

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01334-PAB-KLM

BRANDON BAKER, Rev.,

Plaintiff,

v.

THE STATE OF COLORADO, and
COLORADO ATTORNEY GENERAL,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion to Strike** [Docket No. 16; Filed August 14, 2013] (the "Motion"). On September 4, 2013, Defendants filed a Response [#18]. Plaintiff, who proceeds in this matter as a *pro se* litigant, brings the Motion pursuant to Fed. R. Civ. P. 12(f). *Motion* [#16] at 1. He seeks to strike part of Defendants' pending Motion to Dismiss [#14]. *Id.*

As an initial matter, 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 document to which Plaintiff’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 Plaintiff may therefore not attack the information provided by Defendants through a motion to strike pursuant to Rule 12(f). See *Trujillo v. Bd. of Educ. of Albuquerque Pub. Schs.*, 230 F.R.D. 657, 660 (D.N.M. 2005). Accordingly,

IT IS HEREBY **ORDERED** that the Motion [#16] is **DENIED**.

IT IS FURTHER **ORDERED**, *sua sponte*, that Plaintiff shall file a Response to the Motion to Dismiss [#14] **on or before October 3, 2013**.

Dated: September 18, 2013

BY THE COURT:



Kristen L. Mix
United States Magistrate Judge