SO ORDERED.

SIGNED this 2nd day of November, 2020.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:	)	
	)	
Miguel Arquimedes Caceres,	)	Case No. 18-80776
	)	Chapter 7
Debtor.	)	
	)	
	)	
James B. Angell,	)	
Ch. 7 Trustee for Miguel Caceres,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 20-09007
	)	
Allstate Property and Casualty	)	
Insurance Company,	)	
	)	
Defendant.	)	

ORDER
GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE

This adversary proceeding comes before the Court on the Plaintiff's motion to strike and supporting brief, pursuant to Federal Rule of Civil Procedure 12(f), as made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012 (Docket No. 26, 27, collectively the "Motion").

The Plaintiff requests the Court strike portions of the Answer in which the Defendant asserts a document or transcript "speaks for itself" as well as those

asserting a paragraph in the Complaint "states legal conclusions to which no response is required" (Docket No. 7). The Plaintiff also seeks to strike all affirmative defenses in the Defendant's Answer. In its Answer, the Defendant asserted eight affirmative defenses, which the Court lists here in unabridged form:

1. **First Defense**: The Complaint fails to state a claim upon which relief may be granted.
2. **Second Defense**: Plaintiff's claims are barred by waiver.
3. **Third Defense**: Plaintiff's claims are barred by estoppel.
4. **Fourth Defense**: Plaintiff's claims are barred by mediation and settlement privileges and immunities.
5. **Fifth Defense**: Plaintiff's state law claims are barred by litigation privileges and immunities.
6. **Sixth Defense**: Plaintiff's claims are barred by statutes of limitations.
7. **Seventh Defense**: Plaintiff's claims are barred by failure to mitigate damages.
8. **Eighth Defense**: Plaintiff's claims are barred by unclean hands.

The Plaintiff requests the Court strike the Defendant's first defense and deem that defense abandoned because the Defendant failed to comply with the Court's June 24, 2020 Scheduling Order (Docket No. 15), which required the Defendant to file a brief or legal memorandum in support of any defense asserting failure to state claims for relief. The Plaintiff moves to strike the Defendant's eighth defense—unclean hands—because equitable defenses are prohibited where the claims are legal and not equitable. The Plaintiff moves to dismiss the remainder of the Defendant's affirmative defenses for lack of particularity and failing to meet the pleading standards under Federal Rule of Civil Procedure 8(c).

The Defendant filed a response on September 21, 2020 (Docket No. 31), arguing the Motion is untimely under Rule 12(f)(2) and should be denied. The Defendant also maintained that its responses complied with the pleading requirements of Rule 8 and its affirmative defenses, which the Defendant submits are routinely asserted and highly related to the issues in this litigation, provided the Plaintiff with fair notice of the nature of the defense.

After the Plaintiff filed a reply on October 1, 2020 (Docket No. 35), the Court held a virtual hearing on October 8, 2020, at which Robert Jessup appeared on behalf of the Plaintiff and Jeffrey Kuykendal and Thomas Curvin appeared on behalf of the Defendant. Based on the record in this proceeding, applicable caselaw, and for the reasons discussed below, the Court finds the Plaintiff's Motion was untimely, but will nevertheless strike the Defendant's remaining affirmative defenses sua sponte, pursuant to Rule 12(f)(1), and provide 14 days for the Defendant to amend its Answer.

DISCUSSION

Federal Rule of Civil Procedure 12(f) states that the "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). In considering a motion to strike under Rule 12(f), the Court reviews "the pleading under attack in a light most favorable to the pleader." *Guessford v. Pa. Nat'l Mut. Cas. Ins. Co.*, 918 F. Supp. 2d 453, 467 (M.D.N.C. 2013) (citing *Racick v. Domininion Law Assocs.*, 270. F.R.D. 228, 332 (E.D.N.C. 2010). "Rule 12(f) motions are generally viewed with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic[,] [but] a defense that might confuse the issues in the case and would not, under *the facts alleged*, constitute a valid defense to the action can and should be deleted.'" *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001) (quoting 5C Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1380, 647 (2d ed. 1990)) (emphasis added). To be entitled to relief, the party moving to strike must make a showing of prejudice. *Wall v. Langdon*, No. 15cv731, 2016 WL 4211783, at *3 (M.D.N.C. Aug. 9, 2016).

Pursuant to Rule 12(f)(2), a motion to strike must be made within 21 days after being served with the pleading. The Defendant filed its Answer on June 4, 2020 and the Plaintiff did not file the Motion until September 7, 2020, more than three months later and well after the 21-day deadline. While the Plaintiff's Motion is technically untimely and could be denied as such, *see Martinez v.*

Naranjo, 328 F.R.D. 581, 596 (D.N.M. 2018), this Court may still consider the underlying merits of the Motion because Rule 12(f)(1) permits the Court to act to strike "on its own." *Newborn Bros. Co. v. Albion Eng'g Co.*, 299 F.R.D. 90, 95–96 (D.N.J. 2014). In particular, "the authority given the court by the rule to strike an insufficient defense 'on its own' has been interpreted to allow the district court to consider untimely motions to strike and to grant them if doing so seems proper." 5C Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1380 (3d ed. 2020) (collecting cases). Professors Wright and Miller recommend further that "the time limitations set out in Rule 12(f) should not be applied strictly when the motion to strike seems to have merit." *Id.* Accordingly, this Court will address the merits of the Plaintiff's Motion to Strike.

i. The Responsive Paragraphs

The Court first addresses the Plaintiff's request to strike paragraphs 8-10, 12-13, 16-20, 25, 27, 29, 31-32, 34, 37, 39, 41, 43, 45-50, 53-54, 58, 62, 64, 65-66, 68-69, 74, 76, 79-81, 83, 95, 98-100, 102, 104, 106-109, 111-12, 116-17, 119-121, 125, 128-131, 149-51, and 155 (collectively, the "Paragraphs"). In the Paragraphs, the Plaintiff asserts the Defendant wrongfully refused to admit or deny allegations on the basis that a document "speaks for itself" or because the Complaint called for "legal conclusions to which no response is required." The Plaintiff seeks an order compelling the Defendant to replead the Paragraphs.

Within the context of this case and, specifically, given the form of the allegations in the Complaint, the Court finds the Paragraphs "do not present a sufficiently egregious violation of Rule 8" to justify granting the Plaintiff's Motion or requiring repleading. *Farrell v. Pike*, 342 F. Supp. 2d 433, 441 (M.D.N.C. 2004). As in *Farrell*, the Defendant here denies the allegations in the alternative in all but six of the Paragraphs. *Id.*; *see also Winburn v. Hartford Life & Accident Ins. Co.*, No. 1:19-cv-01397, 2020 WL 3642493, at *5 (E.D. Cal. July 2, 2020); *Barnes v. AT&T Pension Benefit Plan*, 718 F. Supp. 2d 1167, 1175 (N.D. Cal. 2010). Moreover, the Answer contained a general denial in which the Defendant "denies each and every allegation of the Complaint not specifically

and expressly admitted herein" (Docket No. 7, p. 16). Without determining which, if any, of the Paragraphs require a more specific denial or admission, the Court can find that any remaining allegations yet to be addressed within the Paragraphs are denied under the general denial. *See Lane v. Page*, 272 F.R.D. 581, 603 (D.N.M. 2011). The Court finds further that the Plaintiff has not made the required showing of actual prejudice such that the Paragraphs should be stricken. Therefore, under the specific circumstances of this case, the Court declines to exercise the discretion afforded it under Rule 12(f)(1) to strike the Paragraphs.

ii. First Affirmative Defense – Failure to State a Claim for Relief

The Plaintiff moved to strike the Defendant's first affirmative defense for failure to state a claim upon which relief may be granted. In a separate order entered on October 26, 2020 (Docket No. 40), the Court found the Defendant failed to comply with the June 24, 2020 Scheduling Order (Docket No. 15) by timely filing a supporting brief or legal memorandum in support of its assertion that the Complaint fails to state a claim for relief. In accordance with that Order, the Defendant's First Defense is overruled and denied.

iii. Eighth Affirmative Defense – Unclean Hands

The Plaintiff moves to strike the Defendant's eighth affirmative defense that Plaintiff's claims are barred by unclean hands. The Middle District has been clear that where a plaintiff seeks no equitable relief, an equitable defense such as unclean hands "does not constitute a legally sufficient defense." *Villa v. Ally Financial, Inc.*, No. 1:13CV953, 2014 WL 800450, at *3 (M.D.N.C. Feb. 28, 2014); *see also* Staton v. North State Acceptance, LLC, No. 1:13CV277, 2013 WL 391053, at *4 (M.D.N.C. July 29, 2013); *Guessford v. Pennsylvania Nat'l Mut. Cas. Co.*, 918 F. Supp.2d 453, 469 (M.D.N.C. 2013). Accordingly, the Court will grant the Plaintiff's Motion and strike the Defendant's eighth affirmative defense. While defendants are normally granted leave to amend affirmative defenses that are stricken, *Ferrellgas, L.P. v. Best Choice Products a/k/a/ Sky Billiards, Inc.*, No. 1:16CV259, 2016 WL 4539220, at *2 (M.D.N.C. Aug. 30,

2016), the Court declines to grant such leave for the Defendant's eighth affirmative defense because unclean hands would not constitute a valid defense in this case. *Villa*, 2014 WL 800450, at *4.

iv. Remaining Affirmative Defenses

While "the Fourth Circuit has recognized that Rule 12(f) motions are generally viewed with disfavor because striking a portion of a pleading is drastic remedy," *Ferrellgas, L.P. v. Best Choice Products a/k/a/ Sky Billiards, Inc.*, No. 1:16CV259, 2016 WL 4539220, at *2 (M.D.N.C. Aug. 30, 2016), "a defense that might confuse the issues in the case and would not, under *the facts alleged*, constitute a valid defense to the action can and should be deleted." *Waste Mgmt. Holdings*, 252 F.3d at 347 (emphasis added). Courts in the Middle District of North Carolina have declined to extend the particularity and plausibility standard from *Iqbal/Twombly* to affirmative defenses, *Ferrellgas*, 2016 WL 4539220, at *2; however, "a conclusion that the standards are less rigorous is not the same as a conclusion that a defendant need not plead any facts in support of a defense." *Chidester v. Camp Douglas Farmers Co-op.*, No. 13-cv-520-bbc, 2013 WL 6440510, at *3 (W.D. Wis. Dec. 9, 2013). "[T]o survive a motion to strike, a defendant must offer more than a bare-bones conclusory allegation which simply names a legal theory but does not indicate how the theory is connected to the case at hand." *Villa*, 2014 WL 800450, at *2; *see also Staton*, 2013 WL 3910153, at *7 (finding a statement of an affirmative defense "must give notice to an opponent of its basis and go beyond conclusions.")

Here, the Defendant's remaining affirmative defenses are "bare-bones conclusory allegation[s]" that simply offer a laundry list of legal theories without connecting those theories to the facts of this proceeding. The Defendant's basic references to legal theories do not specify the elements of the stated defense or any factual basis for its application to this case. *Qarbon.com Inc v. eHelp Corp.*, 315 F. Supp. 2d 1046 (N.D. Cal. 2004) (finding "[a] reference to a doctrine, like a reference to statutory provisions, is insufficient notice" for an affirmative defense under Rule 8). The Defendant must provide additional supporting facts

to give fair notice to the Plaintiff as to the basis for such defenses. *Ferrellgas,* 2016 WL 4539220, at *2 (striking similar one-sentence affirmative defenses).

The Court finds allowing these "bare-bones" affirmative defenses as pleaded would prejudice the Plaintiff and result in extensive and burdensome discovery. *Villa*, 2014 WL 800450, at *4. Accordingly, good cause is demonstrated for relief under Rule 12(f) and the Plaintiff's Motion will be granted as to the remaining affirmative defenses, specifically the second, third, fourth, fifth, sixth, and seventh defenses. Because motions to strike are "generally viewed with disfavor," *Waste Mgmt. Holdings*, 252 F.3d at347, the remaining affirmative defenses are stricken without prejudice and the Defendant will be given an opportunity to amend its Answer to replead the deficient affirmative defenses. *See Ferrellgas*, 2016 WL 4539220, at *2; *Villa*, 2014 WL 800450, at *5.

CONCLUSION

For the reasons described above, IT IS HEREBY ORDERED that the Plaintiff's Motion to Strike is GRANTED in part and DENIED in part. The Defendant's first defense was overruled and denied in a separate order of this Court. The Defendant's eighth defense is STRICKEN with prejudice as legally insufficient. The Defendant's second, third, fourth, fifth, sixth, and seventh defenses are STRICKEN without prejudice to the Defendant filing an amended answer specifically stating the bases for any defenses no later than fourteen (14) days from the entry of this Order. The remainder of the Motion is DENIED.

END OF DOCUMENT

PARTIES TO BE SERVED

James B. Angell, Trustee v. Allstate Property and Casualty Insurance Company

20-09007

Allstate Property and Casualty Insurance Company
c/o Mike Causey
NC Commissioner of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1200

James B. Angell, Trustee/Plaintiff
via cm/ecf

Robert H. Jessup, Attorney for Plaintiff
via cm/ecf

Jeffrey B. Kuykendal, Attorney for Defendant
via cm/ecf

Laura Elizabeth Smithman, Attorney for Defendant
via cm/ecf

Thomas W. Curvin, Attorney for Defendant
via cm/ecf

William P. Miller, BA
via cm/ecf