

1 alleging violations of the Americans with Disabilities Act and
2 several California statutes. Defendant Live Nation timely
3 answered, asserting thirty affirmative defenses. (See Answer
4 (Docket No. 4).) Plaintiffs moved to strike all thirty of those
5 defenses pursuant to Federal Rule of Civil Procedure 12(f).

6 After this motion was filed, defendant Sleep Train also
7 answered the Complaint raising identical affirmative defenses.
8 (See Docket No. 13.) Pursuant to the parties' stipulation made
9 at the hearing on March 23, 2015, the court will consider both
10 Live Nation and Sleep Train's Answers in ruling on this motion to
11 strike.

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

21 Because motions to strike are "often used as delaying
22 tactics," they are "generally disfavored" and are rarely granted
23 in the absence of prejudice to the moving party. Rosales v.
24 Citibank, FSB, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001); see
25 also N.Y.C. Emps.' Ret. Sys. v. Berry, 667 F. Supp. 2d 1121, 1128
26 (N.D. Cal. 2009) ("Where the moving party cannot adequately
27 demonstrate . . . prejudice, courts frequently deny motions to
28 strike even though the offending matter was literally within one

1 or more of the categories set forth in Rule 12(f)." (citation and
2 internal quotation marks omitted)). Courts may find prejudice
3 "where superfluous pleadings may confuse the jury, or where a
4 party may be required to engage in burdensome discovery around
5 frivolous matters." J & J Sports Prods., Inc. v. Luhn, Civ. No.
6 2:10-3229 JAM CKD, 2011 WL 5040709, at *1 (E.D. Cal. Oct. 24,
7 2011) (citations omitted). "With a motion to strike, just as
8 with a motion to dismiss, the court should view the pleading in
9 the light most favorable to the nonmoving party." Platte Anchor
10 Bolt, Inc. v. IHI, Inc., 352 F. Supp. 2d 1048, 1057 (N.D. Cal.
11 2004).

12 Defendants' tenth affirmative defense is "unclean
13 hands." Defendants allege that "plaintiffs' claims are barred
14 under the doctrine of unclean hands because plaintiffs are not a
15 bona fide customer, but a plaintiff who intentionally stages
16 nuisance lawsuits to extort monetary settlements." (Answer ¶
17 10.) Plaintiffs' motion to strike this defense is well taken.

18 "Scandalous matter" within the meaning of Rule 12(f)
19 "includes allegations that cast a cruelly derogatory light on a
20 party or other person." In re 2TheMart.com, Inc. Secs. Litig.,
21 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000). The court agrees that
22 the accusation that plaintiffs are engaging in extortion is
23 scandalous. The court will accordingly strike the words "bona
24 fide" and "but a plaintiff who intentionally stages nuisance
25 lawsuits to extort monetary settlements" from defendants'
26 Answers. The remaining allegation reads: "Plaintiffs' claims are
27 barred under the doctrine of unclean hands because plaintiffs are
28 not a customer."

1 Plaintiffs move to strike all of defendants' remaining
2 defenses on the bases that they are not technically affirmative
3 defenses, are insufficiently plead, and/or are immaterial to the
4 action. Defendants' defenses do appear to be conclusory and
5 boilerplate. However, plaintiffs have not convinced the court
6 that they will suffer any real prejudice from those defenses
7 remaining in the Answer. Neither is this an extraordinary
8 situation where the court should grant a motion to strike in the
9 absence of prejudice to plaintiffs. See Rosales, 133 F. Supp. 2d
10 at 1180. There is nevertheless some merit to plaintiffs'
11 argument that defendants should not be permitted to proceed
12 forward with affirmative defenses which they have no reason to
13 believe are supported in law or fact.

14 Accordingly, the court will allow defendants a limited
15 time to investigate whether there is a factual and legal basis
16 for their affirmative defenses before requiring that any of those
17 defenses be stricken from the Answer.

18 IT IS THEREFORE ORDERED

19 (1) that plaintiffs' motion to strike be, and the same
20 hereby is, GRANTED in part, with respect to the following
21 language, which is hereby STRICKEN from defendants' tenth
22 affirmative defense: "bona fide" and "but a plaintiff who
23 intentionally stages nuisance lawsuits to extort monetary
24 settlements;"

25 (2) that plaintiffs' motion to strike be, and the same
26 hereby is, DENIED with respect to the remaining affirmative
27 defenses;

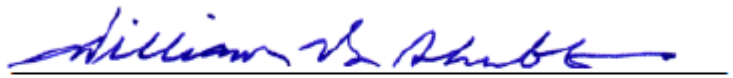
28 (3) that defendants shall have 90 days from the date

1 this Order is signed to complete all necessary discovery in order
2 to determine whether there is any basis for a good faith belief
3 that their affirmative defenses have merit. The word "complete"
4 means that such discovery shall have been conducted so that all
5 necessary depositions have been taken and interrogatories have
6 been answered, and any disputes relevant to that discovery shall
7 have been resolved by appropriate order if necessary and, where
8 discovery has been ordered, the order has been obeyed. All
9 motions to compel discovery must be noticed on the magistrate
10 judge's calendar in accordance with the local rules of this court
11 and so that such motions may be heard (and any resulting orders
12 obeyed) by the time set forth in this Order;

13 (4) that within 120 days from the date of this Order,
14 defendants shall file an Amended Answer which eliminates all
15 affirmative defenses which defendants do not have an honest, good
16 faith belief may be supported by specific facts and applicable
17 law; and

18 (5) that within fourteen days from the filing of
19 defendants' Amended Answer, plaintiffs may file a renewed motion
20 to strike any remaining affirmative defenses.

21 Dated: March 24, 2015

22 
23 **WILLIAM B. SHUBB**
24 **UNITED STATES DISTRICT JUDGE**