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 PETROLIAM NASIONAL BERHAD
 6 (PETRONAS)

7
 8 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 9

10 PETROLIAM NASIONAL BERHAD,)	CASE NO.: 09-CV-5939 PJH
)	
11 Plaintiff,)	MOTION TO STRIKE
)	AFFIRMATIVE DEFENSES OF
12 vs.)	GODADDY
)	
13 GODADDY.COM, INC.,)	Date: September 29, 2010
)	Time: 9:00 a.m.
14 Defendant.)	Courtroom 3
)	Judge: Hon. Phyllis J. Hamilton
15)	

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NOTICE OF MOTION

TO ALL PARTIES AND COUNSEL OF RECORD: Please take notice that pursuant to Fed. R. Civ. P. 12(f), Plaintiff Petroliam Nasional Berhad (“Plaintiff” or “Petronas”) hereby moves this Court to strike all of Defendant GoDaddy.com, Inc.’s affirmative defenses in its complaint (Docket No. 27, attached hereto as Ex. A for convenience). Plaintiff further provides notice that pursuant to the Court’s practice, Plaintiff has selected September 29, 2010 at 9 a.m. as the date the motion will be heard.

MEMORANDUM IN SUPPORT

Plaintiff’s motion to strike should be granted because all of GoDaddy’s Affirmative Defenses are pled as a mere list of the common names for certain defenses and fail to provide notice of the factual or legal grounds, if any, for the defenses.

Federal Rule of Civil Procedure 12(f) provides that a court may strike “from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Whether a pleading is procedurally sufficient so as to withstand a motion to strike is governed by Fed. R. Civ. P. Rule 8(c), under which “the key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense.” *Wyshak v. City National Bank*, 607 F.2d 824, 827 (9th Cir. 1979). “Bare statements reciting mere legal conclusions do not provide a plaintiff with fair notice of the defense asserted, as required by *Wyshak*” and Rule 8. *CTF Dev., Inc. v. Penta Hospitality, LLC*, 2009 U.S. Dist. LEXIS 99538 (N.D. Cal. Oct. 26, 2009) (striking affirmative defenses pled as “all or some of [plaintiff’s] claims are barred under the doctrine of unclean hands” and “all or some of [plaintiff’s] claims are barred because any marks claimed by [plaintiff], including its registration for PENTA (U.S. Reg. No. 3,568,660), are invalid.”) A court may “strike defenses that do no more than name the defenses without listing their elements or supporting facts.” *Qarbon.com Inc. v. eHelp Corp.*,

1 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004) (striking affirmative defenses and stating plaintiff
2 is “barred from recovery in whole or in part by the doctrines of waiver, estoppel, and unclean
3 hands.”). “Where an affirmative defense simply states a legal conclusion or theory without the
4 support of facts explaining how it connects to the instant case, it is insufficient and will not
5 withstand a motion to strike.” *Solis v. Zenith Capital, LLC*, No. C-08-4854, 2009 U.S. Dist.
6 LEXIS 43350, at *8-19 (N.D. Cal. May 8, 2009) (citing *Jones v. Community Redevelopment*
7 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984)).

8 Here, defendant’s complaint simply lists defenses, such as “waiver,” “laches,” or
9 “acquiescence” without providing any supporting facts. Ex. A (Compl. at 8:8-28). For others,
10 GoDaddy identifies general legal concepts but provides no indication of the legal or factual basis
11 for their application to the complaint or this case, such as the “failure of Petronas to mitigate
12 damages” or “the Lanham Act safe harbor for registrars.” *Id.* GoDaddy also states, with no
13 specificity at all, that the complaint “fails to state claim upon which relief can be granted” but
14 provides not information of any kind as why this might be true.

15 Because the affirmative defenses in GoDaddy’s answer fail to meet the pleading standard
16 set forth in Rule 8, they should be stricken pursuant Rule 12(f).

17 Dated: August 25, 2010

LAW OFFICES OF PERRY R. CLARK

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By: /s/ Perry R. Clark

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Perry R. Clark

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Attorney for Plaintiff

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PETROLIAM NASIONAL BERHAD

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Ex. A