

KATHLEEN BLISS, ESQ. (NV Bar #7606)
Email: kb@kathleenblisslaw.com
KATHLEEN BLISS LAW, PLLC
1070 West Horizon Ridge Parkway, Suite 202
Henderson, Nevada 89012
Tele: (702) 463-9074

-and-

PAUL S. PADDA, ESQ. (NV Bar #10417)
Email: psp@paulpaddalaw.com
DAVID J. STANDER, ESQ. (*Admitted PHV*)
Email: dstanderlaw@gmail.com
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

-and-

DOUGLASS A. MITCHELL, ESQ. (NV Bar #3775)
Email: dmitchell@jenner.com
JENNER & BLOCK, LLP
1099 New York Avenue, N.W., Suite 900
Washington, D.C. 20001-4412
Tele: (202) 639-6090

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NAVAJO HEALTH FOUNDATION – SAGE
MEMORIAL HOSPITAL, INC. (doing
business as “Sage Memorial Hospital”); an
Arizona non-profit corporation,

Plaintiff,

vs.

RAZAGHI DEVELOPMENT COMPANY,
LLC; a Nevada limited liability company
(doing business as “Razaghi Healthcare”),
AHMAD R. RAZAGHI; individually,
TAUSIF HASAN; individually, DOES 1-10;
ROES A-Z;

Defendants.

Case No. 2:19-cv-0329-GMN-EJY

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION TO STRIKE
PORTIONS OF COMPLAINT FOR
MONEY DAMAGES AND EMERGENCY
INJUNCTIVE RELIEF**

1 Citing Federal Rule of Civil Procedure 12(f), Defendants seek to strike certain portions
 2 of Plaintiff's Complaint¹ which was filed on October 22, 2019. According to Defendants,
 3 certain allegations in the Complaint fall within limitations identified in Fed. R. Civ. P. 12(f)
 4 because they contain information which Defendants contend is "immaterial to the case,
 5 impertinent in nature, and scandalous, having been pled merely to shock and/or prejudice the
 6 reader." See ECR #47, p. 2. Specifically, Defendants seek to remove five categories of
 7 allegations by Plaintiff:

- 8 1. Paragraphs 1 and 2, regarding the history and treatment of [the] Navajo People;
- 9 2. Paragraphs 19, 20, 21 and 22, regarding the history of Sage Memorial [Hospital];
- 10 3. Paragraph 25, regarding the personal history of [Defendant] Ahmad Razaghi;
- 11 4. Paragraphs 31, 32 and 33, regarding the dismissed FCA [False Claims Act]

12 Allegations; and

- 13 5. Defendants "Does" and "Roes."

14 For the reasons set forth below, Defendants' motion to strike fails to present a basis for
 15 relief and this Court should deny it. In support of this opposition, Plaintiff relies upon the
 16 memorandum of points and authorities below, the Complaint initiating this litigation and any
 17 additional arguments the Court may permit at a hearing on this matter (should the Court deem a
 18 hearing necessary).

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **A. Federal Rule of Civil Procedure 12(f) Standard**

21 Federal Rule of Procedure 12(f) provides that the Court may strike from a pleading an
 22 insufficient defense or any "redundant, immaterial, impertinent, or scandalous matter." Fed. R.
 23 Civ. P. 12(f). To strike an allegation from a complaint based on Fed. R. Civ. P. 12(f), the court
 24 must rely upon one of the specifically identified grounds: redundant, immaterial, impertinent or
 25 scandalous. See *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973-74 (9th Cir. 2010).

26
 27
 28 ¹ ECF #1.

1 “Redundant” matter is that which “consists of allegations that constitute a needless
 2 repetition of other averments.” *Germaine Music v. Universal Songs of Polygram*, 275 F. Supp.
 3 2d 1288, 1299-1300 (D. Nev. 2003), aff’d in part, 130 F. App’x 153 (9th Cir. 2005) (citation
 4 omitted). Matter which is “immaterial” is “that which has no essential or important relationship
 5 to the claim for relief or the defenses being pleaded.” *Id.*, at 1300, citing *Fantasy, Inc. v.*
 6 *Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev’d on other grounds, 510 U.S. 517 (1994).
 7 “Impertinent” matter consists of statements that do not pertain to and are not necessary to the
 8 issues in question. *See* 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure
 9 § 1382, at 711 (1990). “‘Scandalous’ generally refers to any allegation that unnecessarily
 10 reflects on the moral character of an individual or states anything in repulsive language that
 11 detracts from the dignity of the court.” *Armed Forces Bank, N.D. v. FSG-4, LLC*, 2011 U.S.
 12 Dist. Lexis 130636 (D. Nev.) (unreported) (finding that the challenged allegations, while
 13 casting a derogatory light on the defendant, did not rise to the requisite level of
 14 ‘scandalousness’ to necessitate granting a motion to strike). “It is not enough that the matter
 15 offends the sensibilities of the objecting party if the challenged allegations describe acts or
 16 events that are relevant to the action.” *Kennedy v. Las Vegas Sands Corp.*, 2017 U.S. Dist.
 17 Lexis 155779, *4 (D. Nev.) (unreported) (quotation omitted).

18 Courts generally disfavor motions to strike as it is a severe form of relief. *Federal*
 19 *Deposit Insurance Corp. v. Jones*, No. 2:13-cv-00168-GMN-GWF (D. Nev. July 26, 2013),
 20 citing *Germaine*, 275 F. Supp. 2d 1288, 1300 (D. Nev. 2003) (“[M]otions to strike should not
 21 be granted unless it is clear that the matter to be stricken could have no possible bearing on the
 22 subject matter of the litigation.”) (quotation omitted); *Nevada Fair Housing Ctr, Inc. v. Clark*
 23 *County*, 565 F. Supp. 2d 1178, 1187 (D. Nev. 2008) (striking material under Rule 12(f) is
 24 considered a “drastic remedy” that is generally disfavored). Such motions are “generally
 25 disfavored because they are often used as delaying tactics, and because of the limited
 26 importance of pleadings in federal practice.” *Germaine*, 275 F. Supp. 2d 1288, 1300 (D. Nev.
 27 2003) (quotation omitted). Courts often require a showing of prejudice by the moving party
 28

1 before granting the requested relief. *Roadhouse v. Las Vegas Metropolitan Police Dept.*, 290
2 F.R.D. 535, 543 (D. Nev. 2013).

3 In deciding a motion to strike, courts may not resolve disputed and substantial factual or
4 legal issues. *Kennedy*, 2017 U.S. Dist. Lexis 155779, *3 (D. Nev.) (unreported). “If the court is
5 in doubt as to whether the challenged matter may raise an issue of fact or law, the motion to
6 strike should be denied, leaving an assessment of the sufficiency of the allegations for
7 adjudication on the merits.” *Id.* (quotation omitted). Courts accept as true the factual
8 allegations underlying the claim at issue. *Id.*, citing *Kelly v. Kosuga*, 358 U.S. 516, 516 (1959).

9 Here, Defendants fail to meet the necessary standards of Rule 12(f) that could warrant
10 striking the paragraphs at issue in Plaintiff’s Complaint. Therefore, this Court should deny the
11 motion to strike.

12 **B. Plaintiff’s Causes of Action**

13 Plaintiff alleges violations of state and federal civil RICO statutes, as well as common
14 law causes of action for conversion, civil conspiracy, tortious interference with contract, fraud,
15 constructive fraud and aiding and abetting. Plaintiff’s Complaint for Money Damages and
16 Emergency Injunctive Relief. (ECF #1). Under RICO statutes, it is unlawful for “any person
17 employed by or associated with an enterprise engaged in, or the activities of which affect,
18 interstate or foreign commerce to conduct or participate directly or indirectly in the conduct of
19 such enterprise’s affairs for a pattern of racketeering activity or collection of unlawful debt” or
20 for any person to conspire to violate any of the RICO substantive provisions. 18 U.S.C. §
21 1962(c); 18 U.S.C. § 1962(d); NRS 207.400(1)(c); NRS 207.400(j).

22 Necessary elements of RICO claims, which Plaintiff must allege in order to state valid
23 causes of action, are: (1) that Defendants were engaged in an “enterprise” which functioned for
24 the common purpose of defrauding Plaintiff; (2). That Defendants sought to enrich themselves
25 through such fraudulent enterprise; and (3) that as part of such enterprise, Defendants engaged
26 in a pattern of racketeering activity or crime related to racketeering as defined by the statutes.
27 18 U.S.C. § 1961(4); 18 U.S.C. § 1961(5); NRS 207.380(1); NRS 207.380(2); NRS 207.360;
28 NRS 207.390. *See* Complaint, ECF #1, ¶¶ 65-116, generally.

1 In order to properly assert its common law claims, Plaintiff must allege that Defendants:
 2 exerted a wrongful dominion and control over its personal property in denial of or inconsistent
 3 with its rights deliberately causing loss (Complaint, ECF No., 1, Conversion, ¶¶ 117-120);
 4 agreed to commit wrongful acts to accomplish an unlawful purpose or to accomplish a lawful
 5 objective by unlawful means causing damage (*Id.*, Civil Conspiracy, ¶¶ 121-125); interfered
 6 with an existing contract (*Id.*, Tortious Interference With Contract, ¶¶ 126-130); made a false
 7 and material representation with the intent that Plaintiff rightfully rely upon it (*Id.*, Common
 8 Law Fraud, ¶¶ 131-134); fraudulently breached a legal or equitable duty which tended to
 9 deceive others, violate public or private confidence or injury public interests (*Id.*, Constructive
 10 Fraud, ¶¶ 135-139); and counseled, advised, abetted or assisted the commission of an actionable
 11 wrong by another (*Id.*, Aiding and Abetting, ¶¶ 140-143). The challenged paragraphs of
 12 Plaintiff's Complaint support the elements of these causes of action and should not be stricken.

13
 14 **1. Paragraphs 1 and 2 Regarding the Navajo People's Vulnerability Are
 Not Subject to a Rule 12(f) Motion to Strike**

15 Defendants incorrectly claim that Paragraphs 1 and 2 of Plaintiff's Complaint "are
 16 irrelevant, immaterial, and solely meant to prejudice the reader" and should be stricken. (ECF
 17 No. 47, p. 2). However, "prejudice" is not one of the stated grounds for a Rule 12(f) motion to
 18 strike and cannot be used as a basis for such a motion. Fed. R. Civ. P. 12(f).

19 Moreover, based upon the aforementioned causes of action and their elements, this
 20 information is highly relevant and material to Plaintiff's claims. The Navajo people's history of
 21 exploit by outsiders, including the United States government, was a fact that Defendants took
 22 advantage of in order to engage in the unlawful conduct that necessarily informs the basis of
 23 Plaintiff's Complaint. Ahmad Razaghi, fully recognizing the undeniable vulnerability of
 24 communities as a result of extreme poverty, remoteness and minimal infrastructure, gained trust
 25 and access that received little filter or review. According to Plaintiffs, that is how he got away
 26 with years of theft, deception and self-dealing. It helps explain how Razaghi was able to create,
 27 operate, and expand the criminal enterprise alleged in the Complaint. The description of
 28

1 Defendant Razaghi's deceptive and fraudulent conduct, coupled with the Navajo's historical
2 exposure and susceptibility to such, relate directly to Plaintiff's allegations. *See, i.e. Petrie v.*
3 *Electronic Game Card, Inc.*, 761 F.3d 959, 967 (9th Cir. 2014) (withdrawn by publisher on
4 other grounds) (finding allegations of forgery and fraud "clearly [had] an essential or important
5 relationship to [the plaintiffs'] claim for relief in their securities fraud action; *see also, Healing*
6 *v. Jones*, 174 F. Supp. 211, 212 (D. Ariz. 1959) (action instituted to obtain a determination of
7 the rights and interests of the Navajo Tribe, Hopi Tribe and individual Native Americans to an
8 area set aside by an Executive Order of December 16, 1882). Paragraphs 1 and 2 are thus
9 undeniably material to Plaintiff's causes of action and the elements.

