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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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KEYEANNA SAUNDERS, suing  
individually and by and on  
behalf of all others  
similarly situated, and the  
general public,

Plaintiffs,

v.

FAST AUTO LOANS, INC., a  
California Corporation dba  
FAST AUTO AND PAYDAY LOANS;  
COMMUNITY LOANS OF AMERICA,  
INC., a Georgia Corporation;  
and ROBERT REICH, an  
individual,

Defendants.

AND RELATED COUNTERCLAIMS.

CIV. NO. 2:15-2624 WBS CKD

ORDER RE: PLAINTIFF'S MOTIONS TO  
STRIKE AND DISMISS

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Plaintiff Keyeanna Saunders initiated this putative  
class action against defendants Fast Auto Loans, Inc. ("Fast Auto  
Loans"), Community Loans of America, Inc. ("CLA"), and Robert

1 Reich, alleging wage and hour violations under the Fair Labor  
2 Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq., and California  
3 law. Presently before the court is plaintiff's motion to dismiss  
4 defendant Fast Auto Loans' four counterclaims pursuant to Federal  
5 Rules of Civil Procedure 12(b)(1) and 12(b)(6) and to strike  
6 defendants' forty-one affirmative defenses pursuant to Rule  
7 12(f). (Docket No. 6.)

8 I. Motion to Dismiss

9 A. Subject Matter Jurisdiction

10 Plaintiff moves to dismiss defendant Fast Auto Loans'  
11 four state law counterclaims for lack of subject matter  
12 jurisdiction pursuant to Rule 12(b)(1) on the basis that  
13 supplemental jurisdiction over the claims is improper. (Pl.'s  
14 Mot. at 10 (Docket No. 6-1).) Under 28 U.S.C. § 1367, district  
15 courts have supplemental jurisdiction over state law  
16 counterclaims "that are so related to claims in the action within  
17 such original jurisdiction that they form part of the same case  
18 or controversy." Section 1367 applies to state law claims  
19 brought by a plaintiff as well as to counterclaims brought by a  
20 defendant. Sparrow v. Mazda Am. Credit, 385 F. Supp. 2d 1063,  
21 1066 (E.D. Cal. 2005) (Wanger, J.).

22 Rule 13 defines two types of counterclaims: compulsory  
23 and permissive. A compulsory counterclaim "arises out of the  
24 transaction or occurrence that is the subject matter of the  
25 opposing party's claim." Fed. R. Civ. P. 13(a). The Ninth  
26 Circuit applies the "logical relationship" test to determine if a  
27 counterclaim is compulsory by analyzing "whether the essential  
28 facts of the various claims are so logically connected that

1 considerations of judicial economy and fairness dictate that all  
2 the issues be resolved in one lawsuit.” Pochiro v. Prudential  
3 Ins. Co. of Am., 827 F.2d 1246, 1249 (9th Cir. 1987) (citations  
4 omitted); see also Mattel, Inc. v. MGA Entm’t, Inc., 705 F.3d  
5 1108, 1110 (9th Cir. 2013) (“A logical relationship exists when  
6 the counterclaim arises from the same aggregate set of operative  
7 facts as the initial claim, in that the same operative facts  
8 serve as the basis of both claims or the aggregate core of facts  
9 upon which the claim rests activates additional legal rights  
10 otherwise dormant in the defendant.” (citation omitted)). “The  
11 traditional rule is that federal courts have supplemental  
12 jurisdiction over compulsory counterclaims, since a plaintiff  
13 would otherwise lose his opportunity to be heard on that claim”  
14 and they, by definition, form part of the same case or  
15 controversy. Sparrow, 385 F. Supp. 2d at 1066-67.

16 A permissive counterclaim need not arise out of the  
17 same transaction or occurrence as the opposing party’s claim.  
18 See Fed. R. Civ. P. 13(b) (“A pleading may state as a  
19 counterclaim against an opposing party any claim that is not  
20 compulsory.”); id. R. 13 Advisory Committee’s note to 2009  
21 amendment (“The meaning of former Rule 13(b) is better expressed  
22 by deleting ‘not arising out of the transaction or occurrence  
23 that is the subject matter of the opposing party’s claim.’ Both  
24 as a matter of intended meaning and current practice, a party may  
25 state as a permissive counterclaim a claim that does grow out of  
26 the same transaction or occurrence as an opposing party’s claim  
27 even though one of the exceptions in Rule 13(a) means the claim  
28 is not a compulsory counterclaim.”).

1 Defendant Fast Auto Loans' counterclaims are not  
2 compulsory. The four counterclaims for breach of contract, fraud  
3 (false representations), fraud (omission/nondisclosure of  
4 material facts), and unjust enrichment all arise out of  
5 plaintiff's alleged failure to repay a \$260 payday loan that she  
6 obtained from Fast Auto Loans. (Fast Auto Loans' Countercls. at  
7 1-3 (Docket No. 5).) The operative facts underlying Fast Auto  
8 Loans' counterclaim revolve around plaintiff's failure to repay  
9 the loan and allegedly fraudulent intent never to do so. In  
10 contrast, the operative facts underlying plaintiff's wage and  
11 hour claims are that defendants required her to clock out in the  
12 middle of the day to travel between branch locations and then  
13 clock in again upon arrival in order to avoid providing the  
14 required meal and rest breaks and overtime compensation. (See  
15 Compl. ¶ 13.) The facts necessary to prove the two claims do not  
16 substantially overlap.

17 Because Fast Auto Loans' counterclaims are not  
18 compulsory, the next question is whether supplemental  
19 jurisdiction over the permissive counterclaims nevertheless  
20 exists under § 1367(a). The Ninth Circuit has yet to decide the  
21 question of whether, under § 1367(a), federal courts may exercise  
22 supplemental jurisdiction over certain permissive counterclaims.  
23 The Second and Seventh Circuits, however, have found that "§ 1367  
24 has extended the scope of supplemental jurisdiction, as the  
25 statute's language says, to the limits of Article III--which  
26 means that '[a] loose factual connection between the claims' can  
27 be enough." Channell v. Citicorp Nat. Servs., Inc., 89 F.3d 379,  
28 385 (7th Cir. 1996) (citing Ammerman v. Sween, 54 F.3d 423, 424

1 (7th Cir. 1995)); see also, Jones v. Ford Motor Credit Co., 358  
2 F.3d 205, 213 (2d Cir. 2004). This court joins the several  
3 others in the Eastern District of California that have made the  
4 same determination. See, e.g., Sparrow, 385 F. Supp. 2d at 1067  
5 ("However, just because a state law claim does not arise out of  
6 the same transaction or occurrence as the federal law claim does  
7 not mean that the state law claim does not arise out of facts  
8 that bear some relationship to the facts from which the federal  
9 claim arises so that the state claim and the federal claim are  
10 considered part of the same constitutional 'case.'"); Fidelity  
11 Nat. Title Col v. U.S. Small Bus. Admin., Civ. No. 2:13-2030 KJM  
12 AC, 2014 WL 1883939, at \*6 (E.D. Cal. May 12, 2014); Clear  
13 Connection Corp. v. Comcast Cable Commc'ns Mgmt., LLC, Civ. No.  
14 2:12-2910 TLN CKD, 2014 WL 8214006, at \*13 (E.D. Cal. Dec. 8,  
15 2015).

16 In this case, there is a sufficient factual connection  
17 between plaintiff's federal claims and Fast Auto Loans' state  
18 counterclaims. If nothing else, Fast Auto Loans' counterclaims  
19 are at least relevant to its defense that it is entitled to  
20 offset against any recovery by plaintiff on her wage and hour  
21 claims due to her default on the loan. Accordingly, the court  
22 finds Fast Auto Loans' counterclaims form part of the same case  
23 or controversy and the court therefore has supplemental  
24 jurisdiction.

25 Under § 1367(c), district courts may decline to  
26 exercise supplemental jurisdiction over claims otherwise allowed  
27 if:

28 (1) the claim raises a novel or complex issue of State

1 law,  
2 (2) the claim substantially predominates over the claim  
3 or claims over which the district court has original  
4 jurisdiction,  
5 (3) the district court has dismissed all claims over  
6 which it has original jurisdiction, or  
7 (4) in exceptional circumstances, there are other  
8 compelling reasons for declining jurisdiction.

9 28 U.S.C. § 1367(c). Plaintiff argues the court should decline  
10 to exercise supplemental jurisdiction because allowing Fast Auto  
11 Loans to bring a debt collection counterclaim against plaintiff  
12 would have a chilling effect on people who might otherwise bring  
13 suits for relief under FLSA. (Pl.'s Mot. at 12.) At this stage  
14 of the proceedings, the court cannot determine that any of the  
15 above conditions exist here.

16 The record presently before the court does not present  
17 compelling reasons to grant plaintiff's motion to dismiss Fast  
18 Auto Loans' counterclaims under § 1367(d). If it appears later  
19 in the proceedings that Fast Auto Loans' counterclaims should be  
20 severed or dismissed, a motion can be made at that time.

21 B. Failure to State a Claim

22 On a motion to dismiss under Rule 12(b)(6), the court  
23 must accept the allegations in the counter-complaint as true and  
24 draw all reasonable inferences in favor of the nonmoving party.  
25 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
26 grounds by Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto,  
27 405 U.S. 319, 322 (1972). To survive a motion to dismiss, a  
28 counterclaimant must plead "only enough facts to state a claim to  
relief that is plausible on its face." Bell Atl. Corp. v.  
Twombly, 550 U.S. 544, 570 (2007). This "plausibility standard,"  
however, "asks for more than a sheer possibility that a [counter-

1 ]defendant has acted unlawfully," and where a counter-complaint  
2 pleads facts that are "merely consistent with a [counter-  
3 ]defendant's liability," it "stops short of the line between  
4 possibility and plausibility." Ashcroft v. Iqbal, 556 U.S. 662,  
5 678 (2009) (quoting Twombly, 550 U.S. at 557).

6 "While a [counter-]complaint attacked by a Rule  
7 12(b)(6) motion to dismiss does not need detailed factual  
8 allegations, a [counterclaimant's] obligation to provide the  
9 'grounds' of his entitle[ment] to relief' requires more than  
10 labels and conclusions . . . ." Twombly, 550 U.S. at 555  
11 (citations omitted). "Threadbare recitals of the elements of a  
12 cause of action, supported by mere conclusory statements, do not  
13 suffice." Iqbal, 556 U.S. at 678; see also Iqbal, 556 U.S. at  
14 679 ("While legal conclusions can provide the framework of a  
15 complaint, they must be supported by factual allegations.").

16 Plaintiff first argues that Fast Auto Loans' breach of  
17 contract counterclaim should be dismissed because it did not  
18 state with sufficient specificity which of its responsibilities  
19 were excused due to plaintiff's nonperformance. (Pl.'s Mot at  
20 13.) The elements of a breach of contract are: "(1) the  
21 contract, (2) plaintiff's performance or excuse for  
22 nonperformance, (3) defendant's breach, and (4) the resulting  
23 damages to plaintiff." Reichert v. Gen. Ins. Co. of Am., 68 Cal.  
24 2d 822, 830 (1968). Fast Auto Loans alleges that (1) plaintiff  
25 obtained a payday loan on May 7, 2015 in the amount of \$260 and  
26 signed a promissory note obligating her to repay the loan on May  
27 15, 2015, (2) "Fast Auto performed all of its obligations and  
28 conditions under the Loan except those that were excused by

1 Plaintiff's nonperformance, conduct, or breach," (3) plaintiff  
2 did not make the payment when it became due, and (4) as a result  
3 of plaintiff's breach, it has been damaged in the amount of \$260  
4 plus the \$39 service fee. (Fast Auto Loans' Countercls. at 1.)  
5 While Fast Auto Loans included somewhat ambiguous language about  
6 having performed all of its obligations "except those that were  
7 excused by Plaintiff's nonperformance," Fast Auto Loans clearly  
8 explained the nature of the loan and the manner in which  
9 plaintiff allegedly breached the loan agreement. Accordingly,  
10 the court will deny plaintiff's motion to dismiss the breach of  
11 contract counterclaim.

12 Plaintiff next moves to dismiss Fast Auto Loans two  
13 fraud counterclaims. "In alleging fraud or mistake, a party must  
14 state with particularity the circumstances constituting fraud or  
15 mistake. Malice, intent, knowledge, and other conditions of a  
16 person's mind may be alleged generally." Fed. R. Civ. P. 9(b).  
17 Thus, where a complaint alleges fraud, Rule 9(b) "requires more  
18 specificity including an account of the 'time, place, and  
19 specific content of the false representations as well as the  
20 identities of the parties to the misrepresentations.'" Swartz v.  
21 KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007) (citation omitted).  
22 The counter-defendant must have "'notice of the particular  
23 misconduct which is alleged to constitute the fraud charged so  
24 that they can defend against the charge and not just deny that  
25 they have done anything wrong.'" Id. (citation omitted). "Mere  
26 failure to pay without more does not plausibly show any intent to  
27 defraud or induce reliance--a necessary element of fraud."  
28 Yamauchi v. Cotterman, 84 F. Supp. 3d 993, 1019 (N.D. Cal. 2015).



1           Fast Auto Loans alleges that plaintiff submitted the  
2 application for the payday loan without ever intending to repay  
3 it, "as evidenced by her immediate failure to make the required  
4 payment." (Fast Auto Loans' Countercls. at 2.) It further  
5 alleges that plaintiff "concealed the true facts and her  
6 intentions" and "by doing so, she made deceptive and misleading  
7 those facts, representations, and promises she did disclose."  
8 (Id.) The only fact that Fast Auto Loans offers in support of  
9 its fraud claims is plaintiff's failure to pay. This fact alone  
10 is not sufficient to meet the Iqbal/Twombly plausibility  
11 standard, let alone the heightened Rule 9(b) standard. The  
12 innocent inference that plaintiff failed to pay for some other  
13 reason, such as a lack of funds or negligence, is far more  
14 plausible than the guilty inference of fraud. Accordingly, the  
15 court will grant plaintiff's motion to dismiss both fraud  
16 counterclaims.

17           Lastly, plaintiff moves to dismiss Fast Auto Loans'  
18 unjust enrichment counterclaim. (Pl.'s Mot. at 15.) "[U]njust  
19 enrichment is a common law obligation implied by law based on the  
20 equities of a particular case and not on any contractual  
21 obligation." Fed. Deposit Ins. Corp. v. Dintino, 167 Cal. App.  
22 4th 333, 346 (4th Dist. 2008). "It is synonymous with  
23 restitution." McBride v. Boughton, 123 Cal. App. 4th 379, 387  
24 (1st Dist. 2004). "[R]estitution may be awarded in lieu of  
25 breach of contract damages when the parties had an express  
26 contract, but it was procured by fraud or is unenforceable or  
27 ineffective for some reason. . . . Alternatively, restitution may  
28 be awarded where the defendant obtained a benefit from the

1 plaintiff by fraud, duress, conversion, or similar conduct." Id.  
2 at 388. Fast Auto Loans alleges only that "[b]y virtue of the  
3 acts and conduct alleged above, Plaintiff has been unjustly  
4 enriched. On information and belief, Plaintiff obtained benefits  
5 of \$260.00 by obtaining a Loan that she intended never to, and  
6 did not, repay. By right and equity, such amount belongs to Fast  
7 Auto." (Fast Auto Loans' Countercls. at 3.) Given that Fast  
8 Auto Loans failed to plausibly allege its fraud counterclaims,  
9 its unjust enrichment counterclaim must also fail. Accordingly,  
10 the court will grant plaintiff's motion to dismiss Fast Auto  
11 Loans' unjust enrichment counterclaim.

12 II. Motion to Strike

13 Under Rule 8(c), an affirmative defense "is a defense  
14 that does not negate the elements of the plaintiff's claim, but  
15 instead precludes liability even if all of the elements of the  
16 plaintiff's claim are proven." Barnes v. AT&T Pension Benefit  
17 Plan-Nonbargained Program, 718 F. Supp. 2d 1167, 1173 (N.D. Cal.  
18 2010) (citation omitted). "A defense which demonstrates that  
19 plaintiff has not met its burden of proof is not an affirmative  
20 defense." Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1088  
21 (9th Cir. 2002); see also G&G Closed Circuit Events, LLC v.  
22 Nguyen, Civ. No. 10-00168 LHK, 2010 WL 3749284, at \*5 (N.D. Cal.  
23 Sept. 23, 2010) ("[A]llegations that the Plaintiff cannot prove  
24 the elements of his claims are not affirmative defenses.").

25 Rule 12(f) provides that "[t]he court may strike from a  
26 pleading an insufficient defense or any redundant, immaterial,  
27 impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The  
28 Ninth Circuit has held an affirmative defense is sufficiently

1 pled if it provides plaintiff with "fair notice" and describes  
2 the affirmative defenses in "general terms." Kohler v. Flava  
3 Enters., Inc., 779 F.3d 1016, 1019 (9th Cir. 2015); see also Beco  
4 Dairy Automation, Inc. v. Global Tech Sys., Inc., Civ. No. 1:12-  
5 1310 LJO SMS, 2015 WL 5732595, at \*10 (E.D. Cal. Sept. 28, 2015);  
6 Aubin Indus., Inc. v. Caster Concepts, Inc., Civ. No. 2:14-2082  
7 MCE CKD, 2015 WL 3914000, at \*6 (E.D. Cal. June 25, 2015).

8 "While this is less demanding than the Twombly/Iqbal standard, it  
9 still requires a party to plead some factual basis for its  
10 allegations." Beco Dairy Automation, Inc. v. Global Tech Sys.,  
11 Inc., Civ. No. 1:12-1310 LJO SMS, 2015 WL 9583012, at \*2 (E.D.  
12 Cal. Dec. 31, 2015); see also Qarbon.com Inc. v. eHelp Corp., 315  
13 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004) ("A reference to a  
14 doctrine, like a reference to statutory provisions, is  
15 insufficient notice.").

16 Plaintiff moves to strike the following defenses,  
17 arguing that defendants improperly labeled these negative  
18 defenses as affirmative defenses: (1) failure to state a claim,  
19 (3) failure to plead with certainty and particularity, (11) good  
20 faith reliance, (12) no willful or intentional violation, (13)  
21 not compensable time pursuant to the Portal-to-Portal Act of  
22 1947, 29 U.S.C. § 251, (14) non-compensable time because  
23 plaintiff was not subject to the control of employer, (17)  
24 improper collective action because plaintiff is not similarly  
25 situated to members of the class, (18) failure to satisfy the  
26 opt-in requirements, 29 U.S.C. § 216(b), (19) improper class  
27 action because of a lack of adequacy, typicality, and  
28 superiority, (20) improper representative action under the

1 Private Attorneys General Act ("PAGA"), (22) no injury, (23)  
2 unconstitutionally vague standards of liability, (24) plaintiff's  
3 request for exemplary, double, or punitive damages violates  
4 defendants' procedural due process rights, (25)  
5 unconstitutionally excessive fines, (26) no malice, fraud, or  
6 oppression, (27) equitable relief improper, (28) injunctive  
7 relief improper for non-current employees, (29) unclean hands,  
8 (34) equitable indemnity, (35) any unlawful conduct was the  
9 product of employees' unauthorized contravention of established  
10 company policies, (36) unavailability of compensatory or punitive  
11 damages under alleged causes of action, (37) Complaint is barred  
12 by the de minimus doctrine, (38) plaintiff lacks standing, (41)  
13 entitlement to offset due to plaintiff's default on a payday  
14 loan. (Pl.'s Mot. at 3-5.)

