

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-81085-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

vs.

PAULETTE THEODULE,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION TO STRIKE AFFIRMATIVE DEFENSES**

THIS CAUSE is before the court upon plaintiff's motion to strike the affirmative defenses asserted by defendant [DE # 10]. Plaintiff argues that defendant's first and second affirmative defenses are not affirmative defenses but mere denials. Defendant's response agrees that its first affirmative defense should be stricken. Therefore, the court will strike defendant's first affirmative defense.

As to the second affirmative defense, which states that "George Theodule never gave Defendant the purported \$393,000.00," the court agrees that it is a mere denial. An affirmative defense must do more than simply deny the plaintiff's allegations or point out a defect or lack of evidence in the plaintiff's case. *See Boldstar Technical, LLC v. Home Depot, Inc.*, 517 F. Supp. 2d 1283, 1291 (S. D. Fla. 2007). A mere general denial may be stricken under Fed. R. Civ P. 12(f), *see id.* at 1292, or treated as a denial to allegations in the complaint, *see Premium Leisure, LLC v. Gulf Coast Spa Mfrs., Inc.*, 2008 WL 3927265, *3 (M.D. Fla. 2008). Since motions to strike defenses are "disfavored in federal practice," *see Breckenridge Pharmaceutical, Inc. v. Metabolite Laboratories,*


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Inc., 2007 WL 201261 at *2 (S.D. Fla. 2007), the court concludes that the proper remedy here is to treat defendant's second affirmative defense as a denial.

It is hereby **ORDERED** and **ADJUDGED** that:

1. Plaintiff's motion to strike the affirmative defenses asserted by defendants [DE # 10] is **GRANTED IN PART** and **DENIED IN PART** as follows:
 - a. Based the parties' agreement, defendant's first affirmative defense is **STRICKEN**.
 - b. Defendant's second affirmative defense shall be treated as a denial.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 22nd day of October, 2009.


Daniel T. K. Hurley
United States District Judge

Copies provided to counsel of record