

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Cosmonova, LLC v. Biofilm, Inc.

No. 24-cv-1453-MMA-JLB (S.D. Cal. May 28, 2025) · No. 3:24-cv-01453-MMA-JLB · Decided May 28, 2025

SUMMARY

The United States District Court for the Southern District of California granted in part and denied in part Cosmonova, LLC’s motion to strike affirmative defenses asserted by Biofilm, Inc. and Combe, Inc. under Federal Rule of Civil Procedure 12(f). The court struck multiple defenses as factually insufficient, legally insufficient, duplicative of denials, or immaterial, but declined to strike the apportionment defense. The court also struck the defendants’ reservation of additional affirmative defenses and granted leave to amend the answer within seven days.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michael M. Anello
JURISDICTION	United States District Court for the Southern District of California
DECIDED	May 28, 2025
DOCKET	3:24-cv-01453-MMA-JLB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(f) to strike 22 of 25 affirmative defenses asserted in Defendants' answer to the first amended complaint.
STANDARD OF REVIEW	Under Rule 12(f), the court may strike an insufficient defense or redundant, immaterial, impertinent, or scandalous matter. Motions to strike are generally disfavored, and the court will not strike matter unless it has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party. The challenged pleading is viewed in the light most favorable to the pleader, and disputed substantial factual or legal issues should not be stricken.
PRECEDENTIAL VALUE	unpublished and nonprecedential district-court order
PARTIES	Cosmonova, LLC v. Biofilm, Inc., Combe, Inc.

TOPICS

motions to dismiss

affirmative defenses

civil procedure

commercial litigation

contracts

PRACTICE AREAS

civil procedure

commercial litigation

contracts

remedies

QUESTIONS PRESENTED

1. Whether Defendants' sixth, twelfth, thirteenth, fourteenth, seventeenth, and twenty-second affirmative defenses were factually insufficient because they failed to provide fair notice of the grounds for the defenses.
2. Whether Defendants' first, third through fifth, eighth through eleventh, fifteenth, sixteenth, twentieth, twenty-first, and twenty-third through twenty-fifth defenses were legally insufficient because they were denials of elements, attacks on the sufficiency of the complaint, unavailable theories, or otherwise not affirmative defenses.
3. Whether Defendants' tenth apportionment defense was sufficiently pleaded to survive a motion to strike.
4. Whether Defendants' reservation of all affirmative defenses should be stricken as immaterial or duplicative.

HOLDINGS

1. An affirmative defense must provide fair notice of its basis. Merely naming a well-established defense may sometimes suffice, but additional factual matter is required when necessary to identify the grounds for the defense.
2. The sixth good-faith defense, twelfth laches defense, thirteenth estoppel/ratification/waiver/consent/assumption-of-risk defense, fourteenth unjust-enrichment defense, seventeenth unclean-hands defense, and twenty-second bad-faith defense were factually insufficient and were properly stricken.
3. A defense that merely denies an element of the plaintiff's prima facie case or attacks the legal or factual sufficiency of the complaint is not an affirmative defense and may be stricken as redundant or unnecessary.
4. The tenth apportionment defense was not stricken because, construed in the light most favorable to Defendants, it could allege the possibility of other liable parties and rely on facts outside the complaint.
5. A generalized reservation of all affirmative defenses is immaterial or duplicative and may be stricken because Federal Rule of Civil Procedure 15 already preserves the right to amend pleadings.

KEY QUOTATIONS

"The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial" (at 3)

"The key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense." (at 4)

“An “avoidance or affirmative defense” under Rule 8(c) is an allegation that either “admit[s] the allegations of the complaint but suggest some other reason why there is no right of recovery . . .” or “concern[s] allegations outside of the plaintiff’s prima facie case that the defendant therefore cannot raise by a simple denial in the answer.”” (at 8)

FACTUAL BACKGROUND

Cosmonova alleges that it entered oral agreements with Biofilm, Inc. to serve as the exclusive distributor of Astroglide personal lubricant in Latin America. After Cosmonova undertook regulatory and other preparatory steps, Combe, Inc. acquired Biofilm and Defendants allegedly directed Cosmonova to stop sales in several countries. Cosmonova claims that this conduct breached the agreements and caused lost potential profits.

PROCEDURAL HISTORY

Cosmonova filed its initial complaint on August 15, 2024, and its first amended complaint on November 12, 2024. The court previously granted in part and denied in part Defendants' motion to dismiss, dismissing the breach-of-oral-contract, tortious-interference, and quantum-meruit claims. After Cosmonova declined to amend at that time, Defendants filed an answer, and Cosmonova moved to strike numerous defenses. The court granted the motion in part and denied it in part, striking specified defenses and the reservation-of-rights provision without prejudice and allowing Defendants seven days to file an amended answer.

DISPOSITION

other

CASES CITED

- Cortina v. Goya Foods, Inc., 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015)
- Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
- Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)
- Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994)
- Chartwell Staffing Servs. Inc. v. Jaemar, Inc., No. 23-CV-01382-AJB-KSC, 2023 WL 7006797, at *1 (S.D. Cal. Oct. 24, 2023)
- Puccio v. Love, No. 16-CV-2890 W (BGS), 2018 WL 1449399, at *4, *9-10 (S.D. Cal. Feb. 26, 2018)
- Roe v. City of San Diego, 289 F.R.D. 604, 608-12 (S.D. Cal. 2013)
- Wyshak v. City Nat. Bank, 607 F.2d 824, 826-27 (9th Cir. 1979)
- Clemco Indus. v. Com. Union Ins. Co., 665 F. Supp. 816, 818, 829 (N.D. Cal. 1987), aff'd, 848 F.2d 1242 (9th Cir. 1988)
- Sayre v. Musicland Grp., a Subsidiary of Am. Can Co., 850 F.2d 350, 353-54 (8th Cir. 1988)
- Collision Commc'ns, Inc. v. Nokia Sols. & Networks OY, 716 F. Supp. 3d 1, 5 (D.N.H. 2024)
- Roskam Baking Co. v. Lanham Mach. Co., 288 F.3d 895, 901 (6th Cir. 2002)
- J & J Sports Prods., Inc. v. Barwick, No. 5:12-CV-05284-LHK, 2013 WL 2083123, at *4-6 (N.D. Cal. May 14, 2013)

- Pac. Digital Grp. v. Blue Media Mktg., No. 3:20-CV-1976-AJB-BGS, 2021 WL 5768124, at *4-5 (S.D. Cal. Dec. 2, 2021)
- Danjaq LLC v. Sony Corp., 263 F.3d 942, 950-51 (9th Cir. 2001)
- McKinney-Drobnis v. Massage Envy Franchising, LLC, No. 16-CV-06450-MMC, 2017 WL 1246933, at *7 (N.D. Cal. Apr. 5, 2017)
- Vertical Bridge Dev., LLC v. Brawley City Council, No. 21-CV-02153 AJB AHG, 2022 WL 2318690, at *4 (S.D. Cal. June 28, 2022)
- Dollar Sys., Inc. v. Avcar Leasing Sys., Inc., 890 F.2d 165, 173 (9th Cir. 1989)
- DC Labs Inc. v. Celebrity Signatures Int'l, Inc., No. 12-CV-01454 BEN DHB, 2013 WL 4026366, at *4, *6, *8 (S.D. Cal. Aug. 6, 2013)
- Morris Cerullo World Evangelism v. Newport Harbor Offs. & Marina, LLC, 283 Cal. Rptr. 3d 164, 169 (Cal. Ct. App. 2021)
- Mueller v. Dep't of Pub. Safety, 570 F. Supp. 3d 904, 911 (D. Haw. 2021)
- Crystal Springs Upland Sch. v. Fieldturf USA, Inc., 219 F. Supp. 3d 962, 967 (N.D. Cal. 2016)
- Elkey Int'l Ltd. v. Color Image Apparel, Inc., No. CV1408028MMMVBKX, 2015 WL 13917734, at *7 (C.D. Cal. Feb. 4, 2015)
- B & O Mfg., Inc. v. Home Depot U.S.A., Inc., No. C 07-02864 JSW, 2007 WL 3232276, at *6 (N.D. Cal. Nov. 1, 2007)

OPINION

1 2 3 4 5 6 7 8 9 10 UNITED STATES DISTRICT COURT 11 SOUTHERN DISTRICT OF
 CALIFORNIA 12 13 COSMONOVA, LLC, Case No. 24-cv-1453-MMA-JLB 14 Plaintiff,
 ORDER GRANTING IN PART AND 15 v. DENYING IN PART PLAINTIFF'S MOTION TO
 STRIKE 16 BIOFILM, INC., et al., 17 Defendants. [Doc. No. 27] 18 19 20 21 On March 26,
 2025, Plaintiff Cosmonova, LLC ("Plaintiff") filed a motion to 22 strike Defendants Biofilm,
 Inc.'s and Combe, Inc.'s (collectively, "Defendants") answer 23 to its first amended complaint.

Doc. No. 27. Defendants filed a response in opposition, 24 to which Plaintiff replied. Doc. Nos.
 29–30. The Court found this matter suitable for 25 determination on the papers and without oral
 argument pursuant to Federal Rule of Civil 26 Procedure 78(b) and Civil Local Rule 7.1.d.1, and
 took it under submission on 27 April 21, 2025. Doc. No. 31.

For the reasons below, the Court GRANTS IN PART 28 AND DENIES IN PART Plaintiff's
 motion to strike. 1 I. BACKGROUND 2 Plaintiff, a distributor of health, beauty, and personal care
 products in Latin 3 America, alleges that it entered into oral agreements with Defendant BioFilm
 to make 4 Plaintiff the exclusive distributor of its Astroglide personal lubricant in that region.

Doc. 5 No. 14 ("FAC") ¶¶ 6, 10, 13–20. Accordingly, Plaintiff took steps to secure regulatory 6
 approval, and took other pre-distribution steps, to sell Astroglide in various Latin 7 American
 Countries. Id. ¶¶ 27–36. Despite considerable time, energy, and resources 8 spent preparing for

Astroglide distribution, however, Plaintiff alleges that Defendants 9 ordered Plaintiff to cease Astroglide sales in several countries after Defendant Combe 10 acquired Defendant BioFilm—breaching the agreements and causing Plaintiff substantial 11 loss in potential profits, in Plaintiff’s telling.

Id. ¶¶ 35–46. 12 Plaintiff filed its initial complaint on August 15, 2024, followed by the FAC, the 13 operative complaint, on November 12, 2024. Doc. Nos. 1, 14. Plaintiff alleged five 14 causes of action: (1) Breach of Oral Contract against both Defendants; (2) Tortious 15 Interference with Contract against Combe; (3) Promissory Estoppel against both 16 Defendants; (4) Unjust Enrichment against both Defendants; and (5) Quantum Meruit 17 against both Defendants.

FAC ¶¶ 47–91. 18 Defendants moved to dismiss the FAC on December 9, 2024. Doc. No. 19. After 19 briefing from the parties, the Court issued an order on January 28, 2025, granting in part 20 and denying in part Defendants’ motion and dismissing Plaintiff’s claims for: (1) breach 21 of oral contract; (2) tortious interference with contract; and (3) quantum meruit.

See 22 generally Doc. No. 22. Plaintiff’s other claims remain. Id. After Plaintiff filed a notice 23 that it would not amend its complaint at this time, Defendants filed the answer now 24 subject to Plaintiff’s motion to strike. See Docs. No. 23, 25. 25 26 27 28 1 II. LEGAL STANDARD 2 Federal Rule of Civil Procedure 12(f) allows the Court to strike “from a pleading 3 an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter” 4 upon a party’s motion or of its own accord.

Fed. R. Civ. P. 12(f). “An ‘immaterial’ 5 matter has no essential or important relationship to the claim for relief or defenses 6 pleaded. An ‘impertinent’ allegation is neither necessary nor relevant to the issues 7 involved in the action. A [‘scandalous[’] pleading is one that improperly casts a 8 derogatory light on someone, most typically on a party to the action.” *Cortina v. Goya 9 Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D.

Cal. 2015) (internal citations and quotation 10 marks omitted). 11 “The function of a 12(f) motion to strike is to avoid the expenditure of time and 12 money that must arise from litigating spurious issues by dispensing with those issues 13 prior to trial....” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 14 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.

1993), rev’d on 15 other grounds by *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994)). However, “[m]otions to 16 strike are ‘generally disfavored because they are often used as delaying tactics....” 17 *Cortina*, 94 F. Supp. 3d at 1182 (quoting *Rosales v. Citibank*, 133 F.Supp.2d 1177, 1180 18 (N.D. Cal. 2001)).

Therefore, a court “will not exercise its discretion under Rule 12(f) [2] 19... unless the matters... have no possible relationship to the controversy, may confuse 20 the issues, or otherwise prejudice

a party.” Id. 21 “When ruling on a motion to strike, this Court must view the pleading under attack 22 in the light most favorable to the pleader.” Chartwell Staffing Servs.

Inc. v. Jaemar, Inc., 23 No. 23-CV-01382-AJB-KSC, 2023 WL 7006797 *1 (S.D. Cal. Oct. 24, 2023) (internal 24 citations and quotation marks omitted). “The court may not strike from the pleadings any 25 disputed and substantial factual or legal issue. Any doubt about whether the matter under 26 27 28 1 attack raises a factual or legal issue should be resolved in favor of the non-moving party.

2 Puccio v. Love, No. 16-CV-2890 W (BGS), 2018 WL 1449399 *4 (S.D. Cal. Feb. 26, 3 2018) (citing Whittlestone, 618 F.3d at 973–75 (9th Cir. 2010)). “Unless it would 4 prejudice the opposing party, courts freely grant leave to amend stricken pleadings.” Roe 5 v. City of San Diego, 289 F.R.D. 604, 608 (S.D. Cal. 2013); see Wyshak v. City Nat. 6 Bank, 607 F.2d 824, 826 (9th Cir.

1979). 7 III. DISCUSSION 8 As a preliminary matter, the parties devote significant space in their briefing to 9 accusations that one another has refused to meet and confer, refused to agree to requests 10 for extension, brought motions in bad faith, behaved “self-serving[ly,]” mischaracterized, 11 and a litany of other complaints. See Doc. No. 29 at 2–3, 7; Doc.

No. 30 at 4–6. The 12 Court reminds the parties that, as stated in this district’s local rules, “[a]lthough 13 adversarial, the experience does not have to, and should not, be antagonistic or hostile. 14 Civility is paramount...” CivLR 2.1.a.1. “As such, the Court expects that all who 15 practice [here] will adhere to [its] Code of Conduct in all their interactions within the 16 courts... to nurture, rather than tarnish, the practice of law....” Id. “We expect 17 lawyers to treat adverse witnesses, litigants and opposing counsel with courtesy, fairness 18 and respect.” Id. at 2.1.a.3.b.

19 Turning to Plaintiff’s motion, Plaintiff seeks to strike 22 of Defendants’ 25 20 affirmative defenses. Doc. No. 27 at 5. Its arguments are broken down into assertions 21 that: (1) some defenses “simply reference legal doctrines or state bare legal conclusions, 22 with no facts pled in support,” thus failing to provide fair notice as to their nature (factual 23 insufficiency); and (2) some affirmative defenses are not... affirmative defenses at all” 24 but instead “merely recite denials of various elements of Plaintiff’s claims” (legal 25 insufficiency).

See generally id. 26 “An affirmative defense may be stricken if it is factually or legally insufficient.” 27 DC Labs Inc., 2013 WL 4026366 at *4. “The key to determining the sufficiency of 28 pleading an affirmative defense is whether it gives plaintiff fair notice of the defense.” 1 Wyshak, 607 F.2d at 827. Unlike Rule 8(a), governing complaints, Rule 8(c) requires 2 only that a party “affirmatively state” any “avoidance” or affirmative defense—not that it 3 “show[] that the pleader is entitled to relief[.]” Compare Fed.

R. Civ. P. 8(a) with Fed. R. 4 Civ. P. (8)(c). Thus, a defendant need only provide a plaintiff with “fair notice” of the 5 affirmative defenses lain before it—harkening back to pleading standards

before the 6 Supreme Court's Twombly and Iqbal decisions. Roe, 289 F.R.D. at 608–09; DC Labs 7 Inc. v. Celebrity Signatures Int'l, Inc., No. 12-CV-01454 BEN DHB, 2013 WL 4026366 8 *4 (S.D.

Cal. Aug. 6, 2013) (collecting cases). 9 Federal law governs what may or may not be pleaded as affirmative defenses. See 10 Clemco Indus. v. Com. Union Ins. Co., 665 F. Supp. 816, 829 (N.D. Cal. 1987), aff'd, 848 11 F.2d 1242 (9th Cir. 1988); Sayre v. Musicland Grp., a Subsidiary of Am. Can Co., 850 12 F.2d 350, 353–54 (8th Cir. 1988); Collision Commc'ns, Inc. v. Nokia Sols. & Networks 13 OY, 716 F. Supp. 3d 1, 5 (D.N.H.

2024); but see Roskam Baking Co. v. Lanham Mach. 14 Co., 288 F.3d 895, 901 (6th Cir. 2002) (collecting cases). However, Courts consider state 15 law persuasive authority as to whether a defense should be pleaded as an affirmative one 16 when sitting in diversity, as state law ultimately governs the substantive issues. Clemco 17 Indus., 665 F. Supp. at 818, 829; 5 C. Wright & A. Miller, Fed.

Prac. & Proc. § 1271 (4th 18 ed. 2025) (“[F]ederal courts are not bound to treat a matter that is considered... an 19 affirmative defense under forum state law as an affirmative defense for purposes of 20 pleading under Rule 8(c), even in diversity of citizenship cases....”).

The Court will 21 address Plaintiff's factual and legal insufficiency arguments in turn. 22 A. Factually insufficient 23 Plaintiff seeks to strike Defendants' sixth, twelfth, thirteenth, fourteenth, 24 seventeenth, and twenty-second affirmative defenses “on grounds they fail to provide 25 Plaintiff fair notice of the grounds upon which the defenses rest.” Doc.

No. 27 at 14–15.3 26 27 28 1 Defendants allege that they adequately provide Plaintiff fair notice of each defense's 2 grounds. Doc. No. 29 at 4–6. “The fair notice standard does not require defendants to 3 provide a detailed statement of facts[]” in support of an affirmative defense. Roe, 289 4 F.R.D. at 611.

However, pleadings must contain at least such detail as to provide notice 5 of the basis for the defense. Id. at 612. This burden is not high. “For well-established 6 defenses, merely naming them may be sufficient, but for others, a party may need to 7 allege additional factual matter to provide fair notice.” DC Labs Inc., 2013 WL 4026366 8 * at 4.

The Court thus turns to the defenses Plaintiff challenges on that basis. 9 10 6. Good Faith – “Defendants and their agents, if any, acted reasonably and in good 11 faith at all times material herein, based on all relevant facts, law, and circumstances 12 known by them at the time that they acted.

Accordingly, Plaintiff is barred, in whole or 13 in part, from any recovery in this action.” Doc. No. 25 (“Ans.”) at 38. As Plaintiff notes, 14 Defendants do not state to which claim this affirmative

defense applies. Doc. No. 27 at 15 n.4. While good faith may be an affirmative defense to some claims, it is not clear that is the case here. *J & J Sports Prods., Inc. v. Barwick*, No. 5:12-CV-05284-LHK, 2013 WL 2083123 *4–5 (N.D.

Cal. May 14, 2013); See *Pac. Digital Grp. v. Blue Media 18 Mktg.*, No. 3:20-CV-1976-AJB-BGS, 2021 WL 5768124 *5 (S.D. Cal. Feb. 9, 2021); see 19 *Roe*, 289 F.R.D. at 609–10 (discussing good faith defenses in civil rights cases). Given this, and that Defendants provide no factual support for this defense, the Court determines that striking it is proper. *Pac.*

Digital Grp., 2021 WL 5768124 at *5. Thus, the Court GRANTS Plaintiff’s motion and STRIKES the sixth affirmative defense. Laches – “Plaintiff’s claims are barred, in whole or in part, by the doctrines of laches.” Ans. at 39. Laches, as a general matter, “is an equitable defense that prevents a plaintiff, who with full knowledge of the facts, acquiesces in a transaction and sleeps upon his rights.” *Danjaq LLC v. Sony Corp.* 263 F.3d 942, 950–51 (9th Cir.

2001) (internal quotation marks and citations omitted). Defendants provide no description of what rights Plaintiff was apparently aware, nor how—even in general terms—it “slept on them.” Thus, it is insufficiently pleaded. See, e.g. *McKinney-Drobnis v. Massage Envy 3 Franchising, LLC*, No. 16-CV-06450-MMC, 2017 WL 1246933 *7 (N.D. Cal. Apr. 5, 4 2017); cf. *Roe*, 289 F.R.D. at 611–12 (striking a negligence affirmative defense because it “fail[ed] to give Plaintiff any indication regarding the conduct supporting the defense.”).

The Court therefore GRANTS Plaintiff’s motion and STRIKES the twelfth affirmative defense. Estoppel/Ratification/Waiver/Consent/Assumption of Risk – “Plaintiff’s claims are barred, in whole or in part, by the doctrines of estoppel, ratification, waiver, consent, and/or assumption of the risk.” Ans. at 40.

Here, Defendants name a series of potential affirmative defenses while providing no facts in support of any, leaving each insufficiently pleaded. See, e.g., *Vertical Bridge Dev., LLC v. Brawley City Council*, No. 14 21-CV-02153 AJB AHG, 2022 WL 2318690 *4 (S.D. Cal. June 28, 2022). It is unclear as to whether they even assert this as single doctrine under many names, as several defenses based on the same alleged acts, or something else.

Accordingly, the Court GRANTS Plaintiff’s motion and STRIKES the thirteenth affirmative defense. Unjust Enrichment – “Plaintiff’s claims are barred, in whole or in part, because any recovery would result in unjust enrichment to Plaintiff.” Ans. at 40. This allegation features the same deficiency as those above—Defendants provide no explanation as to how Plaintiff would be unjustly enriched, or any facts beyond a boilerplate assertion that the doctrine applies.

This renders it inadequately pleaded. See 24 *Legacy v. Wells Fargo Bank*, No. 3:16-CV-0462-GPC-BLM, 2016 WL 2622953 *4 (S.D. 25 Cal. May 9, 2016) (collecting cases). Thus, the Court GRANTS Plaintiff's motion and 26 STRIKES the fourteenth affirmative defense. 27 28 1 17. Unclean Hands – "Plaintiff's claims are barred, in whole or in part, by the 2 doctrine of unclean hands." Ans. at 40.

As a general matter, the unclean hands "doctrine 3 bars relief to a plaintiff who has violated conscience, good faith or other equitable 4 principles in his prior conduct, as well as to a plaintiff who has dirtied his hands in 5 acquiring the right presently asserted." *Dollar Sys., Inc. v. Avcara Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir. 1989). Defendants make no factual allegations as to how Plaintiff 7 engaged in any of those acts or behaviors.

The Court therefore GRANTS Plaintiff's 8 motion and STRIKES the seventeenth affirmative defense. 9 10 22. Bad Faith – "Plaintiff's claims are barred, in whole or in part, to the extent that 11 Plaintiff has acted in bad faith." Ans. at 41. Defendants allege that Plaintiff acted in bad 12 faith but providing no facts to demonstrate when, where, or how.

As with the other 13 affirmative defenses struck here, the Court must therefore GRANT Plaintiff's motion and 14 STRIKE the twenty-second affirmative defense. 15 16 B. Legally insufficient 17 Next, Plaintiff argues that Defendants' first, third through fifth, eighth through 18 eleventh, fifteenth, sixteenth, twentieth, twenty-first, and twenty-third through twenty- 19 fifth affirmative defenses are not, in truth, affirmative defenses.

Doc. No. 27 at 10–14. 20 Defendants argue that moving to strike these affirmative defenses is a "waste of the 21 Court's and Defendants' time" and that they pleaded these affirmative defenses "to 22 ensure Plaintiff was on notice of Defendants' position and to preserve Defendants' ability 23 to raise these defenses throughout the case and at trial." Doc. No. 29 at 7.

24 An "avoidance or affirmative defense" under Rule 8(c) is an allegation that either 25 "admit[s] the allegations of the complaint but suggest some other reason why there is no 26 right of recovery..." or "concern[s] allegations outside of the plaintiff's prima facie case 27 that the defendant therefore cannot raise by a simple denial in the answer." *Puccio*, 2018 28 WL 1449399 at *9 (internal citations and quotation marks omitted).

Where a stated 1 affirmative defense is merely "an assertion that Plaintiff has not proved essential 2 elements of [their] claim," it is more properly a factual denial—a negative defense—and 3 is "redundant and unnecessary" when a defendant already denies the relevant facts in its 4 answer. *Roe*, 289 F.R.D. at 610; *McKinney-Drobnis*, 2017 WL 1246933 at *7; see *DC 5 Labs*, 2013 WL 402636 at *4.4 An affirmative defense may also be legally insufficient 6 where it is based on a theory not recognized by law.

The Court thus turns to the 7 individual defenses. 8 9 1. Failure to State Sufficient Facts – “The [a]mended [c]omplaint, and each and 10 every cause of action therein, fails to set forth facts sufficient to constitute a cause of 11 action upon which relief may be granted....” Ans. at 38. This is not an affirmative 12 defense, but instead duplicative of Defendants’ factual denials.

See Puccio, 2018 WL 13 1449399 at *9. Further, it duplicates Defendants’ motion to dismiss, upon which the 14 Court already ruled. Doc. No. 22. Defendants may argue factual insufficiency at 15 summary judgment or trial.

Thus, the Court GRANTS Plaintiff’s motion and STRIKES 16 the first affirmative defense. 17 18 3. Failure to State a Claim Upon Which Relief Can Be Granted – “The 19 [a]mended [c]omplaint, and each and every cause of action therein, fails to state a claim 20 upon which relief may be granted....” Ans. at 38. This affirmative defense is 21 effectively the same as the first, and not proper.

See Pac. Digital Grp., 2021 WL 22 5768124 at *4. Additionally, it is wholly repetitive of Defendants’ motion to dismiss, on 23 which the Court previously ruled. See Doc. No. 22. Defendants may argue legal 24 25 4 California Courts approach the issue similarly.

Under state law “[a]n affirmative defense is ‘new 26 matter constituting a defense’ and is defined as ‘[a] defendant’s assertion of facts and arguments that, if true, will defeat the plaintiff’s or prosecution’s claim, even if all the allegations in the complaint are 27 true.’” Morris Cerullo World Evangelism v. Newport Harbor Offs. & Marina, LLC, 283 Cal. Rptr.

3d 164, 169 (Cal. Ct. App. 2021) (quoting Cal. Code Civ. Proc § 431.30(b)(2) and Black’s Law Dictionary 28 1 insufficiency at summary judgment or trial. Accordingly, the Court GRANTS Plaintiff’s 2 motion and STRIKES the third affirmative defense. 3 4 4. No Damages – “Plaintiff has suffered no damage by any acts, events, or 5 occurrences alleged in the [a]mended [c]omplaint....” Ans. at 38.

This is not an 6 affirmative defense and attacks only the sufficiency of Plaintiff’s claims. See DC Labs 7 Inc., 2013 WL 4026366 at *8 (“This defense is simply an attack on the causation element 8... and is not a proper affirmative defense.”); Roe, 289 F.R.D. at 610.

The Court 9 therefore GRANTS Plaintiff’s motion and STRIKES the fourth affirmative defense. 10 11 5. Speculative Damages – “Plaintiff’s claims are barred... because any damages 12... are too remote or speculative to allow recovery, and it is impossible to ascertain and 13 allocate such alleged damages with reasonable certainty.” Ans. at 38. An assertion that 14 damages are speculative is, in effect, an identical argument to one that there are no 15 damages, as it only attacks the pleadings’ factual or legal sufficiency.

See Pac. Digital 16 Grp., 2021 WL 5768124 at *4; McKinney-Drobnis, 2017 WL 1246933 at *7. Thus, the Court GRANTS Plaintiff's motion and STRIKES the fifth affirmative defense. 18 19 8. Improper Claim for Relief – "Defendants allege that Plaintiff is not entitled to 20 some or all of the relief sought in its [a]mended [c]omplaint." Ans. at 39. This defense is 21 an alternative recitation as the prior two defenses, and attacks only the complaint's 22 sufficiency.

See Pac. Digital Grp., 2021 WL 5768124 at *5. Accordingly, the Court 23 GRANTS Plaintiff's motion and STRIKES the eighth affirmative defense. 24 25 9. Lack of Standing – "Plaintiff lacks standing to sue because it has not suffered 26 any concrete harm as a result of Defendants' conduct." Ans. at 39. Like Defendants' 27 "failure to state a claim" defense(s), this attacks complaint's sufficiency and is not an 28 affirmative defense.

See Pac. Digital Grp., 2021 WL 5768124 at *5; McKinney-Drobnis, 1 2017 WL 1246933 at *7. Thus, the Court GRANTS Plaintiff's motion and STRIKES 2 the ninth affirmative defense. 3 4 10. Apportionment – "Plaintiff has failed to meet its burden inasmuch as any 5 alleged liability, which Defendants deny exists, is subject to apportionment of fault, and 6 Defendants are not liable for any fault which may be apportioned or attributed to other 7 persons or entities." Ans. at 39.

Read in the light most favorable to Defendants, this 8 appears to allege the possibility of other liable parties not named. Courts often treat such 9 allegations as "akin to an affirmative defense." *Mueller v. Dep't of Pub. Safety*, 570 F. 10 Supp. 3d 904, 911 (D. Haw. 2021). Arguably, it relies on facts not stated in the 11 complaint and could constitute an affirmative defense, and the thus Court DENIES 12 Defendants' motion as to the tenth affirmative defense.

13 14 11. No Cause of Action – "Plaintiff is not entitled to the relief sought in its 15 [f]ourth [c]laim for [r]elief for '[u]njust [e]nrichment' because unjust enrichment is not a 16 claim upon which relief can be granted under California law." Ans. at 39. This defense 17 is identical to Defendants' "failure to state a claim" defenses and duplicative of 18 arguments made in its motion to dismiss, which the Court resolved.

Doc. No. 22 at 16– 19 17. The Court therefore GRANTS Plaintiff's motion and STRIKES the eleventh 20 affirmative defense. 21 22 15. Statute of Frauds – "Plaintiff's claims are barred... by the [S]tatute of 23 [F]rauds." Ans. at 40.

The Statute of Frauds is a traditional affirmative defense in 24 contract breach claims. *Crystal Springs Upland Sch. v. Fieldturf USA, Inc.*, 219 F. Supp. 25 3d 962, 967 (N.D. Cal. 2016). However, the Court dismissed Plaintiff's contract-based 26 claims, to which this affirmative defense would apply. Doc. No. 22 at 8–14.

Thus, it is 27 no longer material. The Court therefore GRANTS Plaintiff's motion and STRIKES the 28 fifteenth affirmative defense. 1 16. No Entitlement to Interest, Attorneys' Fees, or Costs –

“Plaintiff is not 2 entitled to interest, attorney’s fees, or costs in connection with this action.” Ans. at 40. 3 This is not an affirmative defense as it does not bear on liability.

See DC Labs, Inc. 2013 4 WL 4026366 at *6; Pac. Digital Grp., 2021 WL 5768124 at *5; see also McKinney- 5 Drobnis, 2017 WL 1246933 at *7. Accordingly, the Court GRANTS Plaintiff’s motion 6 to strike and STRIKES the sixteenth affirmative defense. 7 8 20. Lack of Injury-in-Fact – “Plaintiff’s claims are barred... because it has 9 sustained no injury in fact by any act or omission of Defendants.” Ans. at 41.

This 10 merely asserts that Plaintiff fails to plead an element of its claim and is not an affirmative 11 defense. See Pac. Digital Grp., 2021 WL 5768124 at *5. The Court therefore GRANTS 12 Plaintiff’s and STRIKES the twentieth affirmative defense. 13 14 21. Lack of Causation – “Plaintiff’s claims are barred... because of a lack of 15 causation, including, without limitation, because any injuries or damages that may have 16 been suffered were not caused solely or proximately by any act or omission of 17 Defendants.” Ans. at 41.

This asserts that Plaintiff fails to plead an element of its claim 18 and is not an affirmative defense. Pac. Digital Grp., 2021 WL 5768124 at *5; Puccio, 19 2018 WL 1449399 at *10. Accordingly, the Court GRANTS Plaintiff’s motion and 20 STRIKES the twenty-first affirmative defense. 21 22 23–25. Lack of Clear and Unambiguous Promise; Lack of Detrimental 23 Reliance; and Lack of Reasonable Reliance – Defendants, through these affirmative 24 defenses, allege, respectively, that: (1) “Plaintiff’s [f]ourth [c]laim for promissory 25 estoppel is barred, in whole or in part, because Defendants did not make any promise to 26 Plaintiff and/or there was no clear and unambiguous promise that Plaintiff seeks to 27 enforce”; (2) “Plaintiff’s [f]ourth [c]laim for promissory estoppel is barred, in whole or in 28 part, for lack of detrimental reliance”; and (3) “Plaintiff’s [f]ourth [c]laim for promissory 1 estoppel is barred, in whole or in part, for lack of reasonable reliance.” Ans. at 41.

Each 2 attacks only Plaintiff’s pleadings as to an element of promissory estoppel. (Elkay Int’l 3 Ltd. v. Color Image Apparel, Inc., No. CV1408028MMMVBKX, 2015 WL 13917734 *7 4 (C.D. Cal. Feb. 4, 2015) (“Under California law, the elements of a claim for promissory 5 estoppel are: (1) a promise clear and unambiguous in its terms; (2) reliance by the party 6 to whom the promise is made; (3) [that reliance is] both reasonable and foreseeable; and 7 (4) the party asserting the estoppel must be injured by his reliance.”) (quoting B & O 8 Mfg., Inc. v. Home Depot U.S.A., Inc., No. C 07-02864 JSW, 2007 WL 3232276, *6 9 (N.D.

Cal. Nov. 1, 2007) (internal quotation marks omitted)). Thus, it is not an 10 affirmative defense. The Court therefore GRANTS Plaintiff’s motion to strike and 11 STRIKES the twenty-third, twenty-fourth, and twenty-fifth affirmative defenses. 12 13 C. Reservation of Rights 14 Finally, Plaintiff moves to strike Defendants’ “Reservation of Additional 15 Affirmative Defenses,” which

states that Defendants “preserve and assert all affirmative 16 defenses available under any applicable law.” Doc.

No. 27 at 14 n.3; Ans. at 42. 17 Numerous courts have stricken similar language as immaterial or duplicative to Federal 18 Rule of Civil Procedure 15, which “already preserves the right to amend pleadings in 19 federal court.” Puccio, 2018 WL 1449399 at *9; see J & J Sports Prods., Inc., 2013 WL 20 2083123 at *6; Legacy, 2016 WL 2622953 at *5. This Court agrees, GRANTS 21 Plaintiff’s motion on this basis, and STRIKES this section of Defendants’ answer.

22 23 24 25 26 27 28 IV. CONCLUSION 2 For these reasons, the Court GRANTS IN PART and DENIES IN PART 3 || Plaintiff's motion to strike. All material is stricken is without prejudice, and with leave 4 ||to amend. Accordingly, Defendants must file the first amended answer within seven (7) 5 || days of this order. 6 IT IS SO ORDERED. 7 Dated: May 28, 2025 Miki La- hipblr 8 HON. MICHAEL M. ANELLO 9 United States District Judge 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28