

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)