UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ESTATE OF JAIME MORRIS, *et al.*, Plaintiffs, v. IMPERIAL COUNTY, *et al.*, Defendants.	Case No. 16-cv-02334-BAS-PCL **ORDER DENYING DEFENDANTS' MOTION TO STRIKE AND MOTION TO DISMISS DOE DEFENDANTS** **[ECF No. 6]**

On September 15, 2016, Plaintiffs Diana Alba, Samantha Hammond, Gwenyth Peniche, and the Estate of Jaime Morris initiated this action against Imperial County, Imperial County Sheriff's Office, California Forensic Medical Group, Sheriff Raymond Loera, Prabhdeep Singh, twenty Doe Sheriff's Deputies, and twenty Doe employees of California Forensic Medical Group. (Compl., ECF No. 1.) Plaintiffs allege various claims under 42 U.S.C. § 1983, including unconstitutional medical staff policies and practices, unconstitutional jail staff policies and practices, and failure to train and/or supervise. (*Id.* ¶¶ 131–46.)

On November 4, 2016, Defendants Imperial County, Imperial County Sheriff's

Office, and Sheriff Loera moved to strike portions of Plaintiffs' Complaint under Rule 12(f) of the Federal Rules of Civil Procedure, and to dismiss the twenty Doe Sheriff's Deputies and twenty Doe employees of California Forensic Medical Group under Rule 12(b)(6). (Defs.' Mot., ECF No. 6.) Plaintiffs oppose. (Pls.' Opp'n, ECF No. 8.)

The Court finds this motion suitable for determination on the papers submitted and without oral argument. *See* Fed. R. Civ. P. 78(b); CivLR 7.1(d)(1). For the reasons set forth below, the Court **DENIES** Defendants' motion to strike portions of the Complaint, and **DENIES** Defendants' motion to dismiss Doe Defendants.

BACKGROUND

Police arrested Jaime Morris on August 29, 2015, for possessing drug paraphernalia and providing false statements to an officer. (Compl. ¶¶ 70–71.) Police transported Morris to Imperial County Jail ("ICJ") shortly after her arrest. (*Id.* ¶ 72.) ICJ contracts its medical services to California Forensic Medical Group ("CFMG"). (*Id.* ¶ 15.) Upon arrival, Morris allegedly informed ICJ and CFMG that she was a heroin addict, and had been using heroin and methamphetamine daily. (*Id.* ¶¶ 73–74, 77.) While ICJ and CFMG took Morris's vital signs on the day of her arrest, the Complaint alleges that she never saw a physician, nor was given any medical treatment, during her time at ICJ. (*Id.* ¶¶ 87, 91–93.)

Morris was arrested on a Saturday, and by the following Monday, August 31, 2015, she was suffering from heroin withdrawal. (Compl. ¶ 99.) Plaintiffs allege that fellow inmates could hear Morris moaning in her cell, that Morris repeatedly complained to correctional officers that she needed medical attention, and that correctional officers ignored her requests. (*Id.* ¶¶ 100–02.) At 5:00 p.m. on August 31, 2015, a correctional officer noticed that Morris appeared unresponsive, and medical officials transported her to the hospital. (*Id.* ¶¶ 111–13.) Hospital staff pronounced her dead upon arrival. (*Id.* ¶ 114.)

Morris's mother Diana Alba, in her personal capacity and as successor-in-

interest to Morris's estate, along with Morris's two daughters Samantha Hammond and Gwenyth Peniche, commenced this action against Defendants.[1] (Compl. ¶ 7.) Defendants Imperial County, Imperial County Sheriff's Office, and Sheriff Loera (collectively, "County Defendants") now move to strike paragraphs 21–46, 55–58, and exhibits B and C of the Complaint under Rule 12(f). (Defs.' Mot. 5:4–5.) The Court summarizes these portions of the Complaint below.

Paragraphs 21–46 of the Complaint can be summarized as follows:

- Three separate civil grand juries have questioned and/or criticized CFMG's policies, procedures, and practices in providing medical care to inmates. State Department of Justice statistics demonstrate that the CFMG population adjusted rate for drug overdose deaths is 50% higher than other county jails. (Compl. ¶¶ 22–23.)
- CFMG was a defendant in a class-action filed on behalf of inmates in Monterey county jails. In that lawsuit, an expert physician evaluated CFMG's practices and procedures and issued a report finding that clinical care was inadequate, that staffing levels were insufficient, and that drug withdrawal syndromes were managed by officers and nurses without physician oversight. (*Id.* ¶¶ 24–35.)
- Based on the report referenced in paragraphs 24–35, the federal magistrate judge granted a motion for a preliminary injunction against CFMG, and CFMG later agreed to settle the lawsuit. Despite the settlement, CFMG and Imperial County made no changes to the way CFMG provided medical care at ICJ. Further, the medical services provided by CFMG in Imperial County suffer from many of the same deficiencies as did the services provided in Monterey County Jail. (*Id.* ¶¶ 36–46.)

