

1 FREDERICK SILVER.
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6 **THE UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON.**
8 **AT TACOMA.**

9 ***

10 FREDERICK O. SILVER.
11 Plaintiff,
12 vs.
13 CAPITAL ONE SERVICES, LLC.
14 Defendant.

15 **CASE NO. 3:25-cv-05175-DGE**
16 **David G. Estudillo**
17 **United States District Judge.**

18 **PLAINTIFF’S MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES.**

19 Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiff moves to strike
20 several of Defendant Capital One’s asserted affirmative defenses as legally insufficient
21 and/or impermissibly boilerplate.

22 **I. LEGAL STANDARD**

23 Rule 12(f) allows the Court to strike from a pleading any “insufficient defense or
24 any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f).
25 Affirmative defenses must provide fair notice under Rule 8(c) by alleging facts
26 sufficient to state a plausible defense. Kohler v. Flava Enters., Inc., 779 F.3d 1016,
27 1019 (9th Cir. 2015). Mere conclusory statements or “laundry lists” of defenses are
28 insufficient and subject to being stricken. Id.; Hayne v. Green Ford Sales, Inc., 263
F.R.D. 647, 649–50 (D. Kan. 2009).

1 **II. ARGUMENT**

2 **A. Failure to State a Claim (Defense No. 1)**

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4 This is not a true affirmative defense, but a Rule 12(b)(6) motion dressed as a
5 defense. Courts routinely strike it. See *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080,
6 1088 (9th Cir. 2002).

7
8 **B. Defenses Lacking Any Supporting Facts (Nos. 2, 3, 4, 7, 18, 23, 24, 25)**

9 Defendant merely asserts generic phrases such as “failure to mitigate damages,”
10 “estoppel,” “unclean hands,” “waiver,” and “consent” without alleging any facts
11 showing how they apply to this case.

12
13 Such bare conclusions do not satisfy Rule 8(c). See *Kohler*, 779 F.3d at 1019.

14
15 **C. Reservation of Rights (Defense No. 27)**

16 Defendant’s attempt to “reserve” unspecified defenses is improper and provides
17 no notice. Courts consistently strike such “reservation” defenses. *Solvent Chem. Co. v.*
18 *E.I. du Pont de Nemours & Co.*, 242 F. Supp. 2d 196, 212 (W.D.N.Y. 2002).

19
20 **D. Duplicative and Redundant Defenses (Nos. 5, 6, 14, 15, 16, 26)**

21 These defenses (compliance with law, good faith, reasonable procedures, lack of
22 willfulness, innocent mistake) are duplicative of each other and amount to denials of
23 Plaintiff’s allegations, not true affirmative defenses.

24
25 **III. CONCLUSION**

1 For the reasons stated above, Plaintiff respectfully requests that the Court strike
2 the following affirmative defenses as insufficient, redundant, or improper: Nos. 1–4, 7,
3 18, 23–25, and 27.

4
5 Respectfully submitted,

6
7 **Dated: this 25th Day of August 2025.**

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1 **CERTIFICATE OF SERVICE**

2 I, Frederick Silver, I hereby certify that on 25th day of August 2025, I
3
4 electronically filed the foregoing **PLAINTIFF’S MOTION TO STRIKE CERTAIN**
5 **AFFIRMATIVE DEFENSES:** with the Clerk of the Court using the CM/ECF system
6
7 which will send notification of such filing to the following:

8
9 Jesús Miguel Palomares, WSBA No. 51858
10 605 5th Ave. S., Suite 900, Seattle, WA 98104
11 Telephone: (206) 624-8300
12 Fax: (206) 340-0599
13 Email: jesus.palomares@millernash.com

14 Attorneys for Defendant
15
16 Capital One, N.A., erroneously named as “Capital One Services, LLC”
17

18 I declare under penalty of perjury under the laws of the United States of America
19 that the foregoing is true and correct.

20
21 

22
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