UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No.: 8:14-cv-3129-RAL-TBM

METH LAB CLEANUP, LLC

Plaintiff,

v.

SPAULDING DECON, LLC and
LAURA SPAULDING,

Defendants.
_____/

SPAULDING DECON, LLC, a
domestic limited liability company,

Counter-claimant and
Third Party Plaintiff,

v.

METH LAB CLEANUP, LLC, a
foreign limited liability company,

Counter-defendant, and

JOSEPH MAZZUCA, individually, and
JULIE MAZZUCA, individually,

Third Party Defendants.
_____/

DEFENDANTS, SPAULDING DECON, LLC AND LAURA SPAULDING AND COUNTER-CLAIMANTS AND THIRD-PARTY PLAINTIFF, SPAULDING DECON, LLC'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW (DE 30)

Defendants, Spaulding Decon, LLC and Laura Spaulding, and Counter claimant and Third-Party Plaintiff, Spaulding Decon, LLC ("Spaulding"), by counsel, hereby file their

Response in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Motion"). Plaintiff's Motion should be denied, as follows:

INTRODUCTION AND FACTUAL BACKGROUND

Plaintiff's Motion should be denied for any one of the following separate and distinct reasons: (1) existence of disputed issues of material facts; (2) Plaintiff is not entitled to judgment as a matter of law when the Settlement Agreement is read *in pari materia*; or (3) all of Spaulding's affirmative defenses have not been rebutted by undisputed record evidence.

Spaulding is and has been for many years, in Florida and beyond, engaged in the business of meth lab cleanup and decontamination, including surveying, testing, assessing, and cleaning or remediating clandestine or illegal methamphetamine drug laboratories in accordance with federal, state, or local requirements. Although the Plaintiff, Meth Lab Cleanup Company, LLC ("MLCC") claims to do business in Florida and throughout the country, MLCC is primarily a Idaho-based company that seeks to obtain meth lab cleanup assignments and then contracts them out to third parties for performance.

MLCC and Spaulding are long time competitors in the business of cleaning meth labs. Spaulding began in Tampa, Florida, and has performed meth lab cleanups throughout Florida and many other states since 2006. (Spaulding Affidavit, para. 3, attached as Exhibit "A") MLCC is an Idaho-based company that has been in the meth lab cleaning business allegedly since 2003 and claims to operate nationally, including in Florida, despite contacting out its Florida work to third parties.

MLCC previously obtained three federal trademarks for its company name, specifically "Meth Lab Cleanup, LLC." Although the three initial MLCC trademarks were for the company name only, rather than the more general "meth lab cleanup," MLCC attempted to prevent others

from using the phrase "meth lab cleanup" to describe their business services of cleaning up meth labs by initiating legal action against its competitors. Accordingly, MLCC and Spaulding were involved in litigation for several years, where MLCC asserted claims of trademark infringement and Spaulding counterclaimed, among other things, that the trademarks were invalid as generic descriptors of the service itself and that the trademarks were procured by fraud[1]. Spaulding filed cancellation proceedings with the US Trademark Office to cancel the marks.

In resolution of the prior litigation, the parties entered into a settlement agreement ("Agreement"), wherein Spaulding agreed to drop the cancellation proceedings against the trademarks and to not subsequently challenge the marks of "Meth Lab Cleanup, LLC" and MLCC agreed that Spaulding would continue to have unfettered use of the phrase "meth lab cleanup" in its advertising, including Spaulding's websites, to describe the services offered. (Ex. A, para. 11) The Agreement also contained confidentiality and non-disparagement provisions. In compliance with the Agreement, Spaulding dropped its cancellation proceedings against the marks.

Following execution of the Agreement and outside the terms and scope of the Agreement between the parties, MLCC filed three new trademark applications to obtain trademarks for "meth lab cleanup" in addition to its company name. Spaulding did not oppose the registration of those marks, in compliance with the Agreement, although the marks have been challenged by other competitors.

In mid-2014, MLCC sent a series of threat letters to Spaulding from three different law firms seeking a revised Agreement to restrict Spaulding in its use of the phrase "meth lab cleanup" and now took exception with the use of "meth lab services" in Spaulding's domain

[1] The fraud allegation stemmed from affidavits that MLCC filed with the Trademark Office asserting it was the exclusive user of the phrase "meth lab cleanup" while knowing all along that many others, including Spaulding were using the phrase to describe their services.

name. Spaulding did not agree to any restriction of the use of the phrase "meth lab services" nor restrictions to the Agreement's grant of unfettered use of "meth lab cleanup." Subsequently, MLCC filed suit on December 16, 2014. In paragraph 25 of the Complaint, MLCC asserted, "The Domain Name is confusingly similar to Plaintiff's Intellectual Property and is a clear infringement of the Plaintiff's intellectual property rights . . ." in addition to allegations of breach of the Agreement.

In response, Spaulding asserted counterclaims against MLCC and third-party claims against its principals, Joseph and Julie Mazzuca, under the Declaratory Judgment Act that MLCC has no intellectual property rights in the phrase "meth lab services," and that its interference with Spaulding is a violation of the Lanham Act. Spaulding further asserted breach of contract claims, including breaches of both the confidentiality and non-disparagement provisions. In addition, Spaulding asserted claims arising in false advertising for a number of false statements made by MLCC and its principals in the promotion of their services.

More recently, the Defendants have amended the Counterclaim and MLCC has not responded.

ARGUMENT

I. Plaintiff is Not Entitled to Summary Judgment Because the Contract Specifically Authorizes Use of the Phrase "meth lab cleanup" by Defendants.

In this case, both the Complaint and Counterclaim are primarily directed to breaches of contract based on the terms and conditions of the Agreement. The parties are in agreement on validity. The elements of proving a breach of contract action are "(1) a valid contract; (2) a material breach; and (3) damages." *Akzo Nobel Coatings, Inc. v. Auto Paint & Supply of Lakeland, Inc.,* 2010 WL 2821950, *3 (M.D. Fla. 2010). MLCC must make more than vague allegations to support the breach element, which it has not done in the Motion. *Id*. The Court

cannot read requirements into a contract that do not exist when the contract terms are unambiguous. *Bridge Capital Investors, II v. Susquehanna Radio Corp.,* 458 F.3d 1212, 1217 (11th Cir. 2006). Here, MLCC is improperly attempting to parse out small sections of the Agreement and add unsupported assumptions, rather than encouraging the Court to read the Agreement as a whole.

MLCC's Motion attempts to argue that Defendants' use of "meth lab cleanup" as a meta-tag in its website violates section 7(a) of the agreement. No other breach of contract allegation or evidence is set forth in MLCC's Motion. MLCC further makes that argument that 7(a) should be considered *alone* in determining whether a breach exists, contrary to prevailing contract interpretation law requiring a contract to be read as a whole. *See Restatement (Second) of Contracts,* § 202(2). The Court must consider the Agreement as a whole in interpreting the terms and conditions.

In the current case, this is even more important since section 7(a) itself references **two other sections** of the Agreement and certain Definitions found in Paragraph 2 of the Consent Final Order. The Motion makes no reference to those other sections, which specifically negate MLCC's assertion of breach of contract.

In order that the court will have an accurate statement of the contractual provisions applicable, Spaulding directs the Court's attention to Section 7(a) along with the two sections it references, Sections 9 and 10, which are reprinted in their entirety:

> 7. **Restrictions and Restrainment of Defendants Future Use of Copyrights-in-Suit and Trademarks-in-Suit:** Defendants Spaulding Decon, Ms. Spaulding and any person or entity acting in concert with, or at the direction of such Spaulding Decon and Ms. Spaulding, including any and all contractors, managers, agents, servants, employees, partners, assignees, and any others over

> which such Defendant may exercise control, are hereby RESTRAINED and RESTRICTED FROM, from engaging in, directly or indirectly, or authorizing or assisting any third party to engage in, any of the following activities in the United States and throughout the world:
>
> a) copying, manufacturing, importing, exporting, marketing, sale, offering for sale, distributing or dealing in any product or service that uses, or otherwise making any use of, any of the Copyrights-in-Suit and the Trademarks-in-Suit (subject to the definition found in Paragraph 2 of the Consent Final Order as well as the limitations found in Paragraphs 9 and 10), and/or any intellectual property that is confusingly or substantially similar to, or that constitutes a colorable imitation of, any of the Copyrights-in-Suit and the Trademarks-in-Suit, whether such use is as, on, in or in connection with any trademark, service mark, trade name, logo, design, Internet use, website, domain name, meta-tags, advertising, promotions, solicitations, commercial exploitation, television, web-based or any other program, service, or otherwise;
>
> . . .
>
> 9. Plaintiff MLCC, Joseph Mazzuca and Julie Mazzuca herein agree that the current arrangement of the website www.spauldingdecon.com, as it exists on January 26, 2012, is free of infringement of any intellectual property infringement of any rights of the Plaintiff and Counterclaim Defendants.
>
> 10. **Dismissal of the TTAB Proceeding and the Pasco County State Court Case:** Within ten (10) days of the Effective Date of this Agreement, Defendants shall agree to cancel and/or dismiss with prejudice (i) the current cancellation proceeding before the USPTO Trademark Trial and Appeal Board (TTAB) with regard to the Trademarks-in-Suit; and (ii) any and all state court proceedings in Florida, including the current action in Pasco County between the Parties. Defendants shall provide written notice to MLCC as to such cancellation and dismissals.

It is perhaps not surprising that MLCC makes no mention of Paragraph 9 of the contract because that paragraph specifically states Spaulding's website is free of any and all intellectual property infringement of any rights of the MLCC. This is very important because the same "meta-tags" or "meta-data" that the MLCC now alleges in 2014 and 2015 are infringement were in use in the same form and manner by Spaulding at the time the Agreement was executed on January 26, 2012, contrary to MLCC's allegations that the use of meta-data occurred after the Agreement. (Ex. A, para. 9). Apparently, MLCC now regrets the contractual concession made

in Paragraph 9 that the website is free of any and all infringements in the composition of the website in January 26, 2012, and has now taken a new interest in meta-data. However, Paragraph 9 is an integral component of the Agreement, and is explicitly stated, referenced and incorporated into Paragraph 7(a) itself. Moreover, the 2012 meta-data used in Spaulding's website is the exact same meta-data used in exactly the same way in Spaulding's 2014 website www.methlabservices.com. *Id.*

One of the more novel aspects of the Motion is the use of an *unnotarized* affidavit by IT professional, Brad Taylor. *Exhibit "B" to Plaintiff's Motion*. The Taylor affidavit is remarkable at how little it actually says. Taylor speaks generally about himself and his history (para 1 – 7), and generally about IT terminology (para 9 – 12), but none of this information is contested nor relevant. Only paragraphs 8 and 13 of the Taylor affidavit even pertain to any issue in dispute in this case. In Paragraph 8, Taylor acknowledges that he has only reviewed the "publicly available coding and meta data" information about Spaulding's website, meaning he is unable to identify any meta-data actually used, as a password is required to examine the underlying code and content of the Spaulding website. Taylor then goes on to conclude in Paragraph 13 only that Spaulding's use of a vendor (WordPress) that could "allow them to add meta tags thus increasing the likelihood that Defendants' website would appear at the top of any search list when "meth lab cleanup" was searched." Yet, all he can do is state that this is possible, because with only the publicly available information, he is unable to support his allegations. The Taylor affidavit is a red herring that makes no real conclusion about any issue in dispute and does not support the allegations in MLCC's Motion.

Most importantly, Taylor makes no mention of the website and meta-data used by the Spaulding in its January 26, 2012 website, encompassed by the Agreement, and how that meta-

data compares with that which is currently used. He cannot make this comparison with information he has and MLCC has made no request to obtain such information. Since the Agreement concedes that the January 26, 2012 website is free of any intellectual property issue, and the current meta-data is no different, MLCC cannot make any breach of contract claim based upon meta-data use, particularly without any supporting evidence. At best, Taylor's affidavit creates a disputed issue of material fact regarding Spaulding's use of meta-data, which necessarily requires a denial of the Motion for Partial Summary Judgment.

II. The Settlement Contract Further Specifically Authorizes Use of the Phrase "meth lab cleanup" by Defendants in Section 8.

Pursuant to Sections 8 and 9 of the Agreement, Spaulding has full authority for any use of the term "meth lab cleanup" in any website or other advertisement media, including internet media. Interestingly, MLCC mentions Section 8 in the Motion but ignores its contents, which negate MLCC's Motion entirely. The full reading of Section 8 is as follows:

> 8. **Defendants' Right to Accurately Describe Services:** Plaintiff, Ms. Mazzuca and Mr. Mazzuca herein agree that Spaulding Decon (but none of its contractors, agents, or affiliates) may continue to use the term "meth lab cleanup" to generally describe the nature of services offered by Spaulding Decon, subject to the limitation, and that such use is not an intellectual property infringement.

As per this section, Spaulding has full, unfettered use of the phrase "meth lab cleanup" to describe its services offered. The only use of "meth lab cleanup" to date by Spaulding has been to describe its services provided, which falls squarely within the protections of the Agreement. MLCC specifically uses the term as a company name and at no point has Spaulding used the term as a company, business name or entity designation.[2] There has been no evidence presented

[2] As further evidence that Spaulding does not use "meth lab cleanup" in its name, please see the name of Defendant/Counterclaimant in the style of this case, articulated by MLCC when filing the Complaint.

by MLCC that Spaulding has used the terms for any other purpose and therefore, MLCC's Motion cannot stand.

On page 6 of the Motion, MLCC attempts to explain away Section 8 with the argument that if "meth lab cleanup" was used as meta-data, it would not constitute "to generally describe the nature of services offered," as protected by Section 8. MLCC's argument is undercut by its own IT expert, Brad Taylor, who stated under oath in paragraph 9 of his affidavit that "a meta tag is…inserted into a web page to describe the content and provide keywords for use by search engines." Obviously, if one used the term "meth lab cleanup" as a meta-tag to generate Internet search hits when a customer is searching for the service of cleaning up meth labs, this is the very essence of "to generally describe the nature of services offered." Since even Mr. Taylor acknowledges this is the purpose of meta-data, MLCC's argument that Spaulding's consistent use of meta-data since 2012 is a contractual breach is unsupported and unsubstantiated and should be denied.

III. MLCC's Motion is Based on a False Assertion of the Definition of "Trademarks-in-Suit."

Another key problem that underlies MLCC's Motion from beginning to end is that MLCC is somewhat misleading about the trademarks that were the subject of the previous lawsuit and Agreement. Specifically, MLCC implies that the trademark at issue in the Agreement is "meth lab cleanup." This is simply not the case. At the time of the prior litigation, MLCC did not have a federal trademark for "meth lab cleanup." Rather, the only three federal trademarks that MLCC had at any time of the Agreement and prior litigation was their company name "Meth Lab Cleanup, LLC". The Agreement could not be more clear and unambiguous

regarding what trademarks it encompassed. The first item in the Definition section on page 4 of the Agreement reads as follows:

> 1. The "Trademarks-in-Suit" shall refer U.S. Trademark Registration No. 3,662,396 filed on September 4, 2007 and issued on August 4, 2009 for the mark **METH LAB CLEANUP LLC** in International Class 041, U.S. Trademark Registration 3,662,339 filed on September 6, 2007 and issued on August 4, 2009 for the mark **METH LAB CLEANUP LLC** in International Class 042, and U.S. Trademark Registration 3,662,398 filed on September 6, 2007and issued on August 4, 2009 for the mark **METH LAB CLEANUP LLC** in International Class 040.

