

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARVETTE JOHNSON and DEBBIE)	
JOHNSON,)	
)	
Plaintiffs,)	
)	
v.)	CA 12-00534-N
)	
STATE FARM,)	
)	
Defendant.)	

ORDER

In this case, proceeding before the undersigned United States Magistrate Judge for all purposes, including trial, pursuant to 28 U.S.C. § 636(c) (*see* Docs. 8, 9), Defendant State Farm Insurance’s motion for summary judgment (Doc. 43) became ripe yesterday, July 25, 2013 (*see* Doc. 53).

Consistent with the Court’s July 17, 2013 Order (Doc. 59), State Farm, in its reply (Doc. 61), filed yesterday, addressed the plaintiffs’ motion to strike the report of Joel Wehrman, P.E. (Doc. 58). And, simultaneous with the filing of the reply, State Farm also filed its own motion to strike (Doc. 64) certain evidence contained in the plaintiffs’ response (Doc. 55).

At summary judgment, “[i]t is the function of a court, with or without a motion to strike, to review carefully both statements of material facts and statements of genuine issues and the headings contained therein and to eliminate from consideration any argument, conclusions, and assertions unsupported by the documented evidence of record offered in support of the statement.” *Rangel v.*

Schmidt, Cause No. 2:09–CV–071, 2011 WL 5570691, at *4 (N.D. Ind. Nov. 16, 2011) (denying motion to strike certain paragraphs in a plaintiff’s “Clarified Affidavit” and noting, “Motions to strike are heavily disfavored, and usually only granted in circumstances where the contested evidence causes prejudice to the moving party. This Court can give Rangel’s Clarified Affidavit the credit to which it is due, without the need to employ a motion to strike. The Court is able to sift through the evidence and to consider each piece under the applicable federal rules . . .” (citations omitted)).

Accordingly, the Court will exercise its discretion to consider State Farm’s objections in the Court’s consideration of the summary judgment motion. *See, e.g., King v. Alabama Dep’t of Pub. Health*, Civil Action No. 09–0503–WS–C, 2010 WL 3522381, at *1 n.1 (S.D. Ala. Sept. 2, 2010) (“Rather than becoming mired in ancillary evidentiary objections at the outset, the Court will consider those Motions to Strike on an ongoing basis herein, and only to the extent necessary to resolve the pending Motion for Summary Judgment.”).

As such, no response to State Farm’s motion to strike need be filed, and briefing is **CLOSED**.

DONE and **ORDERED** this the 26th day of July, 2013.

/s/ Katherine P. Nelson

KATHERINE P. NELSON
UNITED STATES MAGISTRATE JUDGE