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

ANTONIO FERNANDEZ,

Plaintiff,

v. No. 2:15-cv-1165-RB-KRS

THE WESTERN GROUP, L.C. and SOUTHWESTERN SHORTLINE RAILROAD COMPANY d/b/a SOUTHWESTERN RAILROAD,

Defendants.

ORDER ADOPTING PROPOSED FINDINGS OF FACT AND RECOMMENDED DISPOSITION OF THE MAGISTRATE JUDGE

THIS MATTER comes before the Court upon Defendants' Motion to Dismiss or in the Alternative for Sanctions ("Motion to Dismiss") (Doc. 55), filed April 7, 2017, and Motion to Strike Plaintiff's Sur-Reply to Defendants' Motion to Dismiss ("Motion to Strike") (Doc. 69), filed June 6, 2017. In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Kevin R. Sweazea, who entered Proposed Findings of Fact and [a] Recommended Disposition ("PFRD") (Doc. 81) on January 11, 2018. As detailed in the PFRD, Judge Sweazea recommended denial of Defendants' Motion to Dismiss and dismissal of Defendants' Motion to Strike. On January 25, 2018, Defendants timely filed objections to the PFRD (Doc. 83) pursuant to 28 U.S.C. § 636(b)(1)(C). *See also* Fed. R. Civ. P. 72(b)(2).

Having considered, de novo, those portions of the PFRD to which Defendants object, *see* 28 U.S.C. § 636(b)(1)(C), the Court finds that Defendants' objections are without merit. Accordingly, the Court determines that it will overrule Defendants' objections, adopt the PFRD in its entirety, deny Defendants' Motion to Dismiss, and dismiss Defendants' Motion to Strike.

The relevant facts and law are set forth in the PFRD, and it would serve no purpose to repeat the Magistrate Judge's thorough and well-reasoned analysis. The Court finds it worth mention, however, that the majority of Defendants' objections are reassertions of the arguments Defendants advanced in their Motion to Dismiss (Doc. 55). One notable exception is Defendants' third objection, which reads, in pertinent part, "[t]he Defendants object to the PFRD relying on the Plaintiff's untimely Sur-Reply in the PFRD, but dismissing the Motion to Strike as moot. Doc. 81. Pg. 3." (Doc. 83 at 8.) This objection, however, is misguided, as the only document that is discussed on page three of the PFRD is Defendants' Reply (Doc. 61), and the PFRD contains no mention of Plaintiff's sur-reply.[1]

IT IS THEREFORE ORDERED that Defendants' Objections to Proposed Findings and Recommended Disposition (Doc. 83) are hereby **OVERRULED**.

IT IS FURTHER ORDERED that the Magistrate Judge's Proposed Findings of Fact and Recommended Disposition (Doc. 81) is hereby **ADOPTED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (Doc. 55) is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion to Strike (Doc. 69) is hereby **DISMISSED as moot**.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE

[1] Page three of the PFRD does note that it is understandable that Plaintiff construes Defendants' motion as a request for sanctions under Fed. R. Civ. P. 37. (Doc. 81 at 3.) Plaintiff, though, expresses this interpretation in his Response to Defendants' Motion to Dismiss. (Doc. 58 at 2.)