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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
89) Case No. C 13-0818 SC
10)
11 CHRISTOPHER ERIC GANDEZA,)
12) ORDER GRANTING MOTION TO STRIKE
13)
14 Plaintiff,)
15)
16 v.)
17)
18 THE BRACHFELD LAW GROUP and)
19 ERICA LYNN BRACHFELD,)
20)
21 Defendants.)
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19 **I. INTRODUCTION**20 This matter arises from a dispute under the Fair Debt
21 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq., and
22 California's Rosenthal Fair Debt Collection Practices Act
23 ("Rosenthal Act"), Cal. Civ. Code § 1788 et seq. Now before the
24 Court is Plaintiff Christopher Eric Gandeza's ("Plaintiff") motion
25 to strike Defendants Brachfeld Law Group and Erica Lynn Brachfeld's
26 affirmative defenses. ECF Nos. 8 ("Ans."), 16 ("MTS"). The matter
27 is fully briefed, ECF No. 18 ("Opp'n"), 19 ("Reply"), and suitable
28 for decision without oral argument per Civil Local Rule 7-1(b).

1 **II. BACKGROUND**

2 The factual background of this case is unimportant for the
3 present order. The Court therefore provides only a short
4 procedural summary.

5 On February 22, 2013, Plaintiff filed his Complaint, alleging
6 causes of action stemming from the FDCPA and the Rosenthal Act.
7 ECF No. 1 ("Compl."). Defendants answered the Complaint on March
8 29, 2013 and asserted nine affirmative defenses to Plaintiff's
9 claims. Ans. ¶¶ 48-56.

10 Plaintiff moved to strike those defenses on April 19, 2013.
11 According to Defendants' papers (and not disputed by Plaintiff),
12 Defendants responded to Plaintiff's motion first by sending
13 Plaintiff an email stating that Defendants would file an Amended
14 Answer. Opp'n at 2. They gave Plaintiff a draft of this Amended
15 Answer, which contained only two affirmative defenses, but
16 Plaintiff did not withdraw his motion to strike or stipulate to the
17 filing of an Amended Answer. Id. Defendants accordingly filed
18 their opposition to Plaintiff's motion, in which they agree to
19 withdraw all of their affirmative defenses except the failure to
20 mitigate and bona fide error defenses. Id. They argue that since
21 Plaintiff is on notice of what affirmative defenses will be
22 litigated in the case, and since Defendants bear the burden on the
23 two remaining defenses at litigation, Plaintiff's attempt to strike
24 these two defenses is improper. Id. Alternatively, Defendants ask
25 for leave to amend the Answer. Id. at 2-3. Plaintiff insists that
26 the two remaining affirmative defenses are improperly pled but does
27 not appear to contest Defendants' request that the Court grant
28 leave to amend the Answer as justice requires. See Reply at 2-6.

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2 **III. LEGAL STANDARD**

3 Federal Rule of Civil Procedure 12(f) provides that a court
4 may, on its own or on a motion, "strike from a pleading an
5 insufficient defense or any redundant, immaterial, impertinent, or
6 scandalous matter." Motions to strike "are generally disfavored
7 . . . [and] are generally not granted unless it is clear that the
8 matter sought to be stricken could have no possible bearing on the
9 subject matter of the litigation." Rosales v. Citibank, 133 F.
10 Supp. 2d 1177, 1180 (N.D. Cal. 2001).
11

12 **IV. DISCUSSION**

13 Plaintiff argues that Defendants' affirmative defenses are
14 improperly pled. According to Plaintiff, an affirmative defense
15 must meet the plausibility standards of Twombly and Iqbal. See MTS
16 at 2-4 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007),
17 Ashcroft v. Iqbal, 566 U.S. 662 (2009)).

18 Defendants concede that seven of their nine affirmative
19 defenses are deficient. Opp'n at 2. They therefore waive those
20 defenses. As to their bona fide mistake and failure to mitigate
21 defenses, Defendants argue that a failure to plead facts is
22 irrelevant, since Plaintiff is on notice of the defenses to be
23 litigated and could therefore obtain sufficient facts at discovery.
24 See Opp'n at 4-6.

25 The Court finds that Defendants have failed to plead plausible
26 facts supporting any of their Answer's affirmative defenses. See
27 Ans. ¶¶ 48-56. As the Court has held previously, notice pleading
28 is insufficient for affirmative defenses pled in answers. Dion v.

1 Fulton Friedman & Gullace LLP, No. 11-2727 SC, 2012 WL 160221, at
2 *2 (N.D. Cal. Jan. 17, 2012) (citing Barnes v. AT&T Pension Benefit
3 Plan, 718 F. Supp. 2d 1167, 1171-72 (N.D. Cal. 2011)). Affirmative
4 defenses, like complaints, must be supported with facts rendering
5 the defense plausible under Twombly and Iqbal. See id. It is not
6 enough that a plaintiff knows what legal defense will be argued:
7 the plaintiff must also know the factual bases of the defense. Id.

8 The Court therefore strikes Defendants' affirmative defenses.
9 Defendants have leave to amend their Answer to plead the two
10 affirmative defenses discussed in this Order and their briefing.
11 Defendants must plead facts supporting those two defenses. The
12 Court finds that such a narrow amendment will not prejudice
13 Plaintiff.

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15 **V. CONCLUSION**

16 Plaintiff Christopher Eric Gandeza's motion to strike
17 Defendants Brachfeld Law Group and Erica Lynn Brachfeld's
18 affirmative defenses is GRANTED. Defendants have leave to file an
19 amended answer, as discussed above. They must do so within fifteen
20 (15) days of this Order's signature date.

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22 IT IS SO ORDERED.

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24 Dated: June 27, 2013



25 UNITED STATES DISTRICT JUDGE
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