightest by the filing of Mr. Parker’s
4 declaration a few hours after the Opposition was filed.

5 Plaintiff’s counsel primarily complains that she will not have the ability to respond to the
6 declaration contained in the errata. The only reason she will not is that the Court informed the
7 parties that reply briefs were unnecessary, not because the declaration was untimely. *See* ECF No.
8 68. Additionally, Plaintiff’s counsel omits a material fact from her Motion – on August 27, 2026,
9 Defense counsel informed her that they would not object if she sought to respond to the errata and
10 Mr. Parker’s declaration. *See* August 27, 2026, Green Email, attached as **Exhibit 1**.

11 Plaintiff now multiplies the proceedings, seeking to strike Mr. Parker’s declaration from
12 the docket despite not even conceivably having been prejudiced by its filing. He does not do so for
13 any proper reason. And despite claiming the “compliance assertion” mentioned in the declaration
14 “is contested” (ECF No. 74 at 2), Plaintiff makes no effort to dispute anything in the declaration.¹
15 Instead, his motion to strike largely discusses Ms. Westbrook’s own conduct and lack of diligence,
16 namely (1) her July 17 contact with Mr. Parker, (2) her agreement to depose Mr. Hughes on August
17 26, (3) her sending the subpoena on August 4, and (4) her failure to communicate with Mr. Parker
18 and Defense counsel after that. She has personal knowledge of all of it, and if she has any response,
19 she has chosen to keep that from the defense in every correspondence about these facts.

20 The only way that Mr. Parker’s declaration prejudices Plaintiff is that it reveals Plaintiff’s
21 counsel’s lack of diligence. She requested a deposition, coordinated the date for the deposition
22 with Defense counsel and the deponent’s counsel, then failed to conduct the deposition without
23 explanation. It was the only deposition Plaintiff scheduled in this case, and his counsel could not
24 be bothered to take it. For that, he seeks a discovery extension that he does not deserve.

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27 ¹ Plaintiff had plenty of time to address this declaration if he felt doing so was important, as his
reply in support of his motion (if the Court were to permit one) would have been due by August
31, 2026, two days before he filed the motion to strike.

But let's step away for a moment to appreciate how absurd this motion is. Defendants' counsel made a ministerial error by accidentally failing to submit a document with the Opposition that was cited in that Opposition. Defendants corrected the error immediately on the same day the Opposition was due. Plaintiff's Motion should be denied and, as mentioned in the separately filed motion for sanctions under 28 U.S.C. § 1927, the Court should sanction Plaintiff and his counsel for wasting everyone's time on the most anodyne of mistakes.

2.0 ARGUMENT

2.1 *Bias* approved a notice of errata correcting exhibits

The crux of Plaintiff's argument is that an errata may correct only typographical errors and may never attach evidence. In support, he mis-cites *Bias v. Moynihan*, 508 F.3d 1212, 1224 (9th Cir. 2007). *Bias* is a case in which a party corrected two exhibits supporting a pending summary judgment motion, by errata, without leave, after the opposing party had already responded. Plaintiff's citation to *Bias* was clearly AI-generated (as was the majority of the motion to strike itself), and Plaintiff's counsel failed to read the case cited. Plaintiff's misrepresentation of *Bias* is based on one quote: "Notices of errata to clarify clerical errors are substantively different from attempts to file supplemental briefs unauthorized by local rules." ECF No. 74 at 3 (quoting *Bias*, 508 F.3d at 1224).

However, it appears that Plaintiff trusted an AI citation without reading the case. Otherwise, Plaintiff would have seen the text surrounding that quote. The *Bias* appellees moved for summary judgment. The plaintiff opposed and objected to three of their exhibits. The appellees then filed notices of errata concerning two of the exhibits filed in support of their motion. *Bias*, 508 F.3d at 1224. The plaintiff answered with sur-replies, which the district court disregarded. The Ninth Circuit affirmed, explaining that the errata came before the summary judgment order, raised no additional substantive issues, and addressed clerical errors. *Id.* The sentence Plaintiff quotes is the panel's reason for treating those errata as proper and the unauthorized sur-replies differently. In other words, *Bias* would only be relevant here if Plaintiff filed a reply to address the Parker declaration, in which case *Bias* would suggest the Court should disregard such a reply.

