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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRIS CHAVEZ, on behalf on  
himself and all others similarly  
situated,

No C 06-6609 VRW  
ORDER

Plaintiff,

v

BLUE SKY NATURAL BEVERAGE CO, et  
al,

Defendants.

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On July 21, 2009, plaintiff filed a motion to strike defendants' affirmative defenses. Doc #57. In lieu of a response to plaintiff's motion, defendants filed an amended answer eliminating fourteen affirmative defenses and revising and reasserting five others. Doc #64. While defendants did not obtain leave prior to filing an amended answer, the court will nevertheless allow the amendment because it does not appear to prejudice plaintiff.

Defendants argue that their amended answer moots plaintiff's motion. Doc #65. The court will treat as waived the

1 fourteen affirmative defenses not asserted in defendants' amended  
2 answer. But because defendants' amended answer continues to assert  
3 five affirmative defenses, those five affirmative defenses remain  
4 subject to plaintiff's motion to strike.

5 Defendants were obligated to oppose or state their non-  
6 opposition to plaintiff's motion. Civ LR 7-3. Because defendants  
7 have failed to address plaintiff's motion adequately, defendants  
8 are hereby ORDERED to SHOW CAUSE in writing, not later than October  
9 5, 2009, why plaintiff's motion to strike defendants' five  
10 remaining affirmative defenses should not be granted. The hearing  
11 currently scheduled for September 24, 2009 is VACATED. In its  
12 place, the court will hold a hearing on the matter on October 15,  
13 2009 at 10 AM.

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16 IT IS SO ORDERED.

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19 VAUGHN R WALKER  
20 United States District Chief Judge