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**THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MESIKA MAGIC, a California
corporation, YIGAL MESIKA, an
individual

Plaintiffs,

vs.

PENGUIN MAGIC, INC., a Nevada
corporation, CRAIG PETTY, a resident
of the United Kingdom, DOES 1-10,
inclusive,

Defendants

Case No.: 2:25-cv-07943-MWF-(MBKx)

**NOTICE OF MOTION AND MOTION
TO STRIKE PORTIONS OF
DEFENDANT CRAIG PETTY'S
ANSWER**

Date: November 18, 2026

Time: 10:00 A.M.

Judge: Hon. Michael W. Fitzgerald

Courtroom: 5A, 5th Floor

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs MESIKA MAGIC ("Mesika Magic" or
"Plaintiff") and YIGAL MESIKA ("Mesika" or "Plaintiff") collectively, "Plaintiffs,"
will, and hereby do, move this Court pursuant to Federal Rule of Civil Procedure 12(f)

1 to strike portions of the Answer (Dkt. No. 74) filed by Defendant CRAIG PETTY,
2 (“Petty” or “Defendant”). Plaintiffs seek an order striking :

3 1. Petty’s Fifth and Sixth Affirmative Defenses, after waiver and Defendant’s
4 express withdrawal;

5 2. Petty’s denials in Paragraphs 8 and 9 of the Answer, after waiver; and

6 3. Petty’s Third Affirmative Defense for scandalous matter.

7 This Motion is based on this Notice, the accompanying Memorandum of Points
8 and Authorities, supporting declarations and exhibits, the pleadings and papers on file,
9 and such other evidence and argument as may be presented at the hearing.

10 This Motion is made following the conference of counsel pursuant to L.R. 7-3,
11 which took place telephonically on September 15, 2026. See Declaration of Frederic
12 M. Douglas, filed concurrently.

13 September 25, 2026

Respectfully submitted,

14 /s/ Frederic M. Douglas

15 Frederic M. Douglas

16 Calif. State Bar # 212778

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises from a targeted, monetized defamation campaign orchestrated by Defendant Craig Petty ("Petty") against Plaintiffs Mesika Magic and Yigal Mesika ("Mesika").

On August 4, 2026, this Court issued its Order on Defendants' Motions to Dismiss, Dkt. No. 68, sustaining Plaintiffs' core claims against Petty for Libel (Count 1), Trade Libel (Count 2), and False Light (Count 5) Dkt. No. 68, pp. 11, 31. Pursuant to Fed. R. Civ. P. 12(a)(4)(A), Petty's Answer was due 21 days after the August 4, 2026 Order, Dkt. No. 68, which was August 25, 2026. Ten days after August 25, 2026, on September 4, 2026, Petty filed his Answer to the Second Amended Complaint ("SAC") Dkt. No. 74. Petty has not sought relief under Fed. R. Civ. P. 6(b)(1)(B).

Petty's Answer contained significant defects and improper pleading tactics:

Waived Threshold Defenses: Petty asserted a Fifth Affirmative Defense for "Lack of Personal Jurisdiction," Dkt. No. 74, p. 27, and a Sixth Affirmative Defense for "Improper Venue," Dkt. No. 74, p. 27–28, despite having omitted both defenses from his initial pre-answer Motion to Dismiss, Dkt. 50; Dkt. No. 68, p. 1.

Contradictory Jurisdictional Denials: In Paragraphs 8 and 9 of his Answer, Dkt. No. 74, ¶¶ 8–9, Petty denied the SAC's jurisdictional and venue allegations, creating a direct conflict with his procedural waiver.

Evidentiary Pleading of Scandalous Hearsay: In Paragraphs 4 and 5 of his Third Affirmative Defense (Lack of Actual Malice), Dkt. No. 74, pp. 22–26, Petty's counsel stuffed pages of unsworn, toxic third-party internet comments and social media gossip calling Mesika a "thief," "bully," and "INSANE" (emphasis in original) directly into the Answer.

1 Following a pre-filing conference under Local Rule 7-3, Petty's counsel
2 conceded that the Fifth and Sixth Affirmative Defenses were legally untenable and
3 filed a "Notice of Craig Petty's Withdrawal of Fifth and Sixth Affirmative Defenses"
4 on September 21, 2026, Dkt. No. 76. See Declaration of Frederic M. Douglas,
5 paragraph 8, and Exhibit B thereto.

6 However, Petty's unilateral Notice of Withdrawal does not automatically cut the
7 text from the filed pleading, nor does it resolve Petty's improper denials in Paragraphs
8 8 and 9 or the scandalous evidentiary matter in his Third Affirmative Defense.
9 Accordingly, Plaintiffs now move under Federal Rule of Civil Procedure 12(f) for an
10 Order cleaning up the record, striking the improper matter, and prohibiting Petty from
11 executing his improper bootstrap strategy of inserting disparaging hearsay into
12 pleadings under the litigation privilege.

13 14 **II. LEGAL STANDARD UNDER FED. R. CIV. P. 12(F)**

15 Federal Rule of Civil Procedure 12(f) provides that the Court "may strike from a
16 pleading an insufficient defense or any redundant, immaterial, impertinent, or
17 scandalous matter." The function of a Rule 12(f) motion to strike is "to avoid the
18 expenditure of time and money that must arise from litigating spurious issues by
19 dispensing with those issues prior to trial." *Whittlestone, Inc. v. Handi-Craft Co.*, 618
20 F.3d 970, 973 (9th Cir. 2010); *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.
21 1993), rev'd on other grounds, 510 U.S. 517 (1994).

22 "Insufficient Defense": An affirmative defense is legally insufficient only if it
23 clearly lacks merit "under any set of facts the defendant might allege." *Winburn v.*
24 *Hartford Life & Accident Ins. Co.*, No. 1:19-cv-01397-AWI-SKO, slip opinion, at p. 3
25 (E.D. Cal., Jul. 6, 2020) (quoting *McArdle v. AT&T Mobility, LLC*, 657 F. Supp. 2d

1 1140, 1149–50 (N.D. Cal. 2009) rev'd on other grounds, 474 F. App'x 515 (9th Cir.
2 2012)).

3 "Immaterial" and "Impertinent" Matter: "Immaterial matter is that which has no
4 essential or important relationship to the claim for relief or the defenses being
5 pleaded." *Fantasy, Inc.*, 984 F.2d at 1527. "Impertinent matter consists of statements
6 that do not pertain, and are not necessary, to the issues in question." *Id.*

7 "Scandalous" Matter: A scandalous pleading is one that "improperly casts a
8 derogatory light on someone, most typically on a party to the action." *Cortina v. Goya*
9 *Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015), citing *Aoki v. Benihana, Inc.*,
10 839 F.Supp.2d 759, 764 (D. Del. 2012).

11
12 **III. PETTY'S FIFTH AND SIXTH AFFIRMATIVE DEFENSES**
13 **SHOULD BE STRICKEN**

14 On September 21, 2026, Petty filed a "Notice of Craig Petty's Withdrawal of
15 Fifth and Sixth Affirmative Defenses Asserted in Answer to Second Amended
16 Complaint," Dkt. No. 76. Plaintiffs appreciate that Defendant Petty avoided litigating
17 further regarding the Fifth Affirmative Defense for lack of personal jurisdiction and
18 the Sixth Affirmative Defense for improper venue, which occurred after attorney
19 conference on September 15, 2026.

20 Petty had waived both of these Affirmative Defenses pursuant to Fed. R. Civ. P.
21 12(g)(1) from omitting these defenses in his initial pre-answer motion under Fed. R.
22 Civ. P. 12, Dkt. No. 50. See, Fed. R. Civ. P. 12(b)(2) and (3).

23 The Ninth Circuit has stated clearly that such affirmative defenses are waived if
24 not raised at the first available opportunity. *American Ass'n of Naturopathic*
25 *Physicians v. Hayhurst*, 227 F.3d 1104, 1106 (9th Cir. 2000) ("A fundamental tenet of
the Federal Rules of Civil Procedure is that certain defenses under Fed. R. Civ. P. 12

1 must be raised at the first available opportunity or, if they are not, they are forever
2 waived.").

3 Once a defense is omitted from a pre-answer motion, Fed. R. Civ. P. 12(h)(1)
4 A) is triggered, and the defense is dead. *See Wright & Miller*, 5C Fed. Prac. & Proc.
5 Civ. § 1391; *Church of Scientology of Cal. v. Linberg*, 529 F. Supp. 945, 966 (C.D.
6 Cal. 1981); *Pilgrim Badge & Label Corp. v. Barrios*, 857 F.2d 1, 3 (1st Cir. 1988).

7 Plaintiffs request that the Court formalize the Parties' agreement by striking the
8 Fifth and Sixth Affirmative Defenses, with prejudice.

9
10 **IV. PETTY'S DENIALS IN PARAGRAPHS 8 AND 9 OF THE ANSWER**
11 **SHOULD BE STRICKEN OR DEEMED ADMITTED**

12 In Paragraphs 8 and 9 of the SAC, Dkt. No. 43, ¶¶ 8–9, Plaintiffs pleaded
13 specific facts establishing personal jurisdiction, and proper venue in this judicial
14 district. In Paragraphs 8 and 9 of his Answer, Dkt. No. 74, ¶¶ 8–9, Petty asserted bare
15 denials.

16 Petty's denials in Paragraphs 8 and 9 must be stricken under Rule 12(f) as sham,
17 redundant, and immaterial because they directly contradict his procedural waiver and
18 formal withdrawal of jurisdictional challenges, Dkt. No. 76.

19 Under Federal Rule of Civil Procedure 12(f), the Court has inherent authority to
20 strike sham or contradictory denials that serve no purpose other than to obfuscate the
21 pleadings. Having conceded that he cannot challenge personal jurisdiction or venue,
22 Dkt. No. 76, Petty cannot simultaneously maintain formal denials of jurisdictional
23 facts in his Answer.

24 Allowing these denials to remain would create an impermissible internal
25 conflict on the face of the pleadings and waste the Parties' and the Court's time
conducting discovery on non-existent jurisdictional disputes. The Court should strike
Petty's denials in Paragraphs 8 and 9 of the Answer and deem the allegations of

1 personal jurisdiction and venue in Paragraphs 8 and 9 of the SAC admitted as to
2 Defendant Petty.

3
4 **V. PETTY’S THIRD AFFIRMATIVE DEFENSE SHOULD BE**
5 **STRICKEN**

6 The Court is asked to strike paragraphs 4 and 5 of the Third Affirmative
7 Defense in Petty’s Answer to the SAC under Fed. R. Civ. P. 12(f) for being improper,
8 evidentiary pleading of redundant, immaterial, impertinent, scandalous, and
9 inflammatory hearsay.

10 A complainant is prejudiced by Affirmative Defenses that needlessly multiply
11 discovery. See *Bonshahi v. Fedex Corp.*, Case No. 3:12-cv-2471-TEH, slip
12 opinion, p. 3, 2012 WL 3638608, at *2 (N.D. Cal., Aug. 22, 2012) (“[T]he burden of
13 conducting discovery regarding irrelevant and unsustainable affirmative defenses
14 constitutes... prejudice.”); *Harris v. Chipotle Mexican Grill, Inc.*, Case No. 2:13-cv-
15 2472-WBS-EFB, slip opinion, p. 4, 303 F.R.D. 625, 628 (E.D. Cal., Oct. 6, 2014)
16 (prejudice is found ““where superfluous pleadings may confuse the jury, or where a
17 party may be required to engage in burdensome discovery around frivolous
18 matters.””) (quoting *J & J Sports Prods., Inc. v. Luhn*, 2011 WL 5040709, at *1 (E.D.
19 Cal., Oct. 24, 2011)).

20 As another judge in the Central District of California has articulated, “Rule
21 12(f) provides that a court ‘may strike from a pleading an insufficient defense or any
22 redundant, immaterial, impertinent, or scandalous matter.’” *N.L. v. Children’s Hosp.*
23 *L.A.*, Case No. 2:15-cv-07200-AB-SK, Dkt. No. 144, slip opinion, p. 3, 2019 WL
24 10854340, at *2 (C.D. Cal., Oct. 22, 2019) (Birote, Jr., J.) (quoting Fed. R. Civ. P.
25 12(f)). Redundant allegations are those that are “needlessly repetitive or wholly
foreign to the issues involved in the action.” *J & J Sports Prods., Inc. v. Nguyen*,
Case No. 5:13-cv-02008-LHK, slip opinion, p. 16, 2014 WL 60014, at *8 (N.D. Cal.,

1 Jan. 7, 2014).

2 “A federal court will not exercise its discretion to strike a pleading unless the
3 matters sought to be omitted have no possible relationship to the controversy, may
4 confuse the issues, or otherwise prejudice a party.” *Reyher v. Trans World Airlines,*
5 *Inc.*, 881 F. Supp. 574, 576 (M.D. Fla. 1995)

6 “[A] court may strike a pleading that is: (1) redundant, (2) immaterial, (3)
7 impertinent, or (4) scandalous. *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174,
8 1182 (S.D. Cal. 2015), citing Fed. R. Civ. P. 12(f). An “immaterial” matter has no
9 essential or important relationship to the claim for relief or defenses pleaded. *Cal.*
10 *Dept. of Toxic Substances Control v. Alco Pac., Inc.*, 217 F.Supp.2d 1028, 1032 (C.D.
11 Cal.2002) (internal citations and quotations omitted). An “impertinent” allegation is
12 neither necessary nor relevant to the issues involved in the action. *Fantasy, Inc. v.*
13 *Fogerty*, 984 F.2d 1524, 1527 (1993) (rev'd on other grounds). A scandalous pleading
14 is one that “improperly casts a derogatory light on someone, most typically on a party
15 to the action.” *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal.
16 2015), citing *Aoki v. Benihana, Inc.*, 839 F.Supp.2d 759, 764 (D. Del. 2012).

