+

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN DAWE; FLAT IRON MOUNTAIN ASSOCIATES, LLC, formerly known as FLAT IRON MOUNTAIN ASSOCIATES, a Partnership,

Plaintiffs,

v.

CORRECTIONS USA, a California Corporation; CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION, a California Corporation; JAMES BAIARDI, an individual; DONALD JOSEPH BAUMANN, an individual,

Defendants.

_____/

AND CONSOLIDATED ACTIONS & RELATED COUNTERCLAIMS

_____/

NO. CIV. S-07-1790 LKK/EFB

O R D E R

At its root, this case involves a dispute among former directors of two correctional officers' associations. The procedural history of the case is labyrinthine, which the court describes as best it can in part below. In the instant motion defendants move to strike portions of answers by Gary Harkins,

Brian Dawe, Richard Loud and Flat Iron Mountain Associates to their cross-complaint and counterclaims. As explained herein, the court denies the motions. Defendants also move for sanctions under Rule 11, which the court also denies.

I. Background

Plaintiff Brian Dawe and his company, plaintiff Flat Iron Mountain Associates, have brought suit against Corrections USA, the California Peace Officers Association, and some of their employees, Board members, and chairman. Plaintiff alleged breach of contract and related claims, defamation, and interference with prospective contractual relations, which the court described in detail in its May 20, 2009 order.

That case was consolidated with one filed by Corrections USA, the California Peace Officers Association, and Mike Jimenez, which named Gary Harkins as a defendant, among others. That action arose from the same core controversy as the action brought by Dawe and Flat Iron Mountain Associates.

In February 2009, plaintiffs Dawe and Flat Iron Mountain Associates filed a First Amended Complaint. After the court granted in part and denied in part defendants' motion to dismiss this complaint, defendants filed an answer. This answer was seventy-eight pages long and, in addition to admissions, denials, and affirmative defenses, contained several cross-claims and counterclaims against Harkins, Loud, Dawe, and Flat Iron Mountain Associates.

Harkins then filed an answer to these cross-claims and

counterclaims. The answer is 129 pages long, of which 111 pages are denominated as an "Answer to 'Introduction' and CUSA's General Allegations of Misconduct." It is this section that the cross-claimants / counterclaimants seek to strike.

Dawe, Loud, and Flat Iron Mountain Associates separately filed an answer to the cross-claims and counterclaims. Like Harkins' answer, it begins with an "Answer to 'Introduction' and CUSA's General Allegations of Misconduct." This section is fifty-nine pages long. The cross-claimants / counterclaimants have also moved to strike this.

II. Standard for Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f)

Rule 12(f) authorizes the court to order stricken from any pleading "any redundant, immaterial, impertinent, or scandalous matter." A party may bring on a motion to strike within 20 days after the filing of the pleading under attack. The court, however, may make appropriate orders to strike under the rule at any time on its own initiative. Thus, the court may consider and grant an untimely motion to strike where it seems proper to do so. See 5A Wright and Miller, Federal Practice and Procedure: Civil 2d § 1380.

Motions to strike are generally viewed with disfavor, and will usually be denied unless the allegations in the pleading have no possible relation to the controversy and may cause prejudice to one of the parties. See 5A C. Wright & A. Miller, Federal Practice and Procedure: Civil 2d § 1380; see also Hanna v. Lane, 610 F. Supp. 32, 34 (N.D. Ill. 1985). If the court is in doubt as to whether the

challenged matter may raise an issue of fact or law, the motion to strike should be denied, leaving an assessment of the sufficiency of the allegations for adjudication on the merits. See 5A Wright & Miller, supra, at § 1380.

III. Analysis

The counterclaimants / cross-claimants Corrections USA, California Correctional Peace Officers Association, Baiardi and Bauman ("counterclaimants") move to strike portions of Harkins' and Dawe, Loud, and Flat Iron Mountain's answers on the grounds that they are improper, irrelevant, redundant, immaterial, impertinent or scandalous. The counterclaimants also move for sanctions under Federal Rule of Civil Procedure 11. The court considers each in turn.

Under the Federal Rules, an answer to a claim for relief must "state in short and plan terms" the party's defenses to the claim and "admit or deny the allegations asserted against it." Fed. R. Civ. P. 8(b). Under Rule 12(f), the court may strike from an answer "any redundant, immaterial, impertinent, or scandalous matter." The Court of Appeals has explained,

> "'Immaterial' matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded." 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 706-07 (1990). "'Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." Id. at 711. Superfluous historical allegations are a proper subject of a motion to strike.

Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517 (1994). Scandalous matter is

that which improperly casts an entity, usually a party, in a derogatory light and bears no possible relation to the action or may cause prejudice. Wilkerson v. Bulter, 229 F.R.D. 166, 170 (E.D. Cal. 2005) (O'Niell, J.).

Here, counterclaimants move to strike the 111-page response in Harkins' answer to the counterclaimants' general allegations and the similar, fifty-nine page portion of the answer of Dawe, Loud, and Flat Iron Mountain Associates. Review of the answers reveals that although these sections describe the answering parties' theory of the case in unnecessary detail, they are neither redundant, impertinent, immaterial nor scandalous.[1] The gravamen of the dispute between the parties is a disagreement over use of funds and mismanagement of the organizations who are a party to this action. This has been pled to encompass allegation of appropriation of intellectual property, RICO violations, unfair business practices, and breach of fiduciary duty, among others. See Counterclaimants' Cross-Complaint and Counterclaims (Doc. No. 188-89). In opposition to the couterclaimants' motion, the answering parties assert that their underlying theory in defense of the counterclaims and cross-claims is that California Correctional Peace Officers Association misused Corrections USA funds to cover up various improper activities, including bank fraud, theft, sexual misconduct and

[1] That is not to say that it isn't long, but so is the pleading it is responsive to. No purpose is served by striking any of the pleadings, other than increasing the lawyers' and paper companies' income. The parties are warned, however, that behavior such as they have engaged in up to now, made in the course of this proceeding will be met by the court with appropriate response.

sexual harassment. See Opp'n to Mot. to Strike at 1.

Despite the counterclaimants' characterization otherwise, the sections they seek to strike are not impertinent or immaterial to the suit. These sections set forth, albeit with an exceptionally unnecessary level of detail, the interactions and financial transactions among the parties over the last several years. They also set forth the asserted misconduct that forms the answering parties' theory of the case. They do not, however, stray into detailed depictions of the underlying asserted misconduct. See Order, April 23, 2008 at 10-11 (order by Judge Brennan that the underlying details of asserted sexual harassment "have little or nothing to do with" plaintiffs' claims). Instead, they appear to concern the central dispute between the parties; the court cannot conclude that they have no material relationship to the issues of the suit. See Fantasy, Inc., 984 F.2d at 1527.

Nor is the court persuaded that the cited sections of the answer contain scandalous matter. In their motion, counterclaimants assert that would offend a person's sensibilities and cast them in a derogatory light. Mot. to Strike at 11 (citing Alvarado-Morales v. Digital Equip. Corp., 843 F.2d 613 (1st Cir. 1988)). The court's review of the sections sought to be stricken does not confirm this characterization. Although they include references to private matters and sexual conduct, they are not stated in detail or otherwise appear to unfairly impinge on the privacy rights of the relevant persons. See Harkins Answer to Counterclaims and Cross-Claims ¶¶ 1.61, 1.110, 1.118, 1.119, 1.120. Instead, these

statements are made in the answering parties' larger context of alleging that the defendants' financial misconduct stemmed in part from an intention to cover up sexual misconduct. See, e.g., id. ¶ 1.123. As such, the court agrees that the allegations are no more scandalous than those that would be asserted in any cause of action relating to sexual harassment.

The court is similarly unpersuaded that references to counterclaimants' prior or current counsel are "scandalous" or otherwise merit being stricken. Many of these references identified by counterclaimants are merely mentions of communications with or other actions by counterclaimants' counsel in the extensive narrative of events contained in the answers. See, e.g., Harkins' Answer to Counterclaims and Cross-Claims ¶¶ 1.95, 1.124, 1.212, 1.217. Other references relate to the answering parties' asserted explanation for counterclaimants' decision to file a writ of mandamus in state court. Id. at 1.214. Given that that action is relevant to all parties' allegations against one another, see Order, May 20, 2009, the court cannot conclude that the reference, while not necessary, is improper. Moreover, Harkins' depiction of opposing counsel "acting schizophrenically about his and his firm's role with CUSA," is similarly ill-advised, but does not merit striking. See Pigform v. Veneman, 216 F.R.D. 1, 2 (D.D.C. 2003) (defense counsel's accusation in a motion that plaintiff's counsel had engaged in "hate mongering did not exhibit an ideal, or even an appropriate, level of civility," but excising "every harsh statement from the record . . . would be unwise and wasteful. . .

.").

Finally, the court is not persuaded that Rule 11 sanctions are appropriate here. Counterclaimants have not shown that the answers were presented for an improper purpose or without factual basis. See Fed. R. of Civ. P. 11(b). Morever, counterclaimants have made no showing that the procedural requirements for sanctions have been met, including having given opposing counsel a twenty-one day period to rectify the asserted improprieties prior to filing their motion. See Fed. R. of Civ. P. 11(c)(2).

IV. Conclusion

For the reasons stated herein, defendants' motions to strike and for sanctions (Doc. Nos. 201 & 202) are DENIED. But the court again warns all parties and their counsel: CUT IT OUT.

IT IS SO ORDERED.

DATED: August 20, 2009.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT