UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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VALERIE BROOKS, individually and on behalf of all others similarly situated, Plaintiff, v. BANK OF SAN FRANCISCO, a California corporation; and DOES 1 to 10, inclusive, Defendants.	No. 2:20-cv-01366-WBS-CKD ORDER RE: MOTION TO STRIKE AFFIRMATIVE DEFENSES

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Plaintiff Valerie Brooks ("plaintiff" or "Brooks") brought this action against Bank of San Francisco ("defendant" or "Bank of San Francisco") and Does 1 through 10[1] seeking damages related to defendant's alleged violations of the Americans with

[1] The Doe defendants have not appeared and there is no indication as to who they are. Accordingly, the court will refer to Bank of San Francisco as the sole defendant for purposes of this order.

Disabilities Act ("ADA"), 42 U.S.C. § 12181 et seq., and the Unruh Civil Rights Act, Cal. Civil Code § 51 et seq. Plaintiff's Motion to Strike Affirmative Defenses 1-8, 10-13, and 15-18 in Defendant's Answer is currently before the court. ("Mot. to Strike") (Docket No. 8).)

Under Federal Rule of Civil Procedure 12(f), "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." See Fed. R. Civ. P. 12(f). Affirmative defenses can be challenged as a matter of pleading or as a matter of law. See Harris v. Chipotle Mexican Grill, Inc., 303 F.R.D. 625, 627 (E.D. Cal. Oct. 7, 2014) (Shubb, J.). Plaintiff argues that defendant's fourth, eighth, eleventh, thirteenth, sixteenth, and eighteenth defenses are insufficient as a matter of pleading because they are merely recitations of legal doctrines with no supporting facts or allegations connecting the doctrine at issue to the facts of the case. (Mot. to Strike at 6, 8–11.)

When asserting an affirmative defense, "[a] reference to a doctrine, like a reference to statutory provisions, is insufficient notice." Qarbon.com Inc. v. eHelp Corp., 315 F. Supp. 2d 1046, 1049 (N.D. Cal. Feb. 26, 2004). Defendant has failed to provide facts sufficient to state the nature and grounds of all these affirmative defenses or to connect the label of the doctrines asserted to the facts of this case. (See Answer at 10–12.) Accordingly, the fourth, eighth, eleventh, thirteenth, sixteenth, and eighteenth defenses fail to provide fair notice as a matter of pleading and conceivably pose a risk that plaintiff will have to engage in futile discovery, see

Rosales, 133 F. Supp. 2d at 1180.

Plaintiff argues that Affirmative Defenses 10 (Reasonable Portion of Website Accessible) and 15 (Lack of Subject Matter Jurisdiction) are not actually affirmative defenses and should be stricken on that basis. (Mot. to Strike at 8-10.) "A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense." Zivkovic. v. S. Cal. Edison Co., 302 F.3d 1080, 1088 (9th Cir. 2002.) Regardless of whether these defenses are properly characterized as "affirmative," the court will deny plaintiff's motion to strike these defenses because plaintiff has failed to show that she will suffer any prejudice if these defenses are left in the defendants' Answer. See Rosales, 133 F. Supp. 2d at 1180. In fact, it is more likely that the parties and the court have already expended more resources than necessary on this motion.

IT IS THEREFORE ORDERED that plaintiff's motion to strike defendant's affirmative defenses be, and the same hereby is, GRANTED as to defendant's fourth, eighth, eleventh, thirteenth, sixteenth, and eighteenth affirmative defenses, and DENIED in all other respects.

Defendant has twenty days from the date this Order is signed to file an amended answer if it can do so consistent with this Order.

Dated: November 17, 2020

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE