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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT GRANO, an individual,  
Plaintiff,  
v.  
SODEXO MANAGEMENT, INC., a New  
York Corporation; and CARGILL MEAT  
SOLUTIONS CORP., a Delaware  
Corporation,  
Defendants.

Case No.: 3:18-cv-01818-GPC-BLM

**ORDER GRANTING IN PART AND  
DENYING IN PART CARGILL'S  
MOTION TO STRIKE DEFENDANT  
SODEXO'S ANSWER AND CROSS-  
CLAIMS**

**[ECF No. 141]**

AND RELATED CASES

1 Before the Court is Defendant Cargill Meat Solutions Corp.’s (“Cargill”) Motion  
2 to Strike Defendant Sodexo’s (“Sodexo”) Answer and Cross-Claims in the seven related  
3 member cases.<sup>1</sup> ECF No. 141. Sodexo filed an opposition on July 2, 2020. ECF No.  
4 160. Defendants filed a reply on July 9, 2020. ECF No. 163.

### 5 **I. Background**

6 These eight related actions arise out of injuries sustained from a 2017 E. coli  
7 outbreak at the Marine Corps Recruit Depot (“MCRD”) and Edson Range at Camp  
8 Pendleton, California. Plaintiffs bring strict liability and negligence claims against  
9 Sodexo and Cargill for injuries caused by this outbreak. ECF No. 37 (“SAC”). Sodexo  
10 is a New York corporation that is responsible for providing food and facility management  
11 services for the United States Navy at both MCRD and Edson Range. ECF No. 37 ¶ 2.  
12 Cargill manufactures, distributes, and sells meat products to Sodexo. ECF No. 37 ¶ 3.

13 Plaintiff Grano initiated the lead case on August 3, 2018. ECF No. 1. On October  
14 7, 2019, Plaintiffs in all seven member cases initiated their actions. On October 22, 2019,  
15 Plaintiff Grano filed a Second Amended Complaint (“SAC”), adding Cargill as a  
16 defendant on the basis that Cargill had sold to Sodexo the allegedly contaminated ground  
17 beef patties that give rise to Plaintiffs’ claims. ECF No. 37 ¶ 34. On December 5, 2019,  
18 Cargill filed an answer to the SAC, and a cross-claim against Sodexo for breach of an  
19 indemnification agreement between Cargill and Sodexo. ECF No. 53. On December 26,  
20 2019, Sodexo answered Cargill’s cross-claim and filed its own cross-claim against  
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24 <sup>1</sup> Parties have filed the relevant pleadings in the lead case, Grano v. Sodexo Mgmt. Inc., et al., 3:18-CV-  
25 01818-GPC-BLM (“Grano matter”). Unless otherwise noted, all ECF cites refer to the Grano matter.  
26 The related member cases are Anderson v. Sodexo Mgmt. Inc., et al., 3:19-cv-01903-GPC-BLM  
27 (“Anderson matter”); Lader v. Sodexo Mgmt. Inc., et al., 3:19-cv-01908-GPC-BLM (“Lader matter”);  
28 Baker v. Sodexo Mgmt. Inc., et al., 3:19-cv-01904-GPC-BLM (“Baker matter”); Browning v. Sodexo  
Mgmt. Inc., et al., 3:19-cv-01905-GPC-BLM (“Browning matter”); Abbott v. Sodexo Mgmt. Inc., et al.,  
3:19-cv-01917-GPC-BLM (“Abbott matter”); Evers v. Sodexo Mgmt. Inc., et al., 3:19-cv-01907-GPC-  
BLM (“Evers matter”); Miller v. Sodexo Mgmt. Inc., et al., 3:19-cv-01909-GPC-BLM (“Miller matter”)  
(together, “member cases”).

1 Cargill for breach of a separate indemnification agreement. ECF No. 62. On February  
2 25, 2020, Sodexo filed an answer to Cargill alleging its own cross-claims against Cargill  
3 in all member cases.<sup>2</sup>

4 On March 18, 2020, the Court issued an Amended Consolidation Order,  
5 consolidating all eight cases for the purpose of all motion practice. ECF No. 88. On May  
6 4, 2020, the Court considered Plaintiffs' motion to sever all Defendants' cross-claims in  
7 the member cases and denied the motion as to cross-claims regarding failure to  
8 indemnify, but granted the motion to sever as to the cross-claims regarding failure to  
9 procure insurance. ECF No. 126 at 14-20.

10 On June 1, 2020, Cargill filed a Motion to Strike Sodexo's answer and cross-  
11 claims in the member cases. ECF No. 141 at 4-6. On July 7, 2020, Sodexo filed an  
12 Opposition. ECF No. 160. On July 9, 2020, Cargill filed a Reply. ECF No. 163.

## 13 **II. Discussion**

14 Cargill argues Sodexo's cross-claim regarding failure to procure insurance is  
15 immaterial, and moves to strike under Rule 12(f). *Id.* at 7-8.<sup>3</sup> Additionally, Cargill  
16 claims that Sodexo failed to timely file its answer and cross-claims, as required by  
17 Federal Rule of Civil Procedure ("Rule") 12(a)(1)(b) and was required to seek leave of  
18 Court to supplement its pleading as required by Rule 15(a)(2) but failed to do so. Sodexo  
19 counters that striking its pleadings will be judicially inefficient and that its filing was  
20 timely made. The Court will address each argument in turn.

### 21 **A. Rule 12(f)**

22 Rule 12(f) provides that the court "may strike from a pleading an insufficient  
23 defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P.  
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26 <sup>2</sup> Abbott, ECF No. 23; Anderson, ECF No. 22; Baker, ECF No. 23, Browning, ECF No. 22; Evers, ECF  
27 No. 22; Lader, ECF No. 22; Miller, ECF No. 22.

28 <sup>3</sup> Cargill states that it would not oppose if Sodexo moved to late-file their indemnification claim. ECF  
No. 141 at 9.

1 12(f). A matter is immaterial when it “has no essential or important relationship to the  
2 claim for relief or the defenses being pleaded.” *Dawe v. Corr. USA*, No.  
3 CIVS071790LKKEFB, 2009 WL 2591146, at \*1 (E.D. Cal. Aug. 20, 2009).

4 “The function of a 12(f) motion to strike is to avoid the expenditure of time and  
5 money that must arise from litigating spurious issues by dispensing with those issues  
6 prior to trial...” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010)  
7 (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other  
8 grounds 510 U.S. 517 (1994)). “Motions to strike are ‘generally disfavored because they  
9 are often used as delaying tactics and because of the limited importance of pleadings in  
10 federal practice.’ ” *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal.  
11 2015) (quoting *Rosales v. Citibank*, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001)). Such  
12 motions should only be granted if “the matter has no logical connection to the  
13 controversy at issue and may prejudice one or more of the parties to the suit.” *New York*  
14 *City Employees' Ret. Sys. v. Berry*, 667 F.Supp.2d 1121, 1128 (N.D. Cal. 2009). “When  
15 ruling on a motion to strike, this Court ‘must view the pleading under attack in the light  
16 most favorable to the pleader.’ ” *Novick v. UNUM Life Ins. Co. of America*, 570 F. Supp.  
17 2d 1207, 1208 (C.D. Cal. 2008) (citing *RDF Media Ltd.*, 372 F. Supp. 2d at 561).

18 Here, Cargill argues that Sodexo’s cross-claim regarding failure to procure  
19 insurance coverage is immaterial to the Plaintiffs’ claims. The Court has considered this  
20 claim previously, in the context of a supplemental cross-claim, and held that “judicial  
21 efficiency would not be served by considering this cross-claim in either the lead case or  
22 the member cases.” ECF No. 126 at 20 (emphasis added).

23 Here, the merits of the Plaintiff’s case center on the liability of Defendants for  
24 injuries caused by this outbreak. ECF No. 37. This insurance cross-claim relates only to  
25 the business relationship of the two Defendants, and do not arise out of the same  
26 transaction or occurrence that give rise to the Plaintiffs’ claims. See *ALPS Prop. & Cas.*  
27 *Ins. Co. v. Kalicki Collier, LLP*, No. 319CV00709MMDCLB, 2020 WL 1821428, at \*4  
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1 (D. Nev. Apr. 10, 2020) (“[T]he crossclaims are largely tangential to the Coverage  
2 Action. That is, the two set of claims are not so logically related that considerations of  
3 judicial economy and fairness dictate that all of the issues between them be resolved in  
4 one lawsuit.”); *Podiatry Ins. Co. of Am. v. Falcone*, Civ. A. No. 3:10-1106, 2011 WL  
5 1750708, at \*3 (S.D.W. Va. Feb. 25, 2011) (“Whether or not [claimant's] injuries  
6 stemmed from ... malpractice has no bearing on whether [the insurer] can be held  
7 responsible” under its policy).

8 Resolving this dispute between Defendants, would require the parties to conduct  
9 discovery and depositions regarding the business relationship between Sodexo and  
10 Cargill and other factual disputes regarding contract formation with respect to the Master  
11 Supply Agreement and Subcontract Agreement. See ECF No. 107 at 3-4.  
12 Motions to strike are often granted where they remove unnecessary clutter and prevent  
13 delay. See *Kelley v. Corr. Corp. of Am.*, 750 F. Supp. 2d 1132, 1137–38 (E.D. Cal. 2010)  
14 (“Granting a motion to strike may be proper if it will make the trial less complicated or if  
15 allegations being challenged are so unrelated to plaintiff's claims as to be unworthy of  
16 any consideration as a defense....”) (citing *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527  
17 (1993)).

18 Lastly, the movant must show prejudice. *Berry*, 667 F. Supp. 2d at 1128. Here,  
19 Cargill expresses the familiar concern that the inclusion of this claim in the member cases  
20 but not in Grano, “will create ‘cases within cases,’ forcing the Court to hear discovery  
21 disputes and motions unrelated to the Plaintiffs’ actions,” ECF No. 141 at 8, and will  
22 require “extensive discovery” which will be unrelated to the merits of the case. ECF No.  
23 163 at 5. This will effectively create “case management agony.” ECF No. 141 at 5. This  
24 threat of delay and unnecessary expenditure constitutes adequate prejudice for granting a  
25 motion to strike. See *Atlantic City Elec. Co. v. General Elec. Co.*, D.C.N.Y.1962, 207 F.  
26 Supp. 620, 624, affirmed on other grounds C.A.2d, 1962, 312 F.2d 236, certiorari  
27 denied 83 S.Ct. 1298, 373 U.S. 909, 10 L.Ed.2d 411 (Feinberg, J.). “The possibility that  
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1 issues will be unnecessarily complicated or that superfluous pleadings will cause the trier  
2 of fact to draw unwarranted inferences at trial is the type of prejudice that is  
3 sufficient.” *Benham v. American Servicing Co.*, 2009 WL 4456386, \*8 (N.D. Cal. 2009);  
4 see also *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (holding  
5 that the 12(f) motion to strike functions to avoid unnecessary expenditures of time and  
6 money); *United States v. Paulson*, 331 F. Supp. 3d 1066, 1076–77 (S.D. Cal.  
7 2018), reconsideration denied, No. 15-CV-2057 AJB (NLS), 2018 WL 5920143 (S.D.  
8 Cal. Nov. 13, 2018).

9 The Court finds that striking the failure to procure insurance cross-claim will  
10 streamline the proceedings, make trial less complicated, and avoid unnecessary  
11 expenditures of time. As such, the Court **GRANTS** Cargill’s motion to strike Sodexo’s  
12 cross-claim alleging failure to procure insurance.

### 13 **B. Untimeliness**

14 Having dismissed the failure to procure insurance cross-claims, the Court considers  
15 Sodexo’s remaining cross-claims and answer. Cargill argues that the Court may strike  
16 Sodexo’s answers and cross-claims in the member cases on the basis of timeliness.  
17 Cargill filed its cross-claim on December 5, 2019 and claims that Sodexo was required to  
18 file its answer by December 26, 2019, per the 21-day time period set forth by Rule  
19 12(a)(1)(b). ECF No. 141 at 8. Sodexo filed its answer and cross-claims in the member  
20 cases on February 25, 2020.<sup>4</sup> Sodexo argues that its filing was timely, because Cargill  
21 did not effectuate proper service. ECF No. 160 at 5-8.

22 Rule 12(a)(1)(B) requires that a party “serve an answer to a counterclaim  
23 or crossclaim within 21 days after being served with the pleading that states the  
24 counterclaim or crossclaim.” Fed. R. Civ. P. 12(a)(1)(B). “Although not provided for in  
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28 <sup>4</sup> Abbott, ECF No. 23; Anderson, ECF No. 22; Baker, ECF No. 23, Browning, ECF No. 22; Evers, ECF  
No. 22; Lader, ECF No. 22; Miller, ECF No. 22.

1 Rule 12(f), an answer (or other pleading) filed beyond the time permitted by the Fed. R.  
2 Civ. P. may be ‘stricken’ as untimely if the pleader failed to obtain from the court an  
3 extension of time or leave to late-file the pleading.” *Barefield v. HSBC Holdings PLC*,  
4 No. 118CV00527LJOJLT, 2019 WL 918206, at \*2 (E.D. Cal. Feb. 25, 2019) (quoting  
5 Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 9-G at 9:374.1 (Mar. 2018)).  
6 Here, Sodexo argues that the 21-day time period as set forth by Rule 12(a)(1)(B) never  
7 began to run because they were never served in accordance with Rule 4(h), which  
8 requires that a corporation be served in accordance with Rule 4(e)(1) or by “delivering a  
9 copy of the summons and of the complaint to an officer, a managing or general agent, or  
10 any other agent authorized by appointment or by law to receive service of process.” Fed.  
11 R. Civ. P. 4(h). The Court disagrees.

12 Cargill filed its answer and cross-claims against Sodexo in the related cases on  
13 December 5, 2019. Sodexo filed its answers to the Plaintiffs’ complaints in all the related  
14 cases on December 12, 2019.<sup>5</sup> On December 26, 2019, Sodexo filed its answer to  
15 Cargill’s cross-claim in the lead case. On February 25, 2020, Sodexo filed its answers to  
16 Cargill’s cross-claims in the member cases. Since Sodexo’s counsel had not officially  
17 appeared by filing a Notice of Appearance with the court filing system, Sodexo’s counsel  
18 was not yet receiving Notices of Electronic Filing, and so were not properly served in this  
19 way. See Civ. L. R. 5.4(c) (“The Notice of Electronic Filing that is automatically  
20 generated by the Court’s Electronic Filing System constitutes service of the filed  
21 document on Filing Users.”) (emphasis added).

22 Rule 12(f) does not “neatly cover” the striking of material that is considered  
23 “untimely” but otherwise does not contain anything “redundant, immaterial, impertinent,  
24 or scandalous.” *Barefield v. HSBC Holdings PLC*, No. 118CV00527LJOJLT, 2019 WL  
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28 <sup>5</sup> Anderson, ECF 10; Abbott, ECF 11; Baker, ECF 11; Browning, ECF 10; Evers, ECF 10; Lader, ECF  
10; Miller, ECF 10.

1 918206, at \*2 (E.D. Cal. Feb. 25, 2019). Accordingly, courts have treated such requests  
2 under the framework of Rule 55 since “the filing of a late answer is analogous to a  
3 motion to vacate a default, because the party filing the late answer receives the same  
4 opportunity to present mitigating circumstances that it would have had if a default had  
5 been entered and it had moved under Rule 55(a) to set it aside.” *McMillen v. J.C. Penney*  
6 *Co.*, 205 F.R.D. 557, 558 (D. Nev. 2002). Under Rule 55, courts consider (1) whether the  
7 party engaged in culpable conduct the led to the default; (2) whether the defaulting party  
8 had a meritorious defense; or (3) whether reopening the default judgment would  
9 prejudice the non-defaulting party. See *Franchise Holding II, LLC. v. Huntington*  
10 *Restaurants Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004). The factors are considered  
11 disjunctively, and a court is free to find the absence of good cause and deny a motion to  
12 set aside entry of default if any of the three factors is present. *Id.*

13 The Ninth Circuit has held that “a defaulted party's conduct is culpable ‘if he has  
14 received actual or constructive notice of the filing of the action and intentionally failed to  
15 answer.’ ” *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001)  
16 (quoting *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir.1988)).  
17 Sodexo was aware of and participating in each of the member cases prior to the filing of  
18 Cargill’s answer and cross-claims against Sodexo.<sup>6</sup> Although Cargill never requested a  
19 waiver of formal service from Sodexo, Sodexo certainly had actual notice of proceedings  
20 and the filing, as they had been participating in the lead case (i.e., the Grano matter) for  
21 over a year and the member cases for months. Additionally, Sodexo was able to meet the  
22 correct filing deadline in the lead case, so were clearly aware of the timeframe in which  
23 they were to answer Cargill’s cross-claims. ECF No. 62. For the foregoing reasons, the  
24 Court finds Sodexo’s Answer to be untimely. See *United Food & Commercial Workers*  
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28 <sup>6</sup> As evidenced by the filing of waiver of formal service on October 16, 2019 in *Anderson*, ECF 4;  
*Lader*, ECF 4; *Baker*, ECF 5; *Browning*, ECF 4; *Abbott*, ECF 5; *Evers*, ECF 4; *Miller*, ECF 3.



1 Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984) (“Rule 4 is a flexible rule  
2 that should be liberally construed so long as a party receives sufficient notice of the  
3 complaint.”).

4       Regardless, both parties have expressed an interest in what would best “harmonize  
5 the claims in Grano and the Related Cases.” ECF 141 at 6; ECF 160 at 8. Sodexo notes  
6 that the indemnification issue is already being litigated in the lead case, ECF No. 160 at  
7 8, and Cargill similarly notes that it would not oppose a motion by Sodexo to late file the  
8 indemnification cross-claim in the related cases. ECF No. 141 at 5. Accordingly, it  
9 would be inefficient to strike the claim here, only for Sodexo to later refile with the  
10 consent of Cargill.

11       Accordingly, the Court finds it in the interest of judicial efficiency to strike the  
12 failure to procure insurance cross-claim only, as this cross-claim is immaterial to issues in  
13 this case, under Fed. R. Civ. P. 12(f). However, the motion to strike is denied as to the  
14 remaining claims because such action would unnecessarily delay the proceedings. See  
15 AT&T Corp. v. Dataway Inc., 577 F. Supp. 2d 1099, 1103 (N.D. Cal. 2008) (denying  
16 motion to strike answer to counterclaims filed 170 days late where it was more efficient  
17 and there was no prejudice to counterclaimant); see also Cabral v. Supple, LLC, No. ED  
18 12-00085-MWF (OPx), 2013 WL 12171760, at \*1 (C.D. Cal. Feb. 12, 2013) (denying  
19 motion to strike untimely answer where the plaintiff would “suffer no prejudice”); Wynes  
20 v. Kaiser Permanente Hosps., No. 2:10-cv-00702-MCE, 2013 WL 2449498, at \*1 (E.D.  
21 Cal. June 5, 2013) (“federal courts in this and other circuits generally hold that the  
22 untimeliness of an answer, even if extreme ..., is not, by itself, a sufficient reason for  
23 granting a motion to strike.”).

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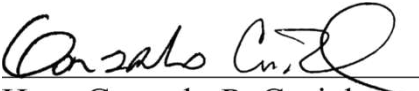
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1 **III. Conclusion**

2 Having considered the moving papers and the Parties' arguments, Cargill's Motion  
3 to Strike Sodexo's Answer and Cross-Claims is **GRANTED** as to the failure to procure  
4 insurance claims and **DENIED** as to the remaining claims and pleadings.

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6 **IT IS SO ORDERED.**

7 Dated: July 22, 2020

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9 Hon. Gonzalo P. Curiel  
United States District Judge

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