Given the clarity of the Agreement, the effort by MLCC to recast the definition of Trademarks-in-Suit illustrates the frivolity of the Motion. The only trademarks referenced in the Agreement pertain to the company name of MLCC, and there has been no proof or even a suggestion by anyone that Spaulding has ever used the MLCC company name trademark as a meta-tag, or any other use. Moreover, to the extent that there is any question, the affidavit of Laura Spaulding makes it clear that Spaulding has never used the name "Meth Lab Cleanup, LLC" as a meta-tag, as an advertisement, or any other use of any kind. (Ex. A, para. 10).

MLCC apparently knows that they are on a very thin reed in trying to assert a violation, given the clear definition of Trademarks-in-Suit. To address that key weakness, MLCC attempted to rely on a letter from Spaulding's business counsel that appears to acknowledge the newer trademarks that were not part of the previous suit and not included in the definition of Trademarks-in-Suit. However, the cited letter from Jeff Fuller is irrelevant. The Agreement itself is very clear that the terms of the Agreement cannot be modified in such a way. Specifically, Section 18 addresses modifications:

> 18. **Modifications:** This Agreement may not be modified, except upon express written consent of the Parties, nor may the performance of any provisions in this agreement be waived, except in writing executed by a waiving Party.

Clearly, the Agreement can only be modified by an express provision directed to contract modification, signed by the parties. The effort by MLCC to avoid or amend the clear definition of Trademarks-in-Suit serves as a tacit acknowledgment that the motion is ill-founded, because no use of the Trademarks-in-Suit as meta-tag on any website has been shown. Again, at best, this creates a disputed issue of fact which precludes entry of summary judgment.

IV. Spaulding's Affirmative Defenses.

A. Standard of Review for Pleading Affirmative Defenses

The standard of review used by federal courts to assess whether or not an affirmative defense is sufficiently pled such as to withstand an effort to strike has been the subject of some debate in recent years. The debate centers around whether the standard is changed or affected as a result of recent U.S. Supreme Court decisions in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). A split of authority exists as to the question of whether the mandates of these cases imposes a higher standard upon pleading affirmative defenses, given that *Twombly* and *Iqbal* themselves are silent as to affirmative defenses. Some courts have adopted such a higher standard, while others, including the Middle District of Florida, have not. *Castillo v. Roche Laboratories, Inc.*, 2010 WL 3027726, *2 (S.D.Fla. 2010).

In the Middle District of Florida, the standard permits affirmative defenses so long as sufficient notice of the defense is provided.

> Under federal standards of notice pleading, it is not always necessary to allege the evidentiary facts constituting the defense. The pleading need only give fair notice of the asserted defense(s) 'so that opposing parties may respond, undertake discovery, and prepare for trial. Thus, for example, a statement that '[t]his claim is barred by the statute of limitations,' gives fair notice of the defense and meets Rule 8 pleading requirements.

Blanc v. Safetouch, Inc., 2008 WL 4059786, *1 (M.D.Fla 2008). This standard has been reaffirmed in this district, noting the *Twombly* decision, and the Middle District of Florida consistently applies the "fair notice" standard nonetheless. *Torres v. TPUSA, Inc*., 2009 U.S. Dist. LEXIS 22033 at *2-3 (M.D.Fla. March 19, 2009). "Affirmative defenses included in an answer are a pleading which must provide a 'short and plain statement of the claim showing the pleader is entitled to relief.'" *Id*. *Torres* notes *Twombly* in that "a pleader must, however, plead enough facts to state a plausible basis for the claim." *Id*. In the Middle District of Florida, "under federal standards for notice pleading, it is not always necessary to allege the evidentiary facts constituting the defense." *Blanc v. Safetouch*, at *1 (M.D.Fla. August 27, 2008). See also, *Sembler Family Partnership No. 41, Ltd. V. Brinker Florida, Inc*., 2008 WL 5341175 (M.D.Fla. December 19, 2008).

In its Motion, MLCC fails to recognize the distinction between the two standards. Nonetheless, Spaulding's affirmative defenses are appropriate under either standard and as a result, MLCC's Motion for Partial Summary Judgment cannot be granted.

B. Under the Standard for Pleading Affirmative Defenses used by this Court, the Defendants' Pleadings are Appropriate

An affirmative defense is "a defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all allegations in the complaint are true." *Ayers v. Consol Const. Servs. of Sw. Fla*., 2007 WL 4181910 at *1 (M.D.Fla. 2007) (quoting *Saks v. Franklins Covey Co*. 316 F.3d 337, 350 (2d Cir. 2003)). For a court to find an affirmative defense insufficient as a matter of law, "the defense must be (1) patently frivolous on the face of the pleading, or (2) clearly invalid as a matter of law." *Id*. (citing *Microsoft Corp*., 211 F.R.D. at 683). An affirmative defense may also be insufficient as a matter of law if it fails

"to meet the general pleading requirements of Federal Rule of Civil Procedure 8, which requires a short and plain statement of the defense asserted." *Id*. at *2 (citing *Microsoft Corp*., 211 F.R.D. at 684). As the court in *Wlodynski v. Ryland Homes of Fla. Realty Corp.* opined:

> Federal courts recognize that, by definition, defendants can only establish an affirmative defense when they admit the essential facts of the complaint and set forth other facts in justification or avoidance…. While an answer need not set forth a detailed statement of the applicable defenses, a defendant may not simply make conclusory allegations…. The affirmative defense must be stricken if it provides no more than a bare bones conclusory allegation…. However, a defendant will not be precluded from arguing the substantive merits of the affirmative defense later in the case even if the court strikes the affirmative defense on technical grounds…. Rather, if an affirmative defense is valid as a matter of law, district courts may strike the technically deficient affirmative defense without prejudice, and grant the defendant leave to replead the stricken defense.

2008 WL 2783148, at *2-3 (M.D.Fla. 2002) (internal citations and quotation marks omitted).

Where a defense puts into issue relevant and substantial legal and factual questions, it is sufficient and may survive a motion to strike, particularly when there is no showing of prejudice to the movant. *Augustus v. The Bd. of Pub. Instruction of Escambia County, Florida*, 306 F.2d 862, 868 (5th Cir. 1962). Under this standard, each and every one of Spaulding's affirmative defenses are sufficient as pled and should not be stricken.

C. Courts in This District Have Accepted Affirmative Defenses That Provide Adequate Notice

MLCC cites *Meitis v. Park Square Enters*. 2009 U.S. Dist. LEXIS 95919 (M.D.Fla. 2009) for the proposition that this District has found that an affirmative defense is insufficient as a matter of law if it provides no more than a bare bones conclusory allegation. However, that proposition is only correct if the defense is so sparse that it does not provide adequate notice to the opposing party. *Voter Verified, Inc. v. Election Systems & Software, Inc.,* 2010 WL 2243702

(M.D.Fla. 2010). Similar to the defendant in the *Voter Verified* case, who was permitted to move forward with its affirmative defenses, Spaulding have met the general pleading standards of Rule 8, as well as the pleading standards of this District. "Rule 12(f) of the Federal Rules of Civil Procedure permits the Court to strike any 'insufficient defense'; however, it is well settled among courts in this circuit that motions to strike are generally disfavored and will usually be denied unless it is clear the pleading sought to be stricken is insufficient as a matter of law." *Blanc v. Safetouch, Inc*., 2008 WL 4059786, *1 (M.D.Fla. 2008). Moreover, this district has permitted affirmative defenses unless there is no plausible link to the controversy or if a party would be prejudiced. *Reyher v. Trans World Airlines, Inc*. 881 F. Supp. 574 (M.D.Fla. 1995). All of Spaulding's affirmative defenses are linked to the controversy at issue in MLCC's Complaint and no party would be prejudiced by the affirmative defenses asserted, as each are valid defenses as a matter of law and properly pled under the requirements of this District.

