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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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9 Jesus Lopez Saucedo and Maria Lopez)
10 Bojorquez, husband and wife; Maria)
11 Soledad Alaniz Gonzalez, a single)
woman, and Angel Alaniz Gonzalez, a)
single man,)

No. CV-07-2267-PHX-DGC

ORDER

12 Plaintiffs,

13 vs.

14 The United States of America,

15 Defendant.

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18 Plaintiffs suffered severe injuries when the vehicle they were riding in rolled over near
19 San Luis, Arizona on January 26, 2005. Plaintiffs filed a complaint against the United States
20 alleging that federal border patrol agents caused the accident. The complaint alleges
21 negligence and civil rights claims. Dkt. #1.

22 Plaintiffs have filed a motion to strike Defendant’s notice of non-parties at fault.
23 Dkt. #59. Defendant has filed a response. Dkt. #73. Plaintiffs have not filed a reply, and
24 the time for doing so has expired. *See* LRCiv 7.2(d). For reasons that follow, the Court will
25 deny the motion.

26 Defendant’s notice identifies twenty-three passengers in the vehicle with Plaintiffs and
27 asserts that these individuals are at fault for Plaintiffs’ injuries because they “exacerbated the
28 hazardous condition of the vehicle, particularly the uneven and dangerous weight distribution

1 caused by the improper loading of twenty-seven persons into the vehicle[.]” Dkt. #21 at 2-4.
2 Plaintiffs contend that the notice is improper because passengers owe no legal duty to fellow
3 passengers. Dkt. #59 at 3. Plaintiffs move to strike the notice pursuant to Rule 12(f) of the
4 Federal Rules of Civil Procedure. *Id.* at 1.

5 As Defendant correctly notes in its response (Dkt. #73 at 3), Rule 12(f) applies to
6 matters asserted in a *pleading*, and a notice of non-parties at fault is not a pleading under the
7 rules of civil procedure. *See* Fed. R. Civ. P. 7(a)(1)-(7). Moreover, even if Plaintiffs’ motion
8 to strike was proper under Rule 12(f), the motion is untimely. Rule 12(f) motions must be
9 made within twenty days after being served with a pleading. Fed. R. Civ. 12(f)(2).
10 Defendant served Plaintiffs with the notice on August 18, 2008. *See* Dkt. #21 at 5. Plaintiffs
11 filed their motion to strike on June 19, 2009, more than nine months late. *See* Dkt. 59.
12 Finally, Plaintiffs’ motion essentially seeks a dispositive legal ruling that the passengers in
13 the vehicle owed no duty of care to Plaintiffs, but a “motion to strike should not be used as
14 a vehicle to determine disputed and substantial questions of law[.]” *Bristol-Myers Squibb*
15 *Co. v. IVAX Corp.*, 77 F. Supp. 2d 606, 619 (D.N.J. 2000).

16 **IT IS ORDERED** that Plaintiffs’ motion to strike (Dkt. #59) is **denied**.

17 DATED this 3rd day of August, 2009.

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22 David G. Campbell
23 United States District Judge
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