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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LIZZIE E. BROWN,
Plaintiff,
v.
FAMILY STATIONS, INC.,
Defendant.

Case No. 13-cv-05305-VC

**ORDER GRANTING MOTION TO
STRIKE**

Re: Dkt. No. 53

Plaintiff Lizzie Brown has filed a motion to strike Defendant Family Stations' twenty-three affirmative defenses. Because Family Stations has alleged no facts in support of its affirmative defenses, the motion to strike is granted.

There is some dispute between the parties about the proper pleading standard for affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure. While the Court is inclined to hold that the heightened pleading standards of *Iqbal* and *Twombly* are applicable for affirmative defenses, in this case it need not address that issue, because Family Stations has pled no facts at all. Rather, each of the twenty-three affirmative defenses are mere recitations of boilerplate language, so regardless of what pleading standard applies, Family Stations has not met it. Accordingly, Brown's motion to strike is granted with leave to amend.

Further, the Court notes that some of Family Stations' alleged affirmative defenses are not actually affirmative defenses, but rather are attempts to point out defects in Brown's prima facie case. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) ("A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense."). Others appear to be wholly inapplicable to FEHA or Title VII. Family Stations is on notice that if it files an amended answer with affirmative defenses it should ensure both that they are genuinely


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affirmative defenses and not specific denials, and that they are applicable affirmative defenses against Brown's claims under FEHA and Title VII.

The motion to strike is granted, with leave to amend, and the hearing set for November 13, 2014 is vacated.

IT IS SO ORDERED.

Dated: November 6, 2014



VINCE CHHABRIA
United States District Judge