

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-cv-00040-BO**

Thomas Hobbs,

Plaintiff,

v.

United States of America,

Defendant.

**PLAINTIFF’S MOTION TO STRIKE
DEFENDANT’S AFFIRMATIVE DEFENSES**

Plaintiff, by and through undersigned counsel, hereby moves pursuant to Rule 12(f) of the Federal Rules of Civil Procedure to strike Defendant United States of America’s (“Defendant”) First, Second, Third, Seventh, Eighth, Eleventh, Twelfth, Thirteenth, and Fourteenth Affirmative Defenses, set forth below:

FIRST AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief can be granted against the United States.

SECOND AFFIRMATIVE DEFENSE

No act or omission by the United States was the proximate cause of any injury, loss, or damage to Plaintiff.

THIRD AFFIRMATIVE DEFENSE

The injuries, loss, or damage alleged in Plaintiff’s Complaint were proximately caused by the intervening or superseding act or acts of a party or parties, other than an officer, agent, servant, or employee of United States.

SEVENTH AFFIRMATIVE DEFENSE

The United States is entitled to a setoff or credit for the amount paid and the value of services rendered to Plaintiff by any disability award, payment, or benefit provided to the individual or legal representative, including but not limited to any award, payment, or benefit provided under any program under the laws administered by the Secretary of Veterans Affairs, under the Medicare program under title XVIII of the Social Security Act, or under the Medicaid program under title XIX of the Social Security Act.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovering for services or care which the United States has already paid.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent that the evidence shows that Plaintiff voluntarily assumed the risks of the occasion, any recovery is barred by Plaintiff's assumption of risk.

TWELFTH AFFIRMATIVE DEFENSE

To the extent that the evidence shows that Plaintiff's negligence contributed to the cause of any injury, loss, or damage, any recovery is barred, in whole or in part, by Plaintiff's contributory or comparative negligence.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent that the evidence shows that Plaintiff failed to exercise reasonable care and diligence to avoid or lessen the consequences of any injury, loss, or damage, any recovery incident to such failure is barred by Plaintiff's failure to mitigate damages.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent any injuries, loss, or damage suffered by the Plaintiff are the direct and proximate result of negligence or other fault on the part of third parties, and not of the United States.

Answer at Pages 8-10.

These alleged defenses fail to meet the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, as they fail to contain "more than labels and conclusions" or "a formulaic recitation." Defendant has done nothing more than state conclusions or labels as defenses. Additionally, the negligence defenses in the Twelfth Affirmative Defense are without merit given the statutory basis of the Plaintiff's claim for relief. Finally, the Seventh and Eighth Affirmative Defenses impermissibly expand the scope of the offset provisions in the Camp Lejeune Justice Act.

WHEREFORE, based on the foregoing, Plaintiff respectfully requests the Court to strike Defendant's First, Second, Third, Seventh, Eighth, Eleventh, Twelfth, Thirteenth, and Fourteenth Affirmative Defenses and any other relief the Court deems appropriate. A memorandum of law in support of this motion is being filed contemporaneously herewith.

(signature page to follow)

The 19th day of May 2023.

Respectfully submitted,

s/ James L. Ward, Jr. _____

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of May 2023, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF, which will provide electronic notice of such filing to all counsel of record.

s/ James L. Ward, Jr.
James L. Ward, Jr.