15 Except with regard to defendants' unclean hands,  
16 offset, and equitable indemnity defenses,<sup>1</sup> the court agrees with  
17 plaintiff that the above-enumerated defenses are not true  
18 affirmative defenses but rather attacks on plaintiff's prima  
19 facie case. In addition to the defenses identified by plaintiff,  
20 the court also finds that the following were improperly  
21 designated as affirmative defenses: (5) damages under FLSA should

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22 <sup>1</sup> See Kendall-Jackson Winery, Ltd. v. Superior Court, 76  
23 Cal. App. 4th 970, 977-78 (5th Dist. 1999) (describing unclean  
24 hands as an affirmative defense); Interstate Grp. Adm'rs, Inc. v.  
25 Cravens, Dargan & Co., 174 Cal. App. 3d 700, 706 (1st Dist. 1985)  
26 ("[S]etoffs must generally be affirmatively pleaded."); Kroll &  
27 Tract v. Paris & Paris, 72 Cal. App. 4th 1537, 1545 (4th Dist.  
28 1999) ("Even without the indemnity cross-complaint, Kroll & Tract  
can show the negligence of Paris & Paris was the cause of San  
Jose Crane's injury through the affirmative defense of  
comparative negligence, thereby reducing any liability it may  
have.").

1 be calculated as fluctuating workweeks, 29 C.F.R. § 778.114, (6)  
2 defendants did not suffer or permit the alleged overtime work,  
3 (7) defendants had no knowledge of hours and overtime hours  
4 worked, (8) plaintiff was provided all required meal periods,  
5 (10) plaintiff was permitted to take all required rest breaks,  
6 and (21) no entitlement to waiting time penalties because there  
7 was no willful failure to pay wages owed at termination.

8 Accordingly, the court will designate these mischaracterized  
9 affirmative defenses as defenses but deny plaintiff's motion to  
10 strike.

11 Plaintiff also moves to strike defendants' affirmative  
12 defenses on the grounds that they are insufficiently pled and  
13 fail to provide fair notice. The court will individually address  
14 each of defendants' remaining affirmative defenses.

15 Defendants' second affirmative defense alleges that  
16 plaintiff's "Complaint, and each purported cause of action  
17 alleged therein, is barred in whole or in part by the applicable  
18 statutes of limitation and/or time bars, including without  
19 limitation Sections 337, 338(a), 340(a) of the California Code of  
20 Civil Procedure, Section 203(b) of the California labor Code,  
21 Section 17208 of the California Business and Professions Code,  
22 and Section 255 of Title 29 of the United States Code." (Defs.'  
23 Answer at 27 (Docket No. 5).) While defendants cite to the  
24 relevant legal authority, they fail to point to any relevant  
25 facts to support their statute of limitations defense. For  
26 example, defendants do not identify plaintiff's dates of  
27 employment or when her claims allegedly expired. As a result,  
28 the court finds this defense is insufficiently pled and will

1 grant plaintiff's motion to strike.

2 In their fourth affirmative defense, defendants claim  
3 the court lacks personal jurisdiction over defendants CLA and  
4 Reich due to insufficient minimum contacts in California. (Id.)  
5 Defendants allege CLA has no offices in California and has not  
6 entered into contracts for the sale or purchase of merchandise in  
7 California; Reich is not a resident of California; and neither  
8 CLA nor Reich have consented to be sued in California. (Id.)  
9 While defendants fail to identify the relevant legal authority,  
10 the court finds that they nonetheless pled this affirmative  
11 defense with sufficient particularity to put plaintiff on notice.

12 In their ninth affirmative defense defendants assert  
13 plaintiff waived any right to a meal period. (Id. at 28.)  
14 Defendants do not identify relevant law authorizing meal break  
15 waivers or identify when or how plaintiff may have waived this  
16 right. Accordingly, the court finds this defense insufficiently  
17 pled.

18 Defendants' fifteenth affirmative defense avers  
19 plaintiff's claims are barred because plaintiff failed to comply  
20 with the notice requirements of California's Private Attorneys  
21 General Act, Cal. Labor Code § 2698. (Id. at 30.) Defendants  
22 allege that the notice did not identify the specific provisions  
23 of the code alleged to have been violated or the facts and  
24 theories of the case. As a result, defendants state they were  
25 "unable to determine what practices or policies were the subject  
26 of Plaintiff's complaint." (Id.) Defendants identified both the  
27 relevant portion of the California Labor Code and the reasons why  
28 plaintiff's notice allegedly fell short. The court therefore

1 finds this defense is sufficiently pled and denies plaintiff's  
2 motion to strike.

3 In contrast, in their sixteenth affirmative defense  
4 defendants vaguely allege plaintiff has "no private right of  
5 action" under the applicable California law. (Id. at 30.) It is  
6 entirely unclear why plaintiff may not have a private right of  
7 action and, as a result, the court will grant plaintiff's motion  
8 to strike this defense.

9 Defendants also thinly allege their thirtieth defense  
10 of laches, thirty-first defense of waiver, thirty-second defense  
11 of estoppel, and thirty-third defense of res judicata.  
12 Defendants state that plaintiff's claims are barred on each of  
13 these grounds and allege no supporting facts whatsoever. (Id. at  
14 35.) Accordingly, the court will grant plaintiff's motion to  
15 strike these affirmative defenses.

16 Defendants' thirty-ninth affirmative defense states  
17 that class members' claims are barred to the extent they have  
18 entered into settlements, compromises, or releases encompassing  
19 claims asserted in this motion. (Id. at 37.) The court will  
20 grant plaintiff's motion to strike as defendants fail to  
21 specifically identify any relevant compromises or settlements or  
22 individual class members who might be barred.

23 Defendants also vaguely contend in their fortieth  
24 affirmative defense that class members are exempt from overtime  
25 or premium compensation. (Id.) Defendants state that "the  
26 claims of various persons on whose behalf relief is sought are  
27 barred because such persons are and were at all relevant times  
28 exempt from overtime, premium compensation and the other

1 allegedly relevant provisions of the Fair Labor Standards Act  
2 ("FLSA"), California law and applicable regulations and wage  
3 orders." (Id.) Defendants further contend that even if class  
4 members do not fall within an exemption, they are exempt because  
5 they were "not meeting the realistic expectations of his/her  
6 employer or the realistic requirements of the job." (Id.)  
7 Defendants again fail entirely to specify which Fast Auto Loans  
8 employees may have been exempt or why defendants have reason to  
9 believe employees were not meeting the expectations of the job.  
10 The court will therefore also grant plaintiff's motion to strike  
11 the fortieth affirmative defense.

12 Lastly, the court will deny plaintiff's motion to  
13 strike defendants' forty-first affirmative defense for offset.  
14 Defendants allege in detail why they are allegedly entitled to  
15 offset and recoup against any recovery by plaintiff due to her  
16 default on a payday loan. (Id. at 37.)

17 Accordingly, the court will grant plaintiff's motion to  
18 strike the following of defendants' affirmative defenses: (2)  
19 statute of limitations, (9) meal break waiver, (16) no private  
20 right of action, (30) laches, (31) waiver, (32) estoppel, (33)  
21 res judicata, (39) compromise and release, and (40) exemptions  
22 from overtime or premium compensation.

23 IT IS THEREFORE ORDERED that plaintiff's motion to  
24 dismiss (Docket No. 6) be, and the same hereby is, GRANTED  
25 without prejudice with respect to Fast Auto Loans fraud and  
26 unjust enrichment counterclaims and DENIED with respect to its  
27 breach of contract counterclaim.

28 IT IS FURTHER ORDERED that plaintiff's motion to strike



1 (Docket No. 6) be, and the same hereby is, GRANTED with respect  
2 to defendants' affirmative defenses of statute of limitations,  
3 meal break waiver, no private right of action, laches, waiver,  
4 estoppel, res judicata, compromise and release, and exemption  
5 from overtime or premium compensation and DENIED with respect to  
6 the remaining defenses.

7 Defendants have thirty days from the date this Order is  
8 signed to file an amended Answer, if they can do so consistent  
9 with this Order.

10 Dated: April 25, 2016



11 **WILLIAM B. SHUBB**  
12 **UNITED STATES DISTRICT JUDGE**

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