

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02708-WYD-KLM

USA,

Plaintiff,

v.

NANCY D. BERRYMAN,
THE TEMPLE OF THE UNVEILED GOD, and
THE OFFICE OF THE OVERSEER OF DEDICATION TO ENLIGHTENMENT, and her
successors, a corporation sole,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Defendant Nancy D. Berryman's ("Berryman") **Objection to, and Motion to Strike United States' Renewed Motion for Summary Judgment Against Nancy D. Berryman** [#90] (the "Motion"). Plaintiff filed a Response [#93] in opposition to the Motion. Defendant Berryman did not file a Reply.

Defendant Berryman, who proceeds in this matter as a pro se litigant, does not provide any legal authority by which she seeks to strike Plaintiff's Renewed Motion for Summary Judgment [#85]. She spends the majority of the Motion instead arguing why summary judgment should not be entered in Plaintiff's favor.¹ If Defendant Berryman seeks

¹ Subsequent to the filing of this Motion [#90], Defendant Berryman filed a document which the Court interpreted to be her intended Response [#95] to the Renewed Motion for Summary Judgment. See *Minute Order* [#97]. Defendant Berryman has not contested this characterization

to strike Plaintiff's Renewed Motion for Summary Judgment pursuant to Fed. R. Civ. P. 12(f), the Court notes that Rule 12(f) only permits the Court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Pleadings, as defined by Rule 7(a), are different from "motions and other papers." Pleadings include a complaint, an answer to a complaint, an answer to a counterclaim designated as a counterclaim, an answer to a counterclaim, a third-party complaint, an answer to a third-party complaint, and, if court-ordered, a reply to an answer. Fed. R. Civ. P. 7(a). "[T]here is no provision in the Federal Rules of Civil Procedure for motions to strike motions and memoranda." *Searcy v. Soc. Sec. Admin.*, No. 91-4181, 1992 WL 43490, at *2 (10th Cir. Mar. 2, 1992). See also 2 James Wm. Moore et. al., *Moore's Federal Practice* § 12.37[2] (3d ed. 2004) ("Only material included in a 'pleading' may be the subject of a motion to strike, and courts have been unwilling to construe the term broadly. Motions, briefs, or memoranda, objections, or affidavits may not be attacked by the motion to strike.").

The Renewed Motion for Summary Judgment to which Defendant Berryman's Motion is directed is not a "pleading" as defined by Rule 7(a) of the Federal Rules of Civil Procedure. The Court finds that Defendant Berryman may therefore not attack Plaintiff's Renewed Motion for Summary Judgment through a motion to strike. See *Trujillo v. Bd. of Educ. of Albuquerque Pub. Schs.*, 230 F.R.D. 657, 660 (D.N.M. 2005). Accordingly,

of that filing.

IT IS HEREBY **ORDERED** that the Motion [#90] is **DENIED**.²

Dated: February 24, 2014

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix". The signature is stylized with a large, sweeping initial 'K' and a cursive 'L'.

Kristen L. Mix
United States Magistrate Judge

² A recommendation on Plaintiff's Renewed Motion for Summary Judgment [#85] will issue in due course.