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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD B. SPENCER
Plaintiff,
v.
C. CARLSON,
Defendant.

Case No. 1:19-cv-01615-ADA-HBK
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF No. 47)

Plaintiff Edward B. Spencer (“Plaintiff”), a state prisoner, is proceeding *pro se* and *in forma pauperis* on his First Amended Complaint, stemming from events that allegedly occurred while he was confined at the California Substance Abuse Treatment Facility. (ECF Nos. 7, 14.) On September 13, 2021, Plaintiff filed a motion to strike all eight of Defendant’s affirmative defenses. (ECF No. 33.) Defendant filed a timely response on March 2, 2022. (ECF No. 45.) On March 28, 2022, the Magistrate Judge issued a findings and recommendations, recommending that Plaintiff’s motion to strike be granted as to Defendant’s sixth (failure to mitigate), seventh (reduction of damages), and eighth (right to assert affirmative defenses) affirmative defenses. (ECF No. 47 at 9.) The Magistrate Judge also recommended that Defendant’s sixth and seventh affirmative defenses be stricken without prejudice and that the Defendant be granted leave to amend those defenses. (*Id.*). The Magistrate Judge further recommended that Defendant’s eighth affirmative defense be stricken with prejudice. Because Defendant withdrew his third (only as to

1 the state immunity claim under Cal. Gov't Code § 854.6), fourth (Plaintiff's contributory
2 negligence), and fifth (third parties' contributory negligence) affirmative defenses, the Magistrate
3 Judge recommended that Plaintiff's motion to strike as to those defenses be deemed moot. (*Id.*).
4 Finally, the Magistrate Judge recommended that Plaintiff's motion to strike be denied as to
5 Defendant's first (immunity), second (presentment under California Government Claims Act),
6 and third (only as to the state immunity code based on Cal. Gov't Code § 820.2) affirmative
7 defenses. (*Id.*).

8 On April 18, 2022, Plaintiff filed objections to the Magistrate Judge's findings and
9 recommendations. (ECF No. 49.) In Plaintiff's objections, Plaintiff largely reiterates his
10 arguments in his motion to strike. (*See* ECF No. 49.) Plaintiff argues that Defendant's second
11 affirmative defense under the California Government Claims Act should be stricken because he
12 presented a timely claim under the California Government Claims Act. (ECF No. 49.) Even
13 though the likelihood of the affirmative defense's success may be minimal, the merits of a
14 defense are not grounds to strike it. *Smith v. Cobb*, 15-cv-00176-GPC, 2017 WL 3887420, at *5
15 (S.D. Cal. Sept. 5, 2017). Rather, Federal Rule of Civil Procedure 12(f) motions' "fair notice"
16 standard only requires that affirmative defenses are described in "general terms." *Kohler v. Flava*
17 *Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015). Because Defendant had satisfactorily stated
18 the nature and grounds for the second affirmative defense to meet the "fair notice" standard, the
19 Court finds no basis for denying the findings and recommendations. (*See* ECF No. 31 at 3.)

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
3 findings and recommendations to be supported by the record and by proper analysis.

4 Accordingly,

- 5 1. The findings and recommendations issued on March 28, 2022 (ECF No. 47) are
6 adopted in full; and
- 7 2. Defendant has **fourteen (14) days** after the date of this order to file an amended
8 answer to attempt to cure the pleading deficiencies.

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11 IT IS SO ORDERED.

12 Dated: September 27, 2022

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UNITED STATES DISTRICT JUDGE