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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
5

6 **LATOYA JOHNSON,**

7 **Plaintiff,**

8 **v.**

9 **GOLDEN EMPIRE TRANSIT DISTRICT, et**
10 **al.,**

11 **Defendants.**

1:14-CV-001841 LJO JLT

ORDER FOR SUR-REPLY RE
MOTION TO STRIKE AFFIRMATIVE
DEFENSES (Doc. 8).

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13 On November 20, 2014, Latoya Johnson (“Plaintiff”) initiated this lawsuit against Golden
14 Empire Transit District (“Defendant”), alleging: (1) interference with rights under the Family Medical
15 Leave Act (“FMLA”), 29 U.S.C. § 2615; (2) discrimination based on a request for leave under the
16 California Family Rights Act (“CFRA”), Cal. Gov. Code § 12945.2; (3) disability discrimination/ failure
17 to accommodate/ failure to engage in the iterative process in violation of California’s Fair Employment
18 and Housing Act (“FEHA”), Cal. Gov. Code § 12900, *et seq.*; (4) failure to prevent discrimination under
19 FEHA. Doc. 1. Defendant filed its answer on January 14, 2015. Doc. 7.

20 Before the Court for decision is Plaintiff’s motion to strike certain affirmative defenses asserted
21 in the answer. Doc. 8. Plaintiff’s motion to strike attacked the sufficiency of the first through the thirty-
22 sixth affirmative defenses pled in Defendant’s answer. Doc. 9. In its Opposition, Defendant concedes
23 that some of its affirmative defenses are insufficient and seeks permission to file a lodged amended
24 answer that contains a total of eighteen proposed amended affirmative defenses. Doc. 11. Plaintiff is
25 correct that if a defense is insufficiently pleaded, the Court should freely grant leave to amend when

1 doing so would not cause prejudice to the opposing party. However, in reply Plaintiff again argues that
2 the second through eighteenth proposed amended affirmative defenses are insufficient. This is, in and of
3 itself, an awkward situation, as Plaintiff is attempting to challenge affirmative defenses in a proposed
4 amended answer that has yet to be accepted for filing. To make things more awkward, the Court is being
5 asked to do so without the benefit of any response from Defendant. In the interest of judicial efficiency,
6 the Court will construe Plaintiff's reply as a motion to strike the proposed amended answer. To afford
7 Defendant's an opportunity to respond and to aid in resolution of the disputes, Defendant is directed to
8 file a sur-reply on or before April 3, 2015. Defendant is cautioned that the Court is particularly
9 concerned about whether and under what circumstances Defendant's references to Plaintiff's collective
10 bargaining agreement are relevant to legally sufficient affirmative defenses. No further briefing is
11 authorized.

12 IT IS SO ORDERED.

13 Dated: March 25, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE