

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kent M. Bryan v. Tahoe Regional Planning Agency, et al.

No. 2:25-cv-1937-CKD (PS) · No. No. 2:25-cv-1937-CKD (PS) · Decided December 9, 2025

SUMMARY

The United States District Court for the Eastern District of California denied plaintiff Kent M. Bryan’s motion to strike the defendants’ ten affirmative defenses in an action concerning the denial of a Lake Tahoe mooring-buoy permit. The court held that the motion improperly addressed the substantive merits of the defenses and that plaintiff had not shown legal insufficiency, lack of fair notice, or prejudice. The court also granted plaintiff’s motion to deem his reply brief timely filed.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 9, 2025
DOCKET	No. 2:25-cv-1937-CKD (PS)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(f) to strike all ten affirmative defenses pleaded in defendants' answer. He also initially sought partial summary judgment concerning the existence of the mooring buoy, but withdrew that portion of the motion. The court granted plaintiff's motion to deem his reply timely and denied the motion to strike.
STANDARD OF REVIEW	A Rule 12(f) motion to strike is disfavored. To establish that an affirmative defense is legally insufficient, the movant must show that there are no questions of fact, that any questions of law are clear and undisputed, and that under no set of circumstances could the defense succeed. Courts also generally require a showing of prejudice before striking an affirmative defense.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- affirmative defenses
- pleadings
- civil procedure
- administrative law
- environmental law

PRACTICE AREAS

civil procedure

administrative law

environmental law

QUESTIONS PRESENTED

1. Whether the defendants' ten pleaded affirmative defenses were legally insufficient under Federal Rule of Civil Procedure 12(f).
2. Whether the affirmative defenses should be stricken because plaintiff disputed their merits, asserted they were refuted by the pleadings or premature, or claimed that evidence would defeat them.
3. Whether plaintiff demonstrated prejudice or lack of fair notice sufficient to warrant striking any affirmative defense.

HOLDINGS

1. A motion to strike affirmative defenses is not the proper vehicle for deciding the substantive merits of those defenses, and affirmative defenses should not be stricken merely because they may ultimately fail.
2. Plaintiff failed to establish that any of the asserted affirmative defenses was legally insufficient because he did not show that the defense could not succeed under any circumstances.
3. The affirmative defenses would not be stricken because plaintiff had fair notice of them and did not show that inclusion of any defense prejudiced him.

KEY QUOTATIONS

“The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” (at 1)

“To show that a defense is “insufficient,” the moving party must demonstrate there are no questions of fact, that any questions of law are clear and not in dispute, and that under no set of circumstances could the defense succeed.” (at 1)

“A motion to strike is not the appropriate vehicle for arguing the substantive merits of an affirmative defense.” (at 2)

“Plaintiff does not show that any asserted affirmative defense cannot succeed under any circumstances, as required to establish legal insufficiency.” (at 2)

FACTUAL BACKGROUND

The action concerns the Tahoe Regional Planning Agency's denial of plaintiff's subsequent application for a permit to place a mooring buoy on Lake Tahoe. Defendants pleaded ten affirmative defenses, including failure to state a claim, res judicata, collateral estoppel, laches, mitigation of damages, speculative damages, immunity, no disparate treatment, no protectable property interest, and lack of standing. This was the second action between the parties concerning denial of a permit application for the same alleged buoy.

PROCEDURAL HISTORY

Plaintiff filed a first amended complaint on August 4, 2025, and defendants answered on September 3, 2025. Plaintiff moved to strike the affirmative defenses on September 16, 2025, and later withdrew his request for partial summary judgment. After briefing, the court accepted and considered plaintiff's untimely reply and denied the motion to strike.

DISPOSITION

other

CASES CITED

- Bryan v. Tahoe Reg'l Planning Agency, No. 2:21-cv-02340-TLN-AC (PS)
- Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983)
- Wyshak v. City Nat'l Bank, 607 F.2d 824, 826 (9th Cir. 1979)
- California Dep't of Toxic Substances Control v. Alco Pac., Inc., 217 F. Supp. 2d 1028, 1032-33 (C.D. Cal.)
- Zivkovic v. S. California Edison Co., 302 F.3d 1080, 1088 (9th Cir. 2002)
- G & G Closed Cir. Events LLC v. Almeda, No. CV-18-00672-PHX-ESW, 2018 WL 4539974, at *2 (D. Ariz. Sept. 21, 2018)
- Garcia v. Mickey Fine Enterprises, Inc., No. EDCV 21-1056 JGB (SHKx), 2022 WL 2168886, at *2 (C.D. Cal. Jan. 7, 2022)
- Xu v. City of Los Angeles, No. 2:23-cv-01575-FLA (SP), 2023 WL 8143542, at *2 (C.D. Cal. Oct. 18, 2023)

OPINION

Kent M. Bryan v. Tahoe Regional Planning Agency, et al.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 KENT M. BRYAN, No. 2:25-cv-1937-CKD (PS) 12 Plaintiff, 13 v. ORDER

14 TAHOE REGIONAL PLANNING

AGENCY, et al., 15 Defendants. 16 17 Plaintiff Kent Bryan proceeds pro se and seeks relief related to the denial of a permit 18 application for a mooring buoy on Lake Tahoe. Plaintiff moves to strike all affirmative defenses 19 in the operative answer filed by defendants Tahoe Regional Planning Agency (“TRPA”), Julie 20 Regan, and Graham St. Michel. The Court previously took the motion under submission pursuant 21 to Local Rule 230(g). For the reasons set forth below, the motion is denied. 22 I. Background 23 This action arises from TRPA’s denial of plaintiff’s subsequent permit application for a 24 mooring buoy.1 Plaintiff filed the operative first amended complaint (“FAC”) on August 4, 2025. 25 (ECF No. 5.) Defendants filed their answer to the FAC on September 3, 2025. (ECF No. 14.) 26 27 1 Plaintiff previously sued the TRPA regarding a permit denial for the same buoy, and the Court granted summary judgment to TRPA in that case.

See *Bryan v. Tahoe Reg'l Planning Agency*,
28 No. 2:21-cv-02340-TLN-AC (PS).

1 On September 16, 2025, plaintiff filed the motion presently before the court, seeking to 2 strike
defendants' affirmative defenses and seeking partial summary judgment on the existence of 3 the
buoy. (ECF No. 16.) Plaintiff later withdrew the portion of the motion requesting partial 4
summary judgment. (ECF No. 30.) Defendants opposed the motion to strike affirmative defenses 5
and plaintiff filed a reply. (ECF Nos. 17, 26.) Plaintiff also filed a motion to deem the reply brief 6
timely filed, which defendants opposed. (ECF Nos. 27, 29.) In this instance, the court will accept 7
and consider the untimely reply brief. 8 II. Applicable Legal Standards 9 The court may strike
from a pleading an insufficient defense or any redundant, immaterial, 10 impertinent, or
scandalous matter. Fed. R. Civ. P. 12(f). "[T]he function of a 12(f) motion to 11 strike is to avoid
the expenditure of time and money that must arise from litigating spurious issues 12 by dispensing
with those issues prior to trial." *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 13 885 (9th
Cir. 1983). 14 An affirmative defense must "give fair notice of the defense pled." *Wyshak v. City*
Nat'l Bank, 607 F.2d 824, 826 (9th Cir. 1979). To show that a defense is "insufficient," the
moving 16 party must demonstrate there are no questions of fact, that any questions of law are
clear and not 17 in dispute, and that under no set of circumstances could the defense succeed.
California Dep't of Toxic Substances Control v. Alco Pac., Inc., 217 F. Supp. 2d 1028, 1032
(C.D. Cal. 2002). 19 Motions to strike are generally regarded with disfavor and, accordingly, the
movant's burden is 20 substantial. See *id.* 21 A defense that points out a defect in a plaintiff's
prima facie case, or "merely negates an 22 element" is not an affirmative defense. *Zivkovic v. S.*
California Edison Co., 302 F.3d 1080, 1088 23 (9th Cir. 2002). However, because it is difficult to
find prejudice in the mislabeling of a matter as 24 an affirmative defense, courts are split on
whether such defenses should be stricken. Compare *G 25 & G Closed Cir. Events LLC v. Almeda*,
No. CV-18-00672-PHX-ESW, 2018 WL 4539974, at *2 26 (D. Ariz. Sept. 21, 2018) (agreeing
with *Wright & Miller* and sister district cases that denials 27 improperly pled as affirmative
defenses should not be stricken for that reason alone), with *Garcia 28 v. Mickey Fine Enterprises*,
Inc., No. EDCV 21-1056 JGB (SHKx), 2022 WL 2168886, at *2 1 (C.D. Cal. Jan. 7, 2022)
(striking failure to state a claim defense without leave to amend). Given 2 their disfavored status,
courts often require a showing of prejudice by the moving party before 3 granting the requested
relief. *California Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 4 F. Supp. 2d at 1033. 5
III. Discussion 6 Defendants' FAC pleaded the following 10 affirmative defenses: Failure to State
a Claim, 7 Res Judicata, Collateral Estoppel, Laches, Mitigation of Damages, Damages
Speculative, 8 Immunity, No Disparate Treatment, No Protectable Property Interest, and Lack of
Standing. (ECF

9 No. 14 at 14-17.) Plaintiff moves to strike all 10 affirmative defenses. Plaintiff argues the
10 affirmative defenses should be stricken as insufficient to overcome his claims, refuted by the 11
pleadings, not applicable, premature, and/or because material evidence will defeat them. (ECF

12 No. 16 at 3-8; ECF No. 26 at 6-11.) These arguments address the substantive merits of the
13 affirmative defenses and are misplaced. 14 A motion to strike is not the appropriate vehicle for
arguing the substantive merits of an 15 affirmative defense. See *Xu v. City of Los Angeles*, No.
2:23-cv-01575-FLA (SP), 2023 WL 16 8143542, at *2 (C.D. Cal. Oct. 18, 2023) (“[A] motion to
strike affirmative defenses is not to 17 decide the merits and courts do not strike affirmative
defenses simply because they will fail.”). 18 Plaintiff does not show that any asserted affirmative
defense cannot succeed under any 19 circumstances, as required to establish legal insufficiency.
See *California Dep’t of Toxic 20 Substances Control*, 217 F. Supp. 2d at 1032. 21 In addition,
plaintiff does not allege lack of fair notice or that any defense is inadequately 22 pleaded in a
manner that fails to give fair notice. This is the second action between the parties 23 regarding
denial of a permit application for the same alleged mooring buoy, and plaintiff’s 24 arguments
addressing the merits of the asserted affirmative defenses indicate he has fair notice. 25 Plaintiff
does not show or assert he is prejudiced by the inclusion of any of the affirmative 26 defenses.
Because plaintiff has not shown the inclusion of any affirmative defense would 27 prejudice him
and because an assessment of the sufficiency of the defenses is better left for 28 adjudication on
the merits, the motion to strike will be denied. See *California Dep’t of Toxic 1 } Substances
Control v. Alco Pac., Inc.*, 217 F. Supp. 2d at 1033. 2 IV. Conclusion and Order 3 In accordance
with the above, IT IS ORDERED as follows: 4 1. Plaintiff’s motion to deem the reply brief timely
filed (ECF No. 27) is GRANTED. 5 2. Plaintiffs motion to strike affirmative defenses (ECF No.
16) is DENIED. 6 || Dated: December 9, 2025 Cad Kt | (£4 (g—

8 UNITED STATES MAGISTRATE JUDGE

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