

1 claims for relief: (1) breach of contract, (2) common count, and (3) deceit and concealment. (Doc. 23)

2 In addition, Plaintiff included a request for punitive damages in the prayer for relief. (*Id.* at 7)

3 Defendant filed the motion to strike now pending before the Court on June 25, 2015, arguing
4 “[t]his is a claim for breach of contract, and punitive damages are not allowed in breach of contract
5 cases;” and Plaintiff fails to make “the requisite showing of malice, oppression and fraud on the part of
6 any defendant to warrant a claim for punitive damages.” (Doc. 27 at 2)

7 **II. Legal Standards**

8 Pursuant to Rule 12(f), a district court “may strike from a pleading . . . any redundant,
9 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A “redundant” matter is
10 comprised “of allegations that constitute a needless repetition of other averments or which are foreign
11 to the issue to be denied.” *Wilkerson v. Butler*, 229 F.R.D. 166, 170 (E.D. Cal. 2005). An immaterial
12 matter “has no essential or important relationship to the claim for relief or the defenses being pleaded,”
13 while an “[i]mpertinent matter consists of statements that do not pertain, and are not necessary, to the
14 issues in question.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on other*
15 *grounds* (quoting 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at
16 706-07, 711 (1990)).

17 The purpose of a Rule 12(f) motion “is to avoid the expenditure of time and money that must
18 arise from litigating spurious issues by dispensing with those issues prior to trial.” *Sidney-Vinstein v.*
19 *A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). Generally, motions to strike affirmative defenses
20 “are disfavored and infrequently granted.” *Neveau v. City of Fresno*, 392 F. Supp. 2d 1159, 1170 (E.D.
21 Cal. 2005).

22 **III. Discussion and Analysis**

23 Defendant argues the allegation that “[t]he representation and concealments are willful,
24 fraudulent, malicious and oppressive and justify the imposition of punitive damages” and Plaintiff’s
25 prayer for punitive damages should be stricken pursuant to Rule 12(f). (Doc. 27 at 3-4) Significantly,
26 however, the Ninth Circuit has opined a Rule 12(f) motion is not the proper method by which to strike a
27 claim for punitive damages. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010).
28 In *Whittlestone*, the district court struck the plaintiff’s claims for lost profits and consequential

1 damages, and the Ninth Circuit examined “whether Rule 12(f) authorizes the district court to strike
2 such matter at all.” *Id.* at 973. Finding Rule 12(f) did not empower the court to strike the claims for
3 damages, the Ninth Circuit explained:

4 Were we to read Rule 12(f) in a manner that allowed litigants to use it as a means to
5 dismiss some or all of a pleading ... we would be creating redundancies within the
6 Federal Rules of Civil Procedure, because a Rule 12(b)(6) motion (or a motion for
7 summary judgment at a later stage in the proceedings) already serves such a purpose ...
8 We therefore hold that Rule 12(f) does not authorize district courts to strike claims for
9 damages on the ground that such claims are precluded as a matter of law.

10 *Id.* at 974-75. Further, the Court observed the plaintiff’s claims for damages were not encompassed
11 within the categories of matters that may be stricken pursuant to Rule 12(f), and could not be
12 considered immaterial “because whether these damages are recoverable relates directly to the plaintiff’s
13 underlying claim for relief.” *Id.* at 974.

14 Moreover, here, the claim for punitive damages relates to Plaintiff’s claim for deceit and
15 concealment. Defendants fail to show the allegation that “[t]he representation and concealments are
16 willful, fraudulent, malicious and oppressive and justify the imposition of punitive damages” falls
17 under one of the categories of material that may be stricken under Rule 12(f). *See Fed. R. Civ. P.* 12(f)
18 (material may be stricken under Rule 12(f) only when it is “redundant, immaterial, impertinent or
19 scandalous matter” or “an insufficient defense”); *see also Estate of Prasad ex rel. Prasad v. Cnty. of*
20 *Sutter*, 958 F. Supp. 2d 1101, 1128 (E.D. Cal. 2013) (denying the defendant’s motion to strike the
21 plaintiff’s prayer for punitive damages because such claim for damages satisfies none of the five
22 categories of material that may be stricken under Rule 12(f)).

23 **IV. Conclusion and Order**

24 Because a motion under Rule 12(f) is not a proper method by which to strike a claim for
25 punitive damages, Defendant’s motion is **DENIED**.

26 IT IS SO ORDERED.

27 Dated: July 23, 2015

28 /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE