

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Impossible Foods Inc. v. Impossible LLC, et al.

Impossible Foods Inc. v. Impossible LLC, No. 5:21-cv-02419-BLF (N.D. Cal. June 18, 2025) · No. 5:21-cv-02419-BLF · Decided June 18, 2025

SUMMARY

The United States District Court for the Northern District of California grants Impossible Foods Inc.’s motion to strike four affirmative defenses—waiver, acquiescence, estoppel, and unclean hands—because they lacked sufficient factual matter and fair notice. The court grants Defendants leave to amend and sets a deadline of July 2, 2025, for filing the amended pleading.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Beth Labson Freeman
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 18, 2025
DOCKET	5:21-cv-02419-BLF
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(f) to strike four affirmative defenses asserted in defendants' corrected answer and counterclaims. The court granted the motion and granted defendants leave to amend.
STANDARD OF REVIEW	A Rule 12(f) motion to strike examines the face of the pleadings to determine whether an affirmative defense is sufficient. Leave to amend is generally freely given absent prejudice, but may be denied for undue delay, bad faith, repeated failure to cure deficiencies, or futility.
PRECEDENTIAL VALUE	unpublished_nonprecedential

TOPICS

- affirmative defenses
- pleadings
- civil procedure
- waiver
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendants' bare allegations of waiver, acquiescence, estoppel, and unclean hands sufficiently pleaded affirmative defenses under Federal Rule of Civil Procedure 12(f) and the applicable fair-notice standard.
2. Whether defendants should receive leave to amend the stricken affirmative defenses.

HOLDINGS

1. Affirmative defenses must include sufficient factual matter to provide fair notice of their factual basis; bare legal conclusions unsupported by factual allegations are insufficient.
2. Defendants should be granted one opportunity to amend the deficient affirmative defenses because the record did not establish undue delay, bad faith, futility, repeated failure to cure, or undue prejudice.

KEY QUOTATIONS

“Under that standard, affirmative defenses must plead “enough factual matter” to “show that the pleader is entitled to relief” and to give the plaintiff “fair notice.”” (at 3)

“These four affirmative defenses lack any factual matter at all, and entirely fail to give fair notice of the factual basis for Defendants’ assertion of each defense.” (at 4)

“Accordingly, Defendants’ Fourth, Fifth, Sixth, and Tenth Affirmative Defenses are STRICKEN.” (at 4)

“Defendants’ Fourth, Fifth, Sixth, and Tenth Affirmative Defenses in the Answer and Revised Counterclaims to Third Amended Complaint are STRICKEN WITH LEAVE TO AMEND.” (at 5)

FACTUAL BACKGROUND

Defendants asserted waiver, acquiescence, estoppel, and unclean-hands defenses in response to Impossible Foods' Third Amended Complaint. Each defense stated only that one or more claims or requested relief was barred by the named doctrine, without identifying supporting facts or the particular claims at issue. Defendants had already filed a corrected pleading after an earlier motion to strike identified the lack of factual allegations as a deficiency.

PROCEDURAL HISTORY

Impossible Foods initially filed a declaratory-judgment action concerning a trademark dispute. After appellate proceedings concerning personal jurisdiction and several amendments to the pleadings, Impossible Foods filed a Third Amended Complaint adding trademark infringement, unfair competition, and fraud claims. Defendants answered and asserted counterclaims and affirmative defenses. The court granted Impossible Foods' motion to strike the Fourth, Fifth, Sixth, and Tenth Affirmative Defenses, with leave to amend.

DISPOSITION

CASES CITED

- Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Hernandez v. County of Monterey, 306 F.R.D. 279, 283-85 (N.D. Cal. 2015)
- Ramirez v. Ghilotti Bros. Inc., 941 F. Supp. 2d 1197, 1204 (N.D. Cal. 2013)
- Scott v. Federal Bond & Collection Service, Inc., No. 10-cv-02825, 2011 WL 176846, at *4 (N.D. Cal. Jan. 19, 2011)
- Security People, Inc. v. Classic Woodworking, LLC, No. C-04-3133, 2005 WL 645592, at *2 (N.D. Cal. Mar. 4, 2005)
- CTF Development, Inc. v. Penta Hospitality, LLC, No. C 09-02429, 2009 WL 3517617, at *7 (N.D. Cal. Oct. 26, 2009)
- Barnes v. AT&T Pension Benefit Plan-Nonbargained Program, 718 F. Supp. 2d 1167, 1170-72 (N.D. Cal. 2010)
- Hayne v. Green Ford Sales, Inc., 263 F.R.D. 647, 650 (D. Kan. 2009)
- Munoz v. PHH Corp., No. 08-cv-0759, 2013 WL 1278509, at *6 (E.D. Cal. Mar. 26, 2013)
- Ariosta v. Fallbrook Union High School District, No. 08-cv-2421, 2009 WL 1604569, at *2 (S.D. Cal. June 4, 2009)
- Wyshak v. City National Bank, 607 F.2d 824, 826-27 (9th Cir. 1979)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5
SAN JOSE DIVISION 6 7 IMPOSSIBLE FOODS INC., Case No. 5:21-cv-02419-BLF 8 Plaintiff,
ORDER GRANTING IMPOSSIBLE 9 v. FOODS INC.’S MOTION TO STRIKE 10
IMPOSSIBLE LLC, et al., [Re: Dkt. No. 174] 11 Defendants. 12 IMPOSSIBLE LLC, et al., 13
Counter-Plaintiffs, 14 v. 15 IMPOSSIBLE FOODS INC. 16 Counter-Defendant.

17 18 Before the Court is Impossible Foods Inc.’s (“IF”) Motion to Strike Defendants/Counter- 19
Plaintiffs’ Affirmative Defenses. Dkt. No. 174 (“Mot.”). Impossible LLC (“ILLC”) and Joel 20
Runyon (collectively, “Defendants”) oppose the motion, Dkt. No. 191 (“Opp.”), and IF filed a 21
reply in support of its motion, Dkt. No. 199 (“Reply”).

The Court finds this motion suitable for 22 resolution without oral argument, see Civ. L.R. 7-1(b),
and VACATES the hearing set for June 26, 23 2025. 24 For the following reasons, the Court
GRANTS Impossible Foods Inc.’s motion. 25 I. BACKGROUND 26 On April 2, 2021, Plaintiff

Impossible Foods Inc. filed a Complaint against Defendant 27 Impossible LLC (then identified as “Impossible X LLC”), alleging one claim for declaratory relief 1 Dkt.

No. 1 ¶ 34. Following IF’s successful appeal of this Court’s grant of Defendant’s motion to 2 dismiss for lack of personal jurisdiction, see Dkt. No. 55, the Court held a Case Management 3 Conference on January 25, 2024, Dkt. No. 69.

The Court then issued the Case Management 4 Scheduling Order, which set the deadline for amending the pleadings as March 25, 2024. Dkt. No. 5 70. IF filed an Amended Complaint against Impossible LLC on February 16, 2024, again alleging 6 one claim for declaratory relief regarding the Parties’ trademark dispute. Dkt. No. 78.

On March 7 8, 2024, Impossible LLC filed its Answer to the Amended Complaint and asserted various 8 Counterclaims. Dkt. No. 80. Impossible LLC amended its Counterclaims on April 4, 2024, Dkt. 9 No. 83, and IF filed an Answer to the Counterclaims on April 18, 2024, Dkt. No. 85. 10 On July 23, 2024, IF sought to amend its Complaint to add trademark infringement and 11 unfair competition claims against both ILLC and Defendant Joel Runyon (“Runyon”).

Dkt. No. 12 92. The Court granted in part IF’s motion on September 17, 2024, Dkt. No. 101, and IF promptly 13 filed its Second Amended Complaint, Dkt. No. 103. After the Court resolved the Parties’ dispute 14 over a counterclaim asserted in ILLC’s Answer and Counterclaims filed in response to IF’s 15 Second Amended Complaint, see Dkt. Nos. 107, 111, 117, IF submitted a further motion to amend 16 to add fraud claims on January 31, 2025, Dkt.

No. 137. The Court granted IF’s motion on March 17 4, 2025, Dkt. No. 149, and IF filed its Third Amended Complaint on March 7, 2025, Dkt. No. 151. 18 Defendants answered on March 31, 2025. Dkt. No. 168. After IF moved to strike Defendants’ 19 affirmative defenses, Dkt. No. 170, Defendants filed a corrected Answer and Counterclaims on 20 April 4, 2025, Dkt. No. 171.

IF then filed the present motion to strike on April 9, 2025. 21 II. LEGAL STANDARD 22 Under Federal Rule of Civil Procedure 12(f), “[t]he court may strike from a pleading an 23 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. 24 Civ. P. 12(f). “[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and 25 money that must arise from litigating spurious issues by dispensing with those issues prior to 26 trial.” *Sidney-Vinstein v. A.H.*

Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). 27 III. DISCUSSION 1 asserted several affirmative defenses for the first time without leave of Court.” Mot. at 3. In the 2 corrected version of the Answer and Counterclaims filed on April 4, 2025, Defendants “clarified 3 that the new defenses applied exclusively to the new allegations and claims in the Third Amended 4 Complaint.” *Id.* Regardless, IF argues that the new affirmative defenses of waiver, estoppel, 5 acquiescence, and unclean hands should be stricken for failure to meet the pleading standards 6 established in *Bell*

Atlantic Corporation v. Twombly, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 7 556 U.S. 662 (2009).

Mot. at 3–5. For example, IF points out that Defendants have failed to 8 identify the type of estoppel asserted or the legal right that IF has allegedly waived. *Id.* at 4. IF 9 further argues that Defendants should not have the opportunity to amend the defenses in light of 10 the prejudice to IF of their doing so at such a late stage in the litigation. *Id.* at 5–6.

11 In opposition, Defendants argue that the affirmative defenses “rest on Impossible Foods’ 12 additional factual allegations” in the Third Amended Complaint “as well as the extensive factual 13 record in this case,” *Opp.* at 1, and that, in any event, affirmative defenses need not meet the 14 *Twombly-Iqbal* standard, *id.* at 5. Defendants then proceed to identify the portions of IF’s Third 15 Amended Complaint that Defendants believe support the affirmative defenses.

Id. at 6–7. 16 Defendants also assert that striking the affirmative defenses will “cause substantial prejudice to 17 Impossible LLC, while Impossible Foods faces little prejudice to addressing those defenses at the 18 summary judgment stage.” *Id.* at 1, 7–10.

Finally, in the event that the Court strikes the 19 affirmative defenses, Defendants request leave to amend “to identify the specific facts in support 20 of each affirmative defense and assert additional factual allegations that have only been revealed 21 in the last few weeks.” *Id.* at 2, 10–11. 22 “[M]ost district courts in this circuit agree that the heightened pleading standard of 23 *Twombly* and *Iqbal*... is now the correct standard to apply to affirmative defenses.” *Hernandez 24 v. Cnty. of Monterey*, 306 F.R.D.

279, 283 (N.D. Cal. 2015) (quoting *Ramirez v. Ghilotti Bros. 25 Inc.*, 941 F. Supp. 2d 1197, 1204 (N.D. Cal. 2013)). Under that standard, affirmative defenses 26 must plead “enough factual matter” to “show that the pleader is entitled to relief” and to give the 27 plaintiff “fair notice.” *Id.* “[T]he burden is on the defendant to proffer sufficient facts and law to 1 defense in the manner defendant intended.” *Id.* at 284.

It is not a requirement that an affirmative 2 defense “include extensive factual allegations in order to give fair notice,” but “bare statements 3 reciting mere legal conclusions may not be sufficient.” *Scott v. Fed. Bond & Collection Serv., 4 Inc.*, No. 10-cv-02825, 2011 WL 176846, at *4 (N.D. Cal. Jan. 19, 2011) (emphasis added) (citing *5 Security People, Inc. v. Classic Woodworking, LLC*, No. C-04-3133, 2005 WL 645592, at *2 6 (N.D.

Cal. Mar. 4, 2005), and *CTF Development, Inc. v. Penta Hospitality, LLC*, No. C 09–02429, 7 2009 WL 3517617, at *7 (N.D. Cal. Oct. 26, 2009)). 8 In other words, despite the fact that motions to strike “are generally disfavored” by courts, 9 they may be granted where it appears that a bare-bones affirmative defense is supported by 10 nothing other than “some conjecture that it may somehow apply.” See *Barnes v. AT&T Pension 11 Ben.*

Plan-Nonbargained Program, 718 F. Supp. 2d 1167, 1170–72 (N.D. Cal. 2010) (quoting 12 Hayne v. Green Ford Sales, Inc., 263 F.R.D. 647, 650 (D. Kan. 2009)). This is such a case. 13 Specifically, Defendants’ Fourth, Fifth, Sixth, and Tenth Affirmative Defenses read as follows: 14 FOURTH AFFIRMATIVE DEFENSE (Waiver) 15 One or more of Plaintiff’s claims and/or the relief Plaintiff seeks are barred by the doctrine of waiver.

16 FIFTH AFFIRMATIVE DEFENSE (Acquiescence) 17 One or more of Plaintiff’s claims and/or the relief Plaintiff seeks are barred by the doctrine of 18 acquiescence. SIXTH AFFIRMATIVE DEFENSE 19 (Estoppel) One or more of Plaintiff’s claims and/or the relief it seeks are barred by the doctrine of estoppel. 20 TENTH AFFIRMATIVE DEFENSE 21 (Unclean Hands) One or more of Plaintiff’s claims and/or the relief it seeks are barred by the doctrine of unclean 22 hands.

23 Dkt. No. 171 at 49–50. These four affirmative defenses lack any factual matter at all, and 24 entirely fail to give fair notice of the factual basis for Defendants’ assertion of each defense. 25 Indeed, Defendants use the highly ambiguous phrase “[o]ne or more of Plaintiff’s claims and/or 26 the relief it seeks” with regard to each defense—a choice of words that seems consistent with 27 “conjecture that [the defense] may somehow apply,” see Barnes, 718 F. Supp. 2d at 1172 1 Defendants cure the inadequacy of their pleading through briefing on the motion to strike, see 2 Opp. at 6–7, since “[a] motion to strike affirmative defenses under Federal Rule of Civil Procedure 3 12(f) looks to the face of the pleadings to determine whether the defenses are sufficient or not.” 4 Munoz v. PHH Corp., No. 08-cv-0759, 2013 WL 1278509, at *6 (E.D.

Cal. Mar. 26, 2013) (citing 5 Ariosta v. Fallbrook Union High School Dist., No. 08-cv-2421, 2009 WL 1604569, at *2 (S.D. 6 Cal. June 4, 2009)). Accordingly, Defendants’ Fourth, Fifth, Sixth, and Tenth Affirmative 7 Defenses are STRICKEN. 8 The question remains whether Defendants should be given leave to amend. Generally, 9 “[i]n the absence of prejudice to the opposing party, leave to amend should be freely given,” 10 Wyshak v. City Nat.

Bank, 607 F.2d 824, 826–27 (9th Cir. 1979) (citing Fed. R. Civ. P. 15(a), and 11 Foman v. Davis, 371 U.S. 178, 182 (1962)), though it may also be denied based on a strong 12 showing of undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies, or 13 futility of amendment, see Foman, 371 U.S. at 182; Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 14 1048, 1052 (9th Cir.

2003). Defendants have failed to cure the identified pleading deficiency 15 once: the Corrected Answer and Revised Counterclaims to Third Amended Complaint was filed in 16 response to IF’s initial motion to strike, see Dkt. No. 170, which specifically called out the lack of 17 factual allegations as a deficiency in Defendants’ responsive pleading, see id. at 5.

However, the 18 Court concludes that one failure is not the same as “repeated failure,” and, in light of the late date 19 at which IF was permitted to add its fraud claims, the Court does not find

that Defendants' 20 conduct evinces undue delay or bad faith. IF's brief argument that "Defendants cannot point to 21 any set of facts that would plausibly support any of the Defenses" is also unconvincing, since IF 22 has not demonstrated that the defenses are "insufficient as a matter of law," meaning that "there 23 are no questions of fact, any questions of law are clear and not in dispute, and under no set of 24 circumstances could the defense succeed." See Hernandez, 306 F.R.D. at 285 (cleaned up).

25 The closest question is whether IF is sufficiently prejudiced that the Court should deny 26 Defendants the opportunity to amend. The Court concludes that it is not. While it is true that IF's 27 motion to strike was filed days before the close of fact discovery, see Mot. at 3, the late date on 1 amendment of its own pleading, which was filed less than six weeks prior to the fact discovery 2 || deadline, see Dkt.

No. 151. Moreover, as IF points out, "[e]ach of the Defenses centers on 3 conduct by Plaintiff, not Defendants." Mot. at 5. In order to prove any of these defenses, then, 4 || Defendants would have needed to elicit discovery into any conduct by IF that supports the 5 application of the defense—and IF would have access to that same discovery, having either 6 || produced it or defended the relevant deposition.

Accordingly, the Court does not believe that IF 7 will be unduly prejudiced by permitting Defendants one opportunity to amend the affirmative 8 defenses stricken by this Order. 9 || IV. ORDER 10 For the foregoing reasons, IT IS HEREBY ORDERED that Defendants' Fourth, Fifth, 11 Sixth, and Tenth Affirmative Defenses in the Answer and Revised Counterclaims to Third 12 || Amended Complaint are STRICKEN WITH LEAVE TO AMEND.

Defendants must file their 5 13 amended pleading on or before July 2, 2025. 15 IT IS SO ORDERED. 16 17 Dated: June 18, 2025 18 nfilecan H LABSON FREEMAN 19 United States District Judge 20 21 22 23 24 25 26 27 28