IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel KENNETH GOMEZ,

Plaintiff,

vs. **No. CIV 10-00594 JP/LFG**

ELEVENTH JUDICIAL DISTRICT COURT,

Defendant.

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER

Defendant, the Eleventh Judicial District Court, through its counsel Robles, Rael & Anaya, P.C. (Luis Robles, Esq.), states the following for its Response to Plaintiff's Motion to Strike Defendant's Answer to Second Amended Complaint to Void Judgment and for Writ of Quo Warranto *[Docket No. 12]*.

The motion does not meet the standard for striking found in Fed. R. Civ. P. 12(f) and Plaintiff offers no other valid basis for striking Defendant's filings.

BACKGROUND

1. On June 16, 2010, Plaintiff, Kenneth Gomez, filed Plaintiff's Second Amended Complaint to Void Judgments, and for Writ of Quo Warranto ("Second Amended Complaint"). A copy of the Second Amended Complaint is attached to Defendant's Supplemental Exhibit to Notice of Removal, filed June 28, 2010 *[Docket No. 8], as Exhibit A*. The factual substance of the Second Amended Complaint is an allegation that the judges of the Eleventh Judicial District Court have not

been bonded as required by New Mexico law.

2. Twelve days later, Defendant filed its Answer to Second Amended Complaint to Void Judgments, and for Writ of Quo Warranto, *filed June 28, 2010 [Docket No. 9]* ("Answer"). The Answer was signed; addressed each of the paragraphs in the Second Amended Complaint in turn with denials, admissions, or a statement of insufficient knowledge, as appropriate; and stated six affirmative defenses.

3. Three days later, Plaintiff filed his Motion to Strike Defendant's Answer to Second Amended Complaint to Void Judgment and for Writ of Quo Warranto, filed *July 7, 2010 [Docket No. 12]* ("Motion to Strike"). Plaintiff claimed that the Answer violated Fed. R. Civ. P. 8(b), Motion to Strike ¶ 2; that the undersigned was in violation of Fed. R. Civ. P. 11, *id*. ¶ 2; that the undersigned was aware of Plaintiff's allegations due to prior litigation, *id*. ¶¶ 2, 3, 5; and that the undersigned was engaged in a criminal conspiracy with Defendant by virtue of having filed the Answer, *id.* ¶¶ 1, 2, 4, 6. For relief, the Motion to Strike asked that Defendant's Answer, and all subsequent filings, be struck.

4. Plaintiff also filed a Memorandum Brief in Support of Motion to Strike Defendant's Answer to Second Amended Complaint to Void Judgment and for Writ of Quo Warranto, *filed July 1, 2010 [Docket No. 13]* ("Motion to Strike Memorandum"). Plaintiff appeared to argue that the Answer erred in stating that it need not respond with an affirmance or a denial to the statements of law in Plaintiff's Second Amended Complaint. Plaintiff reiterated his argument that the undersigned knew and accepted Plaintiff's allegations due to prior litigation. For relief, the Motion to Strike Memorandum asked that Defendant's Answer be struck and that Defendant be compelled to file a

new answer.

STANDARD OF DECISION

Fed. R. Civ. P. 12(f) states that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Motions under Rule 12(f) are "viewed with disfavor and are rarely granted." Salazar v. Furr's, Inc., 629 F.Supp. 1403, 1411 (D.N.M. 1986). The standard for striking under Rule 12(f) is therefore strict. In re Catanella and E.F. Hutton and Co., Inc. Securities Litigation, 583 F.Supp. 1388, 1400 (C.D.Pa. 1984). "[O]nly defenses that are clearly insufficient as a matter of law will be stricken." Old Dutch Farms, Inc. v. Milk Drivers and Dairy Emp. Local Union No. 584, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 281 F.Supp. 971, 976 (C.D.N.Y. 1968). If portions of a pleading are strikable under Rule 12(f), only those portions of the pleading should be struck. See Lipsky v. Commonwealth United Corp., 551 F.2d 887, 893 (2nd Cir. 1976) ("if the motion is granted at all, the complaint should be pruned with care").

