



1 The court concluded that if Plaintiffs wished to further pursue this first new theory of liability  
2 they must request leave to file a fourth amended complaint. As to the second new theory, the  
3 court found that if Plaintiffs wished to further pursue the second new theory of liability they must  
4 file a motion for leave to file a fourth amended complaint. However, on the last page of the  
5 court's order, in the section entitled "ORDER" the court found that Plaintiffs were given leave to  
6 file an amended complaint within twenty days.

7 On August 18, 2009, the court reviewed the July 29, 2009 order. The court noted that  
8 the August 18, 2009 order contained inconsistent instructions on whether Plaintiffs could file an  
9 amended complaint or needed to file a motion to file an amended complaint. To resolve this  
10 inconsistency, the court gave Plaintiffs leave to file an amended complaint within twenty days.

11 On September 3, 2009, Plaintiffs filed a fourth amended complaint. Besides adding the  
12 two new theories against Defendant Songer, the fourth amended complaint added new factual  
13 allegations against other Defendants.

14 On September 28, 2009, Defendants filed a motion to strike portions of the fourth  
15 amended complaint because it included allegations not allowed for by the court's August 18,  
16 2009 and July 29, 2009 orders.

17 On October 16, 2009, Plaintiffs filed an opposition to Defendants' motion. Plaintiffs  
18 contend that the amendments were allowed because the court stated in the August 18, 2009 order  
19 that Plaintiffs were given leave to file an amended complaint. Plaintiffs also list the reasons why  
20 an amended complaint should be allowed.

21 On October 23, 2009, Defendants filed a reply brief.

## 22 **LEGAL STANDARD**

23 Rule 12(f) of the Federal Rules of Civil Procedure allows the court to strike from "any  
24 pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous  
25 matter." The purpose of a Rule 12(f) motion is to avoid the costs that arise from litigating  
26 spurious issues by dispensing with those issues prior to trial. Sidney-Vinsein v. A.H. Robins

1 Co., 697 F.2d 880, 885 (9<sup>th</sup> Cir.1983).

2 **DISCUSSION**

3 The entire focus of the court’s July 29, 2009 order was to address Defendant Songer’s  
4 motion to dismiss in which he contended that the doe allegations did not state a claim and other  
5 allegations concerning Defendant Songer were not contained in the operative complaint. This  
6 order did not address other Defendants or other causes of action. Unfortunately, the court’s July  
7 29, 2009 order provided inconsistent instructions on what Plaintiffs could do to amend the  
8 complaint to contain the two newly discovered theories against Defendant Songer. In the  
9 “Discussion Section” the court stated Plaintiffs would have to file a motion to amend the  
10 complaint to include these two new theories. In the “Order Section”, the court stated Plaintiffs  
11 could amend the complaint with the new theories without leave of court. Noting this  
12 inconsistency, on August 18, 2009, the court resolved the inconsistency in the method that was  
13 easiest for Plaintiffs by allowing the amendment.

14 The court recognizes that the August 18, 2009 order did not specifically limit Plaintiff’s  
15 amendment to the new theories against Defendant Songer. However, the August 18, 2009 order  
16 cannot be read outside the context of the July 29, 2009 order – An order that limited any  
17 amendment or proposed amendment to the new theories about Defendant Songer. Thus,  
18 Plaintiffs’ fourth amended complaint violates the court’s order to the extent it contains  
19 allegations other than those asserting a new theory against Defendant Songer.

20 The court finds the best remedy is for the court to strike the fourth amended complaint  
21 and allow Plaintiffs leave to file a fifth amended complaint that complies with the court’s July  
22 29, 2009 and August 18, 2009 orders and that limits any amendment to the new theories  
23 involving Defendant Songer.

24 //

1 **ORDER**

2 Accordingly, the court ORDERS that:

- 3 1. Defendants' motion to strike is GRANTED;
- 4 2. The fourth amended complaint is hereby struck;
- 5 3. Plaintiffs may file an amended complaint alleging the two new theories involving
- 6 Defendant Songer found in the court's July 29, 2009 order within fifteen days of
- 7 this order's date of service; and
- 8 4. Plaintiffs' request that they be allowed to add additional theories as to other
- 9 Defendants in yet another amended complaint will be addressed in due course by
- 10 the Magistrate Judge.

11

12 IT IS SO ORDERED.

13 **Dated: February 19, 2010**

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE