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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PHIGENIX, INC.,
Plaintiff,
v.
GENENTECH INC,
Defendant.

Case No. [15-cv-01238-BLF](#)

**ORDER GRANTING MOTION TO
STRIKE DEFENDANT'S SIXTH
AFFIRMATIVE DEFENSE, WITH
LEAVE TO AMEND**

[Re: ECF 85]


Plaintiff moves to strike Defendant's sixth affirmative defense for inequitable conduct, which Defendant opposes. The parties appeared for oral argument on the motion on July 2, 2015.

For the reasons stated on the record, the Court GRANTS Plaintiff's motion to strike, with leave to amend. The Court finds that Defendant has failed to allege sufficient facts under the heightened pleading requirements of Federal Rule of Civil Procedure 9(b) to show egregious misconduct. The Court further GRANTS Defendant leave to amend its materiality and intent allegations in the sixth affirmative defense. Defendant is not permitted, absent further leave of Court, to allege any additional affirmative defenses.

At the hearing on the motion, Defendant requested a deadline for amendment of July 13, 2015. The Court HEREBY ADOPTS this deadline. Any amended answer must therefore be filed no later than July 13, 2015.

IT IS SO ORDERED.

Dated: July 2, 2015


BETH LABSON FREEMAN
United States District Judge