17 Rule 12(f) provides, in pertinent part, that “[u]pon motion made by a party . . .
18 the court may order stricken from any pleading any . . . scandalous matter.” Fed. R.
19 Civ. P. 12(f); see C. Wright and A. Miller, *Federal Practice and Procedure (Civil)* 2d
20 § 1382, at 465 (2004) (“‘Scandalous’ matter is that which improperly casts a
21 derogatory light on someone, most typically on a party to the action.”) (footnote
22 omitted); 2 *Moore's Federal Practice* 5C § 12.37[3] at 12-97 (“‘Scandalous’ generally
23 refers to any allegation that unnecessarily reflects on the moral character of an
24 individual or states anything in repulsive language that detracts from the dignity of
25 the court.”) (footnote omitted).

While motions to strike are generally disfavored, “the disfavored character of
Rule 12(f) is relaxed somewhat in the context of scandalous allegations and matter of

1 this type often will be stricken from the pleadings in order to purge the court's files
2 and protect the person who is the subject of the allegations.” 5C C. Wright and A.
3 Miller, *Federal Practice and Procedure (Civil)* 2d § 1382, at 466-67 (2004); see
4 *Metrokane, Inc. v. The Wine Enthusiast*, 160 F. Supp. 2d 633, 641-42 (S.D.N.Y.
5 2001) (“Generally, motions to strike are disfavored and usually granted only for
6 scandalous material.”) (citation omitted). The striking of offensive material is
7 particularly appropriate when the offensive material is not responsive to an argument
8 but, rather, constitutes an inappropriate attempt to abuse the Court's process to attack
9 an individual personally. See, e.g., *Magill v. Appalachia Intermediate Unit 08*, 646
10 F. Supp. 339, 343 (E.D. Pa. 1986) (striking allegations that “reflect adversely on the
11 moral character of an individual who is not a party to this suit” which were
12 “unnecessary to a decision on the matters in question”); see also *Pigford v. Veneman*,
13 215 F.R.D. 2, 4-5 (D.D.C. 2003) (striking unfounded accusations that opposing
14 counsel was racist); *Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1037 (C.D.
15 Cal. 1998) (striking allegation that “defendants are '[l]ike vultures feeding on the
16 dead”).

17 “‘Scandalous’ includes allegations that cast a cruelly derogatory light on a party
18 of other person.” *In re 2TheMart.com Inc. Securities Litigation*, 114 F. Supp. 2d 955,
19 965 (C.D. Cal. 2000).

20 Even if Defendant somehow asserts that these issues have some tangential
21 relation to this controversy, “relevant portions of a complaint may be stricken where
22 they are scandalous and are set out in needless detail.” *Gleason v. Chain Service*
23 *Restaurant*, 300 F. Supp. 1241, 1257 (S.D.N.Y. 1969). The “function of a 12(f)
24 motion to strike is to avoid the expenditure of time and money that must arise from
25 litigating spurious issues by dispensing with those issues prior to trial.” *Sidney-*
Vinstein v. A.H. Robins, 697 F.2d 880, 885 (9th Cir. 1983). That purpose would be
served here by dispensing with Defendant’s extraneous statements in the Third

1 Affirmative Defense which cannot possibly have any bearing on the adjudication of
2 this matter.

3 For the reasons stated above, the scandalous allegations in Paragraphs 4 and 5
4 of the Third Affirmative Defense in Petty's Answer to the SAC are not material to
5 the issues at hand.

6
7 **VI. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this
9 Motion to Strike in its entirety and enter an Order:

- 10 (a) Formally striking with prejudice Defendant Craig Petty's Fifth
11 Affirmative Defense (Lack of Personal Jurisdiction), Dkt. No. 74, p. 27, and
12 Sixth Affirmative Defense (Improper Venue), Dkt. No. 74, pp. 27-28;
13 (b) Striking Defendant Craig Petty's denials in Paragraphs 8 and 9 of his
14 Answer, Dkt. No. 74, Paragraphs 8-9 and deeming admitted the jurisdictional
15 and venue allegations in Paragraphs 8 and 9 of the SAC, Dkt. No. 43,
16 Paragraphs 8-9 as to Defendant Petty; and
17 (c) Striking Paragraphs 4 and 5 of Defendant Craig Petty's Third Affirmative
18 Defense, Dkt. No. 74, pp. 22-26, as improper, immaterial, impertinent, and
19 scandalous matter pursuant to Fed. R. Civ. P. 12(f).

20
21 September 25, 2026

Respectfully submitted,

22
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CERTIFICATION UNDER L.R. 11-6.2

The undersigned counsel of record for Plaintiffs certifies that this brief contains 2,287 words, which complies with the word limit of L.R. 11-6.1.

/s/ Frederic M. Douglas

Frederic M. Douglas
Attorney for Plaintiffs
MESIKA MAGIC and YIGAL MESIKA
September 25, 2026

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