

1

2

3

4

UNITED STATES DISTRICT COURT

5

DISTRICT OF NEVADA

6

7

WILLIAM BRIDGE, individually and on behalf
of all others similarly situated,

2:14-cv-1512-LDG-NJK

8

Plaintiff,

ORDER

9

v.

10

CREDIT ONE FINANCIAL, a Nevada
corporation, d/b/a CREDIT ONE BANK, N.A.,

11

12

Defendant.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Plaintiff has filed a motion to strike the defendant's affirmative defenses (#13, opposition #14, reply #15). Plaintiff maintains that the heightened pleading standards of Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009), govern the pleading of affirmative defenses, as well as allegations in the complaint. Defendant argues that Rule 12(f) motions should be governed by Conley v. Gibson, 355 U.S. 41 (1957). While a number of district courts have weighed in on whether Twombly/Iqbal applies to the pleading of affirmative defenses under Rule 8(c), there is no established precedent guiding the court. While taking no position as to the application of Twombly/Iqbal to Rule 12(f) motions based on Rule 8(a), the court agrees with FTC v. AMG Services, Inc., No. 2:12-cv-536-GMN-VCF, 2014 WL 5454170 (D. Nev. 2014), that because Rule 8(c) imposes no "short and plain" standard, admissions under that rule fall into a different category than do statements of grounds for jurisdiction and claims under 8(a). Thus, the heightened pleading standard of Twombly/Iqbal will not be applied to defendant's affirmative defenses.

1 Plaintiff also argues that many of the affirmative defenses asserted by defendant are not
2 affirmative defenses at all, but rather a recitation of the grounds of defendant's case. While that
3 may be so, the court will not order that such defenses be stricken at this time as their presence
4 would not unduly expand the scope of the case. Rather, those defenses shall await any relevance
5 determinations conducted by the magistrate judge during discovery or by this court subsequently.

6 Defendant has filed a motion for leave to file a third-party complaint naming Nancy Bridge
7 as a third-party defendant (#30, opposition #45, reply #53). The court, based on the arguments
8 presented, will grant defendant leave to file the third-party complaint. The tactics of a party in
9 moving to file the complaint should be of no matter in this Rule 14 analysis. Most, if not all, of
10 the claims in the third-party complaint are anticipated to be issues in the trial of the original
11 complaint. The third-party practice will not unduly delay the trial, or pose a burden for the court.
12 Nor is the motion for leave untimely; the motion was filed before the close of discovery, and the
13 court finds insufficient prejudice.

14 While the court will grant the motion for leave to file the third-party complaint, it will
15 reserve questions regarding jurisdiction and sufficiency of claims for Rule 12 motions.

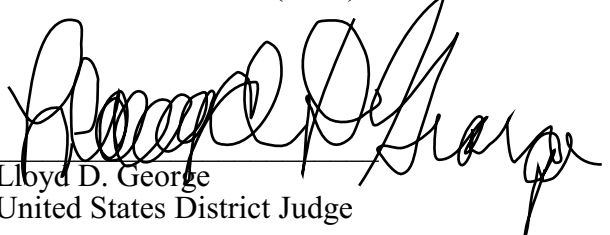
16 Accordingly,

17 THE COURT HEREBY ORDERS that plaintiff's motion to strike the defendant's
18 affirmative defenses (#13) is DENIED.

19 THE COURT FURTHER ORDERS that defendant's motion to file a third-party complaint
20 (#30) is GRANTED.

21 THE COURT FURTHER ORDERS that plaintiff's motion to seal (#118) is GRANTED.

22 DATED this 9 day of September, 2015.

23
24 
25 Lloyd D. George
26 United States District Judge