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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 JUDY ANNE MIKOVITS,

12 Plaintiff,

13 vs.

14 ADAM GARCIA, JAMIE MCGUIRE,
15 RICHARD GAMMICK, GEOFF
DEAN, THREE UNIDENTIFIED
16 VENTURA COUNTY DEPUTY
SHERIFFS, F. HARVEY
17 WHITTEMORE, ANNETTE F.
WHITTEMORE, CARLI WEST
18 KINNE, WHITTEMORE-PETERSON
INSTITUTE, a Nevada corporation,
19 UNEVX INC., a Nevada corporation,
MICHAEL HILLERBY, KENNETH
20 HUNTER, GREG PARI and
VINCENT LOMBARDI,

21 Defendants.
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Case No. CV 14-08909 SVW (PLAx)

Honorable Stephen V. Wilson

**DEFENDANT'S RESPONSE TO
AND REQUEST TO STRIKE
PLAINTIFF'S SEPARATE
STATEMENT IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: November 16, 2015

Time: 1:30 p.m.

Crtm: 6

*[Reply; Evidentiary Objections; and
Declaration of James. S. Eicher, Jr.
filed concurrently herewith]*

25 TO THE CLERK OF COURT, ALL PARTIES, AND THEIR
26 ATTORNEYS OF RECORD:

27 PLEASE TAKE NOTICE that Defendant Sheriff Geoff Dean ("Defendant")
28 hereby opposes and requests, pursuant to Local Rule 83-7, that the Court strike

1 Plaintiff's "Statement of Genuine Disputes, Pursuant to Local Rule 56-2," filed in
2 opposition to Defendant's Motion for Summary Judgment. Specifically, Plaintiff's
3 Separate Statement fails to comply with Local Rules 56-2 and 56-3.

4
5 Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

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7 By /s/ Paul B. Beach
8 Paul B. Beach
9 James S. Eicher, Jr.
10 Attorneys for Defendant
11 Geoff Dean
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MEMORANDUM OF POINTS AND AUTHORITIES

I. THE EFFECT OF PLAINTIFF’S DEFICIENT SEPARATE STATEMENT IS TO ADMIT THE TRUTH OF THE MATERIAL FACTS IDENTIFIED IN DEFENDANT’S SEPARATE STATEMENT.

Despite the clear obligations imposed by this Court’s Local Rules, Plaintiff has not submitted “a concise ‘Statement of Genuine Issues’ setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated,” as required by Local Rule 56-2. This simple requirement must also be read in conjunction with Local Rule 56-3, which states that:

“the Court will assume that the material facts as claimed and adequately supported by the moving party or admitted to exist without controversy except to the extent that such material facts are (a) included in the ‘statement of genuine issues’ and (b) controverted by the creation or other written evidence filed in opposition to the motion.”

Here, **none** of the specific material facts set forth and supported by evidence by Defendant in his Separate Statement were included in Plaintiff’s Separate Statement, and nor were these material facts controverted by Plaintiff by competent declaration or other evidence.

Numerous cases have recognized the inappropriateness of placing the burden of scouring a voluminous record on the Court when a motion for summary judgment is involved, and that such tactics would not be tolerated. Nevertheless, Plaintiff has done exactly that by making numerous nonspecific and vague references to purported facts. Without the Court *sua sponte* scrutinizing the contents of the entire court file, it is impossible to determine whether anything contained in the record actually supports the assertions in Plaintiff’s Separate Statement. Plaintiff has ignored the fundamental purpose of a proper Separate Statement—to identify purported material facts and the corresponding evidence

specifically so that the Court and the opposing party are not forced to hunt through the record for triable issues of fact.

Thus, despite the basic obligation to prepare a proper Statement of Genuine Issues, Plaintiff has not done so. Instead, Plaintiff has put together a haphazard collection of purported controverted facts which does not comply with the very basic procedural requirements. Accordingly, the Court should reject the Separate Statement and rule on the pending summary judgment motion on the remaining papers.

II. CONCLUSION.

For the reasons set forth above, Plaintiff's "Separate Statement" is improper and should be stricken. Alternatively, Plaintiff's failure to comply with the applicable Local Rules, in and of itself, warrants the granting of summary judgment in favor of Defendant, in accordance with Local Rule 56-3. *See, Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538, 1545 (9th Cir. 1988) (Ninth Circuit affirmed summary judgment because non-moving party failed to comply with Local Rule 7.14.3 (the predecessor to Local Rule 56-3), which provides that all "material facts as claimed and adequately supported by the moving party are admitted to exist without controversy" unless the nonmoving party submits a proper "Statement of Genuine Issues" which controverts the material facts "by declaration or other written evidence"). Finally, at the very least, Plaintiff has failed to contest with admissible evidence the issues set forth in Defendant's Separate Statement, entitling Defendant to summary judgment.

Dated: November 2, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Paul B. Beach
 Paul B. Beach
 James S. Eicher, Jr.
 Attorneys for Defendant
 Geoff Dean