10 Additionally, Defendants' Motion is premature since factual development and
11 refinement as the parties prepare for trial will further demonstrate the relevance and materiality
12 of the allegations in Paragraphs 1 and 2. In *Healing*, the plaintiff made a motion to strike based
13 on arguments similar to Defendants' contentions in its Motion. The *Healing* plaintiff argued
14 that language in a counterclaim should have been stricken as "immaterial," "impertinent" and
15 "scandalous...alleged for the purpose of creating prejudice against plaintiff." *Id.* The plaintiff
16 claimed that the language at issue dealt at length with historical events or with events which had
17 no bearing on the case, such as allegations concerning failure in assimilation, population
18 statistics, attempts to create boundary lines, allotment programs, and the past attitudes of the
19 Navajo Indians regarding division of the lands. *Id.*, at 220. The court held the majority of the
20 motion to strike in abeyance until a pretrial conference could be held, noting that it could not
21 determine with assurance the relevance of the challenged paragraphs. "Their pertinence, which
22 may in some respects now seem doubtful, may later appear entirely appropriate." *Id.*

23 Here, the allegations in Paragraphs 1 and 2 are entirely appropriate and very material to
24 Sage Memorial's claims that Defendants created and operated a criminal for the purpose of
25 defrauding it of millions of dollars. As discovery progresses, the appropriateness and
26 materiality of the allegations in Paragraphs 1 and 2 will become even more clear.

1 **2. Paragraphs 19 Through 22 Which Provide Historical Context Regarding**
 2 **The Founding Of Sage Memorial Hospital Are Not Subject To A Rule**
 3 **12(f) Motion To Strike**

4 Defendants improperly seek to strike Paragraphs 19 through 22 of Plaintiff's Complaint
 5 "because they too are immaterial, irrelevant, and do not advance Plaintiff's claims." (ECF No.
 6 47, p. 3). They claim that the inclusion of these paragraphs forces them to "investigate and
 7 litigate the alleged history of the Presbyterian Church, the Ganado Mission, the 1930s school of
 8 nursing, and Sage Memorial prior to 2000". (*Id.* at p. 3). They are wrong.

9 The history of Sage Memorial Hospital is relevant and material to Plaintiff's causes of
 10 action. Sage Memorial's founding purpose of providing for the healthcare needs of the Navajo
 11 people, the Native American nurses it trained, the manner in which it was created and its
 12 continued service to rural and indigent patients with few, if any, alternative healthcare options,
 13 further illustrate Plaintiff's unique vulnerability to Defendants' criminal enterprise. *See*
 14 *Healing*, 174 F. Supp. 211, 212 (D. Ariz. 1959). These paragraphs also provide material insight
 15 into how Plaintiff's organization was structured and how it functioned before Defendants
 16 engaged in their unlawful conduct, which in turn illustrates how Defendants were able to take
 17 advantage of Plaintiff in furtherance of their illegal enterprise.

18 **3. Paragraph 25 Regarding Defendant Ahmad Razaghi's Background Is**
 19 **Not Subject To A Rule 12(f) Motion To Strike**

20 Defendants erroneously believe that Paragraph 25 should "be removed from the
 21 Complaint because the allegations are of a personal nature not relevant to this matter." (ECF
 22 No. 47, p. 4). They also assert that Paragraph 25 contains "improper prejudice or bias" against
 23 Defendant Razaghi. (*Id.*, p. 5). However, "prejudice" and "bias" are not grounds for a Rule
 24 12(f) motion to strike and cannot be used as a basis for such a motion. Fed. R. Civ. P. 12(f).

25 Paragraph 25 of the Complaint states: "Ahmad Razaghi grew up in Salt Lake City, Utah
 26 following his family's emigration to the United States from Iran where he was born in 1966.
 27 Following graduation from college, Razaghi worked as a project manager in the construction
 28 industry. Upon information and belief, Razaghi had no experience at that time in the field of
 healthcare." Ex. 1, ¶ 25. The following paragraph, Paragraph 26, describes Razaghi's

1 construction work on a hospital he was helping build for an Indian community in Utah, showing
 2 again that Razaghi had no prior experience with hospital administration or operations. The
 3 closest he came was building one. Then, Paragraph 27 explains how Razaghi became aware of,
 4 and manipulated his way into, a role administering Sage Memorial. First, by taking advantage
 5 of a friend who was Navajo and then by exaggerating who he was and what he could do. The
 6 allegations in Paragraph 25 are therefore relevant and material to Defendant Razaghi's lack of
 7 ties to the Navajo Nation, his lack of prior experience in the healthcare industry, and the
 8 unscrupulous methods he used to persuade the Sage Board of Directors to let him manage the
 9 hospital. The allegations in Paragraphs 25 through 27 show that Razaghi did not share a
 10 historical bond with the Navajo Nation, did not have any relevant experience, and that his
 11 purported healthcare management company was simply a sham enterprise created expressly to
 12 gain access to Plaintiff's assets.

13
 14 **4. Paragraphs 31 Through 33 Regarding The "2014 Whistleblower Action"**
 15 **Against Defendants Are Not Subject to a Rule 12(f) Motion to Strike**

16 Defendants wrongfully seek to strike Section III, Paragraphs 31 through 33 and the
 17 attached Exhibit A as "immaterial" and "meant to prejudice and improperly influence the
 18 reader." They also claim that these paragraphs must be stricken because "this information
 19 would likely be inadmissible under Rule 404 of the Federal Rules of Evidence". (ECF #47,
 20 p. 5). However, inadmissibility is not an appropriate Rule 12(f) grounds for a motion to strike.
 21 Fed. R. Civ. P. 12(f); *see, e.g. Mitschke v. Gosal Trucking, Ltd.*, 2014 U.S. Dist. Lexis 142744,
 22 *8 (D. Nev.) (unreported), where the defendants argued that certain provisions should be
 23 stricken from the complaint because the court should not admit evidence related to a pending
 24 criminal matter associated with the defendant. In *Mitschke*, the court refused to strike the
 25 provisions stating that "[t]his [the defendant's argument] misses the point. The court is not
 26 receiving evidence at this time. It is determining whether the allegation that [the defendant] is
 27 being criminally prosecuted for [the decedent's death] is 'redundant, immaterial, impertinent, or
 28 scandalous' in the context of a wrongful death action...It is not." *Id.*

1 Similarly, in *Chan v. Pan Western Corp.*, 2011 U.S. Dist. Lexis 27808, *3 (D. Nev.)
2 (unreported), the court found that the plaintiff was not introducing documents into evidence
3 simply by attaching them to the complaint. “Defendants will not suffer any prejudice by the
4 attachments of documents to the pleadings, as Defendants retain the right to object to any
5 attempt Plaintiff may make to introduce said exhibits as evidence at trial or as support for a
6 summary judgment motion.” *Id.* (citation omitted). In the present case, any argument regarding
7 the admissibility of the whistleblower information into evidence is misplaced and cannot
8 provide a basis for moving to strike determination.

9 Furthermore, the allegations concerning the whistleblower lawsuit brought against
10 Defendants for violation of the False Claims Act, 31 U.S.C. § 3729, *et seq.* are relevant and
11 material to the conduct at issue in the present case. Such allegations tend to show the required
12 pattern of conduct, as well as the required description of the alleged unlawful “enterprise” in
13 which Defendants were engaged. As the Complaint alleges that Defendants’ illegal conduct
14 began in 2011 and continues to this day, it is entirely appropriate to include information from
15 the 2014-2017 timeframe regarding the exact same conduct and its effects. The allegations also
16 show how Defendants used Plaintiff’s patients’ indigency and the Navajo people’s reliance
17 upon Sage Memorial Hospital to fraudulently and wrongfully divert federal healthcare funds for
18 their own benefit. *See State Farm Mutual Auto Insurance Co. v. Pointe Physical Therapy, LLC*,
19 107 F. Supp. 3d 772, 801, 802 (S.D. Mich. 2015) (RICO action in which court denied motion to
20 strike material in complaint regarding non-party medical providers that defendant alleged was
21 “gratuitous”; defendant had an ownership interest in non-party providers and was alleged to
22 have unlawfully profited from patients seen by such providers); *Newkirk v. Village of Steger*,
23 2004 U.S. Dist. Lexis 19192, **78, 79 (N.D. Ill.) (unreported) (denying motion to strike
24 material in complaint that defendants argued was unrelated to plaintiffs’ RICO claim and was
25 included for the sole purpose of embarrassing and harassing defendants; “To the extent these
26 claims may point to evidence that Defendants were motivated to violate Plaintiffs’ free speech
27 and political association rights based on Plaintiffs’ political affiliation, the court declines to
28

1 strike them at this time. Defendants will have ample opportunity after discovery to show that
 2 these allegations are baseless or irrelevant to Plaintiffs' claims.").

3
 4 **5. "Prejudice" Is Not the Same as "Scandalous" And Cannot Form The
 Basis Of A Rule 12(f) Motion To Strike**

5 "Prejudice" is defined as "a forejudgment; bias; partiality; preconceived opinion" and
 6 "[a] leaning towards one side of a cause for some reason other than a conviction of its justice."
 7 Black's Law Dictionary, 6th ed. (1991). It cannot form the basis of a Rule 12(f) motion to
 8 strike and Defendants' repeated attempts to strike Complaint paragraphs for this reason are
 9 misguided. "Prejudice" is distinctly different from "scandalous," which for Rule 12(f) purposes
 10 refers to any allegation that unnecessarily reflects on the moral character of an individual or
 11 states anything in repulsive language that detracts from the dignity of the court." *Armed Forces*
 12 *Bank, N.D.*, 2011 U.S. Dist. Lexis 130636 (D. Nev.) (unreported).

13 In determining whether material is "scandalous" under Rule 12(b), courts "analyze the
 14 parties' arguments, [and do] not to pander to the sensitivities of those of delicate temperament."
 15 *Cobell v. Norton*, 224 F.R.D. 266, 281 (D.D.C. 2004). In order to meet Rule 12(f)'s standard,
 16 the material in question must at least be found lacking in evidentiary support. *Id.*, at 282. "The
 17 test for whether an allegation may be stricken as 'scandalous' does not require that the
 18 allegation be conclusively proven, only that it be colorable." *Id.*, at 284.

19 Here, Defendants make only a bare statement that the challenged paragraphs are
 20 "scandalous" without providing any argument as to how any of such paragraphs fall within Rule
 21 12(f)'s definition. (ECF No. 47, p. 6) ("For the reasons stated herein, Defendants request the
 22 Court strike certain portions of the Complaint outlined herein as redundant, immaterial,
 23 impertinent, or scandalous matter."). This alone is reason enough to deny Defendants' motion
 24 to strike.

25 In the alternative, none of the challenged paragraphs rise to the level required by the rule
 26 to be deemed "scandalous." Historical information about the Navajo Nation and Sage
 27 Memorial Hospital do not reflect on Defendants' moral character or state anything in "repulsive
 28

1 language that detracts from the dignity of the court.” Nor does Defendant Razaghi’s
 2 background information provide any basis from which to make such a finding. The allegations
 3 concerning the whistleblower case simply present an objective summary of that litigation in
 4 language that in no way could be deemed “repulsive” or characterized as an assault on the
 5 Court’s dignity. These paragraphs describe and support allegations that at the very least are
 6 “colorable.” Defendants generically allege that all of the challenged paragraphs are
 7 “scandalous” without bothering to provide any argument which even attempts to meet the Rule
 8 12(f) standard. This is insufficient to support their motion.

9 **C. The *Randazza* Decision Does Not Support Defendants’ Arguments**

10 Defendants rely heavily upon *Randazza v. Cox*, No. 2:12-CV-02040-GMN, 2013 WL
 11 1767966, *2 (D. Nev. Feb. 22, 2013) (unreported) in support of their motion. In *Randazza*, the
 12 Court found that the defendant’s amended counter complaint was “replete with irrelevant
 13 material, inappropriate commentary, baseless speculation, and derogatory statements none of
 14 which relate to Plaintiff’s Complaint.” *Randazza*, at *3. However, the *Randazza* court did not
 15 offer any further explanation, or provide the language of the counter complaint which it found
 16 to be in violation of Rule 12(f). Without any contextual detail as to the *Randazza* court’s
 17 reasoning, the decision does not effectively bolster Defendants’ argument in the present case.

18
 19 **D. Plaintiff’s Use of Defendants “Does” and “Roes” Is Appropriate Under the Federal Rules**

20 Defendants move to strike references to “Doe” and “Roe” Defendants in Plaintiff’s
 21 Complaint because it claims that the Federal Rules of Civil Procedure do not allow for the
 22 pleading of fictitious parties. (ECF #47, p. 6). However, Defendants misrepresent the rules.
 23 Although fictitious pleading is “disfavored,” there is no comprehensive prohibition. *See, e.g.*
 24 *Craig v. United States*, 413 F.2d 854, 856 (9th Cir. 1969). The Ninth Circuit recognizes that
 25 “situations arise...where the identity of alleged defendants will not be known prior to the filing
 26 of a complaint” and that “plaintiffs should be given an opportunity through discovery to identify
 27 the unknown defendants, unless it is clear that discovery would not uncover the identities, or
 28

1 that the complaint would be dismissed on other grounds.” *Gillespie v. Civiletti*, 629 F.2d 637,
 2 642 (9th Cir. 1980) (citations omitted) (finding the district court abused its discretion in not
 3 permitting the discovery sought by the appellant regarding “John Doe” defendants and in
 4 dismissing the complaint; “It was very likely that the answers to the interrogatories would have
 5 disclosed the identities of the ‘John Doe’ defendants [and] [w]ith those disclosures, the
 6 allegations contained in appellant’s complaint, if proven, could possibly have provided bases
 7 for relief...”).

8 In the present case, the Complaint makes it clear that discovery could uncover identities
 9 of other defendant corporate entities or individuals and that such defendants will be
 10 appropriately identified and named in the Complaint if and when sufficient information
 11 becomes available during the course of litigation.

12
 13 11. Plaintiff is informed and believes, and thereupon alleges, that each of the
 14 Defendants designated as Does 1 through 10, inclusive, are responsible in some
 15 manner for the events and happenings herein referred to and negligently and/or
 16 intentionally caused injuries and damages to Plaintiff. Plaintiff further alleges
 17 that it cannot currently ascertain the identity of each of the Doe Defendant and
 18 Plaintiff will therefore seek leave of Court to amend this Complaint to insert the
 true names and capacities of Doe Defendants when they have been ascertained,
 together with appropriate charging allegations and to join such Defendants in this
 action.

19 12. Plaintiff is informed and believes, and thereupon alleges, that each of the
 20 Defendants designated as Roes A through Z, inclusive, [are] responsible in some
 21 manner for the events and happenings herein referred to and negligently and/or
 22 intentionally caused injuries and damages to Plaintiff. Plaintiff is further
 23 informed and believes that each of the Roes is either a corporation, related
 subsidiary, parent entity, group, partnership, holding company, owner,
 predecessor entity, successor entity, affiliate, joint venture, related association,
 insurer or business entity, the true names of which are currently unknown to
 24 Plaintiff at this time. Additionally, Plaintiff alleges that it cannot currently
 25 ascertain the identity of each of the Roe Defendants and Plaintiff will therefore
 26 seek leave of Court to amend this Complaint to insert the true names and
 capacities of Roe Defendants when they have been ascertained, together with
 appropriate charging allegations and to join such Defendants in this action.

ECF No. 1, ¶¶ 11, 12; *see Aragon v. Western United Insurance Co.*, 2012 U.S. Dist. Lexis 144789, **5, 6 (D. Nev.) (refusing to strike Doe and Roe Defendants, noting that naming fictitious parties is “only disfavored and not prohibited”, and finding that plaintiff’s complaint alleged facts such that discovery could uncover identities of other defendants and the complaint would not be dismissed on other grounds). The “Doe” and “Roe” Defendants in this case have been properly pleaded as parties and references thereto are not subject to a Rule 12(f) motion to strike.

CONCLUSION

Based on the foregoing, Plaintiff requests that this Court deny Defendants’ Motion to Strike.

Respectfully submitted,

/s/Kathleen Bliss
 Kathleen Bliss, Esq.
 Paul S. Padda, Esq.
 David J. Stander, Esq.
 Douglass A. Mitchell, Esq.

Counsel for Plaintiff

Dated: July 20, 2020

CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure and the Court’s Local Rules, the undersigned hereby certifies that on this day, July 20, 2020, a copy of the foregoing document entitled **PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO STRIKE PORTIONS OF COMPLAINT FOR MONEY DAMAGES AND EMERGENCY INJUNCTIVE RELIEF** was filed and served via the Court’s CM/ECF electronic filing system to the following:

Brian L. Bradford, Esq.
 Pavneet Singh Uppal, Esq.
 Kris Leonhardt, Esq.
 Fisher & Phillips, LLP
 300 South Fourth Street, Suite 1500
 Las Vegas, Nevada 89101

1 Email: bbradford@fisherphillips.com
2 puppal@fisherphillips.com
3 kleonhardt@fisherphillips.com

4 /s/Priscilla Horvath
5 Priscilla Horvath, Paralegal
6 KATHLEEN BLISS LAW
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28