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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RASHPAL SINGH GILL, et al.,  
Plaintiffs,  
v.  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,  
Defendant.

No. 2:13-cv-00356-MCE-KJN

**MEMORANDUM AND ORDER**

Plaintiffs Rashpal Singh Gill and Dalwinder Kaur doing business as Livingston Grocery (“Plaintiffs”) filed this action against Defendant United States Department of Agriculture (“Defendant”) to obtain agency records related to Defendant’s investigation which resulted in Plaintiffs’ permanent ban from participating in the Supplemental Nutrition Assistance Program (“SNAP”). (ECF No 1.) Presently before the Court is Plaintiffs Motion to Strike portions of Defendant’s Answer. (ECF No 11.)<sup>1</sup> For the reasons described below, the Court DENIES Plaintiffs’ Motion to Strike. (Id.)

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<sup>1</sup> Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

## BACKGROUND<sup>2</sup>

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3 On June 28, 2012, Defendant revoked Plaintiffs' right to participate in the SNAP  
4 after concluding Plaintiffs were "trafficking" benefits. (ECF No. 1-1.) In a letter dated  
5 September 13, 2012, Plaintiffs requested Defendant review its revocation decision and  
6 provide Plaintiffs with various documents. (ECF No. 1-2.) Defendant interpreted the  
7 request for documents as Freedom of Information ("FOIA") request. On October 4,  
8 2012, Defendant responded to Plaintiffs' FOIA request and mailed Plaintiffs its 173-page  
9 case file. (ECF No. 1-3.) Defendant's cover letter explained that it withheld and  
10 redacted some documents because FOIA exemptions applied. On October 19, 2012,  
11 Plaintiffs appealed Defendant's FOIA decision. (ECF No. 1.) On October 22, 2012,  
12 Defendant acknowledged receipt of Plaintiffs' appeal. (*Id.*) Plaintiffs followed up with  
13 Defendant several times between November 2012 and January 2013 to obtain the  
14 requested documents and to inquire about the status of its appeal. (*Id.*) On January 30,  
15 2013, Defendant responded to Plaintiffs' appeal releasing a few more documents while  
16 reiterating that the remaining documents fell under various FOIA exemptions. (ECF  
17 No. 1-4.) Consequently, on February 22, 2013, Plaintiffs filed this action under FOIA, 5  
18 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, seeking the  
19 expedited processing and release of agency records requested by Plaintiffs from  
20 Defendant. Defendant answered the Complaint on May 28, 2013. (ECF No. 10.)  
21 Shortly afterwards, Plaintiffs filed this Motion to Strike portions of Defendant's Answer.  
22 (ECF No. 11.) Defendant filed an Opposition to this Motion and withdrew five of its  
23 seven affirmative defenses. (ECF No. 12.)

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27 <sup>2</sup> The facts are taken sometimes verbatim from Plaintiffs' Complaint (ECF No. 1)  
28 and the attached Exhibits. (ECF Nos. 1-1 through 1-4.)

1 Thus, only two affirmative defenses remain: (1) Defendant’s Second Affirmative Defense  
2 which states “as to FOIA exemptions 3 and 6, Plaintiffs failed to exhaust their  
3 administrative FOIA appeal remedy, waived suit, and cannot properly invoke this court’s  
4 subject matter jurisdiction;” and (2) Defendant’s Seventh Affirmative Defense which  
5 states “on the merits, FOIA Exemptions 3, 5, 6, 7C, and 7E support the agency’s  
6 withholding.”

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8 **STANDARD**

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10 The Court may strike “from a pleading an insufficient defense or any redundant,  
11 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “[T]he function of a  
12 Rule 12(f) motion to strike is to avoid the expenditure of time and money that must arise  
13 from litigating spurious issues by dispensing with those issues prior to trial. . . .” Sidney-  
14 Vinsein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). Federal Courts view  
15 motions under Rule 12(f) with disfavor and infrequently grant them. 5C Charles Alan  
16 Wright et al., Federal Practice and Procedure § 1380 (3d ed. 1998). The Court views the  
17 pleading under attack “in the light more favorable to the pleader.” Garcia ex rel. Marin v.  
18 Clovis Unified Sch. Dist., no. 1:08-CV-1924 AWI SMS, 2009 WL 2982900, at \*23 (E.D.  
19 Cal. Sept. 14, 2009).

20 In order for a court to determine that a defense is “insufficient” as Rule 12(f)  
21 requires, the Court “must be convinced that there are no questions of fact that any  
22 questions of law are clear and not in dispute, and that under no set of circumstances  
23 could the defense succeed.”

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1 J & J Sports Productions, Inc. v. Delgado, No. CIV. 2:10-2517 WBS KJN, 2011 WL  
2 219594, at \*1-2 (E.D. Cal. Jan. 19, 2011) (quoting Schmidt v. Pentair, Inc.,  
3 No. C08-4589 TEH, 2010 WL 4607412, at \*2 (N.D. Cal. Nov. 4, 2010)); see also  
4 Bassett v. Ruggles et al., No. CV-F-09-528 OWW/SMS, 2009 WL 2982895, at \*24 (E.D.  
5 Cal. Sept. 14, 2009); Lopez v. Wachovia Mortg., No. 2:09-CV-01510-JAM-DAD, 2009  
6 WL 4505919, at \*5 (E.D. Cal. Nov. 20, 2009). “Immaterial matter is that which has no  
7 essential or important relationship to the claim for relief or the defenses being pleaded.”  
8 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev’d on other grounds  
9 510 U.S. 517 (1994) (internal citations and quotations omitted). “Impertinent matter  
10 consists of statements that do not pertain, and are not necessary, to the issues in  
11 question.” Id. (internal citations and quotations omitted). Redundant matter includes  
12 “needless repetition of other averments or [allegations that] are foreign to the issue.”  
13 Sliger v. Prospect Mortg., LLC, 789 F. Supp. 2d 1212, 1216 (E.D. Cal. 2011).

14 Courts have cautioned that if “the [C]ourt is in doubt as to whether challenged  
15 matter may raise an issue of fact or law, the motion to strike should be denied, leaving  
16 an assessment of the sufficiency of the allegations for adjudication on the merits.” Id.  
17 (citing Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)).

## 18 19 ANALYSIS

### 20 21 A. Defendant’s Second Affirmative Defense

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23 In Defendant’s Second Affirmative Defense, Defendant argues that Plaintiffs failed  
24 to exhaust administrative remedies. Plaintiffs argue that Defendant’s Second Affirmative  
25 Defense should be struck because Defendant has not explained how this defense  
26 applies to this case; and, in particular, Plaintiffs argue that Defendant’s Answer fails to  
27 explain why FOIA Exemptions three and six (5 U.S.C. §§ 522(b)(3), (b)(6)) are relevant.  
28 (ECF No. 11-1.)

1 Further, Plaintiffs argue that they have not waived suit, and Defendant has not explained  
2 why they believe Plaintiffs waived suit. On the other hand, Defendant argues that  
3 Plaintiffs failed to exhaust available FOIA administrative remedies. (ECF No. 12.)

4 Plaintiffs could find the answer to its confusion in the exhibits it attached to its  
5 Complaint. (ECF No. 1-4.) In Defendant's letter dated January 30, 2013, Defendant  
6 explains that it withheld information under 5 U.S.C. 552(b)(3), (b)(6), and (b)(7)(E) of  
7 FOIA, and that Plaintiffs only appealed its application of the "law enforcement  
8 investigation exemption" which is commonly known as FOIA Exemption 7E. (ECF 1-4.)  
9 Thus, Defendant takes the position that Plaintiffs did not file an administrative appeal of  
10 Defendant's application of Exemption three and six (5 U.S.C. 552(b)(3), (b)(6)). Whether  
11 Plaintiffs had notice or whether Plaintiffs exhausted their administrative remedies is not  
12 an appropriate answer to reach on a Rule 12(f) Motion especially given federal courts'  
13 disfavor of such motions. Meas v. CVS Pharmacy, Inc., No. 11-CV-0823 JM (JMA),  
14 2011 WL 2837432, at \*4 (S.D. Cal. July 14, 2011) (quoting 5C Wright & Miller § 1380  
15 (3d ed. 2004)). This issue should be resolved at a later, more substantive proceeding.  
16 Plaintiffs' Motion to Strike Defendant's Second Affirmative Defense is DENIED.

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18 **B. Defendant's Seventh Affirmative Defense**

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20 Defendant's Seventh Affirmative Defense is a single sentence. In its Answer,  
21 Defendant states "on the merits, FOIA Exemptions 3, 5, 6, 7C and 7E support the  
22 agency's withholding decision." (ECF No. 10.) Plaintiffs argue that this defense does  
23 not rise to the level of a cognizable affirmative defense because Defendant does not  
24 explain what is meant by FOIA exemptions 3, 5, 6, 7C, and 7E, nor does Defendant  
25 allege any facts explaining why any of these exemptions apply. (ECF No. 11-1.)  
26 Defendant argues that in its October 2012 letter to Plaintiff (ECF No.1-3), it listed the  
27 various FOIA Exemptions that justified Defendant's decision to withhold or redact  
28 documents. (ECF No. 12.)

1 Defendant's explanation represents the bare minimum; however, references to  
2 the FOIA Exemptions appear throughout the correspondence between Defendant and  
3 Plaintiff. (See ECF Nos. 1-1, 1-3, and 1-4). Whether a FOIA Exemption applies is the  
4 crux of this case. Thus, a reference to a FOIA Exemption cannot be redundant,  
5 immaterial, impertinent, or scandalous, and it would be wildly inappropriate to strike the  
6 central issue of this case on a Rule 12(f) Motion. As the Ninth Circuit wrote in 2008,  
7 "[g]enerally, FOIA cases should be handled on motions for summary judgment." Lane v.  
8 Dep't of Interior, 523 F.3d 1128, 1134 (9th Cir. 2008) (quoting Nolan v. Dep't of Justice,  
9 973 F.2d 843, 849 (10th Cir.1992)). Plaintiffs' Motion to Strike Defendant's Seventh  
10 Affirmative Defense is DENIED

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12 **CONCLUSION**

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14 For the reasons described above, Plaintiffs' Motion to Strike (ECF No. 11) is  
15 DENIED.

16 IT IS SO ORDERED.

17 Dated: July 29, 2013

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20 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
21 UNITED STATES DISTRICT COURT  
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