

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD LEONARDI,

Plaintiff,

v.

RANDALL KWASINSKI, CHRISTOPHER SCHUSTER,  
STEVEN BEAUDRY and YOLANDA ROBERTSON,

Defendants.  
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ORDER

12-cv-133-bbc

Pro se plaintiff Richard Leonardi is proceeding on a claim that defendants Yolanda Robertson, Randall Kwasinski, Christopher Schuster and Steven Beaudry searched his home, in violation of the Fourth Amendment. Plaintiff seeks to strike the following affirmative defenses as “immaterial and insufficient to plaintiff’s action.”

1. Plaintiff's complaint fails to state a claim upon which relief may be granted.

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4. All or portions of this action must be dismissed to the extent that plaintiff failed to exhaust administrative remedies.

5. Any damages sustained by plaintiff were caused by intervening and/or superseding causes over which these answering defendants had no control, including but not limited to, the acts or omissions of the plaintiff.

6. No answering defendant can be found liable for the actions of any other answering defendant under a theory of respondeat superior.

7. The action must be dismissed to the extent that any of the defendants did not have any personal involvement in the events leading to or surrounding the incident which is the basis of this lawsuit.

8. The action may be barred by the doctrine of res judicata (claim preclusion) or collateral estoppel (issue preclusion).

9. The defendants reserve the defense of plaintiff’s failure to mitigate damages.

Defendants have not filed a brief in response to plaintiff's motion.

"Affirmative defenses are pleadings and, therefore, are subject to all pleading requirements of the Federal Rules of Civil Procedure." Heller Financial, Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1294 (7th Cir. 1989). Defenses must set forth a "short and plain" statement of the defense. Fed.R.Civ.P. 8(b). Although motions to strike are disfavored "because [they] potentially serve only to delay," Heller Financial, 883 F.2d at 1294; see also United States v. 416.81 Acres of Land, 514 F.2d 627, 631 (7th Cir. 1975), they can be useful in limited situations. "[W]here . . . motions to strike remove unnecessary clutter from the case, they serve to expedite, not delay," Heller Financial, 883 F.2d at 1294. An affirmative defense will be stricken "only when it is insufficient on its face," but a court may strike affirmative defenses that are "nothing but bare bones conclusory allegations." Id.

As plaintiff points out, defendants' asserted affirmative defenses are indeed bare bones conclusory allegations; defendants include no additional factual allegations explaining how the legal theories they put forth actually apply to the facts of this case. Accordingly, I will grant plaintiff's motion to strike these affirmative defenses, with two exceptions.

First, I will deny plaintiff's motion regarding exhaustion of administrative remedies. Plaintiff is fully aware of the steps that he took to pursue his claim against defendants in the administrative process, so defendants' affirmative defense provides plaintiff notice that defendants believe that the actions taken were insufficient to exhaust his administrative remedies. E.g., Thomas v. Exxon Mobil Corp., 2009 WL 377334, \*4 (N.D. Ill. Feb. 11, 2009).

Also, I will deny the motion regarding the failure to mitigate defense. “[I]n cases where discovery has barely begun, the failure to mitigate defense is sufficiently pled without additional facts.” Fleet Business Credit Corp. v. National City Leasing Corp., 191 F.R.D. 568, 570 (N.D. Ill. 1999).

Defendants will be given an opportunity to replead the defenses that have been stricken.

#### ORDER

IT IS ORDERED that plaintiff Richard Leonardi’s motion to strike defendants’ affirmative defenses, dkt. #21, is GRANTED IN PART; defenses 1, 5, 6, 7 and 8 are STRICKEN. Defendants may have until September 27, 2012 to file amended affirmative defenses.

Entered this 27th day of August, 2012.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge