

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JANET L. SANDERS, et. al.,	)	Case No.: 5:13-cv-03205 EJD
	)	
Plaintiff(s),	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>COMPEL ARBITRATION; DENYING</b>
v.	)	<b>MOTIONS TO DISMISS</b>
	)	
COUNTY OF SANTA CRUZ, et. al.,	)	
	)	<b>[Docket Item Nos. 47, 50, 61, 66, 71, 87]</b>
Defendant(s).	)	
	)	

---

After Christy Ann Sanders (“Decedent”) died while in custody at the Santa Cruz County Main Jail, Plaintiffs Janet L. Sanders, Larry Sanders, and Daniel Ryan Pierce, by and through his guardian ad litem Janet Sanders (“Plaintiffs”), initiated the above-entitled action against Defendants County of Santa Cruz and Phil Wowak, in his capacity as the county sheriff (collectively, the “County Defendants”), for civil rights violations and related causes of action. In response, the County Defendants filed a Third-Party Complaint against Dignity Health, doing business as Dominican Hospital (“Dominican Hospital”), as well as a number of doctors and medical organizations involved in Decedent’s treatment (collectively, “Third Party Defendants”), for express and equitable indemnity.

1 Presently before the court are six motions directed at the Third-Party Complaint: (1) a  
2 Motion to Compel Arbitration filed by Dominican Hospital (Docket Item No. 47); (2) a Motion to  
3 Dismiss filed by Roy Martinez, M.D. and Radiology Medical Group of Santa Cruz County, Inc.  
4 (Docket Item No. 50); (3) two Motions to Dismiss filed by D. Christopher Danish, D.O., Bradley  
5 Whaley, M.D., Marc B. Yellin, M.D., and California Emergency Physicians Medical Group (sued  
6 as “Santa Cruz Emergency Physicians Medical Group”) (Docket Item Nos. 61, 71)<sup>1</sup>; (4) a Motion  
7 to Dismiss filed by National Medical Registry, Inc., doing business as Solvere (“Solvere”) (Docket  
8 Item No. 66); and (5) a Motion to Dismiss filed by James J. Helmer, M.D. (Docket Item No. 87).

9 Subject matter jurisdiction arises under 28 U.S.C. §§ 1331 and 1367. The court found these  
10 matters suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b) and  
11 previously vacated the associated hearing. For the reasons explained below, Dominican Hospital’s  
12 Motion to Compel Arbitration will be granted, while the various Motions to Dismiss will be  
13 denied.

## 14 I. BACKGROUND

### 15 a. Allegations from Plaintiffs’ Complaint

16 Decedent was 27 years of age at the time of her death on August 25, 2012. By that date,  
17 Decedent had been incarcerated at the Santa Cruz County Main Jail since on or about August 12,  
18 2012, and was being held on two separate warrants, one involving theft and another involving drug  
19 possession.

20 While at the Main Jail on August 12, 2012, Decedent complained of flank and chest pain  
21 and painful inability to breathe. She was taken to Dominican Hospital, where she received a chest  
22 x-ray that “showed no infiltration, no consolidation and no widening of the mediastinum.” She  
23 was released and returned to the Main Jail, and there was no follow up on that information by  
24 Defendants.

25  
26  
27 <sup>1</sup> Docket Item Nos. 61 and 71 are two identical motions to dismiss filed by the same parties, save for the title of Docket  
28 No. 71 as an “Amended Motion to Dismiss.” The court will treat Docket Item No. 71 as the controlling motion filed  
by these parties.

1           On August 13, 2012, Decedent contacted the Main Jail’s medical personnel and complained  
2 of pain to the left rib area that wrapped around her back. She stated the pain was sharp. She was  
3 told to contact medical personnel again if the pain worsened.

4           On August 17, 2012, Decedent was confirmed to restart heroin detox protocol, which was  
5 thereafter administered by the Main Jail’s medical personnel.

6           On August 18, 2012, medical personnel responded to a “Code 3,” which was initiated  
7 because Decedent was experiencing minor seizure-like activity. Decedent stated that she was  
8 having difficulty breathing and asked to be taken back to Dominican Hospital. An on-duty nurse  
9 and Doctor Helmer advised Decedent, however, that they felt it unnecessary at that time for  
10 Decedent to be sent to the hospital.

11           On August 20, 2012, Decedent advised medical personnel of “pain in [her] entire chest,”  
12 but her request to be seen for a secondary medical evaluation was denied. On August 23, 2012,  
13 Decedent advised medical personnel that she “needed to go to the hospital,” that “something was  
14 wrong with” her, but that “no one cares.”

15           On August 24, 2012, Decedent told medical personnel that she had a fever and requested a  
16 temperature check. Nurse Thomsen said he was unable to provide her with a temperature check.  
17 Decedent then stated that she would kill herself. After that statement, Decedent was transferred to  
18 the O-13 unit for the night. In the morning, Decedent signed a “no harm contract” and was  
19 thereafter returned to her original cell.

20           On August 25, 2012, medical personnel responded to Decedent’s cell and found her pale,  
21 non-responsive, and without a pulse or blood pressure. An oral airway was put into place and  
22 cardiopulmonary resuscitation was initiated. Lifesaving efforts were continued by medical  
23 personnel until paramedics arrived at the scene; however, Decedent had already expired in her cell  
24 by that time. She was transported to Sheriff-Coroner’s medical facility for further examination.

25           On August 27, 2012, Dr. Richard Mason, a Forensic Pathologist, completed an autopsy  
26 examination of Decedent. Dr. Mason determined the cause of death to be “bilateral pulmonary  
27 melectasis with anoxia due to bilateral empyema, severe on right due to pulmonary abscesses, right  
28

1 upper lobe of lung with contributory causes of pulmonary emboli, fatty metamorphosis of liver and  
2 Hepatitis C,” and that she died of natural causes.

3 Despite Dr. Mason’s findings, Plaintiffs allege that the Main Jail’s medical personnel failed  
4 to administer proper medical care and failed to monitor the likely consequences of their inaction,  
5 which they believe resulted in Decedent’s death. They filed the Complaint underlying this action  
6 on July 11, 2013.

7 **b. Allegations from the Third-Party Complaint**

8 Prior to her incarceration, on or about August 7, 2012, Decedent presented to the  
9 emergency room at Dominican Hospital with complaints of difficulty breathing for the past week,  
10 cough with green phlegm, and chills. She had a history of deep vein thrombosis and significant IV  
11 drug/heroin use, among other conditions. She was seen by Bradley D. Whaley, M.D., who  
12 examined her and diagnosed her with bronchitis, allegedly without obtaining her complete history,  
13 chest x-ray, or blood work. She was discharged the same day.

14 On or about August 13, 2012, Decedent returned to the emergency room at Dominican  
15 Hospital. Decedent was in the custody at that time, and she was accompanied by sheriff’s deputies.  
16 Decedent complained of acute chest pain in her lower ribs, difficulty breathing, and an occasional  
17 cough. D. Christopher Danish, D.O. and/or Marc Yellin, M.D. examined Decedent and ordered a  
18 chest x-ray and blood work.

19 Radiologist Roy Martinez, M.D. interpreted Decedent’s chest x-ray as showing the  
20 presence of a new 3.2 cm density in the right upper lobe of her lung. He provided a differential  
21 diagnosis of “round pneumonia versus inflammatory etiology versus neoplasm,” and recommended  
22 close follow-up. But despite the x-ray that showed a lesion in Decedent’s lung and blood work that  
23 allegedly pointed to infection, Dr. Danish and Dr. Yelling determined that the x-ray was clear and  
24 diagnosed Decedent with pleuritic chest wall pain. They prescribed Motrin and discharged  
25 Decedent back to the jail approximately three hours after her arrival at the hospital. No follow-up  
26 treatment was recommended or prescribed.

1 Decedent ultimately died at the jail on August 25, 2012. In the Third Party Complaint, the  
2 County Defendants allege that Drs. Danish, Yellin, Martinez and Dominican Hospital  
3 misdiagnosed, misrepresented, misinterpreted, and/or failed to alert the County Defendants to  
4 Decedents' true medical condition, the lesion shown on her chest x-ray, and the results of her blood  
5 work when they discharged Decedent back to the jail. They also allege that James Helmer, M.D.,  
6 Decedent's primary physician at the Main Jail and an employee of Solvere, was negligent and/or  
7 deliberately indifferent to Decedent's serious medical needs.

## 8 II. LEGAL STANDARD

### 9 a. Motion to Compel Arbitration

10 The Federal Arbitration Act ("FAA") mandates that written agreements to arbitrate disputes  
11 "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for  
12 the avoidance of any contract." 9 U.S.C. § 2. "By its terms, the Act 'leaves no place for the  
13 exercise of discretion by a district court, but instead mandates that district courts shall direct the  
14 parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.'" Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000) (citing Dean  
15 Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 218 (1985)). Accordingly, a court's role is limited to  
16 determining: (1) whether the parties agreed to arbitrate and, if so, (2) whether the scope of that  
17 agreement to arbitrate encompasses the claims at issue. Id. If the party seeking arbitration  
18 establishes these two factors, the court must compel arbitration. 9 U.S.C. § 4; Chiron, 207 F.3d at  
19 1130.

21 If a contract contains an arbitration clause, the clause is presumed valid (AT & T Techs.,  
22 Inc. v. Commc'n Workers of America, 475 U.S. 643, 650 (1986)) and "any doubts concerning the  
23 scope of arbitrable issues should be resolved in favor of arbitration" (Three Valleys Mun. Water  
24 Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1139 (9th Cir. 1991)). Thus, the party opposing  
25 arbitration has the burden of showing that an arbitration clause is invalid or otherwise  
26 unenforceable. Engalla v. Permanente Med. Grp., Inc., 15 Cal. 4th 951, 972 (1997).



1                   **a. Dominican Hospital’s Motion to Compel Arbitration (Docket No. 47)**

2                   Dominican Hospital contends that a Hospital Services Agreement (the “Agreement”)  
3 between it and the County, which was executed in 1994 and was attached to the Third-Party  
4 Complaint, requires that the County Defendants’ indemnification claims against Dominican  
5 Hospital be submitted to arbitration. In response, the County Defendants argue that the Agreement  
6 does not contain a valid and enforceable arbitration clause and, even if it does, the present dispute  
7 does not fall within its purview.

8                   **i. Whether the Agreement provides for arbitration of disputes**

9                   Under both federal and state law, the threshold question presented by a request to compel  
10 arbitration is whether there is an agreement to arbitrate. Cheng-Canindin v. Renaissance Hotel  
11 Assocs., 50 Cal. App. 4th 676, 683 (1996); see also Simula, Inc. v. Autoliv, Inc., 175 F.3d 716,  
12 719-20 (“Under § 4 of the FAA, the district court must order arbitration if it is satisfied that the  
13 making of the agreement for arbitration is not in issue.”). To determine whether the parties agreed  
14 to arbitration, the court begins with the language of the clause at issue. Section 7.13 of the  
15 Agreement states:

16                   In the event of any dispute between the parties hereto regarding the provisions under  
17 this Agreement and if the parties fail to resolve such dispute within fifteen (15) days  
18 following written notice from either party to the other party of the existence of such  
19 dispute, either party by written notice thereof to the other party may request  
20 resolution of the dispute by a Board of Adjustments to be composed of three (3)  
21 persons as follows: one representative of each of the two parties and a third member  
22 to be selected by the two party representatives. The Board of Adjustments shall  
23 decide the dispute within fifteen (15) days after referral of the dispute to the Board  
24 of Adjustments, and its decision, which shall be by at least majority vote, shall be  
25 final and binding on the parties. Each party shall bear its own fees and expenses of  
26 impasse resolution and shall share equally the fees and expenses, if any, of the third  
27 member of the Board of Adjustments selected.

28                   The County Defendants contend that Section 7.13 is vague and does not clearly express an  
intention to arbitrate. Indeed, the word “arbitration” does not appear in the text of Section 7.13;  
rather, it calls for the referral of disputes to a three-member “Board of Adjustments.” The County  
Defendants state that it is unaware of any organized, pre-existing “Board of Adjustments” and that

1 the term typically refers to a governmental, quasi-governmental, or labor board pre-organized for  
2 the purpose of deciding specific categories of regulatory, zoning, or employment matters. For  
3 these reasons, the County Defendants believe that Section 7.13 is not a valid and enforceable  
4 arbitration clause.

5 The court applies general state law contract principles - here the law as it is in California -  
6 to determine whether a valid written agreement to arbitrate exists. Lowden v. T-Mobile USA, Inc.,  
7 512 F.3d 1213, 1217 (9th Cir. 2008). These general principles take into account “that ‘[t]he basic  
8 goal of contract interpretation is to give effect to the parties’ mutual intent at the time of  
9 contracting.’” Mitri v. Arnel Mgmt. Co., 157 Cal. App. 4th 1164, 1170 (2007) (quoting Founding  
10 Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc., 109 Cal.  
11 App. 4th 944, 955 (2003)). To do so, “[t]he language of a contract is to govern its interpretation, if  
12 the language is clear and explicit, and does not involve an absurdity.” Cal. Civ. Code § 1638. The  
13 contract’s words should be interpreted in their “ordinary and popular sense, rather than according  
14 to their strict legal meaning; unless used by the parties in a technical sense, or unless a special  
15 meaning is given to them by usage, in which case the latter must be followed.” Cal. Civ. Code §  
16 1644. Furthermore, “[t]he whole of a contract is to be taken together, so as to give effect to every  
17 part, if reasonably practicable, each clause helping to interpret the other.” Cal. Civ. Code § 1641.

18 The County Defendants’ restrictive interpretation of Section 7.13 fails under these rules  
19 because it is apparent the section is an arbitration clause even though it is not explicitly designated  
20 as such. See Painters Dist. Council No. 33 v. Moen, 128 Cal. App. 3d 1032, 1036 (1982) (holding  
21 that failure to deem a procedure as “‘arbitration’ is not fatal to its use as a binding mechanism for  
22 resolving disputes between the parties . . . [m]ore important is the nature and intended effect of the  
23 proceeding.”). No matter the moniker used, a dispute resolution procedure is considered an  
24 arbitration if “there is a third party decision maker, a final binding decision, and a mechanism to  
25 assure a minimum level of impartiality with respect to the rendering of that decision.” Cheng-  
26 Canindin, 50 Cal. App. 4th at 687-88. Here, Section 7.13 provides for the requisite “third party  
27 decisionmaker” since the contemplated Board of Adjustments is to be composed of one  
28



1 representative from each party, along with a third member to be selected by the two  
2 representatives. Provisions calling for similar procedures in selecting the decisionmakers have  
3 been deemed “arbitrations” under California law. See Silva v. Mercier, 33 Cal. 2d 704, 708  
4 (1949); see also Moen, 128 Cal. App. 3d at 1036-37. The fact there is no pre-existing Board of  
5 Adjustments is of no moment, because Section 7.13 itself specifically defines how a Board of  
6 Adjustments is to be created, and nothing in the clause suggests that one cannot be created anew.

7 In addition, Section 7.13 contains “a mechanism to assure a minimum level of impartiality”  
8 because both sides are equally represented on the Board of Adjustments, and each side may then  
9 equally participate in the selection of, and equally pay, the third member. And since a majority  
10 decision by the Board of Adjustments is final and binding on the parties, all of the attributes of an  
11 agreement to arbitrate are present. Cheng-Canindin, 50 Cal. App. 4th at 687-88. Thus, the court  
12 finds that Section 7.13 is an agreement to arbitrate because it contemplates a procedure with the  
13 “nature and intended effect” of arbitration. See Moen, 128 Cal. App. 3d at 1036. That was the  
14 parties’ intent under a plain language of the Agreement.

15 **ii. Scope of the arbitration clause**

16 The County Defendants additionally argue that, even if Section 7.13 is an agreement to  
17 arbitrate, the present indemnification dispute falls outside its scope. As indicated, Section 7.13  
18 requires arbitration of “any dispute between the parties hereto regarding the provisions under this  
19 Agreement.”

