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8

9 **SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **COUNTY OF COCHISE**

11 ELI DALTON-WEBB,

12 Plaintiff,

13 v.

14 CITY OF SIERRA VISTA, a municipal
corporation in Arizona, OFFICER E.
15 SLUSSER, R. HERTMAN, OFFICER S.
MCHUNTTING, M. PARTIDGE, peace
16 officers of the Sierra Vista Police Department,

17 Defendants.
18

NO. S0200CV202400628

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

(Assigned to the Honorable David Thorn)

19 Defendant City of Sierra Vista responds in opposition to Plaintiff's Motion to Strike
20 Defendant's Response to Plaintiff's Motion for Alternative Service. Plaintiff's Motion to Strike
21 is included in one filing with his separate Motion for Reconsideration regarding the Court's denial
22 of his November 27, 2024 Motion for Alternative Service and his Reply Brief in support of his
23

1 Motion for Sanctions. As explained more fully below, the Court should deny each of Plaintiff's
2 Motions.

3 **I. PLAINTIFF'S MOTION FOR RECONSIDERATION**

4 Defendant briefly addresses Plaintiff's Motion for Reconsideration to note that it
5 should be denied as moot. On December 3, 2024, the Individual Officer Defendants filed their
6 Opposition to Plaintiff's Application for Entry of Default Judgment. On December 13, 2024,
7 Plaintiff filed his response and simultaneously moved for alternative service. His filing was titled,
8 "Response to Motion to Deny Application for Entry of Default; *Motion for Alternative Service*;
9 Motion for Sanctions." (Emphasis added). On December 26, 2024, Individual Officer Defendants
10 responded to the Motion for Alternative Service. The time for Plaintiff to file his reply brief has
11 passed and the motion is now fully briefed and pending the Court's consideration. As such, that
12 the Court denied Plaintiff's first Motion for Alternative Service, which is duplicative of the
13 currently pending Motion for Alternative Service, is immaterial and the Motion for
14 Reconsideration should be denied.

15 Should the Court order Defendant to file a full response to Plaintiff's Motion for
16 Reconsideration, Defendant will do so in accordance with any such order. *See* Ariz. R. Civ. P.
17 7(e)(2).

18 **II. PLAINTIFF'S MOTION TO STRIKE IS NOT AUTHORIZED BY RULE 12(F)**

19 Plaintiff's reliance on Rule 12(f) is misplaced. Arizona Rule of Civil Procedure
20 12(f) allows this court to "strike from a *pleading* an insufficient defense or any redundant,
21 immaterial, impertinent, or scandalous matter." Ariz. R. Civ. P. 12(f) (emphasis added). Because
22 Rule 7 defines pleadings as complaints, answers, and counterclaims, Rule 12(f) cannot serve as a
23 procedural vehicle for striking a response to a motion. *See Landi v. Arkules*, 172 Ariz. 126, 135,
24 (App. 1992) (noting that a response to a motion is not a pleading under rule 7); *see also Sidney-*
25 *Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 85-86 (9th Cir. 1983) ("Under the express language of

1 the rule, only pleadings are subject to a motion to strike.”) (analyzing Fed. R. Civ. P. 12(f)); *In re*
2 *Marriage of Heredia*, No. 2 CA-CV 2015-0201, 2016 WL 7474020, at *6 (Ariz. App. Dec. 29,
3 2016) (Howard, J., Concurring in Part) (“Moreover, the rules provide only
4 for motions to strike “pleading[s]”).

5 Here, Defendant’s Response to Plaintiff’s Motion for Alternative Service is not a
6 pleading as defined by Rule 7. It is not an answer or a complaint. Rather, it is an opposition filing
7 to Plaintiff’s Motion made in the course of briefing. Plaintiff points to no law, and Defendant has
8 not found any, that provides a mechanism to strike Defendant’s response. Thus, the response is
9 not subject to a motion to strike under the Arizona Rules of Civil Procedure. Accordingly, this
10 Court should deny Plaintiff’s Motion to Strike.

11 Even if Defendant’s Response was considered a pleading, which it is not, it is still
12 not subject to strike. Rule 12(f) provides a mechanism to strike, “an insufficient defense or any
13 redundant, immaterial, impertinent, or scandalous matter” Ariz. R. Civ. P. 12(f). Trial courts
14 generally disfavor motions to strike. *See Sitton v. Deutsche Bank Nat’l Trust Co.*, 233 Ariz. 215,
15 220 n.5 (App. 2013) (“Absent extraordinary circumstances or those expressly contemplated
16 in Rule 12(f), [Ariz. R. Civ. P.] motions to strike usually waste the time of the court and the
17 resources of the parties.”); *see also Engel v. Landman*, 221 Ariz. 504, 509 n.2 (App.
18 2009) (inappropriate motions to strike have “the consequence of impeding the efficient resolution
19 of cases and increasing the cost of litigation” and generally disfavored because ““often sought by
20 the movant simply as a dilatory tactic”), *quoting Waste Mgmt. Holdings, Inc. v. Gilmore*, 252
21 F.3d 316, 347 (4th Cir. 2001). Therefore, Plaintiff must show that the material to be stricken is
22 redundant, immaterial, impertinent, or scandalous.

23 Here, Plaintiff does not even argue that Defendant’s Response is redundant,
24 immaterial, impertinent, or scandalous. Instead, Plaintiff asks this Court to Strike the Defendant’s
25 Response because “Allowing the Defendants to respond would prejudice the Plaintiff and this

1 Court (due to judicial economy), as Rule 4.1(k) was designed to resolve service of process issues.”
2 Defendant can only guess that the alleged prejudice to Plaintiff is that his motion is not unopposed.
3 That does not constitute prejudice, however. Interestingly, Plaintiff alleges that judicial economy
4 will be served by striking the response, but as the caselaw above notes, motions to strike usually
5 waste the time of the court and the resources of the party, not responses to motions.
6 Notwithstanding Plaintiff’s failure to make specific allegations, Defendant aver their response
7 was not redundant, immaterial, impertinent, or scandalous. Of course, a response to a motion is
8 material and pertinent to the extent it addresses arguments in a motion, which Defendant’s
9 response does. Additionally, the response is not redundant because it is the only filing Defendant
10 made addressing Plaintiff’s Motion for Alternative Service. Finally, the response simply outlines
11 the reasons why Rule 4.1(k) is inapplicable, which is not scandalous.

12 Accordingly, Defendant respectfully requests this Court deny Plaintiff’s Motion to
13 Strike Defendants’ Response to the Motion for Alternative Service and deny the Motion for
14 Alternative Service.

15 **III. CONCLUSION**

16 For the foregoing reasons, the Court should deny Plaintiff’s Motion for
17 Reconsideration and Motion to Strike.

18 DATED this 13th day of January, 2025.

19 JONES, SKELTON & HOCHULI P.L.C.

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21 By /s/ Derek R. Graffious

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ORIGINAL of the foregoing electronically filed
this 13th day of January, 2025.

COPY of the foregoing mailed and emailed
this 13th day of January, 2025, to:

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/s/ Cindy Castro