



1                   Plaintiff is a national fraternal agricultural  
2 organization that owns a number of trademarks used for  
3 associational, educational and advocacy activities. (Compl. ¶¶  
4 1-3, 17, 20-21 (Docket No. 1).) Defendant was an affiliate  
5 chapter of plaintiff until 2013, when plaintiff purported to  
6 revoke defendant's charter and defendant disclaimed any further  
7 affiliation with plaintiff. (Id. ¶¶ 31-32, 34; Answer ¶¶ 5, 7-8  
8 (Docket No. 13).) Plaintiff alleges that defendant continues to  
9 use plaintiff's trademarks despite this apparent divorce.  
10 (Compl. ¶ 10.)

11                   Plaintiff filed a Complaint on March 12, 2014, bringing  
12 claims for: (1) federal trademark infringement under § 32 of the  
13 Lanham Act, 15 U.S.C. § 1114; (2) unfair competition and false  
14 designation of origin under § 43(a) of the Lanham Act, 15 U.S.C.  
15 § 1125(a); (3) federal trademark dilution under § 43(c) of the  
16 Lanham Act, 15 U.S.C. § 1125(c); and (4) federal trademark  
17 counterfeiting under § 32(1) of the Lanham Act, 15 U.S.C. §  
18 1114(1). (Compl. ¶¶ 48-101.) On May 12, 2014, defendant filed  
19 its Answer, in which it alleged thirteen<sup>1</sup> affirmative defenses  
20 and two counterclaims: (1) declaratory judgment of non-  
21 infringement, and (2) cancellation of plaintiff's trademark  
22 registrations on the grounds of abandonment. (Answer ¶¶ 102-14,  
23 120-33.)

24                   Plaintiff now moves to strike defendant's affirmative  
25 defenses under Federal Rule of Civil Procedure 12(f); to strike  
26

---

27                   <sup>1</sup> Although it numbers the defenses as one through twelve,  
28 defendant's Answer includes two "eighth" affirmative defenses.

1 defendant's first counterclaim under Rule 12(f) or,  
2 alternatively, to dismiss it under Rule 12(b)(6) for failure to  
3 state a claim; and to dismiss defendant's second counterclaim  
4 under Rule 12(b)(6). (Docket No. 14.)

5 II. Analysis

6 A. Affirmative Defenses

7 Plaintiff moves to strike each of the thirteen  
8 affirmative defenses in defendant's Answer under Rule 12(f),  
9 which authorizes the court to "strike from a pleading an  
10 insufficient defense or any redundant, immaterial, impertinent,  
11 or scandalous matter." Fed. R. Civ. P. 12(f). "The function of  
12 a 12(f) motion to strike is to avoid the expenditure of time and  
13 money that must arise from litigating spurious issues by  
14 dispensing with those issues prior to trial . . . ." Fantasy,  
15 Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) (quotation  
16 marks, citation, and first alteration omitted), rev'd on other  
17 grounds by Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994).

18 An affirmative defense is legally insufficient only  
19 where "there are no questions of fact," "any questions of law are  
20 clear and not in dispute," and "under no set of circumstances  
21 could the defense succeed." Ramirez v. Ghilotti Bros., 941 F.  
22 Supp. 2d 1197, 1204 (N.D. Cal. 2013) (citation omitted). An  
23 affirmative defense is insufficiently pled if it fails to give  
24 the plaintiff fair notice of the defense. Wyshak v. City Nat'l  
25 Bank, 607 F.2d 824, 827 (9th Cir. 1979).<sup>2</sup>

---

27 <sup>2</sup> The court acknowledges the disagreement among district  
28 courts in the Ninth Circuit--including between different judges  
within this district--over whether affirmative defenses must meet

1                   Because motions to strike are "often used as delaying  
2 tactics," they are "generally disfavored" and are rarely granted  
3 in the absence of prejudice to the moving party. Rosales v.  
4 Citibank, FSB, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001); see  
5 also N.Y.C. Emps.' Ret. Sys. v. Berry, 667 F.Supp.2d 1121, 1128  
6 (N.D. Cal. 2009) ("Where the moving party cannot adequately  
7 demonstrate . . . prejudice, courts frequently deny motions to  
8 strike even though the offending matter was literally within one  
9 or more of the categories set forth in Rule 12(f)." (citation and  
10 internal quotation marks omitted)). Courts may find prejudice  
11 "where superfluous pleadings may confuse the jury, or where a  
12 party may be required to engage in burdensome discovery around  
13 frivolous matters." J & J Sports Prods., Inc. v. Luhn, Civ. No.  
14 2:10-3229 JAM, 2011 WL 5040709, at \*1 (E.D. Cal. Oct. 24, 2011)  
15 (citations omitted).

16                   1. Failure to State a Claim

17                   Defendant concedes that its first affirmative defense,  
18 that the Complaint fails to state a claim on which relief can be  
19 granted, is not actually an affirmative defense. "A defense  
20 which demonstrates that plaintiff has not met its burden of proof  
21 is not an affirmative defense." Zivkovic v. S. California Edison  
22 Co., 302 F.3d 1080, 1088 (9th Cir. 2002); see also Dodson v.  
23 Munirs Co., Civ. No. S-13-0399 LKK, 2013 WL 3146818, at \*8 (E.D.  
24 Cal. June 18, 2013) (striking affirmative defense alleging

---

25  
26 the plausibility pleading standard of Bell Atlantic Corporation  
27 v. Twombly, 550 U.S. 554 (2007), and Ashcroft v. Iqbal, 556 U.S.  
28 662 (2009). The court need not reach this question here, as any  
affirmative defenses that are insufficiently pled would fail to  
satisfy either standard.

1 failure to state a claim because it "address[es] elements of  
2 plaintiff's prima facie case" and is "properly addressed through  
3 denial or an appropriate motion.) Accordingly, the court will  
4 grant plaintiff's motion to strike this affirmative defense with  
5 prejudice.

6 2. Invalidity

7 Defendant's second affirmative defense alleges that  
8 plaintiff's trademarks are invalid because plaintiff "has  
9 abandoned the alleged trademarks by failing to police and  
10 exercise adequate quality control over the goods or services sold  
11 or provided by one or more licensees or third parties, or  
12 otherwise does not have valid United State trademark rights in  
13 the alleged marks." (Answer ¶ 103.) Although a plaintiff must  
14 establish the validity of its trademark as an element of its  
15 claim, courts have recognized that invalidity "is effectively an  
16 affirmative defense to claims of infringement, unfair source  
17 designation and other allegations of unfair competition."  
18 Computerland Corp. v. Microland Computer Corp., 586 F. Supp. 22,  
19 24 (N.D. Cal. 1984).

20 By alleging invalidity as an affirmative defense,  
21 defendant has arguably assumed the burden of proof on one element  
22 of plaintiff's claim; thus, the court cannot see how allowing  
23 defendant to proceed with this defense would prejudice plaintiff  
24 in any way. The court may deny plaintiff's motion to strike  
25 without prejudice, even if plaintiff is correct that the defense  
26 is insufficiently pled. See N.Y.C. Emps.' Ret. Sys., 667 F.Supp.  
27 2d at 1128. Accordingly, the court will deny plaintiff's motion  
28

1 to strike this defense.

2 3. Acquiescence; Waiver, Estoppel, and Laches;  
3 Statute of Limitations; Failure to Mitigate

4 These affirmative defenses raise related issues arising  
5 from defendant's allegations that defendant has used plaintiff's  
6 marks with plaintiff's consent for over 100 years. (See, e.g.,  
7 Answer ¶¶ 104, 105.) In other sections of its Answer, defendant  
8 also alleges that it used some of the marks exclusively and prior  
9 to the first use and registration of the marks by plaintiff.  
10 (See, e.g., id. ¶¶ 108, 123.)

11 In moving to strike these defenses, plaintiff disputes  
12 defendant's characterization of the relationship between the two  
13 parties based on facts alleged in its Complaint, and argues that  
14 the termination of the affiliate relationship between the parties  
15 eliminated any of defendant's rights to the marks. However,  
16 those facts are extraneous to the pleading being challenged here-  
17 -defendant's Answer. Instead, the court must view the Answer in  
18 the light most favorable to the pleader. See, e.g., Stearns v.  
19 Select Comfort Retail Corp., 763 F. Supp. 2d 1128, 1139 (N.D.  
20 Cal. 2010) ("The grounds for a motion to strike must appear on  
21 the face of the [pleading] . . . and the court must view the  
22 pleading in the light most favorable to the pleader.").

23 Taken as a whole, defendant's pleadings contain  
24 sufficient facts for the court to infer that defendant's alleged  
25 longstanding use of the marks plausibly supports these defenses.  
26 Thus, even under the stricter pleading standard of Iqbal and  
27 Twombly, these defenses are sufficiently pled. See Twombly, 550  
28

1 U.S. at 570 (requiring that a party plead "only enough facts to  
2 state a claim to relief that is plausible on its face.").  
3 Moreover, as a matter of law, the court cannot say that any of  
4 these defenses are so spurious that "under no set of  
5 circumstances could the defense succeed." Ramirez, 941 F. Supp.  
6 2d at 1204 (describing standard for legal insufficiency of  
7 affirmative defense). Accordingly, because defendant's defenses  
8 of acquiescence; waiver, estoppel, and laches; statute of  
9 limitations; and failure to mitigate each have sufficient bases  
10 in fact and law, the court will deny plaintiff's motion to strike  
11 these defenses.

#### 12 4. Genericness

13 Generic terms "are those that refer to 'the genus of  
14 which the particular product or service is a species,' i.e., the  
15 name of the product or service itself." Advertise.com, Inc. v.  
16 AOL Adver., Inc., 616 F.3d 974, 977 (9th Cir. 2010) (quoting  
17 Filipino Yellow Pages, Inc. v. Asian Journal Publ'ns Inc., 198  
18 F.3d 1143, 1146 (9th Cir. 1999)). "Generic terms cannot be valid  
19 marks subject to trademark protection." Id. Courts allow  
20 defendants to raise the question of whether marks are generic as  
21 an affirmative defense. Filipino Yellow Pages, 198 F.3d at 1146.

22 Here, defendant alleges that "Plaintiff's claims are  
23 barred . . . because Plaintiff's marks are, have been, or have  
24 become generic terms that the relevant purchasing public  
25 understands as primarily the common or class name for the goods  
26 or services asserted to be associated with the marks asserted by  
27 Plaintiff." (Answer ¶ 107.) This conclusory allegation fails to  
28

1 provide plaintiff with even fair notice of the defense, as it  
2 does not identify which marks have become generic or with which  
3 goods and services the public has associated these marks. See  
4 Qarbon.com, Inc. v. eHelp Corp., 315 F. Supp. 2d 1046, 1049 (C.D.  
5 Cal. 2004) (finding that affirmative defense that started legal  
6 conclusion without supporting facts was insufficient to give  
7 plaintiff fair notice of the basis of the defense).

8           Although the court is not required to assume any of  
9 plaintiff's allegations regarding its use of the marks as true,  
10 defendant provides no contrary facts to support this defense as  
11 currently alleged. In light of such conclusory pleading,  
12 plaintiff's defense of genericness is insufficiently pled, and  
13 the court must grant plaintiff's motion to strike the defense  
14 without prejudice.

15           5. Prior Common Law Rights

16           A challenger to a federally registered trademark "may  
17 rebut the presumption of ownership with evidence establishing its  
18 own prior use in commerce of the registered mark." Dep't of  
19 Parks & Recreation v. Bazaar Del Mundo Inc., 448 F.3d 1118, 1124  
20 (9th Cir. 2006). In its seventh affirmative defense, defendant  
21 alleges that it has continually used the marks in commerce in  
22 California since 1873, prior to plaintiff's alleged first use and  
23 registration of the marks. (Answer ¶ 108.)

24           In response, plaintiff argues that its use predates  
25 that of defendant and that any rights defendant had in the marks  
26 extinguished when defendant merged with plaintiff's organization,  
27 as in U.S. Jaycees v. S.F. Junior Chamber of Commerce, 354 F.  
28



1 Supp 61 (N.D. Cal. 1972). But the court is not required to take  
2 plaintiff's version of the facts as true, and there is no  
3 evidence at this early stage of the litigation from which the  
4 court can determine that the two parties merged in the same  
5 manner as the organizations in U.S. Jaycees. It is particularly  
6 telling that U.S. Jaycees was decided at the summary judgment  
7 stage after the court made a number of factual findings and  
8 conclusions of law; here, however, the factual record is not so  
9 clear.

10 The court thus cannot conclude that "there are no  
11 questions of fact" and that "under no set of circumstances could"  
12 defendant rebut plaintiff's presumption of ownership with  
13 evidence establishing defendant's own prior use in commerce of  
14 the registered marks. Ramirez, 941 F. Supp. 2d at 1204.  
15 Accordingly, the court must deny plaintiff's motion to strike  
16 defendant's prior common law rights defense.

17 6. Fair Use

18 Nominative fair use is a defense to infringement where  
19 the use merely identifies the trademarked item in a manner that  
20 does not confuse consumers. See Toyota Motor Sales, U.S.A., Inc.  
21 v. Tabari, 610 F.3d 1171, 1175 (9th Cir. 2010) (considering  
22 defense regarding automobile brokers' use of Lexus trademark).  
23 Here, defendant alleges that plaintiff's claims are barred "in  
24 whole or in part . . . to the extent that Defendant's use of any  
25 of the trademarks asserted by Plaintiff is fair and in good faith  
26 to describe, name, or identify Plaintiff or Plaintiff's own  
27 product or service." (Answer ¶ 109.) Although the court agrees  
28

1 with plaintiff that the primary issue in this case revolves  
2 around defendant's use of the marks to identify itself rather  
3 than plaintiff, it appears undisputed that any use of the marks  
4 simply to identify plaintiff would qualify as fair use.  
5 Accordingly, because the court cannot say "under no set of  
6 circumstances could the defense succeed," Ramirez, 941 F. Supp.  
7 2d at 1204, the court will deny plaintiff's motion to strike  
8 defendant's fair use defense.

9           7.    Lack of Secondary Meaning

10           A plaintiff in an infringement action must prove that  
11 its mark is distinctive. Kendall-Jackson Winery v. E. & J. Gallo  
12 Winery, 150 F.3d 1042, 1046-47 (9th Cir. 1998). It may satisfy  
13 this burden by showing that the mark has acquired a secondary  
14 meaning. Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S.  
15 205, 216 (2000). However, some courts have recognized lack of  
16 secondary meaning as a proper affirmative defense rather than  
17 denial of an element of the plaintiff's prima facie case. See  
18 Desert European Motorcars, Ltd. v. Desert European Motorcars,  
19 Inc., No. EDCV 11-197 RSWL (DTBx), 2011 WL 3809933, at \*9 (C.D.  
20 Cal. Aug. 25, 2011).

21           As with plaintiff's invalidity affirmative defense,  
22 plaintiff does not demonstrate how shifting the burden of proof  
23 on an element of plaintiff's case to defendant causes plaintiff  
24 to suffer any prejudice. There is no indication that allowing  
25 defendant to proceed with this defense would "confuse the jury"  
26 or require the parties "to engage in burdensome discovery around  
27 frivolous matters." Luhn, 2011 WL 5040709, at \*1. Accordingly,  
28

1 because the court may deny motions to strike absent a showing of  
2 prejudice, the court will deny plaintiff's motion to strike  
3 defendant's lack of secondary meaning defense.

4 8. Non-Commercial Use

5 Defendant next alleges that "Plaintiff's claims are  
6 barred in whole or in part to the extent that California State  
7 Grange's use of any of the alleged marks is non-commercial and  
8 thus protected under the First Amendment to the United States  
9 Constitution." (Answer ¶ 111.) This conclusory assertion does  
10 not find any factual support in defendant's Answer, or even  
11 defendant's briefs. It is not even clear in what sense the  
12 defendant uses the term "non-commercial," e.g., not for profit or  
13 not in interstate commerce. Instead, defendant argues that it  
14 may plead inconsistent facts and defenses. This may be true, but  
15 it does not address the lack of any factual allegations to  
16 support this defense. Accordingly, because such barebones  
17 pleadings do not even provide fair notice to plaintiff of the  
18 extent of defendant's alleged non-commercial uses, the court must  
19 grant plaintiff's motion to strike this defense without  
20 prejudice.

21 9. First Sale Doctrine

22 The first sale doctrine holds that "the right of a  
23 producer to control distribution of its trademarked product does  
24 not extend beyond the first sale of the product," and thus  
25 "[r]esale by the first purchaser of the original article under  
26 the producer's trademark is neither trademark infringement nor  
27 unfair competition." Sebastian Int'l, Inc. v. Longs Drug Stores  
28

1 Corp., 53 F.3d 1073, 1074 (9th Cir. 1995). Here, defendant  
2 alleges that plaintiff's claims are barred "to the extent that  
3 [defendant's] use of any of the alleged marks or sale of goods  
4 bearing any of the marks is a mere resale of Plaintiff's  
5 products, whether procured from Plaintiff or on the open market."  
6 (Answer ¶ 112.)

7  
8 Plaintiff challenges the legal sufficiency of this  
9 defense, arguing that the dissolution of the affiliate  
10 relationship between plaintiff and defendant bars defendant from  
11 alleging first sale. Plaintiff presents no legal authority for  
12 this contention, as the case law it provides makes no mention of  
13 the first sale doctrine. See U.S. Jaycees, 354 F. Supp. at 63.  
14 Moreover, as the court has already described, disputed issues of  
15 fact remain as to the relationship between the two entities. The  
16 court thus cannot conclude so early in the litigation that this  
17 defense is foreclosed to defendant and that "under no set of  
18 circumstances could" defendant prove that at least some of its  
19 use of the marks was a mere resale of plaintiff's products.  
20 Ramirez, 941 F. Supp. 2d at 1204. Accordingly, the court will  
21 deny plaintiff's motion to strike defendant's first sale defense.

22 10. Unclean Hands

23 Finally, defendant alleges that plaintiff has unclean  
24 hands "by attempting to enforce its alleged trademark rights  
25 beyond a reasonable interpretation of the scope of the rights  
26 legitimately granted to a trademark owner." (Answer ¶ 113.)  
27 This defense begs the question to be determined by this  
28 litigation, i.e. the scope of plaintiff's trademark rights, and,

1 as plaintiff admits, the "issue will be decided based on the  
2 Complaint and Answer." (Pl.'s Reply at 9:19 (Docket No. 21).)  
3 Accordingly, because this defense will not prejudice defendant,  
4 the court will deny plaintiff's motion to strike defendant's  
5 unclean hands defense.

6 B. First Counterclaim

7 Plaintiff additionally moves to strike or,  
8 alternatively, dismiss, defendant's first counterclaim for  
9 declaratory relief on the grounds that the counterclaim is  
10 redundant. Under the Declaratory Judgment Act, a court "may  
11 declare the rights and other legal relations of any interested  
12 party." 28 U.S.C. § 2201(a) (emphasis added). This provision  
13 "has long been understood 'to confer on federal courts unique and  
14 substantial discretion in deciding whether the declare the rights  
15 of litigants.'" MedImmune, Inc. v. Genentech, Inc., 549 U.S.  
16 118, 136 (2007) (quoting Wilton v. Seven Falls Co., 515 U.S. 277,  
17 286 (1995)). Plaintiff argues that the court should exercise its  
18 discretion to strike or dismiss defendant's counterclaim for  
19 declaratory relief because it raises issues identical to those  
20 raised in the Complaint.

21 "A dismissal of counterclaims [for declaratory relief]  
22 as redundant is not warranted simply because they concern the  
23 same subject matter or arise from the same transaction as the  
24 complaint." City of Lindsay v. Sociedad Quimica y Minera de  
25 Chile S.A., Civ. No. 11-46 LJO SMS, 2011 WL 2516159, at \*3 (E.D.  
26 Cal. June 21, 2011) (citation omitted). A court should consider  
27 whether the counterclaims "serve any useful purpose," and should  
28

1 strike a counterclaim "only when it is clear that there is a  
2 complete identity of factual and legal issues between the  
3 complaint and the counterclaim." Id. (citation and quotation  
4 marks omitted).

5 Here, defendant's counterclaim seeks a declaration that  
6 its use of "Grange," "State Grange," "The National Grange," and  
7 "California State Grange" does not (1) infringe plaintiff's  
8 claimed trademarks "or any common law rights it might have  
9 accrued through its use of those marks;" (2) violate § 32 of the  
10 Lanham Act; (3) violate § 43(a) of the Lanham Act; violate §  
11 43(c) of the Lanham Act; or (4) "violate any other federal, state  
12 or common law." (Answer ¶ 125.) Although these claims  
13 substantially mirror plaintiff's, defendant's references to "any  
14 common law rights" and "any other federal, state or common law"  
15 take the counterclaim beyond the specific scope of plaintiff's  
16 pleadings. Thus, it is not "clear that there is a complete  
17 identity of factual and legal issues between the complaint and  
18 the counterclaim," and the counterclaim may still "serve [a]  
19 useful purpose." City of Lindsay, 2011 WL 2516159, at \*3.

20 As a leading treatise explains, plaintiff's contention  
21 that the counterclaim should be dismissed or stricken "ignores  
22 the possibility that it is very difficult to determine whether  
23 the declaratory-judgment counterclaim really is redundant prior  
24 to trial." 6 Arthur R. Miller & Mary Kane, Fed. Prac. & Proc. §  
25 1406 (3d ed.). Accordingly, "the safer course for the court to  
26 follow is to deny a request to dismiss a counterclaim for  
27 declaratory relief unless there is no doubt that it will be  
28

1 rendered moot by the adjudication of the main action." Id. The  
2 court will therefore decline to exercise its discretion to  
3 dismiss or strike defendant's counterclaim for declaratory relief  
4 at this time.

5 C. Second Counterclaim

6 Plaintiff also moves to dismiss defendant's second  
7 counterclaim under Rule 12(b)(6) for failure to state a claim.  
8 On a motion to dismiss, the court must accept the allegations in  
9 the pleading as true and draw all reasonable inferences in favor  
10 of the non-moving party. Scheuer v. Rhodes, 416 U.S. 232, 236  
11 (1974), overruled on other grounds by Davis v. Scherer, 468 U.S.  
12 183 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972).

13 Defendant's second counterclaim alleges that plaintiff  
14 abandoned its trademarks through naked licensing. A trademark  
15 owner engages in naked licensing when it grants a license but  
16 "fails to exercise adequate quality control over the licensee,"  
17 which results "in the trademark ceasing to function as a symbol  
18 of quality and controlled source." Barcamerica Int'l USA Trust  
19 v. Tyfield Imps., Inc., 289 F.3d 589, 596 (9th Cir. 2002)  
20 (citation and quotation marks omitted). Such a failure  
21 "constitutes abandonment of any rights to the trademark by the  
22 licensor," in which case the court may estop the owner from  
23 asserting those rights. Id. at 596, 598.

24 To support this claim, defendant merely alleges that,  
25 "[o]n information and belief, [plaintiff] has failed to police  
26 and exercise adequate quality control over the goods or services  
27 sold or provided under each of the Marks by one or more licensees  
28

1 or third parties." (Answer ¶ 129.) Defendant alleges no facts  
2 to support this conclusory contention, nor does defendant allege  
3 that plaintiff's failure to exercise quality control over any  
4 licensees has resulted "in the trademark ceasing to function as a  
5 symbol of quality and controlled source." Barcamerica, 289 F.3d  
6 at 596.

7 Defendant's second counterclaim thus offers little  
8 beyond "naked assertions devoid of further factual enhancement"  
9 and "formulaic recitations of the elements" of the claim. See  
10 Iqbal, 556 U.S. at 678 (citation and quotation marks omitted).  
11 Without more, defendant cannot "state a claim to relief that is  
12 plausible on its face." Twombly, 550 U.S. at 570. Accordingly,  
13 the court must grant plaintiff's motion to dismiss the  
14 counterclaim for failure to state a claim.

15 IT IS THEREFORE ORDERED that:

16 (1) plaintiff's motion to strike defendant's  
17 affirmative defenses be, and the same hereby is, GRANTED as to  
18 defendant's affirmative defenses of failure to state a claim,  
19 genericness and non-commercial use; and DENIED as to defendant's  
20 affirmative defenses of invalidity, acquiescence, waiver,  
21 estoppel, and laches, statute of limitations, prior common law  
22 use, fair use, lack of secondary meaning, first sale, unclean  
23 hands, and failure to mitigate;

24 (2) plaintiff's motion to strike or dismiss defendant's  
25 first counterclaim be, and the same hereby is, DENIED; and


26 (3) plaintiff's motion to dismiss defendant's second,  
27 counterclaim be, and the same hereby is, GRANTED.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Defendant has twenty days from the date this Order is signed to file an amended Answer and Counterclaims, if defendant can do so consistent with this Order.

Dated: July 30, 2014

  
WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE