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3	IN THE UNITED STATES DISTRICT COURT
4	FOR THE NORTHERN DISTRICT OF CALIFORNIA
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6	WAILEA PARTNERS, LP,) Case No. 11-CV-3544 SC
7	a Delaware limited partnership,)) ORDER DENYING PLAINTIFF'S
8	Plaintiff, <u>MOTION TO STRIKE</u>
9	v.)
10	HSBC BANK USA, N.A.,
11	a national banking association,)
12	Defendant.)
13)
14	Before the Court is Plaintiff Wailea Partners, LP's,
15	("Plaintiff") Motion to Strike portions of Defendant HSBC Bank USA,
16	N.A.'s ("Defendant") Motion to Dismiss. ECF Nos. 37 ("MTS"), 23
17	("MTD"). Plaintiff's Motion to Strike is DENIED as procedurally
18	improper.
19	Plaintiff asks the Court to strike references to "premiums" in
20	Defendant's pending Motion to Dismiss, arguing that the
21	transactions at issue in this case did not involve premiums. MTS
22	at 4. Under Federal Rule of Civil Procedure 12(f), "[t]he court
23	may strike from a pleading an insufficient defense or any
24	redundant, immaterial, impertinent, or scandalous matter."
25	Plaintiff's MTS is improper under Rule 12(f) because a motion to
26	dismiss is not a pleading. <u>See</u> Fed. R. Civ. P. 7(a) (defining
27	"pleading" as a complaint, an answer to a complaint, an answer to a

counterclaim, an answer to a crossclaim, a third-party complaint,

United States District Court For the Northern District of California

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1 an answer to a third-party complaint, and a reply to an answer); 2 <u>see also McCain v. Cal. Highway Patrol</u>, 2011 U.S. Dist. LEXIS 3 69690, at *5-6 (E.D. Cal. June 29, 2011) (denying plaintiff's 4 motion to strike defendant's motion to dismiss because "Rule 12(f) 5 may be used to strike 'pleadings,' and a motion is not a 6 'pleading'").

The arguments set forth in Plaintiff's MTS should have been included in Plaintiff's Opposition to Defendant's MTD. The Court declines to construe Plaintiff's MTS as a supplemental Opposition because Plaintiff's Opposition already meets the maximum page limit set by Civil Local Rule 7-4(b). ECF No. 35 ("Pl's Opp'n to MTD").

IT IS SO ORDERED.

Dated: November 14, 2011

Samuel

UNITED STATES DISTRICT JUDGE