In deciding whether to strike a Rule 12(f) motion on the ground that the matter is "impertinent and immaterial," it is settled that the motion will be denied unless it can be shown that "no evidence in support of the allegation would be admissible." Id. Immateriality under Rule 12(f) has been defined as "any matter having no value in developing the issues of a case." In re Catanella, 583 F.Supp. at 1400. "[O]nly allegations that are 'so unrelated to plaintiffs' claims as to be unworthy of any consideration as a defense' should be striken[sic]." EEOC v. Ford Motor Co., 529 F.Supp. 643, 644 (D.Col. 1982) (quoting C. Wright & A. Miller, Federal Practice and Procedure § 1380 at 784 (1969)).

Rule 12(f) applies to a "complaint or third-party complaint; an answer to a complaint, a third-party complaint, a counterclaim, or a crossclaim." Ysais v. New Mexico Judicial Standard Com'n, 616 F.Supp.2d 1176, 1184 (D.N.M. 2009), citing Fed.R.Civ.P. 7(a)(1)-(7). Generally, motions, briefs, and responses to motions, and other material that is not a pleading "may not be attacked by a motion to strike." Id.; see also Trujillo v. Board of Educ. of Albuquerque Public Schools, 230 F.R.D. 657, 659-60 (D.N.M. 2005). However, this Court may strike untimely-filed documents as part of its authority to manage its docket. See Arakaki v. Lingle, 477 F.3d 1048, 1069 (9th Cir. 2007). This Court may also strike a pleading under Fed. R. Civ. P. 11, but only if it is unsigned. Searcy v. Social Sec. Admin., 1992 WL 43490, 2 (10th Cir. 1992) (unpublished) ("Only motions to strike unsigned papers under Rule 11, third-party claims under Rule 14(a), and certain matters in pleadings under Rule 12(f) are contemplated by the Federal Rules of Civil Procedure.").

ARGUMENT

Plaintiff's Motion to Strike must be denied. Defendant's Answer complies with Fed. R. Civ. 8(b) and does not meet the standard for striking in Fed. R. Civ. P. 12(f). Defendant is in compliance with Fed. R. Civ. P. 11, though Plaintiff is not. Plaintiff's request that not only the Answer but all subsequent filings be struck is overbroad and not warranted by law. Plaintiff's allegation that Defendant's counsel believes the claims that the constituent judges of Defendant Eleventh Judicial District Court are illegally in office is preposterous. So is Plaintiff's allegation that Defendant and Defendant's counsel are furthering a criminal conspiracy merely by acting to defend themselves in this suit.

I. MANY OF PLAINTIFF'S ALLEGATIONS ARE IRRELEVANT TO A MOTION TO STRIKE.

Plaintiff makes a number of wild and irresponsible accusations which are irrelevant to his Motion to Strike Defendant's Answer. For example, Plaintiff makes several statements about "[a]n in-camera inspection" of the undersigned's financial records, the conditions under which attorney-client privilege is waived, and the source of funding for filing fees. But Plaintiff never actually explains the relevance to striking the Answer or moves this Court for discovery of attorney-client privileged material. Plaintiff also alleges that the undersigned violated Rule 11 in the Notice of Removal, but never explains why the appropriate remedy for the alleged violation is striking the Answer rather than moving for remand, as Plaintiff has already done. Because these and others of Plaintiff's smears appear to be irrelevant to the motion at hand, Defendant declines to respond to them. This is in no way a concession or an admission. If this Court finds some relevance in an argument of Plaintiff's that Defendant has overlooked, Defendant requests that this Court order supplemental briefing addressing the argument.

II. THE ANSWER SHOULD NOT BE STRUCK UNDER RULE 12(f).

The Answer should not be struck under Rule 12(f), as it meets the requirements of Fed. R. Civ. P. 8(b) and does not contain insufficient defenses or material that is redundant, immaterial, impertinent, or scandalous.

A. The Answer Meets the Requirements of Rule 8(b).

Plaintiff argues that the Answer is in "categorical violation of Rule 8(b)." Motion to Strike, ¶ 2. Defendant concedes that a motion to strike portions of a pleading for failure to comply with

Rule 8 can likely be had under Rule 12(f). See, e.g., S.E.C. v. Thomas, 116 F.R.D. 230, 232 (D.Utah 1987) (stating that a Rule 12(f) motion to strike is the proper form for questioning the sufficiency of defenses). However, the Answer does comply with Rule 8(b) so Plaintiff's Motion to Strike must be denied.

Rule 8(b)(1) states that in general, "[i]n responding to a pleading, a party must: (A) state in short and plain terms its defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party." In its Answer, Defendant complied with these requirements. Defendant raised six affirmative defenses in short and plain terms. Where Defendant had sufficient knowledge to do so, in its Answer Defendant either admitted or denied the allegations in Plaintiff's Complaint. Defendant neither expressly admitted nor denied where it lacked knowledge, see, e.g., Answer ¶ 15, but Rule 8(b)(5) permits Defendant to so do. Significantly, Plaintiff's Motion to Strike does not point to a single affirmative defense or a single admission or denial that Plaintiff believes does not comply with Rule 8(b)(1).

Rule 8(b)(2) states that a "denial must fairly respond to the substance of the allegation." The Rule does not clarify the meaning of this requirement (nor does precedent), but presumably it means that a denial must not be based on a merely technical or ancillary part of the allegation. All of the denials in the Answer are denials of the substance of the allegation. In any case, Plaintiff has not claimed any violations of Rule 8(b)(2) or identified any portions of the Answer that contravene it.

Plaintiff's only argument is that Defendant has violated Rule 8(b) by declining to respond to Plaintiff's numerous legal assertions. Motion to Strike Memorandum at ¶ 2. In support, Plaintiff cites cases from the Northern District of Illinois. Plaintiff's argument fails.

Defendant has been unable to find any case from this Court, from the Tenth Circuit, or from the United States Supreme Court which requires that an answer deny pure assertions of law. In fact, refusing to respond to such is customary. Complaint allegations of legal conclusions do not have the same status as factual conclusion. Gutierrez v. Bean, 2006 WL 4117064, 2 (D.N.M. 2006) ("Allegations which state legal conclusions rather than plead material facts are not accorded deference."). Further, in discovery context defendants are required to respond to requests for admission on factual matters but are not required to respond to requests for admission on pure questions of law. See, e.g., O'Brien v. International Broth. of Elec. Workers, 443 F.Supp. 1182, 1187 (D.C.Ga. 1977) (refusing to compel responses to questions which "seek[] pure legal conclusions which are related not to the facts, but to the law of the case"), Cunningham v. Standard Fire Ins. Co., 2008 WL 2247860, 3-4 (D.Colo. 2008).

Even if the Second Amended Complaint's legal conclusions warranted admission or denial, Plaintiff's requested relief of striking the Answer should still be denied. In paragraph 22 of the Answer, Defendant states that it "denies all the allegations made in Plaintiff's Complaint which Defendant did not specifically admit." Rule 8(b)(3) permits denials of this kind. "A party that does not intend to deny all the allegations must either specifically deny designated allegations or *generally deny all except those specifically admitted*." Id. (emphasis added). Therefore, Defendant has effectively denied all allegations it has not admitted and has therefore complied with Rule 8(b).

Additionally, defects in particular parts of an answer do not justify striking the entire answer. See Lipsky v. Commonwealth United Corp., 551 F.2d 887, 893 (2nd Cir. 1976) ("if the motion is granted at all, the complaint should be pruned with care").

Plaintiff's Motion to Strike Defendant's Answer should be denied.

B. The Answer Does Not Meet the Requirements for Being Struck Found in Rule 12(f).

The Answer does not contain insufficient defenses or material that is redundant, immaterial, impertinent, or scandalous. It therefore cannot be struck under Rule 12(f), which states that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Plaintiff does not even cite to these Rule 12(f) standards, let alone point to any specific matter or defense that violates them. The reason for Plaintiff's failure is simple: there is none.

III. SUBSEQUENT FILINGS SHOULD NOT BE STRUCK UNDER RULE 12(f).

In addition to the Answer, Plaintiff has moved this Court to strike all "subsequent filings." With a few exceptions, generally only pleadings can be struck. Since Defendant's subsequent filings have not been and will not be pleadings, Plaintiff's request that all these pleadings be pre-emptively struck must be denied.

Rule 12(f) allows filings to be struck, but Rule 12(f) only applies to pleadings. Generally, motions, briefs, and responses to motion, and other such filings "may not be attacked by a motion to strike." Ysais, 616 F.Supp.2d at 1184; see also Trujillo, 230 F.R.D. at 659-60 (D.N.M. 2005). There are few exceptions. This Court may strike untimely-filed documents as part of its authority to manage its docket, see Arakaki, 477 F.3d at 1069, but Plaintiff has not presented any evidence or even alleged that Defendant's subsequent filings will all be untimely. This Court may also strike filings under Fed. R. Civ. P. 11 if they are unsigned, see Searcy, 1992 WL 43490 at 2, but Plaintiff

has not presented any evidence or even alleged that Defendant's subsequent filings will all be unsigned. Plaintiff's request to strike Defendant's subsequent filings must therefore be rejected.

IV. THE ANSWER AND SUBSEQUENT FILINGS SHOULD NOT BE STRUCK UNDER RULE 11.

The Answer and Defendant's subsequent filings should not be struck because of Rule 11 violations for three reasons. First, Defendant and the undersigned counsel have not violated Rule 11. Second, striking all filings is not a proper sanction under Rule 11 for signed filings. Third, Plaintiff has not complied with Rule 11's requirements for seeking sanctions for violations of Rule 11.

A. Rule 11 Has Not Been Violated.

Rule 11(a) requires that every filing be signed and directs that "[t]he court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention." The Answer, however, was signed.

As discussed above, Plaintiff variously claims Rule 11 violations and claims that the undersigned "knew" that Plaintiff's various allegations were correct. As *pro se* filings are interpreted liberally, see Green v. United States, 260 F.3d 78, 83 (2nd Cir.2001) (explaining that a pro se litigant's submissions should be read "to raise the strongest arguments that they suggest"), Defendant construes these as an argument that Defendant's counsel has violated Rule 11(b) by filing an Answer that denies Plaintiff's allegations, though Defendant's counsel knows these allegations to be true. Rule 11(b) could certainly be construed to bar any attorney from denying claims that he knew to be true.

Yet, Plaintiff's Rule 11 claims are premature and overbroad. They are overbroad because Plaintiff is asking this Court to strike not only the Answer but also all subsequent filings. Plaintiff does not and cannot point to any Rule 11 violation in documents that Defendant has not even filed yet, for the good reason that Rule 11 does not even come into effect until a document has been filed. See Rule 11(b) ("By *presenting* to the court a pleading, written motion, or other paper . . . ."). Plaintiff's Rule 11 claims are premature because Defendant has yet to present its legal arguments respecting Plaintiff's claims. Cf. Divane v. Krull Elec. Co., Inc., 200 F.3d 1020, 1026 (7th Cir. 1999) (addressing a district court's refusal to consider a Rule 11 sanctions motion alleging inadequate factual foundation until after trial, which would allow the factual basis of the claims to be fully aired). Defendant is under no obligation to do so at this stage of the litigation, so Plaintiff has no objective or reasonable basis on which to evaluate the strength of Defendant's argument.

Even if Plaintiff's arguments were limited to the Answer, Plaintiff's argument fails. Defendant's counsel never "knew" that Plaintiff's allegations were correct and Defendant's counsel has not violated Rule 11(b).

Plaintiff is correct that in the Ysais case, the undersigned's firm, representing the state Defendants, successfully moved to have the case against their clients dismissed. See Ysais v. New Mexico Judicial Standard Com'n, 616 F.Supp.2d 1176, 1195 (D.N.M. 2009). Plaintiff is also correct that Defendant's counsel had been exposed to Plaintiff's allegations before filing its Answer, both from Plaintiff's pleadings in this case and from Gomez v. Aragon, 09-cv-2010 (D.C.D.C. 2009), in which Plaintiff brought allegations similar to those he has raised in this case. That case was eventually dismissed for lack of personal jurisdiction, *see* Exhibit A, Gomez, 09-cv-2010, April 15,

2010, Memorandum Opinion and Order [Doc. No. 55], and for lack of prosecution, *see* Exhibit B, Gomez, 09-cv-2010, June 7, 2010, Order [Doc. No. 59].

Plaintiff does not present any reason that Defendant's counsel's *awareness* of Plaintiff's allegations means that Defendant's counsel *believes* Plaintiff's allegations. Defendant's counsel does not. Even if prior litigation had endorsed Plaintiff's claims, Defendant would still have a good faith belief for its position in this allegation, but prior litigation has not endorsed Plaintiff's claims. The above-cited cases did not result in favorable outcomes for Plaintiff's position. In fact, to counsel's knowledge, the claims made by Plaintiff have not received a favorable hearing in any proceeding. Since by Plaintiff's allegation the practice he complains of has been occurring for decades, counsel clearly has a good faith basis for contesting Plaintiff's claims. Rule 11 even allows counsel to make arguments that have been rejected by prior courts, see Rule 11(b)(2) (allowing "nonfrivolous argument for . . . or reversing existing law"), so Rule 11 clearly does not prohibit counsel from rejecting novel claims without any support in prior precedent.

B. Rule 11 Does Not Allow This Court to Provide the Relief Plaintiff Requests.

Rule 11 does not allow all of Defendant's filings to be struck as a sanction for allegedly violating Rule 11(b) with respect to the Answer.

Rule 11(a) admittedly states that unsigned filings *must* be struck. Yet the Answer was signed, all Defendant's subsequent filings to date have been signed, and Plaintiff does not give this Court any reason to believe that future subsequent filings will not also be signed.

Rule 11(c) addresses the sanctions that are available for violations of Rule 11(b). It states that a

> sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

Id. at (c)(4). Striking filings is not listed as a possible sanction. Because striking filing is a sanction under Rule 11(a), by implication it is not an available sanction under Rule 11(c). See, e.g., Rosillo-Puga v. Holder, 580 F.3d 1147, 1165 (10th Cir. 2009)(explaining that under the canon *expressio unius est exclusio alterius*, exclusion of an item from a list must be construed to be deliberate); see also, e.g., Ferrell v. Express Check Advance of SC LLC, 591 F.3d 698, 704 (4th Cir. 2010) (referring to "the canon of statutory construction that, in general, different words used in the same statute should be assigned different meanings"). The Tenth Circuit has held that Rule 11 allows striking documents only if the document is unsigned. Searcy, 1992 WL 43490 at 2.

Further, Plaintiff has not made any showing that a sanction less extreme than striking Defendant's Answer and subsequent filings would not suffice to "deter repetition of the conduct." Unless such a showing is made, Rule 11(c) would not in any case allow the extreme sanction of striking filings.

Rule 11(c) does not allow this Court to strike Defendant's Answer and subsequent filings as a sanction. Plaintiff's request that this Court do so must therefore be denied.

C. Plaintiff Has Not Complied With Rule 11's Sanction Requirements.

Although sanctions for violations of Rule 11 are available under Rule 11(c), the rule has very specific requirements that any party asking for sanctions must meet. Plaintiff has not.

Rule 11(c) specifically states that a Rule 11(c) motion for sanctions cannot be mixed with

requests for other relief. Id. at (c)(2) ("A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)"). Plaintiff's Motion to Strike requests relief under, effectively, Rule 12(f). It therefore cannot also request sanctions under Rule 11(c).

Further, Rule 11(c) states "[t]he motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." Id. In other words, "the plain language of [this section] requires a copy of the actual motion for sanctions to be served on the person(s) accused of sanctionable behavior at least twenty-one days prior to the filing of that motion." Roth v. Green, 466 F.3d 1179, 1192 (10th Cir. 2006). Plaintiff did not serve a copy of this motion on Defendant 21 days prior to filing the motion with the Court. The motion therefore must be denied.

To the extent the Motion to Strike asks that the Answer and subsequent filings be struck as a sanction under Rule 11, the motion must be denied. Contrary to Rule 11(c), the Motion to Strike also effectively asks for relief under Rule 12(f) and was not served on Defendant 21 days prior to filing with this Court.

V. THE EXTREME RELIEF REQUESTED BY PLAINTIFF IS NOT AVAILABLE UNDER EHRENHAUS.

Since Plaintiff is asking this Court to strike the Answer and all subsequent pleadings, Plaintiff is effectively asking this Court to bar Defendant from further participation in this case. Plaintiff's request is therefore tantamount to asking this Court to rule in Plaintiff's favor as a

sanction.

Such a severe sanction is disfavored. See, e.g., Gomes v. Williams, 420 F.2d 1364, 1366 (10th Cir. 1970) (explaining in the context of a default judgment that "[t]he preferred disposition of any case is upon its merits"). Such a severe sanction cannot be granted unless the Ehrenhaus factors are weighed and found to favor this extreme outcome. See Ehrenhaus v. Reynolds, 965 F.2d 916, 921 (10th Cir. 1993). The Ehrenhaus factors that the Court must weigh are (1) the degree of actual prejudice suffered by movant; (2) the amount of interference with the judicial process; (3) the non-movant's culpability; (4) whether the court advised the non-movant that dismissal would be a likely result of further violations; and (5) the effectiveness of lesser sanctions. Id. In the present litigation, none of these factors favor granting the relief requested by Plaintiff.

Plaintiff never addresses or alleges any prejudice that will be suffered by him if Defendant is allowed to participate in this lawsuit. Defendant's Answer does not prejudice Plaintiff, as the Federal Rules of Civil Procedure specifically allows, indeed, insists on, the Answer. See Rule 8. Further, Defendant's subsequent filings will not prejudice Plaintiff. The only prejudice Plaintiff appears to allege is that Defendant is opposing Plaintiff's claims – but Defendant has a constitutional right to participate in this litigation against it, see Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quotation omitted) ("The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner."), so it follows that Plaintiff has no right to argue his claims without opposition. Plaintiff by definition has not been prejudiced by Defendant's willingness to file the Answer and to further defend this suit.

The same reasoning shows that there has been no interference with the judicial process.

Defendant's participation in the judicial process is not interference with the judicial process but is an integral part of it. See, e.g., Herring v. New York, 422 U.S. 853, 862 (1975) (stating that "partisan advocacy on both sides of a case" is the "very premise of our adversarial system."); Sokol Holdings, Inc. v. BMB Munai, Inc., 542 F.3d 354, 358 (2nd Cir.2008) ("It is a fundamental principle of American law that every person is entitled to his or her day in court.").

Plaintiff's nasty allegations that the Defendant and Defendant's counsel are engaged in a criminal conspiracy is not evidence of Defendant's culpability (the third Ehrenhaus factor) because those allegations are false. Plaintiff's basis for these vicious accusations is nil. In effect, Plaintiff charges both Defendant and Defendant's counsel with full knowledge of the validity of Plaintiff's allegations. He then argues that the fact that Defendant's counsel has acted as counsel for Defendant is evidence of a criminal conspiracy, presumably because the legal services provided by counsel aid Defendant. This is nonsense, and it is mounted on stilts. As discussed above, Plaintiff's assumption that Defendant and Defendant's counsel must *believe* Plaintiff's allegations because they are *aware* of those allegations is without any foundation in evidence, logic, or law. American jurisprudence recognizes very few self-evident and self-validating propositions. American law further does not make an attorney's legal representation of a client an act of criminal conspiracy. In fact, far from preventing attorneys from "furthering" the interests of criminals by representing them, American law actually *requires* that criminals be so represented in some contexts. See Gideon v. Wainwright, 372 U.S. 335, 351-52 (1963) (ruling that representation in criminal matters is a fundamental right under the Fourteenth Amendment). What the Constitution commands, conspiracy law cannot criminalize. Plaintiff's grievance that Defendant and Defendant's counsel continue to vigorously defend against

his suit is a not a grievance to which this Court should give any heed.

The fourth and fifth Ehrenhaus factors likewise weigh against barring Defendant from further effective participation in this case. Defendant has never been warned by this Court that it has violated any relevant legal rules. Plaintiff has never made any showing that lesser sanctions would not equally serve his legitimate ends, to the extent he has any.

Plaintiff has not shown that any of the Ehrenhaus factors are met. Therefore, the extreme sanction of barring Defendant from further participation in this suit is unwarranted.

VI. PLAINTIFF'S MOTION TO STRIKE SHOULD BE DENIED BECAUSE IT VIOLATES D.N.M.-L.R. 7.1(A).

Defendant argued in Part V above that Plaintiff's Motion to Strike both the Answer and any subsequent filings was essentially dispositive. If this Court disagrees, then in the alternative the Motion to Strike should be denied because it violates D.N.M.-L.R. 7.1(A).

Plaintiff never sought Defendant's concurrence in the Motion to Strike. Yet D.N.M.-L.R. 7.1(a) states that "[m]ovant must determine whether a motion is opposed, and a motion that omits recitation of a good-faith request for concurrence may be summarily denied." The Motion to Strike should therefore be summarily denied by the Court.

CONCLUSION

Plaintiff's Motion to Strike Defendant's Answer to Second Amended Complaint to Void Judgment and for Writ of Quo Warranto should be denied, or even summarily denied.

WHEREFORE, Defendant respectfully requests that this Court enter an Order, which grants the following relief:

A. Denies Gomez' Motion to Strike Defendant's Answer to Second Amended Complaint to Void Judgment and for Writ of Quo Warranto *[Docket No. 12]*;

B. Awards Defendant its attorney's fees and costs; and

C. Orders all other relief this Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

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I hereby certify that on this 19th day of July 2010, the foregoing was electronically served through the CM/ECF system to the following:

Kenneth Gomez
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/s/ Luis Robles
Luis Robles