

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 SCOTT CATLIN, as guardian ad litem for  
12 C.R., an individual, SCOTT CATLIN, an  
13 individual, and DOES 1-10,

14 Plaintiffs,

15 v.

16 THE UNITED STATES OF AMERICA,  
17 and ROES 1-50, inclusive,

18 Defendant.

Case No.: 18-CV-322 JLS (MDD)

**ORDER: (1) GRANTING MOTION  
TO STRIKE; (2) VACATING  
HEARING; AND (3) SETTING  
BRIEFING SCHEDULE**

(ECF No. 7)

19 Presently before the Court is Defendant The United States of America’s Motion to  
20 Strike, (ECF No. 7). Defendant filed a Rule 12(b) Motion on April 17, 2018, (ECF No. 4).  
21 Plaintiffs then filed an amended Complaint on May 31, 2018, (ECF No. 5). Defendant  
22 moves to strike the amended Complaint as Plaintiffs have violated Federal Rule of Civil  
23 Procedure 15(a). (ECF No. 7.)

24 Rule 12(f) provides that a court “may strike from a pleading an insufficient defense  
25 or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f).  
26 “The function of a 12(f) motion to strike is to avoid the expenditure of time and money that  
27 must arise from litigating spurious issues by dispensing with those issues prior to trial . . . .”  
28 *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy*,

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

3 “Motions to strike are ‘generally disfavored because they are often used as delaying  
4 tactics and because of the limited importance of pleadings in federal practice.’” *Cortina v.*  
5 *Goya Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015) (quoting *Rosales v. Citibank*,  
6 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001)). “[M]otions to strike should not be granted  
7 unless it is clear that the matter to be stricken could have no possible bearing on the subject  
8 matter of the litigation.” *Colaprico v. Sun Microsystems, Inc.*, 758 F. Supp. 1335, 1339  
9 (N.D. Cal. 1991). “When ruling on a motion to strike, this Court ‘must view the pleading  
10 under attack in the light most favorable to the pleader.’” *Id.* (citing *RDF Media Ltd. v. Fox*  
11 *Broad. Co.*, 372 F. Supp. 2d 556, 561 (C.D. Cal. 2005)).

12 Federal Rule of Civil Procedure 15(a)(1) allows a party to amend its complaint once  
13 as a matter of course without permission of the Court. A party can amend within twenty-  
14 one days of serving the pleading. Fed. R. Civ. P. 15(a)(1)(A). And, Rule 15(a)(1)(B)  
15 permits a party to “amend its pleading once as a matter of course within . . . 21 days after  
16 service of a motion under Rule 12(b), (e), or (f).” A plaintiff must follow the earlier of the  
17 two possible dates. Here, Plaintiffs served their initial Complaint on February 16, 2018,  
18 (ECF No. 3), Defendant filed its Rule 12(b) Motion on April 17, 2018, and Plaintiffs filed  
19 their amended Complaint on May 31, 2018. Thus, Plaintiff’s amended Complaint was filed  
20 forty-four days after Defendant’s Motion and 104 days after they served the initial  
21 Complaint. Thus, Plaintiffs were required to seek permission of the Court or written  
22 consent from Defendant. *See* Fed. R. Civ. P. 15(a)(2). They did not do so.

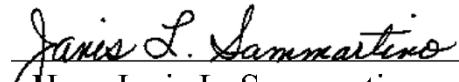
23 While motions to strike are generally disfavored, the Court finds this is an  
24 appropriate instance to exercise such a remedy. Plaintiffs failed to comply with the Federal  
25 Rules of Civil Procedure and their amended Complaint was improperly filed. Accordingly  
26 the Court **GRANTS** Defendant’s Motion, (ECF No. 7), and **STRIKES** Plaintiff’s amended  
27 Complaint, (ECF No. 5).

28 Therefore, Defendant’s Motion to Dismiss is not moot and remains pending before

1 the Court. On its own motion, the Court **VACATES** the hearing currently scheduled for  
2 June 14, 2018 and **SETS** the following briefing schedule. Plaintiffs **SHALL** file an  
3 Opposition to the Motion on or before June 21, 2018. Defendant **MAY** file a Reply in  
4 Support of its Motion on or before June 28, 2018. The Court will only reschedule the  
5 hearing if needed; otherwise, it will take the parties' filings under submission pursuant to  
6 Civil Local Rule 7.1(d)(1).

7 **IT IS SO ORDERED.**

8 Dated: June 8, 2018

  
9 Hon. Janis L. Sammartino  
10 United States District Judge

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28