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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JESUS A. NUNEZ,

12 Plaintiff,

13 vs.

14 KAYLEEN POWELL, et al.,

15 Defendants.  
16

1:18-cv-00213-LJO-GSA-PC

**ORDER DENYING MOTION TO STRIKE  
AFFIRMATIVE DEFENSES  
(ECF No. 30.)**

17 **I. BACKGROUND**

18 Jesus A. Nunez (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*  
19 with this civil rights action pursuant to 42 U.S.C. § 1983. On January 10, 2018, the United  
20 States District Court for the Central District of California opened this case with a letter by  
21 Melissa Nunez (Plaintiff’s daughter) and an attached declaration by Plaintiff. (ECF No. 2.) On  
22 January 29, 2018, Plaintiff filed the original Complaint in this action. (ECF No. 8.) On  
23 February 8, 2018, the case was transferred to this court. (ECF No. 11.)

24 This case now proceeds with the First Amended Complaint filed by Plaintiff on April  
25 26, 2018, against defendant Dr. Kokor (“Defendant”) on Plaintiff’s medical claim under the  
26 Eighth Amendment. (ECF No. 18.)<sup>1</sup>

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28 <sup>1</sup> All other claims and defendants were dismissed from this case on January 11, 2019. (ECF No. 23.)

1 On May 9, 2019, Plaintiff filed a motion to strike Defendant's affirmative defenses to  
2 the complaint. (ECF No. 30.)

3 **II. MOTION TO STRIKE – RULE 12(f)**

4 Rule 12(f) of the Federal Rules of Civil Procedure provides that “[t]he court may strike  
5 from a pleading an insufficient defense of any redundant, immaterial, impertinent, or  
6 scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either  
7 before responding to the pleading or, if a response is not allowed, within 21 days after being  
8 served with the pleading.” Fed. R. Civ. P. 12(f). The purpose of a Rule 12(f) motion is to  
9 avoid the costs that arise from litigating spurious issues by dispensing with those issues prior to  
10 trial. See Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other  
11 grounds, 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994); Sidney-Vinsein v. A.H.  
12 Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). Grounds for a motion to strike must appear on  
13 the face of the pleading or from matters which the court may judicially notice. See Fantasy,  
14 Inc., 984 F.2d at 1528; Securities and Exch. Comm'n v. Sands, 902 F.Supp. 1149, 1165  
15 (C.D.Cal.1995). When ruling on a motion to strike, the court must accept as true the pleader's  
16 factual allegations. See Vokal v. United States, 177 F.2d 619, 623-24 (9th Cir. 1949).

17 To prevail on a motion to strike an affirmative defense, the moving party must persuade  
18 the court that there are no disputed questions of fact or law and that the defense could not  
19 succeed under any set of circumstances. See Securities and Exch. Comm'n, 902 F.Supp. at  
20 1165. “Even when the defense under attack presents a purely legal question, courts are  
21 reluctant to determine disputed or substantial questions of law on a motion to strike.” Id. at  
22 1166; see Vokal, 177 F.2d at 622-23, 625; United States v. Iron Mountain Mines, Inc., 812  
23 F.Supp. 1528, 1535 (E.D. Cal. 1992). Motions to strike are generally regarded with disfavor  
24 because of the limited importance of pleadings in federal practice. See Securities and Exch.  
25 Comm'n, 902 F.Supp. at 1165-66; LeDuc v. Kentucky Cent. Life Ins. Co., 814 F.Supp. 820,  
26 830 (N.D. Cal.1992). The moving party may thus be required to show prejudice arising from  
27 the matter to be stricken. See Securities and Exch. Comm'n, 902 F.Supp. at 1166; LeDuc, 814  
28 F.Supp. at 830.

