

Defendants submitted a timely response on September 28, 2016, fourteen (14) calendar days after service of the motion (Doc 3320). The filing was made electronically through the Court's CM/ECF system. In accordance with the time prescribed by D.N.M.LR-Civ. 7.4, Plaintiffs' reply to Defendants' response was due fourteen (14) calendar days later, specifically on October 12, 2016.

Plaintiffs did not file their reply brief until October 14, 2016, sixteen (16) calendar days later, thus exceeding the filing deadline (Doc 3327). Plaintiffs did not move for an enlargement of time and did not seek leave to file their reply out of time. They have, therefore, waived their opportunity to reply to Defendants' response opposing Plaintiffs' Motion to Exclude. Pursuant to Local Rule D.N.M.LR-Civ. 7.1(b), "failure to file and serve a reply in support of a motion within the time prescribed for doing so constitutes consent that briefing on the motion is complete."

It is also noted that Plaintiffs exceeded the length of brief as prescribed by D.N.M.LR-Civ. 7.5. Plaintiffs' reply brief (Doc 3327) was 21 pages in length, exceeding the 12, double-spaced page limit prescribed by the rule. Although the reply addressed both the Plaintiffs' Cross-Motion and Motion to Exclude, more than 12 pages were devoted to the latter¹.

CONCLUSION

For the foregoing reasons, this Court should issue an order² striking Plaintiffs' October 14, 2016 Joint Reply as it pertains to the Motion to Exclude and, pursuant to D.N.M.LR-Civ.

¹ Portions of Doc 3327 pertaining to Motion to Exclude: page 2 at lines 5-13 and footnote 2; page 3 at lines 18-21; page 4 at lines 1-8 and footnotes 3 and 4; page 5 at line 1; page 8 at lines 11-18; page 9 at all lines and footnote 7; page 10 at all lines and footnote 8; page 11 at all lines; page 12 at all lines and footnotes 9 and 10; page 13 at all lines; page 14 at all lines and footnotes 11 and 12; page 15 at all lines and footnote 13; page 16 at all lines and footnotes 14 and 15; page 17 at all lines; page 18 at all lines and footnote 16; page 19 at lines 1-2; and Doc 3327-2.

² Defendants reserve the right to move for leave to file a surreply if the untimely reply brief is not stricken.

7.1(b), should proceed to evaluate the Motion to Exclude absent Plaintiffs' untimely reply brief.

A proposed form of Order striking Plaintiffs' untimely reply brief will be sent to the proposed order mailbox once the docket number of the corresponding motion is assigned.

Respectfully submitted this 17th day of October, 2016.

Craig Fredrickson /s/ Craig Fredrickson

Regina Fredrickson /s/ Regina Fredrickson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 17, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.

Electronically Filed

/s/ Craig Fredrickson

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