Defendants filed their errata the same day as the Opposition. It consisted solely of a declaration referenced in the Opposition but inadvertently not attached to it, and the only portions of Mr. Parker's declaration that Defendants relied upon were already cited in Defendants' Opposition. The errata corrected a clerical error, namely the inadvertent omission of a document cited in Defendants' Opposition.

Plaintiff here seems to want this Court to believe that the Ninth Circuit has categorically banned errata from attaching evidence that was referenced in a document, but not filed with it at the exact same time. No case says that. No case would. *Bias* sure doesn't.

2.2 Plaintiff's prejudice cases all involved new evidence attached to a reply brief

Tovar v. U.S. Postal Serv. struck portions of a reply brief on appeal because they contained new information and a new affidavit, thereby depriving the opposing party of the opportunity to respond. 3 F.3d 1271, 1273 n.3 (9th Cir. 1993). *Provenz v. Miller* concerns evidence submitted with a summary judgment reply. 102 F.3d 1478, 1483 (9th Cir. 1996). And Plaintiff acknowledges that *1600 E. Newlands Drive, LLC v. Amazon.com.NVDC, LLC* struck evidence first offered in a reply, where the opposing party had no opportunity to respond. ECF No. 74 at 3.

One could argue that since the Magistrate Judge ordered that reply briefs were not required, the prejudice in these cases is present. That would be both dishonest *and* foolish. First, the opposition is not a reply brief; it was entirely proper to attach evidence to it. There is no rule that evidence cannot be attached to an opposition if a reply brief does not follow it. If Plaintiff actually believed such a rule existed, he would have objected to the evidence attached to the Opposition. Second, since the Court has not allowed reply briefs, Plaintiff was not deprived of his ability to respond to it; whether attached to the Opposition or filed as an erratum a few hours later, he never had a right to reply to Mr. Parker's declaration. Third, when Attorney Westbrook raised this informally, Defendants offered to stipulate to a reply. *See* Exhibit 1. Given the lack of candor in the motion, that offer no longer remains open.

2.3 The declaration was not supplemental—striking it does not change the record

Local Rule 7-2(g) prohibits supplemental filings without leave. Defendants did not file a supplement. They corrected a ministerial error. The Opposition specifically cites the Parker declaration. ECF No. 70 at 4. This is obviously a simple inadvertent exclusion of a piece of evidence that was intended to be attached to the Opposition, and Plaintiff is being either mendacious or deliberately obtuse in arguing otherwise.

Plaintiff complains about Parker’s August 21 signature date, a whole *three days* before the Opposition was filed, as if this were a smoking gun. ECF No. 74 at 2. Instead, the fact that it was signed on that date proves Defendants’ argument; other than inadvertence, why would the declaration have been omitted when it was already signed? Plaintiff’s argument would only make sense if the notice of errata had been filed the day after the Opposition and attached a declaration signed the day after. Local Rule IC 2-2(h) required Defendants to explain the change in their notice of errata, and they did so. What more does Plaintiff want?

Williams and *Armstrong* are irrelevant. Both of those cases concerned supplemental argument. *Williams* struck new briefs with new authorities that were filed a month after the sanctioned party’s reply brief. *See Williams v. Rashid*, Case No. 2:21-cv-01676, 2025 U.S. Dist. LEXIS 280803, at *2, 15 (D. Nev. June 9, 2026). In *Armstrong*, the filing was a *supplemental brief* with a declaration filed the day after a motion, which the Court recognized as an attempt to circumvent page limits. *See Armstrong v. Holmes*, Case No. 3:22-cv-00375-ART-CSD, 2024 U.S. Dist. LEXIS 73332, at *9-10 (D. Nev. Apr. 22, 2024). Defendants’ notice of errata just attaches an omitted exhibit that is already cited in the Opposition. That’s all.

As for prejudice, how can Smothermon be “prejudiced” by an errata to an Opposition, where he was *not supposed to file a reply brief anyway*? He was prejudiced because his lawyers read the opposition the moment it was filed, and then had to read the declaration a few hours later? What difference does it make? Plaintiff’s motion is pretextual. Furthermore, the information in the errata was not new. Exhibit 5 to the Green Declaration, ECF No. 70-6, which was attached to the Opposition, contains the same information as the two paragraphs of Mr. Parker’s declaration

1 cited in the Opposition. Mr. Parker's August 19 email in that exhibit recounts his acceptance of
2 service of the subpoena on August 4, that the deposition was set for August 26 at his office, and
3 that Mr. Hughes would be there.

4 **2.4 The remaining authorities, and relief Plaintiff already had available**

5 *In re Corrinet* and *Hollingsworth* are cited for a proposition Defendants have never
6 disputed. *In re Corrinet*, 645 F.3d 1141, 1146 (9th Cir. 2011), says that only a departure from the
7 rules affecting "substantial rights" requires reversal, and a departure from the rules should be
8 overlooked where the effect is negligible. *See id.*, quoting *Prof'l Programs Grp. v. Dep't of*
9 *Commerce*, 29 F.3d 1349, 1353 (9th Cir. 1994); *see* Fed. R. Civ. P. 61. *Weinfeld v. Minor*, Case
10 No. 3:14-cv-00513-RCJ-WGC, 2019 U.S. Dist. LEXIS 244825, at *4-5 (D. Nev. Jan. 14, 2019),
11 even the way Plaintiff describes it, refused to strike an errata supplying material the brief had
12 already relied on. Plaintiff tries to distinguish *Weinfeld* by saying that it involved billing records
13 rather than a declaration, but that is a distinction without a difference: Local Rule 7-2(g) refers
14 simply to "evidence," not particular types or forms of evidence.

15 Finally, Plaintiff asks in the alternative for seven days to respond. ECF No. 74 at 6.
16 Respond to what? If they want a reply brief, then they should move for leave to file a reply brief
17 and demonstrate to the court that there is good cause to file one. Of course, a request to file a reply
18 would not be well taken, since the ordinary time to file a reply had passed before Plaintiff filed his
19 motion to strike. The fact that a declaration came in a few hours after the Opposition does not
20 establish grounds for a reply brief any more than it establishes grounds to strike the evidence.

21 **3.0 CONCLUSION**

22 The Motion (ECF No. 74) should be denied. It is a vexatious waste of resources.
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1 Dated: September 3, 2026.

Respectfully submitted,

2 RANDAZZA LEGAL GROUP, PLLC

3 /s/ Marc J. Randazza

4 Marc J. Randazza, NV Bar No. 12265

5 Ronald D. Green, NV Bar No. 7360

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7 8991 W. Flamingo Rd., Ste. B

8 Las Vegas, NV 89147

9 Attorneys for Defendants Keith Hodge,
10 Kevin Hodge, and Hodgetwins, LLC
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Case No. 2:25-cv-01858-APG-BNW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265

RANDAZZA | LEGAL GROUP

EXHIBIT 1

Email Exchange between Nicole Westbrook
and Ronald D. Green Regarding
Meet and Confer Request
(August 27, 2026)



From: Ron Green <rdg@randazza.com>

Subject: Re: Request for Meet/Confer

Date: August 27, 2026 at 2:31 PM

To: Nicole Westbrook <nwestbrook@jonesdavis.com>

Cc: Marc Randazza <mjr@randazza.com>, Danielle Darkenwald <dbd@randazza.com>, Steve Jones <sjones@jonesdavis.com>, Mike Jackson <mjackson@jonesdavis.com>, Dana Reedle <dreedle@jonesdavis.com>, Brittany Hansen <bhansen@joneskeller.com>, Alex Shepard <ajs@randazza.com>

Nicole:

Following up on our call, we will not object if you respond to our Errata and the declaration of Mr. Parker.

