

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLARKE COLL,

Plaintiff,¹

v.

No. 14-cv-1089 KG/SMV

**STRYKER CORPORATION and
HOWMEDICA OSTEONICS CORPORATION,**

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO COMPEL
PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 2 AND
DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE SURREPLY**

THIS MATTER is before the Court on: (1) Defendants' Motion to Compel Plaintiff's Response to Request for Admission No. 2 [Doc. 67], filed on November 7, 2016, which the Court construes as a motion to determine the sufficiency of Plaintiff's response to Request for Admission number 2, and (2) Plaintiff's Motion for Leave to File Surreply Concerning Defendants' Motion to Compel Answer to Request for Admission No. 2 [Doc. 96], filed on December 9, 2016. The Court has considered the briefing on the motions [Docs. 67, 78, 87, 96, 99, 102], the relevant portions of the record, the oral argument of February 27, 2017, and the relevant law. Being otherwise fully advised in the premises and for the reasons stated on the record at the February 27, 2017 oral argument,

¹ Mr. Coll was substituted as Plaintiff in this matter when the original Plaintiff, Wayne Augé, II, M.D., filed for bankruptcy. Mr. Coll is the trustee of the bankruptcy estate. [Doc. 30].

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Compel Plaintiff's Response to Request for Admission No. 2 [Doc. 67] is **DENIED**. Plaintiff's response and supplement response to Request for Admission number 2 are sufficient.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File Surreply Concerning Defendants' Motion to Compel Answer to Request for Admission No. 2 [Doc. 96] is **DENIED**.

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 36(a)(6) and 37(a)(5) and because Defendants were not substantially justified in filing the motion, reasonable expenses are **AWARDED** to Plaintiff. Plaintiff must file an affidavit of such expenses no later than **March 9, 2017**. Defendants may object to the affidavit no later than **March 23, 2017**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge