

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK A. GRANT,
Plaintiff,
v.
MICHAEL CORRAL, et al.,
Defendants.

No. 2:19-cv-01495-MCE-CKD PS

FINDINGS AND RECOMMENDATIONS
(ECF No. 21)

Presently before the court is plaintiff’s motion to strike defendants’ answer and affirmative defenses. (ECF No. 21.) Defendants have filed an opposition. (ECF No. 23.) For the reasons set forth below the court recommends GRANTING IN PART and DENYING IN PART plaintiff’s motion.

This case involves a dispute regarding the City of Sacramento’s (“the City”) use of code violations against plaintiff and his property. (See generally ECF No. 17.) Read broadly, plaintiff’s complaint asserts that the defendants—the City, Jose Mendez, and Michael Corral—violated his rights to due process and equal protection by their deficient administrative procedures and discriminatory use of code violations. (Id.) The court denied defendants’ motion to dismiss (ECF No. 19), and defendants filed an answer. (ECF No. 20.) Plaintiff then filed a motion to strike defendants’ answer, which is presently before the court. (ECF No. 21.)

///

1 **I. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 12(f) states that a district court “may strike from a
3 pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”
4 The function of a 12(f) motion to strike is to avoid the expenditure of time and money that arise
5 from litigating spurious issues by dispensing with those issues prior to trial. Whittlestone, Inc. v.
6 Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (internal quotations omitted). Thus, the court
7 must determine whether the contested portions of defendants’ pleading present (1) an insufficient
8 defense, or are (2) redundant, (3) immaterial, (4) impertinent, or (5) scandalous.

9 **II. ANALYSIS**

10 Plaintiff moves to strike 32 of defendants’ responses to 32 paragraphs of plaintiff’s
11 complaint and all 10 of defendants’ affirmative defenses.

12 **A. Admissions and Denials**

13 In “short and plain terms,” an answer must admit or deny each of the material allegations
14 raised in the complaint. Fed R. Civ. P. 8(b)(1). Parties are also permitted to plead lack of
15 sufficient knowledge or information, which is treated as a denial of the allegation addressed. Fed.
16 R. Civ. P 8(b)(5). Court’s disfavor ruling on factual questions in motions to strike, and “absent a
17 finding of bad faith, factual allegations in the complaint (or answer) must be tested through the
18 normal mechanisms for adjudicating the merits.” PAE Gov’t Servs., Inc. v. MPRI, Inc., 514 F.3d
19 856, 859 n.3 (9th Cir. 2007).

20 All of plaintiff’s objections to defendants’ responding paragraphs state: “Defendants[’]
21 denial to [the] allegation in paragraph [X] fails to state facts sufficient to constitute a defense,
22 since the defendants are in possession of the information and/or have the ability to acquire the
23 information necessary to form a belief as to the truth of the allegation(s).” (ECF No. 21 at 1–5.)

24 In reviewing plaintiff’s motion and defendants’ answer, the court cannot find a responding
25 paragraph that is redundant, immaterial, impertinent, or scandalous. Nor can the court conclude
26 that any of defendants’ responses were made in bad faith. Accordingly, the undersigned
27 recommends DENYING plaintiff’s motion to the extent he is requesting the court to strike
28 defendants’ responses to the material allegations in plaintiff’s complaint.

1 B. Affirmative Defenses

2 Plaintiff also moves to strike all of defendants' 10 affirmative defenses. Each of his
3 objections state: "Defendants['] [X] Affirmative Defense Fa[i]ls to state facts sufficient to
4 constitute a defense." (ECF No. 21 at 5–6.) Defendants, in opposition, assert that they "have
5 plead[ed] each of their affirmative defenses with sufficient specificity and factual particularly to
6 put Plaintiff on fair notice[.]" (ECF No. 23 at 4.)

7 To sufficiently plead an affirmative defense, it must provide the opposing party "fair
8 notice" of the issue raised. See Wyshak v. City Nat'l Bank, 607 F.2d 824, 827 (9th Cir. 1979)
9 ("The key to determining the sufficiency of pleading an affirmative defense is whether it gives
10 plaintiff fair notice of the defense"), overruled on other grounds by Castro v. County of Los
11 Angeles, 833 F.3d 1060 (9th Cir. 2016) (en banc). To provide fair notice, the defendant must
12 "identify the nature and grounds for the affirmative defense, rather than plead a detailed statement
13 of facts upon which the defense is based." United States v. Rite Aid Corp., No. 2:12-CV-1699-
14 KJM-EFB, 2020 WL 230202, at *2 (E.D. Cal. Jan. 15, 2020) (internal quotations omitted).

15 Because motions to strike are often used as delaying tactics, they are generally disfavored
16 and are rarely granted in the absence of prejudice to the moving party. Harris v. Chipotle
17 Mexican Grill, Inc., 303 F.R.D. 625, 628 (E.D. Cal. 2014). "Motions to strike a defense as
18 insufficient are not favored by the federal courts because of their somewhat dilatory and often
19 harassing character. Thus, even when technically appropriate and well-founded, Rule 12(f)
20 motions are not granted in the absence of a showing of prejudice to the moving party." Greene v.
21 Solano Cty. Jail, No. CIVS040917WBSDADP, 2004 WL 7334559, at *1 (E.D. Cal. Nov. 15,
22 2004) (citing 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1381,
23 at 421-22 (3d ed. 2004)). However, when motions to strike remove unnecessary clutter from the
24 case, they serve to expedite, not delay, and are generally favored. See Heller Fin., Inc. v.
25 Midwhey Powder Co., 883 F.2d 1286, 1294 (7th Cir. 1989).

26 The court recommends granting plaintiff's motion to strike defendants' ninth affirmative
27 defense but denying the remainder of plaintiff's motion.

28 ///

1 Defendants' ninth affirmative defense is entitled "Arrest/Force" and states in its entirety,
2 "Each act or omission alleged in the complaint falls within the immunities and privileges set forth
3 in the California Penal Code, including but not limited to sections 834, 834a, 835, 836, and
4 836.5." (ECF No. 20 at 8.) Not only is this defense void of any factual basis, it is unclear why
5 defendants are asserting statutes addressing arrest and use-of-force procedures as an affirmative
6 defense in a code violation case where no arrest or use of force is pleaded or alleged.

7 Accordingly, striking the defense, would "remove unnecessary clutter from the case" and
8 therefore serve to expedite, rather than delay. See Heller Fin., 883 F.2d at 1294. The court
9 therefore recommends striking defendants' ninth affirmative defense without prejudice.

10 While the remainder of defendants' affirmative defenses are not ideal regarding their
11 factual assertions, the court cannot find prejudice by their inclusion, and plaintiff points to none in
12 his motion. Rather, as mentioned, plaintiff attacks defendants' affirmative defenses in 10
13 identical paragraphs, which are one sentence each. Because plaintiff has not asserted any
14 prejudice by the inclusion of defendants' affirmative defenses, as well as this court's general
15 aversion to motions to strike, the undersigned recommends denying the remainder of plaintiff's
16 motion. See Harris, 303 F.R.D. at 628 ("[T]he court will deny plaintiffs' motion to strike
17 [defendants' affirmative defenses] because plaintiffs have failed to show they will suffer any
18 prejudice if the defenses are left in the defendants' Answer.").

19 **III. CONCLUSION**

20 For the reasons set forth above, it is HEREBY RECOMMENDED that plaintiff's motion
21 to strike (ECF No. 21) be GRANTED IN PART and affirmative defense nine (Arrest/Force) be
22 STRICKEN without prejudice; and DENIED IN PART without prejudice as to the remainder of
23 plaintiff's motion.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, any party may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: March 3, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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