The information provided by Spaulding to support its affirmative defenses is more than conclusory statements. The affirmative defenses are related directly to the MLCC's claims, provide ample notice to the MLCC of the Spaulding's position on its rights, and do not confuse or add additional complexity to the case. Moreover, the Spaulding's affirmative defenses have a legal basis to the alleged claims by the MLCC. Furthermore, MLCC has presented no evidence to specifically rebut the properly pled affirmative defenses. As such, the MLCC's motion must be denied. *See Haven Fed. Sav. & Loan Ass'n v. Kirian,* 579 So. 2d 730 (Fla. 1991) (finding that a "court cannot grant summary judgment where a defendant asserts legally sufficient affirmative defenses that have not been rebutted").

D. Each of Spaulding's Affirmative Defenses are Sufficiently Pled under the Law.

1. Failure to State a Claim.

With respect to its affirmative defense of Failure to State a Claim, Spaulding provides ample facts in its pleading that MLCC does not have any right to its claims against Spaulding and sufficiently asserts an affirmative defense as a result. Specifically, Spaulding's Counterclaims Against MLCC and Third Party Complaint Against Third Party Defendants provide significant information about the invalidity of MLCC's rights to the trademarks and provides considerable detail about why MLCC's claims of breach of contract and trademark infringement are without merit. There is no requirement in law that such factual support be stated in the affirmative defense itself, particularly when Spaulding filed a Counterclaim and Third Party Complaint articulating such factual bases and its Answer, Affirmative Defenses, Counterclaim and Third Party Complaint must be taken as a whole. MLCC has ample notice of Spaulding's arguments from the 22 page pleading supporting its affirmative defenses of failure to state a claim. Therefore, the defense is legally sufficient and should stand.

2. Unclean Hands, Laches, Failure to Mitigate Damages.

MLCC ignored the detailed information provided by the Spaulding indicating MLCC has unclean hands, its claims are barred by the doctrine of laches, and it failed to mitigate its damages. In each of these affirmative defenses, Spaulding presented much more than conclusory statements and provided MLCC with ample notification of the basis for the affirmative defenses.

The defense of unclean hands requires that the Spaulding demonstrate MLCC's alleged wrongdoing is directly related to the claim against which it is asserted and that Spaulding was

personally injured by MLCC's conduct. *Thornton v. J Jargon Co*., 580 F. Supp.2d 1261, 1283 (M.D.Fla. 2008). In order to prevail on the doctrine of laches, Spaulding must show that (1) MLCC delayed in asserting its rights, (2) the delay was not excusable, and (3) there was undue prejudice to the Spaulding. *Id*. at 1286. The affirmative defense of failure to mitigate asserts that MLCC knew of the alleged infringement and did not act to stop the infringement causing additional damages.

In analyzing these affirmative defenses, it is clear that Spaulding put forth significant information of a genuine issue for trial and provided MLCC with ample notice of Spaulding's rights based on the facts provided. Specifically, Spaulding pled detailed facts pertaining to how MLCC has fraudulently obtained patents and has made specific false statement in its Internet advertising. (Ex. A, para. 12)

MLCC also has ample notice of the laches defense. As detailed, MLCC has specifically agreed in the Agreement to the full and unfettered use of the phrase "meth lab cleanup" by Spaulding, only to show up years later and claim to have a different interpretation of the Agreement. (Ex. A, para. 10) Therefore, ample facts to support the laches defense have been stated and the affirmative defense is sufficiently pled.

3. Non-Breach

MLCC's argument with respect to the non-breach defense is erroneous. MLCC claims non-breach is not a defense, and because MLCC has allegedly proven its case, this defense should be stricken. MLCC has not proven its case, particularly because the Motion raises only one issue regarding meta-data and is inadequate and unsubstantiated by any facts or real evidence. The Complaint asserts a myriad of other allegations that have gone similarly

unsupported and unsubstantiated and are not at issue in the Motion. Apparently, MLCC takes the position that it has already proven those claims when it has failed to assert even the underlying facts constituting the charge. Regardless, MLCC's failure to support its own allegations has no bearing on Spaulding's affirmative defense. Spaulding set forth sufficient information concerning how it complied with the contractual language of the Agreement, and hence non-breach is an appropriately pled defense. (Ex. A, para. 13)

4. Waiver, Consent, Acquiescence and Estoppel.

MLCC spends considerable time and effort and nearly three pages of argument concerning these defenses, including an analysis of the elements required under various Florida cases. MLCC seems to think it is required that Spaulding prove all fact related to each of these defenses at the time of pleading. That is simply not the law.

The defenses of waiver, consent, acquiescence and estoppel have well known meanings in the law, as demonstrated by MLCC's Motion arguments. Accordingly, MLCC is on notice by the clear and concise statement of these defenses, and nothing further is needed at this stage. Furthermore, Spaulding has not waived any rights or defenses, nor consented or acquiesced to any revisions to the Agreement. (Ex. A, para. 13) Therefore, the affirmative defenses are sufficiently pled and therefore, should stand as a matter of law.

5. Trademark Defenses – Improper Trademarks, Fraudulent Trademarks & Misuse of Trademark.

Numerous defenses set forth by Spaulding pertain to the improper use of trademarks by MLCC, including the fraudulent conduct undertaken by the MLCC to obtain the marks in the first place. MLCC has spent a considerable amount of its brief arguing against these defenses. Since they are all related, Spaulding will address them together.

The assertion by MLCC that the Spaulding set forth inadequate information concerning these defenses is quite bizarre. The Amended Counterclaim is very specific and direct in calling out MLCC for its fraudulently acquired trademarks. Of course, this was explored thoroughly in the previous litigation as well, so the assertion now that the Spaulding failed to state sufficient facts to assert these defenses is incredulous. MLCC has full knowledge of the factual bases for the allegations, which are clearly articulated in Spaulding's 22 page Answer, Affirmative Defenses, Counterclaim and Third Party Complaint.

Spaulding's pleading also includes a Declaratory Judgment Count that specifically addresses the trademark misuse assertions. Specifically, MLCC now asserts intellectual property rights in the phrase "meth lab services" even though this is certainly not the case. Such efforts are consistent with the fraudulent assertion of trademark rights that has become the hallmark of Meth Lab Cleanup Company, LLC. The facts set forth in the Answer, Affirmative Defenses and Counterclaim are more than adequate to satisfy the pleading requirements of the federal courts. Therefore, the affirmative defenses are sufficiently pled and valid as a matter of law.

CONCLUSION

As fully set forth above, MLCC's Motion should be denied. Spaulding's affirmative defenses were properly pled and are properly supported by both its Answer, Affirmative Defenses, Counterclaim and Third Party Complaint allegations, along with its Affidavit, filed as record evidence in opposition to MLCC's Motion. (Ex. A) In addition, at best, MLCC's Motion exposes a number of unresolved, disputed material facts that preclude summary judgment; including, but not limited to:

(1) Whether any restrictions under the Agreement apply to "meth lab services;"

(2) Whether Spaulding improperly used "Meth Lab Cleanup, LLC" in its meta-data;

(3) Whether use of meta-data describes services provided or a company name;

(4) How meta-data is used on Spaulding's website;

(5) Whether meta-data describes the website content; and

(6) Whether Spaulding ever used Meth Lab Cleanups, LLC, as a company name.

The record showing before this Court indicates all of these issues are disputed facts which preclude summary judgment from being entered. Additionally, Spaulding's affirmative defenses have not been refuted by undisputed record evidence, precluding summary judgment. Finally, Plaintiff's Motion should be denied because Plaintiff is not entitled to judgment as a matter of law based on the actual terms of the Settlement Agreement, when read *in pari materia*.

WHEREFORE, Defendants, Spaulding Decon, LLC and Laura Spaulding, and Counter claimant and Third-Party Plaintiff, Spaulding Decon, LLC, request this Honorable Court deny Plaintiff's Motion for Partial Summary Judgment and grant all other relief this Court deems just and proper as a matter of law.

Dated: 11 June, 2015

Respectfully submitted,

/s/ Lee Harang

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CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of June, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ Lee Harang

SERVICE LIST

Meth Lab Cleanup, LLC v. Spaulding Decon, LLC and Laura Spaulding

Case No.: 8:14-cv-3129-RAL-TBM
United States District Court, Middle District of Florida
Tampa Division

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