Paragraphs 55–58 detail the following:

[1] Morris's daughters are minors and thus have filed suit by and through duly appointed Guardians Ad Litem, Brandy Hammond and Kimberly Moore.

- In 2011, Marcia Dau died while in the care of ICJ and CFMG, during which time she was suffering from withdrawal from benzodiazepines. Following her death, her Estate filed and settled a wrongful death claim against CFMG and Imperial County, after which neither CFMG nor Imperial County revised their withdrawal and detoxification policies. (Compl. ¶¶ 55–58.)

The exhibits that County Defendants seek to strike relate to documents referenced in the Complaint. Exhibit B is a copy of the "Monterey County Jail Health Care Evaluation" referenced in paragraphs 24–35 (Compl. Ex. B.), and Exhibit C is a copy of the order granting the preliminary injunction referenced in paragraphs 36–46 (Compl. Ex. C).

County Defendants also move to dismiss the twenty Doe Sheriff's Deputies and twenty Doe employees of CFMG (collectively, "Doe Defendants") under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Defs.' Mot. 8:13–9:7.)

LEGAL STANDARD

Rule 12(f) of the Federal Rules of Civil Procedure provides that a court may strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter." "'Immaterial' matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (citation omitted), rev'd on other grounds, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994). "Impertinent" matter includes "statements that do not pertain, and are not necessary, to the issues in question." *Id.*

"Motions to strike are generally regarded with disfavor because of the limited importance of pleading in federal practice, and because they are often used as a delaying tactic." *Neilson v. Union Bank of Cal.*, 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003). For that reason, a motion to strike matters simply for being redundant, immaterial, impertinent, or scandalous is granted only when "the matter has no logical connection to the controversy at issue, *and* may prejudice one or more of the

parties to the suit." *McRee v. Goldman*, No. 11-cv-00991-LHK, 2012 WL 929825, at *5 (N.D. Cal. Mar. 19, 2012). "If there is any doubt whether the portion to be stricken might bear on an issue in the litigation, the court should deny the motion." *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004) (internal citations omitted).

DISCUSSION

A. Motion to Strike

County Defendants move to strike paragraphs 21–46, 55–58, and exhibits B and C from the Complaint, on the grounds that the allegations contained in these portions of the Complaint have no bearing on this case. (Defs.' Mot. 5:5–6.) Specifically, County Defendants point to the fact that the allegations in paragraphs 21–46, along with exhibits B and C, involve different counties, different parties, preliminary court orders, and settlements to which the County Defendants were not a party. (*Id.* at 5:6–8.) Additionally, County Defendants argue that the allegations in paragraphs 55–58 are unrelated and disconnected from the case at hand, and that the Complaint fails to provide context for how these allegations have any bearing on the alleged treatment of Morris. (*Id.* at 7:5–12.)

The Court disagrees. Paragraphs 21–46, 55–58, and exhibits B and C are neither immaterial nor impertinent. The allegations contained in these portions of the Complaint speak directly to elements of the claims that Plaintiffs make against County Defendants regarding alleged deficiencies in CFMG policies and practices. To take one example, Plaintiffs allege in the sixth claim of the Complaint that County Defendants' failure to train and supervise employees rose to the level of constitutional deliberate indifference. (Compl. at 5:14–20.) Supervisory liability for deliberate indifference under § 1983 requires a showing that the supervisor refused "to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury." *Starr v. Baca*, 652 F.3d 1202, 1207–08 (9th Cir. 2011) (quoting *Dubner v. City & Cty. of San*

Francisco, 266 F.3d 959, 968 (9th Cir. 2001)). The civil grand jury proceedings, the class action lawsuit and subsequent report regarding CFMG's clinical care practices, the preliminary injunction, as well as the wrongful death suit against Imperial County and CFMG, bear directly on whether County Defendants knew, or should have known, of the alleged deficiencies in CFMG policies. *See Starr*, 652 F.3d at 1207–08. Thus, these allegations are material and pertinent to the Complaint.

That paragraphs 21–46, 55–58, and exhibits B and C speak to the knowledge required under § 1983 is even directly alluded to in the Complaint itself. Paragraph 21—the very first paragraph that County Defendants move to strike—states that "Imperial County knew, or should have known, that CFMG has come under increasing scrutiny for failing to provide adequate care in correctional facilities throughout California." (Compl. ¶ 21.) The Complaint also notes that exhibit B—a report documenting supposed deficiencies in CFMG's clinical care—was publicly available, and thus County Defendants could have learned of these deficiencies prior to the death of Morris. (*See id.* ¶ 27.) Likewise, the order granting a preliminary injunction against CFMG, provided as exhibit C, was issued four months prior to Morris's death and details alleged inadequacies in CFMG's drug withdrawal policies. (*Id.* ¶ 37–40.) Both of these exhibits speak directly to the level of notice and knowledge that County Defendants had regarding CFMG policies and practices—elements directly related to the claims at issue. *See Starr*, 652 F.3d at 1207–08. The threshold for establishing a relationship between the allegations and the underlying claims for a Rule 12(f) motion to strike is a low one, and if there is any doubt as to the nonexistence of the relationship the court should deny the motion. *See Platte Anchor Bolt, Inc.*, 352 F. Supp. at 1057. The doubt raised here is sufficient to warrant denial.

Accordingly, because paragraphs 21–46, 55–58, and exhibits B and C have a relationship to the claims for relief and pertain to the issues in question, the Court denies County Defendants' motion to strike those portions of the Complaint. *See*,

e.g., *Fantasy, Inc.*, 984 F.2d at 1527; *Hatamian v. Advanced Micro Devices, Inc.*, No. 14-cv-00226-YGR, 2015 WL 511175, at *1 (N.D. Cal. Feb. 6, 2015) (finding the allegations at issue could not be stricken because they had an important relationship to the elements of the claim that plaintiffs sought to prove).

B. Motion to Strike Doe Defendants[2]

County Defendants move to strike Doe Defendants from the Complaint on the ground that 'Doe' pleading is improper in federal court. (Defs.' Mot. 8:13-9:7.) This argument is unconvincing.

To be sure, County Defendants are correct that there is no provision in the federal rules of procedure permitting the use of fictitious defendants, *see Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970), and that the use of fictitious defendants in federal court is generally disfavored, *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). However, Doe pleading is not expressly prohibited by the federal rules, nor is it always inappropriate. *See Lopes v. Vieira*, 543 F. Supp. 2d 1149, 1152 (E.D. Cal. 2008). Federal courts have routinely allowed the use of fictitious names for defendants—even without discussion. *See, e.g.*, *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Moreover, federal courts have generally approved the use of Doe pleading "where the identity of alleged defendants [is not] known prior to the filing of a complaint," and where "the plaintiff [may have] an opportunity through discovery to identify the unknown defendants." *Gillespie*, 629 F.2d at 642.

Gillespie is particularly illustrative. In *Gillespie*, plaintiff brought a § 1983

[2] County Defendants move to dismiss Doe Defendants under Rule 12(b)(6), arguing that Plaintiffs have failed to state a claim upon which relief can be granted. (Defs.' Mot. 8:14–18.) This is technically incorrect. County Defendants do not actually challenge the sufficiency of the claims themselves, only the ability of Plaintiffs to name Doe defendants. (*See* Defs.' Mot. 9:4–7.) A motion to remove Doe defendants—unrelated to any challenge on the basis of jurisdiction, venue, or a failure to state a claim—is more appropriately made under Rule 12(f) as a motion to strike. *See, e.g.*, *Lopes v. Vieira*, 543 F. Supp. 2d 1149, 1151–52 (E.D. Cal. 2008). The Court therefore construes County Defendants' request as a motion to strike rather than a motion to dismiss.

claim alleging mistreatment by jail superintendents and guards while being housed in Raleigh, North Carolina, and Kansas City, Missouri. 629 F.2d at 639. The plaintiff in *Gillespie* was unaware of the names of those superintendents and guards responsible for caring for inmates at the time the complaint was filed, and in their place named Doe defendants. *Id*. An analogous situation is presented here. In this case, as in *Gillespie*, Plaintiffs name Doe Defendants allegedly responsible for the care and supervision of Morris while she was in jail—individuals whose exact identities are not likely to have been known at the time the Complaint was field. Morris, who was suffering from symptoms of withdrawal from which she would later die, could not be expected to identify, by name, every individual involved with the policies and procedures that may have been connected to her death. Thus, here as in *Gillespie*, Plaintiffs should have "an opportunity through discovery to uncover the identities of the 'John Doe' defendants and proceed with [their] claims." *See id.* at 643. Accordingly, County Defendants' motion to strike Doe Defendants from the Complaint is denied. *See Lopes*, 543 F. Supp. 2d at 1152.

CONCLUSION

For the foregoing reasons, the Court **DENIES** County Defendants' motion to strike portions of the Complaint, and **DENIES** County Defendants' motion to dismiss Doe Defendants.

IT IS SO ORDERED.

DATED: April 3, 2017

Hon. Cynthia Bashant
United States District Judge