

Howard G. Brown
1344 Lakeridge Drive
Baton Rouge, LA 70802
Phone: (504) 756-1987
Fax: (985) 238-3818

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF LOUISIANA**

HOWARD BROWN,	)	
Plaintiff,	)	
V.	)	Case No. 3:22-CV-00264-SDD-RLB
CITY OF CENTRAL,	)	
ET AL.,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

1. **Rule 8 (c)(1) Affirmative Defenses** of the Federal Rules of Civil Procedure states, “*In General*. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including....**statute of limitations**”
2. **Rule 12(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
 - a. lack of subject-matter jurisdiction
 - b. lack of personal jurisdiction
 - c. improper venue
 - d. insufficient process
 - e. insufficient service of process
 - f. failure to state a claim upon which relief can be granted; and

g. failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

3. The law is clear that affirmative defenses that are not timely pleaded are waived. ***Bentley v. Cleveland County Board of Commissioners*, 41 F.3d 600, 604 (10th Cir. 1994); *Wolfenberger v. Williams*, 826 F.2d 930, 932 (10th Cir. 1987); *State Farm Mutual Auto. Ins. Co. v. Mid-Continent Casualty Co.*, 518 F.2d 292, 296 (10th Cir. 1975); *Cummings v. Moore*, 202 F.2d 145, 148 (10th Cir. 1953)** The purpose of requiring that affirmative defenses be raised in responsive pleadings is to prevent surprise and allow plaintiffs an opportunity for discovery. ***See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 350 (1971).** Defendants have long known the facts upon which they rest their estoppel defense, and raising the defense only at this late date is highly prejudicial to the United States. Accordingly, the defense should be stricken.