

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Samuel Lewis, et al. v. Hilltop Group, L.P., et al.

Lewis · No. 25-cv-03398-HSG · Decided October 10, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
SAMUEL LEWIS, et al., Case No. 25-cv-03398-HSG 8 Plaintiffs, ORDER GRANTING IN
PART AND DENYING IN PART PLAINTIFFS’ 9 v. MOTION TO STRIKE 10 HILLTOP
GROUP, L.P., et al., Re: Dkt. No. 22 11 Defendants. 12 13 Pending before the Court is Plaintiffs’
motion to strike affirmative defenses.

Dkt. No. 22 14 (“Mot.”); Dkt. No. 23 (“Opp.”); Dkt. No. 24 (“Reply”). The Court finds this matter
appropriate 15 for disposition without oral argument, and the matter is deemed submitted. See
Civil L.R. 7-1(b). 16 For the reasons detailed below, the Court GRANTS IN PART and DENIES
IN PART the 17 motion to strike. 18 I. BACKGROUND 19 Plaintiffs Samuel Lewis and Patricia
Olison filed this class action complaint in April 2025, 20 alleging that Defendants have failed to
keep their senior community safe and refused to grant 21 reasonable accommodation requests.

See Dkt. No. 1 (“Compl.”) ¶¶ 1, 3. Plaintiffs bring claims 22 for violation of FEHA, the FHA,
California Government Code § 11135, the Disabled Persons Act, 23 and the Unruh Act, and for
breach of the warranty of habitability and negligence. See Compl. 24 ¶¶ 61–132. Defendants filed
an answer in May 2025. Dkt. No. 13. Plaintiffs now move to strike 25 Defendants’ affirmative
defenses.

See Dkt. No. 22. 26 II. MOTION TO STRIKE 27 Plaintiffs move to strike all seventeen of
Defendants’ affirmative defenses, arguing that 1 Plaintiffs additionally argue that Defendants’
first, thirteenth, and seventeenth defenses are not 2 affirmative defenses, and Defendants’
fourteenth and fifteenth affirmative defenses do not apply to 3 the claims pled. Id. at 11–12.

4 A. Legal Standard 5 Federal Rule of Civil Procedure 12(f) authorizes a court to “strike from a
pleading an 6 insufficient defense or any redundant, immaterial, impertinent, or scandalous
matter.” An 7 affirmative defense is insufficiently pleaded if it fails to give the opposing party
“fair notice” of 8 the nature of the defense. See *Wyshak v. City Nat. Bank*, 607 F.2d 824, 827 (9th
Cir.

1979). In 9 moving to strike, a party seeks “to avoid the expenditure of time and money that must
arise from 10 litigating spurious issues by dispensing with those issues prior to trial.” *Sidney–
Vinstein v. A.H. 11 Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). “Because motions to strike a

defense as 12 insufficient are disfavored, they will not be granted if the insufficiency of the defense is not clearly 13 apparent.” *G & G Closed Circuit Events, LLC v. Nguyen*, No. 10-CV-00168-LHK, 2010 WL 14 3749284, at *1 (N.D.

Cal. Sept. 23, 2010) (quotation omitted). In ruling on a motion to strike, a 15 “court[] may not resolve disputed and substantial factual or legal issue[s].” *Whittlestone, Inc. v. 16 Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quotation omitted); cf. *Colaprico v. Sun 17 Microsystems, Inc.*, 758 F. Supp. 1335, 1339 (N.D. Cal. 1991) (“[M]otions to strike should not be 18 granted unless it is clear that the matter to be stricken could have no possible bearing on the 19 subject matter of the litigation.”). “Ultimately, whether to grant a motion to strike lies within the 20 sound discretion of the district court.” *Kanaan v. Yaqub*, 709 F. Supp. 3d 864, 867 (N.D.

Cal. 21 2023) (quotation omitted).¹ 22 B. Discussion 23 a. Insufficiency of the Pleadings 24 Plaintiffs first argue that Defendants’ affirmative defenses are all “pled in boilerplate and 25 26 1 This Court remains among “the robust and growing ranks of district courts that have lamented the time and expense squandered on Rule 12(f) motions,” see *Inn S.F. Enter., Inc. v. Ninth Street 27 Lodging, LLC*, No. 3:16-CV-00599-JD, 2016 WL 8469189, at *1 (N.D.

Cal. Dec. 19, 2016), and 1 conclusory fashion without supporting factual allegations” and fail to satisfy the *Twombly* and 2 *Iqbal* pleading standard. Mot. at 10. Under Federal Rule of Civil Procedure 8(b)(1), a defendant’s 3 answer must “(A) state in short and plain terms its defenses to each claim asserted against it; and 4 (B) admit or deny the allegations asserted against it by an opposing party.” Fed.

R. Civ. P. 5 8(b)(1). Denials must also “fairly respond to the substance of the allegation.” Fed. R. Civ. P. 6 8(b)(2). The Ninth Circuit has not, however, definitively decided whether the standards 7 articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 8 662 (2009), also apply to affirmative defenses. This Court has previously concluded—like many 9 other courts in this district—that the *Twombly/Iqbal* standard should apply to affirmative defenses.

10 See, e.g., *Packlane, Inc. v. Best & Flanagan, LLP*, No. 23-CV-03496-HSG, 2023 WL 8458263, at 11 *4 (N.D. Cal. Nov. 20, 2023); accord *BGC, Inc. v. Bryant*, No. 22-CV-04801-JSC, 2023 WL 12 4138287, at *4 (N.D. Cal. June 21, 2023) (collecting cases). Other courts, however, have recently 13 held that the *Twombly/Iqbal* standard should not apply. See *Kanaan*, 709 F. Supp. 3d at 867–68 14 (declining to apply the heightened pleading standard and collecting cases); *Jensen v. Thomas*, No. 15 23-CV-01628-RFL, 2024 WL 5295012, at *2 (N.D.

Cal. Aug. 15, 2024). 16 On further reflection, this Court now is persuaded that the *Twombly/Iqbal* pleading 17 standard should not apply to affirmative defenses. As other courts have noted, Rule

8(a)(2) 18 requires a pleader to “show[]” that they are entitled to relief, while Rule 8(b)(1)(A) only requires 19 the responding party “state” its defenses. See Kanaan, 709 F. Supp. 3d at 868.

Additional 20 “practical reasons... militate against extending Twombly and Iqbal to affirmative defenses,” 21 including the fact that “defendants typically have a far more compressed timeline... to respond” 22 to a complaint and, “unlike a plaintiff who can usually freely amend her complaint if the Court 23 finds that she fails to state a claim, a defendant is required to raise all affirmative defenses in her 24 answer or otherwise risk waiving them.” Id. Thus, the Court adopts the view that an affirmative 25 defense must only give a plaintiff fair notice of the defense.

See Wyshak, 607 F.2d at 827. 26 Plaintiff argues that the Court should nevertheless strike Defendants’ affirmative defenses 27 under the “fair notice” standard. Reply at 2–4. But courts have held that general boilerplate 1 does not find these pleadings to be so clearly insufficient as to fail to give notice, and it declines to 2 exercise its discretion to strike these affirmative defenses absent any showing that doing so would 3 meaningfully streamline this litigation.

Cf. Miletak v. Nationwide Mut. Ins. Co., No. 5:25-CV- 4 03931-PCP, 2025 WL 1918738, at *5–*6 (N.D. Cal. July 11, 2025). The Court therefore 5 DENIES the motion to the extent it is based on Defendants’ purported failure to plead sufficient 6 facts. 7 b. Non-Affirmative Defenses 8 Plaintiffs also contend two of the defenses—“Failure to State a Cause of Action” and 9 “Reasonable Accommodation”—should be stricken because they are not in fact affirmative 10 defenses and simply attack Plaintiffs’ prima facie case.

See Mot. at 11. “A defense which 11 demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.” Zivkovic 12 v. S. Cal. Edison Co., 302 F.3d 1080, 1088 (9th Cir. 2002). Defendants do not dispute this fact. 13 See Opp. at 6–7.

The Court therefore strikes these defenses without leave to amend.² 14 Similarly, Plaintiffs urge that Defendants’ last defense, reserving the right to assert 15 additional affirmative defenses, is also not an affirmative defense. See Mot. at 11.

The Court 16 agrees that this reservation is not itself an affirmative defense and is stricken without leave to 17 amend. See, e.g., United States v. Ogden, No. 20-CV-01691-DMR, 2021 WL 858467, at *4–*5 18 (N.D. Cal. Mar. 8, 2021) (striking without leave to amend affirmative defense that “simply 19 reserves the right to assert unspecified defenses later” (quotation omitted)).

Nevertheless, the 20 Court notes that Defendants are still not precluded from asserting additional affirmative defenses 21 later. Id. 22 c. Irrelevant Defenses 23 Plaintiffs argue that Defendants’ defenses for “Business Necessity” and “Legal Necessity” 24 do not apply to the claims at issue. Defendants do not dispute this. See generally Opp. at 6–7. 25 The Court therefore strikes these defenses.

Defendants make no effort to explain how, if at all, 26 27 2 This is of “little practical significance” because Defendants can “challenge [Plaintiffs’]] they could amend these defenses to cure the deficiencies that Plaintiffs identified, so the Court 2 || strikes these defenses without leave to amend. 3 II. CONCLUSION 4 The Court therefore GRANTS IN PART and DENIES IN PART the motion to strike, 5 || Dkt.

No. 22. The Court STRIKES Defendants’ First Affirmative Defense (“Failure to State a 6 || Cause of Action”); Thirteenth Affirmative Defense (“Reasonable Accommodation”); Fourteenth 7 || Affirmative Defense (“Business Necessity”); Fifteenth Affirmative Defense (“Legal Necessity”); 8 and Seventeenth Affirmative Defense (“Additional Unknow Defenses/ Reservation of Rights”) 9 || without leave to amend.

The Court otherwise DENIES the motion in its entirety. 10 1] IT IS SO ORDERED. «3 12 || Dated: 10/10/2025 € 13 Alepwrol 8 Mbt |). 3 HAYWOOD S. GILLIAM, JR. 14 United States District Judge 16 17 Oo Z 18 19 20 21 22 23 24 25 26 27 28