

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**SEAN RENEAU, individually and on  
behalf of all others similarly situated,**

*Plaintiff,*

**v.**

**SPUR 248 STEAK, LLC D/B/A  
STEAK N SHAKE,**

*Defendant.*

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**CIVIL ACTION NO. 6:16-CV-1126  
RWS-JDL**

**JURY TRIAL DEMANDED**

**MEMORANDUM OPINION AND ORDER**

Before the Court is Plaintiff’s Motion to Strike Defenses pursuant to Federal Rule of Civil Procedure 12(f).<sup>1</sup> (Doc. No. 35.) Defendant has filed a Response. (Doc. No. 39.)

As Plaintiff notes in his Motion, Plaintiff filed his Complaint on August 29, 2016. (Doc. No. 1.) Defendant filed its Answer on November 29, 2016. (Doc. No. 5.) Plaintiff filed his Motion to Strike on June 16, 2017. (Doc. No. 35.)

Federal Rule of Civil Procedure 12(f) states:

(f) MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

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<sup>1</sup> Plaintiff’s Motion does not include a Certificate of Conference indicating whether the parties met and conferred pursuant to Local Rule 7(h). In its Response, Defendant alleges that Plaintiff did not meet and confer with Defendant prior to filing his Motion. (Doc. No. 39, at 5 n.4.)

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

Plaintiff's Motion to Strike was filed 199 days after Defendant filed its Answer, far beyond the 21 days allowed by Rule 12(f). Plaintiff has waived any basis to file a Motion to Strike Defendant's Answer.

A few days before its response to the Motion, on June 28, 2017, without leave of Court, Defendant filed an Amended Answer to Plaintiff's Complaint. (Doc. No. 38.) Federal Rule of Civil Procedure 15(a)(1) states:

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Given the untimely nature of Plaintiff's Motion to Strike, Defendant lacked a basis to file an Amended Answer under Rule 15(a)(1).

Accordingly, the Court **DENIES** Plaintiff's Motion to Strike. (Doc. No. 35.) The Court also **STRIKES** Defendant's Amended Answer. (Doc. No. 38.) The parties are advised to familiarize themselves with the Federal Rules of Civil Procedure as well as the Local Rules of this District. Specifically, Plaintiff is advised that a future failure to comply with the meet and confer requirements of Local Rule 7(h) will result in sanctions.

**So ORDERED and SIGNED this 6th day of July, 2017.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE