

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-02707-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN BUTLER,

Defendant.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This matter is before me on Plaintiff's Motion to Strike Affirmative Defenses (ECF No. 36), filed August 7, 2014 and the Recommendation of United States Magistrate Judge (ECF No. 41), filed August 13, 2014. The defendant filed an objection (ECF No. 42) to the recommendation. I overrule the objection and affirm and adopt the recommendation.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which the defendant objects and I have considered carefully the recommendation, the objections, and the governing law.

The magistrate judge thoroughly analyzed the defendant's affirmative defenses and correctly applied the legal standards set forth in Fed. R. Civ. P. 12(f). Specifically, the magistrate judge considered each of the three challenged affirmative defenses and found that none could succeed as a matter of law. While the defendant argues that the magistrate judge erred in not allowing him the opportunity to respond to plaintiff's Rule

12(f) motion, I note that the “district court possesses considerable discretion in disposing of a Rule 12(f) motion to strike redundant, impertinent, immaterial, or scandalous matter.” 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1382 (3d ed. 2014). Additionally, Rule 12(f) permits a Court to act “on its own” or “on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.” Rule 12(f). Thus, I overrule defendant’s objection finding that the magistrate judge clearly had authority to act on his own initiative in striking three of defendant’s five affirmative defenses.

Turning to the merits of the Recommendation, I find that the analysis and conclusions of the magistrate judge are correct. In his objection, the defendant disagrees with the magistrate judge’s “simplistic reasoning” and “obscure” rationale. (Objection at 4). However, I conclude that the arguments asserted by the defendant in his objection are incorrect and find that the magistrate judge properly and thoroughly detailed both the governing law and his reasoning in the recommendation to strike three of the five asserted affirmative defenses.

Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 41) is **AFFIRMED and ADOPTED** as an order of this court. Defendant’s objections (ECF No. 42) are **OVERRULED**. It is

FURTHER ORDERED that the Plaintiff’s Motion to Strike Affirmative Defenses (ECF No. 36) is **GRANTED** to the extent that Defendant’s First, Second, and Fifth

Defenses are hereby **STRICKEN**.

Dated: September 16, 2014

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Senior United States District Judge