On Aug 26, 2026, at 6:30 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

Counsel,

Following up on my request for conferral regarding our letter and forthcoming motion. Does 3:00 MDT/2:00 PDT tomorrow work?

Secondly, we intend to file a motion to strike the "errata" filed on behalf of Defendants. Please let us know if you oppose.

Thanks,
Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
mobile: 615.403.4862 | fax: 972.733.3119

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From: Ron Green <rdg@randazza.com>

Sent: Tuesday, August 25, 2026 3:06 PM

To: Nicole Westbrook <nwestbrook@jonesdavis.com>

Cc: Marc John Randazza <mjr@randazza.com>; Danielle Darkenwald <dbd@randazza.com>; Steve Jones <sjones@jonesdavis.com>; Mike Jackson <mjackson@jonesdavis.com>; Dana Reedle <dreedle@jonesdavis.com>; Brittany Hansen <bhansen@joneskeller.com>; Alex Shepard <ajs@randazza.com>

Subject: Re: Request for Meet/Confer

Nicole:

Do you have any time tomorrow? The discovery period is rapidly expiring.

Ron Green* | Randazza Legal Group, PLLC
8991 W. Flamingo Rd. | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

* Licensed to practice law in Nevada.

On Tue, Aug 25, 2026 at 12:47 PM Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

Marc,

Unfortunately today at 5 does not work. How about Thursday at 3:00 MDT/2:00 PDT?

Thanks,
Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
[15110 Dallas Parkway, Suite 300, Dallas, Texas 75248](https://www.jonesdavis.com)
 mobile: 615.403.4862 | fax: 972.733.3119

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From: Marc John Randazza <mjr@randazza.com>

Sent: Tuesday, August 25, 2026 1:02 PM

To: Nicole Westbrook <nwestbrook@jonesdavis.com>

Cc: Ron Green <rdg@randazza.com>; Danielle Darkenwald <dbd@randazza.com>; Steve Jones <sjones@jonesdavis.com>; Mike Jackson <mjackson@jonesdavis.com>; Dana Reedle <dreedle@jonesdavis.com>; Brittany Hansen <bhansen@joneskeller.com>; Alex Shepard <ajs@randazza.com>

Subject: Re: Request for Meet/Confer

Correction, we are in court at 1:30, we can do it at 4 PM

Marc John Randazza, JD, MAMC, LLM

Randazza Legal Group

Las Vegas - Gloucester - Miami

Sent from iPhone (maybe even using Siri). If the message is at all intelligible, it is a minor miracle.

Il giorno 25 ago 2026, alle ore 11:01, Marc John Randazza <mjr@randazza.com> ha scritto:

Since discovery ends on the 18th, and we do not expect that you are going to get an extension on it, we should probably do this meet and confer today.

We can be available at 1pm Vegas time.

Marc John Randazza, JD, MAMC, LLM

Randazza Legal Group

Las Vegas - Gloucester - Miami

Sent from iPhone (maybe even using Siri). If the message is at all intelligible, it is a minor miracle.

Il giorno 25 ago 2026, alle ore 10:59, Marc John Randazza <mjr@randazza.com> ha scritto:

Did you even read this AI slop before you sent it?

Marc John Randazza, JD, MAMC, LLM

Randazza Legal Group

Las Vegas - Gloucester - Miami

Sent from iPhone (maybe even using Siri). If the message is at all intelligible, it is a minor miracle.

Il giorno 25 ago 2026, alle ore 10:14, Nicole Westbrook <nwestbrook@jonesdavis.com> ha scritto:

Counsel,

Please see the attached correspondence

Please see the attached correspondence.

Best,
Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
[15110 Dallas Parkway, Suite 300, Dallas, Texas 75248](#)
mobile: 615.403.4862 | fax: 972.733.3119

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