20 “It is well established ‘that where the contract contains an arbitration clause, there is a  
21 presumption of arbitrability.’” Comedy Club, Inc. v. Improv West Assocs., 553 F.3d 1277, 1284  
22 (9th Cir. 2009)(quoting AT&T Techs., Inc., 475 U.S. at 650). Thus, while the court employs  
23 general state law principles of contract interpretation to determine the scope of an arbitration  
24 clause, it must do so ““while giving due regard to the federal policy in favor of arbitration by  
25 resolving ambiguities as to the scope of arbitration in favor of arbitration.”” Mundi v. Union Sec.  
26 Life Ins. Co., 555 F.3d 1042, 1044 (9th Cir. 2009)(quoting Wagner v. Stratton Oakmont, Inc., 83  
27 F.3d 1046, 1049 (9th Cir. 1996)).

1 Here, the salient portion of Section 7.13 contains broad language. Indeed, under a  
2 straightforward reading, the clause requires that *any* dispute between the parties, falling under *any*  
3 provision of the Agreement, be submitted to the Board of Adjustments. Since the County  
4 Defendants' third-party claims against Dominican Hospital undoubtedly fall under Section 7.8 of  
5 the Agreement,<sup>2</sup> the court concludes that these claims must be submitted to arbitration. This would  
6 include the claim for equitable indemnity because the Third-Party Complaint makes clear the  
7 County Defendants seek indemnification based on alleged actions undertaken by Dominican  
8 Hospital as a result of obligations imposed by the Agreement. See Comedy Club, Inc., 502 F.3d at  
9 1108 (holding that a "rational interpretation" of a broadly-worded arbitration agreement was "to  
10 say that the arbitrator could decide both equitable and legal claims." ).<sup>3</sup>

11 The County Defendants' interpretation of Section 7.13, based primarily on In re TFT-LCD  
12 (Flat Panel) Antitrust Litigation, No. 11-cv-5781 SI, 2013 U.S. Dist. LEXIS 102307, WL (N.D.  
13 Cal. July 18, 2013), is misplaced. In that case, one of this court's colleagues found a clause calling  
14 for the arbitration of disputes "regarding the terms" of an agreement to be too narrow to encompass  
15 an antitrust claim brought against a technology manufacturer by its former supplier. The court held  
16 that, while the parties' agreement listed the prices for products, it did not discuss how those prices

---

18 <sup>2</sup> Section 7.8 states:

19 HOSPITAL agrees to defend in the name of and pay all costs of all legal proceedings and to pay any  
20 sums which COUNTY may become liable to pay as damages imposed by law for any bodily injury  
21 or death suffered or alleged to have been suffered by any person by reason of the care or treatment of  
22 County responsible patients provided by HOSPITAL or by its agents or employees under this  
23 Agreement.

24 <sup>3</sup> For a similar reason, the fact that the Third-Party Complaint mentions Decedent's treatment prior to incarceration  
25 does not transform the claim for equitable indemnity into an actual challenge to that treatment. Neither the Third-Party  
26 Complaint nor the equitable indemnity claim itself can be plausibly interpreted in that way because the County  
27 Defendants do not have standing to question treatment Decedent received as a private individual. Lujan v. Defenders  
28 of Wildlife, 504 U.S. 555, 560 (1992) ("An injury in fact is an invasion of a legally protected interest that is both (1)  
concrete and particularized and (2) actual or imminent, as opposed to conjectural or hypothetical."). The County  
Defendants could not have been injured if the pre-incarceration medical treatment was negligent. The basic allegations  
relating to this treatment merely provide context for the treatment she received while incarcerated, or emphasize the  
allegation that Dominican Hospital knew of Decedent's medical condition but failed to account for it when she  
appeared for treatment while incarcerated. But even if there are valid arguments to the contrary, the court would still  
compel arbitration under these circumstances. Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-  
25 (1983) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." ).

1 were determined - the issue relevant to the antitrust claims. On that ground, the court denied the  
2 technology manufacturer's motion to compel arbitration.

