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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE**  
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

10 LI-RONG RADICH AND  
DAVID RADICH,

11 Plaintiffs,

12 v.

13 JAMES C. DELEON GUERRERO, in his  
official capacity as Commissioner of the  
14 Department of Public Safety of the  
Commonwealth of the Northern Mariana  
15 Islands,

16 Defendant.

Civil Action No. 14-0020

**MOTION TO STRIKE  
DECLARATION OF DAVID J.  
RADICH FILED ON MARCH 4,  
2015**

**Judge: Chief Ramona Manglona**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

17 **NOW INTO COURT**, through undersigned counsel comes Defendant James C. Deleon  
18 Guerrero, in his official capacity as Commissioner of the Department of Public Safety for the  
19 Commonwealth of the Northern Mariana Islands, and hereby moves to strike the declaration of  
20 David J. Radich filed on March 4, 2015. The legal basis for the Defendant's Motion to Strike is  
21 more fully set forth in the Memorandum which is filed contemporaneously with this Motion.  
22

23 RESPECTFULLY  
24 SUBMITTED.

OFFICE OF THE ATTORNEY GENERAL

25 DATED: March 9, 2015

26 /s/ \_\_\_\_\_  
James Zarones (T0102)  
Assistant Attorney General  
27 Attorney for Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing was electronically filed on March 9, 2015,  
with service requested to all parties of record.

/s/  
James Zarones, Bar No. T0102  
Assistant Attorney General  
Office of the Attorney General  
Counsel for Department of Public Safety  
Commonwealth of the  
Northern Mariana Islands

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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE**  
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

9 **LI-RONG RADICH AND**  
10 **DAVID RADICH,**

10 **Plaintiffs,**

11 **v.**

12 **JAMES C. DELEON GUERRERO, in his**  
13 **official capacity as Commissioner of the**  
14 **Department of Public Safety of the**  
15 **Commonwealth of the Northern Mariana**  
16 **Islands,**

16 **Defendant.**

Civil Action No. 14-0020

**MEMORANDUM IN SUPPORT OF**  
**MOTION TO STRIKE**  
**DECLARATION OF DAVID J.**  
**RADICH FILED ON MARCH 4,**  
**2015**

17 **I. INTRODUCTION**

18 On January 10, 2015, Plaintiffs filed the declaration of David Radich in support of  
19 Plaintiffs’ Motion for Summary Judgment. On February 9, 2015, the Defendant Opposed the  
20 Plaintiffs’ Motion for Summary Judgment and objected to the introduction of the declaration  
21 because it was not in substantial compliance with 28 U.S.C. § 1746 and LR 7.1(b). On February  
22 19, 2015, the Plaintiffs filed a Reply to the Defendant’s Opposition. However, the Plaintiffs did  
23 not respond to or defend against the Defendant’s evidentiary objections.

24 On March 4, 2015, without explanation and without leave of the Court, the Plaintiffs filed  
25 a new declaration to support their Motion for Summary Judgment.

26 Now, the Defendant moves the Court to strike the new declaration of David J. Radich,  
27 filed on March 4, 2015, because it was submitted in violation of the Federal Rules of Civil  
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1 Procedure, Local Rule 7.1, and in violation of the Scheduling Order issued by this Court on  
2 December 31, 2014.

3 **II. THE NEW DECLARATION OF DAVID RADICH IS PROHIBITED BY LOCAL**  
4 **RULE 7.1**

5 The Court should strike the new declaration of David Radich because it was submitted in  
6 violation of Local Rule 7.1. Local Rule 7.1 provides the rules for motions, oppositions, replies,  
7 and declarations filed in the United States District Court for the Commonwealth of the Northern  
8 Mariana Islands. Local Rule 7.1(b) requires that a declaration accompany the motion which it  
9 supports: “[e]ach notice of motion shall be accompanied, where appropriate, by affidavits or  
10 declarations under penalty of perjury sufficient to support any material factual contentions, and  
11 by an appropriate legal memorandum or brief, including, where appropriate, citations to these  
12 Rules.” LR 7.1(b). Here, the new declaration did not accompany the Plaintiffs’ Motion for  
13 Summary Judgment or the Reply. Further, the Plaintiffs did not provide any citation to the  
14 Federal or Local Rules, which is also required by LR 7.1(b).  
15

16 The Court may not accept the new declaration filed by the Plaintiffs. Local Rule 7.1(c)(4)  
17 provides that “no further filings or replies shall be accepted without leave having first been  
18 obtained from the court.” The new declaration is a new filing. Unfortunately, Plaintiffs chose to  
19 file the new declaration without leave of Court and in the absence of any rule which would allow  
20 for such a filing. Local rule 7.1(c)(4) is mandatory and it is not within this Court’s discretion to  
21 accept the new declaration. *See* 7.1(c)(4).  
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23 For the reasons stated above, the Defendant moves the Court to strike the new declaration  
24 of David Radich filed on March 4, 2015.  
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1 **III. THE NEW DECLARATION OF DAVID RADICH WAS SUBMITTED IN**  
2 **VIOLATION OF THE SCHEDULING ORDER ISSUED BY THE COURT**

3 The Court issued its amended scheduling order on December 31, 2014. ECF 15. The  
4 amended scheduling order required the Plaintiffs to submit their summary judgment materials on  
5 or before January 10, 2015. ECF 15 ¶ 2. The scheduling order was not vague or subject to  
6 creative interpretation. The Plaintiffs were required to make their filings on or before January 10,  
7 2015. *Id.* If the Plaintiffs wished to deviate from the Court's order, then it was incumbent upon  
8 them to seek leave of the Court. Instead, the Plaintiffs ignored the Court's order and filed a new  
9 declaration just days before a hearing that has been scheduled for months. The Defendant is not  
10 prepared to address a new declaration submitted well after all of the deadlines have passed.  
11 Fortunately for the Defendant, the Court's orders are not mere suggestions to be followed only  
12 when convenient for the parties. Instead, the Court's orders are binding upon the parties and may  
13 not be disobeyed without consequence. Therefore, the Court should strike the new declaration of  
14 David Radich filed on March 4, 2015, for violating the Court's amended scheduling order issued  
15 on December 31, 2014.

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18 The Plaintiffs may argue that the new declaration is, in fact, just an amendment to the  
19 original declaration. However, such an argument would ignore two important facts. First, the  
20 original "declaration" was not a declaration at all, because it did not substantially comply with 28  
21 U.S.C. § 1746 and LR 7.1(b). The Plaintiffs have conceded this point by failing to address the  
22 Defendant's evidentiary objections. Second, the scheduling order clearly provided that *all* of  
23 Plaintiffs' summary judgment submissions were due on or before January 10, 2015. As such, the  
24 declaration of David Radich filed on March 4, 2015, violated the Court's amended scheduling  
25 order, regardless of the label that Plaintiffs choose to affix to the new filing. If the Plaintiffs  
26 wished to file a document outside of the time allotted by this Court, then the Plaintiffs were  
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1 required to seek leave of Court. LR 7.1(c)(4).

2 For the reasons stated above, the Defendant moves the Court to strike the new declaration  
3 of David Radich filed on March 4, 2015.

4 **IV. THE FEDERAL RULES OF CIVIL PROCEDURE DO NOT ALLOW FOR THE**  
5 **FILING OF THE DAVID RADICH DECLARATION**

6 The Court should strike the new David Radich Declaration because Rule 6(c)(2) requires  
7 that “[a]ny affidavit supporting a motion must be served with the motion.” Fed. R. Civ. P.  
8 6(c)(2). Here, the Plaintiffs did not file the new declaration contemporaneously with their motion  
9 for summary judgment. Nor did the Plaintiffs file the new declaration with their Reply. Finally,  
10 the Plaintiffs did not seek leave of Court before filing the new declaration. It may be that there is  
11 some Rule which would allow for the filing of a declaration whenever a party wishes to do so,  
12 but because the Plaintiffs chose not to encumber their filing with any sort of legal memorandum,  
13 the Court cannot know the Plaintiffs’ reasoning.

14 The Court should strike the new declaration because it is not allowed by Rule 6(c)(2) of  
15 the Federal Rules of Civil Procedure and the Plaintiffs did not seek or receive leave of the Court  
16 before filing the new declaration.

17 **V. CONCLUSION**

18 The Plaintiffs may have had a reason that would have justified their untimely filing. If  
19 they had such a reason, then they should have presented it to the Court and requested leave to file  
20 an amended declaration. Instead, the Plaintiffs took it upon themselves to file the new declaration  
21 without permission, perhaps thinking it easier to ask for forgiveness than for permission. Put  
22 simply, the Plaintiffs should not, and cannot, be permitted to gain an advantage by ignoring the  
23 rules and orders of this Court.

24 Wherefore, the Defendant respectfully moves the Court to strike the declaration of David  
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1 Radich filed on March 4, 2015.

2 RESPECTFULLY  
3 SUBMITTED.

OFFICE OF THE ATTORNEY GENERAL

4 DATED: March 9, 2015

/s/ \_\_\_\_\_

James Zarones

Assistant Attorney General

Office of the Attorney General

Commonwealth of the Northern Mariana Islands

Attorney for Defendant

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