

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Millard Wayne Baker, Jr. v. R. Shahbazian

Baker v. Shahbazian · No. 1:24-CV-01279-HBK · Decided November 19, 2025

SUMMARY

The United States District Court for the Eastern District of California partially granted and partially denied Plaintiff Millard Wayne Baker Jr.’s motion to strike Defendant R. Shahbazian’s affirmative defenses under Federal Rule of Civil Procedure 12(f). The court allowed qualified immunity, failure to exhaust, and Eleventh Amendment immunity defenses to remain, while striking contributory damages, failure to mitigate, punitive damages, and res judicata/collateral estoppel defenses, with leave to amend most of the stricken defenses.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 19, 2025
DOCKET	1:24-CV-01279-HBK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(f) to strike all seven affirmative defenses in Defendant's answer to the First Amended Complaint.
STANDARD OF REVIEW	Under Rule 12(f), the court may strike an insufficient, redundant, immaterial, impertinent, or scandalous matter. An affirmative defense is insufficient as a matter of law when it lacks merit under any set of facts the defendant might allege, and insufficient as a matter of pleading when it fails to provide fair notice of the nature and grounds of the defense.
PRECEDENTIAL VALUE	unpublished district court order; persuasive only
PARTIES	Millard Wayne Baker, Jr. v. R. Shahbazian

TOPICS

affirmative defenses

pleadings

civil procedure

qualified immunity

eleventh amendment immunity

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether Defendant's seven asserted defenses were legally or pleading-wise insufficient under Federal Rule of Civil Procedure 12(f).
2. Whether qualified immunity, failure to exhaust administrative remedies, and Eleventh Amendment immunity were sufficiently pleaded to survive a motion to strike.
3. Whether contributory damages, failure to mitigate, punitive-damages limitations, and res judicata or collateral estoppel required additional factual allegations to provide fair notice.
4. Whether Defendant should receive leave to amend the defenses that were stricken.

HOLDINGS

1. Qualified immunity is an affirmative defense that does not require additional factual allegations to be sufficiently pleaded when the assertion gives the plaintiff fair notice of the defense.
2. A bare assertion of negligence or contributory fault, without any indication of the conduct supporting the defense, does not provide fair notice even under the liberal pleading standard for affirmative defenses.
3. Although failure to mitigate is a proper affirmative defense and generally requires little factual detail, the defense must provide some factual basis indicating how the plaintiff allegedly failed to mitigate damages.
4. A denial that the plaintiff can prove punitive damages is not an affirmative defense; it attacks the plaintiff's prima facie case and is therefore insufficient as an affirmative defense.
5. Failure to exhaust administrative remedies is a proper affirmative defense, and the defendant's burden to prove exhaustion failure is not a basis for striking the defense at the pleading stage.
6. Eleventh Amendment immunity is an appropriate affirmative defense where the defendant asserts immunity from damages for official-capacity claims, and the defense should not be stricken where its applicability presents a factual question.
7. Res judicata and collateral estoppel defenses must provide at least some basic factual information establishing their grounds; a conditional, conclusory reference to prior litigation does not provide fair notice.
8. Absent prejudice, leave to amend should generally be freely given to cure pleading deficiencies in stricken affirmative defenses.

KEY QUOTATIONS

“An affirmative defense is an assertion of facts that if proven would defeat or reduce the stated claim.” (1)

“Fair notice . . . requires that the defendant state the nature and grounds for the affirmative defense.” (1)

“Generally, where a court strikes an affirmative defense, leave to amend should be given to attempt to cure the deficiency so long as there is no prejudice.” (5)

FACTUAL BACKGROUND

Plaintiff, a prisoner asserting civil-rights claims, alleged that Defendant Shahbazian suddenly stopped Plaintiff's Effexor prescription. Defendant's answer asserted qualified immunity, contributory damages, failure to mitigate, punitive-damages limitations, failure to exhaust administrative remedies, Eleventh Amendment immunity, and res judicata or collateral estoppel. The court evaluated whether each defense supplied fair notice and constituted a proper affirmative defense.

PROCEDURAL HISTORY

The motion to strike was filed on October 1, 2025, followed by Defendant's opposition and Plaintiff's reply. The court granted the motion as to affirmative defenses 2, 3, 4, and 7, denied it as to defenses 1, 5, and 6, and granted leave to amend defenses 2, 3, and 7 within twenty-one days; defense 4 was stricken without leave to amend.

DISPOSITION

other

CASES CITED

- Jones v. Bock, 549 U.S. 199, 212 (2007)
- Zivkovic v. So. Cal. Edison Co., 302 F.3d 1080, 1088 (9th Cir. 2002)
- Petrie v. Elec. Game Card, Inc., 761 F.3d 959, 966-67 (9th Cir. 2014)
- Gomez v. J. Jacobo Farm Labor Contr., Inc., 188 F. Supp. 3d 986, 991-993 (E.D. Cal. 2016)
- Wyshak v. City Nat'l Bank, 607 F.2d 824, 826-827 (9th Cir. 1979)
- Kohler v. Flava Enters., Inc., 779 F.3d 1016, 1019 (9th Cir. 2015)
- United States v. Gibson Wine Co., 2016 WL 1626988 (E.D. Cal. Apr. 25, 2016)
- Crawford-El v. Britton, 523 U.S. 574, 587 (1998)
- L.F. v. City of Stockton, 2018 WL 3817558, at *19 (E.D. Cal. Aug. 9, 2018)
- Atkins v. Pickard, 298 F. App'x 512, 513 (7th Cir. 2008)
- Devermont v. City of San Diego, 2013 WL 2898342, at *16-*17 (S.D. Cal. June 12, 2013)
- J&J Sports Prods., Inc. v. Delgado, 2011 WL 219594, at *2 (E.D. Cal. Jan. 19, 2011)
- DeSalvo v. Islands Rest., L.P., 2020 WL 4035071, at *15 (C.D. Cal. July 16, 2020)
- Dodson v. CSK Auto, Inc., 2013 WL 3942002, at *2 (E.D. Cal. July 30, 2013)
- Kohler v. Staples the Office Superstore, LLC, 291 F.R.D. 464, 469 (S.D. Cal. 2013)
- Kaur v. City of Lodi, 2016 WL 627308, at *5 (E.D. Cal. Feb. 17, 2016)
- Guirgois v. U.S. Bank, N.A., 2021 WL 779111, at *9 (W.D. Wash. Mar. 1, 2021)
- Roe v. City of San Diego, 289 F.R.D. 604, 610-612 (S.D. Cal. 2013)
- Weddle v. Bayer AG Corp., 2012 WL 1019824, at *5 (S.D. Cal. Mar. 26, 2012)

- Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014)
- Romano v. Bible, 169 F.3d 1182, 1185 (9th Cir. 1999)
- Krainski v. Nevada ex rel. Bd. of Regents of Nev. Sys. of Higher Educ., 616 F.3d 963, 967 (9th Cir. 2010)
- SEC v. Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995)
- G & G Closed Circuit Events, LLC v. Nguyen, 2010 WL 3749284, at *2 (N.D. Cal. Sept. 23, 2010)

OPINION

Shahbazian

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 MILLARD WAYNE BAKER, JR., Case No. 1:24-CV-01279-HBK

12 Plaintiff, ORDER GRANTING IN PART AND

DENYING IN PART PLAINTIFF’S MOTION

13 v. TO STRIKE DEFENDANT’S AFFIRMATIVE

DEFENSES IN DEFENDANT’S ANSWER¹

14 R. SHAHBAZIAN,

(Doc. No. 31) 15 Defendant. 16 17 Pending before the Court is Plaintiff’s Motion to Strike Affirmative Defenses In 18 Defendant’s Answer filed on October 1, 2025. (Doc. No. 31, “Motion”). Plaintiff files the 19 Motion pursuant to Rule 12(f) of the Federal Rules of Civil Procedure and seeks to strike all of 20 Defendant’s affirmative defenses raised in his Answer to Plaintiff’s First Amended Complaint. 21 (See *id.*). On October 22, 2025, Defendant filed an Opposition to Plaintiff’s Motion. (Doc. No. 22 33, “Opposition”). Plaintiff filed a Reply to Defendant’s Opposition on November 12, 2025. 23 (Doc. No. 34, “Reply”). For the reasons set forth below, the Court denies Plaintiff’s Motion as to 24 Defendant’s Affirmative Defense Nos. 1, 5, 6, but grants Plaintiff’s Motion as to Defendant’s 25 Affirmative Defense Nos. 2, 3, 4, and 7, with leave to amend his Answer to Plaintiff’s First 26 Amended Complaint to cure any pleading deficiency identified by the Court. 27 1 Both parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c)(1). (Doc.

28 No. 25).

1 I. LEGAL STANDARD

2 Federal Rule of Civil Procedure 8(c) requires the responding party to “affirmatively state 3 any avoidance or affirmative defense” and then provides a nonexhaustive list of affirmative 4 defenses that may be pled in response to vitiate the plaintiff’s claim. Fed. R. Civ. P. 8(c)(1); 5 *Jones v. Bock*, 549 U.S. 199, 212 (2007) (finding list “nonexhaustive”). An affirmative defense is 6 an assertion of facts that if proven would defeat or reduce the stated claim. Thus, allegations that 7 merely

claim the plaintiff cannot meet its burden of proof or merely reserves the right to identify 8 future defenses is not a proper affirmative defense. See *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 9 1080, 1088 (9th Cir. 2002). 10 Under Federal Rule of Civil Procedure 12(f), courts “may strike from a pleading an 11 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” *Petrie v. 12 Elec. Game Card, Inc.*, 761 F.3d 959, 966-67 (9th Cir. 2014) (internal quotations omitted). As a 13 rule, an affirmative defense may be deemed insufficient either as a matter of law or as a matter of 14 pleading. *Gomez v. J. Jacobo Farm Labor Contr., Inc.*, 188 F. Supp.3d 986, 991 (E.D. Cal. 15 2016). A legally insufficient affirmative defense “lacks merit under any set of facts the defendant 16 might allege.” *Id.* The Ninth Circuit has long held that an affirmative defense is insufficient as a 17 matter of pleading if it fails to give the plaintiff “fair notice of the defense.” *Wyshak v. City Nat’l 18 Bank*, 607 F.2d 824, 827 (9th Cir. 1979); *Gomez*, 188 F.Supp.3d at 991. “[T]he fair notice’ 19 required by the pleading standards only requires describing [an affirmative] defense in ‘general 20 terms.’” *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015); *Gomez*, 188 21 F.Supp.3d at 991. “Fair notice . . . requires that the defendant state the nature and grounds for the 22 affirmative defense.” *Gomez*, 188 F.Supp.3d at 992; *United States v. Gibson Wine Co.*, 2016 WL 23 1626988 (E.D. Cal. Apr. 25, 2016). Although the fair notice bar is “low” and does not require 24 “great detail” it does require “some factual basis for its affirmative defenses.” *Gomez*, 188 25 F.Supp.3d at 992; *Gibson Wine*, 2016 WL 1626988 at *13. Thus, bare references to doctrines or 26 statutes are unacceptable because they “do not afford fair notice of the nature of the defense 27 pleaded.” *Gomez*, 188 F.Supp.3d at 992; *Gibson Wine*, 2016 WL 1626988at *14. If an 28 affirmative defense is stricken, in the absence of prejudice, “leave to amend should be freely 1 given.” *Wyshak v. City Nat’l Bank*, 607 F.2d 824, 826 (9th Cir.1979).

2 II. ANALYSIS

3 The Court addresses each affirmative defense challenged in Plaintiff’s Motion, and 4 addressed in Defendant’s Opposition and Plaintiff’s Reply, in seriatim. 5 A. Affirmative Defense No. 1: Qualified Immunity 6 As his first affirmative defense, Defendant asserts that because he did not deprive Plaintiff 7 “of any rights, privileges, or immunities guaranteed by the laws of the United States or by the 8 laws of the State of California” and because Defendant acted with a “good-faith belief that his 9 actions comported with all applicable federal and state laws” he is entitled to qualified immunity. 10 (Doc. No. 30 at 6). Plaintiff argues that this defense is a legal conclusion, devoid of facts, and 11 fails to allege “new matter.” (Doc. No. 31 at 1-2). Plaintiff further argues since Defendant is 12 being sued in his official and individual capacity, he “does not qualify for any immunities.” (*Id.* 13 at 2). In his Opposition Defendant contends that the affirmative defense provides fair notice and 14 is an appropriate affirmative defense. (Doc. No. 33 at 4-5). In his Reply, Plaintiff argues 15 Defendant violated Plaintiff’s constitutional rights and he does not “qualify for immunities.” 16 (Doc. No. 34 at 2:18-22). 17 It is well established that qualified immunity is an affirmative defense, and one that does 18 not require additional facts to be

