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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KUANG XUAN LIU, et al.,
Plaintiffs,
v.
WIN WOO TRADING, LLC, et al.,
Defendants.

Case No. 14-cv-02639-KAW

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO STRIKE DEFENDANT
SAFETY TRUCKING, LLC AND JIA TUN
ZHENG'S AMENDED ANSWER

Re: Dkt. No. 39

On November 11, 2014, Plaintiffs filed a motion to strike Defendants Safety Trucking, LLC and Jia Tun Zheng's affirmative defenses in their amended answer to Plaintiffs' first amended complaint. (Dkt. No. 39.)

Upon review of the parties' papers, the Court finds this matter suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and, for the reasons set forth below, GRANTS IN PART AND DENIES IN PART Plaintiffs' motion to strike.

I. BACKGROUND

On June 9, 2014, Plaintiffs Kuang Xuan Liu and Pei Xiong Lin filed this lawsuit against Defendants Win Woo Trading, LLC, Safety Trucking, LLC, and individuals Jia Jing Zheng, Jia Tun Zheng, and Mindy Fang, alleging violations of the Fair Labor Standards Act and the California Labor Code.

On August 7, 2014, Plaintiffs filed an amended complaint. (Am. Compl., Dkt. No. 7.) On August 11, 2014, Defendants Safety Trucking, LLC and Jia Tun Zheng filed their answer. On August 29, 2014, Plaintiffs filed a motion to strike Defendants Safety Trucking and Jia Tun Zheng ("Defendants") answer. The parties eventually entered into a stipulation and Defendants filed an amended answer on October 23, 2014. (Am. Answer, Dkt. No. 35.)

1 delaying tactics and because of the strong policy favoring resolution of the merits.” *Barnes*, 718 F.
2 Supp. 2d at 1170 (citation omitted). Thus, once properly pled, a motion to strike an affirmative
3 defense which alleges legal insufficiency will not be granted “unless it appears to a certainty that
4 plaintiffs would succeed despite any state of the facts which could be proved in support of the
5 defense.” *Barnes*, 718 F. Supp. 2d at 1170 (N.D. Cal. 2010)(quoting *William Z. Salcer, Panfeld,*
6 *Edelman v. Envicon Equities Corp.*, 744 F.2d 935, 939 (2d Cir. 1984)). If a defense is stricken,
7 “[i]n the absence of prejudice to the opposing party, leave to amend should be freely given.”
8 *Wyshak*, 607 F.2d at 826.

9 III.DISCUSSION

10 Defendants’ amended answer raises seven affirmative defenses: (1) failure to state a cause
11 of action; (2) laches; (3) statute of limitations; (4) unclean hands; (5) estoppel; (6) unjust
12 enrichment; and (7) exemption. Additionally, Defendants’ prayer for relief seeks attorneys’ fees
13 and costs to the extent permitted under state law. (Am. Answer at 13.) Plaintiffs move to strike all
14 of the affirmative defenses and the prayer for relief. (Pls.’ Mot. at 4-11.)

15 A. First Affirmative Defense: Failure to State a Cause of Action

16 Defendants’ first affirmative defense is for failure to state a cause of action. Applying the
17 *Twombly-Iqbal* standard, “[w]hile a defense need not include extensive factual allegations in order
18 to give fair notice, bare statements reciting mere legal conclusions may not be sufficient.” *Perez*,
19 2012 WL 1029425 at *8 (quoting *Scott v. Fed. Bond and Collection Serv., Inc.*, No. 10–CV–
20 02825–LHK, 2011 WL 176846, at *4 (N.D. Cal. Jan.19, 2011)). Thus, to satisfy Rule 8, a
21 defendant need only put a plaintiff on notice of the underlying factual bases of the affirmative
22 defense. *Ansari v. Elec. Document Processing, Inc.*, No. 5:12-CV-01245-LHK, 2013 WL 664676,
23 at *3 (N.D. Cal. Feb. 22, 2013).

24 Defendants plead that Plaintiff Pei Xiong Lin’s testified that he is uncertain whether he
25 was ever employed by Safety Trucking and whether Jia Tun Zheng was his direct supervisor or
26 manager. (Am. Answer at 9.)

27 Plaintiffs contend that this is not a proper affirmative defense and that the factual basis is
28 spurious and immaterial. (Pls.’ Mot. at 5.)

1 While technically, pursuant to Rule 12(h)(2), this affirmative defense is never waived, it
2 may still be pled as an affirmative defense. Further, it appears that these facts were not known at
3 the time Defendants originally answered the amended complaint, because they are from Plaintiff
4 Pei Xiong Lin’s deposition. Lastly, defendants may plead inconsistent affirmative defenses, so to
5 the extent that Plaintiffs argue that this is inconsistent, that is not a basis for striking the defense.
6 *See Oki America v. Microtech Int’l, Inc.*, 872 F.2d 312, 313-14 (9th Cir. 1989).

7 Thus, the Court declines to strike the first affirmative defense.

8 **B. Second Affirmative Defense: Laches**

9 Defendants’ second cause of action is laches. The doctrine of laches operates as a bar to a
10 claim for equitable relief where the statute of limitations is not available. DEF AGAINST A PRIMA
11 FACIE CASE § 11:6 (Rev ed. 2014). Plaintiffs’ amended complaint seeks injunctive relief. Thus,
12 laches may be an available affirmative defense. As currently pled in the amended answer,
13 however, Defendants fail to state facts that support a laches defense.

14 Accordingly, this defense is stricken with leave to amend to allege facts to support a laches
15 defense, rather than simply a formulaic recitation of the elements of the affirmative defense.

16 **C. Third Affirmative Defense: Statute of Limitations**

17 Defendants’ third affirmative defense is that the statute of limitations bars some or all of
18 Plaintiffs’ claims. (Am. Answer at 10.) Specifically, Defendants state that, as an example,
19 Plaintiffs have alleged overtime claims prior to June 9, 2010. *Id.* Plaintiffs seek to strike this
20 defense on the grounds that Defendants have not listed the limitations periods for every cause of
21 action alleged. (Pls.’ Mot. at 7.) The standard, however, is whether the affirmative defense gives
22 the plaintiffs fair notice. *Perez*, 2012 WL 1029425, at *6 (citation omitted). Not only does the
23 Amended Answer provide Plaintiffs with some or all of the applicable statutes of limitation for
24 each cause of action, Defendants have given an example of alleged violations that they believe are
25 time-barred. Accordingly, the facts pled, while not as precise as Plaintiffs would like, are
26 sufficient to give fair notice, and, therefore, the Court declines to strike the third affirmative
27 defense.

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1 **D. Fourth Affirmative Defense: Unclean Hands**

2 Defendants’ fourth affirmative defense is that the unclean hands doctrine bars some or all
3 of Plaintiffs’ claims. In order to invoke this defense, Plaintiffs must have directly infected the
4 actual cause of action before the court, and are not merely guilty of unrelated improper past
5 conduct. *Pond v. Ins. Co. of N. Am.*, 151 Cal. App. 3d 280, 290 (Ct. App. 1984). “The doctrine is
6 not restricted, however, to defense of suits in equity, but applies as well to suits at law.” *Id.* at 290.

7 Defendants allege that Plaintiff Pei Xiong Lin’s wrongful conduct was applying for and
8 collecting Unemployment Insurance benefits, presumably, when he was not entitled to them. (Am.
9 Answer at 10.) It is unclear, however, how this conduct would result in unclean hands in regards
10 to the alleged causes of action. Thus, what is currently pled is insufficient to give Plaintiffs fair
11 notice of the facts underlying the defense and must be amended.

12 Thus, the Court strikes the fourth affirmative defense with leave to amend.

13 **E. Fifth Affirmative Defense: Estoppel**

14 Defendants’ fifth affirmative defense is that estoppel bars some or all of Plaintiffs’ claims.
15 (Am. Answer at 11.) Defendants claim that Plaintiff Pei Xiong Lin admitted that he applied for
16 and received Unemployment Insurance benefits following his voluntary resignation from Safety
17 Trucking, LLC and while he was self-employed. *Id.*

18 Plaintiffs argue that it is unclear whether the defense pled is legal or equitable estoppel.
19 (Pls.’ Mot. at 8.) The Court agrees. Accordingly, the Court strikes the fifth affirmative defense
20 with leave to amend to clarify which theory of estoppel they are asserting as an affirmative
21 defense and any or all of what they believe Plaintiff Pei Xiong Lin’s alleged conduct estops.

22 **F. Sixth Affirmative Defense: Unjust Enrichment**

23 Defendants’ sixth affirmative defense is that unjust enrichment bars some or all of
24 Plaintiffs’ claims, because, should they recover, they would receive a higher hourly wage than
25 they were paid. (Am. Answer at 11.) Defendants plead that the hourly salary in 2010 was \$11.25
26 rather than the \$12.50 Plaintiffs claim in the first amended complaint. *Id.* This is sufficient to put
27 Plaintiffs on notice that Defendants believe that the wage and hour damages are less than alleged
28 in the first amended complaint.

1 Thus, the Court declines to strike the sixth affirmative defense.

2 **G. Seventh Affirmative Defense: Exemption**

3 Defendants’ seventh affirmative defense is that Plaintiffs were not misclassified as exempt
4 employees. (Am. Answer at 12.) This is a standard defense in wage and hour litigation, as
5 whether Plaintiffs were exempt employees is at the very heart of this case. Employees may be
6 properly classified under a number of exemptions, and Defendants fail to identify any reasons why
7 they believe Plaintiffs were exempt. Accordingly, the Court strikes the seventh affirmative
8 defense with leave to amend.

9 **H. Prayer for Relief: Attorneys’ Fees and Costs**

10 In their prayer for relief, Defendants seek “attorneys’ fees and costs of suit herein to the
11 extent permitted under applicable law.” (Am. Answer at 13.) Plaintiffs object to this prayer for
12 relief, citing the American rule, which provides that “attorneys’ fees are usually not paid by the
13 losing party to the winning party in a case, except pursuant to specific statutory or contractual
14 rights.” (Pls.’ Mot. at 11.) It appears that Plaintiffs are attempting to preclude a future motion for
15 attorneys’ fees and costs. That, however, is inappropriate at this juncture. Accordingly, the Court
16 declines to strike Defendants’ prayer for relief.

17 **I. Plaintiffs’ Request for Sanctions**

18 In their motion, Plaintiffs repeatedly seek to impose sanctions against Defendants’ for their
19 allegedly “unscrupulous litigation strategy.” (Pls.’ Mot. at 8, 9, 10.) To date, however,
20 Defendants’ have merely filed an answer in this case, rendering Plaintiffs’ motion for sanctions
21 premature at best. Moreover, Courts rarely award sanctions, and only do so when the conduct at
22 issue is particularly egregious. This does not appear to be one of those situations. Further,
23 motions for sanctions must be filed separately in accordance with Civil Local Rule 7-8. Plaintiffs
24 did not comply with that local rule, and so the request for sanctions is denied.

25 The Court reminds the parties that it may issue sanctions *sua sponte* for, among other
26 reasons, unnecessary motion practice. The parties are also reminded that they are required to meet
27 and confer in good faith to resolve any outstanding disputes prior to seeking further court
28 intervention pursuant to the Northern District’s Guidelines for Professional Conduct (available at

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http://cand.uscourts.gov/professional_conduct). Specifically, “[m]otions should be filed or opposed only in good faith and when the issue cannot be otherwise resolved.” *Id.* at § 10.

IV. CONCLUSION

In light of the foregoing, the Court GRANTS IN PART AND DENIES IN PART Plaintiff’s motion to strike. Accordingly, Defendants’ second, fourth, fifth, and seventh affirmative defenses are stricken with leave to amend consistent with this order. Defendants shall file a second amended answer on or before January 9, 2015.

Plaintiffs’ request for sanctions is DENIED.

IT IS SO ORDERED.

Dated: December 12, 2014



KANDIS A. WESTMORE
United States Magistrate Judge