3 The Agreement at issue in this case is distinguishable in two important aspects. First, the  
4 arbitration clause is not limited solely to disputes over the Agreement's terms; it covers any dispute  
5 falling under any provision of the Agreement. While the County Defendants may stop reading  
6 Section 7.13 after the phrase "regarding the provisions" in an effort to limit the section's scope to  
7 one relating solely to disputes over language, this court may not do so under the applicable rules of  
8 interpretation. See Cal. Civ. Code § 1641. The subsequent phrase "under this Agreement" must  
9 mean something, and it is a phrase interpreted broadly. Bldg. Materials & Constr. Teamsters Local  
10 No. 216 v. Granite Rock Co., 851 F.2d 1190, 1193-94 (9th Cir. 1988). Second, in direct contrast to  
11 In re TFT-LCD (Flat Panel) Antitrust Litigation, the Agreement's provisions sufficiently relate to  
12 the issues raised in the Third-Party Complaint: the level of care expected to be provided to county-  
13 responsible patients is discussed in Article 3, and indemnification is discussed in Section 7.8.

14 Accordingly, since the Agreement contains a valid and enforceable arbitration clause, and  
15 since the claims raised by the Third-Party Complaint fall within the scope of that clause,  
16 Dominican Hospital's Motion to Compel Arbitration will be granted.

17 **b. The motions to dismiss (Docket Nos. 50, 61, 66, 71, 87)**

18 The remaining motions, each brought by Third-Party Defendants other than Dominican  
19 Hospital, all seek dismissal of the County's second claim for equitable indemnity, arguing that the  
20 County's claim is barred by law. Since most of the arguments overlap, the court will consider  
21 them together for ease of organization.

22 **i. Equitable indemnity based on § 1983**

23 There is no federal right to indemnification provided in 42 U.S.C. § 1983. Banks v. City of  
24 Emeryville, 109 F.R.D. 535, 539 (N.D. Cal. 1985). Thus, to the extent that the County "may be  
25 trying to seek indemnity by way of the third party complaint based directly on § 1983, the third  
26 party defendants are correct in asserting that impleader is improper." Id.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ii. Equitable indemnity based on Rule 14**

Although the County may not base its claim for indemnity directly on § 1983, Rule 14 of the Federal Rules of Civil Procedure allows a defending party to “serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Rule 14 neither creates nor enlarges upon the substantive rights of the parties, but merely provides the procedure for the assertion of those rights under applicable state law. Weil v. Dreher Pickle Co., 76 F.R.D. 63, 66 (W.D. Okla. 1977). Rule 14 actions are normally interpreted to allow claims even though they do not allege the same cause of action or the same theory of liability as the original complaint. Givoh Assocs. v. American Druggists Ins. Co., 562 F. Supp. 1346, 1350 (E.D.N.Y. 1983). Thus, impleader should be allowed if the third party complaint arises out of the same set of operative facts, and “if under some construction of facts which might be adduced at trial, recovery might be possible.” Tiesler v. Martin Paint Stores, Inc., 76 F.R.D. 640, 643 (E.D. Pa. 1977). If there is any possible scenario under which the third party defendants may be liable for all or part of the defendants’ liability to the plaintiffs, the third party complaint should be allowed to stand. Banks, 109 F.R.D. at 540.

Here, Plaintiffs’ Complaint alleges five causes of action. The only cause of action asserted against the County Defendants is the first one, for violation of § 1983, which seeks to hold the County Defendants liable for general, special, and punitive damages related to Decedent’s death.<sup>4</sup> Applying the law discussed in the preceding paragraph, the court should allow impleader of any Third-Party Defendant who “may be liable for all or part of” the County Defendant’s liability to Plaintiffs. Such is the case here.

As the County Defendants point out, Plaintiffs assert a common law negligence claim which rests on the same set of operative facts as the § 1983 claim against the County Defendants. Although the claim is presently asserted against “Does 51-200,” it is inescapable that Third-Party Defendants, or at least a portion of them, come within this group’s definition: “Sheriff’s deputies, detention officers or other employees or agents of the County employed at the Main Jail,”

---

<sup>4</sup> The other causes of action are asserted against unknown “doe” defendants.

1 “physicians, nurses and other healthcare practitioners who are employees or agents of County  
2 employed at Main Jail,” and “independent contractors providing medical and/or professional  
3 services to inmates brought to Main Jail for treatment of medical needs and conditions while  
4 incarcerated at Main Jail.”

5 That being the case and should Plaintiffs prevail on both their § 1983 claim and on their  
6 negligence claim, there would be significant overlap between the measure of damages for the two  
7 claims, because damages for both would be measured on the same theory of compensation. Carey  
8 v. Phipus, 435 U.S. 247, 253 (1978) (holding that for a § 1983 action, “the elements and  
9 prerequisites for recovery of damages . . . should parallel those for recovery of damages under the  
10 law of torts.”). Moreover, damages for the two claims, if liability is proven, would necessarily  
11 overlap to some degree, if not completely, because “the compensatory damage principle dictates no  
12 double recovery, for by definition, double recovery is antithetical to compensatory damages.”  
13 Fuller v. Capitol Sky Park, 46 Cal. App. 3d 727, 732 (1975).

14 Thus, because there is a possible scenario under which Third-Party Defendants may be  
15 liable for all or part of the County Defendant’s liability to Plaintiffs, the equitable indemnity claim  
16 will not be dismissed as barred as matter of law. See Banks, 109 F.R.D. at 540.

17 **iii. Remaining arguments against equitable indemnification**

18 Third-Party Defendants make two additional arguments in support of their motions.  
19 Neither is meritorious.

20 **1. The distinction between individuals employed at the Main Jail**  
21 **and individuals employed at Dominican Hospital**

22 Several of the Third-Party Defendants are alleged to have been employed at Dominican  
23 Hospital rather than at the Main Jail. These Third-Party Defendants point out that Plaintiffs’  
24 allegations of negligence only relate to the supervision and care provided at the Main Jail and not  
25 at Dominican Hospital, arguing that the failure of Plaintiffs to make allegations against Dominican  
26 Hospital employees invalidates the indemnification claim. Even so, “[a]s a matter of procedure,  
27 Rule 14 does not require that the third party defendant be liable to the original plaintiff in order for  
28

1 the original defendant to proceed with his claim against a third party defendant and recover  
2 judgment thereon.” Huggins v. Graves, 337 F.2d 486, 489 (6th Cir. 1964). Accordingly, this  
3 argument is rejected as a reason to dismiss the claim.

## 4 2. The contract between the County and Solvere

5 Solvere contends that the County has no viable claim for equitable indemnity because of the  
6 existence of a contract between Solvere and the County which contains an express indemnity  
7 provision. Solvere cites the general principle that “[a]n action does not lie on an implied contract  
8 where there exists between the parties a valid express contract which covers the identical subject  
9 matter.” Mediterranean Enterprises, Inc. v. Ssangyong Corp., 708 F.2d 1458, 1464 (9th Cir. 1983).  
10 The County Defendants’ claim for equitable indemnity, however, is not premised on an implied  
11 contract theory, but instead seeks to establish respective liabilities. Indeed, not every claim for  
12 equitable indemnity requires an assertion of implied contract. See Aetna Life & Cas. Co. v. Ford  
13 Motor Co., 50 Cal. App. 3d 49, 52 (1075) (holding that equitable indemnity applies “in cases in  
14 which one party pays a debt for which another is primarily liable and which in equity and good  
15 conscience should have been paid by the latter party.”). Under the facts alleged here, the Third-  
16 Party Defendants owed a duty of care to competently provide medical treatment to Decedent which  
17 could support an equitable indemnification claim independent of any contract.

18 Since the court has found no persuasive reason to sustain them, the Third-Party Defendants’  
19 motions to dismiss the claim for equitable indemnity will be denied.

## 20 IV. ORDER

21 For the foregoing reasons, Dominican Hospital’s Motion to Compel Arbitration (Docket  
22 No. 47) is GRANTED. The claims asserted against Dominican Hospital in the County Defendants’  
23 Third-Party Complaint are STAYED pending the completion of arbitration between these parties.

24 The Motions to Dismiss are DENIED (Docket Nos. 50, 61, 66, 71, 87).

25 **IT IS SO ORDERED.**

26 Dated: September 19, 2014

27   
28 EDWARD J. DAVILA  
United States District Judge