

1
2
3
4
5
6
7
8
9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 CLARK MOSES,

14 Plaintiffs,

15 vs.

16 GMAC MORTGAGE, INC.,
17

18 Defendant.
19

CASE NO. 09-CV-1961 W (BLM)

**ORDER GRANTING IN-PART AND
DENYING IN-PART DEFENDANT'S
MOTION TO STRIKE [DOC. 34]**

20 Pending before the Court is Defendant GMAC Mortgage, Inc.'s motion to strike
21 portions of Plaintiff Clark Moses' Second Amended Complaint ("SAC").

22 The Court decides the matter on the papers submitted and without oral argument
23 pursuant to Civil Local Rule 7.1(d.1). For the reasons stated below, the Court
24 **GRANTS-IN-PART** and **DENIES-IN-PART** Defendant's motion to strike.

25
26 **I. DISCUSSION**

27 Rule 12(f) provides that a court may strike from the pleadings any insufficient
28 defense or any redundant, immaterial, impertinent, or scandalous matter. Fed.R.Civ.P.

09cv1961w

1 12(f). The function of a motion to strike is to avoid the unnecessary expenditures that
2 arise throughout litigation by dispensing of any spurious issues prior to trial. Chong v.
3 State Farm Mut. Auto. Ins. Co., 428 F.Supp.2d 1136, 1139 (S.D. Cal. 2006); Sidney-
4 Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). Rule 12(f) motions
5 “are generally regarded with disfavor because of the limited importance of pleading in
6 federal practice, and because they are often used as a delaying tactic.” Neilson v. Union
7 Bank of Cal., N.A., 290 F.Supp.2d 1101, 1152 (C.D. Cal. 2003). Thus, courts generally
8 grant a motion to strike only where “it is clear that the matter to be stricken could have
9 no possible bearing on the subject matter of the litigation.” LeDuc v. Kentucky Cent.
10 Life Ins. Co., 814 F.Supp. 820, 830 (N.D. Cal. 1992).

11 On July 14, 2010, this Court granted Defendant’s motion to strike Plaintiff’s
12 damage claims under TILA and Business & Professions Code § 17200. (See Order
13 *Granting In-Part and Denying In-Part Mt. to Dismiss and Strike* [Doc. 27] 8:23–28.)
14 Defendant argues that “[i]n clear violation of the Court’s order, Plaintiff alleges and
15 requests damages pursuant to TILA.” (Mt, 221–23.) Defendant, therefore, seeks to
16 strike the following allegations in the SAC:

- 17 • “The amount of damages pled in good faith are \$1,000,000.” (SAC, ¶ 5.)
- 18
- 19 • “. . . Defendants violated §226.23(b)(1) resulting in damages in an
20 unspecified amount.” (*Id.*, ¶ 34.)
- 21 • “AS TO THE FIRST THROUGH FOURTH CAUSES OF ACTION
22 1. Actual Damages;

23 8. \$1,00,000.00.” (*Id.*, ¶ E1 and 2.)

24 Having reviewed the SAC, only the second damage allegation identified above
25 specifically references TILA. The other allegations do not, and Defendant has not
26 explained why it believes the damage allegations refer to TILA.
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

6
7
8

10

12

12
13
14
15