sufficiently plead. *Crawford-El v. Britton*, 523 U.S. 574, 587 19 (1998); *L.F. v. City of Stockton*, 2018 WL 3817558, at *19 (E.D. Cal. Aug. 9, 2018) (stating that 20 “qualified immunity is sufficiently pleaded without additional factual bases.”). Plaintiff does not 21 dispute that he received fair notice of this affirmative defense, which is sufficient to survive a 22 motion to strike. (See Docs. No. 31, 34). Indeed, the assertion of this affirmative defense puts 23 Plaintiff on notice that Defendant intends to argue that his alleged wrongful conduct constituted 24 an exercise of discretion and was carried out in good faith. Further, this Court finds that a motion 25 to strike “is not a good fit for resolving issues like [q]ualified [i]mmunity which often turn on 26 facts yet to be developed.” *Atkins v. Pickard*, 298 F. App'x 512, 513 (7th Cir. 2008). Thus, the 27 Court denies Plaintiff’s Motion to strike Defendant’s Affirmative Defense No. 1. 28 //// 1 B. Affirmative Defense No. 2: Contributory Damages 2 As to his second affirmative defense, Defendant asserts that any injuries Plaintiff suffered 3 were a result of his own negligence, or unlawful or deliberate actions, thus precluding Plaintiff 4 from recovering from such injuries. (Doc. No. 30 at 6). Plaintiff argues that this defense is a 5 legal conclusion and lacks factual support. (Doc. No. 31 at 2). In his Opposition Defendant 6 states that this affirmative defense provided Plaintiff with fair notice. (Doc. No. 33 at 5:9-12). In 7 Reply, Plaintiff claims Defendant misquoted him in his Opposition. (Doc. No. 34 at 2:7-10). 8 Contributory negligence is an affirmative defense listed in Rule 8(c)(1). However, “[a] 9 bare assertion of negligence or contributory fault without ‘any indication of the conduct 10 supporting the defense’ does not pass muster, even under the fair notice standard.” *Devermont v. 11 City of San Diego*, 2013 WL 2898342, at *16-17 (S.D. Cal. June 12, 2013) (unpublished) 12 (quoting *Roe v. City of San Diego*, 289 F.R.D. 604, 611-12 (S.D. Cal. 2013)). This is particularly 13 true given that, in this Court’s analysis, it is unclear how Plaintiff’s conduct contributed to the 14 harm he allegedly suffered when Defendant Shahbazian suddenly stopped Plaintiff’s Effexor 15 prescription. Accordingly, the Court will grant Plaintiff’s Motion and strike Defendant’s 16 Affirmative Defense No. 2 with leave to amend to provide some basis for Defendant’s claim that 17 Plaintiff’s conduct contributed to his injuries and damages. 18 C. Affirmative Defense No. 3: Failure to Mitigate 19 As to his third affirmative defense, Defendant asserts that “if Plaintiff suffered any 20 injuries or damages, Plaintiff failed to mitigate such injuries or damages, thereby precluding or 21 limiting recovery for such injuries or damages.” (Doc. No. 30 at 6). Plaintiff argues that this 22 defense attacks his prima facie case, is a legal conclusion, and lacks factual support. (Doc. No. 23 31 at 2). In his Opposition Defendant states that his affirmative defense provided Plaintiff with 24 fair notice. (Doc. No. 33 at 5:9-12). In his Reply Plaintiff states that Defendant misquoted him in 25 Defendant’s Opposition. (Doc. No. 34 at 2:7-10). 26 A failure to mitigate “generally arises when an injured party could have prevented the 27 continuation or enhancement of the injury.” *J&J Sports Prods., Inv. v. Delgado*, 2011 WL 28 219594, *2 (E.D. Cal. Jan. 19, 2011). Admittedly a failure to mitigate is an affirmative defense, 1 but here the affirmative defense is conclusory and devoid of factual support. (See Doc. No. 30 at 2 6). The Court recognizes that affirmative defenses need very little, if any, facts to support them. 3

Wyshak v. City Nat'l Bank, 607 F.2d 824, 827 (9th Cir. 1979). However, there are myriad ways 4 in which a plaintiff can fail to mitigate damages. Presumably Defendant is in possession of facts 5 that reasonably suggest a failure to mitigate. A brief description of that factual basis should be 6 included so that this defense is not "fact barren." Gomez, 188 F.Supp.2d at 992. Because the 7 affirmative defense does not give any inkling as to how Plaintiff failed to mitigate his damages, 8 fair notice is not provided. See DeSalvo v. Islands Rest., L.P., 2020 WL 4035071 *15 (C.D. Cal. 9 July 16, 2020) (striking a failure to mitigate affirmative defense because no factual basis of any 10 kind was pled); Dodson v. CSK Auto, Inc., 2013 WL 3942002, *2 (E.D. Cal. Jul. 30, 2013); 11 Kohler v. Staples the Officer Superstore, LLC, 291 F.R.D. 464, 469 (S.D. Cal. 2013); Kaur v. City 12 of Lodi, 2016 WL 627308 *5 (E.D. Cal. Feb 17, 2016) (ruling that defendants properly asserted 13 an affirmative defense for plaintiff's failure to mitigate damages because defendants explained in 14 their affirmative defense that plaintiff failed to mitigate emotional damages because she did not 15 seek counseling); cf. Guirgois v. U.S. Bank, N.A., 2021 WL 779111*9 (W.D. Was. Mar. 1, 2021) 16 (refusing to strike mitigation affirmative defense where the factual grounds for the defense, a 17 failure to accept a modification agreement, was identified); Gomez, 188 F.Supp.3d at 1003 18 (striking without prejudice an inapplicable mitigation defense but requiring any amendment to 19 explain the factual and legal basis for the mitigation defense). Because Affirmative Defense No. 20 3 is insufficiently plead, the Court will grant Plaintiff's Motion and strike it but grant Defendant 21 leave to amend id Answer to provide some basis to support the defense. 22 D. Affirmative Defense No. 4: Punitive Damages 23 As his fourth affirmative defense, Defendant asserts that Plaintiff has failed to "show any 24 evil motive on the part of Defendant, and therefore Defendant is not liable for compensatory, 25 punitive, exemplary, or any other damages." (Doc. No. 30 at 6). Plaintiff argues that this defense 26 attacks his prima facie case, lacks factual support, and is not "new matter." (Doc. No. 31 at 3). 27 In his Opposition, Defendant contends that "Plaintiff has failed to show that this defense cannot 28 succeed under any circumstance." (Doc. No. 33 at 6). Plaintiff does not address this defense in 1 his Reply. (See Doc. No. 34). 2 "[D]enial of [liability for] punitive damages is not an affirmative defense but rather is an 3 assertion that Plaintiff has not proved essential elements of [his] claim." Roe v. City of San 4 Diego, 289 F.R.D. 604, 610 (S.D. Cal. 2013); citing Zivkovic, 302 F.3d at 1088 ("A defense 5 which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense."); 6 Weddle v. Bayer AG Corp., 2012 WL 1019824, at *5 (S.D. Cal. Mar. 26, 2012). Because 7 Defendant's Answer denies Plaintiff's factual allegations and disclaims any liability for Plaintiff's 8 claims (see generally Doc. No. 30). Accordingly, the Court will grant Plaintiff's Motion and 9 strike without leave to amend Defendant's Affirmative Defense No. 4. 10 E. Affirmative Defense No. 5: Failure to Exhaust 11 As his fifth affirmative defense, Defendant asserts that "Plaintiff's claims are barred by 12 the Prison Litigation Reform Act based on his failure to exhaust his administrative remedies 13 within the prison system." (Doc. No. 30 at 6). Plaintiff argues that this defense is a legal 14 conclusion that prejudices Plaintiff's case and is devoid of factual support.

(Doc. No. 31 at 3). In 15 his Opposition Defendant argues Plaintiff has failed to allege how this defense prejudices him. 16 (Doc. No. 33 at 6:13-14). Plaintiff does not address this defense in his Reply. (See Doc. No. 34). 17 Failure to exhaust administrative remedies is a proper affirmative defense. *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014). While Defendant has the burden of demonstrating failure to 19 exhaust administrative remedies, that burden is not a basis to strike the affirmative defense. The 20 undersigned does not reasonably construe Plaintiff's argument as meaning that he does not have 21 fair notice of the failure to exhaust defense. Consequently, Plaintiff's Motion to strike 22 Defendant's Affirmative Defense No. 5 is denied. 23 F. Affirmative Defense No. 6: Eleventh Amendment Immunity 24 As his sixth affirmative defense, Defendant asserts that "[t]o the extent Plaintiff asserts 25 any official-capacity claims, Defendant is immune from suit for damages in his official capacity 26 pursuant to the Eleventh Amendment of the United States Constitution." (Doc. No. 30 at 7:13- 27 14). Plaintiff argues that Defendant's defense should be stricken because Defendant is being sued 28 in his individual and official capacity, and therefore "Defendant does not qualify for immunity of 1 any kind." (Doc. No. 31 at 3). In his Opposition Defendant argues that determining if Eleventh 2 Amendment Immunity applies is a question of fact, making it an appropriate affirmative defense. 3 (Doc. No. 33 at 7:14-17). Plaintiff does not address this defense in his Reply. (See Doc. No. 34). 4 "The Eleventh Amendment bars suits against the State or its agencies for all types of 5 relief, absent unequivocal consent by the state." *Romano v. Bible*, 169 F.3d 1182, 1185 (9th Cir. 6 1999). Ordinarily, this protection "extends to state instrumentalities and agencies," as well as 7 "state officials" sued in their "official capacity." *Krainski v. Nevada ex rel. Bd. of Regents of 8 Nev. Sys. of Higher Educ.*, 616 F.3d 963, 967 (9th Cir. 2010). Because the question of whether 9 Eleventh Amendment Immunity applies here is a question of fact, it is an appropriate affirmative 10 defense. *SEC v. Sands*, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995). For this reason, the Court 11 denies Plaintiff's motion to strike Defendant's Affirmative Defense No. 6. 12 G. Affirmative Defense No. 7: Res Judicata and Collateral Estoppel 13 As his seventh affirmative defense, Defendant asserts that "[t]o the extent Plaintiff has 14 previously litigated the issues and claims raised in his lawsuit, the claims and issues are barred by 15 the doctrines of res judicata and collateral estoppel." (Doc. No. 30 at 7:6-7). Plaintiff argues this 16 defense fails to state a claim, is devoid of factual support, and is a legal conclusion. (Doc. No. 31 17 at 4). Further Plaintiff asserts Defendant is lying under oath in asserting this affirmative defense 18 and that such defense prejudices Plaintiff. (Id. at 6-7). In opposition Defendant states that his 19 affirmative defense puts Plaintiff on fair notice and meets the Rule 8 pleading requirements. 20 (Doc. No. 33 at 7-8). In his Reply Plaintiff argues that Defendant failed to provide support for 21 this defense, and that Plaintiff has never previously litigated this claim. (Doc. No. 34 at 2-3). 22 While the fair notice bar is "low" and does not require "great detail" it does require "some 23 factual basis for its affirmative defense." *Gomez*, 188 F.Supp.3d at 992; see also *G & G Closed 24 Circuit Events, LLC v. Nguyen*, 2010 WL 3749284, at *2 (N.D. Cal. Sept. 23, 2010) (striking 25 affirmative defenses—such as unclean hands, res

judicata, collateral estoppel, and superseding 26 events—for failure to provide “basic information” necessary for fair notice to plaintiff). Because 27 Defendant fails to provide the basic information establishing the grounds for the affirmative 28 defense of collateral estoppel or res judicata, he does not provide fair notice to Plaintiff. 1 | Accordingly, the Court will grant Plaintiff's Motion and strike Defendant's Affirmative Defense 2 | No.7 with leave for Defendant to amend his Answer to provide some basis for this defense.

3 CONCLUSION

4 Generally, where a court strikes an affirmative defense, leave to amend should be given to 5 || attempt to cure the deficiency so long as there is no prejudice. Wyshak, 607 F.2d at 826; Gomez, 6 | 188 F.Supp.3d at 993. While Plaintiff argues Defendant should not be given leave to amend since 7 | Defendant has sufficient time to file his Answer, Plaintiff does not state how giving Defendant 8 || leave to amend would prejudice him. The Court independently cannot find prejudice given the 9 | procedural posture of this case and will therefore afford Defendant an opportunity to file an 10 | amended answer to attempt to cure the pleading insufficiencies discussed above if appropriate. 11 Accordingly, it is ORDERED: 12 1. Plaintiff's Motion to Strike Affirmative Defenses (Doc. No. 31) is GRANTED in part and 13 DENIED in part. 14 a. The Court GRANTS the Motion and strikes Defendant's Affirmative Defense No. 15 2 (contributory damages), No. 3 (failure to mitigate), No. 4 (punitive damages), 16 and No. 7 (res judicata and collateral estoppel); 17 b. The Court DENIES the Motion as Defendant's Affirmative Defense No. 1 18 (qualified immunity), No. 5 (failure to exhaust), and No. 6 (eleventh amendment 19 immunity). 20 2. Defendant's Affirmative Defense Nos. 2, 3, and 7 are STRICKEN without prejudice. 21 3. Within twenty-one (21) days of service of this Order, Defendant may file an amended 22 answer to cure the deficiencies cited herein, if appropriate. 23 24 Dated: _ November 18, 2025 law ZA. foareh Back 5 HELENA M. BARCH-KUCHTA

UNITED STATES MAGISTRATE JUDGE

27 28