

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA

7
8 J & J SPORTS PRODUCTS, INC.,
9 Plaintiff,
10
11 v.
12 IAN DOUGLAS HELPER, et al.,
13 Defendants.

1:10-cv-02109-OWW-SMS
MEMORANDUM DECISION AND ORDER
REGARDING PLAINTIFF'S MOTION
TO STRIKE (Doc. 11)

14 I. INTRODUCTION.

15 J & J Sports Products, Inc., ("Plaintiff") proceeds with an
16 action for damages against Ian Douglas Helper and Stephen David
17 Helper ("Defendants").¹

18 On February 23, 2011, Ian Douglas Helper and Stephen David
19 Helper filed an answer to Plaintiff's complaint ("Answer"). (Doc.
20 8).

21 Plaintiff filed a motion to strike various affirmative
22 defenses asserted in the Answer on March 16, 2011. (Doc. 11).

23 Defendants filed opposition to Plaintiff's motion to strike on
24 April 22, 2011. (Doc. 13). Defendants opposition opposes
25 Plaintiff's motion only with respect to affirmative defenses
26

27 ¹ Jeremy Porter Helper is also a named Defendant, however, he filed a separate
28 answer on March 16, 2011, (Doc. 12), and that answer is not implicated in the
instant motion.

1 numbers two and five. Plaintiff filed a reply on March 2, 2011.
2 (Doc. 14).

3 **II. FACTUAL BACKGROUND.**

4 Plaintiff was granted the exclusive nationwide commercial
5 distribution rights to a program entitled: "Firepower: Manny
6 Pacquiao v. Miguel Cotto, WBO Welterweight Championship Fight
7 Program" telecast nationwide on Saturday, November 14, 2009
8 ("Program"). Defendants unlawfully intercepted and exhibited the
9 program at their commercial establishment.

10 **III. LEGAL STANDARD.**

11 District courts may strike from a pleading an insufficient
12 defense or any redundant, immaterial, impertinent, or scandalous
13 matter. Fed. R. Civ. P. 12(f). The function of a 12(f) motion to
14 strike is to avoid the expenditure of time and money that must
15 arise from litigating spurious issues by dispensing with those
16 issues prior to trial. *Whittlestone, Inc. v. Handi-Craft Co.*, 618
17 F.3d 970, 973 (9 th Cir. 2010). Immaterial matter is that which
18 has no essential or important relationship to the claim for relief
19 or the defenses being plead. *Id.* at 974. Impertinent matter
20 consists of statements that do not pertain, and are not necessary,
21 to the issues in question. *Id.* "Motions to strike are disfavored
22 and infrequently granted." *E.g., NRDC v. Kempthorne*, 539 F. Supp.
23 2d 1155, 1162 (E.D. Cal. 2008).

24 **IV. DISCUSSION.**

25 Defendants do not oppose Plaintiff's motion to strike
26 affirmative defenses 1, 3, 4, 6, 7, 8, 9, and 10 asserted in the
27 Answer. Defendants only oppose Plaintiff's motion to strike the
28 second and fifth affirmative defenses asserted in the Answer.

1 The second affirmative defense alleges:

2 Defendants allege that Ian Douglas Helper and Stephen
3 David Helper cannot be held individually liable for
4 actions, if any, of Defendant Tilted Kilt or its agents,
5 employees, or other representatives because Defendants
6 Ian Douglas Helper and Stephen David Helper were not
7 present at the time of any alleged violation, were
unaware of and did not authorize any act that may have
violated Plaintiff's rights, were not officers of the
corporation, and Ian Douglas Helper and Stephen David
Helper did not reap any commercial profit from any
alleged violation.

8
9 The second affirmative defense is unintelligible, as it does not
10 appear to be an affirmative defense at all.² See, e.g., *FDIC v.*
11 *Main Hurdman*, 655 F.Supp. 259, 262 (E.D.Cal.1987) ("Affirmative
12 defenses plead matters extraneous to the plaintiff's prima facie
13 case, which deny plaintiff's right to recover, even if the
14 allegations of the complaint are true."). Further, the second
15 affirmative defense references a corporation, but there is no
16 corporate defendant in this action. As the second affirmative
17 defense does not provide fair notice of the nature of the defense,
18 it is stricken, without prejudice. See, e.g., *Wyshak v. City*
19 *National Bank*, 607 F.2d 824, 827 (9th Cir.1979) ("The key to
20 determining the sufficiency of pleading an affirmative defense is
21 whether it gives plaintiff fair notice of the defense.").

22
23 ² The fact that the contentions presented in the second and fifth affirmative
24 defenses may be improperly labeled as "affirmative defenses" does not render them
25 "insufficient defenses" within the meaning of Rule 12. See *In re Wash. Mut.,*
26 *Inc. Sec., Derivative & ERISA Litigation*, 2011 U.S. Dist. LEXIS 33531 *22-24
27 (W.D. Wa. 2011) ("Though improperly pleaded, these affirmative defenses are
28 related to the litigation and are not immaterial, impertinent or scandalous. The
Court will simply consider them not as affirmative defenses, but as general
denials or objections"); see also *J & J Sports Prods. v. Khachatrian*, 2011 U.S.
Dist. LEXIS 22800 *3-4 (D. Arizona 2011) ("Accordingly, the Court interprets
Defendants' affirmative defense as a Rule 12(b)(6) defense, of which Plaintiff
has fair notice, and will not strike it.").

1 The fifth affirmative defense asserted in the Answer is also
2 deficient. The fifth affirmative defense provides:

3 Defendants allege that the damages of plaintiff, if any,
4 as alleged were not caused by these answering Defendants,
5 but were the result of the acts of third parties over
6 which the answering Defendants, or each of them, had no
7 control.

8 The fifth affirmative defense does not plead sufficient factual
9 information to give Plaintiff fair notice of the defense as it
10 fails to identify any third parties or their acts or omissions.
11 The fifth affirmative defense is stricken, without prejudice.

12 **ORDER**

13 For the reasons stated, IT IS ORDERED:

- 14 1) The second and fifth affirmative defenses alleged in the
15 Answer are STRICKEN; and
16 2) Defendants shall file an amended answer within fifteen (15)
17 days of electronic service of this decision.

18 IT IS SO ORDERED.

19 Dated: May 23, 2011

20 /s/ Oliver W. Wanger
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28