

This argument fails, however, as it again asks the Court to make factual findings at a juncture when factual disputes still remain. The basis for Plaintiff's entire contention rests solely on the following allegation in the Complaint, with the accompanying Answer.:

On July 9, 2006, Plaintiff requested KFI and all vendors of wool products to furnish a Guaranty of Compliance that wool yarns sourced from each vendor did in fact comply with the labeling laws – a request which KFI alone neither acknowledged nor fulfilled.

(Compl. ¶ 54.) Answering Defendants responded,

Answering Defendants admit that on July 9, 2006, Plaintiff asked KFI to complete and return a form it had attached to its correspondence, which form speaks for itself, and that KFI declined to do so. By way of further answer, in July of 2006 KFI was not one of Plaintiff's vendors, nor had it been since December of 2005. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of the balance of the allegations in paragraph 54 of the Complaint, deny same, and demand strict proof thereof, if relevant, at time of trial.

(Answer and Countercl. ¶ 54.) Nothing in these allegations conclusively concedes or proves that Answering Defendants were in legal breach of contract by failing to provided the requested guaranty. In turn, the Court cannot simply assume, at this stage of the litigation, that Plaintiff was absolved of its duties to provide notice and mitigate damages. As such, the Court declines to grant this portion of the Motion to Dismiss.

#### **4. Factual Insufficiency (Seventh Affirmative Defense)**

Plaintiff's final attack challenges the Seventh Affirmative Defense, which states that "Plaintiff is barred from maintaining this action against Answering Defendants, in whole or in part, because of the doctrine of unclean hands." (Answer and Counterclaims ¶ 158.) Plaintiff contends that Answering Defendants cannot maintain their defense of unclean hands "because this defense is pled without any supporting facts, in violation of Rule 8, does not comply with the specificity

requirements of Rule 9, and is an improper affirmative defense because it assumes conduct which has not occurred.” (Pl.’s Mem. Supp. Mot. to Strike 20.)

“For a defendant to mount a successful unclean hands defense, the defendant must prove that the ‘plaintiff’s conduct is inequitable and that it involves the subject matter of the plaintiff’s claim.’” Merisant Co. v. McNeil Nutritionals, LLC, 515 F. Supp. 2d 509, 530-31 (E.D. Pa. 2007) (quoting Ciba-Geigy Corp. v. Bolar Pharm. Co., 747 F.2d 844, 855 (3d Cir.1984)). A defendant asserting unclean hands must introduce “clear, convincing evidence of ‘egregious’ misconduct.” Citizens Fin. Group, Inc. v. Citizens Nat’l Bank, 383 F.3d 110, 129 (3d Cir. 2004). Essentially, courts will apply the equitable doctrine of unclean hands when the “party seeking relief has committed an unconscionable act immediately related to the equity the party seeks in respect to the litigation.” Highmark, Inc. v. UPMC Health Plan, Inc., 276 F.3d 160, 174 (3d Cir. 2001) (citations omitted). “The nexus ‘between the misconduct and the claim must be close.’” Id. (quoting In re New Valley Corp., 181 F.3d 517, 525 (3d Cir. 1999)).

The Court finds no merit to Plaintiff’s Motion to Strike. When pleading the affirmative defense of unclean hands, Federal Rule of Civil Procedure 8 requires only a “short and plain” statement of a claim or defense, and demands that each averment be “simple, concise, and direct.” France Telecom S.A. v. Novell, Inc., Civ. A. No. 102-437, 2002 WL 31355255, at \*2-4 (D. Del. Oct. 17, 2002) (quoting FED. R. CIV. P. 8).<sup>12</sup> Considering the allegation of unclean hands in light of Answering Defendants’ Counterclaim allegations against Plaintiff and in recognition of the relative

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<sup>12</sup> Contrary to Plaintiff’s argument, the particularity requirement of Rule 9(b) does not apply unless Answering Defendants’ affirmative defense involves fraud. Id. Fraud is not a requirement in an unclean hands defense. Rather, to prevail on an “unclean hands” defense, the defendant must simply show egregious misconduct, which can take the form of fraud, unconscionability, or bad faith on the part of the plaintiff. Merisant, 515 F. Supp. 2d at 531.

disfavor towards motions to strike, the Court cannot find that there exists no set of facts under which a claim of unclean hands could succeed in this case.<sup>13</sup>

#### IV. CONCLUSION

In light of the foregoing, the Court finds no basis on which to dismiss Answering Defendants' Counterclaims at this early stage of the litigation. Moreover, given the high burden borne by the moving party on a motion under Fed. R. Civ. P. 12(g), the Court grants Plaintiff's Motion to Strike as to the Fifth Affirmative Defense, but denies it as to all the other Affirmative Defenses. An appropriate order follows.

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<sup>13</sup> Likewise, Plaintiff is mistaken that the defense of unclean hands must arise from conduct during the course of litigation and is not properly asserted as an affirmative defense in the pleadings. As noted above, to succeed on the doctrine of unclean hands, the defendant must demonstrate that "the plaintiff's conduct is inequitable and that it involves the subject matter of the plaintiff's claim." Merisant Co., 515 F. Supp. 2d at 530-31. Even the sole case cited by Plaintiff does not support the bizarre notion that the actions creating the unclean hands must occur during the course of the litigation. See Mag Instrument, Inc. v. JS Prods., Inc., \_\_\_ F. Supp. 2d \_\_\_, 2008 WL 5251850, at \*6 (C.D. Cal. Dec. 17, 2008) ("The unclean hands doctrine closes the doors of a court of equity to one tainted with inequity or bad faith *relative to the matter in which he seeks relief*, however improper may have been the behavior of the defendant.") (emphasis added) (quotations omitted).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE KNIT WITH,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
KNITTING FEVER, INC.,	:	
DESIGNER YARNS, LTD.,	:	
FILATURA PETTINATA V.V.G. DI	:	
STEFANO VACCARI & C., SION	:	NO. 08-4221
ELALOUF, DIANE ELOUF, JEFFREY J.	:	
DENECKE, JR., JAY OPPERMAN, and	:	
DEBBIE BLISS,	:	
	:	
Defendants.	:	

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THE KNIT WITH,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
EISAKU NORO & CO., LTD.,	:	
KNITTING FEVER, INC.,	:	
SION ELALOUF, DIANE ELALOUF,	:	NO. 08-4775
and JAY OPPERMAN,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this *8th* day of *April*, 2009, upon consideration of the Motion by Plaintiff The Knit With to Dismiss Counterclaims and Strike Affirmative Defenses (Doc No. 16), the Response thereto of Defendants Knitting Fever, Inc., Sion Elalouf, Diane Elalouf, Jeffrey J. Denecke, and Jay Opperman (collectively "Answering Defendants") (Doc. No. 17), and Plaintiff's Reply Brief (Doc.

**FILED**

APR 08 2009

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

No. 18), it is hereby **ORDERED** that the Motion is **GRANTED IN PART** and **DENIED IN**

**PART**, as follows:

1. Plaintiff's Motion to Dismiss Answering Defendants' Counterclaims is **DENIED**;
2. Plaintiff's Motion to Strike Answering Defendants' Fifth Affirmative Defense is **GRANTED**;
3. Plaintiff's Motion to Strike Answering Defendants' First, Second, Third, Fourth, Sixth, and Seventh Affirmative Defenses is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

  
\_\_\_\_\_  
RONALD L. BUCKWALTER, S.J.