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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Chadron Garrison, et al.,

10 Plaintiffs,

11 v.

12 Foster Poultry Farms Incorporated,

13 Defendant.  
14

No. CV-16-00280-PHX-DLR

**ORDER**

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16 Before the Court is Plaintiffs Chadron and Pamela Garrison's Motion to Strike  
17 Affirmative Defenses One, Seven and Eight. (Doc. 26.) The motion is fully briefed.<sup>1</sup>  
18 For the reasons stated below, the motion is granted in part.

19 **BACKGROUND**

20 On January 29, 2016, Plaintiffs brought suit against Defendant Foster Poultry  
21 Farms Inc. alleging that their minor child, B.G., became seriously ill after ingesting  
22 chicken contaminated with Salmonella traceable to Defendant's operation. (Doc. 1.) In  
23 April 2016, Defendant answered the complaint and pled eight affirmative defenses.  
24 (Doc. 23 at 13-15.) Plaintiffs now move to strike three of Defendant's affirmative  
25 defenses: (1) defense one—failure to state a claim, (2) defense seven—spoliation, and  
26 (3) defense eight—preemption. (Doc. 26.)

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28 <sup>1</sup> Plaintiffs' request for oral argument is denied. The issues are fully briefed, and the Court finds oral argument will not aid in the resolution of this matter. *See* Fed. R. Civ. P. 78(b); LRCiv. 7.2(f).

1 **LEGAL STANDARD**

2 Rule 12(f) authorizes the court to “strike from a pleading an insufficient defense or  
3 any redundant, immaterial, impertinent, or scandalous matter.” The purpose of a motion  
4 to strike “is to avoid the expenditure of time and money that must arise from litigating  
5 spurious issues by dispensing with those issues prior to trial[.]” *Sidney-Vinsein v. A.H.*  
6 *Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). Motions to strike generally are  
7 disfavored, *Ordahl v. U.S.*, 646 F. Supp. 4, 6 (D. Mont. 1985), and

8 should be granted only where (1) it appears to a certainty that the plaintiff  
9 will succeed regardless of what facts could be proved in support of the  
10 defense; (2) the affirmative defense sought to be struck does not present  
11 disputed and substantial questions of law that could be resolved in such a  
12 way as to support the defense; and (3) the plaintiff shows it will be  
prejudiced by the inclusion of the affirmative defense.

13 *Tompkins v. R.J. Reynolds Tobacco Co.*, 92 F. Supp. 2d 70, 80 (N.D.N.Y. 2000).

14 **ANALYSIS**

15 Plaintiffs argue that the defenses are vague, conclusory, and lack supporting facts,  
16 and thus they fail to meet the pleading requirements of Rule 8. (Doc. 26 at 6.) They also  
17 assert that the first affirmative defense—failure to state a claim—is not an appropriate  
18 affirmative defense. Defendant argues that the heightened pleading standards for  
19 complaints set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft*  
20 *v. Iqbal*, 556 U.S. 662 (2009) do not apply to affirmative defenses, and thus the defenses  
21 are adequately pled. It also asserts that its first defense—failure to state a claim—is  
22 appropriate under the circumstances. (Doc. 27 at 15-16.)

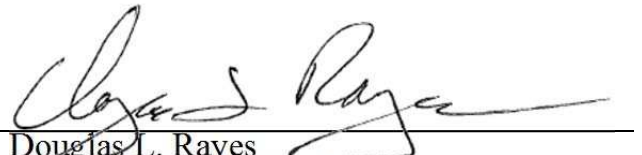
23 The Court recently addressed these issues in a nearly identical case. *See Craten v.*  
24 *Foster Poultry Farms*, No. CV-15-02587-PHX-DLR, 2016 WL 3457899 (D. Ariz. June  
25 24, 2016). *Craten* involved similar claims alleged against Defendant, the same  
26 affirmative defenses, and the same arguments as to why the Court should strike three of  
27 the defenses. Ultimately, the Court concluded that *Twombly* and *Iqbal* do not govern  
28 pleading affirmative defenses. *Id.* at \*3. It further found that Defendant’s first

1 affirmative defense—failure to state a claim—was not a proper defense, but defenses  
2 seven and eight—spoliation and preemption—were sufficiently pled. *Id.* at \*4. Given  
3 that *Craten* and the case at hand are substantially similar, the Court sees no reason to  
4 deviate from its previous decision. Accordingly, the Court strikes Defendant’s first  
5 affirmative defense and declines to strike defenses seven and eight.

6 **IT IS ORDERED** that Plaintiffs’ motion to strike, (Doc. 26), is **GRANTED IN**  
7 **PART**. Defendant’s first affirmative defense is stricken from its answer. In addition,  
8 Defendant’s request for judicial notice, (Doc. 28), and Plaintiffs’ request for judicial  
9 notice, (Doc. 36-1), are **DENIED** because the Court did not rely on the materials in  
10 reaching its decision.

11 Dated this 14th day of July, 2016.

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Douglas L. Rayes  
United States District Judge