

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

MELVIN SMITH and STAN FOWLER,

Plaintiffs,¹

v.

No. 15-cv-1153 SMV/GBW

AUTO-OWNERS INSURANCE COMPANY,

Defendant.

**ORDER DENYING DEFENDANT’S MOTION TO STRIKE
PLAINTIFF’S UNTIMELY RESPONSES**

THIS MATTER is before the Court on Defendant’s Expedited Motion to Strike Plaintiff’s Untimely Responses [Doc. 108], filed March 17, 2017. Plaintiff responded on March 21, 2017. [Doc. 110]. Defendant filed a Notice of Completion of Briefing that same day. [Doc. 111]. Having considered the briefing and being otherwise fully advised in the premises,

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant’s Expedited Motion to Strike Plaintiff’s Untimely Responses [Doc. 108] is **DENIED**. Plaintiff’s responses [Docs. 106, 107] to Defendant’s Motion for Summary Judgment [Doc. 99] and Motion to Exclude [Doc. 97] are not “pleadings” subject to a motion to strike. *See* Fed. R. Civ. P. 12(f); *Estate of Anderson v. Denny’s Inc.*, 291 F.R.D. 622, 634–35 (D.N.M. 2013). The Court will not at this time rule on Plaintiff’s Motion for Extension of Time to Respond [Doc. 112]. The Court will determine whether to consider Plaintiff’s untimely responses when it undertakes a substantive review of Defendant’s motions.

¹ Judgment was entered as to Plaintiff Stan Fowler on November 2, 2016. [Doc. 84]. Melvin Smith is the sole remaining Plaintiff in this case.

IT IS FURTHER ORDERED that Defendant's reply deadline is hereby **EXTENDED**. Defendant's replies in support of its Motion for Summary Judgment [Doc. 99] and Motion to Exclude [Doc. 97] are due by **April 4, 2017**. The Court's consideration of Defendant's replies will be contingent on its determination whether to consider Plaintiff's untimely responses.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent