EXHIBIT C

2010 WL 2846086 (N.D.Cal.) (Trial Motion, Memorandum and Affidavit)
United States District Court, N.D. California.

BARNES,

v.

AT&T PENSION BENEFIT PLAN-NONBARGAINED PROGRAM.

No. 308CV04058.
May 18, 2010.

Date: June 28, 2010
Time: 2:00 p.m.
Place: Courtroom 15, 18th Floor

Plaintiff's Notice of Motion and Motion to Strike Defendants Affirmative Defenses to the Amended Complaint

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Hon. Marilyn H. Patel.

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NOTICE IS HEREBY GIVEN that Plaintiff Quiller Barnes, by and through his attorneys, will and hereby does move the Court to strike the First through Twenty-Fourth Affirmative Defenses contained in the Answer of Defendant AT&T Pension Benefit Plan -Nonbargained Program To Plaintiff's Amended Complaint, to order that certain allegations that Defendant has failed to admit, deny or state that it is without sufficient knowledge are deemed admitted and to order that Defendant respond to Plaintiff's legal conclusions. This motion is based on the accompanying Memorandum of Points and Authorities.

Dated: May 18, 2010

COHEN MILSTEIN SELLERS & TOLL PLLC

By: */s/ R. Joseph Barton*

R. Joseph Barton CA Bar No. 212340

Attorney for Plaintiff

MEMORANDUM AND POINTS OF AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES AND DEFENDANT'S IMPROPER RESPONSES TO THE AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiff Quiller Barnes ("Plaintiff") respectfully moves this Court to strike the twenty-four affirmative defenses asserted by Defendant AT&T Pension Benefit Plan - NonBargained Program ("Defendant") in the Answer of Defendant AT&T Pension Benefit Plan -NonBargained Program To Plaintiff's Amended Complaint ("Answer ") and other portions of Defendant's Answer that fails to adequately respond to Plaintiff's Amended Complaint. Many of the Defendant's "defenses" are not actually affirmative defenses to Plaintiff's three claims, but simply repeat Defendant's denials of Plaintiff's allegations from earlier in their Answer or seek to limit Plaintiffs recovery. Other "defenses" fail as a matter of law. Additionally, all of Defendant's affirmative defenses are comprised of bare bones legal conclusions and are devoid of factual allegations and thus do not meet the applicable pleading requirements or provide Plaintiff with fair notice of the defenses asserted against him. Finally, Defendant has failed to properly respond to certain allegations in the Amended Complaint because it did not admit, deny or state that it was without sufficient knowledge or information to admit or deny the claims. Striking these defenses and improper responses will not only ensure that Plaintiff is provided with the requisite fair notice, but it will streamline this case so that discovery can focus on legitimate issues in dispute.

I. BACKGROUND

This putative class action arises out of Defendant's failure to pay Plaintiff and the putative class benefits they are entitled to under the terms of the Pacific Telesis Group Cash Balance Pension Plan for Salaried Employees ("the Plan"), effective July 1, 1996 (the "PTG Pension Plan Document") after being terminated and then rehired by Pacific Bell Telephone Company ("Pacific Bell") and meeting certain conditions. Amended Complaint ¶¶ 1 ("Complaint"). Plaintiff's Amended Complaint alleges three causes of action: (1) failure to provide adequate notice of reasons for benefit denial in violation of ERISA § 503(a)(1) and the terms of the Plan, (2) a claim for benefits under ERISA § 502(a)(1)(B), and (3) violation of ERISA § 204(g)'s anti-cutback provision. *Id.* ¶¶ 124-25. The Amended Complaint details the specific legal claims

asserted against Defendant under ERISA and the specific factual basis for these claims. *Id.* ¶¶24- 123 (factual allegations), 124-45 (legal claims). In its answer, Defendant fails to properly respond to certain of the allegations by claiming that a document "speaks for itself" or are legal conclusions. E.g. Ans. ¶¶127, 129, 130, 142. In addition to denying allegations that Defendant violated ERISA, Defendant asserts twenty four boilerplate affirmative defenses to Plaintiff's three claims. Ans. ¶¶146-169. Yet, none of these "defense" - some of which are not affirmative defenses - contain no factual allegation and some are so vaguely pled, it is difficult to ascertain what defense is claimed. As such, these affirmative defenses should be struck and the improper responses should be deemed admitted or struck.

II. ARGUMENT

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, a "court may strike from a pleading an insufficient defense." Fed. R. Civ. P. 12 (f). "The function of a Rule 12(f) motion to strike is to avoid the expenditure of time and money that will arise from litigating spurious issues by dispensing with those issues prior to trial." Solis v. Zenith Capital, LLC, No. 08-4854, 2009 WL 1324051, at *3 (N.D. Cal. May 8, 2009) (citing Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983)). Where the asserted defense fails to meet the applicable legal standards, that determination should be made upon a motion to strike "in order to avoid the needless expenditures of time and money in litigating" the defense. Hart v. Baca, 204 F.R.D. 456, 457 (C.D. Cal. 2001). Where such a motion "may have the effect of making the trial of the action less complicated, or have the effect of otherwise streamlining the ultimate resolution of the action, the motion to strike will be well taken." Id. (citing California v. United States, 512 F. Supp. 36, 38 (N.D.Cal. 1981)).

A. Defendant Fails To Adequately Allege Any of Their Twenty-Four Affirmative Defenses

"Affirmative defenses are governed by the same pleading standard as complaints." *Facebook v. Power Ventures, Inc.,* No. 08-5780, 2009 WL 3429568, at *2 (N.D. Cal. Oct. 22, 2009) (quoting *Wyshak v. City Nat'l Bank,* 607 F.2d 824, 827 (9th Cir. 1979) and striking affirmative defenses pled without factual allegations). In order for an affirmative defense to be sufficiently pled under Rule 8, an affirmative defense must give plaintiffs fair notice of the defenses being advanced. *Wyshak,* 607 F.2d at 827 ("The key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense."); *Qarbon.com Inc v. eHelp Corp.,* 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004) (concluding that affirmative defenses are governed by the same pleading standard as complaints, and therefore must give plaintiff "fair notice" of the defense being advanced).

The Supreme Court recently clarified the pleading requirements in Rule 8. In *Bell Atl. Corp. v. Twombly,* 550 U.S. 544 (2007), the Supreme Court held that fulfilling the "obligation to provide the 'grounds' of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of [the] elements." *Id.* at 545. Under the Twombly standard, "a wholly conclusory statement" (*id.* at 561) is insufficient; instead, there must be "enough factual matter" so as to "possess enough heft to 'sho[w] that the pleader is entitled to relief."' *Id.* at 545; *see Ashcroft v. Iqbal,* 129 S. Ct. at 1937, 1949 (2009). Subsequently, in Iqbal, the Supreme Court made clear that the Twombly decision was based on its interpretation and application of Rule 8 of the Federal Rules of Civil Procedure, which governs the pleading standard in all civil actions. *Id.* at 1953.

Post-*Twombly,* the overwhelming majority of district courts addressing the issue have concluded that the pleading standard announced in Twombly and clarified in Iqbal likewise applies to affirmative defenses. *Hayne v. Green Ford Sales,* 263 F.R.D. 647, 649-50, (D. Kan. 2009).[1] Likewise, numerous courts in this District have also concluded that "bare statements reciting mere legal conclusions do not provide plaintiff with fair notice of the defense being asserted." *CTF Dev., Inc. v. Penta Hospitality, LLC,* No. 09-02429, 2009 WL 3517617, at *7 (N.D. Cal. Oct 26, 2009); *Monster Cable Prods., Inc. v. Avalanche Corp.,* No. 08-4792, 2009 WL 650369, at *1 (N.D. Cal. Mar 11, 2009) (striking defense because defendant failed to allege any supporting facts). As another court in this District explained, "[u]nder the Iqbal standard, the burden is on the defendant to proffer sufficient facts and law to support an affirmative defense, and not on the plaintiff

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