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United States District Court
For the Northern District of California

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

J & J SPORTS PRODUCTIONS,
Plaintiff,

No. C 14-3923 MMC

v.

**ORDER GRANTING MOTION TO STRIKE
DEFENDANTS' AFFIRMATIVE
DEFENSES**

JOEANN ELIZABETH PEPPERELL,
individually and dba FUNKEY MONKEY and
BABY DOT, INC., an unknown business
entity dba FUNKY MONKEY,
Defendants.

_____ /

Before the Court is the "Motion to Strike Defendants' Affirmative Defenses," filed January 23, 2015, by which plaintiff J & J Sports Productions, Inc. ("J & J") seeks an order striking all affirmative defenses asserted in the answer filed jointly by defendants Joeann Elizabeth Pepperell, individually and d/b/a Funky Monkey, and Babydot, Inc., an unknown business entity d/b/a Funky Monkey (collectively, "Funky Monkey"). Funky Monkey has filed opposition, to which J & J has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the parties' respective written submissions, VACATES the hearing scheduled for March 13, 2015, and finds, for the reasons stated by J & J, that each of the "affirmative defenses"

1 asserted in defendants' answer is deficient as pleaded.

2 Accordingly, the motion is hereby GRANTED and defendants' affirmative defenses
3 are hereby STRICKEN.


4 In its opposition, Funky Monkey requests leave to file a proposed amended answer,
5 in which all but one of the previously pleaded affirmative defenses have been removed and,
6 as to the remaining affirmative defense, facts in support thereof have been added. The
7 remaining "affirmative defense," however, is not an affirmative defense, but, rather, as J & J
8 points out, a denial of J & J's allegation that Funky Monkey acted willfully. See Zivkovic v.
9 S. Cal. Edison Co., 302 F.3d 1080, 1088 (9th Cir. 2002) (holding "[a] defense which
10 demonstrates that [the] plaintiff has not met its burden of proof is not an affirmative
11 defense"). Consequently, the proposed amendment would be futile.

12 Accordingly, Funky Monkey's request to file its proposed amended answer is hereby
13 DENIED. See Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988) (holding
14 leave to amend properly denied where amendment would be futile).

15 If Funky Monkey wishes to file a different amended answer, such pleading shall be
16 filed no later than March 4, 2015. If no such amended pleading is filed, the case will
17 proceed on the answer presently before the Court, in accordance with the rulings made
18 herein.

19 **IT IS SO ORDERED.**

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21 Dated: February 18, 2015


MAXINE M. CHESNEY
United States District Judge

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