

to strike are generally disfavored and rarely granted.⁶

“An affirmative defense may be pleaded in general terms and will be held to be sufficient as long as it gives plaintiff fair notice of the nature of the defense.”⁷ Courts rarely strike a defense for legal insufficiency⁸ and do not strike defenses raising factual questions.⁹

II. Discussion

Plaintiff argues that six of Defendant Price and Rodick’s affirmative defenses are unrelated to the case and should therefore be set aside to avoid unnecessary costs. Those defenses are (1) failure to state a claim for a deprivation of constitutional rights; (2) intervening acts or omissions including Plaintiff’s own acts; (3) failure to exhaust administrative remedies required by [42 USC § 1997\(e\)\(a\)](#); (4) no showing of prior physical injury under [42 USC § 1997\(e\)\(e\)](#); (5) this Court’s lack of jurisdiction to hear Plaintiff’s state law claims; and (6) statute of limitations.¹⁰

Defendants argue that defenses (1) and (5) are purely legal questions, (2-4) and (6) present mixed questions of fact and law, and none can be resolved without discovery or a hearing.¹¹

The Court agrees. Defendants’ affirmative defenses center on legal questions which are better dealt with at summary judgment. Accordingly, Plaintiff’s motion to strike is **DENIED**.

⁶ 5A C. Wright & A. Miller, Federal Practice and Procedure § 1380, at 655–56 (1990).

⁷ Lawrence v. Chabot, 182 F. App’x 442, 456 (6th Cir. 2006) (internal citations and punctuation marks omitted).

⁸ See, e.g., Hughes v. Lavender, No. 2:10-CV-674, 2011 WL 2945843, at *4 (S.D. Ohio July 20, 2011) (quoting U.S. Commodity Futures Trading Comm’n v. A.S. Templeton Group, Inc., 297 F.Supp.2d 531, 533 (E.D.N.Y.2003)) (striking a defense for legal insufficiency is appropriate only if plaintiff can “show that (1) there is no question of fact which might allow the defense to succeed; (2) there is no question of law which might allow the defense to succeed; and (3) plaintiff would be prejudiced by the inclusion of the defense.”).

⁹ Id. (citing United States v. 187.40 Acres of Land, 381 F.Supp. 54, 56 (M.D.Pa.1974)).

¹⁰ Doc. 29.

¹¹ Doc. 32 at 2.

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Gwin, J.

IT IS SO ORDERED.

Dated: March 2, 2017

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE