

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Erick P. Tollen,

Plaintiff,

v.

Case No. 11-1182-JWL

City of El Dorado, Kansas,

Defendant.

MEMORANDUM AND ORDER

Plaintiff filed this suit against defendant asserting a claim under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and a state law claim of retaliatory discharge. This matter is presently before the court on plaintiff's motion to strike certain affirmative defenses (doc. 6). As will be explained, the motion is denied.

Plaintiff moves the court to strike certain affirmative defenses pursuant to Federal Rule of Civil Procedure 12(f) on the basis that they do not comply with the pleading standards set forth by the Supreme Court in *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007). Defendant, in response, urges that the pleading standards set forth in *Twombly* do not apply to affirmative defenses. Since the filing of plaintiff's motion and defendant's response to that motion,¹ the court has resolved this precise issue in another case and, in doing so, has addressed the arguments asserted by the parties here. *See Unicredit Bank AG v. Bucheli*, 2011 WL 4036466, at *4-6 (D. Kan. Sept. 12, 2011). In that case, this court concluded that *Twombly*

¹Plaintiff did not file a reply to the response.

standards should not apply to affirmative defenses. For the reasons set forth in full in that opinion, the court declines to apply *Twombly* to the affirmative defenses challenged by plaintiff here. The motion is denied.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's motion to strike affirmative defenses (doc. 6) is denied.

IT IS SO ORDERED.

Dated this 5th day of October, 2011, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge