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6 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

7 **BANK OF COLORADO d/b/a**
8 **PINNACLE BANK f/k/a**
9 **WESTERN BANK OF GALLUP,**

10 Plaintiff-Appellee,

11 v.

NO. 30,841

12 **LL and D, INC., d/b/a RESPOND**
13 **NEW MEXICO,**

14 Defendant-Appellant.

15 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

16 **Robert A. Aragon, District Judge**

17 Mason & Isaacson, P.A.
18 Thomas Lynn Isaacson
19 Gallup, NM

20 for Appellee

21 Everett Law
22 Peter Everett, IV
23 Albuquerque, NM

24 for Appellant

25 **MEMORANDUM OPINION**

26 **VIGIL, Judge.**

1 Appellant (Defendant) appeals from the district court's order that strikes his
2 answer on the basis that it was untimely filed. [RP 160] Our notice proposed to
3 dismiss for lack of a final order. In addition, our notice proposed to deny Appellee's
4 (Plaintiff) request for attorney fees.

5 Defendant did not respond to our notice. *See Frick v. Veazey*, 116 N.M. 246,
6 247, 861 P.2d 287, 288 (Ct. App. 1993) (explaining that the failure to file a
7 memorandum in opposition to calendar notice constitutes acceptance of proposed
8 disposition). For reasons set forth in our notice, we dismiss for lack of a final order.
9 While Plaintiff filed a response opposing our proposed denial of its request for
10 attorney fees, we remain unpersuaded by Plaintiff's arguments, and therefore deny its
11 request.

12 **IT IS SO ORDERED.**

13 _____
14 **MICHAEL E. VIGIL, Judge**

15 **WE CONCUR:**

16 _____
17 **CELIA FOY CASTILLO, Chief Judge**

1

2 **JONATHAN